OCR
RECOGNISING ACHIEVEMENT

GCE

Law

Advanced GCE **A2 H524**

Advanced Subsidiary GCE **AS H124**

Report on the Units

January 2008

H124/H524/MS/R/08J

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

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

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REPORT ON THE UNITS

Chief Examiner's Report

This was the third sitting of AS papers under the new 4-unit specification and the first sitting of the A2 papers. It was therefore the first sitting in which all papers have been available. Indeed all units had entries this series, although obviously in a pattern which was not in keeping with sittings under the 6-unit Curriculum 2000 specification.

The highest entries were almost inevitably for Sources of Law at AS and the Special Study units for A2. Around 80% and 70% of the usual cohort entered these units respectively.

It is worth reminding centres that the unit content for Sources of Law can be examined in any combination, and it is worth noting that the questions in this series were on Statutory Interpretation and Judicial Precedent. While there was a certain amount of variation between A2 options, in general the Special Study units performed better than in a normal June series under Curriculum 2000, which was the logical comparator on the size of entry.

On the whole it is possible to identify that the move to a 4-unit structure for OCR Law has been successful in respect of January sittings. There are a number of reasons why this is a reinforcement of the expected result, and these are discussed in detail in the individual Principal Examiners' reports. A number of other points might usefully be made:

- Sources of Law represents 40% of the overall AS mark, compared to 30% for Machinery of Justice, the most popular unit for January entries from the 6-unit specification. Candidates achieving the maximum 60 raw marks on Sources of Law will already have secured a pass at AS irrespective of their performance in the other AS paper. This must therefore be a confidence boost as it would be for any candidate with a high grade A mark.
- The English Legal System unit represents around 70% of the subject content at AS. It is difficult to see how the unit content can be covered in twelve weeks to adequately prepare candidates. If centres want to enter candidates for a January exam, Sources of Law is the obvious choice.
- Evidence at every level in the January 2008 Special Study units suggests that there is a greater awareness of the skills requirements of those papers and candidates are in general engaging meaningfully with the models of assessment and with the source materials.

There was a relatively large entry for English Legal System - over 3,300 candidates, which is more than four times the entry in January 2007 -. and the Principal Examiner expressed concern at the policy of entering candidates in a January series for a paper which such a high content level. Many candidates did not perform as well as they could have done; many scored very high marks on two questions, demonstrating their clear capability, but then scored few or no marks on the other two questions. This presumably demonstrated that candidates had insufficient subject knowledge overall to be sitting the paper at such an early point in their A Level course.

Candidates may benefit from entering a January sitting by virtue of engaging in assessment in 'bite-size chunks' and from the confidence that a good pass can give, as indicated above, and will still have the opportunity to resit to improve their UMS marks. On the other hand, candidates sitting and doing badly may be deflationary and denting to their confidence, and the resit then an essential and unwelcome burden adding to their anxiety in the June series. It must, in any case, be a significant task for candidates to prepare effectively after only twelve weeks of study.

In the case of Law of Contract and Law of Torts numbers were very low, only just into double figures, but in Criminal Law there was a sizeable entry well in excess of 300 candidates. Many of the same points which have been made above in relation to English Legal System could equally be made here. While there were some very good scripts, Principal Examiners reported, and the

scripts showed, that in many instances candidates who were able to score high marks on one or more question, were nevertheless unable to sustain performance over the paper. This is not surprising in view of the volume of content which candidates would be expected to assimilate in twelve weeks and, certainly in the case of Criminal Law, the complexity of some of the concepts.

Nevertheless, it is clear that, even at this early stage, there have been some obvious successes arising from the new 4-unit specification, and the senior assessors for law wish to congratulate teachers and students for the contribution that they have made to this.

It may be of interest to many law teachers to know that OCR has now developed a GCSE Law which will be available for first teaching from September 2009. This GCSE is designed to progress naturally into A Level study by developing key skills and understanding and by providing a lively and interesting course of study and a wide range of assessment models appropriate to and accessible to the notional 15 and 16 year old student. Further information on this qualification can be obtained from the OCR website www.ocr.org.uk

G141 - English Legal System

General Comments

Although the change to the new 2-hour exam seemed to have worked very well for most centres in the summer exam, this session did not perform in the same way. The standard overall was much lower. There were many small centres with retake candidates who performed at very many different levels but were usually able to access four questions to answer. But for many of the large centres who had chosen to put their candidates in for this examination after only one of term of teaching this was not so often true. Many candidates could only really access two or three questions properly and would have to make up an answer to their final question if they attempted it at all. It is recommended that this exam is more suitable for first sitting in the summer session, to allow time to cover the material and develop the skills needed to answer the questions effectively.

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

On the whole there seemed to be a lack of knowledge and detail in part (a) questions, particularly on the popular 'standard' questions on police powers, magistrates and the legal profession, Many candidates still do not focus on the command word and so discuss when they are asked to 'describe' and vice versa.

Candidates still do not read the questions and do not use statutes or cases; worryingly, many are still using old text books. The use of the most up to date text books is essential in law as the English Legal System is constantly changing and answers based on out of date information are just not accurate enough to gain high marks. With the number of text books on the market and availability of resources on the Internet, etc, it is possible to keep relatively up to date. Teachers should be encouraged, if nothing else, to use puiblished mark schemes as a resource.

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

A substantial number of candidates chose to do the two Section B questions, often achieving good marks.

A significant minority of students produced scripts which were very difficult to decipher due to poor handwriting, poor expression or structuring the answer poorly.

It is disappointing that so many candidates **still** fail to enter the question numbers on the front of their Answer Booklet. Candidates **must** write the numbers of the question they answer on the front of their Answer Booklets. There is an instruction in the rubric of the question paper to this effect.

Comments on individual questions

Section A

Question 1
Part (a) This was a reasonably popular question and most candidates could describe some of the roles a magistrate has in criminal cases, so reaching Level 2 or Level 3. Only a very few candidates were able to describe the civil roles of magistrates, which was needed to gain marks in Level 4.

Part (b) was well answered by some candidates, but many strayed away from the question and generally discussed the advantages and disadvantages of lay magistrates.

Question 2
This was not a particularly popular question but, for a question on civil appeals, seemed more popular than usual. The answers tended to be very good or very bad with nothing really in between.

Part (a) The best candidates were able to explain the fact that from the county court appeals are to a different level of judge, not necessarily a different court, and were able to describe the whole range of possible appeals including Article 234 referrals. Less able candidates often confused civil appeals with criminal appeals, with some appearing to be unaware of civil cases or a civil court system.

Part (b) This was often answered slightly better than part (a) as many took the opportunity to talk about ADR and could gain some credit here. Many candidates are still unsure how to 'discuss' and just listed points

Question 3
This question was not at all popular and was answered by candidates from very few centres.

Part (a) There were some very good answers from a small minority of candidates, but generally there was confusion between selection and qualifications required. Many candidates simply listed the qualifications needed without any explanation of how judges are selected. Many candidates who did focus on the question were hampered by only using old law; only a few mentioned the Judicial Appointments Commission and talked at length about secret soundings. Many candidates did not mention tenure which was necessary to get into Level 4.

Part (b) Better candidates could discuss the changes and comment on how they might broaden the field of potential judges. Unfortunately many answers were based on the old process of secret soundings and the Lord Chancellor - a lack of knowledge of the new procedures made it impossible for the candidates to do well. As the changes came in in 2005 and are in more recent text books (and were in many previous text books as proposed reform), candidates should have been aware of them.

Question 4
This question was also rarely attempted. Legal funding does not seem to be taught in many centres.

Part (a) Those that did answer this question were either reasonably good, or it was a last question about which they really did not have much clue. Only a few actually answered a question on legal advice and those gained some good marks. The majority however either answered a question on legal funding or on ADR, neither of which was on the paper, and ended up with no marks. It is really important that students work on the skill of answering the question asked, rather than the question the candidate wants to see. This skill, hoipefully, may be more developed by the summer sitting.

Part (b) Other than the few very good answers, candidates restricted themselves to commenting on the problems of getting legal funding rather than access to advice.

Question 5
This was a very popular question and often done very well, with a high percentage of Level 3 and Level 4 answers.

Part (a) Better candidates got the order of training correct and mentioned ILEX and CPD and covered both solicitors and barristers. There were some excellent answers, with excellent additional insight and detailed expansion on the various stages of training. Weaker candidates did not know the difference between the CPE and the LPC, or which one applied in which context, and had no real idea of the order of the training. Some candidates only dealt with either solicitors or barristers, which prevented them from getting out of Level 2.

Part (b) Even weaker candidates could have a go at this, making some comment about cost and debt or the difficulty of getting training contracts/pupillages, so all tackled it to some degree and usually gained at least Level 2 or Level 3 marks, making very interesting comments.

Section B

Both Section B questions were very popular, with a high proportion of candidates attempting both questions in this section.

Question 6
Answers to this question were very variable.

Part (a) There were many very good answers, showing good knowledge of PACE 1984 and the codes of practice. The best candidates gave a good description of detention times, the custody officer and basic rights, as well as of the rights of the suspect during interview and a description of rights during searches at the police station. Weaker candidates tended to briefly explain one or two rights or concentrated on police powers without mentioning any rights.

Part (b) This part was rarely answered well as many candidates were confused between searches and samples and the different types of search. As they did not know the law in this area they could not accurately apply it to Jack. Those candidates who did know the law in this area often achieved full marks for the question.

Question 7
This was another very popular question and usually done reasonably well.

Part (a) The vast majority of candidates were able to describe at least some of the community sentences available for young offenders to a reasonable degree and could gain marks for that. Better candidates were able to describe some sentences in each category; custodial, community, fines and miscellaneous. The weakest candidates named types of sentences without describing them, or simply described adult sentences and called them youth sentences.

Part (b) Candidates seemed to enjoy this question and answered it reasonably well. The majority managed to reach Level 3 or Level 4 as they were well able to apply aims to Hannah and suggest possible sentences.

G142 - Sources of Law

General Comments

Candidates achieved the full range of marks, demonstrating clear preparation for the examination. However, it was surprising that there were not more candidates achieving higher marks, given the topics on the paper.

The overall standard was lower than in January 2007 but was still adequate. A number of candidates sat the examination with prepared answers, tending to write everything they knew about the question area and presenting a significant amount of irrelevant material.

There was a pleasing split between judicial precedent and statutory interpretation. The choice of question was centre specific. Both questions attracted the full range of marks, demonstrating the quality of teaching in these areas.

An area which centres could concentrate on to improve candidate performance is the part [b] questions. Too many candidates answered without mentioning any additional law. Reliance on the source will only score low level marks.

The use of the source was excellent and it supported candidates at the lower levels. It was noticeable that a limited number of higher-end candidates ignored the source. It is important to emphasize its importance to access the full range of marks.

Virtually all candidates answered the questions in good time. Again a small number of candidates completed both questions.

Question 1 - Judicial Precedent

The responses in this area were mixed. It was pleasing that [cii] was answered very well by a number of candidates, given the normal problems with AO2. Part [ci] was the most challenging to candidates. A significant number focused on the Young criteria or the powers of the House of Lords.

a) Most candidates could define persuasive precedent and make some link to the source. There was a tendency not to support the various types of persuasive precedent with case law. At the higher end there were some outstanding answers, showing clear understanding, with a range of supporting cases that linked their answer with the source.

b) This area was critical to lower scoring candidates. Most candidates demonstrated an awareness of the operation of precedent in the context of the scenarios. There was a significant minority of candidates who were confused regarding the powers of the Court of Appeal and this restricted their marks.

c) There was a significant difference in the answers to ci) and cii). Part ii) had stronger responses.

Most candidates answered part (i) by discussing distinguishing. This varied from a definition to an analysis of the concept using appropriate case law. The more able candidates focused on other methods of avoiding precedent using the source to support their answer. A significant minority of candidates answered the question through a discussion of the Young criteria or by using the source alone.

The responses to part (ii) were very encouraging. A significant number could identify a range of comment relevant to the question. Candidates could have achieved more marks in this area by extending and developing some of their points.

Question 2 - Statutory Interpretation

There were a mixed responses to this question. Parts [a] and [ci] were the strongest with part [cii] being the most challenging. Clearly candidates had been prepared for the obvious areas and this was reflected in the candidate performance.

a) This area was stronger than in previous years. More candidates could define the purposive approach and support their answers with relevant cases. There still remains confusion over this approach and the other rules. There were a number of candidates who mixed AO1 and AO2.

b) A surprising number of candidates did not apply the rules to the scenarios and many answered using common sense or the source. This style of question has been asked a number of times in previous papers and it is important that teaching time is given to this area. It is a very simple way to enhance candidate performance. It is also worth noting that only a small proportion of candidates recognised the similarity between [biii] and the source.

c) Few candidates were able to answer this part well. It resulted in some very mixed and novel answers.

(i) Most candidates could define the literal rule and have some link to case law. However case discussion was disappointing. Centres do need to highlight that cases should be used as illustration. A significant number of candidates focused on

the AO2 of the literal rule and it is important that candidates appreciate the different requirements of the paper.

(ii) This question presented the weakest responses. A significant proportion of candidates discussed the rules in their responses. A number of candidates described the key AO1 themes such as Hansard, but had no comment in line with the question.

G143 - Criminal Law

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

General Comments

This was the first sitting of thisUnit, which incorporates a new method of more objective assessment in Section C and a departure from the previous specification in the rubric and time allowed.

There was a relatively small entry, though even this was in itself a slight surprise, in the sense that the questions covered the entire range of the specification but candidates had effectively experienced only one term of teaching.

Performance varied from centre to centre and within centres and there was a wide range of attainment. There were, indeed, some strong performances but in many instances it was clear that candidates had struggled to cover enough material to deal with the range of topics examined. There was a good deal of familiarity with the Section A and B components but the different skills needed to achieve success in Section C were apparently not understood by a good number of candidates.

All questions set were tackled by the overall cohort. Question 1 on omissions was by far the most popular in Section A. Questions 4 & 5, on the special defences to murder and involuntary manslaughter and causation respectively, in Section B and Question 8 on theft and robbery in Section C were the next most frequently answered.

The points in the following paragraphs have been made before, in relation to the previous specification, but are worth repeating. There is still evidence in essay answers to Section A that students are being prepared to recite ‘stock’ answers to topics rather than learning how to address the particular question set in a wider conceptual way. This can lead to unnecessary discussion of irrelevant material - particularly noticeable in relation to the question on burglary, where some candidates discussed the offence of theft. Happily, candidates now appear to be more aware of the need for evaluative commentary in essay questions, but the evidence sometimes suggests that they have often learned critical comment without necessarily understanding it.

Answers to problem Questions 4 and 5 were reasonably evenly distributed, with candidates preferring Question 4 on murder and the special and partial defences and, generally, earning good marks. Answers to Question 5 tended to be more variable with candidates identifying the causation issues reasonably well but often appearing to be baffled about the analysis of any substantive offence or even abstaining from considering one at all. There were fewer answers to Question 6. Despite this there is generally a steady improvement in the technique applied by most candidates to these problem scenarios. There is also evidence of a more structured and reasoned approach to these questions, with an increasing number of students confident enough to argue to a logical conclusion rather than feeling pressured to come to a definite solution, which is often not possible in a criminal law problem.

Even so, it is often worthwhile for candidates to think about their method. For example, it would seem to make sense to analyse the existence or otherwise of a potential substantive offence before going on to consider issues of causation or defences that may be available. Stating all the relevant law in one go can also be detrimental to the quality of an answer in some circumstances. Often it is more appropriate to deal with the individual issues as and when they

arise chronologically during a scenario. One way to become confident about tackling problem questions by having plenty of practice at them. Slavishly following a mantra about always stating all the relevant law first before embarking upon any application of it to the facts of a scenario can lead to a mechanical approach. While certainly leaving an impression that the candidate has been trained to answer problems logically, this sometimes results in an oversight of one of the key issues.

The new Section C assessment

There were some good responses to Section C questions focusing on legal reasoning, but it is clear that candidates need guidance about preparation, so that they can make the best use of their knowledge and understanding without having to provide evidence of it implicitly rather than expressly. It appeared that many candidates, understandably to some extent, did not know how to approach these questions and thus students included definitions and case details that were not really necessary. Candidates are being assessed on identification and application skills in this form of assessment. Many students provided extensive factual knowledge, and some began with an introduction which was a general summary of the law. This is not necessary for Section C. A lot of candidates cited cases in their answers but a good number did not reach any conclusion on the Statements, even where it was clearly appropriate to do so. Hedging their bets was a very popular option. Many wrote a huge amount; some were so concise it was hard to know how much they really understood. The use of negative statements seemed to confuse some candidates and there were certainly quite a number who did not read the statements carefully. However, there were some good examples of legal reasoning too. One common mistake was a failure to respond purely to the Statement or proposition expressed in the question. Many candidates failed to provide a conclusion that the statements were either accurate or inaccurate, as required by the command in the question. This is logically the last step in a short process of reasoning. Examiners have taken these outcomes on board and, as always, the philosophy is to reward candidates positively for the evidence they provide in their responses. Great care is taken during the standardisation process to ensure that candidates are not disadvantaged in any way.

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

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

Comments on Individual Questions

SECTION A

Question 1 – Liability for Omissions
This was, by far, the most popular question in Section A and on the paper as a whole. Many students would begin their answers with Stephen's 19th century description of X seeing Y drowning. Few could clarify this by saying there would be no duty to act if X and Y were strangers; rather, the answers led to the statement that there would be no duty to act in any circumstance. Apart from the weakest candidates, nearly all were able to provide a reasonably comprehensive knowledge and understanding of the recognised common law 'duty' by reference to the traditional cases in this area. There was some vagueness in the description of the offence committed in *Dytham* – misconduct whilst acting as an officer of justice – and many asserted that the offence in *Gibbins & Proctor* was manslaughter rather than murder. Another occasional area of confusion arose between the duty that may arise from a special relationship (*Gibbins*) and the voluntary assumption of a duty of care (*Stone & Dobinson*). Most candidates referred to the large number of statutory offences which may be committed through a failure to act when under a duty to do so, usually citing various offences under the Road Traffic Acts.

Discrimination, in the main, was to be found in the amount and quality of AO2 content, where the majority were able to refer to the concept of a 'Good Samaritan Law' without developing their consideration of the command in the question much further. There were, however, candidates who capably addressed many of the wider issues associated with the potential problems that might occur should such a law be introduced into England and Wales. This latter group scored well on this question.

Question 2 – Burglary
This topic was examined for the first time as an essay question although it was, of course, the subject of Special Study papers on the previous specification. It was attempted by relatively few candidates. Assistant Examiners reported that the quality of answers that they saw was generally poor, with muddled knowledge and understanding of the offence of burglary, and extremely limited in terms of AO2 evaluation as required by the command. However, the Principal Examiner is happy to report that he saw some good scripts in response to this question. These candidates dealt convincingly with the common elements of 'entry', 'building', 'part of a building', 'trespasser' and were also able to the requirement of ulterior intent in s.9 (1) (a) and distinguish it from the s.9 (1) (b) offence. Good knowledge of the relevant case law was a prerequisite here.

Question 3 – Consent
This question was much more popular than Question 2. Again Assistant Examiners reported a 'mixed bag' of responses. There was a lack of knowledge focused on the question and the inevitable misconceptions about the decisions in *Brown* and *Wilson* arose. A small number erroneously strayed into consent in theft and few engaged in comment to a high level, preferring to repeat the quotation given in terms of the material discussed. Once more, however, the Principal Examiner is able to report that he did see a few good answers to this question from candidates who were clearly well prepared and who were able to supplement wide case citation with some relevant consideration of the question posed. These candidates considered the nature of a true consent to offences against the person and, in most cases, went on to discuss the justifications developed by the courts to the causing of deliberate harm. Examples commonly used to illustrate their considerations were, contact sports, 'manly diversions', public exhibitions, personal adornment for cultural reasons, surgery and, of course, 'vigorous' sexual activity.

SECTION B

Question 4 – Special and Partial Defences to Murder
This was a slightly more popular choice than Question 5 on involuntary manslaughter and there were a number of very good answers. The question was generally tackled correctly with students beginning with a brief discussion on murder, then, leading into potential defences under ss.2 and 3 of the Homicide Act 1957. Perennial problems were that a small number of students insisted the definition is to be found the Homicide Act 1957 and followed this with a lengthy analysis of whether there was evidence of 'malice aforethought'. Many sidetracked wrongly into oblique intent, when the scenario stated that Zandra stabs Shaun in the chest with a knife, evidence, at least, of a direct intention to cause serious harm. A few compounded this by engaging in a protracted discussion of causation when it was obvious that Zandra caused the death of Shaun since the scenario said 'killing him instantly'. Students should have plenty of practice at problem questions before entering the examination in order to help them assess the key features that need to be addressed. Answering problem questions is a particular A2 skill and pressure of time may make this difficult to practice this sufficiently where candidates are entered for this paper in January.

Most candidates focused on provocation as the most obvious defence. All found evidence of provocation but far fewer mentioned the issue of 'cumulative provocation' here since the final insult was rather trivial. *Humphreys* was relevant here but was mentioned by relatively few candidates. There was the issue of time lapse which could have affected the chances of success. Reasoned argument that it may or may not have been available to Zandra because of this feature was credited. The arguments about the relevance of 'characteristics' when applying the objective 'reasonable man (person) test' were rather muddled in this session. Most candidates referred to *Camplin* and applied it to Zandra in terms of her age. A large number said little more than this. Those who did consider the implications of *Smith (Morgan James)* and *Holley* rather tied themselves up in knots over the distinction between characteristics which affect the gravity of the provocation to the accused and those which affect the accused's powers of self-control, if, indeed they distinguished them at all. Rather more worryingly, many candidates stated that *Ahluwalia*, in particular, though sometimes coupled with *Thornton*, has now established a 'defence' of 'Battered Woman Syndrome'. How much more pleasing it would have been had consideration been given as to whether this condition could have been made relevant as a 'characteristic' within the s.3 defence. It would have been better still had there been arguments that BWS is now capable of being recognised as a potential psychiatric condition which may satisfy the test of 'abnormality of mind' under the s.2 defence of Diminished Responsibility (*Hobson*). Instead, although most scripts mentioned Diminished Responsibility, both the definition and, more particularly the application, were often woefully attempted. This is contrary to the trend of recent examinations under the previous specification where Diminished Responsibility has been understood rather well.

Question 5 – Involuntary Manslaughter and Causation

Assistant Examiners report that this question was less popular than Question 4 and many answers lacked a thorough understanding of the different types of involuntary manslaughter and the relevant tests. Many responses focused almost exclusively on causation. Some candidates wrote an entire answer without ever identifying an offence at all. This question clearly required a good discussion of involuntary manslaughter and causation from the point of view of Raul who set up the chain of events, and whether or not Dr Smith broke the chain of causation and would face liability as a result. Students clearly appreciated the issue of causation and made a good and valid attempt on this point. Most identified the issue of transferred malice. Those who were familiar with the case of *Mitchell* grasped the problem straight away although the question could have been answered very competently without reference to it. However, too many candidates failed to display basic knowledge of the offence of unlawful act / constructive manslaughter even if they acknowledged it as the offence. The '*Church* test' was critical here, since Raul had merely 'pushed' Christiano to initiate the chain of causation, but this needed to be interpreted as a battery involving the risk of 'some harm, not necessarily serious harm' to the reasonable person. A potential charge of gross negligence manslaughter against Dr. Smith was recognised by many and there was creditable analysis of the causation issues in this respect through the application of cases such as *Jordan*, *Smith* and *Cheshire.* Most recognised that Dr. Smith did owe a duty of care to Margaret and discussion centred about whether the administering of the penicillin broke the chain of causation. Any reasoned conclusion gained marks. What was lacking, however, in many scripts was a coherent definition of gross negligence manslaughter and analysis of whether Dr. Smith's conduct had fallen so far below the standards of a reasonable doctor as to amount to a breach of duty. Some candidates did identify all the relevant issues and scored well.

Question 6 – Offences Against The Person and Automatism

This question was not a popular choice and often only, at best, adequately answered - perhaps the worst attempted of the scenarios. Many candidates seemed unable to give straightforward definitions or to recognise the difference between s47 and s20 offences. Identification of the mens rea issues was particularly poor in this connection. The most popular charge for the ponytail incident seemed to be criminal damage, with hardly any candidates being aware of the recent decision in *DPP v Smith*. Candidates seldom used an organised approach, identifying offences apparently at random and presenting inaccurate or garbled definitions. Few offered

citation (of either cases or offences) and fewer still identified the defence of automatism. This was slightly surprising, given the prompt in the scenario that Sinita has been knocked unconscious and is still dizzy and stumbles towards Mina. Of course, it is possible that some candidates may not have covered this defence by the time of entering in January. There were a few candidates who proved the exception to the general rule and scored reasonably well.

SECTION C

The general comments in the introduction about the responses to Section C comments are repeated here.

There were some good responses to Section C questions focusing on legal reasoning, but it is clear that candidates need guidance about preparation, so that they can make the best use of their knowledge and understanding without having to provide evidence of it implicitly rather than expressly. It appeared that many candidates, understandably to some extent, did not know how to approach these questions and thus students included definitions and case details that were not really necessary. Candidates are being assessed on identification and application skills in this form of assessment. Many students provided extensive factual knowledge, and some began with an introduction which was a general summary of the law. This is not necessary for Section C. A lot of candidates cited cases in their answers but a good number did not reach any conclusion on the Statements, even where it was clearly appropriate to do so. Hedging their bets was a very popular option. Many wrote a huge amount; some were so concise it was hard to know how much they really understood. The use of negative statements seemed to confuse some candidates and there were certainly quite a number who did not read the statements carefully. However, there were some good examples of legal reasoning too. One common mistake was a failure to respond purely to the Statement or proposition expressed in the question. Many candidates failed to provide a conclusion that the statements were either accurate or inaccurate, as required by the command in the question. This is logically the last step in a short process of reasoning. Examiners have taken these outcomes on board and, as always, the philosophy is to reward candidates positively for the evidence they provide in their responses. Great care is taken during the standardisation process to ensure that candidates are not disadvantaged in any way.

Question 7 – Duress
Although duress is the current topic for the Special Study Paper, very few candidates attempted this question. This is, perhaps, not so surprising given that Centres who entered candidates for this Unit are hardly likely to have covered the Special Study Unit as well. Many candidates failed to identify in their whole answer that the relevant potential defence was duress.

For Statement A) Candidates usually managed to spot that the threat was not of a sufficient gravity but failed to say what a sufficient threat must consist of i.e. a threat of death or serious harm. Most therefore implied that the Statement was not true but failed to say so expressly.

For Statement B) Responses to this Statement were rather variable. The key issue was that clearly Ahmed had voluntarily decided to commit a burglary in response to the threat. Fernando had not demanded that Ahmed did this and therefore no crime had been nominated by Fernando so the defence of duress would not be available to Ahmed for this specific reason. Some referred to the probable requirement of a lesser of two evils without reaching a conclusion. Many continued to ignore the requirement of a serious threat of death or serious harm. The essential point of nomination of an offence was recognised by most but, again, many failed to provide an evaluative comment about the accuracy or otherwise of the Statement proposed.

For Statement C) Candidates seemed quite confused about the effect of the gang membership, probably because of their doubts about the of the 'shoplifting' nature of criminal activity undertaken by Spike's gang. They should have reasoned that Ahmed has voluntarily associated himself with a criminal organisation and then offered an evaluation which admitted the possibility of the Statement being possibly accurate or inaccurate depending upon Ahmed's knowledge both subjective and objective. Ahmed would be able to plead the defence of duress only if he is both honestly unaware nor ought reasonably to have been aware of Spike's propensity for violence. Most got somewhere but again failed to arrive at an evaluation about the accuracy of the Statement.

For Statement D) Most candidates were able to identify the critical issue of immediacy / imminence in the context of Spike's threat being made by email from Italy. There was equivocation about whether the current law requires the threat to be 'imminent' or 'immediate' or 'almost immediate', but little application of the potential distinction between these terms. This is understandable since 'immediate' would appear to mean 'there and then' or 'here and now' whereas 'imminent' seems to mean at some unpredictable moment 'in the near future'. What 'almost immediate' means is anybody's guess. Credit was given for any meaningful application of this conundrum to the facts of the scenario. Again, candidates too often failed to evaluate the accuracy of the Statement. Nevertheless candidates tended to pick up more marks in response to this Statement than the previous ones.

Question 8 – Theft and Robbery

There was a wide range of performance in response to this question. A frequent tendency in response to this question was for candidates to embark upon an, often rather lengthy, introduction to the elements of the definition of theft without specific reference to the question. This is neither necessary nor appropriate for this type of Section C question**.** An **evaluation of the accuracy of each Statement** is what is required. An obvious difficulty in this question was the fact that many students believed there was no theft in Statements A or C and therefore there could be no robbery in Statement D. Some candidates, however, were totally contradictory and concluded that there had been merely an attempted theft or no theft in Statement C but that there had been a robbery in response to Statement D. Overall there was less clarity in the responses to this question. It seemed as though many candidates were not really familiar with the intricacies of dishonesty and appropriation in theft - perhaps casualties of the fact that, for many centres, property offences are taught last and so coverage may have been patchy in order to be ready for a January exam.

For Statement A) Disappointingly few identified the concept of appropriation and the relevance of consent induced by a threat, and whether or not that might negate the consent or - more critically - whether or not an appropriation could occur without consent. Credit was given for an identification of Gary's potential honest belief in this case. Few evaluations of the accuracy of the Statement were offered.

For Statement B) Most candidates were able to spot that force was necessary to substantiate the offence of robbery, but fewer identified this as threats of force, which would also suffice. Some successfully addressed the dishonesty issues in respect of this Statement and reasoned that the Statement was potentially inaccurate. Unfortunately, many candidates did not do so.

For Statement C) Many candidates seemed to suggest that the theft was not complete as Gary did not succeed in 'getting' the bag, thus misunderstanding the concept of appropriation. These candidates therefore asserted that Gary was merely liable for an attempted theft but still did not state that, even in their erroneous opinion, the Statement was inaccurate. Fortunately many others did appreciate that Gary, by seizing the bag, had indeed assumed one of the owners rights and had, therefore, dishonestly appropriated Dorothy's bag with intention to permanently deprive her of it. They then reasoned that there had, indeed, been a completed theft and that therefore the Statement was inaccurate.

For Statement D) Many candidates were happy for this to be a robbery, despite having previously concluded in response to Statement C that there was no theft. Many identified that the force could be applied to the property and not merely the person, and that this technically amounted to a completed robbery even though Gary had run off empty handed. Unfortunately, for many this contradicted their previous reasoning in response to Statement C. Nevertheless credit could be awarded for an accurate response to the particular Statement D, so candidates who misapplied Statement C were able to obtain some marks for their response to this Statement, provided that they accurately identified the elements of robbery.

General Comments –

G144, G146, G148 Special Studies

This was the first sitting of the Special Study units under the new 4-unit specification. Pleasingly, approximately two thirds of the cohort took the advantage of a January sitting in the Special Study rather than an option paper. This is a sensible tactic. While covering one of the general defences in the first term may not appeal to all centres offering Criminal Law as an option, it is nevertheless perfectly plausible to do so. In the case of Contract Law and Torts, the current themes would in any case be topics taught during the first part of the course.

The improved performance of candidates on the Special Study units obviously in part reflects the changes made to the format for the new 4-unit specification. The removal of the common question appears to have given candidates the opportunity to focus much more effectively on the remaining three questions in their modified form. A good example of this could be found in responses to question 2 (the essay style question equivalent to the old question 3). Where it was common on the legacy papers for candidates to write maybe two sides on the case (old question 2 / new question 1) and very often no more than half a side on the old question 3, candidates sitting the new Special Study regularly wrote in excess of four sides for their answer and very often this extended to as many as seven sides. Candidates in each of the options generally coped well with question 1, the case digest, and question 3, application, ,and as usual even the weaker answers tended towards good application skills, although on the whole scriptst showed much more balance between the different questions than in legacy papers. Question 2 was obviously a good discriminator then. However, the improved performance must at least in part also be due to the increased preparation time candidates have had on the Special Study itself. There are also clear benefits to be gained by having learned an aspect of the option content in such depth and with such focus on higher level skills. It would seem logical to presuppose that this can only enhance the ability of candidates when they sit the option papers in June. Question 3, application, for instance, forms an essential building block for answering the much larger problem questions in Section B of the option papers.

The alternative strategy, of entering candidates for an option paper in January, given the amount of content involved seems an altogether more risky option. It is arguable whether candidates in January could have assimilated sufficient understanding of the whole breadth of content to be able to answer effectively. The risk then is that candidates sit the exam with only generalised understanding, or alternatively question-spot on a few areas and run the risk of not seeing the areas that they are hoping for in the exam. If a January entry is seen as a benefit and utilised by centres then the A2 Principal Examiners would all advocate that the Special Study should be the chosen paper.

The papers from all three options in the first sitting of the new Special Study produced a wide range of responses, but with far fewer really weak scripts. There were some excellent scripts with many maximum marks on individual questions. There was certainly no indication at all of the changes to the paper disadvantaging candidates or causing them difficulties. As on the old Special Study, there was some very effective use of the source materials in evidence, and there was increased use of appropriate citation of line references in providing specific AO1 or feeding into comment. Blank references to a source, of course, gain no credit since that demonstrates no specific understanding.

As usual even, weaker scripts lifted their performance with their application in question 3. However, on the whole scripts at every level were much more balanced than was formerly the case.

There was some disappointing spelling, punctuation and grammar, as usual. On the other hand there was also some effective communication with some excellent analysis and/or application.

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

G144 - Criminal Law Special Study

Question 1

This question on each option calls for an examination of a case from the source materials, in this instance *Pommell,* and the ways in which the case developed the defence of duress of circumstances.

There are now only AO2 marks for question 1 and no AO1 marks. Nevertheless, for the purposes of the overarching theme, to secure maximum marks candidates are still expected to make reference to at least one linked case to show development.

For high AO2 marks candidates should have identified the critical point from the case, that the court extended the availability of the defence to all crimes (not just motoring offences as had previously been thought), except of course to murder and attempted murder. With this development clearly explained and two other critical points discussed in depth candidates could have achieved Level 5. Clearly there are a number of other critical points to emerge from the case of *Pommell*: the justification for the original conviction; the reasoning behind the decision in the Court of Appeal, as well as the proviso added by the court that the defendant should desist from committing the crime as soon as he reasonably can are just some (and all of the above could be found in the source). Clearly there were also many cases with which contrast could be drawn for the purposes of showing development and the significance of the case itself, and indeed *Willer, Conway, Martin* etc were generally all in evidence.

The question produced a surprisingly wide range of responses considering the amount of support available in the source. There were many high marks, but there many middling ones in number as well as some low marks. Many candidates did achieve maximum marks and not always by the same route, so that some had excellent depth of explanation of three points while others made many more points. There was generally no problem in offering linked cases. However, the way these were used was not always the most sensible or the most creditable. In this respect many candidates offered a very detailed ‘essay’ on the history of duress of circumstances with extensive explanation of the facts of previous cases, but then only superficial coverage of *Pommel* and without clear focus on the major issues. This is a shame because it clearly demonstrates a lack of understanding of the skills required for the question. In fact some examiners reported that they felt that some candidates were largely unaware of *Pommell*, and yet there is extensive material in the source. In general though, the question was reasonably well answered.

Question 2

Question 2 is now the focus for discussion of the substantive law theme on the paper. The changes to the format of the paper, with the removal of the common question, means that candidates now have 37 ½ minutes in which to answer, in contrast to 27 minutes in the old format. On this basis there is no longer a need to restrict the topic so narrowly as was formerly the case, and candidates on this occasion were given a quote and a discussion which could have been approached in both depth and breadth. The topic of limitations and restrictions on the defence also meant that candidates could make extensive use of the support available in a variety of the sources, not just the one that the quote derived from. The change in the AO1/AO2 weighting also meant that candidates, particularly weaker ones, were able to score many more marks for knowledge.

Candidates could have secured high AO1 marks by providing a detailed explanation of the nature of the defence and the *Graham* two part test and a range of limitations in depth or a wider range of limitations. In fact AO1 in general proved to be very accessible to candidates and there

were some lengthy answers with extensive detail on the cases. It was also pleasing to see how many candidates were not restrained by the information in the sources but had good current awareness with some very detailed explanations of *Hasan.* While most candidates showed good knowledge of a wide range of case law, moderate answers tended towards accurate and detailed but over descriptive accounts of the facts of cases, and weaker answers tended to lack both depth and breadth. Often, for instance, candidates omitted mention of the *Graham* test, clearly an essential for even an adequate mark.

AO2 was the real discriminator between candidates at different levels. For high AO2 marks candidates had a wide range of points which could have been discussed in depth: the fact that the defence is unavailable for some offences, the high expectation of 'heroism' that judgments have led to, anomalies such as that between s18 Offences Against the Person Act 1861 and attempted murder, the inconsistencies with duress of circumstances, the potential unfairness of the immediacy requirement, etc. Many excellent answers achieved all of this and much more. Indeed amongst high level scripts it was not unusual to see 20 plus or even 30 plus AO2 points which was very pleasing. The discussion in more moderate answers tended to towards less sophistication and simpler comments on each limitation e.g. 'and therefore this makes the defence even less available'. What was disappointing was the number of weaker (or even moderate) answers where the AO2 was not merely thin on the ground but barely visible. At this level it was not unusual to see answers getting high AO1 marks but as few as 2, 3 or 4 AO2 marks. This is particularly disappointing in two ways. Firstly the weighting for the Special Study units is AO1 30% to AO2 60%, so the clear emphasis in preparation should be on the higher level analytical and application skills.; this is essentially a skills-based paper, hence the Source materials. Secondly the source materials themselves, containing a mass of discussion as well as information, which even the weakest candidate, if engaging effectively with the style of assessment, ought to be able to make use of.

Question 3

The application question, as is now the standard practice for the paper, was based on three separate small scenarios all worth 10 marks on three separate characters. Candidates should have found the individual questions very accessible since each concerns different situations analogous with existing case law or in any case which relate to specific aspects of the defence of duress by threats. Candidates should have applied the *Graham* two part test and recognised: in the case of a) that the threat was one of death or serious injury, and that there was a clear nexus, but that the duress was self induced by voluntary association with a person known to be violent, and it is possible to argue how the reasonable man might react in the circumstances; in the case of b) that the threat was to Jaz's children, whom he would be responsible for, but was neither imminent nor immediate, and that there was a safe avenue of escape since the person making the threats was in India; in the case of c) that the threat was not of serious harm so would be unacceptable for the defence, credit also being possible for the other aspects of *Valderrama-Vega*, that the court can take into account the cumulative effects of the threats, and that psychological harm is insufficient. Good discussion of the above points together with appropriate cases would allow a candidate to receive high AO1 and AO2 marks. It should be noted that now the AO3 element has been removed all 10 marks are available for AO1, so that it is important for candidates to support their application with cases.

There was some differentiation between candidates, but on the whole application was done well, with some maximum marks awarded overall and many maximums for individual parts of the question. As usual even candidates on a low mark for questions 1 and 2 were able to lift their overall mark with their application skills. Most candidates applied the law well although there were variations in the extent to which appropriate cases were used in support. In general moderate to weak answers lost marks by missing essential elements or by not developing application sufficiently. On the other hand a number of candidates came at question 3 with a full checklist of aspects of the defence and applied every one, even if it was to say that the issue did not apply to the facts. Of course in those instances candidates could be rewarded for points

additional to those in the mark scheme, but would have been expected to have covered the clear focus of the individual scenarios to get into Level 5 overall. For instance, a number of candidates applied numerous aspects of the defence in a) but without reference to the voluntary association, meaning that they could not access Level 5. In general though there was very clear understanding of the defence shown. For a) moderate or weaker answers commonly made the omission indicated above. For b) the common omission was an explanation of the threat being made to Jaz's children being sufficient; many candidates applying the point nevertheless failed to add an appropriate case in support. Some candidates for b) argued that the first part of *Graham* failed because the scenario only said 'harm' and if this was argued cogently it was credited. For c) most candidates spotted the appropriate issues and dealt with them well. On c) candidates usually lost marks because the answer was minimalist, merely citing insufficient threat without a great deal of development or consideration of the other possible points.

G146 - Law of Contract Special Study

Question 1

This question on each option calls for an examination of a case from the source materials, in this instance *Glassbrook Bros v Glamorgan County Council* and the ways in which the case developed the law on using performance of an existing public duty as consideration for a fresh promise.

There are now only AO2 marks for question 1 and no AO1 marks. Nevertheless, for the purposes of the overarching theme, to secure maximum marks candidates are still expected to make reference to at least one linked case to show development.

For high AO2 marks candidates should have identified the critical point from the case, that the court extended the principle in *Hartley v Ponsonby*, on existing contractual duties to existing public duties, and indeed that in this respect it distinguished on the material facts from the authority in *Collins v Godefroy* (accepted and credited as a different point). With this development clearly explained and two other critical points discussed in depth candidates could have achieved Level 5. Clearly there are a number of other critical points to emerge from the case of *Glassbrook Bros v Glamorgan County Council*: the reasoning of the court, that the duty owed by the police was only to provide efficient protection to the colliery, but that the colliery had asked for a specific form of protection, so that it should be bound to pay for the extra protection and that the case repesents an exception to the rule in *Collins v Godefroy* (and all of these could be found in the source). Clearly, although *Hartley v Ponsonby* and *Collins v Godefroy* were the most relevant linked cases to cite, there were other cases with which contrast could be drawn for the purposes of showing development and the significance of the case itself.

The question produced a reasonably wide range of responses despite the amount of support available in the source and in other sources. There were some high marks, but there many moderate marks and some low marks. Some candidates did achieve maximum marks and some had excellent depth of explanation of three points, with others offering a wider range of creditable points. There was generally no problem in offering linked cases, although a number of candidates did not make the analogy with *Hartley v Ponsonby*. Those gaining moderate marks tended on the whole to have a more limited range of analysis, and weaker answers were often narrative with facts of cases but little real analysis.

Question 2

Question 2 is now the focus for discussion of the substantive law theme on the paper. The changes to the format of the paper, with the removal of the common question, means that candidates now have 37 ½ minutes in which to answer, in contrast to 27 minutes in the old format. On this basis there is no longer a need to restrict the topic so narrowly as was formerly the case and candidates on this occasion were given a quote and a discussion that could have been approached by both depth and breadth. The topic of the extent to which judges have shown themselves to accept very little as consideration also meant that candidates could make extensive use of the support available in a variety of the sources, not just the one that the quote derived from. The change in the AO1/AO2 weighting also meant that candidates, particularly weaker ones, were able to score many more marks for knowledge.

Candidates could have secured high AO1 marks by providing a detailed definition of consideration, and possibly some indication of the changing definition over time, as well as case law illustrating the point in the quote. Candidates were not restricted to answering, for instance on adequacy and sufficiency, but could easily have incorporated past consideration, performance of existing duties, and vague consideration in their answers, and did. Generally

AO1 proved to be accessible to candidates and there was some extensive use of a wide range of areas and good case law in illustration. Indeed many candidates made use of virtually all of the cases that they might have used effectively. Since breadth or depth were acceptable strategies, more moderate answers tended to suffer not from a lack of range but rather from descriptive and narrative accounts of the facts of cases without a clear focus on the principles or how they impacted on the quote. Weaker answers tended to lack both depth and breadth.

AO2, while it was obviously a good discriminator between candidates at different levels, tended to be more disappointing on the whole than in Crime or Tort. For high AO2 marks candidates would have been expected to engage in a discussion focused on the quote and to point out the strict nature of the various rules on consideration and ways in which judges have consistently developed exceptions to the basic rules, or have produced judgments that appear inconsistent with the rules, with good contrasting cases where judges take a hard line and those where they are apparently prepared to accept very little as consideration if they are keen to show that a contract indeed existed. In this respect, for instance, a good discussion on the relative positions in cases such as *Chappell v Nestle, Ward v Byham* and *White v Bluett* would have been effective, but equally effective would have been a discussion focusing on the alleged distinctions between *Stilk v Myrick* and *Williams v Roffey Bros & Nicholls.* While at the top end there was some good discussion on a range of points, developed argument on the whole tended to be lacking, with moderate answers making obvious common sense points e.g. 'this means that the judges are prepared to accept very little as consideration' without any real development of the points. Weaker answers tended to have little if any meaningful comment.

Question 3

The application question, as is now the standard practice for the paper, was based on three separate small scenarios all worth 10 marks on three separate characters. Candidates should have found the individual questions very accessible since they all concern different situations analogous to existing case law or in any case which relate to specific aspects of consideration. Candidates should have recognised that: in the case of a) that consideration is past since the promise to pay comes after rather than before the service given, that either of the exceptions in *Lampleigh v Braithwaite* or in *Re Casey's Patents* might be applied in the circumstances, and there is a likelihood that Hewel will have to pay Idris; in the case of b) that Jose is doing no more than he was already bound to do and so *prima facie* will not be entitled to extra, but that, applying *Williams v Roffey*, there may be an extra benefit gained by Keybooks in being able to publish on time; in the case of c) that Malik has an existing contract with New Publishers and either *Stilk v Myrick* applies or, if the extra editing is seen as significant, then the principle in *Hartley v Ponsonby* may be applied so that Malik may be entitled to the extra £100. Good discussion of the above points together with appropriate cases would allow a candidate to receive high AO1 and AO2 marks. It should be noted that now the AO3 element has been removed all 10 marks are available for AO1, so that it is important for candidates to support their application with cases.

While there was some differentiation between candidates, on the whole application was done well, with some maximum marks awarded overall and many maximums for individual parts of the question. Many candidates applied the law well and used appropriate cases in support to gain high marks. In general moderate to weaker answers lost marks by either missing an essential element, for instance failure to apply *Stilk v Myrick* first in b) or in c), or by stating the appropriate principles but without meaningful application. Few candidates were completely wide of the mark in their application, so in general good understanding of consideration was shown.

G148 - Law of Torts Special Study

Question 1

This question on each option calls for an examination of a case from the source materials, in this instance *McLoughlin v O'Brian* and the ways in which the case developed the law on secondary victims in nervous shock (psychiatric damage).

There are now only AO2 marks for question 1 and no AO1 marks. Nevertheless, for the purposes of the overarching theme, to secure maximum marks candidates would still be expected to make reference to at least one linked case to show development.

For high AO2 marks candidates should have identified the critical point from the case, that the court extended the principle, that secondary victims could succeed when present at the scene of the single traumatic event and fearing for the safety of a loved one, to recovery being possible also for falling within the immediate aftermath. Alternatively candidates might have identified, in detail, the controls for secondary victims introduced by Lord Wilberforce in the case. In this respect mere reference to 'the class of persons, the proximity of such persons, and the means by which the shock is caused' on its own would not count as a well developed point. With either development clearly explained and two other critical points discussed in depth, candidates could have achieved Level 5. Clearly there are other critical points to emerge from the case of *McLoughlin v O'Brian*: the justification for arguing that Mrs McLoughlin was indeed a secondary victim and fell within the immediate aftermath; Lord Wilberforce's argument that foreseeability of harm is insufficient on its own to create a duty of care; that policy and the 'floodgates' argument would prevent any further widening of duty; that this indeed was the most liberal treatment of secondary victims. *Hambrook v Stokes, Dulieu v White, Alcock* were all relevant linked cases that could be used to show development and were well in evidence, as well as other cases e.g. *Bourhill v Young* which could have been credited if effectively tied into a critical point.

The question produced a range of responses but on the whole was well done. Many candidates achieved maximum marks overall and some had excellent depth of explanation of three points, with others offering a wider range of creditable points. Moderate to weaker answers tended to have fewer developed points. Surprisingly, a number of candidates made no reference to the development of the 'immediate aftermath' principle.

Question 2

Question 2 is now the focus for discussion of the substantive law theme on the paper. The changes to the format of the paper, with the removal of the common question, means that candidates now have 37 ½ minutes in which to answer, in contrast to 27 minutes in the old format. On this basis there is no longer a need to restrict the topic so narrowly as was formerly the case and candidates on this occasion were given a quote and a discussion that could have been approached by both depth and breadth. The topic of limitations and restrictions on those who can claim nervous shock also meant that candidates could make extensive use of the support available in a variety of the sources, not just the one that the quote derived from. The change in the AO1/AO2 weighting also meant that candidates, particularly weaker ones, were able to score many more marks for knowledge.

Candidates could have secured high AO1 marks by providing a detailed explanation of the essential elements of a claim in nervous shock, (a recognised psychiatric injury caused by a single shocking event to a person within the range of impact and resulting from the defendant's negligence) and a range of limitations in depth or a wider range of limitations. In this respect an obvious focus would have been the controls on secondary victims and an in depth examination of the *Alcock* criteria. However, there are many other restrictions which could also have been

considered, the nature of the injury, the rules on causation, and the treatment of bystanders and of rescuers being some of them. AO1 was generally good and proved to be very accessible to candidates with many lengthy and detailed answers and extensive case law in evidence. It was also pleasing to see how many candidates were not restrained by the information in the sources but had good current awareness with some detailed explanations of *Walters* and *W v Essex CC*, amongst other more recent cases. There was nevertheless still differentiation between candidates with some moderate answers tending towards more descriptive accounts of cases, or having a good range of cases but omitting a definition or the essential elements of a claim, and weaker answers tending to lack both depth and breadth.

AO2 was a good discriminator between candidates at different levels. For high AO2 marks candidates had a wide range of points that could have been discussed in depth, the original scepticism against allowing claims for nervous shock, the criticism in *Hambrook v Stokes* of the *Kennedy* test, the rigidity of the *Alcock* criteria, the inconsistent interpretation of immediate aftermath, the failure to use a medical definition for the injury, the problem of causation, the sharp contrast in the treatment of primary victims and secondary victims, the potentially unfair treatment of bystanders who genuinely suffer what ought to be regarded as foreseeable harm in certain situations, the anomalous cases such as *Attia v British Gas* and *Liverpool Corporation* are just a few. There was some excellent and far reaching discussion in the better answers, and even the weaker answers contained at least some obvious criticisms.

Question 3

The application question, as is now standard practice for the paper, was based on three separate small scenarios, on three separate characters, all worth 10 marks. Candidates should have found the individual questions very accessible since they all concern different situations analogous to existing case law or in any case which relate to specific aspects of nervous shock. Candidates should have recognised: in the case of a) that Jaspreet's only claim would be as a secondary victim since she is not at risk of harm personally, that while she might pass the last two tests in *Alcock* she would probably fail on relationship and would rank as a bystander, but otherwise has a recognised psychiatric injury; in the case of b) that Kelly would most probably be seen as a rescuer so would have to show that she is either a genuine primary victim or a genuine secondary victim, is not at risk so could not be the former, and while probably succeeding in the last two *Alcock* tests being at least in the immediate aftermath would fail on relationship, but otherwise has a recognised psychiatric injury; in the case of c) that Mandeep is a secondary victim, passing the first *Alcock* test because of the presumed close tie, but on any interpretation failing the latter two, and also that, under *Tredget* he does not have a recognised psychiatric injury. Good discussion of the above points together with appropriate cases would allow a candidate to receive high AO1 and AO2 marks. It should be noted that now the AO3 element has been removed all 10 marks are available for AO1 so that it is important for candidates to support their application with cases.

While there was some differentiation between candidates, on the whole application was done well, with some maximum marks overall awarded and many maximums for individual parts of the question. Many candidates applied the law well and used appropriate cases in support to gain high marks. In general moderate to weak answers lost marks by either missing an essential element, for instance a discussion of the injury in the scenario, or failed to use cases in support. Few candidates were completely wide of the mark in their application, so in general good understanding of the controls in nervous shock claims was shown. For a) some candidates argued that there was a close tie and were rewarded if their analysis was capable of sustaining the logic. Generally candidates that lost mark on this part of the question failed to deal with the injury or did not apply all three *Alcock* criteria to the situation. For b) quite a few candidates missed the point that Kelly might be perceived as a rescuer and merely dealt with her solely as a secondary victim but again gained some credit if there was good application. A number of other candidates, spotting the rescuer issue, nevertheless still considered Kelly as only a secondary victim without applying the other significant element of *White* as to whether she could show that

she was at risk and therefore a genuine primary victim. Again some candidates also gave no or only cursory consideration of the injury. For c) most candidates spotted the appropriate issues and dealt with them well, and often where candidates lost marks it was because they did not apply all parts of the test or did not deal effectively with the injury. There were some interesting arguments also seeking to bring Mandeep within the principles in either *Walters* or *W v Essex* but these had to have well developed reasoning to gain credit.

Final observations:

There are a number of interesting positive observations which can be made about the consequences of the changes to the Special Study papers:

- There has undoubtedly been an improved performance overall
- The removal of the common question and the greater available time on individual questions has enabled much greater focus on the demands of the question
- This was particularly so of question 2 where candidates wrote much more extensively than on the former question 3

All of these changes should help candidates to maximise their marks on the papers. The fact that the Special Study carries 40% of the A2 marks should also be a source of encouragement to candidates sitting in January, in contrast to the more popular choice of sitting one of the two option papers, worth 30%, under the former specification.

The main negative comments that can be made are more in the form of warnings to follow good exam technique:

- Some candidates are still writing in excess of two sides, even three in some cases, on question 1. Provided this does not interfere with performance on other questions carrying much higher marks this is not a problem, but candidates should be very cautious of doing so. The chances are that such a strategy means that candidates are doing generalised essays on the topic area implied by the case. This was not uncommon on the criminal law paper with *Pommell* where some candidates wrote potted history's of duress of circumstances without necessarily having clear focus on the key points deriving from the case. Candidates should be able to write everything necessary for maximum marks in around 15 minutes.
- Candidates should be reminded of the major emphasis in the Special Study - higher level skills for AO2 marks. Again there were many candidates who gained very low AO2 marks for question 2 despite having excellent or good knowledge.
- There are now 10 rather than 7 AO1 marks for question 4, so to gain maximum marks candidates must take care to give supporting case law for their application. They have increased time for the question so there is no reason why this should prove a problem.

G145 - Law of Contract

Section A

Question 1 – Invitation to treat

This was a popular question and one that most candidates were able to access well in terms of AO1 and AO2 content. Even weak candidates were able to give some examples of where an invitation to treat can be found, supported by relevant cases which were correctly used in nearly all answers. Better candidates were able to discuss a range of situations, going beyond the obvious examples in shops to situations such as tenders, auctions and council house sales. Good answers also distinguished between different kinds of similar contracts, for example auctions with and without reserve and tenders that amount to a unilateral offer.

In terms of AO2, there was good evidence that candidates were taking notice of the specific question and directing their AO2 content accordingly, in this case that was the protection given to sellers of goods. Most candidates gave the obvious examples of control of sales of alcohol, limited goods and control where a mistake might have been made in the pricing of goods. Quite a lot of candidates also made reference to contrasting situations where an advert can amount to a unilateral offer, and the fact that this gives less protection to sellers of goods. In many answers there were also good comments about the fairness of the outcome of relevant cases, for example the apparent injustice caused in the case of *Fisher v Bell*, and similarly in the case of *Gibson v Manchester*.

Question 2 – Implied terms

There was a small cohort for this exam and none of the candidates attempted this question.

Question 3 – Misrepresentation

Only one candidate attempted this question. There was a good account of the different kinds of misrepresentation, some relevant comments on remedies, including AO2 content, but a tendency to get sidetracked into irrelevant content on the basic elements of misrepresentation.

Section B

Question 4 – Consideration and Intention

This was a popular problem question which contained two scenarios, each with a straightforward issue of consideration where someone was promised payment for completing an existing duty, and one issue of intention to create legal intentions in a family situation.

All candidates spotted the pre-existing duty situation and most distinguished correctly between pre-existing contractual duty and existing public duty. Weaker candidates treated both as coming under the same area of law, usually the *Stilk v Myrick* situation, and some were not clear which case belonged to which scenario, for example following *Stilk* with *Glasbrook v Glamorgan*. Few candidates were able to give a good account of how the ruling in *Williams v Roffey* might influence this situation, even those who described the case well were often weak in its application.

There are still some candidates who start an answer on a topic such as consideration with a lengthy discourse on the topic in general, describing areas of the topic with supporting case law that have nothing to do with the question. This has little merit and adds nothing to an otherwise well focussed and accurate answer, it is not a good use of exam time.

The intention to create legal relations issue was spotted by most candidates and several were able to make relevant use of case law and discuss not only the presumption but whether it was likely to be rebutted in this scenario.

Question 5 – Exclusion clauses

Quite a few candidates attempted this question and in general the standard was good. Answers were logically constructed with all aspects of the question discussed and with good use of supporting case and statute law. A generic weakness was an inability to discuss the reasonableness of a term under the *Unfair Contract Terms Act* with much clarity, although most candidates had a go at this.

The *Unfair Terms in Consumer Contract Regulations* were not fully covered in all answers, and discussion of this area tended to be a feature of better quality answers to this question. The common law rules were discussed competently in most answers, in relation to both incorporation and interpretation.

Question 6 – Undue Influence

None of the candidates attempted this question.

Section C

Question 7 – offer and acceptance and mistake

Statement A This question focuses on the time at which an internet contract is completed, and requires candidates to identify where an invitation to treat, offer and acceptance might be. Many candidates were unable to clearly identify these basic components of a contract, or give a coherent account of how a contract is made. Poor answers made reference to candidates accepting an invitation to treat, or the goods on the website were a unilateral offer.

Statement B This question requires candidates to identify that goods on a website are unlikely to be an invitation to treat. Some candidates were able to identify that the statement was false, and in the better answers were able to give reasons why the goods would not be an offer. Several weaker answers were happy to agree that the goods were a unilateral offer and that sending an order form was an acceptance.

Statement C This question requires candidates to identify unilateral mistake and that it makes a contract void. A simple answer was required and in several cases candidates scored high marks for simply identifying that a person cannot accept an offer that they know to be mistaken. Some candidates completely missed this point and attempted to answer the question on the basis of offer and acceptance. Candidates should be aware that more than one area of law can arise in a part C question. Candidates who pointed out that there is no requirement that consideration is equal on both sides received some credit on this question.

Statement D This question requires candidates to identify that the law of equity is now unlikely to correct a price in the case of a mistake in contract. Again on this question candidates attempted to discuss the scenario with knowledge from other areas rather than address the truth or otherwise of the given statement. Candidates need to focus on the statement rather than the answer to the scenario.

Question 8 – frustration

Statement A This question requires a basic discussion of frustration and the effect of relieving the parties of their obligations under a contract. Candidates identified that the contract would have been frustrated but for the most part were not able to give an accurate account of the legal reason for this being the case.

Statement B This question requires candidates to discuss the possible consequences of a radical change of circumstances being a frustrating event. Weaker answers to this question were based on common sense and a vague sense of justice with little law involved. Better answers were able to identify the relationship with the changing events and the tangential contract involved in the question.

Statement C This question focuses on the situations when expenses incurred before a frustrating event can be reclaimed. Again weaker answers were based on common sense, better answers identified that a claim for expenses depended on some advance payment needing to be returned.

Statement D This question requires candidates to discuss the effect of frustration on money paid before the frustrating event. Weaker answers tended to speculate on areas not included in the question such as exclusion clauses, better answers gave a good level of detail on returning advance payment and the ability to reclaim just expenses, with the law being applied well to the question.

G147 - Law of Torts

General Comments

This was the first sitting of G147; part of its format is familiar in that the Section A and B questions are comparable to those seen on the old 2577 and 2578 papers. In addition G147 introduces candidates to the new Section C question which explores the skills of objective legal reasoning. The time allocation for this paper has also changed and offers the potential for all candidates to succeed across a range of assessments. This paper is wide ranging in its ambit, to reflect the breadth of the specification, and Centres should acknowledge this in their preparation and advice to candidates, particularly for a January sitting. It was encouraging to see that some Centres had covered a wide range of material, exemplified by one Centre in which candidates between them attempted each of the 8 questions on the paper, but others had clearly focused on specific issues; this may not provide a candidate with enough material to answer three different questions adequately.

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

Responses to Section A questions were differentiated in terms of the specific level of knowledge and relevant citation alongside the sophistication of comment. In Section B differentiation was evidenced by the detail used to support identification and application of issues with an increased level of knowledge directly linked to the authority with which legal propositions were expounded and deduced. Centres should note that the mere naming of a case is insufficient and candidates should demonstrate a degree of understanding of the case and its context to be rewarded. Fewer cases, explained and used accurately, will achieve a great deal more then a list of case names with no other amplification. In Section C differentiation was founded on application of legal principle and legal reasoning in response to four distinct statements. Candidates are advised that it is preferable to write in direct response to each of the four statements, rather than to produce a long and general piece of continuous prose in which some application is contained. Candidates are also advised that there is no need for general introductions and conclusions – the essence of this type of assessment is a focused and deductive response to a particular proposition in which they are rewarded for reaching a conclusion based on their understanding of legal principles, evidenced in a logically deductive manner. The marks available are awarded for application skills rather than regurgitation of knowledge and therefore factual discourse on the elements of law relevant to any given proposition is not necessary to gain high marks. However, achieving Level 5 does require a candidate to reach a conclusion on the proposition to which they are responding.

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

Question 1 – Defences of volenti non fit injuria and contributory negligence
The answers to this question tended to focus on the defence of volenti, with limited awareness of contributory negligence, its statutory base and its provisions. Citation was often basic but some explored further, for example the area of sport using *Simms v Leigh* and *Condon v Basi*, and there was an explanation of the basic principle of voluntary acceptance of a risk. In terms of AO2 relatively few candidates addressed the issues posed beyond vague allusions to fairness.

Question 2 – Vicarious Liability
This question encouraged candidates to engage with the range of tests available to determine the ambit of vicarious liability and there was some citation of relevant case law such as *Ready Mixed Concrete* and *Rose v Plenty*. The AO2 component involved some discussion of the competing aims of the law – to protect employees but also to give employers realistic parameters in terms of responsibility and there was an attempt to list the factors which justify the imposition of vicarious liability with an acknowledgement of the practical and philosophical problems this can cause.

Question 3 – Animals Act 1971
Responses to this question were uncommon but some candidates had a good knowledge of the relevant statutory provisions and supporting case law. However, many candidates lacked real precision in their definitions and citation often tended to be fairly basic, perhaps restricted to *Behrens v Bertram Mills Circus*. There was a tendency to focus on the provision of the Animals Act rather than on the defences it provides. As a consequence AO2 comment tended to be general although there was discussion of the reason why liability was strict and there was some attempt to discuss the effectiveness of the defences.

Question 4 – Occupiers Liability
This question was of a fairly standard format but required knowledge of both the 1957 and 1984 Acts; some candidates made no reference at all to the latter piece of legislation. There was an awareness of the basic provisions of the 1957 Act but many scripts lacked detailed definitions and explanations linked to specific legislative provisions. The issue of an independent contractor in s2(4) was not clearly explained by some candidates but the common duty of care in s2(1) and developed in s2(2) was usually adequately explained. Citation was at times unspecific, and whilst candidates can be rewarded for using cases implicitly or even for giving their own examples of how the law works, there is no substitute for clear and accurate citation. Cases referred to rarely strayed beyond *Wheat v Lacon*, *Phipps v Rochester* and *Tomlinson v Congleton* – while these are key points of reference a wider range of case law knowledge can only inform the AO1 component of an answer and help understanding demonstrated in the AO2 element. In terms of identification and application there were some good responses but many tended to be general and inconclusive; whilst certainty is not always possible, covering a range of options is a positive engagement whereas making wide ranging and vague remarks in the hope that something will be right cannot be rewarded to the same extent. Lack of awareness or coverage of the 1984 Act inevitably impacted on the range of marks available for some candidates. It was good to see some discussion of the possibility of contributory negligence but many candidates lacked clarity in their application of the law relating to children.

Question 5 – Nervous shock
This was by far the most popular Section B question and scripts displayed an enormous range of AO1 and AO2 skills. In stronger scripts there was good AO1, evidenced by accurate definitions supported by full and relevant citation based around the *Alcock* criteria and associated cases such as *McLoughlin v O'Brien* and *Rough and Robertson v Forth Road Bridge*, balanced by pertinent identification and impressively sophisticated application to the scenario. In weaker scripts AO1 tended to be less clearly explained in terms of legal principle and relevant citation, a particular example being a lack of distinction between the characteristics of a primary and secondary victim and the requirements of the *Alcock* test in terms of what constitutes close ties of love and affection and an immediate aftermath. This in turn led to some inevitably general and vague application. In terms of Kate, not all candidates recognised she would be a secondary rather then a primary victim and although some commented that siblings cannot normally claim few engaged with the nicety that, as a twin, this could be different. In relation to Leanne, awareness that she could be a primary victim was not universal and few discussed the point of her being a bystander. With regard to Martin there was some confusion given his roles as father and rescuer and many felt that grief would constitute the level of injury required to make a claim. Finally with Natalie there was discussion as to whether she would be caught by the term

immediate aftermath and whether any claim would be negated on the basis that she chose to see her daughter in the mortuary.

Question 6 – *Rylands v Fletcher*
This was attempted by few candidates but there was a basic understanding of the test created by *Rylands v Fletcher* and some effort was made to explain its requirements. Citation in support of explanation was limited; centres need to be aware that to access the higher mark bands knowledge of decided cases is essential, especially in an area which has been considered so frequently by the courts and it was good to see reference to *Transco plc v Stockport MBC*, as well as older cases such as *British Celanese*, *Read v Lyons*, *Rickards v Lothian* and *Perry v Kendricks Transport*. Consideration of defences tended to be limited and Act of God tended to be the one most commonly explained. Candidates attempted systematic application of the Rylands test to the facts, often with some success in terms of Oddbridge College although the niceties of defences were not always explored despite being invited by the question. With regard to the University of Midhampton there seemed to be less confidence in application, particularly on the issue of remoteness and the defence of act of a stranger was not discussed often.

Question 7 – Trespass to the person
Remarks concerning this question need to be read in conjunction with the general comments at the beginning of this section of the report. This question was attempted by all the candidates and there were some encouraging responses, dealing with each of the statements in turn and showing good skills of reasoning from an opening statement to a conclusion. In Statement A there was a general acknowledgment that an assault required a threatening act, although some candidates did not address the issue that this could cause fear. Most were able to conclude that the statement was accurate although sometimes the reasoning was lacking. In Statement B there was a lot of confusion as to whether words could negative assault; this tended to dominate over a simple exposition that words were not traditionally an assault, although the position may now be different if accompanied by gestures or even silence, and that since Tina's act is intentional this should lead to the conclusion that there is an assault. In Statement C some candidates focused on the lack of a battery by John rather then the positive act by Mark. A few candidates picked up on the idea that Mark may have been using reasonable force and therefore, depending on their reasoning, it was possible to decide that there may or may not have been a battery. At this point some weaker candidates chose to make very vague and generalised remarks; unless this was related to the statement and leading to a conclusion based on their reasoning, they could not score highly. Statement D caused considerable confusion as a good number of candidates were uncertain as to the basic requirements of false imprisonment and believed that Mark grabbing hold of Tina's arm was sufficient even though it was not total restraint.

Question 8 – Negligent misstatement
There were no responses to this question, but in terms of the approach to this question similar comments would apply as for question 7. Question 8 raised the possibility of prompting reasoning based on negative statements and candidates should be aware that this is an equally likely, and valid, method of assessing deductive skills. An effort is also made to put forward statements which can clearly be argued to a conclusion although it may be possible to have more then one viable line of reasoning. Although knowledge is essential for a student to deal successfully with this kind of assessment its clear exposition is not required as marks are awarded on the basis of clear, logical, legal reasoning – in other words replicating the thought processes of a lawyer engaged in the problem solving exercises which are the fabric of daily life in legal practice.

Grade Thresholds

GCE Law H124/H524
January 2008 Examination Series

Unit		Maximum Mark	A	B	C	D	E	U
G141	Raw	120	93	83	73	63	53	0
	UMS	120	96	84	72	60	48	0
G142	Raw	60	49	44	39	34	29	0
	UMS	80	64	56	48	40	32	0
G143	Raw	120	93	82	71	60	50	0
	UMS	120	96	84	72	60	48	0
G144	Raw	80	66	59	52	45	39	0
	UMS	80	64	56	48	40	32	0
G145	Raw	120	93	82	71	60	50	0
	UMS	120	96	84	72	60	48	0
G146	Raw	80	66	59	52	45	39	0
	UMS	80	64	56	48	40	32	0
G147	Raw	120	93	82	71	60	50	0
	UMS	120	96	84	72	60	48	0
G148	Raw	80	66	59	52	45	39	0
	UMS	80	64	56	48	40	32	0

Specification Aggregation Results

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

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

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

	A	B	C	D	E	U	Total Number of Candidates
H124	14.6	32.0	55.7	77.6	94.6	100	569

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

Statistics are correct at the time of publication.

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