

Reports on the Units

January 2010

H134/H534/R/10J

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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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Advanced GCE Law (H534)

Advanced Subsidiary GCE Law (H134)

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January 2010 series overview

This series saw a requirement for synoptic assessment in all A2 units and a requirement to provide opportunities for stretch and challenge.

As stated in the June 2009 report this was not to be seen as frightening by candidates, rather as, in many ways, recognising what our best candidates were already doing.

Those candidates seeking to achieve marks for synopticism need to be aware of the following requirements taken from section 4.5 of the specification:

“This is achieved by relevant reference to precedent and/or statutory materials including the development of law and comment on justice and morality where appropriate. It is also achieved by relevant use of precedent and/or statutory interpretation in the application of legal reasoning to given factual situations including comment on the justice or morality of the outcomes where appropriate.”

Candidates who adopted a critical approach in essays to eg erratic development of the law, inconsistency between decisions, lack of relevance of a given precedent to modern circumstances, delays in reforming outdated laws, inconsistent application of statutory provisions, decisions made by courts ignoring the rules of precedent, use of spurious distinguishing, and the potential injustice of any of the above, to name but a few of the possibilities, were rewarded for demonstrating high level critical awareness, in the same way that they had previously been on the Special Study papers.

Candidates wishing to demonstrate outstanding performance should always be seeking to achieve the highest levels of analysis, evaluation and legal reasoning. In this respect candidates should always read questions carefully since the specific focus of the AO2 requirement is always to be found in the wording of the question.

It is important to note that the A* grade can only be achieved at aggregation level and not at unit level and will be achieved by candidates who have a grade A (at least 80% of the uniform marks (UMS) for the whole A Level) and who also have 90% of the UMS of the A2 units added together.

An example of how an A* could be achieved is made below. Centres requiring further information can refer to our website or to the *Open letter to secondary schools and colleges about the new A* grade at A level* issued by Ofqual.

- AS level – candidate is awarded 140 UMS at AS aggregation level, which equates to a grade B;
- A2 units – candidates’ A2 units added together (this can include resits) equates to 180 UMS, which is equal to 90% of the UMS of the A2 units added together;
- A level – candidate’s A level UMS (140 + 180) is 320;
- 320 UMS is equal to 80% of the uniform marks for the whole A Level.

This candidate has achieved at least 80% of the uniform marks (UMS) for the whole A Level and also has 90% of the UMS of the A2 units added together and therefore would be awarded an A* at A level.

G151 English Legal System

General Comments

Overall the candidates seemed to perform better than in June 2009 but not as well as January 2009. The candidates overall tended to lack specific knowledge of some areas of the English Legal System but showed more impressive critical and evaluative skills, thus the discriminator for the candidates reaching the higher marks this time was based on a level of detailed knowledge rather than evaluative skills. Many candidates achieved level 4 marks for part (b) questions while often reaching only level 2/3 on part (a) questions.

As usual there were some very popular questions, notably, 4, 5, 6 and 7, and there were some very good answers to question 5. It would seem that centres had been tactical in their approach to the examination, encouraging students to maximise their marks in part (b) of the questions as well as concentrating on specific topics.

A significant minority of students produced scripts which were very difficult to decipher due to poor handwriting, poor expression or structuring the answer poorly. It is disappointing that so many candidates still fail to enter the question numbers on the front of their scripts.

Most candidates made a reasonable attempt at all four questions. Very few candidates seem to have run out of time.

Comments on Individual Questions

Question 1

Candidates from a very few centres attempted this question. Most candidates understood the track system fairly well although knowledge of the monetary limits was often inaccurate. Stronger responses demonstrated had a good knowledge of jurisdiction which enabled them to reach level 4 in part (a). In part (b) advantages and disadvantages of the small claims track were clearly understood and the question elicited some very good answers. The possible imbalance arising from disputes between companies and unrepresented individuals was widely recognised and many candidates gained full marks for this part of the question.

Question 2

This was another very unpopular question with the candidates. There were a few excellent answers which gave detail on all three areas of criminal funding however answers to part (a) often lacked detail with regard to the three areas with little expansion on the merits test. Candidates tended to write most confidently about the Duty Solicitor scheme at the police station, many noting that it is usually administered by telephone. A number of weaker responses could only cite the CAB as a source of publicly funded advice as well as libraries and law centres.

Part (b) often elicited some sound answers reaching level 4 but some candidates confused the funding with that for civil justice.

Question 3

This question was slightly more popular than questions 1 and 2 but other than a few very well prepared candidates who answered part (a) of the question comprehensively most candidates rarely covered all three areas sufficiently. There was awareness of the changes made to the

selection of judges by the JAC and occasionally of the way Supreme Court judges are to be selected. Knowledge of training was good from some centres but non-existent from others. Part (b) of the question was usually answered with more success. There was scope for them to discuss the role of the Lord Chancellor in selecting judges before the changes and make appropriate comparisons. On the whole candidates did focus on the question and due consideration of the possible diversity of the judiciary in the future.

Question 4

A very popular question where the best candidates produced excellent answers covering both the criminal and the civil roles of magistrates in part (a). Weaker responses were able to explain the role in criminal matters but failed to give any information on the civil role, a significant number of candidates confused the role of magistrates in civil matters with that of the small claims court and civil law in general. In part (b) however candidates were able to discuss the advantages of lay magistrates in some depth and many candidates achieved full marks. It was very rare for candidates to lose sight of the question and discuss disadvantages.

Question 5

A very popular question answered by almost all candidates. It was evident that candidates had prepared thoroughly for this question and there were some very detailed answers reaching high level 4 marks for both part (a) and part (b). Many candidates were able to cite all the other powers listed in the mark scheme. Occasionally some very good answers failed to identify that the search was in order to find prohibited articles, stolen goods, weapons etc,

Question 6

Another popular question this was more variable in the quality of the answers. In part (a) the best candidates were able to identify the categories of offence and the respective courts and give a detailed description of the mode of trial process for triable either way offences. Not all the weaker candidates could identify the categories of offences and the respective courts, but most were able to get full marks for this part while failing to get any marks for the mode of trial procedure.

For part (b) a wide range of advantages and disadvantages were presented and candidates tended to gain high marks here mostly at level 3/4

Question 7

Most candidates attempted this question but with more variable success than question 5. In part (a) the best candidates were able to describe several custodial sentences and several requirements that could be attached to a community order. Weaker responses showed a noticeable lack of any specific knowledge here, particularly of custodial sentences. Some candidates confused community sentences for adults with those for young offenders. Often candidates provided detailed information with regard to fines which was not required. For part (b) candidates had the opportunity to suggest aims of sentencing and possible sentences and there were many answers that were well applied to Dimitiri's situation. Most recognised reparation and rehabilitation as appropriate but were able to make the case for other aims and sentences too.

G152 Sources of Law

General Comments

The overall standard of performance was lower than that of the June series. Candidate performance was very disappointing considering the questions on the paper and its similarity to previous papers. One of the major issues with this series was the use of citation. A significant proportion of candidates were unable to support their answers with case law. Those that could did not fully explain the case(s) in the context of the question or used inaccurate citation. The variety of cases used to support answers was very wide, but unfortunately a vast number were irrelevant. The skills needed to gain success in a Source paper also showed a decline. Candidates should be trained in the use of the Source as it can provide a significant amount of support, and is invaluable to those trying to obtain a pass on the paper. As it is a Source paper it would be very difficult for candidates to obtain a grade A without using the Source in their answers. It is, therefore, important that centres teach Source based skills and that - in any question that directs the candidate to "use the Source"- candidates follow these instructions in order to achieve a level four response.

The majority of candidates attempted the statutory interpretation question. The Europe question was attempted by a small number of candidates. It continues to be a disappointing area; many centres do not teach this area due to time constraints and also the complexity of some of the issues involved. From an examining perspective, this area cannot be left out as there are only a small number of topics that can be assessed in this module. Candidates who were prepared for this topic excelled. However, the overall response was poor and the question was attempted by those who appeared to have little substantive knowledge of this topic.

The A02 aspects of the paper were also disappointing. Most candidates could not develop an argument. Most answers were a series of points that lacked any development or a scattergun of points that had some correct elements.

There was an improvement in the number of candidates that attempted the correct number of questions. In previous sessions, too many candidates had attempted both questions, only a very tiny proportion of candidates attempted both in this session.

Centre tip

Use the mark schemes to support teaching. These include a range of appropriate case law and also the appropriate A02 comments that candidates can develop.

Comments on Individual Questions

Question 1 – European Union

A very small number attempted this question. It was the lowest uptake in this area in my time as the Principal Examiner. Although there were some outstanding answers, the majority of answers were very poor. The questions were all similar to what had been assessed in the past on a variety of papers and given their accessibility it was hoped that the number and quality of responses would have been plentiful.

- (a) The responses in this area were mixed. A number of responses confused the question with directives or a more general answer on the European Court of Justice. Candidates tended to rely on the Source and only a small number could accurately describe Art. 234 and illustrate answers with appropriate case law. Most candidates relied on the source and could offer little development.

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- (b) This was consistently the best answer on the paper. Candidates had been taught excellently in this area and the majority of candidates achieved at least level three. A significant number of candidates achieved full marks as they could identify the central point of the question and expand on their answers by linking them to the concept of the 'arm of the state' and then to HDE or VDE or other relevant points.
- (ci) The majority of candidates' gave little more than a vague definition on directives and link to the Source. There was significant overlap with other types of law and particularly the incorrect use of *Re Tachographs*. Given the lack of appropriation citation, many candidates could not get beyond level two.
- (cii) Many candidates could understand that there is an injustice but could not expand on this beyond low level one. Candidates who could clearly appreciate the problems of people not employed by the state and the gaps in the ECJ's decisions to address these problems scored level four. The latter style of answer was in the minority.

Question 2 - Statutory Interpretation

This was by far the most popular question, but the overall standard was significantly down on previous versions of this topic. Given that this paper was very similar to that in 2007 and the questions asked were very straightforward, it was surprising that the average standard was so low.

- (a) Nearly all candidates could give some sort of definition for the literal rule and link to a case or the Source. However, a high proportion of candidates could not expand on cases to illustrate how the literal rule was used. Many candidates could only explain one case or had bald knowledge on a number of cases. A number of candidates could not reach level four because they failed to use the Source. The amount of incorrect citation was worrying. Although candidates may get credit if a case is used to give context to a rule, case law that illustrates other rules or concepts is not creditworthy.
- (b) This area was answered very poorly. Candidates needed to identify the most appropriate aid, explain why and support with another relevant point to gain a level four answer. A lot of candidates identified the wrong aid or used a scattergun approach that went against the direction of the question of "most appropriate". B (ii) also caused problems because candidates discussed the 'Royal Commission' or the Law Reform Committee. This caused a number of candidates to score 0 marks or low level two.
- (ci) A number of candidates could offer little beyond the Source. The problems encountered in question a) were repeated in this question. Poor use of citation, wrong citation, confusion with the purposive approach all added to a disappointing range of responses. Candidates could not develop their answers by looking at more than one case; the paper was designed to allow candidates to be able to use the most obvious cases.
- (cii) The A02 in this area was very confused. Most answers were focused either on the generic problems of statutory interpretation or were undeveloped points, lists, or answers that were more appropriate to the purposive approach. Candidates that did achieve level four did so by developing their points to provide a discussion. Developed points are essential to achieve higher levels of response and centres need to work on this skill if they want to improve answers in this area.

G153 Criminal Law

General Comments

The rationale of this report is to help teachers prepare their candidates more effectively and any comments made should be seen in that light. The format of this paper is now familiar but the specification is broad in ambit and it was clear that some candidates had only a limited number of topics at their disposal – not all of which appeared on the paper. This resulted in an uneven performance in some scripts and for optimum chances of success those sitting this examination in January need to have covered all of the specification, gained an overview of the material and its significance and be able to relate the different elements successfully if they are to be suitably prepared - a difficult task to achieve in a relatively short number of weeks. Some candidates had covered a wide range of material but others had clearly focused on specific topics, an inevitably risky strategy, and the wisdom of January entry for this unit is one to be considered carefully by centres.

It is also worth noting that the law is developed by legislation and case law and knowledge and use of these sources is crucial to access the higher mark bands. Examples to illustrate how the law works are acceptable, and can reinforce a point but knowledge of the law, and the principles which underpin it, are crucial to success. This is of particular relevance with the introduction of the A* and the requirements of stretch and challenge mean that candidates must be knowledgeable about the law, understand its principles, be able to apply those principles cogently and be able to analyse the law in a coherent and synoptic context.

With a few exceptions, where the scripts evidence suggested very selective or minimal revision, candidates were able to complete the paper but time allocation was not always well handled, usually leading to insufficient time being available for Section C. As a consequence responses were often very brief and lacking in the considered application needed to access the higher mark bands. Although most candidates follow the traditional format of Section A, followed by B and C a growing number now begin with Sections B or C and this can be a good strategy, especially if problem solving skills are strengths of the candidate concerned. It also encourages precision in Section A and avoids a tendency to overrun on what is likely to be the question for which the candidate can best prepare beforehand. Centres are advised to counsel candidates about the need to plan their time carefully so as to do themselves justice in each area of assessment.

Section A questions were differentiated in terms of the specific level of knowledge and relevant citation alongside the sophistication of comment. It was encouraging to see some candidates referring back to the question as a method of making relevant the cases they had cited but to achieve the very highest mark band comment also needs to be overarching in terms of the area of law at issue and the general principles which underpin it as well as wider policy constraints and influences. It is also important to remember to deal with the question which is actually posed, rather than relying on a prepared answer which may well have adopted a different slant on a particular topic.

Section B differentiation was evidenced by the detail used to support identification and application of issues with an increased level of knowledge directly linked to the authority with which legal propositions were expounded and deduced. Centres should note that the mere naming of a case is insufficient and candidates need to demonstrate a degree of understanding of the case and its context to be rewarded. Fewer cases explained and used accurately will achieve a great deal more than a list of case names with no other amplification. Questions 4 and 5 contained statute law and it was disappointing that many candidates did not have at their disposal accurate definitions as a starting point for any demonstration of their knowledge. The rubric for these questions is clear in an effort to avoid discussion of unnecessary issues and candidates are urged to read these instructions carefully.

Section C differentiation was founded on the application of legal principle and legal reasoning in response to four distinct statements. Candidates are advised to write in direct response to each of the four statements, and not produce a long and general piece of continuous prose in which some application is contained, as the essence of this type of assessment is a focused response to a particular proposition. Candidates are rewarded for reaching a conclusion based on an understanding of legal principles evidenced in a logically deductive manner. The marks available are awarded for application skills rather than regurgitation of knowledge and factual discourse on the elements of law relevant to any given proposition. Citation is not necessary and indeed it can be a distraction as it tends to replace a display of the reasoning skills necessary to gain high marks. A level 5 response requires a candidate to reach a conclusion on the proposition to which they are responding.

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

Comments on Individual Questions

Question 1 – Mens Rea

This essay question invited candidates to discuss key issues in relation to both intention and recklessness. The cases on intention tended to be better known but although many could recite the facts of at least Moloney, Hancock and Shankland, Nedrick and Woollin there was considerably less certainty as to the tests these cases had developed and their significance. Section 8 of the Criminal Justice Act 1967 was rarely mentioned and Matthews and Alleyne was an uncommon feature in many essays. Case law on recklessness was generally vague with a worrying number of candidates seeming to be unaware of R v G and R and believing Caldwell recklessness to be the current state of the law. Very few were aware of Law Commission proposals on this area of the law. As a consequence AO2 comment was often rather general and there was little in the way of ‘joined-up’ thinking about the wider significance of the law caused by the judicial decisions in the cases discussed. Some candidates thought this to be a question about murder and wrote extensively on actus reus elements whilst some had clearly been hoping for an essay on causation, omissions or strict liability and saw the essay title as only a slight encumbrance in their endeavours.

Question 2 – Appropriation

This question gave candidates a very specific focus on the law of theft, one which passed a good number by and there was a lot of regurgitation of every element of theft without any effort to relate it to appropriation. Most candidates could define theft accurately but such basics as a clear definition of appropriation or even correctly referencing the relevant section of the Theft Act 1968 was lacking in some responses. Some candidates had confident knowledge and dealt with key cases such as Pitham, Morris, Gomez, Lawrence, Atakpu and Hinks accurately and thoughtfully. Some also discussed dishonesty in the context of its importance given the uncertain state of appropriation and some demonstrated the extent of their knowledge by making relevant reference to other property offences such as robbery and burglary. Some scripts contained wide-ranging, articulate and impressively thoughtful comment on the law but for many the AO2 component tended to focus merely on a bald repetition of the statement without any discussion to reveal understanding or development of an argument.

Question 3 – Intoxication

A very standard question about intoxication and it was encouraging to see some pleasing responses. Many candidates had a good grasp of the relevant delineations in the law and were able to support their remarks with citation which often included Lipman, Kingston, Hardie, Gallagher, Sheehan and Moore, Tandy and O'Grady. Perhaps surprisingly not all candidates dealt with Majewski and although some mentioned the Butler Committee any other references to reform proposals were rarely seen. AO2 comment was often simply a repetition of that contained in the question but there was also some thoughtful, sophisticated analysis of the incongruities found in this defence and its relationship with other defences allied with remarks about government policy driving the shape of this area of the law.

Question 4 – Non fatal offences

This was a popular question and whilst there were some pleasing responses it was disappointing to see a marked paucity of reference to relevant statutory provisions. Candidates were able to explain the law but to access the higher mark bands they also needed to show an accurate awareness of its source. Most responses were able to deal with the actus reus elements reasonably successfully, and with accompanying citation, but often omitted any reference to the mens rea requirements which are key to these offences. The situation relating to Colin was much more confidently dealt with than that of Nicola and many candidates did not pick up on the similarity to Richardson and Tabassum in the scenario. In terms of the AO2 component responses were very mixed and ranged from thoughtful and accurate application to some rather fanciful meanderings based on supposition rather than knowledge. It was good to see some consideration of the CPS Charging Standards but for many candidates indecision led to a lack of clarity in application and no real conclusion in terms of liability. Whilst certainty is not always possible, covering a range of options and advancing reasons why one particular course may be preferable is a positive engagement, whereas making wide ranging and vague remarks in the hope that something will be right cannot be rewarded to the same extent.

Question 5 – Murder and the specific defences

This was the most popular of the Section B questions and there was some confident handling of accurate knowledge which was very pleasing to see. However, too many candidates spent a long time on the elements of murder, with some still believing that the Homicide Act 1957 contains a statutory definition of the offence, at the expense of thorough coverage of the defences. Diminished Responsibility was much less confidently handled and many candidates knew very little about it other than it was to be found in Section 2 of the Homicide Act 1957 and needed medical evidence. Provocation and the type of behaviour needed were generally confidently managed but there was less certainty on the requirement of a sudden and temporally loss of self control. Cases commonly cited were Duffy, Thornton and Aluwahlia but with varying degrees of success in terms of their significance and relatively few spotted the similarity of the scenario to Humphreys. The issue of relevant characteristics was often poorly handled and the significance, or even existence, of Holley seemed to pass many candidates by. In terms of AO2 the key decisions as to liability were not always clearly discussed and some candidates did little more than identify the basic offences. An essential skill is making use of the scenario to show that application is thoughtful and informed - a candidate should aim to show a clear link between the point they are making and the area of the scenario on which they are focusing. Some candidates did find this scenario tricky but there were also some accurate and logical responses which earned high marks.

Question 6 – Manslaughter

This was the least popular of the problem questions but it was gratifying to see a number of excellent answers which dealt confidently with the relevant types of manslaughter, explained and applied the tests accurately and confidently, dealt with issues such as causation in an appropriate fashion and reached sensible conclusions based on the scenario. Sadly, this was not a common approach and many candidates focused on causation to an unnecessary extent and indeed some did not mention the relevant types of manslaughter at all. Some used the term involuntary manslaughter but lacked any detail as to its component parts. Others did not read the instructions carefully and used valuable time to consider liability for murder. Unlawful act, or constructive, manslaughter was marginally better handled but relatively few candidates picked up on the similarity to Mitchell in the scenario and when dealing with gross negligence manslaughter some candidates did not spot the links to Adomako and Jordan. The area best covered in terms of AO1 material was often causation, particularly the thin skull test and there was frequent reference to Blaue. A small number of candidates dealt extensively with the non fatal assaults which precipitated the chain of events leading to death and did so with such confidence that it was a surprise they had not tackled question 4 instead. Manslaughter problem questions require good AO2 skills of identification and logical application and when confidently displayed led to candidates accessing the higher mark bands.

Question 7 – Attempt, Burglary and Robbery

This was a popular question and there were some demonstrations of a high level of knowledge and application skills. A number of candidates focused on robbery in Statement A and those that did deal with attempt were often less than confident in its application, despite the similarity to Campbell. Statement B was generally well done although some candidates spent over long discussing whether Elsa was in fact a trespasser. In Statement C many, but not all, candidates recognised the use of force but did not pick up on the fact that there was no completed theft and thus no robbery. In Statement D only a few candidates recognised that criminal damage is not covered by Section 9(1)(b) Theft Act 1968.

Question 8 – Strict liability

This question attracted a pleasing number of responses and many candidates had a good grasp of the basic material and ideas. In Statement A many candidates thought that Simon could be liable even though the scenario was closely linked to the principles enunciated in Shah and Shah. In Statement B there was plenty of good application although some candidates thought that Simon would be liable despite a situation closely allied to that of *Alphacell v Woodward*. Statement C caused the most uncertainty; many candidates failed to spot the link to the decision in *Sweet v Parsley* but those who did so were able to argue cogently to a rational conclusion. In Statement D most candidates were able to recognise the link to *Callow v Tillstone* but were less confident in their application of its principles.

G154 Criminal Law special study

General Comments

This was the first sitting of the Special Study Paper under the new themes: non-fatal offences and consent (criminal law); judicial and statutory control of exclusion clauses (law of contract); and occupiers' liability to lawful visitors and non-visitors (law of torts). The new themes generally proved accessible to candidates. However, considering the narrowness of focus of the papers, the reduced number of cases from the source materials from which question 1 can be taken, the extent of available AO2 in the sources for question 2, the availability of definitions in source 1 in each option for question 3 candidates might have generally been expected to have answered with more clarity and more real confidence than was in fact shown.

Each of the papers produced the customary wide range of responses and there were some excellent scripts, with some maximum marks on individual questions but with a much lower number of high level scripts than has been the case in recent sittings of the papers. Possibly this is not surprising considering the familiarity of the old themes. However, while the necessary skills were well in evidence, the failure to achieve high level marks appeared more to do with using prepared responses and ignoring the rubric in the questions than anything connected to the new themes.

Candidate' use of the source materials was also much more variable than has recently been the case. Numerous candidates did access the materials on this occasion but often less effectively than has been the case previously. A number of candidates failed to benefit from their use of the sources by either citing the source but no line references or by citing line references but without naming the source from which they came. In either case no credit could be given. More disturbing was the number of scripts with references to irrelevant or inappropriate elements of the sources. Weaker scripts also tended to show some lack of subject knowledge or real understanding which is very worrying considering the extent of the support in the source materials and also since all of the themes should be learnt effectively for responses on the various option papers. However, there were inevitably also some very appropriate references to and use of the sources and this enhanced the answers of the best candidates quite significantly.

Scripts in general demonstrated high levels of subject knowledge with many candidates going well beyond the information available in the sources. Skills levels were possibly not overall as high as in recent times. There were examples of this evident in every question.

One worrying feature in contrast to recent sittings, in which candidates have written very confidently and at length on question 2, is a return to only brief answers to question 2 at the same time as there is a return to indiscriminate essay style answers to question 1. It is poor exam skill to spend disproportionate amount time on question 1 at the expense of question 2 which carries with it more than twice the marks.

Each of the options produced a wide range of responses, and it was pleasing to see that there were few really weak scripts. There were numerous maximum marks on individual questions and some well above the A threshold overall. There was some very effective use of the source materials. However, application questions, while producing many maximum marks for individual parts, were not always as confidently handled as usual.

Communication was generally effective although spelling, punctuation and grammatical aberrations continue to worsen. Time management was not a problem for most candidates with the majority of candidates completing all three questions.

Comments on Individual Questions

Question 1

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

With only AO2 marks available for this question in order to achieve high marks candidates should have identified one of the two critical points arising from the judgment, either that consensual activity between husband and wife in the privacy of the marital home is not a proper matter for criminal prosecution and is not in the public interest, or that the practice in question was no more dangerous than other activities which are considered lawful. With either of these clearly explained together with two other critical points discussed in depth, as well as a clear emphasis on development of the law by use of a linked case, and significantly by comment on the fairness of the development of the case (as required by the rubric), candidates could have achieved level 5.

The question produced a range of responses and there were indeed some excellent responses showing full understanding of the skills requirement of the question and thereby gaining maximum or near maximum marks. Candidates but on the whole was well done and there were indeed numerous excellent answers. Candidates achieving middle ranking marks tended to lose out on high marks by failing to address the issue of fairness or by lack of clarity of points made. Weaker answers tended to write essay style answers with indiscriminate treatment of the case in question. Often these amounted to an essay style question on *Brown* or on the defence of consent in general without effective reference to *Wilson*.

Question 2

Question 2 is the focus for discussion of the substantive law theme on the paper, with the best discussions obviously commenting also in the context of the overarching theme (role of judges, use of precedent and the development of law). The question here was on the judicial development of the three offences in the Offences Against the Person Act 1861, s18, s20 and s47. The quote from Jefferson suggests that the offences are 'confused and uncertain in relation to each other', and 'are incoherent and fail to represent a hierarchy of seriousness', so there was a very clear AO2 focus to the question. Sources 1, 3, 4 and 6 all contain useful information as well as much comment that is useful in answering the question, apart from source 5 from which the quote was taken. The area is a controversial one for which there have been calls for and actual suggestions of reform and so there would have been ample opportunity for high level discussion in the context of the overarching theme sufficient to secure high AO2 marks.

For AO1 candidates could have secured high marks by providing detailed definitions of all three offences and their essential elements, and by illustration through the case law of the issues that have arisen in defining the various elements of the offences. The statutory definitions from the sections were provided in source 1 so candidates should have been able to use these effectively and accurately. There are eight cases in the Special Study Materials so candidates would be expected to consider at least this many and have used cases on all three offences to achieve the level 5 descriptor. Most candidates dealt confidently with AO1. Many candidates achieved level 5. Candidates achieving at a middle level generally did so because of failure to provide accurate definitions of the offences or because use of case law was inaccurate. Weaker scripts tended to provide little or no definitions of the offences or inaccurate definitions. A common failing which did not lose candidates marks but inevitably cost them time that might have been better spent was to engage in a generalised essay on non-fatal offences and therefore beginning with pages of detail on common law assault. This was not asked for in the command and candidates need to read the question so that they can be discriminating in their answers.

In general there was a greater focus on AO2 than AO1. Where this was done thoughtfully, developed and with clear reference to the propositions posed by the quote and in the context of the overarching theme it was well rewarded and there were many high AO2 marks. Many candidates did refer back to the quote repeatedly and again 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. Most candidates were able to provide a detailed account of the problems associated with the 1861 Act offences but often with middle range scripts this appeared to be to a prepared focus on e.g. reform rather than the actual issues in the question. Weaker answers provided some limited comment without development and discussion.

Inevitably in the case of both AO1 and AO2 candidates restricting themselves to a discussion of less than all three offences struggled to achieve level 3. since such answers could not be construed as showing adequate knowledge for AO1 nor considering most of the more obvious points for AO2.

Question 3

The application question incorporated the customary three separate small scenarios all worth 10 marks on three separate characters. Candidates should have found the individual questions very accessible since each concerned different situations analogous with existing case law or in any case which relate to one of the three offences and in some instances the defence of consent also. For Level 5 candidates ought to have included appropriate case illustration in support of application and also to have focused on the critical points evident in the scenarios, for (a) the appropriate offence being battery, or arguably ABH under section 47; for (b) the most likely offence being common assault; and for (c) the most likely offence being either under section 47 or section 20. Good discussion of the above and other points together with appropriate cases cited in support would allow a candidate to receive high AO1 and AO2 marks.

The questions attracted a wide range of responses with many able candidates being able to demonstrate both thorough knowledge and high level application skills whilst weaker scripts showed much more limited evidence of either. The majority of candidates were able to identify appropriate offences in each scenario and to use appropriate citation for each. However, it was the level of understanding and the quality of application of the legal principles that was the real discriminator.

For part (a) answers were generally good with the appropriate offence being identified and at high levels being explained accurately and effectively. The issue of consent was sometimes a discriminator largely based on the depth of answer. Weaker scripts did tend to become muddled on whether there was in fact consent. Weaker scripts often also tended to identify the offence as common assault or section 39 rather than specifying battery and explaining why. Candidates in general coped well with (b) with the stronger scripts providing and fully applying an appropriate definition and dealing with the *Tuberville v Savage* issue confidently and in depth. Weaker scripts again tended towards indiscriminate labelling of the offence with little or no explanation. There were some very good answers to (c) with some detailed observation and application of the principles in *Ireland and Burstow*. Weaker answers tended to be muddled on the offence and on the case law.

G155 Law of Contract

General Comments

There was a very even spread of responses to this paper with no one question dominating and no questions with very few answers. Candidates showed a good awareness of the demands of the 3 different sections of the paper and for the most part structured their answers in a suitable way. There are still a significant number of candidates who include extensive citation to their answers in part C, candidates should keep in mind that all the marks for this section are for AO2 skills, this includes identification of relevant areas and principles of law but candidates gain no extra marks for inclusion of case names or facts. Conversely candidates who gained lower overall marks often did so because of a lack of citation in parts A and B of the paper, citation being an explicit requirement in the assessment grid for AO1 at levels 2 and above.

Comments on Individual Questions

Question 1 – Misrepresentation

This essay question was focussed on the different kinds of misrepresentation and the relationship between the different levels of fault and the remedies available in each case. The strongest answers recognised and addressed this issue directly, focussing well on the different remedies and specifically the measure of damages. In better answers there was also excellent citation to support the explanation of each kind of misrepresentation and good reference to the 1967 Misrepresentation Act. Detailed comments in the better answers focussed on the reversal of the burden of proof in the 1967 Act and also the availability of damages in lieu of rescission under Section 2(2) of that act.

Weaker answers often included a lot of information on other aspects of the topic that was not required for this question, for example a lot of detail on what amounts to a false statement of fact. These answers also lacked clear definitions on the different kinds of misrepresentation. A common fault in answers to this question was the inability to distinguish the measure of damages for each kind of misrepresentation, or even to acknowledge that there is a difference.

Question 2 – Privity

This was a question on the extent to which the reforms to the general rule of privity have avoided injustice, this question was quite broad in scope and most AO1 content could be made relevant to the required discussion. In the better answers there was good citation to support the basic rule of privity and a good range of exceptions to the rule at both common law and statute. Some excellent answers were able to relate the Contract (Rights of Third Parties) Act 1999 to the law that existed before 1999 in order to discuss the extent to which the act removed the injustice and uncertainty that existed up until that time. Better answers also included evaluative comments relating to each of the exceptions and avoidances in order to gain excellent AO2 comments, unfortunately there are still candidates who explain the rule and exceptions very clearly but who include no AO2 content at all and who therefore lose a lot of marks through poor technique and an unbalanced answer. It was disappointing that in many of the weaker answers there was no mention of the 1999 act and some answers even lacked a clear definition of the rule itself.

Question 3 – Undue influence

It was encouraging that many candidates chose to answer this question and most had a good general understanding of the topic, including differentiating between the different classes of undue influence. In better answers there was a good awareness of the developments of the constructive notice cases and good discussion of the *Ettridge* case. Many candidates showed excellent answer technique on this question with an introduction that discussed the nature of undue influence and in some cases included comments on how it differs from duress.

Weaker candidates lacked clarity between the different categories and lacked a clear explanation of presumed undue influence, omitting a discussion of the criteria that there should be a transaction that requires further explanation.

Question 4 – Offer and acceptance

This was a multi part scenario which required candidates to deconstruct the events and analyse them in terms of the legal significance of each stage. As might be expected, weaker answers were able to give a common sense based answer which was poorly supported by legal knowledge and citation. Many candidates were also unaware of the distance selling regulations which were essential knowledge for one of the scenarios in this question.

There were some very good answers however and these included a good range of citation, supporting their answer with clear legal statements and principles before applying their knowledge in a structured way to the question.

Question 5 – Intention to create legal relations

Although this was an unusual question, insofar as there have been few problem questions relating to this legal issue in recent years, candidates identified the subject matter of the question well and for the most part the standard of answers was good. Most were able to support their answers with a good range of case law relating to both domestic and commercial cases and also to make good use of suitable terminology including presumptions and rebuttals. There were also some excellent answers which differentiated between the two domestic cases well.

As well as weaker citation, the answers which gained fewer marks tended to deal less well with the question of rebutting the presumptions, failing to explain the basis for rebuttal in a clear way with effective case illustrations.

Question 6 – Incorporation of terms

This question included several situations where terms might have been included in a contract; candidates had to identify the possible basis for inclusion. This was a demanding but not unpopular question and the standard was comparable with the other questions on the paper. Candidates tended to be more confident on the express terms and the possibility of it being dealt with as an exclusion clause. Stronger responses also dealt well with the possibility of an implied term on the basis of either custom, business efficacy or where they were within the contemplation of the parties. Weaker candidate responses tended to deal with the situation on the basis of common sense but without a background of legal principle supported by citation.

Question 7 – Consideration

This was a straightforward question and most candidates included good legal reasoning to back up their answers on sufficiency of consideration. Candidates should remember to include a clear answer to the question however, some limit themselves to a discussion of the area of law with no clear outcome, this limits the marks attained because there are no marks for AO1 in part C.

Statements C and D required candidates to discuss specific issues, past consideration and legal intention respectively, and to apply them to the scenarios. Most candidates discussed the basic principles of the relevant area of law competently however the better answers were also able to discuss the exceptions to the basic rules, for example exceptions of the rule against past consideration, and discuss the potential for these to apply as well.

Question 8 – Classification of terms and breach of contract

This question required a technical analysis of a number of terms and the consequences if they are broken. The question was done less well than question 7, many candidates having a general grasp of the principles without the detail required to get to the higher levels. Specifically candidates tended to approach issues of classification in a way that predates the *Hong Kong Fir* case, although not required to cite this case candidates should be aware that the basis for identifying a term as a condition was significantly changed after that case.

Statements C and D required candidates to discuss consequences of breach of a particular term, several candidates answered on a common sense approach with no discussion of legal principle and inevitably gained few marks for this approach.

G156 Law of Contract special study

General Comments

This was the first sitting of the Special Study Paper under the new themes: non-fatal offences and consent (criminal law); judicial and statutory control of exclusion clauses (law of contract); and occupiers' liability to lawful visitors and non-visitors (law of torts). The new themes generally proved accessible to candidates. However, considering the narrowness of focus of the papers, the reduced number of cases from the source materials from which question 1 can be taken, the extent of available AO2 in the sources for question 2, the availability of definitions in source 1 in each option for question 3 candidates might have generally been expected to have answered with more clarity and more real confidence than was in fact shown.

Each of the papers produced the customary wide range of responses and there were some excellent scripts, with some maximum marks on individual questions but with a much lower number of high level scripts than has been the case in recent sittings of the papers. Possibly this is not surprising considering the familiarity of the old themes. However, while the necessary skills were well in evidence, the failure to achieve high level marks appeared more to do with using prepared responses and ignoring the rubric in the questions than anything connected to the new themes.

Candidate' use of the source materials was also much more variable than has recently been the case. Numerous candidates did access the materials on this occasion but often less effectively than has been the case previously. A number of candidates failed to benefit from their use of the sources by either citing the source but no line references or by citing line references but without naming the source from which they came. In either case no credit could be given. More disturbing was the number of scripts with references to irrelevant or inappropriate elements of the sources. Weaker scripts also tended to show some lack of subject knowledge or real understanding which is very worrying considering the extent of the support in the source materials and also since all of the themes should be learnt effectively for responses on the various option papers. However, there were inevitably also some very appropriate references to and use of the sources and this enhanced the answers of the best candidates quite significantly.

Scripts in general demonstrated high levels of subject knowledge with many candidates going well beyond the information available in the sources. Skills levels were possibly not overall as high as in recent times. There were examples of this evident in every question.

One worrying feature in contrast to recent sittings, in which candidates have written very confidently and at length on question 2, is a return to only brief answers to question 2 at the same time as there is a return to indiscriminate essay style answers to question 1. It is poor exam skill to spend disproportionate amount time on question 1 at the expense of question 2 which carries with it more than twice the marks.

Each of the options produced a wide range of responses, and it was pleasing to see that there were few really weak scripts. There were numerous maximum marks on individual questions and some well above the A threshold overall. There was some very effective use of the source materials. However, application questions, while producing many maximum marks for individual parts, were not always as confidently handled as usual.

Communication was generally effective although spelling, punctuation and grammatical aberrations continue to worsen. Time management was not a problem for most candidates with the majority of candidates completing all three questions.

Comments on Individual Questions

Question 1

This question on each option calls for an examination of a case from the source materials, in this instance the case of *Photo Productions v Securicor* and the fairness of the development of the law on exclusion clauses made by the case.

With only AO2 marks available for this question in order to achieve high marks candidates should have identified the critical point arising from the judgment, that because of the equal bargaining strength of the parties the fact that the wording of the clause was clear and unambiguous meant that it was sufficient to cover the breach and was valid. With this clearly explained together with two other critical points discussed in depth, as well as a clear emphasis on development of the law by use of a linked case, and significantly by comment on the fairness of the development of the case (as required by the rubric), candidates could have achieved level 5.

The question produced a range of responses and there were indeed some excellent responses showing good awareness of the skills requirement and there were a number of maximum or near maximum marks. A number of candidates focused on the issue of fundamental breach and the effect of the case on the doctrine. These were given full credit but only reached maximum with focus also on the critical point and on the fairness of the decision. Candidates achieving middle ranking marks tended to lose out on high marks by failing to address the issue of fairness or by lack of clarity of points made, or by missing the critical point. Weaker answers tended to write generalised essay style answers on exclusion clauses without real focus on the case or the key points arising out of the case.

Question 2

Question 2 is the focus for discussion of the substantive law theme on the paper, with the best discussions obviously commenting also in the context of the overarching theme (role of judges, use of precedent and the development of law). The question here was on the extent to which the approach taken to the development of judicial controls of exclusion clauses has been restrictive. Clearly this is a very accessible and wide ranging quote with a very obvious and straightforward AO2 emphasis and the scope of the question was fully disclosed in the command, incorporation and interpretation. In this respect the sources 2, 3 and 4 all contain useful information as well as much comment that could be useful in answering the question, besides source 6 from which the quote was taken. The area is one where there has been much judicial development and so there would have been ample opportunity for high level discussion in the context of the overarching theme sufficient to secure high AO2 marks.

For AO1 candidates could have secured high marks by providing a detailed definition of exclusion clauses and also detailed explanations of the process of incorporation and the *contra preferentum* rule as well as other aspects of construction, for example the rule on oral misrepresentations and *Curtis v Chemical Cleaning*, or the approach taken to tickets or to vending machines. There are eight cases in the Special Study Materials so candidates would be expected to consider at least this many and have used cases on both incorporation and interpretation to achieve the level 5 descriptor. Most candidates dealt confidently with AO1 but few achieved level 5 the basic reason being that they failed to consider both incorporation and interpretation as directed by the command. Candidates achieving at a middle level generally did so because of a lack of range, limited explanations/definitions and/or undeveloped case law. Weaker scripts tended to provide little or no definitions or explanation but rather just a listing of cases with some facts.

With such a straightforward and accessible focus, the extent to which the approach of judges to exclusion clauses is restrictive, it was inevitable that there would be some good discussion and there was. The best AO2 also would have been able to move comfortably into a discussion in the context of the overarching theme, since the quote itself concerned development of the law. The best scripts indeed demonstrated some advanced critical awareness and clear focus on the quote in the question, and analysed the case law in the context of the quote. The very best amongst these also had clear focus on the overarching theme, and therefore debated the role of judges in defining the area. Moderate answers lacked depth and assembled comment rather than engaged in a discussion. The weaker scripts lacked comment and were generally narrative. Another factor in determining a low AO2 mark was the failure to discuss both incorporation and interpretation as required by the command.

Inevitably in the case of both AO1 and AO2 candidates restricting themselves to a discussion of only one of incorporation or *contra preferentum* were unable to achieve level 3. since such answers could not be construed as showing adequate knowledge for AO1 nor considering most of the more obvious points for AO2.

Question 3

The application question incorporated the customary three separate small scenarios all worth 10 marks on three separate characters. Candidates should have found the individual questions very accessible since each concerned different situations with a very clear focus on specific sections of the Act. For Level 5 candidates ought to have included appropriate case illustration in support of application and also to have focused on the critical points evident in each of the scenarios, for a) that section 2(2) would apply and that the outcome would therefore depend on whether it was reasonable to use the clause; for b) that either section 6(2) for goods or 7(2) for services would apply; and for c) that section 2(1) would mean that the clause could not be relied upon. Good discussion of the above and other points together with appropriate reference to the sections in support would allow a candidate to receive high AO1 and AO2 marks.

The questions attracted a wide range of responses with many able candidates being able to demonstrate both thorough knowledge and high level application skills whilst weaker scripts showed much more limited evidence of either. The majority of candidates were able to deal in some way with the provisions of the Act, although application of the sections was not always confidently done or accurate.

There were some good part (a) answers with the appropriate section being identified and at high levels being explained accurately and effectively. However, for scripts gaining more moderate or lower level marks part (a) was a clear discriminator with many candidates not spotting the section at all and instead offering more tenuous application of other sections and therefore not really effectively dealing with the issues. Candidates in general coped well with (b) and the best answers, whether following the goods or the service, both of which were credited, providing detailed definition and explanation and reference back to the Sale of Goods Act or Supply of Goods and Services Act. The discriminator for part (b) tended to be in the quality of the application with weaker scripts often applying section 6(2) to a service or section 7(2) to goods with little extra explanation. Unsurprisingly, since the point was so obvious, part (c) was generally well handled with some excellent answers showing full understanding and good application skills. Moderate and weaker answers tended to still accurately identify section 2(1) and the variation in marks was represented by the depth and detail provided.

G157 Law of Tort

General Comments

This was the first sitting of G157 and consequently the cohort of entrants was small. G157 had 40 entrants with 29 candidates sitting the paper.

The vast majority of candidates attempted all three questions and there was little evidence of timing being an issue. The range of available questions to candidates was wide and all, with the exception of the question on Trespass to Land which was attempted by only two candidates, proving equally popular.

Relatively few candidates showed accomplished ability across all three styles of assessment although, those who did, achieved very high marks. Most candidates answered the questions in order with the exception of one centre who may have been guided to answer the Section C question first. Where this was the case, candidates focused on the inclusion of case law which received no credit and which was at the expense of the AO2 comment.

The range of responses to the questions was diverse. There were a number of essay questions which showed an excellent level of knowledge and sophisticated use of case law in supporting both AO1 and AO2 comment. Candidates needed to make overarching comment on the area of law at issue, any underlying issues, proposals for reform and the influence of policy considerations in order to achieve at the higher mark bands. The majority of mid-level candidates tended to dwell on the factual aspects of the question, putting forward a generic discussion on the topic and not sufficiently addressing how the material related to the issues raised by the question posed. Centres should encourage students to use the text of the question to ensure that case law and other observations are focused and relevant.

There were some good problem-solving skills demonstrated in Section B and a number of candidates performed better here than on Section A. This is a reassuring trend as the development of a logical approach to problem solving is a key skill which will enhance not only candidates' personal development in their academic studies but also their future employability. Knowledge of case law was generally good; however, the lack of reference to the relevant sections of the statutory provisions was disappointing. One key area which impacted on the potential available marks was the failure of the candidates to identify all of the individual incidents raised by the scenario and then to apply the law accordingly. Centres may encourage candidates to read the Section B questions very carefully and then to number up each of the incidents before addressing them individually and in turn.

The techniques needed to score high marks on Section C were still not consistently evidenced with only a handful of exceptions. There continues to be a lack of structured logical reasoning through the various stages to reach an informed conclusion in this style of question. This was demonstrated by the variety of approaches across the centres and an ongoing urgency to cite case law, which is not required. Centres should take active steps to discourage this unnecessary inclusion in a Section C answer.

Comments on Individual Questions

Question 1 – Causation & remoteness of damage in negligence

A straightforward question focusing on two key components. The majority of well-prepared candidates were not troubled by the AO1 component although there was a tendency in some cases to focus on the principles of causation rather than remoteness. Weaker responses viewed this question as an explanation of all principles of negligence and here, AO1 was poor as candidates dwelled on duty and breach. Few candidates demonstrated an accomplished knowledge of both principles. Some candidates showed a good awareness of the overarching areas of comment, and some sophisticated points were made by more able candidates both in terms of judicial creativity and policy.

Question 2 – Animals Act 1971

A popular question particularly amongst some centres. Some excellent AO1 comment amongst well-prepared candidates with accurate and comprehensive citation of the statutory provisions and supporting case law. The key concern with some candidates was the inability to put forward AO2 comment which was rooted in the principles and case law. AO2 comment was too general and unsubstantiated even though, the majority of candidates, had already outlined the case law which would facilitate such comment.

Question 3 – Negligent Statement

Some candidates demonstrated a satisfactory knowledge of the relevant principles and case law but this did not tend to extend beyond the basic tests outlined in *Hedley Byrne v Heller*. Few candidates managed to expand upon the three principles with case examples and there was little mention of the tests of knowledge from *James McNaughton Paper Group v Hicks Anderson*. Examples were put forward of where the principle has not been applied neatly, such as the 'solicitor cases' but these were not then capitalised upon in terms of the AO2 comment and influence of policy considerations. Some, stronger candidate responses distinguished between the earlier principles applicable to a claim for negligent misstatement and one for general negligence and there was also accurate explanation of the long held view that such claims were best dealt with by contract law. However, little was made of the floodgates arguments following the decision in *Yianni v Edwin Evans* and the subsequent narrowing of the basis for the test.

Question 4 – Occupier's Liability

This question drew on candidates' knowledge of both the 1957 and 1984 Acts. The lack of accuracy in relation to both the general provisions of the statute and citation of the relevant sections was disappointing. This was in contrast to Question 2. Some good AO1 comments were evidenced in terms of the requirements of the OLA 1957 with comprehensive outlines of both occupiers and visitors. There were clear illustrations of the nature of visitors which were generally supported with relevant case law. Knowledge of the OLA 1984 was less detailed. Candidates were able to outline the nature of the duty but very few went beyond to specify the basis of liability in s.1(3). Knowledge of defences was satisfactory in the majority of cases.

Application of the law to the facts tended to be rushed and unfocused with few candidates really engaging with the necessary logical deduction as to whether or not a claim could be established. Candidates needed to follow this logic through to a well-supported and reasoned conclusion to access the higher mark bands.

Question 5 – Trespass to the person

The most popular of the three questions in Section B and generally very well done by the vast majority of candidates. There was some very good AO1 across all abilities with accurate definitions of assault, battery and false imprisonment supported by illustrative case law. The AO1 responses were generally distinguished by the quality of the explanations and case law across the range of developments in each particular action. AO2 application was also generally very good, drawing well on the earlier case law to provide well-reasoned solutions to the problems posed. The main stumbling block for many candidates was the inability to identify and address all of the incidents with many candidates overlooking the second assault. This impacted on the level of credit which could be awarded.

Question 6 – Trespass to land

This was the least popular question in Section B and was only attempted by two candidates. Definitions of the tort of trespass to land were satisfactory with a good explanation of the relevant case law in support of the various forms. AO1 comment on the potential remedies tended to be weaker.

There was some very good AO2 comment. However, candidates struggled to identify all of the incidents to which the law should be applied. This was required to achieve in the higher mark bands.

Question 7 – Private Nuisance

Remarks concerning this question need to read in conjunction with the general comments at the beginning of this report. There were some encouraging responses, showing good skills of reasoning to a supported conclusion. However, many candidates lacked clarity in their thought processes and did not focus on each statement in turn. Amongst weaker responses, there was a tendency to repetition as they discussed their more prominent observations from the scenario rather than each statement in turn. Statement A - General acknowledgment that the locality is important. There was much confusion in Statement B as the majority of students failed to ascertain that Connie's claim in private nuisance could not be for her personal injury. Statement C - Recognition that planning permission can act as a defence. The majority of candidates managed to distinguish the fact that planning permission would only extend to the building of the extension and not the use of the generator. Statement D was generally very well done with the vast majority of candidates recognising the effect of malice in defeating a claim in nuisance.

Question 8 – Vicarious Liability

This was slightly less popular than Question 7. A key issue here was the repetition amongst weaker candidates in approaching the statements. Statement A - The majority of students were able to recognise that Mockup Factory would have the defence of volenti. However, fewer outlined that Jerry would have to understand the risk of his action and then voluntarily undertake that risk. Statement B - The majority of students recognised that volenti is a complete defence and the impact of that being to remove liability completely. Statement C was inadequately assessed by the majority of candidates. There was good recognition that Jerry was partly responsible for the harm suffered but little to show that a reasonable man would not have done this and the part responsibility of Mockup Factory in not taking steps to stop him. Statement D - A few able and well-prepared candidates were able to contrast this statement with the previous one on volenti. A few were able to go further and to explain that the law was currently unclear as to whether a 1000% reduction may be a possibility.

Candidates need to put forward statements which can clearly be argued to a conclusion although it may be possible to have more than one viable line of reasoning. Knowledge is essential for a candidate to deal successfully with this style of questioning but its de facto exposition is not required as marks are awarded on the basis of clear, logical, legal reasoning thereby replicating the thought processes of a lawyer.

G158 Law of Tort special study

General Comments

This was the first sitting of the Special Study Paper under the new themes: non-fatal offences and consent (criminal law); judicial and statutory control of exclusion clauses (law of contract); and occupiers' liability to lawful visitors and non-visitors (law of torts). The new themes generally proved accessible to candidates. However, considering the narrowness of focus of the papers, the reduced number of cases from the source materials from which question 1 can be taken, the extent of available AO2 in the sources for question 2, the availability of definitions in source 1 in each option for question 3 candidates might have generally been expected to have answered with more clarity and more real confidence than was in fact shown.

Each of the papers produced the customary wide range of responses and there were some excellent scripts, with some maximum marks on individual questions but with a much lower number of high level scripts than has been the case in recent sittings of the papers. Possibly this is not surprising considering the familiarity of the old themes. However, while the necessary skills were well in evidence, the failure to achieve high level marks appeared more to do with using prepared responses and ignoring the rubric in the questions than anything connected to the new themes.

Candidate' use of the source materials was also much more variable than has recently been the case. Numerous candidates did access the materials on this occasion but often less effectively than has been the case previously. A number of candidates failed to benefit from their use of the sources by either citing the source but no line references or by citing line references but without naming the source from which they came. In either case no credit could be given. More disturbing was the number of scripts with references to irrelevant or inappropriate elements of the sources. Weaker scripts also tended to show some lack of subject knowledge or real understanding which is very worrying considering the extent of the support in the source materials and also since all of the themes should be learnt effectively for responses on the various option papers. However, there were inevitably also some very appropriate references to and use of the sources and this enhanced the answers of the best candidates quite significantly.

Scripts in general demonstrated high levels of subject knowledge with many candidates going well beyond the information available in the sources. Skills levels were possibly not overall as high as in recent times. There were examples of this evident in every question.

One worrying feature in contrast to recent sittings, in which candidates have written very confidently and at length on question 2, is a return to only brief answers to question 2 at the same time as there is a return to indiscriminate essay style answers to question 1. It is poor exam skill to spend disproportionate amount time on question 1 at the expense of question 2 which carries with it more than twice the marks.

Each of the options produced a wide range of responses, and it was pleasing to see that there were few really weak scripts. There were numerous maximum marks on individual questions and some well above the A threshold overall. There was some very effective use of the source materials. However, application questions, while producing many maximum marks for individual parts, were not always as confidently handled as usual.

Communication was generally effective although spelling, punctuation and grammatical aberrations continue to worsen. Time management was not a problem for most candidates with the majority of candidates completing all three questions.

Comments on Individual Questions

Question 1

This question on each option calls for an examination of a case from the source materials, in this instance the case of *Tomlinson v Congleton BC* and the fairness of the development to the duty owed by occupiers to trespassers on their premises.

With only AO2 marks available for this question in order to achieve high marks candidates should have identified one of the two critical points arising from the judgment, that no duty was owed in the circumstances either because the risk was not one that the council might reasonably be expected to guard against, or that the claimant was in fact a person of full capacity who had voluntarily engaged in an activity which carried with it inherent risks. With either of these clearly explained together with two other critical points discussed in depth, as well as a clear emphasis on development of the law by use of a linked case, and significantly by comment on the fairness of the development of the case (as required by the rubric), candidates could have achieved level 5.

The question produced a range of responses and there were indeed some excellent responses but only very few that achieved level 5 answers or indeed maximum marks. This was usually due to not addressing the critical points in sufficient depth or not dealing with the fairness of the decision in any considered way. Candidates achieving middle ranking marks tended to lose out on high marks by lack of depth and many wrote more generalised essay style answers so that, even where there was a range of points covered these were not developed sufficiently. Weaker answers tended to write essay style answers where the case itself was only considered as a part of a wider range of cases on trespassers without real focus on the issues arising from the case itself.

Question 2

Question 2 is the focus for discussion of the substantive law theme on the paper, with the best discussions obviously commenting also in the context of the overarching theme (role of judges, use of precedent and the development of law). The question here was on the extent to which the duty of care owed by an occupier to lawful visitors is determined also by a duty on the part of visitors to look after themselves. Clearly this is an accessible quote with a clear indication of the scope of the AO1 in the command and a clear AO2 requirement. In this respect the sources 1, 2, 4 and 6 all contain useful information as well as much comment that could be useful in answering the question, besides source 3 from which the quote was taken. The area is one where, since the statute developed from well established common law principles, there has been much judicial development and thus ample opportunity for high level discussion in the context of the overarching theme sufficient to secure high AO2 marks.

For AO1 candidates could have secured high marks by providing a detailed definition of the duty owed by the occupier to lawful visitors, including the specific duty owed to children, the position on those exercising a trade or calling, and the various ways of avoiding the duty, and by using case law in illustration of the various developments. The statutory definitions from the sections were provided in source 1 so candidates should have been able to use these effectively and accurately. There are eight cases (although only six applying to lawful visitors) in the Special Study Materials so candidates would be expected to consider at least this many and have used cases on all aspects of the duty under the 1957 Act to achieve the level 5 descriptor. There was some reasonably confident AO1 but few candidates achieved level 5 usually because of an absence of any or any accurate and definitions or lack of depth and detail. Moderate scripts did the same and also often relied too heavily on cases on trespassers and the 1984 Act which was clearly outside of the scope of the question. Weaker scripts tended to provide little or no definitions or explanation but rather just a listing of cases with some facts and again usually with indiscriminate reference to trespassers.

The AO2 focus was reasonably straightforward and accessible, the extent to which the duty owed by the occupier is modified by a duty on the part of a visitor also to look after himself. The best AO2 also would have been able to move comfortably into a discussion in the context of the overarching theme, for instance by showing how judges developed the duty owed to children firstly through the allurements principle and then by stating (as in the source from which the quote came) that it is the duty of parents to supervise young children. Obvious reference also could have been made to the treatment of people entering to carry out a trade. The best scripts showed clear focus on the overarching theme, and there were some good discussions on the role of judges in defining the area, identifying for instance that the Act was based on well established common law and leaves a lot of the definitions to common law. Moderate answers lacked depth and tended to produce a range of comment rather than a discussion. Weaker scripts lacked comment and were generally narrative. Where reference to trespassers had relevance and was used in a comparative sense it was rewarded.

Question 3

The application question incorporated the customary three separate small scenarios all worth 10 marks on three separate characters. Candidates should have found the individual questions very accessible since each concerned different situations analogous with existing case law and to specific sections of the Acts. For Level 5 candidates ought to have included appropriate case illustration in support of application and also to have focused on the critical points evident in the scenarios, for a) the either to consider whether ignoring the sign on the door made Liam a trespasser or alternatively the effect of the warning in terms of the occupier avoiding liability to Liam; for b) application of all three parts of the test in section 2(4)(b); and for c) almost any of the points in the mark scheme might be considered critical. Good discussion of the above and other points together with appropriate cases cited in support would allow a candidate to receive high AO1 and AO2 marks.

The questions attracted a wide range of responses with many able candidates being able to demonstrate both thorough knowledge and high level application skills whilst weaker scripts showed much more limited evidence of either. The majority of candidates were able to identify the critical points in each scenario and to use appropriate citation for each. However, it was the ability to apply the legal principles in depth and detail that was the real discriminator between scripts at different mark levels.

For part (a) most candidates identified Liam initially as a lawful visitor but only the very best scripts analysed why this would be the case. Both the effectiveness of the warning sign and the possibility of Liam becoming a trespasser were considered in large numbers. Again it was the quality of the application and the depth of explanation that was at variance between scripts at different levels. Hardly any considered the possibility of contributory negligence. All candidates were able to focus on the independent contractor for part (b) but only the very best answers applied rather than merely stated the three part test from section 2(4)(b) and few reached a reasoned conclusion. There were some very good answers to (c) with almost all candidates correctly explaining why Neil becomes a trespasser, but again section 1(3), while often stated was rarely explained. Virtually all candidates spotted the significance of the suit.

Grade Thresholds

Advanced GCE Law H134 H534
January 2010 Examination Series

Unit Threshold Marks

| Unit | | Maximum Mark | A | B | C | D | E | U |
|------|-----|--------------|----|----|----|----|----|---|
| G151 | Raw | 120 | 94 | 82 | 70 | 59 | 48 | 0 |
| | UMS | 120 | 96 | 84 | 72 | 60 | 48 | 0 |
| G152 | Raw | 60 | 45 | 39 | 34 | 29 | 24 | 0 |
| | UMS | 80 | 64 | 56 | 48 | 40 | 32 | 0 |
| G153 | Raw | 120 | 94 | 80 | 67 | 54 | 41 | 0 |
| | UMS | 120 | 96 | 84 | 72 | 60 | 48 | 0 |
| G154 | Raw | 80 | 63 | 56 | 49 | 43 | 37 | 0 |
| | UMS | 80 | 64 | 56 | 48 | 40 | 32 | 0 |
| G155 | Raw | 120 | 96 | 84 | 72 | 60 | 48 | 0 |
| | UMS | 120 | 96 | 84 | 72 | 60 | 48 | 0 |
| G156 | Raw | 80 | 63 | 55 | 48 | 41 | 34 | 0 |
| | UMS | 80 | 64 | 56 | 48 | 40 | 32 | 0 |
| G157 | Raw | 120 | 94 | 81 | 68 | 56 | 44 | 0 |
| | UMS | 120 | 96 | 84 | 72 | 60 | 48 | 0 |
| G158 | Raw | 80 | 58 | 51 | 45 | 39 | 33 | 0 |
| | UMS | 80 | 64 | 56 | 48 | 40 | 32 | 0 |

Specification Aggregation Results

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

| | Maximum Mark | A | B | C | D | E | U |
|------|--------------|-----|-----|-----|-----|----|---|
| H134 | 200 | 160 | 140 | 120 | 100 | 80 | 0 |

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

| | A | B | C | D | E | U | Total Number of Candidates |
|------|-----|------|------|------|------|-------|----------------------------|
| H134 | 8.2 | 25.0 | 50.3 | 78.8 | 95.8 | 100.0 | 839 |

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

Statistics are correct at the time of publication.

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