GCE

Law

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

OCR Report to Centres

January 2013

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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.

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

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Overview

This is the last January sitting of units G151-G158 but the comments here can still support and guide both centres and candidates.

At AS level it was encouraging to see candidates developing their skills in demonstrating knowledge and then writing discursively, or applying knowledge logically to a scenario, only a few months after completing GCSE courses. The questions in G151 part (b) of Section A stretch candidates and offer preparation for the level of engagement needed to succeed at A2 level. It is particularly encouraging to see logical application skills being used to good effect in part (b) of Section B questions and these also form a platform for A2 study. The format of G152 requires candidates to read carefully, to write analytically and to apply their knowledge – something many do in commendable fashion after only a short time studying the course.

Each of units G153, G155 and G157 saw some increase in numbers, a change which may reflect the fact that many centres now embark on full A level work in the wake of the AS level examinations. Section A questions continue to challenge candidates by asking them to explain relevant principles of law using accurate citation and statutory references where appropriate, whilst also discussing the analytical thrust of a particular question. The candidates who do best have considered the law beforehand and have the confidence to deal with the question set, rather than relying on a pre-prepared answer which often has a different focus from the one required. In Section B, questions have a clear focus both in the scenario facts and the instructions given in the rubric. Careful reading to assimilate the information which is most relevant to the question, and then resisting the temptation to write everything about a topic, instead focusing on what is most pertinent, enhances the accuracy, clarity and logicality of application skills. In Section C there is now a much better use of technique, with many candidates employing a bullet point format and relatively few using citation, but there remains a need to read all the statements carefully at the outset so that the correct focus is given to each.

Those sitting G154, G156 and G158 were often able to demonstrate detailed engagement with the specific subject matter, although there remains some evidence of pre-prepared answers in questions 1 and 2. Another area in which centres and candidates can still improve is the research undertaken to gain mastery of the special study materials, so that they provide a backdrop for wider personal research which can be shown to good effect by widespread and confident referencing across the exam paper.

Although Law is a subject which requires a sound knowledge base, good skills are paramount, and centres and candidates are reminded of the need to focus on these – especially since each paper has different demands. Alongside this the breadth and depth of the papers is such that centres and candidates are strongly advised to prepare as broadly as possible in preference to concentrating on a selective range of topics and attempting to predict which of these are most likely to appear.

Finally, candidates should be encouraged, as with any assessment task, to read the instructions contained within the assessment material to ensure that they know what they have to do before they begin actually answering the questions. By dedicating a few minutes to ensuring that they understand where to write their responses, what combination of questions they are required to select from, and what each question's focus is, candidates can target their responses more effectively.

G151 English Legal System

General Comments

This unit aims to cover a broad overview of the English Legal System and this report is intended to help centres and candidates prepare effectively for future series. Responses in this series were very similar to previous series. Many responses demonstrated good preparation and a detailed knowledge of the areas of the English Legal System covered. They showed that candidates had an ability to apply knowledge to the application questions effectively, and well developed arguments were produced in the discussion questions. Many candidates' responses focussed well on the questions asked. Credit was not given for responses that described or discussed areas of a topic that were not asked for. In order to prepare effectively for the paper it is important that whole topic areas are revised thoroughly. It is also important to read the questions very carefully and answer the question asked.

Most responses demonstrated a good use of time. Many responses answered both questions from Section B which was often advantageous. Many responses also appeared to achieve higher marks on the application questions than on the discussion questions.

For part (a) of all questions it is important to note that there are only AO1 marks available and any comments, no matter how well constructed, will gain no marks. The responses are differentiated by the level of detail and the selection of the right material to answer each question effectively.

For part (b)* of questions in Section A it is important to answer the question asked and to develop arguments rather than just making isolated points. A useful exercise is to see how far a point can be developed, though candidates need to be mindful of not just restating the same point in different ways.

For part (b)* of questions in Section B the issues raised by the scenario should be looked for. There should be at least five issues that can be applied in any question. These need to be identified and applied.

The majority of candidates used the new answer booklets as instructed; where responses were in the wrong place they were marked nonetheless. Whilst candidates are often keen to skip straight to the questions, they should be encouraged, as with any assessment task, to read the instructions contained within the assessment material to ensure they know what they have to do before they begin.

Comments on individual questions

Section A

1(a) Most responses gained the majority of their marks from the categories of offence which were usually correctly specified with accurate examples. No credit was given for examples of types of offences where one of a list was wrong – eg "petty theft" for summary offences. It is better to have one correct example for each category of offence than several for each with some being wrong. The process for deciding where a triable either way case should be dealt with was well answered in a higher proportion of responses than in previous series, demonstrating a good understanding of plea before venue and mode of trial.

1(b)* Many responses demonstrated a good ability to develop arguments covering both the advantages and disadvantages of being tried in the Magistrates' Court. Most responses showed an ability to discuss sentencing and acquittal rates with other issues. Credit was not given for a general discussion on the advantages and disadvantages of having lay magistrates.

2(a) Many responses gave detailed descriptions of the work and organisation of both solicitors and barristers and gained high marks. Credit was not given for a description of the training.

2(b)* Some responses provided good examples and discussion of the reduction of the differences between barristers and solicitors. These usually included direct access and solicitor's advocacy in higher courts. Credit was not given for a discussion of the similarities and differences between the professions that had not changed.

3(a) Most responses gave good detail of the qualifications for jury service. There were more responses in Level 4 than in previous series. It is important to include detail of the disqualification criteria. The selection procedure was usually well done with good detail of challenges and vetting.

3(b)* Many responses concentrated well on the question and focussed the discussion on the secrecy of the jury room. Credit was limited in responses that discussed the merits of the jury system in general only to any points that were connected with the secrecy of the jury room.

4(a) Most responses demonstrated a good grasp of the alternate methods of dispute resolution and gave good examples. Mediation and conciliation were well described. Many responses gave the detailed description of arbitration required for high marks.

4(b)* Most responses covered several issues regarding the advantages of using ADR. It is important to practice developing points as far as possible to get the highest marks.

5(a) Some responses gave a detailed description of the qualifications required and the procedure for selecting judges and gained high marks. Credit was not given for material about the training of barristers and solicitors or the training of judges.

5(b)* Some responses provided good arguments related to replacing lay magistrates with judges and gained high marks. Little or no credit was given for the arguments that judges should be replaced by lay magistrates.

Section B

6(a) There were many very good responses to this question which gave accurate descriptions of several custodial sentences and showed an appreciation that there is one Community Order with requirements attached to it and an ability to describe some of those requirements with statutory authority. Credit was not given for a description of fines or discharges.

6(b)* This was usually answered well with many responses gaining full marks. Credit was given for identifying aims related to points in the scenario and suggesting sensible possible sentences. It is important to fully answer the question and keep referring back to the scenario.

7(a) This question was answered well by a higher proportion of responses than in previous series. The necessity test was described in detail and the limitations on the police usually covered well. No credit was given for a description of stop and search on the street.

7(b)* There were many good responses to this question gaining full marks. Many responses identified the issues of the police not identifying themselves. Full credit was given to this point if responses commented that identification was only necessary if they were not in uniform. A number of responses assumed that tackling to the ground meant "excessive force" – of course, allowance was made for this and appropriate credit given. It is important with application questions to apply the law to the issue identified.

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G152 Sources of Law

General comments

This paper was the last occasion on which there will be a January sitting and was marked by a general improvement, most notably in the development of AO2. The paper seemed well received and there was a good range of responses across both questions. The statutory interpretation question was most popular; however, those who answered the Practice Statement question seemed generally well prepared.

Areas demonstrating progress:
- Development of cases is getting much sharper with an increasing number of students less preoccupied with recitation of facts and more prepared to explain what the word(s) being interpreted were and how the application of a particular rule affected the outcome.
- AO2 development saw a real improvement with most responses able to achieve 3 or 4 developed points and access level 3 and an increasing number able to produce well developed points and access level 4. Instances of responses not achieving marks due to a lack of balance also seem to have decreased.
- Citation of the sources improved with very few responses losing out on access to level 4 because of a failure to link to the source.
- Improved understanding of the Golden Rule with most responses now appreciating that there are two approaches.
- Some improvement in part (b) problem questions with a more methodical approach noticeable.

Areas for improvement:
- Whilst citation of the source has improved, making actual 'use' of the source materials was a significant area of weakness for many. Considering that definitions are the starting point for most (a)* and (c)(i) AO1 questions, it was disappointing to see some scripts not achieving marks because they did not provide basic definitions, which were freely available in the source materials.
- Whilst there was generally an improvement, there were some frustrating lost mark situations in the part (b) questions. Answers which went through all the correct reasoning but failed to actually state whether D was liable or not or whether a particular court was bound or not were far too common. Also, a failure to read the rubric properly cost marks on question 2 (see below).

Comments on individual questions

Question 1

1(a)* This broad question allowed a wide range of potential points to pursue. Responses generally scored well, although distinguishing was generally done better than binding precedent. There was support in the sources, which was used well, and most responses had at least one pair of distinguishing cases to draw on. Some responses could not see much beyond a definition for binding precedent and failed to use easy opportunities such as cases with well-known ratios as examples. A significant minority decided to write everything they knew about either the hierarchy of courts and/or the different kinds of precedent.

- Good use of appropriate cases (***Balfour, Merritt; Brown, Wilson***)
- Good definitions
- Sometimes slight confusion over the exact distinguishing facts
- Few were distracted into offering inappropriate AO2

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1(b) The application questions were generally answered well. Most responses achieved L3 (4) with the correct bound/not bound and why.

(b)(i) Most responses got L2 'bound' and most got the date's significance and therefore got the 'why' (no Practice statement). A significant minority did use London Street Tramways for L4, but most that got L4 did so by raising the possibility of distinguishing.

(b)(ii) Well answered up to L3 by the vast majority of students. Many responses had either 'because a Youngs exception applies' or *per incuriam* but, curiously, not every response linked those up for full marks.

(b)(iii) This was the least well answered question for full marks. Most responses had little problem achieving L3 (not bound because of the Practice Statement) but few candidates recognised the significance of the transfer of this power to the UKSC under **Practice Directions 3 & 4** as confirmed in *Austin v Southwark BC*.

1(c)(i) This question proved quite interesting. It is some time since a question on the Practice Statement. This is partly because of uncertainty in this area since the inception of the UKSC. However, it is also now some time since the UKSC issued **Practice Directions 3 & 4** and the case of *Austin v Southwark BC* confirmed the position and textbooks should now reflect this. Very few responses were up to date. However, this did not stop responses making a good job of the conventional Practice Statement story pre-UKSC which was fully credited. Some responses made good use of the source materials to complete the story.

1(c)(ii)* The quality of development has improved, the balance between advantages and disadvantages was better and there was generally less unfocussed discussion. Points were often developed through use of appropriate cases, well explained consequences and/or causes and well articulated constitutional doctrines such as independence of the judiciary, democratic deficit, supremacy of parliament and separation of powers.

Question 2

This was the more popular question and drew a good range of answers. Fully prepared responses did well but weaker responses failed to make use of generous support available in the source materials and some candidates clearly did not read the rubric on part (b) thoroughly.

2(a)* Some very good answers. There has been a definite improvement in the understanding of the Golden Rule since its last (fairly recent) appearance. Responses are now commonly referring to both the wide and narrow approaches. Not only this, but they are doing so accurately, fluently and with the right supporting cases. Weaker responses failed to use the definition in the source and did not have any cases beyond the source case provided. Some mid-range responses knew their cases but could not always isolate the key issue (eg meaning of 'to marry' = 'change in legal status' or 'to go through a marriage ceremony' – choose whichever removes the absurdity) but managed a recitation of the facts instead.

2(b) These questions required responses to consider **all the rules in each** case. A significant minority picked one rule for each scenario and applied that one alone. Another, smaller, minority answered the question based entirely on anecdotal reasoning. However, most responses were able to apply two rules correctly. The most common misunderstanding was how to apply (or not apply) the Golden Rule.

(b)(i) Most responses were clear that D was 'literally' selling ice cream over the road and recognised this as being 'in the vicinity'. If the respondent did not know what vicinity meant because they had not been taught *Adler,* it was nonetheless explained in the source materials. Few responses raised and dismissed the Golden Rule by saying that since the literal rule does not produce an absurd outcome, there is no need to consider the Golden Rule. This will have denied candidates access to level 4 unless they had an alternative case or point.

(b)(ii) Again, most respondents familiar with *Adler* would have been fine with this question, which works really well on three rules. Those who were unfamiliar with *Adler* had the support of the source. There were some who argued that an ice cream van on a playground is not dangerous and credit under the mischief rule/purposive approach was given where it was reasoned properly.

(b)(iii) This was generally well answered. There were a few responses which did not pick up on the 'giving away' ice cream as opposed to 'selling' it.

2(c)(i) Most of the comments here are the same as those for 2(a). The question was generally very well answered. There was far less confusion with the purposive approach than in previous sessions. There was an improvement in the use of appropriate cases and responses clearly identifying the relevant mischief (eg 'soliciting', 'illegal back-street abortions' and 'drunk in charge of any vehicle') when describing cases. Weaker responses missed out on the help with a definition available in the sources.

2(c)(ii)* This question performed similarly to 1(c)(ii) with the same improvement in AO2 quality. Some thoughtful and well expressed advantages and disadvantages were in evidence.

G153 Criminal Law

General Comments

The final January series for G153 saw a small increase in the total number of candidates and a greater number sitting the paper for the first time. Many of these candidates had used the time since the summer AS exam well to cover a wide range of topics; as a consequence there were responses to all questions on the paper. Those who performed best were able to demonstrate thorough revision which was detailed in its breadth and depth, and reflective in its overview of all the component elements of criminal law.

AO1 rewards knowledge, in both breadth and depth, and clear statements of fact supported by accurate citation and use of relevant statutory provisions are crucial to access the higher mark bands. AO2 rewards analysis and comment in Section A, whilst focusing on application skills in Sections B and C, and candidates are wise to bear these different criteria in mind when revising. The A* grade and the requirements of stretch and challenge mean that sound knowledge supported by awareness of underlying principles, demonstrated by thorough and cogent application or coherent and synoptic analysis, brings the greatest rewards.

This series saw a good number of candidates struggle with the time limit, most often due to a tendency to spend too long on Section A. Beginning with Sections B and C can improve time management as well as making the most of a candidate's problem solving skills, which are a lucrative source of marks.

Section A questions are differentiated in AO1 by factual knowledge and relevant citation alongside analytical sophistication. Candidates should be aware that cited cases need to have more detail than just a name – a few key words in relation to the facts and a clear link to the relevant legal principle are beneficial; relevant cases used appropriately are the most effective. In AO2 those achieving at the highest level are able to develop points of comment and engage with the question posed rather than relying on a pre-prepared answer. Candidates may want to consider making a basic analytical point, developing it and then taking it one stage further, perhaps by looking at the issue from a different perspective or by using an example to illuminate the point made.

Section B questions are differentiated in AO1 by the factual detail used to support the identification and application of relevant issues and the confidence with which legal principles are applied and deduced. Candidates should refer to cases that are appropriate and relevant so as to have plenty of time for application. Statute law should be clearly and confidently expressed, linking sections to names of offences, or legal principles, and their definitions as a demonstration of knowledge. In AO2 clear and thoughtful application should be striven for. Efficient planning is time well spent as it enables a candidate to be more relevant, logical and thorough in their application.

Section C questions are differentiated by the application of reasoning skills to four distinct statements. Candidates are rewarded for their understanding of legal principles demonstrated by logically deductive application. Citation is not necessary and a confident conclusion is essential to reach level 5. Bullet points in answers often help candidates to be succinct and are entirely acceptable in this part of the paper. Candidates should ensure that they read all the statements before beginning an answer to ensure that the correct aspect of the law is being applied and should give sufficient time to these questions as thorough application repays with high marks.

Communication skills continue to be an area of importance for all candidates and paying attention to the accurate use of language, and subject-specific terminology, can only benefit the quality of a candidate's responses.

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Section A

Question 1

This was the least popular question in Section A and responses tended to be polarised. Some showed impressive knowledge of both common and statute law, especially of the Criminal Justice and Immigration Act 2008 and the Coroners and Justice Act 2009, balanced by thoughtful and sometimes topical comment. In other responses knowledge was sketchy and often apocryphal with comment tending to the popular rather than the legally informed.

Question 2

This was a popular question and it was encouraging to see some candidates engaging confidently with the different facets of this topic. Whilst many considered three types of manslaughter, it was possible to achieve maximum marks without detailed reference to reckless manslaughter as the legal community is divided on its existence. With the focus of the question clearly on manslaughter, those who achieved the highest marks were circumspect in their coverage of causation and omissions, choosing only the most relevant areas and cases for discussion. In AO2 it was important to make reference to the Law Commission proposals in its Murder, Manslaughter and Infanticide report of 2006 as the question made specific reference to reform.

Question 3

This was the most popular Section A question and some pleasing responses dealt with all aspects of this area of the law, often using the *Gammon* criteria as a starting point to give structure to their response. Whilst reference to absolute liability is acceptable to give context, some candidates wrote extensively on a very specific and rarely used area of law, which often impacted on the time they had available to deal with other issues or, indeed, to spend on other questions in the paper. Cases were frequently cited but factual content was not always balanced by legal principle. AO2 analysis was often thoughtful and sophisticated, with those who reached the highest mark bands focusing on citizens and businesses through developed comments which did more than simply repeat the question.

Section B

Question 4

This was the least popular Section B question and responses were wide ranging in terms of the accuracy with which the offences contained in the Criminal Justice Act 1988 and the Offences Against the Person Act 1861 were handled. Those who identified and defined statutory sections accurately, supporting those definitions with relevant citation, were best placed to apply the law to the scenario confidently and coherently. The law need only be explained once and, as this area of the law is open to some debate – perhaps compounded by the CPS charging standards – responses were rewarded for taking a variety of routes, if supported by the facts of the scenario, as long as logical in their approach. An example of this is Jonty hitting Patrick across the back of the head – here it was possible to consider a battery and then sections 18, 20 or 47 OAPA 1861 depending on the candidate's conclusion as to the severity of the injury and Jonty's *mens rea.* Questions on this area of the law cover a range of offences, rather than one or two being relevant repeatedly. There was also a need to consider relevant defences and candidates are reminded that the defences of diminished responsibility and loss of control are specific to the offence of murder.

Question 5

This was a popular question and produced some good responses, confident in their exposition of the elements of murder and attempt, before going on to deal with voluntary intoxication in relation to Tanya. For some candidates the *actus reus* and causation aspects of murder formed a good part of their response and it is to be remembered that a crime comprises more than one element, with all needing to be dealt with to reach the highest mark bands. Factual knowledge was often wide ranging when considering attempt and all elements, including impossibility, were explored. A good number of responses were less confident as to the test for *mens rea* in murder which had a knock-on effect in the accuracy of their application. Although it was entirely acceptable to reach a conclusion that Tanya could be liable for involuntary manslaughter rather than murder in relation to the death of Arthur, a detailed exposition of this area of law could not be rewarded as it was not the focus of the question. Candidates should also remember that the aim of the exam is not to repeat topics, and careful reading of the whole paper before beginning any response would help them make the best use of their knowledge.

Question 6

This was the most popular Section B question and it was pleasing to see many candidates confident in their knowledge of the different offences, providing a good platform for logical application. Given the statutory nature of this area of the law responses needed to be accurate in naming and defining relevant sections and those which selected the most appropriate areas for detailed coverage were rewarded. As an example, given the facts in the scenario, there was no need to discuss section 4 in relation to wild animals and fungi or sections 5(3) and 5(4) in relation to property belonging to another. The scenario flagged up key issues, such as section 2(1)(b) in relation to Carlos, and the status of information and the taking of a photocopied sheet of paper in section 4 with regard to Katy. The question was clear in referring to offences under the Theft Act 1968 and so there was a need to consider robbery and burglary to access the higher marks bands. Some responses were equally thorough and accurate here, whilst others confined remarks to theft or were much less confident in knowledge and application – highlighting the need for thorough revision of a topic area.

Question 7

This was the least popular Section C question and, whilst there were some pleasing demonstrations of high level knowledge and application skills, a good number of responses were much less confident. In Statement A there was a need to focus on Sarah's ability to retain some control whilst driving, even if not at a conscious level. In Statement B there was a need to consider the need for an involuntary act which could be demonstrated by the reflex action of swerving and the role of the spider as an external factor. Statement C relied on acknowledging that voluntary intoxication would negative a defence of automatism. In Statement D there was a need to explore the basic principles of insanity, using accurate terminology rather than that to be found in the defence of diminished responsibility.

Question 8

This was the most popular Section C question and it was encouraging to see many responses engage well with this complex area. In Statement A the focus was on the issue of immediacy and it was possible to reach a conclusion that Evgeny would have a defence based on the lack of immediacy, or that he would have no defence since he had acted out of revenge. However, to be credited, responses needed to choose one route and follow it through to its logical conclusion. In Statement B there was a need to explore qualifying triggers and their effect on Evgeny whilst Statement C dealt with the impact of Marianna's conduct on both Evgeny and a reasonable man of the same age and with the same permanent characteristics. Statement D saw a good number of responses deal accurately with the terminology of diminished responsibility and those who reached the conclusion that Evgeny would have a defence based on substantial impairment, or that he would have no defence as his depression was insufficiently significant, were credited as long as the conclusion was clear and logically reached.

G154 Criminal Law Special Study

General Comments

This was the first sitting of the 2013 Special Study paper on insane and non-insane automatism. This series candidates have made fewer common errors than in previous series. Centres and their candidates, in the main, have become very aware of the skills and requirements for each question and have clearly realised that while the topic changes each year, the skills do not. Again, while the G154 Mark Scheme is not prescriptive, certain core elements to each question must be present in a candidate's response to move up the mark levels. For example, utilising the Pre-release material during the exam prevents candidates from having to recite large chunks of information, and instead allows them to concentrate on evaluation and application.

Previous reports had warned centres on the use of prepared responses to question 2 in particular. This series saw a movement away from prepared answers to a more holistic and thought-provoking discussion of the topic which was very pleasing to see. Such responses were duly rewarded. Similarly, previous reports lamented the answers of candidates who spend a disproportionate amount of time on Questions 1 and 2, and as such, would struggle on Question 3 for example. It was pleasing to see that this practice had all but stopped.

Comments on Individual Questions

Question 1

This question looked at the relevance of *Bratty v Attorney-General for Northern Ireland* and, in particular, whether it developed the law in relation to non-insane automatism. Responses were generally strong given the range of information available in Source 3, 5 and 6. Responses in the vast majority of cases discussed the Critical Point: that of Lord Denning's definition of non-insane automatism. Few responses discussed the true *ratio* in the case, but in so doing were not penalised.

The ratio in *Bratty* was not that of Lord Denning's definition; however, his definition has become the most endearing and well-known feature of the case and therefore was the Critical Point. A few responses did discuss the true *ratio* in the case, and were rewarded for doing so. It was especially pleasing to see that candidates again this series went beyond the recognised Analytical Points and brought in (usually) a well-thought further relevant analytical point from their AS year which analysed *Bratty.*

In general, well prepared candidates used Sources 5 and 6 clearly as the basis of their response and were able to analyse the development of the law on non-insane automatism beyond the marks available purely from the Source. Most candidates therefore, followed a clear pattern of response:

1   the discussion of Lord Denning's definition;
2   his flip analysis of what he considered was not insanity through the continuing danger theory;
3   then – using the Sources – the issue of the last stand of the desperate and the problems of the burden of proof to great effect.

Also, given the 2012 Law Commission's scoping paper, there was much opportunity to discuss the Commission's thoughts on *Bratty* and its aftermath as a 'further analysis' point. Some responses missed the opportunity to gain marks by indulging in long discussions of Linked Cases where, in effect, the marks had already been achieved much earlier in their responses; and in the missed understanding of the question which asked for the development on the law of

automatism, here meaning non-insane. Some candidates took the opportunity to discuss insane automatism and its impact on epilepsy, which while somewhat relevant, was not the main thrust of the question.

Question 2

Here the focus was on the unsatisfactory nature of the definition of insane automatism with a particular analytical focus on whether criticisms of the definition have been tackled through subsequent enactments and the common law. The best discussions, again, commented on the accuracy of the quote in the context of the overarching theme (role of judges, use of precedent and the development of law) with specific analysis as to whether '*the stigma of being labelled insane remains'.* Responses which did not focus on the quote and, possibly, were pre-prepared, struggled to achieve the higher levels.

Stronger responses spotted the importance of contextualising the law through its origins of the *M'Naghten* Rules and how the subsequent common law 'developments' have assisted or hindered its consequent development. Such responses were also able to thoroughly discuss the *M'Naghten* sub-definitional areas. However, a significant minority of candidates based their entire response on the statutory enactments of 1991 and 2004 and ignored *M'Naghten*, which was unusual given the basis of the current law is that from *M'Naghten*. Such responses were unable to achieve above Level 2 or 3 without a discussion of the common law. Again, a golden opportunity was either used or completely missed in the Law Commission's 2012 Scoping Paper on insane and non-insane automatism. Responses could nevertheless gain a Level 5 response without such a discussion, but would have been enhanced by this.

In the majority of responses the analysis and evaluation (AO2) achieved Level 4. There was a lot of discussion about the inadequacies of the defence coupled with some good links to the question. Again there was clear evidence that the sources seem to have been utilised more than in previous series. However, discussion (AO1) was frequently disappointing. On many occasions, responses defined *M'Naghten* but then failed to further define the elements from, for example, *Clarke, Kemp* and *Windle*. This was a limiting factor in AO1 marks as they didn't provide good definitions.

Question 3

Question 3 followed the customary three scenarios on the given topic area. Each part is worth 10 marks and based on three separate defendants. It is up to the candidates to conclude whether a conviction is or is not available in each scenario.

- For (a) a successful establishment of either defence would be unlikely. As Samia maintained a degree of control while driving this could prevent non-insane automatism being proved, and since there was no obvious internal factor, a discussion and/or a defence of insane automatism was irrelevant;
- For (b) a potential conviction for a non-fatal offence looked unlikely given that Molly's reflex action to a wasp could give rise to a defence of non-insane automatism. However, if Molly had been reckless in her actions then she may be guilty of such an offence. Again, it looked unlikely that there was any evidence of insane automatism on the basis of the lack of an internal factor;
- For (c) since the hyperglycaemic background to Sylvia is similar to that of the case of *Hennessy* a thorough discussion of insane automatism was required.

Strong responses, in relation to the most appropriate defence, with a linked case(s) cited in support, and application to the scenario together with a correct conclusion would allow a candidate to achieve a high level response. The majority of marks on Question 3 are gained by application (A02) as opposed to knowledge and understanding of the law (A01). Questions attracted good responses, in general, with many able responses demonstrating both thorough knowledge and high level application skills.

Part (a) responses were mixed, perhaps as candidates began the thought process as to which defence was the most appropriate (or only) available defence. Therefore, in some cases responses simply discussed insane automatism ignoring the more obvious, although unavailable, defence under non-insane automatism. Some discussed both defences for this and each scenario, without thinking about the most likely defence, if any at all. At times there was also too much focus on case facts without any application. However, not many responses discussed the issue as to whether Samia's acts were, in fact self-induced.

Part (b) was generally better answered than (a), again as nearly all responses realised it was a possible non insane automatism defence. Most discussed the external factor but often missed applying the definition in terms of reflex action. Again, not many responses discussed the issue as to whether Molly's acts were, in fact, self-induced.

For Part (c) the responses were the strongest since nearly all discussed the correct defence of insane automatism. Responses went through the four elements of the *M'Naghten* Rules but missed opportunities for achieving marks by not applying the scenario or simply saying, for example: "There has to be a defect of reason and Sylvia has one".

G155 Law of Contract

General Comments

In general candidates answered the question in each section of the paper with an appropriate technique and understanding of the skills required to meet each of the assessment criteria. Better responses to essay questions in Section A showed the ability to make evaluative comments throughout and in some cases developed comments to hit level 4 and 5 mark bands. In order to gain marks for developed comments, candidates picked on key words from the question as a basis for their comments and were able to compare the outcomes in different cases or discuss the reason for the decision in key cases.

Better responses to Section B questions were able to deal effectively with each part of the question, supporting their answer with relevant and accurate case law and providing a detailed and clear analysis of how the law would apply.

In Section C there were many good responses which provided a clear and well-structured answer. As in previous years, however, there were many responses which included considerable detail of case law which is not required and not credited for these questions, which carry AO2 marks only. In many cases responses also failed to provide a final conclusion in terms of agreeing or disagreeing with the statement.

Section A

Question 1

This question was well answered in many cases with responses which discussed both aspects of the question, common law and statutory restraints, in good detail. Most responses were more confident with common law restraints as this tends to overlap with the rules on offer and acceptance. A characteristic of the best answers was the ability to also make well developed evaluative points on the statutory controls contained in the Unfair Contract Terms Act, particularly where they focussed on specific aspects of the act rather than the nature of the act in general. Responses did not need to cover all aspects of the act as well focussed knowledge and comments on just a few specific sections were sufficient to access the higher mark bands.

Question 2

Most responses to this question were poorly developed and contained little content on the current use of contractual conditions, for example, where they are specifically labelled by the parties or by statute. Many responses contained irrelevant material on incorporation of terms which could not be credited in this question; there were also several responses where the facts of cases were muddled.

Question 3

Responses to this question tended to be the strongest in Section A, covering a good range of AO1 content with good accuracy and responding well to the specific focus of the question. Examples of content in high scoring responses was the extent to which there is discretion in finding actual undue influence, whether the criteria for presumed undue influence is clear or gives a lot of judicial discretion in identifying a developed relationship of trust and a deal which requires further explanation, and the extent to which the criteria for constructive notice are well defined after *RBS v Ettridge*. Several responses analysed the difference in some banking cases very effectively, particularly the cases of *Lloyds v Bundy* and *NatWest Bank v Morgan*.

Section B

Question 4

This question provided the strongest answers in Section B, and most responses were able to identify the basis for claiming frustration in each part of the question and support with good reference to case law. In many responses there was effective reference to statutory provisions relating to the financial consequences with a good level of accuracy. There were some strong AO2 skills in the better answers as well, particularly discussing the extent to which the rules would apply – for example in the first part of the question, many responses discussed the implications of the closure of the access road for 8 months of the original one year lease. Although there is specific case law dealing with frustration of leases, responses could gain strong marks by applying general principles without reference to these cases.

Question 5

There were some high quality responses to this question which correctly identified the legal issue in each part of the question and were able to support their answer with good reference to relevant case law. Many weaker responses seemed to be hampered by inadequate knowledge of the relevant cases which made it difficult for candidates to spot the legal issues which arose in the question. A notable weakness in many answers was the inability to clearly describe the different kinds of misrepresentation which could arise, statutory misrepresentation in particular being muddled and unclear.

Question 6

Stronger responses to this question were well structured and had good supporting knowledge of the different aspects which made up a claim in duress, the illegitimate threat and the effect of that threat on the other party. Stronger responses also identified lapse of time as an issue. Weaker responses to this question tended to compare parts of the scenario to cases on duress in their entirety without breaking the scenario and law down into different component aspects as earlier indicated.

Section C

Question 7

Many responses to this question were poorly thought out and did not identify the critical aspect of statements A and B in particular. Weaker responses to statement A focussed on the fact that there was an advert without looking at the fact that there was a reward and specified conduct which would indicate a unilateral offer. Similarly weaker responses to statement B did not consider that it was unrealistic to expect the organisers of the flower show to be bound to hold the flower show from the moment someone said they wanted to enter, suggesting that an advert to hold the flower show itself could not be an offer but an invitation to treat. Statements C and D were more effectively answered.

Question 8

Responses to this question tended to be stronger than responses to question 7, identifying the critical point in each question and showing a clear line of reasoning. The comments on Statement C questions in the introductory comments do apply to responses to this question though.

G156 Special Study Law of Contract

This seemed to be a very successful series for candidates. Throughout the paper knowledge of the relevant case law was extremely impressive, as was the fluency of analysis and evaluation. This is particularly notable as this area of the specification is not covered especially well by many of the leading textbooks. Great credit should go to the candidates and their teachers and lecturers for their thorough preparation.

Question 1

Question 1 was generally answered very well. Almost all candidates were able to pick up at least some of the critical points and also provided good linked cases. It should be noted that only three marks are available for linked cases so extensive analysis of linked cases rather than *Mason* could only be credited accordingly. Happily *Mason* provided very fertile ground for candidates' analysis and led to some good discussions of geographical limits to restraints, the courts' paternalistic aversion to abusive restraint of trade clauses and their refusal to use the Blue Pencil Test or tools of construction to 'save' unreasonable restraints.

Question 2

Generally speaking candidates understood clearly what the essay question required of them in terms of AO1 and were able to produce responses of considerable breadth and depth of knowledge and understanding. Developed cases were used very well and Level 5 responses were not uncommon. Some responses included an 'EU law rule of thumb' indicating 10 years as the temporal limit for restraints. This can be traced to a well-known textbook and was therefore credited this year but no supporting authorities could be found to substantiate the claim and it should be treated with caution in the future. It was very pleasing to see very few pre-prepared answers: the large majority of candidates attempted to address the specific question asked and by doing so many were able to access the higher level marks. Careful reading of the source material was clearly in evidence though there was occasional confusion regarding the nature of freedom of contract in the context of the rules on restraint of trade.

Question 3

Question 3 remained the most effective discriminator as it required concise and precise analysis of facts and application of law within a demanding time frame. Opportunities to attract credit were reduced by missing or misinterpreting material facts in the problems, by not stating clearly what type of restraint was in issue or by not providing sufficient clarity and authority for the rules of law being applied. Where responses showed more precisely how elements of the restraints measured against the *particular legitimate interest* in each scenario this improved marks. Whilst a good number of responses did raise the possibility of the Blue Pencil Test, very few were able to achieve all the marks available for it as they did not show clearly which elements of the clauses could and could not be severed. 3(a) and 3(b) tended to be the stronger two questions and were generally dealt with well. Most responses quite rightly focussed on the unreasonable substantive restraints here but those gaining the higher marks also discussed geography, time-scale and, sometimes, the possibility of severance. Question 3(c) was generally found to be more difficult but still most responses were able to secure a reasonable number of marks by discussing the onerous cost and time-scale. Higher marks were gained by commenting on the equality of bargaining power and the apparent lack of exit points (leading to an analysis based more on *Esso* than on *Alec Lobb*).

G157 Law of Torts

General Comments

This series saw a good number of candidates sitting the paper for the first time, with an overall entry comprising a number of large centres who had made use of the teaching time available after last summer's AS to ensure that their candidates had covered a wide range of material. As a consequence, alongside a number of re-sit candidates, there was an encouraging number of pleasing scripts, with answers to all questions, although questions 2, 4 and 7 proved to be the most popular.

AO1 rewards knowledge, in both breadth and depth, and clear statements of fact supported by accurate citation and use of relevant statutory provisions is crucial to access the higher mark bands. AO2 rewards analysis and comment in Section A, whilst focusing on application skills in Sections B and C and candidates are wise to bear these different criteria in mind when revising. The A* grade and the requirements of stretch and challenge mean that sound knowledge supported by awareness of underlying principles, demonstrated by thorough and cogent application or coherent and synoptic analysis, brings the greatest rewards.

This series saw a number of candidates struggle with the time limit, most often due to a tendency to spend too long on Section A. Beginning with Sections B and C can improve time management as well as making the most of a candidate's problem solving skills, which are a lucrative source of marks.

Section A questions are differentiated in AO1 by factual knowledge and relevant citation alongside analytical sophistication. Candidates should be aware that cited cases need to have more detail than just a name, a few key words in relation to the facts and a clear link to the relevant legal principle are beneficial; relevant cases used appropriately are the most effective. In AO2 those achieving at the highest level are able to develop points of comment and engage with the question posed rather than relying on a pre-prepared answer. Candidates may want to consider making a basic analytical point, developing it and then taking it one stage further, perhaps by looking at the issue from a different perspective or by using an example to illuminate the point made.

Section B questions are differentiated in AO1 by the factual detail used to support the identification and application of relevant issues and the confidence with which legal principles are applied and deduced. Candidates should refer to cases that are appropriate and relevant so as to have plenty of time for application. Statute law should be clearly and confidently expressed, linking sections to names of offences, or legal principles, and their definitions as a demonstration of knowledge. In AO2 clear and thoughtful application should be strived for. Efficient planning is time well spent as it enables a candidate to be more relevant, logical and thorough in their application.

Section C questions are differentiated by the application of reasoning skills to four distinct statements. Candidates are rewarded for their understanding of legal principles demonstrated by logically deductive application. Citation is not necessary and a confident conclusion is essential to reach level 5. Bullet points in answers often help candidates to be succinct and are entirely acceptable in this part of the paper. Candidates should ensure that they read all the statements before beginning an answer to ensure that the correct aspect of the law is being applied and allow sufficient time, as thorough application repays with high marks.

Communication skills continue to be an area of importance for all candidates and paying attention to the accurate use of language, and subject-specific terminology, can only benefit the quality of a candidate's responses.

Section A

Question 1

This question produced some pleasing answers where candidates were confident in their knowledge of the law and able to explain the elements of the test with appropriate and relevant citation. Occasionally citation was extensive but overly factual and some of more recent authorities such as *Cambridge Water* and *Transco* were passed over in favour of lengthy explanations of older cases such as *Giles v Walker* and *Read v Lyons.* The best responses used the question to focus on the complexity and ineffectiveness of the law and there were plenty of responses that engaged with this in their AO2 comment, often addressing the current role of the defences as against other torts and the kind of areas in which it still proves useful

Question 2

This was the most popular Section A question and there were some responses that were impressive in their AO1 content, with thorough referencing to OLA 1957 and 1984 as well as to a wide range of cases. Indeed some responses covered this aspect of the question so thoroughly with cases such as *Wheat v Lacon, Glasgow Corporation v Taylor, Phipps v Rochester*, *Roles v Nathan and Haseldine v Daws* often explained in extensive detail that they had little, or no, time for meaningful AO2. Others focused so extensively on issues such as the definition of an owner and premises, alongside the categories of lawful visitors that they struggled to deal with other, and perhaps more important, material, equally thoroughly. A number of responses focused solely on the 1957 Act and these were unable to access the highest mark band as they had not embraced the full ambit of the question. As mentioned above, in areas governed by statute, candidates should aim to make clear and accurate reference to appropriate provisions to support their AO1 and AO2, as well as giving a greater level of coherence to their essay. In AO2 there was a need to engage with the contribution made by both Acts and this was best achieved by developed comment which went beyond a mere repeating of the terms included in the question.

Question 3

There was the least popular Section A question but there were a handful of responses that demonstrated sound knowledge of both *volenti* and contributory negligence, although often with an emphasis on the issues in relation to sport. To reach the higher mark bands responses needed to engage with both the fairness and effectiveness of both defences and this proved to be more of a challenge. Some candidates who answered this question seemed to be less prepared and either wrote generally about defences or wrote on another topic, most usually negligence. It is pertinent to remind candidates that their revision needs to be broad and that a reading of the question paper before beginning to write would have shown that material on negligence was of greatest benefit in question 5.

Section B

Question 4

This was the most popular Section B question and many candidates had a good grasp of the relevant subject matter. There was often a thorough explanation of the law, and extensive case citation on all the components of the tort. There was a tendency to spend time on material which had no relevance to the scenario, such as public and statutory nuisance, but it was encouraging to see wide-ranging case knowledge. In an application question there is no need to comment on the development of the law and some candidates wrote so extensively and analytically on the evolution of the need for a proprietary interest that it impacted on the amount of time they had to cover more appropriate issues. The use of a highlighter to identify the key aspects of the nuisance can also help candidates to be relevant in their explanations and focused in their application. The scenario allowed for some flexibility in application, such as the status of Richard's prize-winning flowers, and candidates were rewarded as long as they were relevant and logical in their use of appropriate law. The question referred to remedies and these needed to be dealt with to access the highest mark band.

Question 5

This was a popular question and attracted a wide range of responses. Some contained good AO1, evidenced by accurate definitions accompanied by full and relevant citation based around the basic tenets of negligence supported by some reference to causation. A number focused at some length on the evolution of the current test in negligence with lengthy, detailed and often analytical discussions of *Donoghue v Stevenson* and *Anns v Merton* before dealing with the current state of the law. Remoteness of damage and the factors relating to breach alongside detailed coverage of all aspects of causation also impacted on some candidates' ability to cover the most pertinent issues in the scenario – those relating to negligence and causation with regard to motorists and doctors. The AO2 element was sometimes handled confidently and logically, to good effect and candidates were able to reach clear conclusions with regard to Boris and Doctor Crane.

Question 6

This was the least popular of the Section B questions but was often answered well by those who chose it. Responses demonstrated sound and accurate knowledge of the relevant provisions of the Animals Act 1971 and were able to use citation appropriately to support the points they made. In particular there was good explanation of the difference between dangerous and non-dangerous animals. By using the scenario, candidates demonstrated good application skills in relation to Marsha, discussing both the camel and the sign provided by Clive. With regard to Nina there was room for some debate based on the categorisation of the harm caused by the ponies and candidates were rewarded for logical application, whilst in relation to Peter there was good application and some reference to the Guard Dogs Act 1975, as well as defences that Clive might use in relation to each aspect of the scenario.

Section C

Question 7

This was by the far the most popular Section C question and there were some encouraging responses, showing good skills of reasoning from an opening statement to a clear conclusion. In Statement A there was a need to consider the basic elements of an assault – with a threatening act seen in Tomos shaking his fist and the fear of an imminent battery being caused by Stefan running away. In Statement B the focus was on the existence of an assault and the ability of words to negative the assault through a lack of immediacy due to the words Stefan uses. In Statement C the elements of false imprisonment were required and responses were credited for alternative lines of reasoning, as long as they were logical, based on whether or not Tomos and his friends totally restrained Stefan. In Statement D the focus was on battery with alternatives credited on the basis of reasoning as to whether Stefan could avail himself of self-defence.

Question 8

This was the least popular Section C question and, whilst there were some pleasing responses, a good number of responses were much less confident in their knowledge and appeared to have answered the question on the basis of not having revised trespass to the person. This often led to uncertain application and conclusions that were unclear – such as 'Workalot might possibly be liable' or 'this statement is both accurate and inaccurate' – and which could not be rewarded. In Statement A there was a need to focus Pablo's act being both an assault and a crime, linking this to the close connection test. In Statement B the focus was on driving in the course of employment and liability for an authorised act done in a careless or even negligent way. Statement C considered the role of vicarious liability when Pablo was in the course of his employment but did an authorised act in an authorised way when he picked up Dennis. Statement D involved a consideration of Workalot's liability for Pablo when he was on a 'frolic' and committed a crime.

G158 Law of Torts Special Study

Vicarious liability is an area of common law which has seen a great deal of topical development in recent years. The development of the close connection test, sharing liability for loaned employees and new ways of establishing an employer – employee relationship have all contributed to a great deal of discussion about the boundaries and proper functions of vicarious liability. It is, therefore, rich in both contemporary AO1 and very relevant AO2.

This series was characterised by a single common theme – a general improvement in all areas of the paper but notably on question 1.

Notable improvements and areas of good practice:

- There was a general improvement in the quality of responses to the case study question.
- There was an improvement in technique employed to deal with the problem questions which clearly demonstrated good preparation by teachers and some thoughtful forward planning.
- There were hardly any candidates who did not attempt all three questions.
- All responses made use of and linked to the source.
- There was an improvement in the ability to address the AO2 'spin' (fairness to employers) in the main essay question.
- Exhaustive case law knowledge including case law developments as recent as November 2012 (*JGE v The Trustees of the Portsmouth Roman Catholic Diocesan Trust*).

Areas for further development:

- Candidates are still running out of time on question 3. This can often cost valuable marks. It is almost always at the expense of too much detail on question 1 and/or question 2. Candidates must learn to divide their time and effort in proportion to the marks available through greater use of timed work and mock exams.
- Some of the responses to question 1 are either longer or of similar length to the main essay question when the former is worth 16 marks and the latter worth 34! Given average handwriting size, a high scoring response to question 1 can usually be achieved in a side-and-a-half of exam paper. It should be remembered that this is a 15 minute response in exam conditions.
- There is still too much AO1 in the essay question. Using selected case law which is directly appropriate to the spin of the question is to be preferred to the 'write all I know about vicarious liability' approach.

Timing and organisation

As referred to above, the slightly poorer performance on question 3 may, in part, be due to candidates running short of time. It certainly seemed that this was the case as there was a significant minority of scripts where the handwriting, quantity and quality of the response seemed to indicate a rushed job.

A (growing) minority of students seem to have significant difficulties with their handwriting. There were a number of scripts where the examiners were only able to credit what was legible.

Individual comments on the questions

Question 1

There was a general improvement in the standard of this question when compared to previous sessions:
- Most candidates achieved full marks on the critical point and linked cases.
- Generally responses could improve with regards analysis outside the case itself by looking at issues such as social policy, loss distribution implications and responsibility for staff.
- There was excellent synoptic awareness of overruling (*Trotman*) and persuasive precedents (*Bazley*).
- Some of the analysis of the close connection test was really excellent and both candidates and centres are to be congratulated on the level of preparation.

Question 2

As always, success on question 2 will usually be dictated by ability to identify the right (relevant) AO1 and ensure that analysis addresses the AO2 spin in the question. Mechanical and rehearsed regurgitation of both AO1 and AO2 will not avail the candidate of access to the highest marks.

Notable improvements and areas of good practice:

- Better development of cases with accurate citation of the legal principle and less lengthy descriptions of case facts.
- Fewer responses lacking a conclusion.
- More responses making the synoptic connections where possible.
- Some responses dealt with the question very directly – only marshalling such material as supported the arguments they were making. These were impressive, well-written, discursive responses which often scored full marks.

Areas for further development:

- A significant minority of candidates clearly did not understand the close connection test as they either avoided it altogether or got confused.
- A stronger balance between AO2 (14 marks) and AO1 (16 marks) promoting the former.
- Timing – given the perceived impact on question 3.

Question 3

Marks are awarded for accurate statements of relevant law, application of legal knowledge through logical reasoning and reaching a cogent conclusion. Responses should avoid speculating outside the given facts.

Respondents often performed well and it was frequently obvious that a lack of time was the only barrier to better marks.

Candidates should avoid:
- Giving lengthy citations of case facts.
- Giving anecdotal answers.
- Speculating on facts that are not given in the scenario.
- Forgetting to conclude (especially after an otherwise perfect answer!)

Please encourage candidates to:

- Try and cover a range of points – questions will always distribute available marks across a minimum of four potential areas and a conclusion (please refer to the skills pointer).
- State the obvious – in this case – 'what **was** the tort which was committed'? What needs to be proved?

3(a) This question was answered the least well because responses were too involved in establishing Alice's status as an employee. Some continued at length, applying all the tests of employment which could be mustered. Some wrongly concluded that she was not an employee denying themselves the marks available on the rest of the question. There was a maximum of 3 marks for establishing employment status and a significant number of students would have been scoring in double figures on this one point had the question been solely about her employment status.

3(b) Generally answered well. Candidates did not waste time on employment status and quickly pointed out that the question 'tells us he is employed'. Most responses recognised the similarity to *Limpus* and used this correctly in conjunction with the Salmond test. A few candidates used the close connection approach but this was not necessary given the tort was negligence but credit was given where appropriate.

3(c) Again, the similarity to **Mattis** put most candidates on the right track. There was some confusion over who would be responsible for Craig although this didn't impact on his liability. There was also some confusion over the close connection test with candidates failing to see that the circumstances here were much 'closer' and clearly contemporaneous than **Mattis**. Reasoning based on a **Salmond** approach of an 'authorised act in an unauthorised way' was credited although it must be unlikely.

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

www.ocr.org.uk

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