

CARIBBEAN EXAMINATIONS COUNCIL

**REPORT ON CANDIDATES' WORK IN THE
CARIBBEAN ADVANCED PROFICIENCY EXAMINATION**

MAY/JUNE 2003

LAW

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LAW**CARIBBEAN ADVANCED PROFICIENCY EXAMINATION****MAY/JUNE 2003****GENERAL COMMENTS**

The 2003 examination was designed to provide a comprehensive test of candidates' knowledge and skills in all dimensions of the syllabus.

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

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

FORM OF THE EXAMINATION**UNIT 1**

In 2003 the examination consisted of three papers.

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

Paper 01 contributed 30 per cent to the examination.

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

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

Paper 02 contributed 50 per cent to the examination.

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

UNIT 2

Paper 01: This paper consisted of nine compulsory short answer (structured-response) questions, of which three questions tested Module 1, Tort; three questions tested Module 2, Law of Contract and three questions tested Module 3, Real Property. Each question was worth 10 marks.

Paper 01 contributed 30 per cent to the examination

Paper 02: This paper was divided into three sections each representing one of the three modules in the Unit. Each section contained three essay-type questions and candidates were required to answer two, a total of six questions in Paper 02. Each question was worth 25 marks.

Paper 02 contributed 50 per cent to the examination.

Paper 03: This was the internal assessment, contributing 20 per cent of the examination. Paper 03 consisted of a research paper, 2000-2500 words based on a topic which spans the three modules.

Comments on Unit 1

Candidates' performance improved in 2003 over 2002. This improvement was reflected in Paper 01, Paper 02 and Paper 03, with the greatest improvement seen in Paper 01. Although candidate performance increased in the three modules, the greatest increase was recorded in Module 3, Criminal Law. The weakest performance was in Module 2, Principles of Public Law. This was also the case in 2002.

Comments on Unit 2

In 2003 there was a slight improvement in Paper 01 over 2002. However, candidate performance in Paper 02, the essay paper, and Paper 03, the Internal Assessment, declined in 2003. This was reflected in the declining performance in the three modules, with the most significant decline in Module 2, Law of Contract. Candidate performance was strongest in Module 1, Tort.

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

1. Candidates must follow instructions. Responses should not be merged – Part (a) must be answered separately from Part (b).
2. Candidates must use formal, impersonal language, yet not be too general or vague.
3. Candidates are encouraged to use a particular format when answering problem-type questions.

The following format is recommended:

I - issue (identification)

- R - rule of law (state)
- A - application of law to facts
- C - conclusion
4. Candidates must support their responses with legal authority, namely
- Case law
 - Statute
 - Legal writers
5. Candidates must deal with the issues and applicable law and refrain from restating the question.

COMMENTS ON INDIVIDUAL QUESTIONS

Unit 1

Paper 01

MODULE 1: Caribbean Legal Systems

Question 1

Mean: 7.19 Standard Deviation (S.D.): 2.02

This question tested candidates' knowledge of 'sources of law'.

Candidates performed well on this question. It should be noted, though, that more emphasis must be placed on the historical, legal and literary sources of law, referring to the Constitution, Legislation and common law as examples.

Question 2

Mean: 5.48 S.D: 2.60

Candidates' knowledge of 'the qualifications for and disqualifications from the jury service' was being tested in this question.

Candidates performed fairly well on this question, overall. However, many candidates were unable to refer to the Jury Act and thus, were unable to answer the question precisely in relation to persons who are exempt from serving as jurors.

In Part (b), many candidates failed to say that as the husband of a High Court Judge, Mr Preddie is an exempt person.

Question 3

Mean: 3.48 S.D.: 1.93

This question was not well done. It tested the candidates' knowledge of the Court structure (that is, the hierarchy) and the procedures for appeal.

Many candidates demonstrated excellent knowledge of the hierarchy of the Courts, beginning with the traffic Court (or Traffic Division), through to the Court of Appeal and finally to the Judicial Committee of the Privy Council.

In Part (b), however, many candidates were unfamiliar with the procedures for appeal and the timeframes at each step. A few candidates even confused 'judicial review' with the 'procedure for appeal'.

MODULE 2: Principles of Public Law

Question 4

Mean: 1.40 S.D.: 1.86

This question was very poorly done. The question tested the candidates' knowledge of the role and function of the various Service Commissions, namely the 'Judicial', the 'Public Services' and the 'Police' Commissions.

Many candidates confused the function of Service Commissions with the functions of bodies governed by the Service Commissions. Consequently, they incorrectly wrote on the judiciary, the public services and the police.

In this question, candidates should have referred to the Constitutional provisions which establish the relevant Commission. In describing the role of the particular Commission, that is, the appointment, discipline and removal of its members, candidates must mention:

- (i) the role of the Commission in a quasi-judicial function;
- (ii) the Commission must exercise its jurisdiction in a manner consistent with sound legal principles, for example, observance of the rules of natural justice;
- (iii) consequences of impropriety on the part of the Commission are judicial review of the action complained of by an aggrieved party.

Question 5

Mean: 3.56 S.D.: 2.15

This question was not well done. The question aimed to test candidates' knowledge of the 'constitutional rights of freedom of association' and 'judicial review for breach of a fundamental right'.

Since many candidates did not identify the ‘freedom of association’ provision in the constitution, they could not expand on the implication of this particular fundamental right, to say that while exercisable individually, within the workplace environment the individual right is enjoyed as part of a bargaining unit.

Among cases to which reference may be made are:

Collymore v A.G
Banton and others v Alcoa Minerals

Question 6

Mean: 3.53 S.D.: 2.55

This question was not well done. The question tested candidates’ knowledge of ‘entrenched provisions’ in a Constitution.

Many candidates were able to explain correctly that ‘entrenched provisions’ mean those which can be changed only through rather stringent procedures, for example, a referendum required for change of the Head of State.

In Part (b)(i), some candidates correctly identified the Fundamental Rights Provision in the various constitutions, and fewer candidates correctly indicated the relevant chapters in which the Provision can be found. A number of candidates identified ‘deeply entrenched provisions’ instead of ‘entrenched provisions’.

In Part (b)(ii), some candidates described correctly the process of amending the Constitution, but very few candidates gave the impact of the amendment (both positive and negative).

MODULE 3: Criminal Law

Question 7

Mean: 4.40 S.D.: 2.74

Candidate performance on this question was encouraging. This question tested candidates’ knowledge of ‘inchoate offence’ and ‘*mens rea* of the crime of conspiracy’.

In Part (a)(i), many candidates were able to explain the term ‘inchoate offence’ as the preparatory stages of the commission of other criminal offences, which are identified as incitement, conspiracy and attempt. A few candidates confused inchoate offences with accomplices and gave the incorrect response of ‘aiding and abetting’.

Responses to Part (b) demonstrated a lack of specificity to the *mens rea* elements of conspiracy. Candidates simply identified elements of *mens rea* generally by speaking to intention rather than an intention to participate.

Candidates were expected to highlight the *mens rea* of conspiracy as:

- (i) intention or agreement to participate;

- (ii) knowledge or belief that certain circumstances exist for the commission of the offence;
- (iii) intention that the prohibited consequences will occur;
- (iv) knowledge of and failure to prevent the occurrence of a crime demonstrate the *mens rea* of conspiracy.

Question 8

Mean: 5.41 S.D.: 2.67

Candidate performance on this question, was average to good. This question tested candidates' ability to apply knowledge of 'defences' in Criminal Law, with specific reference to 'involuntary intoxication' and 'duress'.

In Part (a), many candidates correctly identified the defences of involuntary intoxication and duress. However, in providing reasons for their responses, some candidates speculated on facts not provided by the question. This practice should be discouraged.

Candidates were not very specific in their responses to part (b). The elements of involuntary intoxication are:

- (i) it negates *mens rea* of crimes of basic and specific intent;
- (ii) may amount to insane automatism;
- (iii) the accused becomes an innocent agent, while the person administering the drug is the principal offender;
- (iv) does not always provide a defence.

For the defence of duress the candidate must note that the involuntary participation in the crime would be an issue for comment.

Question 9

Mean: 5.80 S.D.: 2.63

Candidate performance on this question was good. The question tested candidates' ability to apply knowledge of the *mens rea* and *actus reus* of the offence of transferred malice.

In Part (a), most candidates were able to correctly identify the offence as transferred malice, to define transferred malice and to give reasons for their answer. Teachers must encourage students to use the correct legal terminology, for example, transferred malice is correct, not transferred *mens rea*.

In Part (b), some candidates were able to discuss the *mens rea* and *actus reus* of the crime, and to explain that where the defendant has the *mens rea* of one crime and causes the *actus reus* of another, he is liable, even though the result is not what he intended.

Paper 02

Question 1

Mean: 10.07 S.D.: 5.46

This question was not very well done. It is a compulsory question, testing objectives from the three modules. Candidates were tested on their ability to apply knowledge of ‘the common law, the fundamental rights provision in the Constitution’ and homosexuality as a crime’.

In answering this question, candidates did not give equal weight to each module, as required. Most of the candidates dealt with the criminal law aspect (Module 3) in Part (c) but did not answer the question in relation to Module 1 and 2 with the level of depth required. In other words, most candidates paid a merely cursory attention to Modules 1 and 2, Parts (a) and (b).

Teachers must make their students aware that each module carries 10 marks and must therefore receive equal weight in their responses.

In Part (a), candidates were not aware of the common law position on homosexuality in their territories. In formulating a response to this question, candidates should have demonstrated the following understanding of ‘common law’ – its origins and effects:

- (i) historical factors, the ‘King’s Court’ protecting citizens’ legal rights, for example, to property;
- (ii) as the foundation of our legal system;
- (iii) judge made law;
- (iv) the ‘letter’ of the law, rather than the ‘spirit’, therefore harsh in its outlook;
- (v) exacting principles;
- (vi) does not mean it is not dynamic, as can be seen in law of precedent and principle of applying and distinguishing same.

Candidates should also have demonstrated knowledge of some rights protected under the common law. Specifically, candidates should have commented on:

- (i) stringent rules of the common law enshrined certain rights;
- (ii) statutes have changed some, for example, freedom of association is a ‘recent’ right, outside of statutory provision.

- (iii) right to property
- (iv) Commonwealth Law would not recognise freedom of choice in sexual preferences – religious foundations of the common law, Biblical prohibitions echoed in Offences Against the Person’s Act.

In Part (b), candidates were expected to define ‘fundamental right’ and discuss the purpose of same. Candidates should have demonstrated how much of the fundamental rights provisions in the Constitutions of Commonwealth Caribbean States have codified common law provisions.

In Part (c), candidates performed better. However, candidates need to be aware that homosexual activities are still criminal offences in the Commonwealth Caribbean jurisdictions, with the exception of the British dependencies. Further, buggery refers to any anal sex, whether consensual or non-consensual, and is a criminal offence. Candidates should have discussed the legal provisions which make the act a crime.

MODULE 1: Caribbean Legal Systems

Question 2

Mean: 11.69 S.D.: 4.87

This question tested candidates’ knowledge of the ‘doctrine of *stare decisis*’.

Candidates had a fair knowledge of the way in which the doctrine works and its role in understanding the doctrine of precedent. Those candidates who presented good answers dealt with all aspects of the issue, such as:

- (i) explanation of the term – ‘let the previous decision stand’;
- (ii) historical significance in development of the principle, relationship of doctrine to precedent. Relationship between law and morals; how laws develop as a means of ensuring that certain norms are observed;
- (iii) how the doctrine is dynamic;
 - as norm and values of society change, so too laws may be amended or repealed to reflect current standards

judges have always tended towards applying law to the times, for example, the view of ‘conspiracy’ in DP v Kneller

- allows previous decisions to influence later similar cases
- ensures that higher courts bind lower courts:- importance of consistency in deciding cases.

Question 3

Mean: 7.13 S.D.: 4.46

Candidates did not perform very well on this question. It tested candidates' knowledge of 'common law and equity as sources of law'.

Candidates were fairly knowledgeable about the principles of equity and, in particular, of the equitable maxim stated, the general weakness was that a number of candidates answered the question without attempting to identify the issues and without applying the law by referring to cases such as, Pettit v Pettit and Gissing v Gissing. A major pitfall in a number of responses was candidates' emotional involvement in the question, leading them to make value judgements instead of answering based on the law.

Candidates' responses should have included:

- (i) definition of sources of law;
- (ii) the importance of the common law and equity as sources of law;
- (iii) the historical overview of the tension between common law and equity and the development of equitable principles which have modified the common law;
- (iv) equitable principles which support Mrs Banda's contention;
- (v) how the rules of equity versus the common law have developed and have been applied in our local jurisdictions;
 - when the common law seemed insufficient to provide justice, claimants turned to the King's Chancellors for solutions. These Chancellors worked in the Court of Chancery between C13 and C19. Ruling of Chancellors became law
 - equity supported the common law, and was not in opposition to it, bringing aid to the common law where it appeared weak, rigid or ineffective
 - equity not restrained by the strictness of the common law but would look behind legal instruments to ensure that the would-be disadvantaged got relief. It is this element to which Ms Banda adverts
 - judicial precedent a feature of equity through decided cases.

Question 4

Mean: 12.30 S.D.: 3.91

Candidate performance was average on this question. Knowledge of 'Alternative Dispute Resolution (ADR)' as a means of conflict resolution was tested in this question.

Candidates performed better on Part (a) – definition of ADR, and Part (c) – comparison with other methods; and weakest in Part (b) – features of ADR, and Part (d) – advantages of ADR.

Teachers should ensure that students understand some features of ADR are:

- (i) community policing, conflict resolution in schools
- (ii) parties meet with an objective mediator
- (iii) both disputants are told what mediation is about and are assured of its confidentiality.

Candidates were expected to present points in favour of ADR as a viable method of conflict resolution, and examine the advantages of ADR, such as, costs, time and the fact that participants ‘own’ their decision, rather than have it imposed by a judge.

MODULE 2: Principles of Public Law

Question 5

Mean: 10.07 S.D.: 5.46

This question tested candidates’ knowledge of ‘the doctrine of separation of powers’.

Many candidates had a good command of the composition of each arm of the state and were therefore able to explain the different functions and roles, summarized as follows:

- (i) Executive – Government proposes the law;
- (ii) Legislative – Parliament makes the law;
- (iii) Judicial – judges ensure the law is fairly enforced.

Many candidates were able to discuss how the functions overlap, yet how each function maintains its separateness, for example, through judicial review of the legislative and administrative action.

However, candidates failed to be precise in their responses. Few candidates, in defining ‘separation of powers’, gave a historical perspective, that is, that the doctrine has its roots in the theory of former philosophers like Montesquieu, Carnegie and Lewis, who believed that powers in a state should be separate, as a means of checks and balances on each arm of power.

Candidates were expected to point out that the doctrine is one of the fundamental tenets of constitutional law, and that it is and always has been the subject of much debate about its application.

In composing this essay, candidates did not show how the doctrine applies in the United States of America, and in Britain (with its unwritten constitution and its adherence to conventions). Some candidates were able to apply the doctrine in the Commonwealth Caribbean constitution, and therefore based their conclusions on such. Many candidates cited and applied R v Hinds, and explained the case well. Some candidates used the case to make

clear definitive statements in regard to separation of powers, which shows that they had an understanding of the principles of the case, and this is commendable.

Question 6

Mean: 4.23 S.D.: 3.78

This question was not popular, chosen by about 14 per cent of the candidates, and very poorly done. The question required candidates to analyze a given problem, identify the legal issues – the rule of law, specifically the requirements for accountability of the Executive – and discuss the rule of law and its application in a constitution.

Most of the candidates misinterpreted the Prime Minister and the Minister of Home Affairs as two separate individuals, resulting in an unnecessary discussion about roles.

Very few candidates expressly mentioned the rule of law, although a number of candidates alluded to the concept by stating that the Prime Minister was not above the law. Candidates did not discuss the rule of law and its historical antecedents, for example, those embodied in the American (1776) and French (1791) Constitutions, and the writings of philosophers like Locke and Blackstone. Students must be taught the main tenet – that all citizens within a jurisdiction must be treated fairly under the law and it is the duty of the Executive to ensure same.

Not enough candidates pointed out the relevance of separation of powers in this question and too few candidates attempted to apply the principles of the law to the fact problem given. Candidates should have addressed the following issues:

- (i) proper procedure must be followed by the Prime Minister – consultation prior to the establishment of the Commission of Enquiry;
- (ii) the Prime Minister (in either capacity – Prime Minister or Minister of Home Affairs) cannot recommend that the Governor General establish the Commission;
- (iii) the relief sought by the Opposition and the remedies available;
- (iv) constitutional provisions, especially as they relate to the accountability of the Executive arm.
- (v) Hochoy v NUGE – the *locus classicus* of the area tested.

Question 7

Mean: 10.22 S.D.: 5.76

This question tested candidates' knowledge of '*ultra vires*'. Candidates' response indicated a correct understanding of the meaning of *ultra vires*. Most candidates distinguished between the two types of *ultra vires* through examples and illustrations, but discussion of the two concepts was not impressive – candidates tended to be vague and uncertain. Teachers should note the following:

- (i) *ultra vires* doctrine or rule contemplates that the discretion as to the manner in which a power is exercised by administrative authorities (that is, in a quasi-judicial function) is to be exercised within the bounds of the empowering statute (that is, *intra vires*). To be *ultra vires* is to act beyond power or authority;
- (ii) the doctrine of *ultra vires* must be discussed from a procedural and substantive perspective;
- (iii) how the Courts have treated the decisions of public bodies for failure to observe principles of law and proper procedure.

A.G. v Coconut Marketing Board was the case popularly used by candidates in their answer. Other cases are:

CCSU v Minister of the Civil Service

A.G. of Antigua and Barbuda v James

Ali v Elections and Boundaries Commission

MODULE 3: Criminal Law

Question 8

Mean: 10.18 S.D.: 5.13

This question required candidates to analyze a given problem and apply their knowledge of the ‘offence of strict liability’ as well as their knowledge of the defences to crimes of strict liability.

Many candidates did not demonstrate a real understanding of the principle of strict liability. The candidate should have dealt with issues such as:

- (i) identification and definition of offences, both of which are offences of strict liability, giving explanation of the nature of each offence;
- (ii) the nature of strict liability offences, as arising from statute, there being no requirement for *mens rea*;
- (iii) factors may exist to mitigate the punishment of the offender, though ignorance of the law, not being a defence, is not likely to succeed;
- (iv) ignorance of the boys’ ages or acceptance that they are older than they actually are, were that the defence, would not suffice;
- (v) the question to be determined is the reasonableness of the perpetrator in allowing strict liability offences on his premises.

In Part (b), candidates needed to have been more familiar with the application of defences to crimes of strict liability. The fact that the boys are under eighteen and are still at school must be taken into account. Some of the issues raised in Part (a) above would have influence in Part (b). Some defences the candidates should have discussed are:

- (i) that Mr Bourbon took all reasonable precautions/exercised due diligence to avoid the commission of the offence;
- (ii) commission of the offence was due to an act or default of another person who was not under his control;
- (iii) he did not know and had no reason to suspect at the time of the commission of the offence that his act or omission would amount to an offence.

Question 9

Mean: 13.89 S.D.: 4.94

This question tested candidates' ability to evaluate arguments for and against capital punishment.

Some candidates responded well to this question, which was not very popular, with only about 13 per cent of the candidates attempting this question. Some candidates allowed their emotions to cloud what could, otherwise, have afforded them opportunity to look at sentencing in the Criminal Law.

The cases of Pratt and Morgan, and Lewis are two which come readily to mind and which candidates could have exploited to their benefit. Both of these cases discuss in detail the question of capital punishment and the constitutional principles which are relevant.

In formulating their responses to this question, candidates are expected to:

- (i) approach this question with some liberality as far as they are required to express their own views. They must define capital punishment, citing relevant statutory provision, as well as the constitutional provisions against 'cruel and inhumane treatment';
- (ii) raise the issue of mandatory death sentence and its place in local jurisprudence;
- (iii) support their arguments for and against the death penalty by referring to cases, and they may also refer to writers and commentators;
- (iv) come to their own conclusions with justification for their position.

Question 10

Mean: 13.77 S.D.: 5.38

This question tested candidates' ability to analyze a given problem and apply their knowledge of the effects of 'intervening acts' on criminal liability.

Candidates tended to perform better in Part (a), providing the correct definition of ‘intervening acts’ and correctly addressing issues such as ‘the egg-shell principle’ and ‘causation’. Some cases to support this response are R v Lewis, R v Cheshire and R v Pagett.

In Part (b), however, many candidates failed to identify the issues and apply the law; with the support of cases. Part (b) of this question required problem-solving skills and candidates did not perform well. Smith and Hogan’s Criminal Law (2002) contains a useful chapter on ‘intervening acts’ and their effects on criminal liability. It is recommended for use.

UNIT 2

Paper 01

MODULE 1: Tort

Question 1

Mean: 4.54 S.D.: 2.19

This question tested candidates’ knowledge of the distinction between ‘libel’ and ‘slander’.

Candidates showed a general knowledge of ‘libel’ and ‘slander’, but many were unable to give precise definitions and to illustrate with examples.

In Part (b) candidates were not required to write an essay, as many of them did, but to give the distinction between libel and slander as succinctly as possible. Candidates would have benefited greatly, had they listed the distinction and the cases, using the following format: (i) Libel is paramount while slander is transient

Two cases which illustrate the distinctions are:

- (i) Name of case and brief principle of law;
- (ii) Name of case and brief principle of law;

Question 2

Mean: 3.10 S.D.: 2.46

This question tested candidates’ knowledge of ‘tortious liability, contractual liability and criminal liability’.

Like in Question 1, candidates answered this question like an essay. Many candidates were unable to give precise answers, illustrating how tortious liability differs from contractual and criminal liability.

In Part (a), candidates were expected to define tortious and contractual liability. In illustrating the distinction between the two types, candidates should demonstrate an awareness that the same factual situations may provide a legal basis for both types of

liabilities. For instance, the contractual claim of fraudulent misrepresentation is also actionable as the tort of deceit.

In Part (b), candidates were again expected to define tortious and criminal liability. Candidates should recognise the commonality of claims that may arise under these heads, while at the same time demonstrating the distinctions, particularly with respect to the main focus of remedies, which is basically compensatory in the case of torts, but essentially punitive in the case of crimes.

The major weakness identified was the failure of candidates to present appropriate illustrations.

Question 3

Mean: 5.34 S.D.: 2.54

This question tested candidates' ability to define and illustrate the 'tort of negligence' and the 'law relating to remoteness of damage in tort'.

Candidates demonstrated good knowledge of the tort of negligence, but definitions were often imprecise. The key elements of duty, breach and damage were not always adverted to.

From the responses presented in part (b), it was apparent that candidates were not strong on the issue of remoteness of damage in tort. Candidates were expected to show an understanding of the legal principles relating to remoteness of damages. This would involve an awareness of the significance of this area of law in that it determines whether and to what extent an injured party may recover in respect of tortious claims. A few candidates, who responded well to this part of the question, were able to cite the *locus classicus* on the issue, The Wagon Mound (No. 2).

MODULE 2: Law of Contract

Question 4

Mean: 3.44 S.D.: 2.39

This question tested candidates' knowledge of 'consideration'. Most candidates had some idea of what is meant by 'consideration' and a significant number of them referred to the elements of consideration. Weaker responses consisted of general illustrations only, while better responses included cases.

Part (b), appears to have challenged most candidates, who were unable to make a connection between 'consideration' and 'intention to create legal relations'. Candidates who responded well were able to identify cases such as Balfour v Balfour and Durham Fancy Foods in making the distinction.

Question 5

Mean: 4.59 S.D.: 2.61

This question asked for a distinction between ‘fraudulent’ and ‘negligent misrepresentation’, and definition of ‘conditions, warranties and innominate terms’.

Many candidates made a fair distinction between fraudulent and negligent misrepresentation. It was surprising that very few candidates cited the leading case, Derry v Peek.

In Part (b), while candidates demonstrated some knowledge of ‘conditions’ and ‘warranties’, many candidates appeared to have been unfamiliar with ‘innominate terms’.

Question 6

Mean: 3.08 S.D.: 2.04

This question tested candidates’ knowledge on the ways in which a contract may be breached and the rules governing the capacity of a minor to enter into a binding contract.

In Part (a), candidates presented the ways in which a contract may be breached, as well as terminated. Teachers must make students aware that there is a distinction between termination and breach of a contract. The question asked for breach. The responses demonstrated that candidates did not understand the difference between the two terms.

In Part (b), most candidates did not indicate the two instances when a minor can enter into contracts, namely, for necessities and contracts beneficial to the minor, with supporting cases. Some candidates indicated the minor’s inability to enter into a binding contract without the co-signature of an adult.

MODULE 3: Real Property

Question 7

Mean: 3.22 S.D.: 2.70

This question tested candidates’ knowledge of ‘tenancy at will’ and ‘licencee’.

Responses to this question were generally poor. Candidates who answered this question well were those who identified the issue, that is, a licence to occupy. The majority of candidates presented emotional answers, discussing the family relationships, without reference to the legal issue.

In Part (b), candidates were required to discuss any rights which a licensee may have and to substantiate their answers by reference to cases, such as Deen v Mahabir.

Question 8

Mean: 2.59 S.D.: 2.73

This question tested candidates' knowledge of 'restrictive' and 'positive covenant', and the rights that covenants confer on covenantor and covenantee.

This question was poorly answered. Some candidates were able to distinguish between the two types of covenants, but most candidates seemed unaware of positive covenants. Candidates were expected to define a positive covenant as one which imposes on the covenantor an obligation to do something in relation to a defined piece of land, such as, to repair a fence; while a restrictive or negative covenant is one which restricts the user of land in a manner which is disadvantageous to the covenantee, such as, not to use the premises as a factory or church.

With respect to Part (b), candidates were required to make a distinction between the legal and equitable principles which affect the rights of the covenantor and covenantee. They should have pointed out that legal considerations tend towards the enforcement of a contract between the parties, in which event privity of contract is an issue, as it affects third parties.

Candidates who answered Part (b) fairly were mainly those who were able to show that covenants run with the land and that, therefore, there is a contractual relationship not on an individual basis, but in one's capacity as 'owner'.

Question 9

Mean: 2.25 S.D.: 2.41

This question tested candidates' knowledge of the law relating to 'distress' and 'chattel houses'.

This question was poorly done. Candidates are expected to know about the various remedies available to a landlord as a general rule. Whether or not distress applies in their jurisdiction, they must know about it as part of the law of our Caribbean jurisprudence.

In Part (a), candidates who knew the law relating to distress, answered the question well, but they were in the minority. Some candidates did not know the law, while others interpreted the term 'distress' in its literal sense, not legal sense. The following features pertain to distress, in its legal sense:

- (i) power to seize goods of tenant;
- (ii) only goods found on premises;
- (iii) for rent;
- (iv) sell them;
- (v) not at night;

- (vi) statute – limits goods or abolishes right/distrainable goods;
- (vii) tenancy must be persisting;
- (viii) cannot break outer door / enter closed window.
- (iv) In Part (b), those candidates who answered the question well, were able to show the limited circumstances within which distress operates, especially in relation to the chattel house. Mr Easy cannot distrain against Tom’s house, a supporting case being Supersad v Baptiste.

A chattel house is not ‘goods’ in a traditional sense. They should indicate the public policy considerations which make it undesirable for distress to apply to chattel houses (such as the fact that they are dwelling houses, built by their owners to be occupied by themselves and their families). These points were fully advanced in Mitchell v Cowie (Wooding C. J.) and O’Brien Loans v Missick (Georges J.A.) to which candidates may refer.

Teachers are advised to refer to Commonwealth Caribbean Property Law by Professor G. Kodilinye.

PAPER 02

GENERAL COMMENTS

Candidates did not always use the opportunity to earn maximum marks in answering their questions. Answers were often too vague and little attempt was made to support conclusions reached by reference to cases and legal principles.

Problem-type questions are usually not well done, as candidates comment on the “story-line”, ignoring the legal issues about which they are being examined.

We urge teachers to ensure that students receive much practice in how to answer a problem-type question.

A much more forensic, analytical approach is necessary if candidates are to succeed in answering all types of questions. There were some good answers, indicating that students can achieve the required standard.

MODULE 1: Tort

Question 1

Mean: 9.93 S.D.: 6.78

This question tested candidates’ knowledge of the principle of ‘strict liability’.

Not many candidates (about ten per cent) attempted this question. There were some good answers by a few candidates. The key word “evaluate” required candidates to examine all the issues surrounding strict liability on tort – the element of fault and how this militates against

the concept; relationship to vicarious liability. Rylands v Fletcher; liability for dangerous products and how Donoghue v Stevenson affects the law's development. Candidates should also assess the various defences, such as act of God, act of a stranger, statutory authority and contribution. *See Appendix 1*

Question 2

Mean: 11.57 S.D.: 4.98

This question tested candidates' ability to analyze a given problem and apply their knowledge of 'false imprisonment, assault and battery'.

Again, candidates got "carried away" with the facts and did not pay close attention to the issues.

Part (a) required candidates to discuss whether Dick could successfully bring an action against Abby for false imprisonment. Answers were therefore to contain a discussion of the law in this area. Secondly, they should have discussed Dick's claim against Abby for assault and battery. *See Appendix 2*

In Part (b), candidates should have discussed Dick's defence. In doing so, they should say what are the elements of an assault and whether the kiss constitutes an assault. Generally, candidates wrote very emotively on this aspect and must be reminded that they are writing law examinations and must stick with the issues.

Question 3

Mean: 8.68 S.D.: 3.57

This question tested candidates' knowledge of vicarious liability. This question was not well done.

The two issues here are:

- (i) vicarious liability for the acts of a servant;
- (ii) liability for statements.

Candidates who presented good answers for this question were those who were able to identify the issues and support their conclusion by reference to sound legal principles. This was another question for which a large number of candidates gave answers which tended more towards a restatement of the facts outlined, resulting in emotional comments which had little or no foundation in law.

Candidates needed to have dealt more incisively with the issues:

- (i) examining when and how vicarious liability applies;
- (ii) when and how a party becomes liable for statements made, citing in this instance, for example, the leading case of Derry v Peek and Hedley Byne v Heller. *See Appendix 3*

MODULE 2: Law of Contract

Question 4

Mean: 7.92 S.D.: 4.53

This question tested candidates' knowledge of 'how mistake operates to negate the parties' consent'.

This was not very popular, with just about 38 per cent of the candidates attempting it, and it was not very well answered. Those few candidates who approached the question in an analytical manner tended to do well.

In the majority of cases, however, the tendency was for candidates to write all they knew about 'mistake' while failing to answer how 'mistake operates to negate the parties' consent'. In some instances candidates confused 'common' and 'mutual' mistake. Weakness in analyzing cases such as Associated Japanese Bank and Bell v Lever Brothers was a common feature. *See Appendix 4*

Question 5

Mean: 9.30 S.D.: 5.06

This question was a popular one but candidates did not perform well. Candidates failed to recognise the relevant issues and focused on 'consideration'. The issues raised on this question are:

- (i) offer and acceptance;
- (ii) terms of the contract;
- (iii) consideration;
- (iv) privity.

There is a wide body of cases and legal principles upon which candidates could rely. Instead of presenting a forensic, legal based argument, candidates became sidetracked by issues such as who was being fair or unfair.

Where a question has a number of issues, such as this one, candidates are to be encouraged to first identify each issue and deal with them individually, in an organised fashion. In this way, they can maximise their marks.

Question 6

Mean: 8.39 S.D. 5.26

This question tested candidates' ability to apply knowledge of 'frustration', 'liquidated damages' and 'anticipatory breach' to problems given.

Candidates did not perform very well, doing better on Parts (a) and (b), frustration and liquidated damages respectively, than part (c). For each of the issues, candidates should have:

- (i) identified the legal issue (for example, frustration);
- (ii) identified the pertinent legal principles applicable;
- (iii) applied the principles to the facts re. the question.

MODULE 3: Real Property

Question 7

Mean: 8.23 S.D.: 7.66

This question tested candidates' knowledge of 'licence by estoppel'. This question was not very well done, with candidates' responses being too vague, and their analysis too weak. Candidates' responses demonstrated confusion of leases with licences and not many candidates showed an understanding of the issue: whether or not there was a licence by estoppel. Elements of licence of estoppel:

- (i) assurance amounting to a representation or expectation created by the landlord;
- (ii) detriment – expenditure of money with encouragement or promise of reward;
- (iii) reliance – reasonable belief that he would acquire some rights.

Question 8

Mean: 12.09 S.D.: 7.93

This question tested candidates' knowledge of 'express and implied covenants' with respect to landlord and tenant.

This was a popular question with better responses from candidates. Some candidates did not show sufficient knowledge of tenant's covenants and many failed to indicate that besides covenants as common law, some of these covenants are codified in legislation, for example, Rent Restriction or Landlords and Tenants Act. Some aspects of the covenants to note are:

Landlords Implied Obligations

- (i) quiet enjoyment;
- (ii) non-derogation from grant;
- (iii) fitness for habitation;
- (iv) repair.

Tenants' Implied Covenants

- (i) pay rent;
- (ii) not to commit waste – voluntary, permissive – fair wear and tear;
- (iii) not to assign.

Question 9

Mean: 10.38 S.D.: 6.98

This question tested candidates' knowledge of 'joint-tenancy'. Part (a) of the question was fairly well done, although some candidates appeared not to have understood what was meant by 'unities' of a joint-tenancy, namely, possession, interest, title and time.

Many candidates failed to identify the issue in Part (b), namely, severance. The initiation of legal action by one spouse has been held to be a sufficient act of severance: *Re. Draper's Conveyance*.

The right of survivorship should not apply. An assessment of the wife's interest and that of the husband's estate is a matter for the court.

The candidates who identified the issue were not able to apply the law to the facts.

Paper 03**INTERNAL ASSESSMENT**

These comments are made in relation to the projects for both Unit I and Unit 2.

1. Evidence of plagiarism.

More effort should be made to have students credit the source of all references and quotations used in their papers. In one instance a candidate submitted a paper evidently taken from the Internet, inclusive of the website reference.

2. Research papers should be securely fastened.

3. All components of the paper should be included as specified in the syllabus – title, table of contents, aims and objectives, methodology employed and so on.

4. Greater use of regional cases and statutes required.

5. Use of case studies is not encouraged unless all the objectives of a research paper as outlined in the syllabus can be met.

If used, the case study should not contain many topics and issues that prevent the student from going into sufficient depth.

6. Students should be encouraged, to participate in primary research and present additional knowledge gained outside the classroom and on standard texts.
7. Teachers should note that the “content” and mark scheme of the Internal Assessments (effective 2003/2004 academic year) have been modified.
8. Teachers must see drafts of the student’ research paper before the final paper is presented so as to give the necessary supervision and guidance. This must be emphasised and mandated.
9. Before the final drafts are submitted, students should ensure that the papers are proofread.
10. Some of the topics chosen for the projects were creative and original in nature.
11. In some schools the research methodology was (very) commendable. For example, some students conducted interviews, used questionnaires and surveys.
12. In some schools, the interpretation and analysis of the data collected were augmented by the use of graphs, tables and diagrams. This was very good.
13. In a few instances the candidates displayed a good sense of reasoning and the research papers were coherent and well evaluated.

RECOMMENDATIONS

1. Teachers must use a variety of methods to deliver the syllabus.
2. Teachers must cover all areas of the syllabus, even when the law is no longer applicable to their jurisdiction.
3. Teachers must guide students in answering questions. Short-answer questions (Paper 01) should be brief and to the point. In some instances, point-form responses will suffice. For extended response or essay-type or problem-type questions, the suggested format on page 4 is recommended.
4. Teachers and students should pay special attention to key words in the question – evaluate, discuss, advise, suggest, describe, identify, state – and to respond accordingly.
5. Candidates are encouraged to name the Caribbean territory when answering questions. The law may be different depending on the territory. Examiners are not aware of the territory in which candidates reside.
6. Greater emphasis needs to be placed on students’ understanding of their Constitutions.

PAPER 02**UNIT 2****MARK SCHEME**Module 1Question 1

- (i) Definition of ‘strict liability’
- (ii) Illustrations/examples of strict liability
- (iii) Arguments for and against strict liability
- (iv) Coherence/Reasoning Concept

Candidates are required, firstly, to define what is meant by strict liability in tort, which essentially refers to liability which the law imposes without the need to establish ‘fault on the defendant’s part in the form of intentional or negligent wrong doing’. (Baker on Tort, 4th Edition, 1986, p. 201). They should then illustrate examples of strict liability, such as in the case of Rylands v Fletcher (1868) with respect to ‘the carrying on (of) extra-hazardous activity’, and with respect to strict liability for animals. Another form of strict liability occurs with regards to vicarious liability for the acts of employees or servants. Strict liability may also be imposed by statute. Candidates must then address the arguments for and against strict liability in tort. The reasoning of the courts in instances where the principle is upheld and, also, where the courts have refused to extend the principle should be reflected in candidates’ answers. It has been noted by Baker, *supra*, that the courts have refused to give judicial recognition to any general principle of strict liability. This is not surprising since the tort system under the common law is basically a fault system and not a ‘no-fault’ system. Candidates should demonstrate an awareness that the principle of strict liability runs counter to the dominant theme of tort law, which is that liability is not only generally based on a finding of fault (i.e. intention or negligence), but also only such fault that the law will respect against. The House of Lords’ decision in the case of Read v J. Lyons & Co. (1947) should be referred to and utilised in this analysis and evaluation by students.

MARK SCHEMEQuestion 2False imprisonment

- (i) trespass to person
- (ii) restriction of freedom
- (iii) unlawful – originally, lawful may become unlawful
- (iv) imposition of reasonable conditions nullifies unlawfulness
- (v) knowledge of imprisonment irrelevant
- (vi) application to facts and illustrations

Assault

- (i) reasonable fear of immediate physical contact
- (ii) objective test
- (iii) application to facts and illustration

Battery

- (i) direct contact either immediately or with a object
- (ii) lack of consent
- (iii) anger or hostility not required
- (iv) application to facts and illustration

Question 3Vicarious liability

- (i) Employer liable for employee's tort
- (ii) In course of his employment
 - expressly or impliedly authorized
 - an unauthorized manner
 - necessarily incidental to what employed to do

Prohibition

- (i) Existence of express prohibition does not avoid vicarious liability – only a fact to be taken into account
- (ii) Prohibition which limits sphere of employment
- (iii) Prohibition which merely deal with conduct within the sphere of employment

Time

- (i) A reasonable period before or after the time and place
- (ii) Whether employee engaged in activity connected to employment even though after period, for example, returning vehicle.

MARK SCHEME

Question 4(a) Definition of ‘mistake’ and types of mistake

A mistake may be a contract void or voidable

- mistake as to subject matters existence, *res extincta* the item is destroyed! For example, Scott v Coulson (insurance on one’s Death)
- mistake as to quality of subject matter, for example, Leaf v International Galleries
- mutual mistake – (parties at cross-purposes)
- unilateral mistake – (one party under false assumptions)

Legal effect of operative mistake – renders contract as *void ab initio* providing that the parties have not agreed to allocate the risk of the mistake. The article on The Role of Mistake in the Law of Contract should also be helpful in this regard.

(b) Identification of pertinent legal issues. The central issue here is the legal impact of consent or lack of consent in relation to problems involving mistake. The point was made by Lord Atkin in Bell v Lever Bros that mistake only operates in circumstances where the mistake has the effect of negating or nullifying consent. Further, in the Associated Japanese Bank case, Steyn J. made the significant point that the rules of mistake do not logically apply where the parties have agreed by contract to allocate the risk of the mistake.

Analysis and application of case law to issues.

- Thus, candidates must demonstrate an awareness of the pivotal role of consent in this regard and particularly that parties may even agree, either expressly or by implication, to allocate the risk of the most fundamental mistakes. In such cases, the contracts in question will not be *void ab initio* and will continue to be valid and subsisting.
- Intention of the parties as to subject matter or other factors of the contract is important in determining whether or not consent is nullified.
- If there is a complete difference in substance aggrieved party may seek to rescind contract.
- Approach of the Courts, as expressed by Lord Denning in Solle v Butcher: “since the fusion of law and equity... only those contract are now held void in which the mistake was such as to prevent the formation of any contract at all”, that is, the mistake must alter the substance of the contract to render it void.
- Will be rescinded if one party formed a mistaken belief because of a misrepresentation, that is, induced by mis-representation.