OCR
RECOGNISING ACHIEVEMENT

GCE

Law

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

Examiners' Reports

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

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G151 English Legal System

General Comments

Overall the performance of candidates on the paper was very mixed. For most of the questions there were some excellent answers but also some very weak answers showing confusion and a lack of knowledge, particularly on the part (a) of questions in Section A.

The questions in Section B seemed to be the most popular and usually resulted in higher marks for the candidates than those in Section A. This may be because the questions in Section B were topics candidates tend to enjoy and remember well and the vast majority of candidates understand how to do the application questions well.

There are still many candidates who do not read the questions properly and answer the question they had prepared for rather than the question which is asked.

Very few candidates number the questions attempted at the front of the answer booklet which creates quite a bit of initial work prior to marking.

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

Comments on Individual Questions

Section A

Question 1

(a) A popular question with a very mixed range of responses. Some responses demonstrated fairly good understanding of the question in general and achieved good marks. The depth of knowledge on the work of solicitors and barristers was good from some centres but the organisation aspect was very poorly done in general. A number of responses focused on qualifications and complaints or on training – this may be because this is what candidates had learnt and were expecting.

(b)* This question was answered well by some candidates whose responses showed clear understanding of the need to develop issues rather than provide lists of the basic points. The best responses included the idea of having a second opinion, the matter of costs and the need for continuity. There were however many very weak responses which centred on training issues and did not really focus on the question.

Question 2

(a) This was one of the least popular questions. The better responses addressed the first part of the question rather well producing a good explanation of both the selection process and of tenure. Some responses gave a good explanation of the selection process but were unclear as to what 'tenure' meant so could not gain higher than level 3. The weaker responses tried to describe the hierarchy and the qualifications needed to be a judge rather than answering the actual question asked therefore, resulting in some responses gaining no marks for this part question.

(b)* This part of the question was often answered better than the part (a) with the better responses demonstrating good understanding of the changes within the judiciary and even providing statistics to support opinions. The weaker responses failed to develop points or tended to focus on just one feature such as 'male' or 'old'.

Question 3

(a) This was a popular question and was answered very well by some candidates, with responses demonstrating excellent depth of knowledge in terms of how lay magistrates are selected and explaining the MNTI 1 and 2 and the four competencies. The weaker responses tended to describe the qualifications required rather than the selection process and tended to be vague about training. The weakest confused magistrates with jurors. The level of detail in the answers discriminated well with very few candidates failing to reach level 2 with a basic understanding.

(b)* The best responses answered this question well, covering a range of issues including the average age and class of magistrates, the growing number of women and ethnic minorities, lacks of legal knowledge and reliance upon the court clerk. The weaker answers focused upon general issues such as the limited sentencing powers of magistrates which did not directly answer the question and some were very confused. Many responses failed to develop points well which prevented them from getting out of level 3.

Question 4

(a) This was the least popular question on the paper. The question was either done very well or very badly with little in between. A minority of centres had prepared their candidates well and there were some excellent answers which described both civil funding and conditional fees in detail gaining good level 4 marks. The great majority of responses, however, did not answer this question well, demonstrating very limited knowledge and level 1 or 2 marks were achieved as a result. Some responses showed a lack of understanding of what was required and described criminal funding or legal advice. It appeared that many candidates answered this question because they were struggling for a fourth question.

(b)* This part was done better than part (a) by many candidates as the question was broad and allowed for a variety of responses, though very few responses achieved level 4.

Question 5

(a) This was a very popular question and was answered to a satisfactory standard for the most part. The best responses described at least three custodial sentences and three community sentences or requirements available under the Youth Rehabilitation Order in detail. The majority of responses did not go into adequate detail when describing each sentence, with some simply naming community sentences and using vague terms, eg supervision and unpaid work, which limited the overall mark to level 2 or 3. Many responses wasted time on fines and miscellaneous sentences which were not part of the question. Aims were discussed in some answers. Overall candidates seemed to have a better understanding of community sentences than custodial sentences for young offenders. It was common to see detention at Her Majesty's Pleasure with detention for serious crimes confused even in the mid-range responses.

(b)* The best responses focused on the question by explaining why particular sentences might prevent further crime. The weakest focused on the aims of sentencing, in particular punishment and deterrent rather than discussing specific sentences – often no actual sentence was stated which meant the question asked was not answered. The reasons for the efficacy of various sentences tended to be repeated, eg deterrence could be the basis for all sanctions.

Section B

Question 6

(a) Candidates appeared well prepared for this question and there were many answers which achieved level 4. The presumption and general right to bail were stated by the great majority of candidates. Most responses identified reasons, factors and conditions. Better responses made reference to serious offences, reoffending and make reference to the Bail (Amendment) Act 1993. There were common misconceptions, such as bail is automatically denied for indictable offences. The weakest responses were those which simply listed some vague factors and conditions.

(b)* Candidates were able to discuss many of the points in the mark scheme and apply them. The great majority of responses achieved level 3 or 4. Even the weakest responses tended to identify most of the issues although did not then state whether bail would be more or less likely to be granted as a result of that issue.

Question 7

(a) This was a popular question. Many responses demonstrated excellent subject knowledge in this area. Better responses elaborated on public place, reasonable grounds and provided detailed information on powers under legislation other than PACE and very many gained level 4 marks. Stop and search is a much liked area for candidates, however whilst most can tell you that police must have reasonable grounds, accurate responses as to what those grounds actually consist of vary. The weaker responses gave only a brief explanation of PACE and then listed lots of other Acts which gave the police more powers but again failed to elaborate or were confused. Section 60 CJPOA1994 was often explained but there was often confusion as to which Act section 60 was from.

(b)* Again this question was very well answered by the majority with most of the factors being covered, which often gained level 4 marks. Some responses were confused as to reasonable suspicion, with the lawfulness of removing the shoes with application of the Terrorism Act appearing in a number of answers. Some candidates did not read the scenario very carefully and decided that section 60 CJPOA 1994 would be in force because of the concert which was a train ride away.

G152 Sources of Law

General Comments

The overall standard of performance was lower than that of the June series. Candidate performance was disappointing considering the nature of the topics selected and also the individual questions on the paper. Citation continues to be an issue. Although there was breadth regarding the number of cases used, these lacked focus on the actual question eg regurgitating facts as opposed to illustrating the literal rule. The use of the source materials was very positive and most candidates used it in their answers. AO2 skills continue to be problematic. Most candidates focused on a generic and undeveloped list of points as opposed to discussion with developed points. This was a significant barrier to candidates in achieving the highest level.

The majority of candidates attempted the statutory interpretation question. The precedent question was attempted by a small number of candidates. This was surprising as both areas have hitherto been highly popular with candidates. Candidates in the higher percentile of marks tended to attempt the precedent question.

Applied AO2 aspects of the paper were very varied. Candidates who attempted the precedent questions did consistently well. Candidates who attempted the statutory interpretation question gave very disappointing responses. Most candidates could not apply more than one rule or just relied on the Source.

There was a significant improvement in the number of candidates who attempted the correct number of questions. In previous series, too many candidates attempted both questions; hardly any candidates attempted both questions in this series.

Comments on Individual Questions

Question 1

Exercise on Statutory Interpretation

About 85% of candidates attempted this question. Despite its popularity, it was poorly attempted, due to an inability to answer questions (b) and (c)(ii)* well. This was highly surprising as the golden rule was the most obvious question; the area had not been asked for a very long time.

(a)* The responses in this area mainly achieved level 3. Responses demonstrated a breadth of cases but too many focused on the facts instead of illustrating the literal rule. Candidates were expected to describe three cases to access level 4. The use of the Source was very good.

(b)(i)(ii)(iii) This was a very poorly answered aspect of the paper. A significant minority of responses used the Source. The questions were aimed at getting the candidates to contrast how the outcome would change depending on what rule was used. Many responses were limited because they did not go beyond one rule. Centres are encouraged to train candidates in contrasting the rules and explaining why the outcomes would be different or the same.

(c)(i) There was a significant improvement in the responses in this area. Most responses described the two approaches to the golden rule and illustrated them with appropriate case law. The better answers were, however, still limited as they could not describe more than two cases. The use of the Source was very good.

(c)(ii)* Many responses did not discuss the golden rule. Most answers were a list of points with little or no development. Centres must continue to develop candidates' ability to develop an argument to ensure that they can achieve high level 3 and 4 marks. A small number of responses only focused on one aspect of the question.

Question 2

Exercise on Judicial Precedent

This was attempted by the minority of the candidates. Given the nature of the questions it was quite surprising how unpopular it was.

(a)* The majority of the responses defined the term but then offered little more than linking it to the Source. Too many focused merely on the CofA. The better responses linked to the court hierarchy and then illustrated it with cases or methods of avoiding *stare decisis*. Citation tended to be very weak. Given how the marking criteria allowed for description of a wide range of points, the breadth and depth of knowledge exhibited by the responses was disappointing.

(b)(i)(ii)(iii) This area was answered very well. Candidates have clearly been taught well. Most could identify the central point – whether the court was bound or not and then explain why. A number of candidates could identify another relevant point – be it a case or use of the Source. This was the best answered area for question two. Even candidates who struggled on the other parts of the question managed to score highly on these.

(c)(i) A number of candidates could offer little beyond the Source. Too many did not read the question; the question wanted the candidate to focus on the CofA's own powers. Most responses offered a scatter gun approach on the CofA. Citation and awareness of key principles were very weak; the majority of responses were unable to achieve above level 2. The majority of responses had poor knowledge of the *Young* criteria and could not illustrate or even define its principles.

(c)(ii)* The AO2 in this area was mixed. At its best, it was sensational. There was clear development and clear discussion. However, it did share the same problems as the statutory interpretation question – in that it was a list of points. If centres want to improve the percentage of candidates achieving the highest marks, they need to put effort into this area.

G153 Criminal Law

General Comments

This series saw an increase in the number of candidates, perhaps a reflection on the complexity of the subject matter and the percentage of marks the paper attracts at A2 level. Comments here are intended to help teachers prepare their candidates more effectively, and with such a broad specification it was perhaps inevitable that some candidates had only a limited a number of topics at their disposal – not all of which appeared on the paper. This resulted in some uneven performances; for optimum chances of success candidates need to have covered all of the specification, gained an overview of the material and its significance and be able to 'join up' the different elements.

As the criminal law is rooted in statutory provisions and case law knowledge, and accurate use, of these sources is crucial to access the higher mark bands. Whilst examples illustrating how the law works are acceptable, and sometimes very useful, the introduction of the A* at aggregation level and the requirements of stretch and challenge mean that candidates must be knowledgeable about the law, understand its principles, be able to apply those principles cogently and be able to analyse the law in a coherent and synoptic context. Some candidates make comments relating to the separation of powers and Parliamentary sovereignty – whilst these can have some validity remarks to the effect that the judges are going beyond their role have less cogency in the many areas of the criminal law which have evolved only through judicial decisions.

Whilst in general candidates managed their time well there were still those who struggled, most usually leading to a hurried attempt at Section C. A growing number of candidates now begin their responses with Sections B or C and this can be a good strategy if problem solving skills are a candidate's strength. It avoids a tendency to overrun on Section A, the question for which the candidate can best prepare beforehand and candidates are reminded to plan carefully before starting their answer so as to do themselves justice in each area of assessment.

Section A questions were differentiated in terms of specific level of knowledge and relevant citation alongside the sophistication of comment. It was encouraging to see some candidates referring back to the question as a method of making relevant comment but to achieve the very highest mark bands remarks also need to be overarching in terms of the general principles underpinning the area of law at issue as well as wider policy constraints and influences. It is also important 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 and to develop comments so that they move beyond bald assertions.

Section B differentiation was evidenced by the detail used to support identification and application of issues with increased levels of knowledge directly linked to the authority with which legal propositions were expounded and deduced. The mere naming of a case is insufficient and candidates should demonstrate both 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. Where relevant, statute law should be clearly and confidently expressed as a starting point for the demonstration of knowledge. Sometimes the rubric gives a clear indication of the issues to be considered and candidates are urged to read these instructions carefully.

Section C differentiation was founded on the application of legal principles and reasoning in response to four distinct statements. Candidates should respond directly to each of the four statements and they are rewarded for their understanding of legal principles, evidenced by logically deductive application skills, and not the regurgitation of knowledge in a factual discourse. Citation is not necessary and to achieve level 5 candidates must 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.

Comments on Individual Questions

Section A

Question 1* – Omissions

This was a popular essay and some very pleasing responses made good use of citation supported by valid AO2 with *Gibbins v Proctor, Pittwood, Dytham, Miller* and *Stone* appearing frequently. These cases also allowed candidates to deal with the issue of fairness and it was encouraging to see candidates develop an argument based on the contrasting aspects of this concept. Many wrote at some length on the "Good Samaritan" principle and there was some interesting comment as to the inherent lack of fairness in such an idea, with the result that opinion was somewhat divided as to whether its introduction would be a benefit or a curse. A relatively small number of candidates tackled medical issues and the drug cases in involuntary manslaughter, but there was some insightful discussion of the impact of cases such as *Wacker*. Few candidates mentioned *Evans*, arguably the biggest omissions case since *Miller,* and whilst the twelve month rule means that candidates are not disadvantaged if they are unaware of very recent developments they are reminded that the law does not stand still and up to date case knowledge can only be beneficial. EXAMINER TIP – a handy AO2 skill is to take a comment beyond a simple statement based on the question by evaluating a point from different perspectives and then considering how reform and underlying principles influence decisions or drive the pace of change. This allows a candidate to make well-developed points, rather than bald assertions, which attract greater reward.

Question 2* – Involuntary Manslaughter

This was the least popular easy question; there were some good responses although many candidates were much more comfortable with unlawful act and gross negligence rather than subjective reckless manslaughter. Responses tended to demonstrate reasonable case citation but relatively few were able to define unlawful act manslaughter entirely accurately; although *Church* was sometimes cited many candidates were unable to amplify basic statements relating to its objectivity. In contrast a pleasing number were able to deal with gross negligence manslaughter, using predominantly but not exclusively, *Bateman* and *Adomako* accurately and confidently. In terms of AO2, the confusion surrounding drug dealers featured in many answers whilst the opportunity to compare and contrast *Cato*, *Kennedy* and *Khan & Khan* was explored by quite a few candidates. It was pleasing to see candidates mention the Law Commission proposals for a 'ladder' of homicide offences although further discussion of reform proposals was less evident.

Question 3* – Intoxication

This question prompted some pleasing responses as many candidates had a good grasp of the relevant delineations in the law and were able to recognise that voluntary intoxication is a defence, albeit only in specific intent crimes. Candidates supported their remarks with citation which often included *Lipman, Kingston, Hardie, Gallagher, Sheehan and Moore, Tandy* and *O'Grady* but, perhaps surprisingly, not all candidates dealt with *Majewski* and references to *Heard*, another recent and important decision, were sparse. AO2 comment was often simply a repetition of that contained in the question but there was also some thoughtful, sophisticated analysis of the incongruities found in this defence and its relationship with other defences allied with remarks about government policy driving the shape of this area of the law whilst some picked up on legal principles such as the separation of *actus reus* and *mens rea* under *Majewski*-style recklessness. There was some mention of the Butler Committee but little reference to the Law Commission's 2009 paper.

Section B

Question 4* – Fatal offences, property offences and duress

This question elicited a wide range of responses and seemed to cause some candidates considerable difficulty as although they had an awareness of murder, the same was not true for property offences, with the consequence that a good number did not spot burglary and those that did were often unable to define it properly. Whilst murder was an easier offence to identify there was significant confusion surrounding *mens rea* and many seemed to think that because Flora did not go to the building with the intention to kill Brian she did not have malice aforethought, placing too much emphasis on the word 'aforethought'. Many candidates did establish Flora's liability for murder and then discussed, despite some clear prompts in the questions towards duress, the specific defences to murder. A small number were aware of duress and often dismissed it for various reasons, although not always the correct ones given the scenario. EXAMINER TIP – it is vital to use the material given and a detailed consideration of the text is essential. Highlighting key words can be very valuable in focusing the candidate as AO2 marks come from identification, and then application, of relevant and appropriate law.

Question 5* – Property offences

This question produced some good responses with candidates confident in their recognition of robbery, burglary, and theft. In addition there was some creditworthy discussion of assault by Shane and attempted theft by Tabitha. Those who answered this question were often able to write confidently, and apply accurately, the offences of robbery and section 9(1)(a) burglary but section 9(1)(b) burglary caused widespread confusion. Candidates frequently stated that the defendant must form *mens rea* having entered the premises as a trespasser but the statute is silent on the point as to when intention is formed; that said, the offence can only be completed if the defendant, having entered the building as a trespasser, makes at least an attempt to steal or inflict grievous bodily harm. Many candidates used the Theft Act 1968 confidently but the best responses used the provisions most relevant to the scenario rather than writing at length on aspects which would have greater value in an essay question and accompanying citation was confident and accurate. Many candidates dealt well with the two offences relating to Shane but were less clear when discussing Tabitha.

Question 6* – Non Fatal Offences against the Person

This popular problem question gave rise to some very pleasing responses where students were accurate in their knowledge of relevant statutory provisions and identified correctly the most likely offences. Exam questions on this topic inevitably leave some possibility for flexibility and candidates can be rewarded as long as their decisions are possible, given the facts of the scenario. Some candidates still tend to focus, sometimes exclusively, on the *actus reus* of the various offences and many who do refer to *mens rea* do little more than make general assertions relating to the need for intention or recklessness. An issue which causes candidates considerable difficulty is the distinction between a wound and grievous bodily harm – the former equates with serious harm and the latter with the breaking of all the layers of the skin but either will constitute the *actus reus* of section 18 or section 20, with the difference between the two offences being the level of the accompanying *mens rea*. AO2 marks were gained by accurate identification of offences under the Offences Against the Person Act 1861 and the Criminal Justice Act 1988 with some candidates used the CPS charging standards to inform their decisions. There was relatively little discussion of appropriate defences but some were able to define and apply relevant law. EXAMINER TIP – a scenario based on this area of the law is written to cover as many of the non fatal offences as possible and for candidates this means it is unlikely that the same offence will be the right choice several times over on the same set of facts.

Section C

Question 7 – Manslaughter, Insanity and Automatism

This was a popular question and there were some demonstrations of a high level of knowledge and application skills. In Statement A there were some good answers although other candidates wrote extensively on the requirements of unlawful act manslaughter rather than focusing on the issue of causation. Statement B was generally well done although some candidates did not pick up on the self-induced aspect of Rashid's blackout. In Statement C many, but not all, candidates were able to give the definition of insanity but few used this to make a deductive argument by applying the test to Rashid's situation – it is this skill which is the key to success. Statement D was the area where candidates wrote least confidently and there seemed to be relatively little awareness of the sentencing provisions which could apply to Rashid.

Question 8 – Specific defences to murder

Although the Coroners and Justice Act 2009 is within the 12 month rule those candidates who used its provisions accurately and relevantly performed well. This question attracted large amounts of factual material on cases such as *Ahluwalia, Thornton* and *Humphreys* – candidates are reminded that it is the application of principles of law which attracts marks rather than extensive case citation, however accurate and detailed it may be. Statement A produced many good answers although there was some confusion as to whether lunging at Jeff with a knife would be sufficient for an intention to kill. In Statement B most recognised the importance of Jeff's words and actions but not all made a connection with the possible cumulative nature of his behaviour. Statement C was generally well handled but in Statement D a good number of candidates did not think that diminished responsibility would apply, a decision often rooted in confusion as to the difference between the definition of this defence and that of insanity.

G154 Criminal Law Special Study

General Comments

This was the first sitting of the Criminal Law Special Study unit under the new criminal law theme of Involuntary Manslaughter which covers the January and June 2011 papers. Again, however, despite the general comments from the January and June 2010 reports, and the narrower focus of the paper on a single topic, candidates would have been expected to have tackled each question with a greater clarity and structure than was evident. In many cases, this simply did not happen. This is particularly concerning given the following assistance available to candidates: the reduced number of cases from the source materials from which question 1 can be taken than in pre-2010 special study papers; the availability of AO2 in the sources for question 2 and the availability of definitions in the sources for use in question 3. Centres and candidates are advised to read the Special Study Skills Pointer Guide, available from the OCR website, which explains the skills and structure candidates need to know to successfully tackle the paper.

Time management continues to be a problem with candidates spending a disproportionate amount of time, in particular, on question 1. In some extreme cases, candidates would write three or four pages (see below). This is to the potential detriment of the other two questions, in particular question 2. As stated in previous reports, candidates should be advised to try to work to the mark a minute guidance.

Comments on Individual Questions

Question 1*

Question 1, in its traditional style, called for an examination of a case from the source materials: in this instance *Adomako*. Only AO2 and AO3 marks are available for this question with the emphasis on evaluation. In order to achieve high marks candidates were required to identify the critical point arising from the judgment: that the rules on gross negligence manslaughter were reinstated and somewhat clarified by the House of Lords. Candidates achieving level 5 made this point in detail identifying the civil test of negligence and Lord Mackay's confirmation of the further 'gross negligence' requirement. Such responses would discuss two further analytical points eg the apparent circularity of the test and explain a linked case, then make a clear comment on the significance of *Adomako* (as required by the rubric). On the issue of 'circularity', there were few candidates who could actually explain the issue, the majority simply stated that it was a problem without (or being able to) say why. The question produced generally well answered responses given the potential lack of clarity in the subject matter. The majority of responses explained the critical point, however, many candidates simply discussed, in out-line, the three part test leaving 'gross' with a vague explanation.

There was a range of responses and indeed some excellent answers showing full understanding of the skills required for the question and thereby gaining maximum or near maximum marks. Again, despite previous reports explaining this point, candidates achieving mid-ranking marks continued to lose out on the high marks by failing to address the question itself, in this case, the issue of the cases' 'significance'. More alarming is, however, the traditional and worrying trend of writing lengthy 'essay' type answers for this question. This may be a reflection on, for some candidates certainly, the inability to write a thorough answer to question 2 and thus the feeling of being obliged to write everything they know in question 1. Candidates are advised to follow the 'mark a minute' rule.

Two other points are worth raising with regard to this question. Firstly, the vast majority of responses were able to provide a linked case. In some responses candidates gave as many as five or six, showing the development of law. It is important to note that with only 12 AO2 marks available, and candidates being required to explain the key critical point of the case, show development by linking to an appropriate case and address the key word(s) within the question, such quantity of linked cases is unlikely to be the best use of a candidate's time. Secondly, a large number of candidates (whilst not always required to) used the opportunity to explain other relevant points linked to the case to such an extent it became an answer based around the linked case(s) as opposed to *Adomako* itself.

Question 2*

Given the breadth of this topic area and the question asked, it produced varying responses. This question required a focus on a discussion of the difficulties in defining Involuntary Manslaughter and how the judges have developed, or not, the law. The best responses were based therefore on the context of the overarching theme (role of judges, use of precedent and the development of law). Each Source contained a wealth of useful information as well as comment that was useful in answering the question. Most candidates were able to describe and comment on the two (or three) types of Involuntary Manslaughter on the specification. However, there was a tendency for many candidates to simply rattle through a basic definition of the types with mechanical evaluation. This resulted in many weak responses. Where candidates did discuss the parts of the definitions using cases to explain or back up their answers, they did generally gain high AO1 marks. It was interesting to note that many candidates performed better on AO2 than AO1. This seemed due to generally weak or brief definitions and the use (or not) of cases for AO1. Generally, evaluation lacked sophistication and direction both to the question set and the levels of assessment and consequently it became unusual to mark a candidate beyond level 3 or 4 for AO2 and for that matter AO1.

For AO1, candidates could have secured high marks by providing detailed definitions of unlawful act, gross negligence and reckless manslaughter illustrating them with the numerous cases that support the issue of definitional problems or lack of clarity. There are nine cases in the Criminal Law Special Study Materials so candidates would be expected to consider at least eight with an expectation to go beyond the Sources to find relevant cases to achieve the level 5 descriptor. It was pleasing to see reference to the various law reform groups' proposals and consequent detail. Unfortunately many scripts went into lengthy, detailed descriptions of the proposals to the detriment of the definitions of the current common law types of Involuntary Manslaughter.

As has been stated in previous reports many candidates did refer back to the quotation throughout their response to question 2 and where it was done thoughtfully it gained appropriate credit. Unfortunately, in many instances it was merely done mechanically without real thought or development of arguments. It is worth noting that while candidates should refer to passages from the source materials to enhance their answer little, if any, credit will be given to the candidate who refers to either an entire source (eg see Source 5) or a large chunk (eg see Source 5 lines 2 – 26) as part of their answer.

Question 3

The application question was, in general, well answered, with many candidates who performed poorly on question 2 improving their performance here. Question 3 incorporated the customary three separate small scenarios all worth 10 marks based on three separate characters. Candidates should have found the individual questions accessible since each concerned different situations analogous with existing case law and in consequence gave the candidate a direction in which to pursue the most appropriate offence the character was likely to be charged with and whether a conviction for involuntary manslaughter was, or was not, possible. The key cases to provide candidates with a steer were *Cato* (question 3 (a)), *Kennedy* (question 3 (b)) and *Adomako* (question 3 (c)). For level 5, candidates ought to have included appropriate case

illustration in support of application and also to have focused on the critical points evident in the scenarios: for (a) that a conviction would be found for unlawful act manslaughter given the unlawful act of Chesney injecting Brett and a possibility for one of gross negligence manslaughter given the recent case of *Evans*; for (b) an unlikely conviction for unlawful act manslaughter for Dalvinder given the issues of causation and clarification in the House of Lords' decision in *Kennedy* or again a possibility of a conviction for gross negligence manslaughter from *Evans* should a duty of care be established; and for (c) a possible conviction of gross negligence manslaughter along the *Adomako* ruling given the failure of Fontella to respond to the buzzer. Good discussion of the above in relation to the most appropriate offence, with a linked case(s) cited in support, together with a correct conclusion would allow a candidate to achieve high AO1 and AO2 marks.

The questions attracted good responses, in general, with many able candidates demonstrating both thorough knowledge and high level application skills whilst weaker scripts showed much more limited evidence of either. Again this is a question where the candidates could have adopted a structured and indeed mechanical approach. This would have gained candidates higher marks. Having identified appropriate offences in each scenario (the definitions available in the source materials) it was again the level of understanding and the quality of application of the legal principles that was the real discriminator.

For part (a) answers were generally good with methodical application in their response with most candidates having spotted the link to *Cato*. In (b) there were mixed responses from candidates the majority spotted the link to *Kennedy* while a significant number went down the gross negligence line and depending on the quality of response in either case duly rewarded. The best answers were to (c) since the scenario reflected the *Adomako* line of enquiry albeit few students questioned the issue of causation given Gladys was having a heart-attack at the time.

An alarming trend this series was for candidates to create and discuss alternative scenarios to those in the question, similar to obiter statements in case law, particularly in responses to questions 3 (a) and (b). For example, such students would commonly discuss for questions 3 (b) an answer based around Dalvinder injecting drugs to Ethan etc which was irrelevant and a poor use of the time available.

G155 Law of Contract

General Comments

As in previous series candidates showed a good awareness of the demands of the three different sections of the paper although there are still a significant number of candidates who include extensive citation to their answers in Section C. Technique for answering Section C questions is discussed in detail in the comments on question 7 below.

In Sections A and B weaker responses tended to include little or inaccurate citation, thus limiting AO1 marks to level 2 at most. At the higher levels the discriminating factor is the extent to which cases were discussed in a specific and detailed way, too many candidates are prone to mentioning a case name with no supporting detail to demonstrate a good knowledge of the law.

Detail and development are also the key to higher AO2 marks. Candidates have spent time developing their AO2 technique when answering questions on the AS law papers, particularly in writing well-developed points for the G151 English Legal System paper, and should aim to discuss AO2 comments in their A2 answers with similar depth and development.

Comments on Individual Questions

Section A

Question 1* – Pre-contractual Statements

This was the first time that a question has required candidates to compare pre-contractual statements as potential terms or misrepresentations. It was a popular question and many candidates had clearly prepared misrepresentation as a topic, however answers tended to be unbalanced in many cases and contained little content relating to the potential for pre-contractual statements to become terms of the contract. The best answers were able to make good AO2 comments relating to the different measure of damages available for each kind of claim. Some responses also made good comparisons between the ability to terminate a contract following a breach compared to misrepresentation.

Some candidates misinterpreted the question as a false statement which did not subsequently lead to a contract, discussing a false statement as a misrepresentation which was not able to become a term. This approach made little sense as a misrepresentation is only actionable if it induces another party into a contract, and so a false statement which does not lead to a contract is not actionable on either ground. Some candidates also discussed the possibility of silence becoming a misrepresentation at some length; this was of minimal relevance to the question as it specified a false statement made before contracting. Similarly some candidates discussed the concept of anticipatory breach at some length and this is not relevant to a false statement made before contracting.

Question 2* – Privity of Contract

This question was answered well in most cases. Most candidates showed a very good level of understanding of the rule of privity and the effect of the Contract (Rights of Third Parties) Act 1999. The best answers were able to discuss the exceptions that existed before the 1999 act in some detail and analyse the relevance of those exceptions after the act. There were also some very good comments on the fact that the 1999 act still allows the parties to exclude the possibility of third parties having a direct right of enforcement.

The weaker answers were not able to show detailed knowledge of the act or made little attempt to relate the act to the previous exceptions developed by the courts.

Question 3* – Restraint of Trade

A fairly straightforward question on restraint of trade, answered well by many candidates who were able to discuss the reasons for restraining such terms, the circumstances in which they may be justified and the factors taken into account when assessing reasonableness in a structured and clear way and with good reference to case law. While nearly all candidates showed a good level of understanding of the topic, the differentiating factor was often the level of supporting case law with the weaker response relying on no more than one or two cases to support its position.

The AO2 theme for this question required a discussion about who the tests tended to favour, the party seeking to enforce the term or the subject of the restraint. The better responses addressed this question very effectively and developed strong arguments based on the case law, an example being that the worldwide restriction in *Nordenfeld* was fair given the nature of the business in question and that this should not be seen as particularly generous given that the price paid for the goodwill of the business anticipated a restraint of that nature.

Section B

Question 4* – Breach of Contract Terms

This problem question required candidates to advise whether three parties might have a right to terminate a contract on the basis of breach of contract. There were some good answers which identified the nature of a breach which would allow repudiation of a contract, for example discussing the terms implied by the Sale of Goods Act in relation to the faulty biscuit tins which broke when they were used. Many candidates failed to spot the correct topic however and discussed areas such as misrepresentation or frustration. Candidates need to look for the triggers which point to the relevant topic in the problem question they are considering, in this question there were no false statements which would point to misrepresentation and no contract obligations which subsequently became impossible or much more difficult which would have pointed to frustration. The triggers in this question were late payment, which should have brought to mind cases such as *Lombard v Butterworth*, and goods which were faulty which should have led to a discussion of fitness for purpose and satisfactory quality.

Question 5* – Mistake

This question concerned two areas of the law of mistake and the possibility of a claim in misrepresentation. Most candidates correctly identified the relevant areas of law although some inserted extra facts of their own in order to make the question fit an area of law they were better prepared to answer, candidates need to pay careful attention to the exact wording of the question. An example of this being that some candidates assumed that the auctioneers had made a misrepresentation in relation to the arrival date of the ship Bella Vista, in fact the question stated that the auctioneers knew that the cargo they were selling was arriving on a ship on 1 December, the buyer had made his own investigations and discovered a different ship of the same name arriving on a different date. There was nothing to indicate that the auctioneers were aware of the buyer's mistake.

The better answers to this question were very analytical and took a systematic approach to explaining and applying the law of mistake and misrepresentation. Better answers also spotted issues such as lapse of time possibly being bar to claiming rescission in relation to the possible misrepresentation regarding the container of scrap metal.

Question 6* – Duress

This was the most popular Section B question and the most straightforward. It required candidates to discuss the different elements of a claim under economic duress and to apply these in turn to the facts of the question. The better answers to this question explained the case law on each element in turn, for example the nature of the threat and the extent to which it left the other party with no choice but to comply with the threat, illustrating with reference to those particular elements in the relevant cases before applying the criteria in a detailed way to the question. Weaker answers tended to discuss the cases in a general sense without explaining specific aspects of the topic. A differentiating factor in the best answers was spotting that that in the first scenario there was clearly an illegitimate threat, being to breach the contract to supply diving services, whereas in the second scenario the threat was not to make further contracts in the future which is likely to be seen as legitimate commercial pressure. Better answers also applied the detailed criteria explained in the case *Pao On v Lau Yiu Long*.

Section C

Question 7 – Consideration

This was the most popular Section C question and in many cases was answered very well. Candidates need to pay close attention to the criteria for assessing these questions as far too many answers still include extensive reference to case law which is not credited. Candidates need to explain the legal principles behind the question, for example for Statement A they needed to explain the general rule against past consideration and the exceptions for when it will still be seen as good consideration. They then needed to apply each principle to the question, for example why the police have provided past consideration and then why the exceptions might apply in this question. Finally, candidates needed to clearly state whether they agreed or disagreed with the statement.

Candidates should also pay close attention to the specific question and answer what has been asked. Statement D asked whether a promise not to complain, made by a wife to her husband, could be seen as good consideration. Although the intention against legal relations may well apply in that scenario in general the question was specifically about consideration and so a discussion relating to legal intention was not credited.

Question 8 – Offer and Acceptance

In general the comments made in relation to question 7 regarding answer technique apply equally here. This question required candidates to explain specific aspects of offer, acceptance and revocation. Candidates needed to explain the relevant legal rules carefully before a methodical application, again with no reference to case law.

G156 Law of Contract Special Study

General Comments

The paper produced a wide range of responses. Some excellent skills were in evidence including extensive and detailed knowledge of relevant cases and thoughtful and well-supported evaluation. Deconstructing the problem questions generally proved more difficult than the case review and essay for most candidates. The principal factor limiting candidates' marks was the use of pre-prepared answers. Essay questions in particular often failed to reach the higher levels as pre-prepared responses did not match the particular question asked.

The use of the source material was variable. As in previous series, some candidates cited sources as a whole but did not give specific line references and occasionally gave line references but without naming the particular source. Little or no credit could be given in either case. The problem questions in this series were designed mainly, though not exclusively, around the areas of invitation to treat and counter-offers: two areas covered extensively in the source material. Despite this support, many candidates appeared to struggle to apply the rules effectively.

Comments on Individual Questions

Question 1*

This question asked candidates to evaluate the significance of a case to the development of the law. In this instance, the question concerned the significance of *Carlill v Carbolic Smoke Ball Company* to the development of the rules on offer and acceptance.

There are only AO2 and AO3 marks for this question so, as pointed out in the Special Study Skills Pointer Guide (available from the OCR website) no marks are given for simply reciting the facts of the case without any evaluation. AO2 marks are given for the selection of an appropriate linked case and a discussion which shows how the main case has contributed to the development of the law. It should be noted, however that the focus of the answer should remain at all times on the main case (*Carlill*) for which the majority of the marks are given; only a portion of the marks available for question 1 are available for discussion of linked cases. For high AO2 marks, candidates needed to identify and discuss the critical point of the case and some other analytical points and discuss a linked case to show development. The critical point of *Carlill* is the development of the concept of a unilateral offer to the whole world. The majority of candidates discussed this point but a significant proportion did not. This is worrying given the extensive discussion of the point in Source 1 and the length of time that candidates have had to read and analyse the sources. Other credited analytical points included discussions regarding the offeror's waiver of the need for communication of acceptance, the manner in which the court approached the construction of the document, the support of the idea that performance can constitute acceptance in unilateral contracts and discussion of the case's place within the wider context of the courts' attempts to protect individuals from unscrupulous business practices.

On a number of occasions candidates used cases from other jurisdictions as their linked case. Whilst these were credited, full credit could only be given where candidates noted that they were only persuasive precedents.

Question 2*

This question is the central opportunity for the discussion of the substantive legal theme of the series in the context of the overarching theme of the role of the judges in their development of the law. Candidates were given a wide-ranging quotation to lead their discussion of the rules on offer and acceptance. The quotation and instruction included many different aspects the candidates could choose to pursue, including: the judicial development of the law, the practical approach of the judges, the uneasy fit of fact and law and the "forcing" of facts into existing "slots" of offer and acceptance. These different aspects in the question were themselves capable of a wide range of interpretations and all plausible interpretations were credited.

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

The question did not have a specific AO1 target and so to show good and wide-ranging AO1 knowledge (required for the higher levels) candidates needed to combine both breadth and depth in their answers. The source materials covered invitations to treat, counter offers and the postal rule extensively and a detailed discussion of these areas secured a good level 4 mark. Level 5 required candidates to show a wider-ranging knowledge, including, for example, some reference to the rules on revocation of offers, auctions or tenders (all mentioned in the Sources) or other area. Almost all candidates provided sound definitions of 'offer' and 'acceptance'. Most candidates showed impressive depth to their knowledge. Candidates who provided simple lists of case names without any further detail were limited to mid-level marks. This was thankfully unusual – most candidates understood the need to provide a concise account of the key details of the case. Occasionally candidates provided extensive narratives of cases; this went beyond what is required to show depth of understanding and should be avoided where possible – it is not a good use of the limited time that candidates have available.

Question 3

The problem questions attract both AO1 and AO2 marks at a ratio of 1:2. Question 3 led to some excellent answers with precise identification of issues, good selection and clear statements of the relevant legal rules, appropriate use of supporting authorities and clear conclusions. On the whole, candidates appeared to find the problem questions more difficult than the case review or essay. As noted above, questions (a) and (b) revolved primarily around the areas of invitations to treat and counter-offers. It was surprising to see that a very large proportion of students did not recognise that the advertisement in question (a) was an invitation to treat (following the standard rules on advertisements as seen in, for example, *Partridge v Crittenden*). This proved to be the most challenging question of the three though many excellent answers were in evidence. Question (b) centred on a counter-offer by Dalvinder (*Hyde v Wrench*). Question (c) was the only one of three scenarios not based on invitations to treat and counter-offers. The key issues here were the specified method of performance and the timing of acceptance (*Yates v Pulleyn, Ramsgate Victoria Hotel v Montefiore*). Of particular note in the answers to these latter two scenarios was the extensive discussion of the postal rule (both classical and regarding instantaneous communication). Whilst letters and emails did appear in scenarios (b) and (c), the postal rule was not relevant to either answer. Candidates should not assume that the inclusion of letters or emails necessarily means that the postal rule is relevant to the outcome of the problem. Only where timing is material to the case will the postal rule become relevant. In this series, this arose only in relation to Dalvinder's letter to Carlos. Credit was given to candidates who stated that the counter-offer would only take effect on communication rather than posting and therefore Dalvinder's phone call was too late. As the phone call took place after both posting *and* receipt, this was not necessary for full marks.

G157 Law of Torts

General Comments

This sitting of the paper attracted more candidates than has previously been the case at this time of year, perhaps reflecting a tendency on the part of Centres to give their candidates the chance to succeed on a broad paper which attracts a higher proportion of the marks required to achieve a top grade at A2 level. Centres appear comfortable with the time constraints, and there were very few examples of candidates attempting the wrong number, or mix, of questions. The paper continues to be wide ranging in its ambit to reflect the breadth of the specification and Centres should acknowledge this in their preparation and advice to candidates, particularly when making use of a January sitting. There were some pleasing examples of good essay skills, with candidates using a wide variety of factual material accurately and supporting this with analysis and comment focused on the question. Problem solving skills were also seen in good measure although some candidates continue to make comment about the state of the current law as a significant component of their answer – it is the application of relevant law which attracts the highest reward. A common theme seen throughout Sections A and B is an imprecision in knowledge, especially in relation to statutory principles, and an avoidance of case citation or its replacement with a phrase such as 'in a case it is said that…'. Whilst there is a lot of material to recall and examiners are well aware that sitting an examination is challenging experience there is a need for Centres and candidates to appreciate that, as statutes and common law are the bedrock of this subject, those who achieve the highest mark will grapple with statutory intricacies and case references so that clear and accurately expressed knowledge supports the argument they are developing or the scenario solution they are constructing.

This series saw an increase in candidates tackling Section C first and this can prove to be very fruitful as it may allow better time management across the three tasks. Occasionally there are still candidates who write a lengthy, and often high quality, response to Section A but then have little time left to be equally balanced in their responses to Sections B and C, usually with less than favourable consequences. There is no 'one size fits all' approach to exam technique but Centres are advised to counsel candidates about the need to plan their time so as to do themselves justice in each area of assessment.

Responses in Section A were differentiated in terms of the specific level of knowledge and citation alongside the sophistication of comment and the relevance to the question posed. Referring back to the question is to be encouraged but to achieve the very highest mark band it is also necessary to make overarching comment on the area of law at issue and underlying general principles as well as proposals for reform and the influence of policy. It is also important to encourage candidates to move beyond reliance on a prepared answer, which may well adopt a different slant on a particular topic. In Section B differentiation was evidenced by the detail used to support identification of relevant issues with an increased level of knowledge directly linked to the authority with which legal propositions were expounded and deduced. Centres should note that the mere naming of a case is insufficient and candidates must demonstrate a degree of understanding of the case and its context to be rewarded; thus fewer cases explained and used accurately will achieve a great deal more than a list of case names with no other amplification. Once this knowledge had been identified and explained differentiation was evidenced by the accuracy with which it was applied in an attempt to reach a conclusion as to liability. In Section C differentiation was founded on application of legal principle and legal reasoning in response to four distinct statements. Candidates are advised to 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. General introductions and conclusions are not needed – this type of assessment rewards a focused and deductive response to a particular proposition, reaching a conclusion based on understanding of legal principles evidenced in a logically deductive manner. Marks are awarded for application skills making case

citation and factual discourse on the elements of law unnecessary to gain high marks. However, achieving level 5 does require a candidate to reach a conclusion on the proposition to which they are responding.

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

Comments on Individual Questions

Section A

Question 1* – Occupier's Liability

This was the most popular essay and attracted a pleasing number of high level responses. Particularly impressive was the breadth of AO1 case citation and the level of awareness on the part of the highest achieving candidates of the statutory provision so the OLA 1957. Some candidates included factual material on the 1984 Act which, given the ambit of the question, did not achieve credit and candidates are reminded to read the question carefully. Case citation was often of a very high quality although the cases concerning children, such as *Glasgow Corporation v Taylor, Phipps v Rochester* and *Jolley v Sutton LBC* were often confused as were *Roles v Nathan and Haseldine v Daws*. In terms of AO2 a good number of candidates addressed the question directly and whilst returning to the concept of fairness regularly they also attempted to show how it worked for both the claimant and the defendant. EXAMINER TIP – to enhance AO2 marks it is a good idea to make a point, develop it and then draw a conclusion so as to construct a well-developed point rather than a bald assertion lacking support.

Question 2* – Animals Act 1971

This was the least popular essay question but those who attempted it were often able to write clear and impressively detailed accounts of the law in this area. Again, statutory detail was important and there were some novel approaches which focused on the issues. Cases such as *Behrens v Bertram Mills Circus, Smith v Ainger, Cummings v Grainger* and *Mirhavedy v Henley* were standard fare and were usually clearly articulated. The best responses used the question to focus on the role of the law from the perspective of both claimant and defendant, thus addressing the compensation and deterrence aspects in order to gain high AO2 marks. A small number of candidates spent a good deal of time on older case law and whilst this had some merit the need to look at the importance of the Animals Act 1971 was paramount.

Question 3* – Defences to Negligence

There were a good number of responses to this question and some demonstrated commendable knowledge of both *volenti* and contributory negligence. Others had a clear bent towards *volenti* and the issues in relation to sport, with a sparser knowledge of the medical cases and the role of the Law Reform (Contributory Negligence) Act 1945. The AO2 proved to be a more challenging component and whilst some candidates were able to make cogent remarks many were less confident, often resorting to generalised statements to the effect that there were both differences and similarities. Whilst this is not incorrect of itself, those who moved up the AO2 mark bands demonstrated some awareness as to the policy issues underpinning the law and offered an assessment as to the relative weight afforded to each of these ideas.

Section B

Question 4* – Negligent Misstatement

This was the least popular of the problem questions and whilst most candidates were able to demonstrate a basic understanding of the test created by *Hedley Byrne* and explain its requirements, a small number focused exclusively on the issue of pure economic loss or on the developments made through the law of negligence up to the decision in *Caparo v Dickman.* Citation in support of explanation was often limited and Centres are advised that to access the higher mark bands knowledge of decided cases is essential, especially in an area which has been considered reasonably frequently by the courts. In terms of AO2 most candidates picked up on the similarity to *Yianni v Edwin Evans, Smith v Eric Bush* and *Henderson v Merritt* in relation to liability for Barnaby but were often less clear on all the requirements necessary to create liability on the part of Calum, although many alluded to the decision in *Chaudry*. Whilst one approach may not necessarily preclude all others there does need to be some discrimination on the part of candidates as to relative levels of liability if they are to access higher marks.

Question 5* – Vicarious Liability

This was a popular question and attracted a wide range of responses. Some contained good AO1, evidenced by accurate definitions supported by full and relevant citation based around the concept of vicarious liability. Many focused at some length on the tests for control with most deciding that economic reality, as found in *Ready Mixed Concrete,* was the most appropriate although some candidates spent more time on this aspect than any other. There was plenty of confident exposition of the requirements needed for labiality although there was also some confusion and case citation was not always clear. EXAMINER TIP – make sure the area of law is one you can explain clearly and accurately. Use flow charts and colours in revision materials so that in the exam room you are in no doubt as the points you want to get across.

Many standard cases such as *Poland v Parr, Limpus v LGC, Century Insurance, Rose v Plenty, Hilton v Thomas Burton* and *Twine v Beans Express* were cited but not always applied accurately. In relation to whether Ellis was an employee there seemed to be uncertainty on the part of a good number of candidates which underpinned the rest of their answer. For many it was easy to find liability on the part of Fundrives for the damage to Felicity's dress; such assertions were not unanimous and there was considerable uncertainty as to liability for Garth although there was widespread acknowledgement that Ellis had committed a crime as well as a tort.

Question 6* – Nuisance

This was also a popular question and many candidates had a good grasp of the relevant subject matter, although a small number mistakenly believed it to focus on trespass to land. There was often a thorough discourse on the law, and extensive case citation on all the components of this tort. There was a tendency to spend time on material which had no relevance to the scenario in relation to possible defences but it was encouraging to see wide-ranging case knowledge and an appreciation of it's similarly to some of the aspects of the scenario. Elements such as the locality of the business and Len's malice were crucial in achieving differentiation, as were relevant defences and the remedies likely to be awarded. In terms of AO2 it was good to see many candidates really engage with the logical deduction needed when approaching a scenario with complex and controversial issues although some tended to be very general and inconclusive. Whilst certainty is not always possible, and so covering a range of options is a positive engagement, an attempt to discuss the most likely conclusion is the way to access the higher mark bands whilst wide ranging and vague remarks in the hope that something will be right cannot be rewarded to the same extent. There was some uncertainty in relation to the position of

Nerys and the abnormal sensitivity of Mary's plants was also an area in which candidates were less confident.

Section C

Question 7 – Trespass to the Person

Remarks concerning this question need to be read in conjunction with the general comments at the beginning of this report. This was by the far the more popular question in this section and there were some encouraging responses, showing good skills of reasoning from an opening statement to a conclusion but many candidates adopted an overly factual approach, lacked clarity in their thought processes and did not focus on each statement in turn. In Statement A there was a general, although not universal, acknowledgment that trespass to the person rather than the tort in *Wilkinson v Downton* would be most suitable. In Statement B most candidates dealt with the issue of assault although fewer were able to develop this into the need for the apprehension of an imminent battery. In Statement C many recognised that Ruth had committed a battery but few dealt with the details of this offence. Statement D proved the most complex with many candidates unsure as to whether the requirements of false imprisonment had been met, with many focusing on whether Paul knew that he was locked in Ruth's office.

Question 8 – Negligence

This was a considerably less popular question. In Statement A many responses appreciated that the doctor did owe Sven a duty but were unclear in their reasoning. Statement B saw some repetition of the same material and some responses were unable to draw out the contractual basis of the relationship and the standard nature of an examination in such a circumstance. Statement C caused some debate on loss of a chance but few responses were able to move onto the need to prove causation whilst Statement D revealed most confusion as many candidates were uncertain as to whether the chain of causation had been broken. Candidates are reminded of the need to put forward statements which can clearly be argued to a conclusion, although it may be possible to have more then one viable line of reasoning. Knowledge is essential for a student to deal successfully with this kind of assessment but its *de facto* exposition is not required as marks are awarded on the basis of clear, logical, legal reasoning as this is a fundamental legal skill.

G158 Law of Torts Special Study

General Comments

This was the first sitting for the new special study theme of trespass to the person which runs for one year only (2010/11) under the new system where themes change on an annual basis. The theme covers a topic which is often popular with students and has some lively and interesting case law to engage with. Unlike last year's theme of Occupier's Liability, there are no significant statutory provisions with which to contend.

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

Candidates' performances on this paper were, on the whole, very satisfactory. Although there were relatively few scripts demonstrating confident level 5 skills, there were also, pleasingly, very few poor performances.

Notable improvements and areas of good practice were good use of the source materials; evidence of wider research and reading; improved problem-solving skills; good case law knowledge extending beyond the sources. With areas for further development were improved time-management; closer reading of the question – especially question 2; greater development of cases; use of the Skills Pointer to improve the approach to the case study question.

Issues with timing were apparent on a significant minority of scripts although very few candidates failed to finish altogether. Rather, it was apparent that candidates had run out of time for a particular question. Since question 3 was generally the best answered question it might benefit candidates to consider tackling this question first as it may improve confidence and make for a positive start to the exam.

The key word in question 1 was 'development'. Candidates needed to discuss the contribution made by the case to the particular area of law as well as looking at the wider context by looking at legal principles derived from cases which may be linked to the case in question. Candidates scored least well on this question and would benefit from looking at guidance in the Skills Pointer as a basis for preparation.

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

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

The quality of written communication was generally very good. Improved handwriting would allow a small number of candidates to communicate more effectively and use of the appropriate legal terminology is a reasonable expectation at this level. For example, "D is not liable" rather than D is "unliable".

Comments on Individual Questions

Question 1*

This series' case study question was *Letang v Cooper*. For the majority of candidates this was their weakest answer. Most candidates seemed to be able to identify the critical point (that the required mental state for trespass is intention) but were not able to go any further. The Skills Pointer (bottom of page 4) carries explicit guidance on exactly what is required to score well on this question and centres can help candidates prepare more thoroughly by using this guidance as a model for each potential case. The most common error seemed to be that candidates would identify the critical point and then use this as a springboard to talk about other definitional elements of the tort. This is not the type of narrow development required otherwise it would simply be a mini essay on trespass to the person. Clear links with cases which have considered the nature of the intention required in trespass (eg *Fowler v Lanning* and *Stanley v Powell*) are clearly relevant but an exploration of cases on direct and indirect action are not. Similarly, whilst hostility may be linked to intent (see Lord Goff in *Wilson v Pringle*), an analysis of 'hostility' is not closely linked with *Letang v Cooper*. There were also sufficient cues in Source 3 to discuss critical points regarding the distinction between negligence and trespass and the effect of the Limitation Act.

Question 2*

This question produced an unexpected response. The question is quite clearly about 'trespass to the person' but because the quote refers to an aspect of battery many responses wrote exclusively about battery. OCR GCE Law has had a long tradition of rewarding both depth and breadth in such questions. Consequently, adjustments were made to the mark scheme to allow for this. However, the question is perfectly clear and, in fairness to candidates who gave answers covering all three forms, access to the very top of the mark range required candidates to answer the question and deal with all three forms of trespass to the person. This also reflected similar practice on G154 where a candidate might only have dealt with one form of involuntary manslaughter.

Notwithstanding the above, the general standard on question 2 was very good. The AO1 knowledge was impressive with most candidates able to cite cases from outside of the sources. Centres could assist candidates who use AO1 as their main path to success in the exam by encouraging them to develop their cases a little more. Cases are often reeled off in prodigious quantities (frequently covering the same legal point) without actually giving the *ratio*. Use of AO2 was often frustrated by irrelevance to the question and promoting a critical awareness amongst students remains an area for development. A number of students clearly spent too much time on this question and then paid the price on question 3. This was especially evident amongst the candidates who were anxious to share their compendious knowledge of relevant case law. At 37.5 minutes this is a slightly shorter essay than the conventional 50 minute G157 essay and practising timed essays in class would be a good discipline for many to embrace. The best candidates realised they would not be able to cover everything and took a measured approach

by picking a theme or two for each tort (gestures/words/silence in assault, hostility in battery and awareness of imprisonment in FI) and exploring these to reach a reasoned and logical conclusion about how judicial decisions had impacted on 'overcoming definitional difficulties'. Such answers were also characterised by a discursive critical and synoptic awareness.

Question 3

Question 3 was the best performing question for most candidates. This made it all the more disappointing where candidates had run short of time by this stage. Centres have clearly been working with candidates to promote a more structured approach to these questions which is paying dividends. Simple techniques such as setting out who the claimant and defendant are before stating what the potential tort is, then giving a definition before looking to see if the definitional elements are present, worked well for many candidates. Impressive practical subject knowledge and application skills were quite common. The main barrier to not scoring higher marks was pursuing an irrelevant or speculative theme.

Part (a) was the least well answered of the three. Candidates frequently got distracted by what they perceived as a similarity to *Wilson v Pringle* which, in turn, led them to a discussion about hostility and motive. A significant minority determined that this was 'only a practical joke' without any factual support from the question. There was insufficient information in the scenario to speculate on the party's intentions or motives. Most of those candidates who correctly identified that the question was predicated on direct and indirect actions, missed the possibility of using *Wilkinson v Downton*. Part (b) was generally handled very well. Lots of students speculated about the brick being thrown through the window but this was rarely at the cost of dealing adequately with the main assault. Again, part (c) was generally well handled. A small number of students seem to have fundamental misunderstandings about whether it is possible to falsely imprison someone if they are unaware of their imprisonment.

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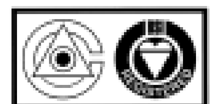

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