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

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

MAY/JUNE 2014

LAW

GENERAL COMMENTS

The total number of candidates writing the CAPE Law examination, in both Units 1 and 2 continues to increase. In 2014 while the number of candidates sitting Unit 2 remained consistent with that of 2013; the number sitting the Unit 1 examination increased from 1,347 to 1,620. In both units, 85 per cent of the candidates obtained Grades I–V.

The examinations for each unit consisted of the following papers:

- Paper 01 — Multiple Choice Paper 02 — Extended Response
- Paper 031 — School-Based Assessment (SBA)
- Paper 032 — Alternative to SBA

For each unit, Paper 01 consisted of 45 multiple choice questions. Fifteen questions tested information on each module. The score on this paper contributed 30 per cent to candidates' overall score.

Each Paper 02 consisted of six questions — two from each module. Candidates were expected to do one question from each module. The scores on this paper contributed 50 per cent to a candidate's overall score.

Paper 031, the SBA, is the internal component of the examination. Candidates were expected to do a research paper on an area of interest. These were marked at the school level and moderated by members of the marking team. Paper 032, the Alternative to SBA, was set specifically for persons who register privately to sit the examination. Candidates were required to do preparation on a set topic and write an essay on this topic under examination conditions. The score on this paper contributed the remaining 20 per cent to candidates' scores.

The team continues to notice that there were some weaknesses in areas of elementary principles of law which indicated a lack of awareness of basic principles. Candidates' responses continue to be plagued by poor essay construction and a general disorganization in the presentation of

ideas. It is also worthy to note that in many cases the responses did not adequately address the problem given in the questions. Candidates are reminded to utilize an answer plan to assist them in producing coherent responses thus improving their chances of gaining points awarded for coherence. Candidates should also note that, in most cases, the format of the questions provide a guide regarding how they are to respond.

It is strongly recommended that candidates become familiar with and practise using one or both of the following formats for answering questions:

- FILAC (**F –** Facts, **I –** Issues, **L –** law, **A –** Application of law to facts, **C –** Conclusion)
- IRAC (**I –** issues, **R –** Relevant law, **A –** Application of law to facts, **C –** Conclusion).

The advantage of using either of these is that candidates' essays are likely to be more structured and address the issues as required by the questions.

It should be noted, however, that although the aforementioned formats are strongly recommended, they are not to be applied mechanically. Candidates are to spend time reading and interpreting the questions since not every question would require one of the formats.

DETAILED COMMENTS

UNIT 1 – PUBLIC LAW

The modules in this unit covered the following topics:

1. Caribbean Legal Systems
2. Principles of Public Law
3. Criminal Law

Paper 01 – Multiple Choice

For 2014, the mean was 59.30 per cent. This mean showed an increase over 51 per cent in 2013. Candidates' overall performance on Module 1 was better than on the other two modules as the mean on this module was 64 per cent compared with 56 and 62 per cent on Modules 2 and 3 respectively.

Paper 02 – Extended Responses

In 2014 overall performance as measured by the mean declined when compared with that of 2013. The mean was 43.05 per cent, down from 48.22 per cent in 2013. Detailed comments on performance by module and question are given below.

Module 1: Caribbean Legal Systems

For this module, Question 2 was more popular and had a higher mean than Question 1. The mean on both questions were 10.49 (42 per cent) and 13.32 (53 per cent) respectively.

Question 1

This question was designed to test candidates' understanding of the role of the Caribbean Court of Justice (CCJ) in the region and to outline its structure. This included a brief discussion of the two jurisdictions of the CCJ (appellate and original) and the nature of the matters heard by each within the territories applying the jurisdictions of the CCJ. Also, candidates were expected to engage in discussions on the arguments supporting and opposing the establishment of the CCJ as the final court for the region in place of the Privy Council.

With regard to outlining the structure, generally candidates did not express this clearly and most did not grasp the fact that they were required to do so. Candidates did not seem to know the countries that signed on to the appellate jurisdiction as they included The Bahamas and Trinidad and Tobago which are not signatories, instead of Barbados, Belize and Guyana. There was not a

general appreciation that the original jurisdiction was applicable to all the signatory states to the Treaty of Chaguaramas, or that there was a distinction to be made between the two jurisdictions of the CCJ.

Candidates generally performed well in discussing the arguments supporting the statement. However, many had a skewed understanding of the arguments in support and presented such arguments to be the converse of the statement. In other words, candidates presented arguments such as the cost to litigants, accessibility and familiarity with the culture (for fear of bias) as disadvantages of using the CCJ. Some also interpreted the question to be about regional integration to accommodate a common currency and foreign exchange.

Candidates performed well in outlining the arguments against the statement and most were able to discuss at least two of those arguments. However, many candidates identified bias, corruption and bribery as disadvantages to the CCJ linking them to racism and prejudice. This part of the question was generally well done.

Question 2

This question, divided into two parts, was designed to test candidates' understanding of the doctrine of alternative dispute resolution with particular attention on mediation and arbitration.

In Part (a), candidates were required to distinguish between these two forms of alternative dispute resolution by providing an explanation of the terms and comparing and contrasting them. While the majority of candidates was able to identify the salient points, many were unable to express their points clearly while some seemed to have confused both terms. The majority of candidates failed to give a full definition of the terms and was not able to distinguish them. Most candidates did not mention the similarities, but were able to give the differences.

Part (b) required candidates to apply the information on the advantages of alternative dispute resolution (ADR) to advise the relevant party why ADR should be chosen to resolve the dispute. This included a discussion about the advantages of ADR, for example *time effectiveness (being*

faster than litigation), cost effectiveness, fairness and flexibility, privacy and confidentiality, among other relevant advantages.

Some candidates did not appreciate the fact that they were required to give general considerations on the advantages and not on the specific forms of ADR. Despite these, however, most candidates were able to advise the client on the advantages.

Model Answers

Question 1

The Caribbean Court of Justice (CCJ) was established in 2001 in Trinidad and Tobago. The CCJ has two jurisdictions, (1) appellate jurisdiction and (2) original jurisdiction. In its appellate jurisdiction it acts as the final court of appeal for all civil and criminal appeals from the domestic courts of some Commonwealth Caribbean territories (Barbados, Belize and Guyana). In its original jurisdiction, it acts as an international court which interprets and applies the revised Treaty of Chaguaramas under which CARICOM was established and the CSME operates. In addition it deals with matters arising out of issues between Commonwealth Caribbean states, matters establishing the rights of private individuals under certain international treaties and matters arising out of trade disputes.

The establishment of the CCJ has encountered serious criticisms by many, while there are others who support its development. The arguments in favour of the CCJ are as follows: (1) Due to the fact that the CCJ is an itinerate court and accordingly has the ability to travel, it is very accessible to litigants. (2) The location of the court within the Caribbean makes the cost to litigants much more affordable as it is a lower cost when compared to travelling to the United Kingdom to the Privy Council. (3) The judges of the CCJ are familiar with the culture of Commonwealth Caribbean countries and are therefore equipped with the knowledge and level of understanding required to make decisions that reflect sensitivity for the Caribbean people. (4) The establishment of the CCJ creates a sense of security and stability in the region as there are well-qualified and eminent jurists in the court capable of fulfilling their role impartially. This

promotes regional integration and independence since we have a high standard of education in the region and are capable of delivering sound judgment. (5) Due to the establishment of the court under the revised Treaty of Chaguaramas, sanctions and pressure exerted on a disobedient state are likely to ensure compliance.

The establishment of the CCJ has also been criticised by opponents who express that (1) the Privy Council is properly and satisfactorily performing its role as the court of final appeal for many Commonwealth Caribbean states and has always been the final court creating precedents and developing the jurisprudence in the region. (2) There is a greater possibility of political influence on judges in the CCJ because of their presence and involvement in the region, while the Privy Council is far removed from the region and is more likely to give objective or unbiased judgments on litigants. (3) There is an unavailability of adequate and sustainable funding from the member states given the economic climate, while territories remaining under the Privy Council would not need to worry about such a financial contribution. (4) It is believed that education in the United Kingdom is far superior producing legal luminaries and jurists that are 'better' able to interpret the rule of law. In that light, it is believed that there is an unavailability of jurists of the required standard for the CCJ. (5) This belief in the education of the jurists lends itself to the further belief that the decisions of judges in the CCJ may be of poor quality.

At best, it may be argued that the establishment of the CCJ promotes regional development and many are ready to facilitate its development in the region (for example, Dominica). However, there continues to be the need for the other Commonwealth Caribbean states to not only embrace the original jurisdiction to which they are already parties, but to establish the appellate jurisdiction of the court in their territory.

Question 2

(a) *Distinguish between Mediation and Arbitration*:

- Mediation – A non-adversarial method of alternative dispute resolution in which a neutral third party helps to resolve a dispute.

- Arbitration — This is another form of alternative dispute resolution. It is the hearing and determination of a dispute by an impartial referee agreed to by both parties (often used to settle disputes between labour and management).

Similarities include:

- Involvement of a neutral third party in settling the dispute.
- Parties agree on the adjudicator/mediator.
- Proceedings are held in an informal setting.

Differences include:

Mediation:

- Contains no elements of a court of law, but is totally informal.
- Third party listens to the position of the parties and communicates these positions to each disputant.
- The parties come to an agreement or settlement after discussions in the presence of the third party.
- Agreement between the parties is not required to be enforced by the court as parties usually comply with the decision because it was made by them. However, mediation that is recommended by the court is enforced by a court order.

Arbitration:

- Contains certain elements of a court of law.
- Third party hears testimony of the parties.
- Arbitrator makes the final decision.
- Decision of the arbitrator is binding on the parties and may be enforced by order of the court.

(b) What reasons would you give to Brandon HDC Ltd to convince them that alternative dispute resolution is a better way to resolve this dispute?

On the facts, the contract to supply and install the kitchen cupboards in the newly constructed houses should have been completed in six months. Now, three years later the job is not completed by XYZ Construction Company Ltd. In advising Brandon HDC Ltd, it is important to understand that alternative dispute resolution provides a wide array of benefits which should be explored.

First, it is time efficient/faster than litigation. This is because the proceedings are less formal than litigation (this includes starting proceedings and preparation for the proceedings when compared to getting a court date for litigation) and given the length of time that has already elapsed, this would certainly be a benefit to seize. Also, there is a limited right of appeal to arbitration, thus there is less scope for the parties to delay the matter and there is swifter enforcement.

Second, it is cost effective. That is to say that the company will save money, as the costs for the proceedings are greatly reduced when compared to litigation. Also, the parties may agree to share certain costs.

Third, it promotes fairness and flexibility. This is because the proceedings may be conducted in a manner deemed appropriate and an investigative approach may be adopted rather than the adversarial approach of the courtroom. With ADR, the parties can opt for remedies that are not available in the court. Also, the parties do not need to adhere to the strict rules of the court of law.

Fourth, the proceedings are private and confidential as they are non-public. At the start of the process, the parties are usually encouraged to sign confidentiality agreements or non-disclosure for unauthorized persons as this could prejudice the parties.

Lastly, in ADR, the arbitrators or mediators with the appropriate degree of expertise may be selected by the parties. This is an added advantage, as in court proceeding the parties do not get to choose the judge.

ADR is a flexible and efficient method of resolving disputes. Brandon HDC Ltd would be encouraged to utilize this process. If XYZ proved cooperative, the process will be greatly beneficial to all parties involved without bringing an adversarial element which can detract from an amicable solution.

Module 2: Principles of Public Law

Questions 3 and 4 were based on this module. More candidates selected Question 3 than Question 4. Approximately 70 per cent of the candidates attempted Question 3. The mean on Question 3 was 14.83 or approximately 59 per cent while that on Question 4 was 12.08 or 48 per cent.

Question 3

This question tested candidates' understanding of the doctrine of the separation of powers and the rule of law as a foundation for just society.

For Part (a), candidates were expected to explain

- the concept of the separation of powers, namely separation of legislative, executive and judicial functions
- where the doctrine can be found and the implication from the constitution
- aspects of the doctrine of separation of powers, for example, the jurisdictions of the three arms of state and areas of possible overlap of jurisdictions and the effect on the doctrine.

Generally, candidates demonstrated an adequate understanding of the concept of separation of powers referring to the unique value of the division of powers between the arms of the government. Most candidates were able to successfully state the roles and functions that each arm performs. Conceptually, candidates had difficulty expressing their view of how the various aspects of separation of power work. Many candidates did not adequately analyse the issues and revealed a lack of understanding of the pitfalls associated with overlapping branches. The

response also showed that candidates lack knowledge of related cases. Some candidates found it difficult to correctly apply cases and, in some instances, irrelevant cases such as *Pratt and Morgan*, *Shaw* v. *DPP* and *Knuller* v. *DPP* were cited.

Some candidates addressed the definition of separation of powers and showed the relevance of the separation of powers to the proper functioning of the government. They identified the value of an independent judiciary working closely with an executive arm that enforces the laws made by the legislature. These responses generally revealed an understanding of the purpose of checks and balances to a stable democracy. Additionally, the important cases of the *Attorney General of Trinidad and Tobago* v. *Collymore* and *R* v. *Hinds* underscored their understanding that not even parliament can disobey the constitution with impunity. They also cited other relevant cases as well as the constitutional value of the separation of powers.

In Part (b), candidates were expected to assess/evaluate/appraise/judge/determine whether the rule of law is in fact the foundation of any just society. In making that determination candidates were expected to explain

- the constituent elements of the rule of law, for example the fact that the law should be accessible, intelligible, clear and predictable
- the constitutional basis for the rule of law
- procedural fairness as part of the rule of law.

Many candidates were able to use current examples to demonstrate an understanding of the rule of law and thereby received generous marks for this part of the question. The idea that no man is above the law seemed to be widely understood and was used often as the definition for the rule of law. Cases such as the recently concluded trial of popular Jamaican entertainer *R* v. *Adijah "Vybz Kartel"*, *Palmer* and that of a Jamaican politician, *R* v. *Kern Spencer*, whose case was dismissed as a no case submission featured prominently in several answers. The *Shanique Myrie* case also received mention from some candidates as illustration of the rule of law.

The Guyanese example of the *Middle Finger* case was mentioned as an example of the rule of law. A young man had allegedly shown the middle finger to the president's motorcade and was arrested and jailed for over two weeks despite the fact that the offence was one which would attract only a fine. Candidates referenced this as a clear example of the breach of the rule of law in Guyana where there was an abuse of power by those in authority against a citizen. These candidates often cited not only writers such as *Hood and Phillips* and *Professor Albert Fiadjoe* but the work of early philosophers such as *Montesquieu* and *John Locke*. This showed an intellectual understanding of the history of the concept and how it has persisted through time in liberal democracies with its current impact on Caribbean jurisprudence.

The answers were generally very coherent with correct use of language and grammar.

Question 4

This question assessed candidates' understanding of the doctrine of *ultra vires.* It was based on a scenario where a minister issued a directive to a board which was responsible for the issuing of licences.

Part (a) required candidates to

- explain the context of the *ultra vires* doctrine and the basis for judicial review
- determine whether the direction of the minister was *ultra vires* Section 6 of the Pharmacies Act
- determine whether the direction of the minister is of a specific nature and not general, and whether it falls outside of the section of the act.

Part (b) required candidates to

- make a determination on the actions of the board, for example, whether the board acted *ultra vires* the minister's direction and whether the minister had acted *ultra vires* the

Parent Act/Enabling Act; whether every action that flows from that *ultra vires* is unlawful or lawful to the extent that it is consistent with the powers granted.

Very few candidates attempted this question. Generally, candidates who selected this question performed poorly. They did not show an understanding of the *ultra vires* doctrine and those who attempted often failed to support their definition with relevant case law.

Module 3: Criminal Law

Questions 5 and 6 were based on this module. Question 5 was more popular, with approximately 70 per cent of the candidates responding to it. The questions on this module had the lowest means on the paper. That for Question 5 was 7.34 or 30 per cent while that for Question 6 was 5.00 or 20 per cent.

Question 5

This question focussed on automatism as a defence. Part (a) was designed to test the coincidence of *actus reus* and *mens re*a. It tested candidates' knowledge of the varying facets of the *actus reus* and the disposing of criminal liability at the fundamental stage, through the discussion of the defence of automatism.

In this section of the question the majority of candidates was able to identify automatism as a defence but had difficulty developing the discussion. Many candidates confused automatism with the defences of provocation, intoxication and diminished responsibility. A substantial number of candidates referred to the case of *R* v. *Byrne* which is a case on diminished responsibility and not automatism. Some candidates were unable to differentiate automatism from the principles related to insanity; hence, there were lengthy discussions of the *McNaughten Rules*.

On the other hand, some candidates were able to differentiate between automatism being the result of some external factor rather than an inherent mental defect but could not expound on what really is an 'external factor'. The majority of these candidates was unable to show the

connection of automatism to the *actus reus* and some candidates discussed automatism as an offence instead of a defence.

It was also evident that candidates did not quite grasp the legal effect of the defence equating it with diminished responsibility and provocation, with the effect being a reduction in the gravity of the offence rather than a complete elimination of criminal liability.

Part (b) was designed to test offences against property, specifically robbery. The majority of candidates was able to give a working definition of robbery; however, a large number did not include the fact that the use of force was required in order for the act to be considered as robbery. A significant number of candidates incorrectly equated robbery with burglary, housebreaking and larceny. Some candidates provided a lengthy discussion on theft. Candidates were able, for the most part, to explain the *actus reus* of the offence and to differentiate it from the *mens rea* required to commit the offence.

Some candidates did not separate the response to Part (a) from Part (b). They instead spoke of automatism in relation to robbery and vice versa.

Model Answer

Question 5

"Automatism applies to the situation where the defendant is not legally insane but because of some external factor he is unable to control what he is doing." Discuss the above statement using decided cases to illustrate your answer.

(a) The statement above refers specifically to sane automatism. It should be noted however, that there are two types of automatism: sane and insane. Sane automatism is usually caused by a factor external to the defendant while insane automatism is generally due to some internal factor.

Sane automatism, if successfully pleaded, will result in the defendant being acquitted, as it is a complete defence. The defendant, however, will have to establish that his acts were beyond his physical control, that is, the acts were done by the defendant's muscle without the control of his mind. In such a case there would be the absence of *actus reu*s as the act was not voluntary. There would also be no *mens rea* because the defendant was not conscious of what he was doing (see *Bratty* v. *Attorney-General for N. Ireland [1963] AC 386*). Typical examples are sleepwalking, acts done in a hypnotic trance, reflex actions and convulsions. Such a state normally excuses a defendant for the consequence of his action on the basis that no responsibility can be attached to involuntary actions.

To be successful in raising the defence of automatism the defendant must establish the following:

Total loss of voluntary self-control: In *Attorney-General's Reference No. 2 of 1992* the Court of Appeal held that the defence of automatism was only available where there was complete destruction of voluntary control. The defendant, a lorry driver, was charged with causing death by reckless driving. He raised the defence of automatism and produced medical evidence to show he was put into a trance while driving on the featureless motorway. The Court of Appeal held that though there might have been some loss of control there was no proof of total loss of control.

Secondly the defendant must establish that this 'total loss of control' was due to an external factor. This inability to control one's act must result from the operation of some external factor upon the working of the brain rather than an inherent mental defect. If in fact it is an inherent mental defect, then the defence of sane automatism will not be successful as the court will view such a defect as an element of the defence of insanity and not automatism. It must be further noted that the external factor must be something that results in more than general stress and anxiety. In *Hill* v. *Baxter* the court gave an example of a driver being attacked by a swarm of bees while driving. It was noted that the removal of the hand from the steering wheel was involuntary and due to the effect of the external factor (which in this case was the swarm of bees).

In *R* v. *Quick*, the defendant, a nurse, caused harm to a patient. He pleaded automatism on the basis that he had taken too much insulin and had eaten very little thus becoming hypoglycaemic. The court first held that the defence of automatism failed but on appeal the Court of Appeal found that the hyperglycaemia was not caused by the diabetes but by the external factor of insulin.

This decision can be contrasted with *R* v. *Hennessy* where the defendant had not taken his daily dose of insulin and fell into a hyperglycaemic state which caused him to not have any recollection of his acts. He raised the defence of automatism; however, the judge ruled that the appropriate defence would be insanity. The court held that the disease of diabetes (an internal factor) itself and not an outside factor of injection or insulin had caused his actions.

Finally, the defendant must establish that the 'total loss of control' caused by an external factor was through no fault of his own, that is, the automatism must not be self-induced. The defendant must not have brought about the state of automatism as in the case of *R* v. *Bailey*.

(b) A person is guilty of robbery if he steals and immediately before or at the time of doing so, he uses force on or threatens the use of force on any person or puts any person in fear of being subjected to force.

All the elements of theft must be proved before a conviction can stand. Therefore, the prosecution must establish that the defendant dishonestly appropriated property belonging to another with the intention to permanently deprive the other of it.

Use of force: After the elements of theft have been made out, the prosecution must then establish the presence of force. The force must be used to effect the theft. The slightest degree of force is sufficient. In *R* v. *Dawson* for example, the victim was jostled so that the defendant could pick his pocket. The court ruled this to be force and therefore robbery instead of theft.

It is important to note that if there is no force then the offence committed would be theft and not robbery. For example, if in *Dawson* the defendant had stealthily taken the bag without jostling it from the victim, then the defendant would have been guilty of theft and not robbery.

The force must be used to effect the robbery: The case of *R* v *Hale* provides an example. The defendants entered the home of the victim in order to steal. The victim was tied up after her jewellery box was seized in order to restrain her from calling for help. In court, the defendants contended that robbery had not been committed as force was only used after the jewellery box was seized. The court, however, held that the act of appropriation was a continuous act therefore the defendants in restraining the victim did so by force and hence committed robbery.

The force must be used in order to steal: In *R* v. *Clouden* the defendant wrenched a shopping bag of goods from the victim. The court held that force had been effected and therefore robbery was committed. The force was applied to remove the bag, but nevertheless amounted to use of force in order to steal.

The *mens rea* of the offence of robbery must be intention to steal as well as the intention to use force in order to steal. In *R* v. *Robinson* the defendant was owed seven pounds by a woman. He went to ask for it and a fight ensued between the defendant and the woman's husband. During the fight five pounds fell from the husband's pocket. The defendant picked it up and kept it. He was convicted of robbery. His conviction was quashed since the defendant had an honest belief that he was entitled to the money, thus the *mens rea* of intention to steal had not been made out.

Question 6

This question was designed to test consent as it relates to intentional actual bodily harm. Most candidates however, discussed consent only as it relates to sexual offences. Generally, candidates seemed unable to discuss consent outside of rape and the knowledge that consent means 'the giving of permission'; therefore, they concluded that once permission has been granted no offence is committed regardless of the gravity. Moreover, candidates seemed not to grasp the elements of the offence of actual bodily harm.

Part (a) required candidates to use decided cases to support an explanation of the role of consent in the offence of intentional actual bodily harm. The majority of candidates generally provided a definition of consent; however, candidates were generally unaware that consent is nullified in relation to intentional actual bodily harm except in certain circumstances. The question required a discussion as it relates to these exceptions. Few candidates mastered this aspect of the question.

Part (b) was based on a scenario where some individuals were involved in sadomasochistic sexual encounters and videotaped the act. The police found the tape and charged each 'with assault occasioning actual bodily harm and unlawful wounding'. Candidates were to use decided cases to substantiate whether the individuals had a defence against the charges.

Many candidates concluded that no offence had been committed as the individuals (Stan, Brad and Jake) consented to the act and this provided a complete defence. Many candidates also made reference to their personal beliefs instead of reference to the law in order to advise Stan, Brad and Jake. The thrust of the question dealt with the issues which arose in *R* v. *Brown* and why the House of Lords determined that sadomasochistic sexual encounters could not be an exception to the general rule that a victim could not consent to intentional actual bodily harm greater than battery. The House of Lords gave three reasons as to why the conviction of the accused in Brown must be upheld. Less than one per cent of the candidates identified these reasons.

Most candidates were able to identify the peripheral issue of corrupting public morals by the distribution of the tape. They were, however, unable to distil the specific public interest concerns such as the potential for the tape getting into the hands of children. Many candidates were able to site but not discuss the relevant cases such as *R* v. *Brown*, *Shaw* v. *DPP* and *R* v. *Knuller* as examples.

Model Answer

Question 6

(a) In law, consent is a defence to many offences such as rape or malicious destruction of property. Regarding offences that may cause intentional harm to a person, however, this may not necessarily be the case.

In *Attorney General's Ref* (*No. 6 of 1980*) the Court of Appeal held that a person's consent will not exonerate a defendant where he intended actual bodily harm. The court held that it was not in the public's interest that people should cause or intend to cause each other bodily harm 'for no good reason'.

The general rule as it relates to consent and bodily harm is that a victim may consent to an assault or battery but not to more than that. Where the harm caused or intended is greater, the victim's consent is irrelevant. The court in *Attorney General's Reference (No. 6 of 1980)* while making this decision acknowledged that there were exceptions to this general rule. These exceptions, the court noted, were based on public policy and were therefore in the best interest of the public.

One exception to the general rule is properly conducted sports and games. In *Attorney General's Ref* (*No. 6 of 1980*), two young men engaged in a dispute sought to settle the quarrel by a 'punch up' in the streets. As a result, one of the two suffered a nosebleed and bruises. The court held the fight unlawful and noted that the participants may be convicted of an appropriate offence even though the other party agreed to the fight.

The exception only covers instances of organized sports and games. Where, however, a participant commits a breach of the rules of the sport and uses force beyond what is expected, criminal sanctions can be brought to bear. One example of this would be in the course of a properly constituted football match where one participant is bitten by another player.

A second exception to the general rule relates to body piercing or tattooing for personal adornment. Although these activities will cause harm beyond mere battery, these acts if properly conducted by trained personnel will not be deemed unlawful. It must be noted however that consent may be nullified if the person conducting the exercise is not properly trained to do so and this information was not known to the victim.

The Court of Appeal in *Wilson* included branding as an exception. In that case the victim, Mrs Wilson, asked her husband, the defendant, to brand his initials on her buttocks with a hot knife. He complied. The Court of Appeal quashed his conviction for assault occasioning actual bodily harm (S47 OAPA). It was the view of the court that what was done was no different and no more dangerous than tattooing.

A third exception is rough horseplay. In *Jones*, former schoolmates of the victims tossed them in the air and one boy suffered a broken arm, the other a ruptured spleen. The Court of Appeal quashed the defendants' conviction for offences under Section 20 OAPA. The court ruled that a genuine belief in consent to rough horseplay could be a defence where there was no intention to commit an injury.

Another exception to the general rule is surgery carried out by a medically qualified person. Most surgeries will cause harm to the victim greater than assault and battery; however, where the harm caused is reasonable given the circumstances, the exception to the general rule will apply. All properly conducted surgical interference will generally be deemed responsible if done for the wellbeing of the victim. Where, however, surgery is done for reasons other than public policy or interest, consent will not be a defence. Such instances include, for example, performing cosmetic surgery to avoid criminal detection.

Where surgery is conducted by someone who is not a medical doctor or other qualified person, the consent of the victim will be vitiated and the defendant may face charges in keeping with the type of harm caused.

Another exception to the general rule is dangerous exhibitions. This covers stunt shows, circus acts and other performances generally geared towards entertainment.

(b) As a general rule, consensual non-violent sexual conduct causing harm will not attract criminal liability. It is, however, generally accepted that intentional harm greater than assault or battery may result in criminal conviction. The House of Lords in *R* v. *Brown* held that it is not in the public interest that a person should wound or cause actual bodily harm to another for no good reason and, in the absence of such a reason, the victim's consent afforded no defence to a charge under s20 or s47 OAPA. The satisfying of sadomasochistic desires did not constitute such a good reason. The HOL further noted that the chief difference would be whether the harm caused was incidental or intentional. If deliberate, then whether or not consent was given would be of no significance and criminal liability may be visited upon the person who inflicted such harm. Where the harm is incidental however, the act will not be deemed unlawful.

The current situation involving Stan, Brad and Jake is similar to that which occurred in *R* v. *Brown*. In that case, a group of middle-aged men willingly participated in sadomasochistic activities which involved the intentional infliction of wounds. Videos were made of their activities and circulated to members of the group. The House of Lords upheld their convictions for offences under the OAPA. The court noted that the harm caused was deliberate and the fact that the victims consented did not make the act lawful.

This case can be contrasted with *Wilson* previously discussed. The court held in *Wilson* that there was no aggressive intent and no intentional infliction of violence on the part of the defendant. The harm caused was merely incidental to the act of branding. Likewise in *R* v. *Emmett* where 'high risk' sexual activities resulted on occasion in haemorrhage to the eyes of the victim and in another, burns to her breasts, the Court of Appeal ruled that consent was

no defence; the harm caused was deliberate and in fact dangerous to the health and wellbeing of the victim. This was deemed serious enough to invoke the public policy principle that is the protection of individuals and by extension the protection of the public from harm, even from themselves.

In *Brown*, the court cited three principles as to why it was against public policy to cause intentional bodily harm in such a manner:

(i) Risk of infection and spread of disease such as AIDS. It was only luck that the participants had not suffered any serious harm or infections from their activities.
(ii) The fact that the participants might withdraw their consent or might not have readily consented to the degree of harm.
(iii) There was the danger that young people could be drawn into these unnatural practices.

One of the chief criticisms of this decision is that there is no indication that young persons were being lured (all the participants were middle-aged men) nor was there any proof that the risk of AIDS was any greater than regular heterosexual activity. Many legal practitioners are of the view that the ruling was not based on legal principles but on society's notion of what is natural or not. Since the decision in *Brown* society has grown more tolerant to acts of this nature; it must be remembered however, that that opinion has not been decided in a Court of Law and the decision in *Brown* has not been overruled.

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

The number of candidates who sit this paper continues to increase each year. This year, 40 candidates sat this paper for Unit 1, up from 20 in 2013 and four in 2012. The mean for this year was 54 per cent.

The question tested candidates' understanding of judicial review.
For Part (i), candidates were expected to

- discuss the main organs of the state, their functions and the independence of the judiciary
- explain the supremacy of the constitution, for example, the supreme law clause and the fact that the actions of both the legislature and executive are limited by the provisions of the constitution
- explain the review of legislation by the courts.

For Part (ii), candidates were expected to

- define judicial review including review by the courts of unlawful administrative decisions and actions by the state
- explain the grounds for judicial review, for example, natural justice, legitimate expectation, improper delegation, abuse of discretion
- remedies available for judicial review.

The majority of candidates demonstrated understanding of the importance of the public authority element to the doctrine of judicial review. Candidates also displayed knowledge of the relevant cases and applied them well to support their points.

However, candidates were generally not knowledgeable in the area of judicial review of legislation more so with regard to the grounds for judicial review of legislation and the cases in relation to this area.

Generally, the papers were well written and information was presented in a coherent and logical manner.

UNIT 2 – PRIVATE LAW

The modules in this unit covered the following

1. Law of Tort
2. Law of Contract
3. Real Property

Paper 01 – Multiple Choice

The performance on this paper, as measured by the mean, showed a slight decrease when compared with 2013. For 2014, the mean was 58 per cent as against 56 per cent in 2013. Candidates' performance was about the same on all three modules. The mean was approximately 58 per cent on each.

Paper 02 – Extended Responses

Performance on this paper was consistent with 2013. In 2013 and 2014 the mean was approximately 43 per cent. The detailed comments below describe candidates' performance on each question in a module.

Module 1: Law of Tort

The first two questions on this paper assessed this module. Question 2 was more popular and it had the higher mean — 13.77 or 55 per cent while that on Question 1 was 10.48 or 42 per cent.

Question 1

This question assessed candidates' understanding of strict liability in Tort as it relates to animals. In Part (a), candidates were expected to

- define strict liability

- identify strict liability as a deterrent aspect of Tort aimed at inducing the modification of persons' behaviour so as not to harm others
- discuss two examples of strict liability in Tort showing how liability is established in each case making application to its deterrent effect.

The majority of candidates was unable to define the term 'strict liability' which suggested that candidates were not familiar with the topic. Candidates seemed not to understand the general area. For example, candidates defined the term as being 'strictly liable' or confused the topic with negligence by stating that 'once you are negligent you are strictly liable'.

Very few candidates mentioned the issue of lack of fault on the part of the person who is strictly liable. Candidates were expected to define strict liability as *the automatic responsibility for damages due to possession and/or use of equipment, materials or possessions which are inherently dangerous such as explosives, wild animals, poisonous snakes or assault weapons.*

With regard to the examples used for strict liability, many candidates used examples of public nuisance or negligence such as 'if a doctor were negligent'. A number of candidates used examples from criminal law and defined the term within that context. Examples oftentimes related to drug offences. Generally, candidates did not understand the distinction between strict liability in civil law and criminal law. Candidates were expected to discuss examples such as liability for animals, and strict liability for harm resulting from abnormally dangerous conditions and activities as in *Rylands* v. *Fletcher*. In most jurisdictions, the general rule is that keepers of all animals, including domesticated ones, are strictly liable for damage resulting from the trespass of their animals on the property of another.

For Part (b), candidates were expected to

- discuss the classification of animals under the common law — *ferrae narturae* (naturally wild for example, lions, tigers) and *mansuetae naturae* (domesticated animals for example, dogs, cats) and state which category the 'ferocious pit bull' in the scenario would be classified under

- identify and explain the test used to determine liability for domestic animals and the action that is applied
- discuss the grounds the plaintiff must prove in order for the owner or keeper to attract liability, for example, that the owner/keeper had knowledge of a propensity in the past to do harm
- cite relevant statute law where it exists in a particular jurisdiction and varies from the common law since statute overrides the common law.

Many candidates did not explain the distinction between strict liability in the case of ferocious animals and the tests required in the case of domestic animals (scienter). Candidates seemed not to have known the test. It seems that in many cases candidates used a 'common sense' approach in determining that the dog was ferocious and the owner ought to have known, rather than applying the test and indicating that the owner satisfied the test in order to determine liability. Too many candidates incorrectly used the principles of duty of care, breach of duty and foreseeability as it relates to negligence to answer the question. Generally, candidates failed to use cases to support their answers. Candidates need to be reminded that cases must be used in answering questions in law regardless of whether this is specified by the question.

Question 2

This question focused on trespass to the person. Part (a) required candidates to

- define assault and battery
- discuss the elements of assault, for example, the fear of imminent battery, words amounting to assault,
- discuss the elements of a battery, for example, it must be a direct act of the defendant, not necessary that physical harm be caused to the plaintiff, etc.

Some candidates confused some aspects of criminal law and tort. However, most candidates provided the correct definitions. Candidates who did not provide the correct definitions generally

confused the two concepts. Generally, candidates displayed full understanding of the element of fear as it relates to assault.

Part (b) required candidates to identify and explain the following issues:

- Whether the tap on the shoulder amounted to an assault
- Whether the kiss on the cheek amounted to an assault
- Whether the throwing of a punch amounted to an assault
- Whether the words "if I catch you…" amounted to an assault

Most candidates generally applied the concepts of assault and battery well and seemed very familiar with the topic. However, candidates failed to include cases in their responses. Again, it must be emphasized that candidates need to provide cases in support of their responses in law regardless of whether it is specifically stated in the question.

Some candidates included negligence in their responses. Candidates should be reminded that negligence does not arise in every question and time should be spent reading and interpreting questions. The questions were not meant to 'write all you know'. Additionally, candidates also need to be reminded to exclude their personal feelings from their analysis. Analysis must be based on the law. For example, candidates displayed a propensity to focus on the issue of homosexuality, sexual assault and defamation which did not arise from the question. Candidates must remain focused on the legal issues.

Module 2: Law of Contract

There was no clear preference for the two questions on this module. The performance on these questions as measured by the mean was less than satisfactory as both means were low — the lowest on the paper. The mean for Question 4 was the higher of the two at 7.23 or 29 per cent while that for Question 3 was 8.55 or 34 per cent.

Generally, the analysis of these questions was poor. It was clear that the majority of candidates did not know the content area and so was unable to correctly formulate responses to the questions.

Candidates are reminded to always use decided cases and/or examples in responding to questions even where a question does not specifically ask for such. In addition, merely citing cases is not sufficient; the application of the case to the issue being discussed must be clearly demonstrated.

Question 3

This question assessed candidates' understanding of the law relating to contract specifically, additional terms which may be implied in a contract as well as conditions and warranties.

Part (a) required that candidates explain the ways in which terms may be implied into a contract. Most candidates mainly explained elements of a contract and illustrated their understanding that contracts entailed both express and implied terms. They, however, failed to demonstrate the ways in which terms may be implied into a contract and/or give suitable examples.

Terms may be implied into a contract

- by custom, *Hutton* v. *Warren [1836]*
- by the court
  (i) intention of the parties, *The Moorcock [1889]*
  (ii) terms implied by law, *Liverpool* v. *Irvin[1976]*
- by statute, *Unfair Contract Terms Act/Sales of Goods Act/Hire Purchase Act*
- at common law, *Scally* v. *Southern Health and Social Services Board [1992]*.

Part (b) required candidates to explain the differences and similarities between a condition and a warranty. Again, this section was answered poorly. The responses showed that most candidates did not have a good understanding of warranties and conditions. Most candidates failed to discuss conditions as an essential term which goes to the heart of the contract but instead discussed them as exclusion clauses in a contract. For example, a number of candidates spoke about conditions being when a telecommunications company states 'conditions apply' when are offering customers a mobile phone plan. These candidates failed to earn any marks for this type of response.

Further, numerous candidates did not explain what warranties were as a *term of contract*. They went into lengthy discussions of a warranty being a manufacturer's guarantee which unfortunately also did not earn them any marks.

Candidates who earned full marks were able to distinguish between conditions and warranties and understood that conditions were more essential to a contract than warranties. They also gave useful illustrations of the distinction by outlining the cases of *Poussard* v. *Spiers and Pond [1876]* and *Bettini* v. *Gye [1876]*.

Candidates were expected to explain the following differences and similarities as outlined below.

A condition*:*

- *A major term which is vital to the main purpose of the contract.*
- *A breach of condition will entitle the injured party to repudiate the contract and claim damages.*
- *The injured party may also choose to go on with the contract, despite the breach, and recover damages instead.*

A warranty*:*

- *A less important term; it does not go to the root of the contract.*
- *A breach of warranty will only give the injured party the right to claim damages.*
- *He cannot repudiate the contract.*

Question 4

This question required candidates to demonstrate a good understanding of discharge of a contract by frustration.

Part (a) (i) required candidates to explain the doctrine of frustration of contract. It was clear that most candidates did not know the doctrine of frustration and instead gave responses describing scenarios where an individual becomes aggravated or perturbed.

Candidates were expected to explain the doctrine of frustration of contract with points including:

- *Subsequent change in circumstances*
- *The contract is rendered impossible to perform*
- *Contract has become deprived of its commercial purpose*
- *Event not due to the act or default of either party*

It was expected that these explanations should have been supported by decided cases or examples.

Part (a) (ii) involved an explanation of the limitations of the doctrine of frustration. Generally, this question was misinterpreted by candidates. Most candidates wrote about the doctrine of frustration instead of explaining situations in which the doctrine would *not* apply.

A good response would have outlined the following limitations:

- Self-induced frustration as in *Maritime National Fish Ltd* v. *Ocean Trawlers Ltd [1935]*
- Where the parties have made an express provision in the contract for the alleged frustrating event as in *Joseph Constantine Steamship Line Ltd* v. *Imperial Smelting Corporation Ltd [1942]*

- Foreseen and foreseeable events as in *Walton Harvey Ltd* v. *Walker and Homfrays Ltd [1931]*
- Where the contract has become more onerous and/or expensive to perform as in *Davis Contractors* v. *Faeham UDC [1956]*
- Where an alternate method of performance is still possible as in *Tsakiroglou & Co* v. *Noblee and Thorl [1962]*

In Part b (i), the focus was on the contract being discharged by frustration. The circumstance being government interference, or supervening illegality, preventing performance as in *Re Shipton, Anderson & Co [1915]* and *Denny, Mott & Dickinson* v. *James B Fraser & Co Ltd [1944]*. The question involved a scenario where a contract was affected by the declaration of war.

Some candidates failed to recognize that both the purchase of timber and the purchase of the timber yard would be illegal due to the wartime control order and hence both aspects of the contract would be discharged by frustration.

In Part b (ii), many candidates focused on the knowledge of the Managing Director of Ranna Hotels Ltd of the impending wartime control order as grounds for rescission of the contract due to misrepresentation. These candidates misinterpreted the question. Responses were mainly based on principles of Tort. Candidates should have recognized that responses grounded in Tort principles would not be appropriate for a response to a question placed in the Law of Contract module or section of the examination.

With knowledge of the limitations of frustration and an applicable decided case, candidates were expected to arrive at the conclusion that once one party to the contract knew of the impending wartime control order (this being Ranna Hotels Ltd) then that party would be in breach as the contract was not frustrated. A foreseeable event cannot frustrate a contract; (see *Walton Harvey Ltd v. Walker and Homfrays Ltd [1931]*), therefore, Ranna Hotels Ltd cannot claim frustration as they were in breach of the contract.

Module 3: Real Property

This module was tested by Questions 5 and 6. Question 6 was marginally more popular with 52 per cent of candidates attempting it. The mean on this question was 13.10 or 52 per cent while that on Question 5 was 11.85 or 42 per cent.

Question 5

This question assessed candidates' understanding of the difference between a lease and a licence. In Part (a), candidates were required to distinguish between a 'lease' and a 'licence'.

They were expected to

- define each concept
- state the differing characteristics of each, for example, a lease is a contract in writing or by deed granting a leasehold interest in land whereas a licence is a permission given by the occupier of land which allows the licensee to do some act which would otherwise be a trespass.

For Part (b), candidates were given a scenario where an owner allowed a relative and his family to live and occupy an apart for 16 years. The occupier made improvements to the building. The owner was seeking to regain possession of the building. Candidates were required to discuss

- whether a lease or a licence was created in the circumstances by applying the characteristics of the two concepts to the fact situation
- whether licence by estoppel has been created by applying the estoppel principle of promise, reliance and detriment to the facts provided.

Most candidates were able to define and provide the distinguishing features between a lease and a licence. However, they were unable to apply the concept of licence by estoppel and tenancy at will to the fact situation. Many candidates did not arrive at a conclusion as to whether the

plaintiff could succeed in an action to recover the apartment; instead, candidates ‘sat on the fence’ in this regard.

Candidates were often unable to differentiate between a licence in property law as opposed to a licence as a regulatory device. Further, there was a general lack of coherence and unpreparedness in answering questions in this area.

Question 6

This question focused on ownership of property and the legal implication on the death of an owner(s) in the case of joint tenancy.

Part (a) required candidates to distinguish between joint tenancy and tenancy-in-common. They were expected to

- define both terms
- identify and explain the differences between the terms, for example, in joint tenancy the co-owners cannot identify any part or share of the land as theirs individually whereas in tenancy-in-common each holds a separate distinct, yet undivided share in the property.

Part (b) provided a scenario where a couple who had two children held a property as joint tenants. The husband made a will giving his half to his sister without the knowledge of the wife. The husband later died and his wife on hearing of his death also died. The survivors are claiming their share of the property.

Candidates were required to say who has a claim to the property. They were expected to

- discuss the issue of survivorship
- apply the legal principle of survivorship to the fact situation
- explain the effect of severance prior to death of party on the principle of survivorship.

Many candidates displayed knowledge of the terms and were able to distinguish between them. They were also able to identify the issue of survivorship and generally answered the question fairly well. However, some candidates were not aware that children born out of wedlock are equally entitled to benefit from their parents' estate. Further, that the right of survivorship is between joint tenants and not between the joint tenants and their heirs.

Many candidates incorrectly identified the definition of *jus acrescendi* as being that interest passed to the youngest child. Many responses lacked coherence.

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

There was a slight increase in the number of candidates who sat the examination compared with 2013. The mean on this paper was 61 per cent.

The question assessed candidates' knowledge of contracts. They were required to

- identify all five of the basic elements for the formation of a valid contract
- explain the requirement (s) for satisfying each of the five basic elements.

Generally, the majority of candidates managed this question well. These candidates were able to identify and explain all the relevant elements needed for the formation of a contract and cited supporting cases.

The few candidates who did not perform as well could not supply cases as required by the question, identify all of the elements or identified incorrect elements.

General and Specific Recommendations

Candidates

Candidates are advised to

- manage their examination time wisely. Too often they short-changed themselves by writing long responses to their first and second questions and then either did not complete questions attempted towards the end of the paper, or made half-hearted attempts at such responses.
- develop a good writing style fostered by reading legal texts and writings.
- indicate, where applicable or required, the jurisdiction to which a particular area of law applies. (Note, especially, those questions that require reference to *a named Commonwealth Caribbean state*.)
- show greater care in complying with the instructions given when responding to examination questions. Specifically they are reminded to
  - write on both sides of the paper and start each answer on a new page as instructed on the answer booklet.
  - note questions attempted in order of response, on the cover page of scripts.
  - record both candidate and centre number in the space provided on the cover page, and throughout the answer booklet where required.
- pay special attention to the use of the convention of written English.
- use legible handwriting.

Teachers

Teachers are encouraged to

- remind students of the FILAC or IRAC method of answering questions and assist them in using these methods.
- give students enough practice in answering questions that have overlapping areas.
- teach students to develop their answers logically and to be coherent in their writing.

- give students practice in analysing questions and responding carefully. Too many students tend to write all they know about a topic instead of identifying the relevant information and properly applying same to the issues identified in the questions.
- spend time explaining key terms so students get a clear understanding.
- make the topics more relevant by finding ways to link the content to the students' own experiences as well as current events.
- help students develop the skill of tailoring their responses to what is required in the questions.
- remind students of the importance of knowing cases so they can use relevant ones.
- remind students that in law they need to use cases in support of their responses regardless of whether the question specifically states so or not and that they need to base their responses on some authority.
- provide opportunities for students to be engaged in mock trials which can be used to depict application of the relevant law to the facts of the scenario given. This would enhance the students' understanding and better equip them with the ability to transfer this understanding when answering examination questions.
- break down complex definitions given to students.

Candidates are encouraged to utilize relevant case law or illustrations for the examinable area.

Paper 031 – School-Based Assessment (SBA)

The SBAs were generally satisfactory. There were a few areas were students performed commendably. These include phrasing the Title, Table of Contents and Description of Method Employed. However, candidates tend not to uphold the same standard in respect of the Aims and Objectives, Presentation of Findings, Discussion of Findings, Recommendations and Bibliography. The overall use of language was well below the required standard.

Increasingly, SBAs which are not in accordance with the requirements set out for conducting the research are being seen. Students are advised to use the stipulated guidelines as set out in the syllabus.

As indicated in the 2013 SBA Report, students are advised against using topics such as 'Defamation', 'Negligence', 'Public and Private Nuisance' and 'Murder', as these topics in and of themselves are too broad and are not focused enough to meet the required standard outlined in the syllabus using the stipulated word limit. Topics should be carefully chosen and narrowed (by using Aims and Objectives) to allow for adequate discussion and legal analysis. Some topics such as 'Homosexuality', 'Child Abuse', 'Hand-held Devices used in Road Traffic Inspection', and 'Squatting' were outside the scope of the CAPE Law syllabus. Students are encouraged to stay clear of these.

Students are strongly urged to adhere to the prescribed format as outlined on pages 31–36 of the syllabus, which details the requirements and format of the SBA. Teachers are reminded to use the most recent moderation form to record grades submitted for projects (revised 2014 or later).

All project titles should be specific, to the point and lend themselves to detailed research. All Table of Contents must reference page numbers.

NB: Introduction, Acknowledgement, Literature Review, Essay, Statement of the Problem and Thesis Statement are not a part of the scheme outlined in the syllabus; no marks are awarded for these.

<u>Aims and Objectives</u>

Some projects had clearly stated aims and objectives, which allowed the students to conduct a more focused research. However, other students presented aims and objectives that were unclear and some that were too remote. This often occurs when the topics are not specific and, as a result, students are unable to identify the most suitable methodology for their project. This adversely affected their overall grades.

Some topics tended to be purely sociological or historical in nature and did not lend themselves to discussion of the law. As a result, the research presented lacked clarity and relevance. Often, students cited laws which were not applicable to the jurisdiction studied, or the scope of the research.

Aims and objectives should be specific and concise. The aims and objectives should lend themselves to research.

Methodology

The majority of students did not properly distinguish between primary and secondary sources of data. In cases where the quantitative methodology was chosen, a significant number of candidates still failed to properly select an appropriate sample and sample size.

Students provided very little or no detail of the data collection methods used. They did not justify the chosen method applied to the research. At times, the particular techniques stated in the methodology were not reflected in the body of the research, for example, where students indicated that secondary sources would be employed but the findings bore no evidence of text material or case law.

It is always recommended that students use a mixture of both primary and secondary methods as this tends to allow for greater validity and reliability of their interpretations, analysis and conclusions.

Also, students must justify why they are using the sources they selected and when conducting an interview must state, the name of the interviewee, date, time and place of interview/s. When using questionnaires students must state the sample size and sample location.

Findings

Most students did a fair job in recording their findings; this was evident in the projects that had clearly stated aims and objectives and applied the relevant methodology. Some of them failed to present the legal findings they intended to rely on in their discussion. They only presented findings from the interview and/or the questionnaires. Also, in some projects, students presented charts/diagrams without stating what they represented. They did not state the proper citation of their cases, and as such they are urged to take note of citation requirements.

Some students did not distinguish between the Findings and Discussion of Findings but instead merged the two under one heading. This negatively affected the grades awarded, as examiners had to allot grades for the required headings based on the information provided.

Students should organize their project as set out in the syllabus (have a heading Presentation of findings which is separate from the Discussion of Findings). They should also present their findings based on the results of the questionnaires and/or interviews conducted and state clearly what each represents.

Also, students should present the legal findings they intend to rely on in their discussions, for example, legislations, case laws and statistics.

Discussion of Findings

The level of legal analysis which was required for this section was generally unsatisfactory. While some students did well in presenting their findings, the analysis and interpretation was lacking.

Students should analyse and interpret both primary and secondary data collected based on their aims and objectives.

Recommendations

Very few students displayed knowledge of what was expected of a recommendation. There is room for great improvement in this area. Many candidates used the recommendation as a conclusion, only summarizing the project.

Students should not use the recommendation as a conclusion only, but should indeed state what they are proposing based on their findings, for example, changes or improvements to be made to the legislation.

The recommendations should be plausible and supported by the relevant laws, where possible.

Bibliography

The vast majority of students was not able to properly cite secondary sources, including cases, journals, textbooks, newspaper articles and internet sources. It is to be noted that search engines such as Google.com, lawteacher.com/net, Wikipedia.com and Ask.com are not in and of themselves proper reference sites.

Students and teachers are reminded that the syllabus contains properly cited reference materials to include texts and cases.

Communication

Overall, the use of the English Language and level of communication displayed in the research projects were below the standard expected at this level.

Students should spend more time proofreading their projects and utilize the dictionary and other spellcheck resources.

Word Limit

Some research projects were in excess of the word limit. It is recommended that the stipulation in the syllabus that students with projects in excess of the prescribed word limit be penalized, be enforced.

Recommended Methodology for Answering Questions

The following seven-point approach is recommended for answering questions, not only for these examinations, but also when preparing their assignments and as a general practice. Success is guaranteed from following these guidelines.

- Candidates must follow instructions.
- Candidates must use language that is grammatically correct, formal and impersonal, not general, vague or colloquial.
- Candidates are encouraged to use the IRAC format when answering problem-type questions.
- Conclusions should relate to the problem and should not be a fanciful construction that bears no relation to the facts, or simply rewrites the facts.
- Candidates must support their responses with legal authority, namely:
  - Case law
  - Statute
  - Legal writers
- Candidates must deal with issues and applicable law, refraining from restating the question, except in so far as a principle of law relates to stated facts. They should strive to answer the questions precisely.