GCE

Law

Advanced GCE **A2 H524**

Advanced Subsidiary GCE **AS H124**

Report on the Units

January 2009

H124/H524/MS/R/09J

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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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Any enquiries about publications should be addressed to:

OCR Publications
PO Box 5050
Annesley
NOTTINGHAM
NG15 0DL

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

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REPORT ON THE UNITS

Chief Examiner's Report H124/H524

This was the fifth sitting of AS papers and the third sitting of A2 papers under the legacy four unit specification.

All units had entries. Inevitably entries were much larger in the Sources of Law and Special Study papers. Even in those papers with very small entries, there was still a number of resit candidates.

A number of points could be made about the different units:

- Whilst English Legal Systems, G141 performed significantly better than in the previous January sitting, and whilst the majority of candidates were able to answer four questions in contrast with the 2008 January cohort, there are still question marks over the ability of candidates to assimilate the quantity of specification content towards effective assessment at this point in their course.
- On Sources of Law, G142 a large number of candidates seemed unprepared for answering with any confidence on Law Reform, although this is a topic area clearly indicated in the specification.
- Whilst the candidature included resit candidates, results on all three option papers pose a question over the advisability of entering candidates at this point in their course of study, with significant deterioration in performance on a June entry.
- Special Study papers clearly benefit from the additional attention given with a January entry and candidates achieve at high levels in large numbers, this is particularly so of G148.

Subject to those qualifications candidates in general continue to engage meaningfully with all models of assessment and at high levels with the skills requirements of the new specifications.

New specification special study themes and pre-released material (first assessment 2010)

With the implementation of the new specification, centres are reminded that the special study themes and resource material will change on an annual basis, ie there will be a new set of themes for 2010, 2011 and so on.

The new specification 2010 special study themes are listed below.

Special Study Themes	**H134/H534 - New specification G154/G156/G158 (theme valid for Jan and June 2010 only)**
Criminal Law	**G154** - Non-fatal offences and the defence of consent.
Law of Contract	**G156** - Judicial and statutory control of exemption clauses.
Law of Torts	**G158** - Occupiers' Liability for lawful visitors and trespassers.

The special study themes and resource material listed here will only be valid for January and June 2010. Electronic copies of the resource material will be available on the OCR website in late spring 2009. Pre-released hard copies will be despatched in September 2009. If preliminary entries are received after the initial dispatch, materials will be sent in a 'pick-up' despatch. These will start in October 2009 and finish at the end of April 2010.

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G154: Criminal Law Special Study overview

Theme: Non-fatal offences and defence of consent

Source 1
Extracts from the Offences Against the Person Act 1861;
- Section 18 Shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm, or to resist apprehension;
- Section 20 Inflicting bodily injury, with or without weapon;
- Section 47 Assault occasioning bodily harm;

Extract from the Criminal Justice Act 1988;
- Section 39 Common Assault.

Source 2
Extract adapted from the judgment in *Collins v Wilcock* [1984] 1 WLR 1172.

Source 3
Extract adapted from the judgment in *R v Ireland; R v Burstow* [1997] 4 All ER 225 House of Lords.

Source 4
Extract adapted from the judgment in *JCC (a minor) v Eisenhower* [1983] 3 All ER 230 QBD.

Source 5
Extracts adapted from *Criminal Law.* Michael Jefferson. 8th Edition. 2007. Pearson Publishing. Pp 552-3 and 556 [specifically on section 18 and section 20 and including much AO2].

Source 6
Extract adapted from 'Consent: public policy or legal moralism?' Susan Nash New Law Journal March 15 1996 [specifically on Brown and Wilson].

G156: Law of Contract Special Study overview

Theme: Judicial and statutory control of exemption clauses

Source 1
Extracts from the Unfair Contract Terms Act 1977;
- 2 Negligence liability;
- 6 Sale and hire purchase (2) (3);
- 7 Miscellaneous contracts under which goods pass (1) (2) (3);
- 11 The "reasonableness" test (1) (2);
- Schedule 2 "Guidelines" for Application of Reasonableness Test.

Source 2
Extract adapted from the judgment of Lord Denning in *Olley v Marlborough Court Hotel Ltd* [1949] 1KB 532 CA.

Source 3
Extract adapted from the judgment of Lord Denning in *Thornton v Shoe Lane Parking Ltd* [1971] 2 WLR 585 CA.

Source 4
Extract adapted from the judgment of Lord Wilberforce in *Photo Productions Ltd v Securicor Transport Ltd* [1980] 2 WLR 283 HL.

Source 5
Extract adapted from 'Limitation Clauses in Standard Term Contracts – are they ever enforceable' Sylvia Elwes The Legal Executive Journal September 1995.

Source 6
Extract adapted from *Contract Law.* Ewan McKendrick. 6th Edition. 2005. Palgrave MacMillan Law Masters. Pp 228-9 [on *contra preferentum* and construction].

G158: Law of Torts Special Study overview

Theme: Occupiers' Liability for lawful visitors and trespassers

Source 1
Extract from the Occupiers' Liability Act 1957;
- Section 2 (1)(2)(4)(5);

Extract from the Occupiers' Liability Act 1984;
- Section 1.

Source 2
Extract adapted from the judgment of Lord Denning in *Wheat v E Lacon & Co. Ltd* [1966] AC 552.

Source 3
Extract adapted from the judgment of Devlin J in *Phipps v Rochester Corporation* [1955] 1 QB 450.

Source 4
Extract adapted from *Street on Torts*. John Murphy. 11th Edition. 2003. Lexis Nexis. pp343-4 [on section 2(4)(b) and independent contractors].

Source 5
Extract from the judgment of Lord Hoffmann in *Tomlinson v Congleton Borough Council* [2004] 1 AC 46.

Source 6
Extract adapted from 'An outbreak of common sense'. Jeremy Pendlebury. Barrister. New Law Journal. 27 April 2007 [on the scope of the duty].

G141 - English Legal System

General Comments

As a legacy paper the vast majority of candidates for this paper were retaking. The standard overall was slightly higher than in summer 2008. Candidates performed at very many different levels but were usually able to access four questions to answer.

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

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

Candidates still do not read the questions and do not use statutes or cases and worryingly many are still using old texts. The use of the most up to date texts is essential in law as the English Legal System is constantly changing and out of date information is just not accurate enough to gain high marks. With the number of books on the market and availability of resources on the internet it is possible to keep relatively up to date. Teachers should be encouraged, if nothing else, to use the 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 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 are not aware of what a developed expanded point is, therefore often making statements rather than comments. Some candidates concentrated on only one point and tended to repeat themselves. It is not possible to get out of level two if only one point is discussed.

A substantial number of candidates chose to do the two applied 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 they have answered on the front of their scripts.

Comments on Individual Questions

SECTION A

Question 1

Part a -This was very unpopular with very few candidates attempting the question.
On the whole answers were not of a high standard. Many candidates were able to identify the existence of means and merits tests but were unable to describe funding in any detail. CFAs were on the whole not understood well with many answers being confined to “no win no fee” adverts on the TV.

Part b – Most answers discussed how unfair the system was but, without any real knowledge, the answers tended to lack substance.

Question 2

Part a - This was a fairly popular question with some centres. However,
candidates only seemed to be able to answer the part on training well - the information on complaints was mostly very weak. This meant that the majority of candidates attempting this question could only gain level 2 or level 3 marks with very few getting into level 4. The weakest candidates seemed to confuse the professions and thought that it was necessary to become a solicitor before becoming a barrister.

Part b – On the whole this was well done with many full mark answers consisting of several well developed points.

Question 3

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

Part a - The vast majority of candidates were able to identify the four types of Alternative Dispute Resolution (ADR). There was some very good understanding of the difference between the ADR types and some good examples given to illustrate answers, although some candidates tended to be confused over very simple characteristics.
Better candidates described Arbitration well and mentioned the Arbitration Act 1996. Weaker candidates tended to make a reasonable attempt at describing the other three but were very poor on Arbitration. A significant minority of candidates had the mistaken belief that each type of ADR would be tried in order, only going on to the next if the previous one did not work.

Part b - This question was answered very well by candidates who developed a discussion of the advantages and disadvantages of mediation and conciliation over using the courts, but many candidates did not differentiate the types of ADR and wrote a very general answer or just made a series of short points, failing to compare with the courts.

Question 4

This question was very popular with variable results.

Part a – There were some very good answers from many candidates showing a mix of selection qualifications and challenges. Some candidates gave a good level of detail of the selection and qualifications of jurors and a description of challenges and gained level 4 marks. Unfortunately many candidates, while strong on the qualifications of juries, failed to describe the selection procedure in any detail.

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

Question 5

This question was also very popular but rarely done well. Arrest seems to be the least well known of the police powers.

Part a - There were some very good answers showing good knowledge of PACE 1984 and the amendments made by SOCPA 2005. Unfortunately a significant proportion of candidates did not read the question and focussed their answer on stop and search rather than arrest. The weakest candidates joined stop and search with arrest and went on to describe stop and search which really could not gain more than a mark. This was the question that gained the most zero mark scores which was disappointing as most of the candidates demonstrated good knowledge and understanding of aspects of police powers, but not of the topic asked for in the question. Many answers lacked detail listing vague rights and not many included other powers of arrest.

Part b - Most candidates were able to identify some of the ways an individual is protected during arrest, but only a few of the better candidates went on to discuss the adequacy of the safeguards.

SECTION B

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

Question 6

Part a – The better candidates explained the basics such as the definition, who would grant bail and the presumption in favour of bail, as well as the reasons for not granting bail and the factors that would be taken into account. Weaker candidates tended to concentrate on one aspect eg all the different conditions that could be attached to bail or factors that were not linked to reasons. The presumption in favour of bail and a definition were the aspects missing from the majority of scripts.

Part b - Candidates seemed to enjoy this one going through some very strong arguments for and against Damien being granted bail. The weaker candidates repeated the scenario but failed to come to any conclusions or suggest conditions

Question 7:

Part a –The vast majority of candidates were able to describe at least some of the aims of sentencing to a reasonable degree and could gain marks for that. The better candidates were able to describe the aims in detail and also describe the factors. The weakest candidates named aims of sentences without describing them or confused them.

Part b - Candidates seemed to enjoy this question and answered it reasonably well. The majority managed to get into level 3 or level 4 as they were well able to apply aims and factors to Bethan and suggest possible sentences.

G142 - Sources of Law

General Comments

The overall standard of performance was disappointing. Most candidates could not achieve a level four response in all the parts of the question. The use of case law was very disappointing with a number of candidates unable to support their answers with authority or expand on them to support their answers.

The most popular question attempted was Statutory Interpretation. A minority of candidates attempted the Law Commission and Delegated Legislation question. In particular, the law commission aspect of the source seemed to challenge candidates; a significant number only achieved a level one response. This had an impact on the number of candidates who achieved higher overall marks. Centres are reminded that law reform is too small a topic on which to base a whole source question. Candidates should be prepared for this topic to be combined with other topics.

The use of the source was also very disappointing. Most candidates did not use it appropriately to support their answers. The paper is designed to give all candidates support and it is important that centres engage candidates with source based skills. Centres also need to highlight to candidates that if they do not use the source to support their responses they cannot access full marks.

Evaluation skills again proved to be a significant challenge. Many candidates still found it difficult to separate A01 and A02 and this was particularly problematic with the discussion on the controls of delegated legislation.

There were no issues with candidates completing the questions in time. Again, a small number of candidates answered both questions. The standard of written English was significantly poorer than in previous sessions.

Comments on Individual Questions

Question 1 - Statutory Interpretation

This was the most popular question. Candidate performance varied on a centre by centre basis.

a Most candidates relied on the source for their answer. A significant number of candidates could not define Hansard. A number of candidates thought Hansard was a collection of cases and linked their responses to precedent. Knowledge of pre *Pepper v Hart*, the conditions laid down in *Pepper v Hart* and the cases and issues post *Pepper v Hart* was exceptionally patchy. A number of candidates failed to use the source, which would have offered significant support.

b These mini problems were reasonably well answered. There are simple technique issues that centres could address to improve candidate performance. Firstly, it is important to justify the use of a rule. A number of candidates stated literal rule guilty, but did not expand by explaining why. It is also important that candidates contrast using other rules (eg “using the literal rule they would be guilty because …. However, using the golden rule the outcome would be different because …”). By adopting such an approach candidate performance will improve.

ci Most candidates could define the purposive approach and link to a feature, eg used in Europe. From this point many candidates appeared to struggle. Most used literal rule cases to support their answers or decided to generically discuss the literal, golden and mischief rule. Case citation in this area was very disappointing. It is important that candidates illustrate the rules and approaches of statutory interpretation with at least two cases. The cases must demonstrate how the rule or approach was used.

cii The responses to this part were very disappointing given that this question had been asked before, and the breadth of ways that a candidate could achieve a level four response. It is important that centres encourage candidates to expand on their points. Candidates need to explain the relevance of a point as opposed to providing a list of issues. Candidates could achieve a level four response by developing at least three points. This, however, was beyond most candidates in this area.

Question 2 - Law Reform and Delegated Legislation

A significant minority of candidates attempted this question, although there were a number of centres for whom this area was the most popular choice. Answers on the delegated legislation aspects of the source were good; however, the law commission part was exceptionally poor.

a It was evident that most candidates had not prepared for this area. Most candidates could identify that the law commission reviews the law, but could not expand their responses further. Many candidates confused the law commission with a parliamentary control.

b This was generally answered well. Candidates at level four could clearly identify the central issue, explain why and support their response with appropriate citation. However, a number of candidates were confused by the concept of judicial review and this hampered their response.

ci This was clearly the most successful part of the question. Nearly all candidates could identify the three types and include some supporting detail. Candidates at level four showed good understanding by having a depth of knowledge on each type. Nearly all candidates achieved a level two answer.

cii This was a problematic area for a number of candidates. Candidates clearly knew the control on delegated legislation, but could not evaluate them or spent too much time describing them. Candidates who achieved the lowest levels tended to have no knowledge or answered the question using mainly A01. Candidates at the higher level could discuss the controls in detail. In the A02 area, it is important that candidates try to develop their points rather than producing a series of bald points.

G143 - Criminal Law

General Comments

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

This was the third sitting of this specification which incorporated a new method of more objective assessment in Section C and a departure from the previous specification in the rubric and time allowed.

Compared to a June series the January entry is small, 300 approximately. However, this in itself is a slight surprise given that the questions cover the entire range of the specification even though candidates have effectively experienced approximately 16 weeks of teaching at most. About 22% of the entry was composed of those who were re-sitting this unit and the statistics indicate that their performance did improve.

Performance varied from Centre to Centre. Within Centres 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 and Question 2 on provocation were by far the most popular in Section A. There were very few answers to Question 3 on self defence although there was at least one level five answer to this question. In Section B Questions 4, 5 and 6 on murder and involuntary manslaughter, property offences and intoxication and offences against the person and automatism respectively, were answered relatively evenly, with Question 4 on murder and manslaughter being slightly less popular than the others and, certainly, less well answered. Questions 7 and 8 on causation and insanity respectively in Section C were answered roughly evenly.

Accurate citation of both case law and statutes, in relation to non-fatal offences against the person in particular, was often limited or inaccurate and seemingly less well understood and applied than in recent series.

The New Section C Assessment.

There were some good responses to Section C questions focusing on legal reasoning but it is still clear that candidates need guidance about preparing so that they can make the best use of their knowledge and understanding without having to provide evidence of it impliedly rather than expressly. It appeared that some candidates, understandably to some extent, were confused about how to approach these questions and thus many 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. However, 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 since the command in the question asks for an evaluation of the accuracy of the statement.

Hedging their bets was a very popular option and, in some cases acceptable, if supported by appropriate reasoning. Many candidates wrote a huge amount whereas some were so concise it was hard to know how much they really understood. The use of negative statements seemed to confuse some candidates and there were certainly quite a number who did not read the statements carefully. However, there were some good examples of legal reasoning too.

One common mistake was the failure to respond 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.

QCA is disposed very enthusiastically towards this more objective form of assessment and Question Paper setters are already learning ways of developing the relevant statements in Section C Questions to make them as accessible and unambiguous as possible. 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 a small number 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 the 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 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 would 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 candidates 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 & Procter) 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 of candidates 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 – Provocation

This topic was examined for the second time in recent years as an essay question although it has also been the subject of Section B problem questions on many occasions. It was attempted by a large number of candidates. There were some good Level 4 scripts in response to this question but relatively few into Level 5. Good knowledge of the relevant case law was a prerequisite here and it was hoped that there would be some knowledge of the recent Law Commission proposals for reform, even though knowledge of the current Bill proposing abolition of the defence was not required under the '12 month rule'.

Unfortunately, a surprisingly large number of candidates were unable to display case law knowledge about characteristics within the objective reasonable man test beyond Camplin 1978. Those who did were either vague or confused over the distinction between characteristics affecting the gravity of provocation to the accused and those affecting the accused's powers of self control.

Understanding of the decision in Holley was very sketchy. AO2 content was far better with most candidates focusing on the breadth of factors that may amount to evidence of provocation, usually citing Doughty with accurate understanding, and the potentially discriminatory nature of the defence in terms of 'battered women'. Accurate knowledge and clear understanding of cases such as Duffy, Davies, Thornton, Ahluwalia, Humphreys and Hobson was, however, more elusive for many candidates.

Question 3 – Self defence

This question was far less popular than questions 1 and 2 (single figures) and very poorly answered by those who tackled it. This was, perhaps not altogether surprising, in the sense that questions 1 or 2 were always likely to be regarded by candidates as being more accessible. This would be likely to be compounded by the difficulty of covering sufficient areas of the specification in time to properly prepare candidates for a January entry.

Self defence would always be likely to be one of the topics which would be likely to be addressed later in the teaching programme rather than earlier. Gratifyingly, there was one excellent Level 5 answer. Most of the other scripts tended to make rather vague general remarks based around the case of Tony Martin.

SECTION B

Question 4 – Murder / Involuntary manslaughter / causation

The scenario was one which is commonly discussed in teaching programmes, text books and even judgments and clearly called for a reasoned analysis of the element of oblique intent as the accused was claiming that the actual outcome of his conduct was different from his expressed desire or wish. Many of those who tackled this problem did identify this aspect but lacked either the knowledge or understanding to apply sufficient law and arrive at a coherent conclusion, possibly because the law on oblique intent has remained relatively undisturbed since Woollin some ten years ago.

Candidates in recent series appear to have more difficulty with this topic than was previously the case. It maybe that Centres are not tackling it in such detail. Just as the law has not changed much the basic question posed by scenarios such as this has not changed either. Indeed a resurgence of terrorist activity may well see a corresponding revival of topicality in this area. In a problem question such as this it was not necessary for candidates to indulge in fantastic speculation that Martin was neither a foetus or in a vegetative state.

The alternative route of involuntary manslaughter was followed by about half of the candidates who tackled this question. Some did so having dismissed a potential murder charge but many went directly to manslaughter, usually the most likely alternative of constructive manslaughter. It was not difficult to argue that merely by planting a bomb that would detonate Wayne had clearly committed both an unlawful and a dangerous act. The definition of 'dangerousness' was often vague, however. Citation on this topic was variable although most were more comfortable with the application skills involved.

There was usually some identification of causation issues but even here many were mystified as to how to analyse the role played by the police telephone operator who mistook the number of minutes before the bomb was to detonate. Candidates should have plenty of opportunity to practice 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 it difficult to practice this sufficiently where candidates are entered for this paper in January.

Question 5 – Property offences and intoxication

This was a popular question and involved several traditional issues associated with property offence problems. The standard of answer varied a great deal not only among different candidates, but also within Centres.

Candidates who produced Level 5 answers identified most of the issues and addressed them satisfactorily. It was not necessary to identify every single issue but, if one of burglary, or robbery, or intoxication was overlooked then it is very unlikely that the script did attract Level 5 marks since these issues were not only central to the problem, they were clearly flagged up by the facts.

With regard to Roger's bike it should not have been too difficult for well prepared candidates to be able to identify an initial potential burglary charge. Unfortunately, the contrary often proved to be the case with a surprisingly large number of candidates failing to spot this and merely discussing theft.

A shed is clearly a 'building' within section 9 Theft Act 1968. Those who recognised this usually dealt with the trespass element satisfactorily, recognising that, even if Tom may have had express or even implied permission from his father to enter, he could be said to be exceeding it, citing Jones & Smith. The other issue here concerned the element of theft whether the burglary was discussed or not. It was arguable under section 2(1)(b) that Tom may have had an honest belief that his father would consent to his taking the bike since he had said that he did not use it any more. Relatively few candidates addressed this point. Simon's searching through Tom's pockets was seen by many as similar to Easom. Unfortunately, very few recognised that, unlike Easom this would now be regarded as attempting the impossible.

The robbery issues were generally well dealt with, provided that the candidate recognised that Simon pushing Ayesha to the ground whilst exiting the shop may well constitute robbery in the first place. Otherwise those candidates usually plumped for a section 47 offence. For some reason the potential intoxication issues were often totally overlooked or dealt with in a confused manner.

Those who argued, quite reasonably, that it appeared that Simon was still perfectly capable of forming the relevant *mens rea* despite his drinking received full credit for this assertion. Others tried to apply the Majewski principles with varying degrees of accuracy and success. Among weaker candidates there was frequent confusion between specific intent offences and basic intent offences.

Question 6 – Offences Against The Person and Automatism

This question was another popular choice but often only, at best, adequately answered. There were, however, some outstanding answers to this question.

Many candidates seemed unable to give straightforward definitions or to recognise the difference between section 47, section 20 and section 18 offences. Identification of the *mens rea* issues was particularly poor in this connection. Candidates seldom used an organised approach identifying offences apparently at random and presenting inaccurate or garbled definitions.

There remains a worryingly frequent misconception that neither section 20 nor section 18 offences can be committed unless there is a 'wound'. Many candidates stated that Didier's broken leg could not amount to grievous bodily harm unless the skin was broken. This misconception has been a common assertion in recent examination series.

Few candidates offered accurate citation (either of cases or statute) and many failed to recognise the potential defence of automatism. The issue of consent in physical contact sports was usually identified but fewer than half of the candidates referred to Barnes in this context. Of course, it is possible that some candidates may not have covered these defences when entering in January.

SECTION C

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

There were some good responses to Section C questions focusing on legal reasoning. However, it is clear that candidates need guidance about preparing for the examination so that they can make the best use of their knowledge and understanding without having to provide evidence of it other than impliedly, rather than expressly. It appeared that many candidates, understandably to some extent, were unsure about how to approach these questions and thus many 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 and some were so concise it was hard to know how much they really understood. The use of negative statements seemed to confuse some candidates and there were certainly quite a number who did not read the statements carefully. However, there were some good examples of legal reasoning too.

One common mistake was the failure to respond 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.

QCA is disposed very enthusiastically towards this more objective form of assessment and Question Paper setters are already learning ways of developing the relevant statements in Section C Questions to make them as accessible and unambiguous as possible. Great care is taken during the standardisation process to ensure that candidates are not disadvantaged in any way. The maximum mark of 20 was attained by several candidates.

Question 7 – Assault Causation

This was a slightly more popular choice than question 8 and, in general was usually answered rather better.

For Statement A candidates usually managed to spot that the apprehension of the imminent application of force was satisfied when Damian pulled out the knife during an argument and that not 'hurting' Juan at that time was irrelevant. Most, therefore, implied that the statement was not true but failed to say so expressly.

For Statement B responses were variable. The key response to the statement was intended to be that the statement was inaccurate because Damian would remain liable for Juan's bruising provided that Juan's actions in running into the road could be judged to be objectively reasonably foreseeable. Again, many failed to provide an evaluative comment about the accuracy or otherwise of the statement proposed.

For Statement C the large majority of candidates recognised the significance of the 'thin skull rule' here and reasoned that Damian would remain potentially liable for Brenda's death as he 'must take his victim as he finds her'. Most did this but, again, failed to arrive at an evaluation about the accuracy of the statement.

For Statement D many candidates became rather muddled in their responses to this statement. Responses required a clear application of the rules of causation, including the 'but for' principle of factual causation, a reassertion of the principle of reasonable ability of foresight in connection with legal causation. There should also have been consideration of the potential *'novus actus interveniens*' on the part of the speeding motorist, Manuel. Candidates could gain credit for any logical evaluation this statement including an 'either / or' conclusion.

Question 8 – Insanity

There was a wide range of performance in response to this 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 were obviously uncertain as to whether a hyperglycaemic diabetic blackout did fall within the “McNaghten Rules” or not. Again, this may reflect rather patchy knowledge and understanding of a general defence which would not normally be taught until towards the end of a year-long teaching programme.

For Statement A this required an application of the facts of the scenario recognising that Rashid was aware of his condition. He knew he should take his medication and failed to do so, bringing about his hyperglycaemic condition. Evaluations of the accuracy of the statement were often not offered.

For Statement B most candidates were able to spot that Rashid could have pleaded automatism, indeed may even be advised to do so. This was potentially creditworthy. Some candidates concluded that Rashid could plead automatism in response to Statement B and also that Rashid would be found not guilty by reason of insanity in response to Statement C. Clearly Rashid could plead automatism as a defence if he wished to but it would of course, be unsuccessful. It was agreed at standardisation that a degree of flexibility would be applied when marking this statement for the reasons given.

For Statement C notwithstanding the reservation contained in the above remarks, many candidates seemed to contradict themselves in response to this statement. Having argued that Rashid could successfully plead automatism many also then reasoned that Rashid would be found not guilty by reason of insanity because his condition arose from an internal source and thus fell within the McNaghten Rules. Many candidates, however, scored well in their response to this statement.

For Statement D the responses were mixed. Candidates who were aware of the discretion afforded to judges by the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 gained good marks, whereas a minority asserted that Rashid was going into a secure institution for the mentally disordered for life. Many candidates did not express an opinion as to the accuracy or otherwise of the statement as they are asked to do in the command of the question.

G144, G146, G148 Special Studies

General Comments

This was the seventh sitting of the Special Study Paper under the current themes. This does mean that centres are now very familiar with the themes and with the demands of the individual questions and as such that the papers are somewhat predictable. Scripts did indeed demonstrate high levels of subject knowledge. High skills levels were also well demonstrated, as was the effective use of the source materials. It is worth pointing out however that merely referring to a source gains no credit without specific reference to lines.

Candidates in general appear to be writing very confidently and at length on question 2. The big discriminator here is the amount and quality of discussion for AO2. A continuing worry is the number of candidates who spend a disproportionate amount of time on question 1 despite it only being worth 16 out of the 80 available marks and therefore only really warranting around 15 minutes of the available 90. Many candidates on question 1 are engaging in a 'generalised essay' on the theme before ever getting into the specific demands of the question. This was true in different ways on all three options.

Each of the options produced a wide range of responses, and it was pleasing to see that there were few really weak scripts. Although Tort was unable to match its 100% pass rate of last January. There were numerous maximum marks on individual questions and many that were well above the A threshold overall. There was some very effective use of the source materials. However, application questions, while producing many maximum marks for individual parts, were not always as confidently handled as usual, which was surprising considering the amount of practice papers on these themes.

Communication was generally effective despite the usual array of spelling, punctuation and grammatical aberrations. Time management was not a problem for candidates with the majority of candidates completing all three questions.

G144 - Criminal Law Special Study

Comments on Individual Questions

Question 1

This question on each option calls for an examination of a case from the source materials, in this instance *Hudson & Taylor* and the fairness of the development to the defence of duress by threats made by the case.

With only AO2 marks available for this question in order to achieve high marks candidates should have identified one of the two critical points from the case. Either that *Hudson & Taylor* concerned the immediacy of the threat, and therefore the extent to which the threat was operating on the minds of the defendants, or that it also considered the effect of a safe avenue of escape and the ability to notify the authorities and gain protection, and the potential effectiveness of this course of action in the minds of the defendants. With either clearly explained plus two other critical points discussed in depth, as well as a clear emphasis on development of the law by use of a linked case, and significantly by comment on the fairness of the development of the case (as required by the rubric), candidates could have achieved level 5.

On the whole the question was well done and produced a range of responses. There were indeed numerous excellent answers. Two common faults stand out, however:

- A number of candidates engaged in a lengthy and unnecessary essay on the development of restrictions on the use of the defence of duress by threats, sometimes running to three or four pages. Not only did this waste potential mark earning time, but where no clear link was made with the case in question then this limited any marks available for that material.
- A number of candidates wrote otherwise excellent answers but introduced no comment on the fairness of the development, as required by the question, meaning level 5 marks were clearly unavailable.

Question 2

Question 2 is the focus for discussion of the substantive law theme on the paper. The best discussions commented in the context of the overarching theme (role of judges, use of precedent and the development of law). The question here was on the development of the defences of duress of circumstances and necessity in the light of a quote from Jefferson explaining that the judges in *Conway* that '*duress* [is] *an example of necessity, and … whether duress of circumstances* [is] *called duress or necessity* [does] *not matter'.* Sources 7, 8, 9, 10 and 11 all contain information as well as much comment that is useful in answering the question. While the range of available cases might be smaller than that for duress by threats, nevertheless the area is unsettled and therefore controversial so there is ample opportunity for high level discussion in the context of the overarching theme, and therefore to secure high AO2 marks.

For AO1 candidates could have secured high marks by providing detailed definitions of both defences and their essential elements. Duress of circumstances is similar to duress by threats but derives from the circumstances the defendant finds himself in rather than from a threat. Necessity is based on the defendant taking a course of action which is the lesser of two evils. Candidates would also need to illustrate through the case law. There are seven cases in the Special Study Materials so candidates would be expected to consider at least this many to achieve the level 5 descriptor. The majority of candidates tackled AO1 confidently and comprehensively. There was evidence of extensive case law well beyond that in the Source Materials. Many candidates achieved level 5 and even maximum marks, while some just missed out on level 5, because of limited definitions. Most moderate answers tended towards accurate

and detailed but listed accounts of several cases, very often taken from the source, and then real differentiation was in the quality and extent of AO2. Weaker answers lacked breadth, often being limited to one of the defences only. Often this was copied wholesale from the source without really demonstrating understanding. A number of candidates had anticipated duress by threats for question 2 and therefore became distracted in a detailed discussion of duress by threats, usually at the start and culminating in very limited information on duress of circumstances and/or necessity. Weaker scripts also provided very limited or even no definitions at all of the defences.

Despite many high AO1 marks, AO2 was a real discriminator between candidates. The best scripts showed advanced critical awareness and clear focus on the quote in the question. These were able to give full account of the development of both defences and to analyse the similarities but also the critical differences between them, and therefore to argue cogently on the point in the quote. The very best amongst these also had clear focus on the overarching theme, and therefore debated the role of judges in the development of the defences. Most candidates were able to give a detailed account of the development of the two defences with comment, but proceeding downward through the AO2 marks with less and less focus on the actual proposition in the question. The weaker scripts lacked comment as well as focus on the question, and often engaged in inaccurate statements of fact, such as the quote being absolutely accurate, rather than engaging in any meaningful discussion.

Inevitably in the case of both AO1 and AO2 candidates who restricted themselves to a discussion of only one of the two defences struggled to achieve level 3. Since such answers could not be construed as showing adequate knowledge for AO1 nor considering most of the more obvious points for AO2.

Question 3

The application question incorporated the customary three separate small scenarios all worth 10 marks on three separate characters. Candidates should have found the individual questions very accessible since each concerned different situations analogous with existing case law or in any case which relate to specific aspects of the defence of duress by threats. Also with this being the seventh paper on the theme there is an inevitable predictability and familiarity about the application questions. Candidates could have applied the *Graham* two part test to all three. While many referred to or explained the test in detail, few actually applied the test leaving this to the examiner and therefore limiting available reward.

For level 5 candidates ought also to have focused on the critical points evident in the scenarios, for part a the lack of immediacy of the threat and the lack of nomination of a crime and therefore no nexus between the threat and the crime; for part b the lack of a threat of death or serious injury in respect of revealing only the defendant's homosexuality; and for part c the possible unavailability of the defence if Freya can be shown to have voluntarily associated with a person whom she ought to realise might cause violence to her. Good discussion of the above points together with appropriate cases cited in support would allow a candidate to receive high AO1 and AO2 marks.

The questions on the whole were well handled; they also elicited a wide range of responses, both overall and by individual questions. The most capable candidates were able to demonstrate thorough knowledge and excellent application skills, and numerous cases cited in support. Most candidates identified the relevant areas and analogised with appropriate case law, but it was the manner of application which produced the real discriminator. Responses to part a were generally good with many very high or maximum marks. Common features of answers not achieving high marks were a failure to apply the *Graham* test despite introducing it, a failure to spot both critical points, and a failure to use appropriate case law in support thus limiting the AO1 mark. Fewer candidates coped as well with part b. Many arrived at an appropriate conclusion but without much supporting application. Few considered the ramifications of *Valderrama-Vega* in any detail,

although most introduced it. Almost none considered the psychological issue, and again *Graham*, while usually introduced, was rarely applied. Most answers raised in the issue of the non-serious nature of the threat as a conclusion rather than as application. For part c the majority of candidates did consider the voluntary association issue in varying degrees of depth, and many were up to date, applying *Hasan.* Some candidates limited their mark by going no further than the critical point. Others conjectured that Freya passed both parts of the *Graham* test because of the nature of the threat and Michael's violent background without going on to consider the possibility of voluntary association. Generally, however, most candidates were able to achieve level 4 or above. For question 3 as a whole there were some weaker scripts that engaged in an essay style answer with little application.

G145 - Law of Contract

General Comments

There were some excellent answers in this examination with candidates who were well prepared and who demonstrated good skills in being able to focus on the specific question and put together a well argued answer. The overall standard was weak however, many candidates had one good answer but showed little knowledge in the rest of the paper. In many answers candidates were clearly confused between topics and subsequently misdirected their answers, this may well be a result in some cases of taking an exam in January after only one term of study.

Comments on Individual Questions

SECTION A

Question 1 – Consideration

This was by far the most popular question in Section A, not surprisingly because consideration is also the special study topic. The question asked about existing obligations and could be tackled using material from existing obligations owed to a third party, the same party or in general law. At best there were some very good answers, particularly candidates who disagreed with the quote and gave a very well argued explanation to back up their point of view. Good examples of this were candidates who explained that the outcome in *Williams v Roffey* should be seen as a new rule rather than an exception to the rule in *Stilk v Myrick*. There were also some very good references to promissory estoppel and the rules on part payment, candidates explained why they were discussing these areas of law and made sure they were related well to the question.

The weaker answers to this question tended to have lengthy explanations of consideration as a whole with little reference to the question. There were also a significant minority of candidates who misunderstood the question and who discussed the rules on performance rather than consideration.

Question 2 – Unfair contract terms

There were few good answers to this question. Candidates were required to discuss how effectively unfair contract terms had been regulated at both common law and statute. In a few cases there was good reference to the rules in both areas but evaluation was not directed well towards the question. Several candidates misunderstood the question and gave lengthy explanation of the rules of incorporation at common law and statute, there was also confusion with classification of terms and with the rules on misrepresentation. Neither of these types of responses received much credit as these were not areas of law relating to the question.

Question 3 – Frustration

This was the least popular question in Section A but it also provided some excellent answers in a few cases. Some candidates were well focussed on the specific requirements of the question and showed well developed evaluation skills in evaluating both the basis for frustration and the relevant provisions in the Law Reform (Frustrated Contract) Act. There were also some excellent comments on the relevance of insurance to this topic, the way in which the allocation of risk between the parties allows them to take out insurance against risks that may well fall to them.

Some candidates confused the topic area with remedies for breach of contract which was not relevant to this question.

SECTION B

Question 4 – Offer and acceptance / incorporation of terms

This was a problem question that was based on a battle of the forms scenario. Candidates were able to provide a good answer with well applied knowledge of offer and acceptance and incorporation of terms in general, even if they were not aware of the specific line of cases that deal with battle of the forms.

Although candidates could have answered with a basic knowledge of the areas outlined above, the standard of answers to this question was very poor. There were many answers with no case law at all and also many answers were poorly structured and rambling. Several candidates discussed the postal rule although that had marginal reference to this question, some answers also discussed classification of terms and the area of repudiatory breach, again of little relevance here.

Some answers started to discuss the principle of a party being bound by what they sign, even if a written set of terms has not been read, but in most cases this was not backed up by an account of the relevant case law.

Question 5 – Privity

This question had a very specific command – to discuss whether issues of privity of contract will prevent one of the parties from getting compensation from two other parties. Most candidates were able to explain the basic principles of privity as they applied to the question but knowledge of the exceptions was generally very poor, and not well backed up by adequate case law. In particular, very few candidates made any mention of the most significant exception of all, the Contract (Rights of Third Parties) Act, which was disappointing. Some candidates made reference to a small range of exceptions to the rule, particularly including restrictive covenants and collateral contracts, and there was some attempt to relate these to the question.

In the weakest answers candidates discussed possible claims in misrepresentation. This was of little relevance to the question, without also including the lack of privity between the parties, and also ignored the specific command.

Question 6 – Duress

This was the least popular of the problem questions but the one that had the best standard of answers. There were two scenarios, each of which required a general explanation of the topic of duress and identification of the features of each scenario which would indicate whether duress was likely to be successfully argued. Several candidates made excellent reference to the criteria from *Pao On v Lau Yiu Long* as explained by Lord Scarman, applying each one to come to a sound overall conclusion. A common area of weakness was candidates not having case law examples of where a legitimate threat did not lead to economic duress, such as in *CTN Cash* and *Carry v Gallagher.*

SECTION C

Question 7 – Intention and consideration

There were several very good answers to this question, identifying the issue in each question and applying the law in a structured way to come to a clear conclusion. However, many candidates are approaching the questions in the same way that they answer a question in part B, by including lots of relevant case law. This is not necessary as there is no credit available for AO1 marks, explanation of the law, in these questions. Some candidates also included a lengthy explanation of the whole topic area as a preamble to their applied answers, this is not creditworthy and not a good use of exam time.

In Statement A a few candidates failed to spot that there was an issue of intention to create legal relations. This aspect of the question was strongly signposted in the question which suggests that some candidates had entered for the exam without preparing all aspects of the specification. If this is the case then such as an approach clearly disadvantages candidates in being able to spot the topic in Section C where there are only two questions to choose from.

There was a widespread lack of understanding of the law on consideration in Statement D, many candidates stating that consideration is what has already been given to a contract rather than a promise for the future, few candidates correctly identified that a mutual agreement to pay money if they won a competition could amount to consideration.

Question 8 – Restraint of trade

This was the less popular but better answered of the two questions in Section C. There were some very good answers to Statements A and B. Fewer candidates were able to identify that an employer needs a legitimate interest in restraining an employee from working for a competitor in question C, better candidates did answer this Statement well however. In Statement D fewer candidates correctly identified that the court will not amend an onerous term as opposed to blue pencilling offending parts if the rest of the term makes sense.

G146 - Law of Contract Special Study

Comments on Individual Questions

Question 1

This question on each option calls for an examination of a case from the source materials, in this instance *Stilk v Myrick* and the fairness of the development to the rules on consideration made by the case.

With only AO2 marks available for this question in order to achieve high marks candidates should have identified the critical point from the case, that doing something which is already an obligation under an existing contractual relationship cannot amount to consideration for an entirely fresh promise. With this clearly explained together with two other critical points discussed in depth, as well as a clear emphasis on development of the law by use of a linked case, and significantly by comment on the fairness of the development of the case (as required by the rubric), candidates could have achieved level 5.

The question produced a range of responses but on the whole was well done and there were indeed numerous excellent answers. Two common faults stand out, however;

- A number of candidates engaged in a lengthy and unnecessary essay on the development of the principle on existing contractual duties, sometimes running to three or more pages, and very often with almost exclusive reference to *Williams v Roffey* and sometimes also *Hartley v Ponsonby*, but with minimal or no reference to the case in question. Not only did this waste potential mark earning time, but where no clear link was made with the case in question then this limited any marks available for that material.
- A number of candidates wrote otherwise excellent answers but introduced no comment on the fairness of the development, as required by the question, meaning level 5 marks were clearly unavailable.

Question 2

Question 2 is the focus for discussion of the substantive law theme on the paper. The best discussions commented in the context of the overarching theme (role of judges, use of precedent and the development of law). The question here was on the development of the concept of consideration itself in the light of Lord Somervell's famous quote from *Chappell v Nestle* that '*A contracting party can stipulate for what consideration he chooses.*' and the analogy with a peppercorn. Clearly this is a very accessible quote on the fundamental character of consideration and, while the obvious context for answers would have been the rule on adequacy and sufficiency of consideration, candidates should have been able to use any of the cases in all eleven sources in support of their discussions. In this respect the sources not only include much useful information but also much comment, judicial and academic, that is useful in answering the question. The area has been subject to much debate and is at the heart of freedom of contract and there is thus ample opportunity for high level discussion in the context of the overarching theme, and therefore to secure high AO2 marks.

For AO1 candidates could have secured high marks by providing a detailed definition of consideration by reference to *Dunlop v Selfridge* (and possibly also previous definitions such as in *Currie v Misa* in demonstrating development), and of adequacy (common meaning) and of sufficiency (legal meaning), and by illustration of these through case law. Candidates would be expected to consider at least these and the cases in the sources on adequacy and sufficiency to achieve the level 5 descriptor. Most candidates tackled AO1 with confidence. Most scripts included the reasoning in *Dunlop v Selfridge* and *Currie v Misa* and explained the reasoning in *Thomas v Thomas,* contrasted *Ward v Byham* and *White v Bluett*, as well as engaging in

extensive discussion of *Chappell v Nestle*, where the quote in the question came from. Some candidates also considered the relevance of Lord Somervell's views in the case of past consideration and performance of existing duties to good effect. Weaker answers lacked depth or breadth, provided no or very limited definitions, although they did show some knowledge of the case law.

AO2 was also an obvious discriminator between candidates. The quote is a fairly obvious one as the basis for discussion on the nature of the rules on consideration and, with definitions changing over time, the move from benefit/detriment theory to exchange theory, and the questionably 'real, tangible and of economic value' of some instances accepted as consideration by the courts, should have led comfortably also into discussion in the context of the overarching theme. Clearly the area is one where candidates could have examined the role played by the judges critically. The best scripts did indeed show some advanced critical awareness and clear focus on the quote in the question. They also analysed the case law in the context of the quote. The very best amongst these also had clear focus on the overarching theme, and therefore debated the role of judges in defining the area. Most candidates were able to provide some detailed analysis or developed comment, but proceeding downward through the AO2 marks with less and less focus on the actual proposition in the question. The weaker scripts lacked comment and tended to be a list of factual accounts of the cases.

Question 3

The application question incorporated the customary three separate small scenarios all worth ten marks on three separate characters. Candidates should have found the individual questions very accessible since each concerned different situations analogous with existing case law or in any case which relate to specific aspects of the defence of duress by threats. Also with this being the seventh paper on the theme there is an inevitable predictability and familiarity about the application questions.

For level 5 candidates ought also to have focused on the critical point in each situation: in the case of part a the critical point was whether Katy would be able to claim that completing the work in the time stated in the contract actually gave Jacquie an extra benefit calculable as of economic benefit; in the case of part b whether the requirement to make the son's life at school 'fulfilling' is sufficiently real, tangible and of value to count as consideration or whether, as is likely, it is too vague to amount to consideration; in the case of part c that, while any consideration appears to be past, whether the exception in *Lampleigh v Braithwaite* that the service has been requested so that payment might be expected, or alternatively the principle in *Re Casey's Patent*, that payment is implied because of Owen's professional expertise, can be applied in the circumstances. Good discussion of the above points together with appropriate cases would allow a candidate to receive high AO1 and AO2 marks.

The questions on the whole were well handled and in general were detailed and accurate with most candidates showing a confident and clear understanding of the relevant legal issues. Nevertheless, the quality of application was a real discriminator with a number of candidates stating the law and a conclusion with the examiner left to apply the reasoning. A number of candidates missed out on marks that should have been available to them because of this weakness in application skills. For part a the majority of candidates focused on the correct issue and answered well, contrasting the principles in *Stilk v Myrick* and *Williams v Roffey* with varying degrees of reasoned application. There were numerous high level responses and the common factor limiting the mark was in the quality of application. A number of candidates argued cogently that the consideration should reflect the intentions of the parties. For part b there were some very good answers with candidates not only focusing on vagueness and contrasting *Ward v Byham* and *White v Bluett* but also often considering whether fulfilment was real, tangible or of economic value. A large number of candidates, however, missed the point and discussed existing contractual duties, even though this had been the focus of part a. Part c was generally well handled by the majority of candidates with past consideration explained, *Re McArdle* (and

often *Roscorla v Thomas*) analysed, and effective consideration of at least one of the exceptions (and very often both) in *Lampleigh v Braithwaite* (requested service implying a willingness to pay) and *Re Casey's Patents* (reliance on expertise creating an implied willingness to pay) analysed. Weaker answers were limited by the level of application skills evident.

G147 - Law of Torts

General Comments

This was the third sitting of G147 meaning that its format has attained some familiarity and it appeared that both the method of questioning and the time allocation was no surprise to the candidates. The breadth of the specification to be covered by the paper is wide, meaning that candidates sitting in January need to be eclectic, or extremely fortunate, in their preparation if they are to have sufficiently detailed knowledge across a range of topics at their disposal. This was evidenced by a particularly uneven performance in some of the scripts and centres are advised to take account of this in their preparation.

For optimum chances of success a candidate should have covered all of the specification, gained an overview of the material and its significance and be able to relate the different elements successfully - a difficult task to achieve in a relatively short number of weeks. Some centres had covered a wide range of material but others had clearly focused on specific issues which may well be a risky strategy and the wisdom of January entry for this unit is one to be considered carefully by centres. The Section C questions require a specific technique and the guidance in the last two reports, as well as comments to be found later in this report, can only help centres prepare their candidates better.

The purpose of this report is to help teachers prepare their candidates more effectively and any comments made should be seen in that light. It is also worth noting that the law is developed by legislation and case law and knowledge and use of these sources is crucial if candidates are to access the higher mark bands. Examples to illustrate how the law works are acceptable, and can reinforce a point but knowledge of the law, and the principles which underpin it, are crucial to success.

All candidates were able to complete the paper but time allocation was not always well handled, especially when candidates spent longer on responses to Sections A and B. This constrained their efforts in Section C, leading to extreme brevity in some statements and an obvious lack of time for the considered application skills needed to access the higher mark bands.

Most candidates chose to follow the common format of Section A, followed by B and C but a handful began with Sections B or C and this can be a good strategy, especially if problem solving skills are strengths of the candidate concerned. It also encourages precision in Section A and avoids a tendency to overrun on what is likely to be the question for which the candidate can best prepare beforehand. 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. Questions 4 and 6 contained statute law and it was disappointing that many candidates were not able to relate their knowledge to the relevant statutory provisions. As these are the source of the law they need to be given the same level of attention as decided cases in a candidate’s preparation. On a positive note it was encouraging to see some candidates referring back to the question as a method of making relevant the cases they had cited. However, to achieve the very highest mark band comment also needs to be overarching in terms of the area of law at issue and the general principles which underpin it as well as wider policy constraints and influences.

It is also important to remember to deal with the question which is actually posed, rather than relying on a prepared answer which may well have adopted a different slant on a particular topic. In Section B differentiation was evidenced by the detail used to support identification and

application of issues with an increased level of knowledge directly linked to the authority with which legal propositions were expounded and deduced.

Centres should note that the mere naming of a case is insufficient and 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 than a list of case names with no other amplification. In addition, as highlighted above, statutory references need to be made where relevant and the precision of their application will have a direct correlation to the mark awarded.

In Section C differentiation was founded on the application of legal principle and legal reasoning in response to four distinct statements. Candidates are advised that they should write in direct response to each of the four statements rather than producing a long and general piece of continuous prose in which some application is contained. A general introduction and conclusion should be avoided as the essence of this type of assessment is a focused response to a particular proposition in which a student is rewarded for reaching a conclusion based on an understanding of legal principles evidenced in a logically deductive manner.

The marks available are awarded for application skills rather than regurgitation of knowledge and factual discourse on the elements of law relevant to any given proposition. This means that citation is not necessary and indeed it can be a distraction as it tends to replace a display of the reasoning skills necessary to gain high marks. It is important to note that achieving level 5 does require a candidate to reach a conclusion on the proposition to which they are responding.

Standards of communication were acceptable but all candidates responding to examinations in this subject would be well advised to work on their accuracy of language and specific legal terminology to inform the quality of their answers – it is not unrealistic to expect candidates to be able to spell specific legal words such as ‘vicarious’ and ‘assault’ correctly.

Question 1 – Development of the duty of care in negligence

In responding to this essay question all candidates identified and discussed the key issues in relation to *Donoghue v Stevenson, Anns v Merton* and *Caparo v Dickman*. Having done this, a small number did go on to consider key developments in relation to groups such as lawyers, the police and judges with some awareness of the policy considerations which have driven this part of the law. However, many tended to digress into issues such as breach, causation and remoteness which, unless linked by clear comment in terms of the implications of such developments, were of only marginal relevance and were not called for by the question.

Citation of key cases was often strong and there was usually good development of the *Caparo* test, although not always accompanied by citation, but wider reference to policy influenced decisions was thin on the ground. As a consequence in terms of AO2 a good number of candidates addressed the question directly but relatively few developed their comments into wider discussion of the policy factors and their implications for the law.

Question 2 – Public and private nuisance

This question gave candidates the opportunity to engage with a wide range of case material to show how the law has evolved. There tended to be a focus on private nuisance and some candidates did not mention public nuisance at all. There was a tendency to employ a technique of listing cases, such as *Malone V Laskey, Sturges v Bridgman, Robinson v Kilvert, Christie v Davy* and *Hollywood Silver Fox Farm v Emmett*, without any explanation as to their contribution or analysis of their impact.

Some responses contained an impressive wealth of citation but so much time and energy was expounded in doing this that there was little opportunity for the evaluation asked for by the question. Some scripts contained wide-ranging, articulate and impressively thoughtful comment on the law. For many, however, the AO2 component tended to focus merely on whether a particular aspect or case was just or unjust without any evaluation of this idea and development or otherwise of the wider law in this area.

Question 3 – Vicarious liability

It was encouraging to see some pleasing responses to this question. Candidates tended to have a good grasp of the relevant tests and were able to support their remarks with citation, although at times the explanation was so fulsome that citation was forgotten. Candidates are reminded that case reference, and in more detail than simply the naming of a case, is an integral part of a response which will meet the requirements of the higher mark bands.

For many the different parts of the test and reference to standard cases such as *Mersey Docks v Coggins, Ready Mixed Concrete case, Limpus v London General Omnibus, Century Insurance, Rose v Plenty, Hilton v Thomas Burton* and *Twine v Beans Express* were standard fare. Sometimes these cases were well explained. Discussion beyond occasional vague reference back to the term 'rough justice' was less evident and for many candidates there was a marked difference in the marks awarded for AO1 and AO2 components.

Candidates are advised to prepare for the possibility of standard topics appearing in any of the sections of the exam paper and, whilst they may prefer to consider its application to a scenario, it is a good idea to have some points of comment in mind should a topic which has been well-prepared appear in a less desirable guise.

Question 4 – Occupiers' liability

This was a popular question and whilst there were some pleasing responses it was disappointing to see a marked paucity of reference to relevant statutory provisions. Candidates were able to explain the law but to access the higher mark bands they also needed to show an awareness of its source, in the same way that decided cases show the evolution of the law where Parliament has not acted. Most responses were able to name and give the correct dates of the two Occupiers' Liability Acts and there was some good awareness, more particularly in relation to the 1957 Act.

It was pleasing to see reference to important cases such as *Roles v Nathan, Jolley v Sutton BC* and *Tomlinson v Congleton BC*. In terms of the AO2 component responses were very mixed and ranged from thoughtful and accurate application to some rather fanciful meanderings based on little more than personal supposition. The introduction of the independent contractor seemed to cause some confusion and many candidates seemed unclear who should take responsibility for Susan's first injury. The situation when Susan became a trespasser caused an equal amount of debate and there was much indecision which often led to a lack of clarity in application and little by way of conclusion in terms of liability.

Whilst certainty is not always possible, covering a range of options and advancing reasons why one particular course may be preferable is a positive engagement, whereas making wide ranging and vague remarks in the hope that something will be right cannot be rewarded to the same extent.

Question 5 – Trespass to the Person

The candidates who attempted this question were usually very well prepared in terms of their knowledge of the law and many responses contained an impressive range of citation including cases such as *Read v Coker, R v Ireland, Burstow, Letang v Cooper, Collins v Wilcock, Bird v*

Jones and *Meering v Graham White Aviation*. Most were able to go beyond mere naming of cases. Some, however, did tend to become so focused on explaining the law through multifarious citation that there was little time or energy given to selectivity based on relevance to the question.

The offences of assault, battery and false imprisonment were usually well documented but there was less awareness of relevant defences, particularly in relation to the possible use of lawful arrest by Stella. Many candidates had knowledge of a level which allowed them to gain high AO1 marks but too often this was not matched by the level of their application and evaluation of the law. The key decisions as to liability were not always clearly discussed and some candidates did little more than identify the basic offences.

Candidates are reminded that an essential skill in this area of the paper is making use of the scenario to show that application is thoughtful and informed. Although marks are not awarded for mere regurgitation of the source a candidate should aim to show a clear link between the point they are making and the area of the scenario on which they are focusing. Some candidates did find this scenario tricky but there were also some gratifyingly succinct, accurate and logical responses which earned candidates high marks.

Question 6 – Animals

This was the least popular of the problem questions but there was a basic understanding of the tests created by the Animals Act 1971. This was supported by relevant citation and cases such as *Behrens v Bertram Mills, Tutin v Chipperfield, Cummings V Grainger, Curtis v Betts* and *Mirvahedry v Henley* were explained. Less clear was knowledge of the relevant statutory sections and although understanding was demonstrated by examples and discussion there is a need to give clear reference to provisions where Parliament has chosen to act. Although there were three different people to consider there was some good application but candidates are advised that the best approach is to deal with one individual at a time so as to avoid confusion and the omission of key issues.

Once the distinction was drawn successfully between dangerous and non-dangerous animals the AO2 component reflected the sophistication with which wider issues, such as the damage to the car, Yuri's failure to repair what he knew to be a weak fence and the level of parental control, were handled. Issues as to whether Jack was a trespasser, and the implication of keeping a guard dog on a chain leading to a discussion of whether this would mitigate liability were also important facets of this scenario. Despite the paucity of answers, the law relating to animals is accessible to students and is one in which they can achieve high marks if their grasp of statute and case law is secure.

Question 7 – Rylands v Fletcher

This was the less popular of the two Section C questions and, in general, seemed to cause candidates more difficulty. There were a few encouraging responses, dealing with each of the statements in turn and showing good skills of reasoning from an opening statement to a conclusion but many candidates tended to focus on a factual approach and to lack clarity in their thought processes. There was often a reliance on citation rather than using knowledge of the principles of law advanced by these cases in deductive application.

Most candidates were able to recognise that the storage of acid in an unlocked storeroom would render Statement A accurate. In Statement B there was less confidence in the application of the defence of Act of God as the rain was not likely to be heavy enough to come within the defence and the damage by rats was something that Russell could have prevented.

In Statement C many, but not all, students recognised that the acid would be a non-natural use of land and in many instances there was good reasoning to a logical conclusion. In Statement D

there was less certainty as to the conclusion and candidates should be aware that marks may be awarded for good reasoning even when the conclusion varies depending on the approach taken. Candidates also need to read the statements carefully to take account of the fact that they may be posed in the positive or the negative.

Question 8 – Nervous shock

This was a considerably more popular question and many candidates had a good grasp of the basic material and ideas. Application skills tended to be more evident. Although there were some responses in which a detailed exposition of *Alcock* was advanced but with little beyond the merely factual. In Statement A many candidates applied the law accurately but a number failed to recognise that there needed to be a risk to Richard for him to be able to make a claim.

In Statement B there was a lot of good application, although sometimes based in a dissection of cases which is not called for in this model of assessment. Although most recognised that a workmate is unlikely to have a sufficiently close tie of love and affection, few also spotted that panic attacks are rarely seen to be a recognised psychiatric condition.

In Statement C candidates usually spotted the main issue as being whether grief and depression would be sufficiently severe conditions and there was evidence of some good application skills in those candidates who decided that although grief may be insufficient, depression, if severe, would meet the necessary requirements.

Statement D was the area in which candidates were most uncertain but many were able to successfully apply basic principles of negligence to logically reach a conclusion that the statement was likely to be accurate.

In conclusion, Section C rewards the candidate who employs clear, logical, legal reasoning as this replicates the thought processes of a lawyer for whom problem solving is a daily necessity.

G148 - Law of Torts Special Study

Comments on Individual Questions

Question 1

This question on each option calls for an examination of a case from the source materials, in this instance *Alcock v Chief Constable of South Yorkshire*, and the fairness of the development to the rules on nervous shock made by the case.

With only AO2 marks available for this question in order to achieve high marks candidates should have identified one of the two critical points from the case. Either that *Alcock* approved but refined and narrowed the three part test devised by Lord Wilberforce in *McLoughlin v O'Brien*, or the test from *Alcock* itself, the need for a close tie of love and affection to the primary victim (presumed in the case of parents/children and spouses, requiring proof for all other relationships); close proximity to the scene or its immediate aftermath; witnessing the single traumatic event with own unaided senses. With either clearly explained plus two other critical points discussed in depth, as well as a clear emphasis on development of the law by use of a linked case, and significantly by comment on the fairness of the development of the case (as required by the rubric), candidates could have achieved level 5.

The question on the whole was well done and produced a range of responses but there were indeed numerous excellent answers. Two common faults stand out, however;

- A number of candidates engaged in a lengthy and unnecessary essay on the development of nervous shock, sometimes running to three or four pages. Not only did this waste potential mark earning time, but where no clear link was made with the case in question then this limited any marks available for that material.
- A number of candidates wrote otherwise excellent answers but introduced no comment on the fairness of the development, as required by the question, meaning level 5 marks were clearly unavailable.

Question 2

Question 2 is the focus for discussion of the substantive law theme on the paper. The best discussions commented in the context of the overarching theme (role of judges, use of precedent and the development of law). The question here was on the development of distinctions in the treatment of primary victims and secondary victims in the light of Margaret Brazier's and John Murphy's assertion that in *White* the House of Lords saw that it would be perceived as unacceptable to award damages to professional rescuers when all of the claims by relatives in *Alcock* had failed. All 11 sources contain information as well as much comment that is useful in answering the question. Certainly all eight cases in the sources would have had relevance to the specific question and could have been used to good effect. As the quote in the question suggests, the area, the relative treatment of primary victims and secondary victims by the judges, is a most controversial one and so there is ample opportunity for high level discussion on the justice of the controls but also in the context of the overarching theme, and therefore the opportunity also to secure high AO2 marks.

For AO1 candidates could have secured high marks by providing detailed definitions of primary victims (present at the scene and physically injured also or present and at risk of some injury and fearing therefore for own safety); secondary victims (present at the scene or its immediate aftermath, witnessing the event with own unaided senses, and with a close tie of love and affection to a primary victim, and therefore fearing for the safety of another, and suffering a foreseeable recognised psychiatric injury and a man of reasonable phlegm and fortitude would likewise suffer); rescuers (after *White*, a genuine primary victim or genuine secondary victim).

There are eight relevant cases in the Special Study Materials so candidates would be expected to consider at least this many to achieve the level 5 descriptor. The majority of candidates tackled AO1 confidently and comprehensively. Indeed a majority of candidates managed to consider towards three times this number of cases, often in great detail. Many candidates achieved level 5, even maximum, while some just missed out on level 5, because of limited definitions, despite extensive knowledge of the case law. Most middle ranking answers on AO1 tended towards accurate and detailed accounts of several cases, and then the real discriminator overall was the quality and extent of the comment for AO2. Weaker scripts provided very limited or no definitions at all, and some very basic or strained interpretations of the case law.

Because of the general quality of AO1, AO2 was the effective discriminator between the majority of scripts. The better answers demonstrated excellent critical awareness and clear focus on the quote in the question, and understood that the judges in *White* in effect were suggesting that they were being fair to all classes of victims, but that the reality is very different. The very best amongst these also had clear focus on the overarching theme, and therefore debated the role of judges in the development of nervous shock and the complete inconsistency of the various treatments of victims, as well as questioning the validity of the anomalous case law. Most candidates were able to provide detailed comment of some type on the relative treatment of different victims, but proceeding downward through the AO2 marks with less and less focus on the actual proposition in the question. The weaker scripts tended to lack reasoned comment, were narrative in style, and lacked depth also.

Question 3

The application question incorporated the customary three separate small scenarios all worth ten marks on three separate characters. Candidates should have found the individual questions very accessible since each concerned different situations analogous with existing case law or in any case which relate to specific aspects of the defence of duress by threats. Also with this being the seventh paper on the theme there is an inevitable predictability and familiarity about the application questions.

For level 5 candidates should have considered each claimant as a rescuer as required by the question. The rubric was clear and there is ample in each situation to allow a discussion on this point eg there is a clear analogy between Baljit, always at risk while in the car, and *Chadwick.* For level 5 also candidates ought to have focused on the critical point in each situation. In the case of part a the critical point was that Baljit did not suffer a recognised psychiatric injury, a fear of cars. In the case of part b the critical point was that Euan is clearly at risk since the petrol tank might explode at any moment, and the application of *Page v Smith* in respect of his injury. In the case of part c the critical point was that Frank cannot show that he is a genuine primary victim or a genuine secondary victim and so fails despite suffering 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.

The questions on the whole were well handled; they also elicited a wide range of responses, both overall and by individual questions. The most able candidates were able to demonstrate thorough knowledge and excellent application skills, and numerous cases cited in support. In general the discriminator between answers at different levels was the attention to detail. Application was generally good but many candidates missed out on one or more essential elements in their application. Use of case law in support was generally excellent. Responses to part a were generally good with many very high or maximum marks. The most common reason for candidates failing to achieve a high level was a failure to consider Baljit as a rescuer, as required by the question. In the case of part b all candidates spotted the connection with *Page v Smith* and there were some excellent answers with detailed consideration of the principles. Some scripts again missed out on level 5 by failing to consider Euan as a rescuer. Lower down there were some very strange interpretations of *Page v Smith* in evidence, for instance that because Euan suffered a recurrence of ME he did not need to prove that he was either primary

or secondary victim, the mere fact of the injury was sufficient to impose liability. For part c most candidates concluded that Frank would not be able to claim. The best answers reasoned why Frank could be neither primary victim nor secondary victim as in *White*, identified that, as a rescuer, he was closer to the principle in *McFarlane* and would be classed a bystander. Candidates achieving at middle or lower levels did so usually through diminishing amounts of detailed application.

Grade Thresholds

Advanced GCE Law H124/H524
January 2009 Examination Series

Unit Threshold Marks

Unit		Maximum Mark	A	B	C	D	E	U
G141	Raw	120	96	86	76	66	56	0
	UMS	120	96	84	72	60	48	0
G142	Raw	60	44	38	33	28	23	0
	UMS	80	64	56	48	40	32	0
G143	Raw	120	91	80	69	58	48	0
	UMS	120	96	84	72	60	48	0
G144	Raw	80	64	57	50	44	38	0
	UMS	80	64	56	48	40	32	0
G145	Raw	120	93	80	68	56	44	0
	UMS	120	96	84	72	60	48	0
G146	Raw	80	70	63	56	49	43	0
	UMS	80	64	56	48	40	32	0
G147	Raw	120	96	84	72	60	48	0
	UMS	120	96	84	72	60	48	0
G148	Raw	80	65	58	51	44	37	0
	UMS	80	64	56	48	40	32	0

Specification Aggregation Results

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

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

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

	A	B	C	D	E	U	Total Number of Candidates
H124	7.2	27.3	52.9	81.3	97.4	100	602

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.

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

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