

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

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

MAY/JUNE 2011

LAW

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GENERAL COMMENTS

The performance on the CAPE Law examination showed improvements, but there is still room for much more growth. For 2011, 977 candidates did the examination in Unit 1 compared with 973 in 2010 and 792 in Unit 2 compared with 702 in 2010. Eighty-four per cent of the candidates who did Unit 1 obtained Grades I – IV while 88 per cent of those who did Unit 2 obtained similar grades. The overall mean for Unit 1 was 51.59 per cent and that for Unit 2 was 49.25.

The 2011 examinations for each unit consisted of the following papers:

- Paper 01 — Multiple-Choice items
- Paper 02 — Extended Response items
- Paper 03/1 — School-Based Assessment
- Paper 03/2 — the Alternative to the School-Based Assessment (administered for the first time this year).

DETAILED COMMENTS

Paper 01 – Multiple Choice

Paper 01 comprised 45 compulsory multiple-choice questions, 15 based on each module. This paper replaced the nine short-answer questions (three based on each module) used prior to 2010. This paper contributed 30 per cent of the overall examination score for a unit. This year, the mean on Paper 01 for both units 1 and 2 was 56 per cent.

UNIT 1 – PUBLIC LAW

Paper 02 – Extended Response

Paper 02 comprised six essay or problem-type questions (two based on each module). Candidates were required to answer a total of three questions, one on each module. This format replaced the previous one in which there was a compulsory question in Section A and nine questions (three based on each module) in Section B, where candidates were required to do three, one from each module. Paper 02 contributed 50 per cent to the examination for a unit. The mean for Unit 1 was 62.07 per cent and on Paper 02 it was 56.35.

Module 1 – Caribbean Legal Systems

Question 1

This question dealt with the classification of law, specifically how private and public law differ and required candidates to explain the advantages of classification in preparing a case.

This optional question was attempted by 40 per cent of the candidates. Thirty-three per cent of this number handled the question satisfactorily.

Part (a) was generally well done. For the most part, candidates whose responses were unsatisfactory confused aspects of public law with private law and vice versa or failed to identify and discuss three differences between public and private law.

Part (b) required a general discussion on the classification of law and application of the classification of law to the facts of a given issue.

Generally, candidates were able to identify at least one area of classification of law that was applicable to the case.

Very few candidates recognized the need for the general discussion as this was not specifically stated and those who did generally did not handle the area well. Although most candidates identified the aspects of classification that related to private law, very few of them were able to relate the application of classification to the facts in issue.

Many candidates failed to recognize the criminal law aspect of the question. Indeed, candidates contended that this was a matter between private individuals and so private and not public law applied. Some candidates discussed the applicability of contract law and the possibility that Mr Cheapskate may have a remedy in contract law for the damage to his shoes. Other candidates struggled to find a defence for the action of Mr Cheapskate. The defenses proffered included provocation, none of which was applicable here.

Candidates who did well on this question

- provided three distinct differences between public and private law and buttressed these with relevant examples, thereby attaining maximum marks for this response.
- noted two headings of classification of law which enabled them to attain maximum marks for that part of the question
- were able to provide a comprehensive discussion of three areas of classification, thereby attaining maximum marks
- identified the areas of law relevant to the facts in issue and were able to apply these to the issues identified.

Overall, although the responses could have been more coherent, candidates possessed knowledge of the subject area and applied this knowledge to their responses.

Question 2

For this question candidates were required to define the term *sources of law*, to provide examples, outline the importance of literary and historical sources and to justify the importance of the constitution to the development of law in the Commonwealth Caribbean. Sixty-seven per cent of the candidates attempted this question. Of this number, approximately 40 per cent gave satisfactory responses.

Part (a) (i) of the question was generally done well by candidates who were aware of the sources of law and their importance. In fact, candidates who got the highest scores in this module completed Question 2.

The following literary and historical sources of law were adequately discussed by candidates:

- Precedents
- Law journals
- Customs
- Constitution
- Bible
- Legislation

For Part (a) (ii), many candidates were not able to define *literary* instead they gave examples to explain their answers.

For the most part, all areas were discussed satisfactorily by candidates. However, while the Bible may have influenced certain laws, it is not a source of law relied on directly in the administration of justice.

In addition, too many candidates misinterpreted a question that invited a discussion on *literary sources of law* and wrote all they knew about 'literal interpretation'.

Part (b) was generally well done. Candidates were aware of the role and importance of the Constitution. They applied the cases well. Despite this however, candidates were not able to supply a definition of the concept Constitution; they simply cited the importance in order to establish a definition.

Candidates who did well on this question

- utilized the relevant information in order to provide a holistic response
- gave a full definition for the sources of law and supported their answers by providing examples of these sources
- outlined the importance of the literary and historical sources and provided two named examples
- defined the Constitution by describing the legal framework and discussing the validity of the law in relation to the Constitution. Candidates comprehensively evaluated three areas which referred to the importance of the Constitution. These responses were also supported by three cases which were well explained.

Overall, the responses were coherent, properly structured and indicated that the candidates were prepared.

Module 2: Principles of Public Law

Question 3

This question required candidates to, with reference to the constitution of a country of the Commonwealth Caribbean, discuss the doctrine of separation of powers. Approximately 80 per cent of candidates attempted this question. Of this number, just about 30 per cent gave satisfactory responses.

The majority of candidates were able to

- provide an acceptable definition of separation of powers
- identify the three arms of government
- identify the historical origins of the doctrine
- show an appreciation of the role of the doctrine in Caribbean Constitutions, and identified the connection with the Rule of Law, making particular reference to the relevant cases

For the most part unsatisfactory responses demonstrated candidates'

- confusion about the functions of the arms of government. Some candidates gave unnecessary detail of the composition of the arms
- incorrect application of the principle of constitutional supremacy, suggesting a clear lack of understanding of the principles of constitutional supremacy and separation of powers
- difficulty in properly characterizing the written and unwritten constitutions of the United States of America and Britain respectively, showing their importance to Commonwealth Caribbean Constitutions.

Question 4

This question required candidates to

- exhibit a basic understanding of the elements involved in the rights to a fair hearing as provided for in the Commonwealth Caribbean Constitutions
- show an appreciation of the procedural requirements necessary for public authorities to achieve fairness in decision making.

This question was attempted by 40 per cent of the candidates of which less than 10 per cent gave satisfactory responses.

In Part (a) most candidates were able to identify at least two elements of the right to a fair hearing.

In less than satisfactory responses, candidates gave answers that were relevant to Criminal Law and not Constitutional and Administrative Law.

In Part (b), the vast majority of candidates exhibited little understanding of the concept of *Legitimate Expectation* and were not able to site relevant case law. Most candidates tended to take a general common sense approach to answering this question.

Module 3: Criminal Law

Question 5

Candidates were required to give an explanation of the terms *transferred malice* and *mens rea of assault*. Additionally, the question tested candidates' uses of decided cases to show the difference between crimes of *basic intent* and crimes of *specific intent*. This question was attempted by approximately 70 per cent of the candidates with approximately 30 per cent of this amount giving satisfactory responses.

Responses show that, generally, candidates understood transferred malice and the cases which exemplify the related issues. However, some candidates demonstrated a misunderstanding of the concept of transferred malice indicating that it may also be applied to objects. For example, the case of *R v. Pembliton* was misused, that is, stone aimed at a person but missed person and hit a window.

In Part (a) (ii), most candidates were aware that the mens rea of assault include the intention to cause harm. However, candidates did not expound on the need for the victim to apprehend immediate unlawful violence which is an important element in the *mens rea* of assault.

A few candidates said assault is intent to kill/cause grievous bodily harm while others misunderstood the concept altogether, confusing assault with battery. For this question most case applications/illustrations were generally correct and appropriate. Very few candidates, however, mentioned that recklessness can suffice as *mens rea* for assault.

In Part 5 (b), quite a few candidates confused *basic* and *specific intent*, giving a basic intent definition for specific intent and vice versa. A large number of candidates were unclear as to which offences are classified as basic intent offences as opposed to specific intent offences. This was particularly so for cases of specific intent where rape and assault were too often cited as a specific intent offence.

Most candidates also had difficulty explaining basic intent crimes and many scripts stated that basic intent crimes do not require intention/mens rea. Even the candidates who recognized that intention was required did not understand that it was merely a lower level of intention that would constitute a crime of basic intent. Some candidates also wrote that basic intent crimes are those where the accused did not intend to cause serious harm, while others seemed to be saying that the resultant crime was an accident that is not foreseeable.

Most scripts were silent on the defense of intoxication and its relationship with the plea of mistake. Many candidates also considered non-violent crimes to be those of basic intent, such as theft, burglary, robbery, while violent crimes such as murder and rape were seen as specific intent crimes.

In many cases, candidates cited irrelevant negligence cases such as *Stone v. Dobinson* and *Adomako* to explain both basic and specific intent offences. The case of *Hill v. Baxter* was also very popular in explaining crimes of basic intent. This case falls under the defence of automatism and is totally unrelated to the issues raised by the question.

Specific intent was generally understood. Many candidates were clear that there needs to be an element of premeditation and a purposive element. However, as mentioned before, they oftentimes confused the offences thinking that rape, for example, is an offence where specific intent is required.

Model Answer

Question 5 (a) (i) Transferred Malice

The principle of transferred malice is considered in determining the mens rea of a crime. Essentially, this occurs where the accused intends to commit an offence against A, but misses his target and harms B instead. It is important that the mens rea and the actus reus coincide, although the victim was unintended. This principle is clearly illustrated in the case of *R v. Latimer* where the accused, after having an argument with O intended to hit with a belt. The belt rebounded hitting P, a bystander, injuring her severely. The accused was still convicted of unlawfully and maliciously wounding P.

It is important to note that the principle of transferred malice has limitations and will only operate when the *actus reus* and *mens rea* coincide. Therefore the case of *R v. Pembleton*, where the accused who was involved in flight missed his human target and broke a window, would not qualify as an appropriate illustration of the principle of transferred malice.

Mens rea of assault

The mens rea of assault may be defined as the intention to cause a person to apprehend immediate fear of unlawful violence. On the other hand, if a person is reckless in his actions resulting in another person's apprehension of immediate fear of unlawful violence, then this can suffice as the mens rea for assault. In the case of *Smith v. Chief Superintendent of Working Police Station*, the accused assaulted the victim by looking through her sitting room window at her in her night clothes with intent to frighten her.

Crimes of basic intent

Crimes of basic intent require a lower level of intention. In other words, the mens rea does not go beyond what is done, that is, the actus reus. Oftentimes, the element of recklessness is involved in crimes of basic intent. Crimes of basic intent include assault, battery, actual bodily harm and rape.

Persons who are charged with some basic intent offences sometimes offer a plea of mistake to negate mens rea. This may be an acceptable defence, if the mistake was not a result of voluntary intoxication. Voluntary or self-induced intoxication is not available to support a plea of mistake as these offences may be committed by recklessness.

The case of *DPP v. Majewski* confirmed that self induced intoxication negating mens rea is a defence to a crime requiring specific intent, but to no other charge. In *R v. Fotheringham*, the defendant in a drunken state had non-consensual intercourse with the 14-year-old babysitter mistaking her for his wife. This mistake as to the identity of the victim caused by his self-induced intoxication was no defence.

Crimes of specific intent

Specific intent crimes are those which require a higher level of intention. There must be a clear purpose for the crime, in that the accused sets out to do something, takes steps to do it and achieves the result or the probable consequence. Such offences include murder, theft, burglary and wounding with intent.

An example of specific intent can be seen in the case of *Attorney General's Reference No. 4* where the defendant pushed his girlfriend over a railing. Believing that she was dead, he dragged her upstairs by rope around her neck, cut her throat with a knife before cutting up her body and disposing of it. He was held liable for murder.

It can therefore be concluded that crimes of basic intent require a much lesser level of intention than crimes of specific intent. In some instances, recklessness suffices as mens rea for crimes of basic intent. In contrast, crimes of specific intent require a much higher level of intent. There is usually some premeditation and a purposive element.

Question 6

This question required candidates to demonstrate their understanding of the *thin-skull* or *egg-shell principle* by giving an explanation and applying it to show whether a client was criminally liable based on the principle and related cases. Sixty-nine per cent of candidates attempted this question. Of this number, 62 per cent obtained satisfactory grades.

In Part (a), candidates' responses demonstrated an awareness of the concept of *thin-skull*. They were able to give the correct illustrations but they were not able to provide a clear definition of the principle. Few candidates discussed *tort* although the question was clearly one of criminal law.

The responses from a number of candidates indicated that they did not understand either of the principles.

For the most part, the answers to Part (b) were opinionated and not premised in law. Candidates discussed irrelevant issues such as *mens rea* and *actus reus*, and 'the year and a day rule', while ignoring important issues like causation. They cited irrelevant cases like *R v. Smith* and *R v. Blaue* while other relevant cases such as *R v. Jordan* and *R v. Chesire* were not mentioned. Most candidates presented partial discussions of causation, *novus actus interveniens* and the 'but for' principle. Overall, there was poor application of the law to the question which led to no proper conclusion.

In analysing the situation which was presented, only a small number of candidates were able to identify the issue: namely liability turns on *what is the substantial cause of Ben's condition*. The issue of blameworthiness vs. causation being the substantial cause of death (Empress Carr's case was not discussed in all the scripts). Some candidates spoke about defence which was not being examined.

Model Answer

Question 6 (a)

"Thin-skull principle" or "egg-shell principle" in criminal liability

The *egg-shell* principle is a principle in law that the defendant should take the victim of his wrongdoing as he finds him. This principle is applied where the victim was suffering from a pre-existing weakness that exacerbated the injury which the defendant inflicted. Take for example, D shoots A who is a haemophilic and A bleeds to death; it is no defense to D that B who is not a haemophilic would have survived.

Although this principle was first developed in civil law, *R v. Blaue* [1975] 3 All ER 446 has established that in criminal law, the defendant must also take his victim as he finds him and this means the whole man, not just the physical man.

In *Blaue*, D stabbed A, a young girl and pierced her lung. She was told she would die if she did not have a blood transfusion. Being a Jehovah's Witness, she refused on religious grounds. She died from the bleeding caused by the wound. D was convicted of manslaughter and argued that V's refusal to have a blood transfusion was unreasonable and had broken the chain of causation. It was held that the judge had rightly instructed the jury that the wound was a cause of death.

The egg-shell principle is therefore important to criminal liability as part of causation. It counters the defendant's argument that the victim's conduct or pre-existing condition broke the chain of causation.

Question 6 (b)

Andy's criminal liability for Ben's death

The question of whether or not Andy can succeed turns to the important consideration of the substantial cause of Ben's death. This calls for a discussion of legal causation. The prosecution has the burden of proving that Andy's act of shooting Ben caused the result, namely Ben's death. To answer this question, the 'but for' test may be applied, that is, *but for* Andy shooting Ben, Ben's death would not have occurred. For Andy to escape liability on the basis of the *but for* test, the court would be asked to eliminate the fact that Andy shot Ben, and determine whether Ben's death would have occurred anyway.

It cannot be said that Ben would suffer a relapse had he not been shot by Andy, thus Ben's death would not have occurred if he had not been shot by Andy. It is next to be determined whether Ben's refusal to take blood transfusion on the basis of his beliefs in natural medicine was so unreasonable that it can be said to be an intervening act which broke the chain of causation so as to absolve Andy of any liability. This, in law, is known as the *novus actus interveniens* principle. On the authority of *R v. Blaue*, this does not appear to be the case.

It is trite law that a defendant must take his victim as he finds him, and according to Lawton J in *R v. Blaue*, this refers to the whole man, not just the physical man. Thus, by this principle, Andy must take Ben and his beliefs as he finds him. In *R v. Blaue*, a young girl who was stabbed by the defendant refused a blood transfusion on religious grounds although she was informed by medical personnel that this blood transfusion could save her life. The court held that the defendant was liable for manslaughter because the chain of causation was not broken.

In *R v. Jordan*, A stabbed B who was admitted to hospital and died eight days later. On appeal, the opinion evidence of two doctors was allowed to show that death had not been caused by the stab wound, but by the introduction of terramycin and other large quantities of liquid into B's system. A's conviction was quashed on the basis that had the jury heard this evidence they would not have been satisfied that the death was caused by the stab wound.

There was no such medical intervention in the case of Andy and Ben.

On the contrary, in the case of *R v. Cheshire*, the bullet wounds D inflicted upon V had ceased to be a threat to V's life at the time of his death, and evidence had clearly proven that V's death was caused by tracheotomy performed and negligently treated by the doctors which had narrowed his windpipe and caused asphyxiation. The Court of Appeal upheld D's conviction on the ground that D's action remained a significant cause of V's death.

In the instant case, it appears that Ben's death was substantially caused by Andy shooting him. In the final analysis, the authorities suggest that Andy is likely to be criminally liable, and it is no defence that Ben would have survived if he had opted to accept the blood transfusion. Andy must take Ben as he finds him, thus Andy is precluded from successfully arguing that Ben's refusal to accept the blood transfusion due to his beliefs will break the chain of causation.

Paper 031 – School-Based Assessment (SBA)

There were no changes in the requirements for the SBA, Paper 031. Students were required to write a research paper of 2000 – 2500 words, based on any topic from any module in the unit. Paper 031 contributed 20 per cent to the examination. The mean for Unit 1 was 41.61.

Paper 032 – Alternative to School-Based Assessment (SBA)

This year's examinations in Paper 032, Units 1 and 2, marked the first time for CAPE Law since its introduction over ten years ago. The performance was fair generally. The mean on this paper was 4.33.

Candidates were asked to answer the question with reference to a named Commonwealth Caribbean state and the fundamental rights provisions of the constitution of that state making reference to *Hinds v. R* and *Pratt and Morgan v. A.G.*, among other cases. Candidates failed however to answer the question to the desired standard given that examinable topics were known prior to the Paper 032 exam. A limited number of candidates sat this paper and the highest mark was 13 out of 30. Candidates failed to identify the constitution to which they referred. They demonstrated limited knowledge on the fundamental rights. Most candidates did not identify and discuss cases outside of *Hinds v. R* and *Pratt and Morgan v. A.G.* For those candidates who identified additional cases, they failed to apply it.

Unit 2 – PRIVATE LAW

Paper 02 – Extended Response

Module 1: Tort

Question 1

This question tested candidates' knowledge of negligence, contributory negligence and vicarious liability. Twenty-three per cent of the candidates did this question. Twenty-one per cent of the candidates who attempted this question gave satisfactory responses.

Many candidates failed to cite cases and those that were cited, were, in most instances, irrelevant. Candidates seemed confused about the differences between negligence and nuisance. Consequently, they cited cases that referred mostly to nuisance. Candidates failed to cite the *locus classicus* case, *Donoghue v. Stevenson* for negligence and that of *Bourhill v. Young*, both of which are important cases applicable to the question. In addition, candidates tended to ignore the negligence aspect of the question focusing primarily on vicarious liability.

The candidates also failed to define key terms/concepts. It is important to note that most of the candidates who attempted this question demonstrated a good understanding of the concept of vicarious liability.

For the contributory negligence defence, approximately 98 per cent of the candidates failed to cite a relevant case. Some candidates applied the facts of cases to incorrect case names. Additionally, some candidates fabricated facts for the cases named.

Overall, some of the responses were poorly organized. It was evident that candidates did not do a plan or outline of how they were going to answer the questions and as a result their essays were not coherent.

Question 2

This question tested candidates' knowledge of defamation, its elements, and the related defences. Of the approximately 77 per cent of the candidates who attempted this question, 55 per cent gave satisfactory responses.

Most of the candidates demonstrated a good understanding of the area that focused on the elements of defamation, including possible defences a defendant may raise. However, they were unable to answer the question illustrating all the relevant issues and/or concepts and cases. A few candidates failed to accurately make the distinction between libel and slander. Candidates stated the correct definition but applied it to the wrong type of defamation.

Candidates displayed a good knowledge of identifying a defence but some were weak in actually fully explaining the defence and most of them failed to cite a relevant case on this point.

Part (b) only required identifying and explaining one defence but many candidates identified several defences but failed to sufficiently explain only one defence and a relevant case to attain the maximum marks awarded for the section. Many candidates incorrectly applied qualified privilege and absolute privilege as possible defences to the situation.

Some of the candidates cited cases only for libel or only for slander without citing cases for both types. Some candidates applied the facts of cases to incorrect case names. Additionally some candidates made up facts for cases named.

Generally, most candidates who performed well were not able to attain marks between 20 and 25 as a result of failing to cite and comment on relevant cases.

Module 2: Law of ContractQuestion 3

This question required candidates to demonstrate their understanding of *consideration* by explaining the term and applying it to a given situation.

For part (a) most candidates were able to provide at least a basic definition of *consideration*. They spoke to the principle of *exchange* or *something for something* in defining the concept. Candidates were also able to identify the general principles pertaining to *consideration* and to cite relevant case law or strong examples to support their points. Most candidates who chose this question performed better on this part than on Part 3 (b).

There were, however, some weaknesses seen in candidates' responses. In many cases, they identified the different types of consideration to include executed and executory consideration, for which no marks were allocated. Some candidates equated 'contract' with 'consideration'. Further, a number of candidates defined consideration in the literal as opposed to legal sense. That is, it was defined as the period during which one 'considers', contemplates or thinks about the terms of the contract. Generally, the responses lacked structure and too many lacked substance.

Although marks are not allocated for grammar, candidates are required to pay more attention to grammar, spelling and the reduction of the use of informal language in their responses. A number of candidates spoke about consideration being part of a 'contract' or 'breach of contract'.

In Part (b), most of the respondents drew suitable conclusions, albeit based on incorrect reasoning. They were able to identify the social and domestic arrangement issue and the supporting case law and apply the principle to the facts of the scenario. Despite these strengths, however, most candidates were unable to explicitly identify the main principle of the question, that is, past consideration, and to identify the exceptions to past consideration. In many cases, candidates repeated the facts of the case in their answers.

Generally, the analysis of the question was poor. It was clear that the majority of candidates were unable to adequately formulate responses to scenario questions. The structure of most of the responses was not systematic, well-reasoned and logical.

Question 4

Candidates were required to use examples of decided cases to explain their understanding of *fraudulent* and *negligent misrepresentations*. They were also required to advise a client in a situation which involved misrepresentation.

For Part (a), most candidates were able to provide a definition and to cite a relevant case. Despite this, however, a number of them did not appreciate the difference in the state of mind element of fraudulent versus negligent misrepresentation. For the negligent misrepresentation, some candidates discussed duty of care, breach of duty etc. instead of what was required by the question. None of the candidates mentioned that it was actionable as a tort.

Generally, the level of analysis in Part (b) was fairly good. The majority of candidates was able to identify and discuss the legal principles and issues relevant to the question. Most of the candidates arrived at the correct conclusion and supported the conclusion with case law. They were also able to speak to the remedies available — damages and rescission.

In a minority of cases, candidates failed to respond to the question in a logical and sequential manner, that is, clearly identifying the issues, explaining the relevant law, then applying the law to the facts etc.

A number of candidates said that Nicole failed to do her due diligence and was therefore culpable in some way. They referred to this as Nicole's negligent misrepresentation or contributory negligence.

Question 5

Candidates were required to identify the five remedies available to a mortgagee given that the mortgagor was six months in arrears in payments. These are the *right to sue on the personal covenant*, *to enter into possession*, *to appoint a receiver*, *to exercise the power of sale and to foreclose*. Two hundred and fifty-four candidates or 32 per cent of candidates attempted this question.

Most candidates provided few or no cases as required and the few who indicated a case were unable to either apply it to the facts or outline the principles of law emanating therefrom. Oftentimes, these candidates did not explain the few rights that they identified in detail. Candidates may have identified definitions of some of the relevant terms, but did not necessarily elaborate.

A significant number of the candidates overemphasized the rights of the mortgagors and consequently failed to answer the question which specifically asked for the remedies available to the mortgagee. Most candidates were however, able to properly define key terms in the question, such as *mortgage*, *mortgagee* and *mortgagor* or at least explain their nature.

Generally, candidates failed to explain that the right to possession did not arise as a result of the default of the mortgagor. Candidates failed to recognize at what point the mortgagee can exercise these remedies. Some candidates also mistook the right to foreclosure with that of forfeiture. Likewise, many of them were incorrectly of the view that seizure of the mortgagor's chattel/property (distress) was a remedy available to the mortgagee.

Overall, most candidates did not know how to manage their time effectively given the allocation of marks. Many candidates failed to proportionately allocate time for each remedy.

Question 6

This question required that candidates distinguish between *tenancy-for-life* and *tenancy-at-will* by providing examples from decided cases, and apply this knowledge to advise a client with a related issue. Sixty-seven per cent of candidates attempted this item. Of this amount, 28 per cent provided satisfactory responses.

For Part (a), the more acceptable responses gave clear definitions of the concepts as well as two or three points mentioning and explaining a case which distinguished the concepts, or a case that, in some way, elaborated on it.

Most candidates made no reference to any case although the question required it. Other candidates mentioned cases which were either inappropriate or inapplicable and so could not have received the designated marks. Unfortunately, of the candidates who mentioned a case, many of them neither identified the name of the case nor elaborated on its relevance.

While many candidates were able to give the definition and elaborate on *tenancy-for-life*, possibly intuitively, most of them were incorrect on *tenancy-at-will*, stating that the tenancy was derived from a will or such document.

Another notable trend was the use of X & Y or A, B, & C to explain, describe or illustrate the concepts of *tenancy-for-life* and *tenancy-at-will*.

Candidates did better on Part (b) than on Part (a). Many of them, however, wasted time restating the facts of the question, instead of providing a solid analysis and applying the relevant law to the facts.

Most candidates had sufficient appreciation of the concept of *joint tenancy* and its elements, as well as the concept of *tenancy in common*. Many candidates used an introductory paragraph, giving far more information than was required, thereby failing to substantially deal with the pertinent issues, such as *equitable interest*, *licensee* and the *effect of the death of one of the joint tenants* and the *notice to quit* on John.

Candidates frequently confused legal and equitable rights, stating that John had legal rights because of the length of time he lived on the property. Where equitable rights were discussed, it was again because of the duration of John's residence and not an association with contribution to activities at the house, such as repairs and the payment of taxes etc. Many candidates also did not recognize that where they identified a licensee relationship, such an entitlement would end upon the death of Mrs Smith.

Some candidates mistakenly intimated that Claudette and Jeanette were Angela Smith's only children and frequently assumed he was the son of one or the other and continued to use this reasoning in their analyses, without the recognition of alternate positions. In too many cases candidates incorrectly asserted that John will get an easement, *John is a squatter* and *John is a joint tenant with Claudette*.

Paper 031 – School-Based Assessment (SBA)

There were no changes in the requirements for the SBA, Paper 03/1. Students were required to write a research paper of 2000 – 2500 words, based on any topic from any module in the unit. Paper 03 contributed 20 per cent to the examination for a unit. The mean was 40.12.

Paper 032 – Alternative to School-Based Assessment

This year's examinations in Paper 032, Unit 1 and 2, marked the first time for CAPE Law since its introduction just over ten years ago. The performance was fair, generally. The mean was 8.81.

Candidates were asked to answer one question comprising two parts, Part (a) and Part (b). The first concerned discussion pertaining to a contractual term with reference to a decided case. The second concerned application of the law to a fact situation. As with Public Law, candidates failed to answer the question to the desired standard, given that topics were known prior to the examination. The highest mark was 26 out of 30.

In Part (a), candidates failed to differentiate between statements that were terms and statements that were mere representation. They did not recognize the area of law being tested and those who did, failed to adequately elaborate on the test of *timing of statement* to determine whether a statement is a term or representation. Frequently, relevant cases were not cited or discussed.

For Part (b), students were unable to use the test to determine whether the statement was a term or representation. The tests would be *timing of statement*, *importance of statement*, *special knowledge or skills* and *reduction of terms*. Most candidates failed to classify terms, for example *implied* and *express* terms and *conditions* and *warranties*. Most candidates failed to discuss and identify relevant cases.

It is worth noting that candidates' responses continue to show weaknesses in the areas of analysis and application. To help students to improve their analytical skills, teachers are encouraged to use the suggested stimuli which appear in the syllabus such as debates and critiques. In this way, students will become accustomed to the language of the discipline which is intrinsic to a better application of the information they have gathered and to presenting improved answers.

RECOMMENDATIONS

Candidates

- Candidates should bear the following guidelines in mind when answering questions, not only for the examinations, but also when preparing their assignments and as a general practice. Success is guaranteed from following these steps:
 - Candidates must follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b)
 - Candidates must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial
 - Candidates are encouraged to use the following format (summarized as IRAC) when answering problem-type questions.

- I - issue (identification)
 - R - rule of law (refer to)
 - A - application of law to facts
 - C - conclusion
- The conclusion should relate to the problem and should not be the candidate's fanciful construction bearing no relation to the facts, or simply rewriting the facts.
 - Candidates must support their responses with legal authority, namely:
 - (i) Case Law
 - (ii) Statute
 - (iii) Legal writers
 - Candidates must deal with issues and applicable law, refraining from restating the question, except in so far as a principle of law relates to stated facts. They should strive to answer questions precisely.
 - Candidates need to be more familiar with definitions of terms and concepts, and should offer definitions of terms as appropriate.
 - Candidates are reminded to read the syllabus carefully to identify what is required for these examinations. In so doing, they should be able to maximize the benefits and opportunities afforded them in having advanced knowledge of the module to be examined. Constant practice in answering questions should assist greatly in developing their ability to analyze and synthesize.
 - It is imperative that candidates develop a good writing style which can be fostered by reading legal texts and writings.
 - Candidates are cautioned to pay keen attention to key instruction words in the question. Words such as *distinguish* and directional phrases such as *with the use of decided case(s)* provide guidelines about what to do and how to structure their responses.
 - Candidates must show greater care in complying with the instructions given. Candidates and teachers are reminded of the following:
 - Candidates are to write on both sides of the paper and to start each answer on a new page' as instructed on the answer booklet.
 - Questions attempted are to be noted, in order of response, on the cover page of scripts.
 - Each candidate's number and centre number are to be recorded in the space provided on the cover page, and throughout the answer booklet, where required.
 - Where applicable or required, the jurisdiction to which a particular area of law applies must be identified. (Note, especially, those questions that require reference to *a named Commonwealth Caribbean state*.)

- With respect to internal assessments:
 - Candidates' names recorded on the assignments and internal assessment forms must be consistent with the names at registration. Careful note must be taken of syllabus requirements to ensure compliance.
- Candidates are advised to manage the examination time wisely. Too often they shortchanged themselves by writing long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.

General and Specific Recommendations to Teachers

- Greater emphasis should be placed on teaching the principles which emerge from the cases rather than having students restate the facts of cases which are often unnecessary and time-consuming.
- Teachers have to be careful not to disregard the relevance of decided cases in their use of local or domestic illustrations with students.
- Generally, the responses to scenario questions were not structured well. Teachers ought to place significant emphasis on teaching candidates how to properly analyse and respond to scenario questions. They should also provide adequate opportunities for students to continuously practice answering these questions.
- A number of students were unable to properly utilize the relevant principles from the stated cases to support their points. The tendency was for students to state and explain the case, but not clearly link the principle derived from the cases to the scenario or general question being asked. Emphasis should be placed on assisting students with analysing and deriving the relevant law from cases and effectively using the law to solve the legal problems.
- All students should be advised as to the importance of stating the principles enunciated in the cases cited and to appropriately apply the said principles to the relevant facts. This demonstrates to examiners a thorough understanding of the concept being tested. Therefore a student, who remembered the name of the case and not the principles of law therein, received less marks than those who illustrated the principles of the case without citing the name of the case. Most students provided few or no cases as required, and the few students who indicated a case were unable to either apply it to the facts or outline the principles of law emanating therefrom.
- While it is recommended that when students brief cases in their preparation for exams, they should pay attention to the facts, they are advised not to restate the facts, as time does not permit same, in exams.