

GCE

Law

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

OCR Report to Centres June 2016

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This report on the examination provides information on the performance of candidates which it is hoped will be useful to teachers in their preparation of candidates for future examinations. It is intended to be constructive and informative and to promote better understanding of the 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.

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G151 English Legal System

General Comments

This year's questions were unlike those on previous papers and were challenging, yet accessible, with conventional topics approached in original ways, which allowed for differentiation yet still left candidates able to complete four full answers to a good standard. The Section B questions were extremely popular with most candidates attempting both, despite one of those questions having not appeared as a section B topic in the past. There was a broad range of responses to most questions on the paper although Question 2 on the Jurisdiction of the High Court and the system of appeals from it and Question 5 on the provision of legal advice regarding civil matters prompted few answers. There were fewer rubric errors and candidates seemed to have been prepared for the assessment and had read and understood the instructions contained within the assessment material.

Almost all candidates answered Questions 6 & 7 and then in descending popularity, Questions 3, 4, 1, 2, 5.

Areas demonstrating progress:

Again this year, it was clear that most candidates were making an effort to apply themselves; with very few poor scripts and very few where the candidate had not made a substantial effort to answer the required questions. In this series, many candidates filled the booklet and many more used additional answer sheets. There was also evidence of an attempt by many students to answer questions to a high standard, yet in a much more concise way, with numerous candidates gaining high level four marks by only using 8-10 pages of the booklet.

Section A part (a) responses showed improvement in A01 development with many candidates achieving a broad range that accessed level 3 marks. An increasing number of candidates were able to produce responses extensive enough to access level 4 marks. Where some candidates had used diagrams to assist their explanations, these, on the whole, were well annotated allowing candidates to access higher grade boundaries.

There was a comprehensive and balanced attempt by candidates to answer the section A part (b) responses, with many candidates managing a range of developed or well developed points with fewer lists or bullet point answers and with many candidates attempting broad answers and as a result, there were fewer answers capped at level three – 7.

A greater number of candidates demonstrated clear knowledge of case illustrations without giving the full case narrative.

There appears to be an improvement responding to the questions asked and with fewer responses failing to get any credit because the candidate had answered a different question yet similar question to the one asked.

Section B part (b) responses showed a methodical approach from most candidates identifying and applying many of the issues raised which were relevant to each question.

Areas for improvement:

It is still evident that some candidates are still trying to spot questions or only revise part of the unit's specification and/or only part of a topic area. This was particularly noticeable **again** in question 7 where some candidates had clearly revised last year's answers about the powers of the police under the Custody Officer and decided that that was the answer that they were going to attempt to force into an answer about the rights of citizens when detained. This point was made last year and again, it should be noted that an approach which will not work is an attempt to use last year's answers/mark scheme to answer this year's questions. It is important to revise complete topic areas as questions can include different elements from that topic area and resulting questions may be asked from a number of different perspectives.

It is important for centres to keep themselves up to date. Most candidates in Question 1 referred to Indeterminate Sentences which were abolished for new offenders from December 2012 and Extended Sentences which no longer exist in their old form, having been changed under the **Legal Aid, Sentencing and Punishment of Offenders Act 2012**.
<http://www.legislation.gov.uk/ukpga/2012/10/part/3/chapter/5/enacted>

Similarly, in Question 4 it should be noted that in Bail, **LASPO** has introduced the 'no real prospect test' and furthermore, there never was a 'presumption in favour of bail' under the older legislation, but a 'general right' to it. The use of the most up to date information is paramount as the English Legal System is constantly changing. The Internet is useful to keep up to date, with a number of sites offering learning packs and legal updates. Recent mark schemes are beneficial as a means of checking the specification areas of questioning but should not be used only as a means of telling students exactly what they need to know for each topic. Newspapers are still an invaluable way of keeping informed.

Although there was less evidence of it, in Section A part (b) questions it is important to focus on the question being asked and to develop relevant arguments in answer to it rather than just making isolated points and when using relevant case law some candidates still spend time on narrative, which gains very limited extra credit. For question 2 (b) on the disadvantages of the court system, many candidates were giving both the advantages and disadvantages.

In Section B part (b) questions it is important to confine the answer to the points raised in the scenario as no credit is given for discussion of issues not raised in the scenario – the circumstances and procedure for Michelle's arrest for example in question 7 (b).

As was seen in question 6 (b) this year, any topics may appear in Section B - it is essential that centres refer to the guidance given by OCR in January 2015 about topics that may appear in Section B in the future

Comments on individual questions

Section A

Question 1

A popular question.

(a) Most students were able to achieve at least a reasonable mark on part (a) as they generally knew a range of both custodial and community sentences. Ideally, what was required here was a range of custodial sentences, perhaps three or four and the same for Community sentences, alongside information that would explain the sentence and its effect and with an example of how it can be seen in practice which would also have provided the depth of information needed for full marks. Some very good answers including those which were 'lists' with some information might have reached 20+ points but had to be restricted to 16 or 17 as they did not include a statutory reference and an explanation of what a Community Order is. There was some confusion over mandatory and discretionary life sentences, with a few candidates stating that

mandatory life sentences applied to all indictable offences. Only a few mentioned irrelevant sentences such as fines and discharges and were limited in their explanations of Custodial - "It is putting them in prison." At some points, there was an overlap with youth sentencing. Candidates regularly missed out the 'life' part on mandatory and discretionary sentences, or the 'determinate' part on new extended sentences.

(b) In contrast, there were many low scores. Two marks for keeping the offender out of harm's way + little else. Little else was relevant as answers often set off on the six aims journey without referring to sentences or how they would protect the public, although some gave a very reasonable answer or one in which candidates had prepared an answer on the different aims of sentencing and so wrote this and finished every paragraph with the words 'so it protects the public'. If the information contained within supported this premise, then full credit was given.

Question 2

A very unpopular question

(a) Not many responses to this question and the range of marks was wide. Candidates either knew this topic or absolutely did not and were only able to name the divisions. Knowledge of their jurisdiction was limited in most cases. Knowledge of appeals was varied, but often contained little detail. There was confusion in some answers which talked about general appeals not just FROM high court. Leapfrog was always mentioned but not generally fully understood as relying on the need for statutory interpretation or precedent. Most answers included the ECJ, which is a reference procedure and **not a route of appeal**.

(b) Points on the system being legally binding and qualified personnel but not really much else. Most questions went to the student default position on civil matters and covered ADR. The question that was asked was not answered and focused on the advantages of ADR tweaked with the words 'civil court system' thrown in at random points. A significant number of those who answered also focussed on the small claims court, clearly having prepared a model answer on this. Other answers focused on the Woolf reforms

Question 3

A very popular question

(a), Candidates were caught out by it not being the 'usual' question. Categories = nine marks – easy marks but we still have candidates falling down and answering that Theft is Summary and Robbery is TEW. In general, most answers were good on TEW procedure, although there were several odd responses about a guilty plea leading to a trial. Pre-trial procedure for summary/indictable was usually unanswered so marks were capped at 14.

(b): In general, good answers though some simply reversed their answers e.g in 'Mag Ct lower acquittal', then later on 'in Crown Ct higher acquittal,' with something similar for maximum sentences. Otherwise good development of points. However speed, funding, was also mentioned but time on remand rarely. Some irrelevancies crept in about the benefit of magistrates generally (e.g. local knowledge)

Question 4

Again, a popular question

(a) Decent levels of knowledge relating to bail were expressed but there was still quite a lot of blurring of the reasons for refusing bail and the factors taken into consideration and some marks were lost in the confusion. Most candidates had knowledge of the conditions but again some blurred conditions and community order sentencing requirements. Sometimes there were very detailed descriptions of factors and descriptions but the marking limits prevented these answers going beyond L3. The vast majority of students incorrectly expressed that 'everyone should have bail' or the words 'presumption of bail'. LASPO was mentioned very infrequently and the 'no real prospects test' even less so. Many candidates wrote a lot about conditions for which four marks maximum was allocated.

(b) Candidates occasionally struggled to focus on the question and provided only some basic judgements of bail. Once past the simplistic explanation of accused's rights to liberty and need to protect the public, there was often little else. Extra marks were usually achieved by reference to conditions and how that may balance rights and public safety. Some candidates mixed it up with question 1 and consequently, became quite confused. On the other hand, those that were well answered clearly addressed the question and made some very valid points.

Question 5

This was rarely seen

(a) Very few candidates seem to have attempted this question and where they did, the general consensus is that this was badly answered. The wording of this question and the mark scheme that reflects it shows that this was a completely 'open' question, where students could have detailed any areas of advice that are available and these answers would have generated credit. The vast majority of answers failed to do this and touched 'lightly' on Citizen's Advice. Few in fact mentioned Solicitors themselves.

(b) Slightly better in some cases as they could think of some arguments for why restrictions on legal funding caused problems with access to justice. However, not particularly well answered as answers usually lacked a range of points and development and again, there were hardly any responses. Again, students attempted to squeeze ADR into their answer and put that in as their alternative to legal funding but although there was some very detailed info given on ADR, it gained no credit unless relevant.

Section B

Opinion on this section appeared to be universal and both of the questions in this section proved popular with an extremely high proportion of candidates choosing to answer question.

Question 6

A very popular question.

(a) A popular question but often misread by the students. Although the question clearly asked **when** are juries used and **what is their role**, candidates still wanted to explain everything they knew especially that information relating to jury selection. Criminal juries were covered well but the civil aspect was much poorer. Those who did know the topic answered it well. Many candidates included information about the Coroners Court in their answer, which is not on the specification so earned no marks. All candidates seem to recall some information even if it was not detailed and few students detailed the types of cases heard by juries in the Crown and Civil Courts.

(b) Looking at the mark scheme and how the marks were applied, P1 and P2 were answered well. P3 was rarely answered but if so was well done. P4 and P5 were often only Ps as detail re five year sentence as cut off point and/or 10 year disqualification was missing or inaccurate. P6 most opted for auto disqualification – no credit. Part b's covered Alfie well but the custodial sentences of Beatrice and Charlie confused many and they stated that you needed to serve 10+ years to be disqualified rather than five years. Charlie's depression was dismissed by most as a mental illness and therefore an absolute bar. The main issue here was that candidates did not actually use the correct terminology - eligible, unable, disqualified.

Question 7

The most popular question on the paper

(a) A very popular question. Most students accurately referred to the time limits on detention, however, , many wrote lengthy sections on detainee's rights instead of restricting themselves to police powers. A significant proportion of candidates were confused over intimate and non-intimate samples. Virtually every script detailed the rights of the suspect during detention (e.g., to a well-ventilated cell), although these were not part of the question. Limitations were misinterpreted as nearly all questions were answered in terms of rights and the role of the custody officer was also included in a lot of detail in many answers as was the different types of searches

(b) Part b again scored high marks, the interview issues and the section on being stripped naked was well understood. Many made the point that a medical professional should carry out the intimate search (not creditworthy as it is wrong) and also failed to identify the creditable issues in relation to the intimate search, namely that either (i) the lighter was neither Class A drugs or a weapon so there were no reasonable grounds to carry out this type of search, or (ii) it could arguably be lawful if the lighter is considered to be an item that may cause harm, which gave reasonable grounds.

G152 Sources of Law

General Comments:

Areas showing improvement

- Well-prepared candidates with detailed and thorough subject knowledge
- Positive engagement with a novel question producing confident and thorough responses
- Candidates tackling application questions in a manner showing clear familiarity with the underlying assessment methodology
- Clear use of past paper questions and accompanying mark schemes to prepare candidates well

Areas for development

- Better preparation for cii) questions possibly by employing the use of writing frames (point – developed point – well-developed point)
- More practice on past paper part b) questions to encourage a ‘thinking on your feet’ approach rather than a rote learning method
- Discouraging a shotgun approach which hopes to gain full marks by covering everything instead of responding accurately to the question

Comments on Individual Questions:

Question 1

1(a) This question was generally well answered. Ideas for new laws are often taught as a prelude to the legislative process as well as part of law reform. Past questions have focused exclusively on the Law Commission in this area. This question allowed candidates to demonstrate knowledge of not only the Law Commission but some of the other sources which are taught in this area. Candidates’ responses were impressive with many being able to cite numerous sources of ideas for new laws as well as specific examples of Acts of Parliament introduced as a result. There was extra credit given to answers which focused heavily on the Law Commission in recognition of the novel nature of the question.

1(b) The application questions followed a well-known pattern and, as a result, candidates performed very well. Full marks required identification of the right type, why it was the right type and something further such as an explanation of who makes them or a link to the source. All three parts performed well up to identification and parts bi and biii performed well to full marks. Some candidates were unaware of the use of Orders in Council as a means of dealing with the transfer of constitutional power and could not gain marks above level 2. Past paper mark schemes do make this point clear.

1ci) Compared to previous questions describing delegated legislation, this question was narrower requiring candidates to focus on two types only. Despite this challenge, candidates gave some excellent answers with lots of detail and an impressive range of specific examples of both enabling and delegated legislation.

1cii) This question attracted a variety of responses. Less able candidates disregarded the question rubric and wrote about both advantages and disadvantages. Whilst disadvantages were creditworthy as counter-points to advantages, they were not creditworthy in their own right. Few candidates were able to produce the well-developed points required for level four but most candidates were able to provide a variety of developed points.

Question 2

2a) This question seemed to attract two types of response. Many candidates gave very thorough answers which demonstrated detailed and accurate knowledge and understanding supported by accurate case citation. Less able candidates gave anecdotal explanations often based on attempts to explain the rules by reference to textbook examples or past exam questions. However, these often disclosed poor understanding of the actual rules and their operation.

2b) In general these questions were well answered. They follow a now familiar pattern and well-prepared candidates identified the appropriate rule, explained why it was appropriate and gave a case example to score full marks. Many candidates only went as far as the identification and explanation but didn't give a case or link to the source. The question that seemed to cause the most common misunderstanding was biii where the speedboat was thought to be 'a form of transport' in spite of the fact that it travels on water where the others travel on land. However, this acted as a good discriminator.

2ci) Where this question was well answered it was impressive, with detailed definitions including additional commentary and excellent citation of appropriate cases explaining the way the approach affected the outcome. A significant minority of candidates seemed genuinely confused with the mischief rule and gave the definition of that rule as well as using mischief rule cases. Such answers were not creditworthy. However, where candidates gave a definition that was acceptable as a definition of the purposive approach and gave a mischief rule case, it was credited if it made the clear point that parliament's intention was achieved (although only one such case was credited).

2cii) As for q1cii (above) there were a number of candidates who ignored the rubric and gave both advantages and disadvantages. The same practice was adopted as above so that disadvantages which were used as counter-points were creditworthy but cited on their own they were not. Candidates were divided on the comparison to the literal rule with some using it as part of every single point and some disregarding it altogether. Again, some candidates produced very full, well-written answers which lacked a well-developed point and were capped at level three.

G153 Criminal Law

General Comments:

There was a pleasing spread of responses to all questions across the paper with most being able to attempt the correct combination. Many candidates now approach the questions in reverse order, often to good effect. However, some spend a disproportionate amount of time on Section A; this impacts on their timing and often leads to Section C answers, worth a total of 20 marks, being rushed or unfinished. Problem solving skills are often good, with many candidates now dealing with an element of the scenario at a time by giving relevant law and then applying it before moving onto the next element. The best answers demonstrate a candidate's ability to select, explain and apply relevant law to the facts they have been given. Where statute law is relevant in Sections A and B, as in questions 1, 2, 4 and 5 it is important that candidates cite, define and explain the relevant sections and subsections accurately so they can go on to use them confidently. Good technique in Section C is often based on a bullet point format with the final point being a clear conclusion and excluding any reference to cases.

Section A responses are differentiated in AO1 by the specific level of knowledge and citation; the best answers select the most relevant cases, focusing on the legal point rather than expansive factual information – only the key facts are needed. For AO2 it is good practice to engage with the question but also to develop and expand evaluative points. It is important to include broader overarching comment on the area of law at issue and the role of policy alongside reform proposals as well as answering the current question rather than one that has been asked in previous years or using a 'one size fits all' approach. The very best answers often begin by placing their answer in the context of the question and then include good, wide-ranging and relevant knowledge supported by clear and well developed analysis throughout the essay before a brief conclusion that supports their opening premise.

Section B responses are differentiated in AO1 by the level of accurate and relevant knowledge, with cases explained and applied accurately rather than an extensive list of names unconnected to the scenario. Statutory law should be named accurately and include the date of the Act alongside detailed and accurate knowledge of relevant provisions to access the higher mark bands. In AO2 the focus is on identification of the relevant areas of law raised by the scenario and accurate application of these to the facts, with alternative lines of reasoning being credited if they are tenable. The very best answers make a short plan which helps to give cohesion to an answer which covers all aspects of the scenario.

Section C responses are differentiated by the accuracy with which relevant legal principles are identified and applied logically. The conclusion should be decisive and phrases such as 'could be liable', 'might be guilty', 'may possibly be liable' are not credited. The very best answers take care to allocate information to the most appropriate statement and use the facts of the scenario to demonstrate application and reasoning skills using a point based format.

Candidates should continue to pay attention to their accuracy of language, their use of specific legal terminology and the quality of their handwriting.

Comments on Individual Questions:

Question 1 – Criminal Attempts Act 1981

This was the most popular essay question and focused on the law after the Criminal Attempts Act 1981. Candidates who wrote about the old common law tests were only credited if they linked these to the need for a new law or used them as a comparator for the effectiveness of the law under the Act. Many candidates were able to give a detailed survey of the *actus reus*,

including some evaluation of the wide and narrow approaches adopted by the judiciary and to develop analytical points. There was often less confidence when dealing with the *mens rea* aspect, particularly in relation to murder, and the issue of impossibility. As well as commenting on the more obvious issues such as the definition of ‘more than merely preparatory’, the levels of *mens rea* and issues around conditional intent and the judicial confusion seen in relation to impossibility the very best answers looked at wider policy areas. These could include sentencing policy, the deterrent effect of such offences and their implications for law enforcement bodies. Reference to reform proposals such as those from the Law Commission and the experience of other jurisdictions also helped to develop and extend evaluation.

Question 2 – Theft Act 1968

This was the least popular essay question in Section A and had a clear focus on the *actus reus* of theft. To this end there was a need for clear and accurate statutory knowledge, beginning with the definition in s1. This could then be developed into an assessment of s3, 4 and 5 with detailed factual knowledge and an evaluation of the issues raised by the law and later judicial interpretation. Candidates who considered s2 and s6 were only credited if it was related clearly to the problems in the *actus reus* which have now placed a disproportionate significance on *mens rea*. The very best answers were also able to deal with statutory subsections accurately and concisely, successfully explaining them rather than relying on their memory to regurgitate long pieces of complex wording from the Act. The best answers rooted their evaluation in the ease of proof dictated by the question before going on to consider wider areas such as the need for a clarity, the lack of reform and what this says about the law as well as the issue of Parliamentary sovereignty as against judicial creativity.

Question 3 – intoxication

This was a popular question, although some were generic rather than having a clear focus on the quotation. The best answers had a clear structure, setting out the boundaries of voluntary and involuntary intoxication plus the elements of specific and basic intent before going on to deal with each in turn. Specific intent offences in relation to voluntary intoxication were often well-handled although candidates were not always so clear on the *Majewski* principle. Involuntary intoxication was not always clearly explained, especially in relation to *Kingston* where many candidates were unclear on the facts and did not explore the decision at first instance and the two subsequent appeals which provided a rich seam of comment in this area. Many candidates did have command of detailed factual information and were then able to evaluate this area of the law in a developed way. Consideration of the legal principle as against public policy debate, the health benefits of some alcohol as against the cost to the NHS of alcohol and drug related harm, the problem of a lack of coincidence, the issues relating to ‘fall-back’, the numbers of intoxicated offender who then find their way into the prison system and proposals for reform alongside government inertia towards implementation were all valid evaluative areas.

Question 4 – non-fatal offences

This was the most popular scenario question and required candidates to cover the Criminal Justice Act 1988 and the Offences Against the Person Act 1861. Accurate and detailed statutory knowledge was important, as was the need to be focus on each element of the scenario. Many candidates were much most confident with assault and battery and some spent a disproportionate amount of time on them. The levels of harm in the scenario invited a variety of responses in terms of selection of offences and candidates were credited as long as their choice was based on cogent reasoning. The *mens rea* aspect of s47 and s20 was not always clearly expressed and the same was true of the alternative *actus reus* elements of s20 and s18. Some candidates referred to the CPS Charging Standards and accurate use of these was credited but maximum marks could be achieved without them. The very best answers focused on each issue in turn, using the practice of considering the most serious appropriate offence first and then dropping to a lesser included offence where necessary as well as including a breadth of offences rather than repetition of offences for several elements of the scenario.

Question 5 – murder and specific defences

This question was the least popular scenario question and evinced a wide range of responses. Some simply focused on an exposition of murder, detailing extensively information on a human being and killing in time of war which had no relevance to the scenario facts. The best technique was to deal with the elements of murder concisely and apply them to Alexi, concluding that he would be liable. The next step was to consider the specific defences to murder contained in the Coroners and Justice Act 2009. Many candidates dealt with loss of control first and this made logical sense. Detailed and accurate knowledge helped candidates apply the law to Alexi, although some confusion often remained on the issue of suddenness, the qualifying triggers and the normal person test. References to provocation and cases predating the 2009 Act were not credited given the decision in *Clinton*. Many candidates concluded that aspects of the test would be challenging for Alexi to meet and so went on to consider diminished responsibility. The best answers were able to provide clear statutory definitions using the relevant terminology such as ‘abnormality of mental functioning’ and the need for a ‘recognised medical condition’ before going on to consider the other elements of the test. The very best answers concluded that Alexi would be most likely to succeed with a defence of diminished responsibility and so reduce his conviction to voluntary manslaughter. Answers which dealt with intoxication and insanity were only credited if this was done in the clear context of the specific defences.

Question 6 – involuntary manslaughter

There were plenty of responses to this question and the best identified the three types of involuntary manslaughter and then worked through their application to each character in turn. The scenario facts allowed for a variety of interpretations, and given there is some lack of clarity in the decided cases, these were credited as long as they were logically reasoned and supported by relevant law. Maximum marks could be achieved with a focus on gross negligent manslaughter and the attendant issues of causation and omissions. A good number of answers provided detail on both causation and omissions, sometimes at the expense of a clear focus on the elements of the manslaughter offences themselves. Accurate consideration of the elements of unlawful act manslaughter and then its discounting based on the facts was credited in relation to both Cyril and George. The best answers focused on gross negligence manslaughter in relation to Dr Malik and applied the four part *Adomako* test clearly and accurately; however, there remained some confusion on the last two elements of the test and on the law in relation to a doctor turning off a life-support machine. Candidates could reach a variety of conclusions as long as their reasoning was logical and backed up by relevant citation.

Question 7 – insanity and automatism

The best answers demonstrated a clear focus on each of the statements in turn and moved through the key elements of each defence with application to a conclusion. Where alternative arguments could be evinced these were credited as long as they were logically reasoned to an appropriate conclusion and the mark scheme demonstrates this. In statement A the key was that Kristen’s epilepsy was the cause of her conduct and thus automatism was not available as she had not taken her medication. In statement B candidates were credited, having recognised that Kristen’s epilepsy was an internal factor, based on their application of whether she knew the nature and quality of her act and that it was legally wrong and reached a logical conclusion. In statement C the key was to recognise that Kristen’s epilepsy was an internal factor; candidates could then decide whether or not she knew the nature and quality of her act in relation to punching Roger and reach an appropriate conclusion. In statement D the key issue was to recognise that since Kristen’s charge was not murder hospitalisation was automatic; candidates could recognise that it might be appropriate given the violence she used or that other sentences were available with an opportunity to consider the most suitable one and reach an appropriate conclusion.

Question 8 – robbery and burglary

The best answers demonstrated a clear focus on each of the statements in turn and moved through the key elements of each offence with application to a conclusion. In statement A the key issue was that the *actus reus* of s9(1)(a) required an entry which Steve could not achieve because the door was locked although he did have the *mens rea* as he intended to steal the cigarettes and so the statement was accurate. In statement B the key issue was that there had been a threat of force when Steve threatened Jill with the hammer but that he had not completed the theft of the cigarettes and so the statement was inaccurate. In statement C the key issue was that the first part of the *actus reus* of s9(1)(b) was completed as Steve smashed the window and entered the petrol station but the element in relation to the ulterior offences was not as the smashing of the shelves constituted criminal damage and so the statement was inaccurate. In statement D the key issue was there had been a completed theft when Steve rode off on Jill's bike but that this was disconnected from the earlier force in relation to the cigarettes and so the statement was inaccurate.

G154 Criminal Law Special Study

General Comments

This session the G154 paper examined the main aspects of the essentially common law 'defence' of consent in relation to offences against the person. The new theme, as anticipated, generally proved accessible to candidates in all three questions. However, for a small minority, Question 3(c) proved to be problematic. Specific mention must again be made to the annual Special Study Skills Pointer (available on the OCR website) and previous Reports to provide helpful advice and guidance. While the topic changes each year, the skills in tackling the questions do not. It is very important also here to stress that the G154 mark scheme is never prescriptive but, nevertheless, flags certain core elements to each question which traditionally must be present in a candidate's response to move up the mark Levels.

Time management is key to success in this paper. This crucial issue continues to be a problem with some candidates spending a disproportionate amount of time on certain questions, in particular Question 1. This is to the potential detriment of the other two questions. Candidates should be advised to try to work to the mark-a-minute guidance, and then spend the extra time on reading, planning or addressing Questions 2 or 3. It may also help candidates to rearrange the order that they attempt the questions. A popular strategy is to answer them in the order of 2-3-1 or 1-3-2. This series continued to see the increase in the use and reference to the pre-release materials. Previous reports have explained the importance of the materials and how they can help and enhance the candidate's work during the planning of the exam and during it. If a quote or a point is contained within a source then the candidate can save time by correctly referencing it rather than re-writing it. However, some candidates, this series, used the source materials in an unconvincing manner and would refer to four or five lines and expect the examiner to pick the creditworthy points out. Clear direction to a point is required and for each point.

Comments on Individual Questions

Question 1

Question 1 in its traditional style called for an examination of a case from the source materials, in this instance *Dica* and the development to the law on consent it has (or has not) provided. This question tests Assessment Objective 2 by requiring analysis, evaluation and application to the law of *Dica*. It has been stated in previous reports that the Critical Point will always be that which was held, as a matter of law, as being the *ratio decidendi* of the case. To achieve Level 5 *inter alia* candidates were required to have identified one or more of the three critical points arising from the judgment, that:

1. the Court of Appeal held a victim can consent to the risk of contracting HIV and that this would provide a defence under s.20 OAPA;
2. the Court of Appeal overruled the decision in *Clarence* as being an 'outdated restriction';
3. the Court of Appeal decided that when a defendant knowing that they were infected with HIV had unprotected sex with a victim and failed to reveal this fact, that whether the defendant was reckless was a matter for the jury to decide and not a matter of law for the judge to decide.

Most candidates were able to identify at least two of the three points but few were really able to articulate all three. Indeed, the third point above was all that some candidates wrote and simply rephrased this part of the judgement over and over for some unknown reason. Centres are again advised when researching cases for preparation for Question 1 to look at five or six textbooks or

reputable legal websites to consider their author's discussions 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 the Critical Point, generally considered Analytical Points and clear references to Linked Cases.

The question produced generally well answered responses given the complicated subject matter which was very pleasing to see. Most candidates achieving a Level 5 answer therefore: explained at least two (and in many cases all three) of the Critical Points; gave further analysis of the case (see 2016's mark scheme); discussed a relevant linked case and made a clear comment on the importance of *Dica* (as required by the rubric). However, some candidates were unable to get into Level 5 since they had failed to use a linked case nor commented on the significance of the decision. Indeed, there was a lot of apparent confusion over the fact that *Dica* was two cases: the original Court of Appeal decision to order a retrial due to a perceived misdirection at the original trial and the subsequent retrial culminating in a second appeal to the Court of Appeal.

The question produced a range of responses and there were indeed some excellent ones showing full understanding of the skills requirement of the question, thereby gaining maximum or near maximum marks. This year, however, there seemed, in many responses, evidence of 'case-spotting' in particular those candidates who turned their responses into an analysis on *Brown* or *Wilson* instead of *Dica*. A tendency towards writing a mini-essay on consent rather than concentrating on the case itself was still apparent but seen slightly less in this series. However, a number of candidates discussed many more cases than is necessary. Some responses unnecessarily covered four or five cases thoroughly where only one relevant linked case is required. Only three marks are available for a linked case discussion in Question 1 and again, candidates lost time by analysing further cases.

The issue and introduction of informed consent by *Dica* was a prime example of an analytical point. However, many candidates confused this with and used the term 'implied' consent taking them down an unnecessary and, at times, incomprehensible response.

In general, well prepared candidates clearly used information available on *Dica* from the sources and from their own research. Most high scoring candidates therefore followed a clear pattern of response which included most or all of the following:

1. A discussion of the Court of Appeal's decision to overrule *Clarence*; the decision that when a defendant knowing that they were infected with HIV had unprotected sex with a victim and failed to reveal this fact, that whether a the defendant was reckless was a matter for the jury to decide;
2. An analysis of the actual case facts and of the opinions of the victims and consequent conviction under s.20;
3. The issues during the first trial that the Court of Appeal discussed including the judge's misdirection in removing the defence of consent;
4. The appeal in the first case followed by a retrial and reconviction;
5. The introduction of the doctrine of informed consent into English law
6. The *obiter dicta* statements in relation to s.18;
7. The thorough discussion of a linked case, for example *Konzani*.

A common omission by candidates was in not analysing the case's procedural matters; in effect, the issues at trial: the defence's specific arguments and the subsequent appeals against guilty verdicts to the Court of Appeal. Given that this is a 'synoptic' paper candidates should use, where relevant, their understanding of the English Legal System in these areas in relation to the actual case.

Question 2

This question required a strong focus on a discussion and analysis on the criminal law's approach to the 'defence' of consent albeit from a particular and specific angle. The question required candidates to consider consent in relation to offences against the person. Some candidates took this to exclusively mean the 1861 Act, missing other important possibilities such as murder, manslaughter or assisted suicide. Nevertheless, candidates could still achieve high marks discussing cases that related directly to offences committed under the 1861 Act.

For AO1, candidates could have secured high marks by providing specific, but not verbatim definitions of consent popularised and categorised by, for example, the terms valid consent (in relation to age and mental capacity - *Burrell v Harmer*, *Gillick*), true consent (in relation to having a full understanding of the impact or consequence of that they are consenting to - *Dica*) and the issue of fraud through identity, nature and quality (*Tabassum*, *Dica*, *Richardson*). This would then be supported by a selection of the exceptions to the general rule that injuries above common assault cannot be consented to.

While a 'well-developed' response on these areas of the 'defence' could secure high marks, it was pleasing to see, but not a requirement to secure high marks, many candidates providing a cursory and carefully selected summary of the law. While consent proved a popular topic amongst candidates allowing a huge target to hit, this proved detrimental to some in their time spent answering the other two questions. It was not uncommon to see responses averaging ten pages or more. Selection and synthesis are key to answering this question and are very important for AO1. Again, there was clear evidence that the sources seem to have been utilised more than in previous sittings.

However, the AO1 demonstration of knowledge and understanding was, at times, frequently disappointing. On many occasions, candidates would concentrate on one case, normally *Brown*, and go into unnecessary lengthy detail about the facts of the case, interestingly in far greater depth and analysis to their response in Question 1. Also many candidates discussed the alleged homophobic decision in that case. While there is little, if any evidence to support that suggestion from the actual case, *Wilson* was generally used to support this continued belief excluding *Emmett*, *Meachen* etc to counter-balance their argument.

Given that the law in this area is almost exclusively driven by common law candidates using a limited number of cases missed many opportunities and were naturally prevented from accessing key aspects of the 'defence', in particular the definition of the defence. Certainly many candidates struggled to achieve Level 5 where they chose simply to concentrate exclusively on sport, lengthy salacious discussions on potential sexual deviance and horseplay. This meant that in some cases the eight case rule for Level 5 AO1 was not achieved. As there are eight cases in the pre-release materials candidates would be expected to have considered at least this many in their responses to achieve the Level 5 descriptor. The common law has provided us with a plethora of cases easily accessible to candidates prior to the exam. Another common error was seen in the candidates misunderstanding of the case facts and in particular the cases decisions and how they would impact. Specifically *Donovan* was incorrectly interpreted by many as allowing the caning of an individual following his conviction being quashed on appeal rather than understanding that this was due to a misdirection by the trial judge. Nevertheless, those candidates who were prepared to 'grasp the nettle' and demonstrate their knowledge in a broader fashion rather than concentrate on purely sexual deviance were duly rewarded.

For AO2, being a synoptic paper, the best analysis and evaluation by candidates was obviously seen in commenting on the question itself: whether the law is best developed on a case by case basis. Candidates in Level 4 and 5 were able to place this into the context of the overarching synoptic themes:

- Parliament's lack of involvement;

- the role of judges on a case by case basis as per the quote/question;
- the use of precedent, and
- the development of law as a result.

Other than Source 1 from which the quote was taken, all of the Sources contained some information as well as much comment that was helpful in answering the question or of stimulating discussion before and during the exam. For the majority of candidate responses the AO2 analysis and evaluation achieved Level 3 or 4 and was generally reliant upon the AO1 scaffolding. However, the specific slant this series was on Russell L.J.'s statement that 'in changing times' it is better to develop the law on consent 'upon a case by case basis'. This clearly required candidates to consider that as time progresses and attitudes to life change it is better to reflect the decisions as they happen rather than by historic and potentially outdated 'propositions', rules or statute. As far as 'the case by case' side of the questions most candidates could articulate how the hierarchy of the courts and precedent had been advantageous or problematic, however many Level 3 and 4 candidates missed the opportunity to comment on 'changing times'. Clearly while criticising decisions like *Brown* they could have given and used their knowledge of current popular opinion no doubt gleaned in class.

As has been stated in previous reports many candidates did correctly refer back to the quote throughout their response to Question 2 and where it was done thoughtfully it gained appropriate credit. Unfortunately in many instances it was merely done mechanically without real thought or development of arguments. The quote will be taken from within the source material and will not be one obscure or opaque. It is also a useful class or 'flipped-learning' activity for candidates before the exam to discuss and model any particular potential quote. It was very evident that a large number of candidates in preparing an answer to Question 2 were predicting a legal principle/public policy AO2 slant. While this could secure an answer in the top levels, ignorance of the true AO2 slant made it somewhat difficult.

Question 3

This application/scenario question provided some interesting and varied responses, particularly between the sub-questions. As noted above, Question 3(c) posed a stump for some candidates. Traditionally, many candidates who scored highly on Questions 1 and 2 lost some of their marks here and this year continued to be no exception. Again, as mentioned in previous series, candidates would do well to use some sort of problem/scenario answering formula such as I.D.E.A or I.L.A.C to help answer the questions. In effect, any such formula looks at defining each part of the relevant law (AO1) then applying this to each part of the scenario (AO2). One of the consequent parts of the definition will be the Critical Point. This series the AO1 and AO2 had to refer to: the act of an unqualified person tattooing a willing minor, the impact of a very serious intentional injury during a professional ice hockey match and the impact of a very serious non-intentional injury while up to tomfoolery.

Question 3 incorporated the customary three separate small scenarios all worth 10 marks based on three separate characters. Candidates should have found the individual questions accessible since each concerned different situations analogous with existing consent case law and certainly well versed in precedent. For Level 5, candidates ought to have included appropriate case illustration in support of application and also to have focused on the Critical Point evident in the scenarios as well as providing an appropriate conclusion. Each scenario required the candidates to consider:

- For (a) that it would be unlikely that a 'defence' of consent would apply to Chris due to the issue of fraud as to his identity/qualification and the fact that at 14, Hope would be seen in law as too young to consent to a tattoo even 'though it was at her own behest.
- For (b) that while there is an expectation in highly competitive professional physical sports like ice hockey, given the speeds travelled on the ice and the very nature of how the game is played, that serious injury is inevitable. However, whether the serious injury caused to

Ian could be consented to within the rules of the game seems unlikely, but possible. Both conclusions, if supported, were rewarded.

- For (c) whether Roger while fooling around with his friend Daryl is able to raise the defence of consent given the severity of the injury he has caused. Case law suggests and modern times support the view that such an injury can be consented to. Again, as in (b) an alternative conclusion, if supported, was rewarded.

Good discussion of the above in relation to the most appropriate exception with thorough application using appropriate cases cited in support would allow a candidate to receive high AO1 and AO2 marks. There are no AO3 marks attached to this question.

The questions attracted many good responses with many candidates being able to demonstrate both thorough knowledge and high level application skills. Scripts marked at the lower end showed much more limited evidence of either. One frequent weakness in candidate answers in (a), (b) and (c) was in the identifying and categorising of potential offences which was not required. In consequence and again creeping in this year and alarmingly so, was candidates suggesting sentence lengths following the unnecessary defining of offences. Having identified appropriate definitions and exceptions in each scenario it was again the level of understanding and the quality of application of the legal principles that was the real discriminator. Also, there was a reduction in the number of candidates who discuss 'alternative' scenarios. Here, in previous series many candidates would say, instead of answering the scenario set: 'but if she/he had done this or that then the answer would be this or that' - in effect creating their own scenario and losing marks as being irrelevant.

Part (a) answers were generally Level 4 or 5 responses. Given that the decision could really only go against Chris and negate any defence candidates were able to explain at least the twin central issues of fraud and the lack of valid consent. Where the differentiation in marks began was how well candidates would explain these specific two points, any other parts of the definition and be able to contextualise their thoughts on the law and scenario. The clear steer here was Hope's age. Being 14 she would be unable to consent in law to the tattoo and a basic understanding of consent driven by cases such as *Burrell v Harmer*, possibly *Gillick*, would have supplied candidates with a secure response. Where valid consent is concerned Hope while clearly wanting a tattoo would be deemed in law unable to have the maturity of mental capacity to truly understand the consequence of the pain, permanence and potential suffering. It is unlikely that modern changing standards would support anything different. For identity, Hope is clearly deceived by Chris as to his lack of qualification as a tattoo artist, or certainly he doesn't explain that he isn't. Cases such as *Tabassum* and *Richardson* provided precedent to allow candidates to establish their argument here. As far as the nature of the act there was no deception – a tattoo is a tattoo but as far as the quality of the fraud is concerned the misspelling of 'Mother' would be without consent. It was a recurring fact that while most candidates spotted the identity issue, many failed to spot or discuss the quality issue.

In (b) most candidates were able to notice that the crucial point was based around the issue of an on-the-ball/off-the-ball incident and how they operate within specific sports – here professional ice hockey. Key to this question was a switch from maturity and valid consent (although those candidates following the recommended formulaic response discussed, dismissed and were rewarded) to true consent and the exception of sporting injuries and consent. For true consent many candidates explained that Ian would, as a professional, clearly understand the physical nature, passion and consequent injury playing at such a level. Most candidates would recognise that receiving a broken nose and losing a tooth in such a manner would be an off-the-ball incident. Talking through cases like *Ciccarelli* (rarely), *Barnes* and *Billinghamurst* allowed candidates with or without specific knowledge of the rules of ice hockey to come to a definite conclusion.

There were mixed answers to (c) which was surprising given the well versed nature of the common law when it comes to horseplay. Cases like *Jones* and *Aitkin* may seem contradictory decisions when compared with cases like *Brown* and *Emmett*. Why should violence in one fashion be allowed but disallowed in another? Nevertheless, many candidates saw darts as a sport and repeated their answer to (b); while this secured some marks it would miss others and crucially some, but not all, of the Critical Point. The general thrust of those candidates achieving high marks were to look at the horseplay as stupid, regrettable but in general here accidental. They would discuss valid consent since the age would be important, perhaps, and discuss that as Daryl understood the consequences and pain he nevertheless agreed to continue on with the tomfoolery. Many candidates refrained from discussing valid or true consent and as a result made it harder on them to achieve the higher Band marks.

G155 Law of Contract

General Comments:

Although the quality of scripts was generally high and candidates have a good understanding of the principles and techniques required in this paper there are still a few common errors which are worth highlighting:

- Candidates should avoid citing cases without any supporting factual detail. A lengthy description of the facts is not required but a case in name only receives little credit.
- Cases are not required in section C answers and do not receive credit
- In section B answers candidates are advised not to take the approach of writing a lengthy AO1 factual essay on the topic first before attempting any application. This approach makes it harder to discuss each issue in fine detail and identify distinguishing facts in the scenario compared to key cases.

Comments on Individual Questions:

Question No.

Q1 – LEGAL INTENTION

Candidates were generally very well prepared for this question and able to cite a large amount of case law to illustrate both the domestic and commercial presumptions and situations where it will be rebutted.

In most scripts there was a good balance between AO1 content and AO2 comment. In better scripts the AO2 comments were linked effectively to both the topic judicial discretion as well as the specific case being discussed. Some candidates made very effective use of cases which looked at legal intention from a broader perspective such as *Kleinwort Benson v Malaysia Mining and Radmacher v Granatino*.

Q2 – INNOMINATE TERMS

Better answers to this question were able to explain the use of innominate terms and the situations where pre-classification as a condition is still used. There were some excellent answers which discussed the balance between certainty and fairness brought about by the development of 'wait and see' innominate terms and developed their answers with reference to specific cases. Less effective answers discussed individual cases without putting them into the perspective of the topic as a whole. An example of this is discussing the term in *Schuler v Wickman* without identifying that it was defined by the parties as a condition, this takes away the whole point of the case.

Q3 – ECONOMIC DURESS

The most effective answers to this question had a very clear structure, referencing the different components to a claim and discussing each one in its own right with evaluation always going back to the concept of clarity for businesses. There were some very effective answers which analysed a wide range of case law and made very effective links between cases to identify consistent themes or conflicting reasoning. There were also some very strong answers which questioned whether we would be better off with a broad principle of acting fairly rather than the piecemeal approach which has been developed by the courts. Less effective answers were either unclear on the outcome of individual cases, for example *CTN Cash and Carry v Gallagher* which was unclear in several answers, or far too general in their AO2 comment without relating individual decisions to the concept of clarity for businesses.

Q4 – CONSIDERATION

This question raised several areas of the topic and the most effective answers dealt with them individually in a structured and detailed way. In several of the legal issues, such as past consideration in the first part of the scenario, candidates were able to explain the law and apply first the main principle and then the exceptions to the main rule. Less effective answers jumped straight to the answer, and most closely linked case, without a full examination of the issue.

Many candidates identified the issue of estoppel and better answers were able to confidently apply both the rule and the limitations to the rule with supporting cases.

In a significant minority of answers there was confusion between pre-existing contractual duty (*Stilk v Myrick*) and pre-existing public duty (*Gladbrook v Glamorgan*). Candidates should aim to approach the exam with a test or aid memoire to avoid confusing the two areas.

Many candidates also confused the issue of an obligation owed to a third party being consideration for a new contract in the final part of the problem. Most answers incorrectly identified this as an issue of privity.

Q5 – MISREPRESENTATION

There were some very effective answers which analysed the issues in this question in good detail, particularly focussing on the most relevant issue in each part of the scenario. Less effective answers took a scattergun approach and discussed the whole topic of misrepresentation in each part. Many answers failed to clearly distinguish between negligent misstatement and statutory misrepresentation, labelling them both as negligent misrepresentation. In some less effective answers candidates also confused the remedies between the two kinds. In the more effective answers candidates displayed very detailed knowledge of the Misrepresentation Act and also the remedies for fraudulent and innocent misrepresentation.

There were few confident answers regarding the issue of silence and insurance in the final part of the scenario. Not many candidates were able to discuss the Consumer Insurance (Disclosure and Representations) Act 2012 which was essential to a full and detailed answer.

Q6 – MISTAKE

Many candidates found it difficult to distinguish between the different kinds of mistake in answering this question, in particular confusing unilateral and mutual mistake. There were some confident and detailed answers to the second part of the scenario on mutual mistake but less effective answers wasted a lot of time discussing cases on unilateral mistake which were not relevant and could not be credited. The final part of the scenario required a discussion of common mistake as to quality, there is a significant amount of case law that could be discussed on this issue, including the way it has been dealt with in equity, but there were very few answers that tackled this in a really confident way.

Q7 – OFFER AND ACCEPTANCE

This question dealt with the area of offer and acceptance that would have been familiar to most candidates taking this exam, particularly methods of communication, however many candidates failed to identify and discuss the fine details of each question or accurately state the most relevant point of law. An example of an area that was lacking in detail in many answers was statement C which dealt with acceptance by instant means. Many candidates incorrectly stated that the postal rule applied, there were also some slightly better candidates who identified the issue of instant communication but failed to acknowledge the principle of sound business practice. In the last statement there were too few candidates who applied the principles of an offer ceasing through lapse of time to the specific facts of the scenario – that in a building contract the parties would have a sense of urgency to move ahead with the work and that this would inform the time at which the offer lapsed.

Q8 – PRIVACY

There were some very good answers to this question which accurately identified the relevant legal issue for each statement, however a large number of answers approached the question in an overly general way and missed the cues in each statement. The first statement raised an issue of collateral contracts and this was flagged up by a sales person making a claim about a product and a householder instructing a builder to purchase and use that product. Too many candidates missed the similarities to the *Shanklin Pier* case and addressed the question as a basic issue of lack of privacy. Statements C and D required knowledge of the Contract (Rights of Third Parties) Act 1999, particularly in statement D about the ability of the contracting parties to change a contract and remove a third party's rights, however in both statements there were few answers displaying a confident understanding of the act.

G156 Special Study Law of Contract

General Comments:

Candidates coped very well with this Special Study paper and on the whole they were successful. There was a wide range of impressive responses and most candidates answered all the questions. Candidates demonstrated an encouraging ability to state fact and engage in extensive assessment and application of law. Candidates should be commended for their ability to demonstrate knowledge of a wide range of relevant authorities. Candidates were well prepared for the examination and those who fared best were those who responded fully to all the questions. There was evidence of a great deal of thought being given as to whether the rules on frustration provide justice. This was demonstrated by the wide range of assessment points. Asking candidates to assess not just whether the doctrine of frustration provides justice but also the consequences of frustration proved challenging. This proved to be an effective discriminator between candidates. The pre-release materials were frequently referred to in responses. Candidates used these for citing cases, case facts and assessment purposes.

Comments on Individual Questions:

Question No. 1

This question was in general answered well. Candidates were prepared in terms of knowledge of *Davis Contracts v Fareham* and its significance within the doctrine. Many candidates demonstrated a good understanding of the requirements and technique required for high marks. Most candidates picked up the critical points of *Davis Contracts v Fareham*. It is worth bearing in mind that this question is a case review and therefore there was no credit given for setting out the historical development and general aspects of the doctrine unless it was utilised effectively. Higher level marks were achieved through, for example, developed analysis of the expectation of the courts that parties in such contracts will take advantage of contractual terms to protect themselves and the added importance of such terms in times of economic hardship. Whilst there was some credit for the issue of 'bad bargain' some candidates addressed just this issue in depth and little else. The source materials were used effectively and links to appropriate cases provided. Some responses cited several cases, explaining the facts of the case and how significant that case was within the doctrine with very little, if any, linking to *Davis Contracts v Fareham*. Candidates and Centres must acknowledge that there are only three marks available for a linked case therefore a maximum of three required. One case, well linked, will achieve maximum linked case marks.

Question No. 2

For AO1 the vast majority of candidates scored Level 3 or above. Level 5 responses for AO1 were not uncommon. Most responses demonstrated a good understanding of frustration particularly when frustration applies. Candidates were weaker at teasing out reasons for not applying frustration. Overall the demonstration of knowledge and understanding was very pleasing. A limiting AO1 factor was the absence of the common law rules on loss and the provisions of the LR(FC)A (Law Reform (Frustrated Contracts) Act). Few responses explained the common rule on the effect of frustration and very few discussed 'loss lies where it falls'. The LR(FC)A was perhaps the weakest element – sometimes the title and date were mentioned but very few detailed and developed explanations of s1(2) and s1(3). The lack of a developed analysis of the LR(FC)A meant that some candidates were capped at the top of Level 3. Candidates have clearly taken on board the requirement of developed cases and were able to provide an excellent range of cases utilising the source material and their own research. There are still occasions where candidates do not use the source materials and/or merely name a case without any further information even when the case facts were in the source materials.

In terms of AO2, the responses were wide ranging and there was a lot of good discussion. This year candidates referred often to the question in their responses. The source materials were used extensively with many quoting discussion points directly from the sources. The responses achieving the higher levels (4 and 5) were able to produce a range of sophisticated discussion/analysis points focussed on the question and quote. It is pleasing to see more and more candidates discussing the assessment issue throughout their responses rather than simply within the conclusion. Lower level responses tended to only partially engage with the question simply stating that a decision was 'just' or 'fair' without giving any reason.

Question No. 3

As with previous years these questions proved to be a discriminator between candidates with very few responses achieving full marks. Those who did well on Q3 tended to do well on the paper as a whole. Those who had included a detailed address of the LR(FC)A in Question 2 achieved the higher marks in Q3. There was some confusion as to how and when to apply s1(2) and s1(3) of the LR(FC)A. Some candidates failed to read the scenarios carefully and therefore were incorrect in some of their assertions and as a result, their conclusions.

Q3(a) was generally answered poorly with few candidates commenting on the question of fundamental difference and possible radical change in circumstance. The majority of candidates addressed the issues of more onerous and bad bargain but failed to fully develop or apply to the given scenario. Whilst many mentioned impossibility it was badly stated with few addressing the possibility of an alternative mode of transport. It was evident that some had not read the scenario carefully simply deciding that the journey by plane was the only way of delivering the script and therefore the contract was frustrated. Consequently, many candidates did not draw an appropriate conclusion or contradicted themselves in their conclusion. The decision that the contract was frustrated triggered, often lengthy, discussion of s1(2) and s1(3) of the LR(FC)A all of which was not credit-worthy

Q3(b) was the most complete and accurately answered of the three. Most candidates identify the critical points including impossibility due to the destruction of the factory. There was quite a lot of marks gained for detailed application of both s1(2) and s1(3) of the LR(FC)A. Some candidates were weaker in applying, for example, concepts of 'lawful expenses', 'discretion', 'benefit', and 'just sum' to the facts. However, when looked at in the round many of the responses were generally clear on the £1500 point and concluded accurately.

Q3(c) responses to this question were mixed. Generally, the critical point was well done with the majority of candidates spotting the subsequent illegality point. However, the overall application was weak on many scripts, with many struggling to get above 5 marks. Most candidates attempted to apply s1(2) and s1(3) of the LR(FC)A with varying degrees of success. Few candidates spotted the possible issues of foreseeability and self-induced frustration. Those who did identify these points argued them very well and this really enhanced their overall response, particularly when they argued that it would not be frustrated if the court found that Vlad had self-induced. As with Q3(a), a limiting factor was the absence of an accurate conclusion.

G157 Law of Torts

General Comments:

A wide range of marks were demonstrated in response to this paper. Candidates appeared to show a preference to answer essay question two on Occupiers' Liability or question three on Nervous Shock, with very few candidates selecting question one on Nuisance and Trespass to the Person. Many candidates choose to answer problem question six on Liability for Animals. Answers to section C showed a preference for question eight over question seven.

In section A candidates cited a wide range of sections and sub-sections of relevant statutory provisions. A large breadth of case law was also demonstrated with less tendency seen than in previous years of candidates putting case names in brackets next to unrelated points. More capable candidates also explained the available defences in relation to question one. There was some evidence of well-developed discussion points that related specifically to the question but generally candidates appeared to struggle with the question focus of comparing the effectiveness of the two torts in question one, discussing the protection of children and professional visitors in question two and the need for reform in question three. Candidates who went beyond making bold general evaluative comments, and really engaged with the question, achieved higher marks for AO2.

In Section B candidates were generally adept at using cases that linked to the scenario, instead of writing every case they knew on the general topic area. In each of the scenarios most of the issues were identified and addressed when applying the law. The more capable candidates also identified relevant defences and arrived at clear and logical conclusions taking these into account. It should be noted that candidates will not achieve credit for explaining the historic development of the law on problem questions and candidates should avoid evaluating the law as it also is not creditworthy in this section.

In Section C candidates are asked to demonstrate legal reasoning skills to come to a logical conclusion. They can do this in a bullet point format and should aim to make five points with the final one being a conclusion. Statutory or case citation is not required. Similarly, to previous years the lack of technique and inability to identify the issue in question was an issue..

Comments on Individual Questions:

Question No. 1

Very few candidates attempted to answer this question and for those who did the AO1 was stronger than the AO2. Candidates generally had a secure knowledge of both torts and could provide case citation to support their points. Stronger candidates also explained the defences that are available for both torts. Weaker answers had limited case citation or just focussed on one of the torts. Even the better answers struggled with the AO2 focus of the question to compare the effectiveness of the two torts. Developed evaluative arguments were exceptionally rare.

Question No. 2

This was a popular question and the level of statute and case knowledge was generally good in many candidates. Candidates successfully blended their knowledge of statute and case law together. It was encouraging to see clear understanding of the 1984 Act, although knowledge of this Act was weaker than candidates understanding of the 1957 Act. In particular many candidates failed to identify the provisions under section 1(3) of the Act and had limited case

citation. Some candidates missed the 1984 Act completely. Many candidates also wasted considerable time writing about independent contractors when this was not a focus of the question. Again, AO2 presented a challenge to many of the candidates who instead of addressing the question prompt made general undeveloped comments on whether the law was fair or harsh.

Question No. 3

This was the most popular of the section A questions. Many candidates showed that they had thoroughly prepared to answer a question on nervous shock by giving extended detailed definitions, secure case knowledge and a clear understanding of how the law has developed. As with question two the AO2 focus was found challenging by all but the most able candidates, with again many students commenting why the law was fair or harsh. The more capable candidates showed knowledge of the Law Commission's proposals and were able to make developed discussions about the problems with the current law, suggestions for reform and comment on these reform proposals.

Question No. 4

This question appeared to be challenging for candidates. Some candidates wasted time explaining the development of the law or explaining law that did not relate to the scenario. Candidates seemed to particularly struggle with the causation element of the question, with some candidates omitting to mention it at all. Application of the law was variable with some candidates taking a very haphazard approach to applying the relevant duty, breach and damage rules. Stronger candidates provided a wide range of relevant cases and identified all the issues including that of contributory negligence from Frank not being attached to the boat, and considering from differing perspectives whether Dr Sugar's actions were a *novus actus interveniens*.

Question No. 5

Students who attempted this question were clearly prepared for the topic. Again, many students wasted time on the development of the law from *Spartan Steel* and *Derry v Peek* onwards. Candidates again used cases that were not relevant to the scenario; for example, explaining *White v Jones* and *Spring v Guardian Assurance*. Application of the law was often very anecdotal and lacking in clear application of the Hedley Byrne principles. Only the most able candidates identified that Rakesh did not directly instruct Peter and that as such Peter had assumed responsibility for the advice. More capable candidates were aware of the modifications to *Hedley Byrne* in *Caparo* and *James McNaughten* and applied these confidently, which was very encouraging.

Question No. 6

This was a very popular question that was generally answered to a high standard. The stronger candidates demonstrated secure knowledge and application of keepers, dangerous and non-dangerous animals as well as potential defences. Many candidates scored exceptionally well on both the AO1 and AO2 elements of the question, although many candidates cited *Mirvahedy* as a dangerous animals' case and did not explain, or apply, *Clark v Bowl*. Some candidates became confused on the section numbers and did not apply all aspects of section 2(2) thoroughly. Candidates again did not effectively utilise their time by explaining the law relating to trespassing livestock and guard dogs.

Question No. 7

Candidates of all abilities struggled with this question. In relation to statement A many candidates did not identify that firstly there had been no escape and secondly that the tort does not cover personal injury. In relation to statement B candidates did not identify that the damage has to be foreseeable. Most candidates identified that there had been an Act of a Stranger in statement C, but many went on to discuss whether Gareth was contributory negligent rather than focusing on the requirements of this defence. Most candidates concluded correctly in relation to statement D but struggled with their reasoning to come to this conclusion.

Question No. 8

Again, candidates of all abilities struggled with this question; in particular statement D. Statement A was answered most successfully with most candidates identifying that the issue in question was whether or not Susan was an employee. Candidates also mostly identified that whether or not Susan was acting in the course of her employment was at issue in statement B. In relation to statement C many candidates omitted to mention the close connection test or became confused by discussing whether Kool Kolours would be criminally liable under vicarious liability. In response to statement D many candidates missed the focus of the question and instead choose to respond to this by stating that the employers would be sued rather than Susan as she would be less able to pay.

G158 Law of Torts Special Study

General Comments:

The theme this year (trespass to the person) has been the subject of a previous special study paper. Therefore, the sources were intended to place more of an emphasis on civil liberties rather than following previous more general themes. This approach was vindicated by the standard of candidate responses which were very good.

This area of law is heavily dominated by common law despite the contribution of statutory intervention such as the Protection from Harassment Acts. Law in this area has continued to be developed by the judiciary through case law. In particular, false imprisonment has seen significant change in an apparent response to the protection of fundamental human rights.

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.’

Notable improvements and areas of good practice:

- There were fewer spoilt and minimal scripts (where not all three questions were attempted)
- There was plenty of evidence of wider reading (outside the sources) and detailed, up-to-date knowledge of case law
- There was detailed and informed use of the sources from most candidates
- Very few candidates lost marks through a failure to make appropriate use of the sources.

Areas for further development:

- Students are still over-preparing for questions 1 and 2 to the cost of question 3 (see below).
- Unnecessarily long and clearly pre-prepared answers to both questions 1 and 2 (but more especially question 2) are giving candidates false confidence and militate against both the spirit and the mark scheme expectations.
- A ‘shotgun’ approach to question 2 with no discerning choice of what to include and what to omit was a notable problem this session.
- Candidates continue to struggle with timings – the marks available (16, 34 and 30) do not inform the time spent on each question which has the impact of wasting time on unnecessary detail on questions that don’t need it and under-performing on other questions which would benefit from more thought and attention.

Comments on Individual Questions:

Question 1 – the case digest – *Murray v MOD*

As in previous sessions and alluded to above, many candidates are spending too long on this question to the detriment of their performance elsewhere on the paper. The skills pointer and previous papers as well as these reports make it clear what is required. The space available in the answer booklet is not an indication of the expectation for any of the questions. Efficient candidates are gaining full marks with little more than a side to a side-and-a-half.

The question was about *Murray* and its contribution to the development of the law on false imprisonment. The standard this year was very good with most candidates scoring in double figures. The central point of the case was the affirmation of the principle set out in *Meering* and this was clearly understood.

Since this question is purely AO2 it was pleasing to see some really thoughtful analysis reflecting on the wider implications of the judgment to the protection of individual liberty and its restraining effect on state authorities. Some responses focused too heavily on the ‘mechanics’ of the development from *Herring* to *Murray* including trial and appeal judgments; where this was done well it was credited but candidates should be encouraged to engage with the more critical aspects of the case such as its wider socio-economic, civil liberty or public policy implications.

Question 2 – the essay question – key words ‘discuss the **development** of the tort of trespass to the person to make it an important weapon in safeguarding the **freedom of the individual**’

Thus the question had two elements to deal with. The AO1 aspect of the essay called for the selection of those cases which would enable the candidate to tackle these two aspects. Some balance between the two issues would be a requirement of a good focus on the quote required for level 5. Very few candidates managed this with any great skill. Those who scored highly tended to do so through exhaustive responses which hit the appropriate case law by co-incident. Some candidates just gave their pre-prepared stock trespass to the person essays. Such responses were unlikely to score outside level 3. Amongst the best responses there was evidence of a nuanced appreciation of both older and more recent case law, wider reading and research out with the sources and a consistent focus on the quote.

The AO2 theme was broad enough to allow the selection of the most appropriate case law to deal with the quote – of which there was plenty. Some candidates focused on one element only (usually ‘freedom’) and were unable to access level 5. Some candidates failed to provide any sort of conclusion or a ‘reasoned’ conclusion and were unable to access levels 3 or 5 respectively. Mechanical repetition of AO2 comments of the ‘so this case shows freedom’ type, were also unlikely to achieve higher scores.

In general centres can improve candidates’ chances of scoring higher marks by encouraging them to:

- practice responding to unseen essay titles (especially the AO2 themes) and ‘think on their feet’ rather than the regurgitation of rote learned, pre-prepared, ‘catch all’, ‘shotgun’ essays
- work on their discursive writing skills
- work on producing ‘reasoned’ conclusions rather than conclusions which are simply a summary of what’s been said or a re-working of the essay title
- make more use of the sources provided in the exam

Question 3 – the mini problem questions

Most candidates scored reasonably well on these problem questions. Some candidates identified the CP and didn't do much else and missed full marks that way and a lot of candidates gave a slavish account of every element of assault, battery or false imprisonment (as appropriate) but failed to deal with the CP at all or in sufficient detail to gain full marks. Another common issue was excessive citation of inappropriate cases – remember there are limited AO1 marks on these problem questions. The majority of marks are for correctly 'applying' knowledge of legal principles and rules to a given situation. Credit would only be given for up to three directly relevant cases per question.

In a) most candidates correctly identified the CP as the excessive detention period and dealt with it well. Some candidates saw the 'reasonableness' of Amanda's detention as the CP which is understandable but script evidence supported running with the detention period.

In b) there were two alternative CPs: 1) the Ireland/Burstow words causing an assault or 2) the harassment option under the PHA. Most candidates correctly identified 1) with a significant minority identifying 2).

In c) most candidates (but by no means all) correctly identified sporting consent ('on' or 'off' the ball incidents) as the CP.

As was the case last year, please remind candidates **not** to:

- Write out long scene setting accounts of irrelevant background law – some of which amounted to a mini essay
- Give lengthy (or any) citations of case facts
- Give anecdotal answers – this is a key feature of the approach of less able candidates who will tend to re-count the 'story' back to us in their own words with some 'common sense' advice applied along the way
- Speculate on facts that are **not given** in the scenario
- **Forget to draw a reasoned conclusion** (especially after an otherwise perfect answer!)

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

OCR Customer Contact Centre

Education and Learning

Telephone: 01223 553998

Facsimile: 01223 552627

Email: general.qualifications@ocr.org.uk

www.ocr.org.uk

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Head office
Telephone: 01223 552552
Facsimile: 01223 552553

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