OCR
RECOGNISING ACHIEVEMENT

GCE

Law

Advanced GCE **A2 H524**

Advanced Subsidiary GCE **AS H124**

Report on the Units

June 2008

H124/H524/MS/R/08

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This report on the Examination provides information on the performance of candidates which it is hoped will be useful to teachers in their preparation of candidates for future examinations. It is intended to be constructive and informative and to promote better understanding of the syllabus content, of the operation of the scheme of assessment and of the application of assessment criteria.

Reports should be read in conjunction with the published question papers and mark schemes for the Examination.

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REPORT ON THE UNITS

Chief Examiner's Report

This was the fourth sitting of AS papers under the new 4 unit specification and the second sitting of A2 papers, and therefore the first complete A Level under the new 4 unit specification.

All units had entries. Inevitably entries were much larger in G141:English Legal System and in the options, G143:Criminal Law, G145:Law of Contract and G147:Law of Torts. There were a number of re-sits in both G142:Sources of Law and in the G144, G146 & G148 Special Study papers.

Generally all units performed well and similarly to their equivalents under Curriculum 2000, and there was a slightly increased aggregate over Curriculum 2000 figures. On this basis it is appropriate to say that, with the first completed A Level, the move to a 4 unit structure has been successful, while obviously throwing up issues to do with strategies for entering candidates for particular papers at either the January or June sittings.

As stated in the January report to centres:

- there is an issue over which of the two AS units to enter in a January sitting. G142: Sources of Law is clearly the most appropriate by virtue of the percentage of content that needs to be covered. This does mean, however, that for adequate time to be given over to G141: English Legal System part of the first term's teaching needs to be given over to topics from that paper.
- a similar point could be made of the choice between the option paper and the Special Study paper at A2. Again, Special Study is clearly the more logical, but preparation for this paper needs to form part only of the overall teaching for the option paper content.

This inevitably poses a challenge to teachers to devise the most appropriate scheme of work to allow equal opportunity for candidates on both papers at each level.

Other points are worth noting.

- Evidence in both January and June papers is that there is a greater awareness of the skills requirements of the various papers and that candidates are in general engaging meaningfully with the models of assessment and with the materials. This in particular includes the new Special Study.
- Perhaps this is less the case with the new Section C on the optional papers, where a number of candidates are answering in a style similar to problem questions and either using excessive case law unnecessarily or not reaching a conclusion on the accuracy of the four statements. This is essential for this model of assessment. However, the section is very new to teachers and overall it produced some good answers and good differentiation.
- On G141:English Legal System, some candidates are clearly unprepared to complete four questions effectively. This is distressing - often candidates have three really good answers and either demonstrate insufficient subject knowledge on their fourth or fail to answer a fourth. Centres have now seen four papers and the likely topics that produce appropriate questions for Section B questions are now apparent. Centres ought to be able to use Section B to ensure four good responses.

Although it does not directly concern A Level Law, one final development may be of interest to many law teachers. OCR has developed a GCSE Law which has now been validated and will be available for first teaching from September 2009. This GCSE is designed to progress naturally into A Level study by developing key skills and understanding and by providing a lively and interesting course of study and a wide range of assessment models appropriate to and accessible to the notional 15 and 16 year old student. Further information on this qualification can be obtained from OCR Customer Contact Centre by emailing general.qualifications@ocr.org.uk

G141 - English Legal System

General Comments

The performance of candidates taking this examination in June 2008 was fairly good, however at a lower standard overall than the previous June. Most candidates were able to access four questions to answer and understood what was required of them, but a significant number showed poor vocabulary and writing skills which prevented them from producing good answers to questions.

Given the mark scheme and criteria, it was relatively easy to get out of Level 1 for most questions, but to get into level 4 candidates needed to demonstrate a sound understanding and some detailed knowledge of the subject matter of the question. Candidates with marks in excess of 100 were able to write in depth and at length on their four chosen areas, sometimes to a very sophisticated level. They are to be congratulated.

On the whole there seemed to be a lack of knowledge and detail in part (a) questions, particularly on the popular 'standard' questions on police powers, juries and sentencing. Many candidates still do not attend to the command word and discuss when they are asked to *describe*.

Candidates still do not read the questions and do not use statutes or cases; worryingly, many are using old texts. It is important to use up to date texts and the Internet to ensure students are being taught up to date material. Teachers are encouraged to use the mark schemes as a resource.

Candidates invariably performed better on part (b) questions and were able to achieve the higher levels and sometimes nearly full marks, even when the answers to part (a) questions lacked precise knowledge and understanding. Better candidates focussed on key words such as 'discuss' and 'advantage/disadvantage' instead of basic lists. Weaker students spent a great deal of time on these but were not aware of what a developed expanded point is and therefore often made statements rather than comments.

A substantial number of candidates chose to do the two applied questions but tended not to do well on the appeals question.

A significant minority of students produced scripts which were very difficult to decipher due to poor handwriting, poor expression or structuring the answer poorly. It is disappointing that so many candidates **still** fail to enter the question numbers on the front of their scripts.

Comments on individual questions

Section A

Question 1:
This was the most popular question in Section A and tended to be answered quite well.

a) The vast majority of candidates were able to identify the 4 types of Alternative Dispute Resolution (although 'litigation, reparation, rehabilitation and a few other ‘-tions ' crept in). There was some very good understanding of the difference between the ADR types and some good examples given to illustrate answers, although some candidates tended to be confused over very simple characteristics.

Better candidates described Arbitration well and mentioned the Arbitration Act 1996. Weaker candidates tended to make a reasonable attempt at describing the other three but were very poor on Arbitration. A significant minority of candidates had the mistaken belief that each type of ADR would be tried in order, only going on to the next if the previous one did not work.

Some centres do not seem to have realised that tribunals are no longer on the specification.

b) This question was answered very well by candidates who developed a discussion of the advantages and disadvantages of arbitration over using the courts, but many candidates did not differentiate arbitration from other types of ADR and wrote a very general answer or just made a series of short points, failing to develop any of them.

Question 2:
This was a very popular question, answered by the vast majority of candidates.

a) Some candidates answered this question very well and gave good detail of the role of juries in both criminal and civil trials and gained level 4 marks. Unfortunately many candidates, while strong on the role of juries in criminal trials ,were very weak on their role in civil cases. Very many candidates wasted time giving detailed descriptions of the selection of juries, which could not gain credit.

b) This was generally answered quite well, with some very well developed discussions of the advantages of retaining the jury system. Quite a significant minority however misunderstood the question and thought *retain* meant "get rid of" or train to a high standard and/or give people a permanent job as a juror, which resulted in them failing to gain any marks.

Question 3:
This question was answered by very few candidates. This was often a question of last resort.

a) Answers were either very poor Level 1 or very good top-level 3 or 4, with very little in between. The best candidates gave some excellent detailed information and used up to date examples of the change to the Lord Chancellor's role and Zimbabwe. Candidates from some centres were unaware of the changes to the Lord Chancellor's role and gave a lot of very out of date information.

b) The better candidates focussed on the question asked and there were many who produced better answers to part b) of the question than to part a).The weaker candidates failed to answer the question asked and discussed the advantages and disadvantages of judicial independence or why the separation of powers is important, with no links to judicial independence.

Question 4:
This was another very popular question with a broad range of responses.

a) There were some excellent answers to this question, demonstrating detailed knowledge of the various types of sentence available. Weaker candidates could give detail on either custodial or community sentences or listed types of sentence without describing them. Some candidates substituted sentencing aims for sentences and described those, gaining no credit for this.

b) Some excellent discussions as to why the different types of sentences would be appropriate or not appropriate for rehabilitation and reform gained Level 4 marks. Weaker

candidates tended to say community sentences were most appropriate but did not expand further. There is still a significant minority of candidates using very old terminology referring to community service and probation.

Question 5:
This was done by a very few candidates and usually very badly, but there were a few very good answers.

a) The best candidates demonstrated a detailed knowledge of the different complaint routes. Markers gave plenty of leeway regarding the names of the various bodies, in the light of the frequent changes over the last few years. Weaker candidates had a very weak knowledge of the processes and tended to confine their answers to suing for negligence.

b) This was usually badly answered, with answers limited to cost and delay with very little discussion.

Section B

Question 6:
Answers to this question were very variable

a) There were many very good answers showing good knowledge of PACE 1984 and other statutes. Stop and search appears to be the most popular area of police powers and was answered much better than last year's question on arrest. Even weaker candidates were able to get into top level 2/bottom level 3 with a basic description of police powers under PACE. The better candidates included the S 60 Criminal Justice and Public Order Act 1994 and other legislation to add detail to their answers.

b) The better candidates applied their knowledge well to Luke's situation and were able to apply both PACE and the S60 CJPOA 1994, gaining level 3/4 marks. The scenario was intended to lead to an application of both; there were many answers in the level 2 band as many candidates failed to mention S60.

Question 7:
This was not a popular question; appeals do tend not to be a popular topic with students.

a) There were some answers in the form of diagrams but unfortunately these were seldom accurate. There were a few very good answers, with high level 4 marks for a detailed description of the appeal routes, but in general this was very badly done, with much confusion between civil and criminal courts.

b) With a lack of knowledge many candidates found it difficult to go further than to identify the relevant points.

G142 - Sources of Law

General Comments

The overall standard of performance was lower than that of the January series. This was due to a number of candidates who had revised different areas of the syllabus. However, given the fact that the paper did not include the two traditional topics, candidate performance was positive; a number of students scored full marks.

The majority of candidates attempted the delegated legislation question - an increasingly popular topic for candidates. The Europe question was attempted by a significant minority of students. This is a positive development and there were numerous examples of outstanding responses. However, a number of candidates attempted this question with little awareness of the cases and comment related to the questions.

The use of the source was disappointing, and a number of candidates failed to use the sources in both questions. It is important to try and coach the skills of using the source to support candidates. This skill is important to support candidates in all ability ranges.

A significant number of candidates could not fully develop their responses in parts (a), (ci) and (cii) for both questions. There was a distinct lack of detail, case support or comment to expand on the original point. It is important to encourage the use of case law and supporting commentary to develop a response.

Part (b) of the examination demonstrated significant improvement and this showed evidence of strong teaching and learning at the centres. This area could be improved further by candidatse being encouraged to support their responses with use of the source.

There was a slight increase in the number of candidates who attempted both questions. As a result, their responses tended to be limited.

Question 1

Europe

A significant minority attempted this question. Answers ranged from outstanding to very poor. It is a positive development that more centres are spending increased time on this area and students are being rewarded with some excellent marks.

a) The responses in this area were mixed. The use of case citation, treaty articles was disappointing. A number of candidates failed to focus on the composition of the ECJ and spent too much time on A234.

b) The responses in this area were positive, with the majority of candidates being able to apply the concept of arm of the state. However, candidates then failed to develop their responses by illustrating their answers with examples, or linking answers to horizontal or vertical direct effect.

c)(i) The majority of candidates could provide a definition of a directive with some basic details. However, development from there was mixed. There was a distinct lack of case citation and examples. There was also confusion between directives and regulations. Sources of European law is a popular question area and it is important to encourage candidates to use case law to develop their answers in this area.

c)(ii) The area challenged the majority of candidates. There were, however, a number of excellent answers. Candidates were able to focus on the injustice of the area but could not develop their responses. There was also too much focus on AO1; some responses were purely on AO1. C (ii) questions traditionally challenge candidates but it is important to try and support and engage learners in this area to improve performance.

Question 2

Delegated Legislation

This was the most popular question. Candidates were well prepared for question (a), (ci) and (cii). Responses to part (b) were disappointing.

a) Most candidates could identify the three types of delegated legislation. The more able candidates could support their answers with examples and comment. There were numerous responses that were less developed because they could not explain who is responsible for various types of delegated legislation or add any supporting detail to the description of the various types.

b) These mini problems were slightly disappointing on the whole. The majority of the candidates could achieve level 4, but a number of candidates made a mistake regarding the central point of the questions or failed to develop their answers. Part b (i) was the most challenging to candidates.

c)(i) There was good identification regarding the need for delegated legislation but a number of candidates failed expand on their original points. For example, candidates would state “it saves time” but would not elaborate any further. In their responses to part (i) of question c, most candidates simply used the source and added little or no detail. It was surprising that the majority of candidates did not support their answers with case law.

c)(ii) This had the same issue as c(i) showing a lack of development in their responses. Most candidates could discuss a number of issues, with a particular focus on controls. This area was a positive AO2 question with the majority of candidates achieving level 3.

G143 - Criminal Law

General Comments

It is important that this Report is read in conjunction with the published Mark Scheme for this Paper which contains details of the relevant indicative content which may be expected in response to the questions.

This is the first June sitting of this examination and, although there were similarities to the previous examination, there were significant differences from the legacy papers in at least three major aspects. The time allowed for the paper is longer by 30 minutes and any aspect of the specification is available for any question or Section of the paper., The new Section C assesses more objectively pure AO2 skills. This is a new departure. Also, the size of the cohort, at 5300 candidates approximately, is significantly larger than ever before in any one A2 Option Paper sitting. It is true that there was the first ever sitting of this paper in January 2008 but the entry was so significantly smaller, at a mere 320, that comparisons are of very limited use.

The general consensus among examiners was that the Paper was appropriate and performed as had been intended. However, the overall standard was slightly below that of recent series, characterised by poorer responses to Section B Questions in particular. The evidence suggested that the paper was accessible to all students. No one question was particularly avoided and there was a reasonably large response to each one, often depending upon Centre distribution. There appears to have been an inevitable slightly uneven response to the choice of questions set with candidates clearly preferring Question 1 on strict liability in Section A, followed by Question 3 on insanity. Question 2 on the offence of murder was very poorly answered and appeared to be the choice of weaker candidates who perhaps knew very little about the other two choices. In Section B Questions 4 and 6 were about equally the most popular although a significant minority tackled Question 5. Questions 7 & 8 in Section C both attracted plenty of answers with the balance probably favouring Question 8. Scripts varied enormously in length (from 1 – 16 pages).

A range of responses was received. At the lower end there still appears to be a significant number of students who are continuing A2 units but lack the basic literacy and conceptual skills essential for success at this level of study. There is still evidence in essay answers to Section A that students are being prepared to recite ‘stock’ answers to topics rather than learning how to address the particular question set in a wider conceptual way. This can lead to discussion of irrelevant material, which was particularly noticeable in relation to the question on strict liability where the focus was very much on the public policy considerations involved in a modern social context. Candidates appear now to be more aware of the need for evaluative commentary in essay questions but the evidence is still that they have often learned critical comment without necessarily understanding it.

For the last two years it has been pleasing to report that problem solving skills were improving. This cannot be said this year. The recent trend towards improving identification and selection of appropriate issues for discussion in an unseen scenario with less irrelevant material being discussed was somewhat reversed, particularly in relation to Question 4, where candidates often churned out irrelevant causation cases on medical negligence, and in Question 6 on theft and burglary where countless minutes were wasted discussing irrelevancies such as the meaning of property in S.4.

One tentative conclusion might be that many centres focussed on entry for the Special Study paper in January without necessarily foreseeing the challenge of addressing the range of material to be covered for this substantive law paper.

For many candidates the poor quality of written communication remains an area which needs to be addressed.

The new Section C assessment.

There were some good responses to Section C Questions focusing on legal reasoning. However it is clear that candidates need guidance about how to make the best use of their knowledge and understanding ,demonstrating it implicitly rather than explicitly. Candidates are being assessed on identification and application skills in Section C. Many students provided extensive factual knowledge and some began with an introduction which was a general summary of the law. This is not necessary.. It appeared that many candidates, understandably to some extent, had not had experience or guidance about how to approach these questions and thus many students included definitions and case details that were not really necessary.

A lot of candidates cited cases in their answers but a good number did not reach any conclusion on the Statements, even where it was clearly appropriate to do so. Hedging bets was a very popular option. Many wrote a huge amount and some were so concise it was hard to know how much they really understood. The use of negative statements seemed to confuse some candidates and there were certainly quite a number who did not read the statements carefully. However, there were some good examples of legal reasoning too. One common mistake was the failure to respond to the Statement or proposition expressed in the question. Many candidates failed to provide a conclusion that the statements were either accurate or inaccurate as required by the command in the question. This is logically the last step in a short process of reasoning. Examiners have taken these outcomes on board and, as always, the philosophy is to reward candidates positively for the evidence they provide in their responses.

Pressure of time did not seem to be too much of an issue. A small number of candidates used the extra overall time at their disposal to write longer answers in Sections A and B resulting in a rushed response to Section C.

Individual Questions

Question 1: Strict Liability
By far the most popular Question in Section A. There were very many scripts that contained good case citation and addressed many of the issues relating to strict liability in general. However, the best answers dealt with the main focus of the question set and reflected the significance of statutory strict liability in the 21st century as a tool for raising standards in areas of social concern for the overall protection of the public.

Better students produced coherent justifications for the current state of the law and did not become sidetracked unnecessarily into the marginally relevant distinctions between strict and absolute liability or a discussion of rare common law offences such as blasphemous libel (recently abolished as an offence in any case). Good scripts often examined the guidelines laid down in *Gammon* and moved on to explain the more important of these, for example, balancing the common law presumption of *mens rea* in *Sweet v Parsley* against all the arguments flowing from the identification of regulatory crimes and those involving an issue of social concern. It was clear that many centres had prepared candidates for such a question. Obviously this is what any good teacher will do. However the close similarity in the responses from many centres suggested that there was much evidence of memorised stock answers rather than genuine conceptual understanding. As a result discrimination was difficult to achieve on occasion. However, candidates at the top end of the range displayed confident and often sophisticated understanding; candidates towards the bottom end of the range fell short in AO2 skills in particular, merely repeating that strict liability offences are harsh and unfair without adequate analysis or justification.

There was plenty of scope for appropriate comment about road traffic offences, food safety, protection of the environment, protection of the young and vulnerable, control of potentially dangerous activities through the imposition of building regulations etc. Most candidates concluded that the existence of strict liability offences is indeed a necessary evil, but that their proliferation is a development which does lead to injustice and unfairness in certain situations and that Parliament should provide a potential 'no-negligence' or 'due diligence' defence far more frequently than it does at present. Many who did refer to it simply - and incorrectly - said that there is no such defence in strict liability.

The overall impression is that this topic has emerged from its relative unpopularity a few years ago to the present position, where its significance is not only recognised but also much better understood.

Cases commonly cited in the context of the Question were *Sweet v Parsley; B v DPP, Gammon v A-G for Hong Kong, Callow v Tillstone, Storkwain, Smedleys Ltd. v Breed, Alphacell Ltd. v Woodward, Shah, Cundy v Le Cocq* and *Sherras v De Rutzen*.

Teacher's Tip
At least some case citation is important on an essay topic such as this. Cases often help to illustrate the situations which have given rise to principles of law and the 'story' element hopefully helps to fix the principle in a candidate's mind. Traditional casebooks are not only expensive but also largely inaccessible to A Level students but some A Level texts do describe case facts and at the very least it is useful for the teacher to have access to a good casebook. Internet websites can also be useful here. A good starting point is www.venables.co.uk - click on 'Student Resources'.

Question 2: Murder
There was a dearth of good answers to this question. Whether this resulted from the traditional conceptual problems involved in the understanding of the *mens rea* of murder or lack of knowledge of recent proposals for reform is open to guesswork. The evidence suggested a probable combination of both of these possibilities. Another possibility is that weaker candidates tended either to be attracted to the offence of murder because they believed they knew about it or, more likely, that they knew very little about the alternative Section A questions on strict liability and insanity.

Weak candidates also often discussed causation issues, which were specifically excluded in the question command, or banged on about the special and partial defences of diminished responsibility and provocation, which only attracted marginal credit in the context of the question which required a discussion of the common law offence of murder. Better candidates were able to address competently aspects of the actus reus, such as the interpretation placed upon the phrase 'in being' by considering *A-General's Reference (No.3 of 1994)* (1997) and the issues surrounding 'brain death' by reference to medical intervention in cases such as *Malcherek & Steel* or *Bland*. This allowed evaluation of moral and ethical issues, as did discussion of *Re: A (2000)*. Euthanasia and the issues arising from *Pretty* were also made relevant by some. There were some candidates who were able meaningfully to discuss self-defence issues arising from *Clegg* and *Martin* in the context of the question. The mens rea of murder continues to baffle most candidates and there were many confused references to *Moloney, Nedrick* and *Woollin* with far too many failing to recognise clearly the purely subjective nature of oblique intent. Candidates appeared to understand this aspect better a few years ago. Knowledge of the recent reform proposals was patchy. Some candidates knew about the proposed three tier structure for homicide and were able to identify proposed changes to a classification of first and second degree murder, but few were able to be much more specific than that.

Even fewer mentioned the proposed codification of intention which suggests putting the 'virtual certainty' test in *Woollin* into statutory form. There was some reasonable discussion of the restrictive effect of the mandatory death sentence and the way that the new proposals would offer judges flexibility in respect of sentencing, were they to be implemented.

Question 3: Insanity

This was generally well answered, particularly in terms of AO2 commentary, although there still appears to be widespread ignorance of the 1991 Criminal Procedure (Insanity and Unfitness to Plead) Act. Better candidates displayed sound knowledge and understanding of the McNaghten Rules and were able to define the defence and demonstrate their knowledge by reference to relevant case law. Defect of reason was generally explained by reference to *Clarke* and *Codere* and *Windle* appeared regularly to discuss whether or not a defendant knew what they were doing or what they were doing was wrong.

Most candidates were able to comment coherently on the shortcomings of the current law in relation to the legal interpretation of disease of the mind and were aware of the inconsistencies in *Quick* and *Hennessey* and the harshness of labelling epilepsy sufferers, diabetes sufferers and sleepwalkers as insane, so AO2 was a definite strength here. Many candidates continue to insist that the distinguishing factor between *Hennessey* and *Quick* is that one suffered from hyperglycaemia and the other from hypoglycaemia (though many continue to confuse the two). The point is that each condition reflects a critical blood sugar imbalance which could result in a coma. The better analysis is the internal/external factor theory, which itself has to be tempered by the qualification that either condition could be self-induced since the patient is likely to be aware of their condition and how to treat it appropriately.

There still seems to be a misunderstanding of the undesirability for many defendants of being labelled insane, so that there was frequent reference for example to *Hennessey* being 'allowed' the defence and *Quick* being denied it as though a 'successful' plea of defence is some kind of special privilege to be greatly cherished. Most candidates considered the emergence of automatism as a defence and reform proposals were often referred to, but there was little evidence of knowledge of what the specific proposals have been. An encouragingly significant minority indulged in a little comparative law and made reference to the cases of *Parks* and/or *Rabey*. Whilst this was by no means necessary it was nevertheless very pleasing to see.

Question 4: Homicide, causation, intoxication

This scenario yet again provided evidence that candidates are profoundly uncertain about the offence of involuntary manslaughter. On reflection it may have been better to have simply phrased the command 'Discuss Alex's liability for the unlawful act (constructive) manslaughter of Barry'; at least candidates would then have known to avoid it!

Although breaking someone's nose with a punch is unpleasant, it did not occur to the Principal when he set the Question that it would lead candidates to discuss the subsequent events that led to Barry's death as capable of generating a murder charge. Nevertheless, that is how the majority of candidates perceived it; they were given credit provided that they interpreted Alex's state of mind when 'lashing out' at Barry as intending to cause at least serious harm, however tenuous this may have been. Unfortunately it then materialised that one of the consequences (or possible reasons) for making this analysis was that candidates could then suggest a defence of provocation as being relevant. (It appears candidates cannot wait to incorporate provocation into almost any answer).

A common fault involved the identification of the punch as a S.20 offence followed by the assertion that this meant that Alex did therefore possess the specific intent to cause at least serious harm or even kill. Very few addressed the wound to Barry's leg after he had run into the road and had been struck by the motorcycle. Those candidates who did go down the expected route of involuntary manslaughter showed scant knowledge of the definitions of non-fatal

offences against the person upon which to base an unlawful act and very few were able to fully define the offence of unlawful act manslaughter. Some suggested reckless manslaughter as the basis for liability and attained credit for this analysis provided the application was there. Much to Lord Mackay's probable chagrin, hardly any contemplated gross negligence manslaughter. Causation was generally very well handled with factual and legal causation clearly well understood. Discrimination was achieved by those who focussed on the victim's own contribution to his death by reference to cases such as *Pagett, Roberts* and *Corbett* and the test of reasonable foreseeability. In fact, *Pagett* is quite well known but only for its discussion of causation. It happens to be a good example of constructive manslaughter and would have been ideal for discussing Alex's liability.

The thin skull test and *Blaue* was appreciated by virtually all candidates. Candidates did not obtain much credit for reciting irrelevant medical negligence cases such as *Smith, Jordan* and *Cheshire.* Far too many candidates overlooked the potential intoxication defence and those who did discuss it were often inaccurate in the application of the *Majewski* rules. One consequence of this was that those who had argued for the murder analysis often stated that intoxication would never be available as a defence to murder for Alex because his drinking had been voluntary (a mistake that was repeated when answering Statement D in Question 8). Frustratingly a significant number of candidates failed to address the homicide offence at all despite the command in the Question to discuss Alex's liability for the death of Barry.

Question 5: Non-fatal offences against the person, consent, theft, robbery
This apparently straightforward question produced a large number of mediocre answers. This largely stemmed from a mysterious inability in the majority of responses to identify accurately and define the potential offences against the person in particular. In comparison with previous series there was a noticeable lack of accuracy in statutory definitions and far fewer cases in support. Quite why this should be is uncertain, unless the knock-on effect of entering candidates for the Special Study paper in January is that the much wider range of topics to be studied for G143 has resulted in centres finding themselves under pressure to cover the necessary range and depth.

Even the issue of consent in physical contact sports played within the rules of the game was not very well handled, with relatively sparse citation of *Billinghurst* or *Barnes*. Most candidates spotted the fairly obvious theft issue, but recognition and analysis of the potential robbery was much more variable. This was slightly disappointing, since the key issue was whether the force used by Sanjit on Aaron was used 'in order to steal'. Many candidates either did not discuss this at all, or failed to fully explain their reasoning if they suggested that a robbery had, in fact, taken place. The potentially 'continuing' nature of theft was significant in this instance with *Hale* being the obvious case to cite.

Question 6: Theft, burglary
This proved to be probably the most popular question and focused upon some of the more common potential issues surrounding theft: appropriation and dishonesty. Most candidates adopted the approach of stating all they could possibly remember about theft and the various sections of S.2 – S.6 of the Theft Act. Whilst this was clearly applicable to the scenario in the widest sense, the problem was designed to assess a more focussed approach, concentrating on the particular issues arising from the question itself and with the emphasis on identification and application skills. Consequently, most markers reported a fairly uncritical trawl through certain sections of the Theft Act which bore little relevance. Candidates discussed the definition of property to an unwarranted length, or spent time discussing issues of consent or belonging to another. Good application skills were needed and those candidates who used the facts of the scenario to build their arguments scored better in this respect. Good answers needed to define accurately and apply the *Ghosh* test for the theft of the perfume and recognise the significance of *Morris* and the assumption of any of the rights of the owner in relation to the label switching incident.

Many candidates asserted that Susan may have also committed burglary in the shop but since there was no evidence of her having entered as 'a trespasser' little credit could be given for this. Regarding the potential theft of the bike, many candidates suggested that Susan may have had an 'honest finder' defence under S.2 (1) (c) but still made the perennial mistake that Susan ought to have 'taken reasonable steps to trace the owner', instead of correctly stating that it may have been her honest belief that the owner could not be traced by taking reasonable steps. Very few properly addressed the S.6 (1) issue that may have indicated a possible intention to deprive when she abandoned the bike in a different location from that in which she had found it. The burglary issue was generally well identified, with most candidates plumping for a S.9 (1) (a) offence, although credit was given to those who also argued that a S.9 (1) (b) offence may also have been committed. The stumbling block here for many candidates was their uncertainty over whether or not a caravan was a building. There were many ingenious and fantastic offerings about this, but very few were able to recognise that it fell within S.9 (4) because it was 'an inhabited vehicle'.

Questions 7 & 8
The vast majority of candidates addressed this style of question for the very first time in an examination environment. A common fault with responses was that candidates had failed to appreciate that credit was only available under AO2 descriptors; in other words, for identification and application skills. Those who wrote at length about the substantive law and provided definitions of offences and defences which were not related to the Statements obtained no credit for doing so, since that is clearly AO1 material. There was a very interesting range of approaches to these questions and no discernible pattern clearly emerged, in the sense that candidates who had performed well on sections A & B did not always perform well on the Section C questions and vice-versa. Few candidates obtained clear Level 5 marks and one reason for this was a failure to respond to the command in each Statement to 'evaluate its accuracy'. A specific response to the command, either 'the Statement is therefore accurate/inaccurate' will earn a mark for each of the Statements, so up to four marks are available for this skill alone. Although, throughout the Paper a whole, candidates seemed desperate to discuss aspects of provocation wherever possible, the responses to Questions 7 & 8 were fairly evenly distributed. The questions did prove to be very useful discriminators and sadly revealed a great deal of uncertainty over the offence of burglary and robbery in Question 7 in particular.

Quite a few candidates identified a S9 (1) (a) burglary in Question 6 but then totally contradicted themselves by asserting that there had been no burglary in Statement A of Question 7 because Matt had not stolen anything after entering the shop intending to steal. This was very peculiar and not easy to comprehend.

Question 7
This Question worked very well indeed and proved to be an excellent discriminator. The structure of the Question seemed very accessible to all the candidates and the better candidates had no trouble in being able to deal with four separate areas of substantive law; burglary, attempt, robbery and battery. Most candidates were able to offer Level 4 answers for Statements A, C and D. However, a large number of students failed to notice that the defendant would clearly be a trespasser upon entering the premises since he had the intent to rob. Many said he was definitely not a trespasser as he had permission to enter the shop, missing the point entirely.

Question 8
Question 8 performed less well on the whole. Candidates could not resist the temptation to release all of their pent-up AO1 knowledge on the issues of provocation and battered woman syndrome, rather than focusing upon an evaluation of the Statements proposed which required AO2 identification and application skills. Most students were able to identify the evidence of provocation, but some candidates took the statement as meaning 'could the victim use evidence

in court?', concluding it would be her word against the defendant and so missing the point entirely. Centres should remind students that "sudden" and "immediate" are not interchangeable terms in the context of provocation and that there is a crucial distinction between them.

The most disappointing feature was the very weak knowledge that was evident in relation to intoxication as a possible mitigating factor. Many candidates appeared to be completely ignorant of the *Majewski Rules* and the distinction between crimes of specific and basic intent. The vast majority of candidates attempting Question 8 (d) got the law wrong – "voluntary intoxication is never a defence" or, arguably worse, intoxication is no defence to Holly because "murder is a basic intent crime". Whether centres had just not covered the topic of intoxication or candidates were rushing to complete the Paper is a matter of conjecture. Either way, the level of understanding of intoxication as a 'defence' fell far below performance in previous examinations.

G144, G146, G148 Special Studies

General Comments

This was the sixth sitting of the Special Study Paper under the current themes, meaning that centres should now be very familiar with both the themes and with the demands of the individual questions. This was certainly evidenced in the answers given by the majority of candidates. Subject knowledge was generally high, and high level skills were often in evidence as well as effective use of the source materials. It was also the second sitting of the new Special Study paper under the new 4 unit specification. It is pleasing to report that over two sittings of the new style papers candidates are finding the style accessible and are generally performing well.

After two sittings of the revised Special Study it is clear that the reduction to three questions from four and the new AO1:AO2 weighting on question 2 appear to have given candidates much more time to focus on the individual questions, as well as enabling them to gain from the additional AO1 marks available. A continuing worry is the number of candidates who spend a disproportionate amount of time on Question 1 despite it being worth only 16 out of the 80 available marks and therefore only really warranting around 15 minutes of the available 90. Many candidates on Question 1 are engaging in a 'generalised essay' on the theme before ever getting into the specific demands of the question. All that is required is to discuss the critical points that emerge from the case in the context of the overarching theme.

Again, the papers from all three options produced a wide range of responses, but with few really weak scripts. There were indeed some impressive scripts, with a number of candidates gaining maximum marks on individual questions and often well above A threshold overall. As usual, there was some very effective use of the source materials in evidence. Application for Question 3 was not as well done as normal overall, although there was some excellent application by individual candidates.

Spelling, punctuation and grammar were, as usual, often very disappointing. However, there was also some very effective communication with some excellent analysis and/or application.

Time management was not a problem for candidates, with the majority of candidates completing all three questions.

One increasingly disappointing feature of the Special Study, as with other units, is the large number of candidates who fail to write the question numbers on the front of their scripts. Examiners already work under pressure, without constantly having to remedy this clear breach of the rubric, which ought easily to be remedied by centres.

G144 - Criminal Law Special Study

Question 1
This question on each option calls for an examination of a case from the source materials, in this instance *Gotts* and the significance of the case to the development of the defence of duress by threats.

There are now only AO2 marks for question 1 and no AO1 marks. Nevertheless, for the purposes of the overarching theme, to secure maximum marks candidates would still be expected to make reference to at least one linked case to show development. Logically, in the case of *Gotts*, this should have been *Lynch, Howe* or some other case referring to the availability of the defence in the case of murder or attempted murder.

For high AO2 marks candidates should have identified the critical point from the case, that the court followed the *obiter dicta* from *Howe* and declared the defence unavailable to a charge of attempted murder. With this development clearly explained and two other critical points discussed in depth, candidates could have achieved level 5. Clearly there are a number of other points that could have been discussed in depth: the original unsatisfactory state of the law in *Lynch*, its overruling in *Howe* and the reasoning of Lord Griffiths, the reason for the *obiter* comment in that case, the reasoning why Lord Jauncey followed the *obiter* from *Howe*, as well as his own reasoning, and indeed the anomaly left with s18 prosecutions and the availability of the defence. All of this was in the source materials.

The question produced a surprisingly wide range of responses, considering not just the amount of support available but also the obvious focus given in the source. Many candidates indeed gained maximum or Level 5 marks by showing the clear development of the law sequentially and adding other significant points such as the anomaly left with s18. However, many middle ranking scripts offered a very detailed ‘essay’ on the history of duress by threats, with extensive explanation of the various limitations and restrictions, although making very little obvious connection with the case itself and often with only glib reference to the central point of the case. Weaker scripts often made the point that duress by threats is unavailable in the case of murder, attempted murder, and secondary participation in a murder, but without any focus on the development made by *Gotts.* Some weaker answers confused *Howe* with *Lynch,* or misrepresented the House of Lords in *Howe.* However, there were many good answers.

Question 2
Question 2 is the focus for discussion of the substantive law theme on the paper, although the best discussions clearly will also be in the context of the overarching theme. The question here was on the development of the defences of duress of circumstances and necessity in the light of a quote from Lord Justice Kennedy from *Pommell.* Sources 7, 8, 9, 10 and 11 all contain useful information for the question. While the range of available cases might be smaller than that for duress by threats, nevertheless the area is a controversial one so there is plenty of opportunity for discussion and high AO2 marks.

For AO1, candidates could have secured high marks by providing a detailed explanation of the nature of both defences and their essential elements, duress of circumstances similar to duress by threats except in deriving from the circumstances in which the defendant finds himself rather than by an actual threat, and necessity based on a course of action which is the lesser of two evils. In fact AO1 proved to be very accessible to most candidates and there was some extensive detail on a wide range of cases, including many beyond those in the source materials, and for level 5 certainly candidates would have been expected to focus on both defences and make use of the 6 cases in the materials. More moderate answers tended towards accurate and detailed accounts of several cases and differentiation was then often down to the quality of AO2.

Some weaker answers lacked breadth with focus on only a small number of cases, often only on one of the two defences. Inevitably a failure to address both defences would prevent a level 3 mark being available, since this could not be construed as adequate knowledge in the context of the command in the question.

With many candidates scoring high AO1 marks, AO2 became the real discriminator of a good script. Overall there were a few where candidates effectively addressed the actual issues raised by the question, showing elaborate and wide critical awareness of current debate and proposals for reform, and so scoring full marks. These candidates clearly demonstrated knowledge of the key differences in the development or lack of it of both these defences. A handful drew some analogy with the development of duress of threats. Most candidates were able to give quite a detailed account of the 'development' of duress of necessity and circumstances without necessarily focusing on the key issues. Often candidates did little more than indulge in a list of cases, sometimes copied, rather than cited, from the source material, explaining the development of both defences. Some demonstrated errors such as that *Dudley & Stephens* had been overruled by *Re: A*. Some weaker scripts were comprehensive accounts of all candidates knew about duress of necessity and circumstances, often copied wholesale from the source material without actually addressing the issues raised by the question. Often, too, weaker answers were distracted by a discussion of duress of threats. A common mistake was for weaker scripts to comment that both duress of necessity and circumstances had not developed at all.

Question 3

The application question, as is now the standard practice for the paper, was based on three separate small scenarios, each worth 10 marks, on three separate characters. Candidates should have found the individual questions very accessible, since they all concerned different situations analogous with existing case law or in any case which relate to specific aspects of the defence of duress by threats. Candidates could have applied the *Graham* two part test to all three. However, while a large number referred to or explained the test in detail, significantly fewer actually applied the two parts of the test, thus limiting available AO2 marks. Candidates ought also to have focused on the critical points evident in the scenarios, for a) the issue of immediacy and the lack of nexus; for b) the lack of a threat of death or serious injury in respect of revealing Tina's occupation and the absence of a person for whom Tina would feel responsible, in the threat to kill the dog; and for c) the unavailability of the defence to a charge of attempted murder and the fact that the threat was made to Ursula' children. Good discussion of the above points together with appropriate cases would allow a candidate to receive high AO1 and AO2 marks. It should be noted that now the AO3 element has been removed all 10 marks are available for AO1, so it is important for candidates to support their application with cases.

There was some differentiation between candidates, but on the whole application was done well, with some maximum marks awarded and many maxima for individual parts of the question. In general, part a) was better handled than b) or c), and in fact many candidates did no more than address the attempted murder issue for part c), limiting their marks drastically. The best answers demonstrated thorough knowledge, understanding and application of the defence of duress of threats thereby scoring full marks. These candidates used numerous cases in illustration. The majority of candidates identified the relevant cases for each scenario but the real discriminator was the manner in which they were used. Most identified *Coles* as the critical point in part a) and added at least one other major point of application, but usually two or more extra. Most candidates coped well with b), arriving at the right conclusion having identified either *Valderrama-Vega* or *Singh*. However weaker answers did focus on the dog being someone for who Tina was responsible and therefore she may have the defence, which clearly lacked appropriate logic and law. Virtually all scripts identified the *Gotts* principle as being relevant for c), though often there was little else, or answers strained logic and law by claiming that Ursula would have the defence because the lives of two children were threatened and that this was the

lesser of the two evils. Some weaker scripts took an ‘all I know about duress’ approach and then applied even irrelevant issues to the scenarios, with a very small minority focusing on the offences rather than the defences.

G146 - Law of Contract Special Study

Question 1
This question on each option calls for an examination of a case from the source materials, in this instance *Thomas v Thomas* and the significance of the case to the development of the law on consideration.

There are now only AO2 marks for Question 1 and no AO1 marks. Nevertheless, for the purposes of the overarching theme, to secure maximum marks candidates would still be expected to make reference to at least one linked case to show development. In the case of *Thomas v Thomas*, this could have been any number of cases where the focus of the case was on adequacy and sufficiency. So obvious choices would have included *Chappell v Nestle, White v Bluett, Ward v Byham* etc.

For high AO2 marks candidates should have identified the critical point from the case, that consideration need not be adequate but it must be sufficient, or indeed that the court in the case accepted that the ground rent, however nominal and inadequate, nevertheless had value and so represented the consideration for the bargain, making it enforceable. With this development clearly explained and two other critical points discussed in depth, candidates could have achieved Level 5. Clearly there are a number of other critical points to emerge from the case which may have included the essential elements of consideration identified by Patteson J in the case, something moving from the claimant, of value in the eye of the law, and representing benefit and detriment. Reference might also have been made to the refusal by Patteson to accept the wishes of the testator as amounting to consideration since this created only a moral and not a legal obligation. The case could also have been contrasted with a variety of other cases showing how the courts view what does amount to sufficiency.

The question, on the whole, was answered particularly well. Most candidates were able to focus on the significance of *Thomas v Thomas* to the development of the law on consideration and to make use of the information provided in the source materials. Many candidates were able to identify and discuss a wide range of critical points emerging from the case and to contrast the case with a range of other cases on sufficiency of consideration, for example *Chappell v Nestle*, *White v Bluett*, and *Ward v Byham*, but other cases were also used. Those gaining moderate marks tended on the whole to have a more limited range of analysis, and weaker answers tended to be descriptive accounts of the facts of cases rather than engaging in discussion. However, on the whole the question was well answered.

Question 2
Question 2 is now the focus for discussion of the substantive law theme on the paper, although the best discussions clearly will also be in the context of the overarching theme. Here the focus of the question was on the development of rules on consideration relating to performance of existing obligations, in the light of a quote from Adams and Brownsword, although other areas could have been included if relevantly drawn into the discussion. There was clearly ample AO1 and AO2 material in sources 6, 7, 8, 9, 10 and 11 for candidates to use. The area is also quite a controversial one, so there is plenty of opportunity for discussion and high AO2 marks. It was indeed pleasing to see that the majority of candidates made full use of the widest range of cases and that many scripts included excellent comment, although AO2 was a clear discriminator.

Candidates could have secured high AO1 marks by providing a definition of consideration, with a focus also on the basic rules relating to performance of existing obligations as well as the various exceptions. Most scripts included at least those cases available in the source and there were many high AO1 marks. Weaker scripts for AO1 had a much more restrictive range of reference, often perhaps focusing only on *Stilk v Myrick* and *Williams v Roffey*. Clearly a failure to address both the basic rules and the exceptions would prevent a Level 3 mark being available

since this could not be construed as adequate knowledge in the context of the command in the question. Similarly a failure to focus on both contractual duties and public duties and their exceptions would prevent a level 5 mark being gained on the basis that less could not be considered as wide ranging knowledge, particularly in the light of what was available in the source materials. On the whole, though, AO1 was generally well handled.

For AO2 a wealth of critical comment was available to a well prepared candidate, with much available in the sources themselves. This might have included the gradual evolution of the definition of consideration, the fact that the basic principles operate too harshly and therefore exceptions are inevitable, the fairness of the original application of the rule in *Stilk v Myrick,* the logic of the exception in *Hartley* (is this just a question of degree?), the apparent inconsistency in *Williams v Roffey* but that the result, if not the approach, is practical and fair, but also based on commercial reality rather than proper application of existing law, the precise meaning of 'extra benefit' (the reality is that not having to sue would always be a benefit). There were many excellent scripts that charted development with telling comment at every stage. Indeed AO2 was much better handled than in January 2008. Moderate scripts tended towards individual comment rather than extensive discussion and weaker scripts tended to be more narrative and uncritical.

Question 3

The application question, as is now the standard practice for the paper, was based on three separate small scenarios, each worth 10 marks, on three separate characters. Candidates should have found the individual questions very accessible since they all concern different situations analogous with existing case law or in any case which relate to specific aspects of consideration. Candidates should have recognised that: in the case of a) the critical point was the sufficiency of the Cola as consideration for an evidently high and unrealistic price, that adequacy is not an issue and that it is both real and tangible and has value to Ross so is good consideration, following the precedents in *Thomas v Thomas* and *Chappell v Nestle*; for b) that consideration appears to be past but the critical point is the exception in *Lampleigh v Braithwaite* that the service has been requested so that payment might be expected, or alternatively also the principle in *Re Casey's Patent*, that payment is implied because of Uriah's professional position; and for c) that bringing someone good luck is just too vague to provide consideration - what is needed is something real, tangible and of value, and a good contrast of the cases *Ward v Byham* and *White v Bluett* would have worked well here. Good discussion of the above points, together with appropriate cases, would allow a candidate to receive high AO1 and AO2 marks. It should be noted that now the AO3 element has been removed, all 10 marks are available for AO1, so that it is important for candidates to support their application with cases.

There was some marked differentiation between candidates here, even though on the whole application was done well, with some maximum marks on individual parts of the question. Part a) was frequently better done than the other two parts. For part c), for instance, a common error was to base application on past consideration, limiting available marks. The best scripts gained good marks for all three, usually with maximum for part a). Moderate scripts tended to have the key focus but lack some development in application, not covering every aspect. Weaker scripts often failed to identify correctly on one or more parts and had limited application on others. For instance, merely defining past consideration and reeling off the facts of *Lampleigh v Braithwaite* is not application and gains only AO1 marks.

G148 - Law of Torts Special Study

Question 1
This question on each option calls for an examination of a case from the source materials, in this instance *Dulieu v White* and the significance of the case to claims for nervous shock (psychiatric damage).

There are now only AO2 marks for question 1 and no AO1 marks. Nevertheless, for the purposes of the overarching theme, to secure maximum marks candidates would still be expected to make reference to at least one linked case to show development. Logically, in this instance, the link should have been with another primary victim case such as *White v Chief Constable of South Yorkshire* or *Page v Smith*, but it could have involved a contrast with the later development of *Hambrook v Stokes* and the extension of the principle to secondary victims.

For high AO2 marks candidates should have identified the critical point from the case, that this was the first case allowing a successful claim for nervous shock, subject to the so-called 'Kennedy test', the then criteria for claiming. With this development clearly explained and two other critical points discussed in depth, candidates could have achieved level 5. A number of other points could have been discussed in depth in the context of the overarching theme. With the case being the first successful claim for nervous shock, this could have been contrasted with the previous position in *Victoria Railway Commissioners v Coultas.* As the Kennedy test was quite narrow it could have been contrasted with the broader development in *Hambrook v Stokes,* which itself would have been unlikely without the initial breakthrough in *Dulieu.* The basis for allowing a claim could have been discussed, as well as that the criterion 'present at the scene and at risk of foreseeable harm' in essence defines what later became known as a primary victim.

The question produced a range of responses but on the whole was well done. Better scripts had clear focus on the significance of the case in context. At the weaker end, some scripts gave a potted history of nervous shock without a clear focus on the development made by the case, and indeed some answered almost exclusively on secondary victims; without clear indication that this was a significant step away from the principle in the case, this could gain little credit.

Question 2
Question 2 is now the focus for discussion of the substantive law theme on the paper, although the best discussions clearly will also be in the context of the overarching theme. Here the focus of the question was on the development of limitations and restrictions in claims for nervous shock, in the light of a quote from Lord Wilberforce in *McLoughlin v O'Brien.* There was clearly ample AO1 and AO2 material in a variety of the sources for candidates to use for both AO1 and AO2. The area is also a quite controversial one, so there is plenty of opportunity for discussion and high AO2 marks. Most candidates did indeed refer to a wide range of case law, going well beyond those in the source materials. Obviously, at least those in the source would have been necessary for a level 5 answer. There was also some good discussion in evidence.

Candidates could have secured high AO1 marks by providing a detailed explanation of the essential elements of a claim in nervous shock, (a recognised psychiatric injury caused by a single shocking event to a person within the range of impact and resulting from the defendant's negligence) and a range of limitations in depth or a wider range of limitations. In this respect an obvious focus would have been the controls on secondary victims and an in depth examination of the *Alcock* criteria. The restrictions relating to the nature of the injury and on causation, and the treatment of bystanders and of rescuers could also have been considered. The best scripts also considered the limitations on primary victims and therefore drew good comparisons with other classes of claimants fuelling good discussion for AO2. AO1 was generally good and proved to be very accessible to candidates with extensive case law in evidence. It was also

pleasing to see how many candidates were not restrained by the information in the sources but had good current awareness with some detailed explanations of *Walters* and *W v Essex CC*, amongst other more recent cases. Moderate answers, however, tended towards more descriptive accounts of cases, or having a good range of cases but omitting a definition or the essential elements of a claim or were let down by more limited discussion for AO2. The weaker answers tended to be descriptive, narrative and without real depth.

AO2 was a clear discriminator between candidates at different levels. For high AO2 marks, candidates had a wide range of points that could have been discussed in depth: the original scepticism against allowing claims for nervous shock, the criticism in *Hambrook v Stokes* of the Kennedy test, the rigidity of the *Alcock* criteria, the inconsistent interpretation of immediate aftermath, the failure to use a medical definition for the injury, the problem of causation, the sharp contrast in the treatment of primary victims and secondary victims, the potentially unfair treatment of bystanders who genuinely suffer what ought to be regarded as foreseeable harm in certain situations, the anomalous cases such as *Attia v British Gas* and *Liverpool Corporation* are just a few. The best answers included excellent discussion on every aspect. Moderate answers tended to include sporadic comment more than extensive discussion with developed points. Weak answers tended to lack much in the way of comment.

Question 3

The application question, as is now the standard practice for the paper, was based on three separate small scenarios, each worth 10 marks, on three separate characters. Candidates should have found the individual questions very accessible, since they all concern different situations analogous with existing case law or which in any case relate to specific aspects of nervous shock. Candidates should have recognised that on the basis that only Uffah's seat belt broke, only he might have a claim as a primary victim and that Rutger and Siggi would have to meet all three parts of the *Alcock* criteria - which, as parents present at the scene of their daughter's injury, they would. The critical points then are in the case of a) that Rutger's claim as a secondary would fail as the funeral not the injury was the cause of harm, but that otherwise he has a recognised psychiatric injury; in the case of b) that Siggi, while passing *Alcock* nevertheless fails because she does not suffer a recognised psychiatric injury based on *Reilly* and *Tredget* and *Vernon v Boseley*; in the case of c) that Uffah is indeed at risk because of the seat belt breaking and would succeed on the basis of the principle in *Page v Smith* and also has a recognised psychiatric injury, the fact that it is a pre-existing condition not mattering because the 'thin skull rule' works in his favour as a primary victim. Good discussion of the above points together with appropriate cases would allow a candidate to receive high AO1 and AO2 marks. It should be noted that now the AO3 element has been removed all 10 marks are available for AO1 so that it is important for candidates to support their application with cases.

There was marked differentiation between candidates even though application was generally well done. There were some high individual marks on some parts of the question. Many candidates applied the law well and used appropriate cases in support to gain high marks. In general moderate to weaker answers lost marks by either missing an essential element, for instance a discussion of the injury in b) or of the causation issue in a) and some weak scripts answered all three as primary victims with some even considering Uffah as a secondary victim.

G145 - Law of Contract

The candidates for this paper were of varying quality, with the range that would be expected, but were in general well prepared and trained to respond to the specific demands of each part of the paper, in terms of targeting AO2 marks. The most notable thing about the responses was a tendency, sometimes in candidates of a good standard, to misinterpret the question or read into a problem scenario facts that were not there. Candidates need to focus very carefully on the information they are given, particularly in the Section C questions where a candidate's reasoning must be directed at whether a specific response can be maintained in relation to the facts given. As there are no AO1 marks in Section C, candidates do not have the cushion of general case law to fall back on so the application must be well focussed.

Section A

Question 1: Privity
This was the least popular of the essay questions, although answers were generally better than for the other 2 questions. Most candidates were able to explain the rule, common law exceptions and a good range of statutory exceptions.

There were some nice examples of candidates explaining the more complex exceptions, such as the trust device, and nearly all candidates explained exceptions such as collateral contracts and restrictive covenants. Most were able to make basic points of evaluation concerning the fairness of the rule and the shortcomings of the exceptions.

A few better candidates were able to discuss the benefits of legislation as a means of law reform as opposed to judicial development. This was the direction of the quote in the question; an obvious area for discussion was the uncertainty that would have been caused if such a fundamental rule was changed by a court case and the retrospective effect that court cases have. However very few candidates engaged with this debate in a detailed way.

Question 2: Consideration
This was by far the most popular essay question.

Most candidates were able to explain pre-existing contractual and public duties and make reference to a range of cases to illustrate these areas. Better candidates also made reference to pre-existing obligations owed to a third party such as in *Pao On.*

Better candidates were also able to go beyond the most basic and obvious examples to discuss contradictions or more recent developments; examples would be discussing the application on *Williams v Roffey* in *Re Selectmove* and discussing the apparent contradiction between *White v Bluett* and *Ward v Byham*.

A large number of candidates gave very factual answers without much evaluation, but there was an obvious effort by many to tackle the specific issue raised in the question, of development in the law being driven by pragmatic decisions in individual cases. Few candidates tackled this in a very developed way, however, most just adding a brief comment at the end of their discussion of each case.

Question 3: Restraint of trade
This was quite a popular question and in large part the responses were polarised between those candidates who gave well developed answers, making use of a good range of case law, and very basic descriptive answers with no case law at all. Although answers in this latter category showed a general awareness of restraint of trade terms and when they are used, the AO1 mark was inevitably very low because there was no supporting legal content.

The quote for this question directed candidates to discuss reasons to allow and to disallow restraint of trade terms and this was generally addressed well in the answers.

A few candidates misinterpreted the question and discussed exclusion clauses, although these could be seen in a limited way as restraining trade such answers could not get more than very basic marks.

Part B

Question 4: Offer and acceptance problem
This was a very popular question and one that required an organised approach from candidates, sorting out the rules that might apply and coming to a well reasoned answer. There were few candidates who combined a wide ranging level of content with a well structured and reasoned answer.

There are still some candidates who take an "all I know about offer and acceptance" approach to this question, before attempting to answer the specific scenario situations. This approach is a waste of exam time and unlikely to produce a good answer as the candidate is not directing knowledge in an effective way at the specific scenarios. There were also a significant number of candidates who ignored the information given in the question – when the question says that one person has made an offer to another, there is no point in discussing all the cases concerning an invitation to treat and debating whether the letter was an offer or an invitation.

There was a lack of consistency in a large number of answers that led to lower AO2 marks than the candidate might have otherwise gained. An example of this is the situation of an offer sent by email that was responded to by letter. A significant number of candidates identified that the postal rule may not be appropriate in this situation, some with supporting knowledge of case law, but then went on to say that as the acceptance had been posted before the phone call with the attempted revocation there was a binding contract.

Most candidates were able to discuss the effect of lapse of time on an offer, in many cases with a good discussion of the nature of the goods contained in the offer, and most candidates had a fair idea of the rules regarding death of the offeror.

Question 5: Mistake problem
This was a scenario concerning 2 different area of mistake, common and unilateral. Most candidates managed to give good answers to the unilateral mistake situation but the quality was much more mixed in relation to the common mistake.
The common mistake question concerned a car which both parties believed to have a certain history that affected its value. There was no information given in the question about any representations made by the seller of the car to the buyer, nevertheless many candidates answered this part of the question on the basis of misrepresentation. This approach could gain some credit but it was not the most effective response to the question. Candidates should have discussed the line of cases regarding common mistake as to quality at both common law and equity, including the most recent authority *Great Peace Shipping*, and whether such an argument could be made in relation to the given set of facts. Very few candidates cited a good range of authorities on this point, many limiting themselves to *Leaf v International Galleries*, several cited that case with no explanation of the relevant areas of law involved.

The unilateral mistake scenario was tackled more effectively, many candidates discussing the difference between face to face cases and those concluded at a distance, and many being aware of the *Shogun Finance* case.

Question 6: performance problem
This was a multipart scenario that invited candidates to discuss the strict rule of performance and the possible exceptions such as substantial performance, severability and prevention o performance. Although the least popular of the three problem questions, the general standard was good, with candidates able to discuss a range of exceptions and to apply them in a coherent way.

Section C

Question 7: Consideration scenario questions
Candidates answered the two Section C questions roughly equally in terms of popularity and quality of answers.

For the most part, candidates tackled this question in an appropriate way, stating whether they agreed or disagreed with the statement and giving reasons why. Many candidates gave the facts of relevant cases in their answers, perhaps unaware that there are no AO1 marks for Section C questions and so a case name in answers to these questions adds nothing.

Part A concerned part payment of a debt and was answered well, candidates were also able to apply the rules of promissory estoppel in part B well. Part C concerned payment of a debt by a third party and many candidates seemed unaware of the rules on whether this can settle a debt. Again some candidates stated a relevant case name and the bald fact that they disagreed with the statement, this gained some credit but not much as no reasoning had been given. Part C was answered well, with candidates making reference to the rule son adequacy and sufficiency of consideration.

Question 8: Misrepresentation scenario questions
This was a wide ranging question on misrepresentation. Again, some candidates used a lot of case law in their answers, but mostly answers were focussed and relevant. Part A required candidates to identify that even an innocent and honest statement can be a misrepresentation; better answers also pointed out that an apparently innocent statement can be a statutory misrepresentation if the maker had no reasonable grounds to make it.

For this question candidates had to pay careful attention to the specific facts of the scenario. Part B required candidates to spot that no actual misrepresentation had been made, and that this was not the kind of situation where a party is under a duty of disclosure. Part C required candidates to spot that rescission would be unlikely to be awarded as there had been affirmation by both lapse of time and continued use of the goods. In both these parts many candidates gave very good answers, but a large number failed to spot the relevant facts and gave generalised answers on misrepresentation or remedies.

Part D required candidates to apply the rules of incorporation of on oral statement as a term of the contract. There were some good answers to this but many candidates were sidetracked into discussions of classifications of terms which is not relevant for this question. Candidates should be aware that, whereas in the past, terms was a topic in contract paper 1 and misrepresentation in contract paper 2, both topics are now in the same paper and a question may well require a discussion of pre-contractual statements in the context of being both terms and representations.

G147 - Law of Torts

General Comments

This was the second sitting of G147; part of its format is familiar in that the Section A and B questions are comparable to those seen on the old 2577 and 2578 papers. In addition G147 introduces candidates to the new Section C question which explores the skills of objective legal reasoning. The time allocation for this paper has also changed and offers the potential for all candidates to succeed across a range of assessments. This paper is wide ranging in its ambit to reflect the breadth of the specification and centres should acknowledge this in their preparation and advice to candidates, particularly if they are anticipating making use of a January sitting. It was encouraging to see that some centres had covered a wide range of material but others had clearly focused only on specific issues, which may well be a risky strategy. January's Centre Report had flagged up various techniques particularly relevant to Section C; candidate responses suggested some centres had not read these. The purpose of this report is to help teachers prepare their candidates more effectively and any comments made should be seen in that light. It is also worth noting that the law is developed by legislation and case law and knowledge and use of these sources is crucial if candidates are to access the higher mark bands. Examples to illustrate how the law works are acceptable and can reinforce a point, but knowledge of the law and of the principles which underpin it is crucial to success.

Time allocation and the order in which questions were answered was a factor in some responses, especially when candidates used their time to spend longer on responses to Sections A and B, which occasionally left insufficient time to cover all four statements in Section C or, more frequently, the need for extreme brevity in all or some of the statements. Some candidates chose to answer Section C first. Centres are advised to counsel candidates about the need to plan their time carefully so as to do themselves justice in each area of assessment.

Responses to Section A questions were differentiated in terms of the specific level of knowledge and relevant citation alongside the sophistication of comment. It was encouraging to see some candidates referring back to the question as a method of making relevant those cases cited, but to achieve the very highest mark band it is also necessary to make overarching comment on the area of law at issue and the general principles which underpin the law, as well as on wider policy constraints and influences. It is also important to remember to deal with the question which is actually posed, rather than relying on a prepared answer which may well have taken a different slant on a particular topic. In Section B, differentiation was evidenced by the detail used to support identification and application of issues with an increased level of knowledge directly linked to the authority with which legal propositions were expounded and deduced. Centres should note that the mere naming of a case is insufficient and that, to be rewarded, candidates should demonstrate a degree of understanding of the case and its context. Fewer cases explained and used accurately will achieve a great deal more then a list of case names with no other amplification. In Section C differentiation was founded on application of legal principle and legal reasoning in response to four distinct statements. Candidates are advised that they should write in direct response to each of the four statements, rather than producing a long and general piece of continuous prose in which some application is contained. Candidates are also advised that there is no need for a general introduction and conclusion – the essence of this type of assessment is a focussed and deductive response to a particular proposition, in which reward is given for reaching a conclusion based on understanding of legal principles and evidenced in a logically deductive manner. The marks available are awarded for application skills rather than regurgitation of knowledge, and factual discourse on the elements of law relevant to any given proposition is not necessary to gain high marks. However, achieving level 5 does require a candidate to reach a conclusion on the proposition to which they are responding.

Standards of communication were acceptable but all candidates responding to examinations in this subject would be well advised to work on their accuracy of language and specific legal terminology to inform the quality of their answers.

Question 1: Causation and remoteness in negligence
The answers to this question tended to focus on causation and general principles of negligence, with remoteness often being marginalised or overlooked altogether. Citation on causation was often strong, and on the thin skull rule, but there was relatively little on remoteness and how this area of law works in reality, such as the contradiction depending on whether damage is to a person or to property. In terms of AO2 a good number of candidates addressed the question directly but relatively few extrapolated this into the wider issues involved in this area of law and the impact of policy restrictions.

Question 2: Trespass to the person
This question encouraged candidates to engage with each of the varieties of trespass to the person and many were able to do this, although there was a preponderance of information on assault and battery. There did seem to be some confusion as to the divide between civil and criminal law in this area, but there was also a demonstration of some excellent and very wide ranging citation, including relevant defences. The AO2 component often focussed on the shortcomings and inconsistencies in the law and medical and sporting issues were the subject of considerable discussion. Given that the question raised protection, compensation and deterrence many candidates used these criteria in their comment, but relatively few showed an awareness of, and engagement with, some of the bigger issues dictated by policy and developments in human rights.

Question 3: Negligent Misstatement
Responses to this question were few, but some candidates had a good knowledge of the relevant law based on the criteria created in *Hedley Byrne and Heller* and then developed in other cases. Comment tended to be thorough and often sophisticated, picking up on Denning's dissent and developing this into a critique of the need for protection, especially in sometimes apparently inefficiently regulated professions. There was also strong AO2 comment relating to wider general principles and the influence of policy on the law's development in this area.

Question 4: Nervous shock
This question addressed the familiar territory of nervous shock and was very popular with students. Some wrote extensively on the whole ambit of this area of the area, charting its development since *Dulieu v White,* and there was a good coverage of the key cases such as *Alcock, Mcloughlin v O'Brien* and *Bourhill v Young*. Some candidates dwelt at length on the law relating to rescuers, which was not called for given the facts of the scenario. Some credit was given for a discussion based on general principles of negligence, but the key thrust of the question was the implications of the law relating to nervous shock. Teasing elements were the intricacies of close ties of love and affection, the type of psychiatric injuries suffered, the concept of immediate aftermath and the thorny question of whether seeing a traumatic injury through the camera of a mobile phone could be using unaided senses. The handling of these issues was often the key discriminator in terms of the AO2 component and it was good to see many candidates really engage with the logical deduction needed when approaching a scenario with complex and controversial issues. In weaker scripts, citation was at times unspecific, and whilst candidates can be rewarded for using cases implicitly or even for giving their own examples of how the law works, there is no substitute for clear and accurate citation. In terms of AO2 identification and application there were some good responses, but many tended to be general and inconclusive; whilst certainty is not always possible, covering a range of options is a positive engagement, whereas making wide ranging and vague remarks in the hope that something will be right cannot be rewarded to the same extent.

Question 5: Vicarious libaility
This was a reasonably popular Section B question and scripts displayed an enormous range of AO1 and AO2 skills. In stronger scripts there was good AO1, evidenced by accurate definitions supported by full and relevant citation based around the tests in *Mersey Docks v Coggins and Griffiths* and *Ready Mixed Concrete*. In addition there was a good exposition of what constitutes an act within employment and the limits to this concept which led to some inevitably general and vague application. The key issues were whether Rick and Westchester School could both be employers and the limits of their liability – focusing on employment tests, whether the acts were done in the course of employment and whether Craig was at any time on a 'frolic of his own'. This question seemed to throw up some confusion in terms of the characters and their respective roles but there were some gratifyingly succinct, accurate and logical responses to a tricky scenario.

Question 6: Rylands v Fletcher
This was the least popular of the problem questions, but there was a basic understanding of the test created by *Rylands v Fletcher* and some effort was made to explain its requirements. Citation in support of explanation was limited and centres need to be aware that knowledge of decided cases is essential to access the higher mark bands, especially in an area which has been considered so frequently by the courts and so it was good to see reference to *Transco plc v Stockport MBC*, as well as older cases such as *British Celanese*, *Read v Lyons*, *Rickards v Lothian* and *Perry v Kendricks Transport*. Candidates attempted systematic application of the *Rylands* test to the facts, but there was often confusion as to the concept of escape and the application of defences, most notably Act of God and act of a stranger. There was some accurate and logical application but many answers seemed to be less confident; whilst one approach may not necessarily preclude all others there does need to be some discrimination on the part of candidates as to their relative merits if they are to access higher marks.

Question 7
Remarks concerning this question need to be read in conjunction with the general comments at the beginning of this report. There were some encouraging responses, dealing with each of the statements in turn and showing good skills of reasoning from an opening statement to a conclusion, but many candidates tended to focus on a factual approach and to lack clarity in their thought processes. In Statement A there was a general acknowledgment that Jackie could commit a nuisance, although there was a lot of discussion about Brian, even though he was not the focus of the question. In Statement B there was a lot of confusion; candidates need to be aware that statements can be both positive and negative in their structure. However, most candidates reached the conclusion that Brian could be liable in nuisance. In Statement C a good number of candidates focussed on other areas of the law, notably trespass to land, rather then simply dealing with whether or not Brian had committed a nuisance. Some weaker candidates chose to make very vague and generalised remarks but, unless related to the statement and leading to a conclusion based on their reasoning, these could not score highly. Statement D caused considerable confusion, as a good number of candidates were uncertain as to the basic requirement of a proprietary interest for a claim in nuisance and this impacted on any conclusions they were able to draw.

Question 8: Negligence

Similar comments in terms of the approach to this question would apply as for Question 7; this was a less popular question with general principles relating to negligence at issue. In Statement A many seemed unaware that Daisy would have no liability since she is an innocent bystander and so has no duty to Terry. Statement B was aimed at the consequence of a contractual duty on the part of Clive, but many responses tended to spend more time discussing the size of the sign and the clarity of Clive's handwriting. In Statement C there were some good responses, although many candidates did not pick up on the aspect of foreseeability and there was some rambling discussion of injuries of this kind, some of which seemed to be based on personal

experiences. Statement D produced a good crop of comments to the effect that Clive would be able to utilise the defence of contributory negligence but there seemed to be less certainly as to why that should be the case. In conclusion, candidates need to put forward statements which can clearly be argued to a conclusion although it may be possible to have more then one viable line of reasoning. Although knowledge is essential for a student to deal successfully with this kind of assessment, its de facto exposition is not required as marks are awarded on the basis of clear, logical, legal reasoning – in other words replicating the thought processes of a lawyer engaged in the problem solving exercises which are the fabric of daily life in legal practice.

Grade Thresholds

GCE Law H124/H524

June 2008 Examination Series

Unit		Maximum Mark	A	B	C	D	E	U
G141	Raw	120	84	74	64	54	44	0
	UMS	120	96	84	72	60	48	0
G142	Raw	60	46	40	34	28	22	0
	UMS	80	64	56	48	40	32	0
G143	Raw	120	84	75	66	57	48	0
	UMS	120	96	84	72	60	48	0
G144	Raw	80	66	58	51	44	37	0
	UMS	80	64	56	48	40	32	0
G145	Raw	120	84	75	66	58	50	0
	UMS	120	96	84	72	60	48	0
G146	Raw	80	66	58	51	44	37	0
	UMS	80	64	56	48	40	32	0
G147	Raw	120	86	77	68	60	52	0
	UMS	120	96	84	72	60	48	0
G148	Raw	80	66	58	51	44	37	0
	UMS	80	64	56	48	40	32	0

Specification Aggregation Results
Overall threshold marks in UMS (ie after conversion of raw marks to uniform marks)

	Maximum Mark	A	B	C	D	E	U
H124	200	160	140	120	100	80	0

The cumulative percentage of candidates awarded each grade was as follows:

	A	B	C	D	E	U	Total Number of Candidates
H124	13.75	28.71	47.74	66.06	81.95	100	11160

	Maximum Mark	A	B	C	D	E	U
H524	400	320	280	240	200	160	0

The cumulative percentage of candidates awarded each grade was as follows:

	A	B	C	D	E	U	Total Number of Candidates
H524	18.72	39.76	63.60	83.16	95.26	100	6372

For a description of how UMS marks are calculated see:
http://www.ocr.org.uk/learners/ums_results.html

Statistics are correct at the time of publication.

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