

**GCE**

**Law**

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

**OCR Report to Centres June 2015**

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

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

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# G151 English Legal System

## General Comments

Overall, the paper appeared to be accessible with the vast majority of candidates able to complete four full answers. The Section B questions were extremely popular with most candidates attempting both questions. There was a broad range of responses to all questions on the paper, although Question 1 on the Separation of Powers and Judicial Independence and Question 5 on the Duty Solicitor Scheme and the provision of aid and advice regarding Criminal Matter prompted few answers.

There were fewer rubric errors occurring and candidates seemed to have been prepared for the assessment and had read and understood the instructions contained within the assessment material. The introduction of the new style answer booklet has ensured that all parts of the script have been marked, as candidates were given the ability to answer the questions in the order that they wished and furthermore, examiners could not submit a script as 'marked' until all pages contained in the candidates work had been annotated.

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

## Areas demonstrating progress:

- It was clear that almost all candidates were making an effort to apply themselves; with very few poor scripts and very few where the candidate had not made a substantial effort to answer 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 AO1 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 appeared to be a recognition that many of the questions in part (a) are two part questions and that there is almost a 9/9 split of the availability of marks. Where some candidates had used diagrams to assist their explanations, these, on the whole, were well annotated allowing candidates to access higher grade boundaries.
- There was a comprehensive and balanced attempt by candidates to answer the section A part (b) responses, with many candidates managing a range of developed or well developed points, with fewer lists or bullet point answers and with many candidates attempting broad answers.
- 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 and/or centres 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 6, where some candidates had clearly revised the powers of the police and the rights of citizens when detained and decided that that was the answer that they were going to attempt to 'crowbar' into an answer about the Custody Officer. Another approach which did not and which will not work is an attempt to use last year's answers/mark scheme to answer this year's questions. It is important to revise complete topic areas as questions can include different elements from a topic area. It is also

important for centres to keep themselves up to date. Many candidates in Question 3 answered that the Small Claims procedure handles claims up to £5,000, when this limit was increased to £10,000 in April 2013.

- 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 2 (b) on the disadvantages of the jury system, many candidates were giving both the advantages and disadvantages.
- 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, as also are newspapers.
- 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 7 (b) where many candidates addressed inaccurate factors used for sentencing, namely aggravating and mitigating factors.

**It is essential that centres refer to the guidance given by OCR in January 2015 about topics that may appear in Section B**

## Comments on individual questions

### Section A

#### Question 1

This question was one of the least popular on the paper and answered by few candidates.

- (a) This was a rarity in the course of the exam cycle and as such divided responses clearly. The grades were L4 when a candidate really prepared this subject and addressed the question directly. Alternatively, those candidates who chose the question and really missed the point of it tended to be the weakest candidates. There was some evidence to suggest that the candidates also taking AS politics were doing this question. There was a lot of confusion about which powers were actually being separated.
- (b) Expressions like “recent reforms” seemed to throw the candidates as to how recent is recent and as much as examiners are happy to mark candidates work positively, the Act of Settlement 1701 is not recent and therefore the security of tenure discussion was irrelevant.

<https://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/independence/>

#### Question 2

This was a popular question on the paper.

- (a) There were some excellent responses that described the selection of juries and the challenges that could be made, with many candidates being able to go into the detail of case examples where challenges had been made. Some responses mixed up the selection of jurors and lay magistrates, which gained no credit. Many scored High Level 4 marks but those that did not mention a statutory reference failed to achieve maximum marks.

- (b) There were some very good responses which developed a discussion of the jury system based on the disadvantages, with many giving extensive answers on the reasoning behind their opinions. No credit was given for a discussion of the advantages.

### Question 3

Again, this question was quite popular.

- (a) Answers generally reached the bottom of L3, but there was a greater awareness of the work within the divisions of the High Court than in previous years. The majority of centres are still teaching the outdated limit of £5000 for small claims. The change in limits came as a response to the coalition government alterations to the Conditional Fee arrangements and gave the ability to litigants in person to make a claim for cases between the old and new limits without having to lose money by having to pay solicitors for their work and it opens up the small claims track to higher value disputes. This change will strengthen the remedies available for many individuals.
- (b) This was generally answered in relation to just the advantages and disadvantages of the SCT rather than specifically to the increased in jurisdiction, but this happened where candidates are still being told the jurisdiction is still £5,000. Many answers discussed Woolf reforms which had a significant impact; this could not be marked as relevant as it is 16 years old. There were some candidates who thought this was the mode of trial question.

### Question 4

This was also a reasonably popular question with many candidates applying their knowledge to both parts of the question, work and complaints.

- (a) There were some excellent answers, and reference to the complaints procedure was far better this year than in previous years when similar questions have been asked. Credit was given to those candidates who included the legal procedures a client might take and additional credit was given for citing case examples.
- (b) This part of the question generally caused all sorts of problems as it required analysis of elements that were not introduced in the part A. Few were able to respond adequately to this demanding comparative question on solicitor's and barrister's training/work. As a result, the candidates picked up on the key words 'work' and 'training'. Work was often described in terms of easier or harder in regard the work undertaken and this was prevalent in weaker answers. The training element often resulted in a recount of the process of training with little or no AO2. A number simply offered a description of how a solicitor qualifies and how a barrister qualifies in a manner more appropriate to the 'Describe' Section A (a) questions. Those that did 'Discuss' insisted it took longer to qualify as a barrister.

### Question 5

This was a particularly unpopular question, answered by only a few candidates. Some answers were confused and it soon became clear that these candidates were those who were 'reaching' for a fourth question. 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 and most of the answers seen gave the impression that the candidates' knowledge had come from watching T.V. The Duty Solicitor appeared in all answers but few seemed to have studied the provision for legal advice and assistance. Furthermore, there was a general mix up between means and merits tests, with many candidates confusing civil and criminal differences with some suggesting that 'no win, no fee' was an option.

- (b) Oddly, those candidates who did badly on part a tended to do better on part b and were able to put together some discussion, albeit limited, on how cuts to legal funding may be disadvantaging people who required access to justice in a criminal case.

## Section B

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

### Question 6

This was very popular and generally quite well done, with very few Level 1 or Low Level 2 answers.

- (a) Part (a) was generally done quite well but the candidates did find it hard to restrict their comments to the custody officer. Weaker candidates showed some confusion on intimate/non-intimate searches with some suggesting that the Custody Officer did the searches. Other candidates unnecessarily wasted their time on covering Stop and Search rules, prior to answering the question on the police rules of searching someone detained at the police station. Additionally some candidates offered information on the taking of samples and the rules for interviewing, whilst the question related solely to police searches of detainees. Many wrote extensively about the time limits and some about interviews. Searches were generally done much better as candidates often do well on this topic but again want to show their in depth knowledge of taking samples as well as searches.
- (b) Candidates were very successful in obtaining high marks for part b with many candidates scoring maximum marks. The only real problems linked to the plain clothes and the reasonable suspicion. Most candidates wrongly quoted that the officers have to give their name and station prior to arrest rather than identifying themselves. Some candidates thought that there was no reasonable suspicion as it could not come from a bitter ex-girlfriend.

### Question 7

This was very popular and generally well done and attempted by most, if not all candidates. Generally the responses tended towards Levels 3 and 4, with very few Level 1 or low Level 2 answers.

- (a) This was again generally done well; candidates picked up reasonable marks and showed good knowledge of the general provisions of bail, although there was a lot of confusion about what a restriction is and what a factor is. In the better responses candidates had clearly engaged with the topic and were able to address the question well. Most candidates outlined sufficient bail conditions to gain the full marks on those allocated to this section of the question. Not everyone mentioned unconditional bail, nor did everyone define bail for extra marks. Many scored high Level 4 marks, but those that did not mention a statutory reference failed to achieve maximum marks.
- (b) Many candidates proved to be very proficient in applying a conclusion on the issues identified as significant for a bail application. Unfortunately others commented merely on the character of Paul (e.g. trustworthy and a hard working family man) without expressing the required conclusion that bail was or was not to be granted, or was or was not more likely to be granted. These candidates perhaps knew the point but nevertheless failed to state it and therefore missed out on extra points. Some candidates spent too much time on going through a number of potential bail conditions, when the question simply asked for the most appropriate. A number of candidates would take Paul's passport away when he might escape to another town. There was also some confusion about the wife and family ranging from he will 'run away to them' to 'they mean that he won't run away as he has something to stay for'. Some candidates expressed a desire that he be given a 'tag.'

## G152 Sources of Law

### General Comments:

This was a challenging paper with some questions on conventional topics framed in novel ways. The standard of responses was varied, as described below. The overwhelming majority of candidates did the legislation and statutory interpretation question with (estimated) less than 5% undertaking the EU Law question. Performances were evenly matched on both papers.

### 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, doing both elements of a two part question, or producing well-developed cases.

### Areas for improvement:

- It was clear that significant numbers of candidates failed to deal with questions framed in novel ways. Whilst it is admirable that candidates have gone to the effort of revising thoroughly and learning the materials, they must be ready and able to manipulate their knowledge to address the requirements of the question. This demonstrates true understanding as compared to mere thoughtless recitation. It has been noted below (by question) where this was a particular issue.
- 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.

### Comments on Individual Questions:

#### Question 1

**1(a)** This question was generally well answered. Indeed, some answers were excessive and exhaustive in their detail – possibly to the detriment of overall timing and performance on the rest of the paper. There were scripts in excess of five sides in response to a fifteen mark, fifteen minute question! When there was too much detail it was typically around describing sources of new laws, types of Bills, the Queen’s Speech, commencement and detailed accounts of the processes that take place between the two Houses of Parliament. Many candidates failed to tackle the demand of the question ‘head-on’ and explain the before and after stages, either side of the Committee Stage. The most common reason for not achieving high marks was missing a stage (Report Stage most commonly), or getting stages in the wrong order.

**1(b)** The application questions were generally answered to a reasonable standard. These are now a very familiar question format and we are able to anticipate student responses with increasing accuracy. Consequently most questions allow for alternative lines of reasoning rather than one single right or wrong route.

The rubric is also clearer than it has been in the past as to what the question expects candidates to do – apply ‘all the rules of interpretation’ to ‘each’ individual. Despite this, a number of candidates used the rules of language not the rules of interpretation and a significant minority used a single different rule of interpretation for each question. There is also a persistent approach to these questions which sees the candidate apply whichever rule delivers the desired outcome and then venture no further.

However, by far the greatest single issue and the one which stops many otherwise able candidates scoring full marks is the application of the Golden Rule. Many candidates simply do not understand how this rule operates. Most especially, the fact that it will have no application where there is no absurd result. It cannot be possible to be guilty or not guilty under **both** the Literal and Golden Rules – either the result of the Literal Rule was satisfactory and there was no need to apply the Golden Rule or the outcome (guilty or not guilty) was absurd and the Golden Rule would change it. It should be noted that raising the possibility of using the Golden rule only to dismiss it as not necessary counts as application of that rule for the purposes of the mark scheme (i.e. three rules correctly applied = full marks).

bi) Most candidates performed well on this question, whether they saw the ‘legal high’ as a drug or not – since both lines of reasoning were allowed for. Note the misapplication of the Golden Rule (above), which did appear occasionally on this question.

bii) A significant minority struggled with the idea that either a) ‘starting a car’ is an attempt to drive it, or b) that a pub car park is a public place, or both. Outside of this and the Golden Rule issue referred to above, most candidates did well.

biii) A few candidates struggled with the idea that being exhausted could be purposefully viewed as being ‘unfit’. However, this would not have deprived them of full marks had they argued that exhaustion is outside the purpose of the Act.

**1ci)** Compared to its relatively recent last appearance in January 2013, the standard on this question was below expectations. The following points should be noted.

To achieve higher marks candidates would be expected to:

- Give reasonable definitions of both the narrow and wide versions of the Golden Rule, which fewer candidates seemed able to do than last time.
- Give two or three well developed case examples, which few candidates managed to do. The standard three cases cited in previous mark schemes and popular textbooks are *Allen*, *Adler* and *Sigsworth*, but few candidates managed all three. These cases, if properly developed, disclose whether or not the candidates have a clear understanding of the Golden Rule.
- Make a comparison to the literal rule. This could have been achieved in a single short sentence and yet many candidates gave exhaustive and excessive accounts of the literal rule, with many well developed cases in support. Many candidates wasted valuable time on this point and ended up writing far more about the Literal Rule than the Golden Rule.

Many scripts:

- failed to achieve level 3 or higher for simply lacking definitions or a single well developed case.
- had the wrong case names with the relevant facts.
- passed off Mischief Rule, Literal Rule and Purposive Approach cases as Golden Rule cases.

- gave the case facts but failed to isolate the word(s) being interpreted and explain the impact of the rule on the word(s) and, in consequence, on the outcome.
- failed to make use of the support offered by the source.

**1cii)** Paradoxically, considering the quality of responses to 1ci), the quality of responses to this question was very good. It is difficult to understand how candidates can have such a good critical appreciation of a topic they seemingly struggled to describe. However, there were some super answers demonstrating:

- good discursive writing potential, evidenced by thoughtful development of points.
- good focus on the quote in the question stem and skilful development of the same point.
- an appreciation of the constitutional law issues involved.
- awareness of the potential for judicial creativity.
- a good balance between advantages and disadvantages.
- critical use of the support in the source material.

As a result many candidates scored well on this question. Where candidates fared less well, it was generally due to lack of development, or using generic critical points which were either not relevant or not made relevant to the question (e.g. wasting time and money and judges being corrupt, biased and wanting to get their own way).

## Question 2

**2a)** There were some very mixed responses here. Some candidates were clearly completely out of their depth and just 'having a go' based on very little knowledge and/or reliance on a re-working of the source. Some candidates did reasonably well but lacked the knowledge or confidence to go beyond a basic explanation of HDE & VDE. Such scripts often used inappropriate cases and got confused between direct effect and direct applicability. Similarly, these candidates were rarely able to explain simple points outside direct effect such as availability through incorporation. However, some candidates gave very lucid and articulate accounts of not only HDE & VDE but indirect effect, state liability, HDE involving human rights and incorporation. These answers were supported by lots of relevant case law and made use of the source.

**2b)** In general these questions were well answered. They follow a now familiar pattern although there were a couple of new 'twists' this time. Less able candidates failed to recognise vital clues in the scenarios and gave incorrect advice. More able candidates demonstrated clear understanding of the topic as they negotiated each question skilfully and supported their answers with alternative actions and/or supporting case law.

bi) Many candidates failed to recognise the fundamental significance of the date in this question. Since the whole question really turned on this point, it divided the answers in a fairly clinical fashion. The correct response would be that Claudia cannot access her rights due the implementation date, with some credit for what she 'might' be able to do were it past implementation. Candidates who missed this point answered the question as a straightforward VDE question and, unfortunately, did not score any marks.

bii) Probably the most straightforward of the three questions. Most candidates will have got the central HDE point with more able candidates going on to suggest alternatives such as state liability.

biii) Some mixed responses here. Despite the hospital being clearly flagged up as 'private', a number of candidates went on to wrongly treat this as a VDE situation (perhaps persuaded by thoughts of resonance with *Marshall*). Those who correctly treated this as a HDE situation rarely went on to deal with the potential human rights issue (age discrimination) under the *Kucukdeveci* principle.

**2ci)** Generally well answered. Most candidates had something relevant to say on both composition and role and functions. More able candidates covered composition well with reference to Advocates General, qualifications, tenure and chambers and then went on to look at Article 267 referrals in some detail as well as the different types of direct actions. These answers were often replete with cases and Article numbers – very impressive.

**2cii)** This was a challenging question, as it had a rather singular focus. Most of the more able candidates were able to examine different aspects of both the impact on supremacy and its consequences. It was often necessary to do this through examination of case law and this was credited as AO2 where appropriate (i.e. as a 'developed point'). Less able candidates were still able to discuss the central supremacy issue but often ended up repeating or re-working the same point. Discussion of non-UK cases was credited where the outcome would have had an impact on UK supremacy as well as the member state concerned and the EU as a whole.

## G153 Criminal Law

### General Comments:

Responses to all questions were seen and there was a pleasing spread, with relatively few examples of candidates not being able to attempt the correct number of questions. The recent trend of candidates tackling the questions in reverse order continued to be seen, often to good effect as it helps candidates plan their time effectively across the whole paper. There remains a tendency for some candidates to spend a disproportionate amount of time on Section A, often by writing a huge amount which can have an adverse effect of their performance in other sections of the paper, especially if time is short for Section C, as this question is worth 20 marks, but needs to be given enough time for candidates to reason logically and accurately.

Problem solving skills are often good, although many candidates still include pre-learned material on a given topic area without any consideration for its relevance to the scenario. The mark scheme gives guidance on this point and the best answers demonstrate a candidate's ability to select, explain and apply relevant law to the facts they have been given. Where statute law is relevant in Sections A and B, particularly in questions 3 and 4, 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. There were many examples of good technique in Section C, often based around a bullet point format and excluding any reference to cases in favour of succinct and reasoned application to a logical conclusion.

Section A responses are differentiated in AO1 by the specific level of knowledge and citation; with only 25 marks available, the best answers use the most relevant cases and focus on the legal point supported by only enough factual information to show that the correct case is being used. With regards to AO2, it is good practice to use the question as a springboard for evaluation, although points need to be developed and expanded to reach the higher assessment levels and repetition of the stem can only attract limited credit. 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 include good, wide-ranging and relevant knowledge supported by clear and well developed analysis throughout the essay before concluding in a way that supports their opening premise.

Section B responses are differentiated in AO1 by the level of accurate and relevant knowledge; in relation to case law, fewer cases explained and applied accurately are preferable to an extensive list of names unconnected to any facts or legal principles. Statutory law, such as the Theft Act 1968 and the Coroners and Justice Act 2009, must demonstrate detailed and accurate knowledge of relevant provisions and supporting case law to access the higher mark bands. In AO2 the focus is on identification of the relevant areas of law raised by the scenario and their accurate application to those facts. As the criminal law can be uncertain, alternative lines of reasoning can be credited if they are tenable on the facts.

**Examiner tip** – using a highlighter to pick out key information so as to write in a relevant way can be very helpful to ensure that the candidate deals with all the issues and does not stray into irrelevance.

Section C responses are differentiated by the accuracy with which relevant legal principles are identified and applied. An integral part of Section C is the conclusion and candidates must be decisive - phrases such as 'could be liable', 'might be guilty', 'may possibly be liable' are not credited.

**Examiner tip** – the very best answers considered each of the statements carefully and separately so as to allocate information accurately. A bullet point format also helps candidates to be focused and brief.

Standards of communication are 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.

### **Comments on Individual Questions:**

#### **Question 1 – consent**

This was a popular question which focused only on non-fatal offences against the person, as indicated in the rubric of the question. Many candidates were able to give a detailed survey of the law and cover a range of issues such as the basic principles that dictate the operation of the defence and its role in particular areas such as sport, surgery, horseplay and sexual offences. A good number of candidates included the development of the law in relation to sexually transmitted diseases such as seen in *Dica* and this often led into a discussion of the key issue in the defence of balancing personal autonomy with the need to protect the public. The cases of *Brown*, *Wilson* and *Emmett* attracted considerable coverage, both in terms of the factual information and the issues they raised although there was a tendency to focus on the heterosexual/homosexual point leading to the conclusion that the judiciary can be seen as homophobic whereas the key reason for imposing liability was that of degradation by, and subjugation of, one party over another as well as pragmatic points about NHS costs and the danger of creating a defence which could provide a gateway to greater harm. Some candidates also explored the conflicts in relation to horseplay in considerable detail and explored the particular issues raised in sport through the differences in sporting activity and the role of sports people in wider society.

#### **Question 2 – strict liability**

This was the most popular question in Section A and required candidates to consider the law in the light of the public protection it offers. Many candidates were well prepared for the AO1 aspect of the question and wrote extensively on absolute liability and old cases on sexual offences as well as common law examples before beginning to engage with more recent ways in which the law has been used. Some candidates wrote without any reference to the test provided in *Gammon* and this often made it difficult for them to construct evaluative points. The best answers used the criteria as a framework for both knowledge and comment, with the one building on the other as they moved through the different elements of the test. The best answers picked up on the changing trend in sexual offences in cases such as *B v DPP* and *Kumar*, using these as an example of where the sentencing policy and attendant stigma has forced a rethink as to who needs to be protected by the law. Many candidates explored the impact of the law on businesses, with the best going on to assess the commercial arguments which can lead to increased deterrence balanced against a profit from risk strategy which can make the offences redundant and leave the public unprotected. Some candidates also looked at proposals for reform which lent colour to their evaluation of the shortfalls in this area of law as well as comments based on the inconsistency with basic principles enshrined in Human Rights Act 1998.

#### **Question 3 – defences to murder**

This was the least popular essay question but many answers were seen which displayed thorough knowledge of the law since its reform in 2009. Accurate and detailed reference to the Coroners and Justice Act 2009 was essential to access the higher mark bands as was the inclusion of recent case law. Given the comment in *Clinton* that the case law of provocation had gone the same way as the old statutory defence credit was only given for pre 2009 cases if they

were used to illustrate how the law would now be applied differently, with *Doughty* and *Aluwahlia* being particularly common examples. Many candidates had clearly got to grips with the complex statutory test and were able to make incisive comment as to how this had, in different ways, both narrowed and widened the test, evidencing comment relating to the goals of the Act and whether in its present form it gives effect to the intention of Parliament. With regards to diminished responsibility, the need for up to date statutory knowledge was also key, although here older cases continue to be relevant. The key point was to recognise the evolution of the defence and to comment on its fitness for the purpose Parliament intended it to have, with its changed working and tighter focus on a medically based test compared with the proposals put forward by the Law Commission. Many candidates looked at the practical implication of the defence in terms of access and sentencing to good effect.

#### **Question 4 – property offences**

This question was the most popular in section B and required candidates to cover theft, robbery and burglary. Some answers focused exclusively on theft and so were unable to access the higher mark bands. Accurate and detailed statutory knowledge was important but even more vital was the need to be focus on the scenario and it was not necessary to cover every aspect of, for example, s3, 4 and 6. That said, key elements such as s5(3) did need to be covered. Many candidates were much more confident with theft than robbery and burglary and candidates should make sure they can deal with all the offences with equal ease. In terms of application many candidates were able to ascertain that the relevant issues in relation to Imran and the money were s5(3) and s2(1)(b) – candidates could reason that Imran had or had not committed theft as long as they did so logically. In relation to the jeans the key point was that the theft was complete and it made no difference that Imran put the jeans back. Most candidates were concluded that Imran committed a theft in relation to the bracelet. In the case of Ahmed there was the opportunity to discuss s9(1)(b) as he became a trespasser when he entered the storeroom and stole the watch. Similarly there was the chance to discuss robbery and using the precedent in *Hale* and *Lockley* it was reasonable to conclude that Ahmed would be guilty of this offence. With regard to Jamal the relevant offence was s9(1)(a) and the best answers appreciated that this was complete at entry; it made no difference that Jamal did not take any shoes and there was no need for conditional intent.

#### **Question 5 – murder and attempted murder**

This question was popular and evinced a wide range of responses. The best technique was to deal with the characters in turn. With regards to Gary there was a need to focus on s1(1) Criminal Attempts Act and to be clear on both the actus reus and mens rea of attempted murder. The key discriminator was to recognise that, as decided in *Whybrow*, only an intention to kill suffices and this needed to be linked to the facts of the scenario. Many candidates linked this to causation and reached the conclusion that given Tyrone's anger at Gary this may well have provided the intention to kill. In the case of Shona, as well as proving the elements of murder the key issue was that of transferred malice and a recognition that Tyrone would be guilty of the murder of Raymond using this principle. Again causation was relevant and the best answers avoided any digression into points about reasonable creatures, time of war the now defunct year and a day rule. Similarly there was no need to revisit all the cases on the mens rea for murder, application of *Woollin* was sufficient. In relation to Shona the key point was the area of omissions and the existence of a duty based on relationship between father and child as seen in *Gibbons and Proctor*. The fact that Tyrone locked Shona in her room and refused to feed her led may candidates to surmise correctly that he would be liable for her murder.

#### **Question 6 – defences**

Although the least popular of the problem questions, there were plenty of pleasing answers to this question. The first step was to identify the relevant defences of insanity, automatism, duress and self-defence. Given the range of defences it was important for candidates to focus on the

features of each defence as relevant to the scenario rather than to give extensive but perhaps marginal information on each defence. The best technique was to focus on one incident at a time. In relation to Margaret and the milk, the most likely defence was automatism as her actions were the result of the external factor of being hit on the head. Discussion of whether Margaret had lost all ability to have voluntary control by the fact that she reached the shop influenced candidates' conclusions and any route was viable as long as it was reasoned. In regard to Margaret attacking the waiter the most appropriate defence was insanity as it was induced by the lack of insulin. Some candidate reached the conclusion that Margaret may choose not to have a defence at all. In relation to Colin and the robbery, duress was the best choice and involved a discussion centring on whether there was nexus, the fact that the threat was to Margaret and that Colin has chosen to become involved with a criminal. As a consequence the best answers concluded that Colin would be unlikely to have a defence. In relation to Colin succeeding with self-defence, the key discussion was around whether the force was disproportionate and whether it made any difference that this was a householder case and Colin reacted as he did as he knew Bill was a gangster, who may well have used a gun. Candidates could reach a conclusion that Colin would succeed or not as long as their reasoning was logical and backed up by relevant citation.

### **Question 7 – non-fatal offences against the person**

The best strategy in this question was to read each of the statements first so that material could be targeted appropriately and then to move through the actus reus and mens rea of each offence with application to a conclusion. In statement A the key was to appreciate the need for unlawful touching or force in battery and that there had to be intention or subjective recklessness for the unlawful touching or force. The slap was unlawful and the way in which it was done suggested that Elliot did so intentionally. In statement B there was a need to be clear that s47 is ABH which requires an interference with health or comfort, also critical was a recognition that the mens rea related only to common assault and not for the harm which occurs. The best answers concluded that a bad bruise would satisfy ABH, that Juan was at least reckless when he swung a punch at Elliot and that he did not need to foresee any harm. In statement C the key was to recognise that the actus reus could be a wound or GBH, with the former being the most appropriate. Candidates could conclude that the cut was or was not enough to be s20 as long as they were logical in their reasoning. The mens rea required the foresight of some, but not serious harm and this was often the key discriminator. In statement D candidates needed to recognise that a broken leg would give rise to GBH but not be a wound. The offence required a specific intention for serious harm as the mens rea and this may or may not have been evident on the facts; credit was given for either line of reasoning to an alternative conclusion as long as it was logical.

### **Question 8 – manslaughter**

The best strategy in this question was to read each of the statements first so that material could be targeted appropriately and then to move through the actus reus and mens rea of each offence with application to a conclusion. In statement A the actus reus was the need for an act causing death which came from Ben driving so fast that he hit and killed Jack. The mens rea was seeing a risk of death or serious injury and running it – which Ben did when he sped through the red light. Candidates who postulated that Ben did not see a risk of death or serious injury could be credited if their reasoning was logical. In statement B the actus reus was reliant on an unlawful and dangerous act causing death and the need to apply the thin skull rule in causation. In addition there needed to be mens rea for the initial unlawful act, which there was as Ben pushed the man in the queue intentionally. In statement C the actus reus was again based on an unlawful and dangerous act causing death, this time evinced by the fact that Ben pushed the man intentionally and this led to Toby being dropped on his head. Candidates could argue in the alternative that the chain of causation between Ben and Toby was broken by the failure of Doctor Brown to treat Toby properly because of his hangover. In statement D the actus reus came from the existence of a duty which was breached – in this case when Doctor Brown failed

to treat Toby for an excessive time of 6 hours. The mens rea would rely on a Doctor Brown seeing a risk of death and his failure to treat being so grossly negligent as to be criminal in the eyes of the jury, a conclusion which could be supported by the fact that he was sleeping off a hangover.

# G154 Criminal Law Special Study

## General Comments

This Report to Centres refers to the summer series of the Criminal Law Special Study Paper for 2015, although a lot of the general comments and specific comments can relate to previous and subsequent series. This series, the G154 paper examined the main aspects of the essentially common law ‘defence’ of intoxication. The new theme, as anticipated, generally proved accessible to candidates in all three questions. However, for a small minority, Question 3c proved to be problematic. This looked to be more of an identification issue than a lack of knowledge. With this in mind, candidates and centres are reminded that the broadest range of the topic will, in general, be tested. Specific mention must again be made to the annual Special Study Skills Pointer (available on the OCR website) and previous Reports to provide helpful advice and guidance. Candidates are again reminded that while the topic changes each year, the skills in tackling the questions do not. It is very important also here to stress that the G154 mark scheme is 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. Indeed, reference should also be made to previous G153 mark schemes where the current topic has been covered.

Previous reports have reminded candidates about time management. This crucial issue continues to be a problem with some candidates spending a disproportionate amount of time on certain questions, in particular Question 1. This is to the potential detriment of the other two questions. Candidates should be advised to try to work to the mark-a-minute guidance, and then spend the extra time on reading, planning or addressing Questions 2 or 3. It may also help candidates rearrange the order that they tackle the questions. A popular strategy is to answer them in the order of 2-3-1. This series continued to see the increase in the use and reference to the pre-release materials. Previous reports have explained the importance of the materials and how they can help and enhance the candidate’s work during the planning of the exam and during it. If a quote or a point is contained within a Source then the candidate can save time by correctly referencing it.

## 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 *Director of Public Prosecutions v Majewski* and the development to the law on intoxication it has (or has not) provided. This question tests Assessment Objective 2 by requiring analyses, evaluation and application to the law of *Majewski*. 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:

- 1 the rule at common law was that self-induced intoxication would not be considered a defence to a criminal charge, although the rule had been tempered for offences where specific intent had to be proved;
- 2 if the crime was one of ‘basic’ intent, committed by the accused whilst in such a condition, the criminal law would not allow a defence to assaults alleged against the defendant if recklessness played a part in getting intoxicated;
- 3 and that this was still the case even although there was, generally, no contemporaneous occurrence of the *actus reus* and *mens rea*.

Indeed, this was all that some candidates wrote and simply rephrased the Critical Points over and over for some unknown reason. Centres are again advised when researching cases for Question 1 to look at five or six textbooks or reputable legal websites to consider their author's discussions of the case. Indeed, it is likely that the full judgement of most cases contained in the Source materials will be freely available on the internet for centres and candidates to consider in class without having to subscribe to a paid legal website. From these additional materials centres can create their own responses to cases which will necessarily include the Critical Point, generally considered Analytical Points and clear references to Linked Cases.

Most candidates achieving a Level 5 answer explained at least two, and in many cases all three, Critical Points clearly, gave further analysis together with a linked case and made a clear comment on the importance of the *Majewski* (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 such candidates were unable to get into Level 5 since they had failed to use a linked case nor commented on the significance of the decision. 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, thereby gaining maximum or near maximum marks. This year, however, there seemed, in many responses, a movement towards writing a mini-essay on intoxication rather than concentrating on the case itself. While some points were indeed relevant (in some cases by default) many in such circumstances were wasting time and marks. Another alarming movement, in consequence, was to discuss many more cases than is necessary. Some responses thoroughly covered four or five cases where only one is required. Although as great credence was paid by the Court towards *Lipman* in *Majewski*, this was treated as a separate Analytical Point in itself where analysed by the candidate. Three marks are available for a linked case discussion in Question 1 and again, candidates lost time by analysing further cases.

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

- 1 The discussion of Lord Elwyn-Jones and the relationship between intoxication-related specific and 'basic' intent crimes;
- 2 The defendant's own failed arguments of why he was not guilty of the offences charged;
- 3 The House of Lord's thorough discussion of the societal problems as a result of alcohol and drug-fuelled violence;
- 4 That section 8 of the Criminal Justice Act 1967 had not altered the rule that intoxication is no defence to a criminal charge, with the exception of specific intent crimes.
- 5 The thorough discussion of a linked case, for example *Beard* or *Richardson and Irwin*.

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

## Question 2

This question required a strong focus on a discussion and analysis on the criminal law's approach to the 'defence' of intoxication albeit from a particular and popular angle.

For AO1, candidates could have secured high marks by providing detailed definitions of ‘voluntary’ intoxication (using *Majewski* and related cases) and discussing the differentiation between specific and ‘basic’ intent crimes in relation to the ‘defence’, ‘involuntary’ intoxication (using *Kingston* and related cases) and self-induced automatism (using *Hardie* and related cases). While a ‘well-developed’ response on these areas of the ‘defence’ could secure high marks, it was pleasing to see, but not a requirement to secure high marks, many candidates moving on to discuss the ‘defence’ in relation to mistake and self-defence as well as diminished responsibility.

A common failing this series was the number of candidates who disappointingly used relatively few cases to in their response to Question 2. Given that the law in this area is almost exclusively driven by common law, candidates using few cases missed many opportunities and were naturally prevented from accessing key aspects of the ‘defence’. There are eight cases in the pre-release materials so candidates would be expected to have considered at least this many in their responses to achieve the Level 5 descriptor. The common law has provided us with a plethora of cases easily accessible to candidates prior to the exam.

Another common error was in explaining the key cases out of chronological order, for example saying, incorrectly, that *Beard* followed *Majewski* and reducing this part of their response to disarray. Previous reports have advised that while there is no requirement to recite the dates of cases in responses, the only exception is to keep them in chronological order if necessary. Not unusually, a small number of candidates completely misunderstood the specific/basic split in terms of *mens rea*, which became more of an issue in their responses to Question 3 and, in particular, Question 3 (a). Indeed, many candidates felt that the split is an absolute rule. However, the common law makes intoxication a rebuttable presumption: that the more drunk you are the less likely you are to form the intent. However, since many defendants can take extreme amounts of alcohol and still form the intent, juries are always advised to consider such thresholds by competent prosecution lawyers particularly in crown court, but very few candidates made this well-developed observation or comment. In consequence, a drunken/drugged intent is still an intent was, in many cases, glossed over or completely missed.

However, the AO1 demonstration of knowledge and understanding was, at times, frequently disappointing. On many occasions, candidates would concentrate on one case, normally *Majewski*, and go into unnecessary lengthy detail about the facts of the case, interestingly in far greater depth and analysis to their response in Question 1 (?!). Whilst it may be interesting to know the defendant’s first names (Robert Stefan) this simply did not enhance their responses on this occasion.

For AO2, being a synoptic paper, the best analysis and evaluation by candidates was obviously seen in commenting on the question itself: whether the criminal law has made a satisfactory compromise between legal principle and that of public policy in relation to defendants accused of committing crimes whilst intoxicated. 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 4 from which the quote was taken, all of the Sources contained some information as well as much comment that was helpful in answering the question or of stimulating discussion before the exam.

In the majority of candidate responses the AO2 analysis and evaluation achieved Level 3 or 4. Most candidates were able to comment in some way on the ‘balance’, or perhaps, lack of one. Most were able to analyse *Kingston*, *Majewski* and *Hardie*, but good candidates were able to give a thorough analysis of the cases together with their consequential cases. Again there was clear evidence that the sources seem to have been utilised more than in previous sittings.

As has been stated 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. Again, it is reminded that the quote will be taken from within the Source material and will not be one obscure or opaque. It is also a useful class or ‘flipped-learning’ activity for candidates before the exam to spot and model any particular potential.

### Question 3

This application question provided some interesting and varied responses, particularly between the sub-questions. Many candidates who scored well on Question 2 lost some of their marks here. Again, as mentioned in previous series, candidates would do well to use some sort of problem/scenario answering formula such as IDEA or ILAC to help answer the questions. In effect, any such formula looks at defining each part of the relevant law (AO1), here ‘involuntary’ intoxication, ‘voluntary’ intoxication via ‘Dutch-courage’ and self-induced automatism/intoxication then applying (AO2) this to each part of 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 and, indeed, the Source material. This in consequence gave the student a direction in which to pursue the most appropriate ‘defence’ the character was likely raise (even if it would be most likely a failed defence) and whether on the facts it would be successful. For Level 5, candidates ought to have included appropriate case illustration in support of application and also to have focused on the Critical Point evident in the scenarios as well as providing an appropriate conclusion. Each scenario required the candidates to consider:

- For (a) that it would be unlikely that a conviction for theft would stand since Mick was unaware that what he was drinking contained vodka. This is because Nazreen had told him the fruit drink was non-alcoholic. Since he could not remember taking the expensive watch as he was so drunk it was likely that he was involuntary intoxicated and would have a complete defence to the specific intent crime following cases like *Kingston*. However, candidates who felt that either because he has noticed the watch earlier, or was simply reckless in believing the drink was non-alcoholic could access full marks for this question also;
- For (b) that Jin was less likely to avoid a conviction since he had deliberately consumed several strong lagers in order to confront Duncan.
- For (c) whether Aimee’s taking of a pill in the mistaken belief it was a painkiller when in fact it was not a painkiller and causing a violent and uncontrollable outburst resulting in injury to her friend thus leading candidates down a *Hardie/Bailey* line. Again, candidates could still secure full marks by going down a well-argued voluntary or involuntary line.

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

The questions attracted many good responses, with able candidates being able to demonstrate both thorough knowledge and high level application skills. Scripts at the lower end showed much more limited evidence of either. One frequent weakness in candidate answers in (a), (b) and (c) was in the specific/basic intent categorising of offences. While candidates did not have to specifically define the most appropriate offences for each of the Question’s sub-sections, many would state for example, incorrectly, that theft was a basic intent crime along with section 18 Offences Against the Person Act, or that section 20 was a specific intent crime because it can be committed intentionally. Having identified appropriate ‘defences’ 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 continuous reduction in the number of candidates who discuss 'alternative' scenarios. Here, in previous series many candidates would say, instead of answering the scenario set: 'but if she/he had done this or that then the answer would be this or that' - in effect creating their own scenario and losing marks as being irrelevant.

Part (a) answers were generally Level 4 or 5 responses. Given that the decision could go either way on the facts, and the cases of *Kingston*, *Allen* and *Fotheringham* that could potentially support either approach of not guilty or guilty, candidates were able to articulate their thoughts appropriately. In consequence, those who felt the intoxication was involuntary would explain in various degrees that this would negate any *mens rea* and that since theft has no actual fall-back Mick would be found not guilty if thus charged. Those that felt he was reckless in believing the content of the drink would nevertheless come to the same conclusion. However, some would incorrectly manufacture theft into being a basic intent crime and say Mick would therefore be guilty of theft, robbery or even burglary!

In (b) most candidates were able to notice that the crucial point was based around the issue of whether Jin's drinking of the several strong lagers was conducive with 'Dutch-courage'. Indeed the question does state that this is the case in order to confront Duncan. Such measures would normally suggest 'Dutch-courage' and following cases like *Gallagher* would disallow completely to Jin any benefit in the rule on specific intent from *Beard*. A thorough discussion on this alone could attract high marks, however, some candidates took this a stage further and explained that if his original intention was simply to admonish Duncan but because they were so drunk that they took the action further than planned by knocking him unconscious then this could provide a different outcome and were duly rewarded.

There were mixed answers to (c), which was surprising given the nature of the common law, the way the 'defence' is explained in texts and the content of the Source material. In essence, the question centred upon whether Aimee fell into the category of soporific or sedative drug-taking or not. *Hardie* itself would suggest the common law's reaction to taking a known drug (Valium) and its (apparent) known effects, but here Aimee didn't take a 'known' or named drug, rather she took one that she believed to be a painkiller which turned out not to be the case. In that case Parker LJ stated that in such situations this should be treated differently to alcohol or non-therapeutic drug taking, and the question in Aimee's case was therefore was she reckless in taking a drug she thought was one thing but clearly was not. Again given the question's potential dual conclusion many candidates were able to articulate either a *Hardie/Bailey* approach or a *Majewski* line with great effect. However, many candidates' responses remained underdeveloped either because they ran out of time or simply struggled over the subject-matter itself.

## G155 Law of Contract

### General Comments:

In general, answers to this exam showed a good many well prepared candidates. Year on year the amount of case law which candidates are able to cite is increasing and the majority of candidates deal with cases effectively, with a small amount of supporting fact and the ratio of the case. Candidates are also confident in their AO2 skills, balancing law with comment effectively in section A questions and using their knowledge well to address the problems raised in section B questions. In both these sections the differentiating factor is the extent to which candidates can extend and develop the AO2 aspects of their answers. A bald statement is not as effective as one which is explained in more detail, and at level 5 candidates are able to explore conflicting arguments before coming to a clearly justified overall conclusion.

### Comments on Individual Questions:

Q1  
Consideration AO1 Most candidates were able to discuss a wide range of rules regarding consideration. Some candidates used the cases that had been studied in the special study topic of privity, this was relevant and credited as long as it related to the requirement of consideration but in some cases candidates used their special study material with a privity focus for which they gained little credit.

Candidates were able to address many different areas of consideration in order to answer this question. In some of the most effective answers the knowledge was arranged into themes which allowed candidates to discuss contrasting cases in their discussion.

AO2 There were some excellent answers which examined the extent to which the outcomes in contrasting cases could be analysed in terms of value, for example discussing the extent to which there is a real difference in the facts of *Stilk v Myrick* and *Williams v Roffey*.

There were some very good answers which disagreed with the proposition in the title, this is a welcome approach when it is thoroughly argued and can gain excellent marks.

Q2  
Mistake AO1 Effective answers to this question discussed a range of areas within unilateral mistake, including cases involving a rogue third party, mistakes between the two contracting parties and mistakes over documents involving non est factum. Candidates should ensure they are aware of up to date case law in each topic. For example an accurate account of *Shogun Finance v Hudson* was missing from some answers

In a significant minority of answers, candidates discussed content from other areas of mistake such as common or mutual mistake; this was not credited unless it formed part of an AO2 comparison comment. Candidates should make sure that they read the question thoroughly and consider the content which is and is not relevant to the question.

AO2 This question invited candidates to discuss whether the rules allowing a contract to be void for unilateral mistake are in fact narrow, and what reasons there may be for limiting claims in mistake. There were some good responses to the first of these questions, candidates were mostly able to discuss a range of cases and assess whether the rules allowing a contract to be void for unilateral mistake were in fact narrow. Fewer candidates were able to confidently discuss the existence of policy in this topic, where a candidate was able to discuss the courts having to choose between an innocent buyer and an innocent seller in 'rogue' cases they were likely to gain very good marks for AO2.

Q3  
Offer

AO1 Accounts of invitation to treat, unilateral and bilateral offers were supported by case law across the vast majority of candidates. Better answers tackled more complex issues where the limits were not so clearly defined, for example cases dealing with battle of the forms such as *Brogden v Metropolitan Railway* and *Gibson v Manchester*. A small minority of candidates included irrelevant material on revocation and acceptance, this was not credited unless it formed part of a relevant AO2 comment.

AO2 Most candidates were able to access this question with an account of the reasons for situations amounting to invitation to treat and not an offer, and also the reason for some adverts being seen as a unilateral offer. There were also many answers which featured a discussion about freedom of contract in negotiations and the ability of the parties to give information without finding themselves in a contract. This was credited but was most effective when it was brought back to the question and the candidate discussed the extent to which the parties were able to effectively gauge the contractual relevance of their communications. Some candidates included very good evaluative comments about situations where the courts have invented a unilateral offer in order to give a fair outcome, such as in tendering situations.

Q4  
Terms

AO1 This question explored a number of issues in incorporation of terms. Most candidates correctly identified the issues raised by the question and were able to include a substantial amount of case law in their answer. Topics which fewer candidates discussed in detail included the law on incorporation of unusual terms into a contract and also incorporation of pre-contractual statements as a contractual term. A minority of candidates discussed the law on misrepresentation, despite clear instructions not to do so in the question. Content on misrepresentation was not credited.

AO2 Better answers to this question were given when candidates considered different approaches which could be taken to a situation and discussed possibly conflicting issues. An example of this is in the first issue surrounding the terms on the delivery note. Candidates could discuss the effect of signature in incorporating terms, and the fact that what was signed was a delivery note and not necessarily a contractual document. They should also have considered incorporation by course of dealings. There were some excellent answers which gained good AO2 marks by considering these factors in a methodical way before coming to a conclusion. Candidates who come to a well-argued conclusion will gain good marks, even if it is not necessarily the final conclusion suggested in the mark scheme.

Q5  
Restraint of trade

AO1 This question invited candidates to consider a range of issues in the topic of restraint of trade. Most answers to this question included a good range of case law, in the less effective answers there was a list of cases with brief details and application to the facts of the question seemed like an afterthought. A tactic used in the stronger answers to this question was to discuss the issues raised by the question in outline, then explain the relevant law before applying it. This ensured that explanations of the law were focussed and relevant and in most cases also led to stronger AO2.

AO2 The first issue in this question raised a potential restraint of trade scenario but candidates were not told whether there was actually an ROT term in place. Most candidates dealt with this effectively, and maximised their AO2 marks, by discussing whether there was a legitimate interest to protect in the first place, and then identifying that there was no term in place to prevent Andrea from setting up her own business nearby.

One differentiating factor in this question was whether candidates considered the possibility of blue pencilling the term in the Emily scenario. Most candidates considered the general issue of whether the term was fair but there was a possibility for candidates to also consider whether there was scope to change the interpretation of the term in some way.

The final section of the question was not dealt with effectively by the majority of candidates. The question required consideration of a legitimate interest in a solus trading situation, and whether there was proportionality between the investment made by the company and the length of the restraint. Most candidates merely considered the length of the restraint in isolation.

Q6  
Undue influence

AO1 There were some good accounts of the categories of undue influence with wide ranging case law on 2A and 2B presumed undue influence. However in many answers some components of presumed undue influence were not explained well, in particular the requirement of a deal which requires explanation. In relation to the third issue in the question which raised an issue of constructive notice, most candidates were able to discuss the leading case of *RBS v Ettridge* but there were few detailed accounts of the nature of the advice which needs to be given.

AO2 Mostly candidates identified the Farida scenario as being one of presumed undue influence. However in many answers the component parts of a case of presumed undue influence were not methodically explored. There were a few excellent accounts however which identified the similarity with *Lloyd's Bank v Bundy* in terms of conflict of interest.

There was widespread confusion in distinguishing between actual and presumed undue influence in Beth's case, with some candidates including irrelevant material questioning what could be proved in court. Candidates should note that if they are given the facts in a question then they can take it that these can be proved.

Q7  
Performance

The vast majority of candidates have now adopted an appropriate answer technique for section C questions; very few include unnecessary case law which is not credited.

This question raised 2 issues concerning the rules on performance, an issue of privity of contract and an issue of anticipatory breach. Most candidates dealt with the issues well, the last issue of anticipatory breach proving to be the most challenging, with fewer candidates using correct terminology and some failing to spot the correct issue.

Q8  
Exclusion  
clauses

This question concerned exclusion clauses and the specific way in which they are regulated by statute. For good marks the question required detailed knowledge of the *Unfair Contract Terms Act*. Where candidates attempted to answer the question without this detailed knowledge, for example on the basis of the rules of incorporation or classification of terms, they did not gain marks.

Statements A, C and D concerned terms which are subject to the requirement of reasonableness. Very few candidates demonstrated a sound understanding of this concept and few attempted to gauge reasonableness from the facts given in the scenario.

## G156 Special Study Law of Contract

### General Comments:

In general, candidates showed a well-grounded understanding of the common law of privity. Rules of law were set out clearly and accurately and were usually well-supported by appropriate case law. A number of candidates needed to demonstrate a better understanding of The Contract (Rights of Third Parties) Act in order to gain higher marks though many showed an excellent grasp of the Act, including the provisions under section 2 regarding the crystallisation of third party rights. General exam technique was very good indeed: candidates appeared to be managing their time well, on the whole.

### Comments on Individual Questions:

#### Question No. 1

There were many very strong answers to this question with candidates quickly and concisely targeting the central points of *Nisshin*. There were a range of critical and analytical points available for candidates to discuss and the better answers focussed on how the High Court had taken the opportunity in *Nisshin* to show their support for Parliament's reforms, explain how the High Court's interpretation of s1(2) operated in a third party's favour and note how the Court had shown its dissatisfaction with the more artificial common law stratagems to avoid privity.

The principal way in which candidates could improve their answers in Q1 is keeping first and foremost in their minds the fact that Q1 is a case review question rather than a general essay question. Marks are only available for work that targets the case in question. Other cases can only be classed as 'linked cases' if they are indeed linked in some way to *Nisshin*. Similarly, evaluation or analysis of the law of privity can only be credited if it is in some way linked to the decision in *Nisshin*.

#### Question No. 2

Candidates' mastery of the law and authorities on privity was most clearly evident in question 2. Most candidates understood the importance of providing a good range of developed cases as authorities. The majority of candidates saw that the question asked about both common law and statutory solutions to the problems of privity and provided material accordingly. It was impressive to see a number of specialist statutory exceptions such as the Road Traffic Act; all such material was credited though it was not necessary for full marks. Given its general importance, however, coverage of the C(RTP)A was crucial to achieving high marks. 'Developed Cases' were awarded for each correct citation of a statutory subsection in the same way that would be for a case name with appropriate further detail of the facts and/or ratio. Recent improvements in candidates' linking to the sources in the pre-release material were maintained – it was very rare to find a candidate omitting a specific reference to the source material.

With regard to the analysis and evaluation of the law (AO2), there seemed to be an increase this year in the number of candidates who made little or no reference to the question. This is an area on which a number of candidates could have significantly improved. The pre-release materials are designed to include a range of stimuli helpful to answering possible essay questions and a number of candidates would have found it beneficial to make more use of them. Two prevalent themes amongst the higher scoring responses were the artificial nature of many of the common law solutions (particularly collateral contracts and some of the early 'Himalaya Clause' cases) and the difficult line taken by Parliament in balancing respect for original parties' intentions against the need to provide and protect third party rights.

### Question No. 3

Responses to the problem questions generally showed a solid understanding of the relevant law and authorities. Most candidates could quickly point out who the key parties were and which element of the basic privity rule needed to be avoided. Some candidates did need to take slightly more care at this initial stage as they misdiagnosed the problem such that they searched for a way to sue a third party (ie a collateral contract) when in fact it was the third party that was trying to enforce a benefit, or vice versa. Q3a) on collateral contracts was generally done very well. Maximum marks were secured by candidates who took the Examiners through each element of collateral contracts, notably the need for consideration from both parties. Q3b) was also done well, with higher marks being awarded to candidates who recognised that s2 of the C(RTP)A was crucial here as Rohini was attempting to change her mind. Many candidates did a superb job on this question. Q3c) was more challenging but many candidates recognised it as a variant on the *Darlington BC* case and dealt with appropriately. A number of students mistakenly went down the *Scruttons* route, thinking that this was an example of a third party being sued and attempting to get the benefit of an exemption clause. Some candidates realised that Concreet's acceptance of £1m liability to Belleville was an example of the *Panatown* rule. In terms of lessons for future series, core exam technique was very strong: candidates were generally able to give concise statements of law, back them up with appropriate authorities and apply them correctly to the facts. The key with all of these questions is to read the problems very carefully and work up from the most basic rules of law to the more specialist exceptions.

## G157 Law of Torts

### General Comments:

This paper showed an increased number of entries when compared to previous years. Entries were from a number of different Centres, and a wide range of marks were demonstrated. Candidates showed a slight preference to answer essay question 3 on *Ryalnds v Fletcher*, problem question 4 on Trespass to the Person, and overwhelmingly candidates preferred question 7 on section C of the paper.

There was plenty of evidence in Section A of candidates accurately citing a wide range of cases and the sections and sub-sections of relevant statutory provisions. More capable candidates also explained the available defences in relation to question 2 and 3. As previously expressed in June 2013 and June 2014 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 or a clear link to the relevant legal principle are beneficial in explaining the elements of the tort. Generally, there was more evidence of this being done well than in previous years. There was some evidence of well-developed discussion points that related specifically to the question. Candidates who went beyond making bold evaluative comments, and really engaged with the question set and drew comparisons between cases, achieved higher marks for AO2.

In Section B candidates appeared more adept than in previous years at using cases that linked to the scenario, instead of writing every case they knew on the general topic area. In each of the scenarios most of the issues were identified and addressed when applying the law. The more capable candidates also identified relevant defences and arrived at clear and logical conclusions taking these into account.

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

### Comments on Individual Questions:

#### Question No. 1

Candidates generally appeared to struggle answering this question. Many weaker answers had limited case citation; with some not using a single case. Most candidates managed to explain the 'But For' test and the impact of a *novus actus interveniens*, but weaker candidates did not explain the law relating to multiple or successive causes. The issue of remoteness was also dealt with in a cursory manner by many candidates, with several weaker candidates omitting to address this aspect of the question at all. Stronger candidates took advantage of the wide range of cases available across this area of tort law, with several candidates achieving full marks for the AO1 aspect of the question. Stronger candidates were also able to make effective comparisons and evaluation of judicial decision making in relation to fairness and justice, although this was infrequently witnessed.

### Question No. 2

This was a popular question and the level of statute and case knowledge was generally excellent. Some weaker candidates struggled to match the correct section number to the relevant section, did not accurately cite the section content, or described the case facts rather than naming the case. More able candidates thoroughly explained the definition of a keeper, each of the elements of non-dangerous animals and the available defences with reference to both the appropriate section numbers and cases. An encouraging number of candidates were able to make developed evaluative comments in relation to the difficulties in interpreting the Animals Act and drew comparisons between approaches taken in cases to exemplify this. Stronger candidates also analysed the wider impact that a given interpretation could have; for example, *Mirvahedy* leading to an increase in insurance premiums and the resulting closure of horse riding schools. Candidates across a range of abilities discussed liability for dangerous animals, and sometimes trespassing livestock, in consider detail, despite this not being in the rubric and therefore not creditworthy.

### Question No. 3

This was the most popular of the section A questions. Many candidates showed solid understanding of the basic principles derived from *Rylands v Fletcher* and were able to explain these with further case citation. Weaker answers were almost totally devoid of cases and were often unable to grasp the fundamental differences between *Rylands* and private nuisance. At all levels there was a confusion as to whether the tort was one of strict liability with many candidates simply moving uncomfortably between foreseeability and strict liability on a paragraph by paragraph basis. A few candidates effectively dealt with the environmental focus of the question in their evaluation and went beyond simply stating at the end of each paragraph whether the environment was protected or not. Stronger candidates evaluated the role of the tort in protecting the environment since its conception to its current use; commenting on the emergence of environmental statutory provisions and drawing comparisons with Australia.

### Question No. 4

This was a very popular question that was generally answered to a high standard. Many candidates scored exceptionally well on both the AO1 and AO2 elements of the question. Candidates' case knowledge of the three elements of trespass to the person was strong, with only a little confusion observed between assault and battery. No credit was given to explanation of the law that was outside the scope of the problem itself; for example, contractual obligations and medical consent. There was some misunderstanding over the role of hostility in battery and this led to some candidates contradicting themselves when they applied the law to the scenario. The weaker candidates failed to identify at all whether a battery had been carried out by Joe hitting Kerry with his ruler. The strongest candidates applied a wide variety of criteria and the defences of consent in sport and lawful arrest to the specific elements in the problem question. More concise answers could have been produced by a focus on the key issues within the scenario itself and then an in-depth examination of those issues.

### Question No. 5

This question was almost as popular a question as question four. Again, many candidates showed extensive case knowledge and understanding of the different categories of victim, and this was demonstrated in a high level of AO1 being achieved. There was very clear application of the law in relation to Kamal by most candidates, and most candidates recognised that Lisa did not suffer a recognised psychiatric illness. There was some confusion as to the position of rescuers in nervous shock, with a few candidates believing that they were still a separate category. This led candidates not to consider whether Lisa was a primary or secondary victim, which negatively impacted on their mark. In relation to Moheen many students were confused by the requirement to witness the event with your own unaided senses and the fact that Moheen

arrived at the hospital in the immediate aftermath of the event. This led to confusing and illogical application of the relevant law with candidates concluding that Moheen did not have a claim as he had not witnessed the fire with his own unaided senses. Whereas, stronger candidates considered that Moheen would not automatically fulfil the criteria of a close tie of love and affection. Several candidates made uncreditworthy evaluative comments on this question about how the tort has been restricted for policy reasons and the unfairness this can lead to.

#### **Question No. 6**

This was by far the least popular of the problem questions. Most candidates demonstrated good knowledge of the employment tests, and many candidates adequately explained the nature of acting in the course of employment with some supporting relevant case citation. Candidates were generally able to successfully apply these areas of law and come to logical conclusions; however, there was little awareness of the close connection test and how it could be applied to the attack on Simon. This impacted on both the AO1 and AO2 scored by candidates.

#### **Question No. 7**

Candidates of all abilities struggled with this question. Many did not seem aware that a trespass to land requires a direct interference to the land and this led to problems in logically and accurately applying the law. Numerous candidates concluded that the BBQ smoke would be a trespass to the land. Equally, many candidates did not identify that leaving fence panels on Belinda's lawn would be a direct interference; with some candidates discussing whether Alan could claim against himself for the damage to the fence panels. Most candidates recognised that flying the radio-controlled plane would be a trespass, although a few concluded that the plane was not low enough to constitute a trespass. Candidates failed to realise that overhanging branches were in fact a nuisance, with several weaker candidates concluding that Alan was not allowed to remove the branches but could keep the fruit. Stronger candidates clearly set out the requirements of the tort in relation to the statement and demonstrated correct application of the relevant legal principles.

#### **Question No. 8**

Again, candidates of all abilities struggled with this question; in particular statement D. Weaker candidates focused their answer to statements A and B on whether David owed Elena a duty of care rather than contributory negligence and *volenti* respectively. Some candidates showed accurate knowledge of the Road Traffic Act 1988 in relation to *volenti* in their answers to statement B and this was credited as an alternative line of reasoning, although it was not essential to gain full marks on this question. In statement C there was some focus on 100% reduction in damages amounting to *volenti*, rather than focus on the issue of contributory negligence as required by the question. Most candidates did recognise that Frank had contributed to his injuries, as well as David, and so there would be some reduction in damages but not 100%. In statement D several candidates answered this in terms of whether the doctors were the cause of the injury, rather than considering whether the operation was a *novus actus interveniens* in the chain of events caused by David. This had a negative impact on the marks awarded and meant that many candidates came to an inaccurate conclusion for this statement.

## G158 Law of Torts Special Study

### General Comments:

Unlike many recent G158 papers, this was the first time that duty of care in negligence had been set as the special study topic with breach and damage having been set some years ago now. As a potentially huge subject area the source materials offered some guidance that the development of duty of care up to Caparo and the subsequent application of Caparo were the key focus and candidates seemed well prepared for that. The standard was, as we have come to expect, very high. This was especially so in questions 1 and 2 although question 3 disclosed some lack of understanding.

This area of law is heavily dominated by common law despite the contribution of statutory intervention such as the Compensation Act 2006. This body of law, shaped as it is by the judiciary, has been at the heart of the so-called compensation culture which has dominated much of English tortious liability in the last 40 years. It has drawn judges into debates about whether unelected and unaccountable individuals should be determining policy and arguments over judicial law-making and activism. With clear implications for business and government alike, there are clearly major policy considerations at play here as well. In short, there is plenty of really accessible AO2 for students to engage with here. It is also true to say that other areas of the student's study on G157 such as nervous shock provide further relevant material.

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.'

Sadly, it is also necessary to repeat comments from previous reports about the perennial issue of the quality (or lack of it) of candidates' handwriting.

'It cannot be put in stronger terms than this – there will be candidates who have missed a place at university because they failed to get the required grade and this will have been entirely and directly 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 you can tell from some of the words and cases you *can* make out that there is something creditworthy there but, the bottom line is that we can't credit what we can't 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. *Michael v Chief Constable of South Wales* [2015] UKSC 2, [2015] All ER (D) 215).
- 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 make appropriate use of the sources.

**Areas for further development:**

- Students are still over-preparing for questions 1 and 2 to the cost of question 3 which makes no sense based on the marks available (see below). Also, an unnecessarily long and clearly pre-prepared answer to question 2 is not what a 34 mark question requires and does not, necessarily answer the question and earn top marks.
- On this occasion it was apparent that whilst many students had acquired a ‘learnt understanding’ of duty of care, when it came to applying that knowledge to an application question, a lack of genuine understanding became apparent.
- 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 – *Anns v Merton London Borough Council*

As in previous sessions and alluded to above, many candidates are spending too long on this question to the detriment of their performance elsewhere on the paper. The skills pointer and previous papers as well as these reports make it clear what is required. As a general rule, if a candidate takes longer on this question (worth 16 marks) than they do on the essay for question 2 (worth 34 marks), then they are probably doing something wrong. The space available in the answer booklet is not an indication of the expectation for any of the questions.

The question was about *Anns* and its contribution to the development of the law on duty of care but there were many ‘mini essays’ commonly running to more than five sides of A4 with in excess of 10 cases just exploring different aspects of the requirements of the neighbour test from *Donoghue*. Candidates should be reminded that any more than 3 linked cases will not be credited and that failing to link to cases which demonstrate the ‘development’ of this area of law will not achieve full marks.

The central point of the case was the development of the two-stage test and lengthy accounts of the limitation periods were of limited relevance.

There was some misunderstanding of the impact of the case in relation to widening or narrowing the scope of those able to establish a duty and, therefore, claim. Similarly, clear understanding of the way this case changed the approach to policy considerations was not always apparent.

There was some good AO2 reflecting on the contribution *Anns* made to the compensation culture and some of the better scripts were able to analyse reasons behind this – often making good use of the sources.

**Question 2** – the essay question – discuss the factors that have influenced the law on duty of care.

The question had a fairly obvious two half approach: how did we get to Caparo and how has it been applied since? The AO1 aspect of the essay called for some balance between the two halves and most candidates recognised this and catered for it. At the higher levels of the mark scheme there was an expectation that candidates offer cases from outwith the source materials which most candidates did in the latter half. Candidates generally made good use of the sources which they appeared to be very familiar with. Gaining full credit for cases required candidates to offer ‘well developed’ cases which involves giving case facts and/or the legal principle. The AO2 was an open invitation to consider different factors that have influenced this development. Whilst policy is a key driver here, there was ample opportunity to discuss all the aims of tort such as compensation, justice, deterrence and loss distribution as well as the various political and philosophical motivations behind them.

**Notable improvements and areas of good practice:**

- In general there was:
  - Good use of (and reference to) the source materials
  - More candidates including a proper reasoned conclusion
  - Clear recognition of synoptic opportunities (especially the use of the Practice Statement in Murphy)
  - Good use of the full range of cases in the source materials

**Areas for further development:**

- Better focus on what’s important:
  - Most of the candidates who scored well on AO1 but then did less well on AO2 did so because they stuck to mechanical, pre-learnt discussion points which were inserted at predetermined points in a ‘stock essay’ instead of addressing the AO2 they knew to the question --- how has public policy, business, insurance, loss distribution, politics, pragmatism, money, justice in the instant case etc etc influenced the shape of the law on duty of care?
  - Many candidates ventured off into fairly detailed accounts of cases which illustrate aspects of, for example, foresight and proximity. These cases were often of limited value or relevance and acted as a distraction from the cases that should have been focused on.
  - There were also a significant minority of responses which focused on the early history of duty of care in far too much detail for a 34 mark essay. Cases such as *Winterbottom v Wright* and *Heaven v Pender* are really only worth the briefest mention. They also encouraged candidates to dwell on issues such as privity of contract when the real focus should have been on what drives much later case law.
  - Some candidates had obviously revised nervous shock for G157 and made good use of relevant case law. This was fully credited where appropriate but not where it became the overwhelming focus of the response as a whole.
- A (thankfully) small minority of candidates have adopted what I’m sure they must consider to be a very discursive style of writing involving giving little or no case details whatsoever. Such scripts will not meet the criteria for accessing the higher levels of the mark scheme.

**Question 3** – the mini problem questions

Most candidates scored reasonably well on these problem questions. However, very few scored full marks with 6 or 7 being a very common score. Unfortunately these questions disclosed a fairly widespread misconception which cost numerous candidates full marks. Most candidates recognised that they would need to establish a duty of care and then see if there was a breach. Most knew they would need to employ Caparo to do this. Most went on to correctly determine foresight and proximity appropriately. However, when it came to establishing that it was fair, just and reasonable to impose a duty, most candidates used the reasoning behind breach to establish this third limb of Caparo. Occasionally there were bits of overlap that could be credited but, more often than not, this led to confused or incorrect answers.

Other common issues included:

- Excessive citation of inappropriate cases – remember there are limited AO1 marks on these problem questions. The majority of marks are for correctly ‘applying’ knowledge of legal principles and rules to a given situation. Credit would only be given for up to two directly relevant cases per question.
- Going on to consider breach after determining (incorrectly) that there was no duty of care.
- Using the wrong area of law altogether – a number of candidates treated 3b) as a nervous shock rescuer case.

In a) most candidates correctly identified the parties, correctly identified foresight (if it gets muddy, people will slip and could injure themselves), correctly identified proximity (legal proximity based on the purchase of a ticket) but then went on to reason that it is fair, just and reasonable to impose a duty of care because (objectively) the reasonable festival organiser had taken sufficient precautions or would have put down more straw. Many of these responses worked through the breach issues perfectly but not as part of breach. This was often followed by an emphatic statement that therefore a duty was owed confirming that this wasn’t simply a mistake on the candidate’s part.

In b) most candidates correctly identified the parties (although a significant minority got the holidaymaker being rescued involved), most correctly dealt with foresight (if equipment isn’t correctly stowed it may cause harm if it becomes loose), most identified proximity (legal proximity based on an employer-employee relationship) but then went on to reason that it is fair, just and reasonable to impose a duty of care based on an analysis of the breach issues discussed in Watt. It may be that some social utility arguments would influence the court in deciding whether it is fair, just and reasonable and where this was clearly expressed it was credited. However, where it was obvious that the candidate was clearly discussing breach issues as the vehicle to determine the fair, just and reasonable limb of Caparo, then this was wrong.

In c), although many candidates correctly identified the parties, many wrongly identified the school as the defendants. Because it was reasonable to ‘consider’ their possible liability it was possible to get some credit but they were not the key defendant and this was made clear by the fact that they had no idea of what was going on and therefore would have failed the test for a duty of care on an absence of foresight. Most candidates correctly identified foresight (Eddie would know of some sort of consequence of his action (especially if he’s seen videos)). Most candidates correctly identified proximity (physical proximity in time and space). Most candidates then determined that based on the standard of behaviour expected of a reasonable Year 9 schoolboy, it would be fair, just and reasonable (or not) to impose a duty of care. Once again, using breach reasoning to consider what should be determined based on policy and similar factors.

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

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

Please remind candidates **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. In this case the special study topic was ‘duty of care’ – this was, therefore, the obvious central issue and critical point with the breach being necessary to conclude but not the ‘critical’ point.

- Consider resonance with leading cases as constructive support not a trap. OCR will always seek to support students in a constructive manner and if a scenario seems similar to a leading case then similar reasoning should be applied or followed rather than avoided with suspicion.

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