CARIBBEAN EXAMINATIONS COUNCIL

REPORT ON CANDIDATES' WORK IN THE CARIBBEAN ADVANCED PROFICIENCY EXAMINATION MAY/JUNE 2008

LAW
(REGION EXCLUDING TRINIDAD AND TOBAGO)

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.

Questions attempted are to be noted, in order of responses, 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.

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 Corniliac 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.