GCE

Law

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

Reports on the Units

June 2010

H134/H534/R/10

Oxford Cambridge and RSA Examinations

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of pupils of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, OCR Nationals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support which keep pace with the changing needs of today's society.

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 specification 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.

OCR will not enter into any discussion or correspondence in connection with this report.

Any enquiries about publications should be addressed to:

OCR Publications
PO Box 5050
Annesley
NOTTINGHAM
NG15 0DL

Telephone: 0870 770 6622
Facsimile: 01223 552610
E-mail: publications@ocr.org.uk

CONTENTS

Advanced GCE Law (H534)

Advanced Subsidiary GCE Law (H134)

REPORTS ON THE UNITS

Chief Examiner's Report

This report sees the first cohort of candidates for the new A level. Over 9,000 candidates completed the AS qualification and almost 6,000 completed the A level qualification. In the latter papers there is a marked disposition towards Criminal Law but Centres are encouraged to look at the other options of Contract and Tort, which both offer equally lively challenges .

A key component of the qualification is the acquisition of legal skills, rooted in the AS study of the English Legal System and the Sources of Law. Whilst being a core element of all undergraduate law study, this course also informs young people about the laws which govern life in the UK and the EU as they make the transition to adulthood and begin to make their contribution to society as members of the voting public. As well as testing their ability to retain information and to problem-solve, the AS specification also introduces candidates to legal sources ;the skill of interpretation and manipulation of material is one essential for both higher level study and for a work environment which often requires an employee to read quickly and efficiently before working analytically and deductively using the sources provided.

At A level the OCR qualification allows candidates to study an area of law in-depth. All the areas offered are core subjects in an LLB degree and thus they can provide reassurance for those taking that path but may also encourage others who had not previously considered such a degree to feel that success is within their grasp.

For teachers the opportunity to explore an area in depth is an attractive one, as is the opportunity to teach relevant skills in the context of subject matter which is exciting, contemporary and challenging. Law's very complexity and contemporary quality can cause teachers some uncertainty as to whether they are in possession of the most up to date information. To this end teachers are encouraged to consider joining the OCR Law e-community: the site is a popular way to share information and resources as well as to ask questions. To become a member of this free resource follow the link below or go to the GCE Law web page on the OCR website for further details.

http://community.ocr.org.uk/community/law-asa/home

Law is a subject which empowers candidates with knowledge and skills as well as giving them an insight into the modern world and its rules and moral values. It is good to see candidates' skills developing as the qualification evolves and it is hoped that this trend will continue in the 2011 sessions.

Change to the mark schemes

Mark schemes for this series include details of the annotations used by examiners. These annotations vary between units and are designed to assist examiners in applying the mark scheme accurately and consistently and in communicating with the senior assessor who is sampling their marking at various stages of the marking process. These annotations may also help Centres and their candidates to understand how marks are awarded. Therefore, Centres are encouraged to use the published mark schemes as a discussion point with their candidates when developing skills and preparing for the examination.

Centres should be aware that the grade threshold and other statistical information is now published separately on the OCR website (www.ocr.org.uk/administration/results/general.html)

Special Study units – 2011

Centres are reminded that the themes for special study units which will be assessed in January and June 2011 are as follows:

G154 Criminal Law	Involuntary manslaughter
G156 Law of Contract	Offer and acceptance
G158 Law of Torts	Trespass to the person

Copies of the pre-release resource materials are available to download via the OCR website and the OCR Law e-Community.

Pre-released hard copies of the resource material will be dispatched to centres in September 2010 on the basis of preliminary entries. If preliminary entries are received after the initial dispatch, materials will be sent in 'pick-up' dispatches. These will start in October 2010 and finish at the end of April 2011.

Centres should also be aware that candidates who sat the new specification special study units in 2009/10 and who wish to re-sit their special study unit this year will be assessed on the 2010/11 themes listed above. There is no opportunity to be re-assessed on the 2009/10 themes.

This will be the case each year and therefore centres and candidates may wish to consider the implications of this when deciding in which series to enter for the special study unit and when considering whether, and when, to re-sit a special study unit.

G151 English Legal System

General comments

The performance of candidates in this session was generally of a higher standard than in June 2009 and similar to the performance in January 2010. It was pleasing to see the increased use of detail by many candidates in answers to some of the part a) questions and also the improved development of arguments in the discussion questions which often resulted in level 4 marks for part b) questions.

In this session, Question 2 on judges was very rarely attempted but all other questions were fairly equal in their popularity. The application questions 6 and 7 were particularly popular, with many candidates choosing to do both along with two questions from Section A.

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

Most candidates made a reasonable attempt at all four questions.

Comments on individual questions

Question 1 - A popular question.

a) The training of barristers and solicitors appears to have been the favourite part of this topic area for candidates and the majority appear to have read the question and talked about both solicitors and barristers.

The vast majority of candidates put the stages of training for both barristers and solicitors in the right order although the weaker answers demonstrated confusion as to when a barrister is "called to the bar". Better answers reached level 4 marks by including the correct names for, and a good level of detail about, each part of the training for both barristers and solicitors. Weaker responses tended to be confused with respect to training of barristers, and quite a few did not demonstrate understanding of the purpose of pupillage. The weakest responses only reached level 1-2 as they did not name the different stages of training and produced very vague answers. Many candidates wasted time by focussing too much on initial qualifications (GCSEs and A levels) which was not really relevant to the question.

b) - This was generally well answered, with the vast majority of candidates able to discuss the problems of cost, duration and competition and therefore gain level 3-4 marks. The weakest responses focused too much on costs without discussion of any other aspects and therefore gained level 1-2 marks.

Question 2 - This was not a popular choice of question and was not generally done very well by those who did select it.

a) Candidates tended to answer from a criminal perspective when the question clearly stated civil. Consistently, answers focused on which judges would sit in which courts, with little reference to the actual function of judges. It appeared that many candidates did not understand the word "role". The better answers (which rarely gained above level 2-3 marks) did identify that the role of the judge is different at first instance and at appeal and gave some information about their role in both levels of court but there was very little detail even from the better candidates.
b) This part was answered significantly better than part a) by the majority of candidates. The majority of candidates discussed expertise and cost and gained at least level 3 marks.

Question 3 - This question was very popular and generally well done.

a) The best candidates were able to describe each of the types of ADR in some detail. A significant proportion of candidates achieved answers in the high level 3/low level 4 range having missed out on key details of arbitration. Although most candidates mentioned the *Scott-Avery* clause, some did not appear to actually understand what it is – suggesting that it solved potential problems before they happened. Weaker answers stated that the types of ADR were stages to go through. This lack of understanding prevented such candidates from gaining more than level 2 marks. Better answers emphasized the difference between binding decisions and non-binding. It seemed some candidates had been taught tribunals, which is not covered within the specification. Therefore, a number of candidates wasted time giving a detailed description of tribunals.

b) The best candidates gained full marks for this question by comparing arbitration to using the courts. The weakest candidates failed to read the question properly and provided answers comparing ADR and courts generally or compared arbitration with other methods of ADR which rarely gained more than level 1-2 marks.

Question 4 - A popular question, tackled with variable levels of success.

a) There were some excellent answers which went beyond the criteria required for full marks. As well as a comprehensive coverage of all of the aims of sentencing and of aggravating and mitigating factors, which could gain full marks, some candidates also referred to statutory sentencing guidelines with regard to drug related offences and repeat offenders of serious crime. Weaker answers tended to be better at explaining factors and picked up more marks here; on aims, for example, some responses merely stated that deterrence deters people and rehabilitation rehabilitates people, etc.

b) The best responses suggested particular sentences which were likely to prevent crime and evaluated how well they were likely to work. The weakest responses demonstrated that candidates had not read the question properly, referring just to aims in general and failing to suggest any actual sentences, and so earned no marks.

Question 5 - This question was popular with some centres but not with others. It was generally fairly well done with the majority of candidates reaching at least level 3 marks.

a) The best responses gave detailed answers covering qualifications, selection, vetting and challenges. Most candidates demonstrated strength regarding qualifications and disqualifying factors, as well as the general process, but less knowledge of valid reasons to excuse and challenges. Only occasionally did responses cite old law with regard to disqualification. The weakest responses confused qualifications for jury service with the qualifications required for magistrates.

b) The best answers focussed on the question asked and discussed relieving public pressure on the jury, inability to say on appeal how a decision was reached, susceptibility to bullying within the jury room, usong cases such as Young to back up arguments. Weaker responses demonstrated that candidates had not read the question, failing to discuss reasons for the secrecy and instead talking about the media and juries generally.

Question 6 - A popular question for which many candidates were well prepared.

a) The best responses explained who could grant bail and the reasons and factors that would be taken into account. They demonstrated an understanding of the presumption in favour of bail and could describe unconditional and conditional bail in some detail. The majority of candidates, however, still failed to explain what bail is and the presumption in favour of bail, which prevented

them from gaining top level 4 marks. The weakest responses tended just to give a list of conditions without any real description of the reasons or factors. This could not gain more than level 1-2 marks.

b) It was pleasing to see most candidates using the name “Kelly” when advising her of the decision about bail. The best responses demonstrated that candidates had read the question carefully, identified the issues and commented on each issue concluding why it would make it more or less likely that Kelly would get bail. Many candidates gained full marks for this. The weakest responses simply identified issues in the scenario and then failed to apply to the situation any criteria for deciding bail. These gained a few marks for identifying the issues but could not get beyond level 2.

Question 7 - A popular question.

a) There were a few excellent answers Most candidates scored very well on the detention and interview aspects of this question but were less well able on searches. Even better responses tended to confuse strip searches with intimate searches and tended to suggest that same sex officers could carry out intimate searches provided only half of clothing was removed at one time. Alternatively, candidates thought that for intimate searches a same sex medical practitioner was required. Surprisingly few responses achieved top level 4 marks in this question even though police powers is usually a favourite topic with candidates. Although many responses achieved level 3, there were inaccuracies with regard to searches and samples. Many candidates lost sight of the question and focused on police powers rather than the rights of the individual. Many mistook PACE guidelines for absolute rights, such as the right to a phone call. The weakest responses concentrated on rights to sleep and food.

b) The best responses demonstrated a good knowledge which was applied well, resulting in level 4 marks. Unfortunately the lack of certainty with regard to searches and samples that was apparent in most candidates, was reflected when it came to applying police powers to Matilda's treatment. A common mistake was to confuse the way strip searches should be conducted with that for intimate searches. Many responses did not differentiate between the fingerprints and the blood. Few responses made the link between the 30 hours and the offence of burglary.

G152 Sources of Law

General Comments

The overall standard of performance was variable, with few outstanding responses. Given that a very student friendly topic was on the paper it was disappointing that many candidates did not flourish. The use of case law was again disappointing and, despite the comments in previous reports**,** candidates repeated the same mistakes. A significant proportion of candidates did not support their answers with case law and only a small proportion could fully explain the relevance of the case.

The use of the source was very disappointing. This was particularly evident in the stronger scripts, where candidates failed to access level 4 because of lack of skill in using the source. It is important to note that a candidate should be able to access over twenty marks by using the source. This is an easy issue for centres to address and can, in some cases, increase candidate performance by a grade..

The majority of candidates attempted the delegated legislation question. The Precedent and Law Reform question was attempted by a minority of candidates. Law Reform has been asked on a number of occasions recently. This topic has been lightly assessed in the past. It is a topic that has limited scope as a full source and it will be limited to being paired with another source of law to make a full source.

The AO2 aspects of the question were again disappointing. There were two main issues: a lack of awareness regarding the range of points and an inability to develop a point. Candidates cannot get into level 4 without having a developed point. The use of a writing frame may support centres to coach the skills of AO2.

Examples of writing frames:

Point		Point
Evidence	or	Evidence/Explanation
However		Example

The number of candidates that attempted both questions was very low, which is encouraging. Those that did tended to have little or no knowledge beyond the support from the source.

Comments on Individual Questions

Question 1 - Delegated Legislation

A majority of candidates attempted this question. Delegated legislation remains a popular choice for many candidates. There was a small number of outstanding answers. The majority of candidates were bunched in the mid range. This was quite surprising considering the nature of the questions. A number of candidates had been prepared for certain questions and gave stock answers; when the question is different from the one that they have prepared for, this simply disadvantages candidates.

a) The responses in this area were generally good. Most could identify and explain a range of points associated with the question. There was good use of examples and explanations to support points. A significant number of candidates focused on the types of delegated legislation and did not make it relevant to the question. As a consequence, the marks for those candidates were lower. This is a clear example of candidates being prepared for a set question and it will impact on the grades awarded. It is important that candidates focus on the question set.

b) This was again a strong area. Centres are to be congratulated on how well they are teaching this area of the paper**;** most candidates are well versed in the appropriate technique to secure level 4. Most candidates could identify the correct type in all scenarios and, therefore, at least achieved level two for each answer. The support for parts **i)** and **iii)** was more limited as candidates discussed orders in council and by-laws generally as opposed to supporting their answers in line with the question. This, therefore, prevented a number of candidates achieving full marks.

ci) The majority of candidates could discuss both aspects of the question. As a consequence, the average answer was in level three. Most candidates could support their answers by giving detail on the various controls. The use of case law was limited and that prevented a number of candidates lifting into level four. The use of the source was also inconsistent for this question.

cii) This was a very disappointing area. The average answer was in level 2, for various reasons. First, candidates focused on the advantages and disadvantages of delegated legislation and then drifted into this question. Second, a number of candidates clearly had no awareness of the content relevant to the question and grasped at marks. This limited a number of candidates from achieving in the 50+ mark range overall.

Question 2 - Precedent and Law Reform

This question was attempted by a minority of candidates. Responses were very varied. Most candidates could perform well on the precedent aspects of the question, but were more limited in their performance with regard to law reform. The use of case law was disappointing in this area, with a number of candidates unable to develop their responses via this route.

a) Nearly all candidates could give some sort of definition of the practice statement. A number could not support or develop their responses through appropriate case law. Some candidates supported their responses with the case of *R v R* but there was not appropriate citation in this area. Due to this case being used in a revision text, candidates were given benefit of the doubt but centres must be aware that this will not be extended in future sessions The majority of candidates could not get beyond level two due to their level of understanding.

b) This was a successful area for most candidates. Nearly all could identify the central theme of whether the court was bound or not and could explain why. It became more difficult for a number of candidates to link to another relevant point - be it a case or the source etc. At the lower end, candidates relied on the source or the use of distinguishing. Again centres should be applauded for the fantastic work they have done in teaching this part of the exam. Many grade E candidates will achieve the majority of their marks from this section due to efforts and diligence in teaching this skill.

ci) This was not a successful area. There were only a handful of candidates who achieved full marks and a small proportion who achieved level four. A number of candidates still discussed the composition of the law commission, which was not the focus of the question. It would appear that a number of centres had not taught this area and that has

had an effect on the range of marks. Most candidates relied on the source and could offer little in terms of examples and explanations relevant to the question.

cii) This was the first time that AO2 has been tested in this area since the curriculum 2000 changes. As a consequence, most candidates had not been prepared for a question of this nature. Many candidates, therefore, could offer little beyond the source or tried valiantly to devise some relevant AO2. The average response was just into level tw2o with only a handful of candidates being able to access level 4.

G153 Criminal Law

General Comments

This sitting of G153 was for the vast majority of candidates their first attempt at this unit and it produced responses to all questions ranging in quality. The paper's wide ambit reflects the breadth of the specification and Centres are advised to consider this when teaching and advising candidates on strategies to bring exam success. However, there is also an appreciation that it is unrealistic to expect candidates to deal with a multiplicity of offences and defences within one hypothetical problem question, and the format of this paper reflects that. Many candidates remain most at ease with the traditional essay format, but there is an encouraging trend of improvement in problem solving skills, accompanied by a greater determination to apply knowledge to the scenario. Indeed, in some circumstances candidates are so enthusiastic in their application that they forget to support their assertions with the wide-ranging and accurate citation necessary to access the higher mark bands by striking the correct balance between the AO1 and AO2 components. In questions focused on statute law, with the Theft Act 1968 a pertinent example, it is important that candidates manipulate the relevant sections and subsections accurately and have a through knowledge of their intricacies as well as being able to give accurate definitions.

In Section A it is encouraging to see candidates using the question as a springboard but there is a need to do more than simply reiterate its words. To access the higher mark bands, overarching comment is necessary on the area of law at issue and on underlying general principles, as well as proposals for reform and the influence of policy. Responses are differentiated in terms of the specific level of knowledge and citation alongside the sophistication of comment and its relevance to the question posed. It is also important to encourage candidates to move beyond reliance on a prepared answer, which may well adopt a different slant on a particular topic; those who can provide a thoughtful, if novel, approach to a question should have every confidence that they will be rewarded appropriately. Principal Examiner tip – to achieve high marks, good knowledge this must be supported throughout an essay by thoughtful and relevant comment and analysis.

Section B rewards knowledge and application along with close reading skills and therefore discussion of burglary in a question identified as concerning theft, for example, is unnecessary and diverts time away from the material essential to gain marks. Differentiation is evidenced by the detail used to support identification of relevant issues, whether statutory or case law, with an increased level of knowledge correlating clearly to the clarity and confidence with which propositions are expounded. Candidates must demonstrate a degree of understanding of the case and its context to be rewarded; thus fewer cases explained and used accurately will achieve more than a list of case names with no other amplification. Once knowledge has been identified and explained differentiation is evidenced by the accuracy and confidence with which it is applied to reach a logical conclusion. Principal Examiner tip - whilst identification of relevant areas of law is often well done, application of the law is often less confident and there is sometimes a paucity of legal authority and citation as well as a tendency to read the question insufficiently carefully in terms of the areas of law requiring explanation and application.

In Section C some candidates struggle as they spend a disproportionate amount of time on Sections A and B with the cumulative effect that their responses are short and their failure to pick up on key nuances suggests a lack of thinking time. The skills required in this section are different to those tested elsewhere and candidates who embrace this difference are often those who reach the higher mark bands. Centres are advised to encourage candidates to make clear distinctions between their answers by indicating clearly which statement they are responding to. Candidates also need to think more carefully about exactly what is said in the statement and respond accordingly as well as reading all the statements carefully first so as to place

information relevantly and to avoid repetition. A strategy which is becoming more common, and achieving success, is to complete Section C first and then move on to the other sections of the paper. Differentiation is founded on application of legal principle and legal reasoning in response to four distinct statements and this format should be the basis of a response. General introductions and conclusions are superfluous but a response focused on the scenario and its accompanying statements is rewarded when candidates reach a conclusion based on their understanding of legal principles in a logical, deductive format. Marks are awarded for application skills and so case citation and discussion is unnecessary. However, achieving level 5 does require a candidate to reach a conclusion on the proposition to which they are responding. Principal Examiner tip - vague answers or hedging of bets cannot gain credit. Not addressing each statement in isolation can result in erroneous reasoning and conclusions and an essay format, whilst demonstrating impressive AO1, does not produce AO2 marks which come from application.

Standards of communication are generally acceptable but all candidates would be well advised to work on their accuracy of language and specific legal terminology to inform the quality of their answers.

Comments on individual questions

Section A
Question 1 – Attempts

Answers to this question frequently contained good AO1 material although a good number still spent over long on the pre 1981 tests. These do have historical relevance and form the basis of some AO2 points but the focus of the question is clearly on the impact of the 1981 legislation. Perhaps unsurprisingly the *actus reus* aspects tends to be the best handled, despite *mens rea* being equally important in the construction of criminal liability, and there seems to be a widespread misapprehension as to the *mens rea* needed for an attempt and the sentencing structure if an offence is proved. Many of the cases such as *Gullefer*, *Campbell*, *Geddes*, *Jones*, *Anderton v Ryan* and *Shivpuri* were commonplace but candidates should appreciate that to make good use of these authorities in an AO2 context the accuracy of knowledge is crucial in explaining the fine lines in this area of law. In terms of AO2 there was some encouraging sophistication in comment, often drawing out such issues as inconsistencies relating to murder, police efficiency and public protection as well as proposals for reform in addition to more commonplace remarks about the line between preparation and embarkation on the crime proper.

Question 2 – *Mens rea* of murder

This was the least popular Section A question and although there were some encouraging, and sophisticated, responses it was also where those who were not confident with attempt or duress languished. As a consequence responses ranged from the confident exposition of some complex and finely nuanced tests, through cases such as *Moloney*, *Hancock* and *Shankland*, *Nedrick*, *Woollin* and *Matthews and Alleyne,* to unfocused statements of fact which often diverted into voluntary manslaughter, causation or recklessness. Inevitably this directly correlated to the sophistication of AO2 remarks but some candidates charted the development of the law analytically and accurately via incisive comment on its current state accompanied by references to recent Law Commission proposals as to the adoption of a system used in the USA. At the other extreme AO2 remarks were vague, unsubstantiated and colloquial. Despite the passage of time and numerous references in previous reports of this kind it is still a source of wonder that some candidates believe murder to be defined in the Homicide Act 1957 and it would be good to see this spectre laid to rest.

Question 3 – Duress

This popular question gave candidates a wide canvas on which to paint a picture of an area of law comprising duress by threats and circumstances as well as necessity; those who reached level 5 engaged with more than one of these areas. Many demonstrated good knowledge of the relevant law, although the debate surrounding immediacy/imminence caused a good deal of confusion, closely followed by the requirements of the *Graham* test, and there was a surprising paucity of reference to *Hasan*. There was some confident handling of material on duress of circumstances and necessity, with the latter occasionally referred to as duress of necessity. Pleasing AO2 comment related to wider general principles, policy influences and the inconsistencies within the defence although less able candidates tended to do little more than repeat the question. A good tip is to link AO2 to AO1 material for greater effect, rather than dealing with all the factual material and then trying to comment on the law in isolation.

Section B

Question 4 – Defences

This question's new format and was both popular and successful. Relatively few candidates wrote at length about the non fatal offences, with most concentrating on the defences which were the focus of the scenario. Automatism was usually well handled, with candidates able to explain key cases such as *Hill v Baxter*, *Whoolley and Quick and Paddison* before accurately and correctly applying them. Insanity was less confidently explained and although there was widespread reference to the M'Naghten Rules their detail was often only vaguely stated and using cases such as *Sullivan* and *Hennessy* did not always lead candidates to the conclusion that the defence of insanity would be available to Bradley, even if he was reckless in not taking his epilepsy medication. The defence of intoxication revealed a good number of candidates to be unclear on the crucial difference between the voluntary and involuntary limbs of the defence in terms of application to Carol's situation. Key cases such as *Kingston* were not always mentioned, with a great deal of time being spent on cases such as *Majewski* and *Lipman*. Self defence was often identified but lacked relevant detail, although it was heartening to see a good number of candidates refer to the Criminal Justice and Immigration Act 2008. Some used cases such as *Palmer* and *Clegg* well whilst others were more colloquial in their application and some wrote about mistake rather than self defence. Candidates who identified all the relevant defences were able to reach level 3 for AO2 and then move up through the mark bands depending on their skills of application with the aim of reaching a logical and appropriate conclusion.

Question 5 – Theft

This was a popular question and there were some high quality answers but it also trapped the unwary. With the focus on theft clearly indicated by the rubric of the question those who wrote about burglary did not gain any credit for this part of their response. Additionally, this area of law is statute based and therefore required confident and accurate definitions and manipulation of the relevant sections. Particular discriminators were Sections 5(3) and 5(4), Section 6's requirement of an intention to permanently deprive rather than a physical manifestation of such behaviour and the situation relating to confidential information dealt with in *Oxford v Moss*. Dishonesty was not always accurately explained, particularly the intricacies of the Ghosh test. In terms of AO2 many candidates applied the law in a general way but missed out on its finer nuances although there were some very well created, succinct and sophisticated responses which moved through the stages of the scenario logically using good legal skill. Candidates were able to accumulate some marks by repeated vague assertions that Yuri had appropriated property which belonged to another and that he was dishonest but could not access the higher mark bands without more detailed and pertinent remarks. With reference to Andrew a good number of candidates seemed to think that Section 6 was key to both situations and, whilst his

intention to permanently deprive Yuri of his season ticket alongside issues of dishonesty was fundamental, it was not the key component of any discussion relating to the exam paper.

Question 6 – Involuntary manslaughter

This was another popular question and there were some very impressive answers although it was also where weaker responses tended to include irrelevant offences, such as murder, and spending too long on the important but not fundamental issue of causation. Some engaged on an overlong discussion of the different types of manslaughter whilst others made no specific mention of the most relevant category of the offence, in this instance being gross negligence. Digression into discussions as to the merits, or otherwise, of protecting doctors and whether the UK should have a Good Samaritan law did not gain marks. Responses demonstrated some candidate confusion in terms of liability but there were also some gratifyingly succinct, accurate and logical responses. There was plenty of good explanation of the duty situations relevant to the law of omissions with cases such as *Stone* and *Dobinson*, *Pittwood* and *Dytham* regularly referred to whilst *Adomako* was often cited but less thoroughly explained or applied. Causation cases of *Smith*, *Cheshire* and *Jordan* featured heavily and accurate knowledge of case facts and underlying principle helped candidates move up the mark bands in terms of both AO1 and AO2. There was some accurate and logical application but many answers were less confident and there does need to be some discrimination on the part of candidates as to relative levels of liability to access higher marks.

Section C
Question 7 – Specific defences to murder

This was the more popular of the Section C questions and the mark scheme was adapted in Statement B and C to allow candidates to acquire marks by different routes. There is still a tendency for candidates to use citation, which is not required, and to couch their responses in general remarks about the law rather than using the scenario to structure and guide their answer. A good number of responses do not reach a conclusion as to the veracity or otherwise of the statement and it is not possible to reach level 5 without this. In Statement A most dealt with the *actus reus* of murder but less frequently covered the *mens rea* element of the offence. In Statement B marks could be achieved through the route of cumulative provocation or through application of the characteristics relevant to Carly and the reasonable man. In Statement C credit could be achieved whether a candidate decided that the time it took Carly to kill Tom constituted a 'cooling off' or not and in Statement D there was a need to apply the key elements of diminished responsibility, a task which seemed to trouble a good number of candidates.

Question 8 – Non fatal offences against the person

The placing of non fatal offences in Section C is a direct response to its prominence on the Special Study paper, as here application of relevant law brings success. In Statement A many applied the basic principles of battery but not all were confident on the crucial consent issue. Statement B saw some digression into Section 18 OAPA 1861, despite the direction given by the rubric, but most candidates did pick up on the concept of transferred malice. Statement C revealed some confusion on the part of candidates as to whether concussion can constitute ABH and there was less clarity on the *mens rea* requirements of a Section 47 OAPA 1861 offence. In Statement D many candidates picked up on the relevant issues which were Avril's consent and the judicial analogy of tattooing to 'personal adornment'. To conclude, candidates need to put forward statements which devolve logically to a conclusion although it may be possible to have more then one viable line of reasoning. Knowledge is essential but its de facto exposition is not required as marks are awarded for the clear, logical reasoning which mirrors legal skills.

G154 Criminal Law Special Study

General Comments

This was the second sitting of the Special Study Paper under the 2010 criminal law theme of non-fatal offences and consent. This theme generally proved accessible to candidates in all three questions. However, given the general comments from the January report and the narrowness of focus of the paper, candidates would have been expected to have tackled each question with far more clarity and confidence than was seen. This is particularly concerning, given the following assistance available to candidates: the reduced number of cases from the source materials from which question 1 can be taken , compared to previous special study papers, the availability of AO2 in the sources for question 2 and the availability of definitions in Source 1 in each option for question 3.

Time management continues to be a problem, with candidates spending a disproportionate amount of time on question 1 in particular. This is to the potential detriment of the other two questions. Candidates should be advised to try to work to the mark per minute guidance, and then spend the extra time on reading, planning or addressing questions 2 or 3. It is important to note that whilst the theme of the paper will change on an annual basis, the methods and skills to be employed by the students to allow them to tackle the paper successfully will not change. Centres achieving strong marks have clearly appreciated this and therefore have responded well to the change to an annual theme. They have achieved this by explaining the skills required and this is reflected in the candidates' work.

Unfortunately, many candidates did not take this opportunity to access high marks, even though this was the second paper in the theme.

Comments on individual questions

Question 1

Question 1, in its traditional style, called for an examination of a case from the source materials: in this instance the conjoined appeal of *Ireland:Burstow* and the significance of the development to the law on non-fatal offences made by the case. Again only AO2 marks are available for this question. In order to achieve high marks candidates were required to have identified one or more of the three critical points arising from the judgment: whether a psychiatric illness can amount to ‘bodily harm’; or that the court (in Ireland) accepted that a silent ‘phone call was capable of constituting an assault, which, in this case, lead to a conviction under section 47; or to consider (in *Burstow*) the meaning of the word ‘inflict’ under section 20 and whether a conviction under that section could be secured if there was no direct/indirect application of force. Most candidates achieving a level 5 answer explained all three critical points clearly together with a linked case and made a clear comment on the significance of the case (as required by the rubric).

However, this level could also be achieved by explaining clearly <u>one</u> of the critical points, together with a clear explanation of a linked case, discussion of any other relevant point, for example the judges' use of the ‘always speaking’ rule of interpretation, and then a clear comment on the significance of the case. It was pleasing to see that most candidates were able to explain (albeit with differing degrees of clarity) all three critical points. However, some such candidates were unable to get into level 5 since they had failed to use a linked case or commented on the significance of the decision. The question produced generally well answered responses given the complicated subject matter which was very pleasing to see. The majority of responses explained at least two critical points with reasonable clarity. The least common critical

point was, not surprisingly, the issue of 'inflict', although when it was discussed most candidates were able to explain the point with a high degree of precision.

The question produced a range of responses and there were some excellent responses showing full understanding of the skills requirement of the question and thereby gaining maximum or near maximum marks. Again, however, despite previous reports explaining this point, candidates achieving middle ranking marks continue to lose out on the high marks by failing to address the question itself, in this case, the issue of the cases' significance. More alarming is however, the traditional and worrying trend of writing essays for this question. This may be, for some candidates certainly, a reflection of their inability to write a thorough answer to Question 2 and thus a feeling of being obliged to write everything they know in question 1. Candidates are advised to follow the 'mark a minute rule'.

Two other points are worth noting with this question. Firstly, the majority of responses were able to provide a linked case showing the development of law; however, some candidates would simply insert and not explain a relevant case or use an irrelevant case with a vague link for example *Tuberville v Savage*. Secondly, few candidates (whilst not always required to) used the opportunity to explain any other relevant point linked to the case.

Question 2

This question requires a focus on the substantive law theme on the paper, with the best discussions obviously commenting also in the context of the overarching theme (role of judges, use of precedent and the development of law). The question here was whether public policy and interest is an increasingly important factor in the development of the law of consent, hence the questions clear focus on AO2 in the question. Other than Source 6 from which the quote was taken, Source 2 contained some useful information as well as much comment that is useful in answering the question. Source 6 contains, perhaps, the most controversial example, or species, of consent – that of the potential conflict between the decisions of the cases of *Brown and Wilson* giving candidates ample opportunity to begin a high level discussion in the context of the overarching theme sufficient to secure high AO2 marks. However, there was a tendency for many candidates to focus entirely on this type of example or species (sadomasochism/tattooing) and ignore the various other examples of consent - hence losing out on further AO2 (and AO1) marks. Indeed many candidates simply followed the unconfirmed line that *Brown* was a homophobic decision and used *Wilson* simply to support their conclusion, without looking at cases like *Emmett and Meachen* to perhaps balance out their conclusion. This resulted in many weak responses. Where candidates did access these wider species of consent, they did generally gain high AO1 marks. However, many candidates could then not match these high AO1 marks with high AO2 marks. Much AO2 comment lacked sophistication and direction both to the question set and the levels of assessment and consequently it became rare for responses to reach beyond level three.

For AO1, candidates could have secured high marks by providing detailed definitions of consent and explanations of its many species, illustrating them with numerous cases that support the issue of public policy considerations. There were eight cases in the resource material so candidates would be expected to consider at least this many and have used relevant cases in their answers to achieve the level 5 descriptor. However, since many of these cases considered the development of non-fatal offences rather than consent, candidates struggled in many answers to use more than four or five, often simply by naming them without giving any explanation. A common failing, which did not lose candidates marks but inevitably cost them time that might have been better spent, was to engage in part in a generalised essay on non-fatal offences therefore at times discussing, in detail, the offences and their definitions which was not required. One other common failure of candidates was their discussion, sometime at great length, of murder and euthanasia which was irrelevant detail. Few candidates were able to provide detailed common law definitions of consent.

As has been reported in previous reports many candidates did refer back to the quote throughout their response to question 2 ; where this was done thoughtfully it gained appropriate credit. Unfortunately in many instances it was merely done mechanicall, without real thought or development of arguments.

Question 3

The application question was in general well answered, with many candidates who scored poorly on question 2 making up their marks here. Question 3 incorporated the customary three separate small scenarios based on three separate characters, all worth 10 marks. Candidates should have found the individual questions accessible since each concerned different situations analogous with existing case law and in consequence gave the candidate a direction in which to pursue the most appropriate offence the character was likely to be charged with and whether the defence of consent would avoid a conviction. For Level 5, candidates ought to have included appropriate case illustration in support of application and also to have focused on the critical points evident in the scenarios: for **a)** that it would be highly unlikely that consent is possible since the character had gone well beyond the acceptable behaviour in the sport; for **b)** either the issue whether it would be acceptable conduct in a marital relationship or whether the defence would not be allowed because of injury was for violent sexual purposes; and for **c)** either the defence would be allowed if the actions were deemed as part of a sporting contes/horseplay or refused in the light of public policy considerations to refuse fighting or brawling. Good discussion of the above in relation to the most appropriate offence potentially caused with appropriate cases cited in support would allow a candidate to receive high AO1 and AO2 marks.

The questions attracted good responses in general with many able candidates being able to demonstrate both thorough knowledge and high level application skills whilst weaker scripts showed much more limited evidence of either. Again this is a question where the candidates could have adopted a structured approach. This would have gained candidates higher marks. One frequent weakness in answers was that the *mens rea* of the offence was rarely mentioned and in consequence rarely applied to the scenario. Another weakness was that many candidates incorrectly identified the potential offences despite key words like bruising, biting, stitches. It was pleasing to see good answers were able to relate the injuries to the CPS charging Standards/ Guidelines and were quickly and accurately able to identify the most appropriate offence. Having identified appropriate offences in each scenario it was again the level of understanding and the quality of application of the legal principles that was the real discriminator.

For part **a)** answers were generally good, with the appropriate species of consent being identified and at high levels being explained accurately and effectively in combination with the likelihood of a very serious offence being committed. In **b)** the stronger scripts provided and fully applied either the line of thought from *Brown* or that from *Wilson*. Many candidates considered both. Weaker scripts tended to focus entirely on a mini-essay on consent without stating the likely offence the character would be charged with. There were mixed answers to **c)** since the scenario seemed to confuse many candidates as to what was exactly happening. There was nevertheless a large number of candidates who could balance either critical point with some detailed observation and application of the principles in *Jones* with that of the *Att-Gen's Ref No6* 1980.

G155 Law of Contract

General Comments

The general standard of answers in this session was good and candidates are able to differentiate their answers well to the demands of the three different styles of question. In Section A candidates were, for the most part, able to address their answers to the specific question set and to develop their AO2 comments in a structured and thoughtful way. There were few answers where candidates merely wrote all they knew about a subject in an indiscriminate way, the quality of the AO2 comments tending to reflect a depth of knowledge of case law.
In Section B candidates were able to use case law effectively to support their answers. A discriminating factor was the extent to which analysis of possible alternative outcomes was explored - an example would be in the last part of the frustration problem question, where candidates could discuss the distinction between a contractual obligation becoming impossible or merely more difficult. In Section C many candidates were still citing case law unnecessarily and in some cases failing to give a clear answer as to whether they agreed or disagreed with the statement.

Comments on individual questions

Section A

Question 1 - Acceptance and revocation

A popular question, focussing on acceptance and revocation of unilateral offers. Candidates were able to discuss a range of relevant case law and in many cases there was very good AO2 discussion on themes such as the difficulty in identifying the moment when acceptance by conduct begins, particularly in situations such as reward cases, and the problems caused by trying to revoke offers in such circumstances.

This question highlighted the need for candidates to pay close attention to wording of the task. There was no comma between acceptance and revocation, thus both related to unilateral offers. Some candidates discussed acceptance in general, including areas of law such as the postal rule; these answers were credited. Credit was not given to answers which discussed revocation in general, however, as this approach is not supported by the question.

Question 2 - Incorporation of terms

This question was not as popular as might have been imagined, given the close link to the special study topic of exclusion clauses. There were some good answers, however, and evidence of well developed arguments relating to the AO2 theme of protecting people from terms they have not properly considered. In the best answers there was also some very good reference to the mistake cases of *non est factum*. Some candidates inadequately distinguished between this question and a more general essay that would have appeared on the special study paper, including irrelevant material on interpretation of terms and topics such as *contra proferentem*.

Question 3 - Economic duress

A straightforward question and a good standard of answers; most candidates directly tackled the AO2 theme of judicial discretion on the application of the rules. A significant number of candidates included a lot of material on non-economic duress that was of limited relevance, a few candidates also made reference to undue influence, which was not likely to be credited in such a clearly directed question. There was also evidence in answers that candidates had

learned a pre-prepared answer based on whether economic duress allowed the judge to favour smaller parties in a dispute. Candidates cannot achieve the higher mark bands without addressing the specific issues in the question.

In some very good answers candidates based much of their answer on the criteria in *Pao On* and the way in which they have been subsequently applied. There were also some good discussions of the reasons why economic duress was not found in *Williams v Roffey,* although a few candidates mistakenly argued that it was found in that case.

Section B

Question 4 - Problem based on mistake

This was the answer that produced the largest number of very weak answers. There were three parts:

A mutual mistake scenario – candidates were most likely to correctly identity this and make reference to relevant case law such as *Raffles v Wichelhaus*.

A sale of goods scenario, where the shopkeeper failed to disclose that goods were unsuitable for an intended use. This could have been approached as either an implied terms issue – that the goods were not fit for the purpose made known by the customer, or as a unilateral mistake where the shopkeeper knew of the other party's mistake, as in *Hartog v Shields*. Some who recognised the potential for unilateral mistake in this scenario went on to discuss the 'rogue' cases which have limited relevance in this context.

A lot of candidates approached this as an issue of misrepresentation, either imagining that a misrepresentation had been made when the scenario was very clear that this was not the case, or claiming that this was a case where silence was capable of acting as a misrepresentation, which it isn't. Some candidates gained credit for explaining that this was not a misrepresentation but were not able to identify other remedies that could be more usefully sought.

The last scenario was an incorrect price on the internet; candidates could gain marks by deconstructing the events in terms of offer and acceptance and also by identifying this as a unilateral mistake if the customer was likely to be aware of the other's mistake. Many candidates gained marks from the offer and acceptance approach, but few were able to discuss the mistake issue. Some candidates approached this section as a misrepresentation issue as well - this was not a suitable approach.

Question 5 - Problem based on privity

This was generally well done, with most candidates recognising the issue of privity and being able to discuss both the main concepts and the exceptions that applied. Most candidates were able to discuss the 1999 Rights of Third Parties Act, which is essential for a well developed answer on this subject, in the best answers candidates were able to discuss the act in detail and debate the arguments for it applying in each case - for example in the last scenario, whether a contract between the builders and the roof company was made with intention to benefit a third party when it would have been acknowledged that they were to benefit but they would probably not have been mentioned or described in the contract. Candidates who discussed the strengths and weaknesses of such an argument were displaying higher level stretch and challenge skills and were rewarded at the higher mark band levels.

A common fault in weaker answers is a failure to read the question properly which then leads candidates to discuss incorrect areas of law. An example would be the failure to spot that the theatre ticket was purchased not by Daisy but by a third party; this error meant that privity was not discussed and candidates casting around for other areas of law such as misrepresentation

(the theatre claiming to have enough seats) or mistake (the theatre and Daisy thinking that the seats existed).

Question 6 - Frustration

This was by far the most popular question in Section B and for the most part was well answered. Most candidates were able to illustrate the law on frustration with relevant cases and also to make reference to the 1943 Act. A factor that differentiated the highest scoring answers was the ability to discuss whether the destruction of the bridge in the final scenario made performance of the contract impossible or merely more difficult and expensive, there were some very good references to *Davis Contractors v Fareham* on this point. Some candidates also gained credit for discussing the potential for Brigit to bring a case for anticipatory breach if Zack indicated that he was not going to fulfil his contract with her.

Section C

While most candidates approached their answers in this section in appropriate way, there is a significant minority who still include in their answers a lot of case citation, which is neither required nor credited, and who fail to indicate finally whether they consider the statements to be true or false. It is perfectly acceptable to debate two conflicting views on the statement but candidates will not gain full marks unless they conclude with a clear, reasoned answer which either agrees or disagrees.

Question 7 - Undue influence

This was the less popular of the two questions and also the least well answered. The first three statements concerned presumed undue influence in relation to a developed relationship, a recognised relationship and the requirement that for a presumption to arise there must also be a deal that requires further explanation. Many candidates were unclear on the difference between a developed and a recognised relationship and the circumstances in which they arose.

In the last statement candidates were required to recognise actual undue influence; many did so but there was also widespread confusion with constructive notice as in *RBS v Ettridge*.

Question 8 - Restraint of trade

The law on this topic is quite straightforward. The skills required for candidates to score well were the ability to identify the relevant factors in each case and apply the law to them. An example of this was debating whether there was a legitimate interest in restraining a financial director from working for a rival; weaker answers merely discussed the general propositions that a restraint would be justified in order to protect company secrets or client information, in other words restating the law. Stronger answers discussed the position in the company, the kind of information someone in that position would be privy to and the way in which it could be useful to a rival. In a similar way, better answers in relation to the IT technician question identified that this was likely to be a generic skill as opposed to being specific to the company, and so not justifying protection unless there were specific IT systems developed for that company.

G156 Special Study Law of Contract

General Comments

The papers produced the customary wide range of responses and there were some excellent scripts, with maximum marks scored on individual questions and overall. However, while the necessary skills were well in evidence in many scripts, for some candidates the failure to achieve good marks appeared more to do with using prepared responses and ignoring the rubric in the questions.

Candidate's use of the source materials was variable. A number of candidates failed to benefit from their use of the sources either by citing the source but no line references or by citing line references but without naming the source from which they came. In neither case could credit be given. Weaker scripts also tended to show some lack of subject knowledge or real understanding, which is very worrying considering the extent of the support in the source materials and also since all of the themes should be learnt effectively for responses on the various option papers. However, there were inevitably also some very appropriate references to and use of the sources and this enhanced the answers of the best candidates quite significantly.

Scripts in general demonstrated high levels of subject knowledge, with many candidates going well beyond the information available in the sources.

Comments on individual questions

Question 1
This question called for an examination of a case from the source materials, in this instance the case of *Olley v Marlborough Court Hotel Ltd* and the significance to the development of the law on exclusion clauses made by the case.

With only AO2 marks available for this question, in order to achieve high marks candidates should have identified the critical point arising from the judgment: that the best way of proving the clause is part of the contract is by a written document, signed by the party to be bound, or by handing them, before or at the time of the contract, a written notice specifying its terms and making it clear to them that the contract is on those terms, or by a prominent public notice. With this clearly explained, together with two other points discussed in depth, as well as a clear emphasis on development of the law by use of a linked case (as required by the rubric), candidates could have achieved level 5.

The question produced a range of responses and there were indeed many excellent answers showing good awareness of the skills required and a significant number of maximum or near maximum marks. A number of candidates focused on the issue of notice and the effect of the case on the doctrine of incorporation. These were given full credit but reached maximum only with focus also on the critical point and on the significance of the decision. Candidates achieving middle ranking marks tended to lose out by failing to address the issue of development, or by lack of clarity of points made, or by missing the critical point. Weaker answers tended to come from generalised essay style answers on exclusion clauses without real focus on the case or the key points arising out of the case. Some candidates, albeit achieving maximum marks, wrote far too much for the available marks and material was included which should have been used for question 2

Question 2
This question was the focus for discussion of the substantive law theme on the paper, with the best discussions obviously commenting also in the context of the overarching theme (judicial and statutory controls of exclusion clauses). The question here was on the extent to which the

approach taken to the control of exclusion clauses has been balanced by the principle of freedom of contract. Clearly this is a very accessible and wide ranging quote, with an obvious and straightforward AO2 emphasis. In this respect all the sources contain useful information as well as much comment that could be used in answering the question, besides Source 5 from which the quote was taken. The area is one where there has been much judicial development and so there would have been ample opportunity for high level discussion in the context of the overarching theme sufficient to secure high AO2 marks. With such a straightforward and accessible focus, the best scripts did indeed demonstrate some advanced critical awareness and clear focus on the quote. The best AO2 was able to move comfortably into a discussion in the context of the overarching theme, since the quote itself concerned controls and freedom of contract.

For AO1, candidates could have secured high marks by providing a detailed definition of exclusion clauses and also detailed explanations of the process of judicial control through the rules on incorporation, *contra proferentum* as well as other aspects of construction, or the approach taken to tickets or to vending machines. There are many cases in the resource materials, so candidates were expected to consider at least four, in addition to also providing an explanation and discussion of statutory controls, which again were to be found in the source material. UCTA and the Regulations should both have been discussed to achieve the level 5 descriptor. Most candidates dealt confidently with AO1 but few achieved level 5, the basic reason being that they failed to consider both judicial and statutory controls as directed by the task. Candidates achieving at a middle level generally did so because of a lack of range, limited explanations/definitions, undeveloped case law and little or no reference to statutory controls. Weaker scripts tended to provide few or no definitions or explanation, just a listing of cases with some facts.

Inevitably, in the case of both AO1 and AO2, candidates restricting themselves to a discussion of only one of judicial or statutory control were unable to achieve level 3, since such answers could not be construed as showing adequate knowledge for AO1 nor considering most of the more obvious points for AO2. In addition there was a significant number of scripts that failed to give any definition of exclusion clauses. As the question was focused on such clauses and is a legal concept it should have been obvious that such a definition was required; without it, level 3 was not attainable. For some candidates the failure may have been a result of giving too much general information in question 1 and then making no reference to their material in question 2.

Question 3

Some candidates did not comply with the instruction not to refer to UCTA. Credit was given where reference was made to the Regulations.

Generally the ability to recognise the pertinent area of law to each of the parts was good. The weakness was in analysis and application. However, many candidates did achieve level 5 marks and there were some outstanding legal skills demonstrated. Weaker candidates failed to focus on the key points relevant to the parts and/or did not provide any authority for their analysis. Some scripts indicated that the candidates had genuinely run out of time for question 3, mainly as a result of poor time management on question 1.

G157 Law of Torts

General Comments

This was the first June sitting of G157, with a large cohort of entrants. The majority of candidates attempted all three questions and there was little evidence of timing being an issue. The range of questions available to candidates was wide. Questions 3, 5 and 7 proved the most popular, with Question 4 attempted by fewest candidates.

Most candidates answered the questions in the order in which they appeared on the paper. An increasing number showed accomplishment across Section A and Section B questions; however, the style of the Section C questions still presents challenge, regardless of ability and performance on the other two questions, although there has been some improvement and evidence of teaching a clear and logical approach to the style in this sitting. This is very encouraging.

The range of responses to the questions was wide. There were a number of essays which showed an excellent level of knowledge and sophisticated use of case law in supporting both AO1 and AO2 comment. In order to achieve at the higher mark bands, candidates needed to make overarching comment on the area of law at issue, any underlying issues, proposals for reform and the influence of policy considerations. The majority of mid-level candidates tended to dwell on the factual aspects of the question, putting forward a generic discussion on the topic and not sufficiently addressing how the material related to the issues raised by the question. Centres should encourage students to use the text of the question to ensure that case law and other observations are focused and relevant.

There were some good problem-solving skills demonstrated in Section B although, in contrast to the January sitting, candidates tended to underperform on this section in comparison to Section A. Knowledge of case law was generally good; however, in question 6 (on the Animals Act 1971) the lack of reference to the relevant sections of the statutory provisions was disappointing. It was reassuring to note that candidates worked well to identify all of the individual incidents raised by the scenarios and then to apply the law accordingly.

The techniques needed to score high marks on Section C were still not consistently evidenced, with only a handful of exceptions. There continues to be a lack of structured, logical reasoning through the various stages to reach an informed conclusion. This was demonstrated by the variety of approaches across centres and an ongoing urgency to cite case law, which is not required. Centres should take active steps to discourage this unnecessary inclusion in Section C answers.

Comments on individual questions

Section A.
Question 1 - Private Nuisance
A straightforward question, focussing on the requirements for a claim in the tort of private nuisance and requiring comment on its effectiveness and relevance in the modern law of tort. The majority of candidates who chose this question had little difficulty in defining the tort of private nuisance and also in explaining what might amount to an unlawful and indirect interference with another person's use or enjoyment of land. This AO1 comment was dealt with in a good level of detail, with well chosen cases supporting the discussion. Well prepared candidates addressed both the nature of the interest in land and also the defences for a claim in private nuisance, which set the scene for the AO2 discussion. The AO2 component was poorly done by a number of candidates. Well prepared students were able to draw on the case law identified in the explanation of what amounts to unlawful interference in light of the question,

therefore making decent comment on effectiveness and relevance of the tort. Again, stronger responses drew on the nature of the interest in land and making part of this assessment. Weaker candidates were only able to draw on the essence of the tort being to balance the competing interests of neighbours and also to draw on the defences and the extent to which they may make the tort ineffective. There was little comment overall on the role of statutory nuisance or the link between private nuisance and the relevance of a claim in negligence.

Question 2 - Trespass to the Person

This was a very popular question in some centres. On the whole, there was excellent AO1 comment with accurate and detailed explanation of assault, battery and false imprisonment with supporting case law. A number of well prepared candidates were able to comment on the role of battery in a medical context. Some candidates also drew on the tort in *Wilkinson v Downton*. AO2 comment was inconsistent overall and in weaker responses was general and unsubstantiated. There was also evidence of an inability to draw on the cases outlined as part of the AO1 comment, which would have facilitated the discussion in the AO2. Well prepared candidates recognised the tort as being actionable per se and addressed the issue of the effectiveness of the tort of trespass to the person in protecting people from all unwanted personal interference in light of the three individual aspects. Good use was again made of the defences as a means of compromising that effectiveness.

Question 3 - Vicarious Liability

This was the most popular of the three Section A questions. Candidates were required to explain the concept of vicarious liability and to comment on whether or not it creates so much injustice to employers that it can never be justified. AO1 comment was very good across all abilities, with the majority of candidates recognising the need for there to be a relationship (usually one of employment) and then for the tort to have been committed in the course of employment. There was little difficulty in identifying the control test, the integration test and the economic reality test with candidates confidently putting forward cases or examples as illustrations of each. The discussion of what may amount to 'acting in the course of employment' was again wide ranging and examples varied from centre to centre, often supported by good and well chosen case law. Well prepared candidates confidently drew on cases such as *Lister v Hesley Hall*, *Mattis v Pollock* and *Lloyd v Grace-Smith* for liability for the crimes of employees. All candidates put forward some valuable AO2 comment, ranging from the basic justifications of the employer benefiting from the work of the employee to the employer being responsible for the work, the recruitment and the training of employees. Well prepared candidates drew confidently on the case law outlined in the AO1, showing limitations of vicarious liability in practice and examples of inconsistent rulings. Some candidates showed a good awareness of the overarching issues and themes in relation to vicarious liability and some sophisticated and well made points were made about judicial creativity and policy. Even apparently less well prepared candidates made some valuable and creditable observations.

Section B

Question 4 – Negligence

This question drew on candidates' understanding of a claim in negligence, negligence by omission, breach of the duty of care and causation. Performance here on the whole was disappointing, as the question seemed to be selected by those candidates who were less prepared. Better responses tended to focus on a straightforward claim in negligence and only a small number of candidates recognised the role of a duty of care for an omission to act. This lack of confident knowledge and understanding of the AO1 had a knock-on effect on the AO2 comment. Well prepared candidates recognised that Butch Builders were in breach of their duty of care through failing to act as a reasonable employer. They also recognised that harm was foreseeable, that likelihood of injury was high and that practical precautions could have been

taken to prevent Kris's injuries. In respect of Motley Hospital, better responses recognised the special relationship between doctor and patient and the fact that a junior doctor would be expected to perform at the same level as one more experienced. Most candidates recognised and applied the 'but for' test as part of this AO2.

Question 5 - Psychiatric Injury

This was the most popular Section B question, answered by the vast majority of candidates. Candidates were expected to outline a claim in nervous shock, to detail what is meant by a recognised psychiatric condition and the distinction between primary and secondary victims, and to illustrate these principles with reference to relevant case law. Well prepared students had little difficulty in presenting a wide ranging and well supported discussion of primary victims, rescuers, bystanders and secondary victims. This detailed AO1 then set the stage for a good performance on AO2. Candidates across the range of abilities correctly identified the status of each of the victims and logically reasoned the extent to which they would have a claim in light of the principles ,supporting with relevant case law. A number of candidates made comment on the influence of policy considerations here and had obviously prepared the topic in anticipation of its appearing as a Section A essay question. Candidates addressed the AO2 in light of each of the four victims. The most problematic of the four proved to be Wanda, where candidates were not aware of the case of *Attia v British Gas*. This did not impact greatly on the quality of the overall responses, however.

Question 6 - Animals Act 1971

This question focussed on the outline and application of the Animals Act 1971. There was some excellent AO1 comment by well prepared candidates, where the supporting case law and statutory provisions were accurately and comprehensively detailed. This tended to be on a centre by centre basis. Less well prepared candidates struggled with case names to support the AO1 and also demonstrated some lack of accuracy in relation to the statute. Where AO1 had been good and detailed, AO2 tended to be equally so, with the majority of candidates recognising the distinction between the dangerous and the non-dangerous animals and applying accordingly. There was some lack of detail on the AO2 in the application of sections 2(2)a, sections 2(2)b, and sections 2(2)c however logic and reasoning tended to be good throughout. The majority of candidates across all abilities recognised George's liability as the owner of the American Eagle Owl under section 6(c) and also that, as this is a dangerous species under section 6(2), liability would be strict under section 2(2). Well prepared candidates drew well on the case law outlined in the AO1 in illustrating their reasoning and application.

Section C
Question 7 - Occupier's Liability

This was the more popular of the two Section C questions. 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, showing good skills of reasoning to a supported conclusion. However, many candidates lacked clarity in their thought processes and did not focus on each statement in turn. Amongst weaker students, there was a tendency to repetition as they discussed their more prominent observations from the scenario rather than each statement in turn.

Statement A was generally well answered, with each of the four elements being addressed by the majority of candidates. For Statement B ,a number of candidates did not acknowledge that Manjit becomes a trespasser when she exceeds her permission as a lawful visitor by entering the prohibited area. Equally, the three aspects of section 1(3) OLA 1984 were overlooked. In Statement C, again candidates overlooked that Manjit had become a trespasser by exceeding her permission. A number of candidates did not recognise that under section 1(6) OLA 1984 the Hotel could claim volenti only if it can show that Manjit freely accepted the risk. For Statement D,

again a number of candidates overlooked that Manjit had become a trespasser; this was important in recognising the scope of the 1984 Act in relation to damage for property.

Question 8 - Rylands v Fletcher

A large number of students failed to recognise for Statement A what would need to be proved for a claim in Rylands v Fletcher, especially the accumulation of something likely to do mischief if it escapes. However, it was recognised that it does not matter that the thing that escapes is not the thing brought onto land originally, providing that there is a connection. On the whole, the correct conclusion was reached. For Statement B a number of students again failed to recognise the need for an accumulation, but did recognise that storage of chemicals such as battery acid may amount to a non-natural use of land. Statement C was well answered on the whole. Candidates tended to recognise that an Act of God can be defence where the weather conditions are extreme and unforeseeable. Many concluded that this is only heavy rainfall and that in addition Power Pack could have stored the batteries somewhere else, making it unlikely that the defence of an Act of God would succeed. In Statement D, well prepared candidates recognised the early case law allowing recovery for personal injuries and recognised also the current position, excluding claims for personal injury; however the link was not then made between Fred’s injuries and the statement.

Candidates need to put forward statements which can clearly be argued to a conclusion, although it may be possible to have more than one viable line of reasoning. Knowledge is essential for a candidate to deal successfully with this style of questioning but its de facto exposition is not required as marks are awarded on the basis of clear, logical, legal reasoning, thereby replicating the thought processes of a lawyer.

G158 Law of Torts Special Study

General Comments

This sitting of G158 was the second on the theme of Occupier's Liability and reflects the process of changing the theme of the special study materials on an annual basis. The paper's close focus on one case and then a particular aspect of the law reflects the opportunity candidates have to become very familiar with the special study materials in the months preceding the examination. This paper tests skills different from those required by G157 in that, although factual material and its exposition is both desirable and necessary in some areas of the paper, the focus is much more on analysis, comment and application; these AO2 skills should be the focus of a Centre's preparation so as to give candidates the direction they need for exam success.

Many candidates answered question 3 first before moving on to the case 'digest' in question 1 and then tackling the more challenging question 2. This strategy appears successful as it ensures that candidates get off to a good start, gaining marks before moving on to the task of using the special study materials to construct a thoughtful and analytical argument accompanied by wide ranging factual knowledge. It is encouraging to see many candidates making use of the special study materials in their answers; quoting small sections of the text is acceptable, but copying out larger chunks cannot gain many marks. Similarly, general citation - for example, simply 'Source 1' - will not attract much credit, whereas a focused link, such as 'Source 1 lines 5-6', shows good skills and the necessary precision. Candidates are able to use the special study materials to support their answers, and indeed it is essential that they do so, but there is also need for a demonstration of wider knowledge to show a thorough grasp of this area of law.

In question 1, the case acts as a springboard and there are key points that the candidate is expected to make in terms of the critical issue in the case, the role of the case in the development of the law and its relationship to other cases, as well as overarching issues such as fairness in the law; responses are differentiated in these terms. Centres should note that the critical point/issue in the case, along with discussion of an associated and relevant case and some link to the theme stated in the question, are all needed to reach level 5.

In question 2 the stimulus quotation needs to be read in its wider context if a candidate is to be best equipped to respond to the question. Relevant factual material, clearly expressed, gains credit and is especially useful to guide the examiner through the answer, by linking to relevant areas of the special study materials. Comment and analysis should focus on the stimulus provided but, whilst it is good to keep this at the heart of a response, comment which simply returns to the initial stimulus without development or variation will struggle to reach the higher mark bands. In terms of AO1, the special study material can be used to support a response, but it is also important to use a wider range of cases. In terms of AO2, the highest mark bands are accessed when a candidate engages in a discussion which focuses on the question and reaches some conclusion.

In Question 3 there is a need for some factual knowledge, but the most important aspect is the application of relevant law to the hypothetical situations. In each scenario the critical point should be identified; marks are awarded for reasoningto an appropriate and logical conclusion, based on relevant law and supported by relevant citation. The majority of the marks are awarded for application skills.

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

Comments on individual questions

Question 1

The focus was on the case of *Wheat v Lacon* and its contribution to the development of the law relating to Occupier's Liability. All the marks available are for AO2 and, although most candidates were able to recount some or all of the pertinent facts, there was also a need to make some general observations as to the developments this case facilitated. Those who picked up the key issues of what constitutes an occupier and the changes made by this case, in terms of the possibility of multiple occupiers and the beginnings of a test based on control, were able to move up the mark bands. Also relevant was discussion as to the defence of 'act of a stranger.' To reach the highest mark bands a candidate needed to deal with these points in the context of the facts of the case and to make reference to at least one other relevant case, such as *Collier v Anglia Water Authority* - as long as this case was discussed in some measure and not simply named.

Question 2

This question saw a very wide range of responses – from those who engaged with the quotation in an articulate and relevant way to those who wrote almost exclusively, albeit fulsomely and confidently, about the Occupiers Liability Act 1957. AO1 marks were awarded for factual material detailing the need for a revision of the law relating to trespassers, and how this development can be charted through the evolution of the law relating to children and the 1957 and 1984 legislation. An important aspect was also to elaborate on the restrictions still in place, such as those found in section 1(3) OLA 1984 and the further caveats relating to defences, warnings, the requirement of only a reasonable level of care and the kinds of injury for which liability can be imposed. Many candidates provided an extensive account of the facts of *Tomlinson* and there were frequent references to other cases such as *Radcliffe v McConnell*, *Donoghue v Folkestone Properties* and *Westwood v the Post Office*. Some candidates digressed into lengthy explanations of the law relating to children, which it was not possible to reward to any great extent unless linked to the question. The quality of factual material inevitably correlated to the sophistication of AO2 remarks, but some candidates charted the development of the law analytically and accurately via incisive comment, supported by detailed use of the special study materials. Others tended to repeat the words of Lord Hoffman without any real attempt to dissect or engage with them. In order to reach level 5, candidates needed to display knowledge of the law well beyond the parameters of the special study materials and to engage in a discussion on the law relating to trespassers, ending with a conclusion based on the points raised.

Question 3

In this question some marks were available for awareness of the relevant provisions of the OLA 1957. Part a) required a candidate to appreciate that Quentin was a lawful visitor and that section 2 (4)(b), dealing with independent contractors, was the relevant area of law to be discussed. Detailed application of these provisions to the facts of the scenario, leading to a conclusion that Professional Academy was unable to avoid liability for the injury suffered by Quentin, would allow a candidate to reach level 5, if there was also reference to a relevant case such as Gwillam v West Hertfordshire NHS Trust. Part b) required a candidate to appreciate that Reggie was a lawful visitor, with a contractual licence on the basis of being a skilled craftsman, and that as such he was covered by the OLA 1957. Candidates then needed to apply section 2(3)(b) to the scenario and reach the conclusion that Professional Academy would not be liable for the injury Reggie suffered as, due to his qualification as a professional electrician, he should have been more aware of safe work practices, and to use *Roles v Nathan* to support their reasoning. In part c) Sara should have been identified as a lawful visitor and thus covered by the OLA 1957. The relevant areas of law were sections 2(2) and 2(3) with regard to children and

supporting cases were likely to be *Phipps v Rochester*, *Moloney V Lambeth BC* and *Taylor v Glasgow Corporation*. Candidates could attain level 5 by reaching the conclusion that Professional Academy did still have liability for the injury suffered by Sara, although some credit was given for the argument that Sara's mother should have supervised her more carefully.

OCR (Oxford Cambridge and RSA Examinations)
1 Hills Road
Cambridge
CB1 2EU

OCR Customer Contact Centre

14 – 19 Qualifications (General)
Telephone: 01223 553998
Facsimile: 01223 552627
Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

Oxford Cambridge and RSA Examinations
is a Company Limited by Guarantee
Registered in England
Registered Office; 1 Hills Road, Cambridge, CB1 2EU
Registered Company Number: 3484466
OCR is an exempt Charity

OCR (Oxford Cambridge and RSA Examinations)
Head office
Telephone: 01223 552552
Facsimile: 01223 552553