

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 *equity*.

- Candidates used cases that were not relevant to the question, such as *Pratt and Morgan v. AG, Shaw v. DPP, R v. Kneller, 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.

Question 2

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

Question 5

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 necessities) 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 necessities
- 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 necessities 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.

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.

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.