GCE

Law

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

OCR Report to Centres June 2014

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OCR REPORT TO CENTRES

G151 English Legal System

General Comments

Overall, the paper appeared to be accessible with the vast majority of candidates able to complete four full answers. The Section B questions were not as popular with many candidates attempting only the question on sentencing. There was a broad range of responses to all questions on the paper although Question 4 on Judges and Question 7 on Criminal Appeals prompted few answers.
There are still some rubric errors occurring and whilst candidates are often keen to skip straight to the questions, they should be encouraged, as with any assessment task, to read the instructions contained within the assessment material to ensure they know what they have to do before they begin.

Areas demonstrating progress:
- It was clear that almost all candidates were making an effort to apply themselves, with fewer poor scripts and very few where the candidate had not made a substantial effort to answer four questions. It has not been uncommon in the past to see questions not attempted or all four questions answered in little more than four sides of the booklet. Many candidates filled the booklet and many more used additional answer booklets.
- Section A part (a) responses showed improvement in A01 development with many candidates achieving a broad range that accessed level 3 marks. An increasing number of responses were able to produce responses extensive enough to access level 4 marks.
- There was a comprehensive and balanced attempt by candidates to answer the section A part (b) responses, with many candidates managing a range of developed or well developed points with fewer lists or bullet point answers and with many candidates attempting broad answers.
- A greater number of candidates demonstrated clear knowledge of case illustrations.
- There appears to be an improvement responding to the questions with fewer responses failing to get any credit because the candidate had answered a different question to the one asked.
- Section B part (b) responses showed a methodical approach from most candidates identifying and applying many of the issues raised which were relevant to each question.

Areas for improvement:
- It is still evident that some candidates try to spot questions and only revise part of the unit's specification and/or only part of a topic area. This was particularly noticeable in question 5 where some candidates had clearly revised Stop and Search when an answer for Arrest was required. This approach meant that some candidates could only give a partial response to the answer. It is important to revise complete topic areas as questions can include different elements from a topic area. This was evident from answers received for question 5 (b) which asked for a discussion on Police Powers to Stop and Search, but as candidates had hoped for this in part (a), they simply wrote out that answer, with many not discussing it at all.
- In Section A part (b) questions it is important to focus on the question being asked and to develop relevant arguments rather than just making isolated points.
- Although relevant case law was cited by many candidates, they also spent time on narrative, which gains very limited extra credit.
- For question 6 (a) on the aims of sentencing, the majority of candidates were quoting the old aims (Incapacitation, Deterrence etc…). The use of the most up to date information is paramount as the English Legal System is constantly changing and OCR has given their imprimatur to some of the books available. The Internet is also useful to keep up to date. Recent mark schemes are beneficial also as a resource for these topics.

- In Section B part (b) questions it is important to confine the answer to the points raised in the scenario as no credit is given for discussion of issues not raised in the scenario. This was evident from the answers given to question 6 (b) where many candidates addressed unimportant factors used for sentencing, whereas the scenario clearly addressed only four.

Comments on individual questions

Section A

Question 1
This question was one of the most popular on the paper and answered by the majority of candidates.
(a) There were some excellent responses that described all three areas of ADR in some detail. Some candidates were able to give a number of illustrations for the different types.
(b) There were some very good responses with well-developed points directly dealing with the question of arbitration. Some responses tended to allude vaguely to ADR rather than arbitration or very quickly mentioned cost, time and flexibility but did not develop this any further.

Question 2
This was a popular question on the paper.
(a) There were some excellent responses that described the selection and the training of magistrates with many candidates being able to go into the detail of training and the different types. Other responses mixed up the selection of jurors and lay magistrates which gained no credit.
(b) There were some very good responses which developed discussions of the magistracy and the improvements that have been made as a result of MNTI2 and other initiatives. Credit was also given for a discussion of the advantages and disadvantages of lay magistrates. Limited credit was given if those arguments were not related to training.

Question 3
Again, this question was quite popular.
(a) The best responses got the order of training for barristers correct and described alternative routes and gave a range of areas of work undertaken by them. There were some good answers with detailed breadth on the various stages of training. Many answers were able to refer to employed barristers, Alternative Business Structures and Legal Disciplinary Practices. Some responses confused the CPE and the LPC and had no real idea of the order of the training. Some gave out of date responses, referring to the Bar Vocational Course rather than the BPTC. They also tended to confuse the work of solicitors and barristers referring to conveyancing and the writing of wills. Some responses described the training of barristers **and** solicitors which generated only part of the available credit.
(b) There were some excellent responses that focused on the question and developed its arguments very well. These usually concentrated on the loss of the cab-rank rule and a loss of an independent bar/second opinion or reductions in time and cost and the advantage of continuity. Some responses lacked focus, concentrating on how the work they did meant that fusion has already taken place. Students who used that as an argument as to why they do not need to merge received full credit. The majority of candidates seemed to tackle it to an adequate degree and usually gained at least level 2 marks.

Question 4
This was a less popular question. Some responses showed confusion between lay magistrates, inferior judges and superior judges.

(a) This was one of the less popular questions. The better responses addressed the question rather well, producing a good explanation of the qualifications needed, the selection process and the appointment process. Some responses gave a reasonable explanation of the selection process but were unclear as to the recent changes in the required qualifications and missed the appointment process which meant that they struggled to get out of level 2. Some answers were confused and it soon became clear that these candidates were those who were 'reaching' for a fourth question.

(b) The best responses developed a good discussion of the changes to the selection process and gave good illustrations based on merit, gender and ethnicity accompanied by some good statistics. It became clear that some candidates had attempted the overall question because they were confident that they could write a good answer to part (b). There were a significant number of responses in this part that did not answer the question properly and had not devoted time to revision of this topic
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Question 5
This was a particularly popular question answered by the vast majority of candidates. Answers tended to be divided in terms of performance with the majority of answers moving within levels 2 and 3.

(a) This question was answered well by a lower proportion of responses although the necessity test was described in detail quite often and the limitations on the police were usually covered well. No credit was given for a description of stop and search on the street. The best responses cited other powers of arrest and relevant case law; however, many candidates wasted time by giving detailed narrative on the case facts and when one takes into consideration that those cases could include, Bibby, McConville, Taylor, Richardson et al, the narrative was extensive.

(b) There were variable responses to this question. Some were very good and discussed whether or not the powers were excessive, often based on good use of statistics vs limitations on their powers. Other responses came from candidates caught off guard who wrote a detailed essay on stop and search, yet did not refer their answer to the question.

Section B

Opinion on this section appeared to be divided and only one of the questions in this section proved popular with a high proportion of candidates choosing to answer question 6 on sentencing.

Question 6
(a) This question was highly popular but generated mixed responses. The best described the aims of sentencing well and used types of sentences to illustrate their answers and then went on to describe three mitigating factors as was required by the question. Many candidates identified the aims and gave a very basic description of some factors but without illustrations. Some responses confused the names of the aims and missed the factors.

(b) There was a mixed focus on the scenario, with fewer candidates than normal gaining full marks. Some responses went into a great deal of detailed discussion on each issue in the scenario which was much more than was required as a concise answer achieves the same marks. The best responses identified the issues in the scenario and applied the appropriate factors to them. They also suggested two sentences with reasons. Some

responses misread the question, failed to identify the issues and confused the factors with aims although many candidates still managed to get into level 3

Question 7
This was attempted by more students than was anticipated, although generally the responses tended towards level 1/2 rather than level 4.

(a) In the better responses candidates had clearly engaged with the topic and were able to address the question well. Some responses failed to identify the correct appeal courts and described over and again that appeal is possible against sentence or conviction and that this is a right. It was possible to award more marks for the defence as very few were able to deal correctly with prosecution appeals. Few candidates went further to discuss CCRC / Double Jeopardy. Simple points were made about where appeals can be made and for basic reasons. A significant section of students seem to be very confused as to the difference between appeals FROM the Crown Court and appeals TO the Crown Court.

(b) Better responses identified that George could appeal against sentence or conviction either for the new witness or misapplication of law and correctly identified the further right of appeal to the Supreme Court. Some candidates got into level 2/3 by identifying the correct court. Some responses came from candidates who misread the question and believed that challenging the decision meant challenging juries.

G152 Sources of Law

General Comments:

This was the first sitting of what is now, effectively, a linear AS Level. Candidates will not have benefited from only focusing on one exam as was the case following a successful January sitting in previous years. G152 will have competed with G151 for candidates' time and attention when revising and preparing for examinations. This would be compounded by the same scenario in other exam assessed AS Levels taken alongside Law.

The effect is difficult to measure. The year on year standard was different at the lower end of the mark range but correlation is not necessarily causation and the papers are clearly not directly comparable. There was insufficient statistical evidence to suggest that there has been any significant adverse impact and most candidates seemed to acquit themselves no worse or better than in any previous session.

Most candidates preferred the SI question but a significant minority took the precedent question. Performances seemed evenly matched on both papers especially on the part b) questions where candidates did less well than with previous similar questions.

Areas demonstrating progress:
- The AO2 in both cii) questions was more fluent at every level and there were less scripts where the candidate had little or nothing to say in cii) as compared to ci) which has not been uncommon in the past.
- There were very few spoilt scripts or scripts where the candidate had speculatively tried both questions.
- Candidates seemed well prepared in terms of not missing marks for failing to link to the source, do both elements of a two part question or produce well-developed cases.

Areas for improvement:
- Once again a small but not insignificant number of scripts featured very poor handwriting. Centres should be aware that we can only credit what we can read. Examiners will try their best (including the ability on Scoris to zoom into the script to get a closer view) to credit what they can, but, will have to ignore what is illegible. This means that a few candidates may well have performed better than their grade indicates. Identifying these candidates and ensuring appropriate support must be a priority for centres who want to ensure all their students are fulfilling their true potential.
- The part b) questions were answered less well. Two key reasons were a) the failure to read and use the source material which would have given the candidate the correct answer; and b) a scattergun approach of throwing a variety of possible answers at a question whilst hoping to hit the correct one. This latter approach will score zero for 'hedging' as the relevant question clearly asks for 'the most appropriate' (singular) not 'all possibilities' (multiple).

Comments on Individual Questions:

Question 1
1(a) This question was generally answered well. The best performances covered all three forms of precedent well with definitions, explanations and relevant case citation. Candidates might have improved their scores by ensuring they covered all three forms of precedent, making sure they used a case or two in support of their answers and by avoiding simply writing everything they knew about precedent in general instead of focusing on BOP. Irrelevant material about the Practice Statement and Young's exceptions as ways to avoid binding precedent were not

uncommon. Persuasive precedent was well answered. Answers on original precedent were short with very few mentioning reasoning by analogy and binding precedent tended to be the one where candidates gave unnecessarily lengthy accounts of the broader operation of *stare decisis.*

1(b) The application questions were generally answered to a reasonable standard with the exception of bii).

bi) Most candidates were able to get to L3(4) as they could see the operation of the Practice Statement. The main reason for not achieving L4 was the lack of any kind of case, LTS or other additional point. The main reason for not getting further than L2 was a failure to recognise the correct reason – i.e. that the Practice Statement allows them to overrule rather than the very common ' because it's out of date' which may be the motivation but it is not 'how' it is done.

bii) Very few candidates got this question right. This is in spite of the fact that the source had all the information necessary to fully answer the question. It is now well established law that the Court of Appeal is bound by the Supreme Court even where there is a conflicting decision from the ECtHR and the question was included to underscore this important point regarding the rules of precedent. A worryingly large number of candidates simply turned the ECtHR into the ECJ and answered on that basis instead. Had the question been about the ECJ they would all have been correct – but it wasn't.

biii) This was generally answered well, probably the best of the three. Most candidates scored L3(4) and the most common route to L4(5) was to consider the possibility of a persuasive precedent. There were a few confused responses that tried to fit this into one of the Young's exceptions (two previous conflicting decisions).

1ci) This question was not generally answered as well as the equivalent SI question. Better candidates were easily able to make more than enough points to score full marks. The position of the CoA in relation to itself, the Young's exceptions, the special position of the criminal division, the position in relation to the ECJ and the ECtHR and all the generic powers of FORD provided a broad target area from which to score 15 points. The most common reasons for not scoring well were either lack of knowledge of key information (especially the Young's exceptions) accompanied by the inability to see the relevance of citing ordinary FORD powers or candidates pursuing the wrong angle – typically, long winded accounts of the attempts by Lord Denning to escape the binding nature of the then House of Lords. In addition there were some candidates who thought the Practice Statement is available to the CoA and some who struggled with the distinction between overruling and reversing. Citation of relevant cases was generally poor even amongst those who knew the Young's exceptions.

1cii) There was a definite improvement here. Candidates at every level seemed fluent and confident in making some sort of critical comment. The better responses were well thought out, discursive and balanced responses covering arguments for and against the CoA having more powers. A small number of candidates need reminding that AO1 is not creditworthy in cii) responses. Some examiners reported responses which included the criticism that judges in the Supreme Court would be 'upset' which, whilst it may be true, is not the right kind of AO2!

Question 2
2a) This question seemed to polarise candidates with those who were prepared scoring full marks with ease and those who had not covered this in their revision clearly struggling. Many of the latter relied on copying out or para-phrasing the source material on the Interpretation Act in the hope of scoring a few points. Some candidates misfired completely and wrote about the rules of language, presumptions or the rules of interpretation. The mark scheme allowed the candidate to score full marks with little more than two lists. High scoring candidates recognised the importance of Hansard and the mark scheme allowed up to 6 marks for this extrinsic aid

alone with many strong candidates able to cite Hansard, describe it and say something about its use with appropriate supporting case law. It was obvious that some candidates were confused between the function of reading a statute and reading a case.

2b) This style of part b) question has been asked twice since the 2007 specification change, most recently in 2010. It follows the classic 'right type' (L2) + 'why' (L3) + something else like a case or a LTS (L4). Despite this many candidates seemed confused and ill-prepared. Many lost marks because they wrote speculative answers which covered intrinsic aids, extrinsic aids, rules of interpretation, rules of language and presumptions. Some of these candidates did stray across the correct answer but were not credited as this was counted as 'hedging'. The rubric is clear – 'which (singular) is the **most appropriate**' aid to interpretation.

bi) A dictionary was cited by most candidates. However, many of them then went on to lose marks due to idle speculation about other possibilities which then counted as hedging. Where it was identified, the reason it was appropriate was not always clear and few candidates took the last step and connected the answer with a case like *Cheeseman* for full marks.

bii) Very few got this one right. Some candidates wrote about looking at research findings and 'reports' in the vague sense but few could make the link between the clue 'a full-time permanent law reform body that produces draft bills' and the Law Commission. Many candidates put Hansard down as the answer.

biii) This was generally answered well – at least to L3. For many candidates, it seems that the fact that they had used Hansard in bii) didn't put them off considering it again in biii) which is a little worrying.

2ci) Most candidates answered this question well. Centres seem to have prepared candidates very accurately for the 'form' of this question – a definition, a feature, a LTS and three well developed cases. The sense of what constitutes a well-developed case also seems to be well understood – i.e. what word(s) were being interpreted and what was the impact of the rule when applied to those words. There was good use of the source and some citation of newer cases like *Bentham* and *Proctor & Gamble*. A significant minority of candidates are still putting AO2 material in this AO1 question. It won't do them any harm but it wastes time better spent on the other questions.

2cii) This was, similarly to 1cii), quite well done and an area of clear improvement. What was quite impressive this time was the confident inclusion of a range of constitutional issues such as separation of powers, supremacy of parliament and the role of judges. There was some good use of appropriate and relevant case law to support some thoughtful, well written, discursive responses. Changes to the marking methodology on the cii) questions also helped students maximise marks in this question.

G153 Criminal Law

General Comments

This was the first session of G153 after the demise of the January sitting. Responses to all questions were seen and there were very few examples of candidates not being able to attempt the correct number of questions. A good number of candidates tackled the sections of the paper in reverse order and this was often done to good effect with candidates able to spend more time on problem solving and thus accrue marks across all questions. There is still a tendency for some candidates to spend a disproportionate amount of time on Section A and this can be detrimental as problem solving, especially in relation to Section C which is worth a total of 20 marks can then be rushed and candidates rarely do themselves justice when working under such pressure. There was evidence of sound problem solving skills in Section B and a logical approach although there remains a tendency to include material regardless of its application to the question, and candidates are advised to focus on knowledge relevant to the scenario. With regard to both Sections A and B questions which include statute law, it is important that candidates cite, define and explain the relevant sections and subsections accurately, as only then can they go on to use them confidently. In Section C there was plenty of evidence of sound technique, although a good number of candidates resorted to detailed recounting of case facts in relation to strict liability, and many used a bullet point approach to good effect to help focus their responses.

Section A responses were differentiated in AO1 by the specific level of knowledge and citation; candidates are reminded that only 25 marks can be awarded for AO1 and to attract credit a significant point needs to be made about the case alongside enough factual information to show that the correct case is being used. With regards to AO2 many candidates use the question as a framework which is a good skill although points need to be developed and expanded to reach the higher assessment levels. It is also important to include broader overarching comment on the area of law at issue and the role of policy alongside reform proposals. **Examiner tip** - the very best answers often begin by addressing the question so as to place the answer in context and balance good, wide-ranging and relevant knowledge with clear and well developed analysis running through the essay and leading to a conclusion that supports their opening premise.

Section B responses were differentiated by the level of accurate and relevant knowledge, whether of a statutory or case-based nature, which was defined and explained clearly. A number of cases explained and applied accurately were preferable to an extensive list of case names unconnected to any facts or legal principles. Statutory law, such as the Theft Act 1968 and the Coroners and Justice Act 2009, required detailed accurate knowledge of relevant provisions and supporting case law to access the higher mark bands. In AO2 the focus was on identifying relevant areas of law based on the scenario and then accurate application to those facts. Given the often less than certain nature of the criminal law candidates were rewarded for lines of alternative reasoning which were tenable on the facts. **Examiner tip** – the very best answers focused carefully on the facts provided so as to be relevant – the use of a highlighter by the candidate in the exam to focus on key information can be very helpful in this regard.

Section C responses were differentiated by the accuracy with which relevant legal principles were identified and applied to reach a logical conclusion. Many candidates used a bullet point approach to good effect successfully and case citation, which is not required, was generally less in evidence. An integral part of Section C is the conclusion and candidates needed to be decisive - phrases such as 'could be liable', might be guilty', 'may possibly be liable' were not credited. **Examiner tip** – the very best answers considered each of the statements carefully and separately so as to allocate information accurately.

Standards of communication were generally acceptable but candidates should continue to pay attention to their accuracy of language, their use of specific legal terminology and the quality of their handwriting.

Question 1 – Murder

This was a less popular question but there were some excellent answers which showed good knowledge and developed comment across a whole range of issues connected with the offence of murder. Many candidates were able to deal effectively with the *actus reus* elements although some did so at great length and without any clear evaluative support. Others wrote extensively on issues such as self-defence and transferred malice which, although relevant to the issue of unlawfulness, were not a major aspect of the material to be covered. Most candidates engaged to some degree with the issue of *mens rea* although a good number found the evolution of the concept of virtual certainty to be challenging. The mandatory life sentence was a good area for discussion and many candidates explored the issues in an evaluative way. There was good awareness of reform proposals and the best answers were able to discuss these in the wider context of the significance of the offence in our society. There was often a tendency for AO2 material to appear towards the end of the essay. Developed and extended comment throughout, especially when balanced by accurate factual knowledge, can help the candidate move through the mark bands quickly as well as giving the essay a great sense of logic and cohesion.

Question 2 – Insanity and automatism

In the wake of these defences having been the most recent subject of the Special Study, this question was an opportunity to engage with some of the broad and topical issues these defences throw up. Many candidates preferred a traditional and largely factually based account of the operation of the defences, AO1 marks often were driven by the accuracy with which candidates could recall some of the key cases accurately for both insanity and automatism. The fine distinction between the decisions in, for example *Hennessey* and *Quick,* continue to be problematic and working out prior to the exam would enable candidates to work more effectively and efficiently. Some candidates focused almost exclusively on insanity despite the wording of the question and it was hard for such answers to reach the higher mark bands as the defences are so closely inter-linked. It was encouraging to see some candidates also exploring the link to diminished responsibility. In terms of AO2 candidates needed to focus on both clarity and fairness; to access the higher mark levels comments needed to be developed. The best answers moved beyond standard points relating to the age and language of the test in *M'Naghten* to look at wider and more topical issues such as the recent activity on the part of the Law Commission, the impact of the relatively recent Coroners and Justice Act 2009, the experiences of other jurisdictions and the wider issues of how mental health issues can be assessed and dealt with so as to protect society and defendants as well as providing justice for victims and their families.

Question 3 – Omissions

This was the most popular of the Section A questions and there were many responses which dealt meticulously with the categories of omissions and supported knowledge with a wide variety of citation. There seemed to be some uncertainty among candidates as where best to use cases such as *Gibbins and Proctor* but most were able to give a competent level of knowledge although sometimes the fine detail as to family relationships was not always clear. Some candidates went on to look at the cessation of duty and the particular issues in relation to doctors and here again there was often good knowledge although many candidates seem to be of the view that *Bland v Airedale NHS Trust* is a case about the turning off of a life-support machine when in fact it is about discontinuing treatment through the removal of a feeding tube. Many candidates used the ideas of protection and deterrence as the foundation of their AO2 and applied both of these points to each of the categories they covered. The very best answers used these ideas as a springboard for extended comment on issues such as the Good Samaritan law and the possible repercussions were it to be enacted in this country alongside broader topical

issues such as the duty of parents to care for children and the amount of trust which can be placed in the police to do their job. There were often interesting references to the growth of statutory duties which led into a discussion of the role of Parliament and the balance to be struck between personal freedom and protection enforced by the state as well as points about assisted dying and euthanasia.

Question 4 – Theft

This was the most popular Section B question and was specific in its instructions so any discussion of robbery and burglary attracted no marks. The provisions of the Theft Act were the most important AO1 material and candidates could not access the higher mark levels without clear and accurate references to s2-6. This included areas of particular relevance to the facts, such as the exceptions to s2, s4(3) and its application to flowers, s5(3) with regard to property given for a specific purpose and the impact of s5(4) on those who receive property by mistake. Case citation was helpful but there was a tendency to include a large number of cases which had no bearing on the scenario – for example *Oxford v Moss* and *Kelly and Lindsay*. Sections 2, 5 and 6 seemed to cause some candidates difficulty in terms of their intricacy. With regards to dishonesty a number of candidates only applied the *Ghosh* test and did not seem clear on its elements. Many candidates defined and explained the law before moving on to application, attracting good marks, but those who explained the law and applied it as they went along were often the most coherent, relevant and thorough in their coverage of the issues. Some candidates focused exclusively on application. Although they used terms from the Theft Act in their responses, without clear explanation candidates were not scoring marks for both AO1 and AO2. Candidates were rewarded for alternative lines of application as long as they were backed up by sound legal evidence – for example with regard to the bicycle and the paying of the electricity bill.

Question 5 – Defences to murder

This was the least popular Section B question and required candidates to deal with the defences of loss of control and diminished responsibility under the Coroners and Justice Act 2009. A discussion of intoxication was relevant if linked to the viability of diminished responsibly in the context of the level of Duane's drinking and specifically whether he would be covered by the principle in *Dietschmann* or if he was suffering from Alcohol Dependency Syndrome. There were some excellent answers where candidates were impressively thorough in their statutory knowledge, using it to support their application and moving logically through the scenario, especially picking up on the similarity with the issues raised by *Clinton* and *Dietschmann.* A good number of candidates stated the elements of the defences without linking them to the correct statutory sections - an important requirement in a question where the factual material is driven by a statute. Some candidates wrote extensively about the law of provocation, appearing to be unaware of the new defence. In terms of AO2 many candidates reached the conclusion that Duane was less likely to be able to use loss of control although there was not always clear reasoning as to why this should be so, with some candidates believing the defence would fail because his action was not sufficiently immediate. Application of diminished responsibly was often thorough and accurate, with many candidates able to conclude that this was the most likely route to a successful defence for Duane.

Question 6 – Involuntary manslaughter

This question produced some excellent answers where candidates explored the different types of involuntary manslaughter and were both methodical and considered in their application of relevant law to the facts. Most candidates were able to explain unlawful act manslaughter (UAM) clearly although some became distracted into an extensive exposition on causation, often using cases unlinked to manslaughter. With regard to gross negligence manslaughter (GNM) candidates were often less clear on all elements of the test and some did not consider reckless manslaughter at all, although it was possible to achieve maximum marks without reference to

the latter. In terms of Shannon most candidates elected to base liability on UAM and moved methodically through the elements of the test, often applying the law to the facts systematically as part of the factual discourse which was good technique. With regards to Nick there was a great divergence of opinion – some candidates applied UAM, some considered GNM and a few considered reckless manslaughter and murder or attempted murder. Discussion of the latter offences was only relevant as a conclusion to a discussion that manslaughter was not the best solution. Credit was given when candidates explored different lines of reasoning as long as they were supported with accurate relevant knowledge and were tenable on the facts.

Question 7 – Strict liability

This was the less popular of the Section C questions but there were some pleasing responses with candidates both confident and accurate in their reasoning. Candidates do not need to rewrite the statement and the conclusion should come at the end. In Statement A it was important to cover the fact that Thomas voluntarily sold alcohol to an under age girl and that, as no *mens rea* was needed, his boss, Martin, was liable. In Statement B the key was that although Thomas voluntarily sold alcohol to a police officer on duty mistake can be a defence in this very specific situation and as Thomas had no awareness of the officer's position or any reason to challenge him since he was not in uniform no offence was committed. In Statement C it was important to note that Martin had the responsibility to ensure that food was stored at the right temperature so, since no *mens rea* was needed for the offence and due diligence was not a defence, he committed an offence simply by storing it incorrectly. In Statement D the key issue was that such an offence is not seen as one of strict liability, as such *mens rea* is required and since Martin had no way of knowing that the cannabis plants were being grown he did not commit an offence.

Question 8 – Robbery and burglary

This was the most popular Section C question and based on the Special Study topics. There was a need to consider both the *actus reus* and the *mens rea* of the relevant offence in each statement and to use the statutory sections accurately. In Statement A the key issue was the need for a theft, which happened when Paul picked up the bag, and the need for force before or at the time of stealing – satisfied when Paul used his finger like a gun which led to Samantha dropping her bag. In Statement B the key issue was the fact that Tom did not steal the beer but there was a theft by Paul and the force used by Tom was in order to steal as the appropriation of the beer could be seen as ongoing. In Statement C there were many excellent answers with candidates able to move through the elements of s9(1)(a), although the one most often overlooked was the need to enter as a trespasser. In Statement D there were also many strong answers although a good number of candidates believed a key issue to be the formulation of an intention to commit an ulterior offence rather than the requirement of an attempted or complete theft or the infliction or attempted infliction of GBH after entry as a trespasser had been accomplished.

G154 Criminal Law Special Study

General Comments

This was the first and only sitting of the Special Study Paper for 2014 under what is, in effect, a linear A2 Level. This session the G154 paper examined offences under sections 8 and 9 of the Theft Act 1968. This had been a previous G154 topic area so there was plenty of historic help and guidance on the two topics. The new themes, as anticipated, generally proved accessible to candidates in all three questions. However, for a small minority, Question 3 proved to be problematic. This looked to be more of a skills issue than a lack of knowledge. Previous reports continue to provide guidance on the skills necessary to tackle this paper. Specific mention must again be made to the annual Special Study Skills Pointer (available on the OCR website). Each year this provides clear and directed guidance on the skill sets required and the most appropriate way that candidates should approach each question. Candidates are reminded here, that while the topic changes each year, the skills in tackling the questions do not. It is very important also to stress that the G154 Mark Scheme is not prescriptive but, nevertheless, flags certain core elements to each question which traditionally must be present in a candidate's response to move up the mark Levels. Well-prepared centres have clearly appreciated this and therefore have responded well to the change to an annual theme. They have achieved this by explaining the skills required and this is reflected in the candidates' work.

Despite previous reports reminding candidates about time management, this crucial issue continues to be a problem with candidates spending a disproportionate amount of time on certain questions, in particular on Question 1. This is to the potential detriment of the other two questions. Candidates should be advised to try to work to the mark a minute guidance, and then spend the extra time on reading, planning or addressing questions two or three. This series did see a pleasing increase in the use and reference to the pre-release materials. Previous reports have explained the importance of the materials and how they can help and enhance the candidate's work in the planning of the exam and during it.

Comments on Individual Questions

Question 1

Question 1 in its traditional style called for an examination of a case from the source materials, in this instance *Hale* and the significance of the development to the law on robbery it has, or has not, provided. This question tests Assessment Objective 2 by requiring analyses, evaluation and application to the law of *Hale*. It has been stated in previous reports that the Critical Point will always be that which was held, as a matter of law, as being the *ratio decidendi* of the case. Candidates were required to have identified one or more of the three critical points arising from the judgment: that for the purposes of section 1 of the Theft Act 1968 the act of appropriation was a continuing one at all material times; that the appellant was in the course of committing theft when he had used force to restrain the victim and prevent her from calling for help; and that it is simply a matter for the jury to decide whether the force was used in order to steal and therefore a robbery. Centres are again advised when researching cases for Question 1 to look at five or six textbooks/reputable legal websites to consider their author's discussions of the case. Indeed, it is likely that the full judgement of most cases contained in the Source materials will be freely available on the internet for centres and candidates to consider in class without having to subscribe to a paid legal website. From these additional materials centres can create their own responses to cases which will necessarily include the Critical Point, generally considered Analytical Points and clear references to Linked Cases.

Most candidates achieving a Level 5 answer explained at least two and, in many cases. all three critical points clearly, provided further analysis together with a linked case and made a clear comment on the importance of the *Hale* (as required by the rubric). It was pleasing to see that most candidates were able to explain (albeit at different degrees of clarity) all three critical points. However, some candidates were unable to get into level 5 because they failed to use a linked case nor commented on the significance of the decision. The question produced generally well-answered responses given the complicated subject matter which was very pleasing to see.

The question produced a range of responses and there were indeed some excellent ones showing full understanding of the skills requirement of the question and thereby gaining maximum or near maximum marks. Again, despite previous reports explaining this point, candidates achieving middle ranking marks continue to lose out on the high marks by failing to address the question itself, in this case, the issue of the case's importance. More alarming, however, is the worrying and continued trend of writing essays for this question.

In general, well-prepared candidates clearly used information available on *Hale* from the Sources and from their own research. Most candidates therefore, followed a clear pattern of response:

1. The discussion of Eveleigh L.J. in the Court of Appeal on the continuing act theory, and how it is a matter for the jury to decide;
2. The 'twists and turns' of the facts and how they unfolded to allow for the Court's decision;
3. The defendant's own failed arguments of why they were not guilty of robbery;
4. The Court's apparent avoidance of the literal rule in favour of the purposive approach to interpretation - that *Hale* agrees with the pre-1968 law which was, arguably, not the intention of Parliament in passing section 8;
5. The thorough discussion of a linked case, for example *Lockley* or *Atakpu*.

A common error was that many candidates discussed at length the issue of whether force was used in *Hale* and how much force was needed for robbery. Such candidates would use such cases as *Dawson* as their linked case. This was irrelevant since, in *Hale,* the issue of how much and whether force was used had not been in question. It had been obvious to the Court of Appeal that putting his hand over Mrs C's mouth and tying her up together with a later threat to her son would clearly and overly satisfy this requirement under section 8.

Question 2

This question required a strong focus on a discussion of parts of section 9 of the Theft Act 1968. For AO2, being a synoptic paper, the best analysis and evaluation by candidates was obviously seen in commenting on the question itself: how accurately the quote reflected the difficulties in defining 'entry' and 'building'. Candidates in Level 4 and 5 were able to place this into the context of the overarching synoptic themes: Parliament's involvement, the role of judges, the use of precedent and the development of law as a result. Other than Source 5 from which the quote was taken, Sources 4 and 6 contained some useful information as well as much comment that was useful in answering the question.

For AO1, candidates could have secured high marks by providing detailed definitions of 'entry', 'building' by using the common law (mis-)interpretations of section 9 by illustrating the terms with numerous cases that support the development of the law, the issue of public policy considerations, or the lack of any common sense or consistency. Candidates could, clearly, achieve Level 5 with this discussion, but many candidates discussed cross-over topics such as 'part of a building' and trespass. There are eight cases in the Criminal Law Special Study Materials so candidates would be expected to consider at least this many and have used relevant cases in their answers to achieve the Level 5 descriptor. A common failing which did not lose candidates marks but inevitably cost them time that might have been better spent on the

question itself was to engage, in part, in a generalised essay on burglary and how there are similarities or differences between sections 9(1)(a) and 9(1)(b).

In the majority of candidate responses the AO2 analysis and evaluation achieved Level 3 or 4. There was a lot of good discussion about the development, good or bad, in the definition of 'entry'. Most candidates, unsurprisingly, were able to mention *Collins, Brown* and *Ryan*, but good candidates were able to give a thorough analysis of the case, the decision and in particular how the cases impacted on the law and in particular future defendants. Again there was clear evidence that the sources seem to have been utilised more than in previous sittings. However, the AO1 demonstration of knowledge and understanding was frequently disappointing. On many occasions, candidates would concentrate on one case, normally *Collins*, and go into unnecessary lengthy detail about the facts of the case. It may be that at the time of the case Edmund Davies L.J. in the Court of Appeal described *Collins* as '*about as extraordinary a case as my brethren and I have ever heard either on the Bench or while at the Bar.*' but such elongated and detailed commentary of the facts by candidates was superfluous. Another common mistake was in their discussion of 'building' where candidates muddled up the facts of *Norfolk Constabulary* with *B&S and Leathley* or got the facts correct, but got their decisions wrong. In such responses this would crucially lead to unusual and therefore incorrect conclusions.

As has been reported in previous reports many candidates did refer back to the quote throughout their response to Question 2 and where it was done thoughtfully it gained appropriate credit. Unfortunately in many instances it was merely done mechanically without real thought or development of arguments.

Question 3

The application question provided some interesting and varied responses. Many candidates who scored well on Question 2 lost some of their marks here. Again, as mentioned in previous series, candidates would do well by using some sort of problem/scenario answering formula such as IDEA or ILAC to help answering the questions. In effect, any such formula looks at defining each part of the relevant law (AO1), here robbery or burglary, then applying (AO2) each part of the definition to the scenario. One of the consequent parts of the definition will be the Critical Point. Question 3 incorporated the customary three separate small scenarios all worth 10 marks based on three separate characters. Candidates should have found the individual questions accessible since each concerned different situations analogous with existing case law. This in consequence gave the student a direction in which to pursue the most appropriate offence the character was likely to be charged with and whether on the facts they had committed it. For Level 5, candidates needed to have included appropriate case illustration in support of application and also to have focused on the Critical Point evident in the scenarios as well as providing an appropriate conclusion. Each scenario required the candidates to consider:

- for (a) that it would be highly likely that a conviction for robbery would stand since Gertrude used the treat of force to take the bike. However, since the word *'lend'* was used in the threat and the bike was soon abandoned, this may not prove an intent to permanently deprive and therefore not robbery;
- for (b) that Ewan could arguably have entered by putting his arm through the open window, but the issue was whether the boat was capable of being a 'building' for the purposes of section 9;
- for (c) whether Kelvin's threat was during the continuing act of appropriation of the purse and therefore robbery, or that the threat was used after the appropriation and as a means of escape and not robbery.

Good discussion of the above in relation to the most appropriate offence with thorough application using appropriate cases cited in support would allow a candidate to receive high AO1 and AO2 marks.

The questions attracted many good responses with able candidates being able to demonstrate both thorough knowledge and high level application skills whilst less able responses showed much more limited evidence of either. One frequent weakness in candidate answers in (a) and (c) on robbery was that the *mens rea* of the offence was rarely mentioned, other than that of theft, and in consequence rarely applied to the scenario. Indeed many candidates used these questions to demonstrate their thorough knowledge of sections 1-6 of the Theft Act which, while relevant to some extent, was not necessary to, for example, the defences under section 2, wild mushrooms and electricity! Having identified appropriate offences in each scenario it was again the level of understanding and the quality of application of the legal principles that was the real discriminator. Also, thankfully, there was a reduction in the number of candidates who discussed 'alternative' scenarios. In previous series, many candidates have, instead of answering the scenario set, would say: 'but if she/he had done this or that then the answer would be this' in effect creating their own scenario and losing marks as being irrelevant.

Part (a) answers were generally good. Given that the decision could go either way on the facts and that the recent case of *Vinall* (2011) gave a decent steer on an intent to permanently deprive in a similar case, candidates were able to articulate their thoughts appropriately. Many candidates discussed the level of fear in Henri and, like that mentioned about *Collins* above, while not entirely irrelevant, it was not as crucial to the response as some of the other parts of robbery. In (b) most candidates were able to notice that the crucial point was based around the issue of whether the boat would be classed as a 'building' under sections 9(1)(a) and 9(4). The stronger scripts provided and fully applied the issue of 'inhabited' and mooted that since the owner, Jaio, was present this may or may not be the case. Some candidates discussed the fact that as he had not actually taken the watch that this must be an attempted burglary and began to confuse themselves. Candidates would then discuss a conviction under section 9(1)(b) which arguably is irrelevant here. It is, however, arguable that since Ewan had clear intention to take the watch when he saw it, that when he put his arm through the open window he had formed the intent to steal the watch, this would allow for a potential conviction under section 9(1)(a). There were mixed answers to (c). Again given the question's potential dual conclusion many candidates were able to articulate either a *Hale* type conclusion or that the threat was used in order to escape rather than as part of a continuing act. Many candidates were able to list the full definition of robbery and apply this to the scenario, but a minority of candidates, again, concentrated on theft at the expense of a main discussion of robbery.

G155 Law of Contract

General Comments:

Many candidates were well prepared for this exam in terms of demonstrating a clear understanding of the skills required in each section of the paper, aiming their answers well towards the relevant assessment criteria. As in previous years the quality of AO2 comments has been a key differentiating factor in identifying very effective answers. Particularly in Section A, candidates are clearly aware of the need to include AO2 comments throughout their answer but stronger answers have better developed comments which explore a relevant issue in more depth and are focussed on specific areas of AO1 content. While there were few answers which contained a lengthy AO1 explanation of the topic with little AO2 comment, in this exam there were more answers with very weak AO1 or inconsistent content between section A and B of the paper.

Comments on Individual Questions:

Section A

Question 1 – Offer, acceptance and revocation

Most candidates were able to give relevant AO1 explanations of each part of this question and in many answers there was an impressive amount of case law cited. In effective answers candidates gave an appropriate amount of accurate factual information on each case, candidates should remember that citing a case name with little or no supporting detail does not gain many AO1 marks but equally it is a poor use of exam time to recite lengthy facts. Effective answers to this question included recent laws relating to contract formation such as legislation on online contracts and the case *Thomas v BPE Solicitors*. From next year candidates should be aware of the Consumer Contract Regulations 2014 which have amended the rules on internet contracts.

In terms of AO2 comments many answers focussed on areas where the law was unclear, making effective reference to issues such as the difficulty in establishing who would be a reliable third party in *Dickinson v Dodds* or the way in which the concept of sound business practise would apply in *Brinkibon v Stahag Stahl*. More effective answers also focussed on the way in which the law has evolved with changes in society, discussing issues such as the way the postal rule has been limited with later exceptions and the implications for online contracts, citing consumer disputes such as Kodak, Argos or Tesco.

Question 2 – Implied terms

Better answers to this question included wide ranging and accurate AO1 content, being able to cite provisions of the Sale of Goods Act and related legislation accurately and illustrating with relevant case law as well as accurate citation of cases where the common law has implied terms into contracts. Some very effective answers made good use of course of dealing cases which were also relevant to this question. A significant number of less effective answers included irrelevant AO1 content dealing with incorporation of express terms; in general this could not be credited in this question although some candidates made effective use of cases such as *L'Estrange v Graucob* in their AO2 comments as a way of illustrating the approach of the courts to interference with the deal struck by the parties.

Although there were many very effective answers to this question with well-focussed AO2 comments, there were a significant amount of answers which were very AO1 orientated and contained only very brief comments. Candidates are advised that in nearly all cases the most effective answers contain a balance of AO1 and AO2 content throughout rather than leaving AO2 comments towards the end of the answer which usually leads to them being brief and undeveloped.

Question 3 – Undue influence

While there were some very strong answers to this question, it also tended to produce answers which suffered from vagueness or confusion. The most effective answers were well structured, giving a clear account of the different aspects of the topic and how each component relates together, for example in presumed undue influence how the requirement of a relationships trust sits with the requirement of a deal which requires explanation. Less effective answers lacked clarity on the outcome of cases such as *Allcard v Skinner* and *CIBC v Pitt* although there were some excellent and wide ranging accounts of the law as well. It was surprising that the leading case *RBS v Etridge* was omitted or covered very briefly in so many answers. Candidates should attempt to identify and include leading cases in their preparation of all topics as these invariably feature in the most effective answers.

The AO2 themes of comparing certainty and justice were explored well in more effective answers; for example some candidates compared the outcomes of cases such as *NatWest Bank v Morgan* and *Lloyds Bank v Bundy* very well. In general in answers where the AO1 was confused or inaccurate candidates found it difficult to make very effective AO2 comments.

Section B

Question 4 – Breach of contract

This question required candidates to explain the range of ways in which a contract term may be classified and the consequences of breaching each of those terms, and then to apply this information to each of the 3 scenarios. Regarding AO1 content most candidates had an awareness of the 3 kinds of contract term and the most effective answers had a good range of case law to illustrate each kind. Better answers identified very detailed case law which was relevant to each scenario, there were some good accounts of the *Hansa Nord* case when discussing the damaged cloth scenario which would have been an innominate term, and in relation to the term which was identified in the scenario as a condition there were some excellent references to *Schuler v Wickman*. Less effective answers were unable to give a convincing account of innominate terms and a surprising amount of answers did not give a satisfactory explanation of *Hong Kong Fir Shipping.*

Application skills in this question favoured those who were able to write clearly and in a well-structured way, in particular pointing out the similarities or differences between the facts in the scenario and key cases in this topic rather than just relying on general principles. Less effective responses lacked precise application of legal principles and amounted to little more than common sense answers which were unlikely to get beyond level 1 marks.

Question 5 – Duress

This question required candidates to give an account of the law of economic duress and apply the principles established by the cases to the 2 different scenarios in the question. The most effective answers were very clearly structured to look at each aspect of this topic in turn, explaining the relevant case law and then applying the specific aspect to the facts. Without this clear structure it was hard to achieve level 4 or 5 marks and less effective answers either

explained all the law before attempting to apply all the principles in one go, or had very brief and unstructured AO2 comments based around a chronological explanation of the development of that area of law. The most effective answers also gave brief but accurate accounts of the facts of key cases and used these to highlight specific aspects of the topic, rather than just stating the duress either was or wasn't found.

There was excellent reference to the case *CTN Cash and Carry v Gallagher* in some responses and this was used well to illustrate the need for an illegitimate threat. Some responses also made excellent use of *Williams v Roffey* to illustrate circumstances which amount to hard commercial bargaining rather than duress.

As with all the problem questions attention to the detailed facts of the scenario was essential for higher level marks, for example the most effective responses identified that there was no actual threat in the Stitches part of the scenario.

Question 6 – Frustration

In order to answer this question well candidates were required to explain the basis for claiming frustration, limits to the doctrine of frustration and also the financial consequences of finding that a contract had been frustrated. The most effective responses covered all 3 parts of this topic well with effective use of case law but there were a surprising amount of responses which lacked precise application and a clear account of the Law Reform (Frustrated Contracts) Act 1943. Many responses omitted a discussion of the limiting factors in frustration; the more effective covered this well including the effect of having a choice in whether to perform, giving a good account of *Super Servant 2* case.

Many responses lacked clarity in applying the reasons for a contract being frustrated, confusing the situations where impossibility will apply with those where there was a radical change of circumstances. Few responses identified that Aurus had a choice about where to hold the concert and that this would have amounted to self-induced frustration and ultimately breach of contract. The most effective responses gave a detailed consideration of whether the Jumpies scenario would have followed *Krell v Henry* or *Herne Bay v Hutto*n; many identified that this was the correct issue to discuss but jumped straight to a conclusion with little discussion of how that decision was arrived at. There were very few accounts of the financial implications of the finding or not finding that a case was frustrated.

Section C

The same comments as were made last year apply. The majority of candidates are now adopting an appropriate style when answering these questions; however, there are still a substantial majority who add case names and descriptions to their answers which are not creditworthy in this section. Candidates are also advised to adopt a specific line of argument leading to a clear agreement or disagreement with the statement. Essay like answers which come to indecisive answers are unlikely to achieve the maximum marks for any question. The most effective answers in Section C adopt a bullet point style presentation of their answer; this helps to identify a clear line of reasoning and to ensure that the answer contains 5 separate stages.

Question 7 – Misrepresentation

This question concerned a range of issues within misrepresentation, what amounts to a false statement of fact, whether a statement had an inducing effect and the different kinds of misrepresentation. The most effective answers to these questions recognised the specific issues involved in the question and had good subject knowledge to back up their answer, a very careful reading of the question being a key skill involved in Section C. Candidates are reminded that

they are not required to cite cases in their answers and gain no more credit for doing so than merely stating the law.

Statement A concerned whether a statement of future intention could amount to a false statement of fact, the issue of law raised by the case *Edgington v Fitzmaurice*. Very few candidates correctly identified this issue, many incorrectly dealing with it as a statement of opinion.
Statement B concerned a possible ulterior motive that Greg may have had for entering the gym contract. Many responses to this statement contained no statements of law at all and were based entirely on common sense.
Statement C required candidates to assess whether a statement could be seen as fraudulent; the most effective responses to this question were able to give an accurate definition of fraud including recklessness but a surprising amount of candidates were not able to give a satisfactory definition.
Statement D required candidates to show an appreciation of the difficulties in bringing a claim of fraudulent misrepresentation compared to statutory misrepresentation in terms of the burden of proof and remedies available; few responses showed clear understanding of the differences in bringing each kind of misrepresentation.

Question 8 – Consideration

This question required candidates to identify very specific rules within consideration and apply them to each of the statements. As in question 7 the most effective responses showed that candidates had carefully analysed the question to identify the legal issue and picked up the hints in the scenario.

Statement A concerned completion of a legal duty as consideration, while the majority correctly identified the issue, a substantial minority confused this with contractual duty. This answer illustrates the need for clear and definitive statements of law to back up the line of reasoning.
Statement B concerned a second offer of payment to complete an existing contractual duty. The scenario clearly stated that the driver was working within her contracted 8 hours but that her employer had gained a benefit for offering her extra money; this was a strong steer towards the principle established in *Williams v Roffey*, a case which candidates would have had to study in depth for the special study paper, yet few responses correctly identified the legal issue.
Statement C concerned a promise made by a third party to the original contract and required candidates to apply the principles established in cases such as *Shadwell v Shadwell* or *Pao On v Lau Yiu Long*; very few candidates correctly identified this issue.
Statement D concerned past consideration; for full marks candidates were required to briefly outline and apply the exceptions to the basic rule as well. Most candidates correctly identified the relevant issue in this question; however, many lost marks by failing to back up their answer with clear statements of law.

G156 Special Study Law of Contract

General Comments:

Candidates have coped very well with this year's Special Study topic. Combining promissory estoppel, a possibly less well known area of the specification, with some of the more familiar areas of consideration clearly played to many candidates' strengths. In general, their knowledge and understanding of the rules of adequacy and sufficiency was particularly impressive. Many candidates had clearly given a lot of thought to developments in the law regarding pre-existing contractual duties. Others needed to build a more confident grasp of the relevant rules of equity and develop some lines of analysis regarding promissory estoppel. The candidates who fared best were those who responded fully to the questions. Most candidates followed the instructions in Q2 and Q3 to consider both law and equity; other candidates would have benefitted from a more careful reading of the question. The vast majority of students appeared to handle the timing of the questions very effectively which consequently meant that they were giving themselves the best opportunity to fulfil their potential. The Pre-Release Materials were generally used well and many candidates were able to use them both to help in their coverage of the rules and authorities and also as a source of some very helpful analysis on which to build.

Comments on Individual Questions:

Question No. 1

Candidates are becoming very adept at these case reviews and they clearly have a good understanding of the importance of setting out the critical points of the case, analysing the case itself and providing links to other case to place it in context. Many candidates provided some sound analysis of *High Trees* and discussed the impact of the establishment of promissory estoppel on the common law and considered the extent to which Denning's obiter ideas were justifiable. They were very clear about the fact that promissory estoppel was created in this case drawing from the related but distinct doctrine of waiver found in *Hughes* and that one of the most controversial aspects of *High Trees* was the suggestion that promissory estoppel could permanently destroy rights rather than simply delay their enforcement. As with last year, some candidates would benefit from rebalancing their approach to ensure that they focus on analysing the case in question rather than associated cases: only one quarter of the AO2 marks available can be awarded for linked cases.

Question No. 2

This question was generally done very well indeed. With regard to AO1, many candidates were able to supply an excellent range of cases – a dozen or more cases was not uncommon. Those candidates who achieved good to very good marks here made sure that they had answered the question and included the relevant rules of equity as well as those of the common law. Not including any reference to the rules of equity made it very difficult to get into the higher mark levels. A clear link to the source materials (source number and line reference) was provided in most responses. Candidates were generally able to supply very concise case facts and a clear ratio for their cases. Being able to develop their cases in this way was key to achieving high marks.

With regard to AO2, a wide range of responses were produced. Responses achieving Level 4 or Level 5 marks were able to consistently attack the question and question what of 'value', if anything, was sought by the courts when they applied the various different rules of consideration and equity to parties attempting to modify a contract. A good, sustained analysis of the inconsistencies and consequent problems of the rules on adequacy and sufficiency tended to form the main element to most Level 4 responses. Candidates who were able to add thoughtful

analysis of cases such as *Williams v Roffey*, *Hartley v Ponsonby*, *High Trees* and *Combe v Combe* for example were able to push up to top Level 4, Level 5 and full marks.

Question No. 3

As with most previous series, the problem questions proved to be good discriminators between candidates. Those who did well on Q3 tended to do well on the paper as a whole. Those candidates who did well tended to provide clear statements of rules, authorities for those rules and showed clearly how the rules applied to the particular facts. They also made sure that they considered both the common law and equity, as instructed in the question. Q3(a) and Q3(c) gave the most opportunity for the application of equity. Making sure that both equity and the common law were covered in these questions tended to be main way in which responses could have been improved. Marks were available in Q3(b) for pointing out that equity could not assist Fiona as it is a shield not a sword but many candidates achieved full marks on this question without discussing equity as they were able to provide a clear and accurate application of *Stilk v Myrick*, *Hartley v Ponsonby* and *Williams v Roffey*. A number of candidates picked up arguable issues of inequity in Hugo's behaviour and duress in George's situation. All of those arguments were rewarded.

G157 Law of Torts

General Comments:

This paper showed a good number of entries from a number of centres, which provided a wide range of marks with answers to all questions. Candidates showed a slight preference to answer essay question two on vicarious liability and problem question four on the Animals Act. Most candidates attempted question eight rather than question seven.

There was plenty of evidence in Section A of candidates accurately citing a wide range of cases and statutory provisions. Better responses also explained the available defences and remedies. As previously expressed in June 2013 candidates should be aware that cited cases need to have more detail than just a name (often observed in brackets after an unrelated point). A few key words in relation to how the facts illustrate the point being made and a clear link to the relevant legal principle are beneficial in explaining the elements of the tort.

There was some good evidence of well-developed discussion points that focused on the question. However, the level of AO2 was often comparatively less than that achieved for AO1 due to wider, and current, issues not being addressed. Candidates who approached the question from a number of different perspectives, and used case and statute authority as a basis for discussion, with relation to the question, provided the most sophisticated responses.

In section B candidates generally identified all the separate issues that were raised in the scenarios and reached logical conclusions. Candidates needed to select and use cases and statutory provisions that were relevant to the scenario in their AO1 as this will aid and focus their application. Again, only the better responses explained and applied defences and remedies, which was reflected in the marks they achieved.

In Section C candidates are asked to demonstrate legal reasoning skills to come to a logical conclusion. They can do this in a bullet point format and should aim to make five points with the final one being a conclusion. Statutory or case citation is not required. Similarly to June 2013 the lack of technique and inability to identify the issue in question continues to be an issue for many candidates.

Comments on Individual Questions:

Question 1
This question was generally very well answered with many candidates showing strong case knowledge across what can amount to a private nuisance, who has a proprietary interest and the different factors that can influence reasonableness. Available, and ineffective, defences were dealt with in a less confident manner with prescription and coming to the nuisance sometimes being confused. Many candidates also struggled to recognise the salient point of *Crown River Cruises Ltd v Kimbolton Fireworks Ltd* and became confused when explaining the effect of social usefulness in relation to the tort. The better responses identified the impact of social usefulness on the awarding of injunctions, in addition to explaining the other available remedies.

The evaluation of the question centred on the fairness or unfairness of particular cases with little evidence of candidates being able to think in wider terms about the tort of private nuisance. Therefore, the evaluation was steady but with little evidence of extended discursive points. Many responses did not reach a conclusion that addressed the specific demands of the question.

Question 2
Answers to this question were generally detailed and accurate. Candidates' case knowledge was very secure across the whole topic area of vicarious liability, showing a very good understanding of the various rules and tests. It was encouraging to see how many candidates dealt intelligently with the close connection test from *Lister v Hesley Hall* and subsequent developments in the case law.   More detailed analysis of the fairness of recent cases, such as *Mattis v Pollock, MAGA v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* and *Catholic Child Welfare Society and others v The Institute of the Brothers of the Christian Order Schools* would have improved the AO2 marks of many responses. However, there was much evidence of analysis of case outcomes and comparison between cases. Wider issues could have been discussed, for example, the contrasting recent decisions in the violence between employees cases such as *Weddall v Barchester Healthcare* and *Wallbank v Wallbank Fox Designs.*

Most candidates engaged with the question and came to a logical conclusion with some candidates assessing the statement from the viewpoint of the claimant, defendant and tortfeasor.

Question 3
There were many excellent answers to this question showing extensive case knowledge and the ability to develop a range of evaluative points. Unfortunately a small number of students confused the question with a general discussion of negligence and scored very poorly. However, most candidates who tackled this question generally showed a clear understanding of the development of negligent misstatement. The better responses extensively explained the criteria of negligent misstatement, in addition to the position of surveyors, accountants and solicitors. The AO2 was steady, with good reference to the question, but only a few response provided wide ranging analysis or evaluation.

Question 4
The vast majority of students who attempted this question had excellent statute and case knowledge and scored accordingly highly on AO1. There was a good deal of sophisticated explanation of the leading cases.

There was some confusion between sections 6(2) and 6(3). Additionally, some candidates were confused about the imposition of strict liability on non-dangerous animals, but stronger responses were aware of the significance of *Mirvahedy* v *Henley* in this context. Stronger responses also fully explained and applied the defences under sections 5(2), 5(3) and 10, although evidence of section 5(3) was far less common amongst responses. Candidates could have shown a wider knowledge of defences by referring to the recent cases of *Turnball v Warrener* and *Goldsmith v Patchcott.*

The application of relevant knowledge was usually both accurate and well organised. Some outstanding responses successfully applied the ruling from *Clark v Bowlt* to reach an alternative conclusion about Alexandra's liability for Iain's injuries. Clear conclusions, and precise understanding of the different situations in the scenario, were frequently evident in responses.

Question 5
On this question candidates demonstrated a good understanding of the definition of land and the different actions that can amount to a trespass, with use of relevant cases and some statutory authority. This was reflected in the high level of AO1 marks achieved by many candidates. However, weaker responses confused the definitions of trespass to land with nuisance.

The selection and application of defences could have been improved as when it came to dealing with the defences candidates would often adopt a policy of writing down every defence they knew rather than explaining and applying ones relevant to the question. Weaker responses tended not to address all the issues raised in the question, in particular the concept of *ab initio,*

whether there was implied consent to walk on the flower bed, and whether Lilly was a trespasser.

Question 6
Stronger responses had an assured blend of statute and case knowledge on this question. However the 1957 Act was referenced with far greater confidence than the 1984 Act. Weaker responses had an awareness of the law but were unable to support their answers with accurate citation; for example there was a lack of citation for warnings or one citation given to cover warnings under both the 1957 and 1984 Acts.

Candidates correctly identified who were visitors and who was a trespasser in the scenario with explanations of the duty owed. Candidates also identified that a higher duty was owed to children and that Adrelin could avoid liability if RideFixerz could be blamed instead. Several candidates insisted on dealing with exclusion clauses and tradespeople, although these did not figure in the scenario. Application of knowledge was generally strong, especially in relation to Latisha and Jacob. Ray as a trespasser was not dealt with as well by candidates, but better responses identified that he could not claim for the damage to his watch and discussed the effectiveness of the warning sign in relation to him.

Question 7
Candidates generally provided solid answers in response to the statements and came to accurate conclusions. There was good knowledge of breach of duty and contributory negligence. Candidates were less inclined to deal explicitly with whether there was a duty of care owed and factual causation. Candidates seemed to find it very difficult to access higher marks on this question.

Question 8
Candidates struggled in answering this question. Very few candidates provided and applied accurate accounts of primary and secondary victims of nervous shock in statements B and D. Even fewer mentioned in statement A the requirement for the shock to be sudden. Issues relating to foreseeability, the close tie of love and affection and the need for a recognised psychiatric condition were all dealt with confidently by most candidates, and candidates came to the correct conclusions even where they had not shown the necessary reasoning to get to it. It was rare for students to access high marks on this question because of lack of focus on the statement.

G158 Law of Torts Special Study

General Comments:

This was the first sitting of what is now, in effect, a linear A2. The theme of nervous shock (or psychiatric injury) is a popular area of tort law and the responses proved to be of a very good standard. Fears about the potentially negative impact of studying for G157 and G158 concurrently as well as any AS re-takes seem unfounded based on the evidence.

Nervous shock is an area of tort law dominated by common law. It has been subject to a great deal of judicial intervention in recent years. The tensions between doing justice to individual claimants and a fear of opening the floodgates to a potentially huge class of litigants has led to judges creating rules which are, at times, irrational, unfair and hard to justify. In a recent Supreme Court decision (*Taylor v A Novo [2013]*), the judges showed their reluctance to change the law in this area any further and expressed the desire to see Parliament taking a lead. There is, in short, no lack of relevant AO1 or AO2 for candidates to engage with in this area of tort law.

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

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

This was, in general, a very positive session with no apparent impact from the changes to A2 assessment. However, one perennial issue not only recurred but seemed to get worse - the quality (or lack of it) of candidates' handwriting. It cannot be put in stronger terms than this – there will be candidates who may have failed to get the expected grade and this will have been entirely due to the illegibility of their handwriting. The examiners try their very best with these scripts and we do now have the ability to zoom in on Scoris to try and decipher what has been written. However, it is becoming more and more common to come across scripts which are so bad they simply can't be read. The sad part is that one can tell from some of the words and cases one *can* make out that there is something creditworthy there but, the bottom line is that we cannot credit what we cannot read. Affected candidates cannot have gone unnoticed by centres who need to take remedial measures as a matter of urgency since this is costing them grades not only in Law but in all subjects with written assessment.

Notable improvements and areas of good practice:
- There was a very good level of engagement with the key AO2 themes which showed good critical appreciation.
- There was plenty of evidence of wider reading and detailed, up-to-date knowledge of case law (e.g. *Taylor v A Novo [2013]*).
- There was detailed and informed use of the sources from most candidates.
- Extensive knowledge of case law beyond the sources was much in evidence.
- There were no spoilt scripts and a tiny minority of candidates who did not attempt all three questions.

- Very few candidates lost marks through a failure to link to the sources.

Areas for further development:
- Candidates continue to struggle with:
  - Handwriting issues – as outlined above
  - Timings – the marks available (16, 34 and 30) do not inform the time spent on each question which has the impact of wasting time on unnecessary detail on questions that don't need it and under-performing on other questions which would benefit from more thought and attention
  - Individual question issues – see below

Comments on Individual Questions:

Question 1 – the case digest – *White and others v Chief Constable of South Yorkshire Police (1998)*

- The biggest single issue on this question is that candidates are increasingly overdoing it:
  - This year some of the responses were of equal size to question 2 when the marks for question 2 are more than double those for question 1
  - Responses running to 4 sides of A4 were common and yet a response can score full marks in little more than a side of A4 if candidates follow the advice in the skills pointer
  - Many of the responses had as many cases as one would expect in an essay – one had 22 cases!
  - There is an increase in the number of candidates writing generic essays or mini-essays on nervous shock and not answering the question – again, wasting valuable time.
  - Even on the more focused responses there was too much time wasted on irrelevant background information – for example, what is and isn't acceptable as nervous shock.
  - There was an apparent misunderstanding of the distinction between AO1 and AO2 with lots of responses setting out the case facts and outcomes of numerous cases even though there is no credit for this on question1.
- Although most candidates scored full marks or close to full marks, many wasted valuable time and then found themselves rushing the essay and/or problem questions worth 30 marks.
- The question is about the contribution made by the case to the **development** of the law in this area and this element was essential for full marks.

Question 2 – the essay question - the extent to which **limitations** have been **fair** …

As always, candidates success on question 2 will usually be dictated by using the right AO1 and ensuring that their AO2 addresses the 'spin' in the question. Mechanical and rehearsed regurgitation of both AO1 and AO2 will not avail the candidate of access to the highest marks.

Notable improvements and areas of good practice:
- The essays were better than last year. In general there was:
  - a better focus on the quote;
  - more candidates integrating their AO2 and achieving a more discursive style;
  - greater confidence with the AO2 themes leading to more assured essays;
  - stronger reasoned conclusions rather than glib restatements of what has already been said;
  - clear recognition of synoptic opportunities;
  - a better focus on the essence of cases.

Areas for further development:
- Better focus on what's important – there was no need to go through twenty plus cases to answer this question and still gain full marks.
- Whilst these reports have, in the past, been critical of candidates putting excessive amounts of case detail in their essays, some candidates have now swung too far in the other direction and merely drop case names in brackets after a particular point has been made. To be clear a developed case will have a very brief account of the facts and/or the ratio.
- There was a reference to the case of Alcock in the question and this seemed to lead a few candidates into treating this question as though it were a question 1 case study.
- Although much improved, there is still a minority of candidates missing out on higher marks for the lack of either a synoptic element, a conclusion or a link to the source materials.

Question 3 – the mini problem questions
There were some mixed performances here. A failure to identify the key issue that made the potential claimant a primary or secondary victim was not uncommon. Since the question asked candidates to consider the *possibility* of succeeding in a claim, examiners credited any valid points whether they related to the claimants being possible primary or secondary victims. However, this question is about the skill of '*applying **relevant** law*' to a problem scenario so examiners did not credit generic scene setting comments or law which was not focused on the question. Clearly, there was no credit for incorrect law and/or application and on this basis it should be stressed that:

In a) Charlie is on a sinking ship and is clearly 'in danger or at risk' – he must, therefore, be a primary victim. It is not like McFarlane as many asserted as he was in a boat some distance away.
In b) Pedro is witnessing the immediate aftermath of an accident which has killed his brother – he is clearly a potential secondary victim depending on the rebuttable presumption against the existence of a close tie of love and affection between brothers.
In c) Michelle is in a *Mc Loughlin* style immediate aftermath situation making her a potential secondary victim. She is not a rescuer as many asserted as she is not at risk of danger.

However, many candidates missed these central issues which were needed in every case for full marks.

Furthermore, since the case of *White*, it is now well-settled law that the term 'rescuer' is not a label for a special class of victim and that any 'rescuer' would have to satisfy the criteria of being either a primary or secondary victim. Despite this, a significant number of candidates incorrectly tackled all three questions as potential rescuer situations based on Chadwick.

As was the case last year, candidates should be reminded **not** to:
- write out long scene setting accounts of irrelevant background law – some of which amounted to a mini essay;
- give lengthy (or any) citations of case facts;
- give anecdotal answers – this is a key feature of the approach of some candidates who will tend to re-count the 'story' back in their own words with some 'common sense' advice applied along the way;
- speculate on facts that are **not given** in the scenario;
- **forget to conclude** (especially after an otherwise perfect answer!).

Candidates should be reminded to:
- Try and think about the question with a greater single-mindedness – these questions always turn on a single critical point and candidates will not score full marks without it. This so-called critical point is often missed because candidates are looking too hard and making the question more complex than it needs to be. Practising single issue mini-problems in class as preparation should help.

Q3a) Charlie. This question was answered least well largely due to a failure to recognise that being on a sinking ship puts one in danger and/or out-of-date notions about rescuers.

Q3b) Pedro. This question was well answered to the extent that most candidates correctly identified that this was a potential secondary victim situation. However, when applying *Alcock* a significant minority wrongly considered that there was insufficient proximity rather than focusing on the issue of a close tie of love and affection. Those who did identify the love and affection issue were credited whichever way they went since the information in the question was insufficient to determine the outcome. This included conditional answers such as 'it will depend whether the close tie can be established'.

Q3c) Michelle. Generally well answered although there was a significant minority who either considered her to be a rescuer or thought she lacked proximity not having witnessed the accident itself – this is despite the similarity to *Mc Loughlin* which was intended to remind candidates of the 'immediate aftermath' scenario.