

CARIBBEAN EXAMINATIONS COUNCIL

**REPORT ON CANDIDATES' WORK IN THE
CARIBBEAN ADVANCED PROFICIENCY EXAMINATION
MAY/JUNE 2005**

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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 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.

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 weaknesses 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 issues 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 candidate discussed the leading cases of Knulier 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 he 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

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

Knulier 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 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 inconsequential, 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 the question without even a mere reference to the locus classicus R. v Duffy and other 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. Peek and Headly Byrne v. 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 these 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 thereof, 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. Duchman. Issue of foreseeability was noted in very few scripts.

Question 3

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.

Question 4

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.

Much 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 Walters v.s Smith.

MODULE 2: Law of Contract

Question 5

It was evident that candidates were not all familiar with the Hong Kong Fir case where Diplock LJ developed the concept of those terms of contract which are neither "warranties" nor "conditions" usually defined. Such terms have been described as innominate 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.

Question 6

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

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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.