

**GCE**

**Law**

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

**OCR Report to Centres June 2017**

OCR (Oxford Cambridge and RSA) is a leading UK awarding body, providing a wide range of qualifications to meet the needs of candidates of all ages and abilities. OCR qualifications include AS/A Levels, Diplomas, GCSEs, Cambridge Nationals, Cambridge Technicals, Functional Skills, Key Skills, Entry Level qualifications, NVQs and vocational qualifications in areas such as IT, business, languages, teaching/training, administration and secretarial skills.

It is also responsible for developing new specifications to meet national requirements and the needs of students and teachers. OCR is a not-for-profit organisation; any surplus made is invested back into the establishment to help towards the development of qualifications and support, which keep pace with the changing needs of today's society.

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.

OCR will not enter into any discussion or correspondence in connection with this report.

© OCR 2017

## CONTENTS

**Advanced GCE Law (H534)**

**Advanced Subsidiary GCE Law (H134)**

### OCR REPORT TO CENTRES

<b>Content</b>	<b>Page</b>
G151 English Legal System	4
G152 Sources of Law	10
G153 Criminal Law	12
G154 Criminal Law Special Study	16
G155 Law of Contract	21
G156 Special Study Law of Contract	24
G157 Law of Torts	26
G158 Law of Torts Special Study	29

# G151 English Legal System

## General Comments

Again, this year's questions were challenging, yet accessible, with conventional topics approached in original ways, which allowed for differentiation yet still left candidates able to complete four full answers to a good standard. The Section B questions were extremely popular with most candidates attempting both and clearly played to candidates strengths in application. There was a broad range of responses to most questions on the paper although Question 4 on the qualifications, selection and training of inferior judges and Question 5 on the Jurisdiction of the County Court and the track system prompted fewer 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 continued use of the 'old style' answer booklet has ensured that all parts of the script have been marked as few pages between question were left blank and again, as in previous years, examiners could not submit a script as 'marked' until all pages contained in the candidates work had been annotated and until the correct percentage of questions had been attempted.

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

## Areas demonstrating progress:

- Again this year, it was clear that most candidates were making an effort to apply themselves; with very few poor scripts and very few where the candidate had not made a substantial effort to answer the required questions. In this series, many candidates filled the booklet and many more used additional answer sheets. This year there was also evidence of an attempt by many students to answer questions to a high standard, yet in a much more concise way, with numerous candidates gaining high level four marks by only using 8-10 pages of the booklet.
- Section A part (a) responses showed A01 development with many candidates achieving a broad range that accessed level 3 marks. An increasing number of responses were able to produce responses extensive enough to access level 4 marks. Where some candidates had used diagrams to assist their explanations, these, on the whole, were well annotated allowing candidates to access higher grade boundaries.
- There was a comprehensive and balanced attempt by candidates to answer the section A part (b) responses, with many candidates managing a range of developed or well developed points with fewer lists or bullet point answers and with many candidates attempting broad answers and as a result, there were fewer answers capped at level two - 5 for listing or level three – 7 for lack of a **well**-developed point.
- A greater number of candidates demonstrated clear knowledge of case illustrations without giving the full case narrative.
- 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 are **still** trying to spot questions or only revise part of the unit's specification and/or only part of a topic area. It was clear that a number of candidates were still using old textbooks, or not updating their information, as common errors included stating that:

- the Lord Chancellor appoints Magistrates
- that the limit for the Small Claims track is £5,000
- that Deterrence, Incapacitation and Retribution are, in themselves, aims of sentencing
- referring to extended and indeterminate sentences.

This was particularly noticeable **again** in question 6 where some candidates had used those old aims and types of sentence, which rendered much of the answer as wrong.

This point was made last year and again, it should be noted that an approach which will not work is an attempt to use last year's answers/mark scheme to answer this year's questions. It is important to revise complete topic areas as questions can include different elements from that topic area and resulting questions may be asked from a number of different perspectives.

It is also important for centres to keep themselves up to date. Many candidates in Question 6 referred to Indeterminate Sentences which were abolished for new offenders from December 2012 and Extended Sentences which no longer exist in their old form, having been changed under the **Legal Aid, Sentencing and Punishment of Offenders Act 2012**.

<http://www.legislation.gov.uk/ukpga/2012/10/part/3/chapter/5/enacted>

To repeat what was said last year, similarly, in Question 7 it should be noted that in Bail, **LASPO** has introduced the 'no real prospect test' and furthermore, there never was a 'presumption in favour of bail' under the older legislation, but a 'general right' to it.

The use of the most up to date information is paramount as the English Legal System is constantly changing and OCR has given their imprimatur to some of the books available. The Internet is also useful to keep up to date, with a number of sites offering learning packs and legal updates. Recent mark schemes are beneficial as a means of checking the specification areas of questioning but should not be used only as a means of telling students exactly what they need to know for each topic. Newspapers are still an invaluable way of keeping up to date.

Although there was less evidence of it, in Section A part (b) questions it is important to focus on the question being asked and to develop relevant arguments in answer to it rather than just making isolated points and when using relevant case law some candidates still spend time on narrative, which gains very limited extra credit. For question 3 (b) many candidates described the protections in place, they did not 'discuss' if they were 'adequate.'

## Comments on individual questions

### Section A

#### Question 1

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

- (a) Some excellent answers, with work and organisation being handled well 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. Some candidates however, who weren't as sure of the information took a 'shotgun' approach, firing as much information onto the page as they had time for.
- (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 quite straightforward question on a barrister's training. As a result, the candidates picked up on the key word 'training' but did not think before responding to the question. The training element often resulted in a recount of the process of training with little or no AO2 in a manner more appropriate to the 'Describe' Section A (a) questions. Those that did 'Discuss' still insisted it took longer to qualify as a barrister and made reference to the inability of a qualified barrister to find a tenancy, which was not relevant to the question asked.

#### Question 2

- (a) Most candidates found this question highly accessible as half of it was based on magistrates and half on juries. There were some excellent responses that described the selection of magistrates with many candidates being able to go into the detail of training and the different types. Most candidates seem to provide a reasonable amount of detail on this question. Far too much time was wasted however with detail of training or disqualifications, although this does not seem to have had an impact on their ability to finish the paper. 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. Many scored High Level 4 marks but those that did not mention a statutory reference failed to achieve maximum marks.
- (b) Again, a highly accessible and straightforward question asking about the advantages of the magistracy. There were some very good responses which developed a discussion, with many giving extensive answers on the reasoning behind their opinions. No credit was given for a discussion of the disadvantages although these were accepted as counter arguments in the main discussion.

### Question 3

This was a particularly popular question answered by the vast majority of candidates. Answers tended to be divided in terms of performance with the majority of answers moving within levels 2 and 3.

- (a) This question was answered better than in previous sessions – all candidates seemed happy to see Stop & Search at last and in arrest, the necessity test was described in detail quite often. No credit was given for a description of stop and search or arrest under statutes other than PACE unless they had amended it. Again, many candidates wasted time by giving **detailed** narrative on the case facts and when you take into consideration that those cases could include, Rice, Bibby, McConville, Taylor, Richardson et al., the narrative was far too extensive.
- (b) There were variable responses to this question. Some were very good and discussed whether or not the rights of the arrestee were adequately protected, often based on good use of statistics vs limitations on their powers. Other responses came from candidates caught off guard who wrote a detailed essay on what rights existed, yet did not refer their answer to the question

### Question 4

This was a less popular question. Some responses showed confusion between inferior judges and superior judges.

- (a) This question was answered by a very low percentage of the candidates. The better responses addressed the question rather well, producing a good explanation of the qualifications needed, the selection process and appointment process and the training available. Some responses gave a reasonable explanation of the selection process but were unclear as to the recent changes in the required qualifications. Some answers were confused and it soon became clear that these candidates were those who were 'reaching' for a fourth question.
- (b) The best responses developed a good discussion of the training available although there were a significant number of responses in this part that did not answer the question properly and had not devoted time to revision of this topic

### Question 5

Again, this question was unpopular.

- (a) Answers generally reached bottom L3, but many wasted time on the work within the divisions of the High Court which wasn't required in the answer. The majority of centres are still teaching the outdated limit of £5000 for small claims. The jurisdiction could have been handled much better.

- (b) Generally answered in relation to ADR, which was described as the best way of handling civil disputes. This meant that the question went unanswered to the best of candidate's abilities

## Section B

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

### Question 6

- (a) This question was highly popular but generated mixed responses. The best described the aims of sentencing well and used types of sentences to illustrate their answers and then went on to describe three aggravating factors as was required by the question. Many candidates identified the aims and gave a very basic description of some factors but without illustrations. Many answers missed the statutory authority, which is an essential element of most answers. This is akin to talking about police powers without mentioning PACE. Some responses confused the names of the aims or gave the old aims and missed the factors.
- (b) There was a mixed focus on the scenario, with fewer candidates than normal gaining full marks. Some responses went into a great deal of detailed discussion on each issue in the scenario which was much more than was required as a concise answer achieves the same marks. The best responses identified the issues in the scenario and applied the appropriate factors to them. They also suggested two sentences with reasons. Some responses misread the question, failed to identify the issues and confused the factors with aims although many candidates still managed to get into level 3

Ref <http://www.legislation.gov.uk/ukpga/2003/44/section/142>

### Question 7

Well done overall and attempted by most candidates The responses generally tended towards Levels 3 and 4 with very few Level 1 or Low Level 2 answers.

- (a) This was again generally done well and 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. Again, this is paramount.

- (b) Many candidates proved very proficient in applying a conclusion on the issues identified as significant for a bail application. Few commented merely on the character of Giovanna (e.g. owns business) 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 her passport away when she might escape to another country, which was probably the best and easiest accessed answer.

## G152 Sources of Law

### General Comments:

This year's paper offered a choice between EU Law and statutory interpretation. The overwhelming majority chose the statutory interpretation question. Indeed, the uptake on EU Law was the lowest I have ever witnessed in 20 years marking this paper. **In spite of Brexit, EU Law remains a part of the specification on the new linear A Level and can still be assessed.**

The general performance was very good on the descriptive AO1 questions and the recent improvement in evaluation in cii) was sustained. However, there was a less assured performance on the part b) application questions this session.

Unfortunately I repeat the same point every session, the quality of handwriting continues to be a cause of concern for a small minority of candidates. Whilst we do our absolute best to decipher such scripts, there are some students who will get a lower grade than they deserve simply because their handwriting is illegible.

### Comments on Individual Questions:

#### Question 1

- (a) Responses to this question were either very good indeed or quite poor with little in between. Better answers demonstrated up-to-date subject knowledge, detailed understanding and a good balance of both role and composition as well as balanced content covering both institutions. Since weaker responses simply lacked content, there are no improvements in 'technique' required.
- (b) The application questions followed a well-known pattern: right form of referral (if any), why it is appropriate and, for full marks, some illustration or link to the source. The most able candidates did really well with these questions. Weaker responses failed to make use of the support offered by the source or misunderstood the application of Article 267 to the scenarios. Since these questions follow a familiar pattern, practising with past paper questions is the obvious remedy here.
- (c)(i) The mark scheme operated very fairly on this question. For example, candidates who were able to offer detail on the direct effect of directives were given full credit for this. Provided there was some detail on all three sources the fact that there was a disproportionate level of detail on directives was not held against the candidate. Consequently, many of the better prepared candidates were able to score high marks on this question and even those less well prepared candidates were able to bring some knowledge of direct effect to bear.
- (c)(ii) This question attracted a variety of responses. Less able candidates seemed to struggle to put their responses in a critical context. Consequently there were some extensive responses based on describing direct effect and the remedies to the lack of horizontal direct effect in some detail which scored very few (if any) marks for failing to place the material in the context of a problem and/or a solution. The more able candidates, however, gave some impressive answers showing sophisticated understanding of an area many students find challenging.

## Question 2

- (a) This question was, on the whole, well answered and the more able candidates scored high marks very comfortably. Candidates who scored fewer marks might have improved by:
- giving varied case examples which show different outcomes (harsh, unjust, absurd etc.)
  - making sure they isolate the word(s) being interpreted and the effect on the outcome of the application of the rule to the word(s)
  - linking to (and using) the source as advised in the question
  - using features of the rule to place it in some broader context.
- (b) In general these questions were less well answered this year. They follow a now familiar pattern and well-prepared candidates identified the appropriate aid to interpretation, explained why it was appropriate and gave a case/statute example (or linked to the source) to score full marks. The most common reason candidates did not score higher marks was due to an increase in ‘hedging’. This is the practice of offering two or more alternatives. The question is clear ‘what is the **most appropriate** aid’. Candidates who stated the most appropriate aid who then went on to speculate about other aids were not penalised since they had answered the question by selecting ‘the **most** appropriate aid’. However, candidates who offered answers such as ‘the judge could use X or he/she could use Y’ gained no marks. Just like question 1, this is a familiar part (b) question and practising past paper questions is the way to improve performances here. Other ways that candidates might have improved their answers include using the source materials and having a better understanding of this area of the specification.
- (c)(i) The comments made above for 2(a) apply equally here. There was no expectation that candidates knew the full definition from Hayden’s Case. Indeed, the mark scheme was very fair in identifying two key aspects: the idea of some sort of problem or mischief and Parliament’s intention as a solution/remedy to that problem. Either/both of these were creditworthy. As for 2(a) the best responses gave more than one example showing the application of the rule in different contexts, used features for context and made use of the source.
- (c)(ii) There were some excellent responses to this question. There was no expectation that candidates would make comparisons to the literal rule throughout their answers and yet many did. Even the more limited responses rarely failed to deal with this part of question. This was very encouraging and demonstrates a welcome demonstration of candidates ‘thinking on their feet’. Less able candidates seemed to miss the point that the question was principally about ‘advantages’ and offered rehearsed ‘advantages and disadvantages’ responses with the latter gaining no marks. Once again, these part (c)(ii) questions (with a ‘comparison’ spin) are now familiar and practising with recent past paper questions is the key to improvement.

## G153 Criminal Law

### General Comments:

There was a pleasing spread of responses to all questions across the paper with very few instances of rubric errors. A good number of candidates now approach the questions in reverse order, often to good effect. For those who start with Section A, some spend a disproportionate amount of time on their essay and this can affect their timing, often leading to Section C answers which are rushed or incomplete. Problem solving skills in Section B are often good, with many candidates dealing with an element of the scenario, by giving relevant law and then applying it, before moving on to the next one. However, some candidates do not read the rubric carefully and write on areas of law which are not required or specifically excluded and so gain no credit for this section of their answer. The best answers demonstrate a candidate's ability to select, explain and apply relevant law to the facts they have been given. Where statute law is relevant in Sections A and B, as in questions 4 and 6, it is important that candidates cite, define and explain the relevant sections and subsections accurately as a basis for confident application. Good technique in Section C is often based on a bullet point format with the final point being a clear and decisive conclusion and excluding any reference to cases.

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

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

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

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

## Comments on Individual Questions:

### Question 1 – causation

This was by far the most popular essay question and it was clear that many candidates had prepared an answer – which was then fitted to the question with varying degrees of accuracy and success. Many candidates were able to give a detailed survey of elements such as the ‘but for’, *de minimis* and ‘thin skull’ tests alongside the position regarding medical cases and a break in the chain of causation test including some evaluation based on the fairness of these areas. There was often less confidence when dealing with the substantial and operative test as well as the range of issues relating to breaks in the chain of causation such as life support machines, the victim’s own act, self-neglect by the victim, the actions of third parties other than doctors, naturally occurring events and the situation relating to self-injection of drugs. As well as commenting on the more obvious evaluative issues such as the efficacy of the ‘but for’ test and the injustice which could result from the ‘thin skull’ test the very best answers looked at wider policy areas. These could include the situation relating to doctors and police officers as well as the morality of this area of the law, the ability of the jury to decide causation issues fairly and the sensitive issues of making a defendant liable when a victim chooses to ignore their own welfare or behaves unreasonably. Reference to reform proposals and the progress or otherwise of these also helped to develop and extend evaluation.

### Question 2 – consent

This was a relatively popular essay question and most candidates were able to explore some of the key areas of the defence. Essays often began with the elements of true and valid consent before moving onto specific areas – of which sex, sport and horseplay were the most popular for consideration. There was often plenty of accurate case citation although the key issues raised in cases such as *Brown* and *Wilson* were not always explored and there was relatively little reference to the case of *Emmett*. With regard to the transmission of disease most candidates considered *Dica*. The best answers rooted their evaluation in the dichotomy which underpins this defence between personal autonomy and social paternalism, leading to an uneasy balance between personal freedom and the protection of the vulnerable by the law. Many candidates considered the inconsistencies between key cases and dealt with the as yet realised reforms proposed by the Law Commission to demonstrate a good understanding of this area of the law.

### Question 3 – manslaughter

This was the least popular of the essay questions; there were some strong answers where candidates were well prepared to write on the topic. The best answers had a clear structure and engaged with each of the three types of involuntary manslaughter in turn, giving accurate definitions and exploring the elements of the tests for UAM and GNM in detail with relevant and accurate citation. Detailed reference to causation was not expected and only cases which involved the offence of manslaughter were credited. Many candidates dealt with subjective reckless manslaughter but it was possible to access level 5 without any reference to it since its existence is far from certain in the eyes of many academics. Many candidates did have command of a good range of detailed factual information and were then able to evaluate this area of the law in a developed way. Consideration of the breadth and variety of this offence, issues relating to sentencing, the circular test in GNM, problems relating to *mens rea* and the very existence of subjective reckless manslaughter were all valid evaluative areas as was a discussion of the Law Commission proposals in this area.

#### **Question 4 – defences**

This was the least popular scenario question and invited candidates to consider the defences of duress by threats, loss of control, intoxication and self-defence. Due to the range of potential defences candidates could access level 5 with a good consideration of three of the four areas. The majority of candidates focused on duress by threats and the best answers explored the elements of the defence, differentiated between its application in burglary and murder, and then applied the principles accurately to Kirsty, concluding that she would have a defence to a charge of burglary but not to murder. With regard to intoxication the most likely conclusion in relation to Kirsty's murder charge was that the defence would fail as she had an intention to cause at least GBH. It was possible to conclude that the elements of loss of control could be proved and the defence would succeed; similarly Kirsty could well succeed with self-defence to her murder charge.

#### **Question 5 – murder and defences**

This question was a popular choice for those candidates who knew murder well and many spent a considerable amount of time expounding in great detail all the elements of Lord Coke's definition as well as embarking on a lengthy exploration of causation. The best answers dealt with the key issues pertinent to the facts and with regard to causation only cases which involved a murder charge were credited, reaching a conclusion that Arthur could be liable for the death of Debbie but not the unborn child. The most likely defence for Arthur was insanity and some candidates were clear in their application of the elements of the defence, concluding that Arthur would succeed if the defence was raised. Some candidates strayed into diminished responsibility, which was specifically excluded by the rubric of the question, and others were less at ease with the line between insane and non-insane automatism. In relation to Pete some candidates repeated the elements of murder but the best answer dealt with this concisely and then considered automatism in relation to a diabetic, reaching the conclusion that the defence was likely to fail as it was self-induced but alternative lines of reasoning could be credited if they were logically reasoned and supported by evidence.

#### **Question 6 – property offences**

This was the most popular Section B question by a considerable margin and invited candidates to explore the offences of theft, robbery and burglary. To reach level 5 all three offences had to be explained and applied. In addition good statutory knowledge was needed alongside accurate citation of relevant cases. Many candidates were very confident on theft, but less so with the offences of robbery and, more particularly, burglary. The best answers worked through each incident in the scenario, defining and explaining the most pertinent aspects of the Theft Act 1968 and applying the law to the facts before moving on. Other candidates wrote in detail about all the provisions of theft, in particular the intricacies of s4 beyond personal property, which were not credited as they had no application to any of the factual situations. As well as reaching conclusions on several potential counts of theft for Daliso credit was given for a discussion of robbery and following decided cases it seems likely that he would be convicted of this offence. Candidates who considered burglary were rewarded for their application of either or both of the provisions in s9.

#### **Question 7 – attempted murder**

The best answers demonstrated a clear focus on each of the statements in turn and moved through the key elements of the offence to reach a conclusion. Where an alternative argument could be evinced this was credited as long as it was logically reasoned to an appropriate conclusion and the mark scheme demonstrates this. In statement A the key issue was that

Imogen had not moved beyond mere preparation when she bought the poison although she did have an intention to kill Brian. In statement B candidates were credited based on their application of whether Imogen had moved beyond preparation when she put the poison into Brian's coffee or if she needed to give him the poisoned coffee to drink, as long as they acknowledged that she did have an intention to kill, and so reached a logical conclusion. In statement C the key issue was to recognise that although Brian had moved beyond preparation when he wired up the garage door he did not have an intention to kill Imogen. In statement D the key issue was to recognise that Brian had moved beyond mere preparation and that it did not matter that the offence was factually impossible since Imogen was already dead as his intention to kill was demonstrated by stabbing her repeatedly.

### **Question 8 – strict liability**

The best answers demonstrated a clear focus on the core elements of strict liability offences. In statement A the key issue was that an offence of selling unfit food occurred through an act committed voluntarily by Tom and since such offences do not require *mens rea* or have a defence of due diligence the offence was committed whatever the seller of the prawns told Tom or despite Tom's lack of awareness that the prawns were not fit to be eaten. In statement B the key issue was that an offence of serving a drunk person alcohol was committed when Tom voluntarily served a drunk customer and since the offence does not require *mens rea* and has no defence of mistake Tom was liable even though he did not realise the customer was drunk or he made a mistake as to their condition. In statement C the key issue was that it is a strict liability offence to broadcast music without a licence, an act James did voluntarily, and since the offence does not require *mens rea* and is an issue of social concern he was liable even if he was unaware that broadcasting music which interferes with the emergency services is illegal. In statement D the key issue was that allowing an underage person to place a bet is a strict liability offence and Marcus was liable when James was allowed to place a bet as the offence does not require *mens rea* and has no defence of due diligence so it made no difference that Marcus was unaware of what is happening or even that he had warned his employee not to allow young people to place bets.

# G154 Criminal Law Special Study

## General Comments

This Report to Centres refers to the summer sitting of the Criminal Law Special Study Paper for 2017, although a lot of the general comments and specific comments can relate to previous and subsequent sittings. It is apparent, more so in this sitting than in previous ones, that many candidates are not exposed to advice given in subsequent reports, or that advice provided in the accompanying Skills Pointer Guides.

This session's G154 paper examined the main aspects of non-fatal offences against the person as per the OCR specification. The new theme, as anticipated, generally proved accessible to candidates in all three questions. However, for a small minority, Question 2, unusually proved to be problematic. Specific mention must again be made to the annual Special Study Skills Pointer (available on the OCR website) and previous Reports to provide helpful advice and guidance. Candidates are again reminded that while the topic changes each year, the skills in tackling the questions do not. It is also very important to stress that the G154 mark scheme is never prescriptive but, nevertheless, identifies certain core elements to each question which traditionally must be present in a candidate's response to move up the mark Levels.

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 to rearrange the order that they attempt the questions. A popular strategy is to answer them in the order of 2-3-1 or 3-2-1.

This series continued to see the pleasing increase in the use and reference to the pre-release materials. Previous reports have explained the importance of the materials and how they can help and enhance the candidate's work during the planning of the exam and during it. If a quote or a point is contained within a source, then the candidate can save time by correctly referencing it rather than re-writing it. This was particularly relevant this year as many of the definitions of offences were contained in the sources.

## 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 *Fagan v. Metropolitan Police Commissioner* and the development to the law on the elements of criminal liability. This question tests Assessment Objective 2 by requiring analysis, evaluation and application to the law of the case of *Fagan*. It has been stated in previous reports that the Critical Point will always be that which was held, as a matter of law, as being the *ratio decidendi* of the case. To achieve Level 5 *inter alia* candidates were required to have identified one or more of the three critical points arising from the judgment, that:

1. the English criminal law's doctrine of coincidence of *actus reus* and *mens rea* requires both elements of a crime to occur at the same time;
2. the decision made by the Divisional Court in *Fagan* creates an exception to this doctrine; and,

3. the Divisional Court took a common-sense approach and held that it is sufficient if a defendant forms the *mens rea* at some point during the continuation of the *actus reus* and can be superimposed as such to create guilt.

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

Question 1 produced generally well answered responses given the complicated subject matter which was very pleasing to see. Most candidates achieving a Level 5 answer therefore: explained at least two of the Critical Points; gave further analysis of the case (see 2017's mark scheme, and below); discussed a relevant linked case and made a clear comment on the importance of *Fagan* (as required by the rubric). However, some candidates were unable to attain Level 5 since they had repeated the continuing act doctrine two or three times or discussed four, and sometimes more 'linked' cases with little explanation as to how they were linked. Indeed, there was a lot of apparent confusion over the fact that *Fagan* had taken the opportunity to discuss various contentious and related issues: those being, *inter alia*, the issue of omissions, the issue of direct/indirect battery along with definitions of assault and battery.

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 there seemed less evidence of 'case-spotting'. A movement towards writing a mini-essay on common assault was not uncommon to see, along with the continued and alarming movement to discuss many more cases than is necessary being still apparent. Some responses unnecessarily covered thoroughly four or five cases where only one relevant linked case is required. Three marks only 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 *Fagan* from the sources and from their own research. Most high scoring candidates therefore followed a clear pattern of response which included most or all of the following:

1. A discussion of the coincidence of *actus reus* and *mens rea* requirement, with *Fagan* being an exception allowing a continuing act to have *mens rea* superimposed at some point during its duration to the *actus reus*;
2. A detailed analysis of the actual case facts and of the three step events, ultimately leading to liability;
3. The issues during the magistrates' court that the Divisional Court discussed and the development of the doctrine, dismissing the defendant's appeal;
4. The Divisional Court's specific explanation of the constituent parts of the doctrine and how it applied to the facts in *Fagan*;
5. The discussion of battery by omission, the requirement of a positive act and the issue of indirect battery;
6. That cases must be decided on a case-by-case basis as assault and battery are not synonymous;
7. The thorough discussion of a linked case, for example *Church or Santana-Bermudez*.

A common omission by candidates was in not analysing the case's procedural matters; in effect, the issues at trial: the defence's specific arguments and the subsequent appeals against guilty verdicts to the Divisional Court. 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 non-fatal offences, albeit from a particular and specific angle. The question required candidates to consider those non-fatal offences covered by the Offences Against the Person Act 1861. Some candidates took this to mean all non-fatal offences including assault and battery. While a discussion of assault and battery was important in outline, where relevant, for the other offences, a full narrative and analysis was not required for the question.

For AO1, candidates could have secured high marks by providing specific, but not verbatim definitions of the three offences under the Offences Against the Person Act. A 'well-developed' response to these offences would begin by defining the offence, either through writing out the definition or referring to the definition in the source material. Candidates in such cases would then spilt the offences down into the *actus reus* and *mens rea* and explain any problems with the definition or interpretation of the definition, and explaining the further development of the offences. While non-fatal offences proved a popular topic amongst candidates allowing a huge target to be hit and it was not uncommon to see responses averaging ten pages or more. Selection and synthesis is key to answering this question and is very important for AO1. Again there was clear evidence that the sources seem to have been utilised more than in previous sittings.

However, the AO1 demonstration of knowledge and understanding was, at times, frequently disappointing. Many candidates saw fit to ignore such straightforward and necessary requirements of elemental explanation and instead simply, and singularly, discussed the offences in relation to sexual offences and psychiatric injury thus being unable to achieve higher levels.

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

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

Other than Source 3 from which the quote was taken, all of the Sources contained some information as well as much comment that was helpful in answering the question or of stimulating discussion before and during the exam. For the majority of candidate responses, the AO2 analysis and evaluation achieved Level 3 or 4 and was generally reliant upon the AO1 scaffolding. As the specific slant this series was on reform, this clearly required candidates to consider that as time progresses and attitudes to life change, and as technology changes, whether the law is quick enough to adapt through precedent in the absence of statutory intervention. As far as 'the case by case' side of the questions most candidates could articulate how the hierarchy of the courts and precedent had been advantageous or problematic.

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

development of arguments. 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 discuss and model any particular potential quote. It was very evident that a large number of candidates in preparing an answer to Question 2 were predicting a legal principle/public policy AO2 slant. While this could secure an answer in the top Levels, ignorance of the true AO2 slant made it somewhat difficult.

### Question 3

This application/scenario question provided some interesting and varied responses, particularly between the sub-questions. As noted above, Question 3(c) posed a stump for some candidates in discussing the continuing act theory. Traditionally, many candidates who scored highly on Questions 1 and 2 lost some of their marks here and this year continued to be no exception. Again, as mentioned in previous series, candidates would do well to use some sort of problem/scenario answering formula such as I.D.E.A or I.L.A.C to help answer the questions. In effect, any such formula looks at defining each part of the relevant law (AO1) then applying this to each part of the scenario (AO2). One of the consequent parts of the definition will be the Critical Point. This series the AO1 and AO2 had to refer to: a likely reckless belief in a person's ability to use a real sword, the impact of making silent 'phone calls to an elderly relative and the impact of the mismatch of timing of a guilty act and guilt mind while on a train.

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 non-fatal case law and certainly well versed in precedent. For Level 5, candidates ought to have included appropriate case illustration in support of application and also to have focused on the Critical Point evident in the scenarios as well as providing an appropriate conclusion. Each scenario required the candidates to consider:

- For (a) the most likely conviction would have been for s.20 GBH/wounding. That the cutting off of a hand would be classed as serious harm or a very serious wound, but that without a clear intent to do so, the issue of recklessness would need to be relied upon to secure any conviction;
- For (b) that the issue of making silent 'phone calls brings into question the issue of bodily harm through psychological means as opposed to direct violence, and whether the defendant had the intent or was reckless in causing such injury. Given the brief unconsciousness, but taking the victim themselves into consideration, that the likely offence would be that of ABH;
- For (c), that in placing his arm against the victim's face may not have been an offence initially, but his refusal to move his arm, analogous to *Fagan*, meant that the defendant would likely have formed the guilty mind to complete a s.39 battery through the continuing act theory.

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

The questions attracted many good responses with many candidates being able to demonstrate both thorough knowledge and high level application skills. Scripts marked at the lower end showed much more limited evidence of either. One frequent weakness in candidate answers in (a), (b) and (c) was in the ignoring the elements of the offences or either simply discussing the *actus reus* and ignoring the *mens rea*, or vice versa. In consequence and again creeping in this year and alarmingly so, were candidates suggesting sentence lengths following the unnecessary defining of offences. Having identified appropriate definitions and exceptions in each scenario it was again the level of understanding and the quality of application of the legal principles that

was the real discriminator. Also, 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.

A final plea is made from examiners in relation to the quality of candidates' handwriting. While the vast majority of candidates have clear and concise handwriting there are a small but significant number of candidates where their handwriting is almost indeterminable. Centres with candidates in this category must seriously consider the use of special considerations including the use of a laptop or scribe.

# G155 Law of Contract

## General Comments:

Although the quality of scripts was generally high the key bullet points below are worth repeating from last year:

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

## Comments on Individual Questions:

### Section A

#### Question 1 – misrepresentation

This question was focussed particularly on the remedies for each kind of misrepresentation and the extent to which the range of remedies available is linked in a fair way to the level of fault. There were some excellent answers which focussed well on the specific question for example evaluating the fairness of the decision in *Smith New Court v Scrimgeour Vickers* which decided that damages for fraudulent misrepresentation are not limited by the foreseeability of the loss incurred.

However there were many less well focused answers which discussed the fairness of the whole topic of misrepresentation. Equally there were many answers which explained a large number of cases on the nature of false statements and silence which was not directly relevant to this question.

#### Question 2 – restraint of trade

Most answers to this question included a good range of AO1 content which was relevant to the question. Most questions were able to evaluate the extent to which there is a large degree of discretion exercised by the judge, for example in the better answers candidates included an effective comparison of a range of cases dealing with time, distance and the scope of the restraint.

While the focus of AO2 comments on this question was generally more accurate than in Question 1, many answers would have been stronger still if they had included a succinct and focused conclusion. Too many answers feature no real conclusion to answer the question, or include a conclusion which repeats content previously stated in their answer.

#### Question 3 - Frustration

As in Question 1, there were many answers which gave an overview of the law on frustration without a specific focus on limits to the doctrine which was asked for in the question. In this question candidates were able to discuss almost any aspect of the topic but needed to ensure that they focussed their AO2 comment on the aspect identified in the question. For example

there were some very good discussions about limits to the doctrine in stronger answers, for example the difference between Krell and Herne Bay on radical change of circumstances and whether this amounts to a limit, the courts being reluctant on policy grounds to allow people to escape from contracts which have become inconvenient.

Stronger answers to this question included good reference to force majeure terms and the ability of the parties to pre-determine the effect of certain events happening which can be preferable to the issue being determined by a judge, with the element of unpredictability which comes with that. A few very good answers developed their discussion further to place their comment in the light of the economic turbulence of recent years and the possibility that have become unprofitable due to changes in the value of property or fluctuation in oil prices.

## **Section B**

### **Question 4 – intention to create legal relations**

Answers to this question were generally well structured with candidates outlining a range of relevant cases in each part of the question before applying the principles to the facts given. Weaker answers did not get much past identifying the situations as either domestic or commercial, or gave an answer without much development of the reasoning for the conclusion they came to.

Stronger answers to this question explored alternative possibilities and the effect of the extra facts given. Candidates should bear in mind that problem questions are carefully written to allow a discussion of all the facts given rather than just arriving at a broad conclusion. An example of this is the statement in the 'Boozers' scenario that Sergei promised to give them the 'best deal possible'. Stronger answers discussed whether this could be seen as too vague to amount to a contractually binding promise, exploring similarities with case law such as *Carlill v Carbolic Smoke Ball Company* and the possibility of the statement being seen as mere puff. When candidates explore alternative outcomes they will not be penalised for coming to a final conclusion which is not the same as the mark scheme. The strongest answers explore a range of outcomes and settle on a final conclusion with fully explained reasoning.

### **Question 5 – privity of contract**

This was a three part question which allowed candidates to identify why privity was an issue in each scenario and explore the effect of various alternative outcomes. As in Question 4 candidates were rewarded for exploring a range of outcomes and the strongest answers were those which applied a rule in good detail and gave a well-reasoned answer. Candidates who explored an exception to the rule of privity which was not in the mark scheme were rewarded if their reasoning was developed and showed an understanding of the law. An example of this is the principle of collateral contracts from the case *Shanklin Pier v Detel Products*. While it was not possible to identify any collateral contracts in this question, candidates were still rewarded for an attempt to apply the principles and for coming to a reasoned conclusion, even if ultimately in error. Too many answers were limited to a statement that there was a collateral contract between two of the parties but with no supporting reasoning.

There were a number of weaker answers to this question which did not make any reference to the Contracts (Rights of Third Parties) Act 1999. This is key legislation in the area of privity of contract and should be a priority for candidates learning this topic. A few stronger answers were

able to explain the act in good detail and with supporting cases but far too many answers lacked any reference to the act at all.

### **Question 6 – performance of a contract**

This was a straightforward question with three scenarios, each one requiring an explanation of the main principle of performance and an exception. There were some very good answers which took a well-structured and methodical approach, dealing well with the issue of a delay in performance in the Pressers part of the question. Stronger answers also put the law in to the context of the parties, for example identifying that two illustrations not being completed by Lucy would mean that the book is unable to procedure, and that while this relatively small proportion of unfinished work would often be seen as substantial performance of the contract as a whole, in the context of the publishing contract this would not be the case.

## **Section C**

### **Question 7 – mistake and misrepresentation**

The majority of candidates now adopt an appropriate answer technique for Section C questions although there are still a minority of candidates who cite case law in their answer or who fail to definitively state whether they think the statements are accurate or inaccurate. As there are 5 marks to be awarded for each statement candidates are advised to structure their answer with 5 reasoned bullet points, one of which being the accuracy of the statement.

Candidates were challenged by Statement B which required a discussion of the principles of title passing and the contract being voidable for misrepresentation. If it was discovered that the goods had been sold due to a fraudulent misrepresentation, the seller could rescind the contract before the third party, Tina, gained title to the goods. Few candidates correctly explained this sequence of events.

There were very few good answers to Statement D which concerned lapse of time. Most candidates incorrectly based their answer on the rule that an offer lapses after a reasonable time. This could not have been the correct answer because candidates were told that the mistaken offer was immediately accepted. Candidates should have addressed their answers to the difference between a contract being void for mistake, where lapse of time would have been irrelevant, and being voidable for misrepresentation, where lapse of time would have been a bar to rescission.

### **Question 8 – undue influence**

In general candidates showed a good level of awareness of the rules of constructive notice and the requirements to give unbiased and complete advice. There were also some very good answers to Statements C and D which concerned actual undue influence, many candidates however jumped to the conclusion that this was either class 2A or class 2B presumed undue influence, disregarding the fact that the improper pressure took place in front of a bank manager.

Candidates must consider the given facts carefully before embarking on their answer, once they have started down an incorrect line of reasoning it is usually impossible to award any marks at all and so many candidates scored no marks for at least one of the statements.

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

### **General Comments:**

The paper appears to have been well received by candidates and the standard of responses was high which suggests candidates were well prepared for this paper. Credit should be given to both candidates and their teachers. The topic of offer and acceptance gave candidates the opportunity to demonstrate the full range of learning outcomes. The majority of candidates were able to demonstrate extensive knowledge of the topic and the range of authority used was very impressive. The Pre-release materials were utilised well and candidates were able to use these as a starting point for analysis on which to build.

### **Question 1**

Generally students were good on the critical points and were able to address the issue and explain in detail the reasoning. The applied points were also well done. The majority of candidates were able to score well when arguing about intention, freedom of contract, unsolicited goods/gifts and the notion of certainty/predictability. There were some candidates simply referring to the rule being 'unfair/unjust' but without giving supporting reasons such as upholding intention or avoiding unwanted contracts through inertia selling. A very pleasing aspect of some responses was to see candidates referencing the Consumer Rights Act and inertia selling. The weakest component was the linked cases. Candidates did not always grasp that the aim was to demonstrate how the rule was followed and developed post-Felthouse. Some reverted to pre-Felthouse cases or used cases that did not have central focus on communication. There were occasions where candidates spent too much time simply copying out copious factual information from the Pre-release material rather than focussing on cases/authority.

### **Question 2**

As with Question 1, this question was generally done reasonably well. For AO1 most candidates were able to demonstrate knowledge and understanding of both the communication of acceptance and revocation. There were very few who gave an unbalanced response, although there is clearly more to write on general communication. There were some responses who gave chapter and verse on offer/invitation to treat as well as unilateral offers, and some who focussed too much on the mirror-image rule. This meant that they had less time to concentrate on the theme of the quote and question.

An impressive variety of sources beyond the ones given was very pleasing to see and benefited the candidates. Virtually all candidates were able to give developed explanations of the facts/ratio and significance of the cases, which was a sound basis for developing the analytical AO2 points. The AO2 component was not as strong as that for AO1. Candidates appeared to struggle to get into the higher bands because they failed to evaluate the cases in light of the question asked. The question required a good range of examples being given to support, or not, the justification for the rule. Many candidates explained the rule but did not critique it using examples, so many did not contextualise what they wrote. Candidates struggled to make synoptic points. Candidates would have benefited from focusing their AO2 efforts on addressing the quote and question and balancing their explanation of the law with a more critical evaluation of the use and limits of the rules in action. The better candidates were able to draw on some contemporary examples of modern forms of communication and sales techniques to show how the rules either support business practices or encourage exploitation of those in an economically disadvantaged position. It would be advantageous to candidates to think more closely about

how the law in action works or could be relevant for modern-day business and consumer practices.

### **Question 3**

Candidates appeared well prepared for Question 3. The main weakness in responses was that candidates appear to forget this is an application question and there must be a point when explanation of the law gives way to a comparison and evaluation of the scenario facts against the rules in the light of the critical problem. The responses that were largely AO1 focused received fewer marks as the candidates had not appreciated that, at best, they were only answering half of the question.

#### **Question 3(a)**

This question elicited the most complete and rounded answers. The critical point was generally done very well and most students picked up these marks quickly. The issue of silence was covered by the vast majority. The weakness for some candidates was the point about email being instantaneous. This was not explained or developed by most students. Most candidates drew the correct conclusion.

#### **Question 3(b)**

The critical point that acceptance must be communicated was identified by the vast majority of candidates. Some failed to address when the offer was made. The postal rule and revocation were addressed by most candidates but there were some scripts demonstrating confusion about when and how revocation works and is legally effective. Some students got tied in knots on this point and, as a result, drew the wrong conclusion.

#### **Question 3(c)**

Most students picked up marks quickly by identifying the issue surrounding a request for further information and when an email acceptance is communicated. Candidates struggled with the issue of when acceptance takes place when sent out of normal business hours. Many students not appreciating what 'normal business hours' are and how they operate and that it is an objective test. Some students were confused as to when Will's acceptance was valid.

## **G157 Law of Torts**

### **General Comments:**

A wide range of marks were demonstrated in response to this paper. Candidates appeared to show a preference to answer essay Question 1 on Trespass to the Person. Many candidates choose to answer problem Question 5 on Nervous Shock. Answers to Section C showed a preference for Question 7 over Question 8.

In Section A candidates cited a large breadth of case law, with less tendency seen than in previous years of candidates putting case names in brackets next to unrelated points. More capable candidates also explained the available defences in relation to Question 1. For each of the essay questions there was much evidence of well-developed discussion points that related specifically to the question. Candidates who went beyond making bold general evaluative comments on the fairness of the law, and really engaged with the question, achieved higher marks for AO2.

In Section B candidates were generally adept at using cases that linked to the scenario, instead of writing every case they knew on the general topic area. In each of the scenarios most of the issues were identified and addressed when applying the law, leading candidates to come to clear and logical conclusions. The more capable candidates also identified relevant remedies in relation to Question 6.

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, although an increased amount of case and statute citation was noted this year in response to Question 7. Similarly, to previous years the lack of technique and inability to identify the issue in question was an issue, but this was less prevalent than in previous years.

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

#### **Question 1**

This was a popular question that showed a high level of case citation and the majority of candidates addressing all three torts to varying degrees of detail. More able candidates really engaged with the question and provided AO2 discussion to demonstrate this. Weaker candidates tended to discuss the fairness of the law without any comment linking to judges' development of principles.

#### **Question 2**

In this question, most candidates provided at least some explanation of both defences with the most capable candidates supporting their points with a good use of case authority. Candidates provided AO2 comment with varying degrees of success. The more able candidates discussed the impact of the defences on the claimant's ability to claim and drew comparisons between the two defences.

### Question 3

Question 3 focused solely on the breach element of negligence. This provided considerably difficulty for some learners who wrote their entire essays on ‘duty’, which negatively impacted on their marks. More capable candidates provided a good explanation of the standard required, considering different types of claimants, defendants, and factors that could be considered with thorough case citation. The question asked for a discussion of the fairness of the factors and many candidates managed to successfully engage with this as well as the most able drawing comparisons between cases to enhance their discussion.

### Question 4

This question was answered with varying degrees of success. Most candidates managed to explain and accurately apply the employment tests for vicarious liability. Candidates struggled more with explaining and applying what actions were in the course of employment and many weaker candidates failed to mention liability for careless actions or the close connection test. Candidates identified most of the issues in the scenario, although the issue of Reena grabbing Charlotte to protect the employer’s goods was missed quite frequently.

### Question 5

This was by far the most popular problem question and again showed a wide range of ability. Most candidates could explain that a recognised psychiatric injury was required, that there must be a single shocking event and that different rules apply to primary and secondary victims with reference to relevant cases. Some candidates also explained that bystanders were expected to have reasonable phlegm and fortitude. In applying the law many candidates became confused over what amounted to a recognised psychiatric condition and did not deal with each of the conditions in the scenario separately, leading to inaccurate conclusions. Many candidates also explained rescuers, although these were not relevant to the scenario and thus not creditworthy. The more capable of learners discussed the law relating to *Attia* and how this applied to Matthew, and that Toby could try to overcome the presumption that he did not have a close tie of love and affection in order to make a successful claim. A minority of learners approached the question by considering if Matthew had a duty of care towards Toby, which did not successfully answer the question.

### Question 6

Candidates identified both trespass to the person and nuisance in this question and explained both torts with reference to cases. Candidates who achieved higher marks explained and applied that an interest in land was needed before a claim could be made and identified and explained the different factors that will be considered when judging if a nuisance is unreasonable. As there were a number of issues in this scenario, candidates could achieve high marks for breadth, even if some issues were addressed with a lack of depth.

### Question 7

This question was by far the most popular from the Section C choices. It was answered very successfully by many candidates who had clearly prepared carefully for a question on the Animals Act. Most learners successfully identified the issues and applied the law for statement A, C and D. Statement B presented more of a challenge with learners stating that Jennifer was strictly liable without considering the impact of Arthur being a trespasser.

**Question 8**

Candidates found this question challenging, with many not identifying what the statement was pointing them towards. This led to candidates frequently repeating the same answer in response to all four statements.

## G158 Law of Torts Special Study

### General Comments:

The theme this year (Occupiers' Liability) has been the subject of a previous special study paper. Therefore, the focus this year narrowed in to look at the way this area affects liability owed towards children. This proved to be a real success with high levels of engagement reflected in some excellent responses.

This area of law is, in essence, a form of statutory negligence governed by two Acts of Parliament - one for lawful visitors and one for non-lawful visitors. These Acts and the case law interpreting their provisions provide a great deal of material reflecting the history of negligence itself, our changing social and moral attitudes towards children as both lawful visitors and trespassers, changes in the built environment and the way we use land and the recent backlash against the rise of the so-called compensation culture. The sources attempted to reflect these key themes and students clearly made good use of them both before and during the examination. Candidates and their teacher are to be congratulated in coming to this exam very well prepared.

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

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

### Notable improvements and areas of good practice:

- There were no spoilt or nil response scripts
- There was plenty of evidence of wider reading (outside the sources) and detailed, up-to-date knowledge of case law
- Timings seemed to have improved with less 'rushed' responses to Question 3
- There was detailed and informed use of the sources from most candidates
- Very few candidates lost marks through a failure to make appropriate use of the sources.

### Areas for further development:

- Students are still over-preparing for questions 1 and 2 to the cost of Question 3 which makes no sense based on the marks available
- Unnecessarily long and clearly pre-prepared answers to both Questions 1 and 2 which really only serve to give candidate false confidence
- A 'generic OLA essay' shotgun approach to Question 2 with no isolation of the key theme (in this case 'children')

### Comments on Individual Questions:

#### Question 1 – the case digest – *Addie v Dumbreck*

Most candidates gave excellent responses to this question. Features of good practice included:

- Good use of the sources (especially Source 6)
- Excellent case knowledge
- Using linked cases that were relevant to the key theme - children as trespassers
- Reflecting the key critical theme (the humanising trend over time)

Improvements could be made by noting the above points and by trimming content to reflect the marks allocated. Some candidates are still treating this as an essay and giving responses which are far too long thus losing valuable time and gaining no extra marks for their efforts.

#### Question 2 – the essay question – key words: ‘Discuss the ways in which the law concerning occupiers’ liability towards children has been **developed over the last 100 years.**’

The question was one of the most straightforward essay questions set in recent G158 papers which often require the candidate to deal with two or more issues. Here, reflecting the slightly narrower focus, the candidates only had the single issue to deal with. Consequently, most candidates did well. Those who scored highly tended to do so through:

- covering different themes (children as visitors, children as trespassers, allurement, parental supervision, ability to read/understand warnings etc.)
- good use of the sources
- evidence of wider reading and case knowledge
- sophisticated critical understanding
- good focus on the quote (development over last 100 years)
- good awareness of the key critical themes mentioned above
- synoptic awareness.

Those who scored less well:

- only covered children as part of a wider general OLA essay
- failed to engage with the theme in the question - ‘development’
- only used cases provided in the sources
- lacked a coherent structure
- showed little critical awareness
- failed to provide a conclusion.

#### Question 3 – the mini problem questions

Most candidates scored reasonably well on these problem questions. It was possible to pick up reasonable marks by dealing with general matters such as who the occupier was, what the premises were, whether the claimant was a visitor or a trespasser and so on without, necessarily engaging correctly with the critical point. However, to score high marks the critical point would have to be identified and dealt with correctly. Given the statutory nature of OLA it was possible to score full marks without a case this year - provided the right part of OLA was dealt with.

In **a)** most candidates correctly identified the CP as the possibility for the hotel to shift liability to Superb Saunas. The most able candidates were able to go through the three elements of s.2(4) and apply them correctly. Most candidates applied at least one element (usually ‘checking’) and

concluded correctly. Anecdotal accounts of the critical point were not credited even where they were close to the right idea - this was because the key elements needed for both this and the other problem questions were easily located in both Acts which were provided in the sources so there was no real excuse for not citing and using them. There was provision in the mark scheme for candidates coming to either view: a) the hotel could have checked easily, or b) it was too complex for the hotel to check - therefore no candidate lost marks for having a different take on the facts as long as the law was properly explained.

In **b)** there was the most common misunderstanding of the three questions leading to fewer high scoring answers than for the other two. The misunderstanding lay in the candidates' perception of the sign on the door. The sign served only one purpose - to make Yvonne a trespasser when she ignored it. It did not purport to be a warning sign of any description but many candidates turned it into a warning and dealt with it as such. This was despite the fact that it didn't even hint at a danger let alone warn of one. There was no critical point credit for such answers. The critical point lay in realising she was a trespasser and correctly applying the three elements of s.1(3). This proved to be a very effective discriminator with the most able students showing the ability to think through the problem with clarity.

In **c)** most candidates correctly identified Zoe as a lawful visitor who needed to be kept safe. This was established by applying s.2(2) correctly which many candidates did in whole or in part. A small minority of students decided to tackle this question by applying the Animals Act 1971 despite the rather obvious point that the special study theme was Occupiers' Liability. Centres should make it clear to candidates that we would never expect them to apply law from outside the special study topic theme - regardless of how relevant it may seem.

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

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

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

**OCR Customer Contact Centre**

**Education and Learning**

Telephone: 01223 553998

Facsimile: 01223 552627

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

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

For staff training purposes and as part of our quality assurance programme your call may be recorded or monitored

**Oxford Cambridge and RSA Examinations**  
is a Company Limited by Guarantee  
Registered in England  
Registered Office; 1 Hills Road, Cambridge, CB1 2EU  
Registered Company Number: 3484466  
OCR is an exempt Charity

**OCR (Oxford Cambridge and RSA Examinations)**  
Head office  
Telephone: 01223 552552  
Facsimile: 01223 552553

© OCR 2017

