RECOGNISING ACHIEVEMENT

GCE

Law

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

OCR Report to Centres

January 2012

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Oxford Cambridge and RSA Examinations

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OCR REPORT TO CENTRES

Overview

These comments are intended to support and guide centres and candidates so as to see how this qualification provides valuable knowledge and transferable skills which are useful for the future.

This series has seen candidates sitting each of the units which comprise the AS and A level qualifications. For some it has been encouraging to see how much can be achieved after just one term of post-GCSE study whilst for others it has been an opportunity to consolidate their progress as they move towards final examinations in the summer, either through judicious re-sits or the first sitting of units to relieve pressure in a few months time.

Although the numbers sitting G151 were broadly comparable with previous January sessions the total number of candidates sitting G152 was somewhat reduced – perhaps reflecting a decision on the part of centres to give candidates longer to assimilate the skills required to do well.

Each of units G153, G155 and G157 saw an increase in numbers, a change which may reflect the fact that many centres now embark on full A level work in the wake of the AS level examinations. Whilst in section B the questions may be less wide ranging in the terms of the number of legal issues contained within a question the level of knowledge, and application skills, need to be demonstrated at a more sophisticated level to access the higher mark bands. In addition sections A, B and C require candidates to demonstrate distinct skills which take time to be taught and consolidated effectively. Amid some excellent performances there was also evidence of candidates whose grasp of the necessary skills was such that they were unable to do justice to the knowledge they had acquired, whilst others were limited by the amount of material at their disposal. As to whether this was due to the candidates being selective in their personal revision or centres being able to teach only some of the topics it is impossible to conjecture but centres are reminded that the breadth and depth of these papers is such that they, and their candidates, are advised to prepare as broadly as possible in preference to teaching a selective range of topics and attempting to predict which of these are most likely to appear.

Those sitting G154, G156 and G158 were often able to demonstrate detailed engagement with the specific subject matter. There was some evidence of candidates giving pre-prepared answers in questions 1 and 2 and what was written was often lacking in the use of the source materials. Centres and candidates are reminded that the special study papers are specifically intended to make use of the material provided well in advance of the examinations and it is not possible to reach the higher mark bands without extensive reference to them, as well as to their own research.

G151 English Legal System

General comments

The performance of candidates on the paper was very mixed. There were some excellent answers to most of the questions where candidates used detailed knowledge to respond to the part (a) of questions and well-focussed arguments in part (b) of questions. There were also some weak answers showing a lack of knowledge and confusion.

Candidates seemed to manage their time very well and virtually all candidates complied with the rubric and answered four questions.

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 include the number of the question being answered within the answer booklet so the examiner had to work out which question it was from the answer.

Comments on individual questions

Section A

1(a) There were many excellent responses which showed a good detailed understanding of all the types of ADR; however, some candidates failed to illustrate their answers with examples which limited their marks as this was required by the question. Weaker responses lacked detail especially about arbitration.

1(b)* There were many good responses to this part of the question with candidates developing their arguments well providing several well developed points focussed on mediation. Weaker responses focused on ADR in general which could only have some credit for issues related to mediation.

2(a) Most candidates gained good marks for describing the training of solicitors. The best responses included detail for each section of the training and a good cross section of possible work was described. Weaker responses relied on describing the training and mentioned doing paperwork as work. A few responses showed confusion about the order of the training.

2(b)* Most candidates focussed their discussion on the training contract. Candidates who developed their arguments well and discussed other problems with training gained high marks. Weaker responses were those that did not develop the arguments to any great extent or did not focus on the question.

3(a) Most answers included good detail about the role of juries in both criminal and civil courts. Weaker responses lacked detail especially on the role in civil courts and tended to limit the answer to finding people guilty or not.

3(b)* There were many good responses to this part of the question with candidates developing arguments for using juries in both civil and criminal cases. Arguments against having juries were credited as counter arguments but isolated arguments against having juries were not credited as they did not answer the question.

4(a) There were many good responses giving detailed information on the powers of the police to arrest a suspect and the rights of the suspect during arrest both under PACE 1984 as amended and other powers. Weaker responses covered the powers of arrest but lacked detail. Some candidates gave information on stop and search or rights of the individual at the police station which gained no credit.

4(b)* Most candidates gained at least level three marks as they were able to discuss a range of points. The best responses included well developed arguments. There were some responses which gave information regarding stop and search but failed to comment or construct any argument .These responses could not gain any credit.

5(a) There were a few good detailed responses to this part of the question which included a detailed description of the role of judges in both civil and criminal courts. Weaker responses did not include information on the role of judges in civil courts. Case management was seldom mentioned.

5(b)* The best responses included well developed arguments. The weakest responses identified points without any development.

Section B

6(a) There were many excellent responses which described at least three types of custodial sentence for adults and three types of custodial sentence for young offenders well. Adult sentences were better described than youth sentences which were sometimes confused. The weakest responses confused sentences with the aims of sentencing.

6(b)* Most responses identified the issues in the scenario and applied the appropriate factors to them. They also suggested appropriate sentences with reasons gaining high marks. Many gained full marks. The weak responses failed to identify the issues or suggested inappropriate sentences.

7(a) Good responses described the appeal structure in detail. There were some responses which lacked any detail or confused civil and criminal appeals and gained very limited credit.

7(b)* The best responses identified the issues and applied them to the possible rights of appeal. Many gained full marks. Weak responses showed confusion between the rights of appeal from the Magistrates Court and from the Crown Court.

G152 Sources of Law

General comments

The Sources of Law unit is intended to give students an appreciation of the main sources of English and Welsh law. As such, it seeks to address both the knowledge and understanding of sources of law (AO1) and the ability to apply that knowledge or discuss it in a critical context (AO2). This series has been very positive and provided evidence of some really hard work on behalf of the candidates and some excellent teaching practice in preparing students for the style of the paper. There are, as ever, some areas for improvement but the overall picture is very encouraging.

Areas demonstrating progress:

- It was clear that almost all candidates were making a real effort to apply themselves, with hardly any spoilt scripts and very few where the candidate had not made a substantial effort to respond to all questions. It has not been uncommon in the past to see (c)(ii) questions simply abandoned or all three questions answered in little more than a single side of A4
- There was much more comprehensive use of the source materials across all the questions and far fewer candidates failing to maximise their scores from lack of source referencing
- Very few candidates were unable to manage a balanced answer to (c)(ii) with many managing a range of developed points. There were barely any lists or bullet point responses with most candidates attempting discursive answers
- Candidates were demonstrating impressive knowledge of new and up-to-date cases (alongside the traditional ones) to illustrate their answers.

Areas for improvement:

- Candidates need to be reminded that the use of AO2 will not be credited in an AO1 question ((a) and (c)(i)), even where it may be relevant and accurate. Questions (a) and (c)(i) are testing knowledge and understanding. Guidance on this distinction can be found in the OCR specification, teachers' guidance and from support materials – see the OCR website for further information
- Teachers have clearly been working with candidates to improve their AO2 skills. The use of writing frames and advantage/disadvantage charts was in clear evidence. Further progress could be made to encourage more high level responses by using slightly more sophisticated differentiated tasks that would develop greater discursiveness
- Although AS Law is a qualification in its own right, most students progress to A2 Law where their study of an area of substantive law will include problem-solving. A vital preparation for this is the part (b) question which requires students to 'apply' their legal knowledge. Too many responses attempted to tackle these questions without thinking or reasoning properly. This is easily remedied through practice and these short questions make ideal starter or plenary activities.

The overwhelming majority of students answered the Statutory Interpretation question which delivered a full range of responses as one would expect. Responses to the European Union question were, on the other hand, polarised with many really impressive scripts demonstrating high levels of understanding and a number of quite poor answers which seemed largely reliant on anecdotal knowledge.

Practical matters

- There were hardly any spoilt scripts
- There was little, if any, evidence of candidates struggling with timing
- There were a significant minority of scripts where the quality of the handwriting posed a potential barrier to proper assessment – centres should address this through the appropriate channels and offer support where necessary. Otherwise candidates should be reminded that whilst we try our best, assessors can only mark what they are able to read.

Comments on individual questions

Question 1

1(a)* Some very impressive answers demonstrating extensive up-to-date knowledge incorporating things like the voting methods used by the Council and illustrations of the role of the Commission as guardians of the Treaties. Most candidates had no problems with balancing answers between the two institutions or making links to the source and therefore the number failing to access level four for these reasons were limited. Lower level responses might have been improved by making some use of the source, covering 'both' institutions, making sure they were clear about the differences between the two institutions and not getting mixed up with the Parliament as some confusion on this latter point was in evidence.

1(b)(i), (ii), (iii) In general these questions were handled well up to level three. Most candidates could identify the relevant source. Some candidates were unable to say 'why' a Treaty, Regulation or Directive would be appropriate and consequently failed to pick up marks for an appropriate example. A significant minority misunderstood the question and discussed institutions rather than sources.

1(c)(i) Again, there were some impressive responses covering 'both' the role and functions of the CJEU. There were up-to-date references to the post-Lisbon structure of the court and to Article 267 (TFEU) referrals and to direct actions under Articles 258, 259 & 260 (TFEU). Article 267 referrals were often illustrated with supporting case law. Improvements to lower level responses could have easily been made by greater use of the source which offered generous support for this question.

1(c)(ii)* This question proved to be the better answered of the two (c)(ii) questions on this paper. Some of the top level four answers were very impressive and demonstrated quite sophisticated understanding of concepts such as supremacy, vertical and horizontal direct effect, indirect effect and state liability. This was often reinforced by excellent use of case law. It might seem as though candidates were partially scoring points for AO1 material in this question but it is not possible to discuss the impact of a CJEU decision without explaining it or at least putting it in context. However, marks were not awarded unless the candidate placed the material in the context of the question.

Question 2

2(a)* Responses to this question seemed to be bunched around levels two and three. Some good work by students and their teachers meant the vast majority of candidates had something substantial to say – often a good definition, some features and a case with (usually) a link to the source. Consequently there very few level one or low level two responses which is very encouraging.

There were other welcome improvements:

- More candidates making links to the source
- Candidates making use of newer cases alongside the traditional ones
- Candidates focusing more on the words being interpreted and the consequent effect of the literal rule on the outcome instead of getting bogged down in the facts of the case.

Candidates could have scored higher marks by giving a more extensive range of cases rather than the AO2 which could not be credited in this AO1 question. Every effort was made to credit some of the comments made by candidates as 'features' of the literal rule but, especially where the candidate had explicitly placed their comments in an AO2 context, credit could not be given.

It is, of course, relevant that the literal rule produces absurd, harsh and unjust results but it would be better to illustrate this through the use of appropriate cases like *Fisher v Bell, Berriman v LNER* and *DPP v Cheeseman* rather than talk about these things as advantages and disadvantages because we can credit the former but not the latter. Missing out on top marks was almost exclusively due to having insufficient cases or not having sufficient cases in sufficient detail.

2(b)(i), (ii), (iii) Most students achieved a minimum of level two for three marks on these questions by correctly identifying the appropriate rule of language. No distinction was made between using the English version of the rules rather than the Latin terms.

Many responses failed to apply the rule to the facts in the question correctly. So, it was common to get the right rule of language, an explanation of the rule and a case instead of the right rule of language, how it applies to the question and a case. The former scores three and the latter scores five. This is because part (b) questions are awarded AO2 for 'application of legal knowledge' and candidates cannot access level three and beyond without that application.

A small number of candidates got confused and answered the question based on the main rules of interpretation.

2(c)(i) Most of the comments here are similar to those given above for 2(a). However, some distinct points are worth noting. The use of case law was less confident than for 2(a). Candidates often resorted to mischief rule and golden rule cases as they clearly had no discrete purposive approach cases to deploy. Where a mischief rule case was put in the context of achieving the purpose of the legislation this was credited as a legitimate purposive approach case as this has been the historic practice on G152. However, where cases were cited in the clear context of providing a remedy to a mischief or ameliorating the harshness and absurdity of the literal rule by choosing an alternate meaning, then no credit was given. There are sufficient modern, well known and interesting purposive approach cases (eg *Ghaidan v Mendoza* [2004] & *R v Secretary of State for Health ex parte Quintavalle* [2003]). Lower level responses might have been improved through greater reliance on the support in the source, knowing two or three cases and having a clearer distinction between the mischief rule and the purposive approach.

2(c)(ii)* A very welcome and pleasing improvement was noted on this question. In particular, it was evident that:

- Most candidates had a reasonable amount to say with far fewer spoilt scripts, lists and bullet point charts than in previous series
- Most responses were balanced
- Most responses managed some development and there was clear evidence of students and their teachers having done some good work in this area
- Most candidates made a link to the source.

Higher marks might have been accessed by continuing this good work onto the next stage – the 'well developed point'. Essentially this involves taking a point and pursuing a line of argument towards some sort of reasoned conclusion. The purpose of this is to start building the kind of discursive skills which students will find helpful in essay questions at A2. The technique may follow a number of styles: point, evidence, counterpoint; point, evidence, further evidence; point, case, conclusion; point, counterpoint, conclusion; point, quote, evidence and so on. Using a balanced combination of these well-developed points to build towards a conclusion should be the goal for those candidates who are aiming for top level four marks.

G153 Criminal Law

General comments

This series saw an increase in the number of candidates from the same series last year; this was especially the case amongst those sitting the paper for the first time. This report is intended to help centres, and candidates, prepare more effectively and the performance across this paper would suggest that some candidates had only a limited a number of topics at their disposal. The spread of topics covered by the G153 specification is such that selective preparation can often leave candidates open to an uneven performance, something which does not optimise their chances of success. Past reports, question papers and mark schemes are illustrative of the need for wide preparation. Candidates put themselves in the best possible position if their revision has been thorough in its coverage, detailed in its breadth and depth, and reflective in its overview of all the component elements of criminal law.

AO1 rewards knowledge, in both breadth and depth, and clear statements of fact supported by accurate citation and use of relevant statutory provisions is crucial to access the higher mark bands. AO2 rewards analysis and comment in Section A whilst focusing on application skills in Sections B and C and candidates are wise to bear these different criteria in mind when undertaking their own revision. Whilst examples to illustrate how the law works are acceptable and can be very useful, especially in Section A, the introduction of the A* and the requirements of stretch and challenge mean that such tools should support, rather than replace, sound knowledge and be a vehicle for candidates to demonstrate their awareness of underlying principles, whether by thorough and cogent application or by coherent and synoptic analysis.

Most candidates appeared to manage their time well but some do struggle, most often due to a tendency to spend too long on Section A. Increasingly, candidates begin with Sections B or C and this can be a good strategy to make the most of a candidate's problem solving skills, as well as having the added benefit of improving time management.

Section A questions are differentiated in terms of factual knowledge and relevant citation alongside analytical sophistication. Many candidates use the question as a basis for comment; those achieving at the highest level also develop their remarks, often by setting them in the context of policy issues and proposals for reform. Candidates are reminded of the need to deal with the question posed in preference to reliance on a pre-prepared answer, although there is a need to have given consideration to likely comments as part of a thorough personal revision strategy. **Examiner tip –** think about a basic point of analysis, then consider how it can be developed and then work out how it can be extended, perhaps by looking at the issue from a different perspective.

Section B questions are differentiated by the factual detail used to support the identification and application of relevant issues and the confidence with which legal principles are applied and deduced. Candidates are reminded that they should demonstrate both understanding and context of cases used; fewer cases explained and used accurately is to be preferred to a list of case names with no other amplification. Where relevant, statute law should be clearly and confidently expressed as a starting point for the demonstration of knowledge. When the rubric of the question gives clear direction to candidates these instructions should be followed to ensure that the time available is used to best advantage. **Examiner tip –** taking time to plan a Section B answer often pays dividends as a candidate is then able to be more relevant, logical and coherent in their approach.

Section C questions are differentiated by the application of reasoning skills to four distinct statements. Candidates should respond directly to each of the four statements and they are rewarded for their understanding of legal principles, evidenced by a logically deductive application rather than the regurgitation of knowledge, and citation is not necessary. To achieve level five candidates must reach a conclusion on the proposition to which they are responding. **Examiner tip –** candidates must be sure to read all of the statements before beginning an answer to ensure that application and reasoning are both clear and appropriate.

Communication skills continue to be an area of importance for all candidates and paying attention to the accurate use of language, and subject specific terminology, can only benefit the quality of a candidate's responses.

Comments on individual questions

Section A

Question 1* – *Actus reus* of theft

This was a popular essay, albeit with a very particular focus, and responses which focused on the question were able to achieve high marks. Many candidates were able to deal with each element of the *actus reus* and provide relevant case citation whilst the very best were also confident in the accurate use of statutory sections which gave those responses coherence and confidence. Sections 3 and 4 were often well handled whilst the intricacies of Section 5 would, for some candidates, benefit from further reinforcement. There were some very pleasing responses which made good use of the Theft Act 1968 and relevant cases, supported by valid AO2 on each area of the law. Appropriation proved the most fertile area for discussion and it was encouraging to see candidates developing arguments based on the troublesome and conflicting aspects of this concept. Those who wrote about the *mens rea* of theft, an area not specifically required by the wording of the question, could obtain credit for analytical comments which focused on the reliance often placed on this aspect due to the problems inherent in the *actus reus*, but those who simply covered all elements without a contextual focus were not able to reach the higher mark bands.

Question 2* – Defences to murder

This was the least popular easy question, perhaps because the area of the law has undergone such a radical overhaul. It was encouraging to see some candidates embrace the challenge of the new law, whose statutory provisions are complex, and able to demonstrate confident factual knowledge supported with thoughtful analysis. Those who cited cases prior to the 2009 Act in context to reinforce their analysis were rewarded, even though it may be argued that the defence of loss of control abolishes provocation and all its attendant case law. It was gratifying to see candidates refer to such recent decisions as *Clinton* and *Brown*. These decisions fall within the twelve month rule and thus candidates could still achieve full marks without reference to either of these cases.

Question 3* – Omissions

This was a popular question and elicited some pleasing responses in which candidates were able to deal confidently with all of the categories of omissions and support their remarks with a wide range of relevant citation, although factual detail was not always accurate even in such familiar cases as *Stone v Dobinson, Gibbins v Proctor* and *Dytham*. AO2 comment was often simply a repetition of the debate highlighted by the question but there was also some thoughtful and sophisticated development of these issues and the particular problems relating to reform proposals and the issues flowing from the Good Samaritan principle.

Section B

Question 4* – Non fatal offences, property offences and duress

This question elicited a wide range of responses based on the accuracy with which the offences contained in the Criminal Justice Act 1988 and the Offences Against the Person Act 1861 were applied. There were some candidates who were able to identify and define statutory sections accurately and support these definitions with relevant citation. This made the application of the law to the scenario a more accessible task and those who adopted this strategy were often confident and coherent in their response. This area of the law is open to some debate, perhaps compounded by the CPS charging standards, and candidates could be rewarded for taking a variety of routes, if supported by the facts of the scenario, as long as they were logical in their approach. This is exemplified by the fact that Bob's cut lip could give rise to an offence under more than one section of OAPA depending on the view taken as to the level of harm and the attendant *mens rea* demonstrated by Ahmed. In the latter part of the scenario Ahmed's twisted ankle could also be approached from more than one perspective, as long as conclusions were explained and supported clearly and accurately.

Question 5* – Murder and general defences

This question produced some good responses with candidates confident in their exposition of the elements of murder and then going on to cover the three relevant general defences of duress, voluntary intoxication and self-defence so as to reach a conclusion that no defence was likely to be available to Luke. For some candidates causation formed the major part of their response and it is to be remembered that a crime comprises more than one element, with all needing to be dealt with to reach the highest mark bands. Factual knowledge was often wide ranging in its breadth and depth and this provided a sound basis for the demonstration of logical application skills. The use of an efficient problem solving method is an important part of a candidate's armoury in this subject and there are plenty of past paper questions which can be used to improve candidate confidence and performance. It is also vital that candidates follow the instructions given in a question so as to avoid digression into areas of law which cannot attract credit – for example any discussion of loss of self control or the old defence of provocation. The use of a highlighter or underlining to pick out key words, and instructions, in a question is recommended to assist candidates in this area.

Question 6* – Involuntary manslaughter

This problem question attracted a wide range of responses and it was pleasing to see many candidates confident in their knowledge of the types of involuntary manslaughter, giving them a good platform for the demonstration of deductive application. As referred to earlier in this report, the law is not always certain and it was possible for candidates to obtain credit for the application of different types of manslaughter, as long as their reasoning was supported by relevant law. Involuntary manslaughter requires careful exposition of the relevant tests and thorough preparation can help candidates show themselves to the very best advantage. Again, assistance can be gained from the text; the use of the phrase 'in the rush' alerted candidates to the fact that the chain of causation may well remain intact in relation to the death of Naomi whilst the time lapse in relation to Pam was designed to stimulate the application of principles found in *Dawson* and *Watson*. Careful reading and preparation before beginning an answer gives time to assess the issues and plan a confident, coherent answer and candidates who dealt with murder were unable to gain credit for this section of their response.

Section C

Question 7 – Property offences

This was a popular question and there was a pleasing demonstration of high level knowledge and application skills in many responses. In Statement A many candidates were confident with all elements of the offence except the fact that the section 9(1)(a) offence is complete at the time of entry. Statement B was generally well done with many candidates working through the elements of theft and applying them clearly to the scenario. In Statement C many candidates were able to define robbery and were credited for concluding the statement to be accurate or inaccurate depending on their assertion as to whether the force was used in order to steal or after the theft was complete. However, whichever line of reasoning was chosen had to be followed through to its logical conclusion to attract credit. In Statement D some candidates were unclear as to the provisions of section 9(1)(b) and so their application was less confident. Throughout this question the highest mark could only be accessed with a clear conclusion in relation to the statement posed.

Question 8 – Attempt

Statement A produced many good answers with regard to the *actus reus* of an attempt although this was the sole focus of some responses whereas those who achieved the highest mark band also applied *mens rea* principles to the scenario. In Statement B the *actus reus* was generally well applied but awareness of the *mens rea* for attempted GBH was often less confidently handled. In Statement C there was a good awareness of the move from preparation to embarkation on the crime proper and this was clearly linked to the scenario. Statement D saw a good number of candidates raise the issue of impossibility in relation to a charge of attempted murder and there was through application of the law to the scenario facts. Throughout this question the highest mark could only be accessed with a clear conclusion in relation to the statement posed.

G154 Criminal Law Special Study

General comments

This was the first sitting of the 2012 Special Study theme of attempted crimes and the theme proved accessible to majority of candidates. It is apparent that advice and guidance given in previous G154 Reports and in the Special Study Skills Pointer (both available on the OCR website) has been noted. What was particularly pleasing was the increased referencing of the source materials by candidates in their responses compared to previous series. It is important to remember that candidates benefit from referencing the sources – quoting accurate source and line references rather than writing out definitions, case facts and judicial quotes etc saves time. With time management being an annual problem evidenced in responses this is something to consider for centres in the future. One particular feature worth noting is there was strong evidence of a greater trend by candidates to answer the three questions out of order. Whilst there can be an advantage in beginning the questions with the most marks first (for example by answering question 2) many candidates who adopted this strategy seemed to spend a considerable amount of time in answering question 2 to the detriment of question 3 and, in particular, question 1.

Comments on individual questions

Question 1*

This question looked at the importance of *Whybrow* and, in particular, whether it developed the common law. Responses varied greatly, though with many candidates accurately explaining the critical point. This centred on the issue of intent to cause GBH being insufficient for a conviction for attempted murder. Much of the information was obtainable from the source material. There is an expectation, as every year, that candidates will go beyond the source material and explore in more detail further analysis of the case's impact. However, in many of the responses this was not so. There was less evidence of case spotting in this series which in previous reports has been indicated as a risky strategy. While the majority of candidates discussed the critical point, not many expanded upon this with further analysis. For example, the justification of not allowing an intent to cause GBH as being sufficient *mens rea* for attempted murder. Also the mechanics of the case, in particular the misdirection at trial and the refusal by the Court of Appeal to allow the defendant's appeal, were ignored by the candidates. Such discussion would have provided much further analysis. Given the case arguably furthered or confirmed the common law's position on the *mens rea* of attempts and the subsequent 1981 Act a lot more could have been said on the critical point. With regard to the linked case or cases, good candidates looked at cases in the same vein eg *Mohan* or *Walker* and *Hayles* etc. However, many candidates seemed to ignore the obvious and instead take the opportunity of only discussing cases centring on recklessness which were not linked. Nevertheless those candidates who looked beyond the sources in relation to *Whybrow* were duly rewarded. It is best practice for candidates to make use of four or five good textbooks when researching the cases for question 1 to give access to a wide-ranging view and different author's opinions.

Question 2*

Here the focus was on the *actus reus* of the crime with the best discussions commenting on the accuracy of the quote in the context of the overarching theme (role of judges, use of precedent and the development of law) along with any other specific or general analysis of the law. The question centred on the issue and difficulties that the criminal law has had in deciding whether a defendant has moved from the stage of mere preparation into the realm of more than mere preparation. There was also, for example, the potential discussion of whether public policy and the safety of others had been taken into consideration by the courts eg in *Campbell* or *Geddes*.

Stronger responses identified the theme of the quotation and the emphasis on the *actus reus* and were able to thoroughly discuss the law beginning with the old common law tests and its associate problems and would then move onto the Law Commission's report leading to the 1981 Act. The remaining response was then based on the post 1981 common law interpretation of the Act. Such responses would then end on the 2007/09 Law Commission Report. Clear AO2 analysis was seen throughout these responses, in particular, with relevance to the quote.

However, given that the question was clearly focused on the *actus reus* there was an alarming trend, perhaps due to candidates preparing a stock answer on the entire topic of attempts, to discuss not only the *actus reus* in summary fashion but also the *mens rea* and the issue of impossibility. Whilst a minority of responses discussed both *mens rea* and impossibility in the light of the *actus reus*, most responses which discussed the whole topic would discuss both *mens rea* (in particular conditional intent) and impossibility with no link whatsoever with the question or quotation. Such responses therefore were not credited for large parts. While a prepared answer can be useful for AO1, it frequently, as here, works to the detriment of candidates when responding to AO2.

Question 3

This question was, in general, well answered. Question 3 followed the customary three separate small application scenarios, all worth 10 marks, based on three separate sets of characters. Candidates should have found the individual questions accessible since each concerned different situations analogous with the stages of attempted crimes. Each scenario required the candidates to consider at which stage the defendant was *en route* to the commission of the full crime. For (a) that a conviction would most likely be found for an attempt given the advanced stage that Arthur was in when he lunged for Bella; for (b) that an unlikely conviction for attempts concerning Charles given his position in the early stages of preparation and not implementation of the full crime; and for (c) a possible conviction of an attempted crime given the advanced stage Harvinder had found himself in whilst setting up to kill his victim. As usual, a good discussion of the above in relation to the most appropriate offence, with a linked case(s) cited in support, application to the scenario together with a correct conclusion would allow a candidate to achieve high AO1 and AO2 marks. Again reference to the Special Study Skills Pointer benefitted candidates by providing a method and structure. It is worth reminding candidates that the majority of marks on question 3 are gained by application (AO2) as opposed to knowledge and understanding of the law (AO1). Many candidates would explain the *actus reus* of an attempt in different ways and fail to adequately apply that to the scenario. What was concerning was the number of candidates who would, rather than use the post 1981 definitions, centre their answer on the old common law tests such as Rubicon or Series of Acts.

The questions attracted good responses, in general, with many able responses demonstrating 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 should have adopted a structured and indeed mechanical approach. This would have gained candidates higher marks. Having identified appropriate stages of planning or execution in each scenario (the definitions available in the source materials) it was again the level of understanding and the quality of application of the legal principles that was the real discriminator.

Part (a) answers were generally well managed with methodical application in their response. Most responses identified the issue of more than mere preparation. Nevertheless candidates who decided that the issue, although unlikely, was mere preparation were duly rewarded though to a lesser extent. Some candidates discussed the issue of impossibility, but on the facts this looked very unlikely given the advanced stage Arthur was in. In (b) there were a surprising number of responses which while spotting the similarity with *Gullefer* decided that Charles was most likely to be in the stage of more than mere preparation. This was unlikely but nevertheless rewarded again as in (a). Given the decision in *Gullefer* it was more likely that Charles was still preparing to commit the crime rather than in the execution stage. The best answers were to (c).

This question gave the candidates the opportunity to discuss the issue of impossibility and the fact that in order to convict Harvinder he would still have to be at the stage of more than mere preparation. Since he was lying in wait to kill his victim this was the most appropriate response.

In all parts of question 3 it was disappointing again to see the issue of intent being largely ignored by candidates. Since this forms part of the offence along with the *actus reus* many candidates missed potential opportunities to score higher marks for each part of the question. However, in part (a) some candidates equated the issue of theft/robbery with conditional intent, which was irrelevant given the Arthur's straightforward (*Mohan*) direct intent to grab the specific money. What was pleasing was an almost end to candidates creating alternative (and irrelevant) scenarios which has been seen in the past.

G155 Law of Contract

General comments

In general candidates showed a good understanding of the skills required to answer this exam paper, in particular the essay questions in Section A where candidates' factual knowledge was well supported by appropriate case citation and frequently by well-developed AO2 comments. In Section B most candidates structured their answers well and applied their knowledge well to the question. However, in this section some candidates were let down by a lack of supporting factual knowledge and citation, particularly in question 5 which dealt with incorporation of terms where some answers contained a bare minimum of cases. In Section C most candidates adopted a suitable answer style although in a significant minority of answers there was a lot of case citation which was not able to be credited within the mark scheme, candidates are reminded that all the marks in Section C are awarded for AO2 content.

Comments on individual questions

Section A

Question 1* – Offer and acceptance

The quotation in this question was focussed on difficulties in identifying offer and acceptance where a contract is formed after correspondence. Some candidates made excellent reference to cases which deal with the issue of battle of the forms such as *Butler Machine Tool* or *Gibson v Manchester*, many candidates also discussed issues surrounding methods of acceptance such as the postal rule and acceptance by instant means, developing good evaluative comments around the rules explained in *Brinkibon v Stahag Stahl*. The best answers included a good discussion of the AO2 themes on this topic rather than just mentioning them as brief comments.

Weaker answers to this question discussed nearly all of offer and acceptance without much reference to the specific theme identified in the question. In particular there was a lot of discussion about the difference between an offer and an invitation to treat, while this could be relevant in the context of an indication of price, and whether this amounts of an offer, a discussion of the rules relating to goods in shops was not directly relevant content.

Question 2* – Economic duress

Responses were able in many cases to use understanding of the law and cases well to answer the specific question which was about how well the law protects a victim of unfair pressure. There were some good discussions of cases such as *Atlas Express*, in some cases comparing the economic position that both parties to the contract found themselves in. There were disappointingly few discussions regarding the limits of economic duress and the extent to which unfair and yet lawful pressure does not amount to economic duress such as in the *CTN Cash and Carry* case.

Question 3* – Frustration

The focus of this question was on the discretion of the judge in applying the rules. There were some particularly good answers which compared the lack of discretion in areas such as illegality with the larger amount in the case law on radical change of circumstances, particularly comparing *Krell v Henry* with *Herne Bay v Hutton*. Several candidates made no mention of the relevant statute law in this area and there was very little detailed evaluative discussion in that area.

Section B

Question 4* – Consideration

Most candidates structured their answer well and attempted to support their answers with good reference to relevant case law. As always with problem questions one of the skills is identifying which part of the topic is relevant to the question, in this question the second part of the question concerning a third parties promise to pay extra money if someone was 'made happy' seemed to cause most difficulty. Candidates mainly identified that there was a promise running alongside the main contract but in many cases discussed the principles in *Stilk v Myrick*, or *Collins v Godefroy* which were not relevant to this question and which received little credit. In problem questions in this area candidates need to plan carefully to ensure that they distinguish between subsequent promises made to pay for a legal duty (*Collins)* or which come from the same party (*Stilk)* or a third party (*Shadwell)*.

Question 5* – Incorporation of terms

This question was not answered well by most candidates. The question required candidates to explain and apply the rules regarding incorporation of terms; many were able to explain the basic rules but were not able to develop their answers in relation to tickets, harsh or unusual terms and the rules of *non est factum*. Candidates should consider whether they have enough AO1 content to support an answer before making their choice of section B questions. The instruction not to discuss statutory regulation of the contract terms was followed by most candidates.

Question 6* – Privity of contract

This question required candidates to have a good understanding of the Contract (Rights of third Parties) Act in order to spot whether the third party had an enforceable right under the act. Most candidates were able to identify that the act applied in the first part of the question but most did not identify that it would not in the second part. Where the act does not apply candidates have scope to explore the other exceptions and ways to avoid the doctrine of privity which exist, a few candidates did this very well, discussing for example whether a collateral contract could apply. The best answers to this question showed the ability to apply the rules and exceptions in a methodical and detailed way.

Section C

Question 7 – Intention to create legal relations

Although most candidates adopted a suitable answer style for Section C questions the content of many answers to this question was poor. Candidates did not discuss the main principles of this topic, presumptions and rebuttal, in a structured and detailed way. An example is in Statement A where most candidates did not look beyond the sibling relationship to examine the actual nature of the contract made. Many candidates repeated their answer for Statement A in Statement B, candidates should note that it is unlikely, though not impossible, that 2 statements to a Section C question will require identical content.

Question 8 – Mistake

Many answers to this question failed to take account of the specific statements which were asked and contained little law, for example lots of answers to Statements B and C were based on common sense. It is essential that candidates include clear statements of legal principle in their answer, without reference to case law, and base their answer around an analysis of the way in which the facts fit the law.

G156 Special Study Law of Contract

General comments

The paper produced a wide range of responses. Every question produced a considerable number of full-mark answers. Some excellent skills were shown, in particular exploring the different dimensions of the problem questions. Extensive and detailed knowledge of relevant cases in the essay questions was also very impressive.

The principal factor limiting candidates' marks was a lack of focus on answering the question. This was evident in both question 1 and question 2. A number of candidates wrote answers to question 2 which had clearly been pre-prepared and which did not address the question asked. This considerably reduced their AO2 marks.

The use of the source material was mixed. Citation improved in comparison to previous series and it was unusual to see a candidate fail to provide both a source and line reference when referring to the sources. However, it was clear that many candidates had not made effective use of the sources in their preparation as their analysis lacked fluency in a number of themes that had been highlighted in the pre-release material.

Comments on individual questions

Question 1*

This question asked candidates to evaluate the significance of a case to the development of the law. In this instance, the question concerned the significance of *Jones v Padavatton* to the development of the rules on offer and 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. It must again be emphasised, however that the focus of the answer should remain at all times on the main case (*Jones*) for which the majority of the marks are given; only a small portion of the marks available for question 1 are available for discussion of linked cases. For high AO2 marks, candidates needed to identify and discuss the critical point of the case, make some analytical points regarding the case and discuss a linked case or cases to show development. The critical point of *Jones* is that it is an example of where the social and domestic presumption regarding ITCLR, that is: a presumption against ITCLR, has been extended to include other family members including parents and children. There are a wide range of analytical points that could be discussed, most of which are highlighted in some way or other in the pre-release materials. These include: the extent to which the court was perpetuating a policy-driven rather than intention-driven approach to ITCLR in these types of cases; the advantages and disadvantages of that policy-driven approach; the certainty and predictability secured by following the same approach as *Balfour v Balfour*; the uncertainty and complexity evident in the fact that there were contradictory findings amongst the various judges involved.

As noted above, the issues which most limited the marks awarded to candidates here centred on not focussing on analysing *Jones* itself. A number of candidates spent considerable time analysing other linked cases, time which was unfortunately greatly disproportionate to the number of marks available.

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 in their development of the law. Candidates were given a quotation which questioned why ITCLR should be inferred in a situation simply because it took place in a business context. A clear instruction followed asking for a discussion of the extent to which the courts take the actual intentions of the parties into account when reaching decisions regarding ITCLR. Candidates were instructed to consider this question with regard to "any situation", unfortunately some candidates chose to only write about commercial cases. This necessarily limited their AO1 marks as they were unable to provide a wide range of cases and they did not explain the basic rules of ITCLR in social and domestic situations. Many candidates produced excellent AO1 material in their answers, including a number of full-mark answers. It was encouraging to see that most candidates were providing some factual background to the cases they cited rather than simply providing a list of case names. This, together with a good range of rules and cases, enabled candidates to access the higher levels. It should be noted that minimal factual background is all that is required to show examiners that candidates have a genuine knowledge of a case. Giving extended narratives of cases is to be avoided as it uses up too much time.

The AO2 marks tended to be the principal discriminator between candidates in question 2. It must be emphasised that AO2 marks are awarded for analysis of issues which are central to the question asked. Some candidates appeared to be working from pre-prepared answers and struggled to enter the higher AO2 levels as their discussions did not attempt to answer the question. Discussions of fairness and certainty, for example, would not attract credit unless they related to issue of whether or not parties' intentions are taken into account. 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.

Question 3

The problem questions attract both AO1 and AO2 marks at a ratio of 1:2. It is important to emphasise that one-third of the marks are awarded for showing knowledge of rules and associated authorities. Two-thirds of the marks are available for applying rules to the scenario and coming to a reasoned conclusion which takes account of all the relevant issues.

Question (a) was an agreement which fell in the social/domestic category and therefore was subject to the presumption against ITCLR (*Balfour*). Extra marks were available for pointing out that the presumption had been extended to friends though cases such as *Buckpitt v Oates*. Possible lines of analysis included the fact that it may be considered to be simply a friendly conversation (eg *Wilson v Burnett*) and the fact that considerable reliance had been placed upon the conversation which could be enough to rebut the presumption (eg *Parker v Clark*). Question (b) was a straightforward commercial agreement and therefore the presumption in favour of ITCLR would normally be applied (eg *Esso*). Extra marks were available for pointing out that rebutting the presumption is particularly difficult to rebut (eg *Edwards v Skyways*), noting that the courts would, as a matter of policy, want to protect Daljit (eg *Esso*) and that there was no evidence of any of the normal methods of rebuttal (eg *Rose and Frank v Crompton Bros*). Question (c) proved to be the most difficult of the problems. It followed the pattern of *Snelling v Snelling*, a case alluded to in the pre-release materials. As such, it is treated as an agreement which fell in the social/domestic category and therefore was subject to the presumption against ITCLR (*Balfour*). Due to the business context in which it took place, there is a likelihood that the courts would be willing to rebut the presumption (eg *Snelling*). The trivial nature of the dispute is countervailing factor which is may lead the courts to choose not to rebut the presumption (eg *Balfour*).

G157 Law of Torts

General comments

This series continued to attract more candidates than has previously been the case previously . Candidates appear comfortable with the time constraints, and there were no examples of candidates attempting the wrong quantity, or mix, of questions. 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 and citation accurately and accompanying this with thoughtful analysis and comment focused on the question. Problem solving skills were also seen in good measure and the growing ability of candidates to structure their answer so that the response follows a model of explanation, application and conclusion on each issue before moving to the next is welcoming. This allows candidates a greater chance to achieve the higher AO1 and AO2 marks. Whilst case citation was often excellent, a common theme seen throughout Sections A and B was an imprecision in, or even a complete absence of, the citation of relevant statutory sections. Whilst there is a lot of material to recall and examiners are well aware that sitting an examination is a challenging experience, there is a need for centres, and candidates, to appreciate that with statutory torts there is an expectation that relevant sections will be utilised rather than the statute's name alone being the statutory citation at the start of the response.

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 the question but it is necessary to move beyond this and to 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 understand that the question will be focused in a particular way and that higher marks for AO2 will only be rewarded for responses that engage with this focus. **Examiner tip –** it is beneficial to candidates to interweave factual knowledge and analytical comment so that the latter component is shown to best effect.

In Section B differentiation was evidenced by the extent to which the issues were identified and appropriately proved, utilising detailed understanding and citation of legal principles and accurate application of these principles to the scenario facts to reach logical and reasoned conclusions. Centres should note that the mere naming of a case is insufficient and 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 a great deal more than a list of case names with no other amplification. **Examiner tip –** candidates are encouraged to prove fully all the elements of the relevant tort but to deal quickly with issues where proof is beyond doubt so as to focus on issues where discussion and reasoning is needed.

In Section C differentiation relied on the application of legal principle and reasoning to four distinct statements and it was pleasing to see 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 definite conclusion on the proposition to which they are responding. **Examiner tip –** vague conclusions such as 'Statement A could or could not be accurate' cannot attract marks, similarly uncertain conclusions such as 'X may be liable' cannot attract credit. Candidates should be encouraged to decide whether the statement is accurate or inaccurate and state this.

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

Question 1* – Animals Act 1971

Most candidates who attempted this essay were able to write clear and impressively detailed accounts of the law in this area. The best responses used the question to focus on the effectiveness of the law from a variety of perspectives; claimant, defendant and the wider society. These responses were adept at taking a structured route through the statute explaining and analysing the law relating to keeper, dangerous and non-dangerous animals and the available defences, thus gaining high AO1 and AO2 marks. Some candidates chose to look more widely than this, examining more particular aspects of the Act and this was rewarded. Case citation was often very good but, as a statutory tort, clear and accurate use of the statute and its sections is vital and centres are reminded of the need for this. A small number of candidates spent a good deal of time on related acts, such as the Dangerous Dogs Act 1991, but as the questioned was focused purely on the Animals Act this could not be rewarded.

Question 2* – Nervous shock

This was the most popular essay question by some considerable margin 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 secondary victims. Cases were generally well used to support arguments and the best responses compared the position of secondary victims with that of primary victims and other categories of claimant. This was particularly accomplished when undertaken within a structured analysis of the process and rules governing how victims can claim. Weaker responses tended to be more narrative in their approach and focused exclusively upon the *Alcock* control mechanisms, rather than incorporating these into a more widespread survey of the law. This limited the ability to develop AO2 comments. There was a common misunderstanding that anyone other than parents, children and spouses are barred from claiming as a secondary victim rather than these groups' close ties being presumed and everyone else having to provide evidence.

Question 3* – Duty of Care

This was the least popular of the three essay questions. The best responses engaged with the question to focus on the extent to which policy considerations had been fair to both the claimant and the defendant. These responses were able to explain the development of the law on duty of care from the neighbour test to its current incarnation in *Caparo v Dickman* and to explain fully all of the current requirements to prove a duty, using wide citation to support this. Many responses found the AO2 more challenging and often progressed little from that of a basic discussion of public benefit and the floodgates argument. High AO2 marks required responses to delve more deeply into the range of policy decisions, such as those concerning the police and barristers, and to analyse the effects of these decisions on the different parties.

Section B

Question 4* – Trespass to the person

This was the most popular of the problem questions by some margin and many candidates were able to score highly as they had a breadth and depth of case knowledge at their disposal and they were able to demonstrate well organised and sophisticated problem solving skills. Citation was detailed in relation to each of the torts of assault, battery and false imprisonment. Most candidates were able to identify all of the issues in the scenario and many were able to apply the law well, especially in relation to Alvor's false imprisonment issue. The best responses took a step by step approach with the law relevant to each small scenario being explained and then the relevant legal provisions carefully applied. The very best responses ensured all elements of the tort were proved, key issues in doubt were interrogated, such as hostility in Belinda's battery with the umbrella, and an appropriate conclusion reached. Weaker responses tended to focus their application skills on the conclusion to each mini scenario rather than building the response to reach the conclusion.

Question 5* – Occupiers' liability

This question attracted a range of responses with the best containing detailed knowledge of the provisions of both the 1957 and 1984 Acts. Understanding of the law was often good but not always supported by use of the statutory sections. Centres are reminded that in statutory torts the ability to explain and cite the appropriate section is expected. Most candidates were able to explain and apply the provisions of the 1957 Act, but there was a lot less confidence in the requirements imposed by the 1984 Act. In particular there were very few responses which could accurately explain and apply the requirements needed for Jakob, as a trespasser, to be owed a duty of care. The majority of responses assumed that he would automatically be owed a duty. Most candidates were correctly able to identify both Myleen and Sparkie as lawful visitors under the 1957 Act. There were some responses that confused professional visitors as the claimant under section 2(3)(b), as in Sparkie's case, with situations when the occupier can argue that an independent contractor should be held responsible under section 2(4).

Question 6* – Negligence

This was the least popular of the three problem questions; the best responses engaged with the thrust of the scenario and were very methodical in explaining and then applying the relevant rules relating to the law on breach of duty and causation of damage. Most candidates were more comfortable with the law relating to breach and there was some good exposition of the *Blyth* test and subsequent refinement in cases such as *Bolam*. The very best responses used the standard of care as a starting point from which to apply the risk factors to decide the question of breach of duty. Candidates found the issue of causation more problematic and many struggled to discuss the law beyond the 'but for' test. Stronger responses were able to identify and discuss the issues relating to Myleen's loss of chance, Colin's disease of the spine as a multiple cause and Colin being a potential intervening act by diving to save Doreen but identification of these issues was not always evident. Some candidates failed to heed the instruction in the question to assume that duty of care requirements had been met. Any subsequent discussion of this could consequently receive no credit. Centres are reminded to advise candidates to read instructions carefully before embarking upon their response.

Section C

Question 7 – Nuisance

Many candidates showed some skills of reasoning from an opening statement to a conclusion but without picking up on the nuances of the individual statements. Many responses for each statement were very similar. In Statement A most candidates failed to recognise that the noise was continuous but that the smoke was not. In Statement B better responses were able to use class and special damage as the correct focus for public nuisance but too many candidates ignored the statement and attempted to establish a private nuisance. In Statement C many candidates recognised that the issue involved abnormal sensitivity but this was too often not tied to the use of the land and so a lot of the discussion was too generalised about sensitive gerbils. In Statement D better responses identified that social utility is not a valid defence to private nuisance but too many responses lacked any legal reasoning.

Question 8 – Vicarious Liability

There were some encouraging responses to this question, showing good skills of reasoning to a supported conclusion. This was particularly evident in Statements B and C. In Statement A most candidates were able to identify the employment status tests but there was too much acceptance of Kumar's status as an employee because he did the same job as Jerry. In Statement B there was widespread understanding of course of employment and the position of authorised acts performed in an unauthorised manner. In Statement C there was again good understanding of how the law deals with an employee's 'frolic of their own'. In Statement D there was less confidence, although most responses were able to engage with the concept of contributory negligence.

G158 Law of Torts Special Study

General comments

This was the first sitting for the new 2012 Special Study theme of private nuisance. This is an area of common law which is rich in easy to remember and accessible cases and this was clearly evident in some particularly good essays. However, nuisance has also been criticised by judges and academics for being too complex and intricate to easily establish liability and this was evident in some less accomplished responses to the problem questions.

As has been the case in previous reports it is worth pointing out the assistance available to teachers of this specification who may be new to OCR:

> '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.'

This series was characterised by a single common theme – a general improvement in questions 1 and 2 but a poorer performance in question 3.

Notable improvements and areas of good practice:

- There were very few poor performances
- There were no spoilt papers
- There were hardly any candidates who did not attempt all three questions
- Very few candidates failed to gain marks through a failure to link to the source
- There was a tighter focus on the AO2 'spin' in the main essay question
- Exhaustive case law knowledge including the latest case law on recent developments under the Human Rights Act.

Areas for further development:

- Dividing time and effort in proportion to the marks available which may remedy the effect referred to above (improved performance on questions 1 & 2 and poorer performance in question 3)
- Practising problem questions to hone the skill of identifying key issues
- Use of the Skills Pointer to improve the approach to the case study question.

Timing and organisation

As referred to above, the slightly poorer performance in question 3 may, in part, be due to candidates running short of time. It certainly seemed that this was the case as there were a significant minority of scripts where the handwriting, quantity and quality of the response seemed to indicate a rushed job.

Practical solutions would seem to include:

- Practising in-class timed questions
- Teaching students to make greater use of referencing the source materials. This is a key skill and one of the reasons that the source materials are allowed into the exam. A candidate who is familiar with the sources and can cite case facts, ratios and critical points from the source will save considerable time whilst still gaining the appropriate marks.

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.

Comments on individual questions

Question 1*

There was a general improvement in the standard of responses to this question when compared to last year. Candidates seemed to have a broader sense of what the requirements of the question are. Many candidates scored marks in excess of level three.

There were some intelligent connections made between the case (*Network Rail v Morris*) and broader issues which clearly indicate the sort of reading around the sources that would be expected of the best students.

There were very few responses where the candidate did not have a clear view of the main critical points. The best responses picked up on the reasonable foreseeability **and** the sensitivity issues and dealt with them separately but most responses managed to deal with one issue or the other.

Better responses made developmental links with both sensitivity cases and either the *Hunter/Bridlington* cases (pursuing the recreational use connection) or cases such as *Cambridge Water* (pursuing the reasonable foreseeability connection). Lower level responses mostly managed to link with at least one sensitivity case.

Critical points were, in general, the defining distinction between more and less competent responses. However, a close reading of the source would have disclosed a number of possible opportunities for analytical points and these were missed opportunities for some candidates. The source, either implicitly or explicitly, refers to:

- The suggestion that the type of complaint Mr Morris has would be better dealt with through regulation – which gives the opportunity to explain other existing forms of statutory nuisance and their rationale
- The hint that electronic interference might be a species of interference worth looking at separately – giving an opportunity to link to *Hunter/Bridlington*
- The mention of reasonable foreseeability in negligence – giving an opportunity to talk about the overlap and an ideal opportunity to link to source 5 and Conor Gearty's discussion on this point
- The question as to whether previous law on sensitivity remains good law – giving an opportunity to discuss the *Robinson/Walker* line of argument
- A reference to the law of nuisance having 'moved on' – giving an opportunity to discuss the changing nature of nuisance
- A reference to balancing competing interests – giving an opportunity to discuss the 'give and take' nature of nuisance and the way remedies help to strike the balance of competing interests as well.

In other words, there was ample support in the source for those who had read it closely in preparation for the exam.

Question 2*

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 score 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 score well.

The general standard of responses to this question was a definite improvement on last year:

- Many students scored full marks on AO1 with their comprehensive case knowledge and excellent source references
- AO2 scores saw similar improvement with a much tighter focus on the exact 'spin' in the question rather than using generic criticism
- It was also very pleasing to see a much improved attitude towards including a logical conclusion following robust criticism of this as a feature of last year's lower level responses
- There was far less misunderstanding of the law with the vast majority of cases being accurately and appropriately cited
- There was generally a good balance with responses looking at the whole picture (who can sue and be sued, what amounts to a nuisance, factors affecting reasonable use of land, defences and remedies).

Improvements might have been achieved through:

- More intelligent and thorough use of the sources
- Developing cases instead of giving lists of bald cases – ideally through a brief statement of the relevant facts and the *ratio*
- Referring to the critical theme and reflecting on it throughout the text
- Remembering that at level five some evidence of recognising synoptic issues will be required
- Remembering that a logical conclusion is a requirement at level three and above.

Question 3

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.

There were some thoughtful responses to the problem questions but, on the whole, they did not perform as well as last year. A number of factors may have contributed to this:

- Timing seemed as though it might have been an issue with candidates effectively 'sacrificing' question 3 in order to play to their strengths in questions 1 and 2
- With a broad range of issues to take into consideration it may have been more challenging to try and identify the critical point
- Some candidates were clearly distracted by irrelevant issues – for example, seeing sensitivity as an issue in inappropriate circumstances.

Part (a) – the best responses dealt with the status of Alice as having a proprietary interest in the land, some issue around locality, the nature of the nuisance and the defence of prescription. Lower level responses tended to deal with the first and last points but got confused over the nature of the nuisance (often missed) and dealt with the locality in a purely anecdotal context. There were also a significant minority who saw Alice as being 'sensitive' because she didn't like the smell of liquorice.

Part (b) – this question attracted the largest number of 'hit and miss' responses. Lots of candidates missed the idea that this was a *prima facie* nuisance. Instead of then considering issues such as nuisances arising from natural causes, adoption and sensitivity candidates speculated on irrelevant issues.

Part (c) – this was the question that attracted the best responses. The similarity to *Hunter* and *Khorasandijian* meant that most candidates were able to establish Charley's lack of status in terms of proprietary rights and recognise that there is no protection in nuisance for this kind of interference anyway and thus conclude correctly.

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