CARIBBEAN EXAMINATIONS COUNCIL

CAPE®
Law

SYLLABUS
SPECIMEN PAPER
MARK SCHEME
SUBJECT REPORTS

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Law

Law is a system of rules usually enforced though a series of institutions. The CAPE Law Syllabus assists persons who wish to embark on further study and training for entry into the legal profession, it also addresses the needs of other persons engaged in occupations which require some knowledge of the law, such as clerks, paralegals, administrators, managers, the police and other public officers. It serves to inform persons of their rights and obligations, and to inculcate in them certain positive values, which are necessary in a civilised society.

The syllabus is arranged into two Units. Each Unit consists of three Modules.

UNIT 1: PUBLIC LAW

Module 1 – Caribbean Legal Systems
Module 2 – Principles of Public Law
Module 3 – Criminal Law

UNIT 2: PRIVATE LAW

Module 1 – Law of Tort
Module 2 – Law of Contract
Module 3 – Real Property

Caribbean Advanced Proficiency Examination®

SYLLABUS
LAW

CXC A23/U2/17

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Please check the website, www.cxc.org for updates on CXC's syllabuses.

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Introduction

The Caribbean Advanced Proficiency Examination® (**CAPE®**) is designed to provide certification of the academic, vocational and technical achievement of students in the Caribbean who, having completed a minimum of five years of secondary education, wish to further their studies. The examinations address the skills and knowledge acquired by students under a flexible and articulated system where subjects are organised in 1-Unit or 2-Unit courses with each Unit containing three Modules. Subjects examined under **CAPE®** may be studied concurrently or singly.

The Caribbean Examinations Council offers three types of certification at the **CAPE®** level. The first is the award of a certificate showing each **CAPE®** Unit completed. The second is the **CAPE®** Diploma, awarded to candidates who have satisfactorily completed at least six Units, including Caribbean Studies. The third is the **CXC®** Associate Degree, awarded for the satisfactory completion of a prescribed cluster of *eight* **CAPE®** Units including Caribbean Studies, Communication Studies *and Integrated Mathematics. Integrated Mathematics is not a requirement for the **CXC®** Associate Degree in Mathematics.* The complete list of Associate Degrees may be found in the **CXC®** Associate Degree Handbook.

For the **CAPE®** Diploma and the **CXC®** Associate Degree, candidates must complete the cluster of required Units within a maximum period of five years*. To be eligible for a **CXC®** Associate Degree, the educational institution presenting the candidates for the award, must select the Associate Degree of choice at the time of registration at the sitting (year) the candidates are expected to qualify for the award.* Candidates will not be awarded an Associate Degree for which they were not registered.

Law Syllabus

♦ RATIONALE

Law is an essential tool for ensuring relative stability, peace and order in society, for regulating inter-personal behaviour and expectations and for defining public and private rights. The study of Law not only assists students who wish to embark on further study and training for entry into the legal profession, but also addresses the needs of other persons engaged in occupations which require some knowledge of the law, such as law clerks, paralegals, administrators, managers, the police and other public officers. It also serves to inform persons of their rights and obligations, and to inculcate in students certain positive values, which are necessary in any civilised society.

This syllabus seeks to develop knowledge and understanding of critical legal concepts, as well as, analytical, functional and problem-solving skills, and the ability to synthesise and evaluate legal materials. It also seeks to promote an awareness and appreciation of the role and mechanisms of Law, in the resolution of disputes whether by the courts (civil or criminal); or Alternative Dispute Resolution (ADR), such as, arbitration or mediation. Moreover, in order to motivate students, emphasis is placed on providing an exciting, challenging and intellectually stimulating framework for them to engage in the study of Law as a discrete discipline and an important tool of social engineering. This course in Law provides the basis and scope for promoting a sound knowledge and understanding of legal principles and the role of law in the society, particularly in the evolving and developing Caribbean states. It also facilitates movement by students into professional and other law related programmes.

The syllabus will help students to acquire the skills of learning to know, learning to do, learning to live together, learning to be and learning to transform oneself and society, as defined in the UNESCO Pillars of Learning. *Besides, students who successfully complete this course of study in **CAPE®** Law will have attained the attributes of the Ideal Caribbean Person as outlined in the document, The Caribbean Education Strategy (2000). These include being emotionally secure with a high level of self –confidence and self-esteem; is aware of the importance of living in harmony with the environment; demonstrates multiple literacies, independent and critical thinking; and has a positive work attitude.*

Ultimately, a student who completes the course of study will be engaged in activities which foster the development of the twenty-first century skills of collaboration, critical thinking and communication.

♦ AIMS

The syllabus aims to:

1. promote and develop knowledge and understanding of legal principles in selected areas of law in the Commonwealth Caribbean;

2. develop techniques of legal reasoning and the ability to analyse and solve legal problems, with reference to the recognised sources of law;

3. develop an appreciation of the role of law in society;

4. promote respect for the Rule of Law and legal institutions in society;

5. promote a critical awareness of the process of developing Caribbean jurisprudence;

6. encourage an awareness of the fundamental rights and freedoms enshrined in the constitutions of Commonwealth Caribbean states and the methods of their enforcement; and,

7. sensitise individuals to their right to proper state administration.

♦ SKILLS AND ABILITIES TO BE ASSESSED

The examinations will test candidates' skills and abilities under two Profile Dimensions.

1. Conceptual Knowledge (CK)

   The ability to:
   - recall legal principles, concepts and theories;
   - describe legal procedures; and,
   - explain legal concepts.

2. Use of Knowledge (UK)

   The ability to:
   - select and use appropriate facts, concepts, principles and rules in a variety of contexts;
   - apply legal precedent from case material or statute to solve factual or simulated problems;
   - analyse a body of information to determine the legal issues contained therein;
   - analyse material and make logical judgements;
   - interpret *cases and statutes, and material from textbooks, legal journals and other sources*;
   - deduce common themes, synthesise themes in a logical manner; and,
   - draw conclusions based on legal research.

♦ *PREREQUISITES OF THE SYLLABUS*

Any person who has completed five years of secondary education or its equivalent should normally be able to pursue the course of study defined by the syllabus. However, it is desirable that a candidate should have good verbal and written communication skills.

♦ STRUCTURE OF THE SYLLABUS

The syllabus is arranged into two Units. Each Unit consists of three Modules, each Module requiring 50 hours.

UNIT 1: PUBLIC LAW

Module 1	-	Caribbean Legal Systems
Module 2	-	Principles of Public Law
Module 3	-	Criminal Law

UNIT 2: PRIVATE LAW

Module 1	-	Law of Tort
Module 2	-	Law of Contract
Module 3	-	Real Property

Lists of resources are provided in the syllabus. The lists provide information that may be helpful for the study of each Module.

Each Unit forms a discrete package for certification.

For each Module there are general and specific objectives. The general and specific objectives indicate the scope of the content, on which the examination will be based. However, unfamiliar situations may be presented as stimulus material in a question.

♦ *APPROACHES TO TEACHING THE SYLLABUS*

The specific objectives indicate the scope of the content and the activities that should be covered. The students should be exposed to accurate and unbiased content and skills that will foster more prepared and critical-thinking citizens capable of effectively participating in a dynamic society. Therefore, the role of the teacher is to employ a collaborative, highly practical and industry-driven approach to facilitate the students' learning.

♦ UNIT 1: PUBLIC LAW
MODULE 1: CARIBBEAN LEGAL SYSTEMS

GENERAL OBJECTIVES

On completion of this Module, students should:

1. *develop a general understanding of law;*

2. appreciate the complex nature of law *and the legal institutions*;

3. understand the dynamic role(s) and functions of law in changing Commonwealth Caribbean societies; and,

4. develop skills in applying principles *of law* to a given set of facts.

SPECIFIC OBJECTIVES	**CONTENT**
Students should be able to:	
1. *describe the nature of law*;	*The Nature of Law*: (a) origin, role, and functions; (b) theories of law: natural law and positive law; (c) *law and religion; and,* (d) *law and morality.*
2. *assess the importance of the contribution of the various sources of law to the development of Commonwealth Caribbean law;*	Concepts of the phrase 'sources of law': (a) literary sources – constitution; (b) legal sources – legislation (primary and subsidiary) and interpretation by the Courts; (c) historical sources – common law; (d) equity – origin and development in the Caribbean; (e) judicial precedent; and, (f) customs and conventions.

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
3. *explain* the bases on which the law can be classified;	Classification of Law: (a) reasons for classification; (b) classification bases: (i) subject matter – for example, contract, criminal, tort; (ii) functional – for example, substantive and procedural; and, (iii) conceptual – for example, private law and public law.
4. *examine the structure* and operation of the court system;	Structure and Hierarchy of the Criminal and Civil Courts (a) *Advantages and disadvantages* of the Judicial Committee of the Privy Council and the Caribbean Court of Justice. (b) Courts of Appeal, High Courts and Supreme Courts. (c) Magistrates' Courts, including Juvenile Court, Family Court and Petty Sessions.
5. evaluate the role and function of named functionaries and institutions of the legal process;	Role and function of: (a) legal personnel (Judges, Registrars, Bailiffs, Marshalls; *Attorney General, Director of Public Prosecution and Attorneys); and,*

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
	(b) the Jury (eligibility and disqualification, advantages and disadvantages of the jury system).
6. assess alternative methods of dispute resolution; and,	Alternative methods of dispute resolution (ADR) – (arbitration and mediation).
7. evaluate the role and function of the Ombudsman.	The role and function of the Ombudsman.

Suggested Teaching and Learning Activities

To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.

1. *Engage students in research on careers in the field of Law as well as those requiring knowledge of Law.*

2. Develop scrapbooks of newspaper reports and clippings on issues related to Caribbean legal systems.

3. Collect material on different ADR processes and study developments in their territory.

4. Allow students to participate in panel discussions involving resource persons with expertise in Caribbean legal systems and in ADR processes.

5. Allow students to participate in debates, moots and prepared speeches on issues related to Caribbean legal systems and ADR processes for presentation and critique by peers.

6. Conduct class discussions on issues related to law that are presented on the Editorial Pages of daily newspapers.

7. Use the Internet and electronic media sources to obtain information on new legislation and legal issues in Parliament.

8. Encourage students to attend Court and Parliament and discuss the issues and report on issues of law.

9. Make use of law libraries for research purposes.

UNIT 1
MODULE 1: CARIBBEAN LEGAL SYSTEMS (cont'd)

RESOURCES

Antoine, R.	*Commonwealth Caribbean Law and Legal Systems (2nd Edition)*. London: Cavendish, 2008.
Britton, P.	*Alternative Dispute Resolution*. *I Guy L. R. 108,* 1999.
Eversley, C. A.	*Law, Religion and Morality*. *I Guy L. R.3,* 1999.
Eversley, C. A.	'The Doctrine of Stare Decisis – An Enlightened Judicial Approach'. *Guyana Law Journal 63,* 1980.
Fiadjoe, A.	*Commonwealth Caribbean Public Law (3rd Edition)*. London: Cavendish, 2015.
Liverpool, N. J. O.	*The History and Development of the St. Lucia Civil Code*. Bridgetown: ISER, Cave Hill, 1983.
Newton, V.	*Commonwealth Caribbean Legal Systems: A Study of Small Jurisdictions.* Bridgetown: Triumph Publications, 1988.

WEBSITES

www.ebscohost.com

www.proquest.com

Suggested Cases

R v Ramsonahai and Duke (1961) 3WIR535

R v George Green (1969) 14WIR204

R v Davis (1962) 4WIR375

Fraser v Greenaway (1992) 41WIR136

Forde v Law Society (1987) 40 WIR 361

Re Niles (1993) 47 WIR 38

Knuller v DPP (1973) AC A35

Mohammed v Moraine and Another (1996) 49 WIR 371

Shaw v DPP (1962) AC 220

Hyde v Hyde (1866) LR 1P&D 130

Constitutions (for relevant jurisdictions & Charter of Rights for Jamaica)

UNIT 1
MODULE 2: PRINCIPLES OF PUBLIC LAW

For the purpose of this Module the term "Public Law" refers to two areas of law, namely, Administrative and Constitutional Law.

GENERAL OBJECTIVES

On completion of this Module, students should:

1. understand the *principles of Constitutional Law*;
2. comprehend the principles of Administrative Law; and,
3. develop skills in applying principles of *Constitutional and Administrative Law to a given set of facts*.

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	Characteristics of the Constitution of any one Commonwealth Caribbean State:
1. distinguish between supremacy of the Constitution and Parliamentary Sovereignty;	Differences between the supremacy of the Constitution vs. Parliamentary Sovereignty.
2. outline the appointment and functions of the Head of State;	The appointment and functions of the Head of State.
3. outline the composition of Parliament;	The composition of Parliament.
4. analyse the concept of the separation of powers, including the independence of the judiciary;	The concept of the separation of powers, including the independence of the judiciary.
5. analyse the concept of the rule of law;	The concept of the rule of law.
6. *explain the process of judicial review;*	The Judicial Review *Process:* (a) *Locus Standi*; and, (b) *persons/bodies subject to judicial review.*

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
	Characteristics of the Constitution of any **one** Commonwealth Caribbean State:
7. *apply the grounds of judicial review;* and,	Grounds for Judicial Review: (a) breach of one's fundamental rights; (b) *breach of a requirement in the statute;* (c) breach of principles of natural justice and legitimate expectation; (d) improper delegation of powers; and, (e) abuse of discretion.
8. *explain the remedies available for judicial review.*	*Judicial review remedies* *(a) Public law:* *(i) Certiorari (quashing order);* *(ii) Mandamus (mandatory order); and,* *(iii) Prohibition (prohibiting order).* *(b) Private law*: *(i) damages;* *(ii) injunction;* and, *(iii) declaration.*

UNIT 1
MODULE 2: PRINCIPLES OF PUBLIC LAW (cont'd)

Suggested Teaching and Learning Activities

To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.

1. Allow students to participate in group projects and presentations based on research on different aspects of the relevant principles of public law.

2. Engage students in conducting peer evaluation of the projects on aspects of public law and presentations.

3. Assign students to produce a scrapbook of newspaper clippings and research material on aspects of public law.

4. Develop a law resource library on issues of public law, which can be added to annually.

5. Allow students to participate in moots and debates on public law issues.

6. Allow students to attend Parliamentary sittings and report on issues pertaining to the law.

7. Engage students in a Youth Parliament.

8. Visit Parliamentary websites and examine Hansard reports to conduct research on law issues.

RESOURCES

Alexis, F.	*Changing Caribbean Constitutions* Bridgetown: Antilles Publications, 1987.
Fiadjoe, A.	*Commonwealth Caribbean Public Law (3rd Edition)*, London: Routledge Cavendish, 2015.
Ventose, E.	*Commonwealth Caribbean Administrative Law,* London: Cavendish, 2013.

The Constitution of various Caribbean countries.

Suggested Cases

Thomas v AG (1982) AC 113

Lilleyman v IRC (1964) 3 WIR 224

Collymore v AG (1967) 12 WIR5

Maharaj v AG (No 2) (1979) AC 385

Hinds v R (1977) AC 195

UNIT 1
MODULE 3: CRIMINAL LAW

GENERAL OBJECTIVES

On completion of this Module, students should:

1. understand the *various aspects of* Criminal *Liability;*

2. *understand the principles of* Criminal Law to solve problems in a logical and analytical way, using case material and statute where relevant; and,

3. develop skills in *applying the principles of Criminal Law to a given set of facts.*

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
1. explain the basic principles of criminal liability;	Criminal Liability: *(a) actus reus, mens rea; coincidence of actus reus and mens rea;* (b) acts, omissions, consequences and surrounding circumstances; (c) specific intention, recklessness; crimes of negligence; strict liability; and, (d) transferred malice.
2. apply the basic principles of criminal liability to offences against the person;	Offences against the Person: (a) murder; (b) manslaughter: voluntary and involuntary; (c) assault *(including consent as a defence);* (d) *cruelty to children/ill-treatment and neglect of children;* and, (e) wounding.

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
3. apply the basic principles of criminal liability to sexual offences;	Sexual Offences: (a) *child sexual abuse;* (b) rape; (c) *buggery; and,* (d) incest.
4. apply the basic principles of criminal liability to offences against property;	Offences against Property: (a) theft/larceny; (b) robbery; (c) burglary; and, (d) criminal damage or malicious damage.
5. apply the basic principles of criminal liability to Inchoate offences;	Inchoate Offences: (a) conspiracy; (b) attempt; and, (c) incitement.
6. explain *the* defences available in Criminal Law; and,	Defences available in Criminal Law: (a) automatism: (i) insane; and, (ii) non-insane. (b) insanity; (c) diminished responsibility;

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
	(d) provocation;
	(e) intoxication; and,
	(f) self-defence.
7. evaluate the sentencing theories and practices in the Commonwealth Caribbean.	Sentencing:
	(a) theories;
	(b) types *and practices;* and,
	(c) *sentencing of* young offenders.

Suggested Teaching and Learning Activities

To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.

1. Assign students to critique films on related criminal law topics.

2. Allow students to participate in moots and debates on criminal law issues, for example, on whether the age of criminal responsibility should be raised.

3. Include analysis of criminal cases in scrapbooks.

4. Allow students to participate in lectures and discussions with visiting resource persons with expertise in areas of criminal law.

5. Allow students to visit criminal courts and report on observations.

6. Arrange with Court Registrar to visit the courts in session and interview personnel (for example, judge, defence counsel and prosecutor).

RESOURCES

Alleyne, M.	*Textbook on Criminal Law. Oxford University Press (Teacher's Reference Text), 2011.*
Burgess, M.	*Protecting our Children; The Law, Policy and Procedures for Child Protection in the Caribbean.* New York, NY, USA; Plain Vision Publishing, 2016.
Card, R. and Molloy, J.	*Card, Cross and Jones: Criminal Law (22nd Edition)*. London: Butterworths, 2016.
Dugdale, A., Furmston, M., Jones, S. and Sherrin, C.	*"A" Level Law*. London: Butterworths, 1996.
Smith, J. and Hogan, B.	*Criminal Law*. London: Butterworths, *2002*. (Teachers' Text)

List of Legislation on Child Maltreatment –
Offences of Cruelty to Children and Child Sexual Abuse

S4 (1) Children's Act 2012, Trinidad and Tobago

S5 Prevention of Cruelty to Children Act 1998, Barbados

S232 Criminal Code of Anguilla

S192 Criminal Code 1997 of the Virgin Islands

S225 Penal Code (2013 Revision), Cayman Islands

S5 Juveniles Act, Antigua and Barbuda

S8 Juveniles Act, St Vincent and the Grenadines

S5 Children and Young Persons Act, Dominica

S9(4) Child Care and Protection Act, Jamaica

S5 Children and Young Persons Act, St Lucia

S93 Criminal Law Offences Act, Guyana

UNIT 1
MODULE 3: CRIMINAL LAW (cont'd)

Websites

www.ebscohost.com

www.proquest.com

www.e-lawresources.co.uk

www.lawteacher.net

legal-dictionary.thefreedictionary.com

www.businessdictionary.com

www.britannica.com

www.lawmentor.co.uk

Suggested Cases

Woolmington v DPP (1935) AC 462

DPP v Morgan (1975) 2 All ER 347

R v Miller (1954) 2 All ER 529

R v Savage (1991) 4 All ER 698

Director of Public Prosecutions v Smith (1961) AC 290

R v Kingston (1994) Crim. LR 846

R v Brown (1993) 2 ALL ER 75 House of Lords/(1994) 1 AC 212

Director of Public Prosecutions v Majewski (1977) AC 443

Director of Public Prosecutions v Morgan (1976) AC 182

Pratt and Morgan v AG for Jamaica (1994) 2AC1

Neville Lewis et al v AG for Jamaica et al (Privy Council) [2001] 2 AC 50

Newton Spence et al v R (Privy Council) Appeals from St. Lucia and from St. Vincent and the Grenadines, 2002. *Judgement of 11 November 2002*

**Williams (Paul) v the State 1999 57 WIR 380*

**Braithwaite v Commissioner of Police 1968 12 WIR 449*
(*These cases are useful for the area of Sentencing)

Trimmingham v Queen (St. Vincent and the Grenadines) [2009] UKPC25

♦ UNIT 2: PRIVATE LAW

MODULE 1: LAW OF TORT

GENERAL OBJECTIVES

On completion of this Module, students should:

1. understand *Tort Law and its relationships to other areas of law*;
2. *understand the various Torts*; and,
3. *develop skills of applying Tort Law to a given set of facts.*

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
1. outline the nature of the Law of Tort;	The nature of Tort: - definition – wrongful act, damage/injury, remedy.
2. distinguish the Law of Tort from the Law of Contract, Constitutional Law and Criminal Law;	Differences between the Law of Tort and: (a) Law of Contract; (b) Constitutional Law; and, (c) Criminal Law.
3. apply the principles of negligence;	Negligence: (a) duty; (b) breach; and, (c) damage: (i) remoteness and foreseeability; and, (ii) negligent misstatements.

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
4. *apply* the principles of defamation including defences;	Defamation: (a) elements of defamation; and, (b) defences to defamation – justification; fair comment; absolute privilege and qualified privilege.
5. *apply* the principles of trespass to the person;	Trespass to the person: (a) assault and battery; (b) false imprisonment; and, (c) malicious prosecution.
6. *apply* the principles of nuisance;	Nuisance: (a) public; and, (b) private.
7. *apply* the principles of liability *for* animals;	Liability for animals.
8. *apply* the principles of *vicarious* liability; and,	Vicarious liability.
9. *apply the principles* of occupiers' liability.	Occupiers' liability.

UNIT 2
MODULE 1: LAW OF TORT (cont'd)

Suggested Teaching and Learning Activities

To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.

1. Invite guest lecturers with knowledge and experience in the Law of Tort to hold panel discussions with students on issues pertaining to the Law of Tort.

2. Allow students to interpret issues related to the Law of Tort through role play and simulated exercises.

3. Compile scrap books of selected cases related to the Law of Tort.

4. Collect newspaper reports on selected cases related to the Law of Tort.

5. Engage students in group work and group research followed by presentation to class.

6. Allow students to attend public lectures on issues related to the Law of Tort and report on major issues.

RESOURCES

Bailey, V.	***CAPE®** Law: Texts and Cases – Contract Law, Tort Law and Real Property. Author House Inc., 2012.*
Jones, M.	*Textbook on Torts*. London: Blackstone Press, 2003.
Kodilinye, G.	*Commonwealth Caribbean Tort Law (5th Edition).* London: Cavendish, 2015.
Rogers, W.	*The Law of Tort.* London: Sweet and Maxwell, 2014. (Recommended Teachers' Text)
Caribbean Examinations Council	*Law: Tort, Unit 2, Module I, 2003.*

UNIT 2
MODULE 1: LAW OF TORT (cont'd)

Suggested Cases

Austin v AG No 1209 of 1985 (unreported), (1986) 21 Barb LR 259 (High Court, Barbados)

Robley v Placide (1966) 11 WIR 58

Campbell v Clarendon Parish Council (1982) 19 JLR 13 (Supreme Court, Jamaica)

Imperial Life Assurance Co. of Canada v Bank of Commerce (Jamaica) Ltd (1985) 22 JLR 415 (Court of Appeal, Jamaica)

Philips v Barbados Light and Power Co. Ltd. (1972) 7 Barb LR 154

Bacchus v Bacchus (1973) LRBG 115

British Guiana Rice Marketing Board v Peter Taylor and Co. Ltd. (1967) 11WIR 208

Donoghue v Stevenson (1932) AC 562

Anns v Merton London Borough Council (1978) AC 728

Caparo Industries v Dickman (1990) 1 All ER 568

Blyth v Birmingham Waterworks Company (1856) 11 [1843-60] All ER Rep 478

Barnett v Chelsea & Kensington Hospital Management Committee (1969) 1 QB 428

Overseas Tankship (UK) Ltd v Morts Dock and Engineering Company Ltd (The Wagon Mound (No.1) (1961) AC 388

Wilson v Pringle (1986) 3 WLR 1

Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd (1947) AC 1

Lister v Hesley Hall Ltd (2001) 2 All E. R. 769 (HL)

UNIT 2
MODULE 2: LAW OF CONTRACT

GENERAL OBJECTIVES

On completion of this Module, students should:

1. *understand the concepts which shape the formation and development of the Law of Contract;*
2. *understand the various legal principles which underlie the Law of Contract*; and,
3. develop skills in *applying the principles of the Law of Contract to a given set of facts.*

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
1. explain the nature of the Law of Contract;	The nature of the Law of Contract: (a) definition of contractual obligations; and, (b) differences from other types of legal obligations, such as tortious liability and criminal liability.
2. analyse the legal rules governing formation of contracts;	The legal rules governing formation of contracts: (a) offer and acceptance; (b) intention to create legal relations; (c) consideration; and, (d) capacity (minors, insane persons).
3. explain the doctrine of privity of contract;	The doctrine of privity of contract: (a) definition, scope and application; and, (b) common law and equitable exceptions.

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
4. explain the legal rules governing contractual terms;	The legal rules governing contractual terms: (a) express and implied terms; (b) conditions, warranties, intermediate or innominate terms; and, (c) exclusion or exemption clauses.
5. *apply the legal rules* relating to misrepresentation;	Misrepresentation: (a) definition of misrepresentation; (b) types of misrepresentation (fraudulent, negligent and innocent); and, (c) the effect of misrepresentation on a contract.
6. apply the legal rules relating to discharge; and,	Discharge: (a) definition of discharge; (b) methods of discharge: (i) agreement; and, (ii) performance. (c) breach; and, (d) frustration.

SPECIFIC OBJECTIVES	**CONTENT**
Students should be able to:	
7. outline the effect of illegality on a contract.	Illegality: (a) *Types* of illegal contracts: (i) *by statute; and,* (ii) *at common law on the grounds of public policy.* (b) Effect of illegality on a contract.

<u>Suggested Teaching and Learning Activities</u>

To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.

1. Invite guest speakers to lecture on issues related to the Law of Contract and engage students in group work and group research followed by presentation to class.

2. Encourage students to interpret issues related to the Law of Contract through role play and simulated exercises.

3. Develop scrapbooks on cases related to the Law of Contract.

4. Develop scrapbooks of newspaper reports on cases related to the Law of Contract.

5. Encourage students to attend public lectures on issues related to the Law of Contract and have them write reports or summarise their findings.

RESOURCES

Bailey, V.	***CAPE®*** *Law: Texts and Cases – Contract Law, Tort Law and Real Property. Author House Inc., 2012.*
Cavendish Publishing Limited	*Cavendish Law Cards – Contract Law.* London: Cavendish Publishing Limited, 2001.
Cavendish Publishing Limited	*Cavendish Law Cards – A' Level Law.* London*:* Cavendish Publishing Limited, 1997.

RESOURCES

Chaudhary, R. et al	*West Indian Law of Contract*. Barbados: Heroco International Limited, 1995.
Eversley, C.	Contractual Freedom vs Business Fairness and Illegality. *Guyana Law Review Vol. 1 No. 1. 41,* 1999.
Poole, J.	*Casebook on Contract (13th Edition)*. Hampshire: Ashford Color Press, 2016.

Suggested Cases

Storer v Manchester City Council (1974) 3 All ER 824

Carlill v Carbolic Smoke Ball Company (1893) 1 QB 256

Gibson v Manchester City Council (1979) 1 All ER 972

Partridge v Crittenden (1968) 2 All ER 421

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd (1952) 2 QB 795

Entores v Miles Far East Corporation (1955) 2 All ER 493

Adams v Linsell (1818) 1 B & Ald 681

Currie v Misa (1875) LR 10 Ex 153

Pao On v Lau Yiu Long (1979) 3 All ER 65

Balfour v Balfour (1919) 2 KB 571

Derry v Peek (1889) 14 App Cas 337

Jarvis v Swan Tours Ltd (1973) 1 All ER 71

Websites

https://www.studentlawnotes.com/
Sixthformlaw.info
https://www.casebriefs.com/

UNIT 2
MODULE 3: REAL PROPERTY

GENERAL OBJECTIVES

On completion of this Module, students should:

1. understand the term 'real property';

2. understand how interests in property are acquired;

3. understand the rights and obligations of owners of real property; and,

4. develop skills in applying the principles of the Law of Real Property *to a given set of facts.*

SPECIFIC OBJECTIVES	**CONTENT**
Students should be able to:	
1. explain the term 'real property';	Real Property (a) Explanation of the term 'real property'. (b) Differences between the following terms: (i) realty and personalty; (ii) corporeal and incorporeal property; and, (iii) moveable and immoveable property.
2. *distinguish* between fixtures and chattels;	Fixtures and Chattels *Differences:* (a) intention; (b) degree of annexation; (c) mode and purpose of annexation; and, (d) custom and usage.

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
3. *apply the principles* of land ownership in any one Commonwealth Caribbean state;	*Land Ownership* (a) Definition of the terms 'tenure' and 'estate'. (b) Description of types of estates: (i) fee simple or freehold estate; (ii) leasehold estate; (iii) life estate; and, (iv) legal and equitable interests. (c) Distinction between legal and equitable interests. (d) Concurrent interests or Co-ownership: (i) the characteristics of a joint tenancy; and, (ii) the characteristics of a tenancy-in-common.
4. *distinguish between* leases and licences;	*Leases and Licences* (a) The nature, acquisition and termination of the following: (i) licences; and, (ii) leases. (b) Differences between a lease and a licence.

SPECIFIC OBJECTIVES	CONTENT
Students should be able to:	
	(c) The landlord (lessor) and the tenant (lessee): (i) types of tenancies; (ii) the implied covenants of: • the landlord (lessor); and, • the tenant (lessee). (iii) the consequences of a breach of covenant by: • the landlord; and, • the tenant.
5. *explain the law* of easements; and,	*Easements* (a) characteristics of an Easement; (b) methods by which an Easement may be acquired: (i) statute; and, (ii) prescription. (c) *Extinguishment of an Easement.*
6. *examine the law* relating to mortgages.	Mortgages: (a) Definition of mortgage, mortgagor and mortgagee. (b) Rights of the mortgagor. (c) Rights of the mortgagee.

UNIT 2
MODULE 3: REAL PROPERTY (cont'd)

Suggested Teaching and Learning Activities

To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.

1. Invite resource persons with knowledge and experience in Real Property to engage students in discussions.

2. Encourage students to interpret issues related to Real Property through role play and simulated activities.

3. Develop scrapbooks on cases related to Real Property.

4. Engage students in group work and group research followed by presentation to class.

5. Encourage students to conduct interviews with mortgage companies to find out major issues confronting these companies.

RESOURCES

Bailey, V.	***CAPE®*** *Law: Texts and Cases – Contract Law, Tort Law and Real Property. Author House Inc., 2012.*
Kodilinye, G.	*Commonwealth Caribbean Property Law (5th Edition).* London: Cavendish, *2015.*
Caribbean Examinations Council	*Law: Real Property, Unit 2 Module III, 2002.*

Suggested Cases

Stanley Johnson v R. Terrier and B. Terrier [1974] 22WIR 441

Panton v Roulstone [1976] 24 WIR 462

O'Brien v Missick [1977]1 B.L.R 40

Mitchell v Cowie [1964] 7 WIR 118

Isaac v Hôtel de Paris [1960] 1AIIER 348, [1960] 1WLR 239

Street v Mountford [1985] 2AIIER 289, [1985] 2WLR 877

Edwards v Brathwaite [1978] 32 WIR 85

Facchini v Bryson [1952] TLR 1386

Kreglinger v New Patagonia Meat and Cold Storage Co. Ltd. [1914] AC.25

♦ OUTLINE OF ASSESSMENT

Each Unit of the syllabus will be assessed separately. The same scheme of assessment will be applied to each Module in each Unit. Grades will be awarded independently for each Unit.

The assessment will comprise two components, one external and one internal. Candidates must complete the School-Based Assessment for the first Unit for which they register and write. Candidates may carry forward the School-Based Assessment mark for the first Unit written to the second Unit (irrespective of the mark earned), or may opt to complete the School-Based Assessment for the second Unit as well.

EXTERNAL ASSESSMENT FOR EACH UNIT (80%)

Written Papers – 4 hours

Paper 01 (1 hour 30 minutes)	The paper will consist of **forty-five (45) compulsory multiple-choice** items. There will be fifteen (15) items based on each Module.	30%
Paper 02 (2 hours 30 minutes)	This paper will consist of *three* extended-response questions with *one* on each Module. Candidates will be required to answer *all THREE questions*.	50%

SCHOOL-BASED ASSESSMENT FOR EACH UNIT (20%)

Paper 031

A research paper of approximately 1,500 words, (exclusive of appendices and footnotes) based on any topic covered in any of the three (3) Modules of the Unit, will be required.

Candidates who, in the same year, register for both Units of **CAPE®** Law may opt to:

(a) submit a single School-Based Assessment for both Units;

OR

(b) submit separate School-Based Assessment assignments for each Unit.

Candidates who are doing two Units of **CAPE®** Law at the same sitting and submitting a single School-Based Assessment must indicate from which Unit the School-Based Assessment was selected.

If a candidate is repeating a Unit, he or she may use the same moderated School-Based Assessment score obtained for a Unit from a previous sitting for both Units being taken at the same time.

Students must work in groups to conduct research and to submit their reports. No two group reports should be identical. The report should be approximately 1,500 words (not including appendices). Wherever a *report* exceeds the maximum length for the project by more than 10 per cent, the teacher must impose a penalty of 10 per cent of the score that the *group* achieves on the project. On the script, the teacher should clearly indicate the original score*, that is,* the score before the deduction is made, the marks which are to be deducted, and the final score *received* after the deduction has been made. Only the final score is to be indicated on the record sheets which are submitted to **CXC®**.

Paper *032*

Private candidates are required to write an Alternative Paper to the School-Based Assessment – Paper 032. Details are on pages 37–38.

MODERATION OF SCHOOL-BASED ASSESSMENT

A sample of the tasks performed in class and the outputs kept on the local electronic submission facility will be requested by **CXC®** for moderation purposes. These samples will be moderated by **CXC®** Examiners. The marks assigned by the classroom teacher may therefore be adjusted to bring them in alignment with **CXC®**'s standards. The Examiner's comments will be sent to schools.

Copies of students' projects that are not submitted to **CXC®** must be retained by the school until three months after publication of the examination results by **CXC®**.

GUIDELINES FOR CONDUCT OF SCHOOL-BASED ASSESSMENT

School-Based Assessment is an integral part of student assessment in the course covered by this syllabus. It is intended to assist students in acquiring certain knowledge, skills and attitudes that are associated with the subject. The activities for the School-Based Assessment are linked to the syllabus and should form part of the learning activities to enable the student to achieve the objectives of the syllabus.

During the course of study for the subject, students obtain marks for the competence they develop and demonstrate in undertaking their *School-Based* Assessment assignments. These marks contribute to the final marks and grades that are awarded to students for their performance in the examination.

The guidelines provided in this syllabus for selecting appropriate tasks are intended to assist teachers and students in selecting assignments that are valid for the purpose of School-Based Assessment. The guidelines provided for the assessment of the assignments are intended to assist teachers in awarding marks that are reliable estimates of the achievement of students in the School-Based Assessment component of the course. In order to ensure that the scores awarded by teachers are consistent with the **CXC®** standards, the Council undertakes the moderation of a sample of the School-Based Assessment assignments from each centre.

ASSESSMENT DETAILS

External Assessment by Written Papers (80% of Total Assessment)

<u>Paper 01 (1 hour 30 minutes – 30% of Total Assessment)</u>

1. Composition of Paper

This paper will consist of 45 multiple-choice items. There will be 15 questions based on each Module. All questions are compulsory.

2. **Syllabus Coverage**

(a) Knowledge of the entire syllabus is required.

(b) The intention of this paper is to test candidates' knowledge across the breadth of the syllabus.

3. **Question Type**

Each multiple-choice *item* will test either Conceptual Knowledge or Use of Knowledge.

4. **Mark Allocation**

(a) One mark will be assigned for each question.

(b) The total number of marks available for this paper is 45, and will be weighted to 90.

(c) This paper contributes 30 per cent towards the final assessment.

Paper 02 (2 hours 30 minutes – 50% of Total Assessment)

1. **Composition of Paper**

(a) The paper will consist of *three* questions, with *one* question based on each Module.

(b) Candidates will be required to answer *all* THREE questions.

2. **Syllabus Coverage**

(a) Each question requires a greater depth of understanding than those questions in Paper 01.

(b) Each question may assess one topic or more from the Module on which it is based.

(c) Each question may be based on a single theme or unconnected themes.

(d) The purpose of this paper is to test candidates' in-depth knowledge of the syllabus.

3. **Question Type**

(a) A question may require a short response with an extended response *as a subpart*.

(b) *The* questions will test both Conceptual Knowledge and Use of Knowledge.

4. **Mark Allocation**

(a) Each question will be allocated 25 marks.

(b) The maximum marks available for this paper is 75, and will be weighted to 150.

(c) This paper contributes 50% towards the final assessment.

School-Based Assessment

A research paper of approximately 1500 words, (exclusive of appendices and footnotes) based on any topic covered in **any** of the three Modules of the Unit, will be required.

Research Paper – Paper 031

1. Requirements

The research paper presents an opportunity for students to demonstrate the accomplishment of the skills referred to on page 2 of the syllabus. Specifically, in the research paper, the *students* will be required to:

(a) identify an issue in the community;

(b) analyse the law relating to that issue;

(c) apply the relevant legal principles to the issue in the community by using analytical and problem-solving skills;

(d) demonstrate a sound understanding of the legal issues and concepts;

(e) synthesise the legal issues and debates related to the topic being studied; and,

(f) where appropriate, make suggestions for reform.

Primary Sources of Data

Candidates should use primary sources of data in their research activities. These include legislation, treaties and cases. Information gathered through questionnaires, and face-to-face interviews may also be used.

Secondary Sources of Data

Secondary sources of data may also be used. These may include text books, law journals, newspapers, professional law journals, law commission reports or other legal reports and documentation on cases studied.

2. The aims of the research project are to:

(a) promote self-learning;

(b) allow teachers the opportunity to engage in the formative assessment of their students;

(c) allow students to enhance their understanding of the nature of law through local studies; and,

(d) allow students to explore more fully some areas of the Unit that may not be assessed adequately in an external examination.

3. Management of the Research Paper

The *candidates* must:

(a) write a proposal as early as possible;

(b) prepare a timetable showing tasks to be completed during the eight-month period;

(c) acknowledge all sources used throughout the research paper by using appropriate references using OSCOLA. See the following link for further guidance: (https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf); and,

(d) submit aspects of the research paper according to the timetable agreed to along with the teacher.

4. Guidance to Teachers

(a) Advise students on the areas suitable for investigation.

(b) Assist in the refinement of the topic. The topic must: (i) fall within the scope of the Unit; (ii) be related to an issue affecting the community; (iii) must be capable of being resolved by law (either by existing law, or by law reform).

(c) Assist students *in identifying and formulating* the aims and objectives of the *research.*

(d) Approve research proposal and timetable for completion.

(e) Advise students on most suitable legal resources to be used.

(f) Devise appropriate strategies to monitor student progress during the eight-month period.

(g) *Employ appropriate strategies to establish the authenticity of the work submitted by students. These techniques may include:*

- *oral questioning;*
- *in class presentations;*
- *ongoing review of the student's work; and,*
- *having students summarising and presenting findings from both primary and secondary sources of data.*

5. Presentation and Assessment

The research paper *should* be submitted *online and* bear the candidates' numbers, name of subject (Unit indicated) and the date submitted.

The format for the presentation of the research report and the marks for each component are given in the table below.

Section	**Marks**
(a) Title and table of contents	2
(b) Description of research problem/issue • Statement of the law	4
(c) Aims and objectives	*4*
(d) Description of methodology employed	*3*
(e) Presentation of Findings	*4*
(f) Discussion of findings — analysis of applicable legal principles/data	*6*
(g) Conclusions and recommendations (where appropriate)	*4*
(h) Referencing	3

MARK SCHEME FOR SCHOOL-BASED ASSESSMENT

Total marks awarded for the SBA report is 30. Teachers must ensure strict adherence to the guidelines stated in the following criteria for marking to guarantee reliability of the mark.

DETAILED CRITERIA AND MARK SCHEME

The candidates should be able to select and present an investigation into a specific legal issue using appropriate legal concepts, principles and theories.

ABILITIES	COMPONENT	MARKS
	TITLE/TABLE OF CONTENTS	**2**
The candidates use table of contents to indicate the organisation of the research report.	• Title of research relates to the objectives in the syllabus and to the investigation, is clearly stated and table of contents is *logically laid out.* • *Title of research relates to the objectives in the syllabus and to the investigation, is clearly stated but table of contents is missing.* • Research is outside the scope of the syllabus but table of contents is included. • *Research is outside the scope of the syllabus and there is no table of contents*	*2* *1* *1* *0*
	DESCRIPTION OF RESEARCH PROBLEM/ISSUE: STATEMENT OF THE LAW	**4**
The candidates: **(a) select a relevant legal issue within the scope of the syllabus.**	*The problem statement is a clearly stated guide to the research that logically and coherently connects all the different parts of the investigations, clearly indicates its importance, connects naturally to the relevant law.*	***4***
(b) narrow the topic to a problem	*Problem statement and relevant law are clearly stated, connection made to the research but the importance of the investigation is not obvious.*	***3***
(c) outline the law relating to the problem	*Problem statement and relevant law are stated but connection to the research and the importance of the investigation are not obvious.*	***2***
(d) establish the importance of investigating the problem	*Problem statement and relevant law are stated but there is no connection to the rest of the investigation.*	***1***
(e) propose a possible solution	*No attempt at a problem statement.*	***0***

AIMS AND OBJECTIVES		4
The candidates narrow the topic to clearly defined, focused aims/objectives	• Aims/ objectives are relevant, clearly defined and help to focus the topic. • Aims/ objectives are somewhat relevant, defined and narrow the topic. • Aims/ objectives somewhat relevant not clearly defined. • Aims/ objectives are not relevant.	4 3 2 1
***DESCRIPTION OF* METHODOLOGY**		***3***
The candidates select and employ appropriate method and procedures in conducting the research.	• *The research methodology is clearly described, realistic in its scope, and appropriate for the study.* • *The research methodology appropriate for the study but is not clearly described.* • The research design is very limited in its scope, inappropriate for the study.	3 2 1
***PRESENTATION* OF FINDINGS**		***4***
The candidates have presented legal information using appropriate forms of presentation consistent with methodology used.	• Findings are comprehensive, clear and accurate, and presented using forms that are appropriate to the research problem. • Findings are comprehensive, clear and accurate, and forms of presentation are somewhat appropriate to the research problem. • Findings are presented using forms that are somewhat appropriate to the research problem. • Findings are poorly presented with several inaccuracies, and forms are mostly inappropriate.	*4* *3* *2* *1*

DISCUSSION OF FINDINGS — *ANALYSIS OF APPLICABLE LEGAL PRINCIPLES/DATA*		**6**
The candidates: **(a) interpret the findings and explain how they relate to existing body of information** **(b) recognise the limitations of the investigation and its impact on the findings** **(c) relate findings to the law and or legal theories**	• *Discussion is comprehensive, coherent, accounts for the findings and makes links to existing law/legal theories while outlining the impact of the limitations on the investigations.* • *Discussion is coherent, accounts for the findings and relates them to the law/legal theories.* • *Discussion accounts for the findings and relates them to the law/legal theories but lacks coherence.* • *Discussion is limited and is not coherent.*	5-6 3-4 2 1
CONCLUSIONS AND RECOMMENDATIONS		**4**
***The* candidates present conclusions that are based on the findings and make sound recommendations.**	• Conclusions are sound, plausible and based on the findings of the research. Recommendations relate to the conclusion drawn. • Conclusions are sound but are not entirely supported by the findings of the research. • Conclusions are flawed and not based on the findings of the research.	3-4 2 1
REFERENCING		**3**
The candidates have prepared a list and acknowledge all sources of information *using an internationally* accepted format.	• Referencing is consistently and accurately done and bibliography is well organised, in appropriate format and includes all relevant details • Bibliography is fairly well organised, in appropriate format and includes some relevant details • Bibliography is poorly organised, format is not appropriate	3 2 1
	TOTAL	**30**

♦ REGULATIONS FOR PRIVATE CANDIDATES

Paper 032 (1 hour 30 minutes)

1. **Composition of Paper**

    (a) For each Unit, the Paper is based on the topic for that year as indicated in the table below.

    (b) There will be one compulsory question. The question may be divided into parts.

    (c) The Paper tests skills similar to those listed for the School-Based Assessment (Paper **031**).

2. **Question Type**

    (a) The question requires candidates to respond either in the form of an extended essay or a short paragraph.

    (b) The candidates may refer to their prepared notes on the topic for that year.

    (c) The question will test both Conceptual Knowledge and Use of Knowledge.

3. **Mark Allocation**

    The Paper is worth 30 marks (weighted to 60 marks) and contributes 20% towards the final assessment.

4. **Award of Marks**

    Marks are awarded for expression, organisation (logical coherence) and content.

TOPICS FOR PAPER 032

YEAR	UNIT 1	UNIT 2
2018	Sentencing	Landlord and Tenants
2019	*Hierarchy and Appeal Process*	*Formation of Contracts*
2020	*Judicial Review*	*Negligence*
2021	*Child Sexual Abuse*	*Fixtures and Chattels*
2022	*Sexual Offences*	*Nuisance*
2023	*Sources of Law*	*Discharge of Contracts*
2024	*Child Maltreatment*	*Leases and Licences*
2025	*Judicial Review*	*Strict Liability in Tort*
2026	*Common Law and Equity*	*Misrepresentation*
2027	*Stare Decisis*	*Easements*

♦ REGULATIONS FOR RESIT CANDIDATES

Resit candidates must rewrite Papers 01 and 02 of the examination for the year for which they re-register. These candidates may elect not to repeat the School-Based Assessment component provided they rewrite the examination no later than two years following their first attempt.

Candidates may reuse any moderated SBA score within a two-year period. In order to assist candidates in making decisions about whether or not to reuse a moderated SBA score, the Council will continue to indicate on the preliminary results if a candidate's moderated SBA score is less than 50 per cent in a particular Unit. Candidates reusing SBA scores should register as "Resit candidates" and must provide the previous candidate number when registering.

Resit candidates must be entered through a school, approved educational institution or the Local Registrar's office.

♦ ASSESSMENT GRID

The Assessment Grid for each Unit is indicated below, showing marks assigned to each paper, each Module, and the percentage contribution of each paper to total scores.

PAPERS	MODULES			TOTAL		(%)
	Module 1	**Module 2**	**Module 3**	**Raw**	**Weighted**	
External Assessment Paper 01 Multiple-choice (1 hour 30 minutes)	15	15	15	45	90	(30)
Paper 02 Extended-response (2 hours 30 minutes)	25	25	25	75	150	(50)
School-Based Assessment Paper 031	*10*	*10*	*10*	*30*	*60*	(20)
Paper 032 *(1 hour 30 minutes)*	*10*	*10*	*10*	*30*	*60*	*(20)*
TOTAL	***50***	***50***	***50***	***150***	***300***	**(100)**

♦ *GLOSSARY OF LEGAL TERMS*

TERM	***DEFINITION/MEANING***
Administrative Law	*The body of law that governs the activities of administrative agencies of government. Government agency action can include rulemaking, adjudication, or the enforcement of a specific regulatory agenda. Administrative law is considered a branch of public law.*
Arbitration	*The settling of disputes (especially labour disputes) between two parties by an impartial third party, whose decision the contending parties agree to accept. This is often used to resolve conflict diplomatically to prevent a more serious confrontation.*
Chattel	*An item of property other than freehold land, including tangible goods (chattels personal) and leasehold interests (chattels real). Property not affixed to real property is considered chattel property.*
Civil Court	*A court which handles legal disputes that are not crimes.*
Common Law	*Also known as judicial precedent or judge-made law or case law. It is the body of law developed by judges, courts, and similar tribunals. It is the part of English law that is derived from custom and judicial precedent rather than statutes.*
Constitution	*A body of fundamental principles or established precedents according to which a state or other organization is acknowledged to be governed.*
Contract	*A written or spoken agreement, especially one concerning employment, sales, or tenancy, that is intended to be enforceable by law.*
Contract Law / Law of Contract	*The body of law that governs oral and written agreements associated with exchange of goods and services, money, and properties.*
Convention	*An agreement or compact, particularly an international agreement, such as the Geneva Convention. It is an accord between states or nations.*
Court of Appeal	*A higher state court to which appeals are made by litigants seeking review of a decision made in a lower court.*
Criminal Law	*The body of law that relates to crime. It proscribes conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people. Most criminal law is established by statute, which is to say that the laws are enacted by a legislature.*
Criminal Liability	*The liability that arises out of breaking a law or committing a criminal act.*
Damages	*Compensation for causing loss or injury through negligence or a deliberate act, or a court's estimate or award of a sum as a fine for breach of a contract or of a statutory duty.*

TERM	DEFINITION/MEANING
Defamation	*Any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person.*
Defence	*The case presented by or on behalf of the party accused of a crime or being sued in a civil lawsuit.*
Delegation of Powers	*The transfer of authority by one person or group to another person or group.*
Dispute Resolution	*Refers to one of several different processes used to resolve disputes between parties. Others include negotiation, mediation, arbitration, collaborative law, and litigation.*
Easement	*A non-possessory right to use and/or enter onto the real property of another without possessing it. It is best typified in the right of way which one landowner, A, may enjoy over the land of another, B.*
Estate	*The net worth of a person at any point in time alive or dead. It is the sum of a person's assets – legal rights, interests and entitlements to property of any kind – less all liabilities at that time. This issue is of special legal significance on a question of bankruptcy and death of the person.*
Equitable interest	*An interest held by virtue of an equitable title or claimed on equitable grounds, such as the interest held by a trust beneficiary.*
Family Court	*A court of Equity convened to decide matters and make orders in relation to family law, such as custody of children.*
Fixture	*Any physical property that is permanently attached (fixed) to real property (usually land). Fixtures are treated as a part of real property, particularly in the case of a security interest.*
Inchoate Offences	*Refers to crimes which have not yet been completed. These offences are concerned with the planning process of a criminal offence which may not even come to fruition, but there is sufficient conduct that is blameworthy and needs to be addressed under the criminal law. The main offence is not yet committed and may not be committed at all.*
Injunction	*An equitable remedy in the form of a court order that compels a party to do or refrain from specific acts. A party that fails to comply with an injunction faces criminal or civil penalties, including possible monetary sanctions and even imprisonment. They can also be charged with contempt of court.*
Judicial	*Pertaining to judgment in courts of justice or to the administration of justice.*

TERM	***DEFINITION/MEANING***
Judicial Process	*Refers to the rules of procedural law that consist of both hearing and determining cases in criminal proceedings, civil lawsuits or administrative proceedings by constitutional courts.* *A set of interrelated procedures and roles for deciding disputes by an authoritative person or persons whose decisions are regularly obeyed. The disputes are to be decided according to a previously agreed upon set of procedures and in conformity with prescribed rules.*
Judicial System	*Pertaining to courts of law or to judges. This includes procedures and functions.*
Jury System	*A system in which the verdict in a legal case is decided by a jury on the basis of evidence submitted to it in court.*
Juvenile Court	*Also known as **Young Offender's Court**. It is a tribunal having special authority to pass judgements for crimes that are committed by children or adolescents who have not attained the age of majority.*
Law	*The system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties.*
Lease	*A contract by which one party conveys land, property, services, etc. to another for a specified time, usually in return for a periodic payment.*
Legal interest	*Something a law recognizes, as in an advantage, profit, right, or share. A legal title is an example.*
Legal System	*Refers to a procedure or process for interpreting and enforcing the law. It elaborates the rights and responsibilities in a variety of ways. Three major legal systems of the world consist of civil law, common law and religious law.*
Liability	*A comprehensive legal term that describes the condition of being actually or potentially subject to a legal obligation.*
Licence	*An official permission or permit to do, use, or own something. The document of that permission or permit.*
Magistrates' Court	*A court which has limited jurisdiction over minor civil and criminal matters, as matters of contract not exceeding a particular amount of money.*
Mediation	*A form of alternative dispute resolution (ADR) in which the parties to a lawsuit meet with a neutral third-party in an effort to settle the case. The third-party is called a mediator.*
Mortgage	*A legal agreement by which a bank, building society, or other authorised agency lends money at interest in exchange for taking title of the debtor's property, with the condition that the conveyance of title becomes void upon the payment of the debt.*

TERM	***DEFINITION/MEANING***
Natural Justice	*In English law, it is technical terminology for the rule against bias and the right to a fair hearing.*
Negligence	*A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behaviour usually consists of actions, but can also consist of omissions when there is some duty to act.*
Nuisance	*In English law it is an area of tort law broadly divided into two torts;* ***private nuisance****, where the actions of the defendant are "causing a substantial and unreasonable interference with a claimant's land or his/her use or enjoyment of that land", and* ***public nuisance*** *where the defendant's actions "materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects".*
Offences against the person	*Usually refers to a crime which is committed by direct physical harm or force being applied to another person. They are usually analysed by division into the following categories:* ***Fatal offences*** *and* ***Sexual offences****.*
Offences against Property	*A category of crime that includes burglary, motor vehicle theft, theft, arson, vandalism and shoplifting. It involves the taking of property or money and does not include a threat of force or use of force against the victim.*
Ombudsman	*A legal representative, often appointed by a government or organization to investigate complaints made by individuals in the interest of the citizens or employees. Usually this is a state official appointed to oversee an investigation of complaints about improper government activity against citizens.*
Precedent	*In legal systems based on common law, a precedent, or authority, is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts.*
Private Law	*That part of a civil legal system which focuses on relationships between individuals, such as the laws of contracts, torts, and obligations.*
Privy Council	*A body that advises the head of state of a nation, typically, but not always, in the context of a monarchic government.*
Public Law	*That part of law which governs relationships between individuals and the government, and those relationships between individuals which are of direct concern to society.* *Public law comprises constitutional law, administrative law, tax law, criminal law, and procedural law. In public law, mandatory rules prevail.*
Rule of Law	*The legal principle that law should govern a nation, as opposed to being governed by decisions of individual government officials. It implies that every person is subject to the law, including people who are lawmakers, law enforcement officials, and judges.*
Sentence	*The punishment assigned to a defendant found guilty by a court, or fixed by law for a particular offence. (noun)* *Declare the punishment decided for an offender. (verb)*

TERM	*DEFINITION/MEANING*
Separation of Powers	*A system in which the powers of the government are divided among three separate but interrelated branches: the legislative, the executive, and the judiciary branch. Each branch is independent, has a separate function, and may not usurp the functions of the other. Their relationship allows for a system of checks and balances to operate effectively.*
Sexual Offences	*A class of sexual conduct prohibited by the law.*
Statute	*A formal law or rule. Whether it is enacted by a government, company, or other organization, a statute is typically written down.*
Supreme Court	*The highest judicial court in a country or state.*
Tenancy	*A contract by which the owner of real property (the landlord), grants exclusive possession of that real property to another person (tenant), in exchange for the tenant's periodic payment of some sum of money (rent).*
Tenure	*A right, term, or mode of holding or occupying something of value for a period of time.*
Tort	*An act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability.*
Trespass	*The act of knowingly entering another person's property without permission. Such action is held to infringe upon a property owner's legal right to enjoy the benefits of ownership.*
Warranty	*Refers to a guarantee or promise which provides assurance by one party to the other party that specific facts or conditions are true or will happen.*

♦ GLOSSARY OF TERMS USED IN THE LAW EXAMINATION

KEY TO ABBREVIATIONS

UK – Use of Knowledge

CK – Conceptual Knowledge

WORD	***DEFINITION/MEANING***
Analyse	*Examine methodically and in detail the elements of a scenario, a law, etc. and then draw (a) conclusion(s).*
Apply	*Use knowledge and or principles of law to resolve a legal situation. This will require making references or drawing conclusions*
Assess	Present reasons for the importance of particular structures, relationships or processes. *This involves comparing the advantages and disadvantages or the merits and demerits of a particular structure, relationship or process to determine relative value*
Cite	*Provide an example of a case, a quotation or a reference.*
Classify	*Divide into groups according to observable characteristics.*
Comment	*State opinion or view with supporting reasons.*
Compare	*State, describe and elaborate on the similarities and differences.*
Deduce	Make a logical connection between two or more pieces of information; use data to arrive at a conclusion.
Define	*Provide a precise statement giving the* ***nature*** *or the* ***scope*** *or the* ***meaning*** *of a term; or use the term in one or more sentences so that the meaning is clear and precise.*
Describe	Provide detailed information on the appearance or arrangement of a specific structure or sequence of a specific process. Description may be done by using words, drawings or diagrams or an appropriate combination. Drawings or diagrams should be annotated to show appropriate detail where necessary.
Develop	Expand or elaborate an idea or argument with supporting reasons.

WORD	*DEFINITION/MEANING*
Differentiate or Distinguish	State or explain briefly those differences between or among items which can be used to define the items or place them into separate categories.
Discuss	*Write an extended answer defining key concepts, stating what is, exploring related concepts and issues, present reasoned arguments for and against, using detailed examples but* ***not*** *necessarily drawing a conclusion.*
Evaluate	Weigh evidence and make judgements based on given criteria. The use of logical supporting reasons for a particular point is more important than view held; usually both sides of an argument should be considered.
Examine	*Write an extended answer defining key concepts, stating what is and exploring* ***related*** *concepts and issues.*
Explain	*Provide statements on* ***what*** *happened,* ***how*** *it happened and* ***why*** *it happened. Provide elaboration of particular terms, concepts, approaches.*
Give/State	*Provide short, concise statements.*
Identify	Name specific components or features. *Point out, indicate without explanation or recognise and select.*
Interpret	Explain the meaning of.
Justify	*Explain the correctness of/give reasons for the selection of.*
Outline	*Provide main points, or features only without details.*
Suggest	*Offer an explanation deduced from information provided or previous knowledge and consistent with subject knowledge.*

Western Zone Office
9 October 2017

CARIBBEAN EXAMINATIONS COUNCIL

Caribbean Advanced Proficiency Examination®
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LAW

Specimen Papers and Mark Schemes/Keys

Specimen Paper:	-	Unit 1 Paper 01
		Unit 1 Paper 02
		Unit 2 Paper 01
		Unit 2 Paper 02
Mark Scheme and Key:	-	Unit 1 Paper 01
		Unit 1 Paper 02
		Unit 2 Paper 01
		Unit 2 Paper 02

CANDIDATE – PLEASE NOTE!

PRINT your name on the line below and return this booklet with your answer sheet. Failure to do so may result in disqualification.

SPEC 2017/02131010 TEST CODE **02131010**

C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

LAW

Unit 1 – PUBLIC LAW

Paper 01

SPECIMEN PAPER

1 hour 30 minutes

READ THE FOLLOWING INSTRUCTIONS CAREFULLY.

1. This test consists of 45 items. You will have 1 hour and 30 minutes to answer them.

2. In addition to this test booklet, you should have an answer sheet.

3. Do not be concerned that the answer sheet provides spaces for more answers than there are items in this test.

4. Each item in this test has four suggested answers lettered (A), (B), (C), (D). Read each item you are about to answer and decide which choice is best.

5. On your answer sheet, find the number which corresponds to your item and shade the space having the same letter as the answer you have chosen. Look at the sample item below.

   Sample Item

   The term '*stare decisis*' means

   (A) reason for deciding
   (B) let the decision stand
   (C) through a lack of care
   (D) offhand comments by a judge

   Sample Answer

   The best answer to this item is "let the decision stand", so (B) has been shaded.

6. If you want to change your answer, erase it completely before you fill in your new choice.

7. When you are told to begin, turn the page and work as quickly and as carefully as you can. If you cannot answer an item, go on to the next one. You may return to that item later.

DO NOT TURN THIS PAGE UNTIL YOU ARE TOLD TO DO SO.

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1. It is true to say that natural law

(A) is similar to morality and Christianity
(B) is a command of the sovereign that must be obeyed
(C) is an instrument of social control and public order
(D) must conform to an acceptable code of moral behaviour

2. Which of the following BEST describes literary sources of law?

(A) Reception of law
(B) Location of the law
(C) Basis of the law's validity
(D) Causative factors behind a rule

3. Primary legislation refers to legislation

(A) made by a government authority
(B) proposed by the Governor General
(C) created by parliament as part of its inherent function
(D) arising from bodies which have independent authority

4. The Judicature Acts of 1873 and 1875 fused law and

(A) equity
(B) custom
(C) morality
(D) judicial precedent

5. Which of the following is NOT a maxim of equity?

(A) Equity is equality.
(B) Delay defeats equity.
(C) He who comes to equity must come with clean hands.
(D) Equity was created to ease the harshness of the common law.

6. Which of the following was traditionally the only remedy available under the common law?

(A) Damages
(B) Injunction
(C) Rectification
(D) Specific Performance

7. What is the MAIN difference between the High Court and the Magistrates' Court?

(A) Appeals are heard by the High Court.
(B) Three magistrates need to sit to hear a single case in the Magistrates' Court.
(C) The Magistrates' Court is superior to the High Court.
(D) Cases in the High Court are primarily tried by a judge and jury.

8. Which of the following are reasons a person may be discharged from jury service?

I. Illness
II. Criminal record
III. Ignorance of legal terms

(A) I and II only
(B) I and III only
(C) II and III only
(D) I, II and III

9. John and James recently had an intense argument in which John asserted, "I bought this property from the government a long time ago. It is mine."

The area of law in which John's action will be pursued is

(A) public
(B) private
(C) criminal
(D) constitutional

10. A policeman gives a traffic ticket to Miss Benjamin, a lawyer. Miss Benjamin feels that she is being unfairly treated and vows to 'have her day in court'. In which of the following jurisdictions is the action most likely to commence?

(A) Privy Council
(B) Court of Appeal
(C) Magistrates' Court
(D) Caribbean Court of Justice

11. Zinga, a victim of domestic violence for 25 years, is charged for killing her abusive husband by putting poison in his food. Which of the following describes the nature of Zinga's case?

(A) Civil
(B) Criminal
(C) Procedural
(D) Substantive

12. The judge in sentencing the defendant said to him, "Be careful of your associates." There was no evidence, however, that the defendant's association with these persons affected the judgement in the case.

The judge's statement may be described as

(A) *stare decisis*
(B) *obiter dictum*
(C) *ratio decidendi*
(D) judicial precedent

13. John, who is before the court on a charge of murder, discloses to his attorney that he had committed the crime. His attorney becomes very perplexed and is not certain what to do. The attorney's first duty is to

(A) himself
(B) his client
(C) the court
(D) the prosecution

14. Which of the following are features of delegated authorities?

I. Flexibility in the court system
II. Special knowledge from experts
III. Greater autonomy to administrative units

(A) I and II only
(B) I and III only
(C) II and III only
(D) I, II and III

15. John and Mary are going through a divorce. They are both seeking custody of their two children, Maria and Jim. They are meeting with an independent third party who is assisting them with the settlement.

They are both engaged in the process of

(A) litigation
(B) mediation
(C) arbitration
(D) rehabilitation

16. The fundamental rights of an individual are enshrined in

(A) a contract
(B) the Constitution
(C) judicial precedent
(D) acts of Parliament

GO ON TO THE NEXT PAGE

17. Two ways in which the independence of the judiciary is guaranteed are that judges are

(A) paid out of a Consolidated fund and are only to be dismissed on three main grounds
(B) allowed to work independently of the chief justice and to remain on the bench indefinitely
(C) allowed to conduct their courts in any manner they see fit and to personally select their support staff
(D) empowered to rule on any case no matter how controversial their decision may be, and to hand down any sentence they wish

18. Constitutional law refers to the law governing the relationship between

(A) contracting parties
(B) government agencies
(C) the state and another state
(D) the state and the individual

19. What is the essential meaning of the doctrine of separation of powers?

(A) The government should separate itself from tyranny and the abuse of power.
(B) No person or public authority should exceed the powers conferred upon him by law.
(C) The executive, the legislative and the judiciary each has a clearly defined and distinct role.
(D) Everyone is equal in the eyes of the law, and everyone should enjoy fundamental rights.

20. An independent judiciary is indispensable for the protection of the right to

(A) a fair hearing
(B) a speedy trial
(C) legal redress
(D) the presumption of innocence

21. Which of the following is a principle of the rule of law?

(A) Let the decision stand.
(B) No one is above the law.
(C) Supremacy of Parliament.
(D) Individuals should govern themselves.

22. *Ultra vires* refers to an

(A) act by any government official
(B) act done by a competent authority
(C) illegal act but done for the common good
(D) administrative act without legal authority

23. Which of the following prerogative orders is used to compel the performance of a public duty by a public authority?

(A) Prohibition
(B) *Certiorari*
(C) *Mandamus*
(D) *Habeas corpus*

24. The Broadcasting Authority, a public body, decides to indict its finance manager on charges of corruption. Which of the following rules should the authority observe if the dismissal is to be deemed lawful?

I. Give reasons for the decision.
II. Consider the manager's ability to get another job.
III. Ensure that the cause is judged by independent persons.

(A) I and II only
(B) I and III only
(C) II and III only
(D) I, II and III

25. The police, acting on a tip, takes Cain into custody and forces him to make a confession. Cain requests the presence of an attorney but his request is denied.

The police infringes Cain's fundamental right to

(A) protection of the law
(B) freedom of expression
(C) freedom of association
(D) freedom of conscience

26. Bert feels correctly that he has been dismissed because of his religious persuasion. He decides to bring an action against his former employers for breach of his constitutional rights. Bringing this action is

(A) not in Bert's favour because there is no constitutional right to a job
(B) not in Bert's favour because his constitutional rights depend on the state action doctrine
(C) in Bert's favour because his constitutional right to freedom of religion has been infringed
(D) in Bert's favour because his constitutional right to freedom from decimation has been infringed

27. The head of state refuses to appoint a Senator, nominated by the prime minister. He argues that the people, in a general election, rejected this individual. The decision of the head of state is

(A) *ultra vires*
(B) unchallengeable in law
(C) contrary to natural justice
(D) violative of the separation of powers

28. Which of the following is NOT a ground for judicial review?

(A) A breach of a defendant's right to a fair hearing
(B) Delegate has wrongfully delegated a power given to him
(C) Defendant is dissatisfied with a custodial sentence imposed on him by a judge
(D) Magistrate imposes a sentence that exceeds the provision for the offence in the statute

29. The fire service has, for the past 20 years, given study leave to junior officers to pursue an associate degree. Alex, a fire officer, applies for study leave to pursue an associate degree but is refused by the chief fire officer.

On what grounds may Alex challenge this decision?

(A) Illegality
(B) Irrationality
(C) Breach of natural justice
(D) Breach of legitimate expectation

30. Mr Justly, a Court of Appeal judge, has decided to run for political office. His friend who is also a judge advises him that he cannot continue to function as a judge while being a political figure. Which of the following issues is now confronting Mr Justly?

(A) Corruption of politics
(B) Parliamentary sovereignty
(C) Separation of powers doctrine
(D) Limitation of the justice system

31. Which of the following criminal offences does NOT require a *mens rea* to be present?

(A) Sexual
(B) Summary
(C) Indictable
(D) Strict liability

32. Recklessness occurs where the defendant

(A) blames a third party
(B) believes there is no danger
(C) considers the dangers to others
(D) shuts his mind to the possibility of danger

33. In the law relating to rape, a man is guilty where he has sexual intercourse with a woman and

I. is reckless as to whether or not she consents
II. she consents
III. he reasonably believes she is consenting

(A) I only
(B) I and II only
(C) I and III only
(D) I, II and III

34. Which of the following offences involves stealing accompanied by violence?

(A) Larceny
(B) Robbery
(C) Burglary
(D) Criminal damage

35. Inchoate offences refer to those offences that

(A) are incomplete
(B) are of a strict liability
(C) are punishable by death
(D) require more than one person

36. The MOST appropriate defence applicable where the accused killed the victim due to a sudden and temporary loss of self-control is

(A) provocation
(B) automatism
(C) spontaneous insanity
(D) diminished responsibility

37. The theory of retribution endorses as a penalty for the crime of murder

(A) life imprisonment
(B) capital punishment
(C) hard labour in prison
(D) imposition of a heavy fine

38. Which of the following is a theory of sentencing?

(A) Rehabilitating the offender
(B) Appeasing victims' families
(C) Considering the plea in mitigation
(D) Reflecting adequately the revulsion of the prosecutor

GO ON TO THE NEXT PAGE

39. Doman entices Paral to buy a car that he claims is free from encumbrances. Paral later finds out that the car is mortgaged to a financial company. Doman was charged with obtaining money by false pretences. Later, it was discovered that the document was void in law as an unregistered bill of sale.

On which of the following grounds would a court be inclined to quash Doman's conviction?

(A) *Mens rea* but no *actus reus* was established.
(B) *Actus reus* but no *mens rea* was established.
(C) No *mens rea* or *actus reus* was established.
(D) *Mens rea* was established but there was an omission.

40. Trevor, a pickpocket, reaches into Tracey's pocket to steal her purse. He changes his mind after pulling the purse to the edge of her pocket. Tracey realizes what happened and calls the police. For which of the following offences is Trevor likely to be charged?

(A) Larceny
(B) Attempt
(C) Robbery
(D) Burglary

41. An assault is different from a battery in that in an assault

(A) the accused uses unlawful physical contact and insults the victim
(B) the accused approaches the victim in a hostile manner and there is a fight
(C) there is no unlawful physical contact, but there is a mutual trading of taunts and threats
(D) the victim is put in fear of an imminent battery, but there is no physical contact by the defendant

42. Which of the following is correct?

Adolphe is guilty of murder where

(A) he announces that he is going to poison Juan but Juan is already dead
(B) Juan learns that Adolphe wants to poison him and he dies from a heart attack
(C) he keeps the poison at home from where Marcus steals it and poisons Betty, who dies
(D) he leaves a glass of milk, laced with poison, for Juan to drink but Marcus drinks it instead and dies

GO ON TO THE NEXT PAGE

43. Which of the following cases results in burglary?

(A) Albert breaks a window and climbs up a ladder to Aggie's house but changes his mind when he hears the police siren.
(B) Donald enters his neighbour's house, believing he had entered his own house, and gives Robert his neighbour's ming vase.
(C) Mary expects her boyfriend Keith to enter her bedroom through the window. In error, she invites Paul, whom she saw outside, and he steals her jewellery.
(D) Tom mistakenly enters his neighbour's house and, upon discovering the mistake, steals a painting and leaves.

44. Brian shoots Marlon in the chest. Marlon had a prevailing heart condition which speeds up his death. Brian claims he is not liable for Marlon's death. Brian is

(A) only liable for wounding Marlon
(B) not liable since Marlon had a heart condition
(C) not liable for the death since he lacks *mens rea*
(D) liable for the death since he must take the victim as he finds him

45. Which of the following is a case of incitement?

(A) X and Y plan to steal from A's purse.
(B) X lends Y a gun to kill A. A is already dead.
(C) X and Y receive a painting from A unaware that it was stolen.
(D) X gives Y poison to kill A but the poison is insufficient to kill anyone.

END OF TEST

IF YOU FINISH BEFORE TIME IS CALLED, CHECK YOUR WORK ON THIS TEST.

LAW

UNIT 1 PAPER 01

ANSWER SHEET

Item Number	Answer Key	Spec. Obj.	Cog. Level	Item Number	Answer Key	Spec Obj.	Cog. Level
1	D	1.1 (a)	CK	27	A	2.7 (d)	UK
2	B	1.2 (a)	CK	28	C	2.7 (c)	UK
3	C	1.2 (b)	CK	29	D	2.7	UK
4	A	1.2 (d)	CK	30	B	2.7 (a)	UK
5	D	1.2 (d)	CK	31	D	3.1 (a)	CK
6	A	1.2 (c)	CK	32	D	3.1 (c)	CK
7	D	1.4 (b)	CK	33	C	3.3 (a)	CK
8	D	1.4 (c)	CK	34	B	3.4 (b)	CK
9	B	1.2 (a)	UK	35	A	3.5	CK
10	C	1.4 (c)	UK	36	A	3.6 (d)	CK
11	B	1.4	UK	37	B	3.7 (a)	CK
12	B	1.5	UK	38	A	3.7 (a)	CK
13	C	1.5 (a)	UK	39	A	3.4	UK
14	C	1.5	UK	40	B	3.1 (a)	UK
15	B	1.6	UK	41	D	3.2 (c)	UK
16	B	2.1	CK	42	D	3.2 (a)	UK
17	A	2.1 (a)	CK	43	C	3.4 (c)	UK
18	D	2.4	CK	44	A	3.4 (c)	UK
19	C	2.4	CK	45	D	3.5 (c)	UK
20	A	2.5	CK				
21	B	2.5	CK				
22	D	2.7 (d)	CK				
23	C	2.8 (a)	CK				
24	B	1.6 (b)	UK				
25	A	2.7 (a)	UK				
26	C	2.7 (a)	UK				

TEST CODE **02131020**

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C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

LAW

PUBLIC LAW

UNIT 1 – Paper 02

SPECIMEN PAPER

2 hours 30 minutes

READ THE FOLLOWING INSTRUCTIONS CAREFULLY.

1. This paper consists of THREE questions, ONE question based on EACH module. Answer ALL questions.

2. Write your answers in the spaces provided in this booklet.

3. Do NOT write in the margins.

4. If you need to rewrite an answer and there is not enough space to do so on the original page, you must use the extra lined page(s) provided at the back of this booklet. **Remember to draw a line through your original answer.**

5. **If you use the extra page(s) you MUST write the question number clearly in the box provided at the top of the extra page(s) and, where relevant, include the question part beside the answer.**

DO NOT TURN THIS PAGE UNTIL YOU ARE TOLD TO DO SO.

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“*”Barcode Area”*”
Sequential Bar Code

SECTION A

MODULE 1: CARIBBEAN LEGAL SYSTEMS

This question is compulsory.

1. During jury selection, the prosecutor learns the following about the jurors:

- Barney has spent five years in prison.
- Sandie, a housewife, applies for exemption because she has the flu.

Two days into the trial, Justice King learns of the recent divorce between Kerwyn a juror, and Ann, the defendant.

(a) Outline the reason why Justice King could dismiss Kerwyn as a juror.

[2 marks]

(b)(i) Explain whether the following persons could be disqualified from serving on the jury in a named Commonwealth Caribbean state.

- Barney
- Sandie

[4 marks]

(ii) Outline TWO disadvantages of a trial by jury.

[4 marks]

(c) Assess FOUR benefits of a trial by jury as against a trial by a single judge.

[15 marks]

Total 25 marks

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“*”Barcode Area”*”
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Use the lines provided on pages 5-9 to write your answer. You may continue your answer on pages 22-26 if you need more lines.

"*"Barcode Area"*"
Sequential Bar Code

Use the lines provided on pages 5-9 to write your answer. You may continue your answer on pages 22-26 if you need more lines.

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"*"Barcode Area"*"
Sequential Bar Code

SECTION B

MODULE 2: PRINCIPLES OF PUBLIC LAW

The question is compulsory.

2. (a) Explain briefly TWO features of the doctrine of separation of powers.

[4 marks]

(b) Describe THREE methods in which the constitution of a named Commonwealth Caribbean country enshrines the separation of powers doctrine.

[6 marks]

(c) Parliament passes the Child Court Act. The judges of the Child Court are to have the same powers of a High Court judge. In accordance with Section 104 of the Constitution, High Court judges are appointed by the Judicial Legal Services Commission. Section 15 of the Child Court Act provides that Judges of the Child Court are to be appointed by the Minister for Justice. Justice Brown, a Child Court Judge who is appointed by the Minister for Justice, convicts Jane of an offence.

With reference to TWO decided cases or examples, advise Jane whether Section 15 of the Child Court Act is unconstitutional.

[15 marks]

Total 25 marks

“*”Barcode Area”*”
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Use the lines provided on pages 11-15 to write your answer. You may continue your answer on pages 22-26 if you need more lines.

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“*”Barcode Area”*”
Sequential Bar Code

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SECTION C

MODULE 3: CRIMINAL LAW

This question is compulsory.

3. (a) (i) Define the term ‘murder’.

[2 marks]

(ii) Explain briefly ONE element of the *mens rea* for murder.

[2 marks]

(b) Identify TWO instances where a person might be found guilty of involuntary manslaughter. Give an example of ONE decided case for each instance.

[6 marks]

(c) John is frustrated with his girlfriend, Tina, who constantly nags him. One evening, John beats Tina severely after her usual nagging. Tina dies as a result of the beating.

(i) Explain whether John is liable for the death of Tina. In your answer, give ONE decided case as an example.

(ii) What defence, if any, may be available to John. In your answer, give ONE decided case as an example.

[15 marks]

Total 25 marks

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C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

ADVANCED PROFICIENCY EXAMINATION

LAW

SPECIMEN PAPER

UNIT 1 - PAPER 02

MARK SCHEME

CAPE LAW UNIT 1

PAPER 02

MODULE 1 – CARIBBEAN LEGAL SYSTEMS

Key and Mark Scheme

Specific Objective: 5 (b)

(a) Legal principles
Personal relationship between Kerwyn and Ann - recently divorced - may result in bias

Clear explanation 2 marks **[2 marks]**
Partial explanation 1 mark

(b) (i) Whether the following persons could be disqualified from serving on the jury

Barney

- o Jamaica
  - ▪ awaiting or committed for trial for an indictable offence
  - ▪ conviction for treason
  - ▪ imprisonment for more than six months
- o Antigua and Barbuda
  - ▪ conviction for an indictable offence
- o Barbados
  - ▪ conviction for any misdemeanour or felony for which they have been sentenced to imprisonment
  - ▪ conviction for any arrestable offence
- o Trinidad and Tobago
  - ▪ conviction for an arrestable offence
  - ▪ conviction for crimes involving dishonesty
- o Guyana
  - ▪ conviction for crimes involving dishonesty
  - ▪ imprisonment for more than six months

Whether Sandie can be disqualified

- Serious medical condition: The juror is currently suffering from such a condition which would inhibit the ability to serve.
- Flu – depends on whether it is serious medical condition so as to affect her performance
- Effect of flu on the performance (In Antigua and Barbuda, the judge has discretion)

For each person - clear explanation of one reason 2 marks each **[4 marks]**

Partial explanation 1 mark

(ii) **Disadvantages of trial by jury**

- Persons on a jury do not generally have a legal background.
- Jurors have their own personal biases which can affect the outcome of the case
- Vetting of jurors and not random selection
- It is likely that jurors are manipulated by interested parties

Any other plausible response
Any two disadvantages clearly outlined 2 marks each
One mark for partial response **[4 marks]**

[10 marks]

(c) **Advantages/benefits of the jury system**

	Trial by jury	**Trial by single judge**
1.	**Personal bias** The size of the jury means it is unlikely that individual prejudices could significantly affect the verdict.	A judge may have a personal bias against the defendant which may influence the outcome of the trial and result in an unfair verdict.
2.	**Values of the community** The verdict in a jury trial may more accurately reflect the views of the community and society as the jury is taken from a sample of members of the public.	A single judge may be out of touch with the views of regular society, and his/her decision may not reflect the values of the community as a whole.
3.	**Perception of fairness and justice** The common man may feel he gets the kind of justice that he thinks is fair since he is judged by his own peers. Thus the verdict is more likely to be accepted by the defendant and the community.	The community may feel that the verdict is unfair since the judge as a legal expert may be out of touch with the social reality of the common man.
4.	Lack of legal training and experience of jurors allows them to bring a fresh outlook to the trial.	Judge may be hardened and cynical after years of legal training and experience.
5.	Trial by jury helps to maintain public confidence and trust in the justice system as society is ready to accept the decision which comes from its own group.	The people are not willing to accept a doubtful decision made by a single judge.
6.	The jury brings the whole power of the citizenry to bear upon the administration of justice.	The power of the citizenry is removed from the administration of justice.

- **Any other relevant point**

  Any four points clearly explained with comparison 3 marks each

  [12 marks]

  Any four points clearly explained without comparison 2 marks each

  Weak explanation 1 mark each

  Coherence **[3 marks]**

  [15 marks]

  Total 25 marks

SECTION B

MODULE 2 – PUBLIC LAW

Question 2

Specific Objective: 4

(a) Features of the separation of powers:

- The separate functions of the executive, the legislature and the judiciary
- The existence of an independent and impartial judiciary
- The protection of judicial powers and jurisdiction from usurpation by the executive and the legislature

Clear outline of any two relevant features 2 marks each

[4 marks]

Weak explanation 1 mark each

(b) Methods of enshrining:

- The existence of a chapter on the judiciary in the constitution: the existence of an independent and impartial judiciary and on the protection of its powers and jurisdiction from usurpation by the executive or legislature.
- The appointment, discipline and removal of judges are made by an independent judicial and legal services commission.
- The salaries of judges are drawn from the consolidated fund.
- Judges cannot be removed from office except for incapacity or misconduct.
- Elaborate process for removal of a judge by an independent tribunal which can recommend to the Court the removal of a judge.

Clear explanation of any three methods 2 marks each
[6 marks]
Weak explanation of methods 1 mark each [4 marks]
[10 marks]

(c) Problem question:

- Issue: Whether Section 15 of the Child Court Act is unconstitutional for violating the separation of powers doctrine

  Clear statement of issue 2 marks
  Weak statement of issue 1 mark [2 marks]

- Law: Privy Council in *Hinds* v. *R* 1977 A.C. 195, which establishes the Doctrine of Separation of Powers seemingly as a general constitutional principle of the Commonwealth Caribbean constitutions, but in practical substantive

terms in respect to the judiciary as against the other arms of the state.

Held: "The principle of Separation of Powers was implicit in the Constitution, and Parliament had no power to transfer from the Judiciary to the Review Board, the majority of whose members were not qualified to exercise judicial powers, a discretion to determine the severity of punishment to be inflicted on an individual member of a class of offenders, and accordingly, the provisions of ss.8 and 22 of the Gun Court Act were contrary to the constitution and void and the sentences passed on the defendant unlawful."

Law: *Astaphan* v*. Controller* of Customs 1966 (Court of Appeal of Dominica)

Section 6 of the Dominica protects individuals from compulsory acquisition of his property without constitutional authority. The appellant was required to pay sums in excess of estimated duties on goods being cleared from customs.

Separation of powers
Issue: Whether Legislature of Dominica delegated or transferred its legislative power of taxation to the Executive by authorities to demand a tax or duty under s.27(4)of the Customs (Control and Management) Act

Held: Section 27 (4) inconsistent with basic principle of separation of powers and therefore unconstitutional and void to that extent. It further sums that in nature of a penalty this was a judicial power or discretion which could not legislatively be transferred to the Executive.

Clear application of each of two laws 2 marks each [4 marks]
Partial application 1 mark
Clear explanation of each case or example 2 marks each
[4 marks]

Application and Conclusion

- Therefore a judge of the Child Court must be appointed by the Judicial Legal Services Commission and not the Minister of Justice.
- Section 15 of the Child Court Act is unconstitutional because it vests the power of appointment of a High Court Judge in the Ministry of Justice, a member of the Executive and Legislature rather than to the independent Judicial Legal Services Commission.

Application and Conclusion [2 marks]
Coherence [3 marks]

[15 marks]

SECTION C

MODULE 3 – CRIMINAL LAW

Question 3

Specific Objective: 2 (a)

(a)

(i) Definition
Murder is the unlawful killing of another human being with malice aforethought during the Queen's peace.

Definition to include reference to any two key elements underlined **[2 marks]**

(ii) Elements for *mens rea*
- Intent to kill is the desire to take or end the life of another human being in circumstances where there is an absence of lawful justification. The person dies as a result of the action of the defendant.
- Or intending to cause grievous bodily harm

[2 marks]

(b) Instances of person found guilty of manslaughter

- Manslaughter by unlawful and dangerous act – pointing of loaded gun at any person – *R* v*. Lamb* (1967); throwing a good size box overboard – *R* v*. Franklin* (1883); rolling a stone/dropping concrete slabs – Handcock and Shankland (1985)
- Manslaughter by negligence – existence of a legal duty, breach of that duty and damage resulting from the said breach – *R* v*. Adomako* (1993)
- Manslaughter by recklessness – D kills by an act knowing that it was highly probably that the act would cause serious injury and/or death or shuts his mind to the issue of whether such harm would be caused – *Hyam* v*. DPP* 1975; *Moloney* v*. DPP* 1985

Any two points clearly explained 2 marks each **[4 marks]**
Weak explanation 1 mark each
Any two relevant cases cited 1 mark each **[2 marks]**
[6 marks]

(c) (i) Issue – whether he may be liable for the death of Tina
- *Actus reus* - Willed voluntary movement is where the defendant does an action that he intends to do in order to bring about the desired result.
- *Mens rea* - The intention to kill or cause grievous bodily harm

- Coincidence of *actus reus* or *mens rea* – whether the defendant having the intention to kill or cause grievous bodily harm does an action to bring about the death or harm of Tina

Cases:
R v. *Maloney* 1985
R v. *Lamb**

Any two points clearly explained 2 marks each [4 marks]
Weak explanation 1 mark
Any relevant example given 1 mark

(ii) John may raise the defence of provocation

- Definition of provocation - Provocation is an act or series of acts, done by the deceased to the accused which would cause in a reasonable man and has actually caused in the accused a sudden and temporary loss of self-control rendering the accused so subject to passion as to make him or her for the moment not the master of his mind – *R* v. *Duffy* 1949.
- Elements of provocation
    - o Sudden and temporary loss of self-control - Instantaneity of the attack and the absence of time to cool off and regain one's self control
    - o Reasonableness of defendant's conduct – Whether the defendant reacted reasonably to the provocation, that is, in a manner that a reasonable man would have – *R* v. *Phillips*; *R* v. *Doughty* 1986.

Any two points clearly explained 2 marks each [4 marks]
Weak explanation 1 mark
Any relevant example given 1 mark

Application and Conclusion

- Where it is determined that provocation has been successfully raised, John's conviction for murder would be reduced to voluntary manslaughter.
- Where it is determined that provocation cannot be successfully raised as a result of his conduct being unreasonable and excessive, he would be convicted for murder.

Application and Conclusion [2 marks]
Coherence [3 marks]

[15 marks]

Total 25 marks

TEST CODE **02131032**

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C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

LAW

PUBLIC LAW

UNIT 1 – Paper 032

SPECIMEN PAPER

1 hour 30 minutes

READ THE FOLLOWING INSTRUCTIONS CAREFULLY.

1. This paper consists of ONE compulsory question.
2. Read the question carefully before you begin writing your response.
3. You may refer to your prepared notes on the topic to be assessed.
4. Write your responses in the answer booklet provided.

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TOPIC: FUNDAMENTAL RIGHTS

Answer this compulsory question.

1. With reference to THREE decided cases, explain THREE ways in which each of the following fundamental rights is important to the citizens in a named Commonwealth Caribbean state:

   (a) Protection of the law **[15 marks]**

   (b) Protection from deprivation of property **[15 marks]**

Total 30 marks

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LAW

UNIT 1 Paper 032

KEY AND MARK SCHEME

MAY/JUNE 2017

LAW
UNIT 1 Paper 032
KEY AND MARK SCHEME

FUNDAMENTAL RIGHTS

Protection of the law

- Referred to as a fair trial or the right to due process
- Regulates the conduct of fair trials
- The emphasis is in criminal trials

1. Right to a fair hearing

"If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a **fair hearing**" – section 18(1) of the Constitution (BDS).

Maharaj v. *Attorney General*: person must be given particulars of charge and an opportunity to respond to those charges before punishment

2. Trial within a reasonable time

"If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing, **within a reasonable time**" – section 18(1) of the Constitution (BDS)

Bell v. DPP – 32 months was an unreasonable time in the appellant's case, which was a retrial.

3. Details of offence charged:

"Every person who is charged with a criminal offence shall be informed as soon as is reasonably practicable, in a language that he understands and in details, of the nature of the offence charged" section 8(2) of the Constitution (DCA)
Amerally & Bentham v. *R* – no offence was disclosed by the charge.

4. Legal Representation

"Every person who is charged with a criminal offence, shall be permitted to defend himself in person or by a legal representative of his own choice – section 18(2) of the Constitution (BDS)

Hinds v. AG of Barbados: since the appellant was represented on appeal he could not argue that his right to a fair hearing was breached by the denial of legal aid at the trial

Two points clearly stated in definition	**2 marks**
Three points clearly explained 2 marks each up to	**6 marks**
Conclusion	**2 marks**
Weak explanation 1 mark each	
Three cases clearly cited 1 mark each	**3 marks**
Coherence	**2 marks**

Total 15 marks

LAW
UNIT 1 Paper 032
KEY AND MARK SCHEME

Protection from deprivation of property

- No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except by or under the authority of a written law

- Acquisition or taking of possession

    - must be made by a written law

    - must prescribe the principles on which and the manner in which compensation therefore is to be determined and given

    - must give to any person claiming such compensation a right of access, either directly or by way of appeal, for the determination of his interest in or right over the property and the amount of compensation, to the High Court

Personal Property

Property includes personal possessions for example, money, debts and other tangibles

AG v Caterpiller: money is property

Salary and Employment Benefits

AG v. Lawrence: L was managing director of bank. Was removed from office. Entitled to profit. Contractual arrangements form of property protected.

Civil Servants Salaries

King v. AG of Barbados: public servant had no right to a minimum salary and no property protected.

Any other point

Two points clearly stated in definition	**2 marks**
Three points clearly explained 2 marks each up to a	**6 marks**
Conclusion	**2 marks**
Weak explanation 1 mark each	
Three cases clearly cited 1 mark each	**3 marks**
Coherence	**2 marks**

[15 marks]
Total 30 marks

LAW
UNIT 1 Paper 032
KEY AND MARK SCHEME

Level	Criteria	Score
1	A logical, well-developed response; demonstrates **excellent** understanding of cases and issues, consistently cites relevant sources to support answer	**27-30**
2	A logical, well-developed response, demonstrates **very good** understanding of cases and issues, usually cites relevant sources to support answer	**23-26**
3	A logical, fairly well developed response; demonstrates **good** understanding of cases and issues, usually cites relevant sources to support answer	**19-22**
4	Satisfactory logic and development shown in response; demonstrates **satisfactory** understanding of cases and issues, occasionally cites relevant sources to support answer	**15-18**
5	Acceptable logic and development shown in response; demonstrates **acceptable** understanding of cases and issues, occasionally cites relevant sources to support answer	**11-14**
6	Weak logic and limited development shown in response; demonstrates **poor** understanding of cases and issues, rarely cites relevant sources to support answer	**7-10**
7	Unsatisfactory logic and minimal development shown in response; demonstrates **unsatisfactory** understanding of cases and issues, very rarely cites relevant sources to support answer	**1-6**

CANDIDATE – PLEASE NOTE!

PRINT your name on the line below and return your booklet with the answer sheet. Failure to do so may result in disqualification.

TEST CODE **02231010**

SPEC 2017/02231010

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LAW

Unit 2 – PRIVATE LAW

Paper 01

SPECIMEN PAPER

1 hour 30 minutes

READ THE FOLLOWING INSTRUCTIONS CAREFULLY.

1. This test consists of 45 items. You will have 1 hour and 30 minutes to answer them.

2. In addition to this test booklet, you should have an answer sheet.

3. Do not be concerned that the answer sheet provides spaces for more answers than there are items in this test.

4. Each item in this test has four suggested answers lettered (A), (B), (C), (D). Read each item you are about to answer and decide which choice is best.

5. On your answer sheet, find the number which corresponds to your item and shade the space having the same letter as the answer you have chosen. Look at the sample item below.

   Sample Item
   Browne owns five acres of land. He rents it to Felix for 99 years.
   Felix now holds

   Sample Answer

   (A) a life interest
   (B) a freehold estate
   (C) a leasehold estate
   (D) an equitable interest

   The best answer to this item is "a leasehold estate", so (C) has been shaded.

6. If you want to change your answer, erase it completely before you fill in your new choice.

7. When you are told to begin, turn the page and work as quickly and as carefully as you can. If you cannot answer an item, go on to the next one. You may return to that item later.

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1. A defamatory statement is one that

(A) was made in a heated argument
(B) was written about someone
(C) tends to lower a person in the estimation of his friends
(D) tends to lower a person in the estimation of right-thinking persons

2. Which of the following is NOT a defence for defamation?

(A) Truth
(B) Free speech
(C) Fair comment
(D) Absolute privilege

3. Which of the following are sources of libel?

I. Photographs
II. E-mails
III. Gestures

(A) I and II only
(B) I and III only
(C) II and III only
(D) I, II and III

4. For a person to be found liable for battery, there must be

(A) unlawful physical contact
(B) consent to physical contact
(C) personal injury to the victim
(D) a threat of violence by the tort feasor

.

5. Which of the following statements is correct with regard to an action for false imprisonment?

(A) It is not actionable per se.
(B) The defendant must justify the restraint.
(C) The defendant must show he had no reasonable cause to detain the plaintiff.
(D) The defendant is liable where the plaintiff knows that the defendant had him detained

6. Which of the following is NOT a true statement in private nuisance?

(A) The plantiff must have an interest in land.
(B) The plaintiff can recover damages for personal injury.
(C) The defendant's conduct must have been unreasonable.
(D) The interference to land must be substantial for a successful action.

7. The term 'particular damage' is usually associated with the law of

(A) assault
(B) negligence
(C) public nuisance
(D) private nuisance

8. Which of the following provides a defence to an occupier for injuries sustained by a lawful visitor on the occupier's premises?

(A) Trespassing
(B) *Ex turpi causa*
(C) Inadequate warnings
(D) *Volenti non fit injuria*

9. Boat Builders Ltd owned a boat that has been abandoned for two years. Gregory, who is13 years old, was injured when the boat fell on him as he tried to repair it.

   Which of the following is the legal position of Boat Builders?

   (A) Not liable for the injury of Gregory
   (B) Liable based on the doctrine of r*es ipsa loquitur*
   (C) Liable because the accident was reasonably foreseeable
   (D) Not liable because the accident was reasonably foreseeable

<u>Items **10-11**</u> relate to the following scenario.

Joe was driving towards town when his vehicle skidded, mounted the pavement and collided with Mary Brown who was walking along the pavement. Mary Brown is taken to the General Hospital where she dies two days later. An autopsy reveals that she dies from an overdose of antibiotics which were administered to her by various nurses at the General Hospital.

10. Mary Brown's personal representatives can bring an action against Joe in the tort of

   (A) assault
   (B) negligence
   (C) recklessness
   (D) manslaughter

11. What concept in tort can Joe adequately advance to absolve him from liability for the death?

   (A) *Non est factum*
   (B) *Res ipsa loquitur*
   (C) *Volenti non fit injuria*
   (D) *Novus actus interveniens*

12. Ellie receives a text message from Tom that her goddaughter, Mandy, was in a terrible accident and had to be hospitalized. Ellie faints and falls breaking her wrist. Later she learns that Ron's dangerous driving caused the accident involving Mandy.

   Which of the following options is available to Ellie?

   (A) She can succeed in an action against Ron for nervous shock
   (B) As Mandy's godmother Ellie qualifies as a foreseeable plaintiff
   (C) She cannot succeed in an action against Ron for nervous shock
   (D) Her position is not affected by Mandy being her goddaughter and not her daughter

13. Slander is actionable per se where the defamatory statement

   I. imputes incompetence of a doctor
   II. suggests that a married woman is adulterous
   III. causes the plaintiff to be shunned from a social group

   (A) I and II only
   (B) I and III only
   (C) II and III only
   (D) I, II and III

14. D says to E, "If you do not leave my daughter alone, I will shoot you." Which of the following BEST states the legal position?

   (A) D commits an assault on E because E is in fear of D.
   (B) D does not commit an assault on E because E is bigger than D.
   (C) D commits an assault on E because E does not intend to leave D's daughter alone.
   (D) D does not commit an assault on E because there is no immediacy about D's threat.

GO ON TO THE NEXT PAGE

15. Which of the following is NOT an employer's duty at common law?

(A) A safe place of work
(B) Adequate plant and equipment
(C) A workplace that is totally free from any danger
(D) A safe system of working with effective supervision

16. Contractual obligation arises from a duty primarily fixed by

(A) law
(B) statute
(C) agreement
(D) judicial revision

17. Which of the following is NOT a type of contract?

(A) Bilateral
(B) Voidable
(C) Unilateral
(D) Fundamental

18. Which of the following conditions creates incapacity to form certain contracts?

(A) Hunger
(B) Old age
(C) Drunkenness
(D) Age of maturity

19. Consideration in a contract is BEST defined as

(A) being party to a contract
(B) the acceptance of an offer
(C) the capacity to make a contract
(D) the price for which a promise is bought

20. A fraudulent misrepresentation is one that is

(A) careless
(B) innocent
(C) dishonest
(D) thoughtless

21. The effect of misrepresentation on a contract is BEST described as rendering the contract

(A) illegal
(B) voidable
(C) discharged
(D) *void ab initio*

22. Which of the following is a legal binding contract?

(A) A defendant bribing a juror
(B) A customer purchasing controlled drugs
(C) A store supplying a bed to a prostitute
(D) A citizen paying to receive a national honour

23. Under which of the following conditions can the discharge of a contract occur?

(A) Capacity
(B) Illegality
(C) Agreement
(D) Misrepresentation

24. Which of the following agreements represents a contract where the parties intended to be legally bound?

(A) Aaron offers $100 000 to any man who will marry his daughter.
(B) Craig promises to pay $40 000 for a car to be supplied by Elizabeth.
(C) Dennis promises to pay his wife a monthly allowance while he is away.
(D) Billy promises Garry a part of the petrol cost in return for a ride to work each morning.

GO ON TO THE NEXT PAGE

25. A father promises his 18-year-old son a gold watch if the boy does not smoke until he turns 21. The boy complies. The father does not. The legal result is that there is

(A) no agreement between the parties
(B) a breach of contract by the father
(C) no privity of contract between the parties
(D) an agreement which is unenforceable by the son

26. Harry is 15 years old but looks much older. He goes into James' barbershop, gets a haircut and then refuses to pay on the grounds that he is 'underage'. James can succeed in a case against Harry because

(A) the contract is one for necessaries
(B) the contract is not for the sale of goods
(C) Harry was a minor at the time of the contract
(D) there was no reason to believe Harry was a minor

27. Ancil Ltd enters into the lease of a gold-mine for 20 years with Bilton Ltd. After 12 years, Ancil Ltd realizes that it had entered into the agreement as a result of misrepresentation by Bilton Ltd. There has been considerable extraction of gold and other minerals from the mine. Ancil Ltd. CANNOT claim rescission because

(A) there is a lapse of time
(B) there is an impossible restitution
(C) there is an affirmation of contract important
(D) third party rights have intervened

28. Jane agrees with Ken to sing a solo at Ken's wedding reception on Sunday. On Thursday, Jane gets soaked in a downpour but, instead of changing her wet clothes, she sits in a draught. Jane contracts laryngitis, and is unable to sing at the reception. When Ken sues Jane, she can

(A) rely on the doctrine of illegality
(B) plead frustration of the agreement
(C) plead a lack of consideration on Ken's part
(D) offer no lawful excuse for her non-performance

29. Alf promises Bob that he, Alf, will pay $50 to Carl if Bob mows Alf's lawn. Bob mows the lawn. Alf now refuses to pay Carl. Which of the following is correct?

(A) Alf is not in breach of contract.
(B) Carl can sue Alf for breach of contract.
(C) Carl can sue Bob for breach of contract.
(D) Carl cannot sue Alf for breach of contract.

30. Which of the following is the BEST describes the effect of illegality on a contract?

(A) Valid and enforceable
(B) Enforceable but voidable at the option of either party
(C) Unenforceable but property transferred may be recovered
(D) Unenforceable and property transferred cannot be recovered

31. A legal interest in land differs from an equitable interest in that a legal interest is

(A) a right in personam
(B) formed without legal formalities
(C) a right binding on the whole world
(D) not as strong as an equitable interest

32. When does the equitable right to redeem occur?

(A) When the mortgage is created
(B) When the mortgage is concluded
(C) Any time before the contractual redemption date
(D) After the contractual redemption date has passed

33. The doctrine of survivorship applies where the title deed for the ownership of the property states that Raul and Sharon are tenants holding the property

(A) in common
(B) in equal shares
(C) in joint ownership
(D) to share and share alike

34. The term 'ownership of real property' refers to

(A) rights in *rem*
(B) choses in action
(C) movable property
(D) corporeal property

35. Which of the following statements is true of a licensee?

(A) He can assign his licence.
(B) He has an interest in the land.
(C) He does not enjoy exclusive possession.
(D) He can enforce his rights over property.

36. Where a person is granted, by deed, the right to enter land in order to enjoy the right to take growing timber, his interest in the land is equivalent to a

(A) lease
(B) bare licence
(C) contractual licence
(D) licence coupled with interest

37. Which of the following is an essential characteristic of an easement?

(A) There is a dominant tenement only.
(B) The right is the subject matter of a grant.
(C) There is consideration by the servient tenement.
(D) There is no accommodation for the dominant tenement.

38. The interest of the landlord of a demised premises whilst the tenant is in possession is called

(A) a reversionary
(B) a legal interest
(C) an equitable interest
(D) a proprietary interest

39. Thompson leases a bond to Jackman who operates a printery. Jackman builds a concrete platform that is pinned to the ground by steel. Upon this platform, Jackman rests his printing press. At the end of the lease, Thompson wants Jackman to leave the printing press. The printing press can be classified as a

(A) fixture
(B) chattel
(C) corporeal
(D) chose in action

40. Broome holds the fee simple in Daxacres. He wishes to change his fee simple to a life estate for himself with remainder to his sons, Felix and Austin. Which of the following is true of the life estate Broome would hold?

(A) Felix and Austin hold the remainder interest for Broome.
(B) Felix holds a life interest for Austin with remainder to Broome.
(C) Felix and Austin both hold a life interest with remainder to Broome.
(D) Felix and Austin are lessees of Broome for the term of their natural lives.

41. Tom owns a house at Macaio. Jerry leases the house from Tom for a period of five months at a specified rent. At the expiration of the five months, Tom allows Jerry to remain in the house. Jerry does not pay any rent. What type of tenancy is created after the expiration of the five months?

(A) Tenancy-at-will
(B) Periodic tenancy
(C) Tenancy by estoppel
(D) Tenancy at sufferance

42. Dan owns land that is next to St Ann's Street. Peter is the owner and occupier of the land adjoining Dan's. Dan has allowed Peter to walk over his land for the past 25 years to go to and from St Ann's Street. Peter is said to have acquired

(A) a lease
(B) a licence
(C) a covenant
(D) an easement

43. J, K, L and M own the Orange Acre property as joint tenants. M dies due to old age. Two weeks later J, K and L advertise the Orange Acre property for sale. How will the proceeds of the sale be legally apportioned?

(A) J, K and L will each receive one-third.
(B) J, K and L will each receive one-quarter.
(C) M's share passes to his estate, the balance is shared equally among J, K and L.
(D) M's share passes to his next of kin, the balance is shared equally among J, K and L.

44. Don mortgages his property to Commercial Inc. for the sum of $20 000. Which of the following remedies would be available to Commercial Inc. should Don default on the loan?

I. Power of foreclosing on the property
II. Right to take possession
III. Right to sue Don

(A) I and II only
(B) I and III only
(C) II and III only
(D) I, II and III

45. A clog on the equity of redemption means that the mortgagee CANNOT

(A) reserve the right to purchase the mortgaged property
(B) reserve benefits after the mortgagor has redeemed the mortgaged property
(C) be allowed to restrict the mortgagor's right to redeem the mortgaged property
(D) enter into an agreement with the mortgagor to become owner on the death of the mortgagor

END OF TEST

IF YOU FINISH BEFORE TIME IS CALLED, CHECK YOUR WORK ON THIS TEST.

LAW

UNIT 2 PAPER 01

ANSWER SHEET

Item Number	Answer Key	Spec. Obj.	Cog Level	Item Number	Answer Key	Spec. Obj.	Cog Level
1	D	1.4 (a)	CK	26	D	2.2 (d)	UK
2	B	1.4 (a)	CK	27	B	2.5 (c)	UK
3	A	1.4 (b)	CK	28	B	2.6 (b)	UK
4	A	1.5 (a)	CK	29	D	2.6 (c)	UK
5	D	1.5 (b)	CK	30	C	2.4	UK
6	B	1.5 (a)	CK	31	C	3.3 (b)	CK
7	C	1.6 (a)	CK	32	D	3.3 (d)	CK
8	D	1.9	CK	33	C	3.3 (d)	CK
9	C	1.3 (c)	UK	34	A	3.3 (a)	CK
10	B	1.3 (a)	UK	35	C	3.4 (a)	CK
11	D	1.3 (b)	UK	36	C	3.4 (a)	CK
12	C	1.3 (c)	UK	37	B	3.5 (a)	CK
13	A	1.4 (b)	UK	38	A	3.6 a)	CK
14	D	1.5 (a)	UK	39	B	3.2 (a)	UK
15	C	1.8	UK	40	A	3.3 (b)	UK
16	C	2.1	CK	41	A	3.3 (d)	UK
17	D	2.1 (b)	CK	42	D	3.3 (d)	UK
18	C	2.2 (d)	CK	43	A	3.3 (d)	UK
19	D	2.2 (c)	CK	44	B	3.6 (b)	UK
20	C	2.5 (b)	CK	45	A	3.6 (b)	UK
21	B	2.5 (c)	CK				
22	C	2.7 (a)	CK				
23	C	2.6 (b)	CK				
24	B	2.2 (b)	UK				
25	A	2.2 (b)	UK				

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CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

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PRIVATE LAW

SPECIMEN PAPER

UNIT 2 – Paper 02

2 hours 30 minutes

READ THE FOLLOWING INSTRUCTIONS CAREFULLY.

1. This paper consists of THREE questions, ONE question based on EACH module. Answer ALL questions.
2. Write your answers in the spaces provided in this booklet.
3. Do NOT write in the margins.
4. If you need to rewrite an answer and there is not enough space to do so on the original page, you must use the extra lined page(s) provided at the back of this booklet. **Remember to draw a line through your original answer.**
5. **If you use the extra page(s) you MUST write the question number clearly in the box provided at the top of the extra page(s) and, where relevant, include the question part beside the answer.**

DO NOT TURN THIS PAGE UNTIL YOU ARE TOLD TO DO SO.

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"*"Barcode Area"*"
Sequential Bar Code

SECTION A

MODULE 1: LAW OF TORT

This question is compulsory.

1. John bought a house in a very quiet part of town called Greenland Park and lives there with his mother, Janet. Last summer, the house next door was sold and the new owner, Chingtung Restaurant, hires a band which plays loud music every night into the wee hours of the morning. Several complaints made to the restaurant owner have been ignored. Janet and John approach you for legal advice regarding this problem.

(a) (i) Identify the tort relevant to this question. Give ONE reason for your answer.

[3 marks]

(ii) Who can bring the action in tort? Give ONE reason for your answer supported by ONE decided case.

[3 marks]

(b) Identify TWO parties that can be sued in this action. Give ONE reason for EACH of the TWO parties in your answer.

[4 marks]

(c) With reference to TWO decided cases, advise Janet and John on THREE factors that the court would take into consideration in determining liability in this matter.

[15 marks]

Total 25 marks

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SECTION B

MODULE 2: LAW OF CONTRACT

The question is compulsory.

2. (a) (i) State ONE presumption of an intention to create legal relations. Refer to ONE decided case in your answer.

[2 marks]

(ii) Explain briefly ONE principle emerging from *Carlill v. Carbolic Smoke Ball Co*.

[2 marks]

(b) Explain TWO methods by which a term can be implied into a contract. Use ONE decided case to support your answer for EACH method.

[6 marks]

(c) Meg is contracted by Telco Ltd to sing at its Christmas concert. She is paid half of the fee, the balance to be paid after the concert. Meg cannot sing on the evening of the concert because she is very hoarse.

Explain to Telco the basis upon which Meg may be discharged from the contract. Refer to THREE decided cases to support your answer.

[15 marks]

Total 25 marks

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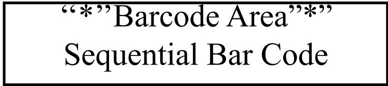

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SECTION C

MODULE 3: REAL PROPERTY

This question is compulsory.

3. (a) Briefly explain any TWO distinguishing features of a ‘bare licence’.

[4 marks]

(b) (i) Give a brief explanation of ONE implied covenant of a landlord.

(ii) List TWO examples of a breach of the named covenant.

[6 marks]

(c) Mr Maraje has five acres of land in Hibiscus Park. He gives Sunil permission to maintain the land and grow crops on it. Mr Maraje promises him (Sunil) a piece of the land in return for his services. Based on Mr Maraje’s promise Sunil builds a house on the land and has been planting and maintaining the land for eight years when a dispute arises between them. Mr Maraje gives Sunil notice to vacate the premises within one month. Sunil refuses to leave, claiming that he is entitled to an interest in the property. Sunil wishes to sue Mr Maraje for possession and retains you as his attorney.

Using TWO decided cases to illustrate your answer, explain to Sunil whether he can succeed in a claim for an interest in Mr Maraje’s property.

[15 marks]

Total 25 marks

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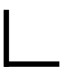

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ADVANCED PROFICIENCY EXAMINATION

LAW

SPECIMEN PAPER

UNIT 1 - PAPER 02

MARK SCHEME

CAPE LAW UNIT 2

PAPER 02

SECTION A

MODULE 1 - LAW OF TORT

Key and Mark Scheme

Question 1

Specific Objective: 5

(a) Candidates are expected to discuss the following:

(i) The tort is nuisance as Chingtung Restaurant is causing an unreasonable interference of John and his mother's use or enjoyment of the house due to the noise from the band playing at nights.

1 mark for response
2 marks for clear explanation
1 mark for partial explanation **[3 marks]**

(ii) John — landowner/tenant/occupier can sue.
Since nuisance is concerned with a person's use or enjoyment of land only persons with an interest in land can sue. In this case John is the person who bought the land, therefore he is the owner and has interest so he can sue.

Cases
Malone v. *Laskey* (1907)
Hunter v. *Canary Wharf* (1995)
Sheppard v. *Griffith* (1973)

1 mark for identifying John
1 mark for reason
1 mark for the case

[3 marks]

(a) The parties that can be sued
Any person who creates a nuisance can be sued regardless of whether that person owns or occupies the land from which the nuisance comes — Southport Corporation

(i) Chingtung Restaurant can be sued as owner.

- The occupier of the land where the nuisance exists is liable when he creates the nuisance. In this case, Chintung Restaurant can be sued.

Chingtung Restaurant can be sued as occupier.

- The occupier may also be vicariously liable where his employee creates a nuisance in the course of employment. In this case, the band is the employee (contracted) of Chingtung Restaurant so Chingtung is vicariously responsible for its action.

- The occupier may also be liable for the nuisance created by his independent contractor where the occupier could have reasonably foreseen, from the instructions which he gave to the independent contractor, that a nuisance was likely to occur – *Bower v. Peat* (1876)
- The occupier may also be liable where the nuisance is created by a trespasser on his land or where it was created by an act of nature once he know or ought to have known of the risk of the nuisance occurring and did nothing to prevent it – *Sedleigh-Denfield v. O'Callaghan* (1940).

(ii) The band may be sued as the creator of the nuisance.

- Any person who creates a nuisance can be sued regardless of whether that person owns or occupies the land from which the nuisance comes — Southport Corporation.

Any two persons identified with clear reason 2 marks each [4 marks]

Any two points partially explained 1 mark each [2 marks]

(b) Issue: Whether the interference was unreasonable
To determine liability of the defendant for unreasonable interference the court will consider the following factors:

- **Substantial interference**
  Not all interference gives rise to liability. In order to strike a balance between the right of the defendant to use his land as he wishes and the right of the plaintiff to be protected from interference with his enjoyment of his land, the plaintiff must prove substantial interference with the enjoyment of land.

- **Duration of the interference**
  The interference must be continuous over a period of time; the shorter the duration of the interference the less likely it is to be found unreasonable. A mere temporary inconvenience, for example, noise or dust from a demolition of building work on the defendant's land may not be unreasonable. A permanent inconvenience such as noise and smoke from the defendant's factory is more likely to be held to be unreasonable and therefore actionable.

- **Sensitivity of the plaintiff**
  If the plaintiff suffered damage only because he or his property was abnormally delicate or sensitive, and he would not otherwise have been harmed, the defendant would not be liable in nuisance. The law expects a person to conform

to a reasonable standard of conduct not to some unusually high standard which the plaintiff seeks to impose.

- **Character of the neighbourhood**
  The nature of the neighbourhood where the acts complained of have occurred may be taken into account in cases of interference with enjoyment of land *Bamford v. Turnley*, but not in cases of physical injury to property *St. Helen's Smelting Co. v. Tipping.* 'What would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey' *Sturges v. Bridgman.*

- **The utility of the defendant's conduct**
  In general, the court will not rule in favour of the defendant merely because he shows that his conduct was beneficial or useful to the community for that would compel the plaintiff to bear the burden alone of an activity from which many others will benefit – *Adams v. Ursell.*

- **The Defendant's malice**
  Malice will refute reasonableness – *Christie v. Davey.*
  Where the defendant carried on his activity with the sole or main purpose of causing harm or annoyance to the plaintiff this is a factor that will be taken into account in deciding whether his conduct is reasonable.
  Malice here means 'spite', 'ill-will' or 'evil motive' *Hollywood Silver Fox Farm Ltd v. Emmett.*

Cases

Walter v. Selfe
Vanderpant v. Mayfair Hotel Co. Ltd
De Keyser's Royal Hotel v. Spicer Bros. Ltd
Harrison v. Southwark & Vauxhall Water Co.
Bolton v. Stone
Midwood v. Mayor of Manchester
Robinson v. Kilvert

Clear explanation of any three relevant factors 2 marks each
[6 marks]
Weak explanation 1 mark each.

Any two cases/examples clearly explained 2 marks each [4 marks]
Application and conclusion [2 marks]
Coherence [3 marks]

[15 marks]

Total 25 marks

SECTION B

MODULE 2 - LAW OF CONTRACT

Question 2

Specific Objectives: 2 (b), 4 (a), 6

(a) (i) Presumptions of an intention to create legal relations.

- Arrangements made between family members are not usually legally binding. **[1]**
  Balfour v. Balfour 1919 **[1]**

- Commercial agreements in which the intention is presumed and must be rebutted by the party seeking to deny it. **[1]**
  Esso Petroleum Company Ltd. v. Commissioner of Customs and Excise 1976 **[1]**

[4 marks]

(ii) Principle emerging from *Carlill v. Carbolic Smoke Ball Co.*

- **The advertisement is a conditional offer rather than an invitation to treat.**
  Performance can amount to acceptance of an offer.

Clear explanation of any one relevant principle [2 marks]
Weak explanation [1 mark]

(b) - *Custom or habit*
Case: *Hutton v. Warren* (1836): Local custom meant that on termination of an agricultural lease the tenant was entitled to an allowance for seed and labour on the land. The court held that the lease made by the two parties must be viewed in the light of this custom. As Baron Parke in the Court of Exchequer said "It has long been settled that in commercial transactions extrinsic evidence of custom and usage is admissible to annex incidents to written contracts, in matters with respect to which they are silent."

- *Terms implied by trade or professional custom*
The parties to a contract might be bound by an implied trade custom when it is accepted as their deemed intention even though there are no express terms on the matter.
Case: *Les Affreteurs Reunis SA v. Walford* (Walford's case) (1919) In this case that we have already seen in privity of contract, Walford was suing for a commission of 3% that he felt he was owed for negotiating a charter party between Lubricating and Fuel Oils Co. Ltd and the owners of the SS 'Flore'. One argument of the defendants was that there was a custom that commission was payable only when the ship had actually been hired. In this instance the French government had requisitioned the ship before the charter party had actually occurred. If the custom was accepted then it would conflict with the clause in the contract

requiring payment as soon as the hire agreement was signed, so it was held not to have been implied into the contract.

- *Terms implied to give business efficacy to a commercial contract*

  Parties would not enter a contract freely that had no benefit for them or indeed that might harm them or cause them some loss. So the courts will imply terms into a contract that lacks them in express form in order to sustain the agreement as a business like arrangement.
  Case: The Moorcock (1889). The defendants owned a wharf with a jetty on the Thames. They made an agreement with the claimant for him to dock his ship and unload cargoes at the wharf. Both parties were aware at the time of contracting that this could involve the vessel being at the jetty at low tide. The ship became grounded at the jetty and broke up on a ridge of rock. The defendants argued that they had given no undertaking as to the safety of the ship. The court held that there was an implied undertaking that the ship would not be damaged. Bowen LJ explained that "In business what the transactions such as this, what the law desires to effect by the implication is to give such business efficacy . . . as must have been intended."

  Clear explanation of any two methods 2 marks each [4 marks]
  Case or example 1 mark each [2 marks]

(c) A commercial agreement has clearly been made.
Any other relevant point

Cases:
Carlill v. Carbolic Smoke Ball Co.
Rose and Frank v. Crompton **[2 marks]**

Effect of Lil's hoarseness: Would this agreement be regarded as frustrated? Compare *Poussard v. Spiers and Pond* with *Storey v. Fulham, Steel Works*. See also Bettini v. Gye case on breach of contract. **[4 marks]**

Cases on frustration of contract which may be helpful include

Krell v. Henry
Taylor v. Caldwell

Analysis:
Identification of issue
Definition of terms
Determination of issue with supporting case law
Soundness of argument **[4 marks]**
Application and Conclusion [2 marks]
Coherence [3 marks]
Total 25 marks

SECTION C

MODULE 3 - REAL PROPERTY

Question 3

Specific Objectives: 4 (a), 4 (c)

(a) Bare licence
- A mere permission to enter on the land of the licensor to do something;
- No consideration is exchanged;
- May be revoked at any time by the licensor without notice, but the licencee must be given a time to leave;
- Licencee becomes a trespasser once time given to remain on the property has expired.

Clear explanation of any two features 2 marks each [4 marks]
Partial explanation 1 mark each

(b) (i) Implied covenants of the landlord

- **Quiet enjoyment**
  - At common law there is an implied covenant of the landlord that once the tenant has been put in possession of the property he shall have quiet enjoyment of the property during the continuation of the lease.
  - The tenant is entitled to recover damages if the landlord or any other person claiming through him substantially disturbs or physically interferes with the tenant's enjoyment of the land.
  - Examples of breaches - blocking the tenant's access to outdoor facilities, bulldozing structures on the premise, removing doors, windows or rook of the building in order to get rid of the tenant – *Lavender v. Betts* (1942); causing the electricity or water supply to be cut off – *Tapper v. Myrie* (1968)

- **Non-derogation from grant**
  - Landlord must not frustrate the use of the land for the purpose for which it was let – *Browne v. Flower* (1911)
  - To constitute a breach of covenant the landlord must do some act which renders the demised premises substantially less fit for the purposed for which they were let
  - For example, excessive dust and fumes given off from neighbouring land seriously interfering with the use and enjoyment of land.
  - Any other relevant point

- **Fitness for habitation**
  - Furnished residential premises must be fit for habitation at the commencement of the tenancy *Collins v. Hopkins* (1923). For example, drains must not be defective – *Wilson v. Finch-Hatton* (1877); premises must not be infected with bugs *Smith v. Marrable* (1843).
  - A landlord of residential apartments in a high rise building has an implied duty to keep the elevators, staircases and other common facilities such as lighting, and garbage disposal facilities in a reasonable state of repair for the benefit of all the tenants in the building.
  - Breaches – failure to maintain common areas (elevators, garbage disposal)

Any two implied covenants of the landlord clearly explained 2 marks each [4 marks]
Any two examples of breaches stated 1 mark each [2 marks]

(c) **Issue: Whether Sunil has acquired a proprietary/equitable interest in the property**

Licence by estoppel gives rise to a proprietary interest in land where:

- Promise made by the land owner. Mr Maraje promised to transfer a parcel of land to Sunil in exchange for his services
- The titleholder expends money on some improvement to property or otherwise acts to his detriment. Based on Mr Maraje's promise, Sunil built a house on the land, and grew crops
- The expenditure was made with the mistaken belief by the person making it that he would enjoy some privilege or interest in the land. Sunil acted with the mistaken belief that he would acquire an interest in the property
- The titleholder knows that the licencee was acting to his detriment with the mistaken belief that he would acquire an interest in the land. Mr Maraje knew that the expenditure was being made by Sunil, and that it was being made with the mistaken belief that he would acquire an interest in the property
- Equity will intervene to stop the legal title holder from denying that the person making such expenditure had an interest in the property.

Cases:
Central London Property Trust Ltd v. High Trees House Ltd
Clarke v. Kellarie
Denson v. Bush
Inwards v. Baker

Any three points well explained 2 marks each [6 marks]
Partial or weak explanation 1 mark each
Any two cases/examples clearly explained 2 marks each [4 marks]

Application and conclusion [2 marks]
Coherence [3 marks]

Total 25 marks

C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

LAW

PUBLIC LAW

UNIT 2 – Paper 032

SPECIMEN PAPER

1 hour 30 minutes

READ THE FOLLOWING INSTRUCTIONS CAREFULLY.

1. This paper consists of ONE question.
2. Read the question carefully before you begin writing your response.
3. You may refer to your prepared notes on the topic to be assessed.
4. Write your responses in the answer booklet provided.
5. Do NOT write in the margins.

DO NOT TURN THIS PAGE UNTIL YOU ARE TOLD TO DO SO.

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TOPIC: STRICT LIABILITY

Answer this compulsory question.

(a) Explain the meaning of the term 'strict liability' in tort, using ONE example to illustrate your answer. **[13 marks]**

(b) Mr Shoemakker has a ferocious Alsatian dog which he usually keeps tied during the day and releases at night. One morning Mr Shoemakker goes to work and forgets to put the dog in its kennel. A little later that morning the postman comes to the gate and calls the housemaid, Angie, who, while walking out to the gate to collect the mail is attacked and badly bitten by the dog. The dog had escaped several times before and had bitten persons passing in the street.

Advise Angie if she can successfully bring an action in tort against Mr Shoemakker. **[17 marks]**

Total 30 marks

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CARIBBEAN ADVANCED PROFICIENCY EXAMINATIONS®

LAW

UNIT 2 Paper 032

KEY AND MARK SCHEME

2017

LAW
UNIT 2 Paper 032
KEY AND MARK SCHEME

STRICT LIABILITY

Specific Objective: 6

(a) Candidates are expected to explain 'strict liability' in tort including the key elements

Definition:

- Automatic responsibility for damages due to possession and/or use of equipment, materials or possessions which are inherently dangerous such as explosives, wild animals, poisonous snakes, or assault weapons.

- Defendant is liable even though the damage to the plaintiff occurred without intention or negligence/fault on defendant's part.

- Motive of the defendant is irrelevant.

- It does not matter what sort of precautions the defendant takes.

- The primary basis of liability is the creation of an extraordinary risk.

- If the activity is appropriate to the area, strict liability exists only if the activity is conducted in an unusual or abnormal way.

- A deterrent aspect of tort, aimed at inducing persons to modify their behaviour so as to avoid harming others.

Any other relevant point
Any three points clearly explained 2 marks each **[6 marks]**
Clear explanation including only one point 2 marks
Weak explanation 1 mark

Example of Strict Liability

Liability for animals

- Test: called Scienter, that is, owner liable for harm caused by the animal. The type of action is called a scienter action.

- Because animals are not governed by a conscience and possess great capacity to do mischief if not restrained, those who keep animals have a duty to restrain them.

- In most jurisdictions the general rule is that keepers of all animals, including domesticated ones, are strictly liable for damage resulting from the trespass of their animals on the property of another.

Students are expected to explain any **one** example of strict liability in tort showing how liability is established.

Any example clearly explained 3 marks each	**3 marks**
Any relevant case/example clearly explained	**2 marks**
Coherence	**2 marks**

[13 marks]

(b) Principles of liability for animals

- For purposes of liability for harm other than trespass, the law distinguishes between domesticated and wild animals

- The keeper of **domesticated animals** (Mansuetae naturae), which include dogs, cats, cattle, sheep, and horses, is strictly liable for the harm they cause **only if the keeper had actual knowledge** that the animal had the **particular trait or propensity that caused the harm**

- The dog must have shown a propensity in the past to do **harm of that kind** and the owner or keeper is proved to **have had knowledge of such propensity**

- The **trait must be a potentially harmful one**

- Not necessary to show that the dog had actually done the particular type of damage on a previous occasion, but exhibited a **tendency** to do that kind of harm

- Onus on the plaintiff to prove this (*Barnes* v. *Lucille*)

- The requisite knowledge of an animal's vicious propensity must relate to the particular propensity that caused the damage, for example, if dog attacks a man, it must be shown that the animal had a propensity to attack humans: it would not be sufficient to show a propensity to attack other animals – *Glanville* v. *Sutton*

- It is sufficient to show that the dog habitually rushed out of kennel and attempted to bite passersby (*Work* v. *Gilling*).

- Keepers of species that are normally considered **'wild'**(*Ferrae naturae*) are **strictly liable for the harm these pets cause if they escape, whether or not the animal in question is known to be dangerous**.

- Because such animals are known to revert to their natural tendencies, they are considered to be wild no matter how well trained or domesticated.

LAW
UNIT 2 Paper 032
KEY AND MARK SCHEME

Cases:

Barnes v. Lucille
Rands v. McNeil
Glanville v. Sutton
Work v. Gilling

Any four points clearly explained 2 marks each	**8 marks**
Any two cases clearly explained 2 marks	**4 marks**
Application and conclusion	**3 marks**
Coherence	**2 marks**

[17 marks]

Total 30 marks

LAW
UNIT 2 Paper 032
KEY AND MARK SCHEME

Level	Criteria	Score
1	A logical, well-developed response; demonstrates **excellent** understanding of cases and issues, consistently cites relevant sources to support answer	**27-30**
2	A logical, well-developed response, demonstrates **very good** understanding of cases and issues, usually cites relevant sources to support answer	**23-26**
3	A logical, fairly well developed response; demonstrates **good** understanding of cases and issues, usually cites relevant sources to support answer	**19-22**
4	Satisfactory logic and development shown in response; demonstrates **satisfactory** understanding of cases and issues, occasionally cites relevant sources to support answer	**15-18**
5	Acceptable logic and development shown in response; demonstrates **acceptable** understanding of cases and issues, occasionally cites relevant sources to support answer	**11-14**
6	Weak logic and limited development shown in response; demonstrates **poor** understanding of cases and issues, rarely cites relevant sources to support answer	**7-10**
7	Unsatisfactory logic and minimal development shown in response; and demonstrates **unsatisfactory** understanding of cases and issues, very rarely cites relevant sources to support answer	**1-6**

CARIBBEAN EXAMINATIONS COUNCIL

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION

MAY/JUNE 2004

LAW

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LAW

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION

MAY/JUNE 2004

GENERAL COMMENTS

The 2004 examination was designed to provide a comprehensive test of candidates' knowledge and skills in all dimensions of the syllabus.

Specifically, the examination intended to test the candidates' abilities to:

(i) recall, select and use appropriate legal principles, concepts and theories;
(ii) solve simulated problems;
(iii) analyze a body of information to determine the legal issues contained therein.

FORM OF THE EXAMINATION

UNITS 1 and 2

In 2004 the examination consisted of three papers.

Paper 01: This paper consisted of nine compulsory short-answer (structured response) questions of which three questions tested Module 1, Caribbean Legal Systems; three questions tested Module 2, Principles of Public Law and three questions tested Module 3, Criminal Law. Each question was worth 10 marks.

Paper 01 contributed 30 per cent to the examination.

Paper 02: This paper was divided into two sections. Section A consisted of one compulsory question based on the three modules. This question was worth 30 marks, divided equally among the three modules.

Section B consisted of nine essay questions, three from each module. Candidates were required to answer three questions, one from each module. Each question was worth 25 marks.

Paper 02 contributed 50 per cent to the examination.

Paper 03: This was the internal assessment, contributing 20 per cent to the examination. Paper 03 consisted of a research paper, 2000 - 2500 words, based on any topic in any module.

General Comments

Many candidates failed to demonstrate accurate understanding of fundamental legal principles which led to misapplication of such principles and inapplicable cases being cited.

Candidates did not answer the questions in a systematic manner in keeping with the structure of the question. Thus, many responses lacked coherence, and caused difficulty in the identification of points.

Candidates should be encouraged to manage examination time wisely. Too often candidates shortchanged themselves by either not completing questions attempted toward the end of the paper, or making half-hearted attempts at such responses.

Candidates need to answer only what they are asked; many spent precious time addressing/debating irrelevant points, or on lengthy and unnecessary preambles and in doing so, sacrificed the substantial part of the question.

It is imperative that candidates apply themselves diligently to the subject, adopting a good writing style which will develop with reading legal texts and writings.

Unit 1

Candidate performance in this unit continues to improve, although too slightly. Candidates performed best in Module 3, Criminal Law. They are to be encouraged to apply equal weight and attention to all three modules.

Unit 2

Candidates performed best in Module 1, Tort. More emphasis should be placed on Module 2, Contract, and Module 3, Real Property. It is encouraging that the performance in Real Property improved this year, even though slightly.

The following recommendations are made with respect to both the Unit 1 and Unit 2 examinations:

1. Candidates must follow instructions. Responses should not be merged - Part (a) must be answered separately from Part (b).

2. Candidates must use formal, impersonal language, yet not be too general or vague.

3. Candidates are encouraged to use a particular format when answering problem-type questions.

   The following format is recommended:

   I - issue (identification)

   R - rule of law (state)

   A - application of law to facts

   C - conclusion

4. Candidates must support their responses with legal authority, namely

   - Case law
   - Statute
   - Legal writers

5. Candidates must deal with issues and applicable law and refrain from restating the question.

COMMENTS ON INDIVIDUAL QUESTIONS

Unit 1

Paper 01

MODULE 1: Caribbean Legal Systems

Question 1

Most candidates failed to answer this question well and this was disappointing especially as this was not the first time that there was a question on equity. There were some excellent answers, however, coming from candidates who identified the tensions which existed between law and equity, tracing the historical development of equity and its impact on the legal system. The better questions were those where equitable maxims were not just mentioned, but were applied effectively. Good answers were those which also identified equitable remedies.

Question 2

Candidates demonstrated a fair understanding of the issues, hierarchy of the Courts and judicial precedents.

It was surprising that in discussing the hierarchy of the Courts, the majority of candidates failed to mention that the Judicial Committee of the Privy Council is not the highest Court of Appeal in Guyana.

A weakness in most answers was that candidates wrote generally, rather than relate the facts presented to the issues before them.

Question 3

This question tested the candidates' knowledge of the procedures for the disciplinary process applicable to attorneys-at-law who breach the canons of the legal profession. Most candidates applied very general information and were evidently not familiar with the provisions of the law in their jurisdictions. Greater attention must be paid to this very important topic as it is central to the role and function of attorneys-at-law.

In some centres candidates were well prepared and there was an encouraging use of Caribbean case law and legislation where applicable (for example, the Legal Profession Act in Jamaica).

MODULE 2: Principles of Public Law

Question 4

Candidates did not answer this question well, for the most part. They demonstrated a lack of depth in discussing how consitutional provisions protect fundamental rights and place limitations on those rights. Thus, candidates tended to be very general in their answers.

More emphasis should be placed on the ways in which a Constitution limits fundamental rights as a means of ensuring balance.

Question 5

As with Question 4, candidates demonstrated only general knowledge of the consititutional provisions relating to the appointment and removal of judges and this resulted in mostly weak answers.

More emphasis (than that which is apparently being done) must be placed on this and other vital issues in constitutional law so that candidates are adequately prepared to answer questions relating to public offices.

Question 6

The question tested candidates' understanding of the principle of '*locus standi*'. It was attempted by more than 65 per cent of the students.

Part (a) of the question was generally well done; however, some candidates were unable to define and explain the term clearly.

The weaker candidates did not understand what *locus standi* meant and were only able to use the word 'standing' but were unable to go beyond that.

MODULE 3: Criminal Law

Question 7

This question tested candidates on the elements of criminal liability, relating to homicide.

Many candidates scored high marks on this question and this demonstrates the extent to which the candidates grasped the elements of *actus reus* and *mens rea*.

In identifying the criminal offences that were presented in the facts, many included murder and grievous bodily harm.

It was observed that many candidates produced correct responses for Part (a) of the question while many produced limited reasons for Part (c).

Question 8

This question tested candidates on the *actus reus* of assault and battery.

Most candidates answered the question adequately, with examples from case law and legislation being cited by the better candidates.

There were some candidates who appeared not to be clear on the topics and who made very general and inadequate answers, failing to identify the essential elements of law.

It was alarming to find that some candidates defined 'battery' to mean a sexual assault on a female by a group of boys, referring to what is a colloquial definition. Such an answer came from more than one jurisdiction and it is hoped that students will be dissuaded from this non-legal definition in the future.

Question 9

This question dealt with liability for theft or larceny.

A number of candidates dealt with both larceny and theft, resulting in inadequate answers and confused the law relating to both. They therefore failed to maximise the points available.

In the better answers, candidates related their answers to the applicable legislation in their jurisdiction. This was what was required.

Some candidates in jurisdictions where the Larceny Act applies, were either unaware of this or failed to indicate their awareness, referring to, and misapplying, the Theft Act 1968 (UK).

Paper 02

Question 1

This question tested candidates' knowledge of the sources of law and the application of such sources to facts which raised the issues of unlawful arrest, the infringement of fundamental constitutional rights and how far the law should go in regulating morality. There were several concerns emanating from the answers presented.

Candidates were often too general in their answers, failing to relate to the facts and apply the law by reference to examples.

Candidates often seemed unclear as to what is meant by the 'common law'.

Candidates were able to identify breaches of fundamental human rights but struggled with a definition of freedom of assembly and association.

Candidates concentrated on the inchoate offence of conspiracy rather than the issues of public decency and morality.

Although candidates were familiar with the cases specific to the question, that is, Shaw v. DPP and Knuller v. DPP, there was no appreciation of the issues of morality or how far public officials should interfere with the nuances of individuals' private lives. As a result, most candidates provided the facts of the case but no analysis of the issues raised.

Most candidates concentrated on the issue of unlawful arrest which, although evident in the facts given, was not being examined.

MODULE 1: Caribbean Legal Systems

Question 2

This question tested candidates' knowledge of the Constitution as a legal source of law and the way it interacts with other sources of law.

Many candidates failed to appreciate that the Constitution is the supreme law and thus did not identify it as having a higher position than other legislation.
Generally, candidates were unable to present detailed or adequate analyses of the sources of law which they chose to write about.

Candidates did not comply fully with the instructions to "compare and contrast"; instead most made only general comments.

Question 3

This question tested candidates' knowledge of the role and function of the Ombudsman. The performance on this question was disappointing, as it is a topic about which it is expected that candidates would be able to write well.

Although there were some excellent and good answers, the majority of candidates wrote very generally and failed to present the impression that they knew much about the subject.

Question 4

This question tested candidates on Alternative Disputes Resolution (ADR) in the process of disputes resolution.

This question was answered fairly well by most candidates and there were some excellent answers.

The best answers were those in which candidates demonstrated an understanding of the various ADR processes, such as mediation, conciliation and arbitration.
In the best answers, candidates pointed to the advantages of ADR, making comparisons with the litigation process. The question was a very popular one with candidates.

MODULE 2: Principles of Public Law

Question 5

For this question, candidates were required to discuss the supremacy of the Constitution with reference to decided cases.

The better answers were those in which candidates defined 'supremacy of the Constitution' and were able to identify the provisions in those Constitutions which contain such a clause or the effect in those Constitutions which do not (depending on their particular jurisdiction).

In the better answers, candidates presented, as required, an analysis of the leading West Indian case of Collymore and Hinds.

Question 6

Candidates were expected to identify legal issues and principles relating to the Minister's discretion based on the stated facts.

In the better answers, candidates discussed the implications of the words "as he thinks fit", in the context of the proper exercise of ministered or other administrative discretion.

For the most part, answers presented were weak on the aspect of the exercise of discretion, that is, 'good faith' and 'bad faith' issues and whether relevant maters are taken into account in the exercise of that discretion. Candidates rarely referred to the statutory provisions forming the basis of the power by which the discretion is exercised.

There was a general dearth of case reference, when in fact there is a wealth of West Indian cases (see CXC/COL publication).

Question 7

Candidates were required to discuss Ms Thorne's right as a public servant, as provided under the Constitution.

The better answers were those in which candidates demonstrated good knowledge of the Public Services Commission and its function in the discipline of public servants.

In the weaker answers, which were the majority for this question, candidates engaged in general, emotive responses which had little or no connection with, or reference to, the constitutional provisions.

Very little, or no case analysis, was evident (see CXC/COL Material and Prof. Fiadjoe's text for assistance).

MODULE 3: Criminal Law

Question 8

Candidates were able to distinguish between insane and non-insane automatism and to indicate that there was a connection between insane automatism and the insanity defense. The M'Naughten case principles were frequently recounted.

Many candidates also linked the taking of asthma medication to Marsha's automatism shock.

The elements of a crime, the *actus reus* and the *mens rea*, were concepts which many candidates grasped. However, they were unable to link them to the defences of insane and non-insane automatism and therefore the effect on criminal liability as required.

Candidates frequently preoccupied themselves with Marsha's 'emergency' as a justification for her driving her car while under the influence of her medication. This did not allow them to appreciate the point that her knowing that the drug would incapacitate her makes non- insane automatism vitiated as a defence.

Cases most frequently cited were Bratty v. AG of Northern Ireland, M'Naughten and Hill v. Baxter.

Generally candidates came to the correct conclusion but their reasoning was frequently flawed or missing entirely. Arguments based on Marsha's recklessness were common.

Overall, Question 8 was the second most popular question in this module.

Question 9

Surprisingly, this was the least popular question in the module, although it is seen as one by which candidates could easily earn marks.

Candidates could identify the three elements of rehabilitation, deterrence and retribution since they were given in the question. Nevertheless, the definitions they gave exposed that their understanding as to the distinction among the three was weak. Frequently they would confuse the meanings. For instance, the definition for incarceration would be used interchangeably with deterrence or rehabilitation.

The area that was best done was special sentencing practices for young offenders.

Candidates frequently made reference to probation and community service as alternatives to incarceration.

Many candidates understood that sentencing practices have an impact on the society and community but few mentioned the families of the victims or accused.

Almost all candidates ignored special sentencing of first offenders which is an important consideration of Courts in imposing sentences.

Most students understood and expressed that departure from retribution was a positive thing.

Allowing the type and degree of offence to impact on sentencing was a concept which, based on their reasoning, candidates appreciated. However, it was rarely ever expressed directly.

The most detrimental mistake candidates made with this question was to focus on only one element and neglect the other two. Many times the entire answer would speak about retribution with no development of deterrence and rehabilitation.

It is worthy to note that this question allowed for candidates to support a view contradictory to that expressed in the question's quote. A few candidates took the view that in actuality, the conditions in our prisons and lack of funding for alternative programmes meant that the sentencing practices actually support retribution more than rehabilitation or deterrence. More candidates argued about this line and they were credited for their analysis.

Question 10

A relatively large percentage of candidates attempted this question and performed fairly well.

Most candidates were able to clearly and concisely define rape and were able to apply the relevant case law to the facts.

The weak candidates were unable to clearly express the *mens rea* of rape.

A large percentage of candidates did not understand that consent was the defence for rape. The responses relating to defence was the weakest area. Surprisingly, many candidates did not refer to DPP v. Morgan, the leading case in point.

Many candidates failed to identify that consent can be withdrawn at any time during intercoruse.

UNIT 2

Paper 01

MODULE 1: Tort

Question 1

This question required candidates to select two of three topics, namely

(a) liability of owners for dog bites
(b) liability of an occupier to trespassers
(c) elements of the tort of malicious prosecution.

In Part (a), some candidates failed to comply with the instructions given and wrote on all three topics. They were the minority of cases but it underscores the necessity for candidates to read carefully and apply the requirements in order to maximise their scores.

Many candidates appeared unfamiliar with liability for dog bites, even to present the elementary principle that liability for dogs is strict.
Some candidates, in jurisdictions which have legislation relating to dogs, did not refer to the legislation.

The majority of candidates who presented good answers were well versed in the common law principles.

In Part (b), candidates who chose this part did fairly well, referring to statute, where applicable as well as to cases such as British Railways Board v. Herrington. Thus, they were able to conclude, with effect, that liability for trespassers is not statutory but is rather a common law principle.

Part (c) was not popular among candidates. Those candidates who answered the question well were those who identified the key elements of the topic, such as:

- The prosecutor set the action in motion without reasonable and probable cause, better candidates explaining what is meant by reasonable and probable cause.
- The prosecutor was actuated by malice.
- The better answers relied upon case law, of which there are a large number of both English and West Indian cases.

Question 2

This question tested candidates on the differences between servants and contractors with respect to vicarious liability in tort. Most candidates defined the terms adequately. A number of candidates confused vicarious liability with occupiers liability, but these were in the minority.

The majority of candidates were able to distinguish between servants and independent contractors. Candidates correctly identified that the distinctions and the consequences which flow are to be understood from the tests which are applicable.

While candidates recognised the application of the tests, most concentrated on the definitive control test and did not advert to the organisation test and the multiple or mixed test.

A minority of candidates, who were the stronger candidates, pointed out that vicarious liability arises where an employee (one who is employed under a contract **of** service), as against an independent contractor (one employed under a contract **for** services) commits a tort “in the course of his employment” but not while “on a frolic of his own”.

On the better answers, candidates cited case law to demonstrate what is meant by “in the course of employment” and “on a frolic of his own”. Some of these cases included Twine v. Beans Express, Rose v. Plenty.

Question 3

This question presented candidates with three fact situations, of which they were to select two. The issues were assault, battery and false imprisonment.

Candidates performed creditably in the majority of cases.

In Part (a), most candidates demonstrated a good knowledge of the tort of assault, defined the term and cited cases in support of answers.

In Part (b), candidates treated the issue of battery fairly well, with the majority of them defining the term and citing cases in support of their answers.

In Part (c), candidates performed weakest of the three issues in the question. Many failed to demonstrate a good understanding of false imprisonment and did not apply the law to the facts presented.

Generally, the weakness in most answers was the failure of candidates to apply the law to the facts presented. This approach tends to be evident in all answers where candidates are presented with facts.

MODULE 2: Law of Contract

Question 4

This was a popular question and was generally well done.

This question tested candidates' knowledge of the doctrine of frustration and their ability to apply the law to the facts in a problem situation.

Many candidates were able to outline the circumstances which would discharge a contract by reason of frustration as well as where the doctrine would not apply. Some used the case law well and cited cases such as Krell v. Henry and Herne Bay Steamboat Co v. Hutton. No candidate considered the rights and liabilities for money paid or to be paid in the event that a contract is frustrated.

Good responses gave a logical application of the law to the facts and concluded that Marsha could not rely on the doctrine of frustration. Effective use of case law was also evident in this section as well.

Poorer responses misapplied the law to the facts. Many candidates did not appreciate that although the fire would frustrate the rental contract for the ballroom, it did not affect the caterers' performance of their obligations.

Question 5

Candidates' knowledge of the concept of past consideration was being tested in this question.

Part (a) of the question required a definition of consideration (Currie v. Misa or Dunlop v. Selfridge) as well as an explanation of past consideration. Few scripts provided a coherent explanation of past consideration or identified supporting cases to support the concept (Roscorla v. Thomas and Re McArdle). Candidates rarely considered the exception to the rule that consideration must not be past (Lampleigh v. Braithwait).

Part (b) of the question caused considerable confusion amongst weaker candidates. Most of these candidates did not fully rely on the facts of the problem to extricate an answer for this section. As a result, there was little application of the law to facts stated. These candidates failed to concede that Anand's consideration was past, the IOU was of no effect and therefore Zack had no legal obligation to pay Anand. In addition, a few candidates mistakenly referred to property law concepts in their response to this section.

Question 6

This question required candidates to distinguish between fraudulent and neglegent misrepresentation, and to state the effect of each on a contract.

There was only a minority of precise answers as the majority of candidates seemed ill-prepared or had not given adequate attention to the distinction. Thus, many candidates wrote generally, in a less than forensic manner.

Candidates were unable, for the most part, to identify the remedies available for each type of misrepresentation. Even the better answers were largely guilty of this weakness.

The better candidates cited the leading cases of Derry v. Peck and Esso Petroleum v. Mardon.

MODULE 3: Real Property

Question 7

This question presented fact situations which required candidates to demonstrate their knowledge of fixtures and chattels, applying to the facts.

A number of candidates answered the question satisfactorily, but some were unclear as to the applicable tests to determine whether a structure is a chattel or a fixture.

In the better answers, candidates relied upon relevant case law such as Mitchell v. Cowie.

In answering Part (b) which required them to say whether a chandelier, a satellite dish and posters were chattels or fixtures, many candidates failed to apply the purpose of annexation test which could have assisted them in arriving at a correct conclusion.

Generally, candidates did not perform as well as they could have on this question.

Question 8

This question was the best done by candidates in this section. It required candidates to

(a) list four rights of a mortgagee in enforcing payments due under a mortgage, and
(b) to say which two they considered most effective and why.

In Part (a), a number of candidates identified the rights of a mortgage, namely:

- (i) possession
- (ii) power of sale
- (iii) appointing a receiver
- (iv) foreclosure
- (v) suing under a covenant.

In Part (b), which enabled candidates to say which two of these rights named they found to be most effective, the majority of them justified their conclusions satisfactorily.

Question 9

This question tested candidates on the acquisition, and extinguishing of easements.

This question was poorly done in the majority of cases. Most candidates demonstrated insufficient knowledge of the subject matter.

While some candidates referred to acquisition by grant or reservation, most did not refer to a grant by statute.

Some candidates referred to easements being extinguished by an express or implied release but very few referred to unity by possession and ownership as a factor.

Paper 02

Question 1

The test item was compulsory and required knowledge from all three modules of the unit; specifically, negligent misstatement in tort, fraudulent misrepresentation in contract and recovery of possession in real property law.

Generally, candidates were not able to explain the basic elements of negligent misstatement:

(i) the existence of a special relationship between the representor (surveyors, lawyers, accountants, bankers) and the representee of the statement;

(ii) the representor must have communicated the advice directly to the representee or known that it would have been communicated to him as a member of an ascertainable class;

(iii) the representor should have known that the representee was relying on the advice; and

(iv) it must be reasonable for the claimant to have relied on the statement.

Part (b) of the question required candidates to apply the law outlined in Part (a) above, to the facts given in the problem situation. This caused considerable difficulty for many candidates, hence they failed to come to the correct conclusion.

Many candidates earned all the marks allocated for Part (c) of the question. They identified and disclosed, clear, concise and correct definitions of fraudulent misrepresentation; adequately related the facts to the law outlined in their definitions and displayed effective use of case law Hedley, Bryne & Co Ltd v. Heller & Partners Ltd.

Responses on a whole, for Part (d) were weak; candidates demonstrated limited knowledge of the process of recovering possession of property and invariably were unable to apply the law to the facts outlined in the problem described.

MODULE 1: Tort

Question 2

This question was a very popular one among candidates. It tested their knowledge of the tort of negligence and many rose to the challenge, identifying the three main elements of the tort, namely, duty, breach and damage. A number of candidates received full or high marks for Part (a).

Part (b) required candidates to explain the part played by foreseeability in setting limits to the tort of negligence. There were several good answers in which candidates explained the foreseeability test as set out in The Wagon Mound case:

- one must take reasonable care to avoid acts or omissions which one can reasonably foresee would be likely to injure one’s neighbour.

- one’s neighbour being the person who one can reasonably foresee as being likely to be injured by one’s act.

There were a number of intelligent and probing answers in which candidates justified their conclusions with apt references to, and analyses of, decided cases.

Question 3

This question presented fact situations concerning the tort of defamation, particularly libel. It was attempted by a number of candidates.

Weaker candidates were sidetracked by the salacious nature of the facts and thus wrote generally. In better answers, candidates correctly defined the elements of the tort of defamation and wove their discussion on the law around the facts presented, with supporting case law.

In the better answers, candidates identified the defenses:

- innocent, unintentional defamation, with a retraction
- justification or truth
- fair comment
- qualified privilege

Question 4

This question tested candidates on public nuisance, and private nuisance, with a fact situation which tested candidates on the issue of a claimant's particular sensitivity in private nuisance.

Generally, candidates appeared not to understand these torts well, although there were a few excellent answers.

In Part (b), referring to the facts presented, there were some rather frivolous answers, with candidates failing to identify the issue: whether or not Elaine was a particularly sensitive person, bearing in mind her asthma attacks and her cats' erratic behaviour which she alleged to occur each night after her neighbour burned incense in his apartment.

The very important distinctions between public and private nuisance should have been emphasized, for example, that public nuisance is also crime and that in private nuisance the defendant's conduct is scrutinised for malice.

MODULE 2: Law of Contract

Question 5

This was the least popular question in the module and in general it was not adequately answered.

Part (a) required candidates to identify and distinguish between express terms and implied terms of a contract. The examiner was expecting that the candidates would readily identify the correct issues of law and then continue to answer the other sections of the question. This was rarely so and a number of candidates incorrectly identified mistake as the main issue emanating from the problem outlined; however, correct and coherent arguments developed from the submission of a mistake as an issue, were given credit.

In answering Part (b), good candidates were able to recognise that the question focused on the interpretation of the word 'new' in describing the vehicles being ordered and further explained that as a term it was of special importance to the purchaser and hence any misinterpretation would be considered material. Some of these candidates developed coherent arguments to include the concepts relating to business efficacy and the officious bystander and related these to the facts of the problem. Additionally, they were able to give brief illustrations of decided cases that were on point and conclude that the Tourist Board could legally refuse to accept the 2003 CRV.

For Part (c), many candidates recognised that supplying a 'used' 2004 CRV would result in a material breach and developed their arguments logically.

Question 6

This was a popular question.

Most candidates demonstrated a fair understanding of the concept of capacity in the formation of a contract. Good candidates disclosed that certain groups of persons (minors, mentally challenged individuals, drunks) do not have full capacity to enter into any kind of contract and provided case illustrations that supported the points of law that they discussed.

A number of candidates failed to provide a clear, concise and correct definition of 'necessaries' in Part (b). The majority argued that Slade is a minor, the bats and pads were not necessaries and therefore the contract cannot be enforced against him. Some candidates however, indicated that Slade would be liable and presented logical and reasonable arguments to support their conclusion. Both groups were appropriately awarded the marks allocated. Few candidates discussed the possible remedy that a supplier may rely on when supplying goods or services to a minor.

For Part (c), most candidates were able to discuss that this was a beneficial contract of service relating to Slade's education and the scholarship would therefore be deemed a necessity; hence the contract would be enforceable.

Generally, there was efficient use of case law in these responses.

Question 7

This again was a popular question and there was a range of standards in the responses.

Many candidates were able to identify intention to create legal relations and consideration as the applicable legal principles.

Some candidates also identified privity in relation to Robert.

In Part (b), the concept of intention to create legal relations was usually better defined and discussed than consideration. Good scripts examined when intention to create legal relations would not be inferred and applied the law to the facts outlined in the problem.

It was a bit worrying that many candidates seemed not to recognise that their responses should have included a brief outline of the core elements of a valid contract. Also, the weighting of the marks for this section was significant and therefore more effort should have been made when responding to the issues in order to attain higher marks.

There was an abundance of case illustrations to support intention to create legal relations (Balfour v. Balfour, Merrit v. Merrit, Parker v. Clarke, Simpkins v. Pays, Jones v. Vernons Pools, Edwards v. Skyways and JH Milner v. Percy Bilton) but not consideration. Indeed, most candidates even failed to identify the principal definition of consideration, as set out in Currie v Misa.

Candidates were unable to state sufficient instances when there is no intention to create legal relations and therefore no contract is created: advertising puffs, letters of comfort, letters of intent and collective agreements.

MODULE 3: Real Property

Question 8

This was not a popular question, with very few candidates selecting it. The procedural factors might have posed a difficulty for candidates and examiners were mindful of this in reading scripts. Although candidates are not expected to write like practitioners, it is expected that they would have a general knowledge of the formalities required for enforcement of a contract for the sale of land:

- writing
- parties
- description of property
- consideration
- effective dates
- signatures of parties

Question 9

Candidates performed well on Part (a) of this question, which required them to describe five ways in which a lease may be terminated. Many earned full marks. The processes of termination were selected from:

- forfeiture
- surrender
- merger
- effluxion of time
- notice to quit
- frustration

Part (b) of the question required candidates to choose one of the remedies of forfeiture, distress and notice, and notice to quit and to indicate how the remedy chosen may be exercised. Most candidates chose the notice to quit and demonstrated a good understanding of how that process works. There were few good answers on forfeiture and distress and notice.

Question 10

Candidates did fairly well on Parts (a) and (b) of this question which required a discussion of a joint tenancy, demonstrating a good knowledge of its characteristics.

Answers were not as strong in Part (c) which required candidates to discuss how an interest in a joint tenancy passes and whether it can pass as a device under a will. Candidates were weak on how a joint tenancy may be severed.

CARIBBEAN EXAMINATIONS COUNCIL

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION MAY/JUNE 2005

LAW

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LAW

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION
MAY/JUNE 2005

GENERAL COMMENTS

The 2005 examination was designed to provide a comprehensive test of candidates' knowledge and skills in all dimensions of the syllabus.

Specifically, the examination intended to test the candidates' abilities to:

(i) recall, select and use appropriate legal principles, concepts and theories;
(ii) solve simulated problems;
(iii) analyse a body of information to determine the legal issues contained therein.

There were some remarkable scripts this year, with candidates demonstrating a high-level of maturity, analytical skills and excellent writing ability.

Although there was a general improvement in this year's performance, far too many candidates failed to demonstrate accurate understanding of fundamental legal princeples which led to misapplication of such principles and inapplicable cases being cited. It was evident in some instances that some candidates did not prepare them
selves adequately.

Some candidates did not answer the questions in a systematic manner in keeping with the structure of the questions. Thus, many responses lacked coherence, and caused difficulty in the identification of points.

Candidates should be encouraged to manage examinations timely and wisely. Too often candidates shortchanged themselves by either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.

Candidates need to answer only what they are asked; many spent precious time addressing/debating irrelevant points, or on lengthy and unnecessary preambles and in doing so, sacrificed the substantial part of the question.

It is imperative that candidates apply themselves diligently to the subject, adopting a good writing style which will develop with reading legal texts and writings.
Candidates did not always comply with the instructions given. We noted some weak-nesses and remind candidates and instructors of the following:-

1. Questions answered to be noted, in order of answers, on the cover page of scripts.

2. Each answer to begin on a new page.

3. Candidate's number and centre number to be recorded in the space provided on the cover page and throughout the answer booklet, where required.

4. With respect to Internal Assessments:-

   (a) Candidates' names are to be recorded on Internal Assessments consistent with the names on registration slips.

   (b) Comments and marks by instructors are to be erased before Internal Assessments are submitted as samples.

   (c) Careful note must be taken of syllabus requirements to ensure compliance.

We repeat the following, in the hope that they will help in answering questions:-

1. Candidates must follow instructions. Responses should not be merged - Part (a) must be answered separately from Part (b).

2. Candidates must use formal, impersonal language, yet not be too general or vague.

3. Candidates are encouraged to use a particular format when answering problem-type questions.

4. The following format is recommended:

   I - issue (identification)

   R - rule of law (state)

   A - application of law to facts

   C - conclusion

5. Candidates must support their responses with legal authority, namely

   - Case law
   - Statute
   - Legal writers

6. Candidates must deal with <u>issues</u> and applicable law and refrain from restating the question.

It is important to bear in mind that in awarding marks to responses, in particular to the essay questions on Paper 02, the examiners consider how well candidates:

- demonstrate an understanding of relevant cases and legal issues
- illustrate their answers with examples from relevant sources, such as legislation, legal authorities and writers, treaties, cases, media reports
- communicate using legal terminology and legal concepts relevant to Commonwealth Caribbean law
- present a logical, well-developed and well-structured answer to the question

UNIT 1

Candidates demonstrated some improvement in this Unit, the best performances shown in Module 3 criminal law; the weakest being Module 2, Public Law.

While candidates performed fairly well on the Paper1 questions, generally, there were weaknesses in Paper 2, particularly in essay questions. There was some improvement in Module 3, Real Property but Module 2, Contract appears to have challenged candidates to some extent.

COMMENTS ON INDIVIDUAL QUESTIONS

UNIT 1

Paper 01

MODULE 1: Caribbean Legal Systems

Question 1.

(a) This question required candidates to define the term "reception of law". Many of them took a very literal approach to the concept and it was evident that many of them were unprepared for it. There were some candidates who correctly identified that the term is one inviting discussion of its various applications in different jurisdiction across the region, for example, Roman-Dutch law in Guyana, Civil Code in St. Lucia. A small number of candidates also identified the debate between "reception" and "imposition" of law.

(b) Candidates were required to show how judicial precedents affect the consistency of legal application. Most candidates earned their marks for the question from their answers to this part.

From the answers given to both parts of this question, it is clear that greater attention must be paid to these very seminal principles of law.

Question 2

Candidates were required to discuss law and morality, specifically as it relates to the legalisation of prostitution. While there were candidates who did not address the issues raised, this was one of the better answered questions. Most candidates discussed the leading cases of Knuller and Shaw.

Candidates are to be encouraged to concentrate on the issues and to answer only what is asked. The short "paper" required them to "include definitions and supporting cases"' a factor many of them ignored, therefore, they lost marks.

Question 3

This question required candidates to discuss legal aid, and whether recent law graduates should serve a period of compulsory legal aid. Many candidates demonstrated a fair knowledge of legal aid and its social functions but there were some who engaged in useless discussions about the Chief Justice's invasion of the rights of law graduates. Better candidates mentioned that there should be some relationship between the economic costs of legal training and the contribution made by young graduates who have benefited from society's input in their training.

Question 4

Candidates were required to distinguish between judicial review of a decision and an appeal against a decision. Some candidates were unable to make the distinction, but a substantial number was able to describe what judicial review and an appeal were. This was only half the answer, however. Very few candidates made the important point that an appeal is a statutory right available from the hierarchy of courts; while judicial review is a common law right available from the Supreme Court/High Court.

Question 5

Too many candidates adopted a layperson's approach to the answering of this question. A large number of responses lacked legal analysis. Weaker candidates even took a criminal law approach to the question, arguing incorrectly that it was a case of false imprisonment. In so doing, public law issues were noticeably absent from their responses. Many candidates also failed to identify and discuss, the statutory provisions giving the police the power of search and seizure.

Question 6

Strong candidates were able to quote the provisions from their constitutions, outlining the role and functions of the Judicial Service Commission. In so doing they were able to produce coherent discussions and consequently scored heavily.

Weaker candidates confused the commission with the judiciary and the doctrine of

separation of powers. Very few candidates mentioned the composition of the commission. Case law highlighting the function of the commission was also sparingly used.

Question 7

Some candidates were able to define the terms "crime of basic intent" and "crime of specific intent", to make the distinction between them and to cite appropriate cases in support of their definitions and distinctions. Unfortunately, these candidates were in the minority.

This was one question which clearly demonstrated the candidates' unfamiliarity with these seminal concepts of the criminal law.

Question 8

Many candidates were side-tracked by the facts presented and wandered off into discussions about housing needs, making their answers more of a sociological analysis than a question of law, requiring them to discuss (a) whether Thomas would be guilty of criminal trespass if he went to squat in the council house and (b) should be do so, whether the defense of necessity would be available to him. Better candidates took the approach of identifying the legal issues, analyzing them and presenting cases such as R. v Dudley and Stephens to support their answers.

Question 9

This question required candidates to discuss Malick's recklessness, based on the facts given.

Better candidates discussed recklessness as defined in Cunningham and Caldwell and made the appropriate distinctions. The weaker candidates were unable to do this, as they confused both cases.

Where, as in the cases of Cunningham and Caldwell such essential principles of law are made and applied or distinguished, candidates must make sure that they are familiar with the cases and can present an intelligent response to any question asked.

UNIT 1

Paper 02

Question 1

The majority of candidates performed poorly on this question. Candidates who performed well were those who identified the issues in each part of the question, related the law to the issues and used appropriate cases to support their discussions. Part (a) required candidates to discuss sentencing. Many of them failed to do so and,

instead, spent valuable time discussing whether or not Keisha should have gone over to Tyrone's house and turned off Tyrone's set as she did - questions they were not asked to decide, and for which they would therefore not earn marks. Some candidates were awarded marks for identifying malicious destruction of property, delegation of a statutory power and burglary. Part (b) required candidates to discuss substantive ultra vires, a factor which eluded many of them and so they wandered off into unhelpful discussions about whether or not Keisha could be put under the principal's guidance rather than placing the emphasis, as required, on the magistrate's conduct.

Part (c) required candidates to discuss Keisha's appeal possibilities through the hierarchy of courts available to her. This was the best answered part of the question.

Parts (a) and (b) would have been better had candidates used cases to support their points. There were too many instances of un-supported generalisations.

Among the cases candidates could have cited and discussed were:

Hinds v R

Comacho & Sons v Collector of Customs

Sugar Producers Federation v Phillips

A.G. v Coconut Marketing Board

Question 2

Generally, candidates tended to waffle - engaging in repetition and useless moralising.

Better answers were those in which candidates were able to refer to theories of law propounded by such experts as Lord Devlin and H.L.A Hart. Those were candidates who identified the philosophy of the naturalists and the positivists. In such answers candidates referred to the dynamic changes in the law from the Wolfenden Report of 1958 in England to legislative changes such as the definition of "spouse" and "child" in some of our Caribbean jurisdictions.

Helpful cases in this area, cited and discussed by better candidates:-

R v Brown

R v R

Knuller v DPP

Shaw v DPP

Question 3

This question was done fairly well by candidates who selected it. The better answers were those in which candidates identified the various specialized courts in their jurisdictions such as Family Court, Industrial Court and Traffic Court and then wrote on the role and function of each.

Some candidates confused the word "specialized" with "hierarchy."

Question 4

Most candidates who attempted this question demonstrated a fair understanding of the jury system, discussing the nature and composition of juries, how jurors are selected, how and why disqualified and how challenged during the empanelling process.

In the better answers, candidates also made comparisons between the operations of the jury system in Commonwealth Caribbean jurisdictions and in the United States where jurors are sequestered in some criminal trials, illustrating an ability on their part to use their general knowledge aptly in answering questions. This was not a frequent feature, but it is highly desirable.

Question 5

This was a popular question. Most candidates were able to correctly define "rule of law" as well as use case law to properly discuss the concept. For the most part, candidates seemed to have fully grasped the concept.

Question 6

The majority of candidates who attempted this question, failed to properly identify and describe the procedure for the removal and discipline of the public servant. Even of more concern, is the fact that only a few candidates were able to highlight the important point that, as a general rule, a civil servant is not to be politically active.

A large number of candidates also adopted a layperson's approach to the question, with no bearing on the law, arguing that freedom of speech and freedom of association were important issues in the question. With respect to the redress available, despite recognizing this right of Mrs Gopthol to appeal, candidates failed to identify that her appeal would be made to the Public Service Appeal Board and not to the Court of Appeal.

Question 7

At this level, it is quite obvious that the area was not widely taught, even though it is in the syllabus and is discussed in detail in Professor Fiadjoe's Public Law text. Consequently, candidates who attempted this question fared badly. The

overwhelming majority failed to define "convention" let alone to describe and highlight them. Some candidates' defined "convention" to mean "gospel concerts" and "meetings." Most were able, however, to appreciate the significance of written constitutions in the context of Commonwealth Caribbean states.

Instructors are to attempt to cover the syllabus in its entirety, ensuring that candidates are aware of these fundamental principles of law, such as "conventions."

Question 8

This was a very popular question. A number of candidates scored well, but the majority did not. Most candidates identified provocation as a defence and were able to define it. Most candidates also identified intoxication as a partial defence which reduces a charge of murder to manslaughter and identified it as voluntary.

The majority of candidates offered case law or illustrations to support their positions and mentioned "cooling off" which is relevant to the issue of provocation. Some mentioned that if provocation, insanity or diminished responsibility is proven it reduces a charge of murder to manslaughter. Candidates lost points for key omissions, waffling or useless dissertations on inconsequentials, such as those listed below.

(a) Writing extensively about the elements of murder, wasting valuable time rather than mentoring the elements and focusing on the defences.

(b) Not mentioning whether mere words can be provocative - most candidates were silent on the issue.

(c) Not identifying the objective and subjective tests of provocation. Most candidates had an idea that the reasonable man had to have done what Dick did to believe him of the defence, but many failed to comment on the relevance of Dick's intense jealousy and state that this subjective element was satisfied.

(d) Advancing automatism, or insanity as defences, rather than diminished responsibility. It was surprising that some candidates attempted thequestion without even a mere reference to the locus classicus R. v Duffy andother leading Caribbean cases (see CXC/COL booklet on the topic).

Question 9

(a) Most candidates took this as an opportunity to write a general answer, from a sociological perspective. Many of the answers were too emotive with colloquial language and harsh words against Bomber being a feature. The vast majority of candidates attempted to define incest. Few mentioned that it was sexual relations within the prohibited degrees of consanguinity, but many examples were given to indicate an understanding of the concept.

(b) A number of candidates drew their conclusion from their moral standpoint rather than the law, stating that Bomber was guilty of incest though Monique was not his biological daughter. Some insightful candidates mentioned that Bomber could be guilty carnal abuse, if not incest, and concluded that the law needed reform.

Question 10

This was not a popular question and it was evident from the answers, that even from among those who attempted it, not much attention had been paid to the topic.

This topic is required by the syllabus and is dealt with in the recommended texts, including the CXC/COL material.

Candidates were required to discuss the statement, showing how the courts have adopted a stricter approach when issues of public policy arise. There is an immense wealth of case law from which candidates could have shown when and when not the courts have been flexible or rigid in strict liability cases.

UNIT 2

Paper 01

MODULE 1: TORT

Question 1

Most candidates were able to define what is a contract, a tort and a crime, but failed to note that the question required them to distinguish between a breach of contract and (a) a tort and (b) a crime. Candidates who scored well were those who identified the main issues, namely, the differences between public and private obligations. There were some excellent candidates who noted that in some torts, such as public nuisance and trespass, there is a thin line between public and private obligations.

Question 2

Most of the candidates identified the issue relating to vicarious liability and discussed Indra's hiring of BRP and Johnny in that context. There was a good use of case law, although in some instances candidates merely mentioned cases without application of principles.

Question 3

Candidates tended to be preoccupied with negligence and lost marks by writing on the elements of negligence, instead of explaining the phrases given, in relation to the law of negligence, as required by the question.

Section B

MODULE 2: Law of Contract

Question 4

This question required candidates to discuss the elementary principle of contract law that merely by advertising for sale, a person is not bound to sell. "An invitation to treat is not an offer for sale". Candidates tended to wonder off into discussions about how far Robert travelled, only to be disappointed. Most candidates failed to avail themselves of the wealth of case law in this area in order to gain marks.

This problem type question revealed how candidates tend to give emotive responses which have nothing to do with legal analysis and application.

Question 5

This question required candidates to deal with the three types of misrepresentation namely: innocent, negligent and fraudulent misrepresentation. The answers were mostly weak, indicating that most candidates were not able to make the distinction and most misunderstood "innocent misrepresentation". The leading cases of Derry v.s Peek and Headly Byrne v.s Heller & Partners, (even if these only among a host of others) would have enabled candidates to answer the question well.

As they were mostly unable to deal fully with part (a), they could not follow through on part (b) to identify Vince's misrepresentation, which in this case, was innocent. – See Derry v. Peek.

Question 6

For the most part, candidates appeared to be not too familiar with the law relative to illegal contracts. Some of them spent their time moralizing about Elaine and would not have earned marks for so doing, as they failed to identify and analyze the issues, supporting their conclusions with the law.

It is an elementary principle of law that illegality renders a contract unenforceable and void but not many candidates made this point.

UNIT 2

Paper 01

MODULE 2: Real Property

Question 7

This question was done reasonably well by most candidates. A general appreciation of the concept of a joint tenancy was exhibited so too were the methods by which a joint tenancy could be severed.

Question 8

This was the most poorly done question in the module. Few candidates were able to identify and discuss the ground a tenant must establish in order to show that the benefit of a covenant has run in equity. Ground such as annexation to the dominant land, express assignment of covenant a scheme of development were required.

Question 9

This question was well done. Candidates were able to identify and properly discuss the landlords' implied obligation under a lease at common law. Most candidates were able to use appropriate case law in their discussions. Some candidates confused statutory provisions with the implied common law obligations. Some also suggested quite incorrectly that a landlord has an "obligation" to collect rent.

Paper 02

Section A

This question tested candidates in all three modules of the Unit. Generally, it was poorly done, although there were few good, even excellent, answers.

Part (a) tested knowledge of occupier's liability. Some candidates referred to the Occupiers Liability Act in their jurisdictions. There were many candidates who misinterpreted the question as requiring them to discuss vicarious liability.

Better candidates mentioned an occupier's liability for trespassers and cited cases in support. There were some good illustrations of occupier's liability to visitors and some mention was made of the standard of requirement, in respect of children and of the relationship between occupier's liability and the general law of negligence.

For Part (b), the majority of candidates failed to recognize this as question on the formalities required for the sale/ purchase of land. Candidates were expected to mention the formal requirements of paper writing, parties, property and price.

The question to be determined, therefore, was whether theses formalities were in place, entitling Dilip, if he chose, to bring an action against Rasheed for specific performance.

Part (c) required candidates to examine the proposal made by Rasheed for Dilip to make a payment “under the table”. In essence then, what was the effect of this proposal, tainted as it is in illegality?

A fair number of candidates identified the issue and used cases in support of their answers. Useful cases, for example, are:-

Pearce v. Brooks

Appleton v. Campbell

Parkinson v. College of Ambulance

UNIT 2

Paper 02

MODULE 1: Tort

Question 2

This question examined candidates on:

(a) Negligent Misstatements
(b) Publication of a Statement being reckless as to its consequences

In (a), candidates failed generally, to discuss the relationship between the representor and the representee, noting the criteria established in the numerous cases on point, such as:

Esso Petroleum v. Maidon

Mutual Life v. Evalt

Spring v. Guardian Insurance

Answers were better when candidates recognized the relationship between representor and the representee, identified the level of relevance on the representation (Royal Bank Trust (Trinidad) v. Pampellone) and the consequence, or the lack there-of, of such reliance.

In (b), candidates ought to have discussed the effect of issuing a statement, either knowing that it would be relied upon being reckless as to whether it was relied upon. See for example Hedley Byrne v. Heller & Partners and Capano Industries v.

<u>Duchman</u>. Issue of forseeability was noted in very few scripts.

<u>Question 3</u>

This question tested candidates' ability to examine a statement and discuss it from all possible perspectives. Such an approach requires a level of analysis which was not evident in most answers. There were some excellent mature responses, but these were in the minority.

The law relating to public and private nuisance is well documented. Greater attention must be paid to the subject.

<u>Question 4</u>

This question tested candidates' ability to state principles of law to given fact situations. In most instances, candidates engaged in irrelevant discussions about "Miss Anita" rather than emphasize the law relating to assault and battery, false imprisonment and malicious prosecutions.

Mush better answers could have been achieved with the use of case law to illustrate the answers given. It was evident that not much attention had been paid to these issues.

On the distinction between detentions by a police officer, as against a private citizen, see <u>Walters</u> v.s <u>Smith</u>.

MODULE 2: Law of Contract

<u>Question 5</u>

It was evident that candidates were not all familiar with the <u>Hong Kong Fir</u> case where Diplock LJ developed the concept of those terms of contract which are neither "warrantees" nor "conditions" usually defined. Such terms have been described as "innonimate" or "intermediate" terms. A reading of Diplock LJ's judgement or even excerpts of it will assist candidates in their appreciation of contractual terms. There is a wealth of case law in this area, from which candidates could have obtained well needed guidance.

<u>Question 6</u>

This question tested candidates on the effect of exemption or exclusion clauses on a contract. This area is fundamental to an understanding of contractual terms and ought to have received greater emphasis. Most candidates who attempted this question showed little understanding of the subject.

There were few good answers in which candidates indicated that exemption clauses seek to exempt liability as distinguished from limitation clauses the purpose of which

is to limit liability.

Candidates were expected to note the disadvantages to which consumers are put when they enter into contracts which contain exemption clauses. There are numerous cases in which the Courts have been strong in their condemnation of such clauses.

The impact of standard form contracts, the contra proferentum rule, the obligations of the party with stronger bargaining power and legislative provisions which have been enacted to protect consumers are among the issues candidates were expected to write.

Cases such as Photo Production v.s Securicor and McCutcheon v.s McBrayne are among those to which candidates ought to have made reference.

Question 7

Most candidates who answered this question demonstrated an understanding of the elementary principles of the ways in which mistake affects a contract. Some attempted to distinguish between mutual and common mistake, although there was some confusion on the part of some candidates as to which was which.

Candidates were expected to discuss the following and some candidates did:

(a) The effect of mistake on consent
(b) Mistake at common law and equity
(c) Effect of misrepresentation
(d) When the non est factum defence is available.

All these factors were important, based on the fact situations presented.

In the better answers, candidates related the law to the facts and cited cases in support of their conclusions. Among the cases cited by candidates were:-

Smith v. Hughes

Ingram v. Little

Smith v. Averay

Bell v. Lever Brothers

Association Japanese Bank v. Crédit du Nord

MODULE 3: Real Property

Question 8

This question tested candidates on:

(a) The effect of a caveat/ caution in protecting a mortgagee under an equitable mortgage
(b) The importance of conducting a search of title at an Office of Titles/ Land Registry when purchasing land
(c) Priority of an equitable mortgage

Candidates were expected to discuss the rights and liabilities of the parties in relation to issues identified. A few candidates took the right approach, but there were too many instances in which candidates pontificated about non-essentials.

This was not among the more popular questions.

Question 9

This was a very popular question and was well done by most candidates. They were able to make the distinction between a chattel and a fixture, and discussed the concept of the chattel house in the Caribbean. An encouraging observation was the widespread use of relevant cases in the discussion by candidates. In addition, Wooding C.J's criteria in Mitchell v. Cowie was extensively utilized.

Question 10

The responses to this question were mixed. Some candidates were able to define a mortgage and highlight its characteristics. A number of them demonstrated good understanding of the concept of the equity of redemption. However, weaker candidates had a difficulty distinguishing between a "mortgagor" and a "mortgagee". Case law was heavily utilized especially pertaining to the rules of equity protecting the mortgagor.

CARIBBEAN EXAMINATIONS COUNCIL

REPORT ON CANDIDATES' WORK IN THE
CARIBBEAN ADVANCED PROFICIENCY EXAMINATION
MAY/JUNE 2006

LAW

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LAW

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION

MAY/JUNE 2006

GENERAL COMMENTS

As with previous examinations, the 2006 examination was designed to provide a comprehensive test of candidates' knowledge and skills in relation to the syllabus. As this report shows, some candidates achieved this end, but there were glaring deficiencies which will be referred to, in the hope that we will experience improved performances in 2007.

Questions were formulated to test candidates' abilities to:

(i) recall, select and apply appropriate legal principles, concepts and theories;
(ii) solve simulated problems
(iii) analyse a body of information, identifying relevant legal issues and presenting answers supported by case law, statute and learned opinions, where applicable.

FORM OF EXAMINATION
UNITS 1 and 2

The 2006 examination consisted of three (3) papers

Paper 01: This paper consisted of nine compulsory short-answer (structured response) questions, three on each module. For each question candidates were awarded 10 marks.

Paper 01 contributed 30 per-cent to the examination.

Paper 02. This paper was divided into two sections. Section A consisted of one compulsory question based on the three modules. This question was worth 30 marks, divided equally among the three modules

Section B consisted of nine essay questions, three from each module. Candidates were required to answer three questions, one from each module. Each question was worth 25 marks.

Paper 02 contributed 50 per-cent to the examination.
This was the internal assessment, contributing 20 per-cent to the examination.

Paper 03. Paper 03 consisted of a research paper, 2000-2500 words, based on any topic in any module.

Unit 2 candidates were able to carry their marks from Unit 1, consistent with a provision in the syllabus which was being implemented for the second year.

General Comments

There were some remarkable scripts this year with candidates demonstrating a high level of maturity, analytical skills and excellent writing ability. This was encouraging. Unfortunately, however, this was not the norm.

There was a general decline in this year's performance. Far too many candidates failed to demonstrate accurate understanding of fundamental legal principles which led to misapplication of such principles and inapplicable cases being cited. It was evident in some instances that some candidates did not prepare themselves adequately. Such candidates demonstrated very little acquaintance with basic concepts and principles. One is constrained to repeat extracts of the 2005 report, in light of this deterioration in performance, and in the hope that the pointers given will lead to enhanced performances in 2007.

Some candidates did not answer the questions in a systematic manner in keeping with the structure of the questions. Thus, many responses lacked coherence, and presented points haphazardly rather than in an organized manner.

Candidates are advised to manage examination time wisely. Too often candidates shortchanged themselves by writing excessively long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.

Candidates need to answer only what they are asked; many spent precious time addressing/debating irrelevant points, or on lengthy and unnecessary preambles and in doing so, sacrificed the substantial part of the question.

It is imperative that candidates apply themselves diligently to the subject, adopting a good writing style which will develop with reading legal texts and writings. Candidates did not always comply with the instructions given. We noted some weaknesses and remind candidates and teachers of the following:-

1. Questions answered are to be noted, in order of answers, on the cover page of scripts.

2. Each answer must begin on a new page.

3. Candidate's number and centre number are to be recorded in the space provided on the cover page, and throughout answer booklet, where required.

4. Where applicable or required, identify the jurisdiction to which the law stated applies. (Note especially, those questions that require reference to a named Commonwealth state).

5. With respect to Internal Assessments:-

   (a) Candidates' names are to be recorded on Internal Assessments consistent with the names on registration slips.

   (b) Careful note must be taken of syllabus requirements to ensure compliance.

We also repeat the following, in the hope that they will help candidates in answering questions:-

1. Candidates must follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b).

2. Candidates must use language that is grammatically correct, formal and impersonal language, not general, vague or colloquial.

3. Candidates are encouraged to use the following format when answering problem-type questions:

   I - issue (identification)

   R – rule of law (state)

   A – application of law to facts

   C - conclusion

4. Candidates must support their responses with references to legal authority, namely

   - Case law
   - Statute
   - Legal writers

5. Candidates must deal with issues and applicable law and refrain from restating the question. Too much time is being wasted, too often, in restating the questions instead of answering them precisely.

With particular reference to essay questions, only a few candidates were able to earn high marks. These candidates articulated the legal principles, applied relevant statutes and case law and gave an exemplary display of their analytical abilities. Mediocre and poor responses were due to candidates not addressing the question and, or, being far too general. Many candidates had great difficulty with responses that required evaluation or assessment. It would seem that candidates would benefit from more practice in answering essay items in order for them to develop their legal writing skills under examination conditions. It should follow that when students' essay skills have been honed, short answer items should pose little challenge to them.

Even though some concepts are tested repeatedly, many candidates often fail to earn good grades for their responses. Candidates would also benefit from practising past examination questions under examination conditions.

DETAILED COMMENTS

UNIT 1

Paper 01

Module 1: Caribbean Legal Systems

Question 1

(a) Candidates were required to distinguish between “positive law” and “natural law” in part (a) of the question and part (b) asked for examples of how natural law affects the system of law in a Commonwealth Caribbean jurisdiction.

(b) In responding to part (a), most candidates were able to give a fair explanation of both terms, but their understanding of the word “distinguish” was obviously limited. The weaker c candidates often confused the terms and failed to give a response to part (b) of the question. Part (b) of the question was generally not well done. Only a few candidates were able to provide suitable examples of how moral standards, cultural customs and religious beliefs affected the legal system, particularly in matters relating to such issues as gambling, prostitution, homosexuality, adultery, capital punishment, polygamy, murder and theft.

Question 2

The majority of candidates were able to present a satisfactory explanation of the terms “sources of law” in part (a) of the question. Many candidates interpreted examples of sources of law to be types of sources; hence examples relating to a particular source were limited or non-existent. Appropriate examples would include;

Legislation	-	e.g. The Road Traffic Act
Constitution	-	e.g. The Protection of Citizens’ Rights
Judicial Precedent	-	Case law

General

In part (b) it was expected that candidates would; explain the development of equity in alleviating the rigid rules, principles and procedures of the common law courts; and identify examples of its application in practice. Many candidates who responded to this section of the question identified equitable remedies in their responses.

Question 3

This question tested candidates’ understanding of binding and highly persuasive precedents as well as the concept of distinguishing a precedent.

In part (a) of the question, many candidates were able to explain adequately the concept of binding precedent and responses were fairly well articulated, indicating that the term was fairly well understood.

In part (a) of the question, many candidates were able to explain adequately the concept of binding precedent and responses were fairly well articulated, indicating that the term was fairly well understood.

Candidates were not clear on the concept of highly persuasive precedents however. Many candidates conveyed the thought that lower courts' decisions were highly influential on the higher courts. This is incorrect. Candidates were expected to explain, for example, that decisions from higher courts in "foreign" jurisdictions including the House of Lords in the United Kingdom, the Supreme Courts of Canada and the United States of America (USA) are regarded as being highly persuasive. Additionally, in constitutional matters, precedents from the European Court of Human Rights are also persuasive. This misconception limited the candidates' ability to offer points of comparison and thus earn marks.

In answering part (b) there was some confusion in the minds of many candidates, They explained that the circumstance which would lead to a court distinguishing a precedent arises when the facts of the case before the court is SIMILAR to the case creating the precedent. For clarification, to distinguish a precedent, the facts of the current case must be materially different from the facts of the case establishing the precedent.

Module 2: Law of Contract

Question 4

This question required that candidates understand what is meant by "entrenched provisions" in a constitution, to be able to identify such provisions and to describe the procedures for amendment. Generally, candidates displayed poor knowledge of the provisions and the procedures for amendment.

Question 5

The majority of candidates were able to earn marks for the definition of "locus standi" (having the right to stand or having standing to proceed in a matter) but most were unable to apply the principle to the facts stated in part (b). It was expected that candidates would present a brief distinction between the rigid and the liberal approach taken by the Courts, in their attempt to answer what would be the likely outcome of Effie's case. Two (2) helpful cases in making the distinction are:-

Mbafeno et al ex p Pierre (rigid approach)
Payne v AG (liberal approach)

Question 6

(B)
Evidently, a number of candidates had difficulty "distinguishing between" the two types of *ultra vires* and were unable, therefore, to identify part (b) as a case of procedural *ultra vires*.

Helpful cases:

Kelshall v Pitts (procedural)
Bonadie v Kingstown Board (substantive)

Module 3: Criminal Law

Question 7

Candidates performed fairly well on this question, for the most part. There was a fair understanding of the applicable statutes on larceny or theft, dependent on their particular jurisdictions.

Candidates demonstrated some understanding of the terms "intimidation" and "appropriation" but most of them were weak on case references e.g. *R v Lowell*, the facts of which are similar to part (b).

Helpful cases on appropriation:

R v Hinds
Lawrence v Commissioner of Police

Question 8

Most candidates were unable to define the term "inchoate offence". This question was poorly done, generally, and the responses were disappointing, generally, especially as there is so much material available on the law in this area. Greater emphasis should be placed on this seminal area of law. Some helpful cases are:

(i) *Incitement*
Race Relations Board v Applin
Invicta Plastics v Clare

(ii) Attempt
"Proximity test" as stated by *Parke B in R v Eagleton*, approved by the House of Lords *in D.P.P. v Stonehouse* where S. by his actions had "crossed the Rubicon and burned his boats".

Question 9

Too many candidates failed to recognise that provocation is a defence available for a charge of murder. Many of them used the term in its common, "street" meaning of being upset. The locus classicus in defining the term *is R v Duffy*. Other helpful cases are:

R v Ibrams and Gregory
R v Thornton
Phillips v R

Had candidates approached the question by relying on the law as posited in the cases cited, they would have been able to demonstrate that, on the facts presented, Xavier could have difficulty advancing a defence of provocation. Few of them took the question beyond a layman's approach and, in so doing, missed such factors as would affect Xavier, such as a "cooling off" period.

Some candidates identified such inapplicable defences as diminished responsibility, duress and self-defence, even intoxication.

UNIT 1

Paper 02

Question 1 – Compulsory Question

Candidates continue to find this question to be challenging. Most candidates have not availed themselves of the opportunity to earn 30 marks in a question which aims to test their ability to deal with subject matter related to the three modules in the unit in one concentrated effort. They are encouraged to take each part separately, as conceived by the question set, and not to attempt to present their answers as an essay, as seems to be the approach taken by most of them. Such an approach is misguided, as it tends to result in inadequate answers which do not reflect an assessment of the issues tested.

(a) Most candidates had some knowledge of the role of the Ombudsman but were not able to advise Anton on how the Ombudsman can assist him as he seeks redress for the real and perceived violations of his rights. Too many candidates presented an emotional, rather than a rational response based on an understanding of the machinery available to an Ombudsman to assist citizens with their complaints including, where applicable, relevant statutory or constitutional provisions. Candidates are reminded that when we advise, we are expected to point to all sides of the matter, indicating to the party being advised what is considered the better view.

(b) Candidates were expected to rely on the relevant fundamental rights provisions, identifying how Anton, as a citizen, is protected in the expression of his religion and in his freedom to assemble. On the other hand, the limitations on the exercise of one's rights, should also have been highlighted. Most candidates failed to present a balanced response which would have demonstrated their appreciation of how the Fundamental Rights Provisions empower, as well as restrain, the citizen in the exercise of his freedom.

(c) Candidates were expected to identify the issue of strict liability. This part of the question was the weakest in the answers presented as most candidates appeared not to be very familiar with this area of criminal law. The fundamental and elementary principle that crimes of strict liability are based in statute was hardly mentioned. How the *mens rea* and the burden of proof relate differently to strict liability offences, as against other criminal liability, ought also to have been highlighted by candidates but occurred in only few instances. Helpful cases in this area are:-

Sweet v Parsley

Cundy v LeCocq

R v McNamara
Alphacell v Woodward

Module 1: Caribbean Legal Systems

Question 2

This was a popular question among candidates and it was done quite well by many of them, and excellently in some instances.

(a) Candidates were expected to identify the various levels of courts in their chosen jurisdictions. In so doing, they were expected to assess how precedents operate, including reference to the doctrine of *stare decisis*. They should also have identified the jurisdiction of particular courts such as Family, Traffic, Industrial, Revenue and other courts.

(b) Most candidates were informed about the Caribbean Court of Justice (CCJ) and expressed their opinions on the advantages to the region from the establishment of the Court. It was obvious that many of them had some information about the Court, with some of them being able to identify the jurisdictions of Barbados and Guyana, where the CCJ is the final court of appeal.

It was disappointing, however, that not many candidates referred to the fact that the Court has jurisdiction for all territories in the settlement of trade disputes and in ensuring the effectiveness of the Caribbean Single Market and Economy (CSME), thereby fostering greater regional integration, and giving opportunity to our judges to create our own body of precedents.

Question 3

There were some excellent answers to this question, although it was not among those chosen by many candidates.
Candidates were expected to demonstrate knowledge and understanding of each rule of interpretation and to illustrate how, in making decisions, judges have applied these rules. A critical, analytical approach was expected and candidates who earned the best marks, ably fulfilled this requirement.

Helpful cases include:

Liberal rule: *R v Ramsonahai and Duke*

Mischief rule: *R v George Green*
Black Clawson v Paperworks

Golden rule: *Lewis v St. Hillaire*
Davis v R
Enmore Estates v Darsan

Question 4

This question was not popular with candidates and was poorly done, in most cases. It was disappointing that candidates appeared to know so little about this very important area of law touching the training and discipline of attorneys-at-law.

Very few candidates referred to the relevant statutes which provide for the training and discipline of attorneys; even fewer were aware that there are three Law Schools in the region, namely Hugh Wooding, Norman Manley and Eugene Dupuch. Very few candidates mentioned the role of the Council of Legal Education and there was little indication that candidates saw any connection between the interests of the public and an organized programme of study and discipline for attorneys-at-law.

Cases of interest regarding discipline:

GLC v Sylvester Morris

Forde v The Law Society

Diggs White v Dawkins

Module 2: Principles of Public Law

Question 5

Candidates were required to demonstrate knowledge and understanding of the constitutional provisions for appointment and removal of judges.
The question was not popular among candidates and for those who attempted it, most answers were inadequate as candidates were unfamiliar with the constitutional provisions.

Question 6

There were some excellent answers to this question which tested candidates' ability to present analytical responses in essay form. Unfortunately, not all candidates who attempted the question were able to meet the requirements.

Candidates were expected to show how judicial review of administrative action functioned to preserve the accountability of public officials. Among the leading cases from the region are:-

Hinds

Maharaj

I.R.C. v Lilleyman

Colleymore v A.G.

Hector v A.G. of Antigua and Barbuda

Question 7

This was a popular question among candidates but it was poorly done for the most part due to candidates' apparent lack of familiarity with the Fundamental Rights Provisions. Many candidates appeared to be guessing, resulting in poor answers being presented.

Among cases of note:

Colleymore v A.G. }

Banton v Alcoa Minerals } Freedom of Association

Pratt and Morgan }

Lewis et al v A.G. for Jamaica} Protection from cruel and inhumane treatment

Newton Spence et al v R – Whether death sentence is mandatory.

Candidates were expected to present well reasoned answers, grounded in the constitution of their choice, indicating the extent to which these provisions protect the rights of citizens, balancing these rights against license.

Module 3: Criminal Law

Question 8

This question required that candidates demonstrate knowledge and understanding of the theories of sentencing. It was a very popular question, and there were some excellent answers, albeit in the minority of cases. The weaker answers tended to be very generalized and candidates appeared uninformed.

Greater attention should be paid to this very important area in the syllabus, ensuring that candidates develop a sensitivity towards sentencing as crucial to the function of Criminal Law.

Case: *Benjamin v R (1964) 7 WIR 459*

Question 9

This was a very popular question among candidates. It was surprising that so many candidates made no mention of *D.P.P. v Morgan* with respect of non-consensual sexual intercourse.

Other cases which could have been mentioned are:-

R v Olugboja

R v Elbekkay

State v Persaud

Regarding part (b), most candidates attempted to apply *R v R* with some being unsure as to whether the case applies in the Commonwealth Caribbean jurisdictions. In fact, some candidates came to the erroneous conclusion that *R v R* applied.

Question 10

Candidates were expected to identify the liability of Alex, Lucy and Camilla, on the facts stated. The question was fairly popular among candidates, most of whom acquitted themselves reasonably in relation to the law of assault and battery.

Some useful cases:-

Meade and Belt

Tuberville v Savage

R v Venna

R v Cunningham

D.P.P. v Smith
R v Spratt

UNIT 2
Paper 01

Module 1: Tort

Question 1

This question tested candidates on three areas of defamation. It was poorly done in the majority of instances, with few candidates demonstrating familiarity with the terms “innuendo” and “ actionable per se”.

Question 2

This question tested candidates in the area of occupier’s liability. It was fairly well done with some candidates providing case illustrations such as:

British Railways Board v Herrington.

Some candidates made the expected connection between the common law duty and statutory provisions which enshrine them in some jurisdictions e.g. Occupiers Liability Act, Jamaica.

Question 3

(a) A fair number of candidates demonstrated a good understanding of public nuisance and its various elements, for example, that the plaintiff must show that the defendant’s conduct has caused him/her particular damage, over and above that suffered by the public.

Cases which could have been useful:

Chandat v Reynolds Guyana Mines Ltd.

Rose v Miles

Campbell v Paddington Corp

Halsey v Esso Petroleum

Castle v St. Augustine Links

Norman v Telecommunication Simices of T & T

(b) This part of the question was, surprisingly not well done by the majority of candidates, as this is a term applicable in the area of vicarious liability. The performance indicated a tendency among candidates to be unfamiliar with elementary terms and principles.

Among cases which could assist:

Rose v Plenty

Whatman v Pearson

Storey v Ashton

Dunkley v Howell

<u>Module 2: Law of Contract</u>

<u>Question 4</u>

Candidates were expected to distinguish between a term of a contract and a mere representation and, in doing so, to indicate how each one affects contractual liability. While most candidates were able to explain what is a "term of a contract" were less than forthcoming. This resulted in the inability of most candidates to make the distinction and to point to the effect of both, resulting in loss of marks.

<u>Question 5</u>

This was the best question in this module by way of how candidates responded. The question sought to test candidate's knowledge about the formation of a contract as it relates to offer and acceptance, in particular promises made and acted upon.

Some cases on point:

Carlhill v Carbolic Smokeball

Gibbons v Practor

R v Clarke (here a reward was denied by the Court in Australia as it was held that the informant had provided information which was self serving, i.e. to clear his name)

<u>Wiliams</u> v *<u>Carwardine</u>*

Question 6

This question was poorly done, generally. The majority of candidates failed to demonstrate an understanding if the terms "anticipatory breach" and "mitigation of damages" and were therefore unable to provide the appropriate illustrations, as required. Notwithstanding, there were some adequate answers.

Module 3: Real Property

Question 7

This question was fairly well done. Most candidates explained "periodic tenancy" and "tenancy at will" in a satisfactory manner but there were some instances in which weak candidates took a somewhat literal meaning of "sufferance" interpreting it to mean "suffering", indicating that it arose where living conditions were poor.

Question 8

Part (a) of this question was mostly well done with the majority of candidates demonstrating some understanding of the term "equity of redemption". Candidates tended to be weak on part (b) and were to identify four (4) of the following:-

(a) Release by the mortgagor

(b) Lapse of time

(c) Exercise of power of sale by the mortgagee

(d) Foreclosure

(e) Appointment of receiver

Question 9

This question tested candidates on the benefits and burdens of restrictive covenants. In general, the answers were inadequate. While candidates had some knowledge of restrictive covenants, they were not clear about positive and negative covenants or the effect of covenants on third party successors in title.

UNIT 2
PAPER 02

SECTION A: Compulsory Question

This compulsory question tested candidates in all three (3) modules of the Unit. Answers varied from excellent to weak. Excellent and good answers were those in which candidates dealt with each part separately, answering questions precisely and aptly, with adequate examples and cases.

Part (a) dealt with (i) liability for dogs and (ii) negligence (in leaving the door of the doghouse open).

(i) This part was fairly well done with some candidates making the distinction between animals which are "mansuetae naturae" such as dogs, and those which are "fera naturae" such as lions, and advanced, correctly, that liability for dogs is strict.

Helpful cases:
Barnes v Lucille
Rands v McNeil

(ii) This part was also fairly well done with most candidates demonstrating a fair understanding of the law of negligence.
Donoghue v Stephenson was a frequently cited case.

(b) The vast majority of candidates did not handle this part well. The question sought to test them on (i) sufficiency of consideration and (ii) for them to determine whether title in the painting passed to Lili even though the paintings were sold at half price.

A number of candidates presented emotive responses, thereby diverting from the issues, engaging in discussions about the conduct of the parties. Candidates were expected to point out that the courts are concerned with sufficiency, and not adequacy, of consideration.

Helpful cases:

Currie v Misa

Thomas v Thomas

(c) In general, candidates demonstrated some knowledge of the covenants between landlords and tenants, and the obligation placed on both sides. Here, it was expected that candidates would indicate the extent to which there is a breach of landlord's covenants. Cases which are helpful:

Douglas v Bowen

Ali v Enmore Estates

Ram v Ramkissoon

Tapper v Myrie

<u>Module 1: Tort</u>

<u>Question 2</u>

This question tested candidates on vicarious liability, employers liability, foreseeability and liability in negligence for work done by an expert, as against an untrained person.

Candidates who attempted this question did not all identify the tests which have been devised to determine the difference between an employee and an independent contractor.

- control
- organization
- multiple or mixed test

There was scope for candidates to make a determination of what constitutes the "course of employment", as against "a frolic of one's own". More acceptable answers dealt withal or most of the issues and those candidates maximized their scores.

<u>Question 3</u>

This was not a popular question but there were some excellent answers from those candidates who attempted it. A number of the better answers demonstrated that candidates had a good appreciation of The Wagon Mound and the test of foreseeability and remoteness of damage.

Cases cited: *Hadley v Baxendale*
Victoria Laundry v Newman
Jones v Boyce
Rose v Squires
The Oreposa

Question 4

In this question, candidates were pointed to the specific issues on which they were to concentrate. All three (3) parts clearly asked about "false imprisonment" on the facts outlined. Despite this, some candidates failed to answer the questions asked, engaging instead in paraphrasing the facts. There were some good answers as well, and these arose where candidates defined false imprisonment, examined the circumstances when the police can detain a person legitimately, the onus on the police (or the absence of such onus dependent on any relevant statutory provision, such as the Jamaica Constabulary Force Act,
section 33 where the burden of proof is reversed) and presented an analysis of the law by referring to relevant cases in support of their answers.

Some cases on point:

Christie v Leachinsky

Meering v Graham White Aviation

Clarke v Davis

Rowe v Port of Spain City Council Foods

McCollin v DaCosta & Musson

Module 2: Law of Contract

Question 5

This essay type question was not a popular one, but it was well done by some of the candidates who attempted it. It tested candidates on the incorporation of exclusion clauses in contracts and on the circumstances when a Court will determine that an exclusion clause was sufficient to cover a breach which had occurred.

Some candidates demonstrated excellent familiarity with the subject matter, relying on the three (3) dimensional tests formulated in *Parker v South Eastern Railway*, as follows:-

1. Did the plaintiff know that there was printing on the ticket?
2. Did he know that the ticket contained or referred to conditions?
   Had the Defendants done what was sufficient to draw the plaintiff's attention to the relevant conditions?

Some cases on point:

Chapelton v Barry UDC

Interfoto Picture Library Ltd. v Stiletto Visual Programmes

Thornton v Shoe Lane Parking Ltd.

Spurling v Bradshaw

White v John Warrick

Hollier v Rambler Motors

Question 6

This problem question tested candidates on (i) the rights of an innocent party to terminate a contract for breach and (ii) the terms of the contract. Specific facts were presented and candidates were expected to assess the facts, determine the applicable law and support their answers with reference to relevant cases.

Most candidates presented very general answers, devoid of support.

Some cases on point:

Bettini v Gye

Poussard v Spiers & Pond

The Moorcock
Hong Kong Fir Shipping

Question 7

Candidates were presented with a problem type question and were expected to assess the facts and identify the issues which relate to offer, acceptance, consideration and the effect of a counter-offer.

This question was poorly done, in most instances but there were some good answers as well. Some enterprising candidates explored whether or not there had been a price which, if so, would affect the conduct of the parties.

Module 3: Real Property

Question 8

Part (a) of this question was fairly well done, in general, as most candidates demonstrated an understanding of (i) contractual licence and (ii) licence by estoppel. The deficiencies in most answers rested on the paucity of examples and/or cases.

Some helpful cases include.

(i) Contractual licence

Winter Garden Theatre v Millenium Productions

Hounslow LBC v Twickenham Gardens Development Ltd.

Ashburn Anstalt v Arnold

Clive v Theatrical Properties Ltd.

Compare *Binions v Evans* and *Bristol v Henning* on the issue of a constructive trust being created.

(ii) Licence by estoppel

Pascoe v Turner

Inwards v Baker

Ives (ER) Investments Ltd.

Part (b) of the question posed difficulties for some candidates who did not identify the issue there as the effect of a grant of a bare licence.

Question 9

Parts (a) and (b) of this question were answered well by the majority of candidates who chose it. It was evident from the answers that candidates are becoming increasingly aware of the distinctions between a joint tenancy and a tenancy in common and how each one is created.
It was surprising that, notwithstanding their display of information on the ways a joint tenancy may be severed, so many candidates missed the small point in part (c) that where joint tenants die simultaneously, the younger is presumed to survive the elder. The property

would have passed to Jean's beneficiaries. Some candidates fell for the "red herring" elicited from the claim attributed to Delroy's mother.

Question 10

This was not a popular question but there were some good answers from those who attempted it.

Candidates were expected to explain the requirements for an easement by illustrating how an easement is acquired. They were therefore expected to illustrate the relationship between a dominant and a servient tenement and the obligations of the grantor and the grantee.

Most candidates showed some knowledge about the acquisition of an easement by an express or implied grant and a presumed grant but very few adverted to possible acquisition of an easement by statute (even though a rare form.) by way of the regulations of a local authority (for example, to utility companies).

Some useful cases in this area:

McManus v Cooke

London Corporation v Riggs

Wong v Beaumont Trust

The Rule in Wheeldon v Burrows

Tehidy Minerals Ltd. v Norman

Bridle v Ruby

CARIBBEAN EXAMINATIONS COUNCIL

REPORT ON CANDIDATES' WORK IN THE

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION

MAY/JUNE 2007

LAW

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LAW

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION

MAY/JUNE2007

INTRODUCTION

As with previous examinations, the 2007 examination was designed to provide a comprehensive test of candidates' knowledge and skills in relation to the syllabus. As this report shows, some candidates achieved this and there were significant improvements. However, there continues to be a large number of underperforming candidates and so some past observations have been repeated, in the hope that the improvements experienced in 2007 will continue in 2008.

Questions were formulated to test candidates' abilities to

(i) recall, select and apply appropriate legal principles, concepts and theories

(ii) solve simulated problems

(iii) analyse a body of information by identifying relevant legal issues and presenting answers supported by case law, statute and learned opinions, where applicable.

STRUCTURE OF EXAMINATION

UNITS 1 and 2

The 2007 examination consisted of three papers.

Paper 01

This paper consisted of nine compulsory short-answer (structured response) questions, three based on each Module. For each question candidates could earn a maximum of 10 marks. Paper 01 contributed 30 percent to the examination.

Paper 02

This paper was divided into two sections. Section A consisted of one compulsory question based on the three Modules. This question was worth 30 marks, with 10 marks allocated to each Module.

Section B consisted of nine essay questions, three based on each Module. Candidates were required to answer three questions, one from each Module. Each question was allocated a maximum of 25 marks.

Paper 02 contributed 50 percent to the examination.

Paper 03 (Internal Assessment)

The Internal Assessment consisted of a research paper, 2000 – 2500 words, based on any topic in any Module.

This component contributed 20 percent to the examination.

GENERAL COMMENTS

The improved performance resulted in more candidates demonstrating a high level of maturity, analytical skills and excellent writing ability. This was encouraging. Unfortunately, however, there was not enough of this excellence.

Far too many candidates failed to demonstrate a clear understanding of fundamental legal principles. This led to misapplication of such principles as well as inapplicable cases or no case at all being cited. It was evident in some instances that some candidates did not prepare themselves adequately. Such candidates demonstrated very little acquaintance with basic concepts and principles.

Some candidates did not answer the questions in a systematic manner in keeping with the structure of the questions. Thus, many responses lacked coherence and were sometimes way off the mark.

Candidates are advised to manage examination time wisely. Too often they shortchanged themselves by writing excessively long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.

Candidates need to answer only what they are asked; many spent too much time addressing or debating irrelevant points, or on lengthy and unnecessary preambles and in doing so sacrificed the substantial part of the question.

It is imperative that candidates apply themselves diligently to the subject, adopting a good writing style which will develop with reading legal texts and writings. Candidates did not always comply with the instructions given. Some weaknesses were noted and candidates and instructors are reminded of the following:-

1. Candidates are to "write on both sides of the paper and start each answer on a new page" as instructed on the answer booklet.

2. Questions attempted are to be noted, in order of responses, on the cover page of the scripts.

3. Candidate's number and centre number are to be recorded in the space provided on the cover page, and throughout answer booklet as required.

1. Where applicable or required, the jurisdiction to which the law stated applies must be identified. (Note especially, those questions that require reference to a named Commonwealth state).

2. With respect to Internal Assessments:-

   (a) Candidates' names recorded on the assignments and Internal Assessments forms must be consistent with the names used at registration.

   (b) Careful note must be taken of syllabus requirements to ensure compliance.

The following are repeated in the hope that they will help candidates in responding to questions appropriately:-

1. Candidates must follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b).

2. Candidates must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial.

3. Candidates are encouraged to use the following format when answering problem-type questions.

   I – issue (identification)
   R – rule of law (state)
   A – application of law to facts
   C – conclusion

4. Candidates must support their responses with legal authorities, namely

   - Case Law
   - Statute
   - Legal writers

5. Candidates must deal with issues and applicable law and refrain from restating the question, except in so far as a principle of law relates to stated facts. Instead, candidates should strive to answer the questions precisely.

6. Candidates need to be more familiar with definitions of terms and concepts, and should offer definitions of terms as appropriate.

With particular reference to essay questions, more candidates were able to earn high marks in 2007. These candidates articulated the legal principles, applied relevant statutes and case law and gave an exemplary display of their analytical abilities. Mediocre and poor responses were due to candidates not addressing the question or being far too general or vague. Many candidates had great difficulty with responses that required evaluation or assessment. It would seem that candidates would benefit from more practice in answering essay items and past examination questions under examination conditions in order for them to develop their

legal writing skills in an examination. It should follow that when their essay skills have been developed, short answer items should pose little challenge to them.

Even though some concepts are tested repeatedly, many candidates often fail to earn good grades for their responses.

A few extracts from scripts have been included to indicate the quality of analysis and writing skill which is recommended.

Candidates continue to perform best in Criminal Law and Tort. This year there was a vast improvement in Property and in Public Law. The main weakness in Public Law was a demonstrable unfamiliarity with the provisions of the relevant Constitutions. The Fundamental Rights provisions, the Commissions, Parliament, the Governor General or President have been the areas frequently tested. There tends to be a better performance when principles of Public Law are tested, such as judicial review or separation of powers.

Over the years, the performance in Legal Systems has been fair and in the Law of Contract, the performance has been average. Candidates seem to have a good understanding of topics as Offer and Acceptance, and Capacity but topics such as Mistake, Illegality and Misrepresentation tend to be more challenging.

DETAILED COMMENTS

UNIT 1

PAPER 01

Module 1: Caribbean Legal Systems

Question 1

Part (a) was poorly done by the majority of candidates who appeared not to be familiar with the rules of statutory interpretation (for example, golden, literal, mischief rules).

In Part (b), there was an improved performance generally, where candidates were required to state two reasons why the Constitution is considered a source of law and to identify a case. Too few candidates were able to state the ratio decidendi of the case they had identified.

Question 2

Parts (a) and (b) were fairly well done but the majority of candidates had difficulty in explaining the jurisdiction of the Caribbean Court of Justice, as they seemed to misunderstand the term ‘jurisdiction’. Candidates were expected to indicate that the jurisdiction of a Court refers to its powers and limitations as contained in its enabling legislation or, as in this case, the terms of the enabling treaty. There were very few instances when this factor was acknowledged.

Question 3

Candidates demonstrated a good understanding of 'mediation' as a form of alternative disputes resolution (ADR) for the most part. Many were challenged to compare and contrast mediation with arbitration, as they did not seem to know much about arbitration. The various forms of ADR are to be brought to the attention of candidates.

Module 2: Principles of Public Law

Question 4

Most candidates could define the term 'judicial review'. In outlining one circumstance in which judicial review will be granted by a court, some candidates confused 'judicial review' with the appeal process. Where candidates correctly identified a remedy of judicial review (for example, certiorari, mandamus, prohibition) they were usually able to explain the remedy identified. In some instances, candidates performed exceptionally well, indicating that they had mastered the concepts.

Question 5

Part (a) of the question was poorly done, generally, as candidates were often not familiar with constitutional provisions. The weakness was not limited to this question only, but was characteristic of this topic. (See general comments on Public Law.) Although some candidates presented excellent answers and cited relevant cases (for example Pratt v Morgan, there were still too few candidates who were able to present an explanation of the 'legal principles' of the cases referred to, as they failed to identify the ratio decidendi).

Question 6

This question appeared to be the most challenging to candidates who were able to describe Parliament's bi-cameral composition in most jurisdictions, except Guyana, but were often not able to describe two functions of Parliament (for example, to pass laws for the peace, order and good government in society and the maintenance of governance through relevant, enabling legislation).

Module 3: Criminal Law

Question 7

Most candidates presented fair responses to Part (a) of the question. For Part (b), there were too many candidates who failed to identify the issues (that is, causation) or to relate the facts to the well-known cases of Thabo Meli v R and R Gibbins and Proctor.

Question 8

Many candidates correctly identified the issue of assault on Ron's part, but the area of weakness was Avery's defence. Many candidates identified provocation as a possible defence, instead of self-defence, failing to bear in mind that provocation is a defence which is available only in cases where the charge is murder. Those candidates who identified the issue and the appropriate defence were often those who cited relevant cases (for example Tuberville v Savage).

Question 9

Part (a) of this question appeared to be challenging to most candidates as many of them seemed not to have recognized the term 'inchoate offence'.

In Part (b) many candidates were unable to state the elements of the crime of attempt. The leading case D.P.P. v Stonehouse would have been helpful.

UNIT 1

PAPER 02

Question 1 – Compulsory Question

Candidates performed well in Part (a) of the question, even though many of them took a sociological, rather than a legal line of argument. Those candidates whose answers tended towards a jurisprudential approach, identifying theories on the function of law, presented better answers. Theirs was the required approach and candidates are to be wary of being too general, even vague, in answering questions of this nature.

In Part (b), many candidates failed to recognize the fact that in some Commonwealth Caribbean Countries there is a Governor General while in others there is a President. It appeared that some candidates confused the President of the country with the President or Leader of a political party. Many candidates were unaware of the constitutional roles of the Governor General or President.

In Part (c) of the question, some candidates explained the term 'actus reus' and missed the word 'rape' in the definition.

Candidates appeared not be aware of the relevant statutory provisions in the respective jurisdictions in question.

Many candidates referred to the Offences Against the Person Act when defining rape not recognizing that the Act only speaks of sentencing for the offence. They did not mention that most of our jurisdictions subscribe to the common law definition of rape. Legislative provisions in various territories must be carefully noted (for example, Barbados).

Most candidates were aware of the opinion that the UK case of R v R (on marital rape) was not adopted in Commonwealth Caribbean jurisdictions.

Module 1: Caribbean Legal Systems

Question 2

The responses to this question were below expectation. Many candidates appeared to be unfamiliar with the critical functions of an Ombudsman. Considering that in the previous year, the Compulsory Question 1 required candidates to write on the role of the Ombudsman in a particular context, one would have expected candidates to observe this topic as an examinable one. Candidates were expected to explain how an Ombudsman functions and to examine critically, the relevance of such a function as part of the justice system in Commonwealth Caribbean jurisdictions. Too often the critical analysis was absent.

Question 3

This was a popular question and a number of candidates presented well-reasoned responses, supported by references to, and analysis of learned writers (for example, Eversley) and cases (Shaw, Knuller)

Question 4

This question was also popular with candidates. While some were able to show how equity eased the harshness of the common law (which was not the greater emphasis of the question) they failed to explain the reception and relevance of equity in Commonwealth Caribbean jurisprudence.

Candidates were expected to place emphasis on the key words: reception, relevance and importance of equity, analysing these words critically.

Module 2: Principles of Public Law

Question 5

There were some excellent answers to this question. Most candidates who attempted this question, had some knowledge of the case, but the better answers were those in which candidates recognized that Hinds was part of a process, which began in such cases as Collymore and Bribery Commissioner v Ranasingh.

> One candidate, after analyzing these two cases and Hinds concluded:
> "As can be seen, Hinds concluded and settled, once and for all, the process which was pronounced upon in the leading West Indian case of Collymore. The learned opinions of the judges in that case were no doubt a catalyst for Hinds and were crystallized there in the bold assertions of the Court that Parliament, not the executive, is supreme."

Question 6

Candidates were expected to identify the essential features of the Rule of Law and then evaluate the extent to which it applied in protecting citizens' rights. Many candidates failed to do so and their answers did not reflect a good grasp of the subject matter, that is, the

historical aspect (for example, UN Charter on Human Rights, Delhi Conference) representation in Commonwealth Caribbean Constitutions (Fundamental Rights provisions). Some candidates even attempted the question with little or no reference to Dicey's pronouncements on the matter. The better answers were those in which candidates followed the approach indicated here, adding their analytical skills to show whether or not the principle applies in Commonwealth Caribbean jurisdictions in a pure or partial sense.

Question 7

This was a popular question among candidates with various degrees of success. Most candidates could explain the term 'separation of powers', but they had difficulty outlining how the doctrine developed. Consequently, they did not refer to early theorists such as Aristotle, Montesquieu or Rousseau and to the impact of the Enlightenment. Some candidates appeared to have difficulty evaluating Jones' claim and treated this sub-section of the question as a "write all you know about", rather than exhibiting their critical capabilities.

It was noted that of the number of candidates who attempted this question, few recognized how deeply entrenched the concept is in Commonwealth Caribbean constitutions and that it underpins the functions of the executive, the legislature and the judiciary.

Module 3: Criminal Law

Question 8

In Part (a), candidates performed well. This was a popular question. Most of them demonstrated a good understanding of the M'Naghten Rules in determining criminal liability on the grounds of insanity. One candidate accurately explained the Rule as:

> "A disease of the mind which can lead to a defect of reason where, the person either does not know what he is doing or is unaware that what he is doing is wrong."

In Part (b), with reference to Marcus' criminal liability, a large number of candidates discussed whether he could successfully rely on insanity as a defense, and correctly concluded that he could not. Consequently, and correctly, they argued that Marcus would be liable for criminal damage. Some candidates ably supported their conclusions with reference to decided cases, as required.

Question 9

This question was not popular among candidates, and a number of those who attempted it, confused 'voluntary manslaughter' and 'involuntary manslaughter'.

Question 10

Few candidates attempted this question with many of them performing well. More candidates were expected to respond as the question afforded them much creativity. They were expected to identify and discuss the various theories of sentencing, assess the given view and make their own conclusions, based on their evaluation of the theories.

Two helpful West Indian cases were:

(1) Williams (Paul) v The State (1999) 57 WIR 380
(2) Braithwaite v Commissioner of Police (1968) 12 WIR 449

UNIT 2

PAPER 01

Module 1: Tort

Question 1

In Part (a), candidates were expected to identify the three torts, namely, assault, battery and false imprisonment.

Most candidates were able to identify the torts, but fell down on Part (b) which required them to advise Mrs. Forde on her liability (for battery) and on her possible defence (self-defence).

Question 2

Candidates were required to define public and private nuisance. Generally, this question was well done but some candidates were not direct enough in the definitions and failed to give an example of each and to identify a related case, even though this area is a fertile one, both in examples and case law.

Definitions:

> "Private nuisance is an unreasonable interference with a person's use or enjoyment of land or of some right over, or in connection with it" (for example, landslides on to land: Case – Leakey v National Trust).
>
> "Public nuisance is committed where a person carries on some activity that affects the general public" (for example, obstruction of public view by construction of a structure in the public street: Case – Campbell v Paddington Corporation).

Question 3

Most candidates were able to identify three elements of the tort of negligence, namely, duty, breach and damage caused by D's breach, such damage not being too remote. They also demonstrated a good understanding of the 'neighbour principle' in many instances and were able to list situations in which a duty of care exists, often using their initiative in doing so.

Module 2: Law of Contract

Question 4

Many candidates seemed to be challenged by this question, which one would have expected to resonate with them. This often examined and much written about subject of 'capacity' in respect of minors, was poorly done in many instances. Candidates seemed unfamiliar with such well known Cases as Chappel v Cooper, Nash v Inman, Doyle v White City Stadium. Very few candidates discussed Taneisha's contract as one for 'necessaries' (her education), but some did, aptly relying on Doyle and/or Roberts v Grey for their conclusion.

Question 5

This question was not well done for the most part as candidates were often confused in the interpretation of a 'common mistake' and a 'mutual mistake'.

Definitions:

> A common mistake occurs where the parties share the same mistake about the same set of circumstances.
>
> A mutual mistake occurs where the parties are at cross-purposes; one party thinks the contract is about "X" while the other party thinks it is about "Y".

Most candidates identified the 'mistake' between Gina and Noelle as a mutual mistake and cited cases such as Raffles v Wichelhaus and Scott v Littledale.

Question 6

Most candidates were able to explain 'privity of contract', identifying that "A" cannot sue or be sued on a contract to which "A" is not a party. One candidate wrote that it is equivalent in effect to locus standi in Public Law. The general conclusion was that Sita could not sue. Cases cited in support included Tweddle v Atkinson and Dunlop Pneumatic Tyre Company v Selfridge and Company Limited.

Module 3: Real Property

Question 7

This question was fairly well done by many candidates. In general, candidates demonstrated a good understanding of the joint tenancy and could state its essential features such as, no words of severance, the jus accrescendi or right of survivorship and the presence of the four unities. Based on these principles, a number of candidates concluded, correctly, that ultimately;

(1) Sandra cannot claim under Sam's will as he had conveyed his interest to Tom, Dick and Harry.

(2) When Tom severed his interest in the joint tenancy and sold his share to Kenneth, Dick and Harry remained as joint tenants and neither one can dispose of his interest by will as Dick purports to do.

(3) Harry has to obtain Kenneth's consent to sell as he and Kenneth hold the property as tenants-in-common upon Dick's death.

Question 8

Most candidates answered this question well and appeared to understand the implied obligations under a lease as they relate to lessor and lessee. For example, they understood the landlord's covenants to include non-derogation from grant, quiet enjoyment, repair and keeping the premises fit for human habitation. In addition to explaining these landlord's covenants and explaining them, they identified the lessee's implied covenants as including payment of rent and keeping the premises free from waste.

Question 9

Candidates were expected to advise Mrs. King that if she wished to assert her right to recover possession, she must make a formal demand for the rent, serve a notice to quit if it remains unpaid and if Chee fails to pay, she may proceed against him under the relevant Rent Restriction/Landlord and Tenant legislation. To counter Mrs. King, Mr. Chee may challenge her position, proving to a court that he had paid the arrears of rent, after the six months. Most candidates identified these issues and answered the question well.

PAPER 02

Question 1 – Compulsory Question

In Part (a), candidates were required to identify tortions act committed by Kenyatta as a private nuisance, In doing so, they were expected to define the term, refer to its characteristics and then indicate who can sue him, whether Candice, Ruiz or both.

In Part (b), the issue of past consideration arises and a number of candidates treated it very skillfully in their answers. Citing Lampleigh v Braithwaite as authority, one candidate wrote:

> "It is indeed a principle of law that past consideration is not good consideration and although there was no consideration given in Lampleigh, the Court held that the defendant was liable to the plaintiff because at the time the contract was made, both parties expected there to be some payment although it was not expressly stated".

In Part (c), some candidates correctly identified any right which Candice may have against Kenyatta as arising from the sub-lease from Ruiz. The question of privity also arises and some candidates argued that her claim was against Ruiz under the lease and against Kenyatta in tort.

Module 1: Tort

Question 2

Candidates were required to base their answers on the law relating to negligence. They did and many succeed in presenting well-reasoned answers, pointing out that Petal's claim for damages would be reduced by her contributory negligence in not wearing a seat belt. One candidate referred to Petal's contribution and continued:

> "Rajendia owed a duty of care to Petal when he picked her up to transport her safely. He breached this duty when he started to drive at a high speed on the wet road which caused the car to overturn and injured Petal. Due to this breach of duty, Petal can claim damages. One might ask, how was the duty to Petal established. The test of foreseeability created by the case Ann v Merton Borough Corporation states that if within a given set of events or circumstances the reasonable man would foreseen that his act or omission might cause injury to the plaintiff, then a legal duty is established".

Rajendia's liability to Willy was identified by candidates as a straightforward one in negligence. Most candidates cited relevant cases in support of their answers.

Question 3

Candidates correctly identified the issues as liability for the acts of a servant (vicarious liability), what constitutes the acts of a servant, who is a servant or agent, and what constitutes work done "in the course of one's employment or duties". As for Mr. Lye's misrepresentation upon which Mr. Florgale relies, how does this affect any claim by Mr. Lye? What is the extent of her liability as a professional (or expert) in the circumstances? There were also the issues of the parties in asserting their legal rights.

Although this was not a very popular question, some candidates answered it well and supported their answer with useful and relevant cases.

Question 4

This was not a very popular question but it was answered well by some of the candidates who responded. Some candidates seemed to understand the law of defamation well and were able to discuss the principle satisfactorily with the support of cases. The defenses, such as qualified privilege, justification or truth were also raised and discussed by candidates, with varying measures of success.

Module 2: Law of Contract

Question 5

This was a popular question and the majority of those candidates who attempted it, demonstrated that they had grasped the principle of offer and acceptance in the formation of a contract. Most candidates did well on Part (a) of the question and cited cases in support of their answers (for example, Fisher v Bell, Carlill v Carbolic Smoke, Ball Partridge v

Crittenden). In relation to Part (b), candidates tended not to do as well, their challenge being the usual weakness in answering problem-type questions as they fail to use the "IRAC" approach.

Question 6

In Part (a), candidates were expected to identify whether or not Meg and Lil had intended to create legal relations, empowering Lil to bring a successful claim against Meg. Many candidates recognized the issue and cited relevant cases in support of their conclusions, but far too many candidates engaged in unhelpful meanderings.

For Part (b), some candidates correctly identified the issue in this part as turning on the law in relation to discharge for breach and/or frustration. They cited cases such as Poussard v Spiers and Bettini v Gye. On the issue of frustration of contract, some candidates argued forcefully that even though the subject matter had not disappeared, there was an impossibility of performance as Meg was hoarse.

Question 7

This question was not very popular. However, there were some excellent answers from some candidates who presented well-written essays, ably supported with case law. One candidate wrote:

> "Illegality casts an indelible stain on a contract, sullying it to the extent that it cannot stand, whether in considerations of public policy, or generally. They are doomed from the start".

Module 3: Law of Property

Question 8

Many candidates did not address the issues, instead they discussed at length the concepts of 'licence' and 'lease'. Some candidates failed to identify the correct type of licence; instead they elaborated on joint tenancy, tenancy at will, and tenancy in common. Likewise, many candidates failed to make the distinction between a 'lease' and a 'licence' and there was limited use of decided cases.

Question 9

Some candidates appeared not to understand the circumstances which may influence the mortgagee to choose among the available remedies. They continued the discussion in Part (a). Additionally, several candidates misinterpreted the remedies (for example, injunction, specific performance, rectification).

Question 10

Some candidates did not demonstrate an understanding of the law relating to easements, although there were many candidates who were able to explain and identify the characteristics of a valid easement. Similarly, many candidates were able to identify the

methods of acquiring an easement but failed to identify and explain the correct method of acquisition (that is, prescription) in this question.

UNITS 1 and 2

PAPER 03 (INTERNAL ASSESSMENTS)

As in previous years, candidates demonstrated some ingenuity and creativity in their selection of topics. In many instances, the quality of their research was remarkable and this was reflected in the mostly higher than average performances.

Despite the largely positive outcomes, it was noted that some candidates presented papers on topics for which there is a wide body of Commonwealth Caribbean jurisprudence but to which they did not advert. For example, in one paper on judicial review of administrative action, the candidate did not refer to one regional case, in an area where there are so many decided cases. Similarly, one candidate who presented a paper on the development of the law of defamation in a chosen jurisdiction, failed entirely to refer to one case from the region, when in fact there are several.

In some instances, candidates chose topics which were too wide in scope. It is recommended that they limit the parameters of their research for maximum benefit and to ensure consistency with the requirements of the examination. For example, a topic such as "Who can sue and be sued in private law?" is too diffuse and is beyond the scope of the Internal Assessment, resulting in the candidates setting unrealistic and unachievable goals and objectives. The opportunity for analysis was therefore lacking.

There was some evidence that candidates at some centres collaborated and presented papers on the same topic. This is not a recommended approach as it stifles candidates' individuality and creativity. Each candidate should write on a topic selected or developed by him/her in consultation with the instructor.

Instructors and candidates are reminded of the amendment to the syllabus which allows the research paper to be based on one Module only.

Many candidates exceeded the word limit. Greater care is required in this regard.

It is expected that through the Internal Assessment candidates would develop their research techniques. Many of them did not demonstrate that this was achieved and they must be encouraged to use more secondary data in their preparation and presentation.

CARIBBEAN EXAMINATIONS COUNCIL

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION MAY/JUNE 2008

LAW
(REGION EXCLUDING TRINIDAD AND TOBAGO)

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LAW

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION

MAY/JUNE 2008

INTRODUCTION

As with previous examinations, the 2008 examination was designed to provide a comprehensive test of candidates' knowledge and skills in relation to the syllabus. As this report shows, some candidates achieved this end. However, there continues to be a large number of underperforming candidates and so once again, some past observations have had to be repeated, in the hope that candidates in 2009 will learn from the mistakes of their predecessors.

Questions were formulated to test candidates' abilities to:

(i) recall, select and apply appropriate legal principles, concepts and theories;

(ii) solve simulated problems

(iii) analyse a body of information, identify relevant legal issues and present answers supported by case law, statute and learned opinions, where applicable.

STRUCTURE OF EXAMINATION

UNITS 1 and 2

The 2008 examination consisted of three papers.

Paper 01

This paper consisted of nine compulsory short-answer (structured response) questions, three based on each Module. For each question, candidates could earn a maximum of 10 marks. Paper 01 contributed 30 percent to the examination.

Paper 02

This paper was divided into two sections. Section A consisted of one compulsory question based on the three Modules. This question was worth 30 marks, with 10 marks allocated to each Module.

Section B consisted of nine problem-type or essay questions, three based on each Module. Candidates were required to answer three questions, one from each Module. Each question was allocated a maximum of 25 marks. This paper contributed 50 percent to the examination.

Paper 03 (Internal Assessment)

The Internal Assessment, consisted of a research paper, 2000 - 2500 words, based on any topic in any Module. This paper contributed 20 percent to the examination.

GENERAL COMMENTS

Once again, candidates are encouraged to follow the instructions given and to ensure that they prepare diligently for the examinations, in order to realize their full potential. The same general comments which applied previously, still apply, although it was evident from the scripts that more candidates approached the examinations with the desired level of application.

Too many candidates failed to demonstrate a clear understanding of fundamental legal principles. This led to a misapplication of these principles, to irrelevant examples and fictional cases or to no case at all being cited. It was evident that candidates did not prepare themselves adequately. In a few instances, such candidates demonstrated very little acquaintance with basic concepts and principles.

Some candidates did not answer the questions in a systematic manner consistent with the structure of the questions. Thus many responses lacked coherence and were sometimes irrelevant.

Candidates are advised to manage examination time wisely. Too often they shortchanged themselves by writing long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.

Candidates need to answer only what they are asked; many spent precious time addressing or debating irrelevant points, or on lengthy and unnecessary preambles and in doing so, sacrificed the substantial part of the question.

It is imperative that candidates develop a good writing style fostered by reading legal texts and writings. They must show greater care in complying with the instructions given. Candidates and instructors are reminded of the following:-

Candidates are to “write on both sides of the paper and start each answer on a new page” as instructed on the answer booklet.

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Each candidate’s number and centre number are to be recorded in the space provided on the cover page, and throughout the answer booklet, where required.

1 Where applicable or required, the jurisdiction to which the law stated applies must be identified. (Note especially, those questions that require reference to a named Commonwealth Caribbean state).

2. With respect to Internal Assessments:-

   (a) Candidates’ names recorded on the assignments and Internal Assessments forms must be consistent with the names at registration.

   (b) Comments and marks by instructors are to be erased before Internal Assessments are submitted as samples.

   (c) Careful note must be taken of syllabus requirements to ensure compliance.

The following are repeated in the hope that they will help candidates to respond to questions appropriately:-

1. Candidates must follow instructions. Responses should not be merged; for example, Part (a) must be answered separately from Part (b).

2. Candidates must use language that is grammatically correct, formal, and impersonal, not general, vague or colloquial.

3. Candidates are encouraged to use the following format (summarized as IRAC) when answering problem-type questions.

   I - issue (identification)
   R - rule of law (state)
   A - application of law to facts
   C - conclusion

4. Candidates must support their responses with legal authority, namely:

   Case Law
   Statute
   Legal writers

5. Candidates must deal with issues and applicable law and refrain from restating the question, except in so far as a principle of law relates to stated facts. Instead, candidates should strive to answer the questions precisely.

6. Candidates need to be more familiar with definitions of terms and concepts, and should offer definitions of terms as appropriate.

Some candidates continued to do well in essay questions. These candidates articulated the legal principles, applied relevant statutes and case law and gave an exemplary display of their analytical abilities. Mediocre and poor responses were due to candidates' not addressing the question or being far too general or vague. Many candidates had great difficulty with responses that required evaluation or assessment. It would seem that candidates would benefit from more practice in answering essay items and past examination question under examination conditions in order for them to develop their legal writing skills in an examination. It should follow that when their essay skills have been developed, short answer items should pose little challenge to them.

Even though some concepts are tested repeatedly, many candidates often fail to earn good grades for their responses. There can be no substitute for serious study and much time must be spent in application and synthesis in order to produce clear, concise and analytical responses, well supported by cases, statues or other relevant sources and authorities.

DETAILED COMMENTS

UNIT 1

PAPER 01

Module 1: Caribbean Legal Systems

Question 1

Many candidates showed some understanding of the terms "source of law" and even weaker candidates tended to be able to identify at least one source of law.

Part (a) which was allocated 4 marks earned most of the marks for fledging candidates, many of whom did not do well in Part (b) which required them to give a brief description of one source and to illustrate their answer by outlining ONE case. Part (b) was worth 6 marks. A more in-depth study of the various sources of law is required than demonstrated in many of the responses.

Question 2

It was disappointing that so many candidates seemed unable to answer fully on this frequently tested area, the jury. While the majority could state the qualifications for jury service, they were unable to apply the facts of Mr. Jankee's case to determine, whether or not, as the brother and not the spouse of a judge, he would be disqualified. Candidates must be encouraged to examine the Jury Acts of their own jurisdictions.

Question 3

This question was poorly done, in general. It was rather surprising that candidates were so unfamiliar with the functions of the Director of Public Prosecution and the Attorney General, two public offices.

Part (b) required candidates to demonstrate knowledge of the recourse which members of the public have against attorneys for alleged professional misconduct. There were some good responses, the candidates referring to cases such as

Forde v The Law Society
Re Niles
Diggs-White v Dawkins

Some candidates mentioned the relevant legislation in their jurisdictions.

Module 2: Principles of Public Law

Question 4

Some candidates answered this question well, but there were too many instances in which candidates confused substantive with procedural *ultra vires*. This matter should be addressed to ensure that candidates are aware of the distinctions and understand how each one operates.

Question 5

Some candidates appeared to be unfamiliar with the term "conventions of the constitution", with a few of them confusing the term with gatherings or meetings to discuss the constitution.

Instructors should engage candidates in discussions on the concept and how conventions function within the context of our written constitutions.

Question 6

This question was poorly done for the most part. Most candidates appeared to be unfamiliar with the concept of entrenchment and so were unable to identify an entrenched provision in a named constitution, and could not therefore say how an entrenched provision could be amended. It was disappointing that so many candidates fell into this category.

Module 3: Criminal Law

Question 7

Part (a) of this question tended to be fairly well done. Several candidates ably demonstrated knowledge of the defense of duress and were able to cite cases such as A.G. v Whelan, Lynch v D.P.P for Northern Ireland, Abbott and Howe.

Part (b), necessity as a defence, did not fare as well, although there were some good responses in which candidates demonstrated a thorough understanding of the defence, including its limitations. In better responses, candidates referred to cases such as Southwark London Borough v Williams and Dudley v Stephens.

Question 8

The general performance on this question was average, although there were some excellent responses in which candidates explained what is a strict liability offence and were able to illustrate with decided cases.

In Part (a), the better answers were those in which candidates illustrated their knowledge of the *actus reus* of the offence with brief references to cases such as Pharmaceutical Society of Great Britain v Storkwain.

In Part (b), the better answers were those in which candidates fulfilled the requirement to determine whether or not Mr. Hill had the *mens rea* of the crime. They pointed to the importance of the words, for example, "knowledge" and "willfully", as indicated in the case of Sherras v De Rutzen.

Question 9

Most candidates demonstrated some knowledge of "transferred malice", with varying results. Generally the question was fairly well done. Cases such as R v Latimer and R v Pembleton were those most often cited.

UNIT 1

PAPER 02

Question 1 Compulsory Question

The performance by most candidates in this compulsory question continued to be somewhat lop-sided, as in previous years, with very few candidates demonstrating comparable strength in all three (3) modules.

Part (a) was generally well done and most candidates were able to explain the origin of law (legal, literary and historical) mentioning the various sources of law and how these have had an impact on the development of Commonwealth Caribbean jurisprudence and have influenced social values. Candidates appeared to be knowledgeable about the historical sources, but some were weak on the literary and legal sources. Some candidates engaged in discussion on the "imposition", versus the "reception", of law.

In Part (b), not all candidates identified this question as requiring a discussion on the "right to life" as enshrined in the various constitutions. Some even confused capital punishment with corporal punishment. In the better responses, candidates referred to the constitutional provisions and cited cases such as Pratt v Morgan, Riley and Kitson Branche in their discussions on how the Courts have sought to balance the rights of the accused against cruel, degrading and inhuman treatment.

Part (c) proved to be the most challenging to candidates, most of whom seemed to have difficulty in explaining the *mens rea* and *actus reus* of malicious damage.

There were some candidates who presented clear, well-structured answers in which references were made to relevant legislation and cases, such as Caldwell, Hill and Hunt.

Module 1: Caribbean Legal Systems

Question 2

Candidates were expected to explain and illustrate what is meant by the "common law" and to demonstrate an understanding of "judicial precedent", discussing the advantages and disadvantages of the doctrine and how it facilitates judges in shaping the common law.

There were some excellent answers in which candidates demonstrated that they were well-prepared and understood the various aspects of "judge-made law" and its impact on the development of law generally. They explained such principles as "*stare decisis*", "*obiter dicta*" and "*ratio decidendi*" and what is meant by binding precedent and hierarchy of the courts.

Question 3

This was not a popular question but from among those candidates who chose it, there were some excellent responses in which candidates demonstrated a good understanding of the rights and remedies which equity has promoted and held to be precious. Some candidates highlighted the tension between common law and equity and showed how the fusion of law and equity has softened the harshness of the common law. Some candidates traced the development of equity, highlighting cases (such as The Earl of Oxford's case) and equitable maxims. They referred to equitable remedies such as *mareva* injunctions and specific performance as ways in which equity has plugged the deficiencies of the common law, and showed that our Courts have been consistent in promoting this trend.

Question 4

This was a popular question among candidates but the majority performed below average, not showing that they fully appreciate Alternative Disputes Resolution (ADR) as an important tool of conflict management. Responses were weak on features of ADR and in drawing comparisons with other forms of conflict resolution, such as conciliation and negotiation. Most were able to show that seeking a resolution through the courts was not always the best choice. Some of them highlighted the need for more education about ADR to assist members of the public with conflict resolution.

Module 2: Principles Of Public Law

Question 5

This essay-type question gave candidates an opportunity to display their analytical skills as they demonstrated their knowledge of the separation of powers doctrine. While the question was not attempted by a large number of candidates, those who chose it were among the stronger candidates who engaged in excellent discussions of the topic as they identified the theories of the doctrine and its chief proponents including ancients such as Aristofle and Montesquieu as well as modern Caribbean writers such as Sir Allen Lewis, Sir Fred Phillips and Professor Albert Fiadjoe. Candidates were also expected to examine relevant case law in support of their arguments, citing such cases as Hinds v R and J. Astaphan & Co. Ltd. v Comptroller of Customs of Dominica and Browne v R. Some candidates were able to refer to their own constitutions and to apply provisions from these constitutions in support of their conclusions.

Question 6

Candidates were expected to identify the applicable constitutional provisions upon which DCP Johns could rely in seeking judicial review of the administrative action taken against him. In this regard, they should have examined who has authority to discuss DCP Johns, whether the Police Services Commission or the Commissioner and in this context, say whether or not the dismissal was *ultra vires* and, if so, the implications. They should also discuss the matter of due process, relating to the principle of natural justice, significantly the right to be heard (*audi alteram partem rule*). Cases illustrative of and which would have been useful in applying the law to the facts:-

Thomas v A.G.
Nobriega v A.G.
Toby v A.G.

Question 7

This question required that candidates should have a good understanding of the Fundamental Rights Provisions, applying these provisions in their answers to each part.

Generally, there was a paucity of scripts in which candidates were able to discuss the applicable constitutional provision, much less to discuss it. In the instant case, the constitutional provision is that which protects citizens from restrictions to their personal liberty, that is, from unlawful detention.

The remedies available were not satisfactorily identified or discussed. As in the decided case which is close on the facts DeMerieux v A.G of Barbados, damages could be sought. Ms. Ming could also seek a declaration that the magistrate's action was *ultra vires*.

Part (c) required candidates to "assess the effectiveness of the constitutional provision protecting the rights of citizens". This could best be done by reference to, and discussion of, decided cases such as:

DeMerieux (*op cit*)
Maharaj v A.G. for Trinidad and Tobago
A.G. for St. Christopher, Nevis & Anguilla v Reynolds
Charles v Phillips & Sealey
Herbert v Phillips & Sealey

Module 3: Criminal Law

Question 8

(a) This question was poorly done, for the most part, as some candidates were unable to distinguish between the two types of recklessness, and some confused one with the other.

(b) The two leading cases of R v Caldwell and R v Cunningham, closely read and analysed would have assisted candidates.

(c) Candidates were expected to show that liability will be determined by the application of the tests as illustrated by Caldwell and Cunningham. Also helpful would be cases such as R v Parmenter and R v Savage; with the basis for the decision by the House of Lords in Parmenter to vary the accused's conviction being of particular assistance.

Question 9

As in previous questions on the subject, candidates were mostly weak in their answers regarding strict liability offences. The same holds true in respect of the inchoate offence, conspiracy.

Candidates were expected to show how the *actus reus* and the *mens rea* of these offences inter-relate in grounding liability, with some discussion of the impact of *mens rea* in strict liability offences.

Among the cases which could have been helpful in advising the parties of their strict liability offences, resulting in a conviction, if any, are:

Sweet v Parsley
Cundy v Le Cocq
Sherras v De Rutzen

Regarding the defence which could be raised in Part (b), candidates were required to show how particular words such as "wilfully" or "knowingly" in a statute are useful in determining liability, or the lack of it.

Cases which could assist in the discussion of conspiracy would include:

R v James Smith
Yip Chin Cheung v R
R v Anderson
R v Edwards

Question 10

Candidates were required to discuss the issue of "automatism" which was the background against which Lord Denning's dictum was pronounced.

Better candidates made the distinction between insane and non-insane automatism, using cases to illustrate the differences and to analyse the issues.

Among the cases which could have been relied upon are:

R v Burgess
R v Kemp
A.G's Reference (No.2) (1992)
Bratty
Hill v Baxter
R v Stripp
R v Pullen
R v Roach

They were also able to distinguish between automatism which arises from a disability and that which is self-induced, relying on such cases as:

R v Quick
DPP v Majewski
R v Hennessy
R v Burgess

UNIT 2

PAPER 01

Module 1: Tort

Question 1

This question proved to be challenging for a large number of candidates who failed to demonstrate a clear understanding of what is meant by "damages" with some confusing the word to be the plural for "damage". As a result, these candidates were unable to explain what are "special damages" and "general damages" as required in Part (b). This weakness was also seen in Part (c), where Wooding CJ, in Cornilíac v St. Louis laid down five basic criteria which the Courts should take into account when assessing general damages, as follows:-

The nature and extent of the injuries sustained;
The nature and gravity of the resulting physical disability;
The pain and suffering which had to be endured;
The loss of amenities suffered; and
The extent to which, consequentially, the plaintiff's pecuniary prospects have been materially affected.
Too many candidates appeared not to understand what is meant by "tortious liability".

Question 2

This question was fairly well done by the majority of candidates, with some gaining full marks. These were the candidates who were able to identify the elements of defamation, using appropriate cases, such as Sim v Stretch, to illustrate their responses. There were some excellent distinctions between "libel" and "slander'.

Question 3

Parts (a) and (b) were fairly well done by the majority of candidates, some of whom failed on Part (c) as they were unable to cite a relevant case. Candidates were expected to define "vicarious liability", giving a brief explanation on how it impacts upon the employee/employer relationship. For Part (b), candidates should have been able to show the distinctions between an employee and an independent contractor and many presented satisfactory responses, citing cases such as:-

Collins v Hertfordshire
Lee v Lee's Air Services
Market Investigations v Minister of Social Security

Among cases which could have been referred to for Part (c) are:

Rose v Plenty
Twine v Bean's Express
Century Insurance v Northern Ireland Road T.B. Confidence Bus Co.

Module 2: Law of Contract

Question 4

The terms "specific performance" and "damages" proved challenging for the vast majority of candidates.

In Part (a), candidates were required to show that "specific performance" is an equitable remedy which was developed by the Chancery Courts, and it is a discretionary remedy. They should also have pointed out that it is generally awarded where damages would be inadequate for the breach such as for the sale of land.

In Part (b), candidates were expected to point out that an award of damages is a common law remedy, intended to ensure that a defendant is given the benefit of his bargain. It is based on the principle of *restitutio in integrum* or full restitution. The principle was re-stated in the 2001 case, Farley v Skinner, as well as in A.G. v Blake (1998).

Greater emphasis needs to be placed on these intrinsic concepts.

Cooperative Insurance v Argyll

Question 5

Candidates performed fairly well on Part (a), the majority of them appearing to understand the doctrine of privity, albeit with varying degrees of success. Most of them referred to decided cases in support of their answer, such as:

Shadwell v Shadwell
Tweddle v Atkinson
Dunlop Pneumatic Tyre Co. v Selfridge
Beswick v Beswick

In Part (b), candidates were expected to show that capacity is one of the essential elements in the formation of a contract.

Regarding the law in relation to minors, the successful answers were those in which candidates highlighted cases which show how the Courts have drawn a distinction between contracts for "necessaries" and those which are not, in determining those for which a minor may be liable.

Cases referred to:

Chapple v Cooper
Nash v Inman
De Francesco v Barnum
Doyle v White City Stadium
Chaplin v Leslie Frewin

Mental disability

Very few candidates chose this option. Candidates were required to show how mental disability limits liability. These limitations arise where:

A, the lunatic, has had his affairs placed by the Court under the charge of a third part, then A could not enter into a contract in relation to those affairs.

Where A is known to be unable to appreciate the nature of a contract, the contract is voidable. It must be shown that at the time of entering into the contract, B knew of A's condition. See Imperial Loan Co. v Stone (1892) which should be compared with Hart v O'Conner which held that such contracts would not be voidable merely by describing it as "unfair".

A is subject to the same rules concerning "necessaries", as apply to a minor.

Where A, being mentally disabled, is more of a simpleton with a propensity for entering into disadvantageous contracts, he may be liable unless undue influence can be proven.

The above were the points which candidates ought to have raised, but few did, resulting in Part (b) (ii) not being a popular choice and where chosen, most candidates seemed ill-prepared.

Question 6

As has been observed in a previous examination, not all candidates handled this question well. The better scripts were those in which candidates relied on case law and defined both "innocent" and "fraudulent" misrepresentation to highlight the differences between them.

The leading cases of Derry v Peek and Doyle v Oldby Ironmongers were often cited and are indeed useful in this area.

See also:
Smith and New Court Securities Ltd. v Scrimgeour (Asset Management) Ltd.
East v Murrier

Module 3: Real Property

Question 7

(a) Candidates were required in Part (a) to define a licence as permission from A to B by which B enters upon or occupies A's land for an agreed purpose, without having been conferred any right to exclusive possession of the land or in any estate or interest in it.

In Part (b), as with Part (a), most candidates were able to respond adequately in identifying the issues:

(i) Whether or not Angela is a tenant or a licensee
(ii) Basis for arriving at the response to
(i) distinguishing between a lease and a license
(iii) Having identified (i) and (ii), they should then have advised Sonja of the recourse she has against Angela, namely, serving her a notice to quit which if Angela does not vacate the premises, leaves Sonja to proceed against her in court which might result in eviction proceedings eventually.

Candidates performed weakest in "advising Sonja", after failing to demonstrate that they understood the need to present a clear outline to make the "advice" effective and convincing.

Question 8

Candidates were required to select two implied covenants of a landlord under a lease, illustrating the legal effect of the covenant chosen, citing one decided case.

In doing so, they could have chosen from among:

Quiet enjoyment
Non-derogation from grant
Fitness for human habitation
Covenant to repair

Candidates performed fairly well on this question, for the most part.

Question 9

This question proved to be the most accessible of the three in this Module, with a number of candidates receiving full marks. These were the candidates who demonstrated an understanding of the differences between a 'fixture' and a 'chattel' and who were very clear about the criteria stated by Wooding CJ in Mitchell v Cowie.

PAPER 02

Question 1- Compulsory Question

Candidates were expected to answer all three parts of this question, but these were a number of instances in which some of them did not do so, resulting in low scores. Some candidates appeared to spend too much on the Modules in which they felt they were strong, thereby neglecting the others. Equal time should be allotted to each Module, as each one is allocated ten marks. However, there were still many candidates who demonstrated the desired approach.

Part (a) required candidates to identify the parties who would be liable for the damage, namely, "At Home", and Steve, for whom "At Home" is vicariously liable.

This part deals with liability for damage by fire. Most candidates made reference to the rule in Rylands v Fletcher, and some correctly commented on the defence, "act of stranger" which would not be applicable to Adam who had no role in the spread of the fire.
Other cases which could have been helpful:

Mason v Levy Auto Parts
Synagogue Trust v Perry
Mandraj v Texaco Trinidad, Inc.

Part (b) was the weakest in candidates' general performance as many seemed to be unfamiliar with the subject matter, exclusion clauses.
The issue to be determined was the effect of the exclusion clauses on the contract between Adam and "At Home". Some candidates answered the question well, discussing cases in support of their conclusions. Among the cases which were cited were:

L'Estrange v Graucob
Curtis v Chemical Cleaning
Olley v Marlborough Court Hotel

Candidates were required to show in Part (c) that they understood how joint tenants hold land. In the course of doing so, they demonstrated knowledge of the four "unities". Most candidates were able to say something about this, with varying degrees of success.

A number of candidates had difficulty with this part, a situation which might have been different, had they been familiar with the 2001 Privy Council decision of Wills v Wills in which it was held that a joint tenant could relinquish his/her interest by "abandonment". The likelihood of Ruth's success in her claim would rest on the candidates' assessment of the application of Wills v Wills to the facts stated.

Module 1: Tort

Question 2

This essay question gave candidates great latitude with which to discuss the elements of tortious liability. From among the candidates who chose this question, there were some excellent answers in which they appropriately identified the three elements as central to the law of negligence, using relevant cases in support of their conclusions.

Cases which could have been cited:-

(a) Duty of care
Donoghue v Stevenson

(b) Breach of duty
Hedley Byrne v Heller
Blyth v Birmingham Waterworks which stated the test: "whether or not a reasonable man placed in the defendant's position, would have acted as the defendant did".

(c) Damage
Most candidates made the useful point that the damage must have been caused by the defendant's breach but that such damage must not be too remote. Cases on point:

Barnett v Chelsea and Kensington Management Committee (causation)
The Wagon Mound (No1) (remoteness)

Question 3

Candidates were required to define the key words, "occupier" and "visitor" and "trespasser". Most were unable to present clear, concise definitions. Wheat v Lacon defines who is an occupier, while Indermaur v Dawes, defines who is a visitor or invitee.

It was expected that candidates would have referred to the statutory and/or common law duty of the occupier to the visitor or invitee, as well as to the trespasser. Some candidates were aware of the leading case, British Railways Board v Herrington on the liability for trespassers (the duty of 'common humanity). In addition, some candidates correctly referred to the special care owed to children, citing such cases as:

Indermaur v Dawes
Latham v Johnson & Nephew
London Graving Dock v Horton
Cox v Chan

(b) The application of the law outlined in Part (a) was what this section required. Some candidates performed fairly well in this regard, identifying both Mr. King and Prince as "visitors" or "invitees" to whom a duty of care was owed, undoubtedly. Some opined that the notices were adequate while others said that since there is a dangerous place, Mr. Castle was negligent in opening the property to the public and that he ought to have known that children, such as Prince, would be among his visitors.

Cases previously cited, along with relevant occupiers' liability statute where applicable, were relied upon in support of position taken.

Question 4

(a) It was found that some candidates were unable to make a distinction between "public" and "private" nuisance, thereby confusing themselves. They were expected to define "private nuisance", giving examples and illustrating by reference to decided cases. Consequently, candidates were expected to show that private nuisance constitutes "unreasonable interference with a person's use or enjoyment, or of some right over, or in connection with, his land". From this, candidates should then have highlighted the issues which have arisen from the definition, such as:

- unreasonable interference, not merely fanciful but must be substantial and sensible, not trifling or minimal, and which courses a reduction in the value of the plaintiff's property, (Walter v Selfe)

- duration of the nuisance, as the shorter it lasts, the less likely that it will be considered unreasonable; that an isolated happening cannot constitute a nuisance, but a wrongful state of affairs does, even if temporary.
- Harrison v Southwark & Vauxhall Water Co.
- Bolton v Stone

- sensitivity of the plaintiff, that is, whether he/she is of abnormal sensitivity (Robinson v Kilvert).

- character of the neighbourhood
  (Bramford v Turnley
- St. Helen's Smelter Co.v Tipping)

(b) Here, candidates were required to apply the law outlined in (a) to the facts stated. Some of them did fairly well, but again, the majority of the answers revealed that application continues to be a weakness among many candidates. Some of them correctly identified noise as the nuisance affecting Lisa's father and that Lisa's claim would be against Tropichem Co. Ltd. for the damage to her plants, caused by what she fears to be burns from the plant. St. Helen's Smelter v Tipping would be useful in discussing the likely success of her claim. Regarding her father's claim, cases which would be helpful are:-

Walter v Selfe (substantial noise)
Midwood v Mayor of Manchester (wrongful state of affairs)
Robinson v Kilvert (sensitivity of the plaintiff)
Bramford v Turnley }(character of the neighbourhood)
St. Helen's Smelter v Tipping }(character of the neighbourhood)

Module 2: Law of Contract

Question 5

Candidates were required to present a well-reasoned, analytical discussion of rules developed by the courts in relation to mistake in contract law, showing how these rules affect the validity of a contract. In positing their ideas to introduce their arguments, they would have been required to have a perspective from which to develop their discussion showing:

The necessity for the rules
Whether or not these rules impose a burden
Whether these rules are consistent with the concept of freedom of contract

Identification of types of mistakes:

as to subject matter (*res extincta*)
Scott v Coulson, McRae v CDC, Couturier v Hastie, Galloway v Galloway

mistake as to quality of the subject matter:
Leaf v International Galleries

mutual mistake:

Raffles v Wichelhaus
Smith v Hughes

unilateral mistake
common mistake

Having identified and discussed the types of mistake, candidates would then be expected to deal with the rules developed by the Courts. In Bell v Lever Brothers, the Court set out five rules of common mistake. These were reiterated in the recent case, "The Great Peace" (2002).

There are also the cases of 'mistaken identity' which are not without their own challenges, allowing candidates much flexibility of approach.

Included in the wide array of cases are:

Lewis v Averay
Boulton v Jones
Cundy v Lindsay
Shogun Finance v Hudson (2004)
Phillips v Brooks
Ingram v Little
Lake v Simmons
Kleinwort Benson v Lincoln C.C. (2004)

It was then left to candidates to indicate when mistake renders a contract *void ab initio*.

A reading of Professor Eversley's article referred to in the syllabus "The Role of Mistake in the Law of Contract", would have assisted greatly. There were some excellent answers, indicating research and application.

Candidates were expected to identify the issues and apply the law, referring to decided cases, in their advice to Derrick.
Many candidates were able to identify the issues as part performance and discharge but were unable to sustain their arguments as they appeared not to be very familiar with the cases in this area.

Consequently, most of the responses were weak or mediocre, although there were some good, even excellent ones. In the better responses, candidates questioned whether or not Sam could claim that the contract was frustrated by Derrick's departure and, if so, what would be the impact of frustrating the contract. They mostly argued that this was not a sustainable position, concluding that there was a sufficient act of part performance by Derrick.

Cases which could have been helpful:

Sumpter v Hedges
Dakin v Lee
Bolton v Mahadeva
Young v Thames Properties
Williams v Roffee Bros. et al

In coming to their conclusions, candidates were expected to examine how the courts have determined what constitutes substantial part performance whereby if the variation is minor, a party (such as Sam) cannot rely on discharge, but must instead make a claim for breach, as established in the old case of Bogue v Eyre. Daken v Lee has amplified the principle. In Bolton v Mahadeva, it was not applied,where the heater which was installed turned out to be defective, but in Young v Thames and Williams v Roffey,it was applied as the work was not only substantial, but was also properly done. On these facts, Derrick could be advised to rely on these cases.

Question 7

Part (a) was not a very popular question, but there were some very good answers. Better performing candidates were those who not only defined what is meant by "illegality" but discussed the impact of illegality on contracts and used decided cases which were cited:

Pearce v Brooks
Appleton v Campbell

Some candidates correctly made the point that illegal contracts are void, being contrary to public policy, and may attract criminal sanction. They also made the point that a plaintiff/claimant may not rely on an illegal contract when seeking to make a claim against a defendant, consistent with the maxim, "*ex turpi causa non oritur actio*" (no action can be based on a disreputable or base cause).

In Part (b), candidates were required to identify the issue (whether an illegal contract can be enforced), advising Ajani on the law, with reference to decided cases. The facts are close to those in Armhouse Lee Ltd. v Chappell.

Most candidates who attempted this question did better on this part, than on Part (a).

Module 3: Real Property

Question 8

Generally, this question was poorly done. Most candidates who attempted the question, mentioned termination by a notice to quit, but demonstrated little or inadequate knowledge of:

Forfeiture
Surrender
Merger
Effluxion of time
Frustration
For each of these, there are applicable statutory provisions in some jurisdictions as well as cases which may be relied upon, as follows:

Forfeiture:
Ramjattansingh v Khan
Central Estates v Woolgar (No 2)
Colonial Minerals v Joseph Dew & Son Ltd.

Surrender:
White v Brown
Foster v Robinson

Effluxion of time:
Scott v Lerner Shop Ltd.

Notice to Quit:
Harrysingh v Ramgoolam
Pollonais v Gittens
Lee Kin v Cumana Consumers Coop. Society Ltd.

Frustration:
National Carriers v Panalpina
Cricklewood Property etc. v Leightons Investment Trust

Merger:

Principle of law which operates when the tenant obtains a fee simple interest in the property, that is, when he purchases it. His interest as a tenant merges with his interest as a purchaser, the latter being a superior title.

Question 9

Candidates appeared to have been challenged by this question. It was not a popular question and many of those who attempted it, submitted poor or mediocre responses. They were expected to identify the five remedies which are available to a mortgagee upon the mortgagor's default.

Suing on the personal covenant
Entering into possession
Appointing a receiver (Receivership)
Selling the mortgaged property (power of sale)
Foreclosure

Cases which could have been cited, under each heading, are as follows:

Possession

Four Maids Ltd. v Dudley Marshall
Bank of Nova Scotia v Morrison
White v City of London Brewery

Receivership

This provision is largely governed by legislation in some jurisdictions such as Barbados, Jamaica, St. Kitts/Nevis, Trinidad and Tobago.

Power of sale

Cuckmere Brick v Mutual Finance Ltd.
Dreckett v Rapid Vulcanizing Co. Ltd.
American British Canadian Motors Ltd. v Imperial Life Assurance Co. of Canada
Supersad v Colonial Life Insurance Co. Ltd.

Forclosure
Campbell v Holyland
("Equity of redemption" should also be discussed as a right of the mortgagor).

Suing on Covenant

This is the least practised by mortgagees and candidates should be able to give reasons, chief being that it is a costly remedy and is less effective than the others, such as the exercise of the power of sale.

Trusting Bank should be advised on which of the above remedies would prove to be most effective against Mrs. Swankie.

Question 10

This question was widely chosen and, in general, was fairly well done by most candidates. Candidates were required to demonstrate an understanding of how easements are acquired, which most of them were able to do, with varying degrees of success. The ways by which easements are acquired were to be identified and discussed, with cases and statutory references, where applicable. These are:

Statute
Grant or reservation
Prescription

The following is a brief outline of what was required:
They may be express or implied. An express grant is usually contained in a written instrument, such as an agreement or statute. Implied grants arise in a number of situations.

These are:
Necessity (Nickerson v Barraclough)
Common intention (Wong v Beaumont Property Trust)
Quasi grant or the rule in Wheeldon v Burrowes
By operation of law (applicable in England)

Prescription

Sometimes referred to as "presumed grants"
Dalton v Angus
Moody v Steggles (per Fry J – "the habit and the duty of the court so far as it lawfully can to clothe the fact with the right").

Long user alone is not sufficient, and the claimant must be able to show a riser as of right, "*nec vi, nec clam, nec precario*", that is, without secrecy and without permission.

Reservation

This is the converse of a grant and occurs where a vendor reserves an easement over land which he conveys or leases to a third party. It must be specifically stated (See Wheeldon v Burrowes), except in situations where it is implied, by reason of (a) necessity or (b) common intention.

NOTE: The foregoing represents an outline of what was required, and is not to be regarded as model answers.

UNITS 1 and 2

PAPER 03 (THE INTERNAL ASSESSMENTS)

The quality of candidates' research and seriousness in approach continue to be remarkable, as evidenced from the sample scripts examined. Despite this, there are some instances in which candidates' performance and writing skills on these papers are not consistent with what is seen from the same candidates in their other scripts. Great care must be taken to ensure the integrity and desired authenticity of these internal assessments.

Some important reminders are listed below.

1. Research papers should be securely fastened.

2. All components of the paper should be included as specified in the syllabus – title, table of contents, aims and objectives, methodology employed and report.

3. Greater use of regional cases and statutes is encouraged.

4. Use of case studies is not encouraged unless all the objectives of a research paper as outlined in the syllabus can be met.

5. Students should be encouraged , to participate in primary research and present additional knowledge gained outside the classroom an on standard texts.

6. Teachers must see drafts of the students' research paper before the final paper is presented so as to give the necessary supervision and guidance.

7. Before the final drafts are submitted, students should ensure that the papers are proofread.

CARIBBEAN EXAMINATIONS COUNCIL

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION MAY/JUNE 2009

LAW

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LAW

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION

MAY/JUNE 2009

INTRODUCTION

As with previous examinations, the 2009 examination was designed to provide a comprehensive test of candidates' knowledge and skills in relation to the syllabus. Some candidates achieved this end. However, there continues to be a large number of underperforming candidates and so once again, some past observations have had to be repeated, in the hope that candidates in 2010 will learn from the mistakes of their predecessors.

Questions were formulated to test candidates' abilities to:

(i) Recall, select and apply appropriate legal principles, concepts and theories.

(ii) Solve simulated problems.

(iii) Analyse a body of information by identifying relevant legal issues and presenting answers supported by case law, statute and learned opinions, where applicable.

The 2009 examination consisted of three papers, Papers 01, 02 and 03, each based on three Modules, Module 1, Module 2 and Module 3.

Paper 01 consisted of nine compulsory short-answer (structured response) questions, three based on each Module. For each question, candidates could earn a maximum of ten marks. Paper 01 contributed thirty per cent to the examination.

Paper 02 was divided into Sections A and B. Section A consisted of one compulsory question based on the three Modules. This question was worth thirty marks, with ten marks allocated to each Module. Section B consisted of nine problem-type or essay questions, three based on each Module. Candidates were required to answer three questions, one from each Module. Each question was allocated a maximum of twenty-five marks. This paper contributed fifty per cent to the examination.

Paper 03 (the Internal Assessment) consisted of a research paper of 2000 - 2500 words, based on any topic in any Module. This paper contributed twenty per cent to the examination.

The revised syllabus, CXC A23/U2/09, will be examined from May/June 2010. Paper 01 will comprise forty-five compulsory multiple-choice items, fifteen based on each Module. Paper 02 will comprise six extended-response questions, two based on each Module. Candidates will be required to answer one question from each Module.

GENERAL COMMENTS

As has been stated in the past, candidates are encouraged to follow the instructions given and to ensure that they prepare diligently for the examinations, in order to realise their full potential. The shortcomings continue and so the general comments which applied previously still apply, although it was evident from the scripts that increasingly, more candidates approached the examination with the desired level of application.

Too many candidates failed to demonstrate a clear understanding of fundamental legal principles. This led to a misapplication of these principles, to irrelevant examples and fictional cases or to no case at all being cited. It was evident that some candidates did not prepare themselves adequately. In a few instances, such candidates demonstrated very little acquaintance with basic concepts and principles.

Some candidates did not answer the questions in a systematic manner consistent with the structure of the questions. Thus many responses lacked coherence and were sometimes irrelevant.

Candidates are advised to manage the examination time wisely. Too often they shortchanged themselves by writing long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.

It is imperative that candidates develop a good writing style fostered by reading legal texts and writings. They must show greater care in complying with the instructions given. Candidates and instructors are reminded of the following:

1. Candidates are to "write on both sides of the paper and start each answer on a new page" as instructed on the answer booklet.

2. Questions attempted are to be noted, in order of responses, on the cover page of scripts.

3. Each candidate's number and centre number are to be recorded in the space provided on the cover page, and throughout the answer booklet, where required.

Where applicable or required, the jurisdiction to which a particular area of law applies must be identified. (Note, especially, those questions that require reference to "a named Commonwealth Caribbean state").

1. With respect to Internal Assessments:

    (a) Candidates' names recorded on the assignments and Internal Assessments forms must be consistent with the names at registration.

    (b) Comments and marks by instructors are to be erased before Internal Assessments are submitted as samples.

    (c) Careful note must be taken of syllabus requirements to ensure compliance.

The following are repeated in the hope that they will help candidates to respond to questions appropriately:

1. Candidates must follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b).

2. Candidates must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial.

3. Candidates are encouraged to use the following format (summarised as IRAC) when answering problem-type questions.

I - issue (identification)

R - rule of law (refer to)

A - application of law to facts

C - conclusion

4. The conclusion should relate to the problem and should not be the candidate's fanciful construction bearing no relation to the facts, or simply rewriting the facts.

5. Candidates must support their responses with legal authority, namely:

    - Case Law
    - Statute
    - Legal writers

6. Candidates must deal with issues and applicable law, refraining from restating the question, except in so far as a principle of law relates to stated facts. Instead, candidates should strive to answer the questions precisely.

7. Candidates need to be more familiar with definitions of terms and concepts, and should offer definitions of terms as appropriate.

Some candidates did well in essay questions. These candidates articulated the legal principles, applied relevant statutes and case law and gave an exemplary display of their analytical abilities. Mediocre and poor responses were due largely to candidates' not addressing the question or being far too general or vague. Many candidates had great difficulty with responses that required evaluation or assessment. It would seem that candidates would benefit from more practice in answering essay items and past examination questions under examination conditions in order for them to develop their legal writing skills in an examination. It should follow that when their essay skills have been developed, short-answer items should pose little challenge to them.

Even though some concepts are tested repeatedly, many candidates often fail to earn good grades for their responses. There can be no substitute for serious study and much time must be spent in application and synthesis in order to produce clear, concise and analytical responses, well supported by case, statutes or other relevant sources and authorities. A few candidates used neon-coloured highlighters to underscore particular areas of their scripts; this practice should be reserved for study activities and should not be part of examination submissions.

DETAILED COMMENTS

UNIT 1

Paper 01

Module 1: Caribbean Legal Systems

Question 1

Candidates were tested on "natural law" and "positive law" and were expected to demonstrate an understanding of each area of law, clearly defining each one and highlighting their main features.

A number of candidates fulfilled the required expectations in a general way, but most were unable to identify specific examples, especially in the context of their own jurisdictions. There were some good answers in which candidates contextualised their responses, thereby indicating that they understood the relation between positive law and natural law as they relate to Commonwealth Caribbean jurisprudence.

Question 2

This question tested candidates on two areas of Alternative Disputes Resolution (ADR) namely (i) arbitration and (ii) mediation. This question was fairly well done in relation to Part (ii), mediation, but answers to Part (i), arbitration, were generally weak.

Question 3

The majority of candidates appeared not to have been very familiar with this most significant, and elementary concept, the classification of law. Hence, they failed to identify the main ways in which law may be classified, namely:

(1) Subject matter (for example, family, tort, criminal)

(2) Function (for example, substantive, procedural, civil, criminal, international)

(3) Concept (for example, private, public, constitutional)

(4) Source (for example, common law, statute)

Candidates were also expected to indicate that classification facilitates research, as one is able to do one's research much more easily, once the particular classification has been determined.

In Part (b) of the question, candidates were expected to show how the aggrieved person, the complainant, could seek legal redress under both public law (criminal) and private law (contract). Consequently, candidates were expected to identify the remedies available (and some did) such as, Damages, Injunction and Costs.

Module 2: Principles of Public Law

Question 4

This question was poorly done with the vast majority of candidates failing to earn more than four of the available ten marks. The first part of the question, which required candidates to state two prerogative orders, accounted for most of the incorrect responses or no response; only a small number of the candidates scored eight to ten marks for this part of the question. Many of the incorrect responses discussed the Governor General's prerogative of mercy and it was evident that although candidates demonstrated knowledge of judicial review and remedies/orders of the court, they were generally unaware of their meanings. Also, candidates were unaware of which of these are prerogative orders.

Question 5

Candidates demonstrated a general weakness in the application of relevant cases to substantiate their answers in this and other public law questions. Whereas the ill-prepared candidates offered no decided cases to support their answers, others offered Pratt v. Morgan or Hinds as a panacea for every given fact situation. However, it was evident that most candidates were familiar with these cases, even if the references to them were sometimes misdirected.

Candidates demonstrated an acceptable level of knowledge with respect to the concept of the Rule of Law and the power of the courts in protecting citizens' constitutional rights.

Generally speaking, candidates applied relevant cases as required in the second part of the question. Of those candidates who failed to earn at least five marks, the majority did not attempt the first part of the question which required an explanation of the Rule of Law.

Question 6

A significant observation was that a fairly large number of candidates writing the examination did not offer a response to this entire question. The performance among those who attempted the question was below the required standard.

Most of the candidates discussed natural law rather than natural justice, seeming to have confused the two terms.

Module 3: Criminal Law

Question 7

This question tested candidates on some defences which are available in criminal law, specifically, Necessity, Diminished Responsibility, Duress and Mistake.

Most candidates simply either did not have the required knowledge of, or did not understand, the defences.

There were a few good answers but the responses were generally poor. A vast majority of the candidates had absolutely no idea or knowledge of how mistake operates as a defence in the criminal law, or even that it was an acceptable and recognized defence. Consequently, most answers were unforensic in approach, being general comments or mistaken beliefs, displaying little or no awareness of a well-developed defence, with cases in support such as:

- R v Richardson Orwin U (consent to horseplay)
- R v Kimber (mistake negativing mens rea)
- R v Lee (mistake of law)
- R v M'Naghten (defect of reason)

Question 8

This question tested candidates on the law of burglary. The candidates had a fair knowledge of the topic. The majority of them were able to define burglary but unfortunately many of them did not identify the appropriate legislation.

For Part (b) of the question, many candidates were able to properly analyse the facts and determine Jamie's liability. However, they were not able to identify and utilise effectively any cases in the response and this negatively impacted on the quality of their response.

Question 9

The candidates' understanding of the law regarding inchoate offences was tested. Many candidates presented good responses to the question.

They provided complete definitions for an inchoate offence, identified appropriate examples and properly applied the legal principles to give appropriate responses to Part (b) of the question.

UNIT 1

Paper 02

Question 1

This question was divided into Parts (a), (b) and (c). Part (a) was based on Module 1, Caribbean Legal systems. Candidates were expected to show the relationship between common law and equity by pointing out their similarities and differences and the effect of the fusion.

Approximately ninety per cent of the candidates understood the features of both common law and equity. However, a few of them failed to point out the relationship which exists between these two sources of law. In cases where the candidates mentioned a relationship between common law and equity, they did not elaborate on the point mentioned. The general response to the issue of the relationship between common law and equity was that “common law and equity work hand in hand to ensure justice and fairness in the society”.

Of note too was that some candidates used recent examples and cases to illustrate the differences between common law and equity such as the cases of Stockert v Geddes; Errington v Errington and Dudley v Dudley.

On the other hand, some candidates had misconceptions about what was required as a response to this section of the question. For example, they wrote about the common law in relation to common law marriages; that the common law gave harsher sentences and lessened the penalties; and equity means equality and fundamental rights. Few candidates stated that common law was based on precedent while equity was not based on precedent. There were a few who mentioned equitable maxims.

The result then was that most candidates received a score of seven or eight marks out of a maximum of ten marks. About two per cent of the candidates received perfect scores for this section of the question.

Part (b) was based on Module 2, Public Law. This question required candidates to identify the source of power of the High Court, the section of the named Constitution which gives right of redress to the average citizen whose fundamental rights have been, are being or are about to be infringed and to cite relevant cases or illustrations. For this part of the question, approximately five per cent of the candidates were able to cite the Constitution as the source of power for the High Court in a named Commonwealth Caribbean jurisdiction as well as quote the section of various Constitutions that contained the fundamental rights. Additionally a few of the candidates were able to answer the second part of the question which required them to address the issue of separation of powers and a substantial number of them referred to the case of Hinds v R or any other relevant case.

A large number of candidates, however, failed to answer this part of the question.

Noticeable, too, was that most candidates did not follow the instructions to respond to this question and wrote the response as a single essay. Furthermore, in cases where some candidates answered the question in parts they confused the cases that applied for Part (i) with those for Part (ii).

Some candidates who responded to this question stated that judicial review is a source of law. Other sources mentioned in the responses were the Governor General, the Chief Justice, the Privy Council and the Supreme Court.

Another misconception seen in the responses was that a few candidates wrote about the rules of statutory interpretation.

It should be noted that very few candidates indicated the inherent jurisdiction of the High Court in their responses.

Generally, candidates seemed not to have understood what was required in the responses to the question. The scores in this section ranged from very low to just acceptable, in the majority of cases.

Part (c) was based on Module 3, Criminal Law. Candidates were expected to demonstrate an understanding of each type of manslaughter and its legal effect, as evidenced in decided cases. Approximately ninety-five per cent of the candidates who attempted this question were able to give adequate responses. For example, they were able to differentiate between voluntary and involuntary manslaughter. Almost all the candidates knew that involuntary manslaughter does not require *mens rea*. They were also able to cite relevant cases such as R v Duffus, R v Church, R v Adomako or use other relevant examples or illustrations to support the distinctions.

In some cases, candidates confused the definitions for voluntary and involuntary manslaughter.

This was the best area of performance for the question.

Section B

Module 1: Caribbean Legal Systems

Question 2

This question required candidates to show how the principle of '*stare decisis'* is intrinsic to an understanding of the doctrine of judicial precedent. In the better papers, candidates were able to do so, relying on cases to support their answers, but there were not enough of such answers. Too many candidates were unable to achieve the required standard, with some seeming not to have understood the seminal concepts of 'judicial precedent' and '*stare decisis'*.

Question 3

Many candidates were unable to identify the rules of interpretation and so were unable to answer the question well. Having set out on a weak footing, they were unable to assess the various presumptions which are applicable and how judges use these as aids to the interpretation of statutes. There were some good and excellent answers, demonstrating that with preparation, candidates could succeed even in a question such as this which required application and analysis.

Question 4

It was surprising that so few candidates were able to answer this question well as the role of the Ombudsman is so critical as a public office. Some candidates demonstrated excellent knowledge of the role of the Ombudsman and critically assessed the effectiveness of the office in affording members of the public an easily accessible fountain of justice.

It was in the area of critical analysis of the effectiveness of the office that most candidates failed to do well.

Module 2: Public Law

Question 5

The responses showed that although candidates had knowledge of the arms of Government, there was some confusion with the Rule of Law and Separation of Powers. A large number of candidates simply stated the duties of two or three of the arms of government rather than answering the question posed in Part (b). There was inadequate discussion on the concept of the Rule of Law, particularly with respect to the historical perspective and views of eminent theorists. Most candidates who addressed the subject of the Rule of Law dealt with the concepts of no one being above the law and the exercise of state power according to law. The use of decided cases was generally inadequate.

Question 6

This question was poorly done, with many candidates earning under five (twenty per cent of twenty-five marks). Generally, there was a weakness in the candidate's application of their knowledge of public law remedies to given fact situations.

Question 7

As in the previous question, candidates were expected to examine what is proper on the part of public officers in the performance of their duties. They would thus be required to discuss judicial review of administrative action, how and when available, and to choose from among any of the wide body of cases which are available, in support of their answers. Had Phillip been deprived of a fair hearing? Are there circumstances when the Courts will strike down a statutory provision on the ground that it is unconstitutional?

(See Hinds v R). Here candidates could have considered the remedies of injunction and declaration.

Module 3: Criminal Law

Question 8

This question tested candidates' understanding of the defence of provocation. They were expected to explain the circumstances in which provocation can be used as a defence using applicable cases to aid the analysis.

A large number of the candidates attempted this question and most had a general understanding of what the defence means and the circumstances in which it can be successfully raised as a defence.

Many of the candidates were able to identify the seminal case of R v Duffus which defines provocation.

Only a few candidates were able to give a complete definition, many were able to give at least a partial definition. There were some candidates who gave a literal, 'street' definition of the word, instead of the legal application as a defence.

Many candidates were able to identify circumstances in which provocation can be raised as a defence as well as applicable cases. Some candidates were even able to recall the facts in the cases and used the information admirably.

However, the application of legal principles and analysis of the cases were particularly weak. Hence, many candidates could only earn just satisfactory or low marks.

Question 9

This question tested candidates' understanding of the theories of sentencing especially as it relates to the treatment of young offenders. Many candidates were able to identify methods of sentencing and they had a clear understanding of what applies in the case of young offenders. However, many of them did not really know the theories of sentencing and consequently were not able to analyse them, having been able to make only general comments, most of which were sociological and bore little or no relationship to the legal context and analysis as was required.

The question was not a popular one and was attempted by only a small number of candidates.

Question 10

This question tested candidates' understanding of the law regarding assault and rape, including 'marital rape'. Approximately seventy per cent of the candidates attempted this question.

The majority of candidates produced good responses to Part (a) of the question. They were able to fully or partially define rape and assault, use applicable cases to analyse the facts and properly advise the accused of his liability.

There were too many candidates who did not know the law applicable to 'marital rape'. Some were able to identify the case of R v R and even to state some of the facts but they did not extrapolate the legal principles. A few candidates properly recognised that in some jurisdictions there are statutory provisions which provide that a man can indeed rape his wife. However, they were not able to identify any such jurisdiction. Most candidates, therefore, simply gave their personal views on the issue.

UNIT 2

Paper 01

Module 1: Tort

Question 1

There were a few good responses to this question, but the majority of candidates performed less than adequately.

Candidates who chose to explain the 'thin skull' and the 'but for' test exhibited the most difficulties in producing adequate answers when compared with the other concepts.

Few candidates wrote on the '*scienter action'*. Generally, a limited knowledge of the law relating to animals was demonstrated.

A reasonable number of candidates failed to use relevant cases and when cases were used they were sometimes irrelevant.

Question 2

This question was generally poorly done. Most candidates failed to identify and explain the tests used for distinguishing an independent contractor from an employee.

Candidates failed to identify the area of vicarious liability and often demonstrated limited analytical skills.

Question 3

A reasonable number of candidates did well on this question yet some showed no knowledge of concept of trespass to the person and confused it with trespass to property.

Those candidates who distinguished between tortious liability and criminal liability performed better than those who distinguished between tortious liability and contractual liability.

Most candidates understood the difference between assault and battery and understood false imprisonment, citing case law in a number of instances.

Module 2: Contract

Question 4

Candidates generally were at a loss as to the import of the question and construed it as requiring either a discussion of privity of contract, capacity, or the discussion of the elements for a binding contract. Mention of case law was, by and large, lacking.

With few exceptions, the discussion and appreciation of the principles in Pinnel's Case left much to be desired. Consequently, candidates mostly meandered without addressing the pertinent issues.

Question 5

While many candidates demonstrated some familiarity with illegality, several of them confused capacity and the elements needed for a binding contract, namely offer, acceptance and consideration and regarded a contract lacking these elements to be an illegal contract.

Mention of the case law was better, however, it was rare to find a candidate who mentioned the various features, which would render a contract illegal and who would cite any other case other than Pearce v Brooks.

Question 6

This question, on the whole, seemed to have been misinterpreted and comments as mentioned for Questions 4 and 5 apply equally here.

Module 3: Property

Question 7

Candidates did not perform well on this question, for the most part, leading to the conclusion that many of them were not familiar with the processes involved in the recovery of possession of property by a landlord. Many of them also did not understand the concept of 'distress' and failed to make the point that it is not applicable in all jurisdictions. Some candidates gave the term a literal interpretation, bearing no relation to law.

Question 8

This question was well answered and the majority of candidates who did well on it received high scores.

Many candidates could directly identify the two tests but others could only identify that the main issue in fixtures is whether the item is a fixture or a chattel.

Candidates did well in deciding whether items were chattels or fixtures, but many seemed to have been unsure as to how 'paintings' were to be classified.

Question 9

In Part (a), candidates were expected to distinguish between 'legal interest' and 'equitable interest'. In Part (b), they were expected to show how Sam could secure his equitable interest in the property for which he had made a down-payment. The question seemed to have been challenging for the majority of candidates, particularly with respect to the equitable interest.

UNIT 2

Paper 02

Section A

Question 1

This compulsory question tested candidates in all three modules of the Unit. Responses were generally weak. Excellent and good answers were those in which candidates dealt with each section separately, answering precisely and aptly, with appropriate use of decided cases.

Part (a) was based on Tort and required candidates to discus two defences, justification and absolute privilege.

Only a few candidates were able to explain satisfactorily how these defences affected a defendant in a claim against him/her for defamation. Good candidates were able to identify decided cases relevant to the area of law. Cases cited in respect of justification included Alexander v North Eastern Railway Co., Cookson v Harewood and Brewster v Trinidad Publishing Co. Ltd.; while for absolute privilege the principal case was Bodden v Brandon.

Some candidates confused absolute privilege with justification. Others failed to illustrate a realization that malice had no relevance to either of the defences and often mistook qualified privilege with absolute privilege.

Part (b) was based on Contract and focused on the issues of intention to create legal relations, consideration being of some 'value' or 'benefit' and sufficiency versus adequacy of consideration. Proficient candidates were able to identify succinctly the issues, apply the law to the facts of the problem and conclude appropriately.

Many candidates addressed the issue of Ken's age which bore no relevance to the point at hand as Ken was already eighteen years of age at the time of the agreement. A large number of candidates inappropriately used a case of Carlill v Carbolic Smoke Ball Co. They incorrectly identified the issue as 'offer and acceptance', instead of 'intention to create legal relations', and 'consideration'.

Generally, candidates were limited in their ability to identify cases that would address the issue of social and domestic relations and the courts' approach to transaction in those circumstances. Relevant cases included Balfour, Hamer v Sidway, Merritt v Merritt, Parker v Clark, and Snelling v John G Snelling. For consideration issues, cases on point were Chappell & Co. v Nestle, Thomas v Thomas and White v Bluett.

Part (c) focused on Property. Several candidates appeared not to understand the doctrine of waste. Some candidates confused the reference to life tenant with tenancies (that is, as relates to landlord generally), while others discussed all the waste concepts without applying this knowledge to the factual issues in the question before them. However, there were some good answers in which candidates appeared to be very knowledgeable about the different types of waste and about the duties of the life tenant.

Section B

Module1: Tort

Question 2

Some candidates exhibited difficulties in identifying the area of occupiers' liability. In most cases, the use of cases was limited.

In many instances, candidates failed to show the duty of care owed to children as likely trespassers and therefore omitted to take cognizance that Walter was ten years old.

The definition of germane words such as 'trespasser' was lacking in most answers.

In many cases, candidates did not exhibit knowledge of relevant statutory provision. Candidates even imparted their own facts into the question, thus failing to adequately answer the question asked.

Others repeated the facts given in the situation and took too much time to address irrelevant issues.

Question 3

This question was not a popular one and candidates who answered it failed to do so adequately.

Some candidates had difficulties in determining whether there was a special relationship between Rapster and Mrs. Parson.

It appeared that candidates did not know what constitutes special relationship and which persons are capable of giving advice on what issues. In addition, there was limited use of relevant cases.

Some candidates also failed to identify that the question required them to discuss liability for statements and negligent mis-statements but presented an essay on the types of misrepresentation without any practical application to the fact situation which was given.

Some candidates who used Hedley Bryne v Heller failed in some cases to explain the case fully. They did not mention the disclaimer that was crucial to that case, and its application to the facts before them.

Question 4

For Part (a), some candidates wrote about negligence in general.

There was reasonable use of the Wagon Mound case, but in some instances it was not fully explained and applied as required.

For Part (b), some candidates answered with long narratives on negligence without dealing with the applicable and essential principles. For example, a reasonable number of candidates failed to speak about the 'egg shell' principle and those who did, did so inadequately.

There was limited use of relevant cases and again, some candidates imported their own or repeated the facts, unnecessarily.

Module 2: Contract

Question 5

This question was a popular one and candidates had little difficulty in defining ‘express terms’. However, they frequently omitted references to the difference in remedies awarded for express terms as opposed to the differences in remedies for mere representations.

Responses generally lacked references to case law, but candidates were able to provide satisfactory examples to explain the meaning of ‘express terms’ and ‘mere representation’.

When asked to name two express terms and give examples of their operation [in (a) (ii)] the majority of candidates furnished excellent examples. Cases cited were appropriately used regarding the discussion of conditions and warranties. However, there was paucity in the number of responses for the section, which made any reference to ‘innonimate terms’.

Candidates’ responses to Part (b) were poor. Many candidates misinterpreted the question and discussed the elements of a contract rather than the relevant factors in determining whether an assessment during negotiation becomes a term of the contract.

These factors are “special knowledge, importance to the promise, prevention from verifying the truth and time of the assertion”. The majority of the candidates dealt with special knowledge and importance to the promise, but few candidates mentioned time of assertion and even fewer mentioned the issue of prevention from verifying the truth. In the better answers, there was generally a fair use of the case law to support answers.

Question 6

Candidates seemed to have mixed up the remedies available for each type of misrepresentation. There was a glaring lack of case law in answering questions. Candidates generally seemed to have confused mistake with misrepresentation.

Candidates were unable to incorporate all the elements of the definition, properly or at all. Most candidates were able to explain in their definition that an actionable misrepresentation is a statement of fact and occasionally some might have ventured the element of ‘inducement’.

Some candidates were able to identify the different types of misrepresentation. The marks were generally poor, although there were some good, even excellent, answers.

Question 7

Candidates who attempted this question generally produced poor answers. It is evident that many candidates failed to read the question property especially in relation to Part (c) which seemed to pose a challenge for some candidates.

The definition of frustration was often not fully accurate and complete. Candidates failed to provide a comprehensive definition. In relation to Part (b), many candidates misinterpreted this section and therefore answers were generally irrelevant and incorrect. There was a poor response in relation to the use of case law.

Module 3: Property

Question 8

Candidates appeared to understand the concept of 'joint tenancy' but generally showed a lack of understanding of 'tenancy-in-common'. Most considered joint tenancy to be a form of proprietorship but considered tenancy-in-common to be a rental situation between several persons.

For Part (b), most candidates did not understand the concept of the presumption of survivorship or *'jus accrescendi'*. As a result many failed to maximize their marks.

For the most part, candidates did not demonstrate any appreciation for the difference between the presumption of survivorship and the right of survivorship.

Question 9

This question tested candidates on the licence by estoppel. Some of them appeared to understand the concept as an equitable remedy.

There was very little case law, inclusive of the well-known High Trees case. Other cases which could have been helpful were:

- Clark v Kellarie
- Inwards v Baker
- Denson v Bush

Knowledge of the cases would have assisted candidates in answering correctly how Navin could succeed in his claim.

Question 10

This question tested candidates' knowledge of the rights of a mortgagor, arising from the equity of redemption. They would have expected to define the relevant terms and show how a mortgagor might be expected to pay the complete sum in advance of the agreed time.

Some candidates identified the main issues on which the question focused, but they were too few in comparison with the larger numbers who appeared not to understand the questions in Module 3.

Cases which could have been helpful, included:

- Kreglinger v New Patogonia Meat and Cold Storage Limited
- Noakes & Co Limited v Rice
- Bradley v Carritt

Paper 03

Internal Assessment

1. Some submissions were of good quality. Candidates were expected to conduct an independent and reasoned research. In this regard, candidates whose papers were considered to be good had to demonstrate a high level of competence in respect to the following:

2. A properly worded research topic - This area of assessment evaluates whether the candidates sought to investigate an area of law covered in the relevant unit. Very good papers demonstrated research topics with some amount of innovation. Very good research papers facilitated candidates in going even further than merely to discuss settled principles of law.

3. Presentation and formatting - were considerations also taken into account. Papers considered to be very good contained a Title, Table of Contents, Aims and Objectives, Methodology, Description, Analysis, Evaluation, Recommendations, Appendices and References as stipulated in the syllabus. Papers also had to conform to the word limit set by the syllabus and be double-spaced.

4. Research method and analysis - Papers which were considered to be very good, demonstrated an appreciation of research methods by utilising primary sources such as questionnaires and interviews and secondary sources such as textbooks, cases, statutes, newspapers reports and journals. Data gathered from primary sources were accurately presented with the aid of graphs and were discussed within the body of the report.

   In exploring the topic "Domestic Violence: Can victims be protected?" One candidate considered the law as it relates to Assault and Battery and attempted to ascertain the relationship between the crimes related to domestic violence in the candidate's own country. The candidate also approached the topic from a constitutional point of view, in particular the right to life. As was expected, the candidate examined the domestic violence. Primary research methods were also employed with results being analysed and presented in the form of statistics.

5. Referencing - Providing proper references for the information was also of fundamental importance. Good papers had accurate citations, footnotes and acknowledgement of sources of information. In some instances, it was possible to detect instances where candidates did not attribute to their sources, but made comments obviously borrowed, without, without any credit to their sources.

   They also presented accurate citation of case and made adequate references to the sources and/or legal authorities. The case law utilised was briefed accurately and principles deduced appropriately.

6. Knowledge and conceptual understanding of the law - Candidates were expected to choose from the modules in the syllabus. Accordingly, candidates were required to demonstrate knowledge and conceptual understanding of the subject matter under enquiry. In this regard, papers which were considered to be very good demonstrated a comprehensive understanding of the law related to the area being investigated. This was demonstrated through defining and describing relevant concepts, citing the relevant cases, legislation and constitutional provisions, presenting information that was relevant to the particular jurisdiction and where relevant, other jurisdiction as well. For example, one candidate discussed False Imprisonment which fell under Unit 2, Module 1: Tort. This candidate showed an in-depth understanding of the tort, including the definition of false imprisonment and giving examples of situations where the tort arises, the candidate cited several relevant cases, legislation and constitutional provisions, as well as other pertinent sources.

7. Application of the law - The very good papers demonstrated not only knowledge of the law but also application of the law to the topic/subject of inquiry. Such information was organised logically and clearly, using correct grammar. As a result, the examiners were able to follow the logical development of the argument or information.

   Several candidates wrote on topics which were both of a legal and a sociological nature but approached the report from a sociological perspective. Candidates are to guard against this approach. The very good papers were focused on the topic adopting a legal perspective in addressing this issue.

8. Analysis and interpretation - A fundamental criterion by which candidates were evaluated was their analysis and interpretation of the law. This was the area that most candidates found challenging. The candidates with very good papers were able to distinguish cases, interpret the law, identify gaps or problems presented by the law, present independent thought and insight into the subject matter and make judgments and recommendations appropriate to the issues.

CARIBBEAN EXAMINATIONS COUNCIL

REPORT ON CANDIDATES' WORK IN THE ADVANCED PROFICIENCY EXAMINATION MAY/JUNE 2010

LAW

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GENERAL COMMENTS

The revised syllabus, CXC A23/U2/09, was examined for the first time this year. The 2010 examinations for each unit consisted of two external papers, Paper 01 and Paper 02, and an internal assessment, Paper 03. Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module replacing the nine short-answer questions (three based on each module). Paper 01 contributed 30 per cent to the examination for a unit.

Paper 02 comprised six essay or problem-type questions, (two based on each module). Candidates were required to answer a total of three questions, one from each module. This format replaced the previous one in which there was a compulsory question in Section A and nine questions (three based on each module) in Section B, where candidates were required to do three, one from each module. Paper 02 contributed 50 per cent to the examination for a unit.

There were no changes in the requirements for Internal Assessments, Paper 03. Candidates were required to write a research paper of 2000–2500 words, based on any topic from any module in the Unit. Paper 03 contributed 20 per cent to the examination for a unit.

The weaknesses evident in Papers 02 and 03 were largely in the areas of analysis and application. To help students to improve their analytical skills, teachers are encouraged to use the suggested stimuli which appear in the syllabus such as debates and critiques. In this way, students will become accustomed to the language of the discipline which is intrinsic to a better application of the information they have gathered and to presenting improved answers.

Candidates are advised to manage the examination time wisely. Too often they shortchanged themselves by writing long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.

It is imperative that candidates develop a good writing style fostered by reading legal texts and writings. They must show greater care in complying with the instructions given. Candidates and teachers are reminded of the following:

1. Candidates are to ‘write on both sides of the paper and start each answer on a new page’ as instructed on the answer booklet.

2. Questions attempted are to be noted, in order of responses, on the cover page of scripts.

3. Each candidate’s number and centre number are to be recorded in the space provided on the cover page, and throughout the answer booklet, where required.

4. Where applicable or required, the jurisdiction to which a particular area of law applies must be identified. (Note, especially, those questions that require reference to ‘a named Commonwealth Caribbean state’.)

With respect to internal assessments:

1. Candidates’ names recorded on the assignments and internal assessment forms must be consistent with the names at registration.

2. Comments and marks by teachers are to be erased before internal assessments are submitted as samples.

3. Careful note must be taken of syllabus requirements to ensure compliance.

The following are repeated in the hope that they will help candidates to respond to questions appropriately:

1. Candidates must follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b).

2. Candidates must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial.

3. Candidates are encouraged to use the following format (summarized as IRAC) when answering problem-type questions.

   I - issue (identification)

   R - rule of law (refer to)

   A - application of law to facts

   C - conclusion

4. The conclusion should relate to the problem and should not be the candidate's fanciful construction bearing no relation to the facts, or simply rewriting the facts.

5. Candidates must support their responses with legal authority, namely:

   - Case Law
   - Statute
   - Legal writers

6. Candidates must deal with issues and applicable law, refraining from restating the question, except in so far as a principle of law relates to stated facts. Instead, candidates should strive to answer the questions precisely.

7. Candidates need to be more familiar with definitions of terms and concepts, and should offer definitions of terms as appropriate.

DETAILED COMMENTS

Paper 01 – Multiple Choice

Candidates were required to demonstrate a broad understanding of the subject as they were tested on wider areas of the syllabus than had been the case previously. The performance was encouraging with more than 50 per cent of candidates achieving the required standard.

For Unit 1, the mean score was 55.7 per cent; the standard deviation was 11.6. The scores obtained on this paper ranged from 19 to 84 from a maximum of 90 marks.

For Unit 2, the mean score was 52.5 per cent, the standard deviation was 11.5.

There were some glaring weaknesses in areas of elementary principles of law where candidates were obviously unaware of the following:

- ‘Transferred malice’ does not apply to things but to persons
- Where two persons own property as joint tenants and both die at the same time, the older is presumed to have died first, so the property passes to the estate of the younger person.
- Strict liability crimes are based in statute.
- The distinction between positive law and natural law.
- When an employer is vicariously liable for the acts of his employees.

UNIT 1

Paper 02 – Essay Questions

While this report is not intended to comprise ‘model answers’, outlines of some questions have been included in the hope that they will be of some assistance in the preparation for future examinations.

Module 1: Caribbean Legal Systems

Question 1

Candidates were required to (a) describe the court structure in a named Commonwealth Caribbean country, showing how the structure facilitated the doctrine of judicial precedent and (b) discuss two advantages and two disadvantages of judicial precedent.

Most candidates could define judicial precedent satisfactorily. Although they showed knowledge of the court system, a number of them did not have the hierarchy correctly represented. Candidates did not sufficiently show that they understood the concept of judicial precedent: sometimes showing knowledge, but lacking coherence. It was evident that there was a good knowledge of the area, but the concepts of the topic, and its various interpretations were often confused. There needs to be greater clarity of the terms and principles, at the preparation stage.

Candidates ignored instructions to indicate a named Commonwealth Caribbean country in their response to Question 1. Instead, they amalgamated information in the hierarchy of the court system in various territories, with disastrous results. Some of the courts which the candidates identified did not exist in the territories for which they were mentioned.

An outline of an expected response is presented below.

Outline of Question 1

(a) Judicial precedent is a source of law. It refers to the process by which decisions handed down by the higher courts are followed by the lower courts in the same jurisdiction and on similar matters. The decisions may either be binding or persuasive. Binding decisions are decisions which must be followed by courts at the same level or at a lower division. Persuasive decisions are followed by courts which operate in a similar system (common law), for example, a case from Australia may be persuasive to a court in the Commonwealth Caribbean.

There exists a hierarchy of the courts in all jurisdictions. In Jamaica, for example, the highest court is the Judicial Committee of the Privy Council. Below that is the Court of Appeal, then there is a Supreme Court which is higher than the Resident Magistrate's Court. At the bottom of the court structure in Jamaica is the Petty Sessions Court, which is usually presided over by Justices of the Peace.

The Privy Council has been replaced by the Caribbean Court of Justice (CCJ) in some jurisdictions. Presently, not all Caribbean countries have the CCJ as the final appellate court. The Privy Council binds all lower courts and itself. The Court of Appeal binds both itself and the lower courts and is also bound by decisions of the Privy Council. In the case of Jamaica, for example, the Supreme Court is bound by the decisions of the Privy Council, Court of Appeal and itself, binding all lower courts. The Resident Magistrate's Court does not bind any other courts, however, its decisions are binding on itself. The situation would be different in those jurisdictions where the CCJ is the highest Court of Appeal, and not the Judicial Committee of the Privy Council.

The application of judicial precedent to the decision-making process in any relevant jurisdiction is facilitated by the court structure outlined above. One element of how the hierarchy operates and its effectiveness is through the principle of *ratio decidendi*. This is a fundamental aspect of the doctrine of judicial precedents which means that a principal rule of law is being proposed. *Ratio decidendi* means the decided rationale, and constitutes the core and most important element of a decision made by a previous tribunal. With the application of binding precedent, an element like the *ratio decidendi* can apply almost automatically from a higher to a lower court. By extension, the principle of *obiter dictum*, translated literally to mean statements said 'by the way', facilitates the use of other aspects of a judgment in persuading a court when unable to bind it. This provides us with the notion of a persuasive precedent which would exert less influence over a decision being made by a tribunal. These notions facilitate the principle of *stare decisis*, translated to mean 'let the decision stand', which ensures greater stability in the development of law in the Commonwealth Caribbean by allowing the doctrine of judicial precedent to be demonstrated in either its binding or persuasive application.

(b) Two advantages of judicial precedents are certainty and time saving.
Two disadvantages are fixity/rigidity and unconstitutionality.

By way of advantages, the doctrine of judicial precedents allows for certainty in the decision making process. The essence of the common law is found in its ability to assure contesting parties of the state of the law. This means that persons are aware of their rights and obligations under the law, as well as the results of their actions or omissions. There need be no uncertainty about the status of the law which remains essentially 'common' to the jurisdictions. It also ensures that a standard is established and maintained as acceptable, and is not open to multiple interpretations.

The time saving aspect of judicial precedence is most obvious when we examine how the judges arrive at their decisions. They look at the decisions of higher courts in matters similar to the ones over which they are presiding and are able to spend less time recording the law, investigating the issues and constructing their judgments, as they would already have had the benefit of existing judgments.

Unfortunately, one major disadvantage of judicial precedent is the fixed nature of decisions made. Binding precedents are more pronounced as disadvantageous, as a tribunal will find itself unable to deviate from a binding decision where it is unable to distinguish between the issues on any important points of law or fact. This is highlighted where there is a similar area of law decided upon by a superior court,

particularly where the degree of difference between the two is less pronounced. This can create a great degree of rigidity and may also stifle the development of the law especially where there are new phenomena, new statutes or new technologies to consider.

Judicial precedents may also lead to some degree of unconstitutionality. Often, following decided cases slavishly may result in breaches of constitutional rights. For example, dealing with the death penalty in the *Pratt and Morgan* case, it was observed by the Judicial Committee of the Privy Council that following the previously decided cases on the death penalty would have amounted to a breach of the appellants' constitutional rights. Accordingly, there would be need to depart from the judicial precedent.

Question 2

This question focused on equity. Candidates demonstrated that they had some knowledge of the general development of equity. With more in-depth knowledge of the area, performance would have been better. There was an acceptable understanding of the history and development of the subject but its application was seriously misconstrued. There was evidently a need for greater detailed information and a better understanding of law to answer the question. Candidates often ignored the parameters set by the wording of the question and took the opportunity to write dissertations on all they could remember about equity. Those candidates who scored higher marks for this question were those who noted the area where the information would be relevant, and observed the specific requirements for each section. A number of candidates referred to the case of *Stockhert* v *Geddes* and it was not a relevant case in support of the point they attempted to advance on the application of equity today. Candidates too often spent much time dealing with the 'common law' and not 'equity' as was required of them. There were, however, some excellent answers in which candidates applied equitable maxims and used relevant cases and examples in support of the position which they advanced.

Module 2: Principles of Public Law

Question 3

This question on the Rule of Law required candidates to present an incisive and analytical response to the statement attributed to Professor Fiadjoe. While there were some excellent answers in which candidates received full marks, or close to full marks, there were far too many instances where the paucity of information submitted by candidates and their inability to critically assess the statement resulted in weak answers.

As required, some candidates identified the Diceyan concept of the Rule of Law as fundamental to their own assessment and presentation. They presented a historical overview, indicating how the accountability of the three arms, executive, legislative and judicial, must interrelate, with checks and balances clearly in place, in order for the Rule of Law to be effective. These candidates were able to show, as required, that the Rule of Law and the Separation of Powers doctrine are interrelated, and that this philosophy is enshrined in the Constitutions of all Commonwealth Caribbean states.

Candidates were also expected to show that *ultra vires* actions of those vested with state power are directly opposite to the Rule of Law. Further, not only do the Constitutions so provide, but that international bodies such as the United Nations, of which Commonwealth Caribbean states are members, either directly, as in the case of independent states, or through the United Kingdom as in the case of non-independent states, subscribe to the principle. Some candidates also referred to the fact that in the case of non-independent states, European Law was also a factor.

From the available cases to which candidates were expected to make reference, they could have arrived at their own conclusions as to the sustainability of the Rule of Law in the Commonwealth Caribbean.

Some of these cases include:

Sugar Producers Ltd. v *Phillips*
Carr v *AG*
Pratt and Morgan v *AG*
Baron Card v *AG*
Hinds v *R*
Emanuel v *AG*
Astaphan v *Comptroller of Customs*

Candidates are to be reminded that merely citing cases is not sufficient; the application of the case to the issue being discussed must be clearly demonstrated. An essay-type question, such as this, requires candidates to use cases and other relevant sources aptly in order to enhance the quality of their responses.

<u>Question 4</u>

This question required candidates to show how the doctrine of *ultra vires* operates in ensuring that public bodies follow proper procedures and apply only relevant considerations.

The majority of candidates who attempted this question had some knowledge of substantive and procedural *ultra vires* and were able to define the terms and to distinguish between them. Where most of them were weak was on the application of the principle of *ultra vires* as evident in decided cases. This proved to be a severe disadvantage for most candidates who failed to show that it is by virtue of judicial review that actions which are deemed *ultra vires* will be nullified.

There were some excellent answers, albeit a small minority, in which candidates approached the question in a mature and authoritative manner, citing and discussing cases and making reference to the importance of independence of the judiciary in performing its functions.

Among the cases which were referred to by some candidates in illustrating their points were:

CCSU v *Minister of the Civil Service*
AG of Antigua & Barbuda v *James*
AG of Antigua & Barbuda v *Coconut Marketing Board*
Ali v *Elections and Boundaries Commission*
Singh v *Public Service Commission et al*

Module 3: Principles of Criminal Law

<u>Question 5</u>

This question required that candidates demonstrate a good understanding of strict liability offences. They were expected to highlight that this area of the law evolved from a stricter approach to a more modern application of the principle as seen in decisions balancing public policy and criminality. A requirement too was that cases such as *Cundy* v *LeCocg, Alphacell* v *Woodward, B (a minor)* v *DPP* and *Sweet* v *Parsley* were to be highlighted in candidates' responses.

The majority of candidates failed to recognize that strict liability offences are statutory offences which do not require the *mens rea* in order to be constituted. They misconstrued strict liability offences as the more grave offences such as rape and murder.

Candidates who fulfilled the necessary requirements showed how cases such *as Sweet* v *Parsley, Alphacell* v *Woodward* illustrate the operation of strict liability offences as incurring liability without the intention or fault element. These candidates clearly defined the offence of strict liability. Additionally, they pointed out some of the offences such as pollution, spirit licence violations or violation of road traffic acts as examples involving strict liability, the outcomes of which stand towards some flexibility, even a somewhat liberal approach by the courts.

The vast majority of candidates failed to show an evolution of strict liability offences from a more traditional approach, being one of absolute liability in the favour of public interest to a standpoint of exercising discretion as to the requirement for *mens rea*. They failed to appreciate that when Parliament is silent on the point and when words such as 'knowingly', 'willfully' and 'permitting' are used, the courts would read into the statute the requirement for *mens rea*. Candidates could also have shown how cases of indecency with children and abuse of drugs, have expanded the law in this area.

Question 6

Part (a) of this question required that candidates define 'insane automatism' as well as refer to case law such as *Bratty* v *AG for Northern Ireland* and *R* v *Quick and Paddison.*

Candidates who scored highly on this part of the question were able to recognize the close relationship between insane automatism and insanity. Noticeably too, they were able to define insane automatism as being uncontrollable behaviour caused by a disease of the mind. Included in their responses were cases such as *Bratty* v *AG for Northern Ireland* and *R* v *Kemp.*

However, some candidates failed to recognize and differentiate between insane automatism and non-insane automatism, sometimes referring to insane automatism as being caused by an external factor. These candidates also failed to highlight the distinction between the two defences that insanity negatives the *mens rea* and automatism negatives the *actus reus*.

A number of candidates discussed intoxication as non-insane or self-induced automatism. Some candidates failed to mention leading cases but applied appropriate cases such as *Hill* v *Baxter* to illustrate insane automatism.

Part (b) required candidates to identify the issues in the problem, apply the law to the facts, as well as use decided cases to support their answers. Approximately 20 per cent of the candidates were able to recognize the facts scenario as close to those of *Hill* v *Baxter* and used this as an authority for the argument that Rory's behaviour amounted to automatism. These candidates were also able to recognize the impact of external forces on Rory's liability as negativing both the *mens rea* and *actus reus* as the *actus reus* was involuntary.

Therefore, due to the fact that the elements of criminal liability were absent, these candidates came to the correct conclusion that Rory may not be held liable.

However, the vast majority of candidates did not recognize 'automatism' as a complete defence which totally absolves criminal liability and instead stated it to be a partial defence which reduces murder to manslaughter.

A large number of candidates failed to recognize the facts presented as being close to those of *Hill* v *Baxter* and, as such, failed to cite the case and use it as authority for the arguments presented and the advice to be given. These candidates wrote long discussions on murder and manslaughter and whether or not provocation, recklessness or negligence would absolve Rory of a murder charge. The murder and manslaughter cases such as *Hyam* v *DPP* and *R* v *Maloney* were discussed, but were of no assistance as such discussions were off the mark.

UNIT 2

Paper 02 – Essay Questions

Module 1: Law of Tort

Question 1

Generally, the majority of candidates who attempted the question did fairly well with several of them attaining 20 or more marks.

However, as for the other problem-type questions, most candidates were unable to adequately answer the question using the FILA (facts, issues, law, application) or IRAC (issues, rules, application and conclusion/advice) technique. With that in mind, the common weaknesses identified in the responses are as follows:

1. While some candidates could briefly indicate the difference between private and public law, the majority were unable to identify the major characteristics that distinguished both nuisances. For example, many candidates failed to mention that public nuisance is a crime which is actionable by the Attorney General.

2. Some candidates confused the elements of negligence with nuisance. For example, in their responses, they wrote extensively on the elements of negligence including the reasonable man, duty of care, foreseeability, and the neighbour principle. Some also used the *Donoghue* v *Stevenson* case as an example of public nuisance.

Candidates displayed a good knowledge of remedies, frequently citing damages, abatement and injunction.

Question 2

In Part (a), most candidates failed to address the central issue of malicious prosecution. Their focus was shifted to other elements of trespass to person, such as assault, battery and false imprisonment. Also, most candidates dealt extensively with defamation.

Only some of the elements of malicious prosecution were addressed in this question. For example, in most of the responses, no mention was made of the point that the plaintiff or claimant must show that the defendant instituted the prosecution against him and the prosecution terminated in his favour.

Most candidates failed to note the link between Parts (a) and (b). They discussed the malicious prosecution element of the question, focusing only on false imprisonment. This, in the examiners' opinion, shows a lack of understanding of both concepts by candidates.

In Part (b), candidates failed to address whether proper procedures were followed in detaining Kevin. Further, there were weak responses on the point regarding whether the arrest was lawful in relation to the facts.

Many candidates addressed the possible remedies and defences available to Donman and the security guard, such as lawful arrest, the right to be searched by the security guard and arrest through an agent.

An outline of an expected response is presented below.

Outline of Part (a) Trespass to person – re: malicious prosecution

Malicious prosecution is committed where the defendant maliciously and without reasonable and probable cause, initiates against the plaintiff, a criminal prosecution which terminates in the plaintiff's favour and which results in damage to the plaintiff's reputation, person or property.

1. Actions for malicious prosecution are often combined with actions for false imprisonment.

2. Unlike malicious prosecution where damage must be proved, false imprisonment is actionable per se, that is, without proof of damage.

3. In malicious prosecution the onus is on the plaintiff to show that the prosecution is unjustified, whereas in false imprisonment the defendant has to prove that the false imprisonment is justified.

4. Requirements for a successful action for malicious prosecution are as follows:

   (a) The defendant must have instituted the prosecution against him.

   (b) The prosecution terminated in his favour.

   (c) The prosecutor had no reasonable and probable cause for having prosecuted him.

   (d) The defendant's motive was purely malicious.

   (e) The plaintiff suffered damage to his reputation, person or property.

Cases

Jhaman v *Anroop*
Rowe v *Port of Spain City Council*
Tewari v *Singh*
Martin v *Watson*

In Part (b), Kevin could succeed in a claim against Donman and the policeman for malicious prosecution and false imprisonment. Kevin in his claim for false imprisonment needs to prove that he suffered loss of his liberty; that there was injury to his feelings, that is, the indignity, disgrace, humiliation and mental suffering arising from the detention; that there was physical injury, illness or discomfort resulting from his detention, injuries to reputation and any further pecuniary loss which is not remote and a consequence of the imprisonment.

<u>*Cases*</u>

Quashie v *AG*
Walter v *Allfools*
Robinson v *AG*
Jangoo v *Gomez*

<u>Likely outcome</u>

The duty of the police when they arrest without warrant is to be quick to see the possibility of the crime but equally they ought to be anxious to avoid mistaking the innocent for the guilty. In this case, the policeman made no inquiry of anyone but acted with great haste and without knowledge of the facts. He made up his mind to arrest and prosecute Kevin and is therefore liable to a claim for false imprisonment. With regard to the claim for malicious prosecution, all the elements for the offence were present in the scenario. Kevin can establish that he was prosecuted for theft alleged to have been committed by him, and that the charges were dismissed by the magistrate and was determined in his favour. Thus, when the police and Donman brought prosecution against Kevin, they had no reasonable or probable cause for doing so, and are therefore liable for the offences of malicious prosecution and false imprisonment.

Module 2: Law of Contract

The answers outlined below are provided for guidance.

<u>Question 3</u>

In Part (a), the focus was on the termination of an offer. An offer may be terminated in the following situations:

1. Revocation: This is where the offeror withdraws from the offer. It must be done before acceptance by the offeree. In *Byme* v *Van Tienhoven*, on 1 October, D in Cardiff posted a letter to P in New York offering to sell a tin plate. On 8 October, D wrote revoking the offer. On 11 October, P received D's offer and telegraphed their acceptance. On 15 October, P confirmed their acceptance by letter. On 20 October, D's letter of revocation reached P who had by this time entered into a contract to resell the tin plate. Held: revocation was not effective until it was received, so a contract came into being on 11 October.

   Revocation can be effectively communicated by a third party: *Dickenson* v *Dodds*.

2. Lapse of time: An offeror may set a time for acceptance. Once this time has passed the offer lapses. In cases in which no time period is stipulated for the offer, an offeree cannot make an offeror wait forever. The offeror is entitled to assume that acceptance will be made within a reasonable time or not at all. A reasonable time period will be dependent upon the circumstance of the case. In *Ramsgate Victoria Hotel* v *Montefiore,* D offered by letter dated 8 June 1864 to take shares in a company. No reply was made by the company but on 23 November 1864 they allotted shares to D and demanded payment of the balances due on them. D refused to take the shares and the court held that the refusal was justified. His offer had lapsed through the company's delay in notifying their acceptance.

3. On failure of a condition precedent, that is, something which must happen if the contract is to be effective — *Financings* v *Stimson* — an offer to take a car on hire purchase lapsed when the car was involved in an accident. It was held to be a condition precedent of the contract that the car should be in a good condition.

4. Counter offer: This acts as a rejection. If an offeree rejects an offer, it is at an end. In *Hyde v Wrench,* D offered to sell his farm for £1,000. P's agent made an offer of £950 and asked for a few days to think about it. D then wrote saying he would not accept the offer of 950 pounds. P then wrote purporting to accept the offer of £1,000. D did not consider himself bound to sell and P sued for specific performances. Held: P could not enforce this acceptance because his counter-offer of £950 was an implied rejection of the original offer to sell at £1,000 and the original offer was therefore no longer in existence.

5. Death: If the offeror dies, the offer may lapse. A party cannot accept an offer once notified of the death of the offeror but that in circumstances, the offer could be accepted in ignorance of death. The death of an offeree probably terminates the offer in that the offeree's personal representative could not purport to accept the offer.

   An acceptance by an offeree will make a valid contract provided that:

   (i) She or he did not know of the death.
   (ii) The contract does not involve personal services.

Part (b) required a discussion on offer and acceptance. An offer is an expression of willingness to contract on certain terms. It must be made with the intention that will become binding upon acceptance. It must be distinguished from an invitation to treat which is a stage in negotiation and cannot be accepted. An acceptance must be an agreement to each of the terms of the offer. See cases: *Stoner* v *Manchester City Council* and *Gibson* v *Manchester City Council*.

In determining whether Evan is entitled to the reward, the following issues arise:

1. What type of offer was made? It is possible for an advertisement to contain an offer, if it is an offer to the world at large. This is possible if the contract is unilateral requiring the other party to do something which amounts to both acceptance and performances of their part of contract. As in the case of *Carlill* v *Carbolic Smokeball Co*, The Court of Appeal decided that there was a binding contract. The advertisement was an offer to the world at large and P had accepted by using the smokeball.

To be effective an offer must be communicated, *R* v *Clarke*, **s**ince the offer must be present in the mind at the time of acceptance.

1. Was there was a valid revocation by Donna?
   Definition of revocation is required. Publication of revocation must have the same degree of circulation as an offer.

   If the court decides that the revocation was sufficient, Evan is not entitled, if not the opposite applies. It is important to note that because there is no legal commitment until a contract has been formed, either party may change minds and withdraw from negotiations. *Routledge* v *Grant*

2. When was Evan's acceptance by e-mail valid?

   Where an acceptance is instantaneous, actual communication is required and the postal rule does not apply. A contract comes into being at the moment acceptance of an offer is communicated to the offeree in *Entores* v *Miles Far Eastern Corporation.*

   An acceptance sent by telefax from Holland to England was held to be effective upon receipt, so that the contract was governed by English law, as the contract was made in England.

Question 4

Part (a) required a discussion on the incorporation of exclusion clauses into contracts. An exclusion clause may be defined as a clause inserted into a contract to exclude or limit liability of one of the parties for certain types of breach of contract. For an exclusion clause to be relied upon, it must be incorporated into the contract by signature, notice or course of dealing.

With reference to signed documents, once a party has signed the contract that party is bound by his signature even if he has not read or understood the contract once there is no misrepresentation as seen in *L'Estrange* v *Graucob*. In this case, a woman bought a cigarette machine and signed a contract containing an exclusion clause without reading it. It was held that she was bound by her signature.

With regard to unsigned documents such as tickets, reasonable notice must be given for the exclusion clause to have been incorporated. Notice of the clause must have been given before or at the time the contract was made. Therefore, if the notice is introduced later it will not be incorporated into a contract as illustrated in *Olley* v *Marlborugh Court Hotel.* In this case, the contract for the use of the hotel room was made at the reception desk but the clauses excluding the loss of luggage was displayed in the hotel. The court found that the use of the exclusion clause was not incorporated because it was introduced too late.

The third way in which an exclusion clause can be incorporated into a contract is by course of dealing. This course of dealing must be regular for the clause to be relied upon as seen in *Spurling* v *Bradshaw*. In this case, the defendant received the document acknowledging the receipt of the barrels of oranges and on its face it referred to the exemption clauses printed on the back. He argued that the notice was sent too late. However, it was held that he was bound by the clauses since similar documents were sent during previous dealings.

For an exclusion clause to be relied upon, it must be incorporated by signature, notice or course of dealing.

Part (b) required an evaluation of the facts considered by the courts in determining whether or not an exclusion clause covers the breach which has occurred. The factors considered by the courts are the rules of construction such as the *contra proferentem* rule, main purpose rule and doctrine of fundamental breach.

With reference to the *contra proferentem* rule, the courts have been strict with this and ambiguity in the exclusion clause is interpreted against the party that is trying to rely on the clause as seen in *Houghton* v *Trafalgar Insurance.* In this case, a reference in an insurance contract to excess loads did not apply where a car was carrying more passengers than the number which it had been constructed to carry.

Pertaining to the main purpose rule, if the exclusion clause is repugnant to the main purpose of the contract it will not be interpreted to cover the breach which has occurred as seen in *Evans* v *Andrea Merzario*. In this case, there was an oral promise made by the defendants that they would continue to stow the goods of the plaintiffs below deck. On one occasion, they did not do this and sought to rely on an exclusion clause contained in the standard conditions of the forwarding trade. It was held that the oral promise overrode the exclusion clause since the clause was repugnant to the main purpose of the contract.

With reference to the doctrine of fundamental breach, the courts used to hold that an exclusion clause was not effective against fundamental breach of contract. This included a breach related to an obligation central to the contract and where consequences of breach were exceptionally serious. This approach was reviewed in *Photo Production Ltd.*v *Securicor Transport Ltd.* In this case, the plaintiffs who owned a factory engaged the defendants to provide security services and one of the defendant's guards started a fire on the premises which destroyed the entire factory. However, the plaintiffs had exclusion clause covering the serious breach which had occurred. The court held that there was no rule of construction which prevented an exclusion clause from being effective against a fundamental breach of contract. Thus, the parties had freedom of contract.

Whether an exclusion clause covers the breach which has occurred would depend upon the interpretation of the clause and the courts will use the rules of construction as *contra proferentem* rule, main purpose rule and doctrine of fundamental breach in their evaluations.

Module 3: Real Property

Question 5

The question focused on tenancy and presented many challenges to several candidates. Too many were unable to differentiate between 'joint tenancy' and 'tenancy-in-common'. The outline of an expected response is presented below.

Outline of Question 5

(a) Tenancy is where two or more persons have an interest in land. The parties are considered to be co-owners of the property, all being entitled to possession at the same time. There are two types of tenancy, joint tenancy and tenancy-in-common.

In a joint tenancy, the parties are considered as a single owner. There are four unities of a joint tenancy; unity of possession, unity of interest, unity of time and unity of title.

Unity of Possession: This means that all the joint tenants are equally entitled to the physical possession, use and profits derived from the entire parcel of land. No one joint tenant can point to any part or piece of the land and claim it as his own to the exclusion of the other joint tenants. It follows that one joint tenant cannot evict another joint tenant or claim rent from him. For example, Tom and Jim are joint owners of a parcel of land with a mango tree to the side that Jim occupies. Jim cannot prevent Tom from coming onto the portion of the land that the tree occupies as they are both entitled to possession and use of the entire parcel of land. Neither can Jim prevent Tom from picking mangoes from the mango tree on the land as they are both equally entitled to the mangoes on the tree.

Unity of Interest: All the joint tenants hold an interest in the land to the same extent, nature and duration: *Singh v Singh*. 'Extent' simply means that each share is equal. If there are three joint tenants each joint tenant is deemed to hold the entire land as a single owner. There are no distinct measurable shares. 'Nature' means that they own all the land as opposed to one joint tenant owning a stable or a tree that is on the land while the other owns the actual land. It means further that one joint tenant cannot be a freeholder and the other a leaseholder, they must all be freeholders. 'Duration' means that they all hold for the duration of their lives.

Unity of Title: Joint tenants should obtain their interest from the same source document. This may be a will, a deed of conveyance or a Duplicate Certificate of Title. For example, both Tom and Jim should have their name on the same Duplicate Certificate of Title. If they obtained the land by will, it should have been left to them in the same will.

Unity of Time: The interest of all the joint tenants should vest at the same time. For example, the land should have been conveyed, transferred or devised to Tom and Jim at the same time and the document that vests the interest — whether a will, deed of conveyance, a Duplicate Certificate of Title — usually contains the date on which the interest vests in all the joint tenants.

(b) Joint tenancy and tenancy-in-common are the two forms of co-ownership known to the modern law. In a joint tenancy, the joint tenants own the land as a single owner having the same rights of possession and the same interest in the land. On the other hand, while the parties in a tenancy-in-common have the simultaneous right to possession, they are said to hold undivided shares in the land. For example, one-half, one-quarter albeit that the land is a single unit. This is also one of the main differences between a joint tenancy and tenancy-in-common. The size of the interest may also be different, that is, one tenant in common can own a half while the others hold a quarter each.

Joint tenancy-in-common also differs in that whereas a joint tenancy has the four unities of possession, interest, time and title, a tenancy-in-common only has the unity of possession. A tenancy-in-common can be presumed where the other three unities are absent.

Another way in which a joint tenancy differs from tenancy-in-common, and this is the most relevant to the question, is that whereas in a joint tenancy there is the right of survivorship or *ius acrescendi*, in a tenancy-in-common, there is no such right. The right of survivorship in a joint tenancy means that a joint tenant cannot devise his interest in the land by will so his interest cannot be passed to his heirs. The last surviving joint tenant has the right to the entire parcel of land after the other joint tenants have died. In a tenancy-in-common, however, the tenant in common holds an undivided share in the property which can be sold or may be devised/passed to whomever the tenancy-in-common wishes to give in a will.

With respect to the Chang Fungs, the option to be recommended is a tenancy-in-common. There is no indication that there is any strife in the family but that is a real possibility with family arrangements concerning land. Given the structure of the Chang Fung family and the number of children of either parent who are not products of the marriage, the tenancy-in-common would allow each parent to devise their share of land giving consideration to the children who are not products of the marriage. If the property is purchased as a joint tenancy, the right of survivorship applies. This means that if Mr Chang Fung dies first, for example, Mrs Chang Fung would own the entire property in fee simple to the exclusion of the children. Therefore, Mrs Chang Fung would enjoy the fruits of the land during her lifetime and, if she so pleases, she could devise the land to her children excluding Mr Chang Fung's five boys who are not products of the marriage. A tenancy-in-common would allow all the children to benefit from their deceased parent's estate.

Question 6

This question focused on easement. Again, several candidates found the topic challenging. It seems much more preparation is needed in this area. The outline of an expected response is presented below.

Outline of Question 6

Definition of Easement: An easement is a right over the land belonging to another person (Re *Ellenborough Park*). For example, a landowner may wish to grant an adjoining landowner a right to pass or repass over his land.

<u>Requirements for an Easement</u>

There are four requirements for an easement:

1. There must be a dominant and a servient tenement as noted in *London Bienham Estates Ltd* v *Retail Parks Limited*. The easement must be connected to the land and not merely personal in nature. The dominant tenement is the land to which the right is attached while the servient tenement is the land over which the easement is exercised. The easement can be acquired even if the easement dominant owner is a lessee (*Thorpe* v *Brummitt*).

2. The dominant tenement and the servient tenement must have different owners. This is simply because a person cannot have a right over his own land. If the dominant and the servient tenements become owned by the same person the easement ceases to exist.

3. An easement must accommodate the dominant tenement. The easement must confer a benefit on the dominant tenement itself and must not be personal to the landowner (*Hill* v *Tupper*). Whether the easement benefits the dominant tenement will be determined by the purposes for which the dominant tenement is used. The easement must serve to make the dominant tenement a better and more convenient property. This means that the easement must increase the value of the dominant tenement and make it saleable. There must be some nexus between the two tenements but they need not lie next to each other.

4. The easement must be capable of forming the subject matter of a grant (*Copeland* v *Greenhalf*). This means that the right must be sufficiently defined, that is, it must not be too vague. This must not substantially deprive the servient owner of possession of the servient tenement, a right will not be recognized as an easement if it substantially deprives the owner of the land or if it amounts to a claim to joint possession of the servient tenement.

5. It appears that Kodilinye adds a fifth requirement for forming an easement. An easement must be negative from the point of view of the servient owner, that is, it must not involve the servient owner in any expenditure.

   A right cannot be an easement if it involves expenditure by the alleged servient owner. There are at least two exceptions:

   (a) Where there is an easement of fencing.
   (b) Where the parties have expressly or impliedly agreed that the servient owner is to be responsible for the maintenance.

   An easement may be required by any of the following methods:

   1. Statute: Statute/Legislation may provide for easements (*Wright* v *McAdams*).

   2. Express Grant: This is usually by deed, will or other written agreement with express words giving an easement to the owner of the dominant tenement (*McNanus* v *Cooke*). The owner of the servient tenement may expressly give the easement of the owner of the dominant tenement.

   3. Implied Grant: There are three categories of easements that may be implied in favour of the purchaser:

(a) Easements of Necessity: That is, without the easement, the land cannot be enjoyed at all.

(b) Intended easement: That is, to give effect to the common intention *(Wong* v *Beaumont Property Trust Limited)*

(c) Easement within the rule in *Wheeldon* v *Burrows* : This rule states the following:

(i) The easement needs to be continuous and apparent.

(ii) The easement must be a right used for a substantial period of time so that it can be seen or discovered, for example, a well-worn path.

(iii) The easement must be necessary to the reasonable enjoyment of the land.

(iv) The right must have been in use at the time of the conveyance.

4. **By Prescription:** Prescription is based on acquiescence by the servient owner in allowing somebody to exercise what amounts to an easement over his land for a long time without doing anything to stop him (*Dalton v Angus*). The requirements for prescription are that the long enjoyment must be:

(a) As of right: The enjoyment must not be by force, in secret or by permission (*nec vi, nec clam, nec precario*).

(b) Continuous: This requirement does not necessarily demand that the use be non-stop or continuous on a 24-hour basis, rather, the degree of continuity needed depends on the type of easement claimed.

(c) In fee simple: The user cannot ripen into an easement unless it is by or on behalf of a fee simple against another fee simple owner.

Paper 03 - Internal Assessments (IA)

Performance in this area has remained fairly constant over the years and this year a number of students presented interesting papers, demonstrating that they took the research component of the examinations very seriously, and applied themselves diligently.

A major concern, however, was that some students presented papers which appeared to have been hastily put together, not much thought being given to the requirements of the syllabus which state that the *Internal Assessment is an integral part of student assessment in the course covered by this syllabus, intended to assist students in acquiring certain knowledge, skills and attitudes that are associated with the subject* (emphasis supplied).

Despite the weaknesses evident in some papers, commendation must be given to those students whose work was evidently original, well-researched and where applicable, was accompanied by exhibits of the instruments they developed in conducting their research.

On the other hand, there were some papers which were lacking in originality and others which exhibited pictures which were inappropriate. Students are to be encouraged to use exhibits where these enhance their presentation, but must ensure that, while they attempt to include the realities, they must remain within the bounds of appropriateness.

Students are to be urged to observe the word limit and to observe the usual requirements for research, chief among them being to avoid plagiarism and to attribute to any source relied upon ensuring that a full bibliography is included.

It is recommended that in the preparation of their internal assessments, students pay close attention to the syllabus.

C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

REPORT ON CANDIDATES' WORK IN THE ADVANCED PROFICIENCY EXAMINATION

MAY/JUNE 2011

LAW

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GENERAL COMMENTS

The performance on the CAPE Law examination showed improvements, but there is still room for much more growth. For 2011, 977 candidates did the examination in Unit 1 compared with 973 in 2010 and 792 in Unit 2 compared with 702 in 2010. Eighty-four per cent of the candidates who did Unit 1 obtained Grades I – IV while 88 per cent of those who did Unit 2 obtained similar grades. The overall mean for Unit 1 was 51.59 per cent and that for Unit 2 was 49.25.

The 2011 examinations for each unit consisted of the following papers:

- Paper 01 — Multiple-Choice items
- Paper 02 — Extended Response items
- Paper 03/1 — School-Based Assessment
- Paper 03/2 — the Alternative to the School-Based Assessment (administered for the first time this year).

DETAILED COMMENTS

Paper 01 – Multiple Choice

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. This paper replaced the nine short-answer questions (three based on each module) used prior to 2010. This paper contributed 30 per cent of the overall examination score for a unit. This year, the mean on Paper 01 for both units 1 and 2 was 56 per cent.

UNIT 1 – PUBLIC LAW

Paper 02 – Extended Response

Paper 02 comprised six essay or problem-type questions (two based on each module). Candidates were required to answer a total of three questions, one on each module. This format replaced the previous one in which there was a compulsory question in Section A and nine questions (three based on each module) in Section B, where candidates were required to do three, one from each module. Paper 02 contributed 50 per cent to the examination for a unit. The mean for Unit 1 was 62.07 per cent and on Paper 02 it was 56.35.

Module 1 – Caribbean Legal Systems

Question 1

This question dealt with the classification of law, specifically how private and public law differ and required candidates to explain the advantages of classification in preparing a case.

This optional question was attempted by 40 per cent of the candidates. Thirty-three per cent of this number handled the question satisfactorily.

Part (a) was generally well done. For the most part, candidates whose responses were unsatisfactory confused aspects of public law with private law and vice versa or failed to identify and discuss three differences between public and private law.

Part (b) required a general discussion on the classification of law and application of the classification of law to the facts of a given issue.

Generally, candidates were able to identify at least one area of classification of law that was applicable to the case.

Very few candidates recognized the need for the general discussion as this was not specifically stated and those who did generally did not handle the area well. Although most candidates identified the aspects of classification that related to private law, very few of them were able to relate the application of classification to the facts in issue.

Many candidates failed to recognize the criminal law aspect of the question. Indeed, candidates contended that this was a matter between private individuals and so private and not public law applied. Some candidates discussed the applicability of contract law and the possibility that Mr Cheapskate may have a remedy in contract law for the damage to his shoes. Other candidates struggled to find a defence for the action of Mr Cheapskate. The defenses proffered included provocation, none of which was applicable here.

Candidates who did well on this question

- provided three distinct differences between public and private law and buttressed these with relevant examples, thereby attaining maximum marks for this response.

- noted two headings of classification of law which enabled them to attain maximum marks for that part of the question

- were able to provide a comprehensive discussion of three areas of classification, thereby attaining maximum marks

- identified the areas of law relevant to the facts in issue and were able to apply these to the issues identified.

Overall, although the responses could have been more coherent, candidates possessed knowledge of the subject area and applied this knowledge to their responses.

Question 2

For this question candidates were required to define the term *sources of law*, to provide examples, outline the importance of literary and historical sources and to justify the importance of the constitution to the development of law in the Commonwealth Caribbean. Sixty-seven per cent of the candidates attempted this question. Of this number, approximately 40 per cent gave satisfactory responses.
Part (a) (i) of the question was generally done well by candidates who were aware of the sources of law and their importance. In fact, candidates who got the highest scores in this module completed Question 2.

The following literary and historical sources of law were adequately discussed by candidates:

- Precedents
- Law journals
- Customs
- Constitution
- Bible
- Legislation

For Part (a) (ii), many candidates were not able to define *literary* instead they gave examples to explain their answers.

For the most part, all areas were discussed satisfactorily by candidates. However, while the Bible may have influenced certain laws, it is not a source of law relied on directly in the administration of justice.

In addition, too many candidates misinterpreted a question that invited a discussion on *literary sources of law* and wrote all they knew about 'literal interpretation'.

Part (b) was generally well done. Candidates were aware of the role and importance of the Constitution. They applied the cases well. Despite this however, candidates were not able to supply a definition of the concept Constitution; they simply cited the importance in order to establish a definition.

Candidates who did well on this question

- utilized the relevant information in order to provide a holistic response

- gave a full definition for the sources of law and supported their answers by providing examples of these sources

- outlined the importance of the literary and historical sources and provided two named examples

- defined the Constitution by describing the legal framework and discussing the validity of the law in relation to the Constitution. Candidates comprehensively evaluated three areas which referred to the importance of the Constitution. These responses were also supported by three cases which were well explained.

Overall, the responses were coherent, properly structured and indicated that the candidates were prepared.

Module 2: Principles of Public Law

Question 3

This question required candidates to, with reference to the constitution of a country of the Commonwealth Caribbean, discuss the doctrine of separation of powers. Approximately 80 per cent of candidates attempted this question. Of this number, just about 30 per cent gave satisfactory responses.

The majority of candidates were able to

- provide an acceptable definition of separation of powers
- identify the three arms of government
- identify the historical origins of the doctrine
- show an appreciation of the role of the doctrine in Caribbean Constitutions, and identified the connection with the Rule of Law, making particular reference to the relevant cases

For the most part unsatisfactory responses demonstrated candidates'

- confusion about the functions of the arms of government. Some candidates gave unnecessary detail of the composition of the arms
- incorrect application of the principle of constitutional supremacy, suggesting a clear lack of understanding of the principles of constitutional supremacy and separation of powers
- difficulty in properly characterizing the written and unwritten constitutions of the United States of America and Britain respectively, showing their importance to Commonwealth Caribbean Constitutions.

Question 4

This question required candidates to

- exhibit a basic understanding of the elements involved in the rights to a fair hearing as provided for in the Commonwealth Caribbean Constitutions
- show an appreciation of the procedural requirements necessary for public authorities to achieve fairness in decision making.

This question was attempted by 40 per cent of the candidates of which less than 10 per cent gave satisfactory responses.

In Part (a) most candidates were able to identify at least two elements of the right to a fair hearing.

In less than satisfactory responses, candidates gave answers that were relevant to Criminal Law and not Constitutional and Administrative Law.

In Part (b), the vast majority of candidates exhibited little understanding of the concept of *Legitimate Expectation* and were not able to site relevant case law. Most candidates tended to take a general common sense approach to answering this question.

Module 3: Criminal Law

Question 5

Candidates were required to give an explanation of the terms *transferred malice* and *mens rea of assault*. Additionally, the question tested candidates' uses of decided cases to show the difference between crimes of *basic intent* and crimes of *specific intent*. This question was attempted by approximately 70 per cent of the candidates with approximately 30 per cent of this amount giving satisfactory responses.

Responses show that, generally, candidates understood transferred malice and the cases which exemplify the related issues. However, some candidates demonstrated a misunderstanding of the concept of transferred malice indicating that it may also be applied to objects. For example, the case of *R* v. *Pembliton* was misused, that is, stone aimed at a person but missed person and hit a window.

In Part (a) (ii), most candidates were aware that the mens rea of assault include the intention to cause harm. However, candidates did not expound on the need for the victim to apprehend immediate unlawful violence which is an important element in the *mens rea* of assault.

A few candidates said assault is intent to kill/cause grievous bodily harm while others misunderstood the concept altogether, confusing assault with battery. For this question most case applications/illustrations were generally correct and appropriate. Very few candidates, however, mentioned that recklessness can suffice as *mens rea* for assault.

In Part 5 (b), quite a few candidates confused *basic* and *specific intent*, giving a basic intent definition for specific intent and vice versa. A large number of candidates were unclear as to which offences are classified as basic intent offences as opposed to specific intent offences. This was particularly so for cases of specific intent where rape and assault were too often cited as a specific intent offence.

Most candidates also had difficulty explaining basic intent crimes and many scripts stated that basic intent crimes do not require intention/mens rea. Even the candidates who recognized that intention was required did not understand that it was merely a lower level of intention that would constitute a crime of basic intent. Some candidates also wrote that basic intent crimes are those where the accused did not intend to cause serious harm, while others seemed to be saying that the resultant crime was an accident that is not foreseeable.

Most scripts were silent on the defense of intoxication and its relationship with the plea of mistake. Many candidates also considered non-violent crimes to be those of basic intent, such as theft, burglary, robbery, while violent crimes such as murder and rape were seen as specific intent crimes.

In many cases, candidates cited irrelevant negligence cases such as *Stone* v. *Dobinson* and *Adomako* to explain both basic and specific intent offences. The case of *Hill* v. *Baxter* was also very popular in explaining crimes of basic intent. This case falls under the defence of automatism and is totally unrelated to the issues raised by the question.

Specific intent was generally understood. Many candidates were clear that there needs to be an element of premeditation and a purposive element. However, as mentioned before, they oftentimes confused the offences thinking that rape, for example, is an offence where specific intent is required.

Model Answer

Question 5 (a) (i)
Transferred Malice

The principle of transferred malice is considered in determining the mens rea of a crime. Essentially, this occurs where the accused intends to commit an offence against A, but misses his target and harms B instead. It is important that the mens rea and the actus reus coincide, although the victim was unintended. This principle is clearly illustrated in the case of *R* v. *Latimer* where the accused, after having an argument with O intended to hit with a belt. The belt rebounded hitting P, a bystander, injuring her severely. The accused was still convicted of unlawfully and maliciously wounding P.

It is important to note that the principle of transferred malice has limitations and will only operate when the *actus reus* and *mens rea* coincide. Therefore the case of *R* v. *Pembliton*, where the accused who was involved in flight missed his human target and broke a window, would not qualify as an appropriate illustration of the principle of transferred malice.

Mens rea of assault

The mens rea of assault may be defined as the intention to cause a person to apprehend immediate fear of unlawful violence. On the other hand, if a person is reckless in his actions resulting in another person's apprehension of immediate fear of unlawful violence, then this can suffice as the mens rea for assault. In the case of *Smith* v. *Chief Superintendent of Working Police Station*, the accused assaulted the victim by looking through her sitting room window at her in her night clothes with intent to frighten her.

Crimes of basic intent

Crimes of basic intent require a lower level of intention. In other words, the mens rea does not go beyond what is done, that is, the actus reus. Oftentimes, the element of recklessness is involved in crimes of basic intent. Crimes of basic intent include assault, battery, actual bodily harm and rape.

Persons who are charged with some basic intent offences sometimes offer a plea of mistake to negate mens rea. This may be an acceptable defence, if the mistake was not a result of voluntary intoxication. Voluntary or self-induced intoxication is not available to support a plea of mistake as these offences may be committed by recklessness.

The case of *DPP* v. *Majewski* confirmed that self induced intoxication negativing mens rea is a defence to a crime requiring specific intent, but to no other charge. In *R* v. *Fotheringham*, the defendant in a drunken state had non-consensual intercourse with the 14-year-old babysitter mistaking her for his wife. This mistake as to the identity of the victim caused by his self-induced intoxication was no defence.

Crimes of specific intent

Specific intent crimes are those which require a higher level of intention. There must be a clear purpose for the crime, in that the accused sets out to do something, takes steps to do it and achieves the result or the probable consequence. Such offences include murder, theft, burglary and wounding with intent.

An example of specific intent can be seen in the case of *Attorney General's Reference No. 4* where the defendant pushed his girlfriend over a railing. Believing that she was dead, he dragged her upstairs by rope around her neck, cut her throat with a knife before cutting up her body and disposing of it. He was held liable for murder.

It can therefore be concluded that crimes of basic intent require a much lesser level of intention than crimes of specific intent. In some instances, recklessness suffices as mens rea for crimes of basic intent. In contrast, crimes of specific intent require a much higher level of intent. There is usually some premeditation and a purposive element.

Question 6

This question required candidates to demonstrate their understanding of the *thin-skull* or *egg-shell principle* by giving an explanation and applying it to show whether a client was criminally liable based on the principle and related cases. Sixty-nine per cent of candidates attempted this question. Of this number, 62 per cent obtained satisfactory grades.

In Part (a), candidates' responses demonstrated an awareness of the concept of *thin-skull*. They were able to give the correct illustrations but they were not able to provide a clear definition of the principle. Few candidates discussed *tort* although the question was clearly one of criminal law.

The responses from a number of candidates indicated that they did not understand either of the principles.

For the most part, the answers to Part (b) were opinionated and not premised in law. Candidates discussed irrelevant issues such as *mens rea* and *actus reus*, and 'the year and a day rule', while ignoring important issues like causation. They cited irrelevant cases like *R* v. *Smith* and *R* v. *Blaue* while other relevant cases such as *R* v. *Jordan* and *R* v. *Chesire* were not mentioned. Most candidates presented partial discussions of causation, *novus actus interveniens* and the 'but for' principle. Overall, there was poor application of the law to the question which led to no proper conclusion.

In analysing the situation which was presented, only a small number of candidates were able to identify the issue: namely liability turns on *what is the substantial cause of Ben's condition*. The issue of blameworthiness vs. causation being the substantial cause of death (Empress Carr's case was not discussed in all the scripts). Some candidates spoke about defence which was not being examined.

Model Answer

Question 6 (a)
"Thin-skull principle" or "egg-shell principle" in criminal liability

The *egg-shell* principle is a principle in law that the defendant should take the victim of his wrongdoing as he finds him. This principle is applied where the victim was suffering from a pre-existing weakness that exacerbated the injury which the defendant inflicted. Take for example, D shoots A who is a haemophilac and A bleeds to death; it is no defense to D that B who is not a haemophiliac would have survived.

Although this principle was first developed in civil law, *R* v. *Blaue* [1975] 3 All ER 446 has established that in criminal law, the defendant must also take his victim as he finds him and this means the whole man, not just the physical man.

In Blaue, D stabbed A, a young girl and pierced her lung. She was told she would die if she did not have a blood transfusion. Being a Jehovah's Witness, she refused on religious grounds. She died from the bleeding caused by the wound. D was convicted of manslaughter and argued that V's refusal to have a blood transfusion was unreasonable and had broken the chain of causation. It was held that the judge had rightly instructed the jury that the wound was a cause of death.

The egg-shell principle is therefore important to criminal liability as part of causation. It counters the defendant's argument that the victim's conduct or pre-existing condition broke the chain of causation.

Question 6 (b)
Andy's criminal liability for Ben's death

The question of whether or not Andy can succeed turns to the important consideration of the substantial cause of Ben's death. This calls for a discussion of legal causation. The prosecution has the burden of proving that Andy's act of shooting Ben caused the result, namely Ben's death. To answer this question, the 'but for' test may be applied, that is, *but for* Andy shooting Ben, Ben's death would not have occurred. For Andy to escape liability on the basis of the *but for* test, the court would be asked to eliminate the fact that Andy shot Ben, and determine whether Ben's death would have occurred anyway.

It cannot be said that Ben would suffer a relapse had he not been shot by Andy, thus Ben's death would not have occurred if he had not been shot by Andy. It is next to be determined whether Ben's refusal to take blood transfusion on the basis of his beliefs in natural medicine was so unreasonable that it can be said to be an intervening act which broke the chain of causation so as to absolve Andy of any liability. This, in law, is known as the *novus actus interveniens* principle. On the authority of *R* v. *Blaue*, this does not appear to be the case.

It is trite law that a defendant must take his victim as he finds him, and according to Lawton J in *R* v. *Blaue*, this refers to the whole man, not just the physical man. Thus, by this principle, Andy must take Ben and his beliefs as he finds him. In *R* v. *Blaue*, a young girl who was stabbed by the defendant refused a blood transfusion on religious grounds although she was informed by medical personnel that this blood transfusion could save her life. The court held that the defendant was liable for manslaughter because the chain of causation was not broken.

In *R* v. *Jordon*, A stabbed B who was admitted to hospital and died eight days later. On appeal, the opinion evidence of two doctors was allowed to show that death had not been caused by the stab wound, but by the introduction of terramycin and other large quantities of liquid into B's system. A's conviction was quashed on the basis that had the jury heard this evidence they would not have been satisfied that the death was caused by the stab wound.

There was no such medical intervention in the case of Andy and Ben.

On the contrary, in the case of *R v. Cheshire*, the bullet wounds D inflicted upon V had ceased to be a threat to V's life at the time of his death, and evidence had clearly proven that V's death was caused by tracheotomy performed and negligently treated by the doctors which had narrowed his windpipe and caused asphyxiation. The Court of Appeal upheld D's conviction on the ground that D's action remained a significant cause of V's death.

In the instant case, it appears that Ben's death was substantially caused by Andy shooting him. In the final analysis, the authorities suggest that Andy is likely to be criminally liable, and it is no defence that Ben would have survived if he had opted to accept the blood transfusion. Andy must take Ben as he finds him, thus Andy is precluded from successfully arguing that Ben's refusal to accept the blood transfusion due to his beliefs will break the chain of causation.

Paper 031 – School-Based Assessment (SBA)

There were no changes in the requirements for the SBA, Paper 031. Students were required to write a research paper of 2000 – 2500 words, based on any topic from any module in the unit. Paper 031 contributed 20 per cent to the examination. The mean for Unit 1 was 41.61.

Paper 032 – Alternative to School-Based Assessment (SBA)

This year's examinations in Paper 032, Units 1 and 2, marked the first time for CAPE Law since its introduction over ten years ago. The performance was fair generally. The mean on this paper was 4.33.

Candidates were asked to answer the question with reference to a named Commonwealth Caribbean state and the fundamental rights provisions of the constitution of that state making reference to *Hinds* v. *R* and *Pratt and Morgan* v. *A.G.*, among other cases. Candidates failed however to answer the question to the desired standard given that examinable topics were known prior to the Paper 032 exam. A limited number of candidates sat this paper and the highest mark was 13 out of 30. Candidates failed to identify the constitution to which they referred. They demonstrated limited knowledge on the fundamental rights. Most candidates did not identify and discuss cases outside of *Hinds* v. *R* and *Pratt and Morgan* v. *A.G.* For those candidates who identified additional cases, they failed to apply it.

Unit 2 – PRIVATE LAW

Paper 02 – Extended Response

Module 1: Tort

Question 1

This question tested candidates' knowledge of negligence, contributory negligence and vicarious liability. Twenty-three per cent of the candidates did this question. Twenty-one per cent of the candidates who attempted this question gave satisfactory responses.

Many candidates failed to cite cases and those that were cited, were, in most instances, irrelevant. Candidates seemed confused about the differences between negligence and nuisance. Consequently, they cited cases that referred mostly to nuisance. Candidates failed to cite the *locus classicus* case, *Donoghue* v. *Stevenson* for negligence and that of *Bourhill* v. *Young,* both of which are important cases applicable to the question. In addition, candidates tended to ignore the negligence aspect of the question focusing primarily on vicarious liability.

The candidates also failed to define key terms/concepts. It is important to note that most of the candidates who attempted this question demonstrated a good understanding of the concept of vicarious liability.

For the contributory negligence defence, approximately 98 per cent of the candidates failed to cite a relevant case. Some candidates applied the facts of cases to incorrect case names. Additionally, some candidates fabricated facts for the cases named.

Overall, some of the responses were poorly organized. It was evident that candidates did not do a plan or outline of how they were going to answer the questions and as a result their essays were not coherent.

Question 2

This question tested candidates' knowledge of defamation, its elements, and the related defences. _Of the approximately 77 per cent of the candidates who attempted this question, 55 per cent gave satisfactory responses.

Most of the candidates demonstrated a good understanding of the area that focused on the elements of defamation, including possible defences a defendant may raise. However, they were unable to answer the question illustrating all the relevant issues and/or concepts and cases. A few candidates failed to accurately make the distinction between libel and slander. Candidates stated the correct definition but applied it to the wrong type of defamation.

Candidates displayed a good knowledge of identifying a defence but some were weak in actually fully explaining the defence and most of them failed to cite a relevant case on this point.

Part (b) only required identifying and explaining one defence but many candidates identified several defences but failed to sufficiently explain only one defence and a relevant case to attain the maximum marks awarded for the section. Many candidates incorrectly applied qualified privilege and absolute privilege as possible defences to the situation.

Some of the candidates cited cases only for libel or only for slander without citing cases for both types. Some candidates applied the facts of cases to incorrect case names. Additionally some candidates made up facts for cases named.

Generally, most candidates who performed well were not able to attain marks between 20 and 25 as a result of failing to cite and comment on relevant cases.

Module 2: Law of Contract

Question 3

This question required candidates to demonstrate their understanding of *consideration* by explaining the term and applying it to a given situation.

For part (a) most candidates were able to provide at least a basic definition of *consideration*. They spoke to the principle of *exchange* or *something for something* in defining the concept. Candidates were also able to identify the general principles pertaining to *consideration* and to cite relevant case law or strong examples to support their points. Most candidates who chose this question performed better on this part than on Part 3 (b).

There were, however, some weaknesses seen in candidates' responses. In many cases, they identified the different types of consideration to include executed and executory consideration, for which no marks were allocated. Some candidates equated 'contract' with 'consideration'. Further, a number of candidates defined consideration in the literal as opposed to legal sense. That is, it was defined as the period during which one 'considers', contemplates or thinks about the terms of the contract. Generally, the responses lacked structure and too many lacked substance.

Although marks are not allocated for grammar, candidates are required to pay more attention to grammar, spelling and the reduction of the use of informal language in their responses. A number of candidates spoke about consideration being part of a 'contrack' or 'breech of contrack'.

In Part (b), most of the respondents drew suitable conclusions, albeit based on incorrect reasoning. They were able to identify the social and domestic arrangement issue and the supporting case law and apply the principle to the facts of the scenario. Despite these strengths, however, most candidates were unable to explicitly identify the main principle of the question, that is, past consideration, and to identify the exceptions to past consideration. In many cases, candidates repeated the facts of the case in their answers.

Generally, the analysis of the question was poor. It was clear that the majority of candidates were unable to adequately formulate responses to scenario questions. The structure of most of the responses was not systematic, well-reasoned and logical.

Question 4

Candidates were required to use examples of decided cases to explain their understanding of *fraudulent* and *negligent misrepresentations*. They were also required to advise a client in a situation which involved misrepresentation.

For Part (a), most candidates were able to provide a definition and to cite a relevant case. Despite this, however, a number of them did not appreciate the difference in the state of mind element of fraudulent versus negligent misrepresentation. For the negligent misrepresentation, some candidates discussed duty of care, breach of duty etc. instead of what was required by the question. None of the candidates mentioned that it was actionable as a tort.

Generally, the level of analysis in Part (b) was fairly good. The majority of candidates was able to identify and discuss the legal principles and issues relevant to the question. Most of the candidates arrived at the correct conclusion and supported the conclusion with case law. They were also able to speak to the remedies available — damages and rescission.

In a minority of cases, candidates failed to respond to the question in a logical and sequential manner, that is, clearly identifying the issues, explaining the relevant law, then applying the law to the facts etc.

A number of candidates said that Nicole failed to do her due diligence and was therefore culpable in some way. They referred to this as Nicole's negligent misrepresentation or contributory negligence.

Question 5

Candidates were required to identify the five remedies available to a mortgagee given that the mortgagor was six months in arrears in payments. These are the *right to sue on the personal covenant, to enter into possession, to appoint a receiver, to exercise the power of sale and to foreclose*. Two hundred and fifty-four candidates or 32 per cent of candidates attempted this question.

Most candidates provided few or no cases as required and the few who indicated a case were unable to either apply it to the facts or outline the principles of law emanating therefrom. Oftentimes, these candidates did not explain the few rights that they identified in detail. Candidates may have identified definitions of some of the relevant terms, but did not necessarily elaborate.

A significant number of the candidates overemphasized the rights of the mortgagors and consequently failed to answer the question which specifically asked for the remedies available to the mortgagee. Most candidates were however, able to properly define keys terms in the question, such as *mortgage*, *mortgagee* and *mortgagor* or at least explain their nature.

Generally, candidates failed to explain that the right to possession did not arise as a result of the default of the mortgagor. Candidates failed to recognize at what point the mortgagee can exercise these remedies. Some candidates also mistook the right to foreclosure with that of forfeiture. Likewise, many of them were incorrectly of the view that seizure of the mortgagor's chattel/property (distress) was a remedy available to the mortgagee.

Overall, most candidates did not know how to manage their time effectively given the allocation of marks. Many candidates failed to proportionately allocate time for each remedy.

Question 6

This question required that candidates distinguish between *tenancy-for-life* and *tenancy-at-will* by providing examples from decided cases, and apply this knowledge to advise a client with a related issue. Sixty-seven per cent of candidates attempted this item. Of this amount, 28 per cent provided satisfactory responses.

For Part (a), the more acceptable responses gave clear definitions of the concepts as well as two or three points mentioning and explaining a case which distinguished the concepts, or a case that, in some way, elaborated on it.

Most candidates made no reference to any case although the question required it. Other candidates mentioned cases which were either inappropriate or inapplicable and so could not have received the designated marks. Unfortunately, of the candidates who mentioned a case, many of them neither identified the name of the case nor elaborated on its relevance.

While many candidates were able to give the definition and elaborate on *tenancy-for-life*, possibly intuitively, most of them were incorrect on *tenancy-at-will*, stating that the tenancy was derived from a will or such document.

Another notable trend was the use of X & Y or A, B, & C to explain, describe or illustrate the concepts of *tenancy-for-life* and *tenancy-at-will*.

Candidates did better on Part (b) than on Part (a). Many of them, however, wasted time restating the facts of the question, instead of providing a solid analysis and applying the relevant law to the facts.

Most candidates had sufficient appreciation of the concept of *joint tenancy* and its elements, as well as the concept of *tenancy in common*. Many candidates used an introductory paragraph, giving far more information than was required, thereby failing to substantially deal with the pertinent issues, such as *equitable interest*, *licensee* and the *effect of the death of one of the joint tenants* and the *notice to quit* on John.

Candidates frequently confused legal and equitable rights, stating that John had legal rights because of the length of time he lived on the property. Where equitable rights were discussed, it was again because of the duration of John's residence and not an association with contribution to activities at the house, such as repairs and the payment of taxes etc. Many candidates also did not recognize that where they identified a licensee relationship, such an entitlement would end upon the death of Mrs Smith.

Some candidates mistakenly intimated that Claudette and Jeanette were Angela Smith's only children and frequently assumed he was the son of one or the other and continued to use this reasoning in their analyses, without the recognition of alternate positions. In too many cases candidates incorrectly asserted that John will get an easement, *John is a squatter* and *John is a joint tenant with Claudette.*

Paper 031 – School-Based Assessment (SBA)

There were no changes in the requirements for the SBA, Paper 03/1. Students were required to write a research paper of 2000 – 2500 words, based on any topic from any module in the unit. Paper 03 contributed 20 per cent to the examination for a unit. The mean was 40.12.

Paper 032 – Alternative to School-Based Assessment

This year's examinations in Paper 032, Unit 1 and 2, marked the first time for CAPE Law since its introduction just over ten years ago. The performance was fair, generally. The mean was 8.81.

Candidates were asked to answer one question comprising two parts, Part (a) and Part (b). The first concerned discussion pertaining to a contractual term with reference to a decided case. The second concerned application of the law to a fact situation. As with Public Law, candidates failed to answer the question to the desired standard, given that topics were known prior to the examination. The highest mark was 26 out of 30.

In Part (a), candidates failed to differentiate between statements that were terms and statements that were mere representation. They did not recognize the area of law being tested and those who did, failed to adequately elaborate on the test of *timing of statement* to determine whether a statement is a term or representation. Frequently, relevant cases were not cited or discussed.

For Part (b), students were unable to use the test to determine whether the statement was a term or representation. The tests would be *timing of statement*, *importance of statement, special knowledge or skills* and *reduction of terms*. Most candidates failed to classify terms, for example *implied* and *express* terms and *conditions* and *warranties*. Most candidates failed to discuss and identify relevant cases.

It is worth noting that candidates' responses continue to show weaknesses in the areas of analysis and application. To help students to improve their analytical skills, teachers are encouraged to use the suggested stimuli which appear in the syllabus such as debates and critiques. In this way, students will become accustomed to the language of the discipline which is intrinsic to a better application of the information they have gathered and to presenting improved answers.

RECOMMENDATIONS

Candidates

- Candidates should bear the following guidelines in mind when answering questions, not only for the examinations, but also when preparing their assignments and as a general practice. Success is guaranteed from following these steps:

  - Candidates must follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b)

  - Candidates must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial

  - Candidates are encouraged to use the following format (summarized as IRAC) when answering problem-type questions.

I - issue (identification)
R - rule of law (refer to)
A - application of law to facts
C - conclusion

- The conclusion should relate to the problem and should not be the candidate's fanciful construction bearing no relation to the facts, or simply rewriting the facts.

- Candidates must support their responses with legal authority, namely:

(i) Case Law
(ii) Statute
(iii) Legal writers

- Candidates must deal with issues and applicable law, refraining from restating the question, except in so far as a principle of law relates to stated facts. They should strive to answer questions precisely.

- Candidates need to be more familiar with definitions of terms and concepts, and should offer definitions of terms as appropriate.

- Candidates are reminded to read the syllabus carefully to identify what is required for these examinations. In so doing, they should be able to maximize the benefits and opportunities afforded them in having advanced knowledge of the module to be examined. Constant practice in answering questions should assist greatly in developing their ability to analyze and synthesize.

- It is imperative that candidates develop a good writing style which can be fostered by reading legal texts and writings.

- Candidates are cautioned to pay keen attention to key instruction words in the question. Words such as ***distinguish*** and directional phrases such as *with the* ***use*** *of decided case(s)* provide guidelines about what to do and how to structure their responses.

- Candidates must show greater care in complying with the instructions given. Candidates and teachers are reminded of the following:

  - Candidates are to write on both sides of the paper and to start each answer on a new page' as instructed on the answer booklet.

  - Questions attempted are to be noted, in order of response, on the cover page of scripts.

  - Each candidate's number and centre number are to be recorded in the space provided on the cover page, and throughout the answer booklet, where required.

  - Where applicable or required, the jurisdiction to which a particular area of law applies must be identified. (Note, especially, those questions that require reference to *a named Commonwealth Caribbean state*.)

- With respect to internal assessments:

  - Candidates’ names recorded on the assignments and internal assessment forms must be consistent with the names at registration. Careful note must be taken of syllabus requirements to ensure compliance.

- Candidates are advised to manage the examination time wisely. Too often they shortchanged themselves by writing long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.

General and Specific Recommendations to Teachers

- Greater emphasis should be placed on teaching the principles which emerge from the cases rather than having students restate the facts of cases which are often unnecessary and time-consuming.

- Teachers have to be careful not to disregard the relevance of decided cases in their use of local or domestic illustrations with students.

- Generally, the responses to scenario questions were not structured well. Teachers ought to place significant emphasis on teaching candidates how to properly analyse and respond to scenario questions. They should also provide adequate opportunities for students to continuously practice answering these questions.

- A number of students were unable to properly utilize the relevant principles from the stated cases to support their points. The tendency was for students to state and explain the case, but not clearly link the principle derived from the cases to the scenario or general question being asked. Emphasis should be placed on assisting students with analysing and deriving the relevant law from cases and effectively using the law to solve the legal problems.

- All students should be advised as to the importance of stating the principles enunciated in the cases cited and to appropriately apply the said principles to the relevant facts. This demonstrates to examiners a thorough understanding of the concept being tested. Therefore a student, who remembered the name of the case and not the principles of law therein, received less marks than those who illustrated the principles of the case without citing the name of the case. Most students provided few or no cases as required, and the few students who indicated a case were unable to either apply it to the facts or outline the principles of law emanating therefrom.

- While it is recommended that when students brief cases in their preparation for exams, they should pay attention to the facts, they are advised not to restate the facts, as time does not permit same, in exams.

C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

MAY/JUNE 2012

LAW

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GENERAL COMMENTS

In 2012, 1 360 and 815 candidates did the CAPE Law examinations in Units 1 and 2 respectively. These numbers represent an increase over those of 2011 when 977 and 792 candidates did Units 1 and 2, respectively. For Unit 1, 83 per cent of the candidates obtained Grades I–IV while 81 per cent obtained similar grades for Unit 2.

The examinations for each unit consisted of the following papers:

- Paper 01 — Multiple Choice
- Paper 02 — Extended Responses
- Paper 031 — School-Based Assessment (SBA)
- Paper 032 — Alternative to SBA

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. The score on this paper contributed 30 per cent to a candidates' overall grade. This year, the mean on Paper 01 for both Units 1 and 2 were 58 and 59 per cent, respectively.

Paper 02 comprised six essay or problem-type questions (two based on each module). Candidates were required to answer a total of three questions, one on each module. The score on Paper 02 contributed 50 per cent to the overall score. The means for Paper 02 were Unit 1, 41.41 per cent and on Unit 2, 36.87 per cent.

There were some glaring weaknesses in areas of elementary principles of law where candidates were obviously unaware of basic principles.

Teachers and candidates are encouraged to read the exemplars, posted on the website, carefully and to use them as models for answering questions. These exemplars are drawn from candidates whose performance in the recent examinations was considered commendable.

DETAILED COMMENTS

UNIT 1 – PUBLIC LAW

Paper 02 – Extended Responses

Module 1: Caribbean Legal Systems

Question 1

This question required that candidates explain a statement of the purpose of equity in common law. Fifty-five per cent of the candidates attempted this question. Of this number, approximately 40 per cent got more than 50 per cent of the total marks. The general observations are that:

- Candidates did not have sufficient knowledge of the subject area. They made valid points but failed to explain, or complete their thoughts.
- A large percentage of candidates failed to cite relevant cases and/or principles and those who made an attempt showed a lack of understanding of the principles.
- Candidates spent too much time on their discussion of the Common Law, its development, advantages and disadvantages and not enough time on e*quity*.

- Candidates used cases that were not relevant to the question, such as *Pratt and Morgan* v. *AG*, *Shaw* v. *DPP*, *R* v. *Knuller*, *R* v. *R* among others. They also used many Constitutional Law cases.
- A number of candidates also spoke of *Positivism* and *Natural Justice*, which shows that they were confusing *equity* with breach of Constitutional Law, Criminal Law and Common Law.
- Candidates spent too much time discussing the reception of Common Law into the Commonwealth Caribbean which was not relevant to the question.
- Many candidates equated *equity* to *morality*. Their misconception being that *equity* will make a guilty man goes free of charge.
- Candidates failed to express themselves in a cohesive manner. In many of the answers candidates kept repeating the same points.

Model Answer

"Equity does not destroy the common law but assists it." Explain this statement with reference to decided cases.

Equity is a source of law created to alleviate the harshness of the Common Law. It was created to provide additional remedies and to provide additional causes of actions that an aggrieved litigant can obtain.

In England, after the Norman Conquest there were a number of different counties that had a different rule of law unique to them. When William the Conqueror gained the throne he established a central rule of law that was common to all the counties known as the 'Common Law'. He sent itinerant justices to the different counties in England to settle and resolve issues using the relevant legal rules. After the justices returned they came together to form one body of legal rules on a legal system.

However, the common law had limitations. It was too harsh and inflexible. *Only one remedy applied — damages — and this was either compensation or money*. Many litigants did not just want compensation; rather they wanted drastic measures to take place.

After the Norman Conquest 1066, litigant's began to complain to the king about the limited remedies in the common law. The king sent the litigants to the chancellor, who is the king's chief minister and keeper of the king's conscience. The litigants began petitioning the chancellor who made judgements on disputes based on his moral views of the dispute. The chancellor made decisions on his own authority. These new remedies became known as equity.

Equity is a body of laws which derived from common law that brings fairness and justice in law. It was in the 1615 Earl of Oxford case where it was stated that where conflict arises between the common law and equity, equity shall prevail. There was much debate on equity and the common law as litigants preferred going to the Court of Chancery.

Equity makes decisions more fair, predictable, flexible, consistent and practical. It is not too harsh or limited in remedies. Equity has established maxims as well.

- 'He who comes to Equity must come with clean hands' this maxim is consistent in the *D and C Builders* v. *Rees* (1466)
- He who seeks equity must do equity; consistent in the *Chapel* v. *Times Newspaper* (1978)
- Delay defeats equity this is consistent in the *Leaf* v. *International Galleries 1950* case.

There are other maxims of equity.

There are rights in equity. These rights are such as the right of beneficiary to a trust. Trust allows the ownership of property to be transferred legally from one person to another. There is right of equitable ownership where persons wishing for example, to have ownership of land, are given the right to do so. There is also right of parties to a contract. Parties who come to an agreement with the terms of a contract can set remedies if the contract is to be breached. Also, right of equitable redemption gives persons the opportunity to go to court to seek certainty and justice in the law.

Notwithstanding, equity also discovered remedies. The *Anton Pillar Order* is one such equitable remedy. It is much used nowadays and is a means by which the Court issues or allows the inspection and/or disposal of goods and documents which may be needed in a trial. This was what occurred in the leading case which has given its name to the remedy, *Anton Pillar* v *Manufacturing Processors Ltd* (1976)

Another equitable remedy is the Mareva injunction, the name of which also derives from a leading case, *Mareva Compania* v *International Bulk* (1975). There, the court issued and ordered the defendants assets to be frozen in circumstances where the interest of the plaintiff would otherwise have been prejudiced or lost.

The equitable estoppel is another equitable remedy which is often used by the Courts. It was first espoused by Denning J, as he then was, in *Central Trust Properties* v *High Trees Ltd* (1949). There, his Lordship enforced a promise made by a defendant where to breach the promise would have materially affected the proprietary rights of the plaintiff. It is sometimes referred to as promissory or proprietary estoppel.

Rectification is an equitable remedy which is applied where, in the interest of an equitable outcome, the Court rectifies the terms of a document and applies principles which enable the contract to be performed, equitably, applying reasonable intentions to the parties.

It was in 1873 when the Judicature Acts brought the turning point for equity and the common laws. The Judicature Acts established that both bodies of law, equity and the common law may remain separate bodies of law; however, they are administered by one court. Therefore, litigants go to one court to seek redress. The period extended from 1873 to now as the English brought these bodies of law to the Commonwealth Caribbean during the colonial period in history.

Equity does not destroy the common law but assists it as it introduced more adequate and flexible rights and remedies in law. Equity and the common law are different bodies of law; however, they are both still law and will remain dominant.

<u>Question 2</u>

This question tested candidates' knowledge of the areas of the law and the courts in which a client may seek redress, and alternate means of dispute resolution. Candidates were given a scenario to analyze and apply this knowledge. This question was done by approximately 45 per cent of the candidates. About 50 per cent of these candidates got more than 50 per cent of the marks.

For Part (a) (i), candidates were asked to identify areas in the law from which a client could seek redress. Most candidates who selected this question performed satisfactorily on this part. However, there were many areas of weaknesses seen in the responses as highlighted below.

- Some candidates confused the concepts of public and private law.
- Many candidates did not show a clear understanding of contract as many classified Tort as a breach of contract.
- Many candidates identified common law and equity as areas in which the company should seek redress.

Part (a) (ii) required candidates to identify the court in which the client in the scenario could seek redress and explain remedies they might obtain from the court. The majority of candidates wrote on the role and hierarchy of the court. Many also identified courts such as the Industrial Court, the Court of Appeal and the Caribbean Court of Justice as possible courts. These were not applicable in the given scenario.

For Part (b), candidates were asked to identify alternate means of dispute resolution available to the parties in the scenario. Many candidates presented well written answers but were not rewarded as they did not elaborate on the areas which would allow them to gain points. For example, explaining all the Alternate Dispute Resolution (ADR) alternatives or listing the elements of each ADR and then writing the advantages of each. Others had all the necessary points but failed to expand in areas that would allow them to earn maximum marks.

Additionally,

- some candidates did not look at the advantages of ADR
- many candidates wrote on the ombudsman as a means of ADR
- a few candidates did not understand the concept of litigation as many referred to litigation as a form of ADR
- some candidates were not able to distinguish between mediation and arbitration with many making errors such as stating that in
    - mediation, the mediator makes the decision which is final
    - arbitration, the arbitrator allows the parties to arrive at a decision.

Module 2: Principles of Public Law

Question 3

This question required candidates to discuss which approach to *locus standi* was better suited to litigants seeking *judicial review*. Approximately 32 per cent of candidates did this question. Of this number, over 65 per cent of them were able to score more than 50 per cent of the marks.

Very few candidates were not able to differentiate the liberal approach from the restrictive approach and as a result were unable to state clearly which approach was better suited to the litigants seeking judicial review. Additionally, they

- were unable to distinguish *locus standi* and *judicial review*
- confused *judicial review* with constitutional law
- confused the principles of *judicial review* and separation of powers
- failed to demonstrate an understanding of *locus standi*.

Question 4

For this question, candidates were required to analyse a scenario relating to a public servant being relieved of her post after an election and to advise the public servant, based on the constitution of a Commonwealth Caribbean country, of the right to seek redress. This question was the more popular of the

two on this module and the most popular on the paper. Approximately 66 per cent of candidates did the question. Just about 49 per cent of these candidates got more than 50 per cent of the marks.

Some of the main concerns with these responses were:

- Candidates did not attempt to use any legal principles to support their answers. They mainly answered based on their everyday experiences
- Most candidates said that the ombudsman is the correct authority to address the permanent secretary issues. Not many candidates correctly stated the Public Service Commission.
- Some candidates' responses showed lack of understanding of basic principles and concepts and some ventured into a discussion of employment law and industrial tribunals, which although not referred as part of the answer appears to be a plausible interpretation of the question.
- In many cases, candidates answered only a part of the question or offered a lot of introductory and irrelevant information.
- There was a tendency for candidates to take a detailed approach to the question by addressing constitutional law, not necessarily distinguishing it from administrative law.

Module 3: Criminal Law

<u>Question 5</u>

For this question, candidates were required to explain the principle of *actus reus*/*mens rea* in determining criminal liability. Approximately 57 per cent of candidates did this question making it the more popular of the two testing this module. More than 60 per cent of the candidates who did this question got in excess of 50 per cent of the marks. While some candidates were able to provide clear and complete definitions for *actus reus* and *mens rea*, most candidates provided partial definitions of the two elements. The most common form of a partial definition by candidates was that the '*actus reus* is the act of the accused' and the '*mens rea* is the guilty mind' as opposed to the full definition for *actus reus* that encapsulates *omissions, consequences and surrounding circumstances or state of affairs* and the full definition of the *mens rea* which includes *intention, recklessness, gross negligence and knowledge*.

Some answers were well structured and the best answers provided cases and examples to illustrate the:

- coincidence of the *actus reus* and the *mens rea*
- presence of the *actus reus* but no *mens rea*
- presence of the *mens rea* but no *actus reus*.

While most candidates understood the doctrine of strict liability as being an exception to the legal principle *actus non facit reum nisi mensit rea* far fewer dealt with *transferred malice*.

Automatism was the most common defence mentioned. Unfortunately, many candidates who treated the case of *Hill* v. *Baxter* failed to fully understand the concept of the principle of *automatism*, in that, while the defendant carried out the *actus reus* of the crime, he was blameless, as the bees entering the motor vehicle and attacking him rendered him unable to fully control his movements, thus resulting in his car hitting the victim.

There was also a failure of some candidates, when treating with *mens rea,* to distinguish the different levels of blame worthiness. Noticeable on many scripts was the fact that defences such as insanity, self-defence and duress were overlooked or inadequately dealt with by candidates. The candidates who dealt

with defences generally focused on provocation. The better candidates examined the different degrees of culpability of the offender.

On the whole, most answers were not well developed, analytical or coherent. Candidates did not make a clear linkage between the cases and the points raised in answering the question. It is also worthy of note that while most candidates were able to make reference to the most relevant cases of *Thabo Meli* v. *R* and *R* v. *Church,* they were unable to relate to the maxim *actus non facit reum nisi mensit rea* to answering the question.

In the less than satisfactory responses candidates

- did not point to strict liability as an exception to the principle that the *actus reus* and the *mens rea* must coincide
- wrote down random criminal law cases without applying the cases to make a substantial point relating to the coincidence of the *actus reus* and *mens rea*
- neglected the role of criminal law defences in determining the criminal liability of an accused
- referred to *intention* as the only level of *mens rea* which led them to make statements like 'the *mens rea* is absent so the accused can only be charged for manslaughter', rather than *the mens rea for murder which is an intention to kill or cause grievous bodily harm, being absent, the accused can only be convicted for manslaughter*
- failed to apply the law to the facts
- misinterpreted the question and therefore, in many instances, did not answer the question
- failed to discuss the importance of both the objective and subjective tests. In the majority of instances where reference was made, it was the objective test that was mentioned.

Question 6

This question used a scenario to assess candidates' knowledge of the principle of *transferred malice*. Approximately 43 percent of candidates did this question. Of those who responded, just about 36 per cent got more than 50 per cent of the marks. While most candidates recognized the issue of *transferred malice* and quoted the cases of *R* v. *Latimer and R* v. *Pembliton,* some did not clearly understand the concept. Some candidates referred to *transferred malice* as a defence or a crime instead of a doctrine/principle. Although some candidates made indirect reference to the *but for* principle and the *novus actus interveniens*, most candidates were able to point out at least two of the four arising issues: (1) *causation* (2) *novus actus interveniens* (3) the *but for* test (4) *thin skull* principle. Seminal cases were often not mentioned in the answers given and this led to candidates receiving lower scores.

Most responses were weak in application of the rule of law to the facts of the question. Candidates made some common errors as they

- failed to identify both issues of *transferred malice* and *self defence*
- presented 'facts' that were not mentioned in the question. Some candidates made assumptions about why Alf shot at Con, which was irrelevant to the question. For example, one candidate wrote 'Con was walking with acid to attack Alf, so Alf had to use his gun to defend himself'.
- failed to discuss the *thin skull* principle in relation to Ben being a haemophiliac and *the novus actus interveniens*, in relation to the long wait at the hospital. However, most candidates mentioned the case of *R* v. *Blaue*
- expressed opinions without any rule of law to support their opinions

- displayed little or no understanding of the legal operation of *self defence* and *transferred malice*, in that they did not clearly indicate that *if the malice is transferred to Ben then the issue of self defence would not arise. Conversely, if there was in fact the availability of self defence, this lawful defence meant there would be no malice to be transferred from Con to Ben*
- incorrectly concluded that the hospital's delay in operating on Ben broke the chain of causation. *The case of R* v. *Jordan, states that for medical negligence to break the chain of causation the operation had to have been 'palpably wrong'*. That was not so in the scenario which was presented.

Some candidates went on a frolic of their own, discussing murder and at time theft. Their inability to adequately identify and argue the second half of the question was also obvious.

UNIT 2 – PRIVATE LAW

Paper 02 – Extended Responses

Module 1: Tort

Question 1

This question required candidates to differentiate between public and private nuisance and analyse the events in a given scenario to discuss the liability. This question was done by 85 per cent of the candidates, making it by far more popular than the other question testing this module. Over 40 per cent of those who did this question received more than 50 per cent of the marks. Responses show that, on the whole, candidates have an understanding of the difference between public and private nuisance. Candidates performed much better on Part (a) compared to Part (b).

Some of the errors which candidates made occurred because they

- interpreted private nuisance as anything that is harmful and that happens in private such as having a marital affair while public nuisance is something that takes place in the public domain such as a homeless person on the streets
- interpreted nuisance to be a person, such as L.A. Lewis, rather than defining it as an act
- described the difference between private and public nuisance as akin to the difference between public and private law. Thus, a candidate would say public nuisance involved public or government entities creating the nuisance and being sued, whereas private nuisance is between private individuals without the involvement of the government. This mistake was at the root of the same candidates missing the point concerning particular damage as they felt that once individuals (and not the government) were involved then it would be 'transformed' into a private nuisance. Therefore, candidates responded to Part (b) by stating that Maya was liable in private nuisance since individuals were involved, despite the fact that it was stated that the sand and gravel were on the sidewalk which is public property
- placed a greater emphasis on negligence and vicarious liability rather than public nuisance
- included 'facts' that were not included in the question such as 'Antonio was speeding', 'Maya knew Antonio' and he had an 'affiliation (sic) of the retina'
- wasted time restating the facts given in Part (b)
- misinterpreted Part (b) as being in relation to occupier's liability and/or employer's liability. Some felt that Antonio was trespassing on Maya's sidewalk and she was liable because she failed to erect signs

- considered employer's liability and vicarious liability as being the same
- applied the excerpt in Question 2 in Part (b) by stating that Maya had a duty of common humanity and used *British Railway Board* v. *Herrington* to explain the principle.

The conclusion of candidates varied in Part (b) as some of them stated that Maya was not liable because of the actions of other characters such as the driver, the workmen or Antonio. They also limited her liability because they felt that Antonio was liable because of contributory negligence.

Question 2

For this question, candidates were required to assess a statement relating to an occupier's duty of care, duty of 'common humanity' and duty 'in accordance with common standards of civilized behaviour'. This question was the least popular on the paper as only 15 per cent of candidates attempted it. About 44 per cent of these candidates received more than 50 per cent of the marks. The following are among the difficulties which candidates had in responding to this question.

- Some candidates failed to define an invitee, an occupier, and a trespasser.
- Candidates had difficulty explaining common humanity, while others who grasped the concept stated that it 'involved the occupier keeping or chasing potential intruders off the property'.
- Most candidates did not state that *the occupier's duty owed to the trespasser was less onerous or that the occupier has a duty to the trespasser if the presence of the trespasser is known or reasonably anticipated by the occupier.*
- Candidates were ignorant of the facts of *British Railways Board* v. *Herrington* case. For example, a candidate stated that it involved a teenager and her boyfriend.
- Candidates included irrelevant issues such as *negligence* and *duty of care*.
- Very few candidates made mention of *Addie* v. *Dumbreck*. Some hinted at a position in the law before British Railways Board.

Module 2: Law of Contract

Question 3

Candidates were required to use decided cases in their explanation of the extent to which contracts, entered into by minors, were enforceable. Approximately 56 per cent of candidates attempted this question. Of those who did, just about 29 per cent got more than 50 per cent of the marks. Performance on this question could have been better if candidates correctly identified the issues, defined essential terms (for example, minors, capacity and necessaries) and properly applied the principles set down in the relevant cases.

Candidates who did well on this question

- properly defined and explained all essential terms such as minors, capacity and necessaries
- cited applicable cases such as *Nash* v. *Inman*, *De Francesco* v. *Barnum* and generally analysed and explained them well
- gave illustrations that were on point and showed that they had a good understanding of the question
- demonstrated an awareness of how the law seeks to protect minors and the aim of the law in this respect. Many candidates could also distinguish the statutory age of majority (18) from the common law age of majority (21).

A few candidates referred to *Proform Sports Management* v. *Proactive Sports Management Limited* (2006) which is commendable as it indicates that the candidates are aware of current development in case law.

Candidates lost marks because they

- vaguely defined terms for example, by stating that 'a minor as anyone under the statutory age'. An acceptable definition would be that *a minor is anyone under the age of 18 years*
- cited cases but did not apply them
- focused on the elements and formation of a contract instead of looking at the issue of enforceability. For example, candidates would discuss and define what is an offer, acceptance, consideration and also cite cases in support of these points. This was not necessary to answer the question asked. The focus should have been on *the circumstances in which contracts with minors are enforceable which would include contracts of necessaries and contracts of service*.

It was also expected that candidates discussed generally unenforceable contracts entered into by minors, for example, contracts containing onerous or harsh terms. A number of candidates made up cases or used the cases in the wrong context.

Question 4

Candidates were required to explain the methods by which a contractual obligation may be upheld and analyse a scenario and advise a client on the likely success of her claim for breach of contract. Forty-four per cent of the candidates did this question. Of this number, just about 37 per cent were able to get more than 50 per cent of the marks.

Candidates' overall performance on Part (a) was satisfactory. Many candidates were able to define partial and substantial performance and give appropriate examples in support of their definitions.

It should be noted however that some candidates attached the wrong definition to both partial and substantial performance. Partial performance was defined by these candidates to be a situation where one party to the contract has completed his/her side of the agreement and the other party has failed to carry out his/her side of the agreement. Substantial performance was defined as the contract being fully adhered to and completed by the parties.

An acceptable definition of partial performance is *where a party to the contract has performed only part of what is required under the contract and the other party is willingly to accept that part performance.* For substantial performance an acceptable definition would be *a situation in which there is only a minor variation from the terms of the contract.*

Sumpter v. *Hedges* (1898), *Christy* v. *Row*, *Boone* v. *Eyre* (1779), *Hoenig* v. *Issacs* (1952) and *Bolton* v. *Mahadeva* are some of the suggested cases for this response.

Not many candidates used the term *quantum meruit* although some were able to explain the concept without actually making mention of the term. Teachers should encourage students to use legal terms.

Candidates performed poorly on Part (b). The answers lacked structure and were not organized in a coherent, clear and concise manner. The issues were not properly identified and relevant cases were not used to support the arguments presented. Despite this, however, many candidates were able to identify the existence of a contract which had been breached and for which the client was consequently entitled to damages. Some candidates noted that the option of specific performance was available to the client.

Some candidates indicated the relevant cases and applied them accurately. Where the candidates did not readily have knowledge of the cases, they were able to give good and appropriate illustrations that indicated their understanding of the area being tested.

Few candidates identified the possibility of the client putting forward *frustration* as a defence. Where it was identified however, relevant cases such as *Krell* v. *Henry* and *Herne Bay Steam Boat Co* v. *Hutton* were mentioned.

Weaker candidates used irrelevant examples and cases. These cases oftentimes fell under the area of contract law but were not appropriate for the issue at hand for example, *Carlill* v. *Carbolic Smokeball* and *Hyde* v. *Wrench*. These candidates were repetitive when answering the question. They repeated that the client could claim for damages for breach of contract while neglecting to mention and expound on other viable options such as specific performance and *quantum meruit* that may be available to her.

Module 3: Real Property

Question 5

This question required candidates to distinguish between chattel and fixture, to determine when a chattel becomes a fixture and advise a client of his likely success of a claim against a former tenant who had removed a structure from the client's property. Approximately 72 per cent of candidates did this question. About 30 per cent of those who responded to the question got more than 50 per cent of the marks.

In most cases, candidates' responses lacked structure. Some candidates were not able to identify issues. Generally, there were weaknesses seen in the application of principles to the facts given. Most candidates used layman concepts/ideas instead of legal principles. In some cases where candidates attempted to use legal principles, these were not relevant to the questions. Some examples of these irrelevant principles are: waste, landlord/tenant relationship, lease and licence, breach of covenant and proprietary estoppels.

In some cases, candidates' responses were indicative of a lack of exposure to the relevant content. There were also instances of candidates putting in additional facts that were not part of the question.

There were examples of candidates not using cases properly. They did not name the case, identify its principles and then show how these apply to the case in question. There are some cases that are critical to the area that candidates should be aware of, for example, *Mitchell* v. *Cowie*.

Question 6

Candidates were required to assess a statement and to say to what extent it was consistent with a mortgagor's equity of redemption. Approximately 28 per cent of candidates did this question. Of this number, approximately 39 per cent got more than 50 per cent of the total marks. On the whole, candidates did fairly well on this question.

Weaker candidates seemed unable to understand the concept of *equity of redemption* and *equitable right to redeem* and in some cases a mortgage itself. They confused the terms *mortgagor* and *mortgagee* and in so doing failed to focus on the rights of the mortgagor.

Many candidates focused on the rights of the mortgagee, that is, power of sale and foreclosure. This may have been as a result of their inability to distinguish between *mortgagee* and *mortgagor*.

In defining *mortgage* many candidates failed to appreciate that it is a security given for the loan and not just the loan itself. Candidates in many cases failed to understand that the legal right to redeem is created when the mortgage is created.

Most candidates did not use cases to answer the question. Some candidates resorted to illustrations but most were irrelevant and/or improperly applied. Few candidates understood the maxim or were able to conclude that it was consistent with the equity of redemption.

Many candidates gave unnecessary historical perspectives not required by the question and they therefore received no marks for this part of their essay.

General and Specific Recommendations

Candidates

- Candidates are advised to manage the examination time wisely. Too often they shortchanged themselves by writing long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.
- It is imperative that candidates develop a good writing style fostered by reading legal texts and writings.
- Where applicable or required, candidates must indicate the jurisdiction to which a particular area of law applies. (Note, especially, those questions that require reference to 'a named Commonwealth Caribbean state'.)
- In responding to examination questions, candidates must show greater care in complying with the instructions given. Candidates are reminded to

  - write on both sides of the paper and start each answer on a new page' as instructed on the answer booklet
  - note questions attempted in order of response, on the cover page of scripts
  - record, in the space provided on the cover page, and throughout the answer booklet, where required both candidate and centre numbers

Teachers

- Teachers are encouraged to remind the students of the Facts, Issues, Law, Application and Conclusion (FILAC) or IRAC method of answering questions and assist them to use either in answering questions.
- Students should be given enough practice in answering questions that have overlapping areas.
- Students need to be taught to develop their answers logically and to be mindful of the need for coherence in their writing.
- Students should

  - pay special attention to the use of the convention of written English
  - use clear legible hand writing

- Students should be encouraged to analyse questions and then respond carefully. Too many students tend to write all they know about a topic instead of identifying the relevant information and properly applying same to the issues identified in the questions.
- Teachers should spend time explaining key terms so students get a clear understanding.

- Teachers should make the topics more relevant by finding ways to link the content to students' own experiences as well as current events.
- Students should be encouraged to tailor their responses to what is required by the question.
- Teachers should encourage students to know the relevant cases.

Other Concerns

- Candidates wasted time restating the facts in the question or giving a whole treatise on information they knew but which was irrelevant to the question.
- Grammar and spelling were generally poor among candidates
- Teachers need to break down complex definitions given to students.
- Candidates should be encouraged to utilize relevant case law or illustrations for the examinable areas.

Paper 031 – School-Based Assessment (SBA)

The paper is done at school and contributes 20 per cent to candidates' overall score.

This year the SBAs were, generally speaking, below the standard we have come to expect. In a bid to facilitate the proper carrying out of this vital part of the assessment process, we have decided to draw attention to the common shortcomings we encountered, while at the same time indicating the most suitable approach in our estimation.

Increasingly, we are seeing SBAs in which the titles are so widely stated as to be bewildering; for example, 'Defamation', 'Murder', 'Negligence'. We advise against such broadly chosen topics, as these do not lend themselves to a detailed examination of the area that would be well-supported and focused enough to meet the required standard outlined in the syllabus. Topics should be carefully chosen to allow for adequate discussion and analysis. We would like to urge teachers, despite the difficulties and challenges they face, to ensure that the proposed topics are sustainable, and that they be vetted, so that students do not go off on tangents or waffle on endlessly.

Useful guidance can be obtained from pages 31 to 36 of the syllabus, which sets out in detail the requirements and format of the internal assessment. In this connection, we draw attention to the habit of some students to embark upon a lengthy introduction of the subject matter, and in some cases, acknowledgements, whereas this is not a part of the scheme outlined in the syllabus.

Title and Table of Contents

Project titles should be specific and succinct. Often they were too broad or vague, relative to the subject matter being discussed. A few students presented research projects without any title. In quite a few projects, the titles did not accord with the stated aims and objectives, or were completely unrealistic or beyond the scope of the research.

Aims and Objectives

Almost all projects had stated aims and objectives. However, sometimes the stated aims and objectives were not sufficiently lucid, and in other instances were unattainable. Where the aims and objectives were not met, or sufficiently developed in the findings of the research, this adversely affected the overall grade obtained by students.

Methodology

The majority of students were able to distinguish between primary and secondary sources of data. However, a significant number of students failed to properly select an appropriate sample and sample size. Students also failed to provide sufficient detail of the data collection methods used and particularly, to state name of interviewee(s), date, time and place of interviews. Students did not justify the chosen method applied to the research. At times, the method(s) stated in the methodology was not reflected in the body of the research. It is recommended that students use a mix of both primary and secondary methods as this tends to allow for greater validity and reliability of their interpretations, analysis and conclusions.

Findings

Some students recorded findings which were relevant and were presented clearly and coherently. However, in the majority of cases, the information presented (in many instances copious and in excess of the word limit) was not related to the title, aims or stated objectives. Also, some students approached the research from a purely sociological or historical perspective, and as such projects did not reflect the applicable legal theories and principles. As a result, the research presented lacked clarity and relevance. Often, students cited laws which were not applicable to the local jurisdiction or the scope of the research.

Discussion of Findings

Some students were not able to properly distinguish between the *Findings* and *Discussion of Findings*; in some instances the two topics were merged. This error negatively affected the grades awarded.

The level of legal analysis which was required for this section was lacking overall. Most students having failed to identify the relevant law in the *Findings*, consequently failed to interpret and analyze the appropriate legal principles in support of the stated aims and objectives.

Recommendations

A few students displayed knowledge of what was expected at this level. However, there is room for great improvement in this area. The recommendations should be buttressed in the law and as such should be sound, plausible and based on the findings of the research.

Bibliography

The vast majority of students were not able to properly cite secondary sources, including cases, journals, textbooks, and internet sources. It is to be noted that search engines such as Google.com and Ask.com are not in and of themselves proper reference sites.

Students and teachers are reminded that the CXC Syllabus contains properly cited reference materials to include texts and cases.

Communication

Overall, the use of the English Language and level of communication displayed in the research projects was satisfactory.

<u>Word Limit</u>

Some research projects were in excess of the word limit. It is recommended that the stipulation in the syllabus that students with projects in excess of the prescribed word limit be penalized, be enforced.

Further Comments

- Students' names recorded on the assignments and SBA forms must be consistent with the names at registration,
- Comments and marks by teachers are to be erased before SBAs are submitted as samples.
- Careful note must be taken of syllabus requirements to ensure compliance.

Paper 032 – Alternative to School Based Assessment (SBA)

This year a total of 18 students did the Alternative to the SBA (4 candidates sat Unit 1 and 14 sat Unit 2). Candidates' responses showed an improvement over performance in 2011. Considering that this is the second year of this paper, this shows some promise. Among the areas of strength noted in the responses are:

- The majority of candidates structured their responses in a logical manner.
- Most candidates adequately identified and discussed sentencing theories, practices, place of retribution, historical and current trends, and forms of sentencing.
- There were also very insightful conclusions.

The areas of weakness identified are listed below.

- Most candidates failed to provide cases and where cases/illustrations were mentioned they were not properly applied to the question.
- Most candidates in evaluating sentencing practices failed to recognise the influence of European Union Human rights law on the Commonwealth Caribbean.
- Most candidates focused on providing information rather than analysing and applying the information to the question.

Recommended Methodology for answering questions

The following seven-point approach is recommended to students when answering questions, not only for the Law examinations, but also when preparing their assignments and as general practice. Success is guaranteed if these guidelines are followed.

- Candidates must follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b).
- Candidates must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial.
- Candidates are encouraged to use the following format (summarized as IRAC) when answering problem-type questions.

I - issue (identification)
R - rule of law (refer to)
A - application of law to facts
C - conclusion

- Conclusions should relate to the problem and should not be the candidates' fanciful construction bearing no relation to the facts, or simply rewriting the facts.
- Candidates must support their responses with legal authority, namely:

    - Case law
    - Statute
    - Legal writers

- Candidates must deal with issues and applicable law, refraining from restating the question, except in so far as a principle of law relates to stated facts. Instead, candidates should strive to answer questions precisely.
- Candidates need to be more familiar with definitions of terms and concepts, and should offer definitions of terms as appropriate.

C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

MAY/JUNE 2013

LAW

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GENERAL COMMENTS

The total number of candidates writing the CAPE LAW examination, in both units, continues to increase. In 2013 while the number of candidates sitting Unit 1 remained consistent, the number sitting Unit 2 increased from 815 (2012) to 1118 (2013). In both units, 85 per cent of the candidates obtained Grades I–V.

The examinations for each unit consisted of the following papers:

- Paper 01 — Multiple-Choice items
- Paper 02 — Extended Response items
- Paper 031 — School-Based Assessment (SBA)
- Paper 032 — Alternative to SBA

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. The score on this paper contributed 30 per cent to candidates' overall score. This year, the mean on Paper 01 was 51 per cent for Unit 1 and 55 per cent for Unit 2.

Paper 02 comprised six essay or problem-type questions (two based on each module). Candidates were required to answer a total of three questions, one on each module. The score on Paper 02 contributed 50 per cent to candidates' overall score. For Paper 02, the mean was 48.22 for Unit 1 and 42.82 per cent for Unit 2.

There were some weaknesses in areas of elementary principles of law which indicated a lack of awareness of basic principles. Many candidates demonstrated an inability to adequately address problem questions: answers were poorly constructed and generally disorganized. Candidates should be reminded to utilize an answer plan to assist them in producing lucid responses thus improving their chances of gaining points awarded for coherence. Possible mock trials can be used to depict application of the relevant law to the facts of the scenario given. This would enhance the candidates' understanding and better equip them with the ability to transfer this understanding when answering examination questions.

It is strongly recommended that the following formats for answering questions be taught: FILAC (**F** – Facts, **I** – Issues, **L** – law, **A** – Application of law to facts, **C** – Conclusion) or IRAC (I – issues, R – Relevant Law, A – Application of law to facts, C – Conclusion). If either of the formats is followed, answers will be more structured, and candidates would be able to address the issues as required by the questions.

Teachers and candidates are encouraged to carefully read the exemplars posted on the website, and to use them as models for answering questions.

DETAILED COMMENTS

UNIT 1 – PUBLIC LAW

Paper 02 – Extended Responses

Module 1: Caribbean Legal Systems

For this module, Question 1 was more popular than Question 2. Approximately 63 per cent of candidates responded to Question 1.

Question 1

Part (a) required candidates to describe the hierarchy of the court system in a named Commonwealth Caribbean state showing how it facilitates the doctrine of judicial precedent. Candidates were expected to define the terms *judicial precedent* and *stare decisis* and show how the doctrine is applied within the hierarchical structure of the court system. They were also expected to point out the fact that in Commonwealth Caribbean states where the Privy Council is the final court of appeal, the decisions of that court are binding on the court of appeal and lower courts; whereas in Commonwealth Caribbean states where appeals to the Privy Council have been abolished, for example Guyana, Belize, Barbados, the decisions of the Privy Council are of persuasive value while decisions of the Caribbean Court of Justice are binding. Candidates were also expected to explain the terms *ratio decidendi* and *obiter dicta*. The mean on this question was 15.02 or 60 per cent.

The majority of candidates was able to answer this question adequately. There was good use of relevant legal references and examples to demonstrate their understanding of the doctrine of precedent. However, too many candidates ignored the fact that the question was a structured question comprising Parts (a) and (b) and chose to answer both parts as a single essay. Candidates need to recognize that the structured questions are geared towards assisting them in obtaining maximum marks in the questions.

Many candidates spent too much time on the discussion of the history of the Commonwealth Caribbean and its development which was irrelevant to the question. Some candidates were not aware of the structure of the courts in their own territory; others omitted certain courts or assigned the wrong duties to courts. Some candidates were also unclear about the territories that have the Caribbean Court of Justice (CCJ) as their final appellate court and those that have retained the Privy Council; other candidates were of the opinion that the juvenile, family, gun, and industrial courts form part of the formal court structure. A number of candidates also failed

to identify and define key terms such as *judicial precedent, stare decisis, ratio decidendi* and *obiter dictum.*

In some cases the answer structure was poor and candidates failed to express themselves in a cohesive or chronological manner, making valid points but failing to explain or complete their thoughts. Some answers were repetitive, demonstrating insufficient knowledge of the subject area. Many of the candidates failed to cite relevant cases and/or principles and some of those who made an attempt showed a lack of understanding of the principles. Another problem was that candidates cited cases that were not relevant to the question such as *NICS and AG, Hinds* v. *R, R* v. *R, R* v. *Phillips, R* v. *Thornton* among others. They also referred to many cases involving constitutional law as well as some fictitious cases.

A large number of candidates did well on Part (b) of the question. It required candidates to identify and explain two advantages and two disadvantages of judicial precedents. For maximum marks, candidates were required to be coherent in their discussion and to demonstrate an understanding of the impact and effect of judicial precedent. Generally, candidates who did not understand the term *judicial precedent* were not able to identify the advantages and disadvantages; some candidates simply repeated the incorrect information from Part (a) or discussed elaborate scenarios that were irrelevant and incorrect.

Question 2

Most candidates who selected this question performed very well on it. Generally, candidates demonstrated a good understanding and sound knowledge of the subject area. The mean for this question was 14.39 or approximately 60 per cent.

Most candidates were able to cite relevant cases and examples of the three rules of statutory interpretation. Good candidates were able to demonstrate their sound knowledge of the subject area and its application by accurately identifying the relevant rule to be applied to the case being decided by Justice Silas. However, many candidates were unclear about the definition of the different rules of statutory interpretation and this was reflected in the entire essay, for example many candidates tended to confuse the *Golden Rule* with the *Mischief Rule*. Some did not identify the different stages of the *Mischief Rule* that the judge would need to apply hence they were unable to obtain maximum points.

Some candidates spent a lot of time on unnecessary and irrelevant information. There were some candidates who failed to demonstrate an understanding of the *Golden Rule* and when the judge should apply this method. They seemed to confuse the legal with the biblical meaning of the *Golden Rule*. Some candidates wasted time repeating the facts of the question in their answers. There were candidates who chose to ignore the structured nature of the question by incorporating

their answers to Part (b) in Part (a) and vice versa. This resulted in them omitting other areas that were required by the question.

Module 2: Principles of Public Law

In this module, more candidates selected Question 3 than Question 4. Approximately 70 per cent of the candidates attempted Question 3.

<u>Question 3</u>

Part (a) required candidates to give a description of

- the role of Parliament in Commonwealth Caribbean constitutions for example, Parliament as the supreme law-making authority of the State; executive usually drawn from members of Parliament;
- the Doctrine of Parliamentary Sovereignty and how this is related to the Caribbean for example, Acts of Parliament must be obeyed; Parliament has full control of its internal proceedings;
- Constitutional Supremacy, for example, Acts of Parliament must conform to the constitution; Parliament must follow special procedures for amending the constitution; the courts can review Acts of Parliament for offending the constitution;
- the role of the courts in resolving the tension between Parliament and the constitution, for example, the constitution gives the court the power to ensure its supremacy; judicial review as the mechanism by which the courts control Acts of Parliament.

Generally, candidates demonstrated an understanding of the concepts: *Constitution, Parliament,* and *Constitutional Supremacy* referring to *Hinds* v. *R* and *Parliamentary Sovereignty*. Many candidates however referred to other cases for example, *Maharaj* v. *AG* and *Thomas* v. *AG* with incorrect application of the principles, indicating a general lack of understanding of the cases and their importance to public law. There were also candidates who discussed separation of powers which was irrelevant to this question. Some also combined Parts (a) and (b), making it difficult to distinguish the sections.

In Part (b), candidates were expected to briefly explain the role and function of the public service in Commonwealth Caribbean states, for example, necessary for effective governance. They were also required to state the methods by which public servants are protected under the constitution, for example, use of service commissions, provisions relating to appointment, discipline, removal and security of tenure. In addition, candidates were asked to explain the ways by which the courts have provided additional protection, for example, judicial review applications, removal of public servants only for reasonable cause, ensuring that the provisions of the constitutions are

followed, and the application of principles of natural justice to discipline and termination of employment of public servants.

Many candidates demonstrated a lack of understanding of the term *public servant* defining a public servant as 'the public, civilian or ordinary citizen'. Some candidates also failed to demonstrate an understanding of the role of a public servant. Many candidates interpreted *protection* to mean police protection and other types of protection. They spoke mainly of citizens and citizens' rights protected by the constitution, the Ombudsman protecting the rights of public servants and citizens, the Bill of Rights or the constitution providing protection and some repeated their answer from Part (a). Few candidates displayed knowledge of the existence of service commissions and their functions. However, some candidates discussed the Public Service Commission, and also referred to the Judicial Service Commission and trade unions.

Question 4

Part (a) required definitions of the terms *judicial review*, *locus standi* and a discussion of factors such as the merits of the case, the importance of the issue, the importance of vindicating the rule of law, the likely absence of respective challenges, and the nature of the breach of duty against which relief was sought. However, many candidates misunderstood the question and confused *locus standi* with *stare decisis*. Several of them showed a lack of knowledge and understanding of the factors taken into consideration by the courts in determining *locus standi*. Instead, they discussed the grounds for judicial review and could not gain many marks as the question did not require this.

Part (b) was an application question based on grounds for judicial review, and it required candidates to apply the facts to the principles of law and advise Bill on any grounds that he may have for judicial review, for example, natural justice, breach of fundamental rights, and bias. Most were able to identify the issues and cite relevant cases for example, *Maharaj* v. *AG*, *Ridge* v. *Baldwin*, *Mc Gill* v. *Porter*, and advise Bill adequately. There were however, some candidates who mentioned natural justice but were unable to explain the law and consequently did not score many marks. Few candidates referred to *Reese* v. *Crane*. There were some candidates who discussed the role and function of a jury which was unrelated to this question.

Module 3: Criminal Law

For this module, Question 6 was more popular, with approximately 54 per cent of the candidates responding to it. The mean for Question 5 was 13.37 or 53 per cent while that for Question 6 was 14.07 or 56 per cent.

Question 5

Part (a) was an application question requiring knowledge and application of the principles of law relevant to assault and rape. The *mens rea* of rape was generally poorly discussed. Candidates failed to discuss the fact that recklessness is also an element of the *mens rea*. Those students who discussed *mens rea* looked at intention and recklessness.

Some candidates defined assault as the intent to cause injury; however, mere assault does not require such an intent. Most candidates did not go on to explain that the victim must apprehend immediate unlawful violence which is an important element in the *mens rea* of assault. Some did not distinguish between *an assault* and *a battery*; they defined an assault as 'the actual infliction of force on a person'. Some candidates concluded that the rape was the assault instead of the victim apprehending immediate personal violence by the mere pointing of the gun. Few candidates identified recklessness as an adequate *mens rea* for assault.

Generally, candidates showed limited understanding of the defence of intoxication. Some referred to intoxication as an element of *mens rea* instead of a defence to crimes of specific intent; most did not recognize that voluntary intoxication would not be a defence to rape and assault as they are crimes of basic intent. The concept of prior fault was never mentioned as discussed in the case of *R* v. *Majewski*.

The application of case law was not adequately treated; candidates cited cases but did not apply the principles stated therein correctly, for example, *R* v. *Tandy* was often cited as a case where the defence of diminished responsibility was successfully raised. In fact, the opposite is true. The defendant was convicted of murder because the defence failed. The case can be cited but it must be noted that the defence failed and the reasons for this must be provided.

For Part (b), many candidates demonstrated a misunderstanding of the case of *R* v. *R* and its applicability to the marriage scenario given in the question. Candidates often failed to indicate the jurisdiction to which they referred when discussing the relevant acts and often misunderstood the act.

Model Answer

Question 5

(a) The issues arising from the question are whether Brian can be held criminally liable for the crimes of:

- Assault
- Rape

Rape is defined as unlawful sexual intercourse with a woman/another person whether by fear, force or fraud and without the victim's consent. The defendant must have knowledge that the victim did not consent or was reckless as to whether the victim consented or not. (*Candidates must check the specific section in their statute that defines rape as this varies across jurisdictions*.)

In order for Brian to be held liable for rape the *mens rea* and the *actus reus* must coincide. The *actus reus* constitutes two key elements: penetration of the victim by the defendant and lack of consent by the defendant. The prosecution has the responsibility for proving these elements. Penetration is complete even if it is not full penetration. The slightest penetration will suffice. Penetration is also treated as a continuing act. In *Kaitamaki* v. *R*, the defendant broke into a young woman's flat and twice raped her, his defence was that at the time he penetrated her, he thought she was consenting, however when he became aware that she was not consenting he did not withdraw. The court held that sexual intercourse comes into existence upon penetration and ends only on withdrawal. Therefore, it is still considered as penetration even if there was no fresh penetration. From the question, it is said that Brian had sexual intercourse with Martha. It can therefore be concluded that Brian in fact penetrated Martha.

The second element of the *actus reus* of rape is the lack of consent from the victim. Consent must be real and not obtained through fear, force or fraud. In *R* v. *Olugboja*, the defendant, who offered the victim a ride home from a disco, took her to his home instead. The defendant turned off the lights and told the victim to take off her trousers. She was crying and complied out of fear and did not resist, struggle or scream. The defendant was still convicted of rape. The court held that there is a difference between consent and submission, and even though every consent involves submission, it by no means follows that mere submission involves consent. The question presented states that Brian entered the guest room and pointed the gun at Martha when she resisted having sexual intercourse with him and then had sexual intercourse with her. It can be argued that Martha submitted out of fear and subsequent consent was not real. Martha's resistance also demonstrates a

lack of consent. It can therefore be concluded that Brian had sexual intercourse with Martha without her consent.

As it relates to the *mens rea* for rape, Brian must have known that Martha did not consent or was reckless as to whether Martha did not consent or was reckless as to whether Martha consented. The question tells us that Martha removed herself to the guest room and tells Brian that the relationship is over. The question also tells us that Martha resisted having sexual intercourse and that Brian pointed a gun at her when she resisted. This provides evidence to argue that Brian did have knowledge that Martha did not consent and thus used force to gain consent. The *actus reus* and *mens rea* for rape is thus satisfied.

Brian could however raise the defence of intoxication from the fact that at the time he was drunk. In *DPP* v. *Majewski*, the defendant had taken a substantial quantity of drug and then went to a pub and had a drink. He assaulted a police officer and claimed he had no recollection of the events due to his intoxication and thus argued that he lacked the *mens rea* of the offences due to his intoxicated state. The court held that the crime was one of basic intent and therefore his intoxication could not be relied on as a defence. A crime of basic intent is one that requires a *mens rea* less than intention. Rape is a crime of basic intent as it also has the *mens rea* of recklessness.

Following the decision in *DPP* v. *Majewski*, voluntary intoxication would not be a defence to a crime of basic intent. Therefore, if Brian's defence was voluntary intoxication, he could not rely on intoxication as a defence and would be liable for rape.

Brian is also charged with assault. An assault is an act by the defendant which causes the victim to reasonably apprehend immediate and unlawful personal violence. A mere threat is sufficient to satisfy the *actus reus*. The defendant must also have intended to cause the victim to apprehend immediate and unlawful violence or was reckless whether such apprehension was caused. The defendant's recklessness is determined subjectively as decided in *R* v. *G* and *R* v. *Cunningham;* that is the defendant must actually foresee the risk of causing apprehension of violence. In *Logdon* v. *DPP*, the defendant pointed an imitation gun at a woman. The woman was terrified and the defendant then told her it was not real. The court held that an assault had been committed as the victim apprehended immediate and unlawful personal violence and the defendant was reckless as to whether she would apprehend such violence.

Brian pointing a gun at Martha would be sufficient to cause her to apprehend immediate and unlawful personal violence. Also, Brian pointed the gun at Martha after she resisted having sexual intercourse. It can be argued that Brian intended to cause Martha to

become fearful and submit to having sexual intercourse with him. Brian therefore intended to cause Martha to apprehend immediate and unlawful personal violence or at the least, was reckless as he must have foreseen the risk of causing such apprehension.

The discussion relating to intoxication above would also apply to the charge of assault as assault is also a crime of basic intent and therefore voluntary intoxication would not be a defence to assault. However, if Brian was involuntarily intoxicated he could successfully plea the defence and avoid liability for the offence.

(b) Had Brian and Martha been married, the advice would be different. In *R* v. *R*, the House of Lords held that a man could rape his wife if

(i) they have been separated
(ii) there exists a separation agreement in writing between the spouses
(iii) there are proceedings for the dissolution of the marriage or for a decree nisi
(iv) there is an order or injunction for non-cohabitation or non-molestation.

In some jurisdictions, this has been codified in statute, for example, Section 4 of the Sexual Offences Act of Trinidad and Tobago and Section 5 of the Sexual Offences Act of Jamaica. From the facts of the question, Brian and Martha would not have satisfied any of the four circumstances outlined in *R* v. *R* before a husband can be liable for rape of his wife. If married therefore, Brian would not have been liable for the rape of Martha.

Question 6

Generally, candidates answered Part (a) of this question better than Question 5 and a number received full marks. However, some candidates dealt inadequately with the issue of criminal liability for omission to act; it was treated as transferred malice, lack of *mens rea*, recklessness, or strict liability. This clearly shows an inability to differentiate the *actus reus* from the *mens rea*. The question required a discussion of omission at common law but some candidates were unable to distinguish between common law and statute, and as such answers in respect of statutory omission to act were also provided. Some candidates confused omission (relating to the *actus reus*) with the tort of negligence and cited examples of negligence as authority for criminal liability omission.

For Part (b), candidates' discussion of provocation often revealed failure to grasp the concept. The difficulty was even greater with diminished responsibility. Many confused the defence with insanity, automatism, intoxication or the Tort of Negligence. While diminished responsibility is an abnormality of the mind (partial insanity) which may be caused by an inherent disease, unlike insanity, it is not a disease of the mind. Some candidates also failed to point out that

diminished responsibility is a defence to murder in certain situations, while automatism is a denial of the *actus reus* and a general defence. Even though the question clearly required candidates to make reference to cases or examples, some candidates lost marks as they failed to provide case law or examples to support their response.

Paper 032 – Alternative to School Based Assessment (SBA)

The number of candidates who sit this paper is showing an increase. This year, 20 candidates sat this paper for Unit 1 compared with four in 2012 while 23 sat the examination for Unit 2 compared with 14 in 2012. Candidate performance is also showing improvement as an increasing number of candidates earned more than 50 per cent of the total score.

Part (a) expected candidates to discuss and elaborate on the reasons the written constitution is the most important source of law in the Commonwealth Caribbean with the use of relevant cases clearly explained. In Part (b), candidates were expected to discuss equity and its development, importance, rights and remedies, with the use of maxims and relevant cases clearly explained.

Stronger candidates mentioned and elaborated on all points concerning the importance of the constitution, used relevant cases and maxims to explain their answer, demonstrated an excellent understanding of the constitution and equity, and were consistent and very coherent throughout.

Candidates needed to mention the reason equity came into being, the fact that it is based on the principles of natural justice and fairness, and used cases to support their answer. For the most part, answers were fairly coherent.

Some candidates answered Part (a) satisfactorily and Part (b) poorly. Some answers were more from a social than a legal perspective; too much time was spent focusing on human conduct and behaviour in relation to the rights of persons under the constitution. Candidates needed to mention cases in Part (a). In Part (b), candidates needed to explain the case cited and its relevance to equity.

UNIT 2 – PRIVATE LAW

Paper 02 – Extended Responses

Module 1: Tort

For this module, Question 2 was slightly more popular than Question 1. Fifty-three per cent of the candidates elected to do Question 2. The mean on Question 1 was 10.33 or 41 per cent while the mean on Question 2 was 53 per cent.

Question 1

In this question, candidates were required to identify the issues arising under the tort of Vicarious Liability, apply the relevant law to the facts and conclude whether Pete and Kallaloo Company were liable for the injury of Andy. Candidates were also expected to discuss whether the defence of contributory negligence was available to Pete and the Kallaloo Company to reduce any damages paid to Andy.

Most candidates were unable to identify all the important issues in order to obtain maximum points; many did not discuss negligence and vicarious liability in advising the company and Pete. Candidates, however, showed a good grasp of the elements of negligence such as duty of care, breach of duty, foreseeability and remoteness of damage but failed to apply the cases relevant to their discussion. Many candidates correctly identified the issue of express prohibition when addressing the sign placed in the company's vehicle; however, some discussed occupier's liability because of the sign, while others incorrectly referred to exclusion clauses which were not relevant to this question. In some instances, candidates confused employer's liability with vicarious liability; others did not understand the concept of *course of employment* and were unable to identify when a tort was committed in the course of employment. Many candidates showed an understanding of damages and the effect of contributory negligence in assessing damages.

Question 2

This question required candidates to apply their knowledge of defamation to a case. It required candidates to show a clear distinction between defamation and slander, to use decided cases to discuss whether the aggrieved person could succeed in a case of defamation against a newspaper and also to discuss any defence the newspaper may put forward.

Most candidates understood the question, were able to identify the issues and demonstrated a good understanding of the elements and types of defamation supported by the pertinent cases. However, more attention needs to be placed on the explanation of defences involving

defamation. Many candidates were unable to distinguish between qualified and absolute privilege. Overall, candidates did quite well in this question.

Module 2: Law of Contract

There was no clear preference for the two questions on this module, as approximately 50 per cent of candidates responded to each question. Question 4, however, had a higher mean (12.71 or 51 per cent) as against 10.45 or 42 per cent for Question 3.

Question 3

Part (a) required candidates to clearly explain any three methods by which a contract may be discharged, for example, performance, agreement, breach, frustration. Candidates were expected to discuss the relevant issues and cite appropriate cases in order to obtain maximum marks for this section.

Candidates showed limited understanding of what it means to discharge a contract and often confused discharge with the formation of a contract. Many candidates placed too much emphasis on the formation of a contract, revocation of a contract and pre-contractual terminology used for discharge. Candidates misinterpreted breach of contract, often confusing it with performance; revocation was confused with agreement. Some candidates were unable to clearly explain the ways in which a contract can be discharged and few candidates applied the relevant cases.

Part (b) required candidates to define the doctrine of *Privity of Contract* and explain the exceptions to the doctrine using decided cases to illustrate their answer.

Most candidates showed a basic understanding of the *Doctrine of Privity*, but a number of them failed to adequately develop the impact of exceptions to the doctrine. Candidates need to place greater emphasis on studying and applying the relevant case law.

Model Answer

Question 3

(a) Discharge of a contract brings a contract to an end. There are four ways to discharge a contract — by agreement, performance, breach or frustration.

Performance occurs when each party discharges his obligations under the contract precisely and completely. This has been illustrated by the well-known case of *Cutter* v.

Powell [*1795*]. Cutter agreed to serve as a second mate on a ship travelling from Kingston, Jamaica to Liverpool for the sum of 30 guineas. He died during the voyage. The court found that his widow was unable to claim the part of his wage relating to the period before his death because he had not fulfilled his whole contractual obligation. This rule has since been relaxed and in some instances substantial or partial performance would be acceptable: *Planche* v. *Colbum; Hoeing* v. *Issacs*.

Agreement is essential to the formation of a contract and since a contract is formed by agreement, it can be discharged by agreement. *Berry* v. *Berry [1929]* is a case in point where a party who agreed to discharge a contract was barred from suing because the contract was coming to an end.

A contract may also be discharged where a breach occurs. A breach of contract may arise for varied reasons such as non-performance or defective performance: *Hochester* v. *De La Tour*.

The final method of discharge is by frustration. A contract is frustrated where an unexpected or rather unanticipated event occurs which makes the performance of the contract impossible. *Krell* v. *Henry* [*1903*] is an excellent case in point since the room was leased for the sole purpose of viewing the coronation of Edward VII but the illness of the king cancelled the procession and the court held that the cancellation of the procession discharged the parties from their obligations under the contract.

(b) It can in fact be agreed that the *Doctrine of Privity* confers rights and obligations on none other than the parties to a contract. The basic rule in the *Doctrine of Privity* is found in the case of *Dunlop* v. *Selfridge* [*1915*] where the court held that Dunlop, the tyre manufacturer, could not sue a customer of Selfridge for selling below the agreed price, but the company to whom Dunlop sold tyres.

However, while it seems reasonable that persons who are not parties to a contract should not carry the burden of a contract, it often seems unfair that such persons cannot reap the benefits especially when the contract is made for their benefit. This can be seen in the case of *Tweedle* v. *Atkinson* where a man was not able to enforce a payment due to him under a contract even though the contract was made specifically for his benefit.

It should therefore be no surprise that the law eventually developed exceptions to the *Doctrine of Privity* and in this regard Freitel is correct in that, that is now only a general rule that the doctrine does not confer rights and obligations on third parties.

Statute has created several exceptions in law such as the *Married Women's Property Act*, which secures property for a woman after her husband's death in varied situations including employment, *The Contracts (Rights of Third Parties) Act, 1999*. Collateral contracts are another exception: *Shanklin Pier* v. *Detel* [*1951*].

The doctrine of agency is another exception as the party on whose behalf an agent acts has certain legal rights to take legal action in his own interest as the contract was made on his behalf. Another exception is where the person is a beneficiary under a Trust.

Other exceptions include:

- Remedies of contract
- Restrictive covenants

Question 4

Part (a) required candidates to explain two types of misrepresentation, using decided cases. Most candidates were able to clearly explain the types of misrepresentation and gave clear examples with decided cases.

Part (b) was an application question which in Section (i), required candidates to explain the issue — whether the exaggerated statement made by Jamen Ltd amounted to a misrepresentation in circumstances where Bolden Ltd sought independent advice. Most candidates accurately identified the issues in this section but few used cases to support their approach to the question and accordingly few got the marks for use of case. Candidates must be reminded that the authority for their legal position comes from case law or statute.

Part (b) (ii) proved to be more challenging to a number of candidates who were unable to establish whether a misrepresentation had been made and the type of misrepresentation made, if any.

Candidates need to take greater care with the use of grammar and spelling; there were too many misspelt legal terms and ordinary words that they should be able to spell. Candidates should take care to structure their sentences and essays logically. A significant number of candidates used incorrect terminology for the types of misrepresentation.

Model Answer

Question 4

(a) A misrepresentation is an untrue statement of fact made by one party to the contract to the other party, which, although not forming a term of the contract is an inducement. There are three kinds of misrepresentation, namely: fraudulent, negligent and innocent. Two types will be explained: fraudulent and negligent misrepresentation.

Fraudulent misrepresentation is false representation of a material fact which is made with the knowledge or belief that it is false. An element of dishonesty is required. In *Derry* v. *Peek*, a company advertised steam powered trams for persons to purchase shares at a time when animal powered trams were in use. Derry went on the assumption that the Department of Trade and Industry would grant the relevant permission. The permission was not granted; the company was wound up and the directors sued for fraud. The court held, amongst other things, that fraud is proven when it is shown that a false representation has been made knowingly.

Negligent misrepresentation is a false statement made by a person who had no reasonable grounds for believing the statement to be true or being reckless or careless as to whether or not the statement is true. In *Gasling* v. *Anderson [1972]*, Ms Gasling, a retired school mistress, entered negotiations for the purchase of three flats. Her agent in the negotiations represented that the garage would come with the flat with parking area. The sale went through. The planning permission was later refused. It was held that her agent made a negligent misrepresentation as he made a statement without reasonable grounds for believing it to be true. Ms Anderson was liable for the acts of her agent and had to pay damages.

On the other hand, innocent misrepresentation is a false statement made by a person who had reasonable grounds to believe that the statement was true, not only at the time it was made but also at the time when the contract was entered into. In *Oscar Chess Ltd* v. *Williams*, Williams bought a car from Oscar Chess Ltd. The claimants took Williams' car as part-exchange. Williams had described the car as a 1948 model and was allowed £290 on the car. It was later found to be a 1939 model. It was held that the contract could be set aside in equity for innocent misrepresentation.

(b) (i) Bolden Ltd purchased a mine from Jamen Ltd. Jamen Ltd gave exaggerated statements regarding the earning capacity of the mine. However, Bolden Ltd also had the mine checked by its own expert agents. Six months later Bolden Ltd found that the statements made by Jamen Ltd had been inaccurate and sought to rescind the contract.

On the facts stated, in order to rescind the contract Bolden Ltd would have to establish fraudulent or negligent misrepresentation on the part of Jamen Ltd and to show that the fraudulent misrepresentation induced Bolden Ltd to enter into the contract.

The case of *Attwood* v. *Small* (1838) is instructive. In that case, the purchaser of a mine elected to verify exaggerated (but not fraudulent) statements of its earnings by commissioning a report from its agents. This failed to reveal the defects in the mine. It was held that he could not rescind the contract because he relied on the report not the statement.

Bolden Ltd is therefore advised that based on the aforementioned, it may not be able to rescind the contract with Jamen Ltd and should therefore seek to take action against its own expert agents for negligent misrepresentation as illustrated in the case of *Headly Bryne* v. *Heller and Partners Ltd [1963*].

In the *Headly Bryne* case, the appellants were advertising agents and the respondents were merchant bankers. The appellants had a client called Easipower Ltd. The appellants represented Easipower as having good credit worthiness and relying on this, the appellants placed orders for advertising time and space for Easipower Ltd. Easipower went into liquidation and the appellants lost over £17,000. It was held by the court that but for the respondents disclaimer, they would have been liable.

It may therefore be a viable option for Bolden Ltd to sue the expert agents and should there be no disclaimer, it may be successful.

(b) (ii) Fraudulent misrepresentation requires an element of dishonesty for the party to succeed against the maker of the statement. On the facts there appears to be no evidence of this and accordingly the exaggerated statements would amount to a mere puff unless it can be proven that they were made knowingly and carelessly. It is submitted that had Bolden not sought advice from its own expert agents, it may have been able to take legal action to rescind the contract with Jamen Ltd and further investigation may have confirmed whether the basis of the suit would be fraudulent or negligent misrepresentation.

Module 3: Real Property

The questions testing this module had the lowest means on the paper. The mean for Question 5 was 9.71 or 39 per cent and that for Question 6 was 7.89 or 32 per cent. Question 5 was more popular as 65 per cent of the candidates elected to answer it.

Question 5

This question invited candidates to describe the characteristics of easements and apply the requirements for acquisition of an easement by presumed grant (prescription) to a problem type question.

Part (a) was relatively straightforward; however, many candidates found it difficult to cite relevant cases to support the requirements for a valid easement. Capable candidates outlined cases including: *Re: Ellenborough Park (1955), Voice* v. *Bell (1993), Hill* v. *Tupper (1861-73), Copeland* v. *Greenhalf (1952), and London and Blenheim Estates Ltd* v. *Ladbroke Retail Parks Ltd (1993).*

Part (b) required candidates to make a systematic examination of the facts and to outline with appropriate proof whether there was acquisition of an easement by prescription.

Acquisition by Prescription is based on acquiescence by the servient owner in allowing somebody to exercise what amounts to an easement over his land for a long time without doing anything to stop him (*Dalton* v. *Angus*). The requirements for prescription are that the long enjoyment must be:

(a) As of right: The enjoyment must not be by force, in secret or by permission (*nec vi, nec clam, nec precario*).

(b) Continuous: This requirement does not necessarily demand that the use be non-stop or continuous on a 24-hour basis, rather, the degree of continuity needed depends on the type of easement claimed.

(c) In fee simple: The user cannot ripen into an easement unless it is by or on behalf of a fee simple against another fee simple owner.

Most candidates were able to define an easement; however, most were unable to apply the legal principles to the facts of the problem. The majority were not able to develop a logical, well-developed response and therefore were not successful in earning scores in the higher ranges. Again, many candidates failed to support their responses with relevant cases. Few candidates cited relevant cases including: *Liverpool Corporation* v. *Coghill (1918), Tehidy Minerals Ltd* v. *Norman (1971), Bridle* v. *Ruby (1989),* and *Mills* v. *Silver (1991).*

Many candidates incorrectly stated that an easement is given because there is no other means/route of getting to the ‘other’ property. Candidates from particular jurisdictions where their beaches are all public property, mistakenly focused on detailed discussions regarding right

of entry to beaches as acquisition of easements, which, unfortunately did not earn them any marks. Some candidates erroneously used the term *appurtenant* as a synonym for *nexus*. A few candidates were unable to differentiate between prescription and adverse possession. Some also missed a mark by not identifying that the right to pass over land must be the land of another person. Several candidates did not grasp the concept of which land owner was dominant and which was servient. Many candidates went into a discussion on the differences between easements and licences which was not relevant given the parameters of the question and thus failed to earn any marks. Several candidates erroneously listed the requirements for prescription as the requirements for easement.

Question 6

This question required that candidates apply legal rules relating to the implied covenants of the landlord/lessor and the consequences of breach of covenant by the tenant/lessee by analysing a fact scenario.

In Part (a) (i), few candidates outlined the implied covenants of the landlord (quiet enjoyment, non-derogation from grant, and fitness for habitation) with supporting cases that were relevant — *Browne* v. *Flower (1911), Aldin* v. *Latimer, Clark, Muirhead and Co (1894), Newman* v. *Real Estate Debenture Corporation Ltd (1940), Smith* v. *Marrable (1843), Wilson* v. *Finch-Hatton (1877), Ram* v. *Ramkissoon (1968), Kenny* v. *Preen (1962), Browne* v. *Flower (1911), Tapper* v. *Myrie (1968) and Port* v. *Griffith (1938).*

General observations regarding this part of the question were:

- Many candidates confused the landlord with the tenant when answering this section of the question and therefore gave the implied covenants of the tenant or lessee and not that of the landlord/lessor. Additionally, some candidates merely narrated the expressed covenants of the tenant/lessees as stated in the question to be that of the landlord.

- Candidates who were able to outline steps for the termination of the lease [Part a (ii)] explained forfeiture for breach of covenant, ejectment proceedings and notice to quit. Possible supporting cases included *Duplessis* v. *Moore (1993) and Patrick* v. *Beverly Gardens Development Co. Ltd (1974).*

In Part (b), few candidates were able to demonstrate that they had the requisite knowledge and understanding of the law to evaluate the given facts or possibly had not managed the examination time efficiently and therefore could not complete this section of the question. Capable candidates were able to outline the conditions under which a tenant may obtain relief from forfeiture — *Gill* v. *Lewis (1956).* Other competent candidates explained that the flood was

an *Act of God* and that the court was likely to consider prorating rent payments as being just and equitable, explaining that the landlord is liable for repairing conditions that seriously affect the property's habitability and that the landlord has insurable interest in the property and is most likely to have insured it against *Acts of God* such as flooding.

Many candidates, however, incorrectly interpreted the term *relief* to mean release from pain, anxiety and distress and said the tenant/lessor would get relief by being evicted. In law, this term means *recovery of rights, protection, redress or benefit likely to be obtained by an order or judgement of the court*. Due to this mistake, these candidates failed to earn marks for their responses. The term *damages* was interpreted as meaning harm or loss and not in its legal sense as *monetary compensation*.

Recommendations

Candidates are advised to

- manage their examination time wisely. Too often they short-changed themselves by writing long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.
- develop a good writing style fostered by reading legal texts and writings.
- indicate, where applicable or required, the jurisdiction to which a particular area of law applies. (Note, especially, those questions that require reference to 'a named Commonwealth Caribbean state'.)
- show greater care in complying with the instructions given when responding to examination questions. Candidates are reminded to
  - write on both sides of the paper and start each answer on a new page as instructed on the answer booklet.
  - note questions attempted in order of response, on the cover page of scripts.
  - record both candidate and centre numbers in the space provided on the cover page, and throughout the answer booklet where required.
- pay special attention to the use of the convention of written English.
- use clear, legible handwriting.

Teachers are encouraged to

- remind students of the FILAC or IRAC method of answering questions and assist them in using these methods.
- give students enough practice in answering questions that have overlapping areas.
- teach students to develop their answers logically and to be coherent in their writing.

- give students practice in analysing questions and responding carefully. Too many students tend to write all they know about a topic instead of identifying the relevant information and properly applying same to the issues identified in the questions.
- spend time explaining key terms so students get a clear understanding.
- make the topics more relevant by finding ways to link the content to the students' own experiences as well as current events.
- help students develop the skill of tailoring their responses to what is required in the question.
- remind students of the importance of knowing cases so they can use relevant ones.
- provide opportunities for students to practise answering past examination questions.

Further Comments

- Candidates wasted time restating the facts in the question or giving a whole treatise on information which they had but which was not relevant to the question.
- Grammar and spelling were generally poor among candidates.
- Teachers need to break down complex definitions given to students.
- Candidates are encouraged to utilize relevant case law or illustrations for the examinable area.

Paper 031 – School-Based Assessment (SBA)

This year's SBAs were generally satisfactorily done. There were a few areas found to be quite good such as the presentation of findings. However, students tend not to uphold the same standard in their discussion of the findings and their recommendations. Common shortcomings displayed by students are listed below, together with recommendations for improvement.

Increasingly, students are submitting SBA reports that are not in accordance with the requirements set out for conducting the research. Students must be instructed to use the stipulated guidelines as set out in the syllabus.

Further, we advise against using topics such as *Defamation, Negligence, Public and Private Nuisance* and *Murder*, as these topics in and of themselves are too broad and are not focused enough to meet the required standard outlined in the syllabus and within the stipulated word limit. Topics should be carefully chosen and narrowed (by using a thesis statement) to allow for adequate discussion and analysis.

Teachers are urged to ensure that the requirements are followed and the projects are vetted so that the students do not go off on tangents. As such, guidance can be obtained from pages 31 to 36 of the syllabus, which sets out in detail the requirements and format of the SBA.

Attention is drawn to the habit of some students to embark upon a lengthy introduction of the subject matter, and in some cases, acknowledgements, which are not a part of the scheme outlined in the syllabus and for which no marks are awarded.

Title and Table of Contents

Most assessment papers contained a title and a table of contents as stipulated in the syllabus. However, there were students who presented the project without a table of contents and others without a clearly stated title. Additionally, a few projects were based on topics that were too broad, vague or unrealistic for the students to actually formulate clear aims and objectives. Project titles should be specific and suitable for detailed research.

Aims and Objectives

Most projects had clearly stated aims and objectives, which allowed the students to conduct focused research. However, some students presented aims and objectives that were unclear and others that were unrealistic. This often occurs when the topics are not specific, and as a result students are unable to identify the most suitable methodology for their project. This adversely affected the overall grade obtained by the students.

Also, some topics tended to be purely sociological or historical in nature and were not appropriate to discussion of the law. As a result, the research presented lacked clarity and relevance. Often, students cited laws which were not applicable to the local jurisdiction, or the scope of the research.

Aims and objectives should be specific, concise and appropriate for in-depth research.

Methodology

A majority of the students were able to distinguish between primary and secondary sources of data. However, a significant number of them still failed to properly select an appropriate sample and sample size. Students also failed to provide sufficient detail of the data collection methods used. Students did not justify the chosen method applied to the research. At times, the method(s) stated in the methodology was not reflected in the body of the research, for example, where the method of observation or interview was used.

It is recommended that students use a combination of both primary and secondary methods as this tends to allow for greater validity and reliability of their interpretation, analysis and conclusions. Also, students must justify why they are using the sources they selected and when

conducting an interview, they must state the name of the interviewee, date, time and place of interview/s. When using questionnaires students must state the sample size and sample location.

Findings

Several students did an excellent job in recording their findings. This was evident in projects that had clearly stated aims and objectives and applied the relevant methodology.

Some students failed to present the legal findings they intended to rely on in their discussion. They only presented findings from the interview and/or the questionnaires. Also, in some projects students presented charts/diagrams without stating what they represented. Many did not apply the proper citation of their cases, and as such they are urged to take note of citation requirements.

Some students did not distinguish between the *Findings* and *Discussion of Findings*; but instead merged the two under the heading *Report* or *Literature Review*. This negatively affected the grades awarded, as examiners had to allot grades for the required headings based on the information provided.

It is recommended that students organize their project as set out in the syllabus and have a heading, *Presentation of Findings* which is separate from *Discussion of Findings*. Students should also present their findings based on the results of the questionnaires and/or interviews conducted and state clearly what each represents. Also, students should present the legal findings they intend to rely on in their discussions, for example, legislation, case law and statistics.

Discussion of Findings

The level of legal analysis required for this section was unsatisfactory overall. Whilst some students did excellent presentations of their findings, they failed to analyse and interpret the data.

Most students failed to identify the relevant law in the *Findings* and consequently, failed to interpret and analyse the appropriate legal principles in support of the stated aims and objectives.

Recommendation: Students should analyse and interpret both primary and secondary data collected to come to a conclusion based on their aims and objectives.

Students should also state the limitations whether it be in the legislation, case law, or agencies/ bodies.

Recommendations

A few students displayed knowledge of what was expected of a recommendation. However, there is room for great improvement in this area. Many students used the recommendations as a conclusion, only recapping what the project was about. A few others presented well-written recommendations but these were not supported by the findings of the research.

Students are reminded not to use the recommendations as a conclusion, but should state what they are proposing based on their findings, for example, changes or improvements to be made to the legislation.

Recommendations should be plausible and supported by the relevant laws, where possible.

Bibliography

The vast majority of students were not able to properly cite secondary sources, including cases, journals, textbooks, and internet sources. It is to be noted that search engines such as Google.com, lawteacher.com/net, Wikipedia.com and Ask.com are not in and of themselves credible/proper reference sites.

Students and teachers are reminded that the syllabus contains properly cited reference materials to include texts and cases.

Communication

Overall, the use of the English language and level of communication displayed in the research projects was satisfactory.

Students should spend more time proofreading their projects and utilizing the dictionary and other spell check resources.

Word Limit

Some research projects were in excess of the word limit. It is recommended that the stipulation in the syllabus that students with projects in excess of the prescribed word limit be penalized, be enforced.

Recommendations

- Students' names recorded on the assignments and internal assessment forms must be consistent with the names at registration.
- Comments and marks by teachers are to be erased before SBAs are submitted as samples.
- Careful note must be taken of syllabus requirements to ensure compliance.

Recommended Methodology for Answering Questions

The following seven-point approach is recommended to students when answering questions, not only for the examinations, but also when preparing their assignments and as a general practice. Success is guaranteed from following these guidelines.

- Students must follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b).
- Students must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial.
- Students are encouraged to use the IRAC format when answering problem-type questions.
- The conclusion should relate to the problem and should not be a fanciful construction that bears no relation to the facts, or that simply rewrites the facts.
- Students must support their responses with legal authority, namely:
  - Case Law
  - Statute
  - Legal writers
- Students must deal with issues and applicable law, refraining from restating the question, except in so far as a principle of law relates to stated facts. They should strive to answer the questions precisely.

C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

MAY/JUNE 2014

LAW

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GENERAL COMMENTS

The total number of candidates writing the CAPE Law examination, in both Units 1 and 2 continues to increase. In 2014 while the number of candidates sitting Unit 2 remained consistent with that of 2013; the number sitting the Unit 1 examination increased from
1,347 to 1,620. In both units, 85 per cent of the candidates obtained Grades I–V.

The examinations for each unit consisted of the following papers:

- Paper 01 — Multiple Choice Paper 02 — Extended Response
- Paper 031 — School-Based Assessment (SBA)
- Paper 032 — Alternative to SBA

For each unit, Paper 01 consisted of 45 multiple choice questions. Fifteen questions tested information on each module. The score on this paper contributed 30 per cent to candidates' overall score.

Each Paper 02 consisted of six questions — two from each module. Candidates were expected to do one question from each module. The scores on this paper contributed 50 per cent to a candidate's overall score.

Paper 031, the SBA, is the internal component of the examination. Candidates were expected to do a research paper on an area of interest. These were marked at the school level and moderated by members of the marking team. Paper 032, the Alternative to SBA, was set specifically for persons who register privately to sit the examination. Candidates were required to do preparation on a set topic and write an essay on this topic under examination conditions. The score on this paper contributed the remaining 20 per cent to candidates' scores.

The team continues to notice that there were some weaknesses in areas of elementary principles of law which indicated a lack of awareness of basic principles. Candidates' responses continue to be plagued by poor essay construction and a general disorganization in the presentation of

ideas. It is also worthy to note that in many cases the responses did not adequately address the problem given in the questions. Candidates are reminded to utilize an answer plan to assist them in producing coherent responses thus improving their chances of gaining points awarded for coherence. Candidates should also note that, in most cases, the format of the questions provide a guide regarding how they are to respond.

It is strongly recommended that candidates become familiar with and practise using one or both of the following formats for answering questions:

- FILAC (**F** – Facts, **I** – Issues, **L** – law, **A** – Application of law to facts, **C** – Conclusion)
- IRAC (**I** – issues, **R** – Relevant law, **A** – Application of law to facts, **C** – Conclusion).

The advantage of using either of these is that candidates' essays are likely to be more structured and address the issues as required by the questions.

It should be noted, however, that although the aforementioned formats are strongly recommended, they are not to be applied mechanically. Candidates are to spend time reading and interpreting the questions since not every question would require one of the formats.

DETAILED COMMENTS

UNIT 1 – PUBLIC LAW

The modules in this unit covered the following topics:

1. Caribbean Legal Systems
2. Principles of Public Law
3. Criminal Law

Paper 01 – Multiple Choice

For 2014, the mean was 59.30 per cent. This mean showed an increase over 51 per cent in 2013. Candidates' overall performance on Module 1 was better than on the other two modules as the mean on this module was 64 per cent compared with 56 and 62 per cent on Modules 2 and 3 respectively.

Paper 02 – Extended Responses

In 2014 overall performance as measured by the mean declined when compared with that of 2013. The mean was 43.05 per cent, down from 48.22 per cent in 2013. Detailed comments on performance by module and question are given below.

Module 1: Caribbean Legal Systems

For this module, Question 2 was more popular and had a higher mean than Question 1. The mean on both questions were 10.49 (42 per cent) and 13.32 (53 per cent) respectively.

Question 1

This question was designed to test candidates' understanding of the role of the Caribbean Court of Justice (CCJ) in the region and to outline its structure. This included a brief discussion of the two jurisdictions of the CCJ (appellate and original) and the nature of the matters heard by each within the territories applying the jurisdictions of the CCJ. Also, candidates were expected to engage in discussions on the arguments supporting and opposing the establishment of the CCJ as the final court for the region in place of the Privy Council.

With regard to outlining the structure, generally candidates did not express this clearly and most did not grasp the fact that they were required to do so. Candidates did not seem to know the countries that signed on to the appellate jurisdiction as they included The Bahamas and Trinidad and Tobago which are not signatories, instead of Barbados, Belize and Guyana. There was not a

general appreciation that the original jurisdiction was applicable to all the signatory states to the Treaty of Chaguaramas, or that there was a distinction to be made between the two jurisdictions of the CCJ.

Candidates generally performed well in discussing the arguments supporting the statement. However, many had a skewed understanding of the arguments in support and presented such arguments to be the converse of the statement. In other words, candidates presented arguments such as the cost to litigants, accessibility and familiarity with the culture (for fear of bias) as disadvantages of using the CCJ. Some also interpreted the question to be about regional integration to accommodate a common currency and foreign exchange.

Candidates performed well in outlining the arguments against the statement and most were able to discuss at least two of those arguments. However, many candidates identified bias, corruption and bribery as disadvantages to the CCJ linking them to racism and prejudice. This part of the question was generally well done.

Question 2

This question, divided into two parts, was designed to test candidates' understanding of the doctrine of alternative dispute resolution with particular attention on mediation and arbitration.

In Part (a), candidates were required to distinguish between these two forms of alternative dispute resolution by providing an explanation of the terms and comparing and contrasting them. While the majority of candidates was able to identify the salient points, many were unable to express their points clearly while some seemed to have confused both terms. The majority of candidates failed to give a full definition of the terms and was not able to distinguish them. Most candidates did not mention the similarities, but were able to give the differences.

Part (b) required candidates to apply the information on the advantages of alternative dispute resolution (ADR) to advise the relevant party why ADR should be chosen to resolve the dispute. This included a discussion about the advantages of ADR, for example *time effectiveness (being*

faster than litigation), cost effectiveness, fairness and flexibility, privacy and confidentiality, among other relevant advantages.

Some candidates did not appreciate the fact that they were required to give general considerations on the advantages and not on the specific forms of ADR. Despite these, however, most candidates were able to advise the client on the advantages.

Model Answers

Question 1

The Caribbean Court of Justice (CCJ) was established in 2001 in Trinidad and Tobago. The CCJ has two jurisdictions, (1) appellate jurisdiction and (2) original jurisdiction. In its appellate jurisdiction it acts as the final court of appeal for all civil and criminal appeals from the domestic courts of some Commonwealth Caribbean territories (Barbados, Belize and Guyana). In its original jurisdiction, it acts as an international court which interprets and applies the revised Treaty of Chaguaramas under which CARICOM was established and the CSME operates. In addition it deals with matters arising out of issues between Commonwealth Caribbean states, matters establishing the rights of private individuals under certain international treaties and matters arising out of trade disputes.

The establishment of the CCJ has encountered serious criticisms by many, while there are others who support its development. The arguments in favour of the CCJ are as follows: (1) Due to the fact that the CCJ is an itinerate court and accordingly has the ability to travel, it is very accessible to litigants. (2) The location of the court within the Caribbean makes the cost to litigants much more affordable as it is a lower cost when compared to travelling to the United Kingdom to the Privy Council. (3) The judges of the CCJ are familiar with the culture of Commonwealth Caribbean countries and are therefore equipped with the knowledge and level of understanding required to make decisions that reflect sensitivity for the Caribbean people. (4) The establishment of the CCJ creates a sense of security and stability in the region as there are well-qualified and eminent jurists in the court capable of fulfilling their role impartially. This

promotes regional integration and independence since we have a high standard of education in the region and are capable of delivering sound judgment. (5) Due to the establishment of the court under the revised Treaty of Chaguaramas, sanctions and pressure exerted on a disobedient state are likely to ensure compliance.

The establishment of the CCJ has also been criticised by opponents who express that (1) the Privy Council is properly and satisfactorily performing its role as the court of final appeal for many Commonwealth Caribbean states and has always been the final court creating precedents and developing the jurisprudence in the region. (2) There is a greater possibility of political influence on judges in the CCJ because of their presence and involvement in the region, while the Privy Council is far removed from the region and is more likely to give objective or unbiased judgments on litigants. (3) There is an unavailability of adequate and sustainable funding from the member states given the economic climate, while territories remaining under the Privy Council would not need to worry about such a financial contribution. (4) It is believed that education in the United Kingdom is far superior producing legal luminaries and jurists that are 'better' able to interpret the rule of law. In that light, it is believed that there is an unavailability of jurists of the required standard for the CCJ. (5) This belief in the education of the jurists lends itself to the further belief that the decisions of judges in the CCJ may be of poor quality.

At best, it may be argued that the establishment of the CCJ promotes regional development and many are ready to facilitate its development in the region (for example, Dominica). However, there continues to be the need for the other Commonwealth Caribbean states to not only embrace the original jurisdiction to which they are already parties, but to establish the appellate jurisdiction of the court in their territory.

<u>Question 2</u>

(a) *Distinguish between Mediation and Arbitration*:

- Mediation – A non-adversarial method of alternative dispute resolution in which a neutral third party helps to resolve a dispute.

- Arbitration — This is another form of alternative dispute resolution. It is the hearing and determination of a dispute by an impartial referee agreed to by both parties (often used to settle disputes between labour and management).

Similarities include:

- Involvement of a neutral third party in settling the dispute.
- Parties agree on the adjudicator/mediator.
- Proceedings are held in an informal setting.

Differences include:
Mediation:

- Contains no elements of a court of law, but is totally informal.
- Third party listens to the position of the parties and communicates these positions to each disputant.
- The parties come to an agreement or settlement after discussions in the presence of the third party.
- Agreement between the parties is not required to be enforced by the court as parties usually comply with the decision because it was made by them. However, mediation that is recommended by the court is enforced by a court order.

Arbitration:

- Contains certain elements of a court of law.
- Third party hears testimony of the parties.
- Arbitrator makes the final decision.
- Decision of the arbitrator is binding on the parties and may be enforced by order of the court.

(b) What reasons would you give to Brandon HDC Ltd to convince them that alternative dispute resolution is a better way to resolve this dispute?

On the facts, the contract to supply and install the kitchen cupboards in the newly constructed houses should have been completed in six months. Now, three years later the job is not completed by XYZ Construction Company Ltd. In advising Brandon HDC Ltd, it is important to understand that alternative dispute resolution provides a wide array of benefits which should be explored.

First, it is time efficient/faster than litigation. This is because the proceedings are less formal than litigation (this includes starting proceedings and preparation for the proceedings when compared to getting a court date for litigation) and given the length of time that has already elapsed, this would certainly be a benefit to seize. Also, there is a limited right of appeal to arbitration, thus there is less scope for the parties to delay the matter and there is swifter enforcement.

Second, it is cost effective. That is to say that the company will save money, as the costs for the proceedings are greatly reduced when compared to litigation. Also, the parties may agree to share certain costs.

Third, it promotes fairness and flexibility. This is because the proceedings may be conducted in a manner deemed appropriate and an investigative approach may be adopted rather than the adversarial approach of the courtroom. With ADR, the parties can opt for remedies that are not available in the court. Also, the parties do not need to adhere to the strict rules of the court of law.

Fourth, the proceedings are private and confidential as they are non-public. At the start of the process, the parties are usually encouraged to sign confidentiality agreements or non-disclosure for unauthorized persons as this could prejudice the parties.

Lastly, in ADR, the arbitrators or mediators with the appropriate degree of expertise may be selected by the parties. This is an added advantage, as in court proceeding the parties do not get to choose the judge.

ADR is a flexible and efficient method of resolving disputes. Brandon HDC Ltd would be encouraged to utilize this process. If XYZ proved cooperative, the process will be greatly beneficial to all parties involved without bringing an adversarial element which can detract from an amicable solution.

Module 2: Principles of Public Law

Questions 3 and 4 were based on this module. More candidates selected Question 3 than Question 4. Approximately 70 per cent of the candidates attempted Question 3. The mean on Question 3 was 14.83 or approximately 59 per cent while that on Question 4 was 12.08 or 48 per cent.

Question 3

This question tested candidates' understanding of the doctrine of the separation of powers and the rule of law as a foundation for just society.

For Part (a), candidates were expected to explain

- the concept of the separation of powers, namely separation of legislative, executive and judicial functions
- where the doctrine can be found and the implication from the constitution
- aspects of the doctrine of separation of powers, for example, the jurisdictions of the three arms of state and areas of possible overlap of jurisdictions and the effect on the doctrine.

Generally, candidates demonstrated an adequate understanding of the concept of separation of powers referring to the unique value of the division of powers between the arms of the government. Most candidates were able to successfully state the roles and functions that each arm performs. Conceptually, candidates had difficulty expressing their view of how the various aspects of separation of power work. Many candidates did not adequately analyse the issues and revealed a lack of understanding of the pitfalls associated with overlapping branches. The

response also showed that candidates lack knowledge of related cases. Some candidates found it difficult to correctly apply cases and, in some instances, irrelevant cases such as *Pratt and Morgan*, *Shaw* v. *DPP* and *Knuller* v. *DPP* were cited.

Some candidates addressed the definition of separation of powers and showed the relevance of the separation of powers to the proper functioning of the government. They identified the value of an independent judiciary working closely with an executive arm that enforces the laws made by the legislature. These responses generally revealed an understanding of the purpose of checks and balances to a stable democracy. Additionally, the important cases of the *Attorney General of Trinidad and Tobago* v. *Collymore* and *R* v. *Hinds* underscored their understanding that not even parliament can disobey the constitution with impunity. They also cited other relevant cases as well as the constitutional value of the separation of powers.

In Part (b), candidates were expected to assess/evaluate/appraise/judge/determine whether the rule of law is in fact the foundation of any just society. In making that determination candidates were expected to explain

- the constituent elements of the rule of law, for example the fact that the law should be accessible, intelligible, clear and predictable
- the constitutional basis for the rule of law
- procedural fairness as part of the rule of law.

Many candidates were able to use current examples to demonstrate an understanding of the rule of law and thereby received generous marks for this part of the question. The idea that no man is above the law seemed to be widely understood and was used often as the definition for the rule of law. Cases such as the recently concluded trial of popular Jamaican entertainer *R* v. *Adijah "Vybz Kartel"*, *Palmer* and that of a Jamaican politician, *R* v. *Kern Spencer*, whose case was dismissed as a no case submission featured prominently in several answers. The *Shanique Myrie* case also received mention from some candidates as illustration of the rule of law.

The Guyanese example of the *Middle Finger* case was mentioned as an example of the rule of law. A young man had allegedly shown the middle finger to the president's motorcade and was arrested and jailed for over two weeks despite the fact that the offence was one which would attract only a fine. Candidates referenced this as a clear example of the breach of the rule of law in Guyana where there was an abuse of power by those in authority against a citizen. These candidates often cited not only writers such as *Hood and Phillips* and *Professor Albert Fiadjoe* but the work of early philosophers such as *Montesquieu* and *John Locke*. This showed an intellectual understanding of the history of the concept and how it has persisted through time in liberal democracies with its current impact on Caribbean jurisprudence.

The answers were generally very coherent with correct use of language and grammar.

Question 4

This question assessed candidates' understanding of the doctrine of *ultra vires.* It was based on a scenario where a minister issued a directive to a board which was responsible for the issuing of licences.

Part (a) required candidates to

- explain the context of the *ultra vires* doctrine and the basis for judicial review
- determine whether the direction of the minister was *ultra vires* Section 6 of the Pharmacies Act
- determine whether the direction of the minister is of a specific nature and not general, and whether it falls outside of the section of the act.

Part (b) required candidates to

- make a determination on the actions of the board, for example, whether the board acted *ultra vires* the minister's direction and whether the minister had acted *ultra vires* the

Parent Act/Enabling Act; whether every action that flows from that *ultra vires* is unlawful or lawful to the extent that it is consistent with the powers granted.

Very few candidates attempted this question. Generally, candidates who selected this question performed poorly. They did not show an understanding of the *ultra vires* doctrine and those who attempted often failed to support their definition with relevant case law.

Module 3: Criminal Law

Questions 5 and 6 were based on this module. Question 5 was more popular, with approximately 70 per cent of the candidates responding to it. The questions on this module had the lowest means on the paper. That for Question 5 was 7.34 or 30 per cent while that for Question 6 was 5.00 or 20 per cent.

Question 5

This question focussed on automatism as a defence. Part (a) was designed to test the coincidence of *actus reus* and *mens re*a. It tested candidates' knowledge of the varying facets of the *actus reus* and the disposing of criminal liability at the fundamental stage, through the discussion of the defence of automatism.

In this section of the question the majority of candidates was able to identify automatism as a defence but had difficulty developing the discussion. Many candidates confused automatism with the defences of provocation, intoxication and diminished responsibility. A substantial number of candidates referred to the case of *R* v. *Byrne* which is a case on diminished responsibility and not automatism. Some candidates were unable to differentiate automatism from the principles related to insanity; hence, there were lengthy discussions of the *McNaughten Rules*.

On the other hand, some candidates were able to differentiate between automatism being the result of some external factor rather than an inherent mental defect but could not expound on what really is an 'external factor'. The majority of these candidates was unable to show the

connection of automatism to the *actus reus* and some candidates discussed automatism as an offence instead of a defence.

It was also evident that candidates did not quite grasp the legal effect of the defence equating it with diminished responsibility and provocation, with the effect being a reduction in the gravity of the offence rather than a complete elimination of criminal liability.

Part (b) was designed to test offences against property, specifically robbery. The majority of candidates was able to give a working definition of robbery; however, a large number did not include the fact that the use of force was required in order for the act to be considered as robbery. A significant number of candidates incorrectly equated robbery with burglary, housebreaking and larceny. Some candidates provided a lengthy discussion on theft. Candidates were able, for the most part, to explain the *actus reus* of the offence and to differentiate it from the *mens rea* required to commit the offence.

Some candidates did not separate the response to Part (a) from Part (b). They instead spoke of automatism in relation to robbery and vice versa.

Model Answer

Question 5

"Automatism applies to the situation where the defendant is not legally insane but because of some external factor he is unable to control what he is doing." Discuss the above statement using decided cases to illustrate your answer.

(a) The statement above refers specifically to sane automatism. It should be noted however, that there are two types of automatism: sane and insane. Sane automatism is usually caused by a factor external to the defendant while insane automatism is generally due to some internal factor.

Sane automatism, if successfully pleaded, will result in the defendant being acquitted, as it is a complete defence. The defendant, however, will have to establish that his acts were beyond his physical control, that is, the acts were done by the defendant's muscle without the control of his mind. In such a case there would be the absence of *actus reu*s as the act was not voluntary. There would also be no *mens rea* because the defendant was not conscious of what he was doing (see *Bratty* v. *Attorney-General for N. Ireland [1963] AC 386*). Typical examples are sleepwalking, acts done in a hypnotic trance, reflex actions and convulsions. Such a state normally excuses a defendant for the consequence of his action on the basis that no responsibility can be attached to involuntary actions.

To be successful in raising the defence of automatism the defendant must establish the following:

Total loss of voluntary self-control: In *Attorney-General's Reference No. 2 of 1992* the Court of Appeal held that the defence of automatism was only available where there was complete destruction of voluntary control. The defendant, a lorry driver, was charged with causing death by reckless driving. He raised the defence of automatism and produced medical evidence to show he was put into a trance while driving on the featureless motorway. The Court of Appeal held that though there might have been some loss of control there was no proof of total loss of control.

Secondly the defendant must establish that this 'total loss of control' was due to an external factor. This inability to control one's act must result from the operation of some external factor upon the working of the brain rather than an inherent mental defect. If in fact it is an inherent mental defect, then the defence of sane automatism will not be successful as the court will view such a defect as an element of the defence of insanity and not automatism. It must be further noted that the external factor must be something that results in more than general stress and anxiety. In *Hill* v. *Baxter* the court gave an example of a driver being attacked by a swarm of bees while driving. It was noted that the removal of the hand from the steering wheel was involuntary and due to the effect of the external factor (which in this case was the swarm of bees).

In *R* v. *Quick*, the defendant, a nurse, caused harm to a patient. He pleaded automatism on the basis that he had taken too much insulin and had eaten very little thus becoming hypoglycaemic. The court first held that the defence of automatism failed but on appeal the Court of Appeal found that the hyperglycaemia was not caused by the diabetes but by the external factor of insulin.

This decision can be contrasted with *R* v. *Hennessy* where the defendant had not taken his daily dose of insulin and fell into a hyperglycaemic state which caused him to not have any recollection of his acts. He raised the defence of automatism; however, the judge ruled that the appropriate defence would be insanity. The court held that the disease of diabetes (an internal factor) itself and not an outside factor of injection or insulin had caused his actions.

Finally, the defendant must establish that the 'total loss of control' caused by an external factor was through no fault of his own, that is, the automatism must not be self-induced. The defendant must not have brought about the state of automatism as in the case of *R* v. *Bailey*.

(b) A person is guilty of robbery if he steals and immediately before or at the time of doing so, he uses force on or threatens the use of force on any person or puts any person in fear of being subjected to force.

All the elements of theft must be proved before a conviction can stand. Therefore, the prosecution must establish that the defendant dishonestly appropriated property belonging to another with the intention to permanently deprive the other of it.

Use of force: After the elements of theft have been made out, the prosecution must then establish the presence of force. The force must be used to effect the theft. The slightest degree of force is sufficient. In *R* v. *Dawson* for example, the victim was jostled so that the defendant could pick his pocket. The court ruled this to be force and therefore robbery instead of theft.

It is important to note that if there is no force then the offence committed would be theft and not robbery. For example, if in *Dawson* the defendant had stealthily taken the bag without jostling it from the victim, then the defendant would have been guilty of theft and not robbery.

The force must be used to effect the robbery: The case of *R* v *Hale* provides an example. The defendants entered the home of the victim in order to steal. The victim was tied up after her jewellery box was seized in order to restrain her from calling for help. In court, the defendants contended that robbery had not been committed as force was only used after the jewellery box was seized. The court, however, held that the act of appropriation was a continuous act therefore the defendants in restraining the victim did so by force and hence committed robbery.

The force must be used in order to steal: In *R* v. *Clouden* the defendant wrenched a shopping bag of goods from the victim. The court held that force had been effected and therefore robbery was committed. The force was applied to remove the bag, but nevertheless amounted to use of force in order to steal.

The *mens rea* of the offence of robbery must be intention to steal as well as the intention to use force in order to steal. In *R* v. *Robinson* the defendant was owed seven pounds by a woman. He went to ask for it and a fight ensued between the defendant and the woman's husband. During the fight five pounds fell from the husband's pocket. The defendant picked it up and kept it. He was convicted of robbery. His conviction was quashed since the defendant had an honest belief that he was entitled to the money, thus the *mens rea* of intention to steal had not been made out.

Question 6

This question was designed to test consent as it relates to intentional actual bodily harm. Most candidates however, discussed consent only as it relates to sexual offences. Generally, candidates seemed unable to discuss consent outside of rape and the knowledge that consent means ‘the giving of permission’; therefore, they concluded that once permission has been granted no offence is committed regardless of the gravity. Moreover, candidates seemed not to grasp the elements of the offence of actual bodily harm.

Part (a) required candidates to use decided cases to support an explanation of the role of consent in the offence of intentional actual bodily harm. The majority of candidates generally provided a definition of consent; however, candidates were generally unaware that consent is nullified in relation to intentional actual bodily harm except in certain circumstances. The question required a discussion as it relates to these exceptions. Few candidates mastered this aspect of the question.

Part (b) was based on a scenario where some individuals were involved in sadomasochistic sexual encounters and videotaped the act. The police found the tape and charged each ‘with assault occasioning actual bodily harm and unlawful wounding’. Candidates were to use decided cases to substantiate whether the individuals had a defence against the charges.

Many candidates concluded that no offence had been committed as the individuals (Stan, Brad and Jake) consented to the act and this provided a complete defence. Many candidates also made reference to their personal beliefs instead of reference to the law in order to advise Stan, Brad and Jake. The thrust of the question dealt with the issues which arose in *R* v. *Brown* and why the House of Lords determined that sadomasochistic sexual encounters could not be an exception to the general rule that a victim could not consent to intentional actual bodily harm greater than battery. The House of Lords gave three reasons as to why the conviction of the accused in Brown must be upheld. Less than one per cent of the candidates identified these reasons.

Most candidates were able to identify the peripheral issue of corrupting public morals by the distribution of the tape. They were, however, unable to distil the specific public interest concerns such as the potential for the tape getting into the hands of children. Many candidates were able to site but not discuss the relevant cases such as *R* v. *Brown*, *Shaw* v. *DPP* and *R* v. *Knuller* as examples.

Model Answer

<u>Question 6</u>

(a) In law, consent is a defence to many offences such as rape or malicious destruction of property. Regarding offences that may cause intentional harm to a person, however, this may not necessarily be the case.

In *Attorney General's Ref* (*No. 6 of 1980*) the Court of Appeal held that a person's consent will not exonerate a defendant where he intended actual bodily harm. The court held that it was not in the public's interest that people should cause or intend to cause each other bodily harm 'for no good reason'.

The general rule as it relates to consent and bodily harm is that a victim may consent to an assault or battery but not to more than that. Where the harm caused or intended is greater, the victim's consent is irrelevant. The court in *Attorney General's Reference (No. 6 of 1980)* while making this decision acknowledged that there were exceptions to this general rule. These exceptions, the court noted, were based on public policy and were therefore in the best interest of the public.

One exception to the general rule is properly conducted sports and games. In *Attorney General's Ref* (*No. 6 of 1980*), two young men engaged in a dispute sought to settle the quarrel by a 'punch up' in the streets. As a result, one of the two suffered a nosebleed and bruises. The court held the fight unlawful and noted that the participants may be convicted of an appropriate offence even though the other party agreed to the fight.

The exception only covers instances of organized sports and games. Where, however, a participant commits a breach of the rules of the sport and uses force beyond what is expected, criminal sanctions can be brought to bear. One example of this would be in the course of a properly constituted football match where one participant is bitten by another player.

A second exception to the general rule relates to body piercing or tattooing for personal adornment. Although these activities will cause harm beyond mere battery, these acts if properly conducted by trained personnel will not be deemed unlawful. It must be noted however that consent may be nullified if the person conducting the exercise is not properly trained to do so and this information was not known to the victim.

The Court of Appeal in *Wilson* included branding as an exception. In that case the victim, Mrs Wilson, asked her husband, the defendant, to brand his initials on her buttocks with a hot knife. He complied. The Court of Appeal quashed his conviction for assault occasioning actual bodily harm (S47 OAPA). It was the view of the court that what was done was no different and no more dangerous than tattooing.

A third exception is rough horseplay. In *Jones*, former schoolmates of the victims tossed them in the air and one boy suffered a broken arm, the other a ruptured spleen. The Court of Appeal quashed the defendants' conviction for offences under Section 20 OAPA. The court ruled that a genuine belief in consent to rough horseplay could be a defence where there was no intention to commit an injury.

Another exception to the general rule is surgery carried out by a medically qualified person. Most surgeries will cause harm to the victim greater than assault and battery; however, where the harm caused is reasonable given the circumstances, the exception to the general rule will apply. All properly conducted surgical interference will generally be deemed responsible if done for the wellbeing of the victim. Where, however, surgery is done for reasons other than public policy or interest, consent will not be a defence. Such instances include, for example, performing cosmetic surgery to avoid criminal detection.

Where surgery is conducted by someone who is not a medical doctor or other qualified person, the consent of the victim will be vitiated and the defendant may face charges in keeping with the type of harm caused.

Another exception to the general rule is dangerous exhibitions. This covers stunt shows, circus acts and other performances generally geared towards entertainment.

(b) As a general rule, consensual non-violent sexual conduct causing harm will not attract criminal liability. It is, however, generally accepted that intentional harm greater than assault or battery may result in criminal conviction. The House of Lords in *R* v. *Brown* held that it is not in the public interest that a person should wound or cause actual bodily harm to another for no good reason and, in the absence of such a reason, the victim's consent afforded no defence to a charge under s20 or s47 OAPA. The satisfying of sadomasochistic desires did not constitute such a good reason. The HOL further noted that the chief difference would be whether the harm caused was incidental or intentional. If deliberate, then whether or not consent was given would be of no significance and criminal liability may be visited upon the person who inflicted such harm. Where the harm is incidental however, the act will not be deemed unlawful.

The current situation involving Stan, Brad and Jake is similar to that which occurred in *R* v. *Brown*. In that case, a group of middle-aged men willingly participated in sadomasochistic activities which involved the intentional infliction of wounds. Videos were made of their activities and circulated to members of the group. The House of Lords upheld their convictions for offences under the OAPA. The court noted that the harm caused was deliberate and the fact that the victims consented did not make the act lawful.

This case can be contrasted with *Wilson* previously discussed. The court held in *Wilson* that there was no aggressive intent and no intentional infliction of violence on the part of the defendant. The harm caused was merely incidental to the act of branding. Likewise in *R* v. *Emmett* where 'high risk' sexual activities resulted on occasion in haemorrhage to the eyes of the victim and in another, burns to her breasts, the Court of Appeal ruled that consent was

no defence; the harm caused was deliberate and in fact dangerous to the health and wellbeing of the victim. This was deemed serious enough to invoke the public policy principle that is the protection of individuals and by extension the protection of the public from harm, even from themselves.

In *Brown*, the court cited three principles as to why it was against public policy to cause intentional bodily harm in such a manner:

(i) Risk of infection and spread of disease such as AIDS. It was only luck that the participants had not suffered any serious harm or infections from their activities.

(ii) The fact that the participants might withdraw their consent or might not have readily consented to the degree of harm.

(iii) There was the danger that young people could be drawn into these unnatural practices.

One of the chief criticisms of this decision is that there is no indication that young persons were being lured (all the participants were middle-aged men) nor was there any proof that the risk of AIDS was any greater than regular heterosexual activity. Many legal practitioners are of the view that the ruling was not based on legal principles but on society's notion of what is natural or not. Since the decision in *Brown* society has grown more tolerant to acts of this nature; it must be remembered however, that that opinion has not been decided in a Court of Law and the decision in *Brown* has not been overruled.

Paper 032 – Alternative to School-Based Assessment (SBA)

The number of candidates who sit this paper continues to increase each year. This year, 40 candidates sat this paper for Unit 1, up from 20 in 2013 and four in 2012. The mean for this year was 54 per cent.

The question tested candidates' understanding of judicial review.

For Part (i), candidates were expected to

- discuss the main organs of the state, their functions and the independence of the judiciary
- explain the supremacy of the constitution, for example, the supreme law clause and the fact that the actions of both the legislature and executive are limited by the provisions of the constitution
- explain the review of legislation by the courts.

For Part (ii), candidates were expected to

- define judicial review including review by the courts of unlawful administrative decisions and actions by the state
- explain the grounds for judicial review, for example, natural justice, legitimate expectation, improper delegation, abuse of discretion
- remedies available for judicial review.

The majority of candidates demonstrated understanding of the importance of the public authority element to the doctrine of judicial review. Candidates also displayed knowledge of the relevant cases and applied them well to support their points.

However, candidates were generally not knowledgeable in the area of judicial review of legislation more so with regard to the grounds for judicial review of legislation and the cases in relation to this area.

Generally, the papers were well written and information was presented in a coherent and logical manner.

UNIT 2 – PRIVATE LAW

The modules in this unit covered the following

1. Law of Tort
2. Law of Contract
3. Real Property

Paper 01 – Multiple Choice

The performance on this paper, as measured by the mean, showed a slight decrease when compared with 2013. For 2014, the mean was 58 per cent as against 56 per cent in 2013. Candidates' performance was about the same on all three modules. The mean was approximately 58 per cent on each.

Paper 02 – Extended Responses

Performance on this paper was consistent with 2013. In 2013 and 2014 the mean was approximately 43 per cent. The detailed comments below describe candidates' performance on each question in a module.

Module 1: Law of Tort

The first two questions on this paper assessed this module. Question 2 was more popular and it had the higher mean — 13.77 or 55 per cent while that on Question 1 was 10.48 or 42 per cent.

Question 1

This question assessed candidates' understanding of strict liability in Tort as it relates to animals. In Part (a), candidates were expected to

- define strict liability

- identify strict liability as a deterrent aspect of Tort aimed at inducing the modification of persons' behaviour so as not to harm others
- discuss two examples of strict liability in Tort showing how liability is established in each case making application to its deterrent effect.

The majority of candidates was unable to define the term 'strict liability' which suggested that candidates were not familiar with the topic. Candidates seemed not to understand the general area. For example, candidates defined the term as being 'strictly liable' or confused the topic with negligence by stating that 'once you are negligent you are strictly liable'.

Very few candidates mentioned the issue of lack of fault on the part of the person who is strictly liable. Candidates were expected to define strict liability as *the automatic responsibility for damages due to possession and/or use of equipment, materials or possessions which are inherently dangerous such as explosives, wild animals, poisonous snakes or assault weapons.*

With regard to the examples used for strict liability, many candidates used examples of public nuisance or negligence such as 'if a doctor were negligent'. A number of candidates used examples from criminal law and defined the term within that context. Examples oftentimes related to drug offences. Generally, candidates did not understand the distinction between strict liability in civil law and criminal law. Candidates were expected to discuss examples such as liability for animals, and strict liability for harm resulting from abnormally dangerous conditions and activities as in *Rylands* v. *Fletcher*. In most jurisdictions, the general rule is that keepers of all animals, including domesticated ones, are strictly liable for damage resulting from the trespass of their animals on the property of another.

For Part (b), candidates were expected to

- discuss the classification of animals under the common law — *ferrae narturae* (naturally wild for example, lions, tigers) and *mansuetae naturae* (domesticated animals for example, dogs, cats) and state which category the 'ferocious pit bull' in the scenario would be classified under

- identify and explain the test used to determine liability for domestic animals and the action that is applied
- discuss the grounds the plaintiff must prove in order for the owner or keeper to attract liability, for example, that the owner/keeper had knowledge of a propensity in the past to do harm
- cite relevant statute law where it exists in a particular jurisdiction and varies from the common law since statute overrides the common law.

Many candidates did not explain the distinction between strict liability in the case of ferocious animals and the tests required in the case of domestic animals (scienter). Candidates seemed not to have known the test. It seems that in many cases candidates used a 'common sense' approach in determining that the dog was ferocious and the owner ought to have known, rather than applying the test and indicating that the owner satisfied the test in order to determine liability. Too many candidates incorrectly used the principles of duty of care, breach of duty and foreseeability as it relates to negligence to answer the question. Generally, candidates failed to use cases to support their answers. Candidates need to be reminded that cases must be used in answering questions in law regardless of whether this is specified by the question.

Question 2

This question focused on trespass to the person. Part (a) required candidates to

- define assault and battery
- discuss the elements of assault, for example, the fear of imminent battery, words amounting to assault,
- discuss the elements of a battery, for example, it must be a direct act of the defendant, not necessary that physical harm be caused to the plaintiff, etc.

Some candidates confused some aspects of criminal law and tort. However, most candidates provided the correct definitions. Candidates who did not provide the correct definitions generally

confused the two concepts. Generally, candidates displayed full understanding of the element of fear as it relates to assault.

Part (b) required candidates to identify and explain the following issues:

- Whether the tap on the shoulder amounted to an assault
- Whether the kiss on the cheek amounted to an assault
- Whether the throwing of a punch amounted to an assault
- Whether the words “if I catch you…” amounted to an assault

Most candidates generally applied the concepts of assault and battery well and seemed very familiar with the topic. However, candidates failed to include cases in their responses. Again, it must be emphasized that candidates need to provide cases in support of their responses in law regardless of whether it is specifically stated in the question.

Some candidates included negligence in their responses. Candidates should be reminded that negligence does not arise in every question and time should be spent reading and interpreting questions. The questions were not meant to ‘write all you know’. Additionally, candidates also need to be reminded to exclude their personal feelings from their analysis. Analysis must be based on the law. For example, candidates displayed a propensity to focus on the issue of homosexuality, sexual assault and defamation which did not arise from the question. Candidates must remain focused on the legal issues.

Module 2: Law of Contract

There was no clear preference for the two questions on this module. The performance on these questions as measured by the mean was less than satisfactory as both means were low — the lowest on the paper. The mean for Question 4 was the higher of the two at 7.23 or 29 per cent while that for Question 3 was 8.55 or 34 per cent.

Generally, the analysis of these questions was poor. It was clear that the majority of candidates did not know the content area and so was unable to correctly formulate responses to the questions.

Candidates are reminded to always use decided cases and/or examples in responding to questions even where a question does not specifically ask for such. In addition, merely citing cases is not sufficient; the application of the case to the issue being discussed must be clearly demonstrated.

Question 3

This question assessed candidates' understanding of the law relating to contract specifically, additional terms which may be implied in a contract as well as conditions and warranties.

Part (a) required that candidates explain the ways in which terms may be implied into a contract. Most candidates mainly explained elements of a contract and illustrated their understanding that contracts entailed both express and implied terms. They, however, failed to demonstrate the ways in which terms may be implied into a contract and/or give suitable examples.

Terms may be implied into a contract

- by custom, *Hutton* v. *Warren [1836]*
- by the court
  - (i) intention of the parties, *The Moorcock [1889]*
  - (ii) terms implied by law, *Liverpool* v. *Irvin[1976]*
- by statute, *Unfair Contract Terms Act/Sales of Goods Act/Hire Purchase Act*
- at common law, *Scally* v. *Southern Health and Social Services Board [1992]*.

Part (b) required candidates to explain the differences and similarities between a condition and a warranty. Again, this section was answered poorly. The responses showed that most candidates did not have a good understanding of warranties and conditions. Most candidates failed to discuss conditions as an essential term which goes to the heart of the contract but instead discussed them as exclusion clauses in a contract. For example, a number of candidates spoke about conditions being when a telecommunications company states 'conditions apply' when are offering customers a mobile phone plan. These candidates failed to earn any marks for this type of response.

Further, numerous candidates did not explain what warranties were as a *term of contract*. They went into lengthy discussions of a warranty being a manufacturer's guarantee which unfortunately also did not earn them any marks.

Candidates who earned full marks were able to distinguish between conditions and warranties and understood that conditions were more essential to a contract than warranties. They also gave useful illustrations of the distinction by outlining the cases of *Poussard* v. *Spiers and Pond [1876]* and *Bettini* v. *Gye [1876]*.

Candidates were expected to explain the following differences and similarities as outlined below.

A condition*:*

- *A major term which is vital to the main purpose of the contract.*
- *A breach of condition will entitle the injured party to repudiate the contract and claim damages.*
- *The injured party may also choose to go on with the contract, despite the breach, and recover damages instead.*

A warranty*:*

- *A less important term; it does not go to the root of the contract.*
- *A breach of warranty will only give the injured party the right to claim damages.*
- *He cannot repudiate the contract.*

Question 4

This question required candidates to demonstrate a good understanding of discharge of a contract by frustration.

Part (a) (i) required candidates to explain the doctrine of frustration of contract. It was clear that most candidates did not know the doctrine of frustration and instead gave responses describing scenarios where an individual becomes aggravated or perturbed.

Candidates were expected to explain the doctrine of frustration of contract with points including:

- *Subsequent change in circumstances*
- *The contract is rendered impossible to perform*
- *Contract has become deprived of its commercial purpose*
- *Event not due to the act or default of either party*

It was expected that these explanations should have been supported by decided cases or examples.

Part (a) (ii) involved an explanation of the limitations of the doctrine of frustration. Generally, this question was misinterpreted by candidates. Most candidates wrote about the doctrine of frustration instead of explaining situations in which the doctrine would *not* apply.

A good response would have outlined the following limitations:

- Self-induced frustration as in *Maritime National Fish Ltd* v. *Ocean Trawlers Ltd [1935]*
- Where the parties have made an express provision in the contract for the alleged frustrating event as in *Joseph Constantine Steamship Line Ltd* v. *Imperial Smelting Corporation Ltd [1942]*

- Foreseen and foreseeable events as in *Walton Harvey Ltd* v. *Walker and Homfrays Ltd [1931]*
- Where the contract has become more onerous and/or expensive to perform as in *Davis Contractors* v. *Faeham UDC [1956]*
- Where an alternate method of performance is still possible as in *Tsakiroglou & Co* v. *Noblee and Thorl [1962]*

In Part b (i), the focus was on the contract being discharged by frustration. The circumstance being government interference, or supervening illegality, preventing performance as in *Re Shipton, Anderson & Co [1915]* and *Denny, Mott & Dickinson* v. *James B Fraser & Co Ltd [1944]*. The question involved a scenario where a contract was affected by the declaration of war.

Some candidates failed to recognize that both the purchase of timber and the purchase of the timber yard would be illegal due to the wartime control order and hence both aspects of the contract would be discharged by frustration.

In Part b (ii), many candidates focused on the knowledge of the Managing Director of Ranna Hotels Ltd of the impending wartime control order as grounds for rescission of the contract due to misrepresentation. These candidates misinterpreted the question. Responses were mainly based on principles of Tort. Candidates should have recognized that responses grounded in Tort principles would not be appropriate for a response to a question placed in the Law of Contract module or section of the examination.

With knowledge of the limitations of frustration and an applicable decided case, candidates were expected to arrive at the conclusion that once one party to the contract knew of the impending wartime control order (this being Ranna Hotels Ltd) then that party would be in breach as the contract was not frustrated. A foreseeable event cannot frustrate a contract; (see *Walton Harvey Ltd v. Walker and Homfrays Ltd [1931]*), therefore, Ranna Hotels Ltd cannot claim frustration as they were in breach of the contract.

Module 3: Real Property

This module was tested by Questions 5 and 6. Question 6 was marginally more popular with 52 per cent of candidates attempting it. The mean on this question was 13.10 or 52 per cent while that on Question 5 was 11.85 or 42 per cent.

Question 5

This question assessed candidates' understanding of the difference between a lease and a licence. In Part (a), candidates were required to distinguish between a 'lease' and a 'licence'.

They were expected to

- define each concept
- state the differing characteristics of each, for example, a lease is a contract in writing or by deed granting a leasehold interest in land whereas a licence is a permission given by the occupier of land which allows the licensee to do some act which would otherwise be a trespass.

For Part (b), candidates were given a scenario where an owner allowed a relative and his family to live and occupy an apart for 16 years. The occupier made improvements to the building. The owner was seeking to regain possession of the building. Candidates were required to discuss

- whether a lease or a licence was created in the circumstances by applying the characteristics of the two concepts to the fact situation
- whether licence by estoppel has been created by applying the estoppel principle of promise, reliance and detriment to the facts provided.

Most candidates were able to define and provide the distinguishing features between a lease and a licence. However, they were unable to apply the concept of licence by estoppel and tenancy at will to the fact situation. Many candidates did not arrive at a conclusion as to whether the

plaintiff could succeed in an action to recover the apartment; instead, candidates 'sat on the fence' in this regard.

Candidates were often unable to differentiate between a licence in property law as opposed to a licence as a regulatory device. Further, there was a general lack of coherence and unpreparedness in answering questions in this area.

Question 6

This question focused on ownership of property and the legal implication on the death of an owner(s) in the case of joint tenancy.

Part (a) required candidates to distinguish between joint tenancy and tenancy-in-common. They were expected to

- define both terms
- identify and explain the differences between the terms, for example, in joint tenancy the co-owners cannot identify any part or share of the land as theirs individually whereas in tenancy-in-common each holds a separate distinct, yet undivided share in the property.

Part (b) provided a scenario where a couple who had two children held a property as joint tenants. The husband made a will giving his half to his sister without the knowledge of the wife. The husband later died and his wife on hearing of his death also died. The survivors are claiming their share of the property.

Candidates were required to say who has a claim to the property. They were expected to

- discuss the issue of survivorship
- apply the legal principle of survivorship to the fact situation
- explain the effect of severance prior to death of party on the principle of survivorship.

Many candidates displayed knowledge of the terms and were able to distinguish between them. They were also able to identify the issue of survivorship and generally answered the question fairly well. However, some candidates were not aware that children born out of wedlock are equally entitled to benefit from their parents' estate. Further, that the right of survivorship is between joint tenants and not between the joint tenants and their heirs.

Many candidates incorrectly identified the definition of *jus acrescendi* as being that interest passed to the youngest child. Many responses lacked coherence.

Paper 032 – Alternative to School-Based Assessment (SBA)

There was a slight increase in the number of candidates who sat the examination compared with 2013. The mean on this paper was 61 per cent.

The question assessed candidates' knowledge of contracts. They were required to

- identify all five of the basic elements for the formation of a valid contract
- explain the requirement (s) for satisfying each of the five basic elements.

Generally, the majority of candidates managed this question well. These candidates were able to identify and explain all the relevant elements needed for the formation of a contract and cited supporting cases.

The few candidates who did not perform as well could not supply cases as required by the question, identify all of the elements or identified incorrect elements.

General and Specific Recommendations

Candidates

Candidates are advised to

- manage their examination time wisely. Too often they short-changed themselves by writing long responses to their first and second questions and then either did not complete questions attempted towards the end of the paper, or made half-hearted attempts at such responses.
- develop a good writing style fostered by reading legal texts and writings.
- indicate, where applicable or required, the jurisdiction to which a particular area of law applies. (Note, especially, those questions that require reference to *a named Commonwealth Caribbean state*.)
- show greater care in complying with the instructions given when responding to examination questions. Specifically they are reminded to
  - write on both sides of the paper and start each answer on a new page as instructed on the answer booklet.
  - note questions attempted in order of response, on the cover page of scripts.
  - record both candidate and centre number in the space provided on the cover page, and throughout the answer booklet where required.
- pay special attention to the use of the convention of written English.
- use legible handwriting.

Teachers

Teachers are encouraged to

- remind students of the FILAC or IRAC method of answering questions and assist them in using these methods.
- give students enough practice in answering questions that have overlapping areas.
- teach students to develop their answers logically and to be coherent in their writing.

- give students practice in analysing questions and responding carefully. Too many students tend to write all they know about a topic instead of identifying the relevant information and properly applying same to the issues identified in the questions.
- spend time explaining key terms so students get a clear understanding.
- make the topics more relevant by finding ways to link the content to the students' own experiences as well as current events.
- help students develop the skill of tailoring their responses to what is required in the questions.
- remind students of the importance of knowing cases so they can use relevant ones.
- remind students that in law they need to use cases in support of their responses regardless of whether the question specifically states so or not and that they need to base their responses on some authority.
- provide opportunities for students to be engaged in mock trials which can be used to depict application of the relevant law to the facts of the scenario given. This would enhance the students' understanding and better equip them with the ability to transfer this understanding when answering examination questions.
- break down complex definitions given to students.

Candidates are encouraged to utilize relevant case law or illustrations for the examinable area.

Paper 031 – School-Based Assessment (SBA)

The SBAs were generally satisfactory. There were a few areas were students performed commendably. These include phrasing the Title, Table of Contents and Description of Method Employed. However, candidates tend not to uphold the same standard in respect of the Aims and Objectives, Presentation of Findings, Discussion of Findings, Recommendations and Bibliography. The overall use of language was well below the required standard.

Increasingly, SBAs which are not in accordance with the requirements set out for conducting the research are being seen. Students are advised to use the stipulated guidelines as set out in the syllabus.

As indicated in the 2013 SBA Report, students are advised against using topics such as ‘Defamation’, ‘Negligence’, ‘Public and Private Nuisance’ and ‘Murder’, as these topics in and of themselves are too broad and are not focused enough to meet the required standard outlined in the syllabus using the stipulated word limit. Topics should be carefully chosen and narrowed (by using Aims and Objectives) to allow for adequate discussion and legal analysis. Some topics such as ‘Homosexuality’, ‘Child Abuse’, ‘Hand-held Devices used in Road Traffic Inspection’, and ‘Squatting’ were outside the scope of the CAPE Law syllabus. Students are encouraged to stay clear of these.

Students are strongly urged to adhere to the prescribed format as outlined on pages 31–36 of the syllabus, which details the requirements and format of the SBA. Teachers are reminded to use the most recent moderation form to record grades submitted for projects (revised 2014 or later).

All project titles should be specific, to the point and lend themselves to detailed research. All Table of Contents must reference page numbers.

NB: Introduction, Acknowledgement, Literature Review, Essay, Statement of the Problem and Thesis Statement are not a part of the scheme outlined in the syllabus; no marks are awarded for these.

Aims and Objectives

Some projects had clearly stated aims and objectives, which allowed the students to conduct a more focused research. However, other students presented aims and objectives that were unclear and some that were too remote. This often occurs when the topics are not specific and, as a result, students are unable to identify the most suitable methodology for their project. This adversely affected their overall grades.

Some topics tended to be purely sociological or historical in nature and did not lend themselves to discussion of the law. As a result, the research presented lacked clarity and relevance. Often, students cited laws which were not applicable to the jurisdiction studied, or the scope of the research.

Aims and objectives should be specific and concise. The aims and objectives should lend themselves to research.

Methodology

The majority of students did not properly distinguish between primary and secondary sources of data. In cases where the quantitative methodology was chosen, a significant number of candidates still failed to properly select an appropriate sample and sample size.

Students provided very little or no detail of the data collection methods used. They did not justify the chosen method applied to the research. At times, the particular techniques stated in the methodology were not reflected in the body of the research, for example, where students indicated that secondary sources would be employed but the findings bore no evidence of text material or case law.

It is always recommended that students use a mixture of both primary and secondary methods as this tends to allow for greater validity and reliability of their interpretations, analysis and conclusions.

Also, students must justify why they are using the sources they selected and when conducting an interview must state, the name of the interviewee, date, time and place of interview/s. When using questionnaires students must state the sample size and sample location.

Findings

Most students did a fair job in recording their findings; this was evident in the projects that had clearly stated aims and objectives and applied the relevant methodology. Some of them failed to present the legal findings they intended to rely on in their discussion. They only presented findings from the interview and/or the questionnaires. Also, in some projects, students presented charts/diagrams without stating what they represented. They did not state the proper citation of their cases, and as such they are urged to take note of citation requirements.

Some students did not distinguish between the Findings and Discussion of Findings but instead merged the two under one heading. This negatively affected the grades awarded, as examiners had to allot grades for the required headings based on the information provided.

Students should organize their project as set out in the syllabus (have a heading Presentation of findings which is separate from the Discussion of Findings). They should also present their findings based on the results of the questionnaires and/or interviews conducted and state clearly what each represents.

Also, students should present the legal findings they intend to rely on in their discussions, for example, legislations, case laws and statistics.

Discussion of Findings

The level of legal analysis which was required for this section was generally unsatisfactory. While some students did well in presenting their findings, the analysis and interpretation was lacking.

Students should analyse and interpret both primary and secondary data collected based on their aims and objectives.

Recommendations

Very few students displayed knowledge of what was expected of a recommendation. There is room for great improvement in this area. Many candidates used the recommendation as a conclusion, only summarizing the project.

Students should not use the recommendation as a conclusion only, but should indeed state what they are proposing based on their findings, for example, changes or improvements to be made to the legislation.

The recommendations should be plausible and supported by the relevant laws, where possible.

Bibliography

The vast majority of students was not able to properly cite secondary sources, including cases, journals, textbooks, newspaper articles and internet sources. It is to be noted that search engines such as Google.com, lawteacher.com/net, Wikipedia.com and Ask.com are not in and of themselves proper reference sites.

Students and teachers are reminded that the syllabus contains properly cited reference materials to include texts and cases.

Communication

Overall, the use of the English Language and level of communication displayed in the research projects were below the standard expected at this level.

Students should spend more time proofreading their projects and utilize the dictionary and other spellcheck resources.

Word Limit

Some research projects were in excess of the word limit. It is recommended that the stipulation in the syllabus that students with projects in excess of the prescribed word limit be penalized, be enforced.

Recommended Methodology for Answering Questions

The following seven-point approach is recommended for answering questions, not only for these examinations, but also when preparing their assignments and as a general practice. Success is guaranteed from following these guidelines.

- Candidates must follow instructions.
- Candidates must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial.
- Candidates are encouraged to use the IRAC format when answering problem-type questions.
- Conclusions should relate to the problem and should not be a fanciful construction that bears no relation to the facts, or simply rewrites the facts.
- Candidates must support their responses with legal authority, namely:
  - Case law
  - Statute
  - Legal writers
- Candidates must deal with issues and applicable law, refraining from restating the question, except in so far as a principle of law relates to stated facts. They should strive to answer the questions precisely.

C A R I B B E A N E X A M I N A T I O N S C O U N C I L

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

MAY/JUNE 2015

LAW

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GENERAL COMMENTS

The total number of candidates registered for the CAPE Law 2015 examination, in Unit 2, increased from 1074 in 2014 to 1243 in 2015. The number entered for the Unit 1 examination was fairly consistent with that of 2014, 1639 candidates registered for the 2015 examination compared with 1243 in 2015. Approximately 88 per cent of the candidates obtained Grades I–V for each of the two units.

The examinations for each unit consisted of the following papers:

- Paper 01 — Multiple Choice
- Paper 02 — Extended Responses
- Paper 031 — School-Based Assessment (SBA)
- Paper 032 — Alternative to SBA

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. The score on this paper contributed 30 per cent to candidates' overall score. This year, the mean on Paper 01 was 66 per cent for Unit 1 and 63 per cent for Unit 2.

Paper 02 comprised six essay or problem-type questions — two based on each module. Candidates were required to answer a total of three questions, one on each module. The score on Paper 02 contributed 50 per cent to candidates' overall score. For Paper 02, the mean was 42 per cent for Unit 1 and 39 per cent for Unit 2.

Candidates must ensure that they follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b). Some candidates merged Part (a) with Part (b) of a question or answered Part (b) in Part (a) and vice versa, thus failing to acquire the available marks. Candidates should use language that is grammatically correct, formal and impersonal, not general, vague or colloquial.

There were some weaknesses in areas of elementary principles of law which indicated a lack of awareness of basic principles. Many candidates demonstrated an inability to adequately address problem questions: answers were poorly constructed and generally disorganized. Candidates should be reminded to utilize an answer plan to assist them in producing lucid responses, thus improving their chances of gaining points awarded for coherence. Possible mock trials can be used to depict application of the relevant law to the facts of the scenario given. This would enhance candidates' understanding and better equip them with the ability to transfer this understanding when answering examination questions.

It is strongly recommended that the following formats for answering problem questions be taught: FILAC (**F** – Facts, **I** – Issues, **L** – law, **A** – Application of law to facts, **C** – Conclusion) or IRAC (I – issues, R – Relevant law, A – Application of law to facts, C – Conclusion). If either of the formats is followed, answers will be more structured, and candidates would be able to address the issues as required by the questions. It should be noted, however, that although the aforementioned formats are strongly recommended, they are not to be applied mechanically since not every question would be suited to these formats. The importance of using relevant authority namely

case law, statute or legal writers to substantiate responses cannot be overemphasized. Candidates must be advised that even where the question does not directly ask for cases, the nature of the subject is such that responses are enhanced by the use of case law. Candidates should practise to accurately summarize cases and cite facts.

Teachers are advised to spend time explaining key terms so students get a clear understanding. Topics should be made more relevant by finding ways to link the content to students' own experiences as well as current events. Emphasis should be placed on the coaching of students in good examination techniques, particularly in the requirement to read each question carefully and paying close attention to what each question is asking before attempting to answer. It is also highly recommended that students practise past examination questions as they progress throughout their course of study. They should also be given questions that involve overlapping topics. This will enable the development of analysis and synthesis skills required for responding to application and analysis type questions, as many times students demonstrated that they had the knowledge but failed to appropriately apply it. Too many candidates tend to write all they know about a topic instead of identifying the relevant information and properly applying same to the issues identified in the questions. Candidates also need to learn how to develop their answers logically and coherently. Some wasted time restating the facts in the question or giving a whole treatise on information which they had but which was not relevant to the question. The conclusion should relate to the problem and should not be a fanciful construction that bears no relation to the facts, or that simply rewrites the facts.

Teachers are further advised to reinforce the need for students to incorporate self-directed learning practices in their preparation for the examination. Utilization of the CAPE Law syllabus for both units as (1) guidance for relevant content to be covered, and (2) recommended resource materials for out of class learning is vital. This will also help students to avoid losing marks for discussing topics that fall outside the syllabus and Commonwealth Caribbean jurisprudence.

DETAILED COMMENTS

UNIT 1 – PUBLIC LAW

Paper 02 – Extended Responses

The modules in this unit covered the following topics:

- Caribbean Legal Systems
- Principles of Public Law
- Criminal Law

Module 1: Caribbean Legal Systems

For this module, Question 2 was more popular than Question 1. Approximately 60 per cent of candidates responded to Question 2. This question had a lower mean (23.80 per cent) the mean on Unit 1 was 47.52 per cent.

Question 1

This question was designed to test candidates' knowledge and understanding of the features of the Caribbean Court of Justice (CCJ) with specific explanation of the appellate and original jurisdictions of the CCJ; the benefits to be gained from joining the CCJ; and the disadvantages of submitting to the CCJ.

Part (a), which dealt with the features of both the CCJ and the Privy Council, was generally not well handled by candidates. While some candidates were able to identify that the CCJ functions in both its original and appellate jurisdiction and was the final court of appeal for Barbados, Guyana and Belize, most candidates were unable to explain the functions of the court in the exercise of its original jurisdiction. Other candidates confused features of the CCJ and Privy Council with the benefits of submitting to the CCJ resulting in Part (b) being answered in Part (a); some candidates gave the general features of a court of appeal. For example:

- The CCJ and Privy Council hear appeals from the lower courts of the Caribbean.
- The CCJ and Privy Council apply the doctrine of binding precedents.
- The CCJ and the Privy Council have the power to overturn a decision of the lower court.

Some candidates did not know anything about the CCJ. Among the poor responses were:

- The CCJ is not yet in force in the Caribbean.
- The CCJ's original jurisdiction allows it to hear appeals from Caribbean countries.
- The CCJ in its original jurisdiction deals with domestic state constitutional law matters.
- The CCJ is not a permanent court but exists in different countries.
- The CCJ hears appeals using a judge and jury.

Stronger candidates were able to speak about the CCJ being an international court hearing matters concerned with the Revised Treaty of Chaguaramas (RTC) and the court's ability to hear trade disputes between Member States.

Some candidates, despite not understanding the original jurisdiction, still demonstrated an understanding of the importance of the CCJ in the determination of the rights of CARICOM members under the RTC, citing relevant cases such as that of Shanique Myrie.

While the features of the CCJ were not well answered, on the other hand, most candidates were able to score higher on discussing the features of the Privy Council. Part (b) was generally well done. Most candidates were able to discuss the benefits and disadvantages of submitting to the CCJ.

Further Comments and Recommendations

Overall, while candidates' performance on this question was satisfactory, it was clear that candidates studied this topic solely from the perspective of the advantages and disadvantages of the CCJ and Privy Council rather than understanding the features of the CCJ and so more time

should be spent on understanding these features, specifically, the role of the CCJ in both its original and appellate jurisdiction.

Question 2

This question was designed to test candidates' knowledge and understanding of the two main categories of legislation and how they are applied. While this was the more popular of the two questions in this module, it was poorly handled by candidates. The question required candidates to:

- Explain the meaning of primary legislation.
- Explain the meaning of secondary legislation.
- Advise the Minister of Jordania on the suitability of enacting either a new Act or passing regulations under the existing Act to deal with the problem of playing loud music on minibuses, giving reasons for their answers.

Part (a) required candidates to explain primary and secondary legislation. It was apparent from the majority of responses that candidates did not know what primary and secondary legislation were and so the majority of them failed to score highly or score any marks on this part of the question. Some examples of poor responses were:

- Primary legislation speaks to moral laws while secondary legislation speaks to Acts passed by parliament.
- Primary legislation is the constitution while secondary legislation is an Act passed by parliament.
- Primary legislation means the body or organ that makes the laws and is the main law making body within a country.
- Primary legislation is passed to govern a specific area while secondary legislation is passed to govern an entire country.
- Primary legislation is subservient to secondary legislation.
- Secondary legislation deals with the Literal, Mischief and Golden rule.
- Secondary legislation is Acts passed by ministers.
- Judges are an example of secondary legislation because of first impression precedents.

Candidates' responses also reflected a failure to distinguish between the legislature and legislation. In some cases, Part (a) was left blank. Stronger candidates were able to define primary legislation and went on to discuss the process by which a Bill becomes an Act. In relation to secondary legislation, they were able to express, although not coherently, that secondary legislation was derived from primary legislation and that it was legislation made by a government authority or a functionary given power to do so by parliament.

The failure of candidates to distinguish between primary and secondary legislation in Part (a) was reflected in the poor performance on Part (b). The question called for students to advise the Minister of Jordania on the suitability of introducing a new Act or implementing regulations to address the issue of playing loud music on minibuses.

Most candidates were able to conclusively state the best option for the minister but failed to explain why the suggested option was suitable. Candidates tended to focus on what ought to be included in the new Act or regulations and argued that such new legislation was needed instead of discussing the advantages of implanting either a new Act or regulations.

It was also evident that candidates did not appreciate the weight of Acts and regulations as well as their enforcement mechanisms. Candidates who were in favour of a new Act argued that it would be easier to bring to the attention of the public than regulations or that it had stronger sanctions such as fines and/or imprisonment while regulations did not. Weaker candidates also stated that the sole reason for the minister to pass regulations under the existing Transportation Act was that the Constitution did not allow him to pass an Act and if he did, it would be *ultra vires*.

Stronger candidates were able to highlight that regulations take a shorter period of time to pass than an Act of Parliament and further discussed that the existing legislation already allowed the minister to pass regulations which would adequately address the problem of playing loud music on buses.

Module 2: Principles of Public Law

In this module, more candidates selected Question 3 than Question 4. Approximately 70 per cent of the candidates attempted Question 3. The mean on Question 3 was 21 per cent while that on Question 4 was 41.73 per cent.

Question 3

Part (a) required candidates to explain the constitutional importance of the head of state of any Commonwealth Caribbean country.

Candidates, in responding to the *constitutional importance*, were to examine the constitutional roles and/or functions of the particular head of state from the jurisdiction selected, since it is only by examination of the role and function that a determination can be made regarding the *significance* of the head of state. Most candidates, however, did not make this examination in arriving at their determination.

The majority of candidates interpreted the question as one requiring them to give detailed information of the constitution, its significance and the fact that it provides for a head of state and how important that office is to the country, but did not outline roles and functions of the office as was required to gain maximum marks.

In Part (b), candidates were expected to advise the leader of the opposition on whether there were any grounds for judicial review in the area of procedural *ultra vires* on the part of the Boundaries Commission.

In arriving at the advice to be given, candidates were expected to identify and discuss whether the commission

- delegated or abdicated its responsibility; the law in relation to sub-delegation and abdication when powers have been vested in a particular person or body
- breached the rule of natural justice by failing to consult the constituents; the law as to mandatory and directory breaches to determine the importance of the requirement of consultation and whether the rule of natural justice — the right to be heard — was breached.

Generally, candidates answered correctly that the Commission failed to consult with the residents, however, candidates failed to respond to the issues of sub-delegation and abdication of responsibility. The following model answers are provided to guide candidates.

Model Answers

Question 3 (a)

The Head of State of Jamaica is the governor general who is appointed by the queen on the advice of the prime minister.

The constitutional significance of the governor general, stated in the Jamaican Constitution, is outlined below

- Appoints Ministers: the governor general appoints the prime minister, leader of the opposition, cabinet ministers and members of the senate.
- Appointment of members of the judiciary: the governor general acting on the recommendation of the prime minister after consulting the opposition leader appoints the chief justice and other members of the judiciary.
- Delivers the throne speech: at the beginning of each parliamentary year, the governor general is responsible for delivering the 'throne speech' in a joint sitting of both Houses, in which programmes for the following year are outlined.
- Assent: the governor general must assent to any Bill passed by parliament before that Bill can become law.
- Prerogative of mercy: the governor general can grant prerogative of mercy which is done on the advice of the Privy Council.
- Appointment of members of the Privy Council: upon consultation with the prime minister, the governor general appoints members of the Privy Council. In the same breath the governor general can declare such person unfit to carry out his functions.

Question 3 (b)

In order to advise the leader of the opposition on whether there are any grounds for judicial review the following issues must be examined namely:

- Whether the Commission delegated or abdicated its responsibility by acting on the instructions of the prime minister and not having consulted the residents of the constituencies affected by the boundary changes

- Whether the delegation or the abdication amounted to procedural *ultra vires* by the Commission
- Whether the Commission breached the rule of natural justice by failing to consult the constituents

The issues will now be examined.

Issue 1: It is established that a political authority must not delegate its powers unless that delegation is expressly provided for or it could be implied in the circumstances. The case applicable to this point of law is *Camacho* v. *Collector of Customs* where it was held that the decision of the controller amounted to a failure to exercise his discretion and a breach of duty.

Therefore, in the instant case by acting on the instructions of the prime minister only and not consulting with the residents — assuming that consultation is mandatory — amounted to delegation and abdication of power by the Commission which was not expressly provided for in any Act and neither could it be implied from the fact pattern. Thus, this is a ground that could be advanced by the leader of the opposition for judicial review.

Issue 2: The law in relation to this issue is that a public authority must not act in excess of the powers vested in it by an Act of Parliament, statute or regulation. Where this is done, the authority is deemed to have acted *ultra vires*. The case on point is *Hinds* v. *R*. In this case, parliament passed the Gun Court Act 1974 which purported to establish a new court called the Gun Court. The court was empowered to sit in three divisions namely: the Resident Magistrate's Court, Full Court and the Circuit Court and to try certain kinds of offence with the power of imposing mandatory sentences of detention with hard labour from which the detainee could only be discharged by the governor general. Hinds was convicted in the Resident Magistrate's Division of the Gun Court and sentenced to detention and he appealed. It was held that although parliament could establish new courts, judges of the new courts must be appointed on the terms laid down in the Constitution that applied to judges of pre-existing courts exercising an analogous jurisdiction. As a result, the provisions of the Act, to the extent that they provide for the establishment of a Full Court Division consisting of members of the lower judiciary exercising the jurisdiction and powers previously only vested in Supreme Court judges, were void. The act by parliament, of creating a new court consisting of the lower court judges, was *ultra vires* since they went beyond the procedure established by the Constitution.

On the facts the Commission acted *ultra vires* since a part of the applicable procedure was to consult with the residents of the affected constituents before formulating a report to change the constituent's boundaries. Therefore, the leader of the opposition could submit this issue as a ground for judicial review.

Issue 3: It is the law that a public authority must consult persons who are directly affected by changes it proposes to make. These include changes to boundaries. The authority on point is the case of *Maharaj* v. *AG*. In this case a judge of the High Court committed the Barrister Appellant, Maharaj, to prison for seven days for contempt in the face of the court. The appellant was granted special leave to appeal to the Privy Council against the committal order. It was held that the judge erred in not clearly explaining to the appellant the particulars of the specific nature of the contempt

with which he was charged before committing him to prison, and the appellant was not given an opportunity to provide an explanation to the charge which is a breach to his constitutional right to a fair hearing.

On the present facts the residents of the affected constituents were directly affected by the report of the Constituency Boundaries Commission to increase the number of constituencies from seven to nine. As a result of this, the residents should have been consulted by the Commission before the formulation of the report. This failure has resulted in a breach of the rule of natural justice since the residents were denied the opportunity to voice their opinions on the change and the impact such a change will have on them. Therefore, the leader of the opposition could advance this issue as a ground for judicial review.

Question 4

The question was designed to test candidates' knowledge and understanding of the following:

- Locus standi
- Judicial review
- Public law remedies

Specifically, given a scenario, candidates were asked to do the following using one dedicated case:

- Advise Morgan whether he had *locus standi*. Candidates were expected to discuss whether Morgan's interest was adversely affected to satisfy the requirement for *locus standi*.

- Discuss and determine whether the school was a public body exercising a public function and as such subject to judicial review.

- Discuss the relevant grounds for judicial review that are available to Morgan, for example, breach of natural justice (right to a fair hearing); breach of legitimate expectation; acting *ultra vires* section 5.

- Advise Morgan on two remedies available to him. Candidates were expected to discuss the two remedies stating how they operate and would operate in Morgan's situation. Any two of the following remedies could have been discussed:

    - Certiorari
    - Declaration
    - Injunction
    - Mandamus
    - Prohibition
    - Damages

Many candidates were able to identify the issues but were unable to apply the law to the identified issues and did not use a decided case. The following is an example of an answer which satisfies the requirements of the question.

Model Answer

(i) Locus standi literally means a place to stand. It refers to someone having a legitimate ground to bring a public law application before the court and is determined by whether the interests of the person has been or will be adversely affected. The principle was displayed in the case of *GCHQ* v. *Ministry of Health*, where the nurses sued the government for instituting a green paper which breaches the government's authority. Morgan has locus standi since he would be adversely affected by the expulsion from the institution, an expulsion which was carried out *ultra vires* section 5 by the principal.

(ii) Judicial review may be defined as the supervisory jurisdiction of the Supreme Court to review or look into the acts of a public body. It must be established that the body is a public one carrying out a public function. In the case of *Dekeyers Royal Hotel*, it was held that a public body is an institution, which performs a public function. The same principle was enunciated in the case of *Ex parte Datafine.* Blanco Secondary is a state funded institution which is performing a public function and therefore is subjected to judicial review.

(iii) The full grounds of judicial review which are available to Blanco Secondary are:

- *Ultra vires* — This means that the decision which was made was outside of the individual's power. This is evident as the actions of the principal were contrary to the statute. Principal Grenadine acted outside of Section V of the Education Act and as such committed substantive *ultra vires*, as the decision to expel Morgan should have been made by the board of directors as mandated by statute. This principle is outlined in the case of *Thomas* v. *AG*, where a police officer was relieved of his job for failing to carry out the instruction of the senior police officer. The Act which was used to dismiss him was inaccurately applied by the relevant persons. The court held that the act of dismissal was *ultra vires*.
- Breach of natural justice (the right to be heard) — This speaks to the fact that Morgan was deprived of the right to a fair hearing to defend himself before he was expelled, a right which was also provided for in the Act. The Act would have also created a legitimate expectation that a certain procedure would be followed before he is expelled. In *Maragh* v. *AG*, a barrister was imprisoned for a week without clear reasons. It was held that a person is entitled to know the reason(s) for which he is being arrested. Morgan was not given a chance to defend himself as no hearing took place. Every person accused has a right to know the charges which are laid against him and has a right to be represented by council.

(iv) Morgan may seek either of the following remedies:

- Certiorari — He may request that the court quash the decision for him to be expelled.
- Declaration — For the court to declare that he be reinstated and declare his rights as a student of Blanco Secondary.
- Damages — To be compensated for any loss which he may have suffered.
- Injunction — Estop Principal Grenadine from expelling him from school.

- Mandamus — Mandate the principal to reinstate him or follow proper procedure.
- Prohibition — Prohibit the principal expelling him.

Module 3: Criminal Law

For this module, Question 5 was more popular, with approximately 60 per cent of the candidates responding to it. The mean for Question 5 was 15.62 or 64 per cent while that for Question 6 was 13.07 or 40 per cent.

Question 5

Part (a) was designed to test candidates' understanding of the evolution of interpretation of the *mens rea* for murder or the intention to commit murder. Generally, candidates could not explain the historic development in the law regarding *mens rea*. Candidates did not seem to understand that the question required an explanation of the evolution or the changes in the definition/interpretation of the *mens rea* for murder — how the notion of intention moved from the broader concept of *foreseeability* to the more narrow *virtual certainty*. Few candidates presented that kind of discussion. Some candidates seemed to have interpreted *development of the mens rea*, to mean how one develops or forms the *mens rea*.

Candidates were able to cite cases in which the ingredients for murder and *mens rea* were generally in issue, but the discussion was not focused on the changing interpretation of *mens rea*. Some did not know what *mens rea* referred to, merely repeated the term, and could not clearly define it. Candidates confused *mens rea* with murder and there seemed to be a focus on murder as opposed to *mens rea* specifically. Candidates were able to identify some relevant cases (such as *Nedrick*, *Moloney*), but could not necessarily explain their importance to the issue.

Candidates appreciated (or recalled) the facts of a case but with little emphasis on the principle to be derived, or where attempts were made this was done incorrectly or incoherently; often the facts were not tied to the court's conclusion or the ratio of the decision. Cases were, therefore, generally cited disconnectedly. Some candidates discussed the spectrum of intention/recklessness/ negligence but without conclusion.

Based on the number of responses that failed to focus on the refinement and re-articulation of *mens rea* with reference to case law to show how the law changed, as the question was intended to elicit, it seems that this issue is a complex area that needs more concentration in the curriculum.

Part (b) was designed to test candidates' knowledge and understanding of criminal liability with particular attention to *mens rea* and the varying facets of causation affecting criminal liability, for example, the 'but for' test, *novus actus interveniens*, eggshell/thin skull principle, substantial and operating cause.

For Part (b) (i), candidates spent much of the time discussing causation, the lack of defences, and the lack of *novus actus interveniens*. Most candidates did not discuss the *mens rea*, that is, intention to kill or cause grievous bodily harm, and simply stated that Marc would be criminally liable based on the fact that he caused the death. Most did not focus on grievous bodily harm as

being indicative of *mens rea* for murder. There were, however, several candidates who were able to infer intention and explain that Marc must have intended death, or foresaw its occurrence and/or likelihood.

In the discussion on *mens rea*, many candidates were of the view that Marc would be guilty of manslaughter or for causing grievous bodily harm, without making the connection to the death two days later which would render him liable for murder. Many referred to the *year and a day rule* to support Marc's liability despite the delay — a few incorrectly applied it as excluding him from liability. Some candidates were able to justify manslaughter on the basis that Marc may not have intended to kill, and gave scenarios in support of this.

In Part (b) (ii), the main challenge was the error in the statement — candidates were asked to explain the difference in outcome if Marc had a history of heart disease, as opposed to Rory. It was clear from the answers, generally, that candidates were apprehensive or unsure about answering the question one way or the other. Many candidates pointed out the error in the question, and answered from both perspectives. Strident efforts were made by those candidates who applied the heart attack to Marc, to justify their answers, and marks were awarded accordingly to offset any disadvantage that would otherwise have accrued. Some candidates were very clear that a dead man could not be found liable for any offence; some acknowledged the fact that he was dead but treated the matter as academic and explained his liability in any event. Marks were allocated for any coherent explanation to justify points and general attempts to answer.

For those candidates who applied the heart attack to Rory (or treated Marc as if he were Rory), most of them identified issues in causation, and especially discussed the eggshell/thin skull rule. Candidates were generally able to justify the heart attack either totally breaking the chain of causation, or justify the chop being the main or continuing cause of death. However, some candidates did not appreciate the fact that a break in the chain would exonerate Marc; some stated that Marc would remain liable for the wounding without being responsible for the death.

Question 6

This question was designed to test candidates' knowledge and understanding of the defences of insanity and self-defence and the offence of burglary.

For Part (a), most candidates referred to *M'Naughten* in setting out the ingredients for insanity. However, most were only able to cite two to three of the four ingredients. Most of these candidates were able to identify "disease of the mind".

Candidates spent a lot of time setting out the procedural, medical and sentencing implications of a defence of insanity (expert medical evidence, remand in mental health institutions, need to protect society from 'mad' people).

There was confusion regarding the concepts of legal insanity, insane automatism and abnormality of the mind and it seems that candidates had a hard time distinguishing between these. Some candidates therefore did not have a clear understanding of insanity, and some did not clearly identify it as a defence. Most candidates who had a clear understanding of insanity provided only

a discussion of the *M'Naughten* rules. Most candidates did not define insanity separately from explaining the ingredients; therefore, there was an issue in allocating marks for definition as distinct from identifying the elements for insanity.

In Part (b) (i), candidates generally identified self-defence as the best defence. However, others often identified the best defence as provocation, as opposed to self-defence, and sometimes both, so that there was not a clear understanding of self-defence. While these candidates correctly explained that the circumstances required Ancil's action, or were necessary (therefore covering the elements of self-defence), they were of the view that Ancil had no *mens rea*, or was reacting to a situation and had no control over himself in the moment, or was provoked into reacting. Candidates also stated that he was insane and applied the defence of insanity. Some focused on battery and assault.

Some candidates did not appreciate that self-defence was a defence that would completely exonerate Ancil, but stated that his actions would result in a conviction for manslaughter.

For Part (b) (ii), some candidates identified burglary as the relevant offence. Others cited theft, or like offences, including those under the statutes. Most candidates appreciated that Abel committed a trespass or breaking and entering; but not all candidates appreciated that an intent to steal did not require that Abel actually make away with an item, and that it was enough to infer an intent to do so.

While candidates identified burglary, they were not able to break down *actus reus* from *mens rea*, and did not adequately explain or process *mens rea*.

Many candidates felt that Abel was an accessory to the burglary, as opposed to being liable on his own. Some candidates wrote about Abel's liability for Cain's assault on Paula, instead of focusing on the burglary/theft issue. Candidates conflated the *mens rea* for unlawful killing with that of burglary, showing a lack of appreciation that the *mens rea* would differ depending on the circumstances and the particular offence in question.

Some candidates spent valuable time rewriting the question as part of their answers and repeating points already made, instead of giving pointed remarks, so that answers were redundant and the relevant points had to be extracted in order to apply the marks.

There seemed to be a general lack of appreciation for the *mens rea* for the various offences.

Paper 032 – Alternative to School-Based Assessment (SBA)

The number of candidates who sit this paper is showing an increase. This year, 38 candidates sat this paper for Unit 1 compared with four in 2012 while 39 sat the examination for Unit 2 compared with 14 in 2012. Candidate performance is also showing improvement as an increasing number of candidates earned more than 50 per cent of the total score.

This compulsory question required candidates to advise James, Brad and Paul of any criminal liability arising from the fact pattern with the aid of decided cases. It called for

- the identification of criminal liability for rape for James and Paul
- a discussion of the *actus reus* and *mens rea* for rape with the aid of supporting cases
- an explanation of the law relating to intoxication and consent in relation to James
- an explanation of the law relating to consent given in circumstances of the threat made by Paul.

The overall performance of candidates on this question was fair. Most candidates were able to correctly identify the fact that James and Paul had committed rape while there was no criminal liability for Brad. Some candidates, however, stated that Brad had been guilty of omission in allowing Ria to be raped. Stronger candidates were able to utilize both domestic sexual offences legislation and case law to discuss the *actus reus* and *mens rea* for rape in addition to identifying the issue of whether Ria's consent was given in the circumstances of her intoxication as well as whether her consent was given in light of the threat she received from Paul.

Weaker candidates were unable to identify the correct criminal liability with respect to James and Paul. Some of the incorrect responses given by candidates were:

- Malice
- Sexual assault
- Invasion of privacy
- Sexual assault
- Bribery
- Aggravated assault
- Omission
- Blackmail
- Voyeurism

In some cases, while the *actus reus* of the offence of rape was correctly identified, candidates gave a general discussion of the *mens rea*, stating that the *mens rea* for rape involved:

- Intent
- Recklessness
- Knowledge
- Criminal negligence
- Wilfulness

In relation to the issue of whether consent was given in the circumstances of Ria's intoxication, weaker candidates did not demonstrate any awareness and/or understanding of the law, and concluded that despite her intoxication, Ria knew what she was doing and James was not liable for rape.

In relation to the issue of whether consent can be given in the circumstances of a threat made, some candidates, while correctly identifying the issue, went on to discuss law and morality, citing cases such as *DPP* v. *Shaw* and the impropriety of Paul's threat to circulate the nude photos he had taken of Ria.

Generally, candidates failed to utilize supporting cases in defining the *actus reus* and *mens rea* but were able to utilize cases such as *DPP* v. *Morgan* and *R* v. *Olugboja* to discuss the issue of consent given in the circumstances of intoxication and consent given in the circumstances of a threat made. Weaker candidates, while identifying the cases, failed to apply them to the facts of the case or merely stated the name of the case without going on to discuss the case.

UNIT 2 – PRIVATE LAW

Paper 02 – Extended Responses

Module 1: Tort

For this module, Question 2 was more popular than Question 1. Sixty-eight per cent of the candidates elected to do Question 2. The mean on Question 1 was 15.02 or 60.20 per cent while the mean on Question 2 was 11.26 or 45.25 per cent.

Generally, candidates failed to follow the directions given in the questions. The trend was that some of the candidates were more intent on relating all they knew about a particular topic rather than confining their responses to what the questions required. For example, even though the questions specifically asked candidates to cite cases, statute or examples, they failed to do so when required.

Candidates also wasted time rewriting the question instead of limiting their responses to answering the question. Consequently, while some responses were quite lengthy, they contained little substance.

Question 1

This question was on the Tort of Occupiers Liability. In Part (a), candidates were required to define the legal concepts of *occupier* and *visitor*. In addition to this, candidates were required to determine the liability, referring to decided cases, of Jonestown Museum to the parties presented in the given scenario. Most candidates were able to accurately define *occupier* and *visitor*; only a few candidates failed to give accurate definitions. Many were also able to identify the relevant statute or cases to support their definitions.

In Part (b) (i), many candidates were able to identify the issues surrounding the liability of Jonestown Museum to Mrs Johnson and were also able to use accurate case law in support of their arguments. Many candidates also raised the issue of *contributory negligence* on the part of Mr Curius. This was quite insightful.

However, there were several candidates who failed to identify the issues which would give rise to liability and instead gave information on *negligence* and *strict liability*. Some also wrote extensively on the topics of foreseeability and vicarious liability. This demonstrated that these candidates did not understand and therefore could not appreciate the different aspects of various torts. Subtle nuances and clues that pointed to the issues were overlooked.

Some candidates also failed to identify the fact that Mr Curius was not employed by the museum. Instead, they misinterpreted the question (concluding that he was an employer of the museum) and therefore attributed his injury to the failure on the part of the museum to be a careful employer.

In Part (b) (ii), many candidates were able to identify Jonestown Museum's liability to Keon but were unable to argue it coherently and failed to support their answers with case law. Some candidates added to the facts provided and used the added material in arguing their points which noticeably caused them to deviate and waste time in writing their answers.

Candidates also mentioned cases without accurately citing the names of the cases or the correct facts of cases. Consequently, many candidates failed to achieve optimum scores because of this failure to accurately support their arguments with relevant cases. In some instances, no case was cited.

Question 2

This question was on private nuisance. Part (i) required candidates to give the legal meaning of private nuisance. Even though the question identified private nuisance as the topic for discussion, many candidates addressed the topic of public nuisance.

For Part (ii), many candidates also failed to properly identify the types of harm as well as the factors which the court would use to determine liability. Instead they argued points concerning personal injury. Candidates focused more on damage to the environment and Zinga's economic loss instead of referring to damage to property and interference with enjoyment of land, which were the issues under consideration in this question. Others mentioned enjoyment but failed to identify that it was interference with enjoyment of land.

In Part (iii), candidates stated incorrect factors that the courts would use to determine the liability of Chemico Industries Ltd. They mistakenly identified foreseeability, prescription and cited immaterial cases such as *Donoghue* v. *Stevenson* and *Rylands* v. *Fletcher*.

On the whole, candidates successfully identified locality as a factor and most also identified malice and utility of the defendant's conduct as factors taken into consideration by the courts in determining liability. Many also mentioned sensitivity even in cases where it was not clearly identified as a factor but was indirectly referenced in the answer. The candidates were very limited in their choices of the factors which the courts usually consider.

Some candidates also discussed the factors in the section of the answer where they should have discussed the harm suffered by Zinga, and discussed harm where the factors should have been considered. This demonstrated that they did not understand the distinction between factors considered by the courts and the types of harm for which Chemico Industries Ltd may be liable.

Overall, this question was poorly done by candidates.

Recommendations

Teachers are asked to help students make clear distinctions between

- nuisance and negligence. They should impress upon students that even though many torts may contain an element of negligence, they need to be more specific in identifying the tort that is most relevant in a given question.

- private nuisance and public nuisance and the difference between nuisance and the rule in *Rylands* v. *Fletcher.* Special attention must be given to clarifying instances where a single individual may succeed in public nuisance as opposed to a situation that is distinctly private nuisance with no possibility of the issue of public nuisance coming into play.

Module 2: Law of Contract

There was a clear preference for Questions 4 as 79 per cent of the candidates elected to do this question. The mean was 9.65 or 38.60 per cent. The mean on Question 3 was 9.75 or 39.16 per cent.

There were some candidates who chose to answer Question 3 (a) and Question 4 (b) together. This clearly reduced their scores. A few candidates did not show a clear appreciation for contract law. Instead they veered off into areas such as Real Property, the Law of Tort and discussed issues such as estoppels.

Candidates discussed several irrelevant points such as exemption clauses. A few candidates did not provide any response to either of the two questions in this module.

<u>Question 3</u>

This question tested candidates' knowledge and understanding of the categories and effect of illegal contracts.

For Part (a), candidates were expected to provide a clear explanation of the categories of illegal contracts including relevant cases/examples. Some examples which constitute illegal contracts include contracts which constitute a criminal offence — *Pearce* v. *Brooks;* contracts to commit a tort — *Clay* v. *Yates;* contracts where performance is contrary to statute — *Re Mahmoud* v. *Ispahani*; those prejudicial to the administration of justice — *Elliot* v. *Richardson;* restraint of trade — *Nordenfelt* v. *Maxim Nordenfelt;* fraud against the revenue service — *Miller* v. *Karlinski;* and the promotion of corruption in public life — *Parkinson* v. *College of Ambulance.*

Overall, most candidates demonstrated adequate understanding of the topic. However, some candidates confused *capacity* with *illegality*. In addition, some candidates, to their detriment, mentioned duress, misrepresentation, mental illness, contracts with minors as illegal contracts.

For Part (b), candidates were required to apply the legal principles of illegality to the facts presented and advise Aaron whether he could recover his house from Jane. For legal principle,

generally there is no recovery of property transferred under an illegal contract. Where there is equal fault the defendant is in the stronger position as in the case *Parkinson* v. *College of Ambulance Ltd*.

Few candidates actually identified the legal principle and none indicated that where there is equal fault the defendant is in the stronger position. Some candidates identified the issue of illegality but did not indicate that Aaron could recover the property in equity. Conversely, there were those who indicated that Aaron could recover the property but they did not identify the underlying illegality in the contract.

In exception, the claimant could establish a claim without relying on the illegality of the contract as in the cases *Tinsley* v. *Milligan*; *Saunders* v. *Edwards*. The exception that the claimant can establish a claim without relying on the illegality of the contract and therefore Aaron could recover the property transferred under the illegal contract was not often identified.

Teachers need to ensure that students can distinguish clearly between *voidable* and *void* contracts.

Question 4

This question tested candidates' ability to explain the core elements of a valid contract and analyse the law relating to misrepresentation.

For Part (a), candidates were required to explain any three of the basic elements of a valid contract, including relevant cases/examples. While many candidates were able to identify the core elements of a valid contract, unfortunately, many did so without a clear explanation for each element and failed to apply cases to bolster their answers. In many instances, candidates did not include cases or examples and therefore were not able to maximize their scores. Overall, the use of case law and or the use of relevant examples were seriously lacking. In some instances, candidates relied greatly on *Carlill* v. *Carbolic Smoke Ball Co* as the supporting case for all the core elements of a valid contract, without adequately explaining how the case was to be applied to each element.

Despite successfully identifying the elements of a valid contract, many candidates concluded that there was no valid contract because of the presence of the dishonoured cheque. They could not differentiate between a contract that was *void ab initio* and one that was *voidable* because of a subsequent breach. The dishonoured cheque was sometimes interpreted as the absence of consideration and by others as misrepresentation.

In Part (b), most candidates could adequately define *misrepresentation*. There were a few who were only able to identify some of the key elements. Some, while indicating that it was a false statement of fact, did not go the extra step and refer to the element of inducement. Most failed to provide a supporting case, and thus could not earn full marks for this part of the question.

Many candidates identified the case of *Bisset* v. *Wilkinson,* however, they did not state the legal principle that a false statement of opinion was not misrepresentation. The other legal principle that says *If opinion is not honestly held it will be misrepresentation* was rarely alluded to by any

candidate. Likewise, the state case of *Edginton* v. *Fitzmaurice* was absent from most responses and there was no substitute case or example to illustrate the point.

Candidates, in many instances, discussed the three types of misrepresentation — fraudulent, negligent and innocent without concluding on a particular type. Additionally, some engaged in hypothetical scenarios which suggested that any of the three types could be operational. In fact, many candidates were prepared to say Karen was negligent but not fraudulent. A smaller number considered that she might be innocent. Unfortunately, there were those who felt that Brenda was also guilty of misrepresentation and would also make the contract void. Few candidates received full marks for application and conclusion. They failed to recognize the issues and did not make the relevant connection or draw the appropriate conclusion on the issues.

Module 3: Real Property

The questions testing this module had the lowest means on the paper. The mean for Question 5 was 7.60 or 30.40 per cent and that for Question 6 was 7.60 or 30.72 per cent. Question 5 was more popular as approximately 60 per cent of the candidates elected to answer it.

Question 5

This question was designed to test candidates' knowledge of mortgages, their features, the differentiation between the equitable right to redeem and the equity of redemption as well as protection provided by the law for mortgagors against harsh/unconscionable terms of mortgagees.

Part (a) (i) required candidates to define the term *mortgage*. The responses were generally acceptable though most responses lacked the technical or forensic terminology which would have been expected from candidates at this level. For Part (a) (ii), candidates were to describe two features of a mortgage. This section was generally not well done and reflected the fact that candidates' knowledge of the area was limited. A common mistake was candidates saying that the presence of a mortgagor and a mortgagee were two discrete features instead of one.

Part (a) (iii) required candidates to differentiate between the equitable right to redeem and the equity of redemption. Candidates who were aware of the differences between the two concepts on several occasions attributed the characteristics of one to the other and were therefore unable to receive passing grades in that section of the question.

In Part (b), candidates were required to explain the extent to which the law protects the mortgagor from harsh and unconscionable terms imposed by the mortgagee. Generally, this section was poorly done. Few candidates addressed the extent to which there was protection.

A majority of the candidates were unfamiliar with the subject matter and as such many did not attempt a response in this section of the question. Of the candidates who attempted to answer this part of the question, few had coherent responses.

Question 6

This question was designed to test candidates' knowledge of licence by estoppel.

For Part (a), candidates were required to define licence by estoppel. This was very poorly done. The vast majority of candidates who attempted this question chose to display their overall knowledge on the area of leases/licences instead of focusing on the narrow area of licence by estoppel. This section of the question required candidates to refer to two decided cases, however, it was noted that most candidates cited no case in their response. This tended to suggest that candidates were generally unfamiliar with this area of the law. Another common error made by candidates in this section was that many confused the concept of *licence by estoppel* with *tenancy by estoppel*.

For Part (b), candidates were required to illustrate, by the use of two decided cases, whether one of the given characters, Chin, could succeed in a claim for an interest in the property. This question was generally very poorly done as it required candidates to apply their knowledge of licence by estoppel to the facts of the scenario. As the vast majority of candidates were not able to define licence by estoppel, this lack of knowledge was carried over into Part (b). A common error made by candidates was identifying the issue as being that of adverse possession based on the length of time for which Chin had occupied the land. In some cases, the issue was incorrectly identified as 'easements'.

Paper 032 – Alternative to School-Based Assessment (SBA)

This question required candidates to:

- Identify all five of the basic elements for the formation of a valid contract.
- Briefly explain the requirement (s) for satisfying each of the five basic elements.

The majority of candidates handled this question well. These candidates were able to identify and explain all the relevant elements needed for the formation of a contract and cited supporting cases.

The few candidates who did not perform well failed to identify all of the elements for the formation of a contract, identified incorrect elements and omitted cases as required by the question.

Paper 031 – School-Based Assessment (SBA)

This year's SBAs were generally satisfactory. In order to improve on the assessment process, the common shortcomings are listed below, supported by recommendations for improvement.

Increasingly, we are seeing SBAs which are not in accordance with the requirements set out in the syllabus for conducting the research. We advise that students adhere strictly to the syllabus guidelines. The only headings to be included in the project reports are: Title, Table of Contents, Aims and Objectives, Methodology, Presentation of Findings, Discussion of Findings, Recommendations, and Bibliography.

Further, we advise against using topics that are too wide in scope which do not lend themselves to proper research, analysis and meaningful recommendations suitable to the level of study of students. For example, a topic on “The Law of Defamation” is considered too wide for a study at this level. However, a more suitable topic would be “The Defamation Act of Country X, enabling journalistic freedom”, for Unit 2. With respect to Unit 1, a topic such as “The Caribbean Court of Justice” may be considered too wide. A possible suggestion is “The Caribbean Court of Justice as a suitable replacement for the Privy Council as Country X’s final Court of Appeal”.

We urge teachers to ensure that the guidelines in the mark scheme are followed, that the projects are reviewed by them and adequate guidance given to students before projects are submitted. We strongly encourage that the syllabus be strictly adhered to and that no additional sections be added as this does not usually result in additional marks for students. Projects need not include thesis statement, introduction, acknowledgement, hypothesis, literature review, analysis and interpretation of data, conclusion.

Title and Table of Contents

Most projects contained a title and a table of contents as stipulated in the syllabus. However, a few students presented the project without a table of contents and others without a clearly stated title. Additionally, some projects contained topics that were too broad, vague or unrealistic for students to actually formulate clear aims and objectives to be achieved from the research.

Recommendation

All project titles should be specific, to the point and allow for detailed research.

Aims and Objectives

Most projects had clearly stated aims and objectives, which allowed students to conduct focused research. However, some students presented aims and objectives that were unclear and others that were far removed from the topic. This often occurred when the topics were not specific, and as a result students were unable to identify the most suitable methodology for their project. This adversely affected the overall grade obtained by students. Also, some topics tend to be purely sociological or historical in nature and did not allow for detailed legal discussion. As a result, the research presented lacked clarity and relevance. Often, students cited laws which were repealed, and or not applicable to the scope of the research and jurisdiction.

Recommendation

Aims and objectives should be specific, concise and allow for proper research.

Methodology

Not all students were able to distinguish between primary and secondary sources of data (examples of each can be found in the syllabus). A significant number of students still failed to properly select an appropriate sample and sample size.

Students also failed to provide sufficient detail of the methods used to collect data. They did not justify the chosen method applied to the research (reliability and credibility information). At times, the method(s) stated in the methodology was not reflected in the body of the research, for example, where the method of observation or interview was used, this was not evident in the findings.

Recommendations

It is always recommended that students use a combination of both primary and secondary methods of data collection as this will allow for greater validity and reliability of their interpretations, analysis and conclusions.

Students must justify the sources used. When conducting an interview, they must state the name of the interviewee, date, time and place of interview/s. When using questionnaires, they must state the sample size, sample location and how the survey was conducted.

Students and teachers are encouraged to review the questionnaire instrument before it is used in the study for relevance of questions and responses if close-ended questions are used. Students are also encouraged to limit the number of 'YES/NO' questions in their instrument and graphical data presentation.

Presentation of Findings

Most students did a satisfactory job in presenting the findings of their research. This was evident in the projects that had clearly stated aims and objectives and applied the relevant methodology. Some students however, failed to present the legal findings they intended to rely on in their discussion. They only presented findings from the interview and/or questionnaires. Also, in some projects, students misinterpreted the graphs/diagrams, presented graphs/diagrams that were incorrectly labelled or failed to state what they represented. Many students did not apply the proper citation of their cases; they are urged to take note of citation requirements.

Some students did not distinguish between the Findings and Discussion of Findings; but instead merged the two under the heading Report or Literature Review. This negatively affected the grades awarded, as examiners had to allot grades for the required headings based on the information provided.

Recommendations

Students should organize their project as set out in the syllabus (have a heading Presentation of Findings which is separate from the Discussion of Findings). They should present their findings based on the results of the questionnaires and/or interviews conducted and the legal findings they

intend to rely on in their discussions, for example legislation, case laws, literature obtained and statistics.

The Presentation of Findings should therefore be an integration of both primary and secondary data.

Discussion of Findings

Overall, the level of legal analysis which was presented for this section was unsatisfactory. Some students did not present a discussion of findings and others in presenting their findings failed to analyse and interpret the data properly. Most students, having failed to identify the relevant law in the Findings, failed to interpret and analyse the appropriate legal principles in support of the stated aims and objectives.

Recommendations

Students should analyze and interpret both primary and secondary data to arrive at a conclusion based on their aims and objectives. They should also state the limitations whether it be in the legislation, case law or agencies/bodies.

A few students displayed knowledge of what was expected of a recommendation. However, there is room for great improvement in this area. Many students used the recommendation as a conclusion, only recapping what the project was about. A few presented well-written recommendations but these were not supported by the findings of the research. Students should be careful not to present recommendations that are too sociological in nature.

Students should not use the recommendation as a conclusion only, but should indeed state what they are proposing based on their findings, for example, changes or improvements to be made to the legislation.

The recommendations should be plausible and supported by the relevant laws, where possible.

Bibliography

The vast majority of students was not able to properly cite sources, including cases, journals, textbooks, interviews and internet sources. It is to be noted that search engines such as Google.com, lawteacher.com/net, Wikipedia.com and Ask.com are not proper or preferred reference sites.

Recommendations

Students and teachers are reminded that the syllabus contains properly cited reference materials which include texts and cases. They are also encouraged to consult the OSCOLA or APA format for referencing and consistently use one of these referencing styles in their research report.

Communication

Overall, the use of the English Language and level of communication displayed in the research projects was below expectation. The majority of the scripts displayed poor paragraphing, subject–verb agreement, spelling and conjunction. The frequent use of contractions and short message service (SMS) language was noted.

Recommendations

Students should spend more time proofreading their projects and should utilize the dictionary and other spellcheck resources before submitting their projects.

Word Limit

A few projects were in excess of the word limit. Students are encouraged to adhere to the prescribed word limit which does not include headings and footnotes. Students and teachers are reminded that the syllabus stipulates that projects in excess of the prescribed word limit be penalized. Teachers are asked to enforce this stipulation for reports which are in breach.

Further Comments

Students' names recorded on the assignments and SBA forms must be consistent with the names at registration. Comments and marks by teachers are to be erased before SBAs are submitted as samples. Careful note must be taken of syllabus requirements to ensure compliance.

C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

MAY/JUNE 2016

LAW

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GENERAL COMMENTS

The total number of candidates who sat each unit was consistent with the 2014 and 2015 figure, with 88 per cent of the candidates obtaining Grades I–V in each of the two units.

The examination for each unit consisted of the following papers:

- Paper 01 — Multiple-choice items
- Paper 02 — Extended response items
- Paper 031 — School-Based Assessment (SBA)
- Paper 032 — Alternative to School-Based Assessment

There were some weaknesses in areas of elementary principles of law which indicated a lack of awareness of basic principles. Many candidates demonstrated an inability to adequately address questions that required problem solving and answers to such questions were often poorly constructed and generally disorganized. Candidates should be reminded to utilize an answer plan to assist them in producing lucid responses thus improving their chances of earning marks awarded for coherence. Possible mock trials can be used as a teaching strategy to engage students in the application of the relevant law to the facts of the scenario given. This would enhance the candidates' understanding and better equip them with the ability to transfer this understanding when answering examination questions.

It is strongly recommended that candidates be taught the following formats for answering questions: FILAC (**F –** Facts, **I –** Issues, **L –** Law, **A –** Application of law to facts, **C –** Conclusion) or IRAC (I **–** Issues, R **–** Relevant law, A **–** Application of law to facts, C **–** Conclusion). If either of the formats is followed, answers will be more structured, and candidates will be able to address the issues as required by the questions.

It should be noted, however, that although the aforementioned formats are strongly recommended, they are not to be applied mechanically. Candidates are to spend time reading and interpreting the questions since not every question would lend itself to responses in these formats and candidates could find themselves adding information to their responses that is not relevant to the question in order to adhere to the formats.

DETAILED COMMENTS

UNIT 1 – PUBLIC LAW

The modules in this unit covered the following:

Module 1 Caribbean Legal Systems
Module 2 Principles of Public Law
Module 3 Criminal Law

Paper 01 – Multiple Choice

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. The total weighted mark on the paper was 90. The score on this paper contributed 30 per cent to candidates' overall score. This year, the mean on this paper was 52.38 or approximately 58 per cent. This represents a decline from 2015 when the mean was 59.11 or 67 per cent. Candidates performed best on Module 1.

The mean on this module was approximately 69 per cent. The means on Modules 2 and 3 were approximately 50 and 60 per cent respectively.

Paper 02 – Extended Responses

Paper 02 comprised six essay or problem-type questions (two based on each module). Candidates were required to answer a total of three questions, one on each module. The total weighted mark for the paper was 150. The score on Paper 02 contributed 50 per cent to candidates' overall score. The mean was 69.49 or 47 per cent, representing an increase over 2015 when the mean was 63.70 or 42 per cent.

Module 1: Caribbean Legal Systems

For this module, Question 1 was more popular than Question 2, and it was attempted by approximately 70 per cent of the candidates.

Question 1

This question was designed to test the candidates' knowledge and understanding of eligibility and disqualification of jurors for jury service, and the advantages and disadvantages of the jury system in the Commonwealth Caribbean. The mean was 17.81 or 71 per cent.

Part (a) of the question dealt with the dismissal of a juror. Most candidates were able to identify that Tom (a potential juror) was recently divorced from Wendy (another person proposed for the jury) or had a personal or intimate relationship with her. This they concluded would be considered a conflict of interest, or some sort of bias would arise if Tom was allowed to serve as a juror in the case, thereby supporting why Justice Anderson could dismiss him. Some candidates spoke of emotional attachment, vendetta, or interest to serve if Tom were allowed to serve and the likelihood of him swaying the other jurors to take his position. A few candidates only restated the facts, and identified the fact that there was a personal relationship of recent divorce between the named parties but did not apply these principles to make a sound conclusion and therefore lost marks.

For Part (b) of the question, candidates were required to identify and conclude on issues of eligibility and disqualification of Nicholas, a former convict who spent five years in prison, and Mary, who applied for exemption because she had the flu. This part was generally not well done by the candidates.

Stronger candidates were able to quote or refer to sections of their relevant jurisdictions' *Jury Act* that indicated the criteria for disqualification inclusive of unsound mind, serious medical condition, conviction, illiteracy, bankruptcy, deafness and blindness to name a few. These candidates were then able to apply the law to the fact pattern and concluded that since Nicholas was a previous convict he could not now be the judge of another person's felony or misdemeanour due to his impending bias in the case. Regarding Mary, strong candidates argued many ways – some candidates argued that the seriousness of her medical condition would not allow her to serve as she would not be focused, could be a distraction to the proceedings (with her coughing and sneezing) and might even spread her symptoms to other jurors thereby delaying the trial process. Additionally, some noted that in applying for the exemption she would be expected to submit a medical report to support her application for the exemption. Another viewpoint was that the influenza was not a serious enough medical condition and so Mary would not be exempted from the proceedings. In conclusion, marks were awarded for either point of view once the candidate was

able to bring out the point that it was at the discretion of the court to determine if the juror was too unwell and unable to serve based on the seriousness of his or her medical condition.

Weaker candidates were distracted by the fact that Mary was a housewife and made an attempt to discuss her eligibility based on her occupation or the view that housewives were not educated or literate. No marks were awarded for such a response.

Candidates were expected to highlight the criteria for disqualification or eligibility based on the facts provided and to give a clear explanation and conclusion in support of each of the two grounds highlighted. Part (c) was fairly well done. Candidates were able to discuss three advantages and three disadvantages of the jury system in the Commonwealth Caribbean. Stronger candidates were able to list and explain the advantages and disadvantages.

More popular responses to the advantages included points related to jury composition (random selection and inclusive of persons from different segments of society), use of common sense and lack of legal training, bringing a fresh outlook to the table, participation in the court system as a matter of civic duty/nation building, juror mores reflective of society's ideals, and provision of a stipend.

More popular responses to the disadvantages included points on time consuming and lengthy trials, fear and threats, bribes, corruption, small stipend, loss of income due to loss of days from work, juror shortage due to reluctance of persons to serve, emotional effect of some cases on jurors' decision making, judge misdirection, low education of jurors could lead to lack of understanding of proceedings, pre-trial publicity (many candidates alluded to the 'Vybz Kartel' – *R v Adidja Palmer* – criminal trial from Jamaica). An interesting point noted by many candidates, especially those from smaller territories, was the fact that due to the geographical size of the territory most persons knew one another and it was therefore difficult to have a jury composed of persons who did not know the parties on trial.

Weaker candidates commented on the fact that the jury system reduced the judge's workload and their verdicts had impact on the law or evolving jurisprudence.

A few candidates only listed the advantages and disadvantages of the jury system and gave no clear explanation of the points they provided, thereby resulting in a failure to earn marks for the discussion of the point. Some misinterpreted the question and merely gave either the advantages or disadvantages.

Candidates who scored highly on this question displayed the ability to:

- Write clear and concise statements.
- Link the legal principle to the fact pattern and conclude on the position taken.

Comments and Recommendations

Overall, while candidates' performance on this question was satisfactory, it was clear that quite a few candidates just regurgitated the facts in their responses without any clear explanation or application of knowledge in the form of a discussion seeking to support their position or conclusion. Candidates are reminded to consider the marks allocated for each question and to develop an awareness of the meaning of key words commonly used in examination questions. A list of such words is found in the *Glossary* in the CAPE Law syllabus and provides guidance as to what is expected of the candidates in their responses.

Question 2

This question was designed to test the candidates' knowledge and understanding of the role and function of the Ombudsman.

While the less popular of the two questions, it was well handled by a large number of candidates who attempted it. The mean 16.57 or 66 per cent.

Many candidates were very creative in crafting their speech in the form of a presentation/feature address to the Sixth Form (Grade 12) students, while others simply answered the question without any regard to the instructions to write an address.

Part (a) required candidates to define the term ‘ombudsman’ and was well done by most candidates. Candidates’ responses demonstrated knowledge of the fact that the ombudsman was a state official or agent, usually a lawyer, who protects the rights of citizens/public against government entities or public institutions. Some candidates wasted too much time discussing the history of the office of the ombudsman and how it came to be established in the Commonwealth Caribbean.

Part (b) was fairly well done by most candidates who were asked to briefly describe four functions of the ombudsman. Many candidates, however, only stated a key word to describe the function without any clear explanation and were unable to earn high marks. The most popular functions highlighted were to protect human rights of citizens, protect citizens from abuse of government agents, listen to complaints, investigate any form of administrative faults or actions, to act as a mediator in disputes, bridge the gap between the citizen and the state, educate the citizenry about the office and its powers, prepare findings and report and submit findings for the government to address. Some candidates seemed to have misinterpreted the question and went on to list the types of ombudsmen that exist and focused exclusively on the type of ombudsman that deals with work-related or industrial disputes in their responses.

Part (c) was well done by the majority of the candidates. Candidates were asked to explain briefly three advantages of seeking redress via the ombudsman rather than by means of the court system. Many candidates only listed the advantages without any clear explanation or merely repeated one or two functions from their response to Part (b) utilizing different words.

Stronger candidates wrote about the easy accessibility and flexibility of the ombudsman; the little or no cost attached to engage the services of the ombudsman; the informality of the office; the personal touch of the ombudsman when dealing with matters; the fact that the ombudsman acts without delay and is not as time consuming as the courts; that there is no need for counsel in matters brought before the ombudsman; that the ombudsman acts as a confidential, impartial agent in the matters and utilizes a consensual rather than adversarial approach.

Part (d) was not as well done as the previous sections. Candidates were expected to briefly explain three limitations of the ombudsman in protecting the rights of citizens. Stronger candidates explained that citizens were often unaware of their rights and the role of the office; the lack of resources and finance that often affected the office of the ombudsman; the limitation of the ombudsman’s jurisdiction (e.g. he or she cannot deal with private action matters); the backlog and overwhelming workload the office has to deal with; the lack of power and effective sanctions in contrast to a court of law, thereby making the

ombudsman often be viewed as ineffective; dependency on Parliament to facilitate serious changes based on the ombudsman's findings/reports. Many candidates either stated one response or only listed responses and gave no supporting explanation, and as a result failed to achieve high scores for coherence and clearly explained points.

Module 2: Principles of Public Law

In this module, Question 4 was more popular as 70 per cent of the candidates attempted it. The means on the questions in this module were generally the lowest on the paper.

Question 3

This question assessed candidates' knowledge of service commissions and their functions. More specifically, they were required to apply their knowledge of the functions of a police service commission to a case of dismissal of a member of the force. The mean of 6.18 or 25 per cent was the lowest on the paper.

Part (a) (i) required candidates to explain what a 'service commission' is and to give two examples of service commissions, other than the police service commission.

Part (a) (ii) required candidates to outline two functions of a service commission in a Commonwealth Caribbean state and to support their response by referring to a decided case.

Few candidates were able to give examples of service commissions and identify their functions. Candidates generally did not perform well, which may be as a result of lack of knowledge and/or a misinterpretation of the question to mean service providers rather than service commissions.

In Part (b), candidates were expected to advise the Commissioner of Police (COP) on whether he could challenge the lawfulness of his suspension and removal from office.

In arriving at the advice to be given, candidates were expected to identify and discuss

- the issue of whether natural justice applies to the suspension of the COP
- the issue of whether the Police Service Commission (PSC) is unlawful on the grounds of bias because of John's participation, since John, who was previously recommended for removal from the police service by the COP, sat as a member of the PSC.

Some candidates were able to identify the issues although the discussions surrounding the issues were weak. It was evident that the candidates did not use the recommended approach for answering law questions (ILAC) but proceeded by using a common-sense approach.

Comments and Recommendations

It is recommended that candidates be taught how to apply the law to the issues. In addition, candidates should be reminded of the need to use decided cases to explain their points and illustrate their understanding of the law.

Question 4

The question was designed to test candidates' knowledge and understanding of the three main organs of the state, namely, the Legislature/Parliament, the Executive and the Judiciary. The mean was 7.36 or 29 per cent.

Parts (a) (i) and (ii) required candidates to describe three features of the Parliament and three features of the Executive, respectively.

Part (b) required candidates to discuss features of the Judiciary, namely:

- The jurisdiction of the High Court as it relates to family matters
- Appointments by the Judicial and Legal Services Commission or the Prime Minister
- Security of tenure of judges
- Removal of judges

Candidates were also required to determine whether the Magistrates Act is unconstitutional in contemplation of the separation of powers doctrine.

For Part (a) of the question many candidates were able to provide at least two roles of Parliament and the Executive respectively. For Part (b) candidates were able to discuss the separation of powers doctrine along with the case of *Hinds v R.* They demonstrated their familiarity with the doctrine and its relevance in the given scenario. Despite this familiarity, however, candidates were unable to earn high marks, since the overall quality of the responses was very poor. Candidates failed to properly discuss the law and apply it to the fact scenario and instead based their entire response on the separation of powers doctrine and *Hinds v R*, overlooking the other points for discussion.

Comments and Recommendations

The failure by candidates to consider other existing legal points for discussion suggests that although candidates were familiar with the area, they needed to have much more practice in answering questions that require problem solving based on scenarios in order to become more insightful in identifying the relevant issue(s) and to develop the ability to apply the law to the given facts. Candidates need to avoid an approach to responding to these types of questions by writing extensively and expansively, simply divulging all they know, relevant or otherwise to the issue, leaving the examiner to sift through the response to select what is applicable and what is not. This does not work to the candidates' advantage since they would discuss one topic at length, aspects of the topic may not be relevant the particular fact scenario, and they may overlook other topics or areas that were brought out in the fact scenario. For example, in this question the separation of powers doctrine and the case of *Hinds v R* were just a very small aspect of the discussion required for answering the question. Candidates still needed to discuss the removal of judges, tenure of judges and jurisdiction of court personnel, particularly that of judges and magistrates. Candidates who did not see that the question was focused on the bigger aspect of the judiciary and not just one facet of it would not have been able to achieve high marks. Hence it is critical for candidates to practise answering scenario-based questions that call for application of the law and for them to see how one issue may draw on several areas in law. They must be able to see the inter-relationships among various concepts of law and not view areas of law as isolated.

Practice would also assist a great deal in preparing candidates to provide more coherent responses and develop a more acceptable writing style.

Module 3: Criminal Law

For this module, Question 5 was more popular, with approximately 77 per cent of the candidates responding to it. The means on the questions in this module were generally the highest on the paper.

Question 5

The question focused on candidates' understanding and application of the law relating to the death of a mother and her unborn child. The mean for Question 6 was 9.76 or 39 per cent.

Part (a) of this question was designed to test candidates' understanding of the offence of transferred malice. Candidates who did well were able to identify the *actus reus* and *mens rea* required for the offense. Many candidates were able to identify the issue of transferred malice; giving the relevant case of *R v Latimer.* Many candidates were able to use the case of *R v Pembleton* to concretize the concept of transferred malice. The concept was applied to the facts and the correct conclusion was reached.

Candidates who did not perform well were not able to identify the legal issue. Further, in determining the criminal liability, if any, in relation to Mark for the death of Sandra and her unborn child, many candidates could not identify what Mark's liability should be, that is, murder or manslaughter. In fact, many candidates did not realize that criminal liability was not limited to murder, especially as it relates to the unborn child.

Although candidates were able to recognise and identify that there was liability attached to Mark for the death of the unborn child, many candidates did not have a comprehensive understanding of the principle laid down (*AG's Reference No 3*) that the unborn child or foetus is not a live person in law and as such liability could only be that of manslaughter and not murder.

Further, candidates were able to state the facts of the relevant cases but lacked understanding of the *ratio decidendi* and therefore some candidates arrived at incorrect conclusions. Additionally, although marks were allocated for examples, some candidates failed to benefit from them because the examples they provided used the exact facts as stated in the question.

Candidates spent a lot of time discussing the definition of murder and what would constitute murder. Others went on to include the definitions of the different types of manslaughter. A few candidates went on to discuss all the various defences Mark could use, even though the defences were not in issue based on the facts.

Some candidates were mistaken as to the meaning of *mens rea* and *actus reus*; the definitions were often confused.

Part (b) of this question was designed to test candidates' understanding of the offence of conspiracy. Most candidates were unsure of the offence for which Ian would be liable if he agreed with Mark to kill Elisha, the mother, and therefore there were lengthy discussions on what constituted the elements of the various inchoate offences, for example, aiding and abetting and failing to report. Candidates gave theories on

each offence and gave scenarios for which they could be found guilty. Many candidates could not identify that the offence in issue was conspiracy.

Some candidates were able to derive from the facts presented that the offence was that of conspiracy but they could not identify the *mens rea* and *actus reus* of the offense which often lead to an incorrect conclusion.

Candidates also mixed up the names of the parties which resulted in confusion of the facts and the actions which were ascribed to each party.

Question 6

This question was designed to test candidates' knowledge and understanding of the theories of sentencing and alternative forms of sentencing. The mean of 12.64 or 51 per cent was the highest on the paper.

For Part (a), many of the candidates did not define sentencing. It was quite clear that many of the candidates did not know what the retributive and rehabilitative theories of sentencing entail and sought to combine the two when an attempt was made to define them. Candidates who were able to define both theories used examples to aid their definition. The examples made the point being stated easier to understand.

Generally candidates performed satisfactorily in this part of the question.

Most candidates who attempted this question did fairly well in Part (b). Many were able to provide a number of alternative methods of sentencing that were used in reality, such as house arrest. However, there were a few candidates who included different theories of sentencing instead of alternative forms of sentencing, for example, deterrent.

Generally, candidates performed well in this part of the question. Most responses included what was required by the question.

Comments and Recommendations

Candidates should refrain from re-writing the question as part of their answers and repeating points already made, instead of giving pointed, relevant responses. Such answers are redundant and the marker is required to sieve out the relevant points in order to apply the mark scheme.

There seemed to be a general lack of appreciation of the *mens rea* and *actus reus* for various offences.

Paper 032 – Alternative to School Based Assessment (SBA)

The number of candidates who sat this paper showed an increase. This year, 43 candidates wrote this paper compared with 38 in 2015. Candidate performance also showed improvement, as a greater number of candidates earned more than 50 per cent of the total score this year.

This question required candidates to discuss the development of equity against the gaps/weaknesses of the common law and evaluate whether the birth of equity destroyed the common law as it existed or enhanced it and allowed it to be more effective.

Candidates were therefore called upon to:

- Discuss the defects of the common law, for example, its harshness, the fact that it only had one remedy, and damages, which were often times inadequate.
- Discuss the core equitable principles which sought to remedy the defects of the common law, for example, remedies introduced by equity and how they function and maxims of equity and how they operate.

The overall performance of candidates on this question was good and candidates appeared to be adequately prepared. All the candidates were able to provide sufficient information on the remedies both at common law and equity; the cases and examples used were relevant and most candidates were able to explain the concept of the common law and how equity was effective in addressing the defects. However, most candidates were unable to achieve high marks because they did not adequately explain the maxims of equity. Most of these candidates just listed the maxims.
Candidates whose performance fell below the satisfactory level showed inadequate knowledge of the topic being tested and thus their marks were lower than expected.

Comments and Recommendations

Candidates are reminded that keen attention must be paid to the allocated marks for this single question. This should be used as a guide to the scope and depth of analysis expected in their response. The question on this paper demands that candidates either discuss or explain an issue related to the stated topic. Bearing in mind the structure of the question, candidates must pay attention to the interpretation of what is required in their responses. In addition, if the question demands a discussion or explanation it would also require an appropriate level of analysis and evaluation.

Candidates are also reminded to make use of the glossary in the CAPE Law syllabus for the meaning of key terms used in examination questions to get a good idea of what is expected in their responses when, for example, words such as “list”, “explain” or “discuss” are used. The syllabus is produced for guidance and should be used accordingly.

UNIT 2 – PRIVATE LAW

The modules in this unit covered the following

Module 1. Tort
Module 2. Law of Contract
Module 3. Real Property

Paper 01 – Multiple Choice

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. The total weighed mark on the paper was 90. The score on this paper contributed 30 per cent to candidates’ overall score. This year, the mean on this paper was 55.25 or approximately 61 per cent. The means for the last

three years are showing a slight increase. As with Unit 1, the mean Module 1 was the highest. This mean was approximately 68 per cent while those on Modules 2 and 3 were approximately 60 per cent each.

Paper 02 – Extended Responses

Module 1: Tort

For this module, Question 1 was more popular than Question 2. Approximately 71 per cent of the candidates elected to do this question. Overall, candidates performed similarly on both questions as the means were approximately 76 per cent. These means were the highest on the paper.

Generally, however, some candidates failed to follow instructions and other directives given in the questions. The trend was that some of the candidates were more intent on relating all they knew about a topic rather than confining their responses to what the questions required. For example, some candidates failed to cite cases and examples when required. Candidates also unnecessarily chose to reproduce the question as part of their response, instead of proceeding to write their answer.

Question 1

The question assessed candidates' knowledge of the elements of defamation and the application of the law which a newspaper and a minister of government may use as a defence in such a case.

Part (a) of this question required candidates to use decided cases to explain the elements of defamation. Part (b) required them to identify a likely defence to defamation that can be used by a newspaper and Part (c) required them to identify a likely defence that can be used by a Minister of Government providing one decided case in support of the defences identified.

While many candidates were able to define defamation, there was a significant number who were unable to do so. Most candidates were also able to identify the three elements of defamation. However, a significant number listed damage to the plaintiff as an element. It must be noted that even where the three elements were correctly identified, several candidates failed to achieve higher scores because they merely listed the elements and failed to explain what they meant.

The greatest weakness displayed, however, was the inability of some candidates to use appropriate cases to explain the elements. Even though the questions specifically asked candidates to use decided cases to outline the elements of defamation, some candidates cited no cases at all. Some candidates also mentioned cases without accurately citing the names of the cases as well as the correct facts of cases used in support of their answers.

A significant number of candidates were unable to identify the defence that was available to *The Daily Maco* newspaper. Some listed all the possible defences without zeroing in on the most likely defence. In addition, even where the most likely defences of fair comment or justification/truth were identified, some candidates failed to outline the essence of the defences. Instead, the defences were merely identified. Most failed to identify a relevant case in this section of the response.

As it relates to the defence available to Minister Bluett, many candidates confused absolute privilege with qualified privilege, and some were simply unable to identify an appropriate defence. Instead, all possible defences were listed. Again, most could not identify an appropriate case. Some merely listed case names

which were not applicable. In some cases, no case was mentioned even though the question explicitly required this.

Question 2

This question focused on false imprisonment and malicious prosecution. Candidates were also required to apply the law and cases to a situation where an accused was seeking an action against the police for false imprisonment. Part (a) of this question required candidates to define both false imprisonment and malicious prosecution. Part (b) asked candidates to use three decided cases to determine whether Carla could succeed in an action against Inspector Showoffe for false imprisonment and malicious prosecution. This required application of knowledge relevant to Part (a).

Many candidates were unable to define false imprisonment and malicious prosecution. Few scored full marks for the definitions since even where a definition was given, it was often incomplete. Many candidates equated being arrested with false imprisonment and it was clear that most were clueless as to what malicious prosecution entails.

Candidates had difficulty applying the law to the facts of the given scenario. There was a marked failure by many candidates to cite cases in support of arguments. Instead, some candidates added to the facts provided and used the added material in arguing their points which noticeably caused them to deviate and waste time in writing their answers.

As with the previous question, most candidates failed to develop their points, merely identifying the elements of false imprisonment and malicious prosecution without applying them to the given scenario. Thus, they did not achieve high marks. In addition, many candidates attempted a response without substantiating it with cases, even though the question explicitly asked that decided cases be used to answer the question.

Comments and Recommendations

1. Teachers should spend more time teaching candidates to use the IRAC or any other applicable method when answering application questions.

2. Candidates should be taught what makes a case applicable and appropriate for a given response. In essence, while a case may relate to a given topic, it may not be the most applicable in a given scenario.

3. Teachers are advised to remind candidates to read each question carefully and pay close attention to what each question is asking before attempting to answer.

4. Candidates should be advised to use the facts given in a scenario and should not speculate or add to the given facts.

Module 2: Law of Contract

Approximately 83 per cent of the candidates attempted Question 3. The means in this module were the lowest on the paper.

Some candidates chose to answer Question 3(a) and Question 4(b) together. This clearly reduced their scores.

Few candidates showed a clear understanding of the Law of Contract. Instead, they veered off into areas such as Real Property and the Law of Tort, while others discussed several irrelevant points, such as exemption clauses. A few candidates did not provide any response to either question.

Question 3

This question tested candidates' knowledge and understanding of discharge of a contract by performance. The mean of 7.21 or 29 per cent was the lowest on the paper.

Part (a) of this question required candidates to explain the law relating to discharge of a contract by performance. As a general principle in law, where there is a general rule which carries with it exception(s), it is expected that the general rule would be stated as well as the exception(s) to that said rule. As such, candidates were required to explain the exception: that a contract is discharged by of acceptance of partial performance of the contract (Case: *Sumpter v Hedges*).

General rule: The parties must perform precisely all the terms of the contract in order to discharge their obligations. A contract becomes discharged through performance where both parties have fully performed their contractual obligations.

Harshness of rule: If all terms of contract are not performed no payment is due.

Exception to the rule: Acceptance of partial performance. Where one party freely accepts partial performance, this may be sufficient in certain circumstances to discharge the other party's obligations under the contract; thus a sum is payable to the defendant for the work completed.

Most of the candidates either did not understand the question or they were not prepared for this section of the module. Many wrote about the elements of a contract and discharge of contract but, for the most part, performance was not mentioned. Candidates wrote about discharge of contract but the emphasis was on breach of contract, agreement or frustration, rather than performance.

The majority of the candidates did not state the rule for performance and those who did, did not do so clearly. Most of the candidates did not provide a relevant case or even make mention of the exceptions to the rule. Candidates who did make reference to relevant cases did not provide full explanation of these principles.

For Part (b) of this question candidates were required to determine whether George was entitled to sue Norma for the $250,000 or any part thereof. In making this determination, candidates needed to discuss the doctrine of *quantum meruit*.

Many candidates did not identify the issue in the scenario – *quantum meruit* – an equitable doctrine in which a party can recover losses in the absence of an agreement or binding contract. For the most part, there was no mention of *quantum meruit*; for those who did, it was not clearly explained. Although there was some reference to partial performance, this was not clearly stated either and cases were not given in relation to either principle. Many of the candidates failed to apply the principles to the situation or to

arrive at a correct conclusion. Few of the candidates gave a reasonable response that showed understanding and application of the relevant principles to the question.

<u>Question 4</u>

This question tested candidates' knowledge and understanding of the doctrine of promissory estoppel and its application to a case. The mean was 8.42 or 34 per cent.

For Part (a) of this question many candidates did not explain the concept of promissory estoppel at all but instead wrote about present consideration and past consideration. None of the candidates gave three clear points on the requirements for promissory estoppel. Candidates did not show much understanding or knowledge of this area. Most of the cases provided were not relevant to promissory estoppel.

In Part (b), candidates for the most part did not answer the question as expected. Some were able to identify the issue and the principle in the scenario but were not able to apply it in answering the question. Some of the candidates made reference to relevant cases but the majority did not. Many candidates were not sure of the conclusion to be reached based on the scenario.

Overall, the questions in this module were not answered in a satisfactory manner. The candidates appeared to have a problem with this area of contract law and their responses demonstrated a lack of understanding or adequate preparation on their part.

Comments and Recommendations

Candidates need more practice answering essay questions to improve their writing skills. Candidates also need to indicate the parts of the question being answered by numbering each part of their response clearly to indicate to which part of the question it corresponds.

Module 3: Real Property

For this module Question 5 was more popular, as approximately 54 per cent of the candidates responded to this question. The mean for each question assessing the module was approximately 45 per cent.

<u>Question 5</u>

This question was designed to test candidates' knowledge and understanding of a life tenancy, with specific explanation of the rights and obligations of a life tenant; the nature and types of waste and the liability for committing waste.

Part (a) of the question was fairly handled by candidates generally. While most candidates were able to identify the rights and obligations of a life tenant, most candidates were of the belief that a life tenant cannot sell the property and those who believed that the life tenant could have sold the property failed to state that the proceeds of the sale should be placed on trust for the beneficiaries. Some candidates stated that the life tenant should share the money but as though it was a moral obligation and not a legal obligation. Other candidates incorrectly wrote at length about leasehold tenancy and the rights and obligations of a tenant.

Part (b) (i) of the question was generally fairly done by the candidates. Some candidates could not provide a definition of waste as used in this context.

Part (b) (ii) of the question was generally satisfactorily done by the candidates. Most candidates were unable to identify the types of waste and stated that waste was created using the facts of the scenario but were unable to state what kind of waste it was. As such, they were unable to score full marks. Most candidates who were able to identify the types of waste were able to identify and explain permissive waste; however, a few confused equitable waste and voluntary waste, and clear explanations of these two types of waste were generally rare. Within this group of candidates, also, while the majority identified and attempted to explain permissive waste, voluntary waste and equitable waste, hardly any candidates attempted to discuss ameliorating waste and those who did attempt to do so examined it from the one component of improvement and were unable to apply the facts to the law. Generally candidates had a very good idea of what waste was and what constituted the creation of the various types of waste but struggled to develop their explanations.

Part (b) (iii) of the question was very poorly done. In this section of the question candidates' responses were generally inadequate and failed to earn marks apart from those available for coherence and conclusion. After candidates' discussion of the types of waste in Part (b) (ii) most of them just concluded that a life tenant would have been liable/guilty of waste for carrying out the acts discussed in Part (b) (ii) and no further discussion was provided as it pertained to liability. It appeared as though the candidates interpreted this part as requiring a repeat discussion of Part (b) (ii) and as such did not see the need for further discussion beyond stating whether or not the life tenant was liable for waste.

Comments and Recommendations

Overall, while candidates' performance on this question was satisfactory, it was clear that candidates were very familiar with waste but were still somewhat confused with regard to life tenancy, landlord and tenant and licence. As such, focus should be placed on differentiating amongst the various interests in land and also on teaching and training students how to determine the demands of a question so they would not simply write all they know on a particular topic but instead would generate more discerning responses to the question. Candidates also need to be reminded that when answering questions divided into parts they must respond to each part of the question and not write their response as though it is a single, continuous, extended essay.

Question 6

This question was poorly handled by candidates. The question required candidates to:

- Explain the termination of a lease by forfeiture
- Explain the termination of a lease by notice to quit
- Discuss the legal effect of waiver of forfeiture

Part (a) (i) of the question required candidates to explain the manner of terminating a lease by forfeiture. The majority of the candidates were able to provide a definition of forfeiture and lease but could not properly discuss the manner of terminating a lease by means of forfeiture. Some candidates discussed this type of termination from a contractual standpoint, given that a lease is a contract by nature and, therefore, their discussion was against that backdrop and termination was discussed in the manner of a

common contact, for example, frustration. Most candidates recognised that there was a breach of covenant to pay rent and that the landlord had the right to re-entry.

Part (a) (ii) of the question required candidates to explain the manner of terminating a lease by notice to quit. Most candidates were able to provide a definition or an explanation giving the basic idea of what a notice to quit is. Many candidates alluded to the fact that the notice to quit must provide a specific time; however, a majority of the candidates failed to state what is considered legal notice based on the type of tenancy.

Part (b) of the question required candidates to discuss the legal effect of the landlord accepting rent arrears which have accumulated for six months. This part of the question was generally poorly done. Some of the candidates knew that if the landlord so decided then she could no longer exercise her right to forfeit. However, the majority of the candidates could not expound on the effects of waiver of forfeiture or what happens if the decision to accept rent arrears is taken at specific periods, for example, if rent arrears are accepted after ejectment proceedings have commenced. Some candidates even stated that the landlord would be in breach of the lease if she accepted the outstanding rent.

Comments and Recommendations

Overall performance on this question was satisfactory but candidates generally need more practice in answering questions. A review of the candidates' scripts suggests that candidates have knowledge of the area being tested but have difficulty applying that knowledge and expressing it in writing. As noted for Question 5, candidates also need to remember that when answering questions divided into parts they must respond to each part of the question and not write their response as though it is a single, continuous, extended essay.

Paper 032 – Alternative to School-Based Assessment (SBA)

The number of candidates sitting this paper was consistent with that of 2015 when 28 candidates responded to the question on the paper.

Part (a) of this question required candidates to explain the meaning of the term 'strict liability' and use one example to illustrate their explanation. While some candidates demonstrated a basic understanding of the concept of strict liability, they were not able to fully explain it. Many were unable to give an example of strict liability.

Part (b) required candidates to give advice with regard to an action in scienter as it related to liability for animals. However, most candidates were unable to identify what the given scenario was about. Candidates identified the issue as negligence, vicarious liability, employer's liability, public nuisance and *Rylands v Fletcher*, totally missing the cues that made it clear that the issue was liability for animals (*scienter*).

In addition, some candidates gave opinions that were not grounded in law. For example, candidates contended that Angie worked for Mr Shoemakker and should have known his dog was vicious. Therefore, she should have taken greater care and she would not have been bitten. This clearly illustrates that candidates did not understand the concept of strict liability.

Of note was the overwhelming number of candidates who thought that the issue at hand was negligence, vicarious liability and occupier’s liability.

Overall, candidates performed very poorly. Even where candidates correctly identified scienter, some failed to provide an example or case to support their conclusions. In addition, some candidates demonstrated ignorance of the requirements to prove scienter and time was wasted by some candidates who found it necessary to rewrite the question instead of proceeding to write their answer.

Comments and Recommendations

1. Teachers should spend more time teaching candidates to use the IRAC or any other applicable method when answering application questions.

2. Candidates should be taught what makes a case applicable and appropriate for a given response. In essence, while a case may relate to a given topic, it may not be the most applicable in a given scenario.

3. Teachers are advised to inform candidates to read each question carefully and pay close attention to what each question is asking before attempting to answer it.

4. Candidates are advised to use the facts given in a scenario and not speculate or add to the given facts.

Paper 031 – School-Based Assessment (SBA)

The School-Based Assessment projects submitted for the academic year 2015/2016 reflected a fair attempt at compliance with the requirements of the Caribbean Examinations Council (CXC). In order to improve on the assessment process, common shortcomings of the projects are listed below, supported by recommendations for improvement.

As was noted in previous years, the submission of school-based assessment projects which are not in accordance with the requirements set out in the syllabus for conducting the research is a recurring problem. We advise that candidates adhere strictly to the syllabus guidelines. The format stipulated in the syllabus that should be followed in the SBA projects is: *Title, Table of Contents, Aims and Objectives, Methodology, Presentation of Findings, Discussion of Findings, Recommendations,* and *Bibliography*.

We again advise against choosing topics that are too wide in scope and do not lend themselves to proper research, analysis and meaningful recommendations suitable to candidates at this level of study. For example, a topic on “*Easement*” is considered too wide for a research study at this level. We suggest a topic such as “*The legal effect of the termination of an easement in Country X*”, which would be more manageable for Unit 2. With regard to Unit 1, a topic such as “M*arital Rape*” may also be considered too wide. A possible suggestion is “*The legal effects of the Sexual Offences Act, 2009, in Jamaica*”.

We impress upon teachers their responsibility to ensure that the guidelines in the mark scheme are followed, that the projects are reviewed by the teacher and that adequate guidance is given to the students before projects are submitted. We strongly encourage strict adherence to the headings specified in the syllabus and recommend that no additional sections be added as this does not usually result in

additional marks for candidates. Projects need **not** include: headings or sections such as Thesis Statement, Introduction, Acknowledgements, Hypothesis, Literature Review, Report, Analysis and Interpretation of Data and Conclusion.

Title and Table of Contents

Most projects contained a title and a table of contents as stipulated in the syllabus. However, we found that a few candidates presented the project without a table of contents and others without a clearly stated title. Additionally, some projects contained topics that were too broad, vague or unrealistic for candidates to actually formulate clear aims and objectives to be achieved from the research.

Recommendation

Project titles should be specific, to the point, and should allow for detailed research.

Aims and Objectives

The majority of the projects had clearly stated aims and objectives, which allowed the candidates to conduct focused research. On the other hand, a few candidates presented aims and objectives that were unclear and others that were not related to the topic. This often occurred when the topics were not specific, and as a result candidates were unable to identify the most suitable methodology for their project. This adversely affected the overall grade obtained by the candidates.

Recommendation: Aims and objectives should be specific, concise and allow for proper research.

Methodology

There was a noticeable improvement in the attempt to use both primary and secondary sources of data. This improvement is commendable. A few candidates, however, still failed to distinguish between the types of sources. Candidates should refer to the examples of each found in the syllabus.

Candidates also failed to provide sufficient detail of the methods used to collect data. Some candidates did not justify the chosen method applied to the research, by considering the criteria of reliability, credibility and currency of information. At times, the method stated in the methodology was not reflected in the Presentation of Findings; for example, where the method of observation or interview was used this was often not evident.

Recommendations: We continue to recommend that candidates use a mixture of both primary and secondary sources for data collection as this will allow for greater validity and reliability of their presentation of data and their discussion of findings which requires interpretation and analysis of the data collected.

We also continue to recommend that candidates justify the sources used. When conducting an interview candidates should state the name of interviewee, date, time and place of interview(s). When using questionnaires candidates must state the sample size, sample location and how the survey was conducted.

Before using the questionnaire, students and teachers are encouraged to review it for relevance of questions and responses. Students are also encouraged to limit the number of 'YES/NO' questions in their instrument and graphical data presentation.

Presentation of Findings

Most candidates did a satisfactory job in presenting the findings of their research. This was evident in the projects that had clearly stated aims and objectives and applied the relevant methodology.

Some candidates however, failed to present the legal findings they intended to rely on in their discussion. They only presented findings from the interview and/or questionnaires. Also, in some projects candidates misinterpreted the graphs or diagrams, presented graphs or diagrams that were incorrectly labelled or failed to state what they represented. Some of the candidates did not apply the proper citation of their cases and, as such, they are urged to take note of citation requirements.

Some candidates did not distinguish between the "Findings" and "Discussion of Findings"; but instead merged the two under their own heading, "Report" or "Literature Review", as distinct from the headings prescribed in the syllabus. This negatively affected the marks awarded, as examiners had to award scores for the required headings based on the information provided.

Recommendations: Candidates should therefore organize their project as set out in the syllabus, with a heading "Presentation of Findings" which is separate from the "Discussion of Findings).

They should present their findings based on the results of the questionnaires and/or interviews conducted and the legal findings they intend to rely on in their discussions, for example, legislation, case laws, literature obtained and statistics.

The presentation of findings should therefore be an integration of **both** primary and secondary data.

Discussion of Findings

The level of legal analysis which was required for this section was unsatisfactory overall. Some candidates did not present a discussion of findings and others in presenting their findings failed to analyse and interpret the data properly.

Most candidates, having failed to identify the relevant law in the presentation of their research findings, consequently failed to interpret and analyse the appropriate legal principles in support of the stated aims and objectives.

Recommendations: Candidates should analyse and interpret both primary and secondary data collected to come to a conclusion based on their aims and objectives.

Candidates should also state the limitations of their research, whether they be in the legislation, case law, or agencies/bodies.

Recommendations

Some candidates displayed knowledge of what was expected of an appropriate, relevant recommendation. However, there is room for great improvement in this area. Others used the recommendation as a conclusion, only recapping what the project was about. A few presented recommendations that were not supported by the findings of their research.

Recommendations:

- Candidates should not use the recommendations as a conclusion only, but should indeed state what they are proposing based on their findings, for example, changes or improvements to be made to the legislation.
- The recommendations should be plausible and supported by the relevant laws, where possible.

Bibliography

The majority of the candidates were not able to properly cite secondary sources, including cases, journals, textbooks, interviews and internet sources. It is to be noted that search engines such as lawteacher.com/net, Wikipedia.com and Ask.com are not the preferred reference sites.

Recommendations: Students and teachers are reminded that the CXC Law syllabus contains properly cited reference materials including texts and cases. In addition, students and teachers are encouraged to consult OSCOLA or APA format for referencing.

C A R I B B E A N   E X A M I N A T I O N S   C O U N C I L

REPORT ON CANDIDATES' WORK IN THE

CARIBBEAN ADVANCED PROFICIENCY EXAMINATION®

MAY/JUNE 2019

LAW

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GENERAL COMMENTS

The total number of candidates writing the CAPE Law examination continues to vary from unit to unit. While the number of candidates sitting Unit 1 increased over 2018, there was a decrease in the number sitting Unit 2. There was also a decrease in the percentage of candidates achieving Grades I–V in Unit 1 (89 per cent down from 92 per cent) but an increase for Unit 2 (91 per cent up from 86 per cent).

This was the first year for assessment based on the revised CAPE Law Syllabus (CXCA23/U2/17). This syllabus establishes for Paper 02, a structure which comprises three compulsory questions — one per module.

The examinations for each unit consisted of the following papers:

- Paper 01 — Multiple-Choice items
- Paper 02 — Extended Response items
- Paper 031 — School-Based Assessment (SBA)
- Paper 032 — Alternative to SBA

As with the previous year, the marking team is concerned that there are some weaknesses in areas of elementary principles of law. These weaknesses are evident in candidates' responses and seem to indicate a lack of awareness of basic principles. In addition, many candidates demonstrated an inability to adequately address problem-type questions; answers were poorly constructed and generally disorganized. Candidates are reminded to utilize an answer plan to assist them in producing lucid responses. This would also improve their chances of gaining points for coherence. It is recommended that teachers use mock trials to depict the application of relevant law to the facts of given scenarios. This would enhance students' understanding and better equip them with the ability to transfer this understanding when answering questions.

It is strongly recommended that the following formats for answering questions be taught: FILAC (**F –** Facts, **I –** Issues, **L –** law, **A –** Application of law to facts, **C –** Conclusion) or IRAC (I **–** issues, R **–** Relevant Law, A **–** Application of law to facts, C **–** Conclusion). These formats help students to structure their responses and be better able to adequately address the issues, as required by the questions.

DETAILED COMMENTS

UNIT 1 — PUBLIC LAW

The modules in this unit covered the following:

- Module 1: Caribbean Legal Systems
- Module 2: Principles of Public Law
- Module 3: Criminal Law

Paper 01 — Multiple Choice

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. The total was weighted up to 90 and the paper contributed 30 per cent to candidates' overall scores. The mean on this paper was 58.21 or 65 per cent. Candidates performed best on questions which assessed Module 1; the mean was 10.39 or 69 per cent. The mean on Module 2 was 9.59 or 64 per cent. That on Module 3 was the lowest, 8.51 or 57 per cent.

Paper 02 — Extended Responses

This year, for the first time, Paper 02 comprised three essay or problem-type questions, one assessing each module. Each question was marked out of 25, totalling 75 marks on the paper. The total was weighted up to 150. This paper contributed 50 per cent to candidates' overall scores; the mean was 63.01 or 42 per cent. Each question was divided into three parts with the first two parts assessing knowledge and comprehension of the principles of Law. The third part assesses use of the knowledge or the application of these principles to a fact scenario.

Module 1: Caribbean Legal Systems

This question was designed to assess the role and function of named functionaries and institutions in the legal process. The mean of 12.34 or 49 per cent was the highest on the paper.

Part (a) was not well done. Too many candidates stated general roles of a High Court judge in the Caribbean legal system such as 'to uphold the rule of law/constitution, sentence convicted persons or preside over trials' while others discussed some of the procedures that occur in the operation of a Supreme/High Court. Only a few candidates correctly identified that *the Chief Justice in the Caribbean Judiciary System is the head of the judiciary and with that role comes administrative responsibilities such as*

- assigning judges in the Supreme/High Court
- sitting on the Judicial Services Commission which in some territories has the responsibility of selecting judges for appointment in the various courts
- being in charge of the general administration of justice and functioning of the courts
- sitting as an appellate court judge in matters before the Court of Appeal
- swearing in the Head of State in some territories such as Trinidad and Tobago.

Parts (b) (i) and (ii) were well done. Candidates were expected to provide two benefits and two drawbacks of the jury system in Commonwealth Caribbean countries. Most candidates provided clear benefits and drawbacks with supporting reasons. For the benefits, the more popular examples included the following:

- Trial by peers
- Random selection which prevents bias
- Pool of persons rather than one judge who renders a verdict

- No legal training required, just common sense to judge the facts.

Some of the common drawbacks presented included the following:

- Fear of reprisals especially in high-profile cases
- Bias towards some of the witnesses or the accused may occur
- Corruption/bribery of jurors to sway their views on a case
- Pre-trial publicity in the media
- Sympathy/emotions in contrast to viewing the facts dispassionately
- Trials are slow
- Remuneration takes a long time
- Uneducated individuals cannot appreciate the court processes.

Some candidates cited good examples of cases such as the following:

- the *R* v. *Adidjah Palmer* (Vybz Kartel) murder trial in Jamaica — a high-profile case in the media — where a juror was bribed and had to be discharged
- the case involving Iman Yasim Abu Bakar who was on trial for sedition in Trinidad and Tobago; the judge ordered a media black of the case in order to preserve the impartiality of the jury

Weaker candidates only provided one of the two benefits/drawbacks requested in both parts of the question and did not explain the reason sufficiently.

Part (c) was fairly well done. Most candidates were able to discuss, as requested, three functions of a High Court judge in conducting a jury trial and to provide relevant examples in support of their answers. Though most candidates gave answers that referred directly to the judge guiding the jury, these are not the only functions of the judge during a trial. Other functions include the following:

- Determining sentencing
- Declaring a mistrial if the situation merits
- Determining the start and end of each day's proceedings

Only a few candidates used the structures of essay writing in advising Kake, the new attorney in the scenario.

Candidates who were awarded high scores for Part (c) displayed the ability to write clear and concise statements with relevant example(s); they gained marks for coherence. Popular responses included the following:

- Presiding over the trial and ensuring discipline is maintained throughout the proceedings
- Issuing rulings to objections made by the prosecution or the defence attorney
- Sentencing convicted persons after the jury renders its verdict
- Providing guidance (directions) or explanation to the jury on matters as they arise during the trial

- Summing up the case to the jury before its deliberation
- Ruling on the admissibility of certain evidence
- Warning the jury to discuss the cases only among themselves, and overseeing the entire proceedings.

In the better responses, candidates were able to clearly explain each function required and provide an example, a case or scenario to justify the function given. Weaker candidates repeated the same function more than once using synonymous expressions but did not gain any more marks for their repetition. Some candidates lost marks because they only listed the functions and did not provide any examples. Marks were also awarded for coherence, which took into consideration the logical flow of the response from introduction to conclusion.

Comments and Recommendations

Overall, candidates' performance on this question was fair. It was clear that quite a few candidates were guilty of just providing the key words for the answer in the various subsections without any explanation or justification in some parts. Candidates are reminded to use the marks allocated as a guide in determining how to structure their responses.

Module 2: Principles of Public Law

Question 2

This question was designed to assess candidates' mastery of principles and practices which concern judicial review, the grounds upon which it can be sought and the remedies available for judicial review. Some candidates gave satisfactory responses to the question, with a few being awarded full marks. It is worthy of note that a significant number of candidates failed to cite cases to support their responses especially in Parts (b) and (c) where this was required. In some instances where cases were cited, some cases were not relevant to the particular question. Also, some candidates provided correct case names but the facts were incorrect or vice versa. The mean, 7.91 or 32 per cent, was the lowest on the paper.

Part (a) was designed to test candidates' knowledge and understanding of the term *judicial review*. Many candidates gave a definition for judicial review and the majority was able to score at least one mark out of the two. Whereas the more able candidates were able to give the full and correct definition, the less able mentioned elements like 'supreme court/high court' or 'public officials'. It was clear, however, that most candidates understood the concept of judicial review.

Part (b) tested candidate's knowledge of the elements for the right to a fair hearing. Many candidates were able to score average to high marks on this section. The most popular answers were

- right to be heard/right to make representation
- right to legal representation and notice of a charge and full particulars thereof.

While many candidates did fairly well on Part (b), scores were mainly average because most failed to maximize their scores for one of three reasons, namely,

- listing only one of two elements of the right to a fair hearing
- failing to explain/outline the elements listed
- failing to provide a relevant case regarding the right to a fair hearing.

However, it is noteworthy that a marked number of candidates were able to use relevant cases to support their answers; *Maharaj* v *AG* was cited by the overwhelming majority of candidates. Not only was this case correctly identified but in most cases, the correct facts were outlined. *Thomas* v *AG* was also cited by many.

Part (c) sought to assess candidates' knowledge of the grounds and remedies for judicial review. This section proved problematic for many candidates who missed the aim of the question, which was a discussion on the breach of natural justice and legitimate expectation. The less able candidates gave answers relating to '*ultra vires'* and *'locus standi'*.

Some candidates recognized the right to a fair hearing and bias as the grounds for judicial review. However, stronger candidates stated *breach of natural justice and legitimate expectation* as grounds available to Tom against the Commission. The majority of candidates was able to give at least two remedies for judicial review. However, the weaker ones only listed the remedies and did not provide an explanation or definition.

With regard to cases, a few candidates gave incorrect cases like *Hinds* v *R* and *Collymore* v *AG*. However, the knowledgeable, stronger candidates gave *Maharaj* v *AG*, and a few gave *Smith* v *Leech*. Many candidates scored average marks on this section.

Candidates who scored highly on this question displayed the ability to

- correctly identify and outline the breach of natural justice and legitimate expectation
- link legal principles to the given scenario and conclude on the position taken
- use relevant cases to support their responses
- correctly identify and outline the applicable remedies available to Tom.

Module 3: Criminal Law

Question 3

This question was designed to assess offences against the person, with specific reference to wounding and manslaughter. The mean was 11.25 or 45 per cent.

In Part (a), candidates were expected to define the terms *voluntary and involuntary manslaughter*. This was satisfactorily done by the majority of candidates. Some candidates, in answering the question on voluntary manslaughter, only referred to the elements for murder in their responses while other candidates at times were not clear on the distinction between the two. Some candidates

incorrectly indicated that 'voluntary manslaughter is caused by recklessness' or referred to 'provocation and diminished responsibility' as elements when they provided the definition for involuntary manslaughter. In addition, both offences have nothing to do with grievous bodily. *Voluntary manslaughter involves an intentional killing of another; this is accompanied by additional circumstances that tend to mitigate but do not excuse the killing*. While in the latter, (*involuntary*) the key difference is that *it is an unintentional killing of another, primarily because the defendant did not foresee, or was reckless in their actions*. The key element in the latter is that the defendant did not intend unlike the former.

The majority of candidates did a good job in answering Part (b). Those who did not, failed to refer to the breaking of the skin, which is a key element in the distinction between this offence and that of assault or other offences against the person. In addition, those who did poorly were not familiar with cases in reference to the *actus reus* of wounding with intent. Some candidates only stated the name of the case and did not seek to give at least a brief discussion of the relevant facts and what was held. This certainly meant that they would have scored less than maximum marks. Candidates are reminded that the names of the cases, the facts (even if brief) and the legal principles must be stated if they are to receive full marks.

Pat (c) was fairly done. First, it must be noted that the question never stated or alluded to any type of provoking activity. It noted "in a fit of rage". Rory then acted. It was therefore unclear why candidates entered into a lengthy discussion about the defence of provocation. This part of the question's focus was on establishing the elements of a crime and not on formulating a defence for involuntary manslaughter. The case was clearly one of constructive/involuntary manslaughter. That is, an unlawful act, with the elements of foreseeability and causation. The following are three key elements in forming this offence.

- There must be an action which amounts to an unlawful act.
- The unlawful act must be a dangerous one; this is the issue of foreseeability/recklessness.
- The unlawful act must have caused the death of the victim. In other words, there must be some unbroken chain of causation.

Some responses were very brief and did not address the issues of involuntary manslaughter while others detailed the elements needed to formulate murder. This was not applicable to the question and so candidates were awarded very few or no marks. Other candidates only restated the question and then extracted portions of the question as their response.

With respect to the use of case law, some responses incorrectly referenced *Hyam* v *DPP.* Again, some candidates only stated the name of cases or provided examples, which resulted in them losing marks.

Comments and Recommendations

Overall, candidates' performance on this question was good in Part (b). Parts (a) and (c) were not as well attempted as was expected, hence overall performance can only be described as fair. It was clear that quite a few candidates were guilty of just providing the key words for the answer in the various subsections without any explanation or justification in some parts.

Teachers and students are reminded that the names of the cases, the facts, and a summary of the legal principles are key in their discussion and application. It is the decision in the cases — commonly known as the *ratio* or *ratio decidendi* — that makes the law, and therefore becomes the key in resolving the conflict. Candidates must clearly state this in order to receive the full marks. Providing an analysis of the problem, regurgitating the facts of the case or the scenario, or simply giving a conclusion to the scenario are insufficient as the legal basis for a good analysis and conclusion. When the question specifically requires it, answers must be supported by case law. That is the expectation in Commonwealth Caribbean jurisprudence.

Finally, teachers should caution students about reading a given scenario and implying information that is clearly not there. Such action results in incorrect answers, and no matter how correctly stated the area of law is written, if it is not applicable, marks will be lost. In practice, this amounts to giving the accused wrong advice.

Paper 031 — School-Based Assessment (SBA)

Topic/Theme: Constitutional Rights
Title of Project: The Effect of Zones of Special Operations (ZOSOs)/ Enhanced Security Measures on citizens' rights in the community of Denham Town, St. Andrew

The SBA projects were moderated by a group of persons. Samples were marked using the usual online marking tool. The following are comments presented by moderators on the different sections of the project reports.

It must be noted that there are still some SBA reports which were not done in accordance with the requirements set out in the syllabus. It is advised that teachers and students adhere to the syllabus guidelines (pages 32–37 of the syllabus that became effective May/June 2018) in order to obtain optimum marks. The only headings to be included in the projects are: *Title, Table of Contents, Description of Research/Rationale, Aims & Objectives, Methodology, Presentation of Findings, Discussion of Findings, Conclusion & Recommendations, and Referencing*.

Further, students are advised against using topics that are too wide in scope or which do not lend themselves to proper research, analysis and meaningful recommendations suitable to the level of the examination. For example, a topic on *Corruption* is considered too wide a study for this level.

Teachers need to ensure that the guidelines in the mark scheme (pages 35–37 of the syllabus) are strictly followed when assessing the projects, that the projects are reviewed over a period of time and that adequate guidance is given to students before the projects are submitted. The practice of students including additional sections to the project is strongly discouraged, as this does not usually result in the award of any additional marks. Also, projects need not include *Thesis Statement, Introduction, Acknowledgement, Hypothesis, Literature Review,* or *Analysis and Interpretation of Data* which obtains for SBA projects in other CAPE subjects.

Too many centres utilized the old mark scheme to assess the projects out of a total of 20 marks in contrast to the new mark scheme which is out of 30 marks. Teachers are reminded that the updated Moderation Form/Cover Sheet (revised January 2018) is available on the CXC website and is to be used going forward.

Title and Table of Contents

Most projects contained a title and a table of contents as stipulated in the syllabus. However, a few students presented the project without a table of contents and others without a clearly stated title. In such instances, examiners would have had to rely on teachers' moderation sheets or the students' aims/objectives to try to figure out the area of law being investigated. Additionally, some projects contained titles outside the scope of the syllabus as well as titles which were too broad, vague or unrealistic for students to actually formulate clear aims and objectives. Also, some titles tended to be purely sociological or historical and even medical in nature and did not allow for detailed *legal* discussion. As a result, the research presented lacked clarity and relevance. Some candidates did not properly prepare their table of contents with the accompanying page numbers for each section; this resulted in loss of marks.

All project titles should be specific, to the point and allow for detailed research. The table of contents must have the headings and the requisite page number where that section of the project is located. The pages of the project are also to be numbered for consistency and organization purposes. Of note also is that the thematic area of research can be broad but the title of the project should be specific to a study area/zone to assist students with structuring their investigations.

Description of Research Problem /Issue/Statement of the Law

This is the newest section added to the project reports, as based on the revised syllabus. As the name suggests, Statement of the Law is a guide to the research that logically and coherently connects all different parts of the investigation. This section clearly indicates its importance and the natural connection to relevant law. In this section therefore, the student is expected to

- select a relevant legal issue within the scope of the syllabus
- narrow the topic to a problem to be investigated
- give a brief introductory outline of the current law relating to the problem
- establish the importance of investigating the problem
- propose a possible solution.

This section was fairly well done but by only a few students. Superior responses identified the legal problem or issue within the broader context of the topic/theme selected and linked it to a specific study area/community/district that needed the problem addressed. These responses would have included a personal rationale for investigating this area of law with the hope of providing a plausible solution. On the other hand, many students did not perform well in this section. These students would have written the issue in the form of a one-sentence moot question with no justification for the topic selected for research. Others lost marks because this section was absent from their projects; it was obvious in those cases that the old syllabus was being utilized for guidance and assessment.

Aims and Objectives

Most projects had clearly stated and relevant aims/objectives, which allowed students to conduct focused research. However, some students presented aims and objectives that were unclear or unattainable for the period of study and completion of the project. Others had aims that were far removed from their titles. This often occurred when the titles were not specific. In such cases, students were unable to identify the most suitable methodology for their project. This adversely affected the overall grade obtained.

Aims and objectives should be specific, concise and allow for proper research. Students should use the guide words provided in the *Glossary of Terms* (at the back of the syllabus, pages 40–42) when framing their aims/objectives; these are words such as *to investigate, to assess, to identify* etc.

Methodology

This section was fairly well done by the majority of students. However, a notable number of students were not able to distinguish between primary and secondary sources of data. Examples of each can be found in the syllabus (page 32) and the differences are taught in CAPE Caribbean Studies and Communication Studies, which are compulsory courses in most 6th form or Community College CAPE programmes. Others used secondary data and reproduced it as their own or used an author's words as their own; this amounts to plagiarism. Students should be taught how to quote line/s of relevance that would form a part of their study. In addition, a significant number of students failed to properly select an appropriate sample and sample size. They also either failed to provide sufficient details regarding the methods used to collect data or used impractical methods to collect the data. Students did not justify the chosen method applied to the research (reliability, credibility and currency of information). At times, the methodology did not reflect the method(s) stated in the body of the research, for example, where the method of observation or interview was used, this was not evident in the Presentation of Findings section.

It is highly recommended that students use a mixture of both primary and secondary sources of data as this will allow for greater variety, validity and reliability of their interpretations, analysis and conclusions of the sources consulted. Also, students must justify the sources used. If *interviews* were conducted, students should have stated *name of interviewee(s), date, time and place of interview(s)*. If *questionnaires* were used, students should have stated *when and where distributed, the makeup of the questionnaire (closed or open type questions), the sample size, sample location and how the survey was conducted (whether by random sampling, snowball sampling etc.)*.

Before interview and questionnaire instruments are used in the study, teachers and students are encouraged to review them in order to determine the relevance of questions and to create responses if close-ended questions are used. Students are also encouraged to limit the number of 'Yes/No' questions in their instruments and graphical data presentations.

Presentation of Findings

Most students did a satisfactory job in presenting the findings of their research. This was evident in the projects where the aims and objectives were clearly stated and the relevant methodology applied. However, some students failed to present in a comprehensive, clear and accurate way the legal findings they intended to rely on in their discussion. They only presented findings from the interview and/or questionnaires (primary instruments) using graphs or tables and did not provide the accompanying description under each chart. In some projects, students misinterpreted the graphs/diagrams, presented graphs/diagrams that were labelled incorrectly or that failed to state what the graphs/diagrams represented. It must be noted though that the use of more than one graph/diagram to represent the information obtained was done properly for the most part.

Students are not applying the proper citation to cases used and are urged to take note of citation requirements. Also, some students did not distinguish between the Presentation of Findings and the Discussion of Findings. Instead, they merged the two sections; this is not acceptable. Some students merged the two sections under one heading called ‘Report’ or ‘Literature Review’ which, as noted before, is not a feature of the CAPE Law SBA. This negatively affected the grades awarded, as moderators had to assign grades for the required headings based on the information provided. Students are to review the differences and note what is expected in the Presentation of Findings section in contrast to the Discussion of Findings section, as outlined in the syllabus.

Often, students cited laws which were either repealed or were not applicable to the scope of the research and local jurisdiction under study. What was also concerning was the many cases of rampant plagiarism. It was evident when students copied and pasted information from online sources without any acknowledgement of the sources. Also disappointingly, many candidates just quoted entirely from secondary sources and presented the information as their primary sources (graphs/tables) in the appendix to the project. The Presentation of Findings section requires students to present the legal information using appropriate forms of presentation (from both the primary and secondary sources) consistent with the methodology utilized by the researcher.

Students should present their findings based on the results of the questionnaires and/or interviews conducted and the legal findings they intend to rely on in their discussions, for example legislation, case laws, literature obtained from journal articles or books and statistics from other secondary sources. This would make the Presentation of Findings a smooth integration of both primary and secondary data that are appropriate to the research problem.

Discussion of Findings

The level of legal analysis which was required for this section was unsatisfactory overall. Some students did not present a comprehensive discussion of findings or relate their discussion to the relevant law or legal theories. Others in writing their discussion, failed to properly analyse and interpret the data obtained but instead opted to provide a summary of the research or reiterate the same information they placed in the Presentation of Findings section. Others made no connection between the presentation of data and the discussion of their findings. What was even more troubling was that students boldly used the published writing of others and camouflaged it with theirs or simply

used such writing in its entirety as their discussion. In such cases, there was no evidence that the student understood what a research paper is about. Teachers need to emphasize to students that plagiarizing published work is unacceptable.

Most students, having failed to identify the relevant/current law in their findings, consequently failed to interpret and analyse the appropriate legal principles in support of the stated aims and objectives. The Discussion of Findings must be linked to the data presented in the Findings section.

Students should analyse and interpret both primary and secondary data collected to come to a sound conclusion based on their aims and objectives. Students should show the correlation between the two with comparisons, contrasts and trends and how these affect the area of study. Students should also state any limitations of the investigation (whether it be in the legislation or body of case law available, or agencies/bodies researched) and the impact of those limitations on the findings in this section.

Conclusion and Recommendations

A few students displayed knowledge of what was expected in this section. However, there is room for great improvement in this area. The section is clearer in the revised syllabus and requires two different things: the students presenting conclusions that are based on the findings and the students making sound recommendations. Many students provided a conclusion that only recapped what the project was about or simply repeated some of what was presented in the Presentation of Findings. A few others presented a clear conclusion and well-written recommendations but these were not supported by or based on their findings from the research. Students should be careful not to present recommendations that are too sociological in nature.

Students should ensure this section has a conclusion to hinge their recommendations on. This can only happen if the title stated at the beginning of the project leads to a viable conclusion. Therefore, this section is to be both a conclusion of the research and also a statement about what the student is proposing as solutions based on the findings. For example, changes or improvements to be made to the legislation or policing operations, greater sensitization of the public or community members on the topic/issue to name a few. The recommendations should be plausible, supported by relevant laws where possible, and relate to the conclusion drawn. In order to be considered plausible, the recommendations should be accompanied by an introductory plan of action on why the suggestion made would be successful in fixing the problem identified.

Referencing

Quite a few of students were unable to correctly cite their sources — including cases, journals, textbooks, interviews and internet sources — with all relevant details. It is to be noted that search engines such as google.com, lawteacher.com/net, sixthformlaw.com, wikipedia.com and ask.com are not proper or preferred reference sites. Copying and pasting the hyperlink of a website consulted is also not proper referencing. Referencing is to be consistently and accurately done in a well-organized manner using the appropriate OSCOLA format.

Teachers and students are reminded that the syllabus contains properly cited reference materials that include texts and cases. In addition, OSCOLA is to be consulted and followed slavishly as a guide on how to properly reference the sources used in the research. In addition to the guide provided on page 33 of the syllabus, the following hyperlink may be used:

https://www.law.ox.ac.uk/sites/files/oxlaw/oscola_4th_edn_hart_2012.pdf

Communication

Overall, the use of the English Language and level of communication displayed in the research projects was satisfactory. Students should take the time however to ensure that proper paragraphing, subject-verb agreement, spelling and punctuation use are appropriate. The use of contractions and SMS/text language was noted in some projects. Students are reminded that this is a formal assignment where informal communication is not expected in their writing. Additionally, not only use of language is considered communication but students' ability to ensure that a coherent document is submitted for assessment is critical. Students must ensure that each section of the project logically flows into the other in order to have a cohesive whole. Too many students were guilty of having produced a project where a moderator could not appreciate the links between the different sections. This can be attributed to last minute or rushed work being done instead of over a period of time.

Students are encouraged to spend more time proofreading their projects and should utilize the dictionary and other spell check resources available before submitting their final projects. Students may be requested to submit more than one draft for correction by their teachers or have drafts prepared for peer review by their friends/colleagues. Students are therefore reminded to save their drafts with their corrections using different names, for example, *draft 1*, *draft 2*, and *final* so that when the final copy is submitted, it is their best work that is forwarded to the Council for moderation. Too many assignments were uploaded with incomplete sentences, self-comments or comments by someone made in the side bar in a different font/colour telling the student to make certain corrections; this can be distracting to any reader. Teachers can help in this regard by ensuring that the *track changes* version of the assignment (with formatting and alignment comments) are not the versions of the students' assignments which are uploaded for moderation.

Word Limit

A few projects were in excess of the word limit. Students are encouraged to adhere to the prescribed word limit of 1500 words; this does not include headings and footnotes. It is recommended that teachers enforce the stipulation in the syllabus that students with projects in excess of the prescribed word limit be penalized.

Paper 032 — Alternative to School-Based Assessment (SBA)

The Paper 032 is the alternate paper to the SBA and is normally done by candidates outside of the formal school setting. The syllabus prescribes the topic for candidates to research and prepare for the

examination and candidates write an essay on this topic in the examination. They are allowed to take their notes into the examination to be used as reference.

Sixty-five candidates wrote the Paper 032 in 2019. This represents an increase over 2018 when 35 candidates did so. The mean on the paper was 21.73 or 36 per cent.

This topic for the paper in 2019 was The Caribbean Legal System and it required candidates to identify and explain the benefits and challenges that Caribbean citizens have been experiencing since the establishment of the Caribbean Court of Justice (CCJ). They were required to provide cases and relevant examples to support their answers. Candidates were expected to discuss benefits accruing to citizens. This should have included a discussion on the following:

- Accessibility and cost
- Efficiency in case management
- Remedies, enforcement and compliance
- Further development of a Caribbean Jurisprudence
- Principles of independence and fairness

They were also expected to discuss the challenges which should have included a discussion on the following:

- The delay in the appellate process
- The lack of trust and respect in certain quarters
- The claim of inexperienced judges

Overall performance was average. Some candidates expounded on the Treaty of Chaguaramas and its benefits to its member states rather than sticking to the CCJ which is just one institution covered by the treaty. Candidates' responses indicate that they know little of the cases coming out of the CCJ. Such information is readily available and easily accessible from the CCJ website.

Some candidates provided discussions on the CARICOM Single Market and Economy (CSME) and the articles in the treaty and the challenges facing this treaty as answer to this question. Such candidates were not awarded marks since the focus of the question was on the court and not the benefits or drawbacks of member states with any other treaty.

Some candidates delved into the evolution of the court and simply wrote a historical development. Eloquently written some of these were and accurate but again not applicable given the focus of the question and the area of study.

UNIT 2 — PRIVATE LAW

The modules in this unit covered the following

Module 1: Tort
Module 2: Law of Contract
Module 3: Real Property

Paper 01 — Multiple Choice

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. The total was weighted up to 90. The score on this paper contributed 30 per cent to candidates' overall score. This year, the mean was 61.43 or approximately 68 per cent. The mean on Module 1 was 11.24 or 75 per cent, the highest of all three modules. That on Module 2 was 10.03 or 67 per cent and that on Module 3 was the lowest, 8.81 or 50 per cent.

Paper 02 — Extended Responses

As with Unit 1, this year was the first time Paper 02 comprised three essay or problem-type questions, one assessing each module. Each question was marked out of 25, totalling 75 marks on the paper. The total was weighted up to 150. This paper contributed 50 per cent to candidates' overall score. The mean on this paper was 59.02 or 39 per cent. Each question was divided into three parts with the first two parts assessing knowledge and comprehension of the principles of Law. The third part assesses use of knowledge or the application of these principles to a fact scenario.

Module 1: Tort

Question 1

This question tested candidates' ability to identify two relevant torts that were applicable to a given scenario. It specifically tested candidates' knowledge of occupier's liability and negligence. Additionally, candidates were asked to outline the eggshell principle and its applicability to the given scenario. It was expected that candidates would make their application with reference to decided cases. They were also asked to apply the principle of contributory negligence to the scenario.

The question was designed to assess candidates' knowledge and understanding of topics relevant to tort including duty of care, breach of duty, causation, and contributory negligence. Candidates were expected to display knowledge of decided cases in the area. The mean was 8.96 or 36 per cent.

Part (a) required candidates to outline the torts for which the Town Hall Council would be held liable. They were expected to outline occupier's liability and negligence. A significant number of candidates were able to correctly identify only one of the torts. However, many respondents were able to correctly identify the two relevant torts. Most candidates who correctly identified the torts were able to outline the concepts associated with them. Some respondents gave incomplete explanations for both occupier's liability and negligence and therefore failed to score full marks. It is noteworthy that

a majority were able to correctly outline two or three of the elements for negligence but failed to fully outline occupier's liability and thus lost at least one mark in this section.

Part (b) required candidates to outline the eggshell principle as it related to the given scenario and use two decided cases to support their response. Many discussed the eggshell principle in general terms instead of focusing on the specifics of the question. While most candidates were able to outline the eggshell principle correctly, they failed to demonstrate how it was applicable to the given scenario. It was evident that most candidates had a basic grasp of the concept but were unable to give a coherent definition. Consequently, a significant number of candidates score partial or no marks for this section.

It was also clear that while many correctly stated that the *eggshell principle* means that *you must take your victim as you find him*, the explanation which followed made it clear that they did not really understand what this meant. For example, some candidates stated that 'the victim should be taken to where he was found or he should be taken to the hospital as soon as he is found'.

Another noticeable weakness in candidates' responses centred on their inability to apply decided cases to the given scenario. A few candidates, however, were able to correctly outline the principle, relate it to the case and use relevant cases to substantiate their responses.

Part (c) required candidates to discuss whether the Town Hall Council could claim that Rahim contributed to his own injury. A significant number of candidates missed the mark by discussing negligence generally instead of focusing specifically on contributory negligence. Many candidates failed to provide relevant cases to support the responses given.

Some candidates failed to read the question carefully, thereby neglecting to place emphasis on discussing whether the Town Hall Council could claim that Rahim contributed to his own injury. Many students missed the direct guidance to a discussion on contributory negligence and not simply any defence to be raised by the Council. Consequently, a significant number of candidates raised the defence of *volenti non fit injuria*.

A few candidates also stated that Rahim was a minor even though a careful reading of the question made it clear that he was in fact an adult. The ones who identified Rahim as a minor ignored the principle of contributory negligence and discussed the occupier's liability to children instead. Even candidates who recognized that Rahim was an adult still discussed occupier's liability as the issue.

No candidate scored full marks for the entire question. This was mostly due to candidates' failure to expand on points raised, especially as the mark scheme was designed to award more marks where candidates not just identified but gave proper explanations and application to the issue at hand.

Comments and Recommendations

Candidates who scored highly on this question displayed the ability to do the following:

- Correctly identify and outline the torts of occupier's liability and negligence

- Outline the eggshell principle, apply it to the scenario and use relevant cases to substantiate their responses
- Link legal principles to the given scenario and conclude on the position taken
- Use relevant cases to support their responses

Question 2

This question was designed to assess elements of *capacity* and *privity* in the formation of a legally binding contract. Several candidates did not attempt the question and some of those who did, could not respond to the entire question. The mean of 6.79 or 27 per cent was the lowest on the paper.

Part (a) assessed candidates' ability to identify the exceptions to the privity to a contract. In most cases, candidates could not clearly identify the exceptions. Some of them gave the definition instead. At times, candidates confused the legal principle of privity of contact with intention to create legal relations. With *privity*, one must remember that the key issue is that *only those who are party to a contract have rights under such a contract*. Exceptions would refer to circumstances where one who is not a party to the initial contract could have rights under the contract. Responses would have included a discussion on collateral contracts, separate contracts and third party claims under an insurance policy (like an injured passenger in a taxi or bus) or the Contracts (Rights of Third Parties) Act 1999.

In Part (b), a large numbers of candidates sought the use of Pinnel's case, which deals with the issue of payment under consideration. They did not demonstrate that they understood the key legal principle to be that of 'intention to create legal relations'. The law presumes that social and domestic agreements are not intended to be legally binding. Sofia and her brother are siblings; this amounts to a domestic agreement. Therefore, such contracts are not intended to be legally binding. Hence, the brother would not be compelled in law to repay Sofia.

A fair number of candidates did not attempt Part (c). This was a clear indication that it was not well covered or not covered at all during preparation for the exam. The question surrounds the issue of the minor under the capacity to contract, an essential element in the formation of a legally binding contract. Those who attempted this part chose to deal with Sofia as an adult in a contract with E-mobile and wrote lengthy answers on the remedies to a standard breach of contract between two consenting adults or between an adult and a commercial entity. They discussed issues of recession, liquidated or unliquidated damages, and seizure of the phone; these were not acceptable.

The issue in this part surrounds a presumption that commercial agreements are intended to be legally binding. However, where there is a minor (Sofia) and an adult (E-mobile) involved, the minor may not be bound. Candidates were therefore expected to discuss contract for necessaries or beneficial contracts as exceptions. They were then to determine whether this situation would fall into such an exceptional category. If it satisfies the criteria for exception, then E-mobile can enforce the contract for the balance. Well-known cases include *Nash* v *Iman*, Headley v *Clarke*, Fawcett v *Smethrust* and *Steinberg* v *Scala Ltd*.

A number of candidates just provided words for the answer in the various subsections without any explanation or justification.

Question 3

This question assessed the body of knowledge and the principles of Law relating to chattels. It specifically required candidates to distinguish between a fixture and a chattel and to recognize the application of the test relating to the classification. The mean of 13.76 or 55 per cent was the highest on the paper.

Part (a) was done satisfactorily. The majority of candidates was able to differentiate between chattels and fixtures. Very few candidates did not provide a response to this part of the question.

Part (b) required that candidates outline two ways in which an object may be classified as a chattel or a fixture. There were candidates who specifically stated the tests of degree of annexation and the purpose of annexation but others did not. The weaker candidates only provided points such as that the item must be attached to the land.

Part (c) required candidates to use two decided cases to advise Shanna on the likely success of a claim against Mr. King for removing any two items from the house. Most candidates stated that Shanna had a claim against Mr. King for removing the burglar-proof windows. However, some failed to give an explanation as to why she would have this claim. They could have said that the *burglar-proof windows were firmly attached to the building, removal would cause damage to the house and as such would have concluded that the burglar-proof windows were fixtures*.

Likewise, some candidates said that Shanna could not claim against Mr. King with regard to the portable garage as this was a chattel. They mentioned that the portable garage was not permanently attached to the land, which though removal may cause decrease in value, it would not cause damage to the land and that the portable garage adds to the appearance and value of the land.

The expected decided cases include *Mitchell* v *Cowie, Leigh* v *Taylor, Burke* v *Berrnard*.

Some candidates did not use decided cases in their discussion and so lost marks. Only a few candidates were able to express themselves clearly when advising Shanna. Candidates who scored highly on this part of the question displayed the ability to write clear and concise statements using the two relevant decided cases which allowed them to gain the marks allotted for conclusion and coherence. Marks for coherence were awarded where the ideas flowed in a logical order from introduction of the argument to developing the body of the essay; marks for conclusion were gained once that part of the response brought the argument to a climax.

General Recommendations

Coming out of the marking exercise, the examining team would like to make the following recommendations.

- Teachers need to ensure that students are taught how respond to problem-type scenarios since these are at the heart of the study of criminal law. Teachers are reminded of the use of the formula IRAC:
  I — Identify the issue the examiner wishes you to look at
  R — Apply the relevant law that will seek to resolve the conflict in the scenario
  A — Apply the law, by that we mean one will seek to determine whether based on the facts of the scenario the outcome of the accused.
  C — Conclude, that is, say whether an individual is criminal liable for a specific offence
- Too often candidates do not conclude but marks are allocated in the mark scheme for coherence, and the conclusion is taken into account when awarding those marks. Hence, candidates who do not provide a conclusion will lose marks for this feature of their essays. Students and teachers are reminded that in practice, after all the legal arguments, the individual seeking advice wants to know what action they should take.
- It should be noted that although the aforementioned format (ILAC) is strongly recommended, it is not to be applied mechanically. Candidates are to spend time reading and interpreting the questions since not every question would embrace the formats and candidates may find themselves adding to the question what is not in the question in order to facilitate the formats.
- Teachers are reminded to keep abreast of developments in Law that are relevant to syllabus topics and encourage students to compile portfolios of legal matters noted in the news.
- Teachers and students also need to pay more attention to the subject reports. Each report identifies the strengths and weaknesses evident in candidates' performance on questions administered in a particular year and makes recommendations for improvement.
- Too many candidates often ignore the separation of the question and choose to write all the parts as one essay. This makes it difficult for the examiner to determine at times where Part (a) or Part (b) starts or ends. Teachers need to instruct students to clearly number the parts of the question attempted and to leave a clear line of demarcation between the parts of a question. Additionally, many candidates did not logically outline their responses. Responses had to be read holistically before examiners could identify the responses to different parts of the question. This made marking difficult for the examiner at times.
- A significant number of candidates continue to spend needless time rewriting the question as a part of their response. This is not necessary and constitutes a waste of time. Students should be guided on how to answer examination questions. They should be instructed that the questions must not be rewritten as a part of their responses.
- Attention should be paid to the instructions given in the questions. Candidates should be aware that they are not fulfilling the requirements of a question if they do not provide the decided cases in their responses as specifically directed.
- Students are to be taught to appreciate the meaning of key words commonly used in examinations and which are found in the glossary of the syllabus such as: *outline, advise, discuss*. These key words are used with reference to described cases and candidates should carefully consider them when crafting their responses to questions, since these words provide guidance as to what is expected in a response. Adherence to these words also help candidates to gain marks for coherence.
- Students and teachers are reminded that the exam has now shifted to one compulsory question in each area. That means that any area/topic can be tested in any one year. It is imperative

therefore that all effort be made to complete the syllabus and candidates need to ensure that they have a good grasp of all areas of the syllabus.

Paper 031 — School-Based Assessment (SBA)

Topic/ Theme: Nuisance
Title of Project: An Investigation into the types of public and private nuisance affecting residents of Black Rock, St. Michael

The comments noted in the Unit 1 SBA section also refer to Unit 2. (See pages 8–13)

Paper 032 — Alternative to School-Based Assessment (SBA)

This topic for this paper in 2019 was Formation of Contracts. The question required candidates to demonstrate knowledge of the elements of a legally binding contract and the cases related to this area of Law. The mean was 18.46 or 62 per cent.

The question specifically required candidates to discuss five basic elements of a contract. In most cases, candidates were able to identify and discuss five elements in detail and support each of these adequately with case law.

It was expected that candidates would have selected from the following elements.

- **Offer**: Discussion would include whether the communication indicates the terms on which the offeror is prepared to make a contract or gives a clear indication that the offeror intends to be bound by the terms if they are accepted by the offeree. Case – *Carlill v Carbolic Smoke Ball Co*.
- **Acceptance**: This involves unconditional agreement to all the terms of the offer. Case – *Felthouse v Bindley*. Other key issues surrounding acceptance include
    - whether all terms were accepted or not, that is, counter offer. Case – *Hyde v Wrench.*
    - whether acceptance via instantaneous means such as email and fax was required to be part of the discussions including the traditional postal rule. Cases – *Adams v Lindell.* (Limits to the postal rule can be seen in *Holwell Securities ltd v Huges 1974* and *Entores v Miles Far East Corporation 1955*).
- **Intention to create legal relations**: The discussion here would surround whether or not the parties intend to create legal relations. However, there must be discussion about the two guiding presumptions. These are
    - social and domestic agreements
    - business agreements.

  Cases – *Balfour v Balfour 1919*, *Esso Petroleum v customs and Excise Commissioners 1976*
- **Consideration**: A key element for the formation of a contract since there must be an exchange of value for it to be binding. An understanding of this area must be demonstrated by a discussion of the several rules relating to consideration. Key in the discussion is definition of consideration: each

party must give something in return for what is gained from the other party. Case – *Dunlop v Selfridge 1915*. Some of the rules of Consideration include the following:

- Need not benefit the promisor (*Jones v Padavatton1969*) Consideration must not be past Re Mc Ardle 1951
- Must be of economic value (Case – Thomas v Thomas 1842)
- Can occasionally exist through the performance of an existing duty
- Existing public duty is sufficient consideration (Case – Collins v Godfroy 1831)
- Existing contractual duty to promisor is sufficient consideration (Case – Stilk v Myrick 1809)
- Contractual duty to pay debts as in the *High Trees* case *1947*.

- **Capacity**: Candidates were expected to discuss the issue involving adult citizens having full capacity to enter into any kind of contract but also the exception of certain groups. Such persons or organizations are not considered in law to have the capacity to make contracts or limited capacity to make contracts, including:
    - Minors — *Nash v Inman 1908*
    - People suffering from mental incapacity, for example, Walker 1905
    - Corporations case – *Ashbury Railway v Riche 1875 and Salomon v Salomon 1897*
- **Certainty**: For the existence of any valid contract, certainty in law is a requirement. It is a principle which notes that all parties to a contract should always look to ensure that a contract is sure. This also includes ensuring that agreements can be sufficiently certain if it lays down how the terms can be clarified (Case – *Foley v Classique Coaches)*. In addition, one should note that clear terms can be implied by statute. Such terms can be clarified by the common law (Case – *Sudbrook Trading Estate Ltd v Eggleleton*) whereas minor uncertain terms can simply be deleted (Case – *Nicolene v Simmonds).*