



Cambridge Assessment
International Education

Example Candidate Responses

Paper 1

Cambridge International AS & A Level

Law 9084

For examination from 2017

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Introduction

The main aim of this booklet is to exemplify standards for those teaching Cambridge AS & A Level Law 9084, and to show how different levels of candidates' performance (high, middle and low) relate to the subject's curriculum and assessment objectives.

In this booklet candidate responses have been chosen from June 2018 scripts to exemplify a range of answers.

For each question, the response is annotated with a clear explanation of where and why marks were awarded or omitted. This is followed by examiner comments on how the answer could have been improved. In this way, it is possible for you to understand what candidates have done to gain their marks and what they could do to improve their answers. There is also a list of common mistakes candidates made in their answers for each question.

This document provides illustrative examples of candidate work with examiner commentary. These help teachers to assess the standard required to achieve marks beyond the guidance of the mark scheme. Therefore, in some circumstances, such as where exact answers are required, there will not be much comment.

The questions and mark schemes used here are available to download from the School Support Hub. These files are:

June 2018 Question Paper 12
June 2018 Paper 12 Mark Scheme

Past exam resources and other teacher support materials are available on the School Support Hub:

www.cambridgeinternational.org/support

How to use this booklet

This booklet goes through the paper one question at a time, showing you the high-, middle- and low-level response for each question. The candidate answers are set in a table. In the left-hand column are the candidate answers, and in the right-hand column are the examiner comments.

Example Candidate Response – high		Examiner comments
Question	Part	
Q1		<p>Misrepresentation is where an untrue statement of fact induces a party to enter into a contract. ①</p> <p>There are 3 requirements to show that a contract is actionable for misrepresentation. This includes that there must be an untrue statement, it must be a statement of fact, and the statement must have induced the party to enter the contract.</p>

① A good start. A brief definition of misrepresentation, which is clear (this is often better than a very long and sometimes less accurate one). This is followed by the main elements of misrepresentation without being over lengthy and wasting time on unnecessary matters.

Examiner comments are alongside the answers. These explain where and why marks were awarded. This helps you to interpret the standard of Cambridge exams so you can help your learners to refine their exam technique.

Answers are by real candidates in exam conditions. These show you the types of answers for each level. Discuss and analyse the answers with your learners in the classroom to improve their skills.

How the candidate could have improved their answer

This was an excellent response, which used a wide range of illustrative detail and sound definitions. Three maxims were identified and explained, each remedy was explained with a relevant case, including the more recent Anton Pillar and Mareva injunctions.

This section explains how the candidate could have improved each answer. This helps you to interpret the standard of Cambridge exams and helps your learners to refine their exam technique.

Common mistakes candidates made in this question

Candidates who fared less well in this response often made the mistake of offering responses based on custom and the Anglo Saxon system of law, rather than concentrating on the creation of Common Law and the way in which Equity was formed to solve problems. Poorer responses also contained far too few example citations for the maxims and particularly the remedies. Concepts such as trust, mortgages and deserted wives' equity could also have been used.

Often candidates were not awarded marks because they misread or misinterpreted the questions.

Lists the common mistakes candidates made in answering each question. This will help your learners to avoid these mistakes and give them the best chance of achieving the available marks.

Question 1

Example Candidate Response – high

Examiner comments

Question	Part
Q.1	<p>“Equity is based on fairness. Describe the development of Equity and assess how far the statement above is true.” 1</p> <p>The Question statement states that Equity as a form of providing justice is based on the foundation of fairness. Equity's literal translation and is “fairness” and it arose due to problems developed under the judicial system of Common Law. But in Anglo-Saxon times, there was no proper unified system of courts but after the Norman Conquest, King then Henry sent a circuit of judges to various towns to make decisions based on common law. Initially, the judges based their decisions on the local customs of the lands they visited, but eventually to on their return back to Westminster, they used to discuss the decisions they made and the best ones were used to as Common Law. Over time, three courts came into being, the Court of Common Pleas, the Court of Exchequer, and the the King's Bench. 2</p> <p style="text-align: center;"><u>Assess:</u></p> <p>Equity branched from the Common Law due to problems associated with it, using Common Law customs, a defined limited cases were recognized and in cases of trespass for example, instead of removing a to plot made on somebody else's land, the Common Law could only provide the remedy of damages. People who couldn't get justice appealed to the King's Chancellor, who 3 became known as the Keeper of the King's</p>

1 It is not necessary to rewrite the question as it wastes time; the question number will do.

2 A good concise historical account setting the scene for the rest of the answer.

3 Points out the issues making a valuable early evaluative point.

Example Candidate Response – high, continued

Examiner comments

Question Part

conscience and based his rules on the principles of natural justice rather than the strict rules of precedent. This is where Equity as a fair system was born. Over the years, Equity came to operate independently and came into conflict with the Common Law but eventually, in the "Earl of Oxford" case and too through the Judicature Act of 1873 to 1875, Equity and the Common Law became unified.

Through these arguments, it can very well be said that Equity is truly based on fairness as it doesn't adhere to strict precedent rules of the Common Law, and offers flexibility. Equity operates under four equitable maxims, the first one being "Equity looks to the form and not the intention", this was reflected in the case of *Berry v Berry* in which a deed, instead of being replaced by another deed, was replaced by a contract, in this case, the intention of the ones who replaced the deed was taken into account. Another Maxim is that "Equity will not be applicable to him who doesn't come with clean hands or has acted unfairly", this was reflected in the case of *D and C Builders Ltd v Rees*, in which a couple had acted unfairly against builders who had not been paid the full amount they were worthy of, the couple had acted unfairly against them in this case. The last third Maxim is that delay defeats Equity which

4 Good use of case law to illustrate the point.

5 Returns to the essence of the question here.

Example Candidate Response – high, continued

Examiner comments

Question Part

was reflected in the case of Leif v International Galleries. Through these Maxims the last Maxim says that Equity has the jurisdiction to create new remedies. Through these Maxims, it could very well be said that Equity allows fairness. 6

Equity also has a number of equitable remedies in which it ensures fairness, one is Equitable Injunctions which prevents parties to do or from doing something or allows them to do something. One case in which injunctions were followed was Warner Brothers v Nelson in which the actress Betty Davis was prevented from making films with other media houses due to her affiliation with Warner Brothers. The Specific Performance is another remedy that ~~the~~ compels parties to follow the terms of the specific contract promptly, this was reflected in Cohen Nutbrown v Thornton. Rescission gets parties back to their pre-contractual positions, this was reflected in case of Car and Universal Credit v Gallwell. Rectification allows the contract to be changed so corrected so that it reflects the parties' wishes, this was seen in Surgicraft Ltd v Radzym biodevices. Rescission allows the entire unfair contract to be dissolved (Hong Kong Fir Shipping). 7

Apart from this, Equity also provides the chance to invoke the Promissory

6 Three maxims clearly explained with good case illustration, again always linking the response to the question.

7 Remedies are well defined. Using cases to illustrate them lifts the answer into the upper bands.

Example Candidate Response – high, continued

Examiner comments

Question Part

Est Estoppel which was seen in *Central London Properties v High Tree House Ltd*, in which a landlord was estopped from claiming the full claim of his rent during the disastrous days of the war. World War II. With these injunctions, it can be confirmed that Equity is based on fairness. Equity can also be applied in modern times such as the equitable right on mortgages and the deserted wife's Equity in which a wife would be allowed to live in her husband's matrimonial home even after he deserted her, this is very fair to the wife. The Mareva or T-Injunction or Freezing order can also help in freezing assets of the one who wishes to escape from the country (Compa Mareva (Compania Naviera SA v International Bulk Carriers SA) and the Anton Piller or Search Order can allow a defendant to search the premises of the one who wronged him for evidence.

The argument, however that Equity is based on fairness is only partially true because in the case of Common Law, there is the possibility of certainty, precision and flexibility in the law and even though it takes time, it can be made sure through checks and balances that the right person will be prosecuted. Through Statutory Interpretation and various linguistic aids and intrinsic and extrinsic aids, a well rounded interpretation of Acts can be made which allows proper compensation.

8 The candidate here moves on to discuss equitable concepts beyond maxims and remedies. Each area is well explained and links the evaluation to 'fairness'.

9 An interesting comparison here with Common Law making a good evaluative point, without allowing the answer to tip into irrelevant material.

Example Candidate Response – high, continued **Examiner comments**

Question	Part	
		<p>In Modern times, the equitable remedy of damages is not the only one the Common Law provides, the Common Law also allows suspended sentences and fines and prison sentences which can be ENFORCED. These extensive measures are not available with Equity. However, even after all this, Equity can be said to be fair as it mitigates the harshness of the Common Law and gives individual rights as postulated by Ronald Dworkin's theory of legal Interpretivism and the case of Southwell v Blackburn. It can also be said that Equity is not fair as it doesn't fulfill Community legal objectives but only individual objectives. 10</p> <p>Using all these remedies and Maxims, Equity provides individual rights and can provide new remedies, and is therefore truly based on fairness, even after its drawbacks.</p>

10 A good counter argument here, well-reasoned.

Total mark awarded = 25 out of 25

How the candidate could have improved their answer

This was an excellent response, which used a wide range of illustrative detail and sound definitions. Three maxims were identified and explained, each remedy was explained with a relevant case, including the more recent Anton Pillar and Mareva injunctions. The response included an account of deserted wives' equity and mortgages. Evaluation was wide ranging and well-integrated within the answer with a clear eye on the issues at all times. The candidate also made valuable comparisons with Common Law and showed a real attempt to answer the question.

Example Candidate Response – middle

Examiner comments

Question Part

Q1 Common law was the major factor in the making of law but after 12th century common law failed to provide full justice to the people. In 1616 the earl's Oxford case decided that equity should prevail in ~~law~~ the law. Lord Chancellor decided that equity should prevail ^{over} the common law, because it provide more justice than the common law.

There were gaps in the common law which made equity more important. Common law remedy was just to over come the damages of the people but in equity judges could provide other things aswell.

Equity means 'fairness' equal rights to the superior and to the inferior.

Equitable remedies are - Injunctions, decision, rectification, special performance.

- Injunctions -

There are two types of Injunctions, when judge order someone to do something is called mandatory Injunction and other is prohibitory Injunction where judge prohibit someone to do something. Early there was case in which judge order to an actress to not do the film with one director because it would be breach of contract with the Warner brothers.

= Special Performance =

Is when judge order someone to perform special - on their property or anywhere else. If case is in court of building lease

1 Rather a brief historical account, although the candidate does make some valid evaluative points.

2 It is better to avoid sub headings in essay work. It can disturb the flow of an argument and lead to a 'note-like' response which may lack evaluative content.

3 Whilst some credit can be given for a case which is described rather than cited, it is always better to give the case name.

Example Candidate Response – middle, continued

Examiner comments

Question	Part
	<p>so court will order the person to not perform something example: perform concert at any type of event. 4</p> <p>- Rescission:- is when judge order to cancel the people to come to their pre contractual position. example:- If some buy some goods then by the order he will return the goods and seller has to return the money to him.</p> <p>- Rectification:- is where judge order the both parties to correct the term or anything in the contract where the breach happened. 5</p> <p>= Conflict between - Common law & equity:- Both are different things so their is - must some conflict between them. There used to have major conflict that when someone go to common law court they dont consider the lord chancellor working and in lord chancellor they dont consider the common law verdict, so then lord chancellor made sure that in Earl's Oxford case in 1616 the equity should prevail the common law. Common law was sim</p>

4 A slightly confused explanation and the remedy is misnamed.

5 Remedies are very briefly explained. Some case illustration here would gain higher marks.

Example Candidate Response – middle, continued

Examiner comments

Question Part

	<p>- Recent Remedies:-</p> <p>In 20th century the equity ^{provide} make developing more remedies to make the fairness in the law. New remedies are Freezing Orders (Mareva Injunction) and Searching Order (Anton pillar orders).</p>	6
	<p>- Freezing orders are the most used remedy in the recent years because in it the court orders to freeze the defendant assets, which court has a doubt that he will move his assets from the United Kingdom, so courts orders to the third party known as the banks which has the assets of that person to freeze them immediately.</p>	
	<p>- Searching Orders:-</p> <p>are for to search the defendant house so the claimant could get some pot valid evidence and the other party cant waste them.</p>	
	<p>Equity also used in mortgages these days because in this time no body buys the property or the houses without mortgages.</p>	7
	<p>Equitable maxims are the most important tool to provide fairness to the people.</p>	

6 Whilst the introduction of recent remedies is valid, the candidate seems to have forgotten that the question centres on fairness rather than modernity and is writing a response to a slightly different question. They miss an opportunity to gain any evaluative credit.

7 This could have been a good element to discuss, but the concept is not really fully explained.

Example Candidate Response – middle, continued

Examiner comments

Question Part

- Delay equity:-
 There should not be any delay to come to court because if there is delay then court will not proceed the case. There was deciding case when some bought a painting and both didn't know that it's the Vinci painting but when it revealed it's not the other party filed a case but court orders to reject it because there was delay of 5 years.

- He who comes to court must come with clean hands:-
 Who ever come to the court must be clean because if he is false the court will not give the judgment in his favour. There was deciding case in which Rees v builders. There was Rees Mr & Mrs Rees hire a builders company and paid the \$200 in advance and the total bill was \$800 so Mr & Mrs Rees knew that builders are in financial crisis so when the builders asked for other remaining payment they refused to give it just gave \$200 the builders accept that amount at that time but later they used for other \$300 and when the case went to court the court decided that Mr & Mrs Rees took unfair advantage of the builders and reject the order to pay the remaining amount but because Mr & Mrs Rees didn't come

8 Again, the case is not cited and the facts are inaccurate. No real link to how this promotes fairness.

9 A good case to discuss and here the candidate does make reference to the idea of Equity supporting fairness.

Example Candidate Response – low

Examiner comments

Question Part

1	<p>The English legal system consist of Common law and Equity. When the Normans first conquered England in 1066, custom was the law of the land. They set up the hundred legal courts which were gradually over taken by the new royal courts. Equity is a historical source of law and is very much part of the current legal system.</p> <p>Equity consists the matter of conscience. It was also the province of Lord Chancellor.</p> <p>When the Normans conquered England, William set up a proper feudal system which made his followers major land own^{owners} all over the country; they could also grant land to their tenants.</p> <p>but however it was feared that the local lords would become too powerful. So step were taken in regner of Henry II to centralise the land court system.</p> <p>In the regner of Henry II the Queens Bench was established as a permanent court in London. It was staffed with specialis as judges.</p> <p>The king used to send official to fraud around the country in order to learn</p>
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1 It would be better for the candidate to expand on this point a little.

2 These points are not directly relevant to the issues in the essay.

Example Candidate Response – low, continued

Examiner comments

Question Part

local disputes.

In the case of *Earle of Oxford* where there was a conflict between common law and equity and it was decided that Equity shall always prevail over common law. 3

In the case of *Diane Pretty*, the common law stated that intentionally taking someone's life is murder, they left it up to the parliament to whether to legalise mercy killing or not.

However, in the case *ANITA V BLAND* the judges ~~seem~~ seemed to go against the common law ~~and~~ when they allowed to discontinue life support for a person in a persistent vegetative state. 4

Thus the statement being true that Equity is based on fairness and justice. Equity modifies the common law.

Such as in the case *WINSKY V MILLER*, the common law was that a husband can not be held liable for raping his wife but in *D. v. V.* the judges seemed to go against this and the husband was liable for marital rape. The judges believed that it was important to save wives from assertive husbands.

3 The candidate does not really explain how Equity came into existence.

4 These cases are not examples of Equity.

Example Candidate Response – low, continued

Examiner comments

Question	Part
	<p>This shows that equity will provide justice where ever it is needed.</p>
	<p>In the case of PATON V BATH. Under common law an unborn fetus has no legal rights until it is born alive. In this case the father could not stop the mother from having an abortion.</p>
	<p>However the judges seemed to go against this principle in the case of RITZ where the he forced the wife to go under surgery in order to save her and the baby's life it was decided that the interest of the baby should always prevail over the interest of the mother. 5</p>
	<p>In D and C Builders v Rees the equitable maxim stated that "he who comes to equity for must come with clean hands". 6</p>
	<p>Another for equitable maxim states that "Delay defeat equity".</p>
	<p>Equity developed due to some unsatisfactory features of the common law.</p>
	<p>Common law had a lot of bribery and corruption. A case in common law courts could not start without a writ.</p>

5 Again, cases are not relevant to the question asked.

6 Here the case is relevant, but is not explained.

Example Candidate Response – low, continued

Examiner comments

Question	Part
	<p>Smallest The smallest procedural hitched such a trivial error that meant that the writ was invalid and the litigant must either pay for a new one or or resign himself from giving giving up the on case. 7</p>
	<p>The common law courts used to give which could be biased. And the only remedy common law has was was damages.</p>
	<p>Equity introduced its remedies which were injunction, a court order telling you not to do something, specific performance, a court telling you to perform the contract, rescission, putting things right and restitution which mean means to cancel the contract and put the party back to their position before making the contract. 8 9n C. V DPP</p>
	<p>9n Under common law a 10 to 14 year could not be liable for criminal offence the judge left it up to the performer to bring about this change.</p>
	<p>The Parliament passed the Crime and Disorder Act 1998 and today a child can be held liable for criminal offence. 9</p>
	<p>More over on the case of Malin v Freeman a man arrived at late to the</p>

7 These points are relevant but rather oddly placed, perhaps better at the beginning of the response.

8 Here, the candidate does begin to offer relevant content but the definitions are vague and often inaccurate. 'Retribution' is not an equitable concept, perhaps the candidate is confusing it with 'rectification'.

9 Again, irrelevant content.

Example Candidate Response – low, continued

Examiner comments

Question	Part
	<p>auction and bid for the wrong property the court did not order specific performance against him</p>
	<p>However the In <i>Tampden v Jones</i> a man was so lazy to read the auction plans and bid for the wrong property so specific performance were ordered against him. 10</p>
	<p>Equity also introduced the concept of trust. In the case of <i>Hussey v Evers</i> a widow gave money to her daughter and husband to build on their land the court said that the money was on trust and they had to pay her back thus equity providing justice. 11</p>

10 Relevant material, but again, not fully explained or linked to the evaluative aspect of the question.

11 A relevant case and point, but appears in isolation.

**Total mark awarded =
9 out of 25**

How the candidate could have improved their answer

The candidate produced a rather confused account of the issues. A lot of the case citation was irrelevant and cannot attract credit; candidates must ensure that they offer relevant and well-explained citations to illustrate their answers. The definitions of legal terms were weak and sometimes inaccurate. The candidate also failed to grasp the evaluative aspect of the question and little commentary was offered beyond occasional mentions of fairness and justice. This response required better planning and the appropriate areas of law needed to be carefully selected.

Common mistakes candidates made in this question

Candidates who fared less well in this response often made the mistake of offering responses based on custom and the Anglo-Saxon system of law, rather than concentrating on the creation of Common Law and the way in which Equity was formed to solve problems. Poorer responses also contained far too few example citations for the maxims and particularly the remedies. Concepts such as trusts, mortgages and deserted wives' equity could also have been used to illustrate fairness. On the whole, candidates tended to ignore the command in the question, often offering responses based on modernity (which had been the topic in previous papers). It is essential that candidates use material to illustrate the evaluative requirements of the question before them.

Question 4

Example Candidate Response – high

Examiner comments

(4) The magistrates ^{in the Magistrates court} mainly deal with criminal cases (76% of them) for e.g. in Summary trials, triable - either way offences and they may also sit in the

1 Opens with a clear explanation of the criminal role of Magistrates.

Crown Court to hear appeals from cases from the Magistrates Court with a judge. They may also lay magistrates with special training may also sit in the Youth Courts which is used for offenders 10-17 years of age. They are used in Family Courts; sometimes to hear orders against protection, adoption orders, etc. ~~More or~~ They also hear bail applications, issue warrants for arrest, deal with early Administrative Hearings, etc. Meanwhile, they only deal with 4% of civil claims ^{demands} for e.g. claims for enforcing council tax; appeals against refusal to grant permission to sell alcohol; investigating granting warrants for investigation of gay or electrical authorities, etc.

2 A recognition of civil function.

3 Clear, well-explained examples.

~~These~~ Magistrates are thoroughly interviewed to check for judicial qualities as well as certain qualities that the Lord Chancellor has said are the key qualities for those acting as Justices of the Peace. Thus, although they are not legal personnel, it is ensured that they know how to

Example Candidate Response – high, continued

Examiner comments

Question Part

assimilate factual information and come to decisions for the right reasons. Moreover, a condition for magistrates is that they must reside in the same area or an area close to where they work thus they have a lot of local knowledge which judges might not have. They will know how the law works in the particular area. However, as it is said that a large number of magistrates come from a professional or managerial background so they may not know what actually happens in poorer areas. Moreover, a large number of Magistrates Courts have closed which means the advantage of them having local knowledge is slowly being lost as they have to travel long distances to the court. Although they are not legally qualified, the use of clerks may balance this problem.

Moreover, they are much cheaper than hiring professional judges as well as more available, the cost of replacing them with judges would be several thousands of pounds thus their existence is crucial.

However, there are downsides to using non-legally-qualified personnel

4 An explanation of qualifications but made relevant to the question by linking it to competency for the role.

5 A good evaluative point.

6 A very well extended and reasoned evaluative point using a fact (residency) to discuss the issue.

7 More good evaluation.

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Example Candidate Response – high, continued

Examiner comments

Question Part

(4) such as magistrates. They are thought to be mostly middle-aged and middle class and it is true that recent research has found that magistrates are mostly from managerial backgrounds and retired. Moreover, ~~and~~ only under 34% of them are under the age of 40. Thus, it can be seen that they are not a true cross-section of society and may not be able to administer justice efficiently. Another disadvantage is that they are seen to be prosecution-biased, believing evidence too easily, which can be seen in the high low acquittal rates in these courts. ~~They~~ This may be because they see the same prosecutors quite often. Also, there may be a high reliance on the clerk ~~at~~ and there is also inconsistency in sentencing in the various Magistrates courts which can be described in the 2013 Howard League for Penal Reform as the 'post-code lottery' for sentencing.

Therefore, I agree with the statement that such vital matters should only be dealt with by

8 Another well extended evaluative point supported with statistics as evidence.

9 More thoughtful evaluation.

10 Evaluation supported by evidence.

Example Candidate Response – middle

Examiner comments

14 Magistrates are lay people who are not legally qualified but participate in the decision make process. The magistrates sit in the Magistrates court, ~~and sometimes in the~~ youth court and sometimes in the family court as well. ¹

The magistrates are appointed by the Senior Presiding Judge with recommendations from the ~~the~~ they must pass some judicial qualities to be appointed. In 1998 the Lord Chocellor set out six key qualities which are that the magistrates must be of a good character, he must be able to understand and communicate, he must be socially aware, he must be mature and have a sound judgement, he must have a sound temperament and he must ² be committed and reliable. After they are appointed the magistrates are trained in the magisterial department of the Judicial College. The magistrates is mentored by an experienced magistrate. The magistrate has to develop a Personal Development Log as well. They sit in court rooms to experience and learn from ³ experienced magistrates. The magistrates can work up to the age of 70. They need to work 26 half days a year which is quite a onerous commitment. The magistrates can be removed if they ~~to~~ misbehave,

¹ A rather brief introduction.

² The focus of this question is on the role of the Magistrate, so much of this material cannot be given a lot of credit. It could have been made more relevant by linking it directly to the evaluative aspect of the question; for example, do these types of people do the job well?

³ Again, a missed opportunity. Whilst training is not the main focus it could be linked to proving that the fact that magistrates are unqualified is not strictly true.

Example Candidate Response – middle, continued

Examiner comments

Question Part

or an incompetence or they do not give the proper time to their ~~own~~ duty. Serious criminals, discharged bankrupts, members of forces and people such as police officers or traffic wardens are not supposed to be eligible to become a magistrate. Close relatives may also not be selected for the same bench.

Magistrates sit in 96% of the criminal and ~~in~~ ~~the~~ cases and ~~in~~ ~~the~~ rest of the 4% sit in preliminary hearings. This involves Early Administrative ~~the~~ Hearings, remand hearing, bail applications and committal proceedings. Other than this they can sit in the youth court which deals with cases of children age between 10-17. One male and one female magistrate is required to sit in the youth court. The magistrate can also sit in Family Court in special cases. Magistrates can issue search warrants, warrants for arrest and conduct Early Administrative Hearings.

There are a lot of benefits for magistrates to sit in ~~the~~ the criminal courts. The magistracy is much more diverse than ~~the~~ the judiciary. 53% of the magistrates are ~~are~~ women as compared to 23% of the judiciary. 8% of the magistrates belong to ethnic minority whereas ~~is~~ only 4%.

4 A good range of detail here on criminal role.

5 Well supported evaluation with evidence.

Example Candidate Response – middle, continued

Examiner comments

Question Part

		<p>of judges represent the judiciary. Furthermore 5% of the magistrates are classed as disabled. The magistracy is a cross examination of society as it much more diverse than the judiciary and much more diverse than it used to be. Magistrates are to are not given any money for their work. They work free of cost; thus, this lowers of the cost of the as state as well. It It would cost a lot if if judges are sit in courts resulting in a million of pounds wasted.</p> <p>However, there are some disadvantages ⁶ of the magistrates as well. The magistrates can be easily bribed, thus the just verdict may be in favour of one party. The magistrates are at middle aged. This is very true as 47% of the magistrates are above sixty and only 3% are under 40. The magistrates believe the police too easily as they are lay people. One point is that proves this that there are low acquittal rates. The magistrates rely too much on the clerks as well. Clerks are legal advisers to the magistrates however they cannot take part in the decision making. In In the case of R v Eccles of Justice, ex</p>
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6 Balances the argument with detail of disadvantages.

Example Candidate Response – low

Examiner comments

Question Part

4) In this question ~~the~~ the argument rises among the magistrates ~~or~~ and the judges ~~that~~. Magistrates or lay Magistrates are basically the ~~of~~ normal citizens with the basic level of education. Magistrates can range in between the age of 12 ~~to~~ 60 years old and they ~~should~~ should have no criminal records and ~~not~~ any sort of illegal activities. They should have a good sense of humour and IQ level. A Magistrate ~~is~~ ~~seen~~ gives a test and when he/she passes it he is sent for training. Magistrates sit in the Magistrates court. Although they have no legal qualification but they think and decide a case as a common ~~man~~ person.

In both civil and criminal case the role of Magistrate ~~is~~ is quite simple as well as ~~similar~~ similar to judge, they only have to ~~see~~ see at the facts hear victims and witnesses.

→

1 A lack of accuracy here in the age requirements.

2 Again, inaccurate and vague.

3 A valid but underdeveloped and unsupported evaluative point.

4 No explanation of the types of cases seen and a rather simplistic view of role.

Example Candidate Response – low, continued

Examiner comments

Question Part

As there is any case of high value or it ~~and~~ needs legal support and cannot rely on the judgment of the ~~2~~ magistrates court, it is send to the crown court where it is heard by a judge and a crown prosecutor stands against the defendant.

The question statement to an extent is correct and ~~is~~ because the magistrates without ~~any~~ any legal aid can work till an extent and the rest is ~~is~~ to be decided by the judges for what law has been made.

5 An attempt at a conclusion, but confused.

Total mark awarded = 4 out of 25

How the candidate could have improved their answer

This was a very brief response. The candidate failed to accurately explain the role in either civil or criminal cases. There were brief points of factual content, but these were largely inaccurate or incomplete. The evaluative content was minimal and unsupported.

Common mistakes candidates made in this question

The question focused clearly on the role of the Magistrate in civil and criminal cases. Many candidates considered one at the expense of the other or produced an imbalanced response in this area. Other candidates also included material on qualification or training which was presented purely factually. This could only address minimal credit. However, it could have been made more creditworthy if candidates had linked it in some way to the evaluative elements. Weaker candidates also provided evaluative material which was unsupported by statistical or case evidence and thus could not be fully credited. In this type of question, it is essential to ensure that evaluation addresses the issues within the question and is not presented merely as generic advantages and disadvantages.

Question 5

Example Candidate Response – high

Examiner comments

⑤ Alternative Dispute Resolution involves solving a dispute by any method other than resorting to the courts. Their use has been promoted by the Woolf reforms and those which led to the Civil Procedure Rules allowing courts to 'stay' legal proceedings so parties can try other forms of resolving their conflict. Essentially, there are four types of alternative dispute resolutions (ADR) - negotiations, conciliation, mediation and arbitration.

Negotiations can be seen as the cheapest and quickest form of solving a dispute as it involves the parties going directly to the other party and explaining their problem. If no agreement is reached, they may hire solicitors who may negotiate on their behalf. This method has resulted in a large number of cases being solved outside of court and it also has the advantage of being completely private. However, a problem with it is that the longer the case of lawyers being hired, the longer the case goes on, the higher the expenses will be.

Under mediation, a neutral mediator will help the parties reach a compromise. He will

1 A good opening point explaining how the individuals are now encouraged to use Alternative Dispute Resolution (ADR).

2 A clear explanation of the idea of negotiation with some nicely integrated evaluation in the first line of the paragraph.

3 Candidate provides a brief but relevant counter argument.

Example Candidate Response – high, continued

Examiner comments

Question Part

explore both the parties positions, see if there's any common ground and communicate offers to and fro. The mediator is not supposed to give his opinions and on the matter and should merely act as a facilitator, but where his opinion is asked, the mediation becomes an evaluation exercise which also aims to resolve the dispute. A formal method of carrying out mediation is a formalised settlement conference where the parties put their points to a panel of two decision making executive from each side and a neutral mediator. They will consider the points together in order to come to an agreement. The advantage of mediation is that it allows parties to come to agreements based on commercial common sense rather than the strict letter of the law as well as allows businesses to agree terms of future conduct. Such resolutions would not be possible with the courts and the adversarial conflict of courts will also be avoided. This may cause a problem if no agreement is reached as the parties will have to go to court anyway but it could

4 A thorough explanation of mediation.

5 Good levels of detail on the more formalised method of mediation, later supported with an example.

6 A well-expressed evaluative point showing understanding of the problem of using the court.

Example Candidate Response – high, continued

Examiner comments

Question Part

help narrow down the issues thus reducing the time spent in court.

Conciliation is the same as mediation in that it involves a neutral mediator resolving the dispute. However, ^{he} ~~it~~ is supposed to play a more active role by giving his opinion and suggesting grounds for compromise. The decision is binding on the parties. 7

The last form of ADR, arbitration, is governed by the Arbitration Act 1996 and involves the parties agreeing to submit their dispute to the decision of a third party other than a judge. Parties can choose to use arbitration either before the dispute arises (such as by using a Scott V Avery clause in commercial contracts) or after it has ~~effective~~ arisen. The 8 exact method of arbitration is completely their decision. They may use paper arbitration where both parties put their points in writing and submit it to the arbitrator. An oral ^{hearing} submission may also take place before the paper arbitration where the parties explain their arguments.

7 Conciliation explained but a little brief and lacking in focused evaluative points.

8 Candidate uses both an Act and a Case to explain arbitration well.

Example Candidate Response – high, continued

Examiner comments

Question	Part
	<p>and if they wish to make the process more formal, they may even call witnesses. Another decision made by the parties is the number of arbitrators and the method of choosing them. Once an a decision is made under arbitration, it is called an award which is binding on both parties and may be enforced by the courts. 9</p> <p>Clearly, there are a huge amount of advantages with using such as ADR such as that they are quicker, cheaper, and less time-consuming than courts. The added advantage of these methods is arbitration is that it is highly flexible as the parties choose everything that suits their situation and the final decision is also enforceable. Moreover, if where a matter of quality is involved, an expert may be made for arbitrator which is cheaper than expert witness less time consuming than calling expert witnesses in court and explaining the technicalities to the judges. However, such forms of resolution may be ineffective 10</p>

9 A clear and very detailed explanation of the workings of arbitration.

10 Well discussed evaluation of arbitration.

Example Candidate Response – high, continued

Examiner comments

Question Part

where the dispute is not resolved and the case will still have to go to court. In this case, there is an added expense. Moreover, where professional arbitrators are used and the dispute is prolonged, it may become just as expensive as using a court. Nonetheless, it is important for ADR to exist where the parties are not financially stable enough to take the case to court or where parties are used to negotiating agreements where it would be unreasonable to go to a court every time they have to ^{come} make an agreement.

* A growing number of organizations have started to provide mediation such as the Centre of Dispute Resolution. Moreover, services such as the West Kent Mediation Service are used for smaller disputes and a growing number of websites also offer online dispute resolution.

11 Some interesting and relevant argument here.

12 Very good examples of the work of mediation (as referred to in comment 5).

Total mark awarded =
23 out of 25

How the candidate could have improved their answer

This was a very good answer covering all of the types of ADR with usually focused evaluation. The candidate used the Woolf report to explain the problem and discusses negotiation, mediation and arbitration in some detail, usually with excellent supporting examples. Most impressive was the way the candidate focused on evaluation within each type of ADR rather than giving a generic 'advantages and disadvantages' commentary. There was a slight weakness in their dealing with conciliation which felt a little rushed and might have benefited from a little more individualised evaluation.

Example Candidate Response – middle

Examiner comments

(5) Alternative methods are referred to as 'ADR' which stands for Alternative Dispute Resolution. This involves any method of resolving a dispute without resorting to using the courts. It includes cases ranging from a very informal negotiation to a comparatively formal commercial arbitration hearing. Methods helps in solving disputes such as in family conflicts, personal injury matters etc. ¹

Various types of methods are used in resolving disputes such as negotiation, mediation, conciliation and arbitration. In negotiation, the person having a dispute with another person can directly solve the matter by negotiating with them. This has the advantage of being completely private and is the quickest and cheapest method that can be used. If the person does not come to an agreement. They may hire a solicitor. The solicitors will then try to negotiate the matter. Even when the court proceedings have been commenced. The lawyers may negotiate on behalf of the client. Once the lawyers are involved, there will be a cost element. Simply, as long as the court proceeding goes on, the cost will be higher. ²

Mediation is a method, in which the third neutral party helps the other two parties to reach a compromise solution. by making offer to and from while keeping confidentiality. The third party will not give suggestions and only listen to the point of view of the other parties. It is the job of the neutral party to act as a facilitator. Even though ³

¹ A good opening paragraph, but perhaps examples might be better saved for each specific type of ADR.

² No real need to list the types as they will be addressed later in the response.

³ A good account of negotiation with some well-integrated evaluation. However, it might be good to have some examples of the type of case which might use this.

Example Candidate Response – middle, continued

Examiner comments

Question Part

	<p>there are centres of resolving matters such as 'centre for dispute resolution. Many cases are referred to these centres. It is said that 80 percent of the cases are resolved by this procedure. But there is a disadvantage too. There is no guarantee if the matter will be resolved or not. In addition, there it will then be necessary to take the case to the court and then there will be delay and cost it will cost more. There are services which deal with smaller disputes, as well. such as neighbour issues. It freely handles the case. The neutral party will listen to the matter from the party who made the complaint and if that party agrees, neutral party will see the point of view of the other party. If both the party agree. The meeting will be set at a neutral place both the parties are in control and can withdraw anytime they want. 4</p> <p>Third method is conciliation, this method is the same as mediation. But the main difference is in mediation where the third party solves the matter without suggesting a solution. Whereas, in conciliation, the neutral party helps to resolve the case by suggesting a solution. 5</p> <p>Last method is arbitration, this method helps to resolve the case in a way that both the parties agree to let the third neutral party take a binding decision. They both have to follow it. 6</p>
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4 A good account of mediation but again it would be useful to have some real-life examples or more detail on the situations in which it might be used.

5 Rather too brief here on conciliation and lacking any evaluative commentary.

6 A very weak account of arbitration with no detail on how it works or any case or statutory citation.

Example Candidate Response – middle, continued

Examiner comments

Question Part

There are many advantages of ADR. The method is cheap because the case can be resolved by these methods and there is no use of going to the court. The methods are not complicated and easy to access. Moreover, it's practical in nature without complicated rules of evidence. There is uniformity in law. However, there are disadvantages too. ~~For~~ If the ^{dispute} ~~method~~ is not resolved by these methods then it is necessary to go to court which leads to the delay of hearing and the case to be solved even though it will be expensive too. 7

Besides these methods, the use of Tribunals are also very important. 8

Tribunals are created ~~is~~ by the judge in order ~~to~~ for the people to enforce their entitlement to certain social rights. Unlike alternative methods, the parties decide not to use the courts. In tribunal cases, ~~the~~ you cannot go to the court and use tribunals instead of court proceedings. Each tribunal uses different procedures which made the system very complicated and confused. The system was reformed by the Tribunals, Courts and Enforcement Act 2007 which changed the system of tribunals.

~~Now~~ Tribunals enforce rights such as, the allowance of mobility service to those who are too disabled to walk for more than a very short distance. The allowance of payment to those who are made redundant from work. Lastly, the right not to be discriminated

7 Very generic evaluation, not really focused on each type and unsupported by any evidence.

8 As tribunals, in this instance, are not really an alternative (as claimants must use them in certain types of dispute) this material cannot be credited.

Example Candidate Response – middle, continued Examiner comments

Question Part

against one's sex, race, age or disability. There are a few things tribunals deal with.

The two types of tribunals are. The first-tier tribunal, it consists of 200 judges and 3500 lay members. It deals with 300,000 cases each year. It operates in seven chambers, some of them are Taxation chamber, Asylum and Immigration chamber, Social entitlement Chamber, Health, Education and social care Chamber etc.

The second type operates in four chambers such as Tax and Chancery chamber and the Lands Chamber etc.

The tribunals cases are heard by the tribunal judge or the tribunal judge with two experts also called lay members.

The advantages of tribunals are. It is quicker as no court proceedings. Very cheap because of low cost and no court cost or expenses. Informality etc.

The disadvantages are that there is lack of finding. The method is more formal than ~~ADR~~ Alternative methods as the clients put up the case themselves which make it confusing and complicated. Delay is the main issue because there are many cases to deal with so it is difficult to get a date for hearing. 9

9 Again, the evaluative material on Tribunals is not relevant to this question and cannot be credited.

Total mark awarded = 15 out of 25

How the candidate could have improved their answer

This response started well with a good account of negotiation and mediation with well-integrated evaluation and clear definition. However, the content on conciliation was quite brief and arbitration was not really explained at all. The candidate offered rather generic advantages and disadvantages of ADR in general. This response spent too long on the discussion of tribunals, which was not strictly relevant to the question.

Example Candidate Response – low

Examiner comments

Ans 5- The term 'ADR' stands for Alternative dispute or resolution and they are considered to be a very important part of law in the United Kingdom. ADR tries to ~~some~~ convince both parties that they should go for an 'out of court' agreement and going to court or starting a court case should be the last resort. There are many ways in which ADR is very effective and it has certain methods.

The first form is negotiation. This is a very good way to settle disputes out of court because both the parties come in a room to negotiate and there is a person sitting with them to help in those negotiations. Both parties try to reach an agreement without having to start a court case.

The second form of ADR is mediation. Mediation means that both parties are called and then a person sits with them but does not speak a word or help them. He simply listens to

1 A clear opening paragraph, but gives no idea as to why using a court should be a 'last resort'.

2 Not a clear definition of negotiation – inaccurate as there does not need to be a third-party present, but the response does show a general understanding.

Example Candidate Response – low, continued

Examiner comments

Question Part

them and notes down the details. This is also a very effective form of resolving disputes between both parties. 3

Alternate Dispute to Resolution is very useful and effective in civil cases because it helps to keep out the low profile cases of court because going to court can become a major hassle also. UDR helps to provide this important service so that going to court should be considered as a last resort. 4

It is considered to be a very useful phenomenon in the English legal system because going to court should be considered as the last resort because it is very expensive to take the case to court. Also it is very time consuming as courts have a lot of time consuming things to resolve and a heavy workload also so ADR eliminates the low grade cases which do not have enough evidence to proceed to the court. Therefore Alternative Dispute to resolution and their various forms are extremely effective in resolving civil disputes out of courts so it saves time, money and 5

3 Again, a rather sparse definition, not wholly accurate and no real explanation as to when it would be used. The evaluative comment is not supported or explained in any way.

4 Quite a confused paragraph with no clear evaluation and the use of slang terms e.g. 'hassle'.

5 Some limited creditable evaluation, but repetitive and unfocused on the various types of ADR.

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