RECOGNISING ACHIEVEMENT

GCE

Law

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

Examiners' Reports

June 2011

H134/H534/R/11

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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 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.

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EXAMINERS' REPORTS

Chief Examiner's Report

This series has seen the completion of another successful year for AS and A level Law qualifications, with the evolution of the special study paper to an annually changing theme completed. Centres are reminded that the new theme and pre-release material for 2011/12 is available to download from the OCR website. In the A2 papers centres continue to favour Criminal Law but there has been an encouraging increase in the numbers studying Tort, perhaps because it is a topical subject area as well as one accessible for the whole range of candidate ability, and Contract continues to appeal to a range of centres. For many candidates AS and A level Law is a precursor to undergraduate study but for others the knowledge and awareness it develops are useful across a whole range of experiences as the move is made into adulthood as members of the voting public.

The AS study of the English Legal System and the Sources of Law provides core knowledge of pertinently and frequently debated issues alongside the acquisition of skills which are varied and transferrable. An inevitable element of the study of this subject is the ability to read, distil and retain factual information but equally important is the opportunity to learn how to process such material quickly and efficiently so as to use it effectively, whether in the construction of an argument or to solve a problem. The AS course also introduces candidates to legal sources, and the important skill of interpretation and manipulation of material is one essential for higher level study or a work environment in which analytical and deductive reasoning using sources provided is often vital.

At full A level the unique nature of the OCR qualification is that it allow candidates to study one area of law in-depth, allowing complexities to be explored in a way more normally encountered at undergraduate level. The subject areas are core LLB subjects and whilst it might be suggested that this means a student can 'take it easy' in that subject area at university the reality is that it often provides some reassurance when embarking on a very different kind of experience and those who have been successful at A level can feel empowered to study a subject which can otherwise have a misplaced mystique of inaccessibility. The different components of the papers also allow for the development of a range of skills and there is 'something for everyone' in terms of the assessment methods used.

The A* qualification gives a new goal for candidates and Law is a subject in which the principles of stretch and challenge can be assessed through the sophistication of debate and problem solving skills.

For teachers the opportunity to study an area in depth is an attractive one, as is the opportunity to teach relevant skills through topical and challenging subject matter. 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 as the site is a popular way to share information and resources as well as asking questions and details of membership are to be found on the OCR website.

The study of AS and A level Law empowers candidates with useful knowledge and transferrable skills as well as providing an insight into a fast-changing world and its rules and moral values. Candidates, and centres, should have the confidence to believe that it is a useful and valuable qualification, despite media assertions which are unfavourable and misguided and it is hoped that the qualification will continue to be favoured and enjoyed by candidates and those who teach them.

G151 English Legal System

General Comments

Overall the performance of candidates on the paper was very mixed. There were some excellent answers to most of the questions where candidates used their knowledge appropriately to respond to the questions. There were also some very weak answers showing confusion and a lack of knowledge particularly on the part a) of questions.

Candidates did not generally perform well on question 7 a) as many did not read the question properly and answered the question they had prepared for on rights of the individual at the police station rather than the question asked which was on the powers of the police at the police station.

Few candidates number the questions attempted at the front of the answer booklet which creates initial work for the examiner prior to marking. Some candidates did not put the numbers of questions within the answer booklet so the examiner had to work out which question it was from the answer.

Few candidates seemed to struggle for time and virtually all candidates complied with the rubric and managed to answer four questions.

Comments on individual questions

These comments should be read in conjunction with the mark scheme

Section A

1 (a) There were some responses which showed an understanding of the system of civil appeals, however, many candidates confused civil with criminal appeals described the court structure or explained the track system.

1 (b)* There were many good responses to this part of the question with candidates developing their arguments well providing several well developed points often focussed on time delay and cost

2 (a) Most candidates gained marks by correctly identifying the categories of offence and the courts they would be tried in and most also provided good examples for each. Candidates who offered several examples including a wrong example such as "petty theft" for summary trials or armed robbery for triable either way were not be credited for that example. Candidates who also clearly explained the process for choosing mode of trial in triable either way offences gained the highest marks.

2 (b)* There were many good responses with structured points of argument. Candidates who provided three well developed points and covered both advantages and disadvantages of choosing to be tried in the Crown Court gained full marks. Weaker responses did not fully develop arguments or just made a series of points with little development.

3 (a) Most candidates gained good marks for describing the training of barristers. The best responses included detail for each section of the training and a description of the work and organisation. Weaker responses relied on describing the training and mentioned advocacy and joining an inn as work and organisation.

3 (b)* Most candidates focussed their discussion on debt, costs and the difficulty of finding a pupillage. Candidates who developed their arguments well gained high marks.

Weaker responses were those that did not develop the arguments to any great extent.

4 (a) The best responses explained the theory of the separation of powers and gave examples of application. Usual responses demonstrated an ability to describe the theory but could only give one example of application. The weakest responses showed a very basic understanding of the theory but an inability to explain further than identifying the three "arms of the state".

4 (b)* Most candidates failed to answer the question asked and wrote generally about the independence of the judiciary rather than focussing on the recent reforms in selection. The best answers discussed how the recent reforms to selection have improved the independence of the judiciary. The weakest responses did not answer the question and gained no marks.

5 (a) The best responses included a detailed description of both the qualifications and the selection of jurors including challenges. Weaker responses included a reasonable description of the qualifications but very limited description of the selection procedure. The weakest responses did not describe the qualifications accurately.

5 (b)* Most candidates gained at least level 3 marks as they were able to discuss a range of points. The best responses included well developed arguments. The weakest responses identified points without any development.

Section B

6 (a) The best responses described the aims of sentencing well and described several factors. Many candidates identified the aims and gave a very basic description of some factors. The weakest responses confused the names of the aims and only described two or three aims and factors.

6 (b)* The best responses identified the issues in the scenario and applied the appropriate aims of sentencing to them. They also suggested two sentences with reasons. Weaker responses failed to identify the issues and confused sentences and aims.

7 (a) The best responses were from candidates who had read the question properly. The question asked for a description of the powers of the police and limitations on those powers at the police station. Many candidates produced a response to a different question and concentrated on the rights of the individual at the police station. Marks were given where a right could be read as a limitation on police powers but many candidates who had good knowledge did not gain high marks due to misreading the question.

7 (b)* The best responses identified the issues and applied the rules correctly. Many candidates failed to differentiate the samples which led to no marks for those two points as the outcome was different for blood and hair. Most candidates were able to identify the issues relating to the search.

G152 Sources of Law

General Comments

Delegated legislation was significantly more popular than Precedent with both areas considered very accessible by candidates and centres; and in particular the (c)(ii) questions were open to allow candidates to showcase their evaluative skills. Both areas produced a full range of responses.

Whilst the standard of answers were better in the (c)(ii) questions, many candidates still focus on a points-based approach rather than a discussion. It would be useful for centres to try to develop this skill as this would allow candidates to access the level four mark range. As stated in a previous report, the use of a writing frame may support candidates in this area:

Examples of writing frames:

Point		Point
Evidence	or	Evidence/Explanation
However		Example

In the context of this paper this would be a well-developed point (WDP). In the main a candidate would need at least four of these to access level 4 – more details of what is required at each level is available from the mark scheme.

It was very pleasing to see case law becoming more evident. Centres have picked up on earlier reports and have addressed this issue. For future sessions, it would be useful to encourage candidates to use the ratio of the case or to use the facts to address the question. This is an important skill for those aiming to reach higher mark levels.

The use of the Sources was disappointing and was particularly evident in the stronger scripts. There were some fantastic responses, but in many cases candidates failed to address the Source. As a result, many answers were unable to achieve level 4. This is a very easy skill to teach as what a candidate needs to do is very minor.

Only a small number of candidates tried to answer both questions, which is encouraging. There was an increase in the proportion of candidates starting one question (in this instance question 2) who then crossed it out and completed the other question (question 1).

Comments on individual questions

These comments should be read in conjunction with the mark scheme.

Question 1

Exercise of legislation and delegated legislation

Delegated legislation is a popular area for candidates and centres had familiarised their candidates well with the major mechanics of this area. There was a full range of answers, but the majority of responses were mid-range. This was due to a combination of issues – poor performance on questions (c)(i) and (c)(ii), and a lack of engagement with the Source. In particular, responses to (c)(i) were disappointing as candidates could not generate depth in their responses.

(a)* The responses in this area were generally good. Most could identify a number or all of the stages. The description of the stages separated the responses. Many very strong answers could not access full marks because they failed to use the Source. A small number of candidates focused on delegated legislation. There was also an over emphasis in some responses on the different types of bill.

(b)(i),(ii),(iii) In general, this was a strong area. It was designed to test the candidates' ability to reason and apply the law – a key skill in this subject. Most candidates could identify the correct critical point and then link it to two other relevant points. Some candidates did not read the question and failed to spot that none of the interviews had been tape recorded. Also, a significant minority of answers focused on the lawfulness around arrest or detention.

(c)(i) This was a generally answered poorly. Most candidates could identify the types, who makes them and some general example but could provide little beyond this. The vast majority of answers lacked any sort depth with regards to the key features and, as a consequence, the average answer achieved level 2. This is clearly an area for centres to focus on. Many candidates who excelled on the rest of the paper failed to achieve level 3 in this question.

(c)(ii)* This was a better answered area. The average answers were stronger than in previous series and the average achieved level 3. Most candidates focused on both sides of the question and could come up with a range of points. There is still room for improvement, but this is a technique issue. It is important to encourage candidates aiming to achieve level 3 and above to write a discussion based answer as opposed to a series of points. Please see the general comments in relation to this matter.

Question 2

Exercise on Judicial Precedent

This question was attempted by a minority of candidates and there was a full spectrum of responses. The use of case law was better, but there was significant variation between centres. Again, this question was hampered by the lack Source use which limited a number of higher ability candidates.

(a)* Nearly all candidates could give some sort of definition of each key term. The lower end candidates were limited due to grasping and rehashing the Source material. The higher end candidates gave some excellent responses supported by at least three cases. This was the requirement to achieve level 4.

(b)(i),(ii),(iii) This was an outstanding area for most candidates; only (b)(i) caused a problem for some candidates because they could not identify the correct critical point. Most candidates could identify the central theme and then give an explanation why. As a consequence, the average answer was well within level 3 and there was an abundance of full mark answers. Some fantastic skills work with the candidates has obviously been taking place within centres. Many learners achieving a grade E this summer will have gained the majority of their marks in this question.

(c)(i) This question elicited mixed responses. There were a number of outstanding answers, but on the whole candidates were limited for two reasons: a lack of case support and a lack of breadth of knowledge of persuasive precedent. Candidates who did not support their answers with appropriate citation were limited to level 2. Centres need to be aware that candidates must have awareness of at least three types of persuasive precedent to achieve level 4.

(c)(ii)* This area had similar issues to that of question 1. The average answer achieved high level 2 marks and this was due to the technique of the response. Too many candidates continue to provide a list of points with little development or discussion. To access level four, candidates needed at least four well developed points.

G153 Criminal Law

General Comments

This sitting of G153 saw a new trend in that a larger number of candidates had sat the unit in January but for the vast majority this was their first sitting and responses to all questions were seen. The paper's wide ambit reflects the breadth of the specification, something centres are advised to consider when teaching and advising candidates on strategies to bring exam success, but there is also a determination to focus on areas of law more closely, especially in problem solving questions, to allow candidates to demonstrate detailed knowledge as well as problem solving skills. Whilst for many the traditional essay format continues to be the most comfortable the encouraging improvement in problem solving skills continues and candidates are becoming more successful in balancing the AO1 and AO2 components. In questions focused on statute law it is important that candidates manipulate the relevant sections and subsections accurately and have a thorough knowledge of their intricacies as well as being able to give accurate definitions. It was refreshing to see many candidates flourishing in Section C, helped in part by a better use of appropriate techniques. In addition many more candidates now approach questions in a different order, beginning with Sections B or C rather than A, and achieve considerable success using this strategy not least because it enables them to better manage their time.

In Section A candidates often demonstrate that they have read the question by using it in their introductory remarks and this is good examination technique. That said, to access the higher mark bands candidates need to do more than simply reiterate those words through providing overarching comment on the area of law at issue, consideration of underlying general principles, as well as proposals for reform and policy influences. 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. Candidates are strongly encouraged to have the confidence to move beyond reliance on a prepared answer, which may well adopt a different slant on a particular topic, as they will be rewarded appropriately. Topics examined often have a lot of case or statutory knowledge on which candidates can draw; centres are advised that the mark allocation for the AO1 component is a maximum of 25; candidates who use a myriad of cases, sometimes only by naming them, will not necessarily score as highly as those who use cases to good effect as the top mark band requires accurate and wide ranging but detailed knowledge and a heavy focus on factual material can often leave a candidate little time to focus on analysis and comment. **Examiner tip** – good knowledge is essential but so is thoughtful and relevant comment and analysis throughout an essay and using the law to support the development of a relevant argument will be rewarded.

Section B rewards knowledge and application skills and it is important to follow the instructions given in the question. Differentiation is evidenced by the level of 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 the law can be applied. As explained above fewer cases explained and used accurately is likely to achieve more than a list of case names with no other amplification. In questions which focus on statute law it is important for candidates to be accurate in their knowledge of relevant provisions, coupled with accurate and confident application. Whilst the identification of relevant areas of law is often correct candidates are often less confident in their application and become generalised in their remarks. **Examiner tip** – candidates are advised to read the question carefully to ensure that their answer approaches the scenario from the correct stance and then to be confident in their application – a clear conclusion supported by good problem solving skills will be rewarded and candidates should be less fearful of not reaching what they perceive to be the 'right' answer.

This series saw many candidates meet with much greater success in Section C although some still struggle as they spend a disproportionate amount of time on Sections A and B, leading to short responses lacking clear thinking. Many now deal with Section C much earlier in the examination and there were few instances of generalised introductions or conclusions. For the most part candidates were more successful in responding to the detailed requirements of each statement and it was gratifying to see very few using case law, other than through its principles manifested in accurate application. A growing number use a bullet point format to order their response and this is perfectly acceptable, indeed it often seems to encourage logical and deductive reasoning. Differentiation is founded on the application of legal principle and legal reasoning to four distinct statements and achieving level 5 requires a candidate to reach a conclusion on the proposition to which they are responding. **Examiner tip** – it is much better for candidates to use phrases such as 'A will be liable for' or 'B is likely to be liable for' rather than 'C may be liable for' or 'D could possibly be liable for'. Similarly candidates should have the courage to reach a conclusion – it is not possible to reward statements such as 'this statement could be accurate or inaccurate'.

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

Comments on individual questions

These comments should be read in conjunction with the mark scheme.

Section A

Question 1* – Causation

For some centres this was a very popular question and answers frequently contained wide ranging AO1 material whilst others used it as springboard for a pre-prepared answer on omissions. For some this question was an opportunity to show the huge amount of material they had revised but details were often unclear, particularly in relation to the timings and issues covered in *Jordan, Smith* and *Cheshire*, and there was considerable embellishment on the facts of some cases such as *Blaue* and *Pagett*. Some were able to develop excellent discussion points with encouraging sophistication in drawing out such issues as inconsistencies between ordinary citizens and the medial profession but many were descriptive in their approach. Others had a list of pre-prepared comments which were accurate but lacked development. The occasional use of rhetorical questions can be helpful to reinforce an analytical point but candidates are advised that it is their job to answer the question posed rather than simply asking questions of the examiner.

Question 2* – Consent

There were some encouraging, detailed and sophisticated responses to this question with a wide range of case citation. Inevitably *Brown* was covered in detail by most candidates, exposing a wide variety in the factual aspects of the case. With such a lot of information on which to draw it was not unusual for candidates to use in excess of twenty cases but in so doing the level of engagement with analytical issues often suffered and it is important to remember that high marks come from a balance of AO1 and AO2 material. Whilst candidates are not required to learn the dates of cases the use of a time line when revising will make for more accurate comment; for example references to *Clarence* and *Dica* rely on the candidates knowing how the years have changed the law. Many candidates were able to engage in a general discussion whilst some were sidetracked into discussions on the apparent homophobia of the House of Lords/Supreme Court, a view not borne out by later decisions of this court. There was relatively little reference to projected reforms and a small number of candidates wrote a great deal on the issue of consent in theft.

Question 3* – Strict liability

This question required candidates to consider the current role of the law and whilst many demonstrated thorough knowledge fewer engaged with its use in the modern world. In an area of law with so many cases on which candidates could draw it was sometimes surprising to see that citation was brief and the key case of *Gammon* was not always considered. Cases on the changing attitude to strict liability as seen in *B v DPP* was not always tackled, with a reliance on older cases such as *Prince* and *Hibbert*, and there seemed to be some confusion on the decision in key cases such as *Sweet v Parsley*. There was some good and wide ranging discussion focused on the question whilst others addressed the issue from the perspective of fairness, something they had clearly practised beforehand. A good tip is to read the question carefully so as to link AO1 and AO2 material to greater effect.

Section B

Question 4* – Murder and specific defences

This question allowed candidates to gain marks by using the provisions of the law under the Homicide Act 1957 or the Coroners and Justice Act 2009. This Act is now outside the twelve month rule and centres are advised that topics dealing with its provisions can appear in any section of the paper. There were many examples of good, accurate and wide-ranging knowledge although there was some evidence that provocation/loss of self-control was better handled than diminished responsibility. Some candidates were able to deal with the key issues of the time delay and the relevant characteristics of Mille with gratifying sophistication. However, there remains some uncertainly as to the decisions in *Thornton* and *Aluwahlia* and the key case of *Holley*. There was often good application of the principles of diminished responsibility but candidates were not always able to define it accurately, confusing it with insanity, and whilst some responses contained a multitude of case law others were sparse and omitted key decisions such as *Dietschmann*. A small number focused on Carl's liability – something not required by the question.

Question 5* – Theft

This was the most popular question in Section B and there were some high quality answers candidates who did not read carefully overlooked that the rubric of the question focused on theft. So those who wrote about burglary did not gain any credit for this part of their response. Many candidates defined theft and then used a step by step approach to explain the law using section numbers and appropriate cases, followed by detailed application – a method which often worked to very good effect. The particular nuances of sections 5(3) and 5(4) were the least well handled. Most spotted and commented on the similarities to *Lawrence* with regard to Brad's initial theft and the cases of *Davidge v Bunnett* and the relevant *Attorney Generals Reference* were also well used. Less well prepared candidates were more general in their knowledge of the relevant sections and in their application. Many candidates did not pick up on the fact that Yoshi could be liable for theft with regard to both pairs of socks. A pleasing number used section 2(1)(b), and its relevance to Brad when he bought a shirt with his wife's money, although not all followed this through to its logical conclusion.

Question 6* – Involuntary manslaughter

This was the least popular of the Section B questions and the quality of responses tended toward the lower mark bands. There were some candidates who identified and accurately dismissed murder before moving on to the two most relevant offences of unlawful act/constructive manslaughter and gross negligence manslaughter. Others focused on causation issues, despite the rubric of the question, or on non fatal offences even though both Jack and Gregor had died. With regard to unlawful act/constructive manslaughter some candidates wrote extensively on the Offences against the Person Act 1861 and had little time left to deal with other

issues. With regard to gross negligence manslaughter it was surprising to see a paucity of references to *Adomako*, coupled with a lack of clarity when explaining and applying the test it created. There was some encouraging use of AO2 skills although candidates were often unwilling to reach any decision as to the fate of Doctor Brown. Defences of intoxication and self defence were generally identified but the supporting level of knowledge and application was not always evident.

Section C

Question 7 – Non fatal offences against the person

This was the more popular of the Section C questions and the mark scheme was adapted in Statement A to allow candidates to acquire marks by different routes. Many candidates wrote confidently and accurately using excellent reasoning skills, although not all saw this through to a conclusion, something which is essential to reach level 5. In Statement A it was possible to argue that Dasha's wounds satisfied the definition of a wound or were insufficiently serious to be classed as GBH and candidates were rewarded as long as they followed one of these routes through to its logical conclusion. In Statement B many identified cuts and bruises as ABH but there was less clarity on the level of *mens rea* needed for this offence. In Statement C the *actus reus* caused little difficulty but, again, the level of *mens rea* was not always clearly explained and applied. Statement D was the best answered and it was encouraging to see a good number of candidates gaining maximum marks here.

Question 8 – Property offences and attempt

In Statement A many applied the basic principles of burglary and identified Sophie as a trespasser. In Statement B some candidates did not read the scenario closely and there was also some confusion as to what constitutes an act which is more than merely preparatory. Statement C was often well answered with many candidates able to apply the provisions of robbery clearly and accurately to gain maximum marks. Statement D showed some candidates to be unsure as to the intricacies of the offences covered in section 9(1)(b) and there was a common and erroneous belief that the formulation of relevant *mens rea* after entry as a trespasser is sufficient. To be liable for this offence it is required that Sophie attempt or commit theft or the infliction of GBH having entered a building or part of a building as a trespasser and it was encouraging to see that some candidates identified the theft of Pauline's watch as being crucial whilst others considered criminal damage, an offence which is not covered by this section of the Theft Act 1968.

G154 Criminal Law Special Study

General Comments

This was the second sitting of the 2011 Special Study paper on Involuntary Manslaughter. The theme for 2011/12 is Attempts and the pre-release material is available to download from the OCR website. While results, in general, were very pleasing, many candidates would have benefitted by reading the now yearly Special Study Skills Pointer and previous G154 Principal Examiner reports published on the OCR website. Centres and candidates are reminded that while having a good understanding of the Special Study topic is crucial to candidate's success, such knowledge can, in many cases, be undermined by a lack of appreciation of the skills required to answer each question. Previous reports have highlighted this fact, but many candidates seem ill-equipped with these skills to allow themselves to reach marks that they are capable of achieving. Therefore centres and candidates are reminded that a key part of the course should be to digest this information and that time should be spent studying these documents.

Poor time management continues to impede many candidates particularly on Question 1. Candidates are reminded that the exam requires a proportionate amount of time spent on each question as the marks dictate. Illegible handwriting and inaccurate spelling was a considerable issue this series and candidates are strongly encouraged to work on these areas to inform the quality of their answers.

Comments on individual questions

These comments should be read in conjunction with the mark scheme.

Question 1*

Given that *Church* is one of the leading cases on UAM, and is included in the pre-release materials, there was an expectation that candidates would have been far more prepared than was evident. Many candidates did not accurately use Source 1, or otherwise completely confused it. There was also little use here of other sources that would have assisted them further into a thorough discussion on the case. A common mistake was where candidates confused the appeal judge Edmund-Davies LJ with the trial judge and the trial with the appeal itself. Given it is a short source and the time candidates had to prepare and research *Church*, this was disappointing. This, therefore, meant many candidates while able to explain that there were issues with the case became confused from the outset and unable to explain such issues correctly.

Centres and candidates are also reminded that using pre-prepared responses to Question 1 is a particularly risky strategy given that it is not possible to know which case the question will focus on. This was reflected in a significant number of candidates discussing Kennedy and its critical point(s) at great length. Another perennial problem, and therefore, an area for improvement, is candidates spending too much time discussing linked cases, usually to the detriment of the central case. Many candidates would discuss five or more cases at great length including cases that may have as their central theme UAM but were mistaken in their explanations or dubious in their obvious links with the *Church* '*dangerous*' test. One of the key analytical points that was missed by all but an exceptionally small minority of candidates is the discussion by Edmund-Davies LJ regarding the '*series of acts'* test. Given the facts of *Church* and their direct relevance to this test together with the widespread discussion in many text-books on this specific issue in the case we would have expected more candidates to have articulated this point. Candidates and centres are also reminded that Question 1 requires an evaluative (AO2) response. Many candidates simply provided a narrative on the case and its aftermath. In consequence, instead

of using the command word 'Development' to discuss such evaluation candidates left their answer as *Church* being a case that 'developed the law' without saying why? More alarmingly was the significant number of candidate who did not discuss the *'dangerous'* test or those who felt the test was purely subjective. While it may be some candidates mixed up the terms objective with subjective, many candidates actually discussed *Church* as being subjective and were adamant that it was such a test. Such candidates had not mixed up the words.

Nevertheless, those candidates who understood the case and the materials and who had developed the necessary skills as exemplified in the Skills Pointer guide were successful in achieving high marks.

Question 2*

Given the large area that this topic covers, this question was generally well done with many candidates focussing well on the quote and with good definitions. Some candidates only focussed on UAM and therefore limited their ability to score highly. This error had been witnessed in January and was again repeated by a small number in this paper. This is despite the fact that the question requires "*the law on involuntary manslaughter*" to be discussed. A significant number of such candidates, including those who achieved high marks on the rest of the paper, missed out on achieving marks by not including Gross Negligence and/or Subjective Reckless Manslaughter. Candidates generally seem to have appreciated that this is the 'big' question within the paper, and most had obviously dedicated a significant proportion of their examination time to answering it. A few, though, still did not complete their answer to this question.

Generally, candidates demonstrated good knowledge and understanding of the definition of unlawful act manslaughter. A common missed opportunity was in not discussing the issues surrounding the drugs cases culminating with the House of Lords decision in *Kennedy*, despite Source 6 discussing this. Indeed many candidates failed to discuss this decision leading to the assumption that older text books were being used. Those that did discuss beyond UAM again provided good definitions and discussion. However, the AO1 detail on Gross Negligence (in particular the actual discussion on 'gross') and/or Subjective Reckless Manslaughter was usually weaker. Many candidates did not understand nor discuss the 'risk of death' part of GNM's definition. Another observation in relation to AO1 is that a surprising number of candidates spent time trawling through cases, explaining and commenting on them, but did not provide clear definitions or necessary structure of the offences themselves. This meant a maximum of level 2 for a lot of candidates, due to limited definitions, despite the presence of many cases.

There were some good AO2 comments on scripts and often a good focus on the quote; even weaker responses often achieved at least a level 3 mark for this part of the question. There was also a clear awareness amongst candidates that AO2 comment needed to be linked to the specific focus of the quote, and this was often done well. A small number of responses to the question, however, concentrated on AO2 points to the detriment of AO1 criteria.

As with Question 1, most candidates appreciated the need to make links to the key wording within the question – in this paper the potential 'harshness' of this area of law in relation to the accused. But, again, candidates need to be looking to do more than simply continually repeating the word 'harsh' over and over again within their AO2 comment. It was also very pleasing to see the large number of candidates who referred to the historic proposals for reform from the Law Commission, especially that from 2006.

Question 3

This generally provided the best responses for most candidates who, using their knowledge of the three types of involuntary manslaughter and their definitions were able to suggest, in their opinion, the most appropriate type and score highly. However, some candidates, including those that had achieved high marks on other parts of the paper, failed to complete all questions here, with Question 3(c) being most commonly omitted.

Question 3(a) was the best answered question and marks gained here were further 'uplifted' (as in (b) and (c)) if candidates had covered more than one type of involuntary manslaughter (although, clearly, candidates could achieve maximum marks on either UAM or GNM). Consideration of UAM option produced better answers. However, not enough candidates spotted the factual similarities with the 'drug cases', and therefore the issue of whether or not Harry, being aged ten, was capable of a voluntary act which would break the chain of causation was very often missed.

With Question 3(b), most candidates realised that the scenario had something to do with *Dawson* and/or *Watson,* but few demonstrated real knowledge and understanding of the law from these cases and how it would apply to Imran. It was also surprising to see how few candidates correctly identified burglary or a non-fatal offence against the person as Imran's potential unlawful act.

Question 3(c) seemed to pose the most problems for candidates. A number of candidates felt that since discussing UAM and GNM in the previous parts to question 3 that (c) must therefore be Reckless Manslaughter only. Whilst this is possible, was not the case. Few gave a fully detailed response on either unlawful act manslaughter or gross negligence manslaughter, and marks were generally obtained by covering a range of points, rather than by the identification of a specific offence and an analysis of the facts. When considering the critical point of the unlawful act in this scenario, very few candidates spotted the issue of whether or not Kerry was consenting to Liam's act therefore providing a potential, if unlikely, defence for Liam. Quite a few, however, did enter into discussion of whether or not an assault had been committed due to *actus reus*/*mens rea* issues, as raised in *Lamb*, with Kerry unlikely to be in fear.

From a skills point, across all parts of the question, most candidates included at least one 'linked case' but many failed to include a specific or definitive conclusion, thus removing their potential to gain full marks. It was also clear that again the analytical point that was largely ignored by candidates was the issue of the defendant needing the *mens rea* of the unlawful act when discussing UAM.

G155 Law of Contract

General Comments

The overall standard of answers for this exam was good, candidates are clearly addressing both AO1 and AO2 content directly in their answers and in particular in Section A candidates are directing their material to the specific question. On a general note candidates are reminded to present their answers as clearly as possible, this includes writing down the question number they have answered on the front of the answer book, clearly labelling their answers within the answer book, including the four sections on their Section C question, and underlining cases they have used.

Candidates should be reminded that cases are a means of supporting statements of law; a list of case names with no factual detail or comments on the legal points raised will add little to a candidates answer.

Most candidates were able to time their answers appropriately in order to give a full answer in each of the three sections of the paper. In a few cases this was evidently not so and candidates compromised their overall mark by leaving too little time for a Section c answer with the result that it was very brief.

Comments on individual questions

These comments should be read in conjunction with the mark scheme.

Section A

Question 1* – Intention to create legal relations

This was the most popular question in Section A and most answers were well supported by case law and were also well directed at the question. Common areas where answers could be improved included a lack of clarity on the specific outcomes in cases discussed, notably in *Jones v Padavatton* and *Edwards v Skyways*. Most candidates were stronger on domestic than commercial contracts although at the top end there was a very good level of knowledge on aspects such as competitions, adverts and letters of comfort. Some candidates made some very good comments on the possible effect of legislation such as the *Unfair Terms in Consumer Contract Regulations* and how they may affect cases such as *Jones v Vernon Pools*.

Question 2* – Classification of terms

This essay question produced some of the weakest answers, a lot of candidates were able to explain conditions and warranties but gave little detail on innominate terms. In many cases the facts of *Hong Kong Fir Shipping v Kawasaki Kisen Kaisha* were unclear and confused on the outcome. Very few candidates were able to give a coherent account of the situations where conditions and innominate terms are now used. The better candidates could include useful AO2 points arising from cases such as *Bunge v Tradax* or *Reardon Smith Line.*

Some weaker responses answered in terms of breach of contract generally but in doing so they were not addressing the specific question asked. In a few cases candidates discussed the way in which express and implied terms were incorporated into a contract which was not relevant material for this question and could not, therefore receive credit.

Question 3* – Undue influence

Many answers to this question were descriptive, focussing on explaining the difference between actual and presumed undue influence and fiduciary as opposed to non-fiduciary relationships. The better scripts did this but also explored the wider remit of the question by providing a rationale of the banking cases. In a few answers the content was out of date, focussing on cases such as *Barclays v O'Brien* and *CIBC v Pitt* rather than *RBS v Ettridge* however there were also some excellent accounts of *Ettridge.*

Section B

Question 4* – Offer and acceptance

This question dealt with some of the basic issues of invitation to treat, offer and acceptance and required candidates to apply the principles in a methodical way. Many candidates were able to describe the law in this area but their application was cursory or flawed in its reasoning. Better candidates were clear on the first part of the question (Saffron) and were able to discuss the difference in the second part of the question (The Galley) which involved a competitive tendering situation.

Question 5* – Consideration

This was the most popular Section B question. This was answered well across different ability levels and most candidates made a good job of it, particularly in isolating the issues shown. Better responses spotted more than one issue in relation to some of the characters in the scenario, for example the character Gregor inspiring the other actors raised issue of sufficiency as well as existing contractual duty. Some candidates were confused between contractual and public duty and some spotted contractual duty but confined their discussion to *Stilk v Myrick* and *Hartley v Ponsonby* without also discussing *Williams v Roffey*. Some candidates wasted exam time by discussing all areas of consideration including topics that were not relevant to the question, even to the extent of dismissing them as being not relevant.

Question 6* – Misrepresentation

This was the least popular Section B question and in many cases was poorly answered. A question concerning misrepresentation requires a methodical and well-structured approach with well developed application, this was present in some of the best examples but a significant number of candidates merely gave an overview of the topic with little developed discussion.

As well as misrepresentation candidates could be rewarded for discussing mistake or sale of goods implied terms in this question although neither was required for full marks. In a few cases candidates made excellent reference to the requirement that goods were fit for purpose as an alternative to relying on misrepresentation where the seller of goods remained silent about their suitability for a customer's needs.

Few candidates gave a good account of the potential remedies available for misrepresentation and the availability of damages and rescission. Some candidates gave a lengthy account of the bars to rescission which was not relevant material for this question.

Section C

Question 7 – Frustration

Most candidates now adopt an appropriate approach to Section C questions, answering in a structured way and showing step by step reasoning. Some candidates still include irrelevant AO1 material such as case name when all the marks for Section C answers are for AO2 content only. There are still some candidates who did not say whether the statement is accurate or inaccurate, failure to do this will mean a candidate is unable to access full marks for a question.

Most candidates were able to answer Statements A and B of question 7, this concerned whether the contract was frustrated or remained valid. A few candidates failed to distinguish between impossibility and illegality in Statement A.

Statements C and D of question 7 proved difficult for many candidates. These questions required a detailed knowledge of the *Law Reform (Frustrated Contracts) Act 1943*, particularly the provisions dealing with unjust enrichment which do not amount to a claim merely for work completed before frustration. The majority of candidates were not able to apply the relevant provisions of the act accurately.

Question 8 – Privity

This was a fairly straightforward question, the first two statements required candidates to show an awareness of the *Contracts (Rights of Third Parties) Act 1999* and apply it to the given situation. Clearly some candidates did not have a detailed knowledge of the act and attempted to answer based on general knowledge and common sense, there were however some excellent answers which answered the questions in a clear and precise way.

Statements C and D required candidates to show an awareness of exceptions to the rule of privity which pre-date the 1999 legislation. Although there were some good answers to these questions many candidates were unable to apply the principles of collateral contracts to the scenario, even though in many cases they were aware of the law as they explained the facts of the *Shanklin Pier v Detel Products* case but without any relevant application. Equally, many candidates were unaware of the principles of special cases and the reason why they would not apply in the given scenario.

G156 Special Study Law of Contract

General Comments

This was the second sitting of the 2011 Special Study paper on Offer and Acceptance. The theme for 2011/12 is Intent to create legal relations and the pre-release material is available to download from the OCR website. The paper produced the customary wide range of responses. Some excellent skills were in evidence including extensive and detailed knowledge of relevant cases and thoughtful and well-supported evaluation. However, while the necessary skills were well in evidence in many scripts, for some candidates the failure to achieve higher levels was limited by the use of pre-prepared answers whilst ignoring the rubric in the questions. Centres are reminded that both the Special Study Skills Pointer and previous G156 Principal Examiner reports published on the OCR website are useful resources.

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 with no line references or by citing line references but without naming the source from which they came. Only limited or no credit could be given in either case. Weaker scripts also tended to show some lack of subject knowledge or real understanding. 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 candidates going beyond the information available in the sources.

Comments on individual questions

These comments should be read in conjunction with the mark scheme.

Question 1*

This question required candidates to evaluate the significance of a case to the development of the law. In this instance, the question concerned the significance of *Household Fire Insurance Co v Grant* to the development of the law on communication of acceptance.

There are only AO2 and AO3 marks for this question so, as pointed out in the Special Study Skills Pointer Guide (available from the OCR website) no marks are given for simply reciting the facts of the case without any evaluation. AO2 marks are given for the selection of an appropriate linked case and a discussion which shows how the main case has contributed to the development of the law.

For high AO2 marks, candidates needed to identify and discuss the critical point arising from the judgment: that a contract was formed at the moment of posting a letter and it was irrelevant to liability that the letter had never been received. With the critical point clearly explained, and two other analytical 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.

This question was answered well. 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 the postal rule and the communication of acceptance and were given full credit but reached maximum marks 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 not addressing the issue of development, or by lack of clarity or depth of points made, or by missing the critical point. Many candidates were able to discuss and apply the source material effectively and identifying at least one link case *(Adams v Lindsell, Re London and Northern Bank)*. Weaker answers tended to

discuss in general terms the postal rule without addressing issues of development. Some candidates clearly spent far too much time answering this question and this was at the expense of their answers to Question 2. Material was included in Question 1 which should have been included in the answer for Question 2. Candidates should be encouraged to read all three questions before commencing writing.

Question 2*

This question is the central opportunity for the discussion of the substantive legal theme of the series in the context of the overarching theme of the role of the judges (and effectiveness) in their development of the law. Candidates were given a wide-ranging quotation to lead their discussion of the rules on offer and acceptance.

The quotation and instruction included different aspects the candidates could choose to pursue, including: the judicial development of the law, the practical approach of the judges, to the difficulties experienced in "accommodating everyday transactions" and whether the approach was "effective" within the offer and acceptance framework. These different aspects in the question were themselves capable of a wide range of interpretations and all plausible interpretations were credited.

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 2 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. The high level AO2 marks obtained by many candidates were very impressive and showed considerable thoughtfulness, careful consideration of the issues and skilful use of the Sources. However, some candidates appeared to be working from pre-prepared answers and consequently struggled to enter the higher AO2 levels as their discussions did not attempt to answer the question.

The question did not have a specific AO1 target and so to show good and wide-ranging AO1 knowledge (required for the higher levels) candidates were able to combine both breadth and depth in their answers. The source materials covered invitations to treat, counter offers, communication of offer and acceptance and the postal rule and a detailed discussion of these areas secured a good level 4 mark. To achieve level 5 candidates were required to show a wider-ranging knowledge, including, for example, some reference to the rules relating to modern means of communication, rewards, auctions or tenders (all mentioned in the Sources) or other areas. Almost all candidates provided sound definitions of 'offer' and 'acceptance'.

Many candidates showed impressive depth to their knowledge. Weaker scripts tended to provide few or no definitions or explanation, just a listing of cases with some facts. Candidates who provided simple lists of case names without any further discussion of issues were limited to mid-level marks. Most candidates understood the need to provide a concise account of the key details of the case whilst others provided unnecessary extensive narratives of cases. This went beyond what is required to show depth of understanding and should be avoided where possible – it is not a good use of the limited time that candidates have available.

Question 3

The problem questions attract both AO1 and AO2 marks at a ratio of 1:2. Question 3 led to some excellent answers with precise identification of issues, good selection and clear statements of the relevant legal rules, appropriate use of supporting authorities and clear conclusions. Most candidates were able to identify an appropriate conclusion to each of the parts. On the whole, candidates appeared to find the problem questions more difficult than the case review or essay.

Questions 3(a) revolved primarily around the areas of invitation to treat and more specifically unilateral offers. Many candidates were able to recognise that the advertisement was an invitation to treat (*Partridge v Crittenden*) and the similarity of *Carhill v Carbolic Smoke Ball* to the scenario. However, weaker candidates made no reference to unilateral offers and tended to focus on case narrative only. Question 3(b) centred on the areas of invitations to treat and rules relating specifically to auctions. Some candidates did not recognise that the advertisement was an invitation to treat (*Partridge v Crittenden*). There was a general recognition of the key issue: that the offer is made when people make bids and the contract is only formed on the fall of the auctioneers hammer *(Harris v Nickerson, Payne v Cave).* Question 3(c) was the only scenario not requiring reference to invitation to treat. It centred on whether a counter-offer (*Hyde v Wrench*) or a mere enquiry had been made *(Stevenson v McClean)*. It proved to be the most challenging question of the three though many excellent answers were in evidence. Some candidates were able to make reference to communication of revocation *(Bryne v Van Tienhoven),* though this was not necessary for full marks. Weaker responses tended to focus on only one aspect, either counter-offer or mere enquiry.

G157 Law of Torts

General Comments

This series reflected a changing trend in that some candidates had already tackled G157 in January but for most it was their first sitting of the paper. Most seemed comfortable with the time constraints and the decision by candidates to start with something other than Section A seems to be growing, often to good effect. The paper continues to be wide ranging in its ambit to reflect the breadth of the specification and centres should acknowledge this in their preparation and advice to candidates. There were some pleasing examples of good essay skills, with candidates using a wide variety of factual material accurately in support of analysis and comment focused on the question, especially when dealing with the topic of nervous shock. The nature of the questions has helped candidates demonstrate problem solving skills and this was particularly in evidence when dealing with trespass to the person although some candidates use Section B to comment on the current law and candidates are required that this is not necessary in this area of the paper. Both Sections A and B require case and statutory law and the latter necessitates candidates embracing the need for detailed and specific knowledge. Section C questions require the candidate to employ a logical and deductive approach to reach a conclusion to each of the four statements and many candidates tackle this first, giving them the chance to plan their time more efficiently in sections A and B.

Responses in Section A were differentiated in terms of the specific level of knowledge and citation alongside the sophistication of comment, particularly in terms of its relevance to the question posed. It was pleasing to see candidates refer to their question in their opening remarks but it is necessary to also make overarching comment on the area of law, its underlying general principles and reform proposals as well as considering broader policy issues to reach the very highest mark band. 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. **Examiner tip –** it is beneficial to candidates to interweave factual knowledge and comment so that the latter component is shown to best effect.

In Section B differentiation was evidenced by the detail used to support identification of relevant issues with an increased level of knowledge directly linked to the confidence with which the law can then be applied. In some areas of the law, most notably trespass to the person, there is a wealth of potential citation and candidates are advised that the mere naming of a case is to be avoided and only an explanation demonstrating understanding of the case in context can be rewarded. Once this knowledge was identified and explained differentiation was evidenced by the accuracy with which candidates reached a conclusion. **Examiner tip –** candidates are encouraged to make appropriate decisions and not worry as to whether they have reached an answer which might be 'wrong' as the law is open to interpretation and candidates will be rewarded as along as their approach is tenable based on the material at their disposal.

In Section C differentiation relied on the application of legal principle and reasoning to four distinct statements and it was pleasing to see nearly all candidates write in direct response to each, rather than producing a long and general piece of continuous prose. General introductions and conclusions were largely absent as was case citation but candidates are advised that to reach level 5 a candidate must reach a conclusion on the proposition to which they are responding. **Examiner tip –** vague remarks such as 'Statement A may or may not be accurate' cannot attract marks, similarly remarks such as 'F could possibly be liable' cannot attract credit.

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

Comments on individual questions

These comments should be read in conjunction with the mark scheme.

Section A

Question 1* – Breach of duty

This essay attracted some high level responses with wide ranging accurate and detailed knowledge supported by comment on the fairness and consistency of this area of the law. There was good explanation of the range of factors which are taken into account when deciding on breach and there was some sophisticated discussion of the particular principles relating to medical professionals in the *Bolam* and *Bolitho* situations as well as those relating to particular groups such as learner drivers and children. Some candidates were more restricted in the range of issues considered and this impacted on their ability to engage in analysis of the question. In order to reach the top mark band there was a need to move beyond mere repetition of the terms 'consistent' and 'just' through consideration of the principles which underpin the construction of liability. Those candidates who adopted a more narrative approach, even if containing a large amount of citation, could not access the higher mark bands. **Examiner tip** – to enhance AO2 marks it is a good idea to make and develop points throughout the essay to support factual knowledge with the aim of drawing relevant conclusions.

Question 2* – Nervous shock

This was the most popular essay question and there were top quality answers, both in terms of the factual material used and the sophistication of the supporting comment, with the very best candidates engaging with the question and its focus on the relationship between negligence and nervous shock. *Alcock* was clearly a vital case and many candidates used this as the basis of their discussion with a good number also providing a fulsome historical survey of the law. The position relating to primary and secondary victims as well as rescuers and bystanders was covered although some candidates provided little more than a narrative approach and comment was limited to generalised remarks about the expansion and contraction of this area of law. There was some high quality AO2 which considered the impact of developments in the law and the wider philosophical and humanitarian ideas which underpin judicial approaches.

Question 3* – *Rylands v Fletcher*

This was the least popular question but there were some good answers which covered the provisions of the law in considerable detail, supported by wide-ranging and accurate citation. Each aspect of the law was often covered in depth, as were defences. The AO2 proved to be a more challenging component of this question and whilst some candidates were able to make cogent remarks many were less confident, often resorting to generalised statements to the effect that this tort is no longer very common. However, there were also responses in which candidates engaged with the environmental benefits of the tort and other wider issues with both insight and sophistication.

Section B

Question 4* – Trespass to the person

This was the most popular of the problem questions by some considerable margin and many candidates were able to score highly as they had a multiplicity of case knowledge at their disposal and they were able to demonstrate well organised and sophisticated problem solving skills. This question rewarded a step by step approach with each small scenario being explained and then the relevant legal provisions being applied. Citation was detailed in relation to each of the torts of assault, battery and false imprisonment and candidates are advised that this

knowledge can simply be explained once, even if it is then applied in several different scenarios. The use of relevant information is to be encouraged and thus the explanation of defences which have no bearing on the question is to be discouraged. Many candidates were able to apply the law well especially in relation to a head butt being outside the laws of boxing. Some candidates also advanced the view that using aggressive language may well be accepted as normal in a sport such as boxing although it was equally acceptable to consider the words used by Ali to be an assault. Not all candidates considered the emergency surgery undertaken by Doctor Crop and the attendant defence of necessity.

Question 5* – Occupiers' liability

This question attracted a wide range of responses with the best containing good knowledge of the provisions of both the 1957 and 1984 Acts. Detail was often bountiful although not always strictly necessary given the scenarios posed by the question. There was less confidence in the requirements imposed by the 1984 Act and *Tomlinson* but the areas relating to children, based on *Glasgow Corporation v Taylor* and *Phipps v Rochester,* were often detailed and accurate. The best answers dealt with each of the people named in turn with some good discussion as to Colin's status, with many deciding that he was a trespasser, but also taking into account whether Superviews would be able to exonerate themselves on the basis that their preventative measures could be perceived as less than fulsome. Daisy was identified as a lawful visitor although there was less certainty as to the best way for her to claim and the supporting provisions of the 1957 Act. With regard to Ethan many candidates concluded that parental responsibility played a large part although this was sometimes anecdotal rather than based on case law and there were plenty of references to sliding down banisters.

Question 6* – Trespass to land

This was the least popular question and, sadly, a good number of candidates focused their answers on the law relating to private nuisance. Some covered both nuisance and trespass to land and they were able to receive credit, even if not for all of the information their answer contained. There were a small number of top quality answers where candidates were confident in their knowledge and were able to support it with accurate and detailed citation. Cases such as *Kelsen* and *Bernstein* were well-used and candidates were also able to explain relevant defences accurately. In terms of AO2 it was good to see some candidates really engage with the logical deduction needed when approaching such a scenario although some tended to be very general and inconclusive. Whilst certainty is not always possible, and so covering a range of options is a positive engagement, an attempt to discuss the most likely conclusion is the way to access the higher mark bands as wide ranging and vague remarks in the hope that something will be right cannot be rewarded to the same extent. Some candidates concluded their answer with a consideration of appropriate remedies which represents good examination technique as well as providing a fully rounded response.

Section C

Question 7 – Negligent misstatement

This was the less popular question in this section, perhaps because of the subject matter. Many candidates did show skills of reasoning from an opening statement to a conclusion but did not always pick up on the nuances of the individual statements. In Statement A there was a general, although not universal, acknowledgment that Josie could sue Kieran on the basis that there had been a negligent misstatement. In Statement B most candidates dealt with the issue of a special relationship in outline but were often less clear on all aspects covered by such a relationship. In Statement C many recognised that Josie would rely on Kieran's report and that this would be integral to the success of a claim. Statement D allowed candidates to show awareness of the general principles of negligence and some went on to explore each of those requirements in order to reach the conclusion that Josie would be able to make a claim for Kieran's advice in negligence.

Question 8 – Vicarious liability

This question attracted many more responses and in Statement A most candidates appreciated that Norah would be able to make a claim against Monster Haulage although they were not always clear in their reasoning. Statement B produced a range of alternative responses with much discussion of 'a man of straw' but relatively few were able to apply the law accurately. In Statement C most candidates were clear that liability would lie with Monster Haulage with many picking up on the points relating to the responsibility incurred by Louis and his protection of the company's goods. In Statement D many candidates identified battery as a tort whilst not necessarily going on to explain that it is also a crime but it was good to see some clearly deduce this to be the case before considering the possibility of self defence and arriving at the conclusion that Louis would still be able to make a claim against Monster Haulage.

G158 Law of Torts Special Study

This was the second sitting of the 2011 Special Study paper on Trespass to the person. The theme for 2011/12 is Nuisance and the pre-release material is available to download from the OCR website. The 2010/11 theme covers a topic which is often popular with students and has some lively and interesting case law to engage with. Consequently, the standard was very pleasing in terms of both content and technique. There were some marked improvements compared to the January series but there are still some areas for improvement.

It is worth repeating the following paragraph from the January 2011 Principal Examiner Report since some centres may not have read it having not entered any candidates in that series.

'The emphasis in G158 is very much focused on AO2 skills which are worth 57.5% of the total marks compared with 40% on G157. Centres and candidates will therefore find the guidance set out in the Skills Pointer an invaluable teaching and learning aid as it clearly sets out the skills required for each section of the paper. The Skills Pointer is published free of charge by OCR and available *via* the OCR website. Furthermore, in an effort to offer improved support for teachers and candidates, OCR now publishes details of the annotation, marking and assessment criteria within the published mark schemes and centres will find that this will give them a more accurate and nuanced appreciation of how the paper is marked. Centres should use this information, in conjunction with the Skills Pointer, as part of the process of preparing students for the exam.'

It is clear from the candidates' responses that areas of significant improvement can be achieved by centres making good use of this guidance as well as the mark schema and Principal Examiner's Reports. Much of the advice is generic and will support next year's theme equally well.

Candidates' performances on this paper were, on the whole, very satisfactory. There was a marked improvement in candidates reaching level 5 on AO1 although there were relatively few scripts demonstrating confident level 5 AO2 skills; there were also, pleasingly, very few poor performances and there were no spoilt papers. Very few candidates failed to answer all three questions.

Notable improvements and areas of good practice:
- Thoughtful use of the source materials
- Fewer candidates losing marks for failing to link to the source materials
- Improved technique when responding to the mini problem questions
- Exhaustive case law knowledge extending well beyond the sources

Areas for further development:
- Dividing time and effort in proportion to the marks available
- Closer reading of the command in question 2
- Better engagement with the AO2 theme in question 2
- Use of the Skills Pointer to improve the approach to the case study question

Timing and organisation

This session saw a significant minority of candidates spending a highly disproportionate amount of time on question 1 (the case study – worth 16 marks), often to the detriment of question 2 – worth 34 marks. It was not uncommon to see scripts with 4 sides of A4 devoted to question 1 but barely more than 2 sides devoted to question 2. On this occasion it was often due to extensive AO1 accounts of the law on false imprisonment which was not linked to *Herd v Weardale* and, consequently, achieved little or nothing except to deprive the candidate of the time needed to make a better job of question 2. Otherwise, there did not appear to be any significant timing

issues. Few candidates submitted less than 6 to 8 sides of A4 and scripts of 12 to 14 sides were not unusual. Within this, it is clear that individual candidates sometimes struggled and that mock exams might have helped with the timing discipline necessary to perform well.

A (growing) minority of students seem to have significant difficulties with their handwriting. There were a number of scripts where the examiners were only able to credit what was legible. Such candidates are risking under-performance and would benefit from seeking help from the excellent student support arrangements that centres offer.

The key word in question 1 was 'development'. Candidates needed to discuss the contribution made by the case to the particular area of law as well as looking at the wider context by looking at legal principles derived from cases which may be linked to the case in question. Candidates performed least well on this question and would benefit from looking at guidance in the Skills Pointer as a basis for preparation of candidates. This series did see an improvement in the way candidates dealt with the 'critical point' with very few candidates scoring less than 3 marks for that element. However, there are a further 6 marks for other analytical points and 3 marks for linked cases where candidates are currently under-performing. The marking of this question (and all the others) is fully explained in the OCR Skills Pointer referred to above.

Success in question 2 will always depend on how well the candidate responds to the stimulus quotation and the particular 'spin' demanded by the question. Candidates will not be able to gain high marks by the mechanical repetition of AO1 or AO2 in a rehearsed fashion that does not respond directly to the question. Good discursive skills which convey a critical appreciation of the question and reach a well reasoned and logical conclusion will always perform well.

Question 3 requires the application of legal knowledge to three mini problem questions. Close attention to the central thrust of the question will provide all the scope candidates need for a good answer. It is not necessary or helpful to speculate outside the given facts. Marks are awarded for accurate statements of relevant law, application of legal knowledge through logical reasoning and reaching a cogent conclusion.

Comments on individual questions

These comments should be read in conjunction with the mark scheme.

Question 1*

This series' case study question was on *Herd v Weardale Steel*. This proved to be a more accessible question than *Letang v Cooper* in the January series and most candidates performed well on the critical point element. In overall terms it still proved to be the weakest question in spite of this slight improvement. Repetition of the advice in January remains valid – centres should encourage candidates to understand the advice in the skills pointer which carries explicit and detailed advice on how to tackle this question.

Pleasingly, almost all candidates were easily able to reach full marks on the critical point (that the employers won the case because the miner was considered *volenti* to his imprisonment as a result of his contract of employment). Indeed, many went well beyond what was required for 3 marks. However, few candidates managed to come up with many analytical points beyond the critical point. Most candidates resorted to mechanical rehearsals of everything else they knew about false imprisonment and some were able to make thoughtful links to *Herd* but, where such material appeared in isolation, it was not generally creditworthy.

There were some outstanding examples of really thoughtful critical appreciation of this case study. Better candidates were placing the case in its wider socio-economic context by discussing, *inter alia*, the rights of the employer as compared to the employee in 1915, the effect

of World War I and the need for coal, how differently the case would be decided today because of health and safety and human rights legislation and so on.

Improvements in this area for the forthcoming series can be made by encouraging students to make simple revision charts for each possible case remembering that two well developed points or six individual points alongside the critical point and linked cases is all that is required for full marks. Students who were awarded full marks on this question rarely took more than a side-and-a-half of A4.

Question 2*

The January paper contained a reference to 'battery' in the source quote which steered a number of candidates down the path of a single topic response focusing solely on battery. However, the command was quite clear and required consideration of all three forms of trespass (or more if you include *Wilkinson v Downton* and/or the **Protection from Harassment Act**). On this occasion the command was similarly clear and the source quote was free of any 'particular' references. However, there was a significant minority of candidates who saw that the quote came from source 6, looked it up, recognised that it was principally about defences and proceeded to write solely about those. Centres are strongly advised to brief candidates that the quote is simply a source from which a critical theme can be identified and that the broader context and/or origin of the quote is not an indication of any kind of emphasis. Candidates should always follow the command in the question.

However, this was only a minority and most candidates performed very well on this question. There were a large number of strong performances on AO1 with many scoring full marks. Sadly, a small number of otherwise excellent answers missed the opportunity to achieve full marks because they did not make use of the source materials which is clearly a key theme on a source based paper.

Less able candidates would have benefited from making greater use of the source booklet. There were ten cases cited in the source booklet. Six of them (*Read, Ireland, Thomas, Letang, Herd & Robinson*) have both the case facts and *ratio* and the other four (*Cole, Wilson, Collins & Re:F*) have the *ratio* and some of the reasoning. Eight cases with six of them well explained and a link to the source was enough for full marks on AO1 and yet a number of candidates produced scripts with no cases whatsoever and scripts with three or less cases were not uncommon.

The discrimination between candidates was evident in the more varied AO2 performances. Most candidates managed to get to levels 2 or 3 but fewer got to level 4 and very few achieved level 5. The two main barriers that could be addressed by centres include some quite straightforward advice. Firstly, give the question some thought and answer it. This seemingly obvious advice is not as easy as it seems when observing that the question has four clauses in it … the 'extent' to which judges have 'succeeded' in protecting 'civil liberties' in 'developing rules' etc; secondly, drawing a logical and reasoned conclusion. Too many conclusions were either a restatement of observations already made in the main body of the answer or were glib, unqualified and failed to actually answer the question – to what extent have judges succeeded?

There were some outstanding answers which were characterised by thoughtful, intelligent but, above all, selective use of cases for AO1 and by astute critical awareness displayed in a sophisticated discursive style with both critical and synoptic awareness.

Question 3

Once again, as in January, this was the best all round performing question. Centres are to be congratulated on the work they have been doing with students in this area which was clearly evident in their responses. Marks between 6 and 8 were very common. Students benefited from a structured approach and thought their way through the questions with skill and clarity.

Breaking definitions down into their component parts to ensure enough marks was a notable improvement. There was good practical subject knowledge and there were hardly any candidates who, at the very least, didn't correctly identify the appropriate form of trespass. Candidates could have improved their marks by avoiding inclusion in one of the following two categories: firstly, candidates who tend to analyse the problem well and write a lot about how the law relates to what's going on but forget to set out the legal rules, and secondly, candidates who give detailed statements of the relevant law and supporting cases but do not do much application.

Candidates should be reminded generally that exhaustive recitation of case facts rarely attracts marks but this is *particularly* true in question 3 which is a question where students are being rewarded for their application skills. Some less able candidates give a long account of the case facts and then fail to say what the legal principle is.

Question 3(a) was the least well answered of the three. The critical point on this question was to recognise that Dick might be *volenti* to his imprisonment in the style of *Robinson/Herd*. Candidates who spotted this often seemed to feel they had not done enough and went on to speculate about alternative safe means of escape or the length of time necessary for it to constitute false imprisonment and so on. Candidates who missed the critical point commonly speculated on facts not given in the scenario and this is always bad practice.

Question 3(b) was without doubt the best answered of the three. Possibly because there was plenty to legitimately speculate on. Candidates who discussed immediacy & *Thomas*, immediacy & *Stephens/Smith*, status of words & *Ireland*, status of words & *Read/Wilson*, words negativing & *Tuberville* or need for gestures & *Read* were achieving between 6 and 8 marks without any application or conclusion (which are clearly still required for full marks!). There were a minority of students who missed out on achieving marks on this question because they produced a conclusion which was not supported by their reasoning. For example, the *Stephens v Myers* alongside *R v Ireland* approach would support a finding of assault where the *Thomas v NUM* alongside *Tuberville v Savage* approach would support a finding of no assault. However, there were, not infrequently, candidates who followed the former line of reasoning only to come to the conclusion more appropriate to the latter.

Question 3(c) again, was generally well handled being a straightforward battery and self-defence scenario. Better candidates realised there wasn't much more to the question and analysed the definitional components separately – was the act direct (*Scott*) and intentional (*Letang*) and was the self-defence proportionate (*Lane*)? Less able candidates often got into a complex and confusing analysis of the history of hostility and this is not creditworthy in the context of an application question. The mark scheme was generous and rewarded **either** 'hostility is needed (*Wilson*)' or 'hostility is no longer required (*Re:F*)' but **not both** and certainly not a detailed exposition of *Cole, Collins, Wilson, Re:F* and so on.

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