GCE

Law

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

OCR Report to Centres

June 2012

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, OCR Nationals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

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

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

OCR will not enter into any discussion or correspondence in connection with this report.

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OCR REPORT TO CENTRES

Overview

This has been another successful series for AS and A level Law qualifications. The Special Study is now an annually changing theme and offers the opportunity to explore in depth areas of the specification so as to improve both teaching and learning outcomes. Although at A2 level Criminal Law continues to be the option attracting the largest number of candidates, the numbers studying Tort are on the rise and Contract is holding its own. Each option offers its own attractions but a common thread is the development of transferrable skills, a process begun at AS level. Although some candidates will go on to study Law at university for many the opportunity to engage with a lively and topical subject is attractive in itself.

The study of the English Legal System and the Sources of Law can be a challenge for students who have only just left behind GCSE qualifications but it provides rich benefits. For most it is the opportunity to engage with a new area of study and it teaches both knowledge of an area important to young adults and skills beneficial across the academic curriculum and in the world outside education. These include close reading, the interpretation of legal materials, analytical writing, deductive reasoning and logical problem solving.

In the A2 element of the course these skills are enhanced further and there is a valuable opportunity to explore a substantive area of law in depth. For those who go on to read Law at university this can give a grounding and sense of familiarity to help demystify a subject which can be intimidating for an undergraduate and those who take other routes complete the course with a good overview of the study of Law and some of its component parts. Different skills are examined across the papers giving candidates the widest possible chances of success using a variety of assessment models.

AS and A level Law provides candidates with valuable knowledge and essential skills alongside an awareness of the modern world. It remains a useful and valuable qualification and it is hoped that candidates and centres will continue to enjoy the opportunities and challenges it provides.

G151 English Legal System

General comments

This unit is intended to cover a broad overview of the English Legal System and this report is intended to help centres and candidates prepare effectively for future series. The performance of candidates in this series was very similar to previous series. Many candidates were well prepared and demonstrated a detailed knowledge of the topics, were able to produce well developed arguments in the discussion questions were able to apply their knowledge to the application questions effectively. Others were not so well prepared and appear to have been rather selective in their revision by only revising parts of topics. This was highlighted in the questions that had two areas of a topic to describe which often had one area described in much better detail than the other. In order to prepare effectively for the paper it is important that candidates thoroughly revise whole topic areas rather than selecting just parts of topics. It is also important that candidates read the questions very carefully and answer the question asked.

Most candidates managed their time well. A large number of candidates chose to do both questions in Section B which was often to their advantage as most appeared to find it easier to gain marks on the application questions than the discussion questions.

For part (a) of all questions it is important to note that there are only AO1 marks available and any comments, no matter how well constructed, will gain no marks. The questions are differentiated by the level of detail and the selection of the right material to answer each question effectively.

For part (b) of questions in Section A it is important to answer the question asked and to develop arguments well rather than just to make isolated points. A useful exercise for preparation is to see how far a point can be developed.

For part (b) of questions in Section B candidates should look for the issues raised by the scenario. There should be at least five issues that can be applied in any question. These need to be identified and applied.

Question 2 on criminal funding was particularly unpopular and often not well done. It may be that many centres do not cover this topic area because it is not popular with the candidates. Candidates who prefer to answer two Section B questions in their exam would be disadvantaged were funding to be one of the Section B questions. Centre who do not teach the full specification should be aware of this risk.

Comments on individual questions

Section A

Question 1

(a) There was a mixed response to this question, some candidates had clearly prepared well for this topic. These candidates demonstrated a good knowledge of the role of magistrates in criminal matters including issuing warrants, bail, extension of detention and the youth court as well as the more obvious roles in the main court and also demonstrated an accurate knowledge of their civil role. Those that had not revised so thoroughly often got the civil part of the role confused with the track system. Some mistakenly thought that magistrates dealt with divorce. Quite a few of the candidates mentioned that magistrates hear different cases which they then followed with a mode of trial answer. It is important for candidates to address to the question asked and not go off on tangents as there are only limited marks for these parts of the magistrate's role.

(b)* In general the answers were good to this part of the question if the candidate had read the question properly and concentrated on advantages. The best responses included several well developed points. Credit was given to the other side of the argument; where disadvantages were linked to the advantages. A list of disadvantages gained no credit.

Question 2

(a) The question on criminal legal funding was extremely unpopular with very few candidates attempting it. It was answered extremely well gaining level 4 marks where a good knowledge of the duty solicitor scheme, advice and assistance and legal representation was demonstrated. It was answered poorly gaining level 1 or low level 2 marks where it was evidently an area that had not been revised properly. There did not seem to be any responses in between the two extremes. The advice can only be to revise the topic thoroughly.

(b)* This question was not always attempted by candidates. Those that achieved high marks on part (a) generally answered part (b) well. The less well prepared candidates lacked the knowledge to effectively discuss the issues in great detail although most managed to comment on the lack of fairness where funding was not available.

Question 3

(a) Questions on the training of barristers or solicitors tend to be popular with the candidates. This one seemed to be slightly less popular than usual probably due to training being linked with complaints. Few candidates were able to put the stages of training in the correct order, many giving accurate descriptions of stages but in the wrong place. It is important to give a very detailed description in the right order to maximise marks. The complaints part of the question was sometimes answered very well with up to date information including the powers of the Legal Ombudsman or was limited to suing barristers or, in many cases, simply left out. This omission restricted candidates to low level 3 marks if the training part was very good. This illustrates the importance of learning whole topic areas rather than selecting the parts that are liked best.

(b)* The question was answered in a very similar way to previous series, candidates either seem to know this part of the topic or they do not. Those that had mentioned the Legal Services Act in part (a) did not seem to be confused. Where answered well candidates had a good grasp of the recent changes to the complaints structure for barristers and solicitors and were able to produce well developed points of discussion.

Question 4

(a) This question was answered very well by some candidates who covered the Community Order and the Youth Rehabilitation Order with statutory authority and described several requirements in detail. Many candidates did not appreciate there was one Community Order with requirements attached to it and described the requirements as individual sentences. This is a fundamental concept and precluded level 4 marks .This was another question that illustrated the importance of reading the question properly as many candidates wasted time describing fines and custodial sentences.

(b)* This was answered very well by some candidates who discussed why particular aims would be used more often with young offenders. There was however a significant number of candidates who just described the aims of sentencing or linked aims with sentences which was not required by the question.

Question 5

(a) This question on the civil courts jurisdiction and the track system was answered very well by candidates from some centres who had obviously prepared very well for this topic. Some answers far exceeded the quality of answers in previous series in the level of detail provided. This resulted in many full mark answers to the credit of those centres. Weaker responses tended to describe the track system in basic terms but were very limited in their knowledge of jurisdiction. There were very few mid-range answers.

(b)* Those that were well prepared for part (a) of the question tended to perform well in part (b). There were some very pleasing, well developed arguments discussing case management, whether delays had been reduced and issues of ADR. Weaker responses made isolated points but did not include development of arguments.

Question 6

(a) This question elicited a wide range of responses. Some were very good with candidates describing the presumption in favour of bail, reasons for not granting bail, factors and conditional/unconditional bail. Mid-range responses seemed to leave out the reasons but described factors and conditions. It is important for candidates to take a structured approach to such a question and ensure they have covered all the elements.

(b)* This was usually answered well with many responses gaining full marks. Credit was given for identifying factors as aggravating or mitigating, as well as saying whether a factor would make it more likely or less likely to result in bail being approved. Some candidates decided that Philip would not get bail so did not suggest any conditions which were asked for in the question.

Question 7

(a) On the whole this question was answered very well by some candidates. Descriptions of searches on the street were better than those at the police station in general. The question was again not read properly by a significant number of candidates who wasted time describing police powers under several Acts of Parliament in addition to PACE1984 which could not get credit as they were not required by the question. Searches at the station were answered more accurately than in previous series.

(b)* This question was answered well by the majority of candidates. Surprisingly a significant number of candidates identified the issues but failed to say whether an action was lawful or not and consequently lost marks. Few candidates made the connection that it was unlawful to do an intimate search for the earrings as they were not a weapon or Class A drugs. A number of students misunderstood the implication of taking fingerprints by force and assumed that it meant “excessive force” – of course, allowance was made for this and credit given. It is important with application questions to apply the law to the issue identified.

G152 Sources of Law

General comments

This paper seems to have been well received and candidates produced a good range of answers. The great majority of candidates answered the delegated legislation question well, whether describing the role and functions of the Law Commission or the controls over delegated legislation. However, the precedent question seemed to be attempted by students who were not always able to answer well in both (a) and (c(i). Once again, the hard work put in by students and teachers was in clear evidence and, on the whole, most candidates were well prepared and acquitted themselves admirably.

All parts of both questions seemed accessible to the whole range of candidates and the paper differentiated well. There were very few spoilt scripts indeed. There were very few scripts where candidates did not answer anything at all and very few where candidates could not at least attempt every question. There were no notable rubric errors and most candidates were able to employ the sources effectively to support some part of their answers.

Areas demonstrating progress:

- Realising that questions with two elements in the command (eg describe **both** role **and** functions) requires a balanced answer that responds to both aspects
- Excellent level of detail and very few areas of misunderstanding
- Less AO2 being used inappropriately as compared to January 2012's paper although still prevalent.

Areas for improvement:

- Candidates are potentially disadvantaging themselves through a number of practices that would be worthy of consideration. Candidates should:
  - not use highlighters to highlight cases and/or statutes in their responses as the effect does not scan well and can leave the original writing illegible
  - use the answer booklet as instructed – in particular, answer questions where the relevant space is indicated
  - not use 'real' ink fountain pens (or similar pens with 'runny ink') as the ink from one side of the page subsequently smudges the facing page as the candidate progresses through the booklet which also leaves the original writing illegible
- Centres should consider what support might be appropriate where the quality of a candidate's handwriting is poor.
- Centres need to work with students to encourage more independent thinking and reasoning skills and discourage over-reliance on stock answers learnt from past papers – this was a particular issue with question 1(b) this series (see below).

Comments on individual questions

Question 1

(a)* This was a deliberately broad question which was included in order to ensure that candidates would have a wide range of potential points to pursue. Candidates generally scored well. At levels 1 and 2 candidates were able to use the source (A) to get basic points like a definition and the importance of the hierarchy and at level 4 candidates were routinely scoring well in excess of what was required for full marks. Some of the key issues (both good and bad) were:

- generally good use of appropriate cases although some responses which focused too narrowly used multiple cases as examples of the same single point and these were not credited
- generally good use of the source material
- some responses focused too narrowly. For example, describing the hierarchy in great detail which, whilst valid, was only one part of the answer
- some candidates got distracted into an AO2 discussion of the advantages and disadvantages of precedent in general – there are no AO2 marks available
- whilst there were marks available for describing the exceptions to the rules of precedent, these were limited because they are 'exceptions' to the rules. A few candidates, having given a definition and mentioning the hierarchy, then described the Young's exceptions and the Practice Statement cases in great detail – there were limited marks available for such responses.

(b) The application questions were generally answered well.

(i) Most candidates got Level 2 'not bound'. A significant minority did not go on and achieve Level 3 because, perhaps, it seemed like stating the obvious. However, a simple 'the Court of Appeal (Criminal Division) is not bound (Level 2), this is because the two divisions do not bind each other (Level 3)' was all that was required for Level 3 and beyond. Most did not go beyond Level 3 but a few candidates were able to describe the persuasive nature of the other division's decisions and quote appropriate cases like *Re:A* and *R v Ireland & Burstow*. The lesson for centres is to get candidates to structure their answers around making the 'why' clear even if it seems obvious.

(ii) Well answered up to Level 3 by the vast majority of students. Despite lots of possibilities such as distinguishing or following contrary EU/ECHR/PC decisions, few candidates achieved Level 4.

(iii) This was the least well answered question. Examiners recognised that the candidates might read the question two ways and made provision for this in the mark scheme by providing two different routes. However, many students got confused and either wrote long convoluted answers trying to cover all options or 'hedged their bets' by providing two alternatives which inevitably contradicted themselves. However, a large number argued it as a repeat of (b)(ii) which they probably thought rather odd but they didn't seem unsettled by it. These answers received full credit. A few did recognise the appropriate Young's exception and applied it correctly.

(c) **(i)** This question proved more challenging than 1(a) for most candidates. Those that knew their Young's exceptions scored reasonably well but struggled to achieve top marks by describing 'other' powers. The key issue seemed to be a misreading of the command in the question – describe the 'powers' of the Court of Appeal. Therefore, lengthy descriptions of the various ways the Court of Appeal is bound were not relevant and not credited. A significant minority also wrote at length about the relationship between the Court of Appeal and the then House of Lords in the 'Denning cases'. This was not credited as they are part of a legal anachronism and have no relevance to the question. It might be argued that the source material encouraged this discussion but the source material is never there to support every question and, on this occasion it was mainly there to support (c)(ii)* where students have struggled to achieve higher marks. However, there was support for the question asked in the final paragraph – students needed to read the question carefully and be selective in what they used.

(ii)* Most candidates were able to achieve Level 2 – Level 3 but few achieved Level 4. In recognition that it is a difficult and narrow area which is also, in fairness, not covered in much detail by textbooks, a single well developed point was required to achieve Level 4. Generally responses:

- underperformed where candidates decided to shift the question onto their own ground and then write about the advantages and disadvantages of precedent in general
- answered well where candidates used the source material thoughtfully – there was a lot of support in the sources which talked, for example, about 'certainty, rigidity, predictability, flexibility and social change'. Able candidates were able to pick up these points and run with them using case examples to support their arguments
- achieved top marks where they discussed the way the Court of Appeal has justified apparent extensions of their own powers in, for example, criminal cases (*R v Gould*), following the Privy Council (*James & Karimi*), following the ECJ/ECHR etc
- answered well up to Level 3 with an acceptable range of balanced developed points.

Question 2

(a)* A good range of answers were in evidence here. These ranged from candidates who 'wanted' delegated legislation to be questioned but weren't prepared for the Law Commission to be questioned with it, through to impressive responses detailed both aspects of the question. Generally, better responses had a good balance between role and composition and gave examples of successes. Lower achieving responses might have been improved by describing composition in as much detail as role. There was enough support in the source to get *all* candidate a few marks.

(b) This question was not answered well by the majority of candidates. The clear wording in the command asked the candidates to 'state the **most suitable <u>body</u>**' in the situations given. The vast majority of candidates answered with the most suitable 'type' as has been past practice. Responses therefore commonly read *'the most suitable body to make delegated legislation in this situation would be a bylaw'* – even though the sentence doesn't make sense. In this instance it was decided that provided the candidate mentioned the correct body 'somewhere' in their answer and said why they were the appropriate body, they were able to achieve Level 3.

However, it should be understood that question (b) is about thinking, reasoning and application of knowledge. Candidates have become too used to relying on a formulaic approach based on past papers instead of engaging with a question, thinking about it and responding by applying what they know. The correct approach for most part (b) question is to concentrate on the correct outcome to the question asked, the reason why it's the appropriate answer and giving something further to show context or illustrate the points already made. Where the rubric is clear and a question demands a particular piece of information, then this will be strictly enforced in future papers. Candidates should answer the question put to them.

(i) Most candidates were clear about bylaws being made by a local authority so there were few problems here. The 'why' ranged from accountability due to being voted for to having appropriate local knowledge.

(ii) Mostly correct although some simply repeated the Home Office from the question.

(iii) This was the least well answered. The correct answer is the Queen **and** Privy Council as the 'who' in these questions.

(c) **(i)** This question was generally very well answered. In fact, it represents a definite improvement over previous series. In particular the court controls and knowledge of appropriate judicial review cases was impressive. A more sophisticated appreciation of judicial review was also in evidence with the understanding that the process invalidates the *ultra vires* **decision** not the delegated legislation. Answers were also invariably well balanced between parliament and the courts.

(ii)* This question performed similarly to 1(c)(ii) with a variety of responses but most around Level 2/3. A significant number of candidates also turned the question into the one they were 'ready' for which was the straightforward advantages and disadvantages of delegated legislation in general – this approach gained little or no credit. There was, as for question 1(c)(ii)*, support in the source material. The key issue remains an inability to produce well developed points which are still needed for Level 4.

G153 Criminal Law

General comments

Once again a good number of candidates had already sat G153 in January but for the vast majority this was their first sitting. Responses to all questions were seen and most candidates were able to attempt the correct number of questions, suggesting that centres and candidates have responded to advice that question spotting and overly selective revision can be counter-productive. This sitting also sees a growing number of candidates beginning with Sections B or C, a strategy that can bring success as a candidate is able to focus on problem solving skills when they are mentally fresh and for many it provides an effective way to balance their time in the examination. **Examiner tip** – it is much easier for a candidate to gain marks by making bullet points for the end of an essay on a topic with which they feel comfortable rather than trying to resolve a hypothetical problem question under the pressure of time. Problem solving skills continue to improve in section B but many candidates still struggle to adopt a logical approach – looking at the pattern employed in the mark scheme may be helpful in this regard. Section A questions need to be read carefully so that the candidate responds to the precise area required and it is helpful to have considered reform proposals as another aspect of the law which can give rise to analytical comment. For questions focused on statute law it is important that candidates are able to define and explain the relevant sections and subsections accurately, as only then can they go on to use them confidently. Once again a larger number of candidates were able to perform well in Section C, a factor due to their increased ability to use the right skills rather than simply the appearance of the Special Study topic in this area of the paper.

In Section A candidates are often adept at using the words in the question as a springboard for AO2 comment but to access the higher mark bands there is a need to do more than simply reiterate those words – overarching comment on the area of law at issue as well as consideration of wider principles and the role of policy alongside reform proposals are all fruitful areas for consideration. Responses are differentiated in terms of the specific level of knowledge and citation alongside the quality of relevant comment. More candidates have the confidence to move beyond reliance on a prepared answer and are rewarded for their efforts to engage with the question posed. Case knowledge is often impressive but candidates are reminded that only 25 marks can be awarded for AO1 and it is most beneficial to use a number of relevant cases in some detail, focusing on the points of law at issue, rather than listing large numbers of cases which lack detail or a clear link to the question. **Examiner tip** – aiming for a balance of good, wide-ranging and relevant knowledge with thoughtful and clearly expressed analysis throughout an essay is an approach which can allow a candidate to show their skills to very good advantage.

In Section B the focus is on knowledge and application skills. It is crucial that candidates follow the rubric given in the question, for example if a question asks for a consideration of defences no credit will be given for knowledge, however detailed, of the offences which give rise to the need for a defence. Differentiation is evidenced by the level of detail used to support the identification of relevant issues, with an increased level of knowledge correlating clearly to the sophistication with which the law is then applied. Again, cases explained and applied accurately are more helpful in the quest for marks than a bald list of case names. Statute based areas require accurate knowledge of relevant provisions and supporting case law, coupled with accurate and confident application to access the higher mark bands. **Examiner tip** – reading the question carefully offers candidates the opportunity to exclude extraneous information and time taken to plan an answer is beneficial in terms of clarity and accuracy.

Many candidates are now able to respond more successfully in Section C, often using the technique seen in the mark scheme as a guide, although some are short of time if they leave Section C until last. There are few instances of generalised introductions or conclusions and the majority of candidates do not use case law. Many use a bullet point format, which is perfectly

acceptable, to encourage logical and deductive reasoning. Differentiation is through the application of legal principle and legal reasoning to four distinct statements and a candidate must reach a conclusion to achieve top marks. **Examiner tip** – being decisive is key, so avoid phrases such as 'could be liable', might be guilty', ' may possibly be liable', for example.

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

Question 1* – Mens rea of murder

For some candidates this was a very popular question, for which they were well-prepared, but not all were able to be selective in their use of material and valuable time was often lost by extended writing on *actus reus* elements. The topic of intention is harder than perhaps some candidates realise as it requires precise knowledge of some nuanced judicial wording which needs to be supported by analysis on the evolution of the test and the wider consequences for the law to access the higher mark bands. There is also a need for a sense of chronology and those who, for example, commented that the test in *Nedrick* was confirmed by *Hancock* or modified by *Moloney* struggled to show the incisiveness this area of law requires. There were also some excellent answers, which charted the evolution of intention and were able to comment on its problems and wider policy issues in relation to the offence of murder alongside reform proposals.

Question 2* – Non-fatal offences in OAPA

This question had a clear and specific frame of reference and so candidates who wrote about assault and battery in the context of their relationship to the OAPA offences could be credited but there was limited credit to be gained from a detailed, and often fulsome, survey of assault and battery as free-standing offences. For areas of statute law it is necessary to be able to define the offence accurately and then to discuss its component parts. Section 47 was often the best handled, but many candidates still believe that if there is no wound, as in *Eisenhower*, there can be no Section 20 offence and whilst most discuss the *actus reus* a good number do not mention *mens rea* at all or, particularly in the case of Section 20, believe incorrectly that it requires intention or recklessness as to GBH. The best answers dealt with the OAPA sections and its problems before moving on to consider reform proposals and the likelihood of them resolving this frequently used area of law.

Question 3* – Insanity and automatism

There were some very encouraging answers to this question with candidates showing wide and detailed knowledge, which they were then able to support with insightful comment about the policy issues that surround these defences, the lack of momentum for large-scale reform, the experiences of other countries and the relevance of these defences to a modern society as well as their impact on human rights. For others insanity was handled better than automatism but a good number confused the cases of *Quick, Sullivan* and *Hennessy* which was often detrimental to supporting comment and the effect of sleepwalking and stress on the defence of automatism was not always expressed or commented on. Some candidates struggled to give an accurate definition of insanity through the M'Naghten Rules and knowledge of such a key case is important if this topic is to be tackled in an examination. Others remained unclear as to the changes to the law in 1991, whilst a small number referred to these as 'recent' reforms.

Question 4* – Theft Act offences

This was a popular question and there were some very impressive answers. It was important to read the question carefully and to make a plan, so that the liability for each character was handled accurately. For many the coverage of theft was impressive, although some covered every section and subsection in great detail, even though many of these issues were not raised

by the facts of the scenario. Robbery and burglary were often less clearly defined, with section 9(1)(b) proving particularly troublesome. The quality of explanation had a direct correlation to the application; many thought that Tom and Stan had both entered Greenworld at night, which was not the case, and that Tom's section 9(1)(a) burglary, incorrectly, only occurred when he stole the fish. Some candidates explored the fact that Stan might not have been dishonest if Greenworld had provided free chocolates for customers and in the best answers candidates used their knowledge to mirror application throughout the scenario.

Question 5* – Defences

A rather less popular question and yet one where there were some impressive answers with candidates confident about the three defences of duress, intoxication and self-defence. Candidates were directed to deal with defences only but a good number still wrote at length about the offences contained in the scenario – an exercise which attracted no credit. Although elements of duress were often dealt with well there was a paucity of references to the test in *Graham* and many did not pick up on the nexus point and the scenarios' similarity to *Cole*. Intoxication was often written about at length but application was not always clear, especially with regard to the difference between offences of specific and basic intent. Some candidates omitted self-defence altogether whilst others thought that it would be successful for Nicole as the force she used against Ricardo was proportionate but did not go on to consider the position with regard to a drunken mistake.

Question 6* – Involuntary manslaughter

Candidates were directed to the offence of manslaughter and so those who wrote about murder attracted no credit for this part of their answer. Some focused heavily, or exclusively on causation, and were not able to access the higher mark bands unless this issue was dealt with in the context of manslaughter. With regard to Roy it was good to see candidates discuss both unlawful act and subjective reckless manslaughter. In the former candidates often picked up on the reference to *Lamb* and the possible lack of an unlawful act by. Others applied *Lidar*, although it was possible to reach full marks without mentioning subjective reckless manslaughter as its very existence is open to question. With regard to Doctor Brown most candidates wrote about gross negligence manslaughter but not all were clear on the elements of the *Adamako* test and so struggled to apply the law clearly to the scenario. The issue of medical treatment was often dealt with well, with candidates using the cases of *Jordan, Smith* and *Cheshire* although not always with total confidence as to the points of similarity and difference between them.

Question 7 – Non fatal offences against the person

This question dealt with the 2011/12 Special Study topic and there were some pleasing responses although for others their grasp of basic principles was tenuous. Candidates wrote confidently and accurately using excellent reasoning skills, and without referring to cases, although not all saw this through to the conclusion which is essential to reach level 5. A number began with a conclusion, but one which was not always supported by their reasoning and whilst candidates were often fulsome on *actus reus* elements they either omitted or were unclear on the *mens rea* for attempted murder, which is intention to kill only. Phrases such as 'the *mens rea* is the same as for the full offence' could not attract credit. In Statement A it was possible to argue that Maria's *mens rea* was sufficiently high for attempted murder or not and candidates were rewarded as long as they followed their chosen route through to its logical conclusion. In Statement B many identified Maria's act as being more than merely preparatory but were less clear on her *mens rea*. In Statement C some candidates wrote about the murder rather than the attempted murder referred to in the statement. Statement D was often answered well and it was encouraging to see a good number of candidates gaining maximum marks here. **Examiner tip** – move through each statement logically, reaching a conclusion at the end and read each statement carefully so as to write with the correct focus.

Question 8 – Strict liability and OAPA

In this question there was no need to have knowledge of substantive strict liability offences as the principles are contained in the well-known cases of *Harlow LBC v Shah and Shah* and *Callow v Tillstone*. In Statement A many successfully reasoned that the offence lay in Bruce selling the ticket to Seth and that Seth's age was irrelevant. In Statement B some candidates were less certain as to whether Bruce had committed an offence and wrote at some length about due diligence defences but without accurate application of its principles. Statement C was occasionally well answered but a good number of candidates did not see Seth's food poisoning as falling within section 20 OAPA as they believed, correctly, that it did not constitute a wound but did not consider that it could be GBH – something flagged up by the use of the word 'severe' in the scenario. Others were unclear on the *mens rea*, erroneously basing liability on a need for Bruce to foresee a risk of serious harm. In Statement D candidates were also often unclear as to whether Molly's burns were sufficiently serious and on the *mens rea* aspect. Candidates were credited for alternative reasoning on the *mens rea* issue, depending on whether they wrote about direct or oblique intent, as long as their approach was logical.

G154 Criminal Law Special Study

General comments

This was the second series of the 2012 Special Study paper on attempted crimes. It has become more apparent that advice and guidance given in previous G154 Reports and in the yearly Special Study Skills Pointer (both documents which are available on the OCR website) had been considered and followed by the majority of centres. While the G154 Mark Scheme is not prescriptive, certain core elements to each Question must be present in a candidate's response to move up the Mark Levels. This clearly depends on the quality of their work also. Again centres and candidates are advised to consider the information in these documents. There was clear evidence of a move towards the increased referencing of the Source Materials by candidates in their responses compared to previous series. This is something which has been mentioned in previous Reports as a way of the candidates not necessarily having to re-write large chunks of AO1 information and instead provide more time to concentrate on their own AO2 comment. A good example would be where candidates wrote out the facts of *Whybrow* and/or *Shivpuri* when in fact they could have simply referenced Source 4 Lines 1–7 and Source 6 Lines 14–17, respectively, saving time. Another example which was commonly seen was candidates writing out either the full definition of section 1(1) of the Criminal Attempts Act 1981 or the *Mohan* definition of intent, both of which could have simply been referenced from the Source. Issues with time management were not as evidential this series having been a problem previously. As mentioned in previous Reports, it was apparent that a number of candidates continue to spend a disproportionate amount of time on Question 1 and, as such, would be best advised to stick to those timings that are suggested as a guide in the Special Study Skills Pointer.

Comments on individual questions

Question 1*

This question looked at the importance of *Jones* and, in particular, whether it developed or helped with the interpretation of the definition of attempted crimes under section 1(1). Responses were generally strong given the range of information available in Source 3 and elsewhere in the Sources. Nevertheless, despite this, a minority of candidates failed to discuss the Critical Point. This being that Taylor LJ specifically ruled that in each case, in looking at the plain natural meaning of section 1(1), it was ultimately for the jury to consider the evidence and decide whether an attempt had taken place. Centres are advised while researching into cases for Question 1 to look at five or six textbooks/reputable legal websites to consider those author's discussions of the case. The Critical Point will always be that which was held as a matter of law as being the *ratio decedendi* of the case. Indeed, it is likely that the full judgement of most cases contained in the Source materials will be freely available on the internet for centres and candidates to consider in class without having to subscribe to a paid legal website. From these additional materials centres can create their own responses to cases which will necessarily include generally considered Analytical Points and clear references to Linked Cases. It was especially pleasing to see that candidates this series went beyond these recognised Analytical Points and brought in, usually, a well-thought out relevant AP5 point learnt in their AS year which analysed *Jones*.

In general, well prepared candidates clearly used Source 3 as the basis of their response and were able to extend beyond the marks available purely from the Source. These candidates were able to reference the facts of the case (Source 3 Lines 1–7) from the Source. They discussed and expanded on the Critical Point and then analysed the Court of Appeal's discussion where that Court felt the lines of demarcation were drawn. In this present case this was between the defendant's act of mere preparation and those acts of more than mere preparation. Both pieces of information were contained in the Source. They were then led to discuss those cases which had specific Linked Case status to *Jones* and were able to explain the link to *Jones*. However, it was again apparent that some candidates, as was seen in previous series, seemed to ignore the obvious link between their case(s) discussed and *Jones* and instead take the opportunity of only discussing the facts of their 'linked' case with no bearing on how it was developed by *Jones*.

What was of particular interest was many well written responses criticised the decision in *Jones* as being unimportant, stating that it clarified little, if anything. While candidates are encouraged to comment on their own view it is worth bearing in mind that stronger evidence would be expected from candidates to contradict any widely-held view of the cases' definite importance.

Question 2*

Here the focus was on the *mens rea* and impossibility of attempted crimes. The best discussions commented on the accuracy of the quote in the context of the overarching theme (role of judges, use of precedent and the development of law) with specific analysis as to whether both areas are now '*both simple and sensible'*. Where well prepared candidates were unable to achieve the top level marks this was due to their inability to concentrate their response on the quote or, at least where possible, blend their prepared response to the quote. These candidates were then unable to realistically answer the question set. The question therefore centred on the issues, difficulties and potential clarifications that the common law or statute has made to these two areas of law.

Stronger responses spotted the dual theme of the quote and the emphasis on discussing both areas with reference to the quote. They were also able to thoroughly discuss the sub-topic areas. For *mens rea* this would usually, but not prescriptively, include (and importantly contextualise in relation to attempted crimes) for *mens rea*: intent – both direct and indirect, conditional intent and recklessness. For impossibility strong responses considered the common law before the 1981 Act together with the time period after this. An opportunity missed this series by many candidates was in relation to the recent Law Commission Reports in 2007 and 2009 and their discussion on *mens rea* with particular relevance to direct/indirect intent and recklessness. Where candidates mainly used the Reports was to explain proposals for the amendment of the *actus reus* not the *mens rea*.

As stated in the January 2012 G154 Report there are dangers in question spotting and the potentially risky use of prepared essays for Question 2. This series saw a huge reduction in candidates discussing purely, or at length, the *actus reus* of attempted crimes with little or no relevance or contextualisation to the question. Again a minority of candidates ignored the focus of the quote and question and would discuss the *actus reus* through cases like *Geddes* and *Campbell* without discussing their potential intent. Such cases were noted in the case count, but were not credited unless used in relation to the *mens rea*. It is worth reminding centres that candidates must, at least, read both the quote and the question to decide whether an entire or specific response is required from any given topic. As discussed above candidates are reminded that they do not have to re-write large passages from the Source material when an accurate Source and line reference will suffice. There was clear evidence of candidates going beyond the Source material in this series which was especially pleasing where, on occasion, very recent cases were being discussed.

Question 3

Question 3 followed the customary three scenarios on the given topic area. Each part is worth 10 marks and based on three separate defendants and it is up to the candidates to conclude whether a conviction is or is not available in each scenario. Candidates should have found the individual questions accessible since each concerned different situations analogous with the stages of attempted crimes. Each scenario required the candidates to consider at which stage the defendant was *en route* to the commission of the full crime. For (a) that a conviction would most likely be found for an attempt given the advanced stage that Latifah was in when she swung a bottle at Douglas; for (b) a likely conviction for attempts concerning Edward given his position at the door of the bank even though the issue of impossibility was present; and for (c) a doubtful conviction of an attempted crime given at the preparatory stage Jill had been unable to move beyond further than the entrance to the garden. Strong responses, in relation to the most appropriate attempted offence, with a linked case(s) cited in support, application to the scenario together with a correct conclusion would allow a candidate to achieve high level response. Again reference to the Special Study Skills Pointer benefitted those candidates by providing a method and structure. The majority of marks on Question 3 are gained by application (AO2) as opposed to knowledge and understanding of the law (AO1). Many candidates would explain the *actus reus* of an attempt in different ways and fail to adequately apply that to the scenario. What was a concern (as stated previously in the January 2012 Report) was the number of candidates who would, rather than use the post 1981 definitions, centre their answer on the old common law tests such as Rubicon or Series of Acts. Given the thrust of their responses to Question 1 and the judgement of Taylor LJ in *Jones* in relation to these tests, this approach was most concerning with regards consistency of candidate's answers.

As in January's series, 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. Having identified appropriate stages of planning or execution in each scenario (the definitions available in the source materials) it was again the level of understanding and the quality of application of the legal principles that was the real discriminator. In general, the *actus reus* was well defined and applied across the scenarios. However, the issue of *mens rea* was again generally missed or poorly attempted. Many candidates spotted that intent was a crucial issue in each scenario but, unlike with their discussion of the *actus reus*, failed to either define the *mens rea* or apply it in each scenario. This was more alarming given that the *Mohan* definition was described in Source 5 and a simple reference to this would have allowed the candidates to gain simple marks. One final, general piece of advice while answering Question 3 is that candidates are not required to specifically, and in detail, define the sub-crime (eg in Question 3(c) the issue of theft or burglary). All the candidate need do is identify there is a sub-crime, name it if they can, then discuss the main topic, which here is attempts. Many candidates spent a considerable amount of time defining the sub-crimes (eg the full *actus reus* and *mens rea* of section 9(1)(a) Theft act 1968) which was not necessarily required.

Part (a) answers showed the strongest of responses. The majority of candidates spotted the issue of more than mere preparation. Nevertheless candidates who decided that the issue, although unlikely, was mere preparation were duly rewarded to a lesser extent. This crediting is true of each part of Question 3 and reflected in the Mark Scheme. Some candidates discussed the issue of impossibility, but on the facts this looked very unlikely given the advanced stage Latifah was in. In (b) there were a surprising number of candidates who while spotting the similarity with *Campbell* decided that Edward was most likely to be in the stage of mere preparation despite the fact he was at the door of the bank realising it was closed. This placed Edward in a more advanced stage of motion than *Campbell* and was more analogous to *Tosti* or even *Boyle and Boyle* and should have been considered an attempt. The Critical Point in this scenario was the issue of impossibility given the bank was closed. Many candidates discussed the bank being closed but failed to name or realise the issue of factual impossibility. In (c) given the decision in *Gullefer* it was more likely that Jill was still preparing to commit the crime, rather than in the execution stage.

Again, while she had clear intent to steal the television, came nowhere geographically near to that item for it realistically to be considered an attempt. Again a minority of candidates discussed the issue of impossibility regarding the dog which was not relevant. Some candidates spent a considerable amount of time discussing conditional intent which was, again, irrelevant. The fact that candidates were aware of her intent to steal a specific item, ie the television, precluded conditional intent.

G155 Law of Contract

General Comments

In general candidates showed a good understanding of the skills required to answer this exam paper, in particular the essay questions in Section A where candidates' factual knowledge was well supported by appropriate case citation and frequently by well-developed AO2 comments. In Section B most candidates structured their answers in an appropriate way. In this section some responses were let down by an overly narrow response, particularly in question 4. In Section C most candidates adopted a suitable answer style although in a significant minority of answers there was a lot of case citation which was not able to be credited within the mark scheme; candidates are reminded that all the marks in Section C are awarded for AO2 content. Also some responses failed to achieve one of the available marks because they did not finally say whether they agreed with the statement.

Section A

Question 1* – Consideration

This question allowed a discussion of any aspect of the law of consideration provided that the AO1 content was used as a basis for suitable AO2 comment. There were a number of answers with very little comment and a lengthy explanation of relevant case law, more effective answers considered the comments they wished to make and structured their answers around these comments, using their knowledge of case law to support their comments. While it was possible to make effective links to the law of privity in this question, and some candidates made excellent references to the lack of consideration required of those who benefit under the Contract (Rights of third Parties) Act 1999, some candidates answered entirely around privity which was not appropriate for this question.

The case of *Williams v Roffey* is particularly relevant when answering this question and it was surprising to see many answers which did not make use of this case.

Question 2* – Restraint of Trade

This was generally well answered. There was good case citation and most could provide several examples on how reasonableness was judged. The better responses covered solus agreements and were thus able to include some well-developed AO2 points in the process.

Question 3* – Mistake

There were some excellent answers to this question which covered all aspects of the topic well and made effective use of recent case law including *Great Peace Shipping* and *Shogun Finance*. Less effective answers tended to be unclear on definitions of the different kinds of mistake and with cases wrongly assigned to the type of mistake under discussion.

The AO2 content of less effective responses was also quite thin, for examples repeating the key words of the question without fully grasping or exploring the issues raised.

Section B

Question 4* – Exclusion clauses

This question required a discussion of all aspects of exclusion clauses including incorporation, interpretation and statutory controls, weaker responses tended to be limited to issues surrounding incorporation and very few responses gave an effective account of statutory controls. Although many candidates were able to discuss the effects of section 2(1) of the Unfair Contract Terms Act, few were able to effectively address issues surrounding the loss of profit and the question of reasonableness. There were some effective discussions based around whether the contract with Cookit may be frustrated due to Bradley's injury.

Question 5* – Undue influence

Examiners saw a lot of AO1 responses that clearly showed awareness of the different types of undue influence and the general obligations on banks but it was not always centred on effective knowledge and citation. Reference to the leading case of *RBS v Etridge* was absent in many responses and rarely well developed in terms of the detail of banks' responsibilities. Some responses were also inaccurate regarding the facts of leading cases such as *National Westminster Bank v Morgan*. Application of the law to the facts of the question was basic in most responses, the lack of developed knowledge on *Etridge* leading to a lack of developed application, and few responses were clear about the last scenario being an example of actual undue influence.

Question 6* – Performance

Most candidates spotted the performance issues and could offer an effective account of the general rule and some exceptions. A few answered solely on the basis of terms or even frustration despite the reference to performance in the question.

In applying the rules most candidates identified the severance and substantial performance issues, better responses also discussed the possibility of anticipatory breach and prevention of performance.

Section C

Question 7 – Intention to create legal relations

Most candidates showed a good level of understanding of the rules and better answers made use of correct terminology such as presumptions and rebuttal. There are still many answers which include a lot of case law with cursory application to the facts of the question; these answers do not achieve many marks because the focus for section C questions is AO2 application. A surprising number of responses stated that in the first scenario as there was no third party there could not be a finding of legal intent, clearly following the ruling in *Parker v Clarke* very literally. Candidates should be reminded of the need to apply principles of cases rather than looking for exact matches in the facts. Many section C questions include one statement which is based on a different area of law, in this case the privity question was clearly stated but many candidates answered on the basis of domestic intention which was not relevant to this question.

Question 8 – Misrepresentation

There were many effective answers to this question and many candidates demonstrated sound understanding of the situations where silence will and will not amount to a false statement of fact. As with question 7, candidates should be reminded of the need for a definite answer as to whether they agree with the statement, and that they should not include cases in their answer.

G156 Special Study Law of Contract

General comments

The paper led to a wide range of responses, including some very impressive answers indeed. Not only was real mastery of the case law in evidence in many responses but there was also a very encouraging display of analytical engagement in questions 1 and 2 and problem solving ability in question 3.

Similarly to previous series, the principal factor discriminating between responses was the extent to which the response answered the specific question asked. It was very encouraging to see a generally better AO2 focus in question 2 in particular though there were some pre-prepared answers or analyses based around general concepts such as fairness and they were quite limited in their AO2 marks. The pre-release materials are intended to provide candidates with support in thinking about and exploring a range of analytical themes and it was very encouraging to see that many candidates had clearly made good use of them in their preparation. Equally, there remained a large number of responses which clearly would have benefitted from greater use of the sources.

The problem questions were answered generally well though greater consistency in the use of authorities to support every step in the solution to the problem is an area that could be usefully targeted for future improvement.

Comments on individual questions

Question 1*

This question invited responses evaluating the significance of the decision of the House of Lords in *Esso Petroleum Ltd v Commissioners of Customs and Excise* to the development of the law on intention to create legal relations.

Most responses had a good sense of the critical points of the case and many responses showed some very thoughtful analysis, doing excellent work with the different pointers in the pre-release materials. As noted in the Special Study Guide (available from the OCR website) and as highlighted in the previous Report to Centres, the fact that there are only AO2 and AO3 marks available for Q1 means that marks are awarded for evaluation and analysis rather than for recitation. For example, merely quoting from the excerpt of Viscount Dilhorne's dissenting opinion is not *in itself* likely to attract credit. However, pointing out that Viscount Dilhorne was prepared to take a more subjective approach to the question of intention was a good point which was seen in many responses. Similarly, pointing out that the fact that the House of Lords found intention by only a bare majority suggests that the application of the rules on intention is far from necessarily clear, predictable or consistent was another very good point which many responses included.

Linking the case in question with other relevant cases is one way in which candidates are expected to be able to analyse a case's significance to the overall development of an area of law. Only a small proportion of the marks are available for this element of a response however, as the focus of the response should always be on the actual case in the question. In this series, many thoughtful links were made between *Esso* and, for example, *Edwards v Skyways, Kleinwort Benson* and *Rose and Frank v Crompton Bros*.

Question 2*

The essay question is the opportunity to invite candidates to showcase their understanding of the rules and authorities of the law on intention to create legal relations (AO1) and engage in an analytical discussion of those rules (AO2). Candidates were provided with a quotation reflecting a policy stance prevalent at the beginning of the twentieth century and then asked to discuss two distinct issues to consider whether it required reform: firstly, the extent to which the law on ITCLR is outdated and secondly, the extent to which it is inconsistently applied. As noted above, AO2 marks are driven primarily by the extent and depth to which responses answer the question asked. Many responses included a good range of points answering both elements of the question and were rewarded with commensurately high marks. Responses which only addressed one element of the question found it difficult to access the highest marks. The regurgitation of pre-prepared essays which did not answer the question was much reduced. There were a large number of Level 5 AO2 responses including many at full marks.

Candidates' knowledge and understanding of the relevant rules and authorities was often very impressive indeed: many candidates achieved full marks at AO1 by giving a clear statement of the key presumptions and methods of rebuttal, supporting those statements with a wide range of developed cases which both drew from (and explicitly linked to) those mentioned in the pre-release materials as well as going considerably beyond them and providing a clear conclusion. This level of breadth and depth in both rules and cases is the key to being able to move up through the levels of response.

Question 3

This question invites candidates to apply their understanding and knowledge to three small problem questions. Both AO1 and AO2 marks are available in question 3. AO2 marks are awarded according to how effectively candidates can identify the legal issues inherent in the problem and choose and apply the relevant rules to reach a reasoned conclusion. AO1 marks are awarded for clearly stating the relevant rules and providing case authorities for each rule. When giving authorities in Q3, simple case names suffice and no further development of material facts is necessary.

In general, the problem questions were answered well and the vast majority of candidates were able to see the basic legal issues inherent in each. The main discriminator between responses was the level of detail provided in the response and also the inclusion of authorities (or lack thereof) for *every* step in a candidate's analysis.

Q3 (a) A number of responses attracted reasonable marks by suggesting a solution to the problem simply using *Jones*. The best responses situated Andre and Misha's agreement was a domestic one and thus subject to the usual presumption as found in *Balfour*. They went on to note the similarities in *Jones* and then consider the extent to which rebuttal could be argued using grounds such as reliance or uncertainty looking at *Parker v Clarke*, the *MIB* cases and again at *Jones*.

Q3 (b) This tended to be the best answered of the three problems. Similarly to (a), reasonable marks were secured simply on the basis of *Merrit v Merrit* but the better responses both noted the separation of Imogen and Jason as a potential cause for rebuttal of the presumption shown in *Balfour* and also explored possible arguments to bolster the rebuttal by looking at committing the agreement to writing and possible reliance.

Q3 (c) This was answered general well. Almost all candidates recognised the use of the honour clause in the agreement between Lake Cruises and Mountain Heights. Further credit was awarded to candidates who noted the likely reluctance of the court to find in Lake Cruises' favour (*Edwards*) and that the purported honour clause would therefore have to be clear and unambiguous (*Vaughan*).

G157 Law of Torts

General comments

The trend continued in this series that a growing number of candidates had previously attempted the paper in January. For many, however, this was their first attempt at G157. Candidates appear comfortable with the time constraints, and there were no 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. There were some pleasing examples of good essay skills, with candidates using a wide variety of citation accurately and accompanying this with thoughtful analysis and comment focused on the question. Problem solving skills were also seen in good measure with the ability to clearly explain relevant law and apply the necessary elements clearly demonstrated. Case citation was often wide-ranging throughout Sections A and B, but candidates should be made aware that full credit will only be gained through making relevant use of the case, rather than just naming it. This allows clear and accurately expressed knowledge to support the argument they are developing or the scenario solution they are constructing.

Responses in Section A were differentiated in terms of the specific level of knowledge and citation alongside the sophistication of comment, particularly in terms of its relevance to the question posed. It was pleasing to see candidates refer to the question but it is necessary to develop discussion to reach the very highest mark band. It is also important to encourage candidates to understand that the question will be focused in a particular way and that higher marks for AO2 will only be rewarded for responses that engage with this focus in a developed manner. **Examiner tip –** the higher marks for analytical ability are rewarded to those responses that develop and extend discussion of issues.

In Section B differentiation was evidenced by the extent to which the issues were identified and appropriately proved, utilising detailed understanding and citation of legal principles, alongside accurate application of these principles to the scenario facts to reach logical and reasoned conclusions. Centres should note that the mere naming of a case is insufficient and candidates must demonstrate a degree of understanding of the case and its context to be rewarded; thus fewer cases explained and used accurately will achieve a great deal more than a list of case names with no other amplification. **Examiner tip –** candidates are encouraged to fully use the scenario evidence to prove the elements of the relevant tort that they have explained.

In Section C differentiation relied on the application of legal principle and reasoning to four distinct statements and it was pleasing to see that nearly all candidates wrote in direct response to each, rather than producing a long and general piece of continuous prose. However, many candidates seem to be unaware of what is expected of them and how marks will be awarded. Section C 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. Too many responses lacked a focus on the thrust of the statement. Candidates are advised that to reach level 5 they must reach a definite conclusion as to the accuracy of the proposition to which they are responding. **Examiner tip –** candidates must read carefully the individual statements and respond accordingly to the focus of each.

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

Comments on individual questions

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

Question 1* – Negligent Misstatement

Most candidates who attempted this essay were able to write clear and impressively detailed accounts of the law in this area. The best responses used a chronological approach to the question and this worked extremely well for many as it allowed a clear structure to the answer. Analytical content was more variable, with the best responses clearly engaging with the issues of complication and unpredictability stressed in the question. This allowed a developed discussion of issues such as the broadening of liability in *Hedley Byrne*, subsequent development in cases such as *James McNaughton Paper Group v Hicks Anderson* and the more recent approaches that the courts have taken, as evidenced in the 'wills cases'. There was some evidence of pre-prepared answers and this had a negative effect on analytical content which was largely unfocused on the question asked. A small number of candidates spent time explaining and discussing the development of the law on pure economic loss through negligent acts and this could not be rewarded. A very small number of candidates misread the question and embarked on a survey of the law of negligence.

Question 2* – Causation and Remoteness

Again, most candidates who attempted this essay were able to write clear and impressively detailed accounts of the law in this area. The best responses had a depth of knowledge and understanding and were able to build a clear structure that progressed through the different issues that the courts have encountered in determining factual causation, intervening events and remoteness of damage. There was a wealth of analytical issues that candidates could focus on and again the best responses were able to engage. This was evidenced by an ability to develop and extend discussion of how issues, such as the *Fairchild* exception, could be perceived by both parties and whether the courts could be seen to have made appropriate decisions. Such an approach responded directly to the question asked and was most effective when interweaved with an exposition of the law. There was a small minority of responses that felt it necessary to include some explanation and discussion of the elements of duty and breach, despite the question being clearly limited to causation and remoteness – this gained no reward.

Question 3* – Trespass to the Person

This was the most popular essay question by some considerable margin and there were many very impressive responses, both in terms of the factual material used and the sophistication of the supporting comment, with the very best responses engaging with the question and its focus on compensation and deterrence. Cases were generally well used to support arguments and the best responses undertook a wide survey of the torts of assault, battery and false imprisonment and the available defences. Those responses that discussed harassment were also rewarded. Again, the best responses threaded the analytical comment into the essay and were adept at developing and extending this discussion. Those that chose to evaluate the law in the second half of the answer often found that time was against them and were unable to achieve the depth or breadth necessary for the higher marks. Weaker responses tended to be more narrative in their approach and focused on the fairness of the law, rather than its ability to compensate and to deter. There were no responses that misunderstood the question but there were some disappointing responses in relation to the lack of case knowledge demonstrated in such a case-rich area.

Section B

Question 4* – Nervous Shock

This was the most popular of the problem questions by some margin and many candidates were able to score highly as they had a breadth and depth of case knowledge at their disposal and they were able to demonstrate well organised problem solving skills. The best responses took a structured route through the explanation of the need for every claimant to have a recognised condition due to the sudden shock of a single incident and then proceeded to explain the

different requirements for primary and secondary victims and the position of rescuers. However, the extent to which the law was explained was variable and many responses focused on achieving a quantity of cases rather than a careful use of appropriate case citation as a mechanism to allow application. In relation to application of the law the very best responses ensured all elements of the tort were methodically proved, key issues in doubt were interrogated, such as how the court may perceive Kate's personality change, and an appropriate conclusion reached. Better responses recognised that Minnie could attempt to claim as both a primary victim and as a secondary victim and addressed this. Weaker responses tended to focus their application skills on the conclusion to each mini scenario rather than building the response to reach the conclusion. A significant proportion of responses misunderstood that once a victim is accepted as primary the normal rules of negligence apply and the control mechanisms have no place. Similarly, it was very rare for a candidate to explain that a successful claim for nervous shock would also need proof of breach and causation of damage. Brief discussion of this to prove overall liability within the tort of negligence would have been welcomed.

Question 5* – Trespass to Land

This was the least popular of the problem questions and responses were rather polarised. The best responses had a good and detailed understanding of the law reinforced by wide case citation across the elements of the tort, the criteria to bring a claim, the available defences and the remedies that could be awarded to a claimant if successful. These responses were able to take a methodical approach to identifying the different issues in the scenario and determining whether and how the tort could be proved, whether any defences were available to Mr Xi and the appropriate remedies that Lisa may utilise. Weaker responses were lacking in detail and did not, for example, explain what 'land' meant. These responses demonstrated a lack of logical progression through the tort when applying and focused on particular issues only, meaning there was usually an unsubstantiated conclusion or sometimes no conclusion at all. There was a very small minority of candidates that appear not to have read the instruction in the question and attempted to answer on the basis of nuisance.

Question 6* – Rylands v Fletcher

This question attracted a range of responses. The best responses had a very clear understanding of the law and were able to back this up with detailed use of case citation. This was particularly noticeable in the explanation of the courts' approach to defining the meaning of 'non-natural'. In relation to application of the law the best responses identified clearly the different possible claims for *Rylands v Fletcher*. These responses then ensured all elements of the tort were methodically proved, key issues in doubt were interrogated, such as whether the recycling centre was a non-natural use of land, and an appropriate conclusion reached. Weaker responses were less assured in their application and there was often confusion between what damage the can and the top of the can unit had done. Most responses recognised that claims for personal injury will not succeed, but a lot less were aware of the law on purely financial losses. There was a trend from a majority of responses to explain all of the defences available in the tort, rather than those applicable to the scenario. Only those relevant were able to be rewarded. Again there was a very small minority of candidates that appear not to have read the instruction in the question and attempted to answer on the basis of nuisance or occupiers' liability.

Section C

Question 7 – Occupiers' Liability

There were some encouraging responses to this question, showing good skills of reasoning to a supported conclusion but many candidates failed to read the statements carefully and respond to the focus of each. This was particularly evident in Statement B. In Statement A there was a significant amount of responses that could not explain the definition of an occupier. In Statement B those that had read the statement discussed the potential for Carrie to excuse liability on the basis of Dave's role as an independent contractor; those that did not read carefully discussed

warning signs. In Statement C there was generally good understanding of the extent to which an occupier must check the work of an independent contractor. In Statement D there was again generally good understanding of what a warning sign needs to do to excuse liability.

Question 8 – Private Nuisance

Many responses did show some skills of reasoning from an opening statement to a conclusion but again there was often a failure to focus on the thrust of the individual statements. In Statement A most responses failed to fully define private nuisance but most responses did recognise that loss of view could not be claimed for. In Statement B better responses moved logically through how Joan would prove the nuisance but too many responses focused on property damage despite no evidence of this. In Statement C most responses recognised that the issue revolved around maliciousness and the balance that must be achieved between claimant and defendant. In Statement D few responses understood that planning permission is a valid defence but only if it inevitably leads to a change in the character of the neighbourhood.

G158 Law of Torts Special Study

This was the second series in 2012 for the special study theme of private nuisance. It was also one of the latest exams in the June 2012 series. Therefore candidates will have had the materials for a full year and had the advantage of seeing the January paper for some practice. The standard was, consequently, very good.

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

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

This series was characterised by excellent responses to question 1 with many candidates scoring full marks, a lack of focus on the exact wording of the 'theme' in the essay question denying many students top marks and a 'shotgun' approach to the problem questions which often lacked focus.

Notable improvements and areas of good practice:

- there were very few poor performances
- there were no spoilt papers
- there were hardly any candidates who did not attempt all three questions
- exhaustive case law knowledge and very few misunderstandings of the law
- impressive awareness of recent developments under the Human Rights Act.

Areas for further development:

- the problem questions lacked a coherent 'technique' and candidates often only scored marks 'accidentally' having employed a 'shotgun' approach.
- candidates need to practice going through essay questions from past papers (G157 and G158) and identifying the AO2 'themes' in each question and considering how they would marshal their knowledge of the particular topic around that question.
- some practical issues in need of attention include:
  - candidates should not use highlighters to highlight cases names as they can obscure the case on scanned copies.
  - candidates should not use fountain pens as the 'wet' ink from one page smudges the facing page and can be illegible when scanned.
  - candidates with particularly poor handwriting should be directed to appropriate support services as some of them are compromising the accurate assessment of their performance if markers cannot read what they've written.
  - candidates should use the answer booklets as instructed.

Comments on individual questions

Question 1*

There was significantly good performance on this question. In part this is because the case (*Hunter*) was well supported in the source materials but also because it had two critical points allowing a wider range of points to be accessed. However, these factors should not detract from a good performance where candidates were clear about how to approach a case study question and covered critical points, linked cases and analytical points.

Some candidates merged the two critical points into one and missed marks because of the ensuing confusion. To be clear, the inability to sue for loss of TV reception is due to the court taking the view that TV reception was analogous to loss of a view and such things were not subject to actions in nuisance. The lack of status in terms of not having a legal interest in the land is a separate issue. So, to say 'the claimants could not sue for lack of TV reception because they had no proprietary interest in the land' is too confused to be creditworthy.

There has been a definite improvement in the technique of answering this question.

Some candidates 'over-egged' the question and there were a significant minority who produced answers which were in excess of four sides of A4. This is excessive and a candidate should be able to score full marks from a response which is easily under two sides of A4 (assuming normal handwriting size). The risk is ending up short of time on later questions worth more marks.

There was good (and extensive) use of the source materials.

Question 2*

- Candidates generally scored well on AO1. However, a significant minority of candidates performed poorly due to not making use of the source materials.

- Many candidates did not access levels four and five on AO2 because they failed to engage with the question (see below).

- A small minority of candidates scored poorly on AO1 because they only used a couple of cases despite there being eight cases in the source materials.

- Generally answers were too long. Some essays were in excess of eight sides of A4 which is completely unnecessary.

- There were too many responses which attempted to cover every aspect of nuisance instead of selecting an appropriate selection of cases that would allow the candidate to focus more clearly on the question (see below).

- The quality of understanding was generally very good and appropriate cases were used throughout. There was some over-statement of *Miller v Jackson*. Candidates seem to think that the social utility argument was successful and meant there was no nuisance. It should be remembered that there was a nuisance in this case for which damages were awarded. The social utility argument revolved around the granting of an injunction. One judge supported the granting of an injunction (Lane), one was against the grant of an injunction (Denning) and the third judge (Cummings- Bruce) supported Denning but accepted that he might be wrong and said he would agree with Lord Lane (regarding the temporary suspension of an injunction) if he were wrong. The decision has been widely criticised since. At best, we might say that social utility might have an impact on the remedy granted but not that it stops there being a nuisance at all.

- There seems to be an emerging habit of 'dropping' a case name in (almost as an afterthought) after having made a particular point. It should be remembered that level 5 will usually require approximately 6 well developed cases. A well-developed case will invariably involve some explanation of the facts and/or a clear statement of the legal principle. Therefore, 'bald' cases will be credited but not as fully as developed cases.

Failure to engage appropriately with the AO2 theme

This was a particular problem this series. It appears that it is due to nothing more than a failure to read the question properly – albeit on a fairly grand scale. The question is asking candidates to discuss how well nuisance strikes a fair balance between two competing interests – being 'individuals and the community'. Most candidates read this as between the defendant and the claimant. Of course in many cases the defendant will be the community or a representative thereof but the subtlety behind the question was missed by many. This led to some detailed but 'glib' essays where candidates went through the whole of nuisance and all the cases they could remember (some running in excess of 20) and simply reviewed (in a most mechanical fashion) whether the outcome had been better for the claimant or the defendant. These essays were usually accurate and well executed but they simply failed to deal with the question being asked and scored 9 or under on AO2.

Over-length responses

Many candidates had prepared a stock essay on private nuisance which covered every aspect of the tort and were determined to dispense it and the sheer scale and ambition of these responses left little room for any AO2 at all or anything other than standard 'this was good/bad/fair on C and/or D' style AO2. Some of the best responses limited the remit of their AO1 and then focused closely on the AO2 spin of the question in an intelligent and highly reflective manner. The very best examples picked cases where the impact on the community was the key feature and allowed this to lead the whole response. Thus, it is perfectly possible to score full marks with just nine cases which will provide all the opportunity that is needed to fully answer the question's AO2 spin 'head on':

- The human rights trilogy of *Hatton, Dennis and Marcic*
- The location trilogy of *Laws, Adams* and *Halsey*
- The social/public utility trilogy of *Miller, Kennaway* and *Hunter*

All of these cases provide an excellent evidence based opportunity to reflect on the way the courts balance individual rights against those of the community and do so from conventional settled cases through to newer cases demonstrating emerging judicial attitudes under human rights legislation.

The absence of a conclusion was also a limiting factor on a significant minority of essay questions. This limited some answers to 8 marks or less despite good AO2 elsewhere. At levels 4 and 5 it wasn't the complete absence of a conclusion but rather the absence of a 'logical' conclusion that limited access to full marks in some cases.

To summarise, it should be remembered that by comparison to the G157 essay questions, this is a smaller essay which shouldn't take more than 37.5 minutes in normal exam conditions. It is disappointing to see so much effort being wasted on exhaustive essays which demonstrate little more than how much a candidate can remember – it doesn't gain the marks that such candidates will, no doubt, believe they are entitled to. The skill on this question is, as ever, a matter of how well the candidate thinks on their feet and marshals their knowledge around the question that is asked. Consequently, some candidates will have scored full marks (34) for a short (3 or 4 sides of A4) piece covering 9 cases and others will have scored half marks (17) having written a lengthy (in excess of 8 sides of A4) piece covering 25 or 30 cases but having missed a link to the sources and not having addressed the AO2 theme or concluding properly (which, if you've missed the central theme, is impossible).

Question 3 – mini problems

These were generally answered reasonably well. Very few candidates scored 5 or less marks although there were also relatively few 10 mark responses. The main issue seems to be a lack of technique. The mark scheme requires a candidate to:

- identify a critical point and try and make 3 points out of it
- identify half-a-dozen further analytical points, and
- conclude.

Questions should have a clearly obvious/identifiable critical point. This is often based on a strong similarity to a leading case. Once this is established, 3 marks can achieved by stating the law, applying it to the scenario and then using a case to back the point up. This leaves the candidate to find a couple more valid opportunities to earn 3 marks each in the same manner or raise a sufficient range of relevant single points to earn 6 marks. A conclusion then makes 10 marks.

Candidates seemed to take a real 'shotgun' approach to these questions. Issues which are relevant but not central to the question are limited to a mark each and gaining excessive points without covering the critical point, would be limited to 6 marks – so identifying the critical point is essential. So, things like considering who could be a claimant, remedies and 'reasonableness factors' in general that are not prompted by the question, will carry limited credit.

A lot of answers focused too heavily on remedies. There was some limited credit for raising the issue of possible remedies but it was not asked for in the question and excessive detail was not credited as they were certainly not central to any of the questions.

There were a significant minority of students who insisted on re-telling the scenario back to the examiners in a sort of narrative prequel to their answer. This is a waste of time and does not gain any credit.

Similarly, starting every question with a standard definition of private nuisance is not necessary.

Q3(a)

- A significant minority of candidates dismissed Asif out of hand as not having a legal interest in the land and, therefore, not being able to sue. This is wrong. People who rent can have a legal interest through either their exclusive possession and/or a licence to occupy. Similarly, a wife may **not** have a proprietary interest where the husband is a mere licensee (*Malone*) but will have a proprietary interest in land where she is married to the owner and has a beneficial interest in the matrimonial home. Unfortunately this error cost these candidates a better score.

- Many candidates missed the similarity to *Halsey v Esso* and consequently failed to focus on the critical points which were whether the kind of harm Asif was suffering is an actionable nuisance and the reasonableness of the actions that caused the harm.

- Candidates were still able to score reasonable marks by looking at whether Asif could sue, locality, social utility, directness, reasonableness in general, duration and non-physical harm.

- The most common area to focus on seemed to be locality which was relevant and credited but was not the central thrust of the question which (having eluded to *Halsey's* facts) made very clear references to the types of harm Asif was suffering and their effect on him.

Q3(b)

- A significant minority simply elected the wrong claimant. The question is absolutely clear in asking candidates to advise the following claimants and then the first word in the first sentence of the first line of each scenario makes it perfectly clear who the claimant is. The fact that the majority got it right also suggests a minority of students who simply didn't understand how malice works.

- Most candidates who understood the malice point did well with lost scoring 7 to 9 marks through – who is the claimant (3); how will malice affect things (3); points about non-physical aspects of the claim, the fact that malice can 'flip' the case and the possible alternative route of using HRA.

- The most common mistake was arguing location. There is no support for the idea that music lessons would be any more or less of a nuisance in the country than they would in the town.

Q3(c)

- Many candidates were getting certain 'bits' of this question right but few were getting a coherent answer worth 10 marks.

- The vast majority of candidates recognised correctly that Christov would have no legal interest in the land.

- A significant group failed to see there being any physical damage and/or the possibility of damage arising from natural hazards – despite cases like *Leakey* and *Holbeck*.

- The most common mistake was to follow the *Leakey* argument that where you have a hazard on your land and you're aware of it, then you are liable for the harm it causes, rather than the *Holbeck Hall* line that unless the harm (or, in particular, its degree) cannot reasonably be foreseen, then the occupier cannot be liable for it. Of course, where the former route was taken and argued thoughtfully (ie that the Council were in clear breach of a duty to deal with the subsidence more effectively) then they were credited but the facts in the scenario did not point to this outcome so it would not have counted as the critical point.

- Few candidates considered using the Human Rights Act as a possible alternative route since Christov didn't have a proprietary interest in the land.

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