



# **CARIBBEAN EXAMINATIONS COUNCIL**

**Caribbean Advanced Proficiency Examination®  
CAPE®**

**LAW**

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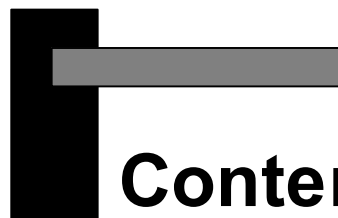
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This document CXC A23/U2/09 replaces CXC A23/U2/03.

Please note that the syllabus was revised and amendments are indicated by italics.

Please check the website [www.cxc.org](http://www.cxc.org) for updates on CXC's syllabuses.



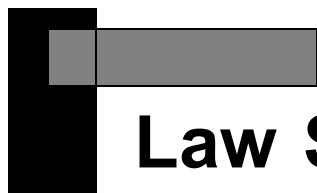


# Introduction

The Caribbean Advanced Proficiency Examination (CAPE) is designed to provide certification of the academic, vocational and technical achievement of students in the Caribbean who, having completed a minimum of five years of secondary education, wish to further their studies. The examinations address the skills and knowledge acquired by students under a flexible and articulated system where subjects are organised in 1-Unit or 2-Unit courses with each Unit containing three Modules. Subjects examined under CAPE may be studied concurrently or singly.

*The Caribbean Examinations Council offers three types of certification. The first is the award of a certificate showing each CAPE Unit completed. The second is the CAPE diploma, awarded to candidates who have satisfactorily completed at least six Units, including Caribbean Studies. The third is the CAPE Associate Degree, awarded for the satisfactory completion of a prescribed cluster of seven CAPE Units including Caribbean Studies and Communication Studies. For the CAPE diploma and the CAPE Associate Degree, candidates must complete the cluster of required Units within a maximum period of five years.*

*Recognized educational institutions presenting candidates for CAPE Associate Degree in one of the nine categories must, on registering these candidates at the start of the qualifying year, have them confirm in the required form, the Associate Degree they wish to be awarded. Candidates will not be awarded any possible alternatives for which they did not apply.*



# Law Syllabus

## ◆ RATIONALE

Law is an essential tool for ensuring relative stability, peace and order in society, for regulating inter-personal behaviour and expectations and for defining public and private rights. The study of Law not only assists students who wish to embark on further study and training for entry into the legal profession, but also addresses the needs of other persons engaged in occupations which require some knowledge of the law, such as law clerks, paralegals, administrators, managers, the police and other public officers. It also serves to inform persons of their rights and obligations, and to inculcate in students certain positive values, which are necessary in any civilised society.

This course in Law at the Advanced Proficiency level provides the basis and scope for promoting a sound knowledge and understanding of legal principles and the role of law in the society, particularly in the evolving and developing Caribbean states. It also facilitates movement by students into professional and other law related programmes. Moreover, in order to motivate students, emphasis is placed on providing an exciting, challenging and intellectually stimulating framework for them to engage in the study of Law as a discrete discipline and an important tool of social engineering. Students who successfully complete this course in Law will have developed an appreciation for the challenges and potential of being Caribbean citizens. They will have an understanding of their own roles and responsibilities in preserving and contributing to their Caribbean heritage. They will have attained the attributes of the Ideal Caribbean Person as outlined in the document, The Caribbean Education Strategy (2000).

This syllabus seeks to develop knowledge and understanding of critical legal concepts, as well as, analytical, functional and problem-solving skills, and the ability to synthesise and evaluate legal materials. It also seeks to promote an awareness and appreciation of the role and mechanisms of Law, in the resolution of disputes whether by the courts (civil or criminal); or Alternative Dispute Resolution (ADR), such as, arbitration or mediation. The syllabus will also help students to refine their critical thinking skills and judgments and the acquisition of skills as defined in the UNESCO Pillars of Learning through research. These include the responsibilities of learning to know, learning to do, learning to live together, learning to be and learning to transform oneself and society

## ◆ AIMS

The syllabus aims to:

1. promote *and develop* knowledge and understanding of legal principles *in* selected areas of law in the Commonwealth Caribbean;
2. develop techniques of legal reasoning and the ability to analyse and solve legal problems, with reference to the recognised sources of law;
3. develop an appreciation of the role of law in society;
4. promote respect for the Rule of Law and legal institutions in society;
5. promote a critical awareness of the process of developing Caribbean jurisprudence;
6. encourage an awareness of the fundamental rights and freedoms enshrined in the constitutions of Commonwealth Caribbean states and the methods of their enforcement;
7. sensitise individuals to their right to proper state administration.

## ◆ SKILLS AND ABILITIES TO BE ASSESSED

The examinations will test candidates' skills and abilities *under two Profile Dimensions*.

1. *Conceptual Knowledge (CK)*  
*The ability to:*
  - recall legal principles, concepts and theories;
  - describe legal procedures;
  - explain legal concepts.
2. *Use of Knowledge (UK)*  
*The ability to:*
  - select and use appropriate facts, concepts, principles and rules in a variety of contexts;
  - apply legal precedent from case material or statute to solve factual or simulated problems;
  - analyse a body of information to determine the legal issues contained therein;
  - analyse material and make logical judgements;
  - interpret material from law reports, statutes, legal journals and case materials in specific issues (cases);
  - deduce common themes, synthesize themes in a logical manner;
  - draw conclusions based on legal research.

## ◆ STRUCTURE OF THE SYLLABUS

The syllabus is arranged into two Units. Each Unit consists of three Modules, *each Module requiring 50 hours*.

### UNIT 1: PUBLIC LAW

Module 1	-	Caribbean Legal Systems
Module 2	-	Principles of Public Law
Module 3	-	Criminal Law

### UNIT 2: PRIVATE LAW

Module 1	-	Law of Tort
Module 2	-	Law of Contract
Module 3	-	Real Property

*Lists of resources are provided in the syllabus. The lists provide information that may be helpful for the study of each Module.*

*Each Unit forms a discrete package for certification.*

*For each Module there are general and specific objectives. The general and specific objectives indicate the scope of the content, on which the examination will be based. However, unfamiliar situations may be presented as stimulus material in a question.*



# ◆ UNIT 1: PUBLIC LAW

## MODULE 1: CARIBBEAN LEGAL SYSTEMS

### GENERAL OBJECTIVES

On completion of this Module, students should:

1. understand the varying ideas and thoughts about the subject of law;
2. appreciate the complex nature of law;
3. understand the dynamic role(s) and functions of law in changing *Commonwealth Caribbean* societies;
4. develop skills in applying legal principles to a given set of facts.

### SPECIFIC OBJECTIVES

Students should be able to:

1. *describe the various theories and meanings of law;*
2. *describe the interrelationships of law, morality and religion;*
3. *explain the phrase 'sources of law';*
4. *describe the bases on which the law can be classified;*
5. *evaluate the structural and hierarchical operation of the court system;*
6. *evaluate the role and function of named functionaries and institutions of the legal process;*
7. *assess alternative methods of dispute resolution;*
8. *assess the main ethical standards that lawyers should follow;*
9. *describe the sanctions available against attorneys for breach of the code of ethics;*
10. *evaluate the role and function of the Ombudsman.*

# UNIT 1

## MODULE 1: CARIBBEAN LEGAL SYSTEMS (cont'd)

### CONTENT

1. Natural Law and Positive Law:
  - (i) nature, origin, role, and functions;
  - (ii) *theories of law*.
2. The Influence of Morality and Religion on Law.
3. Concepts of the phrase 'sources of law':
  - (i) literary sources - Constitution;
  - (ii) legal sources - legislation (primary and subsidiary) and interpretation by the Courts;
  - (iii) historical sources - common law;
  - (iv) equity - origin and development in the Caribbean;
  - (v) *judicial* precedent;
  - (vi) *customs and conventions*.
4. Classification of Law:
  - (i) reasons for classification;
  - (ii) classification bases:
    - (a) subject matter - for example, contract, criminal, tort;
    - (b) functional - for example, substantive and procedural;
    - (c) conceptual - for example, private law and public law.
5. Structure and Hierarchy of the Criminal and Civil Courts
  - (i) Evaluation of the Judicial Committee of the Privy Council and the Caribbean Court of Justice;
  - (ii) Courts of Appeal, High Courts and Supreme Courts;

## UNIT 1

### MODULE 1: CARIBBEAN LEGAL SYSTEMS (cont'd)

- (iii) Magistrates' Courts, including Juvenile Court, Family Court and Petty Sessions.
6. *Role and function of:*
- (i) Legal personnel (Attorney General, Judges, Registrars, Bailiffs, Marshalls, Prosecutors);
  - (ii) The Jury (eligibility and disqualification, advantages and disadvantages of the jury system).
7. *Alternative methods of dispute resolution (ADR) – (arbitration and mediation).*
8. Ethical Standards related to relationships between:
- (i) lawyer and lawyer;
  - (ii) lawyer and client;
  - (iii) lawyer and the courts.
9. Sanctions for breaches of The Code of Ethics:
- (i) suspension;
  - (ii) fines;
  - (iii) Striking off the Roll or disbarment.
10. The role and functions of the Ombudsman.

#### Suggested Teaching and Learning Activities

*To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.*

1. Develop scrapbooks of newspaper reports and clippings on issues related to Caribbean legal systems.
2. Collect material on different ADR processes and study developments in their territory.
3. Allow students to participate in panel discussions involving resource persons with expertise in Caribbean legal systems and in ADR processes.

## UNIT 1

### MODULE 1: CARIBBEAN LEGAL SYSTEMS (cont'd)

4. Allow students to participate in debates, moots and prepared speeches on issues related to Caribbean legal systems and ADR processes for presentation and critique by peers.
5. Conduct class discussions on issues related to law that are presented on the Editorial Pages of daily newspapers.
6. Use the Internet and electronic media sources to obtain information on new legislation and legal issues in Parliament.
7. Encourage students to attend Court and Parliament and discuss the issues and report on issues of law.
8. Make use of law libraries for research purposes.

## RESOURCES

These are some of the resource materials available for teaching Module 1.

- |                     |   |
|---------------------|---|
| Antoine, R.         | <i>Commonwealth Caribbean Law and Legal Systems</i> , London: Cavendish, 1999.  |
| Britton, P.         | Alternative Dispute Resolution, <i>I Guy L. R.</i> 108, 1999.   |
| Eversley, C. A.     | Law, Religion and Morality, <i>I Guy L. R.</i> 3, 1999.   |
| Eversley, C. A.     | The Doctrine of Stare Decisis - An Enlightened Judicial Approach, <i>Guyana Law Journal</i> 63, 1980.                 |
| Fiadjoe, A.         | <i>Commonwealth Caribbean Public Law</i> , London: Cavendish, 1999.   |
| Liverpool, N. J. O. | <i>The History and Development of the St. Lucia Civil Code</i> , Bridgetown: ISER, Cave Hill, 1977.                   |
| Newton, V.          | <i>Commonwealth Caribbean Legal Systems: A Study of Small Jurisdictions</i> , Bridgetown: Triumph Publications, 1988. |

**UNIT 1**  
**MODULE 1: CARIBBEAN LEGAL SYSTEMS (cont'd)**

Some Suggested Cases

*R v Ramsonahai and Duke* (1961) 3WIR535  
*R v George Green* (1969) 14WIR204  
*Davis v R* (1962) 4WIR375  
*Fraser v Greenway* (1992) 41WIR136  
*Forde v Law Society* 40 WIR 36  
*Re Niles* (1993) 47 WIR 38  
*Knüller v DPP* (1973) AC A35  
*Mohamed v Moraine and Another* (1995) 49 WIR 37  
*Shaw v DPP* (1967) AC 220

## **UNIT 1**

### **MODULE 2: PRINCIPLES OF PUBLIC LAW**

For the purpose of this Module the term “Public Law” refers to two areas of law, namely, Administrative and Constitutional Law, with the greater emphasis on Constitutional Law.

#### **GENERAL OBJECTIVES**

On completion of this Module, students should:

1. understand the overall concept of *Public Law*;
2. comprehend the principles of *Administrative and Constitutional Law*;
3. develop skills in applying principles of *Public Law* to fact situations.

#### **SPECIFIC OBJECTIVES**

Students should be able to:

1. *distinguish* between supremacy of the Constitution and Parliamentary Sovereignty;
2. *describe* the fundamental rights under the constitution;
3. *describe* the role and functions of Service Commissions;
4. *outline* the composition of Parliament;
5. *analyse* the concept of the separation of powers, including the independence of the judiciary;
6. *outline* the appointment and functions of the Head of State;
7. *analyse* the concept of the rule of law;
8. *describe* the general principles of Administrative Law and Constitutional Law.

#### **CONTENT**

*Characteristics of the Constitution of any one Commonwealth Caribbean State*

1. Differences between the supremacy of the Constitution vs. Parliamentary Sovereignty.
2. The fundamental rights under the Constitution.

## UNIT 1

### MODULE 2: PRINCIPLES OF PUBLIC LAW

3. The role and functions of Service Commissions.
4. The composition of Parliament.
5. The concept of the separation of powers, including the independence of the judiciary.
6. The appointment and functions of the Head of State.
7. The concept of the rule of law.
8. Judicial Review
  - (i) Ultra Vires Doctrine:
    - (a) unlawful administrative decisions and actions by the state;
    - (b) *distinction between procedural and substantive ultra vires;*
  - (ii) *Breach of one's fundamental rights;*
  - (iii) *Breach of the provision of some statute other than the Constitution;*
  - (iv) *Grounds for Judicial Review specific to:*
    - (a) *breach of the principles of natural justice and legitimate expectation;*
    - (b) *improper delegation of powers;*
    - (c) *abuse of discretion.*
  - (v) Locus Standi-liberal vs. restrictive approach.

## UNIT 1

### MODULE 2: PRINCIPLES OF PUBLIC LAW

#### Suggested Teaching and Learning Activities

To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.

1. Allow students to participate in group projects and presentations based on research on different aspects of the relevant principles of public law.
2. Engage students in conducting peer evaluation of the projects on aspects of public law and presentations.
3. Assign students to produce a scrapbook of newspaper clippings and research material on aspects of public law.
4. Develop a law resource library on issues of public law, which can be added to annually.
5. Allow students to participate in moots and debates on public law issues.
6. Allow students to attend Parliamentary sittings and report on issues pertaining to the law.
7. Engage students in a Youth Parliament.
8. Visit Parliamentary websites and examine Hansard reports to conduct research on law issues.

#### RESOURCES

Alexis, F. *Changing Caribbean Constitutions*, Bridgetown: Antilles Publications, 1983.

Fiadjoe, A. *Commonwealth Caribbean Public Law*, London: Routledge Cavendish, 2006.

The Constitution of various countries.

#### Cases

*Thomas v AG* (1982) AC 113

*Lilleyman v IRC* (1972) 18 WIR 227

*Collymore v AG* (1967) 12 WIR5

*Maharaj v AG* (1979) AC 385

*Hinds v R* (1977) AC 195



## UNIT 1

### MODULE 3: CRIMINAL LAW

#### GENERAL OBJECTIVES

On completion of this Module, students should:

1. understand the basic principles of Criminal Law;
2. develop skills in applying knowledge of Criminal Law to solve problems in a logical and analytical way, using case material and statute where relevant;
3. develop skills in evaluating the reform and development of Criminal Law, especially as it relates to certain offences and the treatment of offenders, including juvenile offenders;
4. appreciate the importance of the role of Criminal Law in society.

#### SPECIFIC OBJECTIVES

Students should be able to:

1. explain the basic principles of criminal liability;
2. *apply* the basic principles of criminal liability to offences against the person;
3. *apply* the basic principles of criminal liability to sexual offences;
4. *apply* the basic principles of criminal liability to offences against property;
5. *apply* the basic principles of criminal liability to Inchoate offences;
6. explain select defences available in Criminal Law;
7. evaluate the theories and practices of sentencing practices in the Commonwealth Caribbean.

#### CONTENT

1. Criminal Liability:
  - (i) *actus reus*, including age of criminal responsibility and status of offences;
  - (ii) acts, omissions, consequences and surrounding circumstances;
  - (iii) *mens rea*;
  - (iv) specific intention: *recklessness; crimes of negligence; strict liability.*

**UNIT 1**  
**MODULE 3: CRIMINAL LAW**

- (v) coincidence of *actus reus* and *mens rea*;
  - (vi) transferred malice.
2. *Application of the basic principles of criminal liability to:*
- (i) Offences against the Person:
    - (a) murder;
    - (b) manslaughter: voluntary and involuntary;
    - (c) assault;
    - (d) wounding;
  - (ii) Sexual Offences:
    - (a) rape;
    - (b) incest;
  - (iii) Offences against Property:
    - (a) theft or larceny (*as applicable to a particular Commonwealth Caribbean state*);
    - (b) robbery;
    - (c) burglary;
    - (d) criminal damage or malicious damage;
  - (iv) Inchoate Offences:
    - (a) conspiracy;
    - (b) attempt;
    - (c) *incitement*.

**UNIT 1**  
**MODULE 3: CRIMINAL LAW (cont'd)**

3. Select defences available in *Criminal Law*:
  - (i) insanity;
  - (ii) diminished responsibility;
  - (iii) provocation;
  - (iv) intoxication;
  - (v) self-defence.
  
4. Sentencing:
  - (i) theories;
  - (ii) types;
  - (iii) young offenders.

**Suggested Teaching and Learning Activities**

*To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.*

1. Assign students to critique films on related criminal law topics.
2. Allow students to participate in moots and debates on criminal law issues, for example, on whether the age of criminal responsibility should be raised.
3. *Include analysis of criminal cases in scrapbooks.*
4. Allow students to participate in lectures and discussions with visiting resource persons with expertise in areas of criminal law.
5. *Allow students to visit criminal courts and report on observations.*
6. *Arrange with Court Registrar to visit the courts in session and interview personnel (for example, judge, defence counsel and prosecutor).*

## UNIT 1 MODULE 3: CRIMINAL LAW (cont'd)

### RESOURCES

- Card, R. *Card, Cross and Jones: Criminal Law*, London: Butterworths, 1995.
- Dugdale, A., Furmston, M., Jones, S. and Sherrin, C. *“A” Level Law*, London: Butterworths, 1996.
- Smith, J. and Hogan, B. *Criminal Law*, London: Butterworths, 2002. (Teachers’ Text)

### Cases

- Woolmington v DPP (1935) AC 462*
- DPP v Morgan (1975) 2 All ER 347*
- R v Miller (1954) 2 All ER 534*
- R v Savage (1991) 4 All ER 698*
- Director of Public Prosecutions v Smith (1961) AC 290*
- R v Kingston (1994) Crim. LR 846*
- Director of Public Prosecutions v Majewski (1977) AC 443*
- Director of Public Prosecutions v Morgan (1976) AC 182*
- Pratt and Morgan v AG for Jamaica (1994) AC1*
- Neville Lewis et al v AG for Jamaica et al (Privy Council) 2000*
- Newton Spence et al v R (Privy Council) Appeals from St. Lucia and from St. Vincent and the Grenadines, 2002*
- \*Williams (Paul) v. the State 1999 57 WIR 380*
- \*Braithwaite v. Commissioner of Police 1968 12 WIR 449*
- (\*These cases are useful for the area of Sentencing)

## ◆ UNIT 2: PRIVATE LAW

### MODULE 1: LAW OF TORT

#### GENERAL OBJECTIVES

On completion of this Module, students should:

1. understand the underlying concepts of civil liability for wrongful conduct;
2. develop the ability to apply skills of analysis and critical evaluation to a wide variety of law materials, such as, law reports, statutes and legal journals.

#### SPECIFIC OBJECTIVES

Students should be able to:

1. outline the nature of the Law of Tort;
2. distinguish the Law of Tort from the Law of Contract, Constitutional Law and Criminal Law;
3. explain the principles of defamation including defences;
4. explain the principle of nuisance;
5. explain the principles of trespass to the person;
6. explain the principles of liability of animals;
7. explain the principles of employers' liability;
8. explain the nature of occupiers' liability;
9. assess the nature of liability for negligence in the Law of Tort.

#### CONTENT

1. *The Law of Tort:*  
The nature of Tort including remedies available in specific torts.
2. Differences between the Law of Tort and:
  - (i) Law of Contract;
  - (ii) Constitutional Law;

## UNIT 2

### MODULE 1: LAW OF TORT (cont'd)

- (iii) Criminal Law.
3. Defamation:
- (i) elements of defamation;
  - (ii) defences to defamation – justification; fair comment; absolute privilege and qualified privilege.
4. Nuisance:
- (i) public;
  - (ii) private.
5. Trespass to the person:
- (i) assault and battery;
  - (ii) false imprisonment;
  - (iii) malicious prosecution.
6. Liability for animals.
7. Vicarious liability.
8. Occupiers' liability.
9. Negligence:
- (i) duty;
  - (ii) breach;
  - (iii) damage:
    - (a) remoteness and foreseeability;
    - (b) negligent misstatements.

## UNIT 2

### MODULE 1: LAW OF TORT (cont'd)

#### Suggested Teaching and Learning Activities

To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.

1. Invite guest lecturers with knowledge and experience in the Law of Tort to hold panel discussions with students on issues pertaining to the Law of Tort.
2. Allow students to interpret issues related to the law of Tort through role play and simulated exercises.
3. Compile scrap books of selected cases related to the Law of Tort.
4. Collect newspaper reports on selected cases related to the Law of Tort.
5. Engage students in group work and group research followed by presentation to class.
6. Allow students to attend public lectures on issues related to the Law of Tort and report on major issues.

#### RESOURCES

Jones, M.	<i>Textbook on Torts</i> , London: Blackstone Press, 2003.
Kodilinye, G.	<i>Commonwealth Caribbean Tort Law</i> , London: Cavendish, 2002.
Rogers, W.	<i>The Law of Tort</i> , London: Sweet and Maxwell, 1994. (Recommended Teachers' Text)
Caribbean Examinations Council	<i>Law: Tort, Unit 2, Module I</i> , 2003.

#### Some Suggested Cases

*Austin v AG* (1986, High Court, Barbados)

*Robley v Placide* (1966) 11 WIR 58

*Campbell v Clarendon Parish Council* (1982, Supreme Court, Jamaica)

## **UNIT 2**

### **MODULE 1: LAW OF TORT (cont'd)**

*Imperial Life Assurance Co. of Canada v Bank of Commerce (Jamaica) Ltd (1985, Court of Appeal, Jamaica)*

*Philips v Barbados Light and Power Co. Ltd. (1972) 7 Barb LR 154*

*Bacchus v Bacchus (1973) LRBG 115*

*British Guiana Rice Marketing Board v Peter Taylor and Co. Ltd. (1967) 11WIR 208*

*Donoghue v Stevenson (1932) AC 562*

*Anns v Merton London Borough Council (1978) AC 728*

*Caparo Industries v Dickman (1990) 1 All ER 568*

*Blyth v Birmingham Waterworks Company (1856) 11 Exch 781*

*Barnett v Chelsea & Kensington Hospital Management Committee (1969) 1 QB 428*

*Overseas Tankship (UK) Ltd v Morts Dock and Engineering Company Ltd (The Wagon Mound (No.1) (1961) AC 388*

*Wilson v Pringle (1986) 3 WLR 1*

*Mersey Docks & Harbour Board v Coggins & Griffith (Liverpool) Ltd (1947) AC 1*

*Lister v Hesley Hall Ltd (2001) 2 All E. R. 769 (HL)*



## **UNIT 2**

### **MODULE 2: LAW OF CONTRACT**

#### **GENERAL OBJECTIVES**

On completion of this Module, students should:

1. understand the various legal principles which underlie the Law of Contract;
2. develop the ability to analyse the theories and concepts which shape the formation and development of the Law of Contract;
3. understand how the Law operates to protect contractual rights;
4. develop skills in analysing fact situations in order to apply the rules of the Law of Contract.

#### **SPECIFIC OBJECTIVES**

Students should be able to:

1. *explain the nature of the Law of Contract;*
2. *analyse the legal rules governing formation of contracts;*
3. *explain the doctrine of privity of contract;*
4. *explain the legal rules governing contractual terms;*
5. *analyse the law relating to misrepresentation;*
6. *apply the legal rules relating to discharge;*
7. *outline the effect of illegality on a contract.*

#### **CONTENT**

1. *The nature of the Law of Contract:*
  - (i) *definition of contractual obligations;*
  - (ii) *differences from other types of legal obligations, such as tortious liability and criminal liability.*

## UNIT 2

### MODULE 2: LAW OF CONTRACT (cont'd)

2. *The legal rules governing formation of contracts:*
  - (i) *offer and acceptance;*
  - (ii) *intention to create legal relations including contract between husband and wife;*
  - (iii) *consideration;*
  - (iv) *capacity(minors, insane persons).*
  
3. *The doctrine of privity of contract:*
  - (i) *definition, scope and application of the doctrine of privity of contract;*
  - (ii) *common law and equitable exceptions to the doctrine of privity of contract.*
  
4. *The legal rules governing contractual terms:*
  - (i) *expressed and implied terms;*
  - (ii) *conditions, warranties, intermediate or innominate terms;*
  - (iii) *exclusion or exemption clauses.*
  
5. *Misrepresentation:*
  - (i) *definition of misrepresentation;*
  - (ii) *types of misrepresentation (fraudulent, negligent and innocent);*
  - (iii) *the effect of misrepresentation on a contract.*

## UNIT 2

### MODULE 2: LAW OF CONTRACT (cont'd)

6. Discharge:
- (i) definition of discharge and the types of discharge;
  - (ii) *methods of discharge*:
    - (a) *agreement*;
    - (b) *performance*;
    - (c) *breach*;
    - (d) *frustration*.
7. *Effects of illegality on a contract*:
- (i) *Examples of illegal contracts*:
    - (a) *Uphill v. Wright; Pearce v. Brooks*;
    - (b) *Re Mahmoud v. Ispahani*.

#### Suggested Teaching and Learning Activities

*To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.*

1. Invite guest speakers to lecture on issues related to the Law of Contract and engage students in group work and group research followed by presentation to class.
2. Encourage students to interpret issues related to the Law of Contract through role play and simulated exercises.
3. Develop scrapbooks on cases related to the Law of Contract.
4. Develop scrapbooks of newspaper reports on cases related to the Law of Contract.
5. Encourage students to attend public lectures on issues related to the Law of Contract and have them write reports or summarize their findings.

## UNIT 2

### MODULE 2: LAW OF CONTRACT (cont'd)

#### RESOURCES

Cavendish Publishing Limited	<i>Cavendish Law Cards - Contract Law</i> , London: Cavendish Publishing Limited, 2001.
Cavendish Publishing Limited	<i>Cavendish Law Cards - A' Level Law</i> , London: Cavendish Publishing Limited, 1997.
Chaudhary, R.	<i>West Indian Law of Contract</i> , Heroco International Limited, 1995.
Eversley, C.	Contractual Freedom vs Business Fairness and Illegality, <i>Guyana Law Review</i> Vol.1 No.1. 41, 1999.
Poole, J.	<i>Casebook on Contract</i> , Hampshire: Ashford Color Press, 1995.
Smith, J.	<i>Smith and Thomas - A Casebook on Contract Law</i> , London: Sweet and Maxwell, 2002.

#### Some Suggested Cases

*Storer v Manchester City Council* (1974) 3 All ER 824

*Carlill v Carbolic Smoke Ball Company* (1893) 1 QB 256

*Gibson v Manchester City Council* (1979) 1 All ER 972

*Partridge v Crittenden* (1968) 2 All ER 421

*Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* (1952) 2 QB 795

*Entores v Miles Far East Corporation* (1955) 2 All ER 493

*Adams v Linsell* (1818) 1 B & Ald 681

*Currie v Misa* (1875) LR 10 Ex 153

*Pao On v Lau Yiu Long* (1979) 3 All ER 65

*Balfour v Balfour* (1919) 2 KB 571

*Derry v Peek* (1889) 14 App Cas 337

*Jarvis v Swan Tours Ltd* (1973) 1 All ER 71

## **UNIT 2**

### **MODULE 3: REAL PROPERTY**

#### **GENERAL OBJECTIVES**

On completion of this Module, students should:

1. understand the term “real property”;
2. understand how interests in property are acquired;
3. understand the rights and obligations of owners of real property;
4. develop skills in applying the principles of the Law of Real Property in the context of the issues raised in the Module.

#### **SPECIFIC OBJECTIVES**

Students should be able to:

1. explain the term “real property”;
2. analyse the differences between fixtures and chattels;
3. describe the concept of land ownership in any one Commonwealth Caribbean state;
4. evaluate the characteristics of leases and licences;
5. describe the characteristics of easements;
6. explain terms and concepts related to mortgages.

#### **CONTENT**

1. (i) Explanation of the term ‘real property’.  
(ii) Differences between the following terms:
  - (a) realty and personality;
  - (b) *corporeal and incorporeal property*;
  - (c) moveable and immoveable property.
2. Fixtures and Chattels – intention – degree, mode and purpose of annexation; Custom and usage.

**UNIT 2**  
**MODULE 3: REAL PROPERTY (cont'd)**

3.
  - (i) Definition of the terms 'tenure' and 'estate'.
  - (ii) Description of types of estates:
    - (a) fee simple or freehold estate;
    - (b) leasehold estate;
    - (c) life estate;
    - (d) legal and equitable interests.
  - (iii) Distinction between legal and equitable interests.
  - (iv) Concurrent interests or Co-ownership:
    - (a) the characteristics of a joint tenancy;
    - (b) the characteristics of a tenancy-in-common;
4.
  - (i) The nature, acquisition and termination of the following:
    - (a) licences;
    - (b) leases.
  - (ii) Differences between a lease and a licence.
  - (iii) The landlord (lessor) and the tenant (lessee):
    - (a) types of tenancies;
    - (b) the implied covenants of:
      - the landlord; (lessor)
      - the tenant; (lessee)
    - (c) the consequences of a breach of covenant by:
      - the landlord;
      - the tenant.

**UNIT 2**  
**MODULE 3: REAL PROPERTY (cont'd)**

5.
  - (i) The characteristics of an easement.
  - (ii) Brief outline of the following methods by which an easement may be acquired:
    - (a) statute;
    - (b) prescription.
6. Explanation of the following terms:
  - (i) mortgage;
  - (ii) mortgagor and mortgagee;
  - (iii) equitable right to redeem;
  - (iv) equity of redemption;
  - (v) power of sale.

**Suggested Teaching and Learning Activities**

*To facilitate students' attainment of the objectives of this Module, teachers are advised to engage students in the teaching and learning activities listed below.*

1. Invite resource persons with knowledge and experience in Real Property to engage students in discussions.
2. Encourage students to interpret issues related to Real Property through role play and simulated activities.
3. Develop scrapbooks on cases related to Real Property.
4. Engage students in group work and group research followed by presentation to class.
5. Encourage students to conduct interviews with mortgage companies to find out major issues confronting these companies.

## UNIT 2

### MODULE 3: REAL PROPERTY (cont'd)

#### RESOURCES

Kodilinye, G. *Commonwealth Caribbean Property Law*, London: Cavendish, 2000.

Caribbean Examinations Council *Law: Real Property, Unit 2 Module III, 2002.*

#### Some Suggested Cases

*Stanley Johnson v. R. Terrier and Auir* [1974] 22WIR, 441

*Panton v. Roulstone* [1976] 24 WIR 462

*O'Brien v. Missick* [1977] B.L.R 49

*Mitchell v. Cowie* [1964] 7 WIR 118

*Isaac v. Hôtel de Paris* [1960] IAIER, 348, [1960] IWLR, 239

*Street v. Mountford* [1985] / AIER, 289, [1985] 2WLR, 877

*Edwards v. Brathwaite* [1978] 32 WIR, 85

*Facchini v. Bryson* [1952] ITLR 1386

*Kreglinger v. New Patagonia and Cold Storage Co. Ltd.* [1914] AC.25



## ◆ OUTLINE OF ASSESSMENT

Each Unit of the syllabus will be assessed separately. The same scheme of assessment will be applied to each Module in each Unit. Grades will be awarded independently for each Unit.

*The assessment will comprise two components, one external and one internal. Candidates must complete the School-Based Assessment for the first Unit for which they register and write. Candidates may carry forward the School-Based Assessment mark for the first Unit written to the second Unit (irrespective of the mark earned), or may opt to complete the School-Based Assessment for the second Unit as well.*

### EXTERNAL ASSESSMENT FOR EACH UNIT

(80%)

#### Written Papers - 4 hours

**Paper 01**                      The paper will consist of **forty-five (45) compulsory**      30%  
(1 hour 30 minutes)      **multiple-choice** items. There will be fifteen (15) items  
based on each Module.

**Paper 02**                      This paper will consist of six extended-response questions with two      50%  
(2 hours 30 minutes)      questions based on each Module. Candidates will be required to  
answer one question from each Module, that is, a total of  
**THREE** questions.

### SCHOOL-BASED ASSESSMENT FOR EACH UNIT

(20%)

#### *Paper 03/1*

*A research paper of approximately 1500 words, (exclusive of appendices and footnotes) based on any topic covered in any of the three (3) Modules of the Unit, will be required.*

*Candidates who, in the same year, register for both Units of CAPE Law may opt to:*

- (a)      *submit a single School-based Assessment for both Units OR ;*
- (b)      *submit separate School-based Assessment assignments for each Unit.*

*Candidates who are doing two Units of CAPE Law at the same sitting and submitting a single School-based Assessment must indicate from which Unit the School-based Assessment was selected.*

*If a candidate is repeating a Unit, he or she may use the same moderated School-based Assessment score obtained for a Unit from a previous sitting for both Units being taken at the same time.*

Students may work individually or in groups to conduct research. However, each candidate must produce a complete report. No two reports from the same group should be identical. The report should be approximately 1500 words (not including appendices). Wherever a candidate exceeds the maximum length for the project by more than 10 per cent, the teacher must impose a penalty of 10 per cent of the score that the candidate achieves on the project. On the candidate's script, the teacher should clearly indicate the candidate's original score, that is, the score before the deduction is made, the marks which are to be deducted, and the final score that the candidate

receives after the deduction has been made. Only the final score is to be indicated on the record sheets which are submitted to CXC.

### **Paper 03/2**

Private candidates are required to write an Alternative Paper to the *School-based Assessment* – Paper 03/2. Details are on page 37.

### **MODERATION OF SCHOOL-BASED ASSESSMENT**

A sample of the tasks performed in class and the outputs kept on the local electronic submission facility will be requested by CXC for moderation purposes. These samples will be moderated by CXC Examiners. The marks assigned by the classroom teacher may therefore be adjusted to bring them in alignment with CXC's standards. The Examiner's comments will be sent to schools.

Copies of students' projects that are not submitted to CXC must be retained by the school until three months after publication of the examination results by CXC.

### **GUIDELINES FOR CONDUCT OF *SCHOOL-BASED* ASSESSMENT**

*School-based* Assessment is an integral part of student assessment in the course covered by this syllabus. It is intended to assist students in acquiring certain knowledge, skills and attitudes that are associated with the subject. The activities for the *School-based* Assessment are linked to the syllabus and should form part of the learning activities to enable the student to achieve the objectives of the syllabus.

During the course of study for the subject, students obtain marks for the competence they develop and demonstrate in undertaking their *School-based* Assessment assignments. These marks contribute to the final marks and grades that are awarded to students for their performance in the examination.

The guidelines provided in this syllabus for selecting appropriate tasks are intended to assist teachers and students in selecting assignments that are valid for the purpose of *School-based* Assessment. The guidelines provided for the assessment of the assignments are intended to assist teachers in awarding marks that are reliable estimates of the achievement of students in the *School-based* Assessment component of the course. In order to ensure that the scores awarded by teachers are consistent with the CXC standards, the Council undertakes the moderation of a sample of the *School-based* Assessment assignments from each centre.

### **ASSESSMENT DETAILS**

#### **External Assessment by Written Papers (80% of Total Assessment)**

#### **Paper 01 (1 hour 30 minutes - 30% of Total Assessment)**

##### **1. Composition of Paper**

*This paper will consist of forty-five (45) multiple-choice items. There will be fifteen (15) questions based on each Module. All questions are compulsory.*

2. **Syllabus Coverage**

- (i) Knowledge of the entire syllabus is required.
- (ii) The intention of this paper is to test candidates' knowledge across the breadth of the syllabus.

3. **Question Type**

Each multiple-choice *item* will test either Conceptual Knowledge or Use of Knowledge.

4. **Mark Allocation**

- (i) *One mark will be assigned for each question.*
- (ii) *The total number of marks available for this paper is 45, and will be weighted to 90.*
- (iii) *This paper contributes 30% towards the final assessment.*

**Paper 02 (2 hours 30 minutes - 50% of Total Assessment)**

This paper will be divided into two sections; Section A and Section B.

1. **Composition of Paper**

- (i) *The paper will consist of six questions, with two questions based on each Module.*
- (ii) *Candidates will be required to answer one question from each Module, that is, a total of THREE questions.*

2. **Syllabus Coverage**

- (i) *Each question requires a greater depth of understanding than those questions in Paper 01.*
- (ii) *Each question may assess one topic or more from the Module on which it is based.*
- (iii) *Each question may be based on a single theme or unconnected themes.*
- (iv) *The purpose of this paper is to test candidates' in-depth knowledge of the syllabus.*

### 3. Question Type

- (i) A question may require a short response or an extended response.
- (ii) The questions will test both Conceptual Knowledge and Use of Knowledge

### 4. Mark Allocation

- (i) Each question will be allocated 25 marks.
- (ii) The maximum marks available for this paper is 75, and will be weighted to 150.
- (iii) This paper contributes 50% towards the final assessment.

### *School-based Assessment*

A research paper of approximately 1500 words, (exclusive of appendices and footnotes) *based on any topic covered in any of the three (3) Modules of the Unit, will be required.*

### **Research Paper – Paper 03/1**

1. The aims of the research paper are to:

- (i) promote self-learning;
- (ii) allow teachers the opportunity to engage in the formative assessment of their students;
- (iii) allow students to enhance their understanding of the nature of law through local studies;
- (iv) allow students to explore more fully some areas of the Unit that may not be assessed adequately in an external examination.

2. Requirements

The research paper *presents* an opportunity for students to demonstrate the accomplishment of the skills referred to on page 2 of the syllabus. Specifically, in the research paper, the student will be required to:

- (i) illustrate conceptual understanding of the law;
- (ii) apply legal principles by the use of analytical, functional and problem-solving skills;
- (iii) synthesise and evaluate issues.

The topic of the research paper should be related to a topic in the syllabus or based on a specific objective. The teacher should mark the research paper out of 20, using the mark scheme on pages

33-36 of the syllabus. The teacher should award the marks that the student obtained on the research paper to each of the three Modules.

### **Primary Sources of Data**

Candidates *may* use primary sources of data in their research activities. These include information gathered through questionnaires, and face-to-face interviews.

### **Secondary Sources of Data**

Secondary sources of data *may* also be used. These include newspapers, professional law journals, magazines, (such as Newsweek, Times) and documentation on cases studied.

### 3. Management of the Research Paper

- (i) An early start to planning the research paper is highly recommended.
- (ii) Each candidate should know the requirements of the research paper and its assessment procedures as part of the orientation to the Unit.
- (iii) Teachers should guide the candidates in choosing appropriate topics that relate to the candidates' interest and the specific objectives identified.
- (iv) A schedule of the dates for submitting project work (agreed by teachers and candidates) should be established.
- (v) A teacher should offer guidance in the data collection process and the preparation of the report.

### 4. *Presentation and Assessment*

The research paper should be presented in a soft folder bearing the candidate's number, name of subject (Unit indicated) and the date submitted.

The research paper will be assessed under the cognitive levels indicated in the following table:

	<b>Cognitive Level</b>	<b>Candidates' Ability</b>
(i)	Conceptual Knowledge (CK)	To demonstrate knowledge and understanding of the objectives being assessed;
(ii)	Use of Knowledge (UK)	To collect, classify and communicate information in a logical way using correct grammar.  To distinguish relationships among components, to interpret, make judgement and recommendations appropriate to the issues under investigation.

The marks for the research paper will be allocated as indicated below.

Section	Marks	Cognitive Level
(i) Title and table of contents	1	Conceptual Knowledge - CK
(ii) Aims and objectives	1	Conceptual Knowledge - CK
(iii) Description of method employed	2	Use of Knowledge - UK
(iv) Findings	6	Use of Knowledge - UK
(v) Discussion of findings	3	Use of Knowledge - UK
(vi) Recommendations	3	Use of Knowledge - UK
(vii) Bibliography	2	Conceptual Knowledge - CK
(viii) Communication of <i>the</i> Information	2	Conceptual Knowledge - CK

**MARK SCHEME FOR *SCHOOL-BASED* ASSESSMENT (RESEARCH PROJECTS) FOR CAPE LAW UNITS 1 AND 2**

The research paper will have a total of 20 marks allocated to cognitive levels as follows:

Conceptual Knowledge	- 6 marks (Including Communication - 2 marks)
Use of Knowledge	- 14 marks

Teachers are reminded that the firm and activities used for the research paper may be real or simulated.

DETAILED CRITERIA AND MARK SCHEME

<p><b>COGNITIVE LEVEL 1</b>  <b>Conceptual Knowledge</b>  <b>Total 2 marks</b></p>	<p><i>The candidate should be able to select and present an investigation into a specific legal issue using appropriate legal concepts, principles and theories.</i></p>	
<p><b>Abilities</b>  <b>The candidate has:</b></p>	<p><b>Descriptors</b>  <b>Title/Table of Contents/Aims</b></p>	<p><b>Marks</b>  <b>2</b></p>
<p>1. selected a relevant legal issue within the scope of the syllabus and included a table of contents    <p style="text-align: center;">(maximum 1 mark)</p> <p>2. stated the aim of the research    <p style="text-align: center;">(maximum 1 mark)</p> </p></p>	<ul style="list-style-type: none"> <li>▪ Title of research is related to the objectives in the syllabus and to the investigation, is clearly stated and table of contents is included</li>   <li>▪ Research is outside the scope of the syllabus or not clearly stated</li>   <li>▪ Aim of the research is relevant, unambiguous and clearly stated</li>   <li>▪ Aim of the research is irrelevant, ambiguous or not clearly stated</li> </ul>	<p style="text-align: center;">1</p> <p style="text-align: center;">0</p> <p style="text-align: center;">1</p> <p style="text-align: center;">0</p>
<p><b>COGNITIVE LEVEL 2</b>  <b>Use of Knowledge</b>  <b>Total 8 marks</b></p>	<p><i>The candidate should be able to analyse the legal problem being investigated by examining its constituent parts in detail, gathering relevant data and applying appropriate legal concepts to interpret and explain the issues.</i></p>	
<p><b>Abilities</b>  <b>The candidate has:</b></p>	<p><b>Descriptors</b>  <b>Methodology</b></p>	<p><b>Marks</b>  <b>2</b></p>
<p>3. described the method and procedures employed in conducting the research    <p style="text-align: center;">(maximum 2 marks)</p> <p>4. presented legal information in an acceptable manner consistent with methodology used    <p style="text-align: center;">(maximum 6 marks)</p> </p></p>	<ul style="list-style-type: none"> <li>▪ The research design is realistic in its scope, and appropriate for the study</li>   <li>▪ The research design is very limited in its scope, inappropriate for the study</li>   <li><b>Presentation of Data (Findings)</b></li>   <li>▪ <i>The information presented is relevant to the aims of the research and is clear, unambiguous and meaningful</i></li>   <li>▪ <i>The information presented is relevant to the aims of the project, but lacks clarity</i></li>   <li>▪ <i>The information presented is not quite relevant to the aims of the project and lacks clarity</i></li> </ul>	<p style="text-align: center;">2</p> <p style="text-align: center;">1</p> <p style="text-align: center;">6</p> <p style="text-align: center;">5 - 6</p> <p style="text-align: center;">3 - 4</p> <p style="text-align: center;">1 - 2</p>

Abilities	Descriptors	Marks
The candidate has:	Discussion of Findings	3
5. used legal theories and concepts for interpretation and analysis  (maximum 3 marks)	<ul style="list-style-type: none"> <li>▪ Recognition of the limitations of legal information and excellent use of legal theories and concepts for interpretation and analysis</li> <li>▪ Satisfactory use of legal theories and concepts for interpretation and analysis with some inaccuracies</li> <li>▪ Attempted use of legal theories and concepts for interpretation and analysis</li> </ul>	3
		2
6. presented correct conclusions based on the findings of the research  (maximum 3 marks)	<p><b>Recommendations</b></p> <ul style="list-style-type: none"> <li>▪ Conclusions are sound, plausible and based on the findings of the research</li> <li>▪ Conclusions are sound but are not entirely supported by the findings of the research</li> <li>▪ Conclusions are flawed and not based on the findings of the research</li> </ul>	1
		3
		3
<p><b>COGNITIVE LEVEL 1</b></p> <p><b>Conceptual Knowledge</b></p> <p>Total 4 marks</p>	<p><i>The candidate should be able to observe international conventions of reporting by presenting information in a logical manner using correct grammar.</i></p>	
The candidate has:	References	2
7. prepared a bibliography acknowledging all sources of information in alphabetical order (excluding cases that are cited)  (maximum 2 marks)	<ul style="list-style-type: none"> <li>▪ For persons interviewed, the list comprises date, place and job title</li> <li>▪ For publications, the list comprises the names of the author, publisher and year published</li> <li>▪ For Internet sites, the list comprises the address of the website and names of authors and organizations</li> </ul>	Any two done well
		Any one done well
		None done well
		2
		1
		0



	<b>Communication of Information</b>	<b>2</b>
8. presented information in a logical manner using correct grammar  (maximum 2 marks)	<ul style="list-style-type: none"> <li>▪ Information is presented in a very well organized manner and ideas are communicated well using correct grammar sometimes</li> <li>▪ Information is fairly well organized and ideas are communicated satisfactorily using correct grammar sometimes</li> <li>▪ Information is very poorly organized and ideas are communicated poorly using correct grammar most of the time</li> </ul>	<p style="text-align: right;">2</p> <p style="text-align: right;">1</p> <p style="text-align: right;">0</p>
	<b>TOTAL</b>	<b>20</b>

## ◆ REGULATIONS FOR PRIVATE CANDIDATES

### Paper 03/2 (1 hour 30 minutes)

1. *Composition of Paper*

- (i) *For each Unit, the Paper is based on the topic for that year as indicated in the table below.*
- (ii) *There will be one compulsory question. The question may be divided into parts.*
- (iii) *The Paper tests skills similar to those listed for the School-Based Assessment (Paper 03/1).*

2. *Question Type*

- (i) *The question requires candidates to respond either in the form of an extended essay or a short paragraph.*
- (ii) *The candidates may refer to their prepared notes on the topic for that year.*
- (iii) *The question will test both Conceptual Knowledge and Use of Knowledge.*

3. *Mark Allocation*

*The Paper is worth 30 marks (weighted to 60 marks) and contributes 20% towards the final assessment.*

4. *Award of Marks*

*Marks are awarded for expression, organization (logical coherence) and content.*

### TOPICS FOR PAPER 03/2

YEAR	UNIT 1	UNIT 2
2010	<i>Hierarchy of Courts and Appeal Process</i>	<i>Defamation</i>
2011	<i>Fundamental Rights</i>	<i>Contractual Terms</i>
2012	<i>Sentencing</i>	<i>Leases and Licenses</i>
2013	<i>Sources of Law</i>	<i>Nuisance</i>
2014	<i>Judicial Review</i>	<i>Formation of Contracts</i>
2015	<i>Sexual Offences</i>	<i>Fixtures and Chattels</i>
2016	<i>Common Law and Equity</i>	<i>Strict Liability in Tort</i>
2017	<i>Fundamental Rights</i>	<i>Contract Terms</i>
2018	<i>Sentencing</i>	<i>Landlord and Tenants</i>

## ◆ REGULATIONS FOR RESIT CANDIDATES

Resit candidates must rewrite Papers 01 and 02 of the examination for the year for which they re-register. Resit candidates may elect not to repeat the School-Based Assessment component provided they rewrite the examination no later than two years following their first attempt.

Resit candidates must be entered through a school, approved educational institution or the Local Registrar's office.

## ◆ ASSESSMENT GRID

The Assessment Grid for each Unit is indicated below, showing marks assigned to each paper, each Module, and the percentage contribution of each paper to total scores.

PAPERS	MODULES			TOTAL		( (%)
	Module 1	Module 2	Module 3	Raw	Weighted	
<b>External Assessment</b> Paper 01 Multiple-choice (1 hour 30 minutes)	15	15	15	45	90	(30)
Paper 02 Extended-response (2 hours 30 minutes)	25	25	25	75	150	(50)
<b>School-Based Assessment Paper</b> 03/1 or 03/2 (1 hour)	20	20	20	60	60	(20)
<b>TOTAL</b>	<b>60</b>	<b>60</b>	<b>60</b>	<b>180</b>	<b>300</b>	<b>(100)</b>

## ◆ GLOSSARY

### KEY TO ABBREVIATIONS

UK -Use of Knowledge

CK - Conceptual Knowledge

WORD	DEFINITION	NOTES
<i>Analyse</i>	<i>Examine in detail</i>	UK
<b>Apply</b>	Use knowledge and or principles to solve problems	Make references/conclusions; UK
<b>Assess</b>	Present reasons for the importance of particular structures, relationships or processes	Compare the advantages and disadvantages or the merits and demerits of a particular structure, relationship or process; UK
<b>Cite</b>	Provide a quotation or a reference to the subject	CK
<b>Classify</b>	Divide into groups according to observable characteristics	UK
<b>Compare</b>	State similarities and differences	An example of a significance of each similarity and the difference stated may be required for comparisons which are other than structural; UK
<b>Deduce</b>	Make a logical connection between two or more pieces of information; use data to arrive at a conclusion	UK
<b>Describe</b>	Provide detailed factual information of the appearance or arrangement of a specific structure or sequence of a specific process	Description may be words, drawings or diagrams or an appropriate combination. Drawings or diagrams should be annotated to show appropriate detail where necessary; CK
<b>Develop</b>	Expand or elaborate an idea or argument with supporting reasons	UK

WORD	DEFINITION	NOTES
<b>Differentiate or Distinguish</b>	State or explain briefly those differences between or among items which can be used to define the items or place them into separate categories	CK
<b>Evaluate</b>	Weigh evidence and make judgements based on given criteria	The use of logical supporting reasons for a particular point is more important than view held; usually both sides of an argument should be considered ;UK
<b>Explain</b>	Give reasons based on recall; account for	CK
<b>Identify</b>	Name specific components or features	CK
<b>Interpret</b>	Explain the meaning of	CK
<b>Outline</b>	Give basic steps only	CK

Western Zone Office  
 11 September 2013

# CARIBBEAN EXAMINATIONS COUNCIL

Caribbean Advanced Proficiency Examination (CAPE)



## LAW

### Specimen Papers and Mark Schemes/Keys

**Specimen Papers:**

- Unit 1, Paper 01
- Unit 1, Paper 02
- Unit 1, Paper 03/2
- Unit 2, Paper 01
- Unit 2, Paper 02
- Unit 2, Paper 03/2

**Mark Schemes and Keys:**

- Unit 1, Paper 01
- Unit 1, Paper 02
- Unit 1, Paper 03/2
- Unit 2, Paper 01
- Unit 2, Paper 02
- Unit 2, Paper 03/2



**CARIBBEAN EXAMINATIONS COUNCIL**

**ADVANCED PROFICIENCY EXAMINATION**

**LAW**

**SPECIMEN PAPER**

**UNIT 1 - PUBLIC LAW**

**PAPER 01**

**1 hour and 30 minutes**

**READ THE FOLLOWING INSTRUCTIONS CAREFULLY.**

Each item in this paper has four suggested answers lettered (A), (B), (C), (D). Read each item you are about to answer and decide which choice is BEST.

**Sample Item**

The term ‘stare decisis’ means

- (A) let the decision stand
- (B) offhand comments by a judge
- (C) reason for deciding
- (D) through a lack of care

**Sample Answer**



The best answer to this item is “let the decision stand”, so answer space (A) has been shaded.

There are 45 items in this specimen paper. You will have 90 minutes to answer them.

1. Which of the following is the BEST statement regarding natural law?
  - (A) Law, morality and Christianity are quite similar.
  - (B) Law is an instrument of social control and public order.
  - (C) Law is a command of a sovereign individual which must be obeyed and is enforced by a sanction.
  - (D) Law is derived from nature and must conform to an acceptable code of moral behaviour.
  
2. Primary legislation refers to legislation
  - (A) created by the legislature as part of its inherent function
  - (B) made by a government authority or functionary
  - (C) proposed by the Governor General or President
  - (D) arising from bodies which have independent power to legislate for their own members
  
3. The Judicature Acts of 1873 and 1875 fused law and
  - (A) custom
  - (B) equity
  - (C) morality
  - (D) judicial precedent
  
4. Which of the following is NOT a maxim of equity?
  - (A) Equity is equality.
  - (B) Delay defeats equity.
  - (C) Equity was created to ease the harshness of the common law.
  - (D) He who comes to equity must come with clean hands.
  
5. Which of the following was traditionally the ONLY remedy available under the common law?
  - (A) Damages
  - (B) Injunction
  - (C) Rectification
  - (D) Specific Performance
  
6. What is the PRINCIPAL difference between the High Court and the Magistrates' Court?
  - (A) Three magistrates sit to hear a single case in the High Court and not one.
  - (B) The Magistrates' Court is superior to the High Court.
  - (C) Appeals are heard by the High Court unlike the Magistrates' Court.
  - (D) Cases in the High Court are primarily tried by a judge and jury, unlike in the Magistrates' Court.
  
7. Which of the following is NOT true of the Magistrates' Court?
  - (A) The magistrate has a dual function, investigative and trial.
  - (B) The court has an appellate jurisdiction.
  - (C) The procedure in this court is usually summary.
  - (D) The magistrate is the sole determinant of both fact and law.
  
8. A person may be discharged from jury service for all of the following reasons EXCEPT
  - (A) illness
  - (B) exhibiting bias
  - (C) acceptance of bribes
  - (D) ignorance of legal terms



9. A literary source of Law is BEST described as
- (A) the location of the law
  - (B) the reception of law
  - (C) the causative factors behind a rule
  - (D) the basis of the law's validity
10. The PRINCIPAL difference between the common law and equity is that the common law
- (A) is well known for its maxims
  - (B) is a complete legal system whereas equity is only a gloss on the common law
  - (C) offers more remedies than equity
  - (D) was created after equity to ease the harshness of equity
11. John and James live adjacent to each other. James has for many years been parking his car on a strip of land on John's property. John and James recently had a heated argument in which John asserted, "I bought this property from the Government a long time ago... It is my constitutional right to be here, given to me by the State. I'll have my day in court."
- The area of law in which John's action will be pursued is
- (A) criminal law
  - (B) constitutional law
  - (C) public law
  - (D) private law
12. A policeman gives a traffic ticket to Miss Benjamin, a lawyer. Miss Benjamin feels that she has been harshly treated and vows "to have her day in court".
- In which court is the trial MOST likely to commence?
- (A) Court of Appeal
  - (B) Magistrates' Court
  - (C) Privy Council
  - (D) Caribbean Court of Justice
13. John and Mary, are going through a divorce settlement. They both hope to have custody of their two children. During the dispute settlement, an independent third party invites John and Mary to separate 'caucuses', which are described as private meetings with each party.
- In which process are John, Mary and the independent third party MOST likely engaged?
- (A) Arbitration
  - (B) Litigation
  - (C) Mediation
  - (D) Rehabilitation
14. John, who is before the Court on a charge of murder, discloses the truth to his attorney that he had committed the crime. His attorney becomes very perplexed but does not advise him to enter a guilty plea.
- The attorney's first duty is to
- (A) himself
  - (B) his client
  - (C) the judge
  - (D) the prosecution

15. All of the following are true of the Office of the Ombudsman EXCEPT that
- (A) he must be a High Court judge
  - (B) he addresses administrative, not executive action
  - (C) his office may be established either by the constitution or by statute
  - (D) he has a role to play in the protection of fundamental rights
16. Two ways in which the judiciary is guaranteed independence are by ensuring that Judges are
- (A) allowed to conduct their courts in any manner they see fit AND to personally select their support staff
  - (B) empowered to rule on any case no matter how controversial their decision may be, AND to hand down any sentence they wish
  - (C) paid out of the Consolidated fund AND are only to be dismissed on three main grounds
  - (D) allowed to work independently of the Chief Justice AND to remain on the bench indefinitely
17. The fundamental rights of an individual are enshrined in
- (A) a contract
  - (B) acts of Parliament
  - (C) judicial precedent
  - (D) the Constitution
18. What is the essential meaning of 'the doctrine of separation of powers'?
- (A) Everyone is equal in the eyes of the law, and everyone should enjoy basic fundamental rights.
  - (B) No person or public authority should exceed the powers conferred upon him by law.
  - (C) The executive, the legislative and the judiciary each has a clearly defined and distinct role.
  - (D) The government should distance itself from tyranny and the abuse of power.
19. Which of the following rights is NOT guaranteed under the Constitution? A right
- (A) to be discriminated against because of sexual preference
  - (B) to express political views
  - (C) to equality of treatment from any public authority
  - (D) to protection from the law
20. Which of the following is a principle of the rule of law?
- (A) Individuals should govern themselves.
  - (B) Let the decision stand.
  - (C) No one is above the law.
  - (D) Parliament is supreme.
21. Constitutional law refers to the law governing the relationship between
- (A) contracting parties
  - (B) government agencies
  - (C) the state and another state
  - (D) the state and the individual

22. *Ultra vires* refers to an
- (A) act by any government official
  - (B) act done by a competent authority
  - (C) administrative act without legal authority
  - (D) illegal act but done to the common good
23. Which of the following is NOT correct?
- The Constitution is superior to Parliament because
- (A) it states this in the supreme law clause
  - (B) it establishes Parliament as a legislative body
  - (C) Parliament can only change the Constitution by a special procedure
  - (D) Parliament can only pass certain laws
24. The Parliament of Antidad passes a Law by a 12-10 majority that from July 1 there shall be only one newspaper published in the country, the Government Newspaper. Counsel for the Daily Blare, a newspaper currently in circulation, challenges this Law as being contrary to freedom of
- (A) association
  - (B) conscience
  - (C) expression
  - (D) religion
25. Cain is a habitual thief who has been convicted repeatedly for larceny. The police, acting on a tip, took him into custody and forced him to make a confession, although he had requested an attorney to be present.
- The police have infringed his fundamental right to freedom of
- (A) association
  - (B) conscience
  - (C) expression of opinion
  - (D) protection of the law
26. Bert feels that he has been dismissed because of his religious persuasion. He has been advised by his neighbour, Debra, that he should bring action against his employer, Cardamon Ltd, for breach of his constitutional rights. The decision to bring the action is
- (A) not in Bert's favour because his constitutional rights depend on the state action doctrine
  - (B) not in Bert's favour because there is no constitutional right to a job
  - (C) in Bert's favour because his constitutional right to freedom of religion has been infringed
  - (D) in Bert's favour because his constitutional right to freedom from discrimination has been infringed

27. The Head of State of your jurisdiction refuses to appoint as a Senator an individual so nominated by the Prime Minister. The Head of State argues that this individual has already been rejected by the people in the general election. The effect of this is that his decision is
- (A) *intra vires*
  - (B) *ultra vires*
  - (C) unchallengeable in Law
  - (D) violative of the separation of powers
28. The Fire Service has, for the past twenty years or so, given study leave to junior officers to pursue the Associate Degree in Emergency Management. Alex, a junior fire officer, applies for study leave to pursue this course but is refused by the Chief Fire Officer.
- On what ground may Alex challenge this decision?
- (A) Breach of legitimate expectation
  - (B) Breach of natural justice
  - (C) Illegality
  - (D) Irrationality
29. All of the following are grounds for judicial review EXCEPT where
- (A) there is a breach of one's right to a fair hearing
  - (B) a delegate has wrongfully delegated a power given to him
  - (C) a magistrate imposes a sentence which exceeds that which is provided for the offence in the statute
  - (D) a defendant is dissatisfied with a custodial sentence imposed on him by a judge
30. The Broadcasting Authority, a public body, decides to interview its Finance Manager on charges of corruption. Which of the following rules need NOT be observed if any dismissal is to be deemed lawful?
- (A) Consider his difficulty in getting another job.
  - (B) Give reasons for the decision.
  - (C) Hear the other side.
  - (D) No one should be a judge in his own cause.
31. The MOST appropriate defence applicable where the accused killed the victim due to a sudden and temporary loss of self control is
- (A) automatism
  - (B) diminished responsibility
  - (C) provocation
  - (D) spontaneous insanity
32. The '*mens rea*' of a crime refers to
- (A) an act which brings about the crime
  - (B) an agreement to commit the crime
  - (C) the means by which the crime is committed
  - (D) the state of mind to commit the crime
33. Which of the following is NOT correct? The crime of incest occurs by having sexual intercourse with one's
- (A) first cousin
  - (B) foster child
  - (C) son or daughter
  - (D) step sister

34. In the Law relating to rape, a man is guilty EXCEPT where he has sexual intercourse with a woman and
- (A) is reckless as to whether or not she consents
  - (B) she does not consent
  - (C) she objects then withdraws her objection
  - (D) thinks the woman consents but in fact she does not
35. In Commonwealth Caribbean jurisdictions, the case of *R v R* which deals with marital rape is
- (A) not accepted as the law
  - (B) generally accepted as the law
  - (C) accepted as the law in ONE jurisdiction
  - (D) applicable in some, but not all jurisdictions
36. Which of the following is a case of incitement?
- (A) X encourages Y to steal from A's purse. The purse is empty.
  - (B) X tells Y to kill A. A is already dead.
  - (C) X gives Y poison to kill A but the poison is insufficient to kill anyone.
  - (D) X and Y believe a painting to be stolen but in fact it is not stolen. X coerces Y to receive the painting.
37. The theory of retribution is the theory which endorses as a penalty for the crime of murder,
- (A) capital punishment
  - (B) hard labour in prison
  - (C) imposition of a heavy fine
  - (D) life imprisonment
38. The purpose of sentencing is NOT to
- (A) ensure that the punishment fits the crime
  - (B) reflect adequately the revulsion of citizens
  - (C) rehabilitate the offender
  - (D) satisfy victims' families
39. In which of the following is the accused acting dishonestly?
- (A) After taking reasonable steps to find the owner of the property, he concludes that the owner cannot be found.
  - (B) He has come by the property innocently and assumes ownership.
  - (C) He believes he would have received the consent of the owner.
  - (D) He believes he has a legal right to deprive another of the property.
40. An assault is different from a battery in that in an assault
- (A) the accused approaches the victim in a hostile manner and there is a fight
  - (B) the accused uses unlawful physical contact and insults the victim
  - (C) the victim is put in fear of an imminent battery, but there is no physical contact by the defendant
  - (D) there is no unlawful physical contact, but there is a mutual trading of taunts and threats

41. In English Law, an omission to act is NOT punishable EXCEPT where
- (A) the party who caused the initial harm does nothing
  - (B) the victim is a helpless child one sees in danger
  - (C) there is a duty arising from contract
  - (D) there is a duty arising from a responsibility voluntarily undertaken
42. Provocation may be successfully advanced as a defence where the accused kills a person who has
- (A) habitually insulted him or her
  - (B) had an affair with his or her spouse
  - (C) physically assaulted him or her
  - (D) taunted him or her because of a physical disability of which he or she is very conscious
43. Which of the following is correct?  
Adolphe is guilty of murder where
- (A) he announces that he is going to poison Juan but Juan is already dead
  - (B) he keeps the poison at home from where Marcus steals it and poisons Betty, who dies
  - (C) he leaves a glass of milk, laced with poison, for Juan to drink but Marcus drinks it instead and dies
  - (D) Juan learns that Adolphe wants to poison him and he dies from a heart attack
44. Which of the following is deemed to be burglary?
- (A) Albert breaks a window and climbs up a ladder to Aggie's house but changes his mind when he hears the police siren.
  - (B) Donald enters his neighbour's house, believing he had entered his own house, and gives Robert his neighbour's ming vase.
  - (C) Mary expects her boyfriend Keith to enter her bedroom through the window. In error, she admits Paul and he steals her jewellery.
  - (D) Tom mistakenly enters his neighbour's house and, upon discovering the mistake, takes a painting and leaves.
45. Which of the following is correct?  
Insanity as a defence
- (A) ensures that upon conviction, the accused is committed to a mental institution for treatment
  - (B) occurs where the accused did not know the nature and quality of his act because of a disease of the mind
  - (C) requires that the accused be found fit to plead at trial
  - (D) shifts the burden of proof to the accused once he tenders evidence of a defect of reason and a disease of the mind

**END OF TEST**

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Caribbean Examinations Council (CXC)

Master Data Sheet

Subject: **CAPE LAW UNIT 1**

Year: **2008 Specimen**

QUESTION	KEY
1	D
2	A
3	B
4	C
5	A
6	D
7	B
8	D
9	A
10	B
11	D
12	B
13	C
14	B
15	A
16	C
17	D
18	C
19	A
20	C
21	D
22	C
23	D

QUESTION	KEY
24	B
25	D
26	A
27	B
28	A
29	D
30	A
31	B
32	D
33	A
34	C
35	A
36	C
37	A
38	A
39	B
40	C
41	A
42	D
43	C
44	D
45	B



FORM 02131020 SPEC



TEST CODE **02131020**

**CARIBBEAN EXAMINATIONS COUNCIL**  
**ADVANCED PROFICIENCY EXAMINATION**

**LAW**

**SPECIMEN PAPER**

**UNIT 1: PUBLIC LAW**

**PAPER 02**

*2 hours 30 minutes*

**INSTRUCTIONS TO CANDIDATES**

1. This paper consists of **SIX** questions, two questions are based on **EACH** Module.
2. You are required to answer **ONE** question from **EACH** Module.
3. Read the question carefully before you begin writing your response.
4. Write your responses in the answer booklet provided.

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### MODULE 1: CARIBBEAN LEGAL SYSTEMS

Answer ONE question.

1. "The Ombudsman is the answer to the people's cry against injustice."

Explain this statement, defining who is an ombudsman and making clear what is the nature, role and jurisdiction of the associated office.

[25 marks]

2. "Law, morality and religion are critical to civil society."

Present arguments and cite decided cases to support this statement. Include relevant definitions in your response.

[25 marks]

### MODULE 2: PRINCIPLES OF PUBLIC LAW

Answer ONE question.

3. (a) Define the term 'Rule of Law' and outline the development of its present form.

[10 marks]

- (b) Evaluate the extent to which the rule of law is applied in protecting the rights of citizens in a **named** Commonwealth Caribbean country.

[15 marks]

**Total 25 marks**

4. The Attorney General of a Commonwealth Caribbean country proposes that all public matters relating to the judiciary, including the budget, must be submitted to his offices for approval. Adam Jones, a well-known journalist, claims that the proposal is "a dangerous attempt to undermine the separation of powers in this country".

- (a) Comment on Jones' opinion by

(i) explaining the separation of powers doctrine

(ii) outlining how this doctrine developed

(iii) assessing the validity of Jones' claim that the proposal "undermines the separation of powers...".

[10 marks]

- (b) Assess the extent to which the constitution of a **named** Commonwealth Caribbean country enshrines the separation of powers doctrine.

[15 marks]

**Total 25 marks**

GO ON TO THE NEXT PAGE

**MODULE 3: CRIMINAL LAW**

**Answer ONE question.**

5. (a) Explain the legal principles established by the *M'Naghten Rules* relating to the defence of insanity, citing decided cases to illustrate your answer.

**[10 marks]**

- (b) Marcus is a strong supporter of his town's cricket team, Gabba Stars. He and his friends attend a match one afternoon and, much to their surprise, Gabba Stars loses the match by two runs. Some Gabba fans, including Marcus, go on a rampage and damage the opposing team's clubhouse. In his defence before the court, Marcus claims that he had "lost it", not knowing what he was doing and that he had just found himself "going along with the crowd".

Advise Marcus as to his criminal liability.

**[15 marks]**

**Total 25 marks**

6. "The sentence should adequately reflect the revulsion felt by citizens to the particular crime."

With reference to decided cases, assess the extent to which this view reflects sentencing practices in a **named** Commonwealth Caribbean country.

**[25 marks]**

**END OF TEST**

**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**

**A D V A N C E D   P R O F I C I E N C Y   E X A M I N A T I O N**

**L A W**

**S P E C I M E N   P A P E R**

**U N I T   1   -   P A P E R   0 2**

**M A R K   S C H E M E**

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 1

Specific Objective: 10

Content: 10

Explanation should include:

**Definition**

The Ombudsman is an independent, high level public official who is responsible to the legislature or Parliament [1], who receives complaints from aggrieved persons against government agencies [1], officials and employees or who acts on his own initiative and who has the power to investigate [1], recommend corrective action and issue reports. As such, the Ombudsman is the bulwark against abuses [1], of the State and a bridge between the ever-increasing gap spanning the bureaucracy and the citizenry [1].

**Any 5 points stated - 5 x 1 mark (5 marks) CK**

The office of the Ombudsman was established to address the abuses that the ordinary Courts cannot adequately handle [1], or which are not convenient for resolution before the courts [1]. It is an alternative to High Court action and is therefore quasi-judicial in function [1].

**Any 2 points stated - 2 x 1 mark (2 marks) CK**

**Nature of the office**

- Has wide investigatory powers with a view to addressing complaints; given protection to enable him to carry out his duties successfully;
- Informal
- Accessible
- No cost in most jurisdictions (exception: small fee charged in Barbados)

**Any 3 points stated - 3 x 1 mark (3 marks) CK**

**Role of ombudsman:**

- To protect the citizen against the abuses of the 'machinery of state'.
- The watchdog for citizens' fundamental rights
- Acts as a mediator between the citizen and the State.

**Any 2 points stated - 2 x 1 mark (2 marks) UK**

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 1 cont'd

**Jurisdiction**

The function of the Ombudsman is called into operation where a citizen or body of citizens suffers an injustice [1], due to a fault in administration, or from administrative action or inaction [1], that is, the procedural function of public bodies [1].

**Any 2 points stated - 2 x 1 mark**

**(2 marks) UK**

**Injustice covers:**

- Injury redressible in a court of law
- Outrage aroused by unfair or incompetent administration
- Delay
- Bias
- Unfair discrimination whether based on race, politics or otherwise
- Failing to give proper advice
- Harassment
- Failing to follow proper procedure
- Rash, unworkable procedure
- Neglect
- Failure to take relevant considerations into account or considering irrelevant ones
- Mere discourtesy

The Complainant does not have to suffer actual loss

**Any 5 points stated - 5 x 1 mark**

**(5 marks) UK**

**The Ombudsman is allowed to investigate:**

- Local statutory authorities
- Local government bodies
- Public bodies
- Bodies where the majority of members are appointed by the Head of State or a Minister
- Bodies funded wholly or mainly by public funds
- Any authority empowered to determine the entering into contracts by or on behalf of the government
- Bodies that are not public or statutory but exert undue influence over the public

***R v Panel on Mergers, ex p Datafin.***

**Any 4 points stated - 4 x 1 mark**

**(4 marks) UK**

**Case cited - 2 marks**

**(2 marks) UK**

**Total: 25 marks**

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 2

Specific Objective: 2

Content: 2

Students must define law, morality, religion and civil society and show why law, morality, religion are critical to civil society. The discussion should include the following points:

- **Define law**

- the legislative pronouncement of rules to guide behaviour;
- the total of those rules of conduct put in force by legislative authority or court decisions, or established by local customs;
- an institution which is essential to the social nature of man and without which he would be a very different creature; and
- the enforceable body of rules that govern society
- rules establishing procedure, guiding behaviours or govern or maintain conduct, maintain cohesion.

**Any 2 points OR Any 2 functions - 2 x 1 mark (2 marks) CK**

- **Discuss the nature of law**

- According to Wollheim, "...the nature or essence of law may be found in the definition of law. The nature of law, therefore, may be characterized by its **rules that seek to create and maintain order in society**. In other words, the nature of law is to be found in its normative or rule-making content.
- **The law seeks to create and maintain the conduct desired of society**. That is why the law lays down the procedure for doing things and sometimes attaches a penalty for non-performance of a particular act. Thus law is characterized by the law's rule-making content which moulds the behaviour of society.
- The role and function of law is to bring cohesion to, and maintain order within societies.

**Any 2 points OR Any 2 functions - 2 x 1 mark (2 marks) CK**

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 2 cont'd

• **Define morals**

Discussion of theories of natural, positive law, with examples of theories.

Morals and ethics constitute "that **right reason**" which exists within all men and which leads us to distinguish right from wrong and good from evil. Elliott and Quinn define morals as:

"...beliefs and values which are shared by a society or a section of a society..." [1]

Moral rules are also rules, in that they all lay down how we should conduct ourselves in relationships. An individual who displays good ethics in his/her dealings with others is considered to be a morally upright person by the wider civil society.

- The morality and ethics of a society are concerned with **disapproval** in one way or another with what is deemed to constitute unacceptable conduct. It is believed that the family is the "cornerstone" from which the essential social values such as, honesty and truthfulness are born [1].
- morally upright behaviour is usually the **socially acceptable** manner in which one conducts one's self with respect to matters concerning:
  1. sexual relationships;
  2. money transactions; and
  3. attitude towards one's spouse, family, friends, strangers

**Point stated - 1 mark + expansion - 1 mark**

**Any 2 points - 2 x 2 marks**

**(4 marks) CK**

• **Define religion**

Religion is defined as: "*recognition on the part of man of some higher unseen power as having control of his destiny, and as being entitled to obedience, reverence and worship.*"

**Partial definition - 1 mark**

**Full definition - 2 marks**

**(2 marks) CK**



LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 2 cont'd

**Examine law and morals (ethics)**

Law and morals exist simultaneously to uphold the rules of proper social behaviour that is necessary for the achievement of social cohesion in every well-ordered society. While moral rules are not backed by the obvious sanctions which make some legal rules enforceable, they are often reinforced by pressure which in some cases may be as strong, if not stronger: For example, the disapproval of family and friends, loss of status, and being shunned by the community are powerful deterrents against immoral conduct. For example, if a man has sex with his daughter he runs the risk of being ostracized by family, friends and the wider community.

**Any 3 points - 3 x 1 mark**

**(3 marks) UK**

**Enforcement by pressure**

Natural law theorists argue that law should reflect morality. Philosophers such as Thomas Aquinas, see natural law as higher law that comes from God, the principles of which

"...should be reflected in the laws societies make for themselves."

**Any 2 points or 2 examples - 2 x 1 mark**

**(2 marks) UK**

Discussion of examples of the relationship between law and morality.

**Issue identified - 1 mark**

**Moral position stated - 1 mark**

**Corresponding law referenced - 1 mark**

**3 marks for discussion of any one example**

**(3 marks)**

**Example 1**

A female was ostracized by the church and society if she indulged in sexual activity before marriage because under English law, the act of fornication is deemed to be morally wrong and the female would be held to be unchaste and unsuitable for marriage. This moral position was extended by the law to deny both a mother and her offspring any recognition at law if the child was born out of wedlock. The law in Guyana supported this moral position by the creation of the Bastardy Act. However, with the removal of the moral stigma as more and more children were born out of wedlock, the law followed suit in order to keep pace with changing morality and repealed the Bastardy Act.

LAW  
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KEY/MARK SCHEME

Question 2 cont'd

**Example 2**

In case of **Shaw -v- Director of Public Prosecutions** [1962] AC 220, Shaw had published a ladies Directory. Lord Diplock said:

Shaw's act of publishing advertisements for prostitutes soliciting fornication tended to corrupt public morals. Therefore Shaw's agreement to do that act was a crime at common law.

The Court of Appeal upheld a conviction against Shaw on the charge of 'conspiring to corrupt public morals'.

**Example 3**

In the case of **R v Kneller (Publishing, etc.) Ltd** [1972] 3 W.L.R. p. 143 the appellants were directors of a company which published a fortnightly magazine. On an inside page under a column headed "Males" advertisements were inserted inviting readers to meet the advertisers for the purpose of homosexual practices.

The appellants were convicted on counts of conspiracy to corrupt public morals and conspiracy to outrage public decency. The House of Lords held that while the offence of 'conspiracy to outrage public decency' was unknown to the law, the Appellants by their actions were nevertheless guilty of behaviour that could be deemed an offence known to English law, that is, 'conspiracy to corrupt public morals'.

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 2 cont'd

**Examine law and religion**

The religion of the European colonizers was and continues to be Christianity, which has influenced English law and helped to shape the morality of Caribbean people. This religious influence was so strong that religious rules were given statutory force and validity. For example, the religious rules "thou shalt not steal" and "thou shalt not kill" have been made law [1].

This religious influence also finds expression in the symbolic wearing of the bib by members of the legal profession. Guyana is the only Commonwealth Caribbean territory that has relinquished the use of the bib. The two rectangles of the bib symbolize the two tablets of stone upon which were written the Ten Commandments which God gave to Moses.

**Any one example examined (3 marks) UK**  
**Issue identified - 1 mark**  
**Religious position stated - 1 mark**  
**Corresponding law referenced - 1 mark**

Influences of the religious rule that one should love one's neighbour as one loves one's self permeates the law of torts which enforces society's conformity with the neighbour principle which was laid down in the famous case of **Donoghue v Stevenson (1932)** wherein one's neighbour at law is deemed to be anyone who likely to be affected by one's actions.

The law's definition of marriage for example, is based upon religious and moral principles: Lord Penzance formulated that which is considered the "classic" definition of marriage in the case of **Hyde -v- Hyde (1866)** LR. P&D 130.

"I conceive of marriage, as understood in Christendom, to be the voluntary union for life of a single man and single woman to the exclusion of all other."

In the Caribbean area the law has continued to maintain its close relationship with Religion and morality to defeat an unacceptable shift in morality: For example, the law of the Commonwealth Caribbean territories regarding marriage has not been changed to accommodate same sex marriages.

**Any 2 points or reference of Christianity to a maximum of 4 marks**  
**(4 marks) UK**

Helpful sources:

Lord Devlin: "The Enforcement of Morals"  
Calvin Eversley: "Law, Religion and Morality"

**Total: 25 marks**

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 3

Specific Objective: 7

Content: 7

(a) Candidates are expected to:

- Define the term 'Rule of Law'. **(2 marks)**
- Give a brief history of its background in the writings of Aristotle and Montesquieu and its impact on the American Declaration of Independence (1776) and French post-revolution Constitution (1791) **(3 marks)**

- Outline Dicey's principles of the Rule of Law, based on three basic tenets.
  - No one should be punished without due process being applied
  - No one is above the law
  - The constitution safeguards the rights of private citizens

**Statement - 1 mark + Examples - 2 marks (3 marks)**

- Identify the principle as enunciated in universal organizations, for example,
  - Declaration of Delhi (1959)
  - International Declaration of Human Rights (1948)
  - European Convention on Human Rights

**Identification and expansion - 1 mark + 1 mark (2 marks)**

**[10 marks] CK**

- (b) Show extent to which principle is enshrined in Commonwealth Caribbean Constitutions in Fundamental Rights provisions and ensures accountability of public institutions and their officers.

**1 mark for stating, 2 marks for expansion (3 marks) UK**

- Identify and analyse cases in public law which illustrate how the principle operates:

**Facts - 4 marks + application - 4 marks (8 marks) UK**

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 3 cont'd

*Bryan Card v AG      Thornhill v AG of TT*  
*Carr v AG*  
*Sugar Producers Federation v Phillips Re Bain*  
*Collymore v AG*  
*Williams Construction Ltd v AG*  
*Pratt & Morgan v R*

Full marks will be awarded to candidates who present clear,  
analytical references to at least TWO cases.  
Incisive, analytical, logical presentation

2 x 2 marks

(4 marks) UK

[15 marks] UK

Total: 25 marks

Question 4

Specific Objective: 5

Content: 5

(a) Candidates are expected to

- explain what is meant by 'separation of powers' (2 marks)
- identify the three arms of government - (i) executive (ii) legislative and (iii) judicial (3 marks)
- present brief history of the development of the doctrine as illustrated by earlier and current writers such as Fiadjoe, Marburg, Madison (3 marks)
- indicate whether, in their opinion based on their understanding of the doctrine as they have outlined, the Attorney General's proposal is in conflict with it. (2 marks)

[10 marks] CK

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 4 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	8 - 10
2	A logical, well-developed response; demonstrates <b>very good</b> understanding of cases and issues, usually cites relevant sources to support answer	7
3	A logical, fairly well developed response; demonstrates <b>good</b> understanding of cases and issues, usually cites relevant sources to support answer	6
4	Satisfactory logic and development shown in response; demonstrates <b>satisfactory</b> understanding of cases and issues, occasionally cites relevant sources to support answer	5
5	Acceptable logic and development shown in response; demonstrates <b>acceptable</b> understanding of cases and issues, occasionally cites relevant sources to support answer	4
6	Weak logic and limited development shown in response; demonstrates <b>poor</b> understanding of cases and issues, rarely cites relevant sources to support answer	3
7	Unsatisfactory logic and minimal development shown in response; demonstrates <b>unsatisfactory</b> understanding of cases and issues, very rarely cites relevant sources to support answer	1 - 2

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 4 cont'd

(b) Candidates are expected to

- demonstrate an understanding of the particular Constitution which they have chosen by
- identifying and analyzing how the three (3) arms of government are enshrined in the system of government
- identifying and discussing the checks and balances enshrined in the constitution as a buttress of the doctrine
- select and apply ONE case, an example, which illustrates how the Courts have interpreted the doctrine as it applies to Commonwealth Caribbean Constitutions

- For example, ***Hinds v R***  
***Bata Shoe Co Guyana Ltd v Commissioner of***  
***Inland Revenue***

***J. Astaphan & Co (1970) Ltd v Comptroller of***  
***Customs Benjamin et al v Minister of***  
***Information et al***

[15 marks] UK

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 4 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	14 - 15
2	A logical, well-developed response; demonstrates <b>very good</b> understanding of cases and issues, usually cites relevant sources to support answer	12 - 13
3	A logical, fairly well developed response; demonstrates <b>good</b> understanding of cases and issues, usually cites relevant sources to support answer	10 - 11
4	Satisfactory logic and development shown in response; demonstrates <b>satisfactory</b> understanding of cases and issues, occasionally cites relevant sources to support answer	8 - 9
5	Acceptable logic and development shown in response; demonstrates <b>acceptable</b> understanding of cases and issues, occasionally cites relevant sources to support answer	6 - 7
6	Weak logic and limited development shown in response; demonstrates <b>poor</b> understanding of cases and issues, rarely cites relevant sources to support answer	4 - 5
7	Unsatisfactory logic and minimal development shown in response; demonstrates <b>unsatisfactory</b> understanding of cases and issues, very rarely cites relevant sources to support answer	1 - 3



LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 5

Specific Objectives: 4, 6

Content: 4(w) 6

Candidates are expected to:

- (a) Explain the **M'Naghten Rules**, the presumption being that everyone is sane until the contrary is proven.

**Presumption Stated (1 mark)**

To succeed as a defence, the accused must show the following:

" It must be clearly proved that (a) at the time of committing the act, the party accused (b) was labouring under such a defect of reason, (c) from disease of the mind, (d) as not to know the nature and quality of the act he was doing, or (e) if he did know it, that he did not know he was doing what was wrong."

**2 marks each for any 3 (6 marks)**

Identification and explanation of case to illustrate, for example, **Kemp, Clarke, Bratty**

**Fact - 1 mark + Application - 2 marks (3 marks)**

**[10 marks] CK**

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 5 (cont'd)

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	8 - 10
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LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 5 cont'd

(b) Candidates should be able to advise Marcus on the impact of his defence that he "lost it" on the following bases:

- That defence of insanity, within the meaning established by the **M'Naghten Rules [1]**, would not be sustainable [1].

(2 marks)

- The defence of insanity does not avail an accused whose acts were uncontrollable or impulsive, however irresistible the impulse [1], - Case: **R v Sodemane [1]**.

(2 marks)

- That defence of automatism may be considered, that is where D. though he may be capable of action, is not conscious of his action [1]. It is sometimes considered that D might not be capable of mens rea [1], at the time of his action. Involuntariness is a major element.

(2 marks)

- External [1], nature of the influence on the accused is its crucial distinction from insanity which is internal [1], ("a disease of the mind"), for example, West Indian case **R v Thompson [1]**, and see also **R v Sullivan**.

(3 marks)

- Candidates should be able to distinguish between (a) those cases where the accused has been affected by the use, for example of a medicine to treat his illness (such as insulin for diabetes and he becomes hypoglycemic subsequently) [1], and (b) those cases where the alleged involuntary act arises from self-induced factors, for example, alcoholic beverages or abuse of drugs [1]. See **Bratty v A-G. [1]**.

(3 marks)

- The "advice" given to Marcus would ultimately turn on whether or not candidates regard Marcus' defence as a substantial act of automatism [1]. Application of M'Naghten rules [1].

(2 marks)

- Diminished responsibility [1].

(1 mark)

Other cases:

**Walton v Queen (P.C)**  
**Still v Barton (Barbados)**  
**R v Bynoe**

[15 marks] UK

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 5 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	14 - 15
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[15 marks]

TOTAL 25 marks

LAW  
UNIT 1 - PAPER 02  
KEY/MARK SCHEME

Question 6

Specific Objective: 7

Content: 7

Candidates should name the State to which their answer applies and are expected to present a clear, analytical and informed response. They should refer to relevant legislation and case law, where applicable, in support of the points raised.

Marks should be awarded based on:

- Identification of principles/theories of sentencing, for example, preventive, rehabilitative, retributive, deterrent.

**Any 3 - 3 x 2 marks**

**(6 marks) CK**

- Identifying statutory provisions e.g. Young Offenders legislation and impact of this on sentencing considerations; amendments to offences Against Persons legislation.

**(4 marks) CK**

- Sociological and other factors which influence sentencing, for example, views of capital punishment in Commonwealth Caribbean States also position of international agencies such as Amnesty International.

**At least 2 factors - 2 x 3 marks**

**(6 marks) UK**

- Cases which may be cited in support of arguments presented.

**2 cases - 2 x 3 marks**

**(6 marks) UK**

***Pratt & Morgan v AG for Jamaica***

***R v Blake*** (1961) per Hilberry, J.

***Benjamin v R*** (1977) per Wooding, C.J.

(Severity of sentence and factors to be considered).

***Williams (Paul) v The State*** (1999) per de la Bastide, C.J.

(proper factors to be considered. Here extraneous factors had wrongly influenced sentence, so sentence reduced).

***Brathwaite v Commissioner of Police*** (1968) per Williams, J.

(proper consideration required from the court which had obviously been influenced by conclusion that appellant was repentant, sentence reduced.)

logical, analytical, development of arguments.

**(3 marks) UK**

**TOTAL 25 marks**

**FORM 2131030 SPEC**



TEST CODE **02131032**

MAY/JUNE 2009

**CARIBBEAN EXAMINATIONS COUNCIL**  
**ADVANCED PROFICIENCY EXAMINATION**

**LAW**

**SPECIMEN PAPER**

**UNIT 1: PUBLIC LAW**

**PAPER 032**

*1 hour 30 minutes*

**INSTRUCTIONS TO CANDIDATES**

1. This paper consists of ONE compulsory question.
2. Read the question carefully before you begin writing your response.
3. You may refer to your prepared notes for the topic to be assessed.
4. Write your responses in the answer booklet provided.

**NOTHING MISSING FROM THIS PAGE**

**TOPIC: TRIAL BY JURY**

Answer this compulsory question.

With reference to the provisions of the Jury Act, evaluate the extent to which the Commonwealth Caribbean States ensure that juries are representative of the public conscience with regards to the following procedures:

- (i) Selections
- (ii) Exemptions
- (iii) Disqualifications
- (iv) Challenges

**[30 marks]**

**END OF TEST**



**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**

**A D V A N C E D   P R O F I C I E N C Y   E X A M I N A T I O N**

**L A W**

**S P E C I M E N   P A P E R**

**U N I T   1   -   P A P E R   0 3 2**

**M A R K   S C H E M E**

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UNIT 1 - PAPER 032  
KEY/MARK SCHEME

Specific Objectives: 5, 6

Content: 6 (ii)

- Trial by jury ought to provide trial by one's peers who should be unbiased and representative of society. **(2 marks)**

Trinidad and Tobago Jury Act (or Jury Act of named Commonwealth Caribbean State)

**(1 mark)**

- **Selections**

Qualification is very liberal: anyone on the electoral list aged 18-60 inclusive who is a citizen or ordinarily resident in the State for 2 years.

Every person shall be qualified to be a juror who

- is over the age of eighteen years and under the age of sixty years;
- is ordinarily resident in Trinidad and Tobago;
- was born in Trinidad and Tobago; or, not being so born, has resided in Trinidad and Tobago for two years or more;
- is able to read and write the English language and understand the same when spoken; and
- is either -
  - (i) seised or possessed of freehold or leasehold interest in land of the clear annual value of seven hundred and twenty dollars; or
  - (ii) in occupation of a house which is rated or assessed to some general or local tax on an annual value of not less than six hundred dollars; or
  - (iii) in receipt beneficially of a net annual income of not less than three thousand dollars.

Any three qualifications explained clearly and accurately -

**3 x 2 marks**

**(6 marks)**

- **Exemptions**

The exceptions shall be as follows, that is to say:

- Members of Parliament;
- The Judges of the Supreme Court;
- Magistrates and their clerks;
- Justices of the Peace;
- Ministers of Religion;
- Mayors and Deputy Mayors;
- Consuls and Vice-Consuls;

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- Members of the Medical Board in actual practice;
- Licensed Druggists in actual practice as such;
- Persons (other than licensed shopkeepers) registered under the Medical Board Act;
- Attorneys-at-law in actual practice and their clerks;
- Officers of Courts of Justice;
- Schoolteachers;
- Jailors and persons employed as deputies under them;
- Members of the Defence Force;
- Members of the Police Service and constables;
- Members of the Fire Service;
- Officers and servants of the Post Office or the Customs and Excise Department;
- Pilots who are licensed under the provisions of section 5 of the Pilotage Act;
- Members of the air crew of any company, firm or other organisation operating an airline service under an agreement with the Government who hold licences issued by the Director of Civil Aviation.

The spouses of the following persons:

Judges of the Supreme Court;  
Members of Parliament;  
Mayors and Deputy Mayors;  
Magistrates and their clerks;  
Justices of the Peace;  
Attorneys-at-law and their clerks;  
Officers of the Courts of Justice;  
Members of the Police Service and constables.

Excused or exempted

- because of more pressing employment duties of public need e.g. doctors, nurses, MPs , members of the armed forces, fire officers, pilots
- Service is voluntary for those aged 65-70.
- School teachers

**(Any 4 exemptions stated - 4 x 1 mark)**

**(4 marks)**

Such other persons or classes of persons as may from time to time be excepted by the President by Order.

that is

- mainly people concerned with the administration of justice such as judges, magistrates, lawyers, Justices of the Peace, Court Registrars and other court personnel, police officers, prison officers as these may become case hardened by their profession and lack of being 'anonymous and amorphous' per Sir Siebag Shaw.
- Mentally ill

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- Members of the clergy - this may be contentious as they would be valuable in reminding a jury of public conscience and of the need to enforce public morality.
- Fire officers
- School teachers
- Pilots

• **Disqualifications**

s5. Every person shall be disqualified for being a juror who

- has been convicted of an arrestable offence or any indictable offence not being an arrestable offence involving dishonesty in respect of which indictable offence such person has been sentenced to imprisonment; presumably on the ground that they would have a deep anti-police, anti establishment bias which will prevent them from hearing a case fairly;
- may be incapable of reflecting the public conscience;
- (i) is of unsound mind, or imbecile or deaf, or blind or afflicted with any other permanent infirmity of body or mind; or
- (ii) is a bankrupt, or has entered into a deed of arrangement with his creditors.

**Any three disqualifications stated clearly, accurately**

**3 x 2 marks**

**(6 marks)**

Subject to the above selection is random from the electoral list. However some people may not register to vote for all sorts of reasons, for example, religious.

• **Challenges**

Peremptory / without cause

s23. Wherever a jury is being empanelled

- every person charged may peremptorily and without assigning cause challenge up to three jurors; and
- the prosecutor may peremptorily and without assigning cause challenge up to three jurors in respect of each person charged.

**(2 marks)**

• **Challenge for cause**

s23A. The prosecutor and the accused shall be entitled to any number of challenges on any of the following grounds:

- that any juror's name does not appear in the Jurors Book, save that no misnomer or misdescription in the Jurors Book shall be a ground of challenge, if it appears to the Court that the description given in the Jurors Book sufficiently designates the person referred to;
- that any juror is not indifferent between the State and the accused;

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KEY/MARK SCHEME

- that any juror has been convicted of any offence for which he is sentenced to death or to any term of imprisonment with hard labour exceeding one year;
- that any juror is disqualified as an alien;
- that any juror cannot speak, read, write and understand the English language; or
- that any juror was returned to serve as a juryman contrary to the provisions of this Act relating to the summoning of jurors

Any 3 challenges stated accurately and clearly

**3 x 2 marks (6 marks)**

Evaluation

**(3 marks)**

**Total 30 marks**



**CARIBBEAN EXAMINATIONS COUNCIL**

**ADVANCED PROFICIENCY EXAMINATION**

**LAW**

**SPECIMEN PAPER**

**UNIT 2 - PRIVATE LAW**

**PAPER 01**

**1 hour and 30 minutes**

**READ THE FOLLOWING INSTRUCTIONS CAREFULLY.**

Each item in this paper has four suggested answers lettered (A), (B), (C), (D). Read each item you are about to answer and decide which choice is BEST.

**Sample Item**

Browne owns Daxacres. He rents the land to Felix for 99 years. Felix now holds

- (A) a freehold estate
- (B) a leasehold estate
- (C) a life interest
- (D) an equitable interest

**Sample Answer**



The best answer to this item is “a leasehold estate”, so answer space (B) has been shaded.

There are 45 items in this specimen paper. You will have 90 minutes to answer them.

1. A defamatory statement is
  - (A) a statement which was made in a heated argument
  - (B) a statement which tends to lower a person in the estimation of his friends only
  - (C) a written statement about someone
  - (D) a statement which tends to lower a person in the estimation of right-thinking persons
2. Which of the following is NOT a defence for defamation?
  - (A) Absolute Privilege
  - (B) Provocation
  - (C) Fair Comment
  - (D) Truth
3. For a person to be found liable for battery, there must be
  - (A) consent to physical contact
  - (B) personal injury to the victim
  - (C) threat of violence by the tortfeasor
  - (D) unlawful physical contact
4. Which of the following is a correct statement?
  - (A) A defendant in an action for false imprisonment must justify the restraint.
  - (B) False imprisonment is not actionable per se.
  - (C) In false imprisonment, the defendant must show he had no reasonable cause to detain the plaintiff.
  - (D) The defendant can only be found liable for false imprisonment where the plaintiff knows that he is detained by the defendant.
5. Which of the following provides a defence to an occupier for injuries sustained by a lawful visitor on the occupier's premises?
  - (A) *Ex turpi causa*
  - (B) Inadequate warnings
  - (C) Trespassing
  - (D) *Volenti non fit injuria*
6. Each of the following is an example of a source of libel EXCEPT
  - (A) e-mails
  - (B) gestures
  - (C) photographs
  - (D) TV broadcasts
7. The term 'particular damage' is usually associated with the law of
  - (A) assault
  - (B) negligence
  - (C) private nuisance
  - (D) public nuisance
8. Which of the following is NOT a true statement?
  - (A) A person bringing an action in private nuisance must have an interest in land.
  - (B) The defendant's conduct must have been unreasonable in an action for private nuisance.
  - (C) The interference or injury to land must be substantial for a successful action in private nuisance.
  - (D) The plaintiff in an action for private nuisance can recover damages for personal injury.

Items **9 - 12** relate to the following scenario.

Joe was driving towards town when his vehicle skidded, mounted the pavement and collided with Mary Brown who was walking along the pavement. Mary Brown was taken to the General Hospital where she died two days later. An autopsy revealed that she died from an overdose of antibiotics which was administered to her by various nurses at the General Hospital.

- 9.** Mary Brown's personal representatives can bring an action against Joe in the tort of
- (A) assault
  - (B) manslaughter
  - (C) negligence
  - (D) recklessness
- 10.** In the action brought by Mary Brown's personal representatives, they can rely on
- (A) *res ipsa loquitur*
  - (B) *volenti non fit injuria*
  - (C) contributory negligence
  - (D) the 'egg shell skull' principle
- 11.** What concept in the law of tort can be adequately advanced by Joe to absolve him from liability for the death?
- (A) *Non est factum*
  - (B) *Novus actus interveniens*
  - (C) *Res ipsa loquitur*
  - (D) *Volenti non fit injuria*
- 12.** Joe will NOT be found negligent towards Mary Brown if he can
- (A) show that the skid was inexplicable
  - (B) show that he exercised due care
  - (C) establish that Mary Brown contributed to the accident
  - (D) establish that the pavement was unusually wide
- 13.** Slander is actionable per se in EACH of the following EXCEPT where the defamatory statement
- (A) causes the plaintiff to be shunned from a social group
  - (B) imputes incompetence of a doctor
  - (C) suggests that a married woman is adulterous
  - (D) infers the commission of a crime by the plaintiff
- 14.** At common law an employer's duty includes all of the following EXCEPT providing
- (A) adequate plant and equipment
  - (B) a workplace that is totally free from any danger
  - (C) a safe place of work
  - (D) a safe system of working with effective supervision



15. The law of tort can BEST be distinguished from the criminal law because in the law of tort
- I actions are brought by the parties while in the criminal law actions are usually brought by the police or Director of Public Prosecutions
  - II duties are usually fixed by the law while in the criminal law duties are usually fixed by the parties themselves
  - III the Plaintiff must prove its case while in the criminal law the prosecutor must establish its case on a balance of probabilities
  - IV victims are compensated for wrongful conduct while the criminal law seeks to punish offenders
- (A) I and II only  
(B) I and IV only  
(C) I, II and IV only  
(D) II, III and IV only
16. Contractual obligation arises from a duty primarily fixed by
- (A) agreement  
(B) judicial revision  
(C) law  
(D) statute
17. Which of the following is NOT a type of contract?
- (A) Bilateral  
(B) Fundamental  
(C) Unilateral  
(D) Voidable
18. Which of the following does NOT create incapacity to form certain contracts?
- (A) Drunkenness  
(B) Infancy  
(C) Insanity  
(D) Old age
19. Consideration is BEST defined as
- (A) the acceptance of an offer  
(B) the price for which a promise is bought  
(C) being party to a contract  
(D) the capacity to make a contract
20. Which of the following is NOT correct?
- (A) The breach of any implied term discharges the contract.  
(B) The condition is an important term of the contract.  
(C) The nature of the innominate term depends upon the consequences of its breach.  
(D) The warranty is a collateral term of the contract.
21. A fraudulent misrepresentation is a misstatement of fact made
- (A) carelessly  
(B) dishonestly  
(C) innocently  
(D) thoughtlessly
22. Which of the following is NOT necessarily an illegal contract?
- (A) Bribing a juror  
(B) Paying to receive a national honour  
(C) Purchasing controlled drugs  
(D) Supplying a bed to a prostitute

23. Discharge of a contract occurs through
- (A) agreement
  - (B) capacity
  - (D) illegality
  - (C) misrepresentation
24. Which of the following agreements raises a presumption of an intention to create legal relations?
- An agreement
- (A) between corporations
  - (B) between spouses
  - (C) to have a private meeting
  - (D) to have a business lunch
25. A father promises his 18-year-old son a gold watch if the boy does not smoke until he turns 21. The boy complies. The father does not. The legal result is that there is
- (A) a breach of contract by the father
  - (B) an agreement but it is unenforceable by the son
  - (C) no agreement between the parties
  - (D) no privity of contract between the parties
26. Alf promises Bob that he, Alf, will pay \$50 to Carl if Bob mows Alf's lawn. Bob mows the lawn. Alf now refuses to pay Carl. Which of the following is correct?
- (A) Alf is not in breach of contract.
  - (B) Carl can sue Alf for breach of contract.
  - (C) Carl can sue Bob for breach of contract.
  - (D) Carl cannot sue Alf for breach of contract.
27. A term will be implied into a contract when the court considers the term
- (A) fair
  - (B) important
  - (C) necessary
  - (D) reasonable
28. The effect of misrepresentation on a contract is BEST described as rendering the contract
- (A) discharged
  - (B) illegal
  - (C) *void ab initio*
  - (D) voidable
29. Jane agrees with Ken to sing a solo at Ken's wedding reception on Sunday. On Thursday, Jane gets soaked in a downpour but, instead of changing her wet clothes, she sits in a draught. Jane contracts laryngitis, and is unable to sing at the reception. When Ken sues Jane, she
- (A) can offer no lawful excuse for her non-performance
  - (B) can plead frustration of the agreement
  - (C) can plead a lack of consideration on Ken's part
  - (D) can rely on the doctrine of illegality

30. Which of the following is the BEST description for the effects of illegality on a contract?
- (A) Enforceable but voidable at the option of either party
  - (B) Unenforceable but property transferred may be recovered
  - (C) Unenforceable and property transferred cannot be recovered
  - (D) Valid and enforceable
31. In determining whether a structure is a fixture or a chattel the court applies each of the following tests except
- (A) degree of annexation
  - (B) mode of annexation
  - (C) purpose of annexation
  - (D) time of annexation
32. A legal interest in land differs from an equitable interest in that a legal interest is
- (A) a right binding on the whole world
  - (B) formed without legal formalities
  - (C) not as strong as an equitable interest
  - (D) a right in 'personam'
33. The doctrine of survivorship applies where the Title Deed for the ownership for property states that Raul and Sharon are tenants holding the property
- (A) in common
  - (B) in equal shares
  - (C) in joint ownership
  - (D) to share and share alike
34. Which of the following is NOT available to a landlord for a breach of covenant by a tenant?
- (A) A right of re-entry
  - (B) Distress
  - (C) Foreclosure
  - (D) Notice to quit
35. All of the following are types of licences EXCEPT
- (A) contractual licence
  - (B) licence coupled with an interest
  - (C) bare licence
  - (D) licence in 'rem'
36. Which of the following is NOT an implied covenant of the tenant?
- (A) Not to sublet
  - (B) Not to commit waste
  - (C) To pay rent
  - (D) To repair
37. Which of the following is NOT an essential characteristic of an easement?
- (A) There is a dominant and servient tenement.
  - (B) There is accommodation for the dominant tenement.
  - (C) There is consideration by the servient tenement.
  - (D) The right is the subject matter of a grant.

38. The term “ownership of Real Property” refers to
- (A) choses in action
  - (B) corporeal property
  - (C) movable property
  - (D) rights in rem
39. Thompson leases a bond to Jackman who operates a printery. Jackman builds a concrete platform which is pinned to the ground by steel. Upon this platform Jackman rests his printing press. At the end of the lease, Thompson wants Jackman to leave the printing press. The printing press can be classified as a
- (A) chattel
  - (B) corporeal
  - (C) chose in action
  - (D) fixture
40. Broome holds the fee simple in Daxacres. He wishes to change his fee simple to a life estate for himself with remainder to his sons, Felix and Austin. Which of the following describes the life estate Broome would hold?
- (A) Felix and Austin both hold a life interest with remainder to Broome.
  - (B) Felix and Austin are lessees of Broome for the term of their natural lives.
  - (C) Felix and Austin hold the remainder interest for Broome.
  - (D) Felix holds a life interest for Austin with remainder to Broome.
41. Which of the following statements is NOT true of a licensee?
- (A) He can assign his licence.
  - (B) He cannot enforce his rights over property.
  - (C) He has no interest in the land.
  - (D) He does not enjoy exclusive possession.
42. Tom owns a house at Macaio. Jerry leases the house from Tom for a period of five months at a specified rent. At the expiration of the five months, Tom allows Jerry to remain in the house. Jerry does not pay any rent. What type of tenancy is created after the expiration of the five months?
- (A) Periodic Tenancy
  - (B) Tenancy by estoppel
  - (C) Tenancy at sufferance
  - (D) Tenancy-at-will
43. Dan owns lands which are next to St Ann’s Street. Peter is the owner and occupier of the adjoining lands to Dan’s. Dan has allowed Peter to walk over lands for the past 25 years to go to and from St Ann’s Street. Peter is said to have acquired
- (A) a lease
  - (B) a licence
  - (C) an easement
  - (D) a covenant

44. Don mortgages his property to Commercial Inc for the sum of \$20 000. Should Don default on the loan, Commercial Inc would have available to it all of the following remedies EXCEPT the
- (A) power of foreclosing on the property
  - (B) right to take possession
  - (C) power to add an extra sum to the mortgage debt
  - (D) right to sue Don
45. A clog on the equity of redemption means that the mortgagee CANNOT
- (A) be allowed to restrict the mortgagor's rights to redeem the mortgaged property
  - (B) enter into an agreement with the mortgagor to become the owner on the death of the mortgagor
  - (C) reserve benefits after the mortgagor has redeemed the mortgaged property
  - (D) reserve the right to purchase the mortgaged property

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Caribbean Examinations Council (CXC)

Master Data Sheet

Subject: **CAPE LAW UNIT 2**

Year: **2008 Specimen**

QUESTION	KEY
1	D
2	B
3	D
4	A
5	D
6	B
7	D
8	D
9	C
10	A
11	B
12	C
13	A
14	B
15	B
16	A
17	B
18	D
19	B
20	A
21	B

QUESTION	KEY
22	D
23	A
24	A
25	B
26	D
27	C
28	D
29	A
30	B
31	C
32	A
33	C
34	A
35	D
36	B
37	C
38	D
39	A
40	C
41	A
42	D
43	B
44	C
45	A

FORM 2231020 SPEC



TEST CODE **02231020**

MAY/JUNE 2009

**CARIBBEAN EXAMINATIONS COUNCIL**  
**ADVANCED PROFICIENCY EXAMINATION**

**LAW**

**SPECIMEN PAPER**

**UNIT 2: PRIVATE LAW**

**PAPER 02**

*2 hours 30 minutes*

**INSTRUCTIONS TO CANDIDATES**

1. This paper consists of SIX questions, two questions are based on EACH Module.
2. You are required answer **ONE** question from EACH Module.
3. Read the question carefully before you begin writing your response.
4. Write your responses in the answer booklet provided.



**MODULE 1: TORT**

**Answer ONE question.**

1. Rajendra and Petal, two law students, attended a party at the start of the academic year. Rajendra consumed several alcoholic drinks. Petal was walking home when Rajendra stopped and offered her a ride. At first she refused but, because the road was dark, wet and lonely, she accepted. On the way to her flat, Rajendra drove at high speed and, as the road was wet, the car skidded and overturned. Petal was not wearing a seatbelt and she was thrown through the windscreen, sustaining major head injuries and a broken leg. Rajendra sustained minor injuries. Willy, who was waiting to cross the road, was knocked down by the skidding car and sustained broken limbs.

Advise Rajendra of his liabilities to Petal and Willy.

**[25 marks]**

2. During the budget debate, an opposition Member of Parliament in his speech said that it had been brought to his attention that Mr Ned Parker, Minister of the Environment, had been paid thousands of dollars by the Neverdurty Sanitation Company for awarding them a million-dollar contract. Next day, the headlines of the daily *Maco* newspaper were: "Government Minister Caught in Corruption".

Minister Parker wishes to sue the opposition Member of Parliament and the newspaper for defamation.

- (a) Explain the elements of the tort of defamation that Minister Parker must satisfy to succeed against the opposition Member of Parliament and the newspaper.

**[13 marks]**

- (b) Outline TWO defences that could be raised by the newspaper and ONE defence that the opposition Member of Parliament might have.

**[12 marks]**

**Total 25 marks**

GO ON TO THE NEXT PAGE

**MODULE 2: LAW OF CONTRACT**

**Answer ONE question.**

3. (a) It is an accepted principle of contract law that “an invitation to treat is not an offer for sale”.

Explain this principle of law with reference to TWO decided cases.

**[12 marks]**

- (b) The Housing Authority passes a resolution to sell their tenanted houses to tenants who have lived in those houses for five or more years.

Richards, the Chief Operating Officer, writes a letter to qualified tenants stated “the Authority will be prepared to sell you the house you currently occupy at the assessed market value, less 20%”. Tenants, including Bernard, are invited to make formal applications if they wish to purchase the house they occupy. Bernard applies.

Before Bernard receives an answer from the Authority, there is a general election and a change of government. The Housing Authority’s policy is changed by the new government.

Bernard claims that there is a binding contract between him and the Authority.

Advise Bernard, citing ONE case to support your advice.

**[13 marks]**

**Total 25 marks**

4. (a) Meg, a well-known singer, agrees to be the soloist at the wedding of her best friend, Lil. Meg refuses to accept a fee from Lil and tells her “consider my singing to be your present”. On the day of the wedding, Meg cannot sing as she is very hoarse.

Citing relevant case law, advise Lil whether she can successfully bring an action against Meg.

**[13 marks]**

- (b) Meg is contracted by Telco Ltd to sing at their Christmas concert. She is paid half of the fee, the balance to be paid after the concert. On the evening of the concert, Meg cannot sing as she is very hoarse.

Explain to Telco Ltd the basis upon which Meg may be discharged from her contract with them. Cite relevant case law to support your answer.

**[12 marks]**

**Total 25 marks**

GO ON TO THE NEXT PAGE

**MODULE 3: REAL PROPERTY**

**Answer ONE question.**

5. (a) Advise a mortgagee on TWO remedies that are available to enforce his or her security.

**[12 marks]**

- (b) Explain the mortgagor's equity of redemption.

**[13 marks]**

**Total 25 marks**

6. Abbott and Costello own adjoining farms and for over twenty years Abbott used a narrow, rough dirt track leading from his farm over Costello's land to the main road. However, when the weather is bad the track is hardly passable. Abbott and Costello have been friends and Costello has never objected to Abbott's use of the track. Abbott and Costello quarrel, and when Abbott starts to pave the track to make it passable to vehicles, Costello writes him "withdrawing the permission I gave you to use the track". Costello then erects a fence across the track, barring access to Abbott's farm.

Advise Abbott on

- (a) whether he has acquired an easement over Costello's land

**[15 marks]**

- (b) the remedies that would be available to him to protect his legal interest.

**[10 marks]**

**Total 25 marks**

**END OF TEST**

**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**

**A D V A N C E D   P R O F I C I E N C Y   E X A M I N A T I O N**

**L A W**

**S P E C I M E N   P A P E R**

**U N I T   2   -   P A P E R   0 2**

**M A R K   S C H E M E**

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 1

Specific Objective(s): 8

Content: 8

**Liability to Petal****The Law**

- The burden of proving negligence always lies on the Plaintiff therefore Petal has to prove that Rajendra was negligent. (2 marks) CK
  - It is well established that Rajendra as a driver owes a duty of care to all road users **Bourhill v Young** and as this is a personal injuries case, the nature of the duty of care is governed by **Donoghue v Stevenson**. To fulfill this duty Rajendra must act as a reasonable man: (3 marks) UK
    - Observe traffic rules and signals, **James v Seivwright**
    - Avoid excessive speed and adjust his speed according to the prevailing conditions, for example, where the road is wet, owing to heavy rain, he must reduce his speed so as to be able to manoeuvre the vehicle in the event of an emergency, **Tiwari v Jagessar**.
    - Avoid driving under the influence of alcohol **Owens v Brimmell**

**Action - 1 mark + case cited - 1 mark**  
**Any 2 points stated - 2 x 2 marks**
- (4 marks) UK

Whether D has observed the standard of care required of him in the particular circumstances is a question of fact.

On the facts, Rajendra was driving at high speed and did not adjust his speed even though the road was wet. In addition, he was driving while he was under the influence of alcohol. Rajendra was therefore in breach of his duty and the breach resulted in damage to Petal. Rajendra is therefore liable for negligence and will be required to compensate Petal in damages.

**Liability stated - 1 mark**  
**2 points to support - 2 x 1 mark**

(3 marks) CK

**Contributory negligence**

Rajendra may raise the defence of contributory negligence. In **Froom v Butcher**, it was held that a driver or a front seat passenger of a car who failed to wear a seatbelt and was injured in an accident was guilty of contributory negligence if his injuries could have been avoided or minimized by wearing a seatbelt. (Also **Thurston v Davis, Woods v Francis**)

**Mention any case**

(2 marks) UK

On the facts Petal did not have on her seatbelt and was thrown through the window. But in **Thurston v Davis** it was held that there was no evidence that if the Plaintiff had on her seatbelt that her injuries would have been prevented or lessened so D could not rely on the defence of contributory negligence.

(2 marks) UK

## LAW

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 1 cont'd

On the facts, even if Petal had on her seatbelt she would still have been injured because the car overturned.[1] There is therefore no evidence that her injuries would have been prevented or lessened and therefore Rajendra may not be able to rely on the defence.[1] However, Petal would not have been thrown through the window had she been wearing a seat belt.

(2 marks) UK

**Liability to Willy**

Even though Willy was not in the car but standing on the sidewalk Rajendra may also be prima facie liable for his injuries.

(1 mark) CK

Rajendra in his defence may argue that the accident was due to the skid. It is well established that such a plea will not in itself absolve Rajendra, rather he must go further and show that the skid occurred without fault on his part **Pajero v Koo**.

(2 marks) UK

In **McAree v Achille**, Rees J. said that a skid itself does not displace a prima facie presumption of negligence;[1] on the contrary, a skid raises a presumption that the driver was either going too fast or applied his brakes too suddenly, having regard to the road conditions prevailing at the time.[1]

(2 marks) UK

On the facts, before the skid Rajendra was driving at high speed and the fact that the car overturned is evidence of the speed at which Rajendra was driving.[1] Thus it may be inferred that the violent skid was caused by the negligence of Rajendra. Rajendra is therefore liable for the injuries to Willy.[1]

(2 marks) CK

**TOTAL 25 marks**

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 1 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	22 - 25
2	A logical, well-developed response; demonstrates <b>very good</b> understanding of cases and issues, usually cites relevant sources to support answer	19 - 21
3	A logical, fairly well developed response; demonstrates <b>good</b> understanding of cases and issues, usually cites relevant sources to support answer	16 - 18
4	Satisfactory logic and development shown in response; demonstrates <b>satisfactory</b> understanding of cases and issues, occasionally cites relevant sources to support answer	13 - 15
5	Acceptable logic and development shown in response; demonstrates <b>acceptable</b> understanding of cases and issues, occasionally cites relevant sources to support answer	10 -12
6	Weak logic and limited development shown in response; demonstrates <b>poor</b> understanding of cases and issues, rarely cites relevant sources to support answer	6 - 9
7	Unsatisfactory logic and minimal development shown in response; demonstrates <b>unsatisfactory</b> understanding of cases and issues, very rarely cites relevant sources to support answer	1 - 5

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 2

Specific Objective(s): 3

Content: 3

(a) (i) Definition of defamation:

- A defamatory statement is one which tends to lower the plaintiff in the estimation of right thinking members of society generally[1] **Sim v Stretch**[1]

OR A defamatory statement may be either:

(i) Libel, or[1]

(ii) Slander[1]

(2 marks) CK

- Libel is a defamatory statement in a **permanent** form, for example, most usually consisting of written words in a newspaper. [1]
- Slander is a defamatory statement in a **transient** form - mainly by spoken words or gestures.[1]

No distinction between libel and slander in Barbados by virtue of its Defamation Act.

(2 marks) CK

**Elements of Defamation**

(ii) The Plaintiff must prove:

- A defamatory statement
- The statement refers to the plaintiff
- The statement was published to a 3<sup>rd</sup> party

(3 marks) CK

Libel is **actionable per se**, that is, the law presumes that damage has been done to P's reputation and he will be awarded general damages by way of compensation in any event **British Guiana Rice Marketing Board v Peter Taylor and Co. Ltd.**

If he does prove that he has suffered actual loss, he will be awarded a further sum as special damages.

Slander is not actionable per se, that is, P has no cause of action unless he can show that he has suffered actual material or temporal loss **Sunanansingh v Ramkerising.**

However slander is actionable per se where there is imputation of crime, that is, where the defendant alleges that P has committed a crime punishable by imprisonment or corporeal punishment, for example, theft, corruption in public office.

**Discussion of any one case 3 marks****Application - 3 marks**(6 marks) CK  
UK**[13 marks]**



## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 2 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	13
2	A logical, well-developed response; demonstrates <b>very good</b> understanding of cases and issues, usually cites relevant sources to support answer	11 - 12
3	A logical, fairly well developed response; demonstrates <b>good</b> understanding of cases and issues, usually cites relevant sources to support answer	9 - 10
4	Satisfactory logic and development shown in response; demonstrates <b>satisfactory</b> understanding of cases and issues, occasionally cites relevant sources to support answer	7 - 8
5	Acceptable logic and development shown in response; demonstrates <b>acceptable</b> understanding of cases and issues, occasionally cites relevant sources to support answer	5 - 6
6	Weak logic and limited development shown in response; demonstrates <b>poor</b> understanding of cases and issues, rarely cites relevant sources to support answer	3 - 4
7	Unsatisfactory logic and minimal development shown in response; demonstrates <b>unsatisfactory</b> understanding of cases and issues, very rarely cites relevant sources to support answer	1 - 2

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 2 cont'd

(b) Defences of the Newspaper

1. **Justification**

It is a complete defence to an action for libel or slander that the words are true in substance. The plaintiff does not have to prove that the defamatory words are false for the law presumes this in his favour, but if the defendant can prove its truth he will defeat the plaintiff's claim. The defendant should not plead justification unless he has good reason to believe that it is true for failure to establish the defence will usually inflate damages awarded against him as the Court will treat it as an aggravation of the original injury ***Small v the Gleaner Co Ltd***

**3 marks for point and case****(3 marks)****UK**2. **Fair Comment**

It is a defence to an action for libel or slander that the statement was fair comment on a matter of public interest.

- The matter must be a comment or opinion and not an assertion of fact ***British Guiana Rice Marketing Board v Peter Taylor and Co. Ltd;***
- The comment must be based upon true facts ***Soltysik v Julien;***
- The comment must be honestly made. Honest means 'genuinely held'. Once the defendant expresses his genuine opinion on the subject matter he will have a defence notwithstanding that his opinion may have been biased, prejudiced, exaggerated, or irrational. But the defendant is not entitled to cast aspersions on the personal character of the plaintiff or to ascribe to him base, dishonest or corrupt motives.
- The comment must not be actuated by malice, ***Clapham v Daily Chronicle***
- The comment must on a matter of public interest ***Clapham v Daily Chronicle***

**Point - 1 mark + case cited - 1 mark****Any 2 points = 2 x 2 marks case on each point****2 marks if no case****(4 marks)****UK**3. **Qualified Privilege**

- This defence applies to fair and accurate reports of judicial and parliamentary proceedings or statements made under a duty.

**(1 mark)****UK**

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 2 cont'd

- The defence can be destroyed by showing that the defendant was actuated by malice. Malice means that the defendant had no honest belief in the truth of his statement, *Horrocks v Lowe*. (2 marks) UK
- (b) The opposition minister may have a defence of absolute privilege as the statement was made in parliamentary proceedings. (2 marks) UK

[12 marks]

**TOTAL 25 marks**

## Question 3

Specific Objective(s): 2

Content: 2

- (a) Candidates are expected to identify the principle as central to the formation of a contract pointing out that there must be consensus ad idem. A display of products does not constitute an offer but it is a mere invitation to treat.

**Definition of term (2 marks) UK**

Cases illustrating the principle include:

*Pharmaceutical Society of Great Britain v. Boots*  
*Fisher v. Bell* (in which principle was enunciated)  
*Harvey v. Facey*  
*Patridge v. Crittenden*  
*Gibson v. Manchester City Council*  
*Papre v. Cerve*

Principle identified - 1 mark

Elaboration - 1 mark

Case - 1 mark

**Any two - 2 x 4 marks (8 marks) UK**

**Analysis of principle (2 marks) UK**

[12 marks]

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 3 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	12
2	A logical, well-developed response; demonstrates <b>very good</b> understanding of cases and issues, usually cites relevant sources to support answer	10 -11
3	A logical, fairly well developed response; demonstrates <b>good</b> understanding of cases and issues, usually cites relevant sources to support answer	8 - 9
4	Satisfactory logic and development shown in response; demonstrates <b>satisfactory</b> understanding of cases and issues, occasionally cites relevant sources to support answer	6 - 7
5	Acceptable logic and development shown in response; demonstrates <b>acceptable</b> understanding of cases and issues, occasionally cites relevant sources to support answer	5
6	Weak logic and limited development shown in response; demonstrates <b>poor</b> understanding of cases and issues, rarely cites relevant sources to support answer	3 - 4
7	Unsatisfactory logic and minimal development shown in response; demonstrates <b>unsatisfactory</b> understanding of cases and issues, very rarely cites relevant sources to support answer	1 - 2

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 3 cont'd

- (b) Facts here are close to those in **Gibson v Manchester City Council**[1] where the House of Lords held that the letter from the treasurer, before preparation of the contract was an invitation to treat.[1] (2 marks) CK

Is Bernard's formal application the acceptance of an offer?[1] This would make Richards' letter an offer and not an invitation to treat.[1] (2 marks) CK

Candidates are expected to analyse these issues and to support their answer with decided cases. (See cases suggested above as among the authorities which may be relied upon)

## Analysis

- Identification of issues (3 marks) UK
- Analysis of issues and use of case law in support (4 marks) CK
- Conclusion (2 marks) UK

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[13 marks]  
TOTAL 25 marks

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 4

Specific Objective(s): 4

Content: 4

(a) Candidates are required to identify the issue:

Is there an intention to create legal relations?  
 Did Meg intend to be bound by the promise?  
 Was there consideration?

Issue - Identified - 1 mark + Elaboration - 1 mark

**Any two - 2 x 2 marks****(4 marks) CK**

Distinction must be made between

(i) social, family or domestic arrangements where the presence or absence of an intention to create legal relations depends on what inference is drawn by the Courts on the basis of: **[1]**

- language used by the parties **[1]**
  - the circumstances in which they use it; **[1]**
- and

(ii) commercial agreements in which the intention is presumed and must be rebutted by the party seeking to deny it. **[1]**

**(4 marks) CK**

Can this agreement be treated as being frustrated?

Analysis

- Identification of issue
- Definition of terms
- Determination of issue with supporting case law
- Soundness of argument

**Conclusion****(2 marks) UK**

Intention is always determined by an objective test.

Suggested cases: **Jones v Padavatton**  
**Simpkins v Pays**  
**Balfour v Balfour**  
**Merrit v Merrit**

**Any one case****(3 marks) UK****[13 marks]**

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 4 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	13
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(b) Here, a commercial agreement has clearly been made.

Cases such as *Carlill v Carbolic Smoke Ball Co*, *Rose and Frank v Crompton* may be useful.

(2 marks)

CK

Effect of Lil's hoarseness: Would this agreement be regarded as frustrated? Compare *Poussard v Spiers and Pond* with *Storey v Fulham, Steel Works*. See also *Bettini v Gye* case on breach of contract.

(4 marks)

UK

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 4 cont'd

Cases on frustration of contract which may be helpful include

***Krell v Henry***  
***Taylor v Caldwell***

**Analysis:**

Identification of issue

Definition of terms

Determination of issue with supporting case law

**(4 marks)****UK**

Soundness of argument

**Conclusion****(2 marks)****UK**

Level	Criteria	Score
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**[12 marks]****TOTAL 25 marks**



## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 5

Specific Objective(s): 6

Content: 6

(a) Remedies available to the mortgagee to enforce his security:

- (i) right to enter into possession of the mortgaged property [1]
- (ii) right to sell the mortgaged property (power of sale) [1]

These remedies are both concurrent [1] and cumulative, [1] that is, the mortgagee can pursue all or any simultaneously as soon as the mortgagor is in default, and if one remedy proves insufficient to satisfy what is owing to him, he may pursue another remedy in order to recover the balance.

**Remedies correctly outlined - 2 x 2 marks**

**(4 marks) CK**

(i) **Right to enter into possession**

- A legal mortgagee has a right to possession of the mortgaged property 'before the ink is dry on the mortgage' per Harman .J in **Four Maids Ltd v Dudley Marshall (Properties) Ltd** unless there is something in the contract whereby he had contracted himself out of the right.
- The right to possession has nothing to do with the default of the mortgagor.
- In practice, the mortgagee will not take possession of the mortgaged property except as a preliminary step to exercise his statutory power of sale after a default by the mortgagor.
- Where there is such default it will be necessary for the mortgagee to exercise his right in order to sell the property with vacant possession.
- Where the mortgagor is in possession it will be necessary for the mortgagee to bring an action for recovery of possession.

**Any four - 4 x 1 mark**

**(4 marks) UK**

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 5 cont'd

(ii) **Power of sale**

Provided the mortgage is made by Deed the mortgagee has the power to sell the mortgaged property out of court.

- The power of sale arises as soon as the date fixed for repayment is passed or in the case of instalments, as soon as an instalment is due and unpaid.
- The power of sale becomes exercisable when either:
  - (i) Notice requiring repayment of the mortgage money has been served on the mortgagor and default has been made in payment of part or all of it for 3 months thereafter; or
  - (ii) (ii) Some interest under the mortgage is two months or more in arrears; or
  - (iii) There is a breach of some provision contained in the Acts or in the mortgage deed by the mortgagor or by the mortgagee or someone who concurred in making the mortgage.

**Any four - 4 x 1 mark**

**(4 marks) UK**

**[12 marks]**

- (b) Explain the equity of redemption as the right of the mortgagor[1] to pay the amount due[1] to the mortgagee after the date for repayment has passed.[1] That this right is an equitable[1] one and he cannot be deprived of his right to exercise it.[1] Applicable maxim, "there should be no clog on the equity" of redemption.[1]

**(6 marks) CK**

Case to illustrate, for example, Kreglinger

Issue identified - 1 mark

Definition of term - 1 mark

Supporting case - 1 mark

Soundness - 1 mark

**(4 marks) UK**

**Application of law**

**(3 marks) UK**

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 5 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	13
2	A logical, well-developed response; demonstrates <b>very good</b> understanding of cases and issues, usually cites relevant sources to support answer	11 - 12
3	A logical, fairly well developed response; demonstrates <b>good</b> understanding of cases and issues, usually cites relevant sources to support answer	9 - 10
4	Satisfactory logic and development shown in response; demonstrates <b>satisfactory</b> understanding of cases and issues, occasionally cites relevant sources to support answer	7 - 8
5	Acceptable logic and development shown in response; demonstrates <b>acceptable</b> understanding of cases and issues, occasionally cites relevant sources to support answer	5 - 6
6	Weak logic and limited development shown in response; demonstrates <b>poor</b> understanding of cases and issues, rarely cites relevant sources to support answer	3 - 4
7	Unsatisfactory logic and minimal development shown in response; demonstrates <b>unsatisfactory</b> understanding of cases and issues, very rarely cites relevant sources to support answer	1 - 2

[13 marks]

TOTAL 25 marks

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 6

Specific Objective(s): 5

Content: 5

**Issue#1: whether Abbott's use of the track over Costello's farm is capable of being an easement**

(a) **Requirements for an easement**

**Definition**

An easement is a right **in alien solo**, that is, over the land of another.

(2 marks) CK

The characteristics of an easement were laid down in **Re Ellenborough Park**

- (i) There must be a dominant and servient tenement;  
On the facts Costello's farm is the servient tenement while Abbott's farm is the dominant tenement.
- (ii) The easement must accommodate the dominant tenement **Hill v Tupper**;  
that is the right claimed must be for the benefit of the dominant tenement. It must not confer some personal benefit but must make the dominant tenement a better and more convenient property or increase the value of the land **Re Ellenborough Park**. In deciding whether an alleged easement accommodates the dominant tenement, regard must be had to the purposes for which the tenement is used.

On the facts, the easement over Costello's land allows access to Abbott's farm. Therefore it can be inferred that it is not a personal benefit but for the benefit of Abbott's farm. It also increases the value of the Abbott's land. A pathway is the most common type of easement therefore it is safe to assume that it benefits the land.

There must be a sufficient nexus, that is, the servient and dominant tenements must be proximate but not necessarily adjoining or adjacent. The nexus test is satisfied as the farms are adjacent.

- (iii) The dominant and servient owners must be different persons.

The farms are owned by different persons. Abbott owns the dominant tenement and Costello owns the servient tenement.

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 6 cont'd

- (iv) The easement must be capable of forming the subject matter of a grant, that is, it must be capable of being granted by a Deed. For this to be satisfied there must be a capable grantor and a capable grantee. There is no incapacity in law to prevent Abbott and Costello from being a grantor or grantee.

Also the right claimed must be sufficiently definite and must be in the nature of a recognized easement. A right of way is the most common easement.

- (v) An easement is a right against other land.
- (vi) Must be negative in nature, that is, no expenditure of money by the servient owner.

**Any 3 - 3 marks**

**(9 marks) CK**

Thus the pathway across Costello's farm is capable of being an easement.

But whether Abbott actually has an easement depends on whether he has acquired it in a manner recognized by law.

**Issue #2: Whether Abbott has acquired an easement in a manner recognized by law.**

An easement may be acquired in several ways:

- Express grant
- Implied grant
- Prescription

**Identification of any one method of acquisition, with explanation of methods**

**(1 mark) CK**

- **Common Law Prescription**

**(3 marks) UK**

On the facts there is no question of an express grant or implied grant. In the absence of a conveyance between Abbott and Costello, the doctrine in **Wheeldon v Barrows** does not apply.

Therefore if Abbott has acquired an easement he will have done so by prescription.

A prescriptive easement can be acquired in three ways - common law prescription, lost modern grant, and under the Prescription Act 1832. All three are based on acquiescence and it is necessary to show that the servient owner knows of the use over his land by the dominant owner, has the power to stop it or sue in respect of it, and fails to do: **Dalton v Angus (1881)**.

## LAW

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 6 cont'd

On the facts it would appear that these factors are satisfied as Costello knows of Abbott's use of the track and only takes steps to stop it in 2008. All three types of prescription are also based on longer user as of right, without force, secrecy or permission (*nec vi, nec clam, nec precario*). These factors will now be considered in respect of the different types of prescription.

In order to successfully plead common law prescription, Abbott would have to show that the path has been used across Costello's farm since time immemorial - 1066. Although the rule is deemed to be satisfied if the use can be shown to have existed throughout the memory of the oldest living inhabitant of the area, such a plea will fail even if the farms had existed since that time in view of the fact that the path has, apparently, only since 1988.

**Lost Modern Grant**

This is essentially a fiction whereby 20 years' user or more, as of right, was presumed to arise from the grant of a deed which had since been lost: ***Tehidy Minerals v Norman (1971)***. The difficulty for Abbott here would be that he could not show 20 years' user as of right.

Abbott's strongest case lies in pleading the Prescription Act 1832. Under s2 and s4 of the Act, 20 years' user as of right next before some suit or action without interruption must be shown. Several points must be considered here: Is there 20 years' user in view of the fact that the path is not passable when the weather is bad? Has Abbott used as of right? And is there an interruption?

As to the first point, it was settled in ***Mills v Silver (1991)*** that an agreement in the form of right of way could come into existence notwithstanding the fact that the path in question could only be used in dry weather. As to the second point, Costello will no doubt seek to argue that he had given Abbott permission to use the path back years ago as indicated in his letter of April 2008; however, a distinction must be drawn between **acquiescence** which is the basis of prescription (***Dalton v Angus***) and **permission**. If there was true permission Abbott cannot claim an easement, but if there was acquiescence or toleration it is not open for Costello to seek to grant permission *ex post facto* by his letter of April 2005.

The 20-year period can, of course, be defeated by an interruption provided that it lasts for at least one year and is known to the dominant owner who submits to it. Although it is reasonable to assume Abbott knows of the existence of the fence, it is not clear whether he has submitted to it. Question arises whether or not the interruption is valid, thereby enabling Abbott to claim the easement.

[15 marks]

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

## Question 6 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	14 - 15
2	A logical, well-developed response; demonstrates <b>very good</b> understanding of cases and issues, usually cites relevant sources to support answer	12 - 13
3	A logical, fairly well developed response; demonstrates <b>good</b> understanding of cases and issues, usually cites relevant sources to support answer	10 - 11
4	Satisfactory logic and development shown in response; demonstrates <b>satisfactory</b> understanding of cases and issues, occasionally cites relevant sources to support answer	8 - 9
5	Acceptable logic and development shown in response; demonstrates <b>acceptable</b> understanding of cases and issues, occasionally cites relevant sources to support answer	6 - 7
6	Weak logic and limited development shown in response; demonstrates <b>poor</b> understanding of cases and issues, rarely cites relevant sources to support answer	4 - 5
7	Unsatisfactory logic and minimal development shown in response; demonstrates <b>unsatisfactory</b> understanding of cases and issues, very rarely cites relevant sources to support answer	1 - 3

[15 marks]

## (b) Remedies

Hence, Abbott appears to have acquired a legal easement over Costello's farm by virtue of the Prescription Act 1832, which will entitle him to get a mandatory injunction requiring Costello to remove the fence. However, the easement is limited to the right to pass and re-pass along the track. In other words it does not give Abbott the right to improve the track, merely to repair it, and insofar as Abbott has commenced improvements by paving the track he has committed a trespass which will enable Costello to recover damages from him (see **Mills v Silver**).

[10 marks] UK

## UNIT 2 - PAPER 02

## KEY/MARK SCHEME

Question 6 cont'd

Level	Criteria	Score
1	A logical, well-developed response; demonstrates <b>excellent</b> understanding of cases and issues, consistently cites relevant sources to support answer	8 - 10
2	A logical, well-developed response; demonstrates <b>very good</b> understanding of cases and issues, usually cites relevant sources to support answer	7
3	A logical, fairly well developed response; demonstrates <b>good</b> understanding of cases and issues, usually cites relevant sources to support answer	6
4	Satisfactory logic and development shown in response; demonstrates <b>satisfactory</b> understanding of cases and issues, occasionally cites relevant sources to support answer	5
5	Acceptable logic and development shown in response; demonstrates <b>acceptable</b> understanding of cases and issues, occasionally cites relevant sources to support answer	4
6	Weak logic and limited development shown in response; demonstrates <b>poor</b> understanding of cases and issues, rarely cites relevant sources to support answer	3
7	Unsatisfactory logic and minimal development shown in response; demonstrates <b>unsatisfactory</b> understanding of cases and issues, very rarely cites relevant sources to support answer	1 - 2

[10 marks]  
TOTAL 25 marks



FORM 2231030 SPEC



TEST CODE **02231032**

MAY/JUNE 2009

**CARIBBEAN EXAMINATIONS COUNCIL**  
**ADVANCED PROFICIENCY EXAMINATION**

**LAW**

**SPECIMEN PAPER**

**UNIT 2: PRIVATE LAW**

**PAPER 032**

*1 hour 30 minutes*

**INSTRUCTIONS TO CANDIDATES**

1. This paper consists of ONE compulsory question.
2. Read the question carefully before you begin writing your response.
3. You may refer to your prepared notes for the topic to be assessed.
4. Write your responses in the answer booklet provided.



**TOPIC: NEGLIGENCE**

Answer this compulsory question.

1. With reference to decided cases, analyse the extent to which the principle of 'remoteness of damage' increasingly limits the liability of hapless defendants.

**[30 marks]**

**END OF TEST**

**CARIBBEAN EXAMINATIONS COUNCIL**

**ADVANCED PROFICIENCY EXAMINATION**

**LAW**

**SPECIMEN PAPER**

**UNIT 2 - PAPER 032**

**MARK SCHEME**

**LAW****UNIT 02 - PAPER 032****MARK SCHEME**

Question 1

Specific Objective: 9

Content: 9 (iii)

- Candidates would be expected to examine the law relating to negligence, in all its aspects, and discuss the rules laid out in THE WAGON MOUND which are intended to restrict the liability of a defendant in circumstances when without the limitations, he would be disadvantaged by the strict application of the law.
- They should examine the statement by Kodilinye at page 106 of the 2003 edition of his "Commonwealth Caribbean Tort Law" where he says, "The concept of remoteness of damage is one way in which the law sets limits to the extent of a person's liability for the consequences of his negligence ..."
- They should also examine other ways by which the law seeks to limit liability and compare with THE WAGON MOUND, thereby demonstrating effective analysis. "Contributory negligence" is suggested as one good area for comparison.

**CASES:***The Wagon Mound**Donoghue v Stevenson* (1932) AC 562*Hughes v Lord Advocate*(1963) AC 837*Witter v Brinks* (1992) JLR 344*Malcolm v Broadhurst* (1970) 3 All ER, 508

*Nottage v Super Value Food Stores Ltd* (Unreported case from The Bahamas, page 108 of Kodilinyne)  
among others."

- a. Rationale - sets limits on the extent of a person's liability for negligence. **(7 marks)**
  - b. The Wagon Mound - The consequences are too remote if a reasonable man would not have foreseen them. **(3 marks)**
  - c. Foreseeable harm must be of the same kind, type and class as that which actually occurred. **(3 marks)**
  - d. Egg-shell skull principle. **(4 marks)**
  - e. *Novus actus interveniens*. **(4 marks)**
- Any 3 cases (fact + principle + comment) - 3 x 3 marks **(9 marks)**