

**CARIBBEAN EXAMINATIONS COUNCIL**

**REPORT ON CANDIDATES' WORK IN THE  
CARIBBEAN ADVANCED PROFICIENCY EXAMINATION  
MAY/JUNE 2009**

**LAW**

**LAW****CARIBBEAN ADVANCED PROFICIENCY EXAMINATION****MAY/JUNE 2009****INTRODUCTION**

As with previous examinations, the 2009 examination was designed to provide a comprehensive test of candidates' knowledge and skills in relation to the syllabus. Some candidates achieved this end. However, there continues to be a large number of underperforming candidates and so once again, some past observations have had to be repeated, in the hope that candidates in 2010 will learn from the mistakes of their predecessors.

Questions were formulated to test candidates' abilities to:

- (i) Recall, select and apply appropriate legal principles, concepts and theories.
- (ii) Solve simulated problems.
- (iii) Analyse a body of information by identifying relevant legal issues and presenting answers supported by case law, statute and learned opinions, where applicable.

The 2009 examination consisted of three papers, Papers 01, 02 and 03, each based on three Modules, Module 1, Module 2 and Module 3.

Paper 01 consisted of nine compulsory short-answer (structured response) questions, three based on each Module. For each question, candidates could earn a maximum of ten marks. Paper 01 contributed thirty per cent to the examination.

Paper 02 was divided into Sections A and B. Section A consisted of one compulsory question based on the three Modules. This question was worth thirty marks, with ten marks allocated to each Module. Section B consisted of nine problem-type or essay questions, three based on each Module. Candidates were required to answer three questions, one from each Module. Each question was allocated a maximum of twenty-five marks. This paper contributed fifty per cent to the examination.

Paper 03 (the Internal Assessment) consisted of a research paper of 2000 - 2500 words, based on any topic in any Module. This paper contributed twenty per cent to the examination.

**The revised syllabus, CXC A23/U2/09, will be examined from May/June 2010. Paper 01 will comprise forty-five compulsory multiple-choice items, fifteen based on each Module. Paper 02 will comprise six extended-response questions, two based on each Module. Candidates will be required to answer one question from each Module.**

**GENERAL COMMENTS**

As has been stated in the past, candidates are encouraged to follow the instructions given and to ensure that they prepare diligently for the examinations, in order to realise their full potential. The shortcomings continue and so the general comments which applied previously still apply, although it was evident from the scripts that increasingly, more candidates approached the examination with the desired level of application.

Too many candidates failed to demonstrate a clear understanding of fundamental legal principles. This led to a misapplication of these principles, to irrelevant examples and fictional cases or to no case at all being cited. It was evident that some candidates did not prepare themselves adequately. In a few instances, such candidates demonstrated very little acquaintance with basic concepts and principles.

Some candidates did not answer the questions in a systematic manner consistent with the structure of the questions. Thus many responses lacked coherence and were sometimes irrelevant.

Candidates are advised to manage the examination time wisely. Too often they shortchanged themselves by writing long responses to their first and second questions and then either not completing questions attempted towards the end of the paper, or making half-hearted attempts at such responses.

It is imperative that candidates develop a good writing style fostered by reading legal texts and writings. They must show greater care in complying with the instructions given. Candidates and instructors are reminded of the following:

1. Candidates are to “write on both sides of the paper and start each answer on a new page” as instructed on the answer booklet.
2. Questions attempted are to be noted, in order of responses, on the cover page of scripts.
3. 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”).

1. With respect to Internal Assessments:

- (a) Candidates’ names recorded on the assignments and Internal Assessments forms must be consistent with the names at registration.
- (b) Comments and marks by instructors are to be erased before Internal Assessments are submitted as samples.
- (c) Careful note must be taken of syllabus requirements to ensure compliance.

The following are repeated in the hope that they will help candidates to respond to questions appropriately:

1. Candidates must follow instructions. Responses should not be merged, for example, Part (a) must be answered separately from Part (b).
2. Candidates must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial.
3. Candidates are encouraged to use the following format (summarised as IRAC) when answering problem-type questions.

- I - issue (identification)
- R - rule of law (refer to)
- A - application of law to facts
- C - conclusion

4. 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.
5. Candidates must support their responses with legal authority, namely:
  - Case Law
  - Statute
  - Legal writers
6. Candidates must deal with issues and applicable law, refraining from restating the question, except in so far as a principle of law relates to stated facts. Instead, candidates should strive to answer the questions precisely.
7. Candidates need to be more familiar with definitions of terms and concepts, and should offer definitions of terms as appropriate.

Some candidates did well in essay questions. These candidates articulated the legal principles, applied relevant statutes and case law and gave an exemplary display of their analytical abilities. Mediocre and poor responses were due largely to candidates' not addressing the question or being far too general or vague. Many candidates had great difficulty with responses that required evaluation or assessment. It would seem that candidates would benefit from more practice in answering essay items and past examination questions under examination conditions in order for them to develop their legal writing skills in an examination. It should follow that when their essay skills have been developed, short-answer items should pose little challenge to them.

Even though some concepts are tested repeatedly, many candidates often fail to earn good grades for their responses. There can be no substitute for serious study and much time must be spent in application and synthesis in order to produce clear, concise and analytical responses, well supported by case, statutes or other relevant sources and authorities. A few candidates used neon-coloured highlighters to underscore particular areas of their scripts; this practice should be reserved for study activities and should not be part of examination submissions.

## **DETAILED COMMENTS**

### **UNIT 1**

#### **Paper 01**

#### **Module 1: Caribbean Legal Systems**

##### Question 1

Candidates were tested on "natural law" and "positive law" and were expected to demonstrate an understanding of each area of law, clearly defining each one and highlighting their main features.

A number of candidates fulfilled the required expectations in a general way, but most were unable to identify specific examples, especially in the context of their own jurisdictions. There were some good answers in which candidates contextualised their responses, thereby indicating that they understood the relation between positive law and natural law as they relate to Commonwealth Caribbean jurisprudence.

### Question 2

This question tested candidates on two areas of Alternative Disputes Resolution (ADR) namely (i) arbitration and (ii) mediation. This question was fairly well done in relation to Part (ii), mediation, but answers to Part (i), arbitration, were generally weak.

### Question 3

The majority of candidates appeared not to have been very familiar with this most significant, and elementary concept, the classification of law. Hence, they failed to identify the main ways in which law may be classified, namely:

- (1) Subject matter (for example, family, tort, criminal)
- (2) Function (for example, substantive, procedural, civil, criminal, international)
- (3) Concept (for example, private, public, constitutional)
- (4) Source (for example, common law, statute)

Candidates were also expected to indicate that classification facilitates research, as one is able to do one's research much more easily, once the particular classification has been determined.

In Part (b) of the question, candidates were expected to show how the aggrieved person, the complainant, could seek legal redress under both public law (criminal) and private law (contract). Consequently, candidates were expected to identify the remedies available (and some did) such as, Damages, Injunction and Costs.

## **Module 2: Principles of Public Law**

### Question 4

This question was poorly done with the vast majority of candidates failing to earn more than four of the available ten marks. The first part of the question, which required candidates to state two prerogative orders, accounted for most of the incorrect responses or no response; only a small number of the candidates scored eight to ten marks for this part of the question. Many of the incorrect responses discussed the Governor General's prerogative of mercy and it was evident that although candidates demonstrated knowledge of judicial review and remedies/orders of the court, they were generally unaware of their meanings. Also, candidates were unaware of which of these are prerogative orders.

### Question 5

Candidates demonstrated a general weakness in the application of relevant cases to substantiate their answers in this and other public law questions. Whereas the ill-prepared candidates offered no decided cases to support their answers, others offered Pratt v. Morgan or Hinds as a panacea for every given fact situation. However, it was evident that most candidates were familiar with these cases, even if the references to them were sometimes misdirected.

Candidates demonstrated an acceptable level of knowledge with respect to the concept of the Rule of Law and the power of the courts in protecting citizens' constitutional rights.

Generally speaking, candidates applied relevant cases as required in the second part of the question. Of those candidates who failed to earn at least five marks, the majority did not attempt the first part of the question which required an explanation of the Rule of Law.

#### Question 6

A significant observation was that a fairly large number of candidates writing the examination did not offer a response to this entire question. The performance among those who attempted the question was below the required standard.

Most of the candidates discussed natural law rather than natural justice, seeming to have confused the two terms.

### **Module 3: Criminal Law**

#### Question 7

This question tested candidates on some defences which are available in criminal law, specifically, Necessity, Diminished Responsibility, Duress and Mistake.

Most candidates simply either did not have the required knowledge of, or did not understand, the defences.

There were a few good answers but the responses were generally poor. A vast majority of the candidates had absolutely no idea or knowledge of how mistake operates as a defence in the criminal law, or even that it was an acceptable and recognized defence. Consequently, most answers were unforensic in approach, being general comments or mistaken beliefs, displaying little or no awareness of a well-developed defence, with cases in support such as:

- R v Richardson Orwin U (consent to horseplay)
- R v Kimber (mistake negating mens rea)
- R v Lee (mistake of law)
- R v M'Naghten (defect of reason)

#### Question 8

This question tested candidates on the law of burglary. The candidates had a fair knowledge of the topic. The majority of them were able to define burglary but unfortunately many of them did not identify the appropriate legislation.

For Part (b) of the question, many candidates were able to properly analyse the facts and determine Jamie's liability. However, they were not able to identify and utilise effectively any cases in the response and this negatively impacted on the quality of their response.

#### Question 9

The candidates' understanding of the law regarding inchoate offences was tested. Many candidates presented good responses to the question.

They provided complete definitions for an inchoate offence, identified appropriate examples and properly applied the legal principles to give appropriate responses to Part (b) of the question.

## UNIT 1

### Paper 02

#### Question 1

This question was divided into Parts (a), (b) and (c). Part (a) was based on Module 1, Caribbean Legal systems. Candidates were expected to show the relationship between common law and equity by pointing out their similarities and differences and the effect of the fusion.

Approximately ninety per cent of the candidates understood the features of both common law and equity. However, a few of them failed to point out the relationship which exists between these two sources of law. In cases where the candidates mentioned a relationship between common law and equity, they did not elaborate on the point mentioned. The general response to the issue of the relationship between common law and equity was that “common law and equity work hand in hand to ensure justice and fairness in the society”.

Of note too was that some candidates used recent examples and cases to illustrate the differences between common law and equity such as the cases of Stockert v Geddes; Errington v Errington and Dudley v Dudley.

On the other hand, some candidates had misconceptions about what was required as a response to this section of the question. For example, they wrote about the common law in relation to common law marriages; that the common law gave harsher sentences and lessened the penalties; and equity means equality and fundamental rights. Few candidates stated that common law was based on precedent while equity was not based on precedent. There were a few who mentioned equitable maxims.

The result then was that most candidates received a score of seven or eight marks out of a maximum of ten marks. About two per cent of the candidates received perfect scores for this section of the question.

Part (b) was based on Module 2, Public Law. This question required candidates to identify the source of power of the High Court, the section of the named Constitution which gives right of redress to the average citizen whose fundamental rights have been, are being or are about to be infringed and to cite relevant cases or illustrations. For this part of the question, approximately five per cent of the candidates were able to cite the Constitution as the source of power for the High Court in a named Commonwealth Caribbean jurisdiction as well as quote the section of various Constitutions that contained the fundamental rights. Additionally a few of the candidates were able to answer the second part of the question which required them to address the issue of separation of powers and a substantial number of them referred to the case of Hinds v R or any other relevant case.

A large number of candidates, however, failed to answer this part of the question.

Noticeable, too, was that most candidates did not follow the instructions to respond to this question and wrote the response as a single essay. Furthermore, in cases where some candidates answered the question in parts they confused the cases that applied for Part (i) with those for Part (ii).

Some candidates who responded to this question stated that judicial review is a source of law. Other sources mentioned in the responses were the Governor General, the Chief Justice, the Privy Council and the Supreme Court.

Another misconception seen in the responses was that a few candidates wrote about the rules of statutory interpretation.

It should be noted that very few candidates indicated the inherent jurisdiction of the High Court in their responses.

Generally, candidates seemed not to have understood what was required in the responses to the question. The scores in this section ranged from very low to just acceptable, in the majority of cases.

Part (c) was based on Module 3, Criminal Law. Candidates were expected to demonstrate an understanding of each type of manslaughter and its legal effect, as evidenced in decided cases. Approximately ninety-five per cent of the candidates who attempted this question were able to give adequate responses. For example, they were able to differentiate between voluntary and involuntary manslaughter. Almost all the candidates knew that involuntary manslaughter does not require *mens rea*. They were also able to cite relevant cases such as R v Duffus, R v Church, R v Adomako or use other relevant examples or illustrations to support the distinctions.

In some cases, candidates confused the definitions for voluntary and involuntary manslaughter.

This was the best area of performance for the question.

## **Section B**

### **Module 1: Caribbean Legal Systems**

#### Question 2

This question required candidates to show how the principle of '*stare decisis*' is intrinsic to an understanding of the doctrine of judicial precedent. In the better papers, candidates were able to do so, relying on cases to support their answers, but there were not enough of such answers. Too many candidates were unable to achieve the required standard, with some seeming not to have understood the seminal concepts of 'judicial precedent' and '*stare decisis*'.

#### Question 3

Many candidates were unable to identify the rules of interpretation and so were unable to answer the question well. Having set out on a weak footing, they were unable to assess the various presumptions which are applicable and how judges use these as aids to the interpretation of statutes. There were some good and excellent answers, demonstrating that with preparation, candidates could succeed even in a question such as this which required application and analysis.

#### Question 4

It was surprising that so few candidates were able to answer this question well as the role of the Ombudsman is so critical as a public office. Some candidates demonstrated excellent knowledge of the role of the Ombudsman and critically assessed the effectiveness of the office in affording members of the public an easily accessible fountain of justice.

It was in the area of critical analysis of the effectiveness of the office that most candidates failed to do well.

## **Module 2: Public Law**

### Question 5

The responses showed that although candidates had knowledge of the arms of Government, there was some confusion with the Rule of Law and Separation of Powers. A large number of candidates simply stated the duties of two or three of the arms of government rather than answering the question posed in Part (b). There was inadequate discussion on the concept of the Rule of Law, particularly with respect to the historical perspective and views of eminent theorists. Most candidates who addressed the subject of the Rule of Law dealt with the concepts of no one being above the law and the exercise of state power according to law. The use of decided cases was generally inadequate.

### Question 6

This question was poorly done, with many candidates earning under five (twenty per cent of twenty-five marks). Generally, there was a weakness in the candidate's application of their knowledge of public law remedies to given fact situations.

### Question 7

As in the previous question, candidates were expected to examine what is proper on the part of public officers in the performance of their duties. They would thus be required to discuss judicial review of administrative action, how and when available, and to choose from among any of the wide body of cases which are available, in support of their answers. Had Phillip been deprived of a fair hearing? Are there circumstances when the Courts will strike down a statutory provision on the ground that it is unconstitutional?

(See Hinds v R). Here candidates could have considered the remedies of injunction and declaration.

## **Module 3: Criminal Law**

### Question 8

This question tested candidates' understanding of the defence of provocation. They were expected to explain the circumstances in which provocation can be used as a defence using applicable cases to aid the analysis.

A large number of the candidates attempted this question and most had a general understanding of what the defence means and the circumstances in which it can be successfully raised as a defence.

Many of the candidates were able to identify the seminal case of R v Duffus which defines provocation.

Only a few candidates were able to give a complete definition, many were able to give at least a partial definition. There were some candidates who gave a literal, 'street' definition of the word, instead of the legal application as a defence.

Many candidates were able to identify circumstances in which provocation can be raised as a defence as well as applicable cases. Some candidates were even able to recall the facts in the cases and used the information admirably.

However, the application of legal principles and analysis of the cases were particularly weak. Hence, many candidates could only earn just satisfactory or low marks.

Question 9

This question tested candidates' understanding of the theories of sentencing especially as it relates to the treatment of young offenders. Many candidates were able to identify methods of sentencing and they had a clear understanding of what applies in the case of young offenders. However, many of them did not really know the theories of sentencing and consequently were not able to analyse them, having been able to make only general comments, most of which were sociological and bore little or no relationship to the legal context and analysis as was required.

The question was not a popular one and was attempted by only a small number of candidates.

Question 10

This question tested candidates' understanding of the law regarding assault and rape, including 'marital rape'. Approximately seventy per cent of the candidates attempted this question.

The majority of candidates produced good responses to Part (a) of the question. They were able to fully or partially define rape and assault, use applicable cases to analyse the facts and properly advise the accused of his liability.

There were too many candidates who did not know the law applicable to 'marital rape'. Some were able to identify the case of R v R and even to state some of the facts but they did not extrapolate the legal principles. A few candidates properly recognised that in some jurisdictions there are statutory provisions which provide that a man can indeed rape his wife. However, they were not able to identify any such jurisdiction. Most candidates, therefore, simply gave their personal views on the issue.

**UNIT 2****Paper 01****Module 1: Tort**Question 1

There were a few good responses to this question, but the majority of candidates performed less than adequately.

Candidates who chose to explain the 'thin skull' and the 'but for' test exhibited the most difficulties in producing adequate answers when compared with the other concepts.

Few candidates wrote on the '*scienter action*'. Generally, a limited knowledge of the law relating to animals was demonstrated.

A reasonable number of candidates failed to use relevant cases and when cases were used they were sometimes irrelevant.

Question 2

This question was generally poorly done. Most candidates failed to identify and explain the tests used for distinguishing an independent contractor from an employee.

Candidates failed to identify the area of vicarious liability and often demonstrated limited analytical skills.

Question 3

A reasonable number of candidates did well on this question yet some showed no knowledge of concept of trespass to the person and confused it with trespass to property.

Those candidates who distinguished between tortious liability and criminal liability performed better than those who distinguished between tortious liability and contractual liability.

Most candidates understood the difference between assault and battery and understood false imprisonment, citing case law in a number of instances.

**Module 2: Contract**Question 4

Candidates generally were at a loss as to the import of the question and construed it as requiring either a discussion of privity of contract, capacity, or the discussion of the elements for a binding contract. Mention of case law was, by and large, lacking.

With few exceptions, the discussion and appreciation of the principles in Pinnel's Case left much to be desired. Consequently, candidates mostly meandered without addressing the pertinent issues.

Question 5

While many candidates demonstrated some familiarity with illegality, several of them confused capacity and the elements needed for a binding contract, namely offer, acceptance and consideration and regarded a contract lacking these elements to be an illegal contract.

Mention of the case law was better, however, it was rare to find a candidate who mentioned the various features, which would render a contract illegal and who would cite any other case other than Pearce v Brooks.

Question 6

This question, on the whole, seemed to have been misinterpreted and comments as mentioned for Questions 4 and 5 apply equally here.

**Module 3: Property**Question 7

Candidates did not perform well on this question, for the most part, leading to the conclusion that many of them were not familiar with the processes involved in the recovery of possession of property by a landlord. Many of them also did not understand the concept of 'distress' and failed to make the point that it is not applicable in all jurisdictions. Some candidates gave the term a literal interpretation, bearing no relation to law.

Question 8

This question was well answered and the majority of candidates who did well on it received high scores.

Many candidates could directly identify the two tests but others could only identify that the main issue in fixtures is whether the item is a fixture or a chattel.

Candidates did well in deciding whether items were chattels or fixtures, but many seemed to have been unsure as to how ‘paintings’ were to be classified.

### Question 9

In Part (a), candidates were expected to distinguish between ‘legal interest’ and ‘equitable interest’. In Part (b), they were expected to show how Sam could secure his equitable interest in the property for which he had made a down-payment. The question seemed to have been challenging for the majority of candidates, particularly with respect to the equitable interest.

## UNIT 2

### Paper 02

#### Section A

#### Question 1

This compulsory question tested candidates in all three modules of the Unit. Responses were generally weak. Excellent and good answers were those in which candidates dealt with each section separately, answering precisely and aptly, with appropriate use of decided cases.

Part (a) was based on Tort and required candidates to discuss two defences, justification and absolute privilege.

Only a few candidates were able to explain satisfactorily how these defences affected a defendant in a claim against him/her for defamation. Good candidates were able to identify decided cases relevant to the area of law. Cases cited in respect of justification included Alexander v North Eastern Railway Co., Cookson v Harewood and Brewster v Trinidad Publishing Co. Ltd.; while for absolute privilege the principal case was Bodden v Brandon.

Some candidates confused absolute privilege with justification. Others failed to illustrate a realization that malice had no relevance to either of the defences and often mistook qualified privilege with absolute privilege.

Part (b) was based on Contract and focused on the issues of intention to create legal relations, consideration being of some ‘value’ or ‘benefit’ and sufficiency versus adequacy of consideration. Proficient candidates were able to identify succinctly the issues, apply the law to the facts of the problem and conclude appropriately.

Many candidates addressed the issue of Ken’s age which bore no relevance to the point at hand as Ken was already eighteen years of age at the time of the agreement. A large number of candidates inappropriately used a case of Carlill v Carbolic Smoke Ball Co. They incorrectly identified the issue as ‘offer and acceptance’, instead of ‘intention to create legal relations’, and ‘consideration’.

Generally, candidates were limited in their ability to identify cases that would address the issue of social and domestic relations and the courts’ approach to transaction in those circumstances. Relevant cases included Balfour, Hamer v Sidway, Merritt v Merritt, Parker v Clark, and Snelling v John G Snelling. For consideration issues, cases on point were Chappell & Co. v Nestle, Thomas v Thomas and White v Bluett.

Part (c) focused on Property. Several candidates appeared not to understand the doctrine of waste. Some candidates confused the reference to life tenant with tenancies (that is, as relates to landlord generally), while others discussed all the waste concepts without applying this knowledge to the factual issues in the question before them. However, there were some good answers in which candidates appeared to be very knowledgeable about the different types of waste and about the duties of the life tenant.

## **Section B**

### **Module1: Tort**

#### Question 2

Some candidates exhibited difficulties in identifying the area of occupiers' liability. In most cases, the use of cases was limited.

In many instances, candidates failed to show the duty of care owed to children as likely trespassers and therefore omitted to take cognizance that Walter was ten years old.

The definition of germane words such as 'trespasser' was lacking in most answers.

In many cases, candidates did not exhibit knowledge of relevant statutory provision. Candidates even imparted their own facts into the question, thus failing to adequately answer the question asked.

Others repeated the facts given in the situation and took too much time to address irrelevant issues.

#### Question 3

This question was not a popular one and candidates who answered it failed to do so adequately.

Some candidates had difficulties in determining whether there was a special relationship between Rapster and Mrs. Parson.

It appeared that candidates did not know what constitutes special relationship and which persons are capable of giving advice on what issues. In addition, there was limited use of relevant cases.

Some candidates also failed to identify that the question required them to discuss liability for statements and negligent mis-statements but presented an essay on the types of misrepresentation without any practical application to the fact situation which was given.

Some candidates who used Hedley Byrne v Heller failed in some cases to explain the case fully. They did not mention the disclaimer that was crucial to that case, and its application to the facts before them.

#### Question 4

For Part (a), some candidates wrote about negligence in general.

There was reasonable use of the Wagon Mound case, but in some instances it was not fully explained and applied as required.

For Part (b), some candidates answered with long narratives on negligence without dealing with the applicable and essential principles. For example, a reasonable number of candidates failed to speak about the 'egg shell' principle and those who did, did so inadequately.

There was limited use of relevant cases and again, some candidates imported their own or repeated the facts, unnecessarily.

## **Module 2: Contract**

### Question 5

This question was a popular one and candidates had little difficulty in defining ‘express terms’. However, they frequently omitted references to the difference in remedies awarded for express terms as opposed to the differences in remedies for mere representations.

Responses generally lacked references to case law, but candidates were able to provide satisfactory examples to explain the meaning of ‘express terms’ and ‘mere representation’.

When asked to name two express terms and give examples of their operation [in (a) (ii)] the majority of candidates furnished excellent examples. Cases cited were appropriately used regarding the discussion of conditions and warranties. However, there was paucity in the number of responses for the section, which made any reference to ‘innominate terms’.

Candidates’ responses to Part (b) were poor. Many candidates misinterpreted the question and discussed the elements of a contract rather than the relevant factors in determining whether an assessment during negotiation becomes a term of the contract.

These factors are “special knowledge, importance to the promise, prevention from verifying the truth and time of the assertion”. The majority of the candidates dealt with special knowledge and importance to the promise, but few candidates mentioned time of assertion and even fewer mentioned the issue of prevention from verifying the truth. In the better answers, there was generally a fair use of the case law to support answers.

### Question 6

Candidates seemed to have mixed up the remedies available for each type of misrepresentation. There was a glaring lack of case law in answering questions. Candidates generally seemed to have confused mistake with misrepresentation.

Candidates were unable to incorporate all the elements of the definition, properly or at all. Most candidates were able to explain in their definition that an actionable misrepresentation is a statement of fact and occasionally some might have ventured the element of ‘inducement’.

Some candidates were able to identify the different types of misrepresentation. The marks were generally poor, although there were some good, even excellent, answers.

### Question 7

Candidates who attempted this question generally produced poor answers. It is evident that many candidates failed to read the question properly especially in relation to Part (c) which seemed to pose a challenge for some candidates.

The definition of frustration was often not fully accurate and complete. Candidates failed to provide a comprehensive definition. In relation to Part (b), many candidates misinterpreted this section and therefore answers were generally irrelevant and incorrect. There was a poor response in relation to the use of case law.

### Module 3: Property

#### Question 8

Candidates appeared to understand the concept of ‘joint tenancy’ but generally showed a lack of understanding of ‘tenancy-in-common’. Most considered joint tenancy to be a form of proprietorship but considered tenancy-in-common to be a rental situation between several persons.

For Part (b), most candidates did not understand the concept of the presumption of survivorship or ‘*jus accrescendi*’. As a result many failed to maximize their marks.

For the most part, candidates did not demonstrate any appreciation for the difference between the presumption of survivorship and the right of survivorship.

#### Question 9

This question tested candidates on the licence by estoppel. Some of them appeared to understand the concept as an equitable remedy.

There was very little case law, inclusive of the well-known High Trees case. Other cases which could have been helpful were:

- Clark v Kellarie
- Inwards v Baker
- Denson v Bush

Knowledge of the cases would have assisted candidates in answering correctly how Navin could succeed in his claim.

#### Question 10

This question tested candidates’ knowledge of the rights of a mortgagor, arising from the equity of redemption. They would have expected to define the relevant terms and show how a mortgagor might be expected to pay the complete sum in advance of the agreed time.

Some candidates identified the main issues on which the question focused, but they were too few in comparison with the larger numbers who appeared not to understand the questions in Module 3.

Cases which could have been helpful, included:

- Kreglinger v New Patagonia Meat and Cold Storage Limited
- Noakes & Co Limited v Rice
- Bradley v Carritt

### Paper 03

#### Internal Assessment

1. Some submissions were of good quality. Candidates were expected to conduct an independent and reasoned research. In this regard, candidates whose papers were considered to be good had to demonstrate a high level of competence in respect to the following:
2. A properly worded research topic - This area of assessment evaluates whether the candidates sought to investigate an area of law covered in the relevant unit. Very good papers demonstrated research topics with some amount of innovation. Very good research papers facilitated candidates in going even further than merely to discuss settled principles of law.
3. Presentation and formatting - were considerations also taken into account. Papers considered to be very good contained a Title, Table of Contents, Aims and Objectives, Methodology, Description, Analysis, Evaluation, Recommendations, Appendices and References as stipulated in the syllabus. Papers also had to conform to the word limit set by the syllabus and be double-spaced.
4. Research method and analysis - Papers which were considered to be very good, demonstrated an appreciation of research methods by utilising primary sources such as questionnaires and interviews and secondary sources such as textbooks, cases, statutes, newspapers reports and journals. Data gathered from primary sources were accurately presented with the aid of graphs and were discussed within the body of the report.

In exploring the topic “Domestic Violence: Can victims be protected?” One candidate considered the law as it relates to Assault and Battery and attempted to ascertain the relationship between the crimes related to domestic violence in the candidate’s own country. The candidate also approached the topic from a constitutional point of view, in particular the right to life. As was expected, the candidate examined the domestic violence. Primary research methods were also employed with results being analysed and presented in the form of statistics.

5. Referencing - Providing proper references for the information was also of fundamental importance. Good papers had accurate citations, footnotes and acknowledgement of sources of information. In some instances, it was possible to detect instances where candidates did not attribute to their sources, but made comments obviously borrowed, without, without any credit to their sources.

They also presented accurate citation of case and made adequate references to the sources and/or legal authorities. The case law utilised was briefed accurately and principles deduced appropriately.

6. Knowledge and conceptual understanding of the law - Candidates were expected to choose from the modules in the syllabus. Accordingly, candidates were required to demonstrate knowledge and conceptual understanding of the subject matter under enquiry. In this regard, papers which were considered to be very good demonstrated a comprehensive understanding of the law related to the area being investigated. This was demonstrated through defining and describing relevant concepts, citing the relevant cases, legislation and constitutional provisions, presenting information that was relevant to the particular jurisdiction and where relevant, other jurisdiction as well. For example, one candidate discussed False Imprisonment which fell under Unit 2, Module 1: Tort. This candidate showed an in-depth understanding of the tort, including the definition of false imprisonment and giving examples of situations where the tort arises, the candidate cited several relevant cases, legislation and constitutional provisions, as well as other pertinent sources.

7. Application of the law - The very good papers demonstrated not only knowledge of the law but also application of the law to the topic/subject of inquiry. Such information was organised logically and clearly, using correct grammar. As a result, the examiners were able to follow the logical development of the argument or information.

Several candidates wrote on topics which were both of a legal and a sociological nature but approached the report from a sociological perspective. Candidates are to guard against this approach. The very good papers were focused on the topic adopting a legal perspective in addressing this issue.

8. Analysis and interpretation - A fundamental criterion by which candidates were evaluated was their analysis and interpretation of the law. This was the area that most candidates found challenging. The candidates with very good papers were able to distinguish cases, interpret the law, identify gaps or problems presented by the law, present independent thought and insight into the subject matter and make judgments and recommendations appropriate to the issues.