

# **Report on the Units**

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**January 2009**

**H134/MS/R/09J**

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

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

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Any enquiries about publications should be addressed to:

OCR Publications  
PO Box 5050  
Annesley  
NOTTINGHAM  
NG15 0DL

Telephone: 0870 770 6622  
Facsimile: 01223 552610  
E-mail: [publications@ocr.org.uk](mailto:publications@ocr.org.uk)

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## Chief Examiner's Report

This was the first sitting of the AS units under the new four unit specification. However, it was the fifth sitting of the legacy units English Legal Systems and Sources of Law.

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

- On English Legal Systems, G151 the majority of candidates were able to answer four questions in contrast with the legacy G141 unit 2008 January cohort. However, there are still question marks over the ability of candidates to assimilate the quantity of specification content towards effective assessment at this point in their course.
- On Sources of Law, G152 a large number of candidates seemed unprepared for answering with any confidence on Law Reform, although this is a topic area clearly indicated in the specification.

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

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

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

The new specification 2010 special study themes are listed below.

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

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

Please contact the OCR Customer Contact Centre if you have any further queries relating to this, [general.qualifications@ocr.org.uk](mailto:general.qualifications@ocr.org.uk) or 01223 553998.

### **G154: Criminal Law Special Study overview**

Theme: Non-fatal offences and defence of consent

#### **Source 1**

Extracts from the Offences Against the Person Act 1861;

- Section 18 Shooting or attempting to shoot, or wounding, with intent to do grievous bodily harm, or to resist apprehension;
- Section 20 Inflicting bodily injury, with or without weapon;
- Section 47 Assault occasioning bodily harm;

Extract from the Criminal Justice Act 1988;

- Section 39 Common Assault.

#### **Source 2**

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

#### **Source 3**

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

#### **Source 4**

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

#### **Source 5**

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

#### **Source 6**

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

### **G156: Law of Contract Special Study overview**

Theme: Judicial and statutory control of exemption clauses

#### **Source 1**

Extracts from the Unfair Contract Terms Act 1977;

- 2 Negligence liability;
- 6 Sale and hire purchase (2) (3);
- 7 Miscellaneous contracts under which goods pass (1) (2) (3);
- 11 The "reasonableness" test (1) (2);
- Schedule 2 "Guidelines" for Application of Reasonableness Test.

#### **Source 2**

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

#### **Source 3**

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

#### **Source 4**

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

**Source 5**

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

**Source 6**

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

**G158: Law of Torts Special Study overview**

Theme: Occupiers' Liability for lawful visitors and trespassers

**Source 1**

Extract from the Occupiers' Liability Act 1957;

- Section 2 (1)(2)(4)(5);

Extract from the Occupiers' Liability Act 1984;

- Section 1.

**Source 2**

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

**Source 3**

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

**Source 4**

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

**Source 5**

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

**Source 6**

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

# **G151 English Legal System**

## **General Comments**

As a new unit, all the candidates entered for G151 were sitting it for the first time. It was a small cohort of candidates from a small selection of centres who appeared to have prepared very well for the paper. The standard overall was higher than in English Legal Systems in summer 2008. Candidates performed at very many different levels but were usually able to access four questions to answer.

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

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

Candidates still do not read the questions and do not use statutes or cases and worryingly many are still using old texts. The use of the most up to date texts is essential in law as the English Legal System is constantly changing and out of date information is just not accurate enough to gain high marks. With the number of books on the market and availability of resources on the internet it is possible to keep relatively up to date. Teachers should be encouraged, if nothing else, to use the mark schemes as a resource.

Candidates invariably performed better on the part b of questions and were able to achieve the higher levels and sometimes full marks even when the answers to the part a of questions lacked precise knowledge and understanding. Better candidates focused on key words like 'discuss' and 'advantage/disadvantage' instead of basic lists. Weaker students spent a great deal of time on these but are not aware of what a developed expanded point is, therefore often making statements rather than comments. Some candidates concentrated on only one point and tended to repeat themselves. It is not possible to get out of level 2 if only one point is discussed.

A substantial number of candidates chose to do the two applied questions often achieving good marks.

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

## **Comments on Individual Questions**

### **SECTION A**

#### **Question 1**

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

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

#### **Question 2**

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

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

#### **Question 3**

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

Part a - The vast majority of candidates were able to identify the four types of Alternative Dispute Resolution (ADR). There was some very good understanding of the difference between the ADR types and some good examples given to illustrate answers, although some candidates tended to be confused over very simple characteristics.

Better candidates described Arbitration well and mentioned the Arbitration Act 1996. Weaker candidates tended to make a reasonable attempt at describing the other three but were very poor on Arbitration. A significant minority of candidates had the mistaken belief that each type of ADR would be tried in order, only going on to the next if the previous one did not work.

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

#### **Question 4**

This question was very popular with variable results.

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

## *Report on the Units taken in January 2009*

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

### **Question 5**

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

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

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

### **SECTION B**

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

### **Question 6**

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

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

### **Question 7:**

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

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

# G152 Sources of Law

## General Comments

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

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

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

Evaluation skills again proved to be a significant challenge. Many candidates still found it difficult to separate AO1 and AO2 and this was particularly problematic with the discussion on the controls of delegated legislation.

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

## Comments on Individual Questions

### Question 1 - Statutory Interpretation

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

- a Most candidates relied on the source for their answer. A significant number of candidates could not define Hansard. A number of candidates thought Hansard was a collection of cases and linked their responses to precedent. Knowledge of pre *Pepper v Hart*, the conditions laid down in *Pepper v Hart* and the cases and issues post *Pepper v Hart* was exceptionally patchy. A number of candidates failed to use the source, which would have offered significant support.
- b These mini problems were reasonably well answered. There are simple technique issues that centres could address to improve candidate performance. Firstly, it is important to justify the use of a rule. A number of candidates stated literal rule guilty, but did not expand by explaining why. It is also important that candidates contrast using other rules (eg "using the literal rule they would be guilty because .... However, using the golden rule the outcome would be different because ..."). By adopting such an approach candidate performance will improve.

## *Report on the Units taken in January 2009*

- ci Most candidates could define the purposive approach and link to a feature, eg used in Europe. From this point many candidates appeared to struggle. Most used literal rule cases to support their answers or decided to generically discuss the literal, golden and mischief rule. Case citation in this area was very disappointing. It is important that candidates illustrate the rules and approaches of statutory interpretation with at least two cases. The cases must demonstrate how the rule or approach was used.
- cii The responses to this part were very disappointing given that this question had been asked before, and the breadth of ways that a candidate could achieve a level four response. It is important that centres encourage candidates to expand on their points. Candidates need to explain the relevance of a point as opposed to providing a list of issues. Candidates could achieve a level four response by developing at least three points. This, however, was beyond most candidates in this area.

### **Question 2 - Law Reform and Delegated Legislation**

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

- a It was evident that most candidates had not prepared for this area. Most candidates could identify that the law commission reviews the law, but could not expand their responses further. Many candidates confused the law commission with a parliamentary control.
- b This was generally answered well. Candidates at level four could clearly identify the central issue, explain why and support their response with appropriate citation. However, a number of candidates were confused by the concept of judicial review and this hampered their response.
- ci This was clearly the most successful part of the question. Nearly all candidates could identify the three types and include some supporting detail. Candidates at level four showed good understanding by having a depth of knowledge on each type. Nearly all candidates achieved a level two answer.
- cii This was a problematic area for a number of candidates. Candidates clearly knew the control on delegated legislation, but could not evaluate them or spent too much time describing them. Candidates who achieved the lowest levels tended to have no knowledge or answered the question using mainly A01. Candidates at the higher level could discuss the controls in detail. In the A02 area, it is important that candidates try to develop their points rather than producing a series of bald points.

# Grade Thresholds

Advanced GCE Law H134  
January 2009 Examination Series

## Unit Threshold Marks

Unit		Maximum Mark	A	B	C	D	E	U
G151	Raw	120	96	86	76	66	56	0
	UMS	120	96	84	72	60	48	0
G152	Raw	60	44	38	33	28	23	0
	UMS	80	64	56	48	40	32	0

## Specification Aggregation Results

First opportunity to aggregate AS will be June 2009.

For a description of how UMS marks are calculated see:

[http://www.ocr.org.uk/learners/ums\\_results.html](http://www.ocr.org.uk/learners/ums_results.html)

Statistics are correct at the time of publication.

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

**OCR Customer Contact Centre**

**14 – 19 Qualifications (General)**

Telephone: 01223 553998

Facsimile: 01223 552627

Email: [general.qualifications@ocr.org.uk](mailto:general.qualifications@ocr.org.uk)

**[www.ocr.org.uk](http://www.ocr.org.uk)**

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Telephone: 01223 552552  
Facsimile: 01223 552553

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