RECOGNISING ACHIEVEMENT

GCE

Law

Advanced GCE **A2 H534**

Advanced Subsidiary GCE **AS H134**

OCR Report to Centres

June 2013

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.

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OCR REPORT TO CENTRES

Overview

This series sees another successful year for AS and A level Law, with the last January sitting completed and the annual change of the Special Study topic now firmly established. It is encouraging to see centres at A2 level continuing to teach students across each of the study areas offered and the opportunity to explore an area of law in depth through the Special Study paper not only affords useful research opportunities but also, for teachers, allows them to gain a wealth of knowledge which can then be put to good use in subsequent years. Across all the papers it is encouraging to see the development of candidate skills, some specific to the study of Law whilst others are useful throughout higher education or in employment.

The AS level qualification introduces candidates to the English Legal System (G151) and allows them to explore its many facets. Its breadth is reflected in the topics examined and candidates are encouraged to be fulsome in their personal revision so as to be well prepared for the ambit of this paper. The Sources of Law (G152) paper tests candidates' ability to engage with real legal material and use appropriate skills. All topic areas are of equal importance in the creation of law and should be treated as such to give candidates the best chance of success. Both these units encourage the development of the skills of thoughtful reading, analytical writing, deductive reasoning and logical problem solving which are developed further at A level.

The A level qualification allows candidates to explore an area of law in depth so as to appreciate its intricacies and to deal with the concepts which underpin it. Law is a fast changing subject and although the twelve month rule means that candidates are not disadvantaged if they do not refer to changes made in the twelve months immediately preceding the examination new cases and changes in the law will be credited where they are appropriate and supported by evidence. There have been important developments in some areas, especially Criminal Law, and these should be incorporated in centre teaching. Candidates are more confident in their use of legal skills and they, along with their teachers, are taking full advantage of the particular opportunity offered by the Special Study paper.

The A* qualification is also now well-established and is a useful tool for universities as well as providing another level of challenge which candidates can aspire to meet.

OCR is committed to supporting teachers of Law and a range of resources can be found on the OCR website and the Professional Development area.

AS and A level Law offers candidates the chance to study a subject which is complex but contemporary and valuable, whether to a prospective undergraduate or to someone embarking on a full role in society. It is hoped that both candidates and centres will continue to rise to the challenges it provides and enjoy the rewards its study can bring.

G151 English Legal System

General Comments

Overall, the paper appeared to be well received with the vast majority of candidates able to complete four full answers. The Section B questions were very popular with many candidates attempting both questions in this section. There was a broad range of responses to all questions on the paper although Question 1 on Funding and Question 5 on Civil Appeals were both answered by very few candidates.

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

Areas demonstrating progress:

- There appears to be an improvement in reading the questions more thoroughly with fewer responses failing to get any credit because the candidate had answered a different question to the one asked.
- There was good breadth to most responses and where a question required a description of two elements there were fewer responses than in previous series which only dealt with half the question.
- Section A part (a) responses showed improvement in AO1 development with many responses able to achieve 3 or 4 developed points and access level 3 marks. An increasing number of responses were able to produce well developed points and access level 4 marks.
- Section B part (b) responses showed a methodical approach from most candidates identifying and applying many of the issues raised which were relevant to each question.

Areas for improvement:

- It is still evident that some candidates try to spot questions and only revise part of the unit's specification and/or only part of a topic area. This was particularly noticeable in question 2 where some candidates had only revised either juries or magistrates. This approach meant that some candidates could only answer part of the question. It is important to revise complete topic areas as questions can include different elements from a topic area.
- Although there appears to be improvement in answering the specific questions asked, time is still wasted by candidates by providing "everything I know about the topic". This approach will gain some marks for the relevant descriptive points but often limits responses to achieving level 2 as much of the detailed information is not relevant to the question.
- In Section A part (b) questions it is it is important to focus on the question being asked and to develop relevant arguments rather than just making isolated points.
- The use of the most up to date texts is important in law as the English Legal System is constantly changing. With the number of books on the market and availability of resources on the Internet it is possible to keep relatively up to date. Recent mark schemes are useful as a resource for both teachers and candidates.
- In Section B part (b) questions it is important to confine the answer to the points raised in the scenario as no credit is given for discussion of issues not raised in the scenario.

Comments on individual questions

Section A

Question 1

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

(a) There were some excellent responses that described both civil legal funding and conditional fees in some detail. Some candidates were even up to date with the changes implemented in April 2013 which was very pleasing to see. As these changes were within the last 12 months equal credit was given to both the old and the new criteria.

(b) There were some very good responses with well-developed points directly dealing with the question of access to justice. Weak responses tended to allude vaguely to the fact that there is very little funding available but did not develop this any further.

Question 2

This was one of the most popular questions on the paper

(a) There were some excellent responses that described the role of juries in the Crown Court and the various roles of magistrates. Weaker responses wasted time describing the selection of both jurors and lay magistrates which gained no credit. Virtually all responses managed to explain that both magistrates and jurors decide the verdict in a trial and that magistrates are also responsible for sentencing.

(b) There were some very good responses which developed a discussion of the advantages of using lay magistrates over district judges. Credit was also given for a discussion of the advantages of using lay magistrates rather than jury trial as the question was broadly written. Credit was not given for a discussion of using the Magistrates' Court in preference to the Crown Court as that was not the question asked.

Question 3

This was also a very popular question although with a full range of responses at different levels.

(a) The best responses got the order of training for solicitors correct and described ILEX and GDL and gave a range of areas of work undertaken by solicitors. There were some excellent answers with additional insight and detailed expansion on the various stages of training. Weaker responses did not know the difference between the CPE and the LPC and which one applied in which context and had no real idea of the order of the training. They also tended to limit the description of work to doing paperwork and going to court. Some responses described the training of barristers which did not get credit.

(b) There were some excellent responses that focused on the question and developed its arguments well. These usually concentrated on a lack of training contracts, cost and time to qualify. Weaker responses lacked focus or only discussed the problems of cost but all candidates seemed to tackle it to some degree and usually gained at least level 2 marks.

Question 4

This was a popular question and generally answered slightly better than questions on this topic had been in the past. Fewer responses showed confusion between aims and sentences than has been evident in previous series.

(a) There were some excellent responses which included a description of several custodial sentences, the Youth Rehabilitation Order with a detailed description of some of the requirements, fines including ages and amounts. The weakest responses had the names of types of sentences without any description, or confused descriptions or described adult sentences and just called them youth sentences which gained very limited credit. A few candidates confused aims with sentences.

(b) The best responses developed a good discussion of what sentences would be best to prevent youth crime. The question did ask what would be most effective so credit was not given for a discussion of what would not be effective unless it was a counter argument. There were a significant number of responses in this part that did not answer the question and looked at aims of sentencing rather than actual sentences which gained little or no credit.

Question 5

This was not a particularly popular question but seemed more popular than previous question on this topic in previous series. Answers tended to be polarised in terms of performance.

(a) The best responses showed an ability to explain the fact that the County Court appeals are to a different level of judge not necessarily to a different court. These responses were able to describe the whole range of possible appeals including Art 267 TFEU referrals. Weaker responses often confused civil appeals with criminal appeals with some responses appearing to be unaware of civil cases or a civil court system.

(b) Responses to this question were varied. There were variable responses to this question. Some were very good and discussed the changes brought about by the introduction of the track system. More often responses just discussed the advantages and disadvantages of each individual track which could only achieve very limited credit.

Section B

Both questions in this section were very popular with a high proportion of candidates choosing to answer both questions.

Question 6

(a) There were some excellent responses to this question. The vast majority of responses to this question were of a Level 3 or Level 4 standard with a good description of the rules relating to granting bail. Weaker responses tended to concentrate on the conditions that could be attached to bail.

(b) In general, responses to this question were of a high standard in comparison to other questions on the paper. There was good focus on the scenario, with a very high proportion 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. A concise answer achieves the same marks.

Question 7

(a) Many responses were tightly focussed on the question and gave good detail of both detention and searches. Weaker responses tended not to differentiate between the searches. Credit was not given for interviews as that was not required by the question asked.

(b) There were many good responses to this question gaining full marks. The best responses correctly dealt with all the issues including the mask and the demonstration. Weaker responses only identified the issue of the police not identifying themselves and the tackle to the ground being more than reasonable force. It is important for candidates to look for a range of issues to identify and apply each; else they limit the marks they can achieve.

G152 Sources of Law

General Comments

This series' examination saw the combination of legislation and delegated legislation and European Union (EU) Law. There was some evidence to suggest that a small number of candidates had not prepared for either of these topics. When preparing for any examination, candidates should be taught the entire unit's content unless the specification states otherwise. This should also be reflected in their preparation for the examination.

Less than 5% of the cohort chose the EU Law question with the overwhelming majority electing to tackle the question on Legislation and Delegated Legislation. The standard on the former was polarised with the better scripts showing impressive and confident understanding but with a large number of scripts showing quite a poor grasp of the subject-matter and much confusion was evident. The latter followed the usual spread of responses one would expect to see although it did seem as though less able candidates preferred to deal with 'types' of delegated legislation rather than 'controls'.

Areas demonstrating progress:

- The better EU Law scripts demonstrated a confident and sophisticated understanding of this traditionally abstruse topic.
- A structured approach to responding to part (b) questions was evident. In particular the level 3 requirement to explain 'why' (which was the key to these questions) showed some improvement.
- The comprehensive level of detail in evidence (especially in 1(a) and 1(c)(i)) was also impressive and a credit to the candidates and their teachers who have clearly worked hard on some thorough revision.
- Generally, good use of case law with appropriate citation and development.
- Candidates also showed a pleasing degree of enthusiasm for the subject. Even the less able candidates threw themselves into some of their answers with misguided but sincere gusto.

Areas for improvement:

- There was a notable increase in the number of scripts featuring poor handwriting. Centres should be aware that we can only credit what it is possible to read. Examiners will try their best (including acquiring additional opinions from colleagues) to credit what they can, but, will have to ignore what is illegible. Identifying these candidates and ensuring appropriate support must be a priority for centres who want to ensure all their students are fulfilling their true potential.
- The perennial problem of failing to make use of the source materials remains a weakness for many. Sadly, it is often the well-prepared and otherwise high performing candidates who most commonly fall foul of this issue. Equally, less able candidates are often not making use of the sources.
- Notwithstanding the improvements mentioned above, this series did feature a significant minority of rather quixotic responses from candidates who were clearly under-prepared but willing to 'have a go'. This was especially so on the EU Law question but was also a feature of the Legislation and Delegated Legislation question where candidates were trying to force the 'types' revision they had done to the 'controls' question they ended up with.

Very few candidates answered both questions.

Comments on Individual Questions

Question 1

1 (a) This was a well answered question. Responses generally showed an impressive and detailed knowledge of the legislative process. An impressive number of responses achieved level 3 or above marks. Most of those not achieving the higher marks had either missed the pre-legislative process or some other vital stage, not linked to the source or failed to provide enough detail. The most common 'missing stage' was, as always, the third reading. However, strong responses demonstrated a confident and accurate understanding and a nuanced appreciation of the subtleties of the process (how the Parliament Acts operate for example).

1 (b) The application questions were generally answered well. Most responses achieved Level 2 with the correct head of review. Some of the explanations ('why') were wrong, awkwardly expressed or confused and some of the cases given were wrong or inappropriate.

1 (b) (i) Most responses recognised 'substantive *ultra vires* for unreasonableness' but a significant minority appeared to be unaware of unreasonableness as a head of review and, generally went for substantive *ultra vires*. For the 'why' few responses accurately expressed that it was a decision which no reasonable council would take and gave a reason based more on the reasonableness of the decision itself – both were credited. At the higher end of the levels, most candidate used *Strickland v Hayes* rather than *Wednesbury* itself.

1 (b) (ii) Most response achieved level 3 or 4. A significant minority thought there was no *ultra vires* because of the wording 'the Minister has used powers granted to her' which provided a good discriminator as the more able responses were aware that substantive *ultra vires* involves the exercise of legitimate power to do one thing, to actually do another thing. Most candidates used the source (*Boddington*), *Fire Brigades Union* or the *Teacher's Union* case.

1 (b) (iii) This was, by far, the best answered of the three. Most responses achieved Level 4 and most knew (and used) *Aylesbury*.

1 (c) (i) This question was generally answered well. Able candidates had an impressive range of controls to describe and there was some impressive descriptive detail. Generally, there was good balance between judicial and parliamentary controls. Weaker responses failed to make use of the support in the sources. Responses were still a little weak on the roles of the different scrutiny committees and not many were aware of Legislative Reform Orders. There was a good understanding of the difference between the two resolution procedures and a good use of cases. There was also some confusion between primary and secondary legislation.

1 (c) (ii) This was (generally) the least well answered question. Whilst there were some thoughtful, fluent, discursive responses, the most common issues were:

- weaker responses rarely citing the source (weak, ineffective and inaccessible)
- some responses focused on descriptive (AO1) material (describing controls again) when there were only AO2 marks and AO3 marks available
- there were instances where responses stated that a control is effective/ineffective without qualifying why and made anecdotal assertions which have no basis in fact
- there was some poor understanding of how to develop a point
- poorly structured responses which lacked fluidity or clarity
- arguments which were one-sided and therefore lacking in balance
- answers which only focused on the courts or parliament.

Question 2

This was, by far, the least popular question at less than 5% and drew a range of answers. Although some of the better answers were of a very high standard, a significant number of scripts showed a poor level of understanding.

2 (a) The best responses understood the distinction between discretionary and mandatory referrals, said something about the process of acquiring a referral and mentioned either the guidelines from *Bulmer v Bollinger*, *CILFIT* or the *Practice Direction* or dealt with *acte claire* in some detail. Below this level, responses were characterised by a simplistic understanding of both referrals themselves and the process by which they operate. For example, it is not correct to say that a case has to exhaust the domestic appeal system before it can be referred. Nor is it the case that the availability of such an appeal is the reason or basis for making a discretionary referral. A discretionary referral is just that – it's 'discretionary' – the court's choice.

Many scripts got confused with other areas. For example, the idea that we, as a member state, can be referred by the Commission which then led to what was often detailed consideration of the *Re: Tachographs* case. Others got mixed up with issues of supremacy and direct effect. Long (misguided) narrative accounts of cases such as *Re: Tachographs* and *Factortame* were not uncommon.

2 (b) Well prepared responses recognised the requirements of the questions as 'what type of referral, why and a supporting case' and recognised the similarities to leading cases as clues. Consequently, they were able to achieve maximum marks. Less well prepared candidates attempted to make sense of the questions in various ways including considering which type of EU legal measure might be used, whether there would be horizontal or vertical direct effect and how English rules of precedent might be used. Some responses decided that since there was a similarity to leading cases, no referral would be necessary in any of the cases as the courts could simply use existing precedents.

2 (b) (i) Recognising the status of the court or the similarity to B&Q led better responses down a straightforward route to full marks. Some responses struggled to articulate the 'why' (simply, because they can choose to refer), some thought that the case should be appealed domestically and a significant minority thought it should have the B&Q precedent applied. Of course, B&Q is not a definitive case on all aspects of Sunday trading and the similarity was intended to help candidates towards a correct response.

2 (b) (ii) As above, recognising the status of the court or the similarity to *Factortame* assisted responses to a full mark answer. Some responses were too simplistic in their explanation ('why') – simply stating 'because it's the Supreme Court' as opposed to explaining the fact that there is no judicial remedy from the decision of the UKSC. Some responses saw the CJEU as the logical and natural next step in the domestic hierarchy.

2 (b) (iii) This scenario had the lowest level of case recognition. Consequently, fewer responses were able recognise the *acte claire* link with *Smith ex parte EOC*. However, they made good sense of the question by using the *Bulmer v Bollinger* guidelines. Other responses thought the answer lay in the application of English rules of precedent or even that tribunals are not part of the court system and, therefore, don't count.

2 (c) (i) There were few scripts that demonstrated clear understanding of this area but where they did, the standard was excellent with real clarity about how direct effect arises. These scripts often started by explaining direct applicability as a concept distinct from direct effect and then explaining direct effect as a general concept (in terms of its application to Treaty articles and regulations) and only then considering its application to directives based on whether the directives had been implemented or not.

However, many responses gave an impression that the candidates understood the doctrine better than they could explain it. It seems as though the easiest route to understanding how direct effect applies to directives is to understand that a directive is not a law but an instruction to make a law and to deal with the availability of direct effect based on what happens when the law isn't 'made' by the member state.

The other area of significant misunderstanding seemed to surround a very narrow focus on who the potential parties might be and what the substantive grounds of action might be.

Some responses were based on a mixture of everything the candidate knew about EU law including supremacy and Article 267 referrals. Long narrative accounts of *Re: Tachographs* and *Factortame* were quite common.

2 (c) (ii) There was a very subtle distinction between the Level 4 responses and the Level 2/3 responses on this question. The question calls for a subtle and skilled presentation of what is seemingly AO1. The Level 4 responses presented the case for the unfairness of direct effect fairly quickly and then go on to consider the potential 'solutions' developed by the CJEU over the years. In doing so, the presentation of 'arm of the state', indirect effect and state liability were couched in terms of judicial creativity, interventionism and the mutually agreed imperative of achieving the common goals of the EU. Responses achieving Level 2 or 3 tended to present the same AO1 but without the subtle AO2 spin required for the award of AO2 marks. Many responses were able to use the sources. Some responses engaged in some lively discussion of the relative merits of EU membership with a particular focus on supremacy.

G153 Criminal Law

General Comments

For most candidates this was their first sitting of G153 in their A2 year. Responses to all questions were seen and there were very few examples of candidates not being able to attempt the correct number of questions. This sitting saw some reversal of the trend towards tackling problem questions first and there was some evidence of candidates spending a disproportionate amount of time on Section A – a strategy which can be detrimental to overall performance. There was a refreshing move away from pre-prepared answers and a greater inclusion of reform proposals in candidate answers. There was evidence of sound problem solving skills in Section B and of candidates making plans – something to be encouraged as it tends to lead to a more logical approach to problem solving. In the AO1 aspect of Section B there is some tendency to include material regardless of its relevance to the question, and candidates are advised to focus on knowledge relevant to the scenario. In both Section A and Section B for questions which include statute law it is important that candidates are able to cite, define and explain the relevant sections and subsections accurately, as only then can they go on to use them confidently. In Section C there was plenty of evidence of sound technique and many candidates used a bullet point approach to good effect.

In Section A responses were differentiated in AO1 by the specific level of knowledge and citation alongside the quality of relevant comment. Case knowledge was often impressive but candidates are reminded that only 25 marks can be awarded for AO1 and it is most beneficial to use a number of relevant cases in some detail, focusing on the points of law at issue, rather than listing large numbers of cases which lack detail or a clear link to the question. In AO2 there was plenty of evidence of candidates using the question to target the way in which their comments were structured alongside a greater tendency to develop and expand the point made, as well as the inclusion of broader overarching comment on the area of law at issue and the role of policy alongside reform proposals. **Examiner tip** - the very best answers demonstrated good, wide-ranging and relevant knowledge which was balanced by clear and well developed analysis running through the essay.

In Section B differentiation in AO1 was evidenced by the level of accurate and relevant knowledge, whether statutory or based on case citation, which was defined and explained clearly. Once again a number of cases explained and applied accurately proved preferable to an extensive list of case names unconnected to any facts or legal principles. Statute based areas required accurate knowledge of relevant provisions and supporting case law to access the higher mark bands. In AO2 the focus was on the identification of the relevant areas of law and accurate application to the scenario. Candidates can be rewarded for exploring alternative ways in which the law can be applied as long as such an approach is tenable on the facts. **Examiner tip** – Section B questions tend to focus on relatively specific areas and candidates are often given instructions on material to include, or specifically exclude, and paying careful attention to these instructions can help candidates target their answer appropriately and make the best use of their time.

In Section C differentiation was achieved by the accuracy with which relevant legal principles were identified and applied so as to reach a conclusion. Many candidates used a bullet point approach successfully, whilst general introductions and conclusions along with case citation were much less in evidence. The nature of Section C is such that candidates should be decisive and so conclusions which used phrases such as ‘could be liable’, might be guilty’, ‘ may possibly be liable’ could not be credited. **Examiner tip** – given the specific nature of Section C the very best responses considered each of the statements carefully so as to use information most appropriately.

Standards of communication are generally acceptable but all candidates would be well advised to continue to work on their accuracy of language and specific legal terminology to inform the quality of their answers.

Section A

Question 1

This was a very popular question and there were some excellent answers showing good knowledge and developed comment which addressed the question. Many candidates were able to deal effectively with the basic tests for causation and explored the more challenging areas of medical treatment and factors which could lead to the chain of causation being broken. Some candidates wrote extensively on the law relating to omissions and this could only be credited if it was placed firmly in the context of causation. In many instances candidates were able to make evaluative remarks about causation; these were not always developed and expanded sufficiently to access the higher mark bands. An example of this was in relation to the cases concerning medical treatment where the best answers commented on the problems from the perspective of the victim and the medical profession. Those who engaged with wider issues of concern in the context of drug cases in involuntary manslaughter had an opportunity to develop wider AO2, which some candidates did very well. There was often a tendency for AO2 material to appear towards the end of the essay and comment throughout the essay, especially when linked to cases, can be used to especially good effect and is a preferable technique to a more narrative listing of analytical points which lack development and extension.

Question 2

This question invited candidates to consider the law of attempts from two different perspectives and a good number of candidates engaged with this enthusiastically, as well as considering proposals for reform. Some responses were expansive on the old common law tests; although these were of some relevance it was important to strike an appropriate balance between these tests and the 1981 Act. As this is an area of statute law candidates were rewarded for accurate reference to the relevant sections and this was often accompanied by extensive case citation. There was a tendency to focus on the *actus reus* elements and candidates are reminded that *mens rea* and the issue of impossibility are also important with the need to be clear when defining these elements. Those who did not cover all three elements could not access the higher mark bands.
In terms of AO2 there were many strong answers, once again often with a focus on the *actus reus* of attempt and there were a lot of comments based on, for example, moral outrage at the decision in *Geddes*. Such remarks need to be framed in the context of the debate between legal principle and public policy to be used to best effect.

Question 3

Although this was the least popular of the Section A questions there were some strong responses, perhaps due to the topic's recent appearance on the Special Study paper. Some candidates focused on duress by threats and often wrote detailed and extensive answers but there was a need to engage with duress of circumstances and necessity as well to access the higher mark bands. Despite its importance in the development of the recent law on duress not all candidates dealt with *Hasan* and consequently failed to pick up on the current requirement for the threat to be 'immediate or nearly immediate' rather than 'imminent'. Issues such as nexus and the nature of the threat were often well handled but the same was not always true of the test found in the leading case of *Graham*, which underpins the application of the defence. There was some good work on duress of circumstances while some candidates, but not all, recognised the importance of *Re A* in necessity. There was plenty of good AO2 material especially, on the position relating to murder and the inconsistencies this creates. The best answers also included reform proposals and some considered how the law is applied in other jurisdictions.

Section B

Question 4

This question was specific in its instructions and so detailed expositions on the law relating to murder, the non fatal offence which Robert might have committed and the intricacies of causation attracted only limited credit. Many candidates defined and explained the law before moving on to application, attracting good marks, but those who explained the law and applied it as they went along were often able to be both coherent, relevant and thorough in their coverage of the issues. Candidates were rewarded for alternative lines of application as long as they were backed up by sound legal evidence – for example it was entirely possible to conclude that Robert was not liable for unlawful act manslaughter in regard to Thomas and that liability should rest on Kieran or Jenny on the basis of a break in the chain of causation but it was not tenable to suggest that Robert was liable for gross negligence manslaughter as there is no evidence that a duty exists between friends. Liability for Kieran would be found in gross negligence manslaughter; this offence was also a possibility for Jenny, as would reckless manslaughter although some candidates concluded Jenny could be liable for unlawful act manslaughter, perhaps based on a misconception relating to *Kennedy*. The best answers were logical in their approach – defining and explaining the four part test for unlawful act manslaughter and that for gross negligence manslaughter as found in *Adomako*. Consideration of reckless manslaughter was credited but it was possible to achieve maximum marks without any reference to this offence given its doubtful existence in the eyes of many legal professional and academics.

Question 5

This was the most popular Section B question. There were some excellent answers where candidates were impressively thorough in their knowledge, which they used to support their application moving logically through the scenario, although some responses were more of an essay on theft. Given the statutory focus of this area of law to reach the higher mark bands candidates needed to make clear and accurate reference to relevant statutory provisions backed up by appropriate case citation. Given the scenario there was no need to give detail on areas such as sections 3(2), 4(2), 4(4) and 5(3). The question was also clear in its reference to theft, rather than offences under the Theft Act 1968, and so candidates who considered robbery and burglary attracted no credit for this other than for material firmly connected to theft. Many candidates handled the issue relation to the money that William took, the price labels he swapped and the chocolate bar he ate accurately and confidently. The issue of the change was open to greater interpretation and conclusions could be credited as long as they were adequately supported by accurate legal principle. The flowers caused candidates the greatest difficulty, with many unsure as to whether the flowers needed to be wild or to be planted in a wild place for William to avoid liability. In AO2 candidates who did not address all of the issues could not reach level 5, regardless of the sophistication of their application elsewhere.

Question 6

This was the least popular of the Section B questions but there were some excellent answers where candidates wrote confidently about the provisions of the Coroners and Justice Act 2009 with regard to the defence of loss of control, and its impact on the Homicide Act 1957 in relation to diminished responsibility. Since provocation has been abolished as have the cases relating to that area of law according to *Clinton,* coupled with the fact that the few cases so far decided on loss of control do not deal with issues covered by the scenario, accurate statutory citation and explanation of sections 54 and 55 accompanied by good application enabled candidates to score highly. Credit was given for a brief summary of murder and the question was clear in requiring only an outline consideration of causation. With regard to diminished responsibility there was a need to refer to section 52 of the 2009 Act so as to deal with the new terminology but existing cases decided under the 1957 Act were credited as they retain the force of law. With regards to AO2 most candidates applied the law relating to both defences to Hayley, and this

was entirely appropriate on the facts. There was good application of the qualifying triggers in loss of control and a high level of awareness that the need for immediacy has now gone. The 'normal person' test was often applied well and appropriate conclusions reached. There was equally good application of diminished responsibility, with candidates paying particular regard to the newly defined area of a recognised medical condition and the repercussions of this. Some candidates considered intoxication and were rewarded but it was possible to reach maximum marks without any reference to this defence. A very small number of candidates used the defence of insanity but there was no credit given as its applicability in a situation such as that of Hayley is tenuous in law and unlikely to be a preferred route in practice.

Section C

Question 7

There were many pleasing responses to this question with candidates both confident and accurate in their reasoning. Some did refer to cases, which are not credited in this section of the paper, and some were not able to state basic principles accurately. There is no need to rewrite the statement and candidates are advised to give their conclusion at the end. In Statement A it was important to cover the both aspects of the defence of inanity and apply it – credit was also given for the alternative reasoning that Ludmilla was simply absent minded as along as the correct conclusion that the statement was inaccurate flowed from that. In Statement B candidates were rewarded for application of the involuntary and external elements of the defence of automatism with an alternative line of reasoning available if candidates concluded that Tony's epilepsy was an internal factor and so the defence of automatism was unavailable. In Statement C there were thorough and confident answers but some candidates did not pick up on Tony's recovered state in relation to both aspects of insanity. Statement D was often answered well and a good number of candidates achieved maximum marks here based on the legal principle still largely articulated by the courts that sleepwalking is an internal factor. **Examiner tip** – the best answers look at all the statements at the outset and then work through each one logically, ending with a conclusion.

Question 8

This was the most popular Section C this question and there was a need to consider both the *actus reus* and the *mens rea* of each of the offences. In Statement A many candidates successfully reasoned that there was an assault, but the alternative that Martin's words came within the 'banter' of professional sportsmen was also rewarded. In Statement B there were some excellent answers although not all candidates considered the *mens rea* of Simon's punch. In Statement C many candidates were confident on the *actus reus* element, although some responses suggested incorrectly that both a wound and GBH are required. The same confidence was not always apparent in the *mens rea* element, where Martin needed to have intention or subjective recklessness for some harm but not necessarily the serious harm that resulted. Most candidates picked up on the consent point although some believed it was restricted to assault and battery, which is not the case in properly conducted sports. In Statement D there were many strong answers although the *mens rea* of section 18 was not always clearly explained and applied.

G154 Criminal Law Special Study

General Comments

This was the second and final sitting of the 2013 Special Study paper on insane and non-insane automatism. Previous reports continue to provide guidance on the skills necessary to tackle this paper. This is clearly now being reflected more so in candidate's responses. However, some candidates are still seen to be making common errors that would be easily avoided given a review of such reports and other guidance issued by OCR. Specific mention must be made to the annual Special Study Skills Pointer (available on the OCR website). Each year this provides clear and directed guidance on the skill sets required and the useful ways that candidates can approach each question. Candidates are reminded here, that while the topic changes each year, the skills in tackling the questions do not. It is very important also here to stress that the G154 Mark Scheme is not prescriptive. Nevertheless, the mark scheme does flag certain core elements to each question which traditionally must be present in a candidate's response to achieve the marking levels.

Previous annual reports had warned centres on the use of prepared responses in particular to question 2. This series' responses saw a continued movement away from prepared answers to a more holistic and thought-provoking discussion of the topic by the candidate which was very pleasing to see. In particular, there was a further increase in the appropriate use of the pre-release materials to demonstrate understanding of both AO1 and AO2. Therefore, by correctly referencing the materials, such candidates were able to concentrate on analysing and evaluating the law without the real necessity to replicate that information already in the materials. Previous reports have lamented candidates who spend a disproportionate amount of time on certain questions, specifically question 1. This has traditionally had a detrimental effect on the candidate's questions. This series examination saw many responses to question 1 run long, in some occasions over four pages. Whilst this is not raised, necessarily, as a criticism it would suggest some candidates over emphasised their discussion on the case. Again, advice has, in previous reports, been given to remind candidates to stick to the timings that are suggested as a guide in the Special Study Skills Pointer. This remains a constant.

Comments on Individual Questions

Question 1

This question looked at the relevance of *Hennessy* and, in particular, whether it developed the law in relation to insane automatism. Responses were generally strong given the range of information available in the Sources and in general texts. Candidates were, in the main, able to discuss the Critical Point: that of Lord Lane's reaffirmation of hyperglycaemia being a condition capable of being a legal disease of the mind; and that since this was an internally caused condition it was one capable of coming under the *M'Naghten* Rules of insane automatism. 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. In this series *Hennessy,* to some candidates, was simply a matter of the internal/external diabetes dichotomy. A close inspection of the available texts exposes a much more multifaceted Court of Appeal decision. Further areas to explore, and those sought by strong candidates, were the defence's line of argument that his actions were based on stress and anxiety which had been dismissed at trial and by the Court of Appeal; or that these factors were deemed ordinary by the courts and, to be capable of being considered external, would need to be unique, novel or accidental factors; or, the strategic defence line ran by defendants with common illnesses capable of coming under the *M'Naghten* Rules in pleading guilty to avoid hospitalisation. A common error was in some candidates believing *Hennessy* was sent to a mental institution which was not the case. Centres are again

advised when researching cases for question 1 to look at five or six textbooks/reputable legal websites to consider those 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.

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

1 the discussion of Lord Lane in the Court of Appeal on hyperglycaemia as a likely disease of the mind;
2 his refusal to allow ordinary stresses to be capable of being external factors allowing automatism;
3 that this confirmed the trial judges' decision;
4 the dichotomy between hyperglycaemia and hypoglycaemia linking *Quick* or a similar cases;
5 the tactical manoeuvre by the defendant to plead guilty in order to avoid the stigma of a 'successful' insane automatism defence.

However, some candidates saw this as an opportunity to discuss mini-essays on insane automatism, particularly of the *M'Naghten* Rules which was largely unnecessary and to the detriment of marks. Indeed, a small, but significant, number of candidates confused the facts of *Burgess* with that of *Hennessy* which was unexplainable. Also, given the 2012 Law Commission's scoping paper there was much opportunity to discuss the Commission's thoughts on *Hennessy* and its aftermath as a 'further analysis' point. Unfortunately, very few candidates took this golden opportunity to discuss the Paper.

Question 2

Here the focus was on the difficulties that a defendant would face in raising the defence of automatism given the problems of finding evidence of an automatic state. 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 defendant has established some evidence..'*. Where well-prepared candidates were unable to achieve the top level, this was because of an inability to concentrate their response on the quote or, at least where possible, to blend their prepared response to the quote.

Stronger responses spotted the importance of contextualising the law through the common law definition of automatism which 'began' its more formative roots in *Bratty* and continued to develop or be restricted ever since. Such responses were also able to thoroughly discuss the *Bratty* definition; that the act must be involuntary; that automatism requires an externally caused factor; and that a total destruction of the defendants control of their mind and body at the time of committing the crime must be proved. Many candidates also discussed the issue of self-induced automatism and were able to link cases such as *Hennessy* and *Quick* to *Bingham*, *Bailey* or *Clarke* (2009). While it was not a huge issue for those candidates who could accurately compare insane automatism with non-insane automatism and use this comparison to explain the quote (the diabetic dichotomy being a good example), some candidates simply used question 2 as an opportunity to discuss insane automatism. Such responses had little, if any, relation to the topic of non-insane automatism or the quote and therefore kept responses low within the levels of assessment. Again, it is pointed out here that while prepared essays can be utilised in an exam, unless they answer the question it remains a significant burden. Again, a golden opportunity was completely missed by many candidates in the Law Commission's 2012 Scoping Paper on insane and non-insane automatism. Candidates could nevertheless gain a Level 5 mark without such a

discussion, but would have enhanced their evaluative responses with this knowledge. That said, many candidates did replicate the Paper's observation of the inconsistency in verdicts for sleepwalkers between insane automatism and non-insane automatism eg *Bilton* and *Burgess*. Most candidates would discuss 'dissociative states' in the light of *R v T* with graphic facts but many, incorrectly, would state that she was found not guilty by the jury. Also the issue of the disparaging comments made by the Court of Appeal in *Narbrough* on *R v T* were largely ignored or overlooked.

In the majority of responses the analysis and evaluation (AO2) achieved Level 3 or 4. There was a lot of good discussion about the restrictive nature of the defence coupled with some good links to the question's quote as the candidates went through the defence. Again there was clear evidence that the sources seem to have been utilised more than in previous sittings. As in January, however, discussion (AO1) was frequently disappointing. On many occasions, candidates quoted *Bratty* but then failed to further define the defence from, for example, *Woolmington, Hill v Baxter*, *Attorney-General's Reference (No.2 of 1992), Lipman* and *Clarke (2009)*. This was a limiting factor in AO1 marks as they didn't provide good definitions. Some candidates were in Level 2 for AO1, but top Level 4 for AO2. What was very pleasing to see was the discussion of commonwealth country's case law in this area showing, on some occasions, the completely contrasting decisions to English appeal court decisions when looking at the same medical conditions e.g. *Falconer, Rabey* or *Parks*.

Question 3

Question 3 continues to follow the customary three scenarios on the given topic area; here a mix of insane automatism and non-insane automatism. 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 and to say so affirmatively. Candidates should have found the individual questions accessible since each concerned cases or situations analogous with insane automatism and non-insane automatism. Each scenario required the candidates to consider:

- for (a) that a successful establishment of insane automatism was likely. However, as the situation was brought on by Abdul's potential self-induced nature a jury could go either way. As Abdul's condition was that of epilepsy, an established disease of the mind, this would most likely lead to being found not guilty by reason of insane automatism due to the internal factor. Since there was no obvious external factor, a discussion and/or a defence of non-insane automatism was irrelevant
- for (b) since the hypoglycaemic background to Luke is similar to that of the case of *Quick,* a thorough discussion of automatism was required. Although, again, the issue of self-induced automatism could have changed matters as in *Clarke* (2009)
- for (c) a potential conviction for a non-fatal offence looked unlikely given Ethan's knee-jerk reflex action to the medical hammer would most likely give rise to a defence of non-insane automatism.

Strong responses took the fashion of a discussion of the relevant offence and a thorough, but not necessarily forensic application, of this to the scenario. Therefore a Level 5 response looked to accurately discuss the most appropriate defence, use a linked case(s) to cite in support, and apply this to the scenario. This had to be achieved together with a correct and specified conclusion. Again reference to the Special Study Skills Pointer benefitted those candidates by providing a method and structure. The majority of marks on Question 3 are gained by application (AO2) as opposed to knowledge and understanding of the law (AO1). Questions attracted good responses, in general, with many strong candidates demonstrating both thorough knowledge and high level application skills whilst some candidate's responses showed much more limited evidence of either.

3(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 candidates would discuss both insane and non-insane automatism. Some candidates 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 candidates discussed the issue as to whether Abdul's acts were, in fact self-induced. Responses achieving Level 4 and 5 set out the *M'Naghten* Rules, explained in greater detail and applied. Lower level responses would generally miss out a key part of the Rules or be too brief. A common missing part was the *Defect of Reason* and its explanation. Some exceptional responses looked at Abdul from both an insane automatism and a self-induced automatism perspective and then made the decision as to which way the trial would go; formulating a specific conclusion. **3(b)** was generally better answered than **3(a)**, again as candidates settled into their responses and nearly all realised it was a probable non-insane automatism defence given its similarity with *Quick*. Nevertheless, many candidates spotted the potential issue of self-induced automatism as seen in *R v C* (2007) and *Clarke* (2009). **3(c)** the responses were the strongest since nearly all candidates spotted the issue of the medical hammer being an external factor leading to an involuntary knee-jerk reaction. Given this was the most likely non-insane automatism scenario many candidates missed the issue of the requirement of a total lack of control to warrant such a defence.

G155 Law of Contract

General Comments

Candidates displayed many strong exam based skills when answering this paper. In general there was a good awareness of the demands of each different kind of question and the relevant assessment criteria. In the best responses candidates focussed very effectively on the specific question set and addressed their AO2 content accordingly. In less effective responses, particularly in Section A, candidates tended to repeat the words in the question without any elaboration or links to the specific case being discussed. However, it was good to see that there were very few answers which contained a lengthy AO1 explanation of the topic with little attempt at AO2 comment.

A commonly occurring AO2 theme, again in Section A, was to state that the courts are keen to protect the weaker party in a contract. While there may be cases where this can be argued candidates should attempt to argue this point of view where relevant with reference to specific cases, merely stating this as a fact is unsatisfactory and does not make for effective AO2 comment in itself.

Section A

Question 1

Most candidates were able to explain the rule of privity with reference to appropriate case law and to explain a wide range of exceptions to the rule which pre-date the 1999 act. In the best answers there was some excellent analysis of the extent to which the 1999 act has changed the rule of privity and the extent to which the old exceptions are still relevant. For example some candidates discussed that it is unlikely to apply where a party is not named in the contract, in situations such as *Shanklin Pier*, and that the act can be excluded from a contract and will be in many situations such as the building industry.

There were many answers which stated the rule and pre act exceptions in great detail but only added a brief reference to the act, these answers tended to gain good AO1 answers but did poorly on AO2 as they paid little attention to the specific question set.

Some weaker answers tended to give a lot of details on the facts of cases such as *Tulk v Moxhay*, *Shanklin Pier v Detel* or *Jackson v Horizon* but were not explicit as to why there was an issue of privity in these cases. In the least effective answers candidates presented the exceptions to the rule of privity as examples of the operation of the Act.

Question 2

Better answers to this question included a great deal of relevant case law including detailed reference to the Law Reform (Frustrated Contracts) Act and cases arising from interpretation of that act. Better candidates were able to cite several examples of cases concerning the different grounds on which a contract may be frustrated as well as good case law to support limitations such as self-induced frustration and force majeure clauses.

There were a significant number of answers with confused or minimal case law however and there were a disappointing number of answers with little or no reference to the act.

Candidates were mostly able to address the AO2 aspects of this question and to recognise that there were 2 aspects, justice and predictability. Better answers were able to discuss these aspects together and assess the extent to which there was tension between the two.

Question 3

There were some very strong answers to this question which combined wide ranging knowledge supported by excellent case law however strong AO1 content was frequently not matched by equally strong AO2 comment and many candidates missed opportunities for relevant comment on the areas of the topic which they had clearly explained. Areas where candidates did make effective comments were the difficulty in proving a case in fraudulent misrepresentation, the narrow circumstances where silence can be seen as a false statement of fact and the situations where a claimant will lose the right to rescind the contract due to factors such as lapse of time and affirmation.

There were some errors of knowledge which appeared quite frequently on this question. One was to confuse negligent misstatement and statutory misrepresentation and to roll them up as one into a general idea of negligent misrepresentation. Another was to cite the case of *Bissett v Wilkinson* as an example of innocent misrepresentation, confusing the concept of an opinion which does not amount to a misrepresentation of any kind with a statement which is untrue but which was made on justifiable grounds.

Section B

In general the best answers to Section B questions focussed on the specific application of case law, explaining the principle in a case and then examining the extent to which that specific principle applies rather than applying broad principles. A good example of this could be seen in question 6 where better answers discussed the detail of the rules on acceptance by instant means and, rather than just stating that acceptance was when it was received during business hours, questioned the appropriateness of this rule in what looks like a private transaction.

Question 4

This question was predominantly about unilateral mistake, in fact each part of the question could have been answered quite satisfactorily on unilateral mistake alone although there was scope to discuss mutual mistake in the last part of the question concerning Zaki. Many candidates wasted a lot of time discussing areas of mistake which were not relevant in this question and which did not gain credit. An example of this is the second part of the question concerning the vase; some candidates did not read the question properly and gave a lengthy description of common mistake as to quality. A small number of candidates ignored the instruction to discuss the law of mistake altogether and discussed other areas which could not be credited such as breach of contract.

In the better answers there was detailed discussion of the relevant case law and a good range of cases on each part of the question. Better answers were able to discuss the issue of title passing in the first part of the question and some answers pointed out that even if the contract was not void and followed cases such as *Phillips v Brooks*, on the facts given it is still possible that the seller Derek rescinded the contract before the rogue sold the goods on to Rusts the antique shop.

Question 5

Most candidates had a general understanding of the difference between intention in domestic and commercial cases and were able to back this up with relevant case law. Better responses included a clear explanation of the way in which the presumption applies and can be rebutted, using correct terminology.

Better responses included substantial case law on both domestic and commercial cases and in less effective responses there was a lot less content on commercial cases with a focus mainly on domestic. This led to a loss of marks if candidates were unable to discuss the potential commercial aspect of the card making enterprise and the extent to which the commercial presumption may have been rebutted by the words in the email saying they were just doing it as friends.

Explanation of some key cases was unclear in less effective responses, particularly *Simpkins v Pays* and *Jones v Padavatton*, on the other hand some candidates spend far too long describing the facts of individual cases which leaves them too little time for effective application of the law.

Question 6

This question required three different aspects of offer and acceptance to be discussed and applied, the most effective answers to this question were the most methodical and well planned however there were a number of answers which generally recognised the areas being discussed but were unable to support their answers with thorough and clear case law.

The first part of the question concerned the postal rule and whether it applied. Most candidates were able to give an account of the cases on the postal rule but some were unclear on exactly what the rule meant and what happened if it did not apply. Few responses explored whether the postal rule should apply in response to an offer sent by instant means and the judgement in *Holwell Securities v Hughes* was rarely seen.

Answers to the second part of the question which concerned accepting by instant means and the time at which acceptance became effective tended in many cases to be vague as candidates were either unaware of the rules developed in *Brinkibon V Stahag Stahl* or were unable to clearly discuss how they applied. Many responses made reference to the recent case *Thomas v BPE Solicitors*.

Most got rules on instant aspects of offer and acceptance though subject to comments made above. There were few good answers to third part, where the method of aspects of offer and acceptance was prescribed by offeror.

Section C

The majority of candidates are now adopting an appropriate style when answering these questions; however, there are still a substantial majority who add case names and descriptions to their answers which are not creditworthy in this section. Candidates are also advised to adopt a specific line of argument leading to a clear agreement or disagreement with the statement. Essay-like answers which come to indecisive answers are unlikely to achieve the maximum marks for any question.

Question 7

This question had very specific statements which in A and C related to legitimate interest in imposing a restraint, there were some excellent answers which focussed very well on this specific aspect however many answers widened their discussion to discuss the general reasonableness of the restraint when answering these questions, these wider discussions did not attract marks.

Statement D required candidates to discuss the blue pencilling rule, while the best answers showed clear understanding of what this rule entails and were able to apply it well to the question there were many answers which suggested that the court could amend or add things to the term to make it reasonable, these answers did not gain marks.

Question 8

Most candidates showed a good level of awareness of the rules which needed to be applied for this question, particularly past consideration in statement A and sufficiency in statement B. A small number of candidates were not aware of the exceptions to the rule that part payment is not good consideration in statement C and in statement D on promissory estoppel a large number of responses wasted time in discussing the facts of *Central London Property v High Trees* rather than applying the rules. It was evident however that most candidates had a good level of understanding of what promissory estoppel is and how it relates to consideration.

G156 Law of Contract Special Study

This seemed to be once again a very successful series for candidates. Knowledge of the relevant law and authorities was very impressive and particularly notable given that this area of the specification is not covered especially well by many of the leading texts. Credit should once again go to the candidates and their teachers and lecturers for their thorough preparation. There was a full range of responses across all of the questions including some full mark responses. The AO2 spin in Question 2 was accessible yet challenging and proved to be an effective discriminator between candidates.

Question 1 was generally answered very well. Virtually all candidates picked up at least some of the critical points of *Schroeder* and also provided good linked cases. Unfortunately a sizeable minority of candidates did spend an excessive amount of time exploring the linked cases rather than *Schroeder* itself. It bears repeating that the focus of answers to Question 1 must always be on the case in the question; minimal credit is available for linked cases so extensive analysis of linked cases rather than *Schroeder* could only be given minimal credit. Most candidates were able to discuss the courts arguably paternalistic approach to parties who clearly had a very weak bargaining position and found themselves in deeply one-sided contracts. Higher level marks tended to be achieved through developed analysis of the importance of the courts' willingness to subject standard-form contracts to scrutiny. Other interesting points included noting that this case was a nice example of an expansive application of the Nordenfelt test to a novel situation and criticisms of the courts' approach considering whether in fact music publishers such as Schroeder needed to contract using these sorts of conditions if they were to have a sustainable business model.

Most candidates clearly understood the need for a good range of developed cases to score highly against AO1 in Question 2. Responses which included over ten developed cases were not uncommon. Some candidates were limited in their marks here simply by not being able to provide a sufficient range of developed cases to support their answer. As in the January series, 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. With regard to AO2, happily very few candidates showed no evidence of having actually read the question and almost everyone made some attempt to provide analysis answering it. At the heart of most responses was the demonstration of the courts' flexibility through showing how the reasonableness test was applied on a case-by-case basis. This was generally done well. Lower-level responses tended to display more of a faint awareness of the question rather than a real engagement with it – this was often seen by references to the question appearing only in the opening and closing paragraphs. When candidates did actually engage with the question, they generally did well; Level 4 responses were common. Higher-level responses included some more sophisticated analysis about, for example, the range of substantive issues that the courts had dealt with, their approach to consideration received for restraints and also justification for the courts' rigidity in certain regards through critical comments about the problems that excess flexibility might bring (eg in the use of interpretation).

In this series Question 3 was done particularly well though it remained a good discriminator. A full range of responses were seen including many at full marks. Where marks weren't achieved, it tended to be either 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. Many candidates were able to adopt a very scholarly, legal approach, giving a clear application of a rule to a fact, explaining why that rule applied in the way that it did and giving an authority for that rule. A clear route to improvement for many candidates would lie in making sure that they apply the reasonableness test fully (ie substance, time and geography) against the particular legitimate interest and also giving more careful thought to the

use of the blue-pencil test and/or narrow interpretation. **Q3(a)** was generally answered very well. Candidates pointed out the reasonableness of the geographical and temporal restrictions and focussed on the unreasonable substantive restraint. **Q3(b)** was perhaps the more challenging of the three scenarios given the more onerous restraints but most candidates picked up the links to *Nordenfelt* and *Forster* and the appropriateness of a global restraint for an individual of such specialist skill. **Q3(c)** produced a range of answers though that seemed to be principally caused by time-management issues: some answers were clearly extremely rushed. There were many excellent answers to this question many of which applied helpful distinctions between *Esso v Harpers Garage* and *Alec Lobb v Total Oil* and raised the possibility of a *Schroeder*-type approach.

G157 Law of Torts

General Comments

Candidates showed a preference to answer essay question 2 on trespass against the person and problem question 4 on nervous shock. Most candidates attempted question 8 rather than question 7.

There were very few instances of rubric error and very few instances of candidates not attempting to answer the right amount of required questions.

There was plenty of evidence in Section A of candidates citing a wide range of cases and statutory provisions. In questions 2 and 3 more capable candidates also explained the available defences. As previously expressed in the January 2013 report, 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 in explaining the elements of the tort. In question 1 a good number of candidates were not so adept at sticking to the right area of law with a particular tendency to explain breach of duty and remoteness of damages.

Candidates used the essay questions for AO2 and there was evidence of some developed and well developed points; candidates could concentrate on developing their points into a discussion rather than separate bold comments. The level of AO2 was often comparatively less than what the candidate has achieved for AO1. Candidates who used case and statute authority for a basis for discussion with relation to the question showed the most sophisticated answers.

In Section B some candidates made plans but not that many – these would really help in complex scenarios. Candidates generally identified all the separate issues that were raised in the scenarios but at times struggled to apply the law accurately or come to logical conclusions. Candidates need to use cases and statutory provisions that are relevant to the scenario in their AO1 as this will aid and focus their application.

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 a range of points which include a clear conclusion. Statutory or case citation is not required. The lack of technique and inability to identify the issue in question continues to be an issue for many candidates.

Section A

Question 1

A good number of responses charted the history of duty of care with reference to the key cases and resulting tests. A good number digressed into other areas such as breach and nervous shock with a clear confusion between foresight of damage under the *Caparo* test and remoteness of damage when assessing causation of damage. The AO2 often tended to focus on the question and could have been improved with more evidence of developed discussion. Answers were generally mechanical and needed to pick up on interesting issues and the duty of relevant groups such as police, judges and lawyers.

Question 2

This was a very popular question with extensive case authority commonly used to support points. False imprisonment was sometimes cursory as candidates had spent so long on assault and battery. The issues of hostility and medical cases could have been better handled and discussed. There were some interesting cases used by candidates, including an Australian citation. Many candidates used criminal cases such as *Ireland* and *Brown* to illustrate their points, which is acceptable, and could have led to further discussion of the impact of criminal cases on civil law. There was little reference to the Protection from Harassment Act 1997 and although this was not required for level five it was seen in some of the better responses.

Question 3

This was the least popular question in section A but those candidates who answered it usually seemed thoroughly prepared for it. The AO1 on this question was generally answered very well with good case and statutory citation. Many candidates had learnt several of the subsections for both dangerous and non-dangerous animals as well as livestock and a variety of defences. The AO2 was not as strong as the AO1, although often directly linked to the quality of AO1. Candidates provided balanced responses discussing both the complexity and effectiveness as directed by the questions. Again, candidates needed to take the opportunity to develop their discussion of points.

Section B

Question 4

This question was hugely popular and often there were high levels of AO1 with good case citation for both primary and secondary victims. Most candidates could identify the *Alcock* criteria with higher AO1 marks being awarded to candidates who could explain each part of the test with case authority. Well-prepared candidates also explained the position of bystanders and rescuers. The AO2 did not reflect the quality of the AO1 with generally only more obvious points applied with little exploration. Only a few candidates fruitlessly used time evaluating the law, which is not credit worthy in Section B but some candidates did discuss whether Craig had a claim which was not required under the instructions for the question.

Question 5

In this question again there were some very good answers which used the Occupiers Liability Acts provisions clearly and accurately with some case citation. High AO1 marks were achieved from explaining both Acts with accurate citation of sections and subsections including available defences. A good number of candidates exhausted themselves on who an occupier is, the law relating to those 'exercising a calling' and that ladders can be considered premises (neither of the latter two being directly relevant to the question) so that they then did not deal with both Acts in enough detail to achieve higher marks. Most candidates recognised that Sparks Electrics was an independent contractor and the rules associated with this. This meant that Andrei often saw the best application. Maxim suffered due to a paucity of information about the 1984 Act and many thought Gleb was a trespasser and were more focused on the lack of compensation for his damaged watch than anything else.

Question 6

Very few candidates answered this question. Both AO1 and AO2 tended to be low to mid-range. This was because the question was focused on this one particular tort which therefore required responses to fully explain the *Rylands* tort in detail with supporting cases and clear explanations of available defences to access higher marks. Some candidates were confused as to what amounted to non-natural use of the land and added to this confusion by discussing that Phil's sons squeezing through the hole in the fence as a possible escape. Most candidates identified all the issues raised in the scenario. These needed to be dealt with them in a more confident manner to reach accurate conclusions.

Section C

Question 7

This question was not as popular as question 8. Most candidates struggled to demonstrate a clear line of legal reasoning. There were some good answers here although rarely consistently strong across all the statements. Despite Statement C having two routes of reasoning available, and thus more flexibility in answering the question, candidates discussed the liability for Kevin in giving a misstatement by recommending Nigel when this is clearly not what the question was asking to be considered. The scenario was often compared to cases with explanation of case facts rather than applying the pertinent points of law to the statements.

Question 8

Most candidates attempted this question rather than question 7 and correctly identified and tried to apply the principles of vicarious liability. Again there were many mid-range answers with no consistency across statements and difficulty in showing logical legal reasoning. Candidates need to be more effective at identifying the points of law at issue in each statement. In Statement A candidates needed to identify that a tort had been committed and that Amir was in the course of his employment rather than stating that he was an employee. In Statement B candidates needed to focus on whether Amir was in the course of employment rather than whether Quickdrop is liable for a crime (which is required by Statement C). Only a small number of candidates considered whether excessive force would mean that Quickdrop is no longer liable. In Statement C candidates needed to consider whether there was a close connection, which many did not do. Lastly, in Statement D most candidates successfully identified that Amir was on a frolic of his own and reached an accurate conclusion. Candidates again needed to address whether his criminal actions were closely connected to his employment.

G158 Law of Torts Special Study

This was, for the last time, the second sitting for the 2013 special study theme of vicarious liability. 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 all contributed to a great deal of discussion about the boundaries and proper functions of this important and practical area of law. Indeed, as recently as last November the Court of Appeal continued to develop fundamental approaches to establishing vicarious liability in *JGE v The Trustees of the Portsmouth Roman Catholic Diocesan Trust*. It is, therefore, rich in both contemporary AO1 and very relevant AO2.

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.'

Generally speaking, this has been a very positive series for the candidates whose performance continues to reflect the familiarity with what is, by now, a well understood specification. Detailed mark schemes from previous series, along with the skills pointer, give clear guidance as to the format and general expectations. Consequently, well prepared candidates are able to tackle the paper with confidence.

One of the perennial issues which has often featured in previous reports has been a particular problem this series. The quality (or lack of it) of candidates' handwriting has been a notable issue. A number of scripts were in parts illegible and, whilst every effort is made, examiners can only credit what can be confidently read. Most candidates who have identified learning support needs are able to access appropriate examination support. Some of the handwriting we have witnessed is so poor that centres and candidates alike should be aware of the problem. Affected candidates need to take remedial measures as a matter of urgency as this must be costing them grades not only in Law but in all subjects with written assessment.

Notable improvements and areas of good practice:

- There was a more structured approach to tackling the problem questions and candidates have consequently done well on these.
- There was plenty of evidence of wider reading and detailed, up-to-date knowledge of case law.
- There were no spoilt scripts and a tiny minority of candidates who did not attempt all three questions.
- Few candidates failed to use the sources.

Areas for further development:

- Candidates continue to struggle with the discipline of timings. Candidates must learn to divide their time and effort in proportion to the marks available through greater use of timed work and mock exams.

- Many of the responses to question 1 were too narrowly focused. Few candidates managed to score significant marks for analytical points. Most candidates preferred to focus solely on the judgment and linked cases rather than step back and consider the judgment in its wider objective context.
- In general, there is still too much AO1 in the essay question. Judicious use of selected case law which is directly appropriate to the AO2 spin of the question demonstrates the ability of a perspicacious candidate to think and respond spontaneously.

Timing and organisation

As referred to above, the problem of timings seems to remain as an obstinate and immovable obstacle to many candidates making further progress on this paper. The simple relationship between the effort which ought to go into a 34 mark question compared to that which ought to be expended on a 30 mark question seems to completely elude what are otherwise seemingly bright candidates.

The disappearance of the January series next year lends an even stronger impetus for centres to engage candidates in lots of mock exams and in-class timed work focusing on getting these timings right. This issue is detrimental to otherwise capable candidates' performance.

Comments on Individual questions

Question 1

There was a general drop in the standard of this question when compared to the January series:

- Most candidates' critical point and linked cases were well done.
- Where responses did less well it was generally due to a limited ability to produce objective analysis outside the case itself by looking at issues such as social policy, loss distribution implications and widening the scope of vicarious liability.
- Whilst there was excellent case knowledge of *Mattis* itself and various linked cases, there was poor reflection of the impact of the judgment. Indeed a significant minority posited that it was an insignificant case which did little more than follow existing precedent!
- Some of the candidates wrote lengthy, pedestrian and narrative accounts of the evolution from *Salmond, Trotman, Bazley, Lister* & *Mattis* through *Maga, Gravill and N v CC Merseyside* – all in exhaustive detail with lengthy consideration of the judgments in *Mattis* at both trial and on appeal to the Court of Appeal.

Question 2

As always, candidates success on question 2 will usually be dictated by having the sagacity to selectively use the right (relevant) AO1 and ensure that their AO2 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:

- Fewer lengthy descriptions of case facts and a slightly sharper focus on what is important.
- Fewer candidates are failing to conclude.
- More candidates making the synoptic connections where possible (here it was mainly the persuasive precedent of *Bazley* and judicial creativity).

Areas for further development:

- The three-pronged AO2 spin ('justified in achieving …', 'apportioning blame' & 'social justice') clearly proved too much for many candidates to juggle. The challenge of considering their knowledge of vicarious liability in the abstract in order to marshal selected material around these three issues proved too demanding for most. The ability to engage in such reasoning and thinking skills are, however, a fair discriminator.
- A significant minority of candidates clearly didn't understand the close connection test as they either avoided it altogether or got it confused with the Salmond test.
- Too many rigid, structured and rehearsed responses.
- A number of candidates adopted a policy of simply reciting the words 'social policy' and 'apportionment of blame' at every opportunity whether it fitted or not. This did not pass for thoughtful AO2.
- Timing – as above – a significant issue and an easy way to move a significant group from C/B to A/B for relatively little effort.

Question 3

Question 3 requires the application of legal knowledge to three mini problem questions. Close attention to the central thrust of the question will provide all the scope candidates need for a good answer. It is not necessary or helpful to speculate outside the given facts. Marks are awarded for accurate statements of relevant law, application of legal knowledge through logical reasoning and reaching a cogent conclusion.

Candidates often performed very well on these questions. It was obvious that candidates had been well prepared for these questions and most acquitted themselves well. By sticking to a reasonably formulaic approach, most candidates should be able to score a reasonable number of points even if they are struggling with the application elements.

The only fairly common misunderstanding was that some candidates believe that if something happens 'whilst actually at work' then it has happened 'in the course of employment' and consequently conclude liability. It is submitted that *Jones v Tower Boot Company* usually works well to disabuse these candidates of such a notion. Colleagues will be aware that acting 'in the course of employment' is a legal test based on whether your tortuous act or omission is 'authorised' - not a practical or temporal test based on what you are doing at the given time.

Candidates should be reminded **not** to:

- Give lengthy citations of case facts.
- Give anecdotal answers – this is a key feature of the approach of weaker responses which tend to re-count the 'story' back in their own words with some 'common sense' advice applied along the way.
- Speculate on facts that are **not given** in the scenario.
- **Forget to conclude** (especially after an otherwise perfect answer!). This was a common problem for a significant minority who believe that establishing that a tort/crime has taken place 'in the course of employment' established liability when, in fact, it is one of three things that must be proved. So, saying that something happened in the course of employment was often given as the overall conclusion when it is not the same thing.

Please remind candidates **to**:

- Try and cover a range of points – questions will always distribute available marks across a range of potential areas and a conclusion (please refer to the skills pointer).
- Not forget to state the obvious – in this case - 'what ***was*** the tort which was committed'? What needs to be proved?

3 (a) This question was the most well answered. Possibly, the resonance with leading cases or the slightly more detailed information regarding her employment status or both- gave candidates something to work with. Most candidates did well. A small number concluded that she was not an employee (because she was working on a piece rate) but most concluded, correctly, that Floral farms would be liable, Some of the better responses even broke the tort (negligence) down into its component parts – that Amaan owed the end consumers a duty of care, had fallen below the standard of the reasonable flower-picker and caused foreseeable harm. Anecdotal answers such as 'Amaan acted negligently' were not credited – anyone can act negligently (or carelessly) but being 'negligent' is a significantly different thing. It was this kind of anecdotal response that needs to be addressed.

3 (b) There was a dual route critical point on this question which meant it was generally answered well. Recognising the resonance with *Limpus* and *Twine* was reasonably obvious to many candidates who then just needed to work through the logic of the application. Stronger responses spotted and dealt with both routes – although only one route could be credited. Weaker responses were usually able to gain some marks from one route or the other.

3 (c) Again, the similarity to *N v CC of Merseyside* put most candidates on the right track. For those candidates who recognised the case, the application was fairly straightforward. For those who didn't recognise the case, it was obvious that it was an intentional tort and, therefore, the close connection test would apply. The application of an abstract principle from that point led to some unusual reasoning about Dave's potential 'close connection'. It should be remembered that this is about your broader employment circumstances putting you in a position to carry out the tort/crime not whether you're literally 'proximate' and 'on duty' at the given time.

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