**FHS Jurisprudence and Diploma in Legal Studies**
**Examiners' Report 2026**

**FORM OF REPORT ON EXAMINATIONS 2025/26**

**BA JURISPRUDENCE, FINAL HONOURS SCHOOL**

**PART I**

**STATISTICS**

**A.**

(1) Numbers and percentages in each class/category

(a) Classified examinations

FHS Course 1, BA Jurisprudence

| Class | Number | | | Percentage (%) | | |
|---|---|---|---|---|---|---|
| | 2025/26 | 2024/25 | 2023/24 | 2025/26 | 2024/25 | 2023/24 |
| I | 37 | 37 | 35 | 19.2 | 20.8 | 15.7 |
| II.I | 147 | 134 | 175 | 76.2 | 75.3 | 78.48 |
| II.II | 6 | 7 | 10 | 3.1 | 3.9 | 4.48 |
| III | | 0 | 1 | 0.0 | | 0.45 |
| Pass | 1 | 0 | 0 | 0.5 | | |
| Fail | 2 | 0 | 2 | 1.0 | | 0.9 |

FHS Course 2, BA Law with Law Studies in Europe

| Class | Number | | | Percentage (%) | | |
|---|---|---|---|---|---|---|
| | 2025/26 | 2024/25 | 2023/24 | 2025/26 | 2024/25 | 2023/24 |
| I | 7 | 7 | 4 | 23.3 | 25.9 | 12.9 |
| II.I | 21 | 20 | 26 | 70.0 | 74.1 | 83.87 |
| II.II | 2 | 0 | 1 | 6.7 | | 3.2 |
| III | | 0 | 0 | 0.0 | | |
| Pass | | 0 | 0 | 0.0 | | |
| Fail | | 0 | 0 | 0.0 | | |

FHS Course 1 and 2 combined

| Class | Number | | | Percentage (%) | | |
|---|---|---|---|---|---|---|
| | 2025/26 | 2024/25 | 2023/24 | 2025/26 | 2024/25 | 2023/24 |
| I | 44 | 44 | 39 | 19.7 | 21.5 | 15.35 |
| II.I | 168 | 154 | 201 | 75.3 | 75.1 | 79.13 |
| II.II | 8 | 7 | 11 | 3.6 | 3.4 | 4.33 |
| III | 0 | | 1 | 0.0 | | 0.39 |
| Pass | 1 | | 0 | 0.4 | | |
| Fail | 2 | | 2 | 0.9 | | 0.79 |

(b) Unclassified Examinations

Diploma in Legal Studies

| Category | Number | | | Percentage (%) | | |
|---|---|---|---|---|---|---|
| | 2025/26 | 2024/25 | 2023/24 | 2025/26 | 2024/25 | 2023/24 |
| Distinction | 11 | 9 | 11 | 40.7 | 30 | 36.7 |
| Pass | 16 | 20 | 18 | 59.3 | 66.7 | 60 |
| Fail | 0 | 1 | 1 | | 3.3 | 3.3 |

(2) Vivas

Vivas are no longer used in the Final Honour School. Vivas can be held for students who fail a paper on the Diploma in Legal Studies.

(3) Marking of scripts

A rigorous system of second marking is used to ensure the accuracy of marking procedures. This second marking occurs in two stages.

The first stage takes place during the initial marking that is carried out prior to the first marks meeting. In subjects with a large number of candidates, marking teams meet shortly after the examination concerned to ensure that a similar approach is taken by all markers. Regardless of whether there is a discrepancy in the marking profiles among members of the team, a sample of scripts is sent for second marking to ensure consistency. In 2025/26, this sample comprised at least six scripts, or 20% of the scripts, whichever was larger. Further, any scripts where the first mark ended with a 9 (e.g., 69, 59, 49) or any mark below 40 were also second marked at this stage together with potential prize scripts.

Following the first marks meeting additional scripts are sent for second marking in three situations. The first concerns scripts that are 4 marks or more below the candidate's average mark. The second is where a script has been marked at 58 and an increase to a mark of 60 would result in the award of a First. The third is where a script has been marked at 68 or 67, and an increase to a mark of 70 (either in isolation or in conjunction with other 67s and 68s in the profile) would result in the award of a First.

In 2025/26, 327 scripts were second marked following the first marks meeting.

Following the second marks meeting, additional scripts were sent for second marking (and in some instances third marking) where the Examination Board felt that further second marking (or third marking) was warranted upon reviewing candidates' marks profiles. Third marking also took place at this stage.

Overall, the level of second marking was broadly similar to that in the last few years.

| | Number | | | Percentage % | | |
|---|---|---|---|---|---|---|
| | 2025/26 | 2024/25 | 2023/24 | 2025/26 | 2024/25 | 2023/24 |
| Total Scripts | 2239 | 2171 | 2243 | | | |
| First stage | 489 | 583 | 555 | 21.84 | 26.85 | 24.74 |
| Second stage | 327 | 263 | 264 | 14.6 | 12.11 | 11.77 |
| All second marking | 816 | 846 | 819 | 36.43 | 38.97 | 36.29 |

**Jurisprudence Procedure**

As the two elements of the Jurisprudence assessment (i.e. mini-option essay and examination) are marked separately, a slightly different procedure is used for second marking. During first and second marking, the standard procedure is used for the examination component (see above). Following the first marks meeting, additional second marking takes place. Some scripts are sent for second marking where one or both elements is 4% below the candidate's average. Second marking also occurs where the combined marks leave the candidate on the borderline between classifications. In 2025/26, 39 Jurisprudence exam scripts were second marked further to this procedure.

**NEW EXAMINING METHODS AND PROCEDURES**

**B.**

*Coursework*

Five papers (History of English Law, Feminist Perspectives in Law, Dissertation, Comparative Law and Advanced Criminal Law) were assessed by way of essays, written over the course of a working week (except the Dissertation). The assessments for Medical Law and Ethics, took place in both Week 0 of Trinity Term and Week 9 of Hilary Term. Advanced Criminal Law, Copyright, Trade Marks and Allied Rights and Feminist Perspectives in Law took place in Hilary Term and History of English Law and Comparative Law took place in Trinity Term.

*In-person examinations*

Candidates sat examinations in person, using the computer-based Inspera assessment platform. Candidates were allowed three hours per examination (save in the cases of two hours for the Jurisprudence examination and one and a half hours for the Jessup Moot examination). Materials were made available to candidates in the examination room for the majority of examinations. The materials were detailed in the Notice to Candidates and case lists were made available via Canvas.

During the examinations themselves, cases of students not receiving the correct materials were reported by both students and the Exams and Assessments team. This caused frustration for those affected and, in some cases, was raised in Mitigating Circumstances Notices to Examiners. The Exams and Assessments team continue to report these occurrences with the Inspera technical support team and seek improvements for the next academic year.

There was a live link in the Competition Law and Policy examination that took place on Thursday 18 June 2026. Following the reporting of this, the invigilator announced the error to the cohort and no other students were affected.

**C.** Examination Conventions were made available on the relevant Canvas sites. These were supplemented by email communications and Canvas announcements ahead of all assessment periods.

**PART II**

## A. GENERAL COMMENTS ON THE EXAMINATION

The proportion of Firsts awarded has decreased since 2024/25. Percentages have decreased from 21.5% of students to 19.7% of students, however this is still an increase from 2023/24. Candidates were allowed three hours per examination (save in the cases of two hours for the Jurisprudence examination and one and a half hours for the Jessup Moot examination).

The Examination Board wishes to express its sincere gratitude to the external examiners, who contributed both highly significantly and very helpfully to its work.

## B. EQUALITY AND DIVERSITY ISSUES/ BREAKDOWN OF THE RESULTS BY GENDER

FHS Course 1, BA Jurisprudence

| | 2026 | | | | 2025 | | | | 2024 | | | | 2023 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Female | | Male | | Female | | Male | | Female | | Male | | Female | | Male | |
| | No | % | No | % | No | % | No | % | No | % | No | % | No | % | No | % |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| I | 21 | 18 | 16 | 22 | 16 | 17 | 21 | 25 | 16 | 12 | 20 | 23 | 14 | 11 | 16 | 20 |
| II.I | 94 | 78 | 53 | 73 | 76 | 81 | 58 | 69 | 109 | 80 | 65 | 76 | 97 | 79 | 62 | 78 |
| II.II | 3 | 3 | 3 | 4 | 2 | 2 | 5 | 6 | 9 | 7 | 1 | 1 | 9 | 7 | 2 | 2 |
| III | | | | | | | | | | | | | 1 | 1 | | |
| Pass | 1 | 1 | | | | | | | | | | | 1 | 1 | | |
| Fail | 1 | 1 | 1 | 1 | | | | | 2 | 1 | | | 1 | 1 | | |
| Total | 120 | | 73 | | 94 | | 84 | | 136 | | 86 | | 123 | | 80 | |

FHS Course 2, BA Law with Law Studies in Europe

| | 2026 | | | | 2025 | | | | 2024 | | | | 2023 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Female | | Male | | Female | | Male | | Female | | Male | | Female | | Male | |
| | No | % | No | % | No | % | No | % | No | % | No | % | No | % | No | % |
| I | 4 | 20 | 3 | 30 | 4 | 22 | 3 | 33 | 3 | 15 | 1 | 9 | 4 | 19 | 2 | 15 |
| II.I | 15 | 75 | 6 | 60 | 14 | 78 | 6 | 67 | 17 | 85 | 10 | 91 | 18 | 81 | 11 | 85 |
| II.II | 1 | 5 | 1 | 10 | | | | | | | | | | | | |
| III | | | | | | | | | | | | | | | | |
| Pass | | | | | | | | | | | | | | | | |
| Total | 20 | | 10 | | 18 | | 9 | | 20 | | 11 | | 22 | | 13 | |

FHS Course 1 and 2 combined

| | 2026 | | | | 2025 | | | | 2024 | | | | 2023 | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Female | | Male | | Female | | Male | | Female | | Male | | Female | | Male | |
| | No | % | No | % | No | % | No | % | No | % | No | % | No | % | No | No |
| I | 25 | 18 | 19 | 23 | 20 | 18 | 24 | 26 | 19 | 12 | 21 | 22 | 18 | 12 | 18 | 19 |
| II.I | 109 | 78 | 59 | 71 | 90 | 80 | 64 | 69 | 126 | 82 | 75 | 78 | 115 | 79 | 73 | 78 |
| II.II | 4 | 3 | 4 | 5 | 2 | 2 | 5 | 5 | 9 | 6 | | | 9 | 6 | 2 | 2 |
| III | 0 | | 0 | | | | | | | | | | 1 | 0.7 | | |
| Pass | 1 | 1 | 0 | | | | | | | | | | 1 | 0.7 | | |
| Fail | 1 | 1 | 1 | 1 | | | | | | | | | 1 | 0.7 | | |
| Total | 140 | | 83 | | 112 | | 93 | | 154 | | 96 | | 145 | | 93 | |

The imbalance in the number of men and women attaining Firsts has decreased since 2025. The percentage gap has decreased from 8% to 5% since 2025. The gap in percentages between men and women getting Firsts is also now smaller than 2023, where there was a 7% difference.

## C. DETAILED NUMBERS ON CANDIDATES' PERFORMANCE IN EACH PART OF THE EXAMINATION

Candidates studying on the two BA programmes take nine papers as part of the FHS examinations. These consist of seven compulsory papers and two optional papers. In 2025/26, candidates chose from a list of 28 option papers. The distribution of candidates across the option papers in recent years has been as follows:

| Subject | 2026 | 2025 | 2024 | 2023 | 2022 | 2021 | 2020 |
|---|---|---|---|---|---|---|---|
| Advanced Criminal Law | 22 | 23 | 31 | 35 | 23 | 31 | 25 |
| Civil Dispute Resolution | 7 | 8 | 25 | 28 | 12 | 15 | 4 |
| Commercial Law | 17 | 15 | 21 | 17 | 12 | 20 | - |
| Company Law | 15 | 16 | 2 | 22 | 6 | 14 | 12 |
| Comparative Law | 13 | 9 | 16 | 1 | 14 | 14 | 15 |
| Competition Law and Policy | 25 | 17 | 16 | 3 | 9 | 24 | 17 |
| Constitutional Law | 8 | 6 | 5 | 6 | 3 | 8 | 5 |
| Copyright, Trade Marks and Allied Rights | 31 | 25 | 3 | 16 | 16 | 31 | 16 |
| Criminal Law | 8 | 6 | 5 | 6 | 3 | 8 | 5 |
| Criminology & Criminal Justice | 11 | 12 | 11 | 18 | 16 | 20 | 16 |
| Dissertation | 16 | 12 | 13 | 18 | 17 | - | - |
| Employment Law | 8 | 10 | 21 | 15 | 13 | 1 | 13 |
| Environmental Law | 10 | 7 | 15 | 4 | 12 | 22 | 12 |
| Subject | 2026 | 2025 | 2024 | 2023 | 2022 | 2021 | 2020 |
| Family Law | 19 | 28 | 39 | 38 | 20 | 41 | 57 |
| Feminist Perspectives in Law | 26 | 23 | 19 | 22 | - | - | - |
| History of English Law | 19 | 14 | 8 | 7 | 14 | 3 | 5 |
| Human Rights Law | 1 | | | | | | |
| International Trade | 1 | 9 | 18 | 4 | 5 | 15 | 10 |
| Introduction to Comparative Asian Law | 11 | - | - | - | - | - | - |
| Law and Technology | 9 | - | - | - | - | - | - |
| Media Law | 15 | 17 | 5 | 30 | 41 | 23 | 30 |
| Medical Law and Ethics | 75 | 74 | 85 | 68 | 29 | 51 | 85 |
| Moral and Political Philosophy | 18 | 2 | 17 | 23 | 23 | 35 | 17 |
| Personal Property | 1 | 15 | 18 | 20 | 8 | 16 | 12 |
| Public International Law | 32 | 33 | 42 | 33 | 33 | 31 | 29 |
| PIL Jessup Moot | 7 | 4 | 5 | 4 | 1 | 5 | 6 |
| Roman Law (Delict) | 5 | 9 | 5 | 17 | 5 | 16 | 5 |
| Succession Law | 1 | 9 | 16 | - | - | - | - |
| Taxation Law | 13 | 18 | 34 | 30 | 19 | 15 | 27 |

Candidates sitting the DLS take three papers, and choose from a shortened list of FHS option papers. The distribution of DLS candidates across the core and option papers in recent years has been as follows:

| Subject | 2026 | 2025 | 2024 | 2023 | 2022 | 2021 | 2020 |
|---|---|---|---|---|---|---|---|
| Administrative Law | 3 | - | - | 1 | 4 | - | 1 |
| Advanced Criminal Law | - | - | - | - | - | 1 | - |
| Civil Dispute Resolution | 1 | 2 | 1 | 1 | 1 | - | - |
| Commercial Law | - | - | 5 | 4 | 6 | 1 | - |
| Company Law | 8 | 10 | - | 8 | 9 | 8 | 12 |
| Competition Law and Policy | 9 | 10 | 8 | 1 | 14 | 4 | 5 |
| Constitutional Law | 3 | 2 | 1 | 2 | 4 | 2 | 4 |
| Contract | 14 | 18 | 25 | 17 | 24 | 19 | 25 |
| Copyright, Trade Marks and Allied Rights | 8 | 2 | - | 7 | 4 | 4 | 6 |
| Criminal Law | 1 | - | 2 | 2 | 1 | - | 2 |
| Criminology & Criminal Justice | 3 | 3 | 8 | 3 | 3 | 3 | 2 |
| Employment Law | - | - | - | 2 | - | - | 1 |
| Environmental Law | 1 | 1 | 1 | 2 | 1 | 3 | 1 |
| Subject | 2026 | 2025 | 2024 | 2023 | 2022 | 2021 | 2020 |
| European Union Law | 4 | 3 | 7 | 6 | 4 | 3 | 3 |
| Family Law | 3 | - | - | - | - | - | - |
| Feminist Perspectives in Law | 5 | 5 | - | - | - | - | - |
| History of English Law | - | - | - | - | - | 1 | - |
| Human Rights Law | - | 1 | 2 | 8 | 2 | - | - |
| Jurisprudence (Exam) | - | 1 | - | - | - | - | - |
| International Trade | - | - | 3 | - | - | - | - |
| Land Law | - | 1 | - | - | - | - | - |
| Law and Technology | 3 | | | | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Media Law | - | - | - | 3 | 1 | 2 | 1 |
| Medical Law and Ethics | 4 | 4 | 3 | 1 | - | - | - |
| Public International Law | - | - | - | - | 5 | 6 | 5 |
| Roman Law (Delict) | 2 | 5 | - | 3 | 1 | - | 2 |
| Succession Law | - | 2 | 1 | - | - | - | - |
| Taxation Law | 1 | 3 | 2 | 3 | 2 | 2 | - |
| Tort | 7 | 12 | 17 | 16 | 15 | 23 | 17 |
| Trusts | 2 | 2 | 4 | 4 | 1 | 2 | 1 |

A blank field indicates that no candidates fell into the range concerned.

| Subject | Student Count | 75-79 | 71-74 | 70 | 68-69 | 65-67 | 61-64 | 60 | 58-59 | 50-57 | 48-49 | 40-47 | 39 or less |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Administrative Law | 229 | 1 | 26 | 31 | 12 | 61 | 53 | 13 | 18 | 10 | 1 | 2 | 1 |
| Contract | 235 | 0 | 14 | 19 | 19 | 59 | 83 | 14 | 4 | 18 | 2 | 2 | 1 |
| European Union Law | 222 | 0 | 8 | 29 | 19 | 66 | 55 | 8 | 11 | 22 | 0 | 3 | 1 |
| Jurisprudence | 221 | 0 | 13 | 14 | 40 | 75 | 63 | 7 | 1 | 5 | 0 | 1 | 2 |
| Land Law | 221 | 0 | 9 | 21 | 8 | 48 | 62 | 31 | 13 | 25 | 0 | 2 | 2 |
| Tort | 228 | 0 | 5 | 31 | 15 | 83 | 73 | 8 | 5 | 6 | 0 | 1 | 1 |
| Trusts | 222 | 0 | 7 | 14 | 14 | 36 | 62 | 16 | 13 | 55 | 1 | 3 | 1 |
| Advanced Criminal Law | 22 | 0 | 3 | 8 | 8 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Civil Dispute Resolution | 8 | 0 | 3 | 0 | 2 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Commercial Law | 17 | 0 | 3 | 0 | 2 | 3 | 5 | 0 | 0 | 4 | 0 | 0 | 0 |
| Company Law | 23 | 0 | 1 | 3 | 4 | 6 | 8 | 0 | 1 | 0 | 0 | 0 | 0 |
| Comparative Law | 13 | 0 | 2 | 3 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Competition Law and Policy | 34 | 0 | 1 | 5 | 7 | 15 | 5 | 0 | 0 | 1 | 0 | 0 | 0 |
| Constitutional Law | 10 | 0 | 3 | 4 | 0 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Copyright, Trade Marks and Allied Rights | 39 | 0 | 3 | 7 | 4 | 13 | 8 | 1 | 2 | 1 | 0 | 0 | 0 |
| Criminal Law | 8 | 0 | 0 | 1 | 2 | 3 | 0 | 1 | 0 | 1 | 0 | 0 | 0 |
| Criminology & Criminal Justice | 14 | 0 | 6 | 0 | 3 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Dissertation | 16 | 0 | 2 | 4 | 4 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Employment Law | 8 | 0 | 1 | 2 | 1 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| Environmental Law | 11 | 0 | 1 | 3 | 0 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| Subject | Student Count | 75-79 | 71-74 | 70 | 68-69 | 65-67 | 61-64 | 60 | 58-59 | 50-57 | 48-49 | 40-47 | 39 or less |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Family Law | 22 | 0 | 2 | 6 | 2 | 8 | 3 | 1 | 0 | 0 | 0 | 0 | 0 |
| Feminist Perspectives in Law | 31 | 0 | 8 | 4 | 4 | 14 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| History of English Law | 19 | 0 | 2 | 5 | 9 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Human Rights Law | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| International Trade | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Introduction to Comparative Asian Law | 11 | 0 | 1 | 2 | 3 | 1 | 4 | 0 | 0 | 0 | 0 | 0 | 0 |
| Law and Technology | 12 | 0 | 1 | 1 | 2 | 5 | 1 | 0 | 0 | 2 | 0 | 0 | 0 |
| Media Law | 15 | 0 | 3 | 2 | 2 | 3 | 4 | 1 | 0 | 0 | 0 | 0 | 0 |
| Medical Law and Ethics | 79 | 1 | 10 | 4 | 6 | 27 | 21 | 5 | 5 | 0 | 0 | 0 | 0 |
| Moral and Political Philosophy | 18 | 0 | 1 | 3 | 3 | 7 | 4 | 0 | 0 | 0 | 0 | 0 | 0 |
| Personal Property | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 |
| Public International Law | 32 | 1 | 1 | 5 | 8 | 6 | 9 | 1 | 0 | 0 | 0 | 0 | 1 |
| PIL Jessup Moot | 7 | 0 | 2 | 1 | 1 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Roman Law (Delict) | 7 | 0 | 0 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Succession Law | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Taxation Law | 14 | 0 | 2 | 3 | 2 | 3 | 2 | 1 | 0 | 0 | 0 | 0 | 1 |

## D. COMMENTS ON PAPERS AND INDIVIDUAL QUESTIONS

Please see Annex 1.

## E. COMMENTS ON THE PERFORMANCE OF IDENTIFIABLE INDIVIDUALS AND OTHER MATERIAL WHICH WOULD USUALLY BE TREATED AS RESERVED BUSINESS

*1. MCEs*: The Examination Board considered MCEs. The Board decided to disregard papers, amend individual course marks and review the classification and make amendments.

*2. Decisions made in respect of individual cases*: No scripts were sent to the Proctors for suspected poor academic practice/plagiarism concerns. The coursework submissions were also reviewed, however none were referred.

*3. Approval of alternative examination arrangements:* The Board discussed the dispensation requests which were submitted during the academic year. These were dealt with on a case by case basis.

4. Withdrawals and suspensions stayed at roughly the same level as in 2024/25, with 22 withdrawals/suspensions in 2025/26 in contrast with 24 withdrawals/ suspensions in 2024/25.

## F. NAMES OF MEMBERS OF THE BOARD OF EXAMINERS

Prof. J Rowbottom (Chair)
Dr. Aruna Nair
Prof. Ruth Chang
Prof. Dev Gangjee
Dr. Kate Greasley
Dr. Miles Jackson
Prof. Roderick Bagshaw
Dr. Barbara Havelkova
Prof. Albertina Albors-Lorens (External Examiner)
Prof. Mark Lunney (External Examiner)

# Annex 1

## ADMINISTRATIVE LAW

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

Candidates interpreted some questions (especially questions 1, 3 and 4) as allowing them to write about almost anything concerning the general topic, without offering a suitably close tie-up to the question. Our main advice for success in an exam like this one is that candidates who directly answer the question do significantly better.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

Q.1: The most popular question; it invited candidates to discuss the proposition that courts should be hesitant to conclude that a policy decision was irrational. Yet almost all candidates said nothing about what 'policy' means! Some wrote down a pre-prepared essay on the rationality/proportionality debate, without even explaining how that related to this question. Candidates who explained what policy is, and why it might be relevant to judicial review of discretionary decisions under the Human Rights Act and at common law were well rewarded.

Q2 – Concerning fettering of discretion by the making of contracts. Some candidates underperformed on this question by dealing with it without addressing contracts, as if it simply read, 'Discuss fettering of discretion'.

Q3 – We sometimes found ourselves reading pre-prepared essays on fair procedures. There were various views, not always clearly expressed, on what counts as process; candidates did better when they explained and defended what they thought about that.

Q4 - There were some good answers that explained the variety of purposes that administrative law might serve, and some good ones that attempted to portray all of those purposes as involving protection of rights. Some discussed errors of law and of fact and legitimate expectations without clearly addressing the question.

Q5 Only a few candidates answered this question about ombuds. Some gave a prepared essay about ombuds in general; better answers addressed in some depth what would happen if ombuds could commence investigations on their own initiative.

Q6A – very few candidates attempted this, those few were very good.

Q6B – Regrettably, many candidates treated this question as if it were an opportunity to write down a ready-made essay about standing; it wasn't really possible to attain a high mark on this question by talking only about standing. Those who discussed other aspects of judicial review procedure were rewarded, and some candidates gave excellent analyses and critiques of the whole process.

Q7 – There were some good answers to this question about the difference between tribunals and the High Court. Some candidates missed the significant change made by the Judicial

Review and Courts Act 2022. Good answers explained procedural and jurisdictional differences as well as the interaction between tribunals and the High Court.

Q8 – There were some good answers to this question, but some treated the question as if it read, 'Should the courts impose liability on public authorities to compensate the claimant for an omission to use their statutory powers in ways that would have benefited the claimant?' The good answers explained the phrase, 'loss caused by unlawful administrative action'.

Q9 – A rather difficult question on when a public authority must give a hearing, and when it must give reasons for a decision. To score highly, a candidate had to think seriously about the overlap and divergence between the underlying rationales for giving a hearing before making a decision, and for giving reasons.

Q10 - This question was popular; some answers were full of mistakes. Most candidates saw that this ouster clause was a reaction to *Miller No 2.* However, few showed an understanding of the difference between prorogation and dissolution of Parliament. A small number of candidates reasoned well regarding judicial treatment of full and partial ouster clauses.

**ADVANCED CRIMINAL LAW**

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

As in previous years there were seven question. There was a single compulsory question in Part A which explored general themes raised in the course and a six questions in Part B, of which candidates had to answer one, reflecting the topics raised by specific lectures/seminars. Candidates were encouraged to explore particular seminar topics when answering questions in Part A, which they did successfully and similarly to draw on the wider themes, when examining particular seminar topics.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

*The Part A question*

The strongest answers explored in detail the distinction between a wrong and harm and whether this provided the key to the focus of criminal law. Weaker answers focussed simply on the different kinds of harms criminal and tort law were concerned with. Stronger answers added to their analysis by looking at examples of there may be harms but no wrongs; or wrongs but no harms and discussed whether this illuminated the boundaries of criminal law.

*Part B questions*

These were generally well answered with all questions getting takers. These were spread fairly evenly across the questions, although question 5 was the least popular. Strong candidates were able to explore the particular topic they were addressing, while putting it within the wider context of the issues running through the course. Good candidates took care to define the terms in the question. The best answers to question 4, for example, unpacked the terms preparatory and possession offences. Question 7 required a careful

consideration of the term 'violence' and whether it differed from the term 'harm' which best answer tackled, but weaker answers failed to distinguish.

## CIVIL DISPUTE RESOLUTION

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

Overall candidates demonstrated a generally strong command of the reading list and sometimes went beyond it. Candidates generally engaged confidently with leading authorities, policy arguments and the secondary literature, and several answers showed sophisticated critical analysis.

The principal academic weaknesses was a lack of precision: some candidates underdeveloped the normative part of the question; some conclusions were more assertive than the analysis supported; and a minority of answers contained doctrinal imprecision or incorrect case propositions. Time management was also a recurring problem in a number of scripts, with some answers markedly shorter or truncated compared with the candidate's other answers.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

Given the small cohort, it is not possible to provide meaningful commentary tackled individual questions. Some questions were clearly more popular than others; with the PQ being attempted by very few candidates. The strongest answers were on judicial bias, legal professional privilege, ADR and artificial intelligence.

## COMMERCIAL LAW

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

The commercial law paper consisted of 10 questions: 5 essay questions and 5 problem questions. As is usual, there was a strong preference amongst the candidates in favour of the problem questions, with most candidates only answering problem questions, and some of the essay questions not being answered at all.

Overall, candidates either showed a strong knowledge of the rules of commercial law and an acute ability to apply them to the scenarios in the problem questions, or they struggled to answer any of the questions effectively. The lesson for future years is that, to do well in commercial law, it is essential to have detailed knowledge of the relevant statutory and common law rules. There is simply no substitute for it when it comes to offering a first class or high 2.1 standard answer to a problem question.

**Essays:**

So few students attempted to answer essay questions this year, that it is hard to make specific observations about how each was answered without effectively picking out individual scripts. However, the examiners noticed that some essay answers – which struggled to score high marks – contained a minimum use of statute and/or case law, and relied mainly on vague assertions about what the law is or should be. Future candidates should only answer essay questions if they have a strong degree of familiarity with the relevant primary and secondary material, otherwise their marks will necessarily be limited.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

Question 1

This was an accessible form of a commonly asked question about whether the exceptions to the nemo dat rule are satisfactory or should be reformed one way or another. To answer it successfully, candidates were required to look at several different exceptions to nemo dat, reflect on the relevant amplificatory case law, and link to wider ideas of principle and/or policy in relation to them. Merely talking in broad terms, without specificity, was not enough to do well.

Question 2

This question was best answered by those who considered not just simple ROT clauses, but also those who considered more complex arrangements (including proceeds clauses and products clauses), and how they have been treated by the judges. They also looked at the wider issues of principle and policy which ROT clauses raise. Marks were also available for students who linked ROT clauses to real security and/or to other forms of quasi-security so as to contextualize some of the debate.

Question 3

This question wanted students to consider if the outcome, in substance, of cases like First Energy was inconsistent with the proposition of agency law put forward in Heinl v Jyske Bank. Students who engaged in detail with that issue, and who were able to refer critically to secondary material concerning it, did well. Students who wrote about Watteau, or other agency matters which plainly fell without the scope of Nourse LJ's remark, did less well.

Question 4

The question wanted candidates to describe the differences between equitable and statutory assignments, and to consider which form of assignment was more useful. The question of utility could have been answered from the perspective of a creditor, a debtor, or a third party assignee. Better answers focused on questions of notice, and issues around set off, but other good points could also have been made.

Question 5

No candidates answered this question.

Question 6

This question required candidates to classify three different charges. The highest marks went to those who were able to deploy Lord Millett's two-step test from Agnew, and draw in other rules and aspects of the case law too. The best students spotted that the purported charge over 'the value of' the mixers raised an Avanti issue. The question also raised issues about priorities, both in relation to charged assets and assigned assets (Dearle v Hall). It also raised an issue about the effect of so-called subordination agreements. It was, largely, well answered.

Question 7

This is an agency law problem question. Part one sought to raise the issue of whether ostensible authority could be established in cases where P has not made a representation to TP. Part 2 is about whether or not a third party can rely on the apparent authority of an agent if it failed to make the inquiries that a reasonable person would have made in all the circumstances to verify that the agent had the authority which they seem to be represented as having: Philipp v Barclays Bank. Part 3 raised well-trodden issues about ratification (Bolton v Lambert) and bars to ratification. On the whole, answers to this question were of mixed quality.

Question 8

This question raised issues about ROT clauses. There were two ROT clauses to assess, and each raised different issues. Students who spotted those issues and were able to make connections between those issues and the case law (e.g. Bond Worth, or Romalpa, or Associated Alloys) did best. There was also a charge issue which, depending on how one characterised the charge in issue, could have raised an Automatic Bottlemakers point.

Question 9

This was a passing of property and nemo dat problem question, with some element of implied terms too. It was, on the whole, not answered that well. Most candidates identified the s18 R5(1) issue, but not everyone went on to look at s20A thereafter. This cost candidates marks. There was also an intricate s2 Factors Act point which many candidates did not devote enough time or detail to. Lastly, few went into the contractual points in enough detail.

Question 10

This was an implied terms problem question. The best candidates considered breaches of s13 and s14(3), and went into the case law surrounding the application of each of those sections, rather than just sticking to the face of the statutory rules. This problem question also raised issues on acceptance, which were done reasonably well, and, fairly obviously, a Ritchie v Lloyd issue. Most marks were awarded to students who were capable of going into detail on both those points.

**COMPANY LAW**

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

The Company Law paper was sat by 26 candidates with four candidates achieving first-class marks, one candidate achieving a lower second class mark and the remaining candidates achieving an upper second class mark. The general standard of the answers to individual questions was good with the range of overall marks being 58–71, although there was a general failure, in essay questions, to focus on the specifics of the question set and, in problem questions, to differentiate the significance/importance of the various points raised. Specific issues relating to individual questions are considered below.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

**Question 1:** This popular question involved a quote from *Prest v Petrodel Resources Ltd* (2013) concerning whether piercing the corporate veil involves the operation of a coherent legal doctrine or involves nothing more than a legal label. Stronger answers focused on the particular issue raised by the question, considering in particular the *Chandler* line of authority, the trust analysis in *Prest* and the equitable response in *Jones v Lipman*. The weakest answers did little more than consider the general advantages of the *Salomon* principle, whilst slightly better answers at least considered the judgment in *Prest*.

**Question 2:** This was not a popular question and concerned whether the proper purposes duty should be properly characterised as an implied term in the corporate constitution, rather than a freestanding duty. The weaker answers simply described the issue, whereas the stronger answers considered the consequences of this potential recharacterisation, including the possible impact on other directors' duties.

**Question 3:** This was not a popular question and gave candidates the opportunity to consider the scope of the *Duomatic* principle. Whilst candidates where able to describe the principle and its limitations, only better answers considered the issue of whether the *Duomatic* principle represented an impingement on management autonomy, with only the best answers spotting that the *Duomatic* principle has generally been framed in terms of powers already allocated to the general meeting.

**Question 4:** This was a reasonably popular question that elicited some good responses to the issue of whether section 172(1) of the Companies Act 2006 was little more than a rhetorical device. Weaker answers failed to consider the second part of the question relating to section 172(3) and the protection of creditors, although the best answers considered *Sequana* and its relationship with section 214 of the Insolvency Act 1986.

**Question 5:** This was not a popular question and was not well answered. Most answers simply considered directors' duties in a general way without focusing on the extent to which common law duties still influence the development and interpretation of the statutory directors' duties. Candidates might also have considered the use of partnership principles in *Ebrahimi* and *O'Neill*, as well as the continued role for the double derivative action and the *Allen* line of cases.

**Question 6:** This was not a particularly popular question, but was handled reasonably well by those candidates who attempted it. Whilst candidates generally dealt well with the extent to which the capital rules protected "internal corporate constituencies", particularly

creditors, little was said about the extent to which those rules did or did not address "broader societal concerns", such as the societal impact of undercapitalised public companies engaged in high-risk business activities.

**Question 7:** This was not a popular question with the weaker answers simply describing the statutory remedies available to shareholders, whereas stronger answers analysed the overlap between the derivative action and unfair prejudice remedy following *Kimionis* and *Chimbganda*, but nobody really addressed the continuing limits of the approach in those cases, which was the central aspect of the question.

**Question 8:** This was a reasonably popular question and elicited some good responses, although candidates found the breadth of the essay question the principal challenge. Rather than simply giving equal treatment to each of the duties in sections 172–177 of the Companies Act 2006, stronger answers focused on those duties that had been subjected to most judicial analysis and dealt with the other duties more briefly. Candidates who tried to deal with all the duties in equal depth either ran out of time or produced answers that were too superficial.

**Question 9:** This was a popular question, which was well answered, requiring consideration of various breaches of duty, including sections 172, 174, 175, 176 and 177 of the Companies Act 2006. Too many candidates wasted time considering the possibility of a derivative action or unfair prejudice claim when C was in fact a majority shareholder, so the focus ought to have been more on the issue of whether the general meeting has power to initiate litigation and/or take other remedial steps. Most candidates spotted that the appointment of the liquidator further eased any enforcement issues.

**Question 10:** This was a popular question, which was generally well answered, raising issues around the issuing of new shares, the effect of forgery on corporate contracts, inquorate meetings and the equitable constraints upon the alteration of the corporate constitution and class rights. Most candidates spotted the significance for the share issues of W being a public company.

**Question 11:** This was a reasonably popular question regarding breaches of duty, unfair prejudice and liquidation. Most candidates spotted the potential quasi-partnership and the ensuing unfairness, but surprisingly few spotted the limitation issue in light of the very recent UKSC decision in *Zedra*. Almost all candidates spotted the difficulty of bringing an unfair prejudice claim in the context of a public company. Better answers considered the potential significance of just and equitable winding up, both in terms of public companies and the powers of a liquidator under section 238 of the Insolvency Act 1986.

**Question 12:** This was a reasonably popular question, dealing with breaches of duty and shareholder remedies, although candidates often failed to respect the fact that advice was sought specifically in relation to the bringing of a derivative action. In that regard, as well as considering sections 172, 174 and 175 of the Companies Act 2006, candidates should have considered the possibility of both a single and double derivative action. Candidates dealt well with the advantages that would come with appointing a liquidator in terms of enforcement and additional powers and every candidate pointed out the erroneous reference to "Fiona" at the end of the second paragraph, which shows a close attention to detail!

## COMPARATIVE LAW

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

The paper was made up of seven questions, one compulsory question in Part A, and a choice among six questions in part B. Candidates had to do one question from each of Part A and Part B. Candidates were rewarded for providing sources.

As a general statement, the examination was completed very well, with some rich and interesting answers covering multiple legal systems and making valuable comparisons across them. Eight candidates took the exam, and the marks reflected what the examiners believe was hard work during the year and a careful attention to what the exam was asking for.

The examination was conducted by submission format. There were no breaches of rubric, though any candidates who did not fulfil the terms of the question, such as by not focussing on the topic or topics requested, were not rewarded. That was, thankfully, a rare event.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

The single part A question was about methodology in comparative law, which is a constant preoccupation in the discipline and which, because of its cross-cutting nature, appeared in directly or indirectly in the teaching of all topics. The question asked about how methods can 'both help and hinder the aims of comparative lawyers'. This obviously opened space for discussion of both positive and negative aspects of methodology, but it also called for discussion of the multiple aims of comparative law. Candidates did best when they surveyed the whole course and found the best examples from the material covered, and built on that evidence base to make balanced arguments that addressed multiple methodological possibilities.

The Part B questions addressed the topics that were covered in the seminars that were delivered on different substantive legal fields in tort, contract, and property. The questions demanded that candidates show a range of knowledge across systems, sometimes implicitly (QQ 2, 3), sometimes by explicitly referring to multiple legal systems by name (QQ 4, 6), and sometimes by requiring discussion of more than one legal system, while leaving the candidates with choice in that respect (QQ 5, 7).

In all cases candidates did best when they were able to analyse the question and to respond in a well-organized and clear way to the precise question. Strong candidates were able to describe legal rules and principles concisely; explain those rules and principles with nuance; and show an ability to maintain an open mind rather than being overly affected by presuppositions from one's 'home' system (in this case, the law of EW).

The results were strong and based on the students' engagement in the seminars, this would seem to be because we had a small group who had self-selected for a genuine interest in the enterprise of comparative law.

## COMPETITION LAW AND POLICY

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

The paper comprised eight questions, four of which were essay questions and four were problem questions. All thirty-four candidates, FHS and DLS, were required to answer three questions, including at least one problem question, within four hours.

Thirty-four candidates submitted answers for the exam. Overall, the scripts demonstrated a strong command of the subject and analytical skills. The average mark was 66.24%. Six students achieved a first-class honours, approximately 17% of the class. As in previous years, candidates generally chose to spread their answers across both essay and problem questions, although there was again a clear preference for the latter (i.e., two, sometimes even three problem questions). First-class answers generally displayed an excellent grasp of the underlying material, evidenced by sustained references to case law and commentary, combined with critical, creative reasoning. Weaker answers tended to miss important substantive issues, engage in perfunctory analysis and/or misrepresent the relevant case law.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

The essay questions probed the students' ability to reflect on recurring themes in competition law as well as on topical developments.

The first essay question asked students to reflect on the application of the European Merger Regulation to the elimination of important competitive constraints in non-collusive oligopolies.

The second essay question included an excerpt from the CJEU judgment in Case C-233/23 Alphabet (Italian Android), asking students to consider the application of the Bronner criteria to open platforms.

The third essay question invited students to discuss the scope of the 'object' category under Article 101 TFEU, with reference to the CJEU judgment in Case C-176/19 P Commission v Servier. Given that this question is a staple of the course, it was the most popular among all essay questions.

The fourth and final essay question asked students to reflect on ecosystem concerns in merger control, following the Commission's analysis of Booking.com's acquisition of eTraveli.

The problem questions focused on the application of Article 101 TFEU, Article 102 TFEU, the EU Merger Regulation and the enforcement of competition law, with significant crossover between these areas in all four of the questions on offer.

Question five contained a multitude of issues, including potential restrictions under Articles 101 and 102 TFEU, given limitations on distribution, information exchange, and the acquisition of a majority of shares.

Question six similarly cut across several areas of the course, touching on price alignment, joint ventures, and enforcement powers under Regulation 1/2003.

Question seven probed candidates' ability to assess self-preferencing and exclusionary practices in digital markets, as well as the consequences of acquisition on minority shares in a target company.

Question eight mainly touched upon potential abuses of dominance under Article 102 TFEU, including loyalty rebates, tying, price discrimination, predation, and reduced interoperability.

## CONSTITUTIONAL LAW

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

Scripts were generally of very high quality, with about half scoring 70 or above. Many included thoughtful analysis and showed impressive knowledge of the course materials.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

The most popular questions were question 3 (on parliamentary sovereignty), question 2 (separation of powers), and question 8 (repeal of s 3 of the Human Rights Act 1998). The best answers to these questions explored the key concepts (eg the nature of sovereignty) in detail, and went beyond familiar debates (eg between the 'pure' and 'partial' theories of the separation of powers). Question 6, on devolution, was the least popular.

## CONTRACT

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

The overall quality across the cohort was pleasing, with many very good and a few truly exceptional scripts. The full classification range was represented, but the centre of gravity sat comfortably in the upper-second band: the majority of candidates produced competent, well-structured work that demonstrated a sound knowledge and understanding of contract law. Fails and Thirds were concentrated among scripts that were either substantively incomplete - failing to answer the required number of questions, or providing very short or rushed final answers - or that revealed fundamental misunderstanding of core ideas of contract law rather than mere thinness of detail.

The clearest differentiator between First-class and upper-second work was analytical engagement with the precise issues raised by the question. A recurring pattern emerged: fluent, heavily-referenced essays that narrated the law without confronting the question's actual tension tended to end up with upper-seconds, not Firsts. Genuine First-class answers took and defended a clear position on the hard analytical point a question was designed to elicit.

Incompleteness was a material factor in depressing marks. Candidates who did not answer the required number of questions, or who provided very short or evidently rushed answers to one or more questions, suffered markedly for it. This is an avoidable loss of marks; disappointing given that this problem is emphasised to students year after year, seemingly without impact.

Problem questions containing a non-obvious structural feature - such as a two-limbed quotation requiring both halves to be addressed (Question 1), or a signficant factual detail easily missed absent close reading (Question 12) - discriminated effectively between candidates of different calibre. Performance on these questions correlated closely with overall script quality, confirming that careful reading of the question or problem is a key skill.

**Suggested actions for candidates preparing for next year's examination:**

Candidates should engage critically with the precise wording of essay prompts, rather than writing a general essay on the broad topic a quotation evokes. Treating every essay question as an invitation to "write everything I know about X" limits otherwise well-informed answers to the upper-second band.

Candidates should engage completely with multi-part or multi-limbed questions, addressing every element raised by a quotation or every party identified in a problem, rather than the most familiar or obvious element only.

Candidates should pay careful attention to the chronology and sequence of facts in problem questions.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

**Question 1**

**Topic:** *Foakes v Beer* - practical benefit - promissory estoppel

This was among the most popular questions on the entire paper. The general standard was competent to good, with a significant proportion of First-class answers.

Candidates handled the doctrinal narrative well, tracing the line from *Pinnel's Case* through *Stilk v Myrick, Williams v Roffey Bros, Re Selectmove*, and *MWB Business Exchange v Rock Advertising* to Lord Sumption's observation that the rule is "ripe for re-examination." Many made effective use of academic commentary, including Chen-Wishart's collateral-unilateral-contract analysis, O'Sullivan's fungibility/exchange-economy defence, and Fuller's account of the functions of consideration.

A recurring and significant weakness was that many candidates engaged with only one limb of the quotation - typically the practical-benefit limb - and effectively ignored promissory estoppel, or *vice versa*, despite the quotation expressly invoking both doctrines. The question was deliberately two-limbed, and this structural feature discriminated well between those who engaged with the whole prompt and those who wrote a partial answer. There was also a widespread failure to confront the logical defensibility of the increasing-

pact/decreasing-pact distinction, and many candidates did not see that *High Trees* and *Foakes* are difficult to reconcile.

**Question 2**

**Topic:** Textualism vs contextualism in interpretation; Lord Hodge in *Wood v Capita* (essay).

A reasonably popular question, though less so than Question 1. The general standard was solid.

Good answers demonstrated command of the case-law trajectory from *ICS v West Bromwich Albion* through *Chartbrook*, *Rainy Sky*, and *Arnold v Britton* to *Wood v Capita*'s iterative/unitary approach, with awareness of the recent decision in *Sara & Hossein v Blacks Outdoor Retail*. Effective use was made of Lords Sumption's and Hoffmann's extrajudicial debate.

The principal problem was that many candidates did not engage with Lord Hodge's actual framing - that textualism and contextualism are complementary tools rather than warring paradigms - and instead defaulted to a generic "which approach wins" narrative that did not directly answer what was asked. Some answers included off-point material on incorporation of terms, and *Wood v Capita* itself was often underdeveloped despite being the natural focus of the quotation.

**Question 3**

**Topic:** The "fiction of fraud"; s.2(1) Misrepresentation Act 1967; *Royscot Trust v Rogerson*

This question attracted comparatively few attempts and was among the least popular essay options. Where attempted, the standard was generally competent.

Stronger answers made good use of *Royscot*, *Smith New Court v Scrimgeour Vickers*, *East v Maurer*, and *Derry v Peek*, together with the deceit measure of damages and the remoteness implications of the fiction.

The main weakness was thin engagement with the academic literature and the reform debate surrounding section 2(1); conclusions were often asserted rather than properly argued through.

A further, more specific omission was that many candidates did not actually construe the wording of section 2(1) itself. The provision deems a representor "so liable" - that is, liable as though the misrepresentation had been made fraudulently - and a good answer needed to engage with what that deeming provision does and does not achieve, rather than simply debating in the abstract whether the fiction of fraud is a good or bad policy. Too many scripts moved straight to the merits (is it fair to treat a negligent misrepresentor as though they were a fraudster?) without first pausing on the statutory mechanism that produces that result. Few candidates discussed the equivalent consumer law position which would have made for a nice point of comparison.

**Question 4**

**Topic:** Penalties; *Cavendish Square Holding v Makdessi*

This was the least popular question on the paper.

Where attempted, the standard was variable. Stronger answers engaged critically with the *Makdessi* "legitimate interest/out of all proportion" test, considered *ParkingEye*, and grappled with the tension between the modern restatement and the older *Dunlop Pneumatic Tyre* genuine pre-estimate approach.

Weaker answers described the Supreme Court's restatement without critically assessing whether it in fact delivers the greater certainty for commercial parties that it was intended to provide, which was the central question posed.

A further point worth noting is that, despite the test's language of "proportion" and "legitimate interest" inviting an obvious comparison with public law proportionality review, no candidate drew that analogy explicitly - a missed opportunity, since exploring the parallel (and its limits) would have provided a genuinely original angle on the certainty question. A minority of candidates, generally amongst the stronger scripts, did engage with a related and more fundamental point: that a flexible, discretion-laden test of this kind may sit awkwardly with commercial contracting specifically, where the parties value predictability and the ability to allocate risk in advance more highly than in consumer contexts, where a degree of judicial control over substantive fairness is traditionally more at home. This argument, where it appeared, was made well, but it appeared all too rarely.

**Question 5**

**Topic:** Lawful act duress; *Pakistan International Airlines v Times Travel*

A moderately popular question with a variable standard of answers.

Strong scripts engaged with *CTN Cash and Carry v Gallaher*, *Williams v Bayley*, *Borrelli v Ting*, and *Times Travel* itself - distinguishing the majority's "reprehensible conduct" approach from Lord Burrows' bad-faith model - and identified the no-reasonable-alternative requirement and the genuine commercial-certainty concerns raised by the recognition of lawful act duress.

A common and significant flaw, seen repeatedly, was an argument that lawful act duress is doctrinally unnecessary because the relevant conduct could be relabelled under existing categories. On inspection, this argument simply relocates the very question *Times Travel* was trying to answer - when does a lawful threat become illegitimate? - rather than answering it, and candidates who advanced it did not generally notice the circularity. Weaker answers were overly descriptive of orthodox duress categories, and several candidates were imprecise in distinguishing the majority and minority positions.

**Question 6**

**Topic:** Implied terms; *Marks and Spencer plc v BNP Paribas*

A reasonably popular question.

Good answers deployed the business-efficacy and officious-bystander tests accurately, engaged with *M&S v BNP Paribas*(Lord Neuberger) and the interpretation/implication debate arising from *Attorney General of Belize v Belize Telecom*, and showed awareness of recent authority (*Tesco Stores v USDAW*, *Barton v Morris*).

Recurring errors included: omission of the classic foundational authorities (*The Moorcock*, *Liverpool CC v Irwin*); thin academic engagement; and a failure to draw a clear

distinction between terms implied in fact and terms implied in law, which the question required.

**Question 7**

**Topic:** Good faith; relational contracts; *Yam Seng Pte v International Trade Corporation*

This question attracted comparatively few attempts.

Where chosen, the better answers engaged properly with *Yam Seng*, *Walford v Miles*, the subsequent relational-contracts line (including *Tesco Stores v USDAW* and *Bates v Post Office*), and Lord Leggatt's development of the doctrine, together with traditional English objections to a standalone duty of good faith.

Weaker answers were largely descriptive summaries of the case law rather than a sustained critical argument responsive to the prompt.

**Question 8**

**Topic:** Advise Ariadne: (a) Boris/clock; (b) David/basement; (c) Edgar/SecureIt alarm

By a wide margin the most popular question on the entire paper and attempted by a substantial majority of the cohort. Most were able to deal with the formation mechanics well.

Most candidates correctly identified the advertisement as an invitation to treat (*Partridge v Crittenden*), analysed the counter-offer point (*Hyde v Wrench*), and engaged reasonably with the instantaneous-communication/receipt rules for revocation (*Entores*, *Brinkibon*, *The Brimnes*). Most also correctly raised intention to create legal relations in the family context (*Balfour v Balfour*, *Jones v Padavatton*) and certainty of terms for David, and the Contracts (Rights of Third Parties) Act 1999 gateway for Ariadne's claim against SecureIt (*Nisshin Shipping*).

Three recurring and significant problems emerged. First, in part (a), many candidates treated Ariadne's reply as a counter-offer without pausing to ask whether it actually introduced a new term at all. That question turns on whether the default rule is that a seller must deliver goods to the buyer - it is not: the default position is that the buyer arranges collection. Candidates who spotted this were able to see that Ariadne's stipulation may have added nothing to the bargain, so that her reply was arguably an acceptance rather than a counter-offer; those who did not spot it tended to assume, without analysis, that any additional wording must be a counter-offer. Second, in part (b), there was a very common and consequential omission: candidates who correctly concluded there was no binding contract with David simply stopped their analysis at that point, without going on to consider his claim for a *quantum meruit*. This demonstrates the wisdom of always scrutinising a result reached by the application of strict legal rules to a 'common sense' test: will the law really allow David to labour away for nothing? Third, in part (c), the single most frequent omission was section 7(2) of the 1999 Act, which many candidates simply did not address when analysing the £500 limitation clause. Among the minority who did engage with section 7(2), extra credit was given to those who went on to suggest that a claim in the tort of negligence might in fact be the more promising route around the contractual cap, knowledge of the interaction between contract and tort being part of the contract syllabus.

**Question 9**

**Topic:** Advise Greg: Fiona/Greg variation and Greg/Ian part payment

Also a very popular question, second only to Question 8 in terms of popularity. The general standard was good.

Most candidates correctly applied *Stilk v Myrick* and *Williams v Roffey Bros* practical benefit to the variation, engaged with economic duress (illegitimate pressure, no reasonable alternative), and correctly worked through *Foakes v Beer*, promissory estoppel, and *D&C Builders v Rees* (clean hands) for the part-payment scenario, generally reaching the correct conclusion that Ian could recover the balance owed.

Weaknesses included: a recurring and somewhat misdirected detour into treating Greg's deliberate underbid as an actionable misrepresentation, rather than addressing it as a straightforward consideration/duress problem; frequent failure to spot the orthodox fresh consideration available on the facts (Greg's promise to hire additional workers) as an alternative route to practical benefit; a general failure to notice that, because Greg in fact finished on time, Fiona suffered no actual loss from the relevant breach, meaning any damages were nominal at best; omission of *Re Selectmove* from the part-payment analysis; and some confusion between lawful act duress and ordinary (unlawful act) duress.

**Question 10**

**Topic:** Advise Julian: 3D printer, consumer/trader classification, exclusion clauses, misrepresentation

A popular question with a variable standard of answers.

Good scripts addressed the consumer/trader classification under the Consumer Rights Act 2015 (s. 2(3)), worked through misrepresentation under section 2(1) of the Misrepresentation Act 1967 and the *Royscot* fiction of fraud, and engaged with exclusion clauses under both UCTA and section 31 of the CRA.

The most significant recurring mistake was that many candidates committed to a single classification (usually treating Julian as a trader) rather than systematically running both the consumer and business routes, which the facts invited. A further common and important omission was the failure to recognise that the hidden, punitive self-destruct mechanism might itself be a breach of the implied term of satisfactory quality (s.9 CRA / s.14(2) SGA), quite apart from any misrepresentation claim; several candidates as a result wrongly concluded that the relevant exclusion clause remained effective, overlooking that section 31 CRA would render it void. The 2008 Regulations (which were deemed to still be in force at the time of the Examination, were frequently omitted altogether, and the remoteness analysis in relation to Julian's lost profits was often thin.

**Question 11**

**Topic:** Advise Sarah, Ted, Professor Umberto and Wendy v Voldemort Press - the *Festschrift*

A moderately popular question.

Strong answers correctly classified the relevant clause as an innominate term relying on *Hong Kong Fir Shipping*, addressed repudiatory breach and, in the better scripts, affirmation and legitimate interest (*White & Carter v McGregor*), and engaged with third-

party rights for Professor Umberto under the 1999 Act (s.1(3)) together with distress/non-pecuniary damages (*Addis*, *Farley v Skinner*, *Jarvis v Swans Tours*, *Watts v Morrow*).

The most consistent weakness was that Wendy's position was frequently under-analysed or simply ignored, even though her claim raised a distinct and testable set of issues. The performance-interest/cost-of-cure analysis (*Ruxley Electronics v Forsyth*, *Radford v de Froberville*) was often missed entirely. Some candidates misapplied frustration to what was, on the facts, a straightforward late-delivery scenario, and many failed to see that an express "time is of the essence" clause would elevate the relevant term to a condition and render the publisher's termination lawful - a point that was central to the variation (and rather obviously signposted).

**Question 12**

**Topic:** Margot/tapestry and Neville/Oliver display case

A popular question that sharply divided the field, producing some of the widest variation in quality seen on the paper.

Only a significant minority of candidates correctly spotted the central timing point: the damage occurred before either contract was formed. Frustration was therefore inapplicable to the Margot contract (*Amalgamated Investment & Property Co v John Walker*), which instead fell to be analysed under common mistake and section 6 of the Sale of Goods Act 1979 (perishing of specific goods: *Couturier v Hastie*, *Bell v Lever Bros*, *Great Peace Shipping v Tsavliris*). Many candidates who, to their credit, spotted that this was all about common mistake were blissfully unaware of section 6 SGA, unfortunately.

Most candidates analysed both contracts as cases of frustration, missing the pre-contract timing point and the application of section 6 SGA entirely. This was the single most consequential recurring analytical error on the paper. That said, credit was given even where the analysis was inevitably entirely misguided: candidates who proceeded on the mistaken premise that one or both contracts were frustrated were rewarded for correctly working through the consequences of that analysis and for competently applying the provisions of the Law Reform (Frustrated Contracts) Act 1943, even though the anterior premise was wrong. Where frustration was not found to discharge the contract or mistake not found to render the contract void, the damages analysis was often rushed, and many candidates overlooked that the "non-refundable" deposit clause was liable to be void under section 31 CRA, or in any event that the deposit was recoverable on the grounds of a total failure of consideration. This question, more than any other, confirmed that careful reading of the chronology of facts in a problem question is the essential first step in problem-question technique.

## COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

This was the second year with the new assessment format, consisting of two take-home essays, one on a copyright topic and the other on trade marks, to be completed over a week. The examiners were mindful of the potential for generative AI assistance and designed questions that, it was hoped, reduced the availability of ready-made answers.

These questions were also designed to give candidates the opportunity to think and research beyond the syllabus, albeit that all topics were recognisably situated within the material covered during the course. Some questions therefore rested on pending, unresolved litigation (Pelham, IKEA) while others encouraged specific, critical engagement with very recent developments (Iconix) or required candidates to reimagine old law in a new context (Creation Records). It was pleasing to see many candidates demonstrate their capacity for conducting independent research as well as developing original analytical perspectives. Given the assessment format, descriptive answers summarising familiar materials fared less well.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

There was a reasonably even spread of attempts between each question.

**Q1** was attempted by 14 candidates. Better essays weighted the analysis so that they spent adequate time on the second (normative) part of the question (including addressing counterarguments) and engaged closely with the interaction between UK and EU law. They also drew from a good range of case law and academic commentary. A common issue amongst essays that performed less strongly was a failure to consider the conflict between UK and EU law; in fact, some candidates did not even cite *WaterRower*, which was a significant omission.

**Q2** was attempted by 10 candidates. This question asked candidates to discuss a quote from the AG opinion in *Pelham II*, which in turn required them to have understood not only the immediate context of the quote, but the broader ramifications of the AG's proposed approach to pastiche. The answers to this question were very strong, with candidates showing skill in both their descriptive and evaluative analysis.

**Q3** was attempted by 8 candidates. There were a number of solid answers to this question that described key arguments and case studies from Giblin and Doctorow's book, and discussed ideas covered in the fifth copyright seminar. Better answers also drew from other elements of the course and supplemented the seminar materials with additional reading to add further depth and insights to their analysis.

**Q4** was attempted by 7 candidates. There were a number of potential sub-issues within Question 4, including whether characters should enjoy separate protection from the work in which they appear, whether exceptions should extend to use in 'subversive' contexts, and whether moral rights have some work to do. The examiners had no fixed formula in mind, so long as the essay was responsive and relevant. Overall, the essays on this topic demonstrated good knowledge of copyright law. Many cited a good deal of authority. The main issue was responsiveness: at times answers strayed too far from the question by not remaining focused on characters in subversive contexts.

**Trade Marks**

**Q5** was attempted by 5 candidates. It asked whether trade mark defences needed to be reformed to better accommodate repair and recycling. Better answers began by exploring the extent to which trade mark law ought to facilitate the control of product markets, including aftermarkets, in light of trade mark theory. More forensic answers identified how circular economy activities would infringe in the first place. The best responses explored whether the exhaustion defence would remain available when a

product was materially altered to serve a different purpose, precisely how the honest practices proviso constrained a more generous reading of the referential use or descriptive use defences and whether circular economy norms could be introduced into the interpretation of the proviso. Those who merely mapped out the limitations of current defences were marked accordingly.

**Q6** was attempted by few candidates but they were good attempts. Based on a 'live' dispute before the CJEU in *IKEA*, it required candidates to assess whether the specific questions referred provide courts with an adequate roadmap to appropriately reconcile expressive interests (including parodies) with proprietary interests in marks. The candidates appropriately focused not only on the potential scope of due cause and other defences but also on whether the infringement thresholds, such as use in relation to goods or services or in the course of trade were met by expressive (political) uses. Candidates were rewarded for productively exploring whether a due cause defence (pre-loaded with criteria from past cases) was preferable to fashioning a new, stand-alone parody defence.

**Q7** was attempted by 13 candidates. It required candidates to engage with the extent to which agentic AI is inhibiting or even entirely supplanting consumer agency, since consumer decision making defines the scope of trade mark protection. If trade marks no longer convey information to consumers in the same way – they do not perform their functions – what are the implications for trade mark protection? More thoughtful responses explored the scope for the average consumer – as a hypothetical legal construct – to continue to operate notwithstanding agentic AI. Candidates who emphasised the relevance of (post-sale) engagement with brands and the potential for dilution or post-sale confusion protection were also rewarded. Those who developed a nuanced response, identifying those retail sectors where agentic AI would be relevant performed well. On the other hand, candidates who directed their attention to the impact of *AI in general* on trade mark law performed relatively less well, since the question had a clear focus on agentic AI.

**Q8** was the most popular, being attempted by 19 candidates. It required candidates to evaluate the (i) normative plausibility and (ii) doctrinal coherence of post-sale confusion (PSC), as developed by the UK Supreme Court in *Iconix*. Answers which first identified the specific features of the version of PSC adopted in *Iconix* (for e.g. no requirement for materiality of harm, with mere confusion being sufficient) before addressing these two aspects were rewarded. Candidates explored a range of issues under the normative plausibility of PSC limb, including the overlap with dilution (and unfair advantage in particular); the risk of stifling otherwise lawful competitive substitutes and copies; and the extent to which speculative claims would be encouraged, wasting institutional resources. In terms of doctrinal coherence, the best answers distinguished between the existence of precedents recognising PSC and whether those precedents could be reconciled with other cases (e.g. *Picasso*) or rules (the infringement test calls for a *consumer,* not any bystander) that seemingly required point of sale confusion. In other words, the mere existence of PSC precedents was not sufficient to establish doctrinal coherence. Some of the best responses creatively engaged with the 'realistic and representative' post-sale context proviso, that is gradually being developed by courts to curtail the breadth of *Iconix*.

## CRIMINAL LAW

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

The Final Honour School Criminal Law paper comprised seven essay questions in Part A and four problem questions in Part B. Candidates were required to answer at least one essay question and at least two problem questions, completing four questions in total, except for DLS candidates, who answered three questions.

Answers were generally of a good standard. Most candidates showed knowledge of the relevant legal principles and were able to identify the main issues raised by the questions. Higher marks were awarded to answers that combined accurate statement of authority with structured application and a willingness to engage with the particular difficulty posed by the question. In problem questions, the strongest answers were not merely comprehensive, but selective and analytical: they identified the real pressure points in the facts and addressed them directly. In essay questions, the best answers offered an argument rather than a survey.

A recurring point worth emphasising is the importance of precise statutory engagement. Where statutory provisions are provided, candidates should be expected to use their language carefully. Generalised accounts of the law, or loose paraphrases of statutory tests, were less successful, particularly where the question itself turned on the detail of the relevant provision.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

The most popular questions included two problem questions and two essay questions.

**Essay Questions**

Question 2, on the partial defences to murder, produced some competent answers. However, merely knowing and accurately outlining the partial defences was not sufficient to attract high marks. The question required candidates to assess whether the defences are principled and coherent. Stronger answers therefore moved beyond exposition and offered an argument about the structure and justification of the law. It was unfortunate where candidates failed to appreciate the distinction between a partial defence to murder and the conditions of involuntary manslaughter.

Question 5, on foresight and intention after Jogee, produced some very good answers. Candidates who attempted an original argument were very welcome. The best answers engaged directly with the proposition in the question and considered the conceptual distinction between foresight as evidence of intention and foresight as intention itself. Less strong answers tended to recite the authorities without explaining what was at stake in the distinction.

**Problem Questions**

Question 8 was the most popular problem question. It had a knotty causation issue at its heart, and candidates who teased that issue out carefully were rewarded. The best answers addressed the possible significance of the victim's vulnerability, refusal of treatment,

negligent medical intervention, and later sedation, rather than treating causation as a mechanical checklist. Comprehensive treatment of potential offences across sections 47, 20 and 18 of the Offences Against the Person Act 1861 was welcome and relatively rare. Candidates should also be careful not to treat Woollin as a catch-all response to factual or legal uncertainty. It is a doctrine concerned with intention, not a general solution whenever a problem question contains uncertainty.

Question 10 required accurate use of the Sexual Offences Act 2003 in order to achieve good marks. Some candidates showed good instinctive understanding of the issues raised by consent and withdrawal of consent, but weaker answers were let down by poor handling of the statutory framework. This was especially unfortunate given that the relevant statutory provisions were provided. Candidates should be precise: in this area, small differences in statutory wording can matter significantly to both offence definition and application.

## CRIMINOLOGY AND CRIMINAL JUSTICE

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

The overall standard of the scripts was high, with a relatively homogeneous distribution of marks across the cohort. Marks ranged from **64 to 74**, with a mean of **69.6** and a median of **68**, indicating a consistently strong performance among candidates.

Overall, the essays were well written and demonstrated that students had developed the ability to construct criminological arguments grounded in both theoretical and empirical literature. Across the scripts, students showed a good understanding of criminology as an interdisciplinary field, drawing effectively on scholarship from sociology, psychology, feminist studies, postcolonial studies, migration studies, and law.

Although twelve questions were available, candidates concentrated their answers on seven of them. The most frequently selected questions reflected both core criminological topics—including sentencing, policing, victimisation, and imprisonment—and areas that have become increasingly prominent within contemporary criminology, particularly border control, feminist criminology, and decolonial criminology.

This pattern is not unusual in an examination offering a broad range of topics. Many students selected well-established areas of criminology, which may reflect greater familiarity with these longstanding debates. At the same time, it was particularly encouraging to see a high level of engagement with more contemporary areas of criminological scholarship. The quality and number of responses to these questions suggest that students valued these perspectives and were able to engage confidently with emerging debates in the field.

A notable strength across the scripts was students' ability to engage critically with competing theoretical perspectives rather than simply describing them. Many candidates successfully combined doctrinal, empirical, and socio-legal perspectives, producing well-balanced and analytically sophisticated essays. There was also clear evidence that students were able to synthesise material from different parts of the course rather than treating topics in isolation.

One area for continued development is encouraging students to engage confidently with the full breadth of the syllabus. It may therefore be beneficial to continue encouraging students

to prepare across the entire syllabus rather than focusing primarily on the topics they perceive as most familiar.

**Suggested actions**

- Continue emphasising essay writing as an exercise in developing critical arguments supported by both theoretical and empirical literature.
- Maintain the interdisciplinary approach to teaching, as students demonstrated a strong ability to integrate perspectives from law, sociology, psychology, feminist, decolonial and migration studies.
- Continue maintaining a balance between teaching foundational criminological debates and introducing students to contemporary critical perspectives.
- Continue embedding feminist, border, and decolonial perspectives across the curriculum, as students demonstrated a high level of engagement with these areas.
- Continue encouraging students to engage confidently with the full range of topics across the syllabus so that a broader distribution of examination questions is attempted.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

**Question 1**

**Discuss the principal limitations, practical and ethical, of the sentencing philosophy which emphasises general deterrence.**

This question was generally answered well. Most candidates approached it through a legal and criminological analysis of sentencing, demonstrating a solid understanding of the principal sentencing theories and their normative foundations. Stronger answers balanced doctrinal discussion with empirical evidence on the effectiveness of general deterrence and critically evaluated both its practical limitations and ethical implications.

**Suggested action:** Continue encouraging students to integrate empirical evidence alongside normative sentencing theory when evaluating the effectiveness and legitimacy of different sentencing philosophies.

**Question 3**

**How, if at all, does feminist criminology reconfigure understandings of crime and criminal justice?**

This was one of the most popular questions. Candidates demonstrated an excellent understanding of the core contributions of feminist criminology and were generally able to move beyond descriptive accounts towards critical engagement. Many essays effectively incorporated critiques concerning race, intersectionality, and the historical limitations of mainstream feminist criminology, drawing productively on material covered throughout the course. The strongest scripts demonstrated an ability to connect feminist criminology with broader debates concerning power, inequality, and justice.

**Suggested action:** Continue emphasising intersectionality and critical feminist perspectives while maintaining strong links with race, coloniality and broader debates on structural inequalities.

**Question 7**

**Is stop-and-search a legitimate policing practice?**

This question produced a number of thoughtful and well-argued essays. Many candidates drew effectively on contemporary examples from the UK and critically examined both the legal basis and practical consequences of stop-and-search powers. Stronger answers moved beyond the question of legitimacy itself to consider possible reforms and safeguards, demonstrating an appreciation of the policy implications surrounding policing practices.

**Suggested action:** Continue incorporating contemporary case studies and policy debates (outside the UK), as students demonstrated a strong ability to connect theoretical discussions with current policing practices.

**Question 8**

**What role should victims play in the criminal process?**

Candidates answered this question well by drawing on both theoretical and empirical material discussed during the course. Several essays creatively incorporated debates surrounding restorative justice and victim participation, successfully linking these discussions to wider questions concerning the aims and legitimacy of criminal justice.

**Suggested action:** Continue encouraging students to make connections across topics, particularly between victimology, restorative justice and broader theories of criminal justice.

**Question 9**

**What, if anything, do the pains of imprisonment tell us about the purpose of imprisonment?**

This question generated several strong responses. Candidates engaged critically with the literature on the pains of imprisonment and demonstrated a good understanding of how the concept has evolved within criminological scholarship. Rather than treating the pains of imprisonment as a fixed concept, stronger essays used the literature to problematise its meaning and examine what imprisonment reveals about punishment, legitimacy, and the lived experience of incarceration.

**Suggested action:** Continue encouraging students to engage critically with foundational criminological concepts and to examine how they have been challenged and expanded by more recent scholarship.

**Question 10**

**Is the exercise of border control a form of penal power?**

Overall, this question produced particularly interesting essays. Candidates successfully engaged with debates concerning the relationship between criminal law and administrative law through discussions of immigration detention, while others expanded their analysis to

include deportation. These topics were well covered during the course, and many candidates demonstrated an ability to synthesise theoretical debates with contemporary empirical examples. The strongest answers critically examined the concept of penal power and explored the increasingly blurred boundaries between criminal justice and migration control.

**Suggested action:** Continue integrating border criminology within the broader criminology curriculum, as students demonstrated a strong ability to connect migration governance with wider theories of punishment and state power.

**Question 11**

**To what extent does mainstream criminology reflect the perspectives of the Global North, and what are the implications of presenting these perspectives as universal?**

This question was answered by a considerable number of candidates and produced some of the strongest essays in the examination. Many students successfully integrated material from across the course, demonstrating a sophisticated understanding of the intellectual trajectory from mainstream criminology to critical, postcolonial, and decolonial perspectives. Strong answers engaged thoughtfully with the epistemological assumptions underpinning dominant criminological traditions and critically reflected on the implications of treating Global North perspectives as universal.

**Suggested action:** Continue embedding decolonial scholarship throughout the curriculum rather than presenting these perspectives as standalone topics, as students demonstrated a strong ability to use them to critically interrogate mainstream criminological assumptions.

It is also worth noting that some questions attracted relatively few responses, including those on intersectionality, historical approaches to criminology, citizen journalism and representations of crime, and emotions in crime and criminal justice. These topics represent important and, in some cases, relatively newer directions within criminological scholarship. While candidates may have felt more confident selecting questions on well-established areas of criminology, such as sentencing, policing, imprisonment, and victimisation, these emerging perspectives are increasingly shaping contemporary criminological research and debate. Their lower uptake should therefore not be interpreted as a weakness of the questions themselves, but rather as an indication of the continuing importance of embedding these perspectives throughout the curriculum as they become more established within the discipline.

## EMPLOYMENT LAW

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

Nine candidates sat the Employment Law paper this year (eight FHS and one M.Jur.). There were four First Class scripts and five Upper Second Class scripts. On the whole, candidates demonstrated a sound knowledge of the basics of employment law and many had interesting ideas about problem areas and possibilities for reform. With the exception of

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| question 1, all questions attracted at least one answer, with the most popular questions being 3 (worker), 4 (minimum wage), 6 (unfair dismissal) and 10 (right to strike). |
| **Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions). |
| Given the relatively small cohort this year, it would not be appropriate to comment in detail on each question, but there are three points to note which may be useful for students in future years. First, when tackling any question on status, such as question 3 this year on the 'worker' definition, it is important to read the question carefully. Some candidates answered this question in relation to the 'employee' definition, which was not mentioned. Second, in answering questions on topics with significant statutory content, such as the National Minimum Wage, it is useful to be clear about which elements of the law under discussion are in the statute and which are the result of judicial interpretation. Third, some candidates answering the unfair dismissal question argued strongly in favour of replacing the current 'band of reasonable responses' test for the fairness of a dismissal with a proportionality test without considering the extent to which such a test can be said to be part of the law already, for example, when a dismissal engages rights under the Human Rights Act 1998. |

**ENVIRONMENTAL LAW**

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| **General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions). |
| Overall, as in previous years, the quality of the scripts was good. Stronger answers were those that paid acute attention to the question and drew on the detail of relevant detail from the material. All questions were addressed and many candidates did the non-compulsory problem questions. |
| **Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions). |
| Q1 – Good answers engaged with the detail of the post-Brexit legal framework<br><br>Q2 – A question that allowed candidates to use material across the course to evaluate the nature of the subject.<br><br>Q3 – A popular question with stronger responses acknowledging that the first question had a broader scope than the second question. Good answers displayed excellent analytical grip of the legal framework.<br><br>Q4 – A question that required candidates to engage with the set of different legal concepts that the reasoning of a recent SC court gave rise to.<br><br>Q5 – This question requires engagement with the Climate Change Act 2008. Stronger answers showed mastery of the detail of that Act. |

Q6 – A popular question. Stronger answers engaged with the layers and different facets of legal detail.

Q7 – Another popular question in which stronger answers engaged both with the legal framework and the complexity of the case law.

Q8 – A hybrid problem question. Stronger responses had a good grip on the legal detail of both Aarhus and its implementation in the UK.

Q9 – A question that leant itself to methodically working through the planning law framework.

Q10 – A question that required issue spotting across a range of different legal regimes.

**EUROPEAN UNION LAW**

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

Overall, the scripts showed good understanding of the core elements of the course, and at the top end some highly informed and impressively critical analysis. Relatively few candidates performed very poorly and most were able to offer sensible analysis on key issues in answer to most questions. The overall standard seemed to be solid with many strong performances on many individual questions, as well as some strong scripts overall.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

Overall, there were many high quality answers to the questions set on this paper, with some extremely strong performances at the top end and relatively few truly weak scripts. Notable weaknesses included the usual problem of attempting to squeeze in a pre-prepared answer to a question other than the one set on the relevant topic, as well as a tendency sometimes to offer narrow coverage of the case law and little or no use of secondary literature.

**Q1**. This question on the case law of the Court on national remedies and procedures was attempted by a goodly proportion of candidates, and received a mixture of answers. Some attempted to re-hash pre-prepared answers on the topic and squeeze them into the question set, others kept an overly narrow focus on very few headline cases, but pleasingly a good number made a more direct (and typically more successful) attempt to deal with the elements of the question in a critical fashion. Higher marks went to those who were able to combine a critical analysis with an acknowledgment of the breadth of the case law and the national provisions which it has addressed.

**Q2**. The approach of the EU's courts to standing in actions for annulment has generated much comment and criticism, and this question attempted to provoke candidates to think carefully about which developments (case law or Treaty reform) have contributed to any loosening of the standing criteria. Some candidates seemed content to stop at the Treaty of Lisbon, without any real discussion of how the more recent cases have addressed the reformed provisions of Article 263 TFEU, and they did not score highly. Those who were able to set up the development of the case law succinctly, clearly and accurately, and

address both the impact of the Lisbon reforms and the subsequent case law of the Court, using the literature to enrich their answers, were well rewarded with strong marks.

**Q3**. The tensions created by the doctrine of the primacy of EU law when ranged against national constitutional considerations formed the basis of this essay question, which was attempted by a significant proportion of candidates. Strong answers were able to situate the quotation in the question securely in the EU and national court jurisprudence on primacy issues, addressing questions of pluralism and dialogue, and the role of the CJEU in achieving an acceptable balance between EU law and national constitutional claims. Weaker candidates did not seem aware of the pluralism debate or much of the national case law responding to EU law's claims to primacy, or tried to answer another question on these issues of hierarchy which they wished the examiners had asked them instead.

**Q4**. The scope test for freedom of movement restrictions in goods and services has generated extensive academic commentary and fluctuating case law over the years, and this question asked candidates to consider whether a simpler overarching approach to what amounts to a trad restriction would render free movement law more 'effective'. Stronger answers paused to consider what metric or yardstick we might use for assessing such 'effectiveness', and then sought to apply this when analysing the ebb and flow of the Court's case law in these fields. Top answers were able to include a decent amount of discussion on services too, while weaker candidates stuck narrowly to goods and were unable to offer an accurate and nuanced account of the evolution of the case law from *Dassonville* and *Cassis*, through *Keck* and *Gourmet* to the more recent *Trailers* and *Jetskis* judgments. Those who could address the case law and literature in critical detail scored highly.

**Q5**. This was a relatively popular question, and it generated some pleasingly acute answers which really sought to pick apart the quotation given and apply its different elements to the case law and the provisions of the EU Charter of Fundamental Rights. The strongest candidates showed care and nuance in their discussion of issues of scope, justifications and horizontality issues, while weaker scripts satisfied themselves with rather general discussion and assertions about EU law and fundamental rights, without getting to grips with the detail of the question or the legal materials.

**Q6**. This question received a number of pre-prepared essays which often simply did not receive the re-orientation needed to address the way in which this question about the EU's legislative competence was framed. Strong candidates immediately spotted the need to assess what were the key 'constitutional foundations' of the EU to which the question referred, before assessing the approach taken by the CJEU to the scope of the EU's competence to act. Weaker candidates made some general observations about cases like *Tobacco Advertising* and did not touch upon conferral, subsidiarity or proportionality in their answers.

**Q7**. There were some extremely pleasing answers to this question, where candidates engaged critically with the precise focus of the quotation in the question and were able to agree and/or challenge its premises and assessment by reference to a good range of case law and secondary literature. Weaker candidates contented themselves with a brief discussion of *Foglia* v. *Novello* and a few related cases or issues, without taking on abord the more recent developments in cases like *CIM* and the critical discussions in the literature about the role of national courts and their interaction with the CJEU.

**Q8**. This question on horizontal direct effect endeavoured to focus candidates' minds upon the broader duty on national courts to give full effect to EU law from *Poplawski*, and how that relates specifically to the Court's range of case law which has been criticised by many

commentators as inconsistent and hard to justify. Those who engaged directly with the legitimate expectations idea referred to by Gallo in the quotation, and then used this critically to examine a range of areas (state/public bodies, the interpretive obligation, no horizontal direct effect for directives, general principles, indirect horizontal impact in cases like *CIA Security*, etc) scored highly, especially when using the literature effectively to develop their answers. Weaker candidates ignored the legitimate expectations dimension, and/or offered only narrow answers which did not engage with the range of issues at stake.

**Q9**. The first of the two problem questions attracted a fair number of candidates, and many were able to address the range of issues concerning direct effect, interpretative obligation, national remedies and procedures and potential Member State liability issues under *Francovich* etc very clearly and effectively. Others mistook this for a free movement question and said little or nothing about the key issues raised by the facts given. Strong candidates were able to see issues of vertical and horizontal direct effect, the potential to interpret the national legislation's pre-existing requirements in the light of effectiveness and also considered possible State liability for failure to implement the Directive.

**Q10**. This problem question raised common issues of the recognition of qualifications and experience gained in one Member State when seeking to work or establish oneself in another Member State. It also raised questions with regard to the entitlement of EU nationals to various types of social support from a host Member State when operating as work-seekers or as EU citizens. Stronger candidates – of which there were many – were able to apply both the free movement of workers and establishment case law (like *Vlassopouolou*) and its impact upon qualifications to both parts of the question, as well as the Citizens Residence Directive 2004 concerning receipt of social advantages for family members. Weaker candidates considered this to be a national remedies question or to address services, and did not grapple with the substantive issues at hand.

**FAMILY LAW**

| **General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions). |
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| This paper was generally well done. There were some very strong answers showing a good knowledge of family law, but combining with an understanding of the wider theoretical issues. Some of the weaker candidates showed a lack of appreciation of the subtleties of law (e.g. in relation to the status of parenthood). There is sometimes a danger in studying family law, that the broad concepts can appear familiar and readily understandable, but these can be much more complex than they initially appear. Strong candidates will carefully unpack these concepts. |
| **Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions). |
| Generally there was a reasonable spread of answers to the questions, although the questions on the law and message sending (question 8) and (somewhat surprisingly) children's rights (question 9) were less popular. Question 1 on domestic abuse was answered reasonably well with most candidates being able to describe the concept of coercive control and how it has come to be a key concept within the domestic abuse |

literature. Not many candidates sufficiently explored whether coercive control outside the domestic sphere should be seen as different from domestic abuse. Too many candidates when answering question 2 on parenthood failed to adequately unpack the concept of parenthood in the law, particularly the distinction between parental responsibility and parenthood. Question 3 on marriage was generally not well done, with answers focussing on whether marriage was a contract, but not addressing in detail the other claims in the quotation. Question 4 on child protection and question 5 on financial orders were generally well done, with candidates showing a good understanding of the theoretical material as well as the case law. Answers to question 6 on the zone of parental discretion were more mixed. Weaker answers primarily focussed on medical issues and failed to consider whether these were necessarily reflective on other areas of parental decision-making. Question 7 was generally well done, with most candidates, understandably, focussing on domestic abuse and disputes over children.

**FEMINIST PERSPECTIVES IN LAW**

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

The paper followed the format from previous years where candidates were required to answer one of three questions from Part A, which covered broad theme of feminist thinking; and one of eight questions in Part B, which focussed on one of the particular seminar topics. While this might appear to recommend a sharp division between the general theories, and specific topics, most candidates did well to show when answering a Part A question, there were direct application in individual seminar topics. Similarly, in answer Part B questions to recognise the issues reflected broader themes in feminist thought.
The strongest answers showed a sensitive understanding of disputes and tensions within feminism and sought to explore how these could be used as a resource, rather being seen as simply a cause of division. Weaker answer were prone to take a more strident approach and fail to show understanding for why issues have provoked disagreements among feminists.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

Candidates answered the Part A questions well, with some outstanding answers. There were strong answers on all three questions. The most popular question was 3., which explored the question of whether law was necessarily gendered. The second question, considering issues around feminist critiques of "colonial rescue narratives". This was a challenging question, but generated some strong answers. The first on bodily difference and cultural construction was more popular and produced a wider range of answers. The strongest unpacked the terms 'bodily difference' and 'cultural construction' in powerful ways.

The Part B answers were generally well answered, especially when candidates drew on the broader feminist theory to explore the specific issues at hand. It was pleasing to see a reasonable spread of answer across the seminar topics. It is important that feminist theory is able to address the kinds of issues that come to court and to contribute to legal debates in those areas and it was pleasing to see candidates undertake that kind of work. The essay question on 'maternal-foetal' conflict was popular, with the best candidates challenging the conflict model from a feminist perspective. It was pleasing to see candidates writing on

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| issues ranging from intellectual property to the law on public spaces, recognising the power of feminist thought in its infinite variety. |

## HISTORY OF ENGLISH LAW

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| **General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions). |
| Students generally performed very well. 35% of candidates obtained a first class mark, only one mark below 60 was awarded.<br><br>All questions were answered, but questions about the common law as case law and the civilian tradition in English legal history were only answered once each. Candidates instead chose the questions directed to particular topics within the course. |
| **Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions). |
| In general, answers received higher marks when there was clear argument and analysis. While description is always necessary in legal history, stronger answers featured less description and clearly directed it to the analysis, rather than repeating material from textbooks and lectures. Good use and engagement with primary sources was rewarded.<br><br>Higher marks were also awarded to answers which were well directed to the question set, rather than the general topic. For example, a question asking about whether trespass on the case was 'new law' could profitably include material on the debates about why trespass on the case was introduced, but not all aspects of that debate are obviously relevant to the question. Weaker answers might either treat it as a question about why trespass on the case was introduced or lose focus on the particular question later in the answer and come to discuss issues that were not obviously relevant. |

## INTRODUCTION TO COMPARATIVE ASIAN LAW

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| **General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions). |
| 11 students sat this option. Overall, the scripts were strong. Students demonstrate ability to integrate knowledge of various seminars on Asian comparative law. The scripts also demonstrate students' critical thinking about Asian legal issues. Some scripts include original ideas. |
| **Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions). |
| 1. Asian law convergence. Good scripts arguing for yes point out the increasing similarity of legal systems; explain the reasons for this while referencing the seminars on legal diffusion, |

regionalization, internationalization; and reflect on lessons. Asian law is increasingly operating in an international legal landscape; interaction of Asian legal systems; harmonization of Asian laws in commercial area. Good scripts arguing for no point out the increasing difference of legal systems; explain the reasons for this while referencing the seminars on tradition, religion, colonialism; and reflect on lessons, e.g. formal convergence vs functional divergence.

2. Confucian law. Good scripts explain features of Confucian ethics (hierarchy, collectivism, relativism); reflect in Chinese legal codes and practices, give some examples of legal rules and legal cases particularly in family and criminal areas; and reflect on the nature of Chinese traditional law as Confucian law. Weaker scripts discuss the Confucian influence on Chinese traditional law but do not reflect on the nature of Chinese traditional law as Confucian law.

3. English Law in Singapore. Good scripts explain how English law were introduced into Singapore during the colonial period; the reasons for this; and the reasons for the continuity of English law in Singapore after independence (e.g. stability, elite interests, education…); and discuss the adaption of English law to the Singapore context.

4. Authoritarian law. Good scripts discuss the common function of authoritarian law in China and Singapore (regime security, social stability, economic development, legitimacy), and explain the reasons for this function (e.g. single and dominant party rule; Confucian legacy…)

5. Law and Development. Good scripts discuss the role of law in economic development in relevant Asian countries, give some specific examples, integrate knowledge of other seminars, such as authoritarian law and colonial law.

6. Legal transplants: Good scripts demonstrate some examples of legal transplantation of American corporate in Japan after WW II, and discuss some general lessons for legal transplants, e.g. the long process, adaption to local condition, the necessity of local people, and limitation of the concept of legal transplants and the alternative concepts e.g. legal diffusion.

7. Regional Law. No scripts respond to this question.

8. International law. Good scripts indicate the different approaches (normative commitments and pragmatic considerations) in judicial engagement with international law in Japan and China; and discuss some lessons with reference to the concept of "comparative international law", e.g. judicial engagement with international law is shaped by the nature of domestic law.

**JURISPRUDENCE**

| **General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions). |
|---|
| The distributions of questions answered seemed fairly normal – no single question was clearly more or less often chosen. The distributions of marks was also roughly as expected. While there were a few firsts, none of them showed the kind of excellence that calls for special attention (for a couple, the marker thought there may be, but after second-marking, |

it was agreed that this is not the case). A common problem with many exams is that instead of focusing on the precise question (or on the part of it that they want to focus on), they think of each question as an invitation to tell their usual story about the relevant topic. Such answers are never good, nor is their grade.

As things stand, there is no maximal number of words for the question. This has two undesirable effects: First, it unfairly advantages quick-typers. Second, it gives the students the impression that "the more, the better". It may be a good idea to reconsider this, and to introduce an upper limit. Doing so will eliminate (most of) the unfair advantage of fast typers, and will perhaps nudge the students to spend more time thinking and planning, and perhaps also to focus on the main things.

**LAND LAW**

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

There was some lovely work in this year's scripts where candidates had given considerable thought to puzzles and questions in land law. There was also often a good knowledge of caselaw, including recent cases, which the examiners were pleased to see.

Few candidates attempted four problem questions; most answered a mix of essay and problem questions.

A few concerns did emerge regarding references to the doctrine of notice and ss. 3-6 LRA 2002 (first registration of title) which were not relevant and suggests that some candidates are not comfortable with registration and the rules for priority.

Another concern was some candidates answering questions based on principles, without reference to caselaw. A thorough doctrinal analysis was expected and rewarded. There was also often a lack of depth of analysis: sometimes cases and statutory provisions were mentioned but not considered, as if citing them was a sufficient answer to the question set. Candidates need to consider how a case is relevant to e.g., an issue in a problem question, does it assist the analysis, or does it create complexity? In the easements problem question, this was often done well e.g., in relation to ouster and parking considering *Batchelor, Moncrieff, Polo Woods* and now *Stenner*, showing that candidates had considered the puzzles here. However, often this was not the case: e.g., in relation to acquisition where the cases and s.62 LPA 1925 were cited more as principles, missing, for instance, that "the paperwork" did not mean that a deed had been completed so that it was not clear that s.62 would apply in this context. Candidates could have gained assistance here from attention to the wording of s.62 and from cases such as *Borman v Griffith*.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

**1. What does it mean to say that possession must be 'adverse' to underpin a claim for registration under schedule 6 of the Land Registration Act 2002? Should the term 'adverse' be removed from the legislation?**

This question required an analysis of caselaw as well as the statutory schemes (e.g., Sched 6, para 9(1)), including a discussion of the nature of possession and what it means to characterise it as "adverse". Strong candidates considered the requirements of factual possession e.g., in *Powell v McFarlane*. The nature of the acts, perhaps considering the key and lock in *Moran*, the failure of surveyor's tape in *Zarb v Parry* or the lack of enclosure required for paving in *Thorpe v Frank*. They also noted that in relation to the *animus possidendi*, the requisite intention is to possess rather than own (Slade LJ in Moran and Lord Browne-Wilkinson in *Pye* [HL]) and that the courts have held that it does not matter if the squatter offers to pay (*Pye* and *Offulue*). The strongest candidates also considered *Parshall v Hackney* and/or *Nasrullah* asking whether a registered proprietor can adversely possess their own title.

Whilst there was a temptation to mention the SC decision in *Brown v Ridley*, candidates had to work hard to make these points relevant; when they did so, they were rewarded. Few candidates considered whether criminality does or should affect the nature of possession e.g., *Best v LR* and *Nasrullah* and whether this sheds any light on the meaning of "adverse".

Overall, candidates were required to answer the question set, considering what is meant by "adverse" and whether it is still a useful criterion or whether "possession" is sufficient, specifically under the LRA 2002. Candidates who set out a (pre-prepared) essay in favour of the doctrine of adverse possession did not score highly.

**2. What does the doctrine of *numerus clausus* contribute to understanding ownership in land law? What does it miss out?**

To do well, candidates had to address the question, rather than simply describing the concept of numerus clausus (which was a feature in weaker answers). One approach (though not the only one) was to consider what numerus clausus contributes to understanding ownership and what (if anything) it contributes beyond characterising the personal/proprietary distinction (as set out recently by the CA in *Donovan v Prescott Place*). To address what numerus clausus misses out, strong candidates considered the nature of ownership and/or the "why" of numerus clausus. Some candidates argued persuasively that numerus clausus includes a theory of "why" and so leaves nothing out. Candidates who did not consider ownership in at least some depth, writing solely about numerus clausus, were unlikely to achieve a 2:1 mark.

**3. '… the distinction between expropriation and control is neither clear-cut, nor crucial to the analysis.' (LORD CARNWATH, *Mott v Environment Agency* (2018))**

**Do you agree with this statement in relation to land under Article 1 of the First Protocol of the European Convention on Human Rights?**

There were some very good answers to this question. Strong candidates had a close knowledge of A1P1, and the framework established in *Sporrong*, considering *James* as well as *Pye* (both C and GC) and *Mott*, considering whether these outcomes are either compatible or plausible or both. As this was a relatively narrow question candidates needed to demonstrate close understanding of the caselaw to do well.

**4. When should a mortgagee be able to repossess a mortgagor's property?**

This was an essay question on possession (rather than sale), so needed to focus on the statutory regime and related caselaw, noting that courts have discretion. Weaker

candidates wrote essays exclusively, or containing substantial material, on the mortgagee's power of sale.

Candidates should have considered the operation of the AJA 1970 s 36 and AJA 1973 s 8 as well as key cases such as *Norgan*, *Krausz*, and *Quennell v Maltby*.

Strong candidates knew that the changes introduced through amendments to the Consumer Credit Act 1974, notably to s. 126, mean that the common law principle set out in *Ropaigeleach* and *Horsham* no longer applies to most residential mortgages, since the category of Regulated Mortgage Contracts (RMCs) has been expanded. Since this expansion, if a mortgage contract is an RMC, the mortgagee may no longer sell, unless either the mortgage or consents to sale or the court orders sale. Very strong candidates noted that change for RMCs reflects Dixon's arguments that mortgage law should be reformed to make possession a remedy granted to mortgagees by the courts, rather than an entitlement available as of right. Strong candidates also considered Russell's arguments on policy. Candidates who only noted ss101 and 103 LPA 1925 on sale, without considering whether these provisions are relevant to consider possession did not score highly.

Some candidates also (rightly) noted specific protections for tenants via the Mortgage Repossessions (Protection of Tenants etc) Act 2010 if their landlord had obtained a mortgage without the consent of the mortgagee (noting that otherwise the mortgagee would have priority). Strong candidates also knew that a spouse or civil partner can make mortgage payments (Family Law Act 1996 ss 30(3)) and can become a "connected person" (s55) for a dwelling house. This can enable them to resist an order for possession. Some candidates also recalled provisions from the Pre-Action Protocol where CML lenders committed to seeking possession before seeking an order for sale. Lastly, strong candidates noted and considered the distinction between residential and commercial, e.g., by referring to a "dwelling house" in the AJA or considering the changes for RMCs.

**5. Should 'mistake' be explicitly defined in the Land Registration Act 2002?**

This was a question that requires understanding of some tricky cases. Strong candidates considered Scheds 4 and 8 LRA 2002, noting that "mistake" is key to rectification where the mistake prejudicially affects the title of the registered proprietor. Some noted that while the legislation does not define mistake, the concept is elucidated in caselaw (e.g., *NRAM*). Candidates should have noted the distinction between void and voidable in this context (*NRAM* and *Antoine*) as well as the confirmation of the restoration of priority in *Gold Harp*. Strong candidates also considered whose mistake can trigger rectification (if there is prejudice), i.e., HMLR rather than any previous mistake (*Antoine*).

Some candidates (rightly) considered Goymour's argument that "title by registration", with its implications for rectification is not consistently applied by the courts, who in a three-party situation often prefer the original owner over the third party (e.g., *Malory*). However, they also asked whether this view is reflected in later cases (arguably yes re *Gold Harp* but probably not in *NRAM, Antoine* & *Swift*). Some candidates argued persuasively (drawing on Dixon) about whether or not there was not a mistake requiring rectification in *Nasrullah*.

Strong candidates also considered the implications of not clearly defining the meaning of mistake e.g., the effect of mistake as discussed in *Malory* noting the withdrawal from both *Malory 1* (a trust of the registered title) and *Malory 2* (a right of rectification). Some strong candidates considered whether the first point was wrongly resuscitated in *Nasrullah* and/or whether the analysis in *Swift* or Cooper and Lees's article helps with

this question. On a "right to rectification", strong candidates noted Dixon's critique that this is to misread the statute, which confers discretion on HMLR and a power to order rectification. Strong candidates also considered derivative mistakes including *Gold Harp* and *Swift* and whether the outcome in *Guy* would still stand today and/or whether forgery in *Swift* is drawn so broadly, so that lenders are protected while defrauded registered proprietors may not be (thereby echoing Goymour's normative argument that perhaps they should be).

In order to achieve a 2:1 on this question, candidates needed to consider whether there is a definition of mistake as well as consider why the definition of mistake matters.

**6. 'It is said that when a person sells land and stipulates that the sale should be "subject to" a contractual licence, the court will impose a constructive trust upon the purchaser to give effect to the licence: see *Binions v. Evans* [1972] Ch. 359, 368, per Lord Denning M.R.' (FOX L.J. in *Ashburn Anstalt v Arnold* (1989))**

**Discuss.**

Almost all candidates were able to consider the orthodox position that without more a licence does not constitute a property right (though may have contractual implications), considering cases including *Winter Garden Theatre v Millenium Productions*, *Verrall v Great Yarmouth BC*, *Thompson v Park, King v David Allen* and *National Provincial Bank v Ainsworth*

Candidates also discussed Lord Denning's interventions in *Errington v Errington* and *Binions v Evans*, though not all were able to explain the decision in *Ashburn Anstalt v Arnold*, identifying the distinction between a licence coupled with an equity and a constructive trust, premised on unconscionability. Strong candidates were able to explain the modern principles contained in *Chaudhary v Yavuz*, thereby addressing important aspects of the debate today.

Strong candidates also discussed modern analysis that it is a third party's own conduct that gives rise to a new, equitable obligation rather than indicating that the right was proprietary from the start (considering McFarlane). To do well, candidates also needed to note that *Ashburn* held that a constructive trust will only arise if C has undertaken to confer a new right on B. Some candidates also correctly suggested that this might lead to a particular type of constructive trust *sub conditione*, so that "subject to" is not enough by itself (McFarlane).

Engaging with the normative implications, strong candidates also considered ideas such as Bright's argument that a doctrine of constructive trusts is inappropriate here and that courts should instead draw on other remedies e.g., wrongful interference in tort (*Midland Bank v Green*), equitable liability for knowing receipt (*Peffer v Rigg*) or contractual implied terms (*Binions*). Some interesting arguments were made about the relationship of the *Ashburn Anstalt* line of authority with the topic of privity of contract.

Candidates sometimes (rightly) considered the limitations on the creation of new interests (ss1 and 4 LPA 1925), possibly freezing the creation of new equitable interests (Briggs) though rarely referred to in court (e.g., ignored by Lord Templeman when discussing a "deserted wife's equity" in *Ainsworth*).

***7. Alex is the registered proprietor of a fee simple title to 9 Honey Lane in Oxford, a three-storey house. She lives in New Zealand and, in March 2026, enters into the**

**following arrangements:**

**(a) By phone, to let Ben live in the attic, paying market rent of £1000 a month for a self- contained flat. Alex tells Ben that he can leave whenever he likes by giving her a week's notice but that she will let him stay until he finishes his painting 'The Great Awakening';**

**AND**

**(b) In writing, to let Cesar and Delphine live on the first floor for three years, each paying £500 a month for a double room with a self-contained bathroom;**

**In April 2026, Cesar and Delphine decide to elope and leave for Antigua. They agree to 'sublet' their room to Freddie, on the basis that he will pay £1000 directly into Cesar and Delphine's joint bank account and that Cesar and Delphine will pass it on to Alex. Freddie moves in and pays the first instalment of £1000 to Cesar and Delphine, who transfer the money to Alex.**

**AND**

**(c) By deed, to let Elise live on the ground floor, where there are two bedrooms, for ten years, paying £500 a month. Alex says that at £500 this rent is reduced as Alex may come to stay from time to time. So far, Alex has not returned to the UK for a visit. Elise has registered the lease.**

**In May 2026, Alex decides that she is not returning to the UK and sells her freehold title to 9 Honey Lane to Georgina with vacant possession.**

**Advise Georgina on her remedies against the current occupiers of 9 Honey Lane.**

This was a very popular question. Candidates generally considered the issues as appropriate for each scenario with almost all answers identifying the correct issues to be addressed. However, many candidates did not appear to understand the rules on formalities and/or priorities or their interaction. In particular, Section 54(2) LPA 1925 was often misunderstood or ignored; and a few candidates were confused about the relevance of a contract for a lease (for instance, incorrectly stating that E could not have a legal lease because there was no mention of a contract preceding the deed).

A significant area of confusion centred on the role of intention in *Mexfield/Southward* (and to a lesser extent, *AP Wireless*, which concerns a company so that no lease for life analysis could be applied, a point noted by strong candidates). The examiners would encourage candidates to read the cases carefully to understand the analysis in *Mexfield* and the debates about intention in the cases, where there is some plausible disagreement. Some candidates had clearly taken on board the comments in the 2025 Examiner's report about the hierarchy of the courts and made these points well; though some had still not understood the implications.

Generally, the exclusive possession cases, the debate about *Mikeover,* and *Bruton* and *Kay* were understood well though there was often too much reliance on citation rather than applying the legal arguments to the facts, analysing the consequences.

***8. Iris is the registered proprietor of fee simple titles to two semi-detached houses in Oxfordshire, 10 & 11 Green Road. She lives in no. 10, and, until 2009, her two**

**children lived next door in no. 11. In 2010, after her children moved out, Iris leased no. 11 to James and Ken for fifteen years. As Iris does not drive, James asks if he and Ken can park their second car on in front of no. 10 on Iris's property as there is only room for one car in front of each house. Iris agrees. She asks whether, in return, she can continue to take the short cut she used while her children were living at no. 11 through that house's garden into the park, so that she can walk her dog in the evenings without having to go out onto the main road. James and Ken agree.**

**In 2025, James and Ken ask to renew the lease for a further five years, which Iris is happy to do and sends through the paperwork, which they sign.**

**One evening, as Iris is walking through the garden, her dog growls aggressively at Ken, and he and James ask Iris to stop using the path through their garden to access the park. Iris responds by saying that they may no longer park in front of her house.**

**Frustrated with the disagreement, Iris sells no.10 to Zafar in March 2026. When Zafar views the house, James and Ken have driven away for the weekend, so that the front of the house is clear. Zafar is horrified when, after he moves in, James and Ken claim that they can park their car in front of no. 10. Zafar also explains that Iris had assured him that he could take the short cut to the park to meditate each morning, but James and Ken object.**

**Advise Zafar.**

This was another popular question with some very good answers though many candidates struggled, particularly on the acquisition issues. The parking/storage cases were well understood although candidates often assumed that a right of way had the characteristics of an easement without considering whether the arrangement met the tests for accommodation.

Many candidates had difficulty with acquisition. The parking arrangement was initially a licence – so was the easement acquired in 2025? The PQ said that "James and Ken ask to renew the lease for a further five years, which Iris is happy to do and sends through the paperwork, which they sign". As this is a five-year lease, this may constitute a legal lease if completed by deed (s52 LPA). If a legal lease, the easement is acquired via s62 (*Wright v Macadam*). While the Law Com recommend abolishing this upgrade, it is still good law.

If, however, the "paperwork" was not a deed, it can, at best be an equitable lease (*Walsh v Lonsdale*). In that scenario, s62 cannot apply as there would have been no conveyance. Candidates could also have considered whether *Wheeldon v Burrows* was available – there was no indication in the question that Iris or her children previously parked in front of no. 10 when they occupied the property (especially as Iris does not drive). However, it may be difficult to argue that the parking is "continuous and apparent" (*Wood v Waddington*; and even harder to argue that it is "necessary" given that no. 11 has a parking space of its own (re convenience see *Wheeler v Saunders*, *Borman* and *Goldberg*). Similarly, it is difficult to argue for implication by necessity (*Pwllbach Colliery, Nickerson*). Common intention (*Wong, Donovan v Rana*) may be more plausible, implying the easement into the equitable lease but there is no evidence it was discussed or included in the terms.

Strong candidates noted that, if acquired, any easement would only run for the term of the lease (*Borman*).

Registration: If there was a deed (some candidates "assumed" that the paperwork constituted a deed, which did not enable them to deal with the detail but did let them move forward) so that the easement passed via s62 and would bind Z if Sched 3, para 3 applied (though many candidates did not appreciate the detail of these provisions). If the lease is equitable, and the easement was acquired via common intention, this would produce an equitable easement, which may not be overriding under para 3 (*Chaudhary*). Only a few candidates considered whether para 2 might be argued, if there was actual occupation in this scenario, for instance drawing on McFarlane.

On the right of way, many candidates did not consider accommodation in depth nor asked whether the right of way was a personal privilege rather than proprietary right (*Polo Woods*). Strong candidates noted that the right should have been expressly reserved. Many candidates failed to note that *Wheeldon v Burrows*, or section 62, do not apply to an easement that should have been reserved. Some candidates considered that if the parking easement binds, then the right of way might bind via benefit and burden (*Ives v High*). However, few went on to consider the registration implications.

***9. Luna, Meriel and Norah are friends and the registered proprietors of a fee simple title to 26 Park Street in London. The property cost £600,000 when they bought it in January 2010. They paid the £300,000 deposit in equal shares and contribute equally to the £300,000 mortgage.**

**In February 2013, Luna is offered a transfer with her company to New York and moves away. In March 2013, Norah moves back to the Cotswolds to care for her elderly father.**

**Neither continue to pay their share of the mortgage payments, leaving Meriel to pay the full amount by herself.**

**In October 2013, Osman, Meriel's boyfriend, moves into 26 Park Street as Meriel has contracted an illness requiring her to resign from her job. Osman starts paying all the running costs for 26 Park Street, including the mortgage, insurance, council tax and maintenance as well as all the household expenses (for food and cleaning). When Meriel expressed uneasiness about how much Osman was taking on, he told her that he was 'happy to do it for her.' She told him that she would 'leave him the house to say thank you' but he told her that this was unnecessary.**

**In September 2024, Meriel dies, leaving Osman in sole occupation of 26 Park Street. Meriel left all her assets to Osman in her will.**

**In February 2025, Luna and Norah write to Osman, saying that they intend to sell 26 Park Street, which is now worth £1.2 million.**

**Advise Osman.**

There were some strong answers on this question with most candidates identifying at least some of the key points. At the outset, there is a question whether L, M and N are tenants in common in equity (*Malayan Credit Ltd, Williams v Williams*) or joint tenants (*Stack, Jones*) given the absence of an express agreement (*Goodman v Gallant*). Either approach was acceptable as long as it was sufficiently supported by caselaw. If they were equitable tenants in common then there was no need to discuss severance cases; otherwise, these cases needed to be discussed, taking account of the fact that it is

not possible to sever a joint tenancy in equity by will.

*O's Acquisition:* This required consideration of acquisition of both direct and indirect contributions (*Rosset, Stack*). Strong candidates were aware that under a CICT, even by paying the mortgage, O could only acquire against M's share. Few candidates noted cases beyond the core, e.g., *Graham-York* in relation to unfairness. On quantification, strong candidates considered *Jones* and related caselaw.

Some candidates did well in explaining the relevance of TOLATA 1996, including ss14 and 15 and *White v White*. While there was no specific question on occupation rent, strong candidates considered that L and N might argue that they are entitled to occupation rent from O, based on their share of the property, drawing on their common law right of occupation (*Bull*) and ss12 and 13(6) TOLATA. It is unlikely in the circumstances that this would be ordered as L and N have not been excluded (*Ali v Khatib*, *Davis v Jackson*). Strong candidates also considered equitable accounting in relation to the missed mortgage payments.

The one aspect of the problem question that few candidates addressed was overreaching. This was a key part of the answer since if L and N did not wish to obtain a court order, they could sell the property and overreach O's beneficial interest (ss2 and 27 LPA, *Flegg*). Even though O had a beneficial interest and was in actual occupation, overreaching will mean that the interest is no longer in the property so that Sched 3, para 2 (and *Boland*) cannot apply. Few considered these points but those who did were rewarded.

A few candidates answered this question, either exclusively or partially, by drawing on the law of proprietary estoppel. While this is in practice a difficult line to draw, strong candidates appreciated that this scenario concerned a joint intention (between M&O) while question 10 concerned a representation and so was concerned with proprietary estoppel. It would also be difficult to make out the elements of proprietary estoppel on the facts.

***10. Philippa is an extremely talented pianist who finishes her musical studies at university in July 2004. Her childhood piano teacher, Quentin, who is 70, owns 17 Green Row, a large house near Regent's Park in London. In August 2004, Quentin asks Philippa to move into his house and play for him every evening as he enjoys listening to her play. Philippa feels that she owes Quentin a great deal and cannot afford to pay rent in London, given her low salary as a music tutor. She agrees to this arrangement, even though it means that she cannot give public recitals or concerts as she is busy in the evenings.**

**Quentin promises Philippa that he will leave 17 Green Row to her in his will so that she can live there and use it as a base for future recitals, launching her career as a concert pianist. Philippa thanks Quentin profusely.**

**Philippa cares for Quentin, managing the house as well as his nursing needs as he becomes older and frail.**

**In April 2026, Quentin dies. He has not updated his will and 17 Green Row, now worth £10 million, passes to his niece Ursula.**

**Ursula writes to Philippa telling her that she must leave 17 Green Row within a**

**month.**

**Advise Philippa.**

This was a conventional proprietary estoppel question that was often well done. Strong candidates considered the nature of the representation (*Gillett, Cobbe, Thorner*), as well as the relevance of friendship (*Wayling v Jones*) and the need for detrimental reliance (*Greasley*; some candidates usefully compared the approach in *Sidhu* in the High Court of Australia) with some excellent use of *Winter v Winter* and consideration of the relevance of countervailing benefits (noting free rent as well as unpaid work), discussing how the courts treat loss of opportunity and non-financial disadvantage. Strong candidates also considered the question of unconscionability, questioning whether this existed (drawing on *Guest, Jennings v Rice*). On remedy, it was necessary to demonstrate knowledge of the Supreme Court decision in *Guest v Guest*; some candidates offered strong consideration of the relationship between *Guest* and *Jennings v Rice*.

Few candidates made simple formalities points e.g., noting the lack of any written promise and the (ir)relevance of s 2 LPMPA and *Farrah v Millar*.

Some candidates did consider a CICT here, and this could be relevant if linked to a promise-based analysis (*Rosset*, *Matchmove, Hudson v Hathway*), but it was not required and difficult to sustain given the promise related to a future interest.

There was no third party at the end of the problem question, but strong candidates also considered whether Ursula could sell after inheriting, looking at s116 LRA, *Henry v Henry, Brake v Swift.*

***11. Sam was the registered proprietor of a freehold title to a farm, consisting of a farmhouse, several fields, and two cottages occupied by farm employees, Tabitha and Uma.**

**In 2023, Sam sold the registered freehold title to one of the cottages to Tabitha. In the deed of conveyance, Tabitha covenanted (i) that she would continue to use the cottage 'solely as a dwelling;' (ii) that she would not allow it to fall into a state of disrepair; and (iii) that she would contribute to the cost of maintenance of a path that runs across the fields and provides the main access point to the public highway of all three properties.**

**In 2024, Sam sold the second cottage to Uma, who entered into exactly the same covenants as Tabitha.**

**In 2025, Uma sold her title to the cottage to Victor.**

**In June 2026, Sam died and his registered title to the farmhouse passed under his will to his daughter, Wanda.**

**Wanda has now started using the main farmhouse as a bed and breakfast hotel, to the annoyance of Victor and Tabitha. She has also replaced the path that ran over the fields with a tarmac road and has sent Victor and Tabitha an invoice demanding that they contribute to the cost of these works. Meanwhile, Victor's cottage has become quite dilapidated and both Tabitha and Wanda are annoyed about this.**

**Advise Tabitha, Victor, and Wanda.**

This was not a very popular question though many candidates answered it well. Most candidates picked up on the *Halsall v Brizell* point in relation to the covenant to maintain the road and included some good discussion of whether V had the option of foregoing the benefit (*Thamesmead*). Most candidates also picked up the point about W's liability – her predecessor (S) had not explicitly covenanted – so there was no covenant to pass the burden of without there having been a scheme of development. Those who considered the existence of a scheme generally engaged thoughtfully with the facts, including the layout of the land, and intention of the vendor in determining whether there was a scheme of development (*Elliston, Re Dolphin's*). Strong candidates reflected on the interpretation and scope of the covenants (e.g. maintenance and repair). Some candidates were penalised for invoking the rules governing the running of the burden and the benefit in a rote fashion without considering the position of the individual parties (e.g. T as an original covenantor).

## LAW AND TECHNOLOGY

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

1. **Are technologies political? How might a consideration of their politics assist in regulating them?**

This was a popular question, attempted by 70 per cent of candidates. It was seeking a focused discussion of what it means or might mean for technologies to be political, how the politics of technologies are or might be appropriately assessed, and how that assessment might and should inform the approach of states and other actors to regulating technologies. There was a lot that could potentially be covered, and candidates were not expected to cover everything. Most used Langdon Winner's work as the starting point, which was appropriate, but it was important also to go beyond Winner, especially when considering the implications and implementation of his and others' theories in practice. The question was handled adeptly overall.

2. **How far, if at all, can the emergence of surveillance capitalism be attributed to early Internet regulation? What can law makers learn from the experience?**

This was another popular question, attempted by three-quarters of candidates. The question was inviting a discussion of the causal connection between key aspects of early Internet regulation, such as the implementation in different jurisdictions of the OECD's FIPPs and the safe harbour provisions of the DCA and e-Commerce Directive, and the emergence of a data driven economy, including surveillance capitalism specifically. The strongest answers focused on the permissive regulatory environment of the early Internet era as a product of legal and extra-legal regulatory modalities, and went beyond an historical account of the law's development by giving sufficient space to the second part of the question though a sustained reflection of the lessons to be drawn from it. This typically included a discussion of the challenges of early legal intervention in new regulatory spaces, and of the relative merits of some of the different forms of intervention which are available, clearly informed by and connected to the earlier discussion. Particularly welcome was the extent of several candidates' constructive engagement with the work not just of Zuboff – the most immediate point of reference – but also of Polanyi and others, in discussing the current regulatory framework in Europe.

3. **What is the right to be forgotten? What does it reflect about the European approach to data regulation?**

Approximately 60 per cent of candidates answered this question. To do well, they needed to demonstrate a precise and detailed understanding of the right to be forgotten (the RTBF), including the circumstances in which it can be invoked and the scope of the duties it imposes. Almost all distinguished clearly between de-indexing/delisting and removing content in their discussions of those duties, which was excellent. Candidates were also expected to consider the right as a reflection (or otherwise) of characteristic features of European law in the data regulation field, including the central role played by the Court of Justice in developing the law, the focus on (individual and constitutional) rights, and the handling of cross-border/jurisdictional issues. It was pleasing to read several good analyses of the delicate balance which the RTBF requires between privacy, data protection, freedom of expression and information, and commercial rights and interests, and of the implications of having private actors adjudicate rights controversies on the Internet. Indeed, several answers focused constructively on the responsibilization of tech companies and the blurring of the public and private spheres as important aspects of the European approach, with other persuasive analyses also offered.

4. **What explains the different approaches of the European Patent Office in *Howard Florey* (1994) and the European Court of Justice in *Brustle v Greenpeace* (2011)? Which approach do you prefer, and why?**

This was a challenging question which required a detailed knowledge and clear understanding of the reasoning in each of the cases referenced, as well as an ability to step back from it and consider the wider implications of each, including for the use of patent law as a mechanism for regulating technology, and the relationship between morality and patentability. The comparatively small number of candidates who attempted the question did very well.

5. **How helpful is Foucault's theory of power/knowledge in explaining the challenges created for law by advanced technologies? How might law-makers draw on the insights it affords?**

This question triggered a diversity of responses, including some good comparative discussions of the explanatory and normative value of Foucault's theory, and its ongoing relevance for law and policy makers grappling with the challenges posed by different technologies. Especially pleasing was the way that candidates drew on their answers to the first question in addressing the second, and the confidence with which they moved from theory to practice. Most saw value in Foucault's theory, with opinions on its relevance beyond the Internet divided.

6. **What is the difference between 'unfair' and 'discriminatory' algorithmic decision-making? How important is the distinction for data protection law?**

[Only one candidate attempted this question.]

7. **What challenges have artificial intelligence (AI) technologies created for law? How might those challenges be met? Answer with reference to EITHER (a) OR (b):**

**(a) Patent law.**

**OR**

**(b) Data protection.**

Approximately half the candidates attempted this question, with a nearly equal division between those who focused on patent law (option (a)) and those who focused on data protection (option (b)). Discussions of AI and patent law appropriately focused on the challenges created for patentability by AI-devised and AI-assisted invention, including for the idea of patents as incentives for research and development, and the feasibility in practice of restricting patenting to human devised invention. Discussions of AI and data protection appropriately focused on the effects of AI in testing and further destabilising existing (consent-based) legal models of data protection, and the options for strengthening them. Both questions were handled well overall, with minimal overlap also in the answers to question 7(b) and other answers by individual candidates.

8. **'The law is very, very outdated and not keeping up with the technology. This makes everyone confused. The clinic[s] are confused, the public are confused, and the law makers themselves are confused.' (ROMANIS) Discuss.**

Approximately half the candidates attempted this question also, with all of those who did focusing on assisted reproductive technologies, which was appropriate given the source of the quote. Some offered a general discussion in which different types of ART were referenced, while others focused on a particular technology, such as surrogacy. Either approach was acceptable and both afforded a range of responses. The challenge was to engage critically with the statement that the law related to ARTs generates widespread confusion, including among law makers and ART providers (clinics), and that the reason for it doing so is its failure to have kept pace with developments in the relevant field of technology. The challenge was to avoid offering a general discussion of the issues raised by one or more ART, such as the difficulties of enforcement given the realities of social inequality and reproductive tourism, and/or of different legal provisions, such as the ban on commercial surrogacy, without linking it clearly and persuasively to the quote

## MEDIA LAW

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

15 candidates sat the Media Law exam this year, and 5 gained first class marks. The standard of scripts was generally very high, with candidates showing good knowledge of the field. As usual, the best candidates engaged with the question and drew on the detail well to illustrate their arguments. They also went beyond the material and arguments from the textbook and seminars, and drew on the wider literature. Some candidates showed very good knowledge, but were let down by either trying to write everything they know on the topic or answering the question they wanted to be asked (rather than the question that was being asked).

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

Q1. This question invited candidates to compare formal legal constraints on the media with informal constraints. Some candidates discussed this well and looked at commercial pressures on the media along with the position of social media platforms. A number of candidates used the question to discuss only the Official Secrets Act 1989 and did not make the necessary comparisons.

Q2. The question asked candidates about the role of self-regulation and whether it is the best way to secure multiplicity of voices. There were some very good answers, looking at the strengths and weaknesses of self-regulation. A number of answers showed considerable knowledge, but were let down by providing a more rehearsed broadcast v print essay.

Q3. A question on misuse of private information, requiring candidates to consider its role in the protection of reputation. Most candidates showed good knowledge of *ZXC*. The very best scripts critiqued various strands of the Supreme Court's reasoning. A number of candidates discussed the position in relation to remedies. Those candidates that did not engage with the question either treated it as a general question on the protection of privacy or used the question to springboard into a general discussion of the public figure principle.

Q4. Relatively few answers to this question on contempt of court. Those that did answer showed a sound grasp of the Law Commission's proposals (which had been covered in lectures) and critically assessed them.

Q5. Relatively few candidates answered this question, which allowed candidates to draw on knowledge from various topics. The question could be answered by comparing pre-trial injunctions in defamation and privacy, looking at the effects of prior publication, and considering the ways to limit damage once information has already gone into circulation.

Q6. A fairly straight forward question on the effectiveness of s 10 of the Contempt of Court Act. Most candidates identified the various ways that s 10 still allows for sources to be identified. Some candidates explored the other ways that sources can be identified that avoid s 10. Some good scripts also considered when a source should be protected and whether a chilling effect may be desirable in some cases.

Q7. Those answering part A had a very good grasp of the Online Safety Act 2023 and the various incentives for over-removal. It is very difficult to be comprehensive and the best answers selected the most pressing issues as the focus for discussion. Few answers to part B, but those that did answer it showed very good knowledge of the secondary literature and debates on the liability of platforms, and whether the partial shields are still warranted.

Q8. A challenging question on open justice, which had a very specific steer on the effects of publicity. The decision in *Tickle* provided a starting point. Candidates could then consider whether the risk of the public misinterpreting or misunderstanding information is a reason for limiting publicity. Some candidates were able to connect this issue to that in *Khuja*.

Q9. A question on whether defamation is a democracy protecting tort. While the question was very focused and challenging, there were some excellent answers noting the various limits to defamation as a way protecting political debate. The answers were specific and used the elements of the tort and defences well to illustrate their answers.

Q10. The question invited candidates to consider whether BBFC style regulations could be applied to online publications. The answers were mixed. Some provided rehearsed answers on the law of obscenity. The better scripts considered

reasons why online publications have not been controlled and regulated in the same way as those offline, and considered whether and how that could change.

## MEDICAL LAW AND ETHICS

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

As with previous years, the quality of papers was mixed. As with previous years, although there were some really excellent papers, the examiners were again disappointed with the overall quality. Despite previous comments urging students to take intellectual risks and offer detailed, considered arguments in response to the questions posed, again many instead chose to simply give an overview of the law and the positions taken by various academics. The examiners would yet again emphasise that they are looking for detailed, critical responses to the questions.

Weaker papers tended to offer unfocused responses, that lacked direct engagement with the questions, and instead tended to present general discussions of the topic, rather than answers to the questions asked. Such papers were also often marked by superficial discussion of the relevant case law. Other problems included:

1. Excessive 'breaking down' of the question. There is no need to define terms that are clear and well-understood (such as 'ethics', 'reproduction'), and students should focus on the overall meaning of the question, rather than assuming that breaking into component parts is an illuminating approach. It may in some cases, but in others it actually over-simplifies or misleads. Students need to really think about whether 'breaking down' the question will assist them in answering it.

2. Introductions that set out a structure but fail to give any sense of what will be argued. It is far more compelling to use the introduction to engage immediately with what the question asks, and set out the arguments that will be made.

3. Providing overviews of the law, particularly narratives of the case law development. Unless the question has asked for this, or it is genuinely necessary to answer it, this approach rarely succeeds. Again, students are encouraged to focus on producing a critical response to the question and using case law to illustrate their arguments, rather than merely describing the law.

4. Following one article or author too closely. Many papers tended to respond to the question by setting out the views of one academic and then explaining why they agreed with these, as opposed to providing their own thinking and/or drawing on a wide range of literature.

5. Failing to cite and engage with the reasoning in the relevant case law. Very often, papers provided a precis of the facts and the outcome, but did not set out the reasoning given in support of that outcome, nor did they critically evaluate that reasoning.

6. Providing a summary of the positions in the scholarship, rather than developing an argument in response to the question asked. Sometimes these summaries did not show a good understanding of the original sources, suggesting that the scholarship had not been read directly by the student.

7. Using unusual or inappropriate language, such as referring to judges as 'highlighting', rather than 'stating' or 'opining', or using obscure synonyms for 'argue', when their essays would have been more compelling had they used direct and clear language. There is no need to use language that complicates the issues and it is better to write in an accessible and direct way. As ever, students are strongly encouraged to avoid using the passive voice ('it is argued that..') and simply say what it is they think.

Strong papers engaged precisely with the questions asked, and offered detailed, well-supported arguments in response that demonstrated a sophisticated understanding of the literature. There were some excellent, detailed analyses of the judgments, while some also delved deeply into the relevant academic debates, exploring the range of views and providing a reasoned position in relation to them. The very strongest papers were able to both explain the justifications behind the law, and critique these justifications to provide highly considered, effective responses, which were well grounded in a range of relevant literature.

## MORAL AND POLITICAL PHILOSOPHY

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

There were 18 candidates who sat the Moral and Political Philosophy examination. The work in the examination was of a good standard, with no marks in the 2:2 range, and four 1st class marks. The paper was divided into Part A (moral philosophy, 8 questions) and Part B (political philosophy, 4 questions). Candidates were required to answer at least one question from each part, and most chose two questions from Part A. Answers covered all of the topics, with many answers on question 3 (utilitarianism), question 8 (moral luck), and question 12 (democracy). The strongest scripts were those that focussed on the specific question set, and presented arguments in favour (and against) a particular answer to that question. Weaker answers tended to drift into a general discussion of the literature on the topic, rather than advancing a particular view on the topic. To take one example, question 3 was addressed to the issue of the demandingness of utilitarianism. Stronger answers considered the different ways in which utilitarianism could be considered demanding, whether in terms of having to work out which action would maximise utility, or in terms of there being no limits to what can be required from agents, and went on to discuss whether this made utilitarianism too demanding.

## PUBLIC INTERNATIONAL LAW & JESSUP MOOT

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

As in previous years, the overall quality of scripts was good, with some variance towards the top and bottom. Of the 32 scripts, there were 7 distinctions, 24 upper-seconds, and one fail (where a sufficient number of answers was not provided). There was also one script of exceptional quality. A number of candidates scored very highly on tricky problem questions. In a few cases, answers to essay questions drifted away from the precise focus of the question, though this was not a general problem.

| **Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions). |
|---|
| • Question 1: answers were generally good and thoughtful. Most identified distinctive features of the international legal system; better answers engaged directly with questions of 'legal character' and 'effective functioning' of the international legal order.<br><br>• Question 2: some candidates scored very well; others didn't engage sufficiently with both parts of the question (persistent objection and specially affected States). This is a general point of exam technique – to evenly allocate time where there are two central aspects of a question.<br><br>• Question 3: this question was not attempted by too many candidates. The strongest answers provided a rich account of the (complicated) practice of statehood and recognition / non-recognition in contested situations.<br><br>• Question 4: this question received some exceptional answers, which systematically considered each of (i) jurisdiction and (ii) immunity for the three offences. Weaker answers did not distinguish issues of jurisdiction and immunity as they arise differently for different offences.<br><br>• Question 5: generally, a solid set of answers, perhaps reflecting that most tutors will have covered reservations in some detail.<br><br>• Question 6: some excellent answers, which were enjoyable to mark. The strongest candidates considered the position of each state in relation to the problems of (i) armed attack; (ii) attribution; (iii) necessity; and (iv) proportionality.<br><br>• Question 7: very few candidates attempted the question on monism and dualism, perhaps reflecting that tutors generally do not cover it in tutorials.<br><br>• Question 8: again, some excellent answers, as with the other problem question. Candidates who were able to demonstrate their knowledge of the system of reciprocity and reservations – and apply that knowledge – did very well.<br><br>• Question 9: there were relatively few answers to this question on the protection of fundamental values. The strongest distinguished the *erga omnes* character of obligations from their peremptory character, and used recent examples from practice. |

**ROMAN LAW (DELICT)**

| **General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions). |
|---|
| The paper was taken by five FHS students and two DLS students. FHS candidates should answer four questions out of ten, including at least two set text questions (those marked |

with an asterisk). DLS candidates should answer three questions, including at least one set text question (those marked with an asterisk).

Of the FHS students two came out with a first (40 %), the rest with a 2.1. Both DLS students achieved a 2.1.

The average mark for FHS students was 68.4, for DLS students 67.5.

Both firsts were a 70, so no script stood out as particularly stellar.

These results are in line with the long-term result pattern for this course.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

The questions answered sprinkle over all 10 questions. This does not allow us to draw reliable data for individual questions.

**TAXATION LAW**

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

Consistent with previous years, the paper contained 8 questions (6 essay questions and 2 problem questions). The questions covered a broad range of areas across the syllabus, allowing candidates a wide degree of choice.

Approximately three quarters or more of candidates answered Qu.1 and Qu.5 - respectively dealing with tax purpose and design; and either purposive interpretation in tax avoidance, or whether the GAAR has been a success. Similar proportions of candidates answered one or both of the two problem questions, Qu.7 and Qu.8 – in turn, respectively dealing with CGT and IHT; and various income tax aspects of employment taxation.

Only very small numbers of candidates answered Qu.2, Qu.3, Qu.4 and Qu.6: these questions explored whether the taxation of income from work needs fundamental reform; whether taxing lifetime transfers under IHT would be more coherent than experimenting with wealth taxes; whether the CGT and IHT regimes should actively encourage or discourage certain types of trusts; and whether the deductibility of expenses in arriving at business profits for income tax purposes is clearly defined in statute.

There were very few weak answers – with the vast majority of answers demonstrating a good knowledge of the fundamental issues under consideration. More than one third of candidates achieved overall First Class marks.

In general, the highest marks were awarded to candidates who provided well-reasoned, persuasive but balanced answers which specifically addressed each and every element of a question - where relevant explicitly drawing upon statute, applicable case law and broader policy or other literature.

Candidates notably lost marks by not answering all elements of the question; through not supporting their answers, where relevant, by reference to specific statutory provisions or relevant cases; or by not referencing key literature covered on the course.

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

Qu.1 asked candidates to discuss a statement that the essential purpose of tax design is "simply to raise money"; and that "other design criteria are at best incidental". Better answers critically evaluated each element of the statement, distinguishing aspects of purpose from design, and drew on a range of literature and examples to support arguments which acknowledged the role of taxation in raising revenue whilst emphasising different ways in which that revenue might be used (for example, redistribution); and which highlighted the importance of key aspects of tax design – such as equity and efficiency - explaining how these are not simply "at best incidental". Weaker answers explored, for example, different elements of tax design – but did not develop their points to support a coherent argument in direct answer to the question.

Qu.2 asked candidates to discuss a statement around a need for fundamental reform of the taxation of work – given a claim in the statement of "unjustified distortions which lead to widespread avoidance". The question was designed to give candidates a broad opportunity to develop arguments around the reasons for differences in the taxation of employment and self-employment (including NICs) and why these differences might or might not be justified. The question also offered opportunities to explore how anti-avoidance legislation had been introduced to address concerns (such as the "IR35" regime). Here too, high marks were awarded where an answer carefully addressed all elements of the question, drawing both on policy and broader literature together with statute and case law, to deliver a well-reasoned and supported response to the question statement.

Qu.3 asked whether amendments to IHT to cover lifetime transfers at the time of their making would be more coherent than experimenting with wealth taxes – and asking whether there were sound reasons grounded in effective tax design against such an approach. Whilst this question was not answered by many candidates, the quality of answers of those that did was very encouraging – generally offering well-argued and clear "points of view". Some marks were lost by not addressing potential consequential issues arising from different options – such as liquidity requirements to meet tax liabilities; or "capital flight" risks.

Qu.4 asked whether the CGT and IHT regimes should actively encourage or discourage certain types of trust. There were two underlying contexts to the question – whether, in the generality, these tax regimes should be encouraging, neutral towards, or discouraging about trusts of different types; and how, for example, Section 89 IHTA disability trusts (or trusts for other reasons) might be differentiated from any mainstream treatment. A strong answer needed to demonstrate both a policy understanding and "point of view" around the general tax treatment of trusts – and critically analyse why there might be any departures from such a general treatment.

Qu.5 provided a choice to candidates around either discussing a quote from Ribeiro PJ about purposive interpretation; or whether the GAAR in Part 5 of the Finance Act 2013 had been a success. There were a number of strong answers to both options – and, with only some exceptions, this question scored well overall. Answers to the first part generally demonstrated a strong command of the evolution of relevant case law with a clear

articulation of both the nature and current status of purposive interpretation in tax avoidance cases. The best answers to the second option developed a clear argument in response to the question, underpinned by the incorporation of relevant literature and an exploration of how the GAAR has operated in practice – for example, whether judicially or as a deterrent to aggressive avoidance.

Qu.6 asked candidates to discuss a statement around the deductibility of expenses in arriving at business profits; and whether these are clearly defined in statute leaving little room for dispute. A strong answer would identify examples of where deductions are clearly defined under express statutory provisions – but then highlight a number of areas where, for example, the "wholly and exclusively" or "capital" tests have been litigated; and how indeed the provisions have been the subject of dispute – in turn, all supporting a clear argument in response to the question statement.

Qu.7 was a problem question considering the CGT and IHT consequences of a series of arrangements and transactions involving Barney, a former designer. The best answers carefully identified and analysed each element of the fact pattern and, drawing on both explicit statutory references and relevant case law, set out proposed tax treatments – acknowledging where relevant that in some areas the position was not "clear cut", but nonetheless providing the advice requested by the question.

Qu.8 was a problem question considering the tax consequences of a broad fact pattern relating to Louise, a sound engineer employed by a music recording studio. Again, the best answers carefully identified and analysed each element of the fact pattern and used statute and case law (where relevant) to support their advice, highlighting where there may be uncertainties in the treatment. Answers notably lost marks either by (i) not addressing all individual elements of the fact base; or (ii) not supporting their conclusions with, for example, specific statutory references, but simply making generalised statements.

**TORT**

**Comments on individual questions:** Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

Question 1

This question centred on critical comments that Dean Prosser had made as regards the law of defamation. He had criticised it as lashing out at morally innocent defendants while at the same time failing to safeguard claimants against serious harm. There are many features of the English law of defamation to which candidates could have referred in support or contradiction of what Prosser had said. Unfortunately, nearly all candidates who attempted this question offered answers that simply summarised recent developments in the law in this space.

Question 2

This question leveraged remarks that Professor Nolan had made doubting the merits of the *Consumer Protection Act 1987* and, in particular, the strict liability rule for which it provides. Stronger answers engaged well with Nolan's paper whereas weaker responses simply highlighted various product liability cases and sections of the statute but without

connecting them to Nolan's claims. Few candidates paused to consider what is meant by 'strict liability'.

Question 3

This question asked candidates whether tort law should recognise a duty to rescue. It was a popular question. Less impressive answers to it treated it as calling for a general discussion of the omissions doctrine and mentioned various authorities in this space. Stronger answers engaged with the extensive theoretical literature regarding the pros and cons of a duty to aid others.

Question 4

This question asked, with reference to a claim that Professor Steel had made, whether foreseeaibility is generally a necessary condition for liability in tort. It was a relatively unpopular question. Most of those candidates who attempted it were relatively unsuccessful in marshalling relevant evidence despite the case law supplying a lot of material both in favour of Steel's position and against it.

Question 5

This question concerned the merits of the current law concerning the illegality defence. It was essential for candidates to discuss recent decisions in this space. However, the better answers were able to do more than merely summarise these cases, and engaged well with the vast body of scholarship concerning the defence.

Question 6(a)

This question called for comment on a claim by Dean Calabresi that tort law is ultimately about reducing accident costs. In order to do well regarding it, candidates needed to be versed in the theoretical materials set out at the end of the core reading list. Very few candidates demonstrated any awareness of those materials.

Question 6(b)

This question required engagement with a passage from Professor Weinrib's work commenting on the correlative nature of tort law and citing the objective standard of care as supporting evidence in this regard. Unfortunately, nearly all candidates who attempted this question appeared to be oblivious to the literature on correlativity and the theoretical materials set out at the end of the core reading list more generally. Many candidates wrongly treated the question as calling for a discussion of the black-letter law regarding the objective standard of care.

Question 7

This question asked candidates to consider the significance of non-compensatory remedies in tort law. It was an unpopular question. Most candidates who attempted it mentioned punitive damages. But, generally speaking, minimal reference was made to other relevant remedial responses.

Question 8

This problem question raised torts to the person as well as various other issues, including the rules regarding joint tortfeasance. Most candidates who attempted it missed obvious

points of considerable significance, such as the possibility that Brenda might have a defence of self-defence despite the fact that she injured Fred rather than Adam. Few candidates recognised that the question required treatment of the law concerning accessorial liability in tort. Conversely, other parts of the question, such as those concerning harassment, assault and battery were generally handled more effectively.

Question 9

This was a popular question. It concerned, among other matters, the law governing compensation in respect of negligently inflicted psychiatric injuries. The contributory negligence doctrine formed an important part of this question. It was generally handled poorly with most candidates not understanding that the 1945 Act deals only with apportionment and not with the test for contributory negligence. Most candidates appreciated that the facts concerning the bitcoin were simply a variation of the facts in *Spartan Steel*.

Question 10

This question raised issues regarding the law of nuisance and the rule in *Rylands v Fletcher*. Many candidates tackled it. An area of weakness in many scripts is that they did not address, or did not adequately address, the remedies that might be available. It was surprising how many candidates did not realise that personal injuries are not compensable in a claim in *Rylands*.

Question 11

This question concerned the economic torts. It was unpopular. Repeated difficulties with answers involved their overlooking various claims.

Question 12

This was a popular question that raised issues regarding medical/professional negligence, causation (in particular in light of *Chester* and *Baker/Jobling*), and recovery of lost chances under *Allied Maples*. Some candidates thought, wrongly, that the facts regarding the ballroom dancing prize triggered the rule in *Gregg v Scott*. That rule is to the effect that mere lost chances do not qualify as damage. The rule was irrelevant on the facts since Tiffinay undoubtedly suffered damage in the form of a broken leg.

Question 13

This question concerned, principally, occupiers' liability. It was popular. Common areas of difficulty included: (i) confusion as to whether the Consumer Rights Act 2015 or Unfair Contracts Terms Act 1977 applied; (ii) failing to spot that a trespass to land claim might lie as against Yanis; and (iii) failing to identify that Wendy might have a claim (regulated by *Bolam*) against Xavier.

## TRUSTS

**General comments:** Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).

With some notable exceptions, this paper was poorly done. A major difficulty was weak problem question technique. A few pointers can be given here. One is that when told to 'Advise X', the examiner is not asking candidates to state what arguments X might make (after all, X is not a lawyer and so will not be putting forward any arguments themselves). What the examiner is instead asking is how the case will pan out should it come to court. In other words, candidates are being asked to predict what the judge will say. At the very least, therefore, it is not enough to say 'X is advised to argue …' without also stating how such an argument will fare. Unfortunately, many candidates failed to go this extra mile, listing arguments back and forth like a tennis match. Another essential matter of problem question technique is never to assume facts. If a fact is not given, this is generally deliberate on the part of the examiner, and candidates should discuss the issue in the alternative. This was particularly problematic in Qu 14, where there was a possible application of backwards tracing for part iii. Despite this, many candidates simply said there was no co-ordinated scheme and that backwards tracing was not therefore applicable. What they should have done instead is to say that more facts were needed, and that if X, Y, and Z were present, then backwards tracing would be available.

There was also a general failure to discuss the correctness of cases, eg, those of the Court of Appeal in *Re Rose* and *Pennington v Waine*. If candidates are trying to predict how a problem question will be decided, they need to take account of the fact that previous decisions are sometimes overruled. Indeed, problem questions are often structured deliberately to get students to discuss the correctness of certain decisions. More generally, candidates would often enunciate the correct legal test but just leave it there, either making no attempt to apply it to the facts or simply asserting that it was or was not satisfied.

Essay technique was also often poor. There was, for example, too much subjectivity, with many candidates telling the examiner of their 'beliefs' or 'thoughts', that this was 'their reading' of the case-law, that they found a particular decision 'unconvincing'. This is not how law degree answers should be written, especially in a doctrinal subject such as Trusts. Just as a judge in court, the examiner does not care what candidates 'think' or 'believe'. What they are instead interested in is arguments why a particular case is 'unconvincing', not bald assertions. This is, after all, a law degree. Another problem was the prevalence of tentative talk. We were often told, for example, that a certain case 'suggested' that the law was X, when in fact the case *decided* it was so. It was also said that cases made 'assertions' or 'outlined' propositions. While examiners did not deduct answers for these stylistic features, this kind of writing often showed that candidates did not confidently understand the case law and, more fundamentally, how judges reason.

More generally, there was a poor knowledge of primary sources. This was particularly noticeable with the key cases of *Rochefoucauld v Boustead*, *Hunter v Moss*, and *Barclays Bank v Quistclose*, decisions which many candidates seemed never to have read. The same was true of statutory provisions, despite candidates having access to them in the exam. The worst example was s 53(1)(b) of the Law of Property Act 1925, which the examiners were often told laid down either a rule about 'transfer' or the 'creation' of a trust, though the statute uses neither term. Section 53(1)(c) LPA 1925 fared no better in this regard.

**Comments on individual questions:** Please comment on the overall quality of answers,

notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).

**Question 1**

**Does it help our understanding of trusts to think in terms of 'conscience'?**

This was a fairly open-ended essay. A good answer could have spoken about the resurgence of the language of conscience in recent years, giving concrete examples such as that of Lord Browne-Wilkinson in *Westdeutsche*, Nourse LJ in *BCCI v Akindele*, Arden LJ in *Pennington v Waine*, and Lord Walker in *Pitt v Holt*, explaining how the term was used by these various judges. The question would have then been whether their usage was correct, there being no shortage of *dicta* to the effect that the language of conscience is conclusory only, adding nothing to the substantive enquiry, that all that is being described is the form of orders in equity (ie, orders directed to the defendant's 'conscience'). Examples in this regard would be *re Ellenborough*, *re Diplock*, *Choithram v Pagarani*, and, most recently, *Byers v Saudi National Bank*.

The question had relatively few takers and was often poorly done. Some answers tended to just focus on *Pennington v Waine*, without noticing the more prevalent use of this language or attempting to explain its historical origin. Others, by contrast, discussed everything under the sun, telling the examiners that the language of conscience was 'foundational' or 'seminal', though with no explanation why, and simply listing case after case after case without properly advancing an argument. Other candidates still were clearly expecting an essay on so-called 'persistent rights' and proceeded to insert that answer here; they did not answer the question asked and were marked accordingly.

**Question 2**

**'[The trust in *Quistclose Investments v Barclay's Bank* was] indicative of an express trust with two limbs rather than an express trust in favour of the shareholders and a resulting trust in favour of Quistclose which arose by reason of an incomplete disposition by Quistclose of the whole of its interest in the money lent to Rolls Razor.' (GUMMOW J in *Re Australian Elizabethan Theatre Trust* (1991))**

**Discuss.**

A good answer would begin by describing exactly what is a *Quistclose* trust, at least according to Lord Wilberforce in *Quistclose* itself. It would then ask whether Gummow J's analysis of the trust as express withstands scrutiny, noting that the same language appears more recently in *Bellis v Challinor* and *Prickly Bay*. Moreover, was Gummow J correct in rejecting an automatic resulting trust analysis of the second trust? If not express, does the one-trust resulting trust analysis of Lord Millett in *Twinsectra* fare any better? Of course, there is no logical divide between express and resulting, so candidates would need to explain what sort of resulting trust Lord Millett had in his 'orthodox' account.

This was an extremely popular question, done by at least 90% of candidates. However, it was often poorly executed. Many simply ignored the quotation and trotted out prepared answers. Of those who did address the quotation, few put it in context, failing to note that Gummow J was trying to explain Lord Wilberforce's reasoning ('indicative of'), nor explaining why Gummow J thought the secondary trust was not an automatic resulting trust. If candidates want to score highly on essay questions, they need to pay close attention to the question asked, not write generic essays. Other candidates simply said it was

impossible to have an express trust with two limbs, an obviously nonsensical notion. However, by far the worst feature of most answers was an almost complete ignorance of what Lord Wilberforce actually said in *Quistclose*. He did not, for instance, say that the two trusts were express and resulting. Indeed, neither word appears anywhere in his speech. He spoke instead of a 'primary' and a 'secondary' trust, something which would have been obvious to any student bothering to read the case for themselves. Given that Lord Wilberforce's speech in *Quistclose* is only five pages long, one would have thought that any well-prepared candidate would have taken the trouble to acquaint themselves with what he said.

Other difficulties included saying that the result in *Quistclose* was explicable on the basis of the decision of Goff J in *re Denley's ST*. Not only is *re Denley* a contentious decision, but, if applied to the facts of *Quistclose*, Lord Wilberforce's primary trust would arguably not have failed. Further, when discussing the alternative analysis of Lord Millett in *Twinsectra*, few candidates mentioned the power of the trustee to apply the funds for the stated purpose. Yet without it, Lord Millett's analysis simply does not work. Moreover, it is the Achilles' heel of his reasoning, for 'orthodox' resulting trusts do not permit their trustees to use trust money to pay their own debts.

Some candidates described the trust as a fiction 'reflective of policy considerations'. This is a meaningless statement unless the nature of that policy is articulated, which it rarely was. Moreover, is certainly not how either Lord Wilberforce or Gummow J saw it. Other candidates resorted to 'fairness' without further explanation, a generally unhelpful approach in a law exam.

**Question 3**

**Was the trust in *Rochefoucauld v Boustead* (1896) express or constructive? Does it matter?**

A good answer would begin by describing what happened in *Rochefoucauld v Boustead*, noting that the Court of Appeal in the case itself, as part of its *ratio*, held the trust to be express, not constructive, a conclusion recently endorsed by the Court of Appeal in *Crescent Gas v National Iranian Oil Co*. It would also note that there are many others who say it is constructive, including the Court of Appeal in *Bannister v Bannister*, Millett LJ in *Paragon Finance v Thakerar*, and various academic commentators. Candidates therefore needed to engage with the arguments of both courts and commentators and conclude one way or the other.

As to the second part of the question (why it matters?) a good answer would point to *Rochefoucauld* itself, where the claim would have been out of time if constructive (hence *ratio*), and to the emergence of the *Binions v Evans* doctrine, the only authority for which is *Bannister v Bannister*. There are also some academics who try to construct a general theory of constructive trusts, with *Rochefoucauld* as a foundational case. Finally, there are the so-called 'Acquisition Constructive Trusts', including cases such as *De Bruyne v De Bruyne*, a case not even involving land.

This was another popular question. A major criticism, however, was a general failure to pay attention to the cases themselves. A prime example was the decision in *Rochefoucauld* itself, which the vast majority of candidates had clearly never read. Of course, the finding in that case that the trust was express has been criticised, and that criticism needed to be

discussed, but the starting point should have been with what the case itself decided and with Lindley LJ's reasoning.

Another problem was a misrepresentation of the subsequent case of *Bannister*, the main authority relied upon for the argument that, at least as a matter of authority, the trust was constructive. The Court of Appeal there not there did *not* hold that the trust arose because of plaintiff going back on his promise. If that had been the argument, *Rochefoucauld* would have been irrelevant. Yet the court applied *Rochefoucauld*. What the plaintiff was there trying to do was to use s 53(1)(b) LPA 1925 to exclude D's oral testimony as to what was agreed, exactly as happened in *Rochefoucauld* itself. He argued that the *Rochefoucauld* doctrine only applied where fraud in the form of deceit was both alleged and proved, an argument which was rightly rejected. This was a prime example of the danger of relying on second-hand accounts of cases, for nothing is said in the case itself about the trust arising because of the plaintiff reneging on his promise.

Yet another problem was confusion with s 53(1)(c) LPA 1925, a different rule completely, and a failure on occasion to identify the exact nature of the rule in s 53(1)(b), which was often, as noted above, wrongly referred to as a rule 'creation' or 'transfer'. Again, the minimum familiarity with the text of the provision would show that this cannot be the case.

Finally, as to the second part of question (why it matters), many just ignored it, though there were some good accounts, with discussion of cases such as *Binions v Evans* and *Khan v Khan*.

**Question 4**

**'[T]he equitable personal claim in what is generally called knowing receipt … usually arises where a trustee ("T") transfers trust property beneficially owned by the claimant ("C") to the defendant ("D") in breach of trust, and D learns about that breach before disposing of the property by transfer to a third party or by dissipation or destruction of it. In such a case although, after disposal, dissipation or destruction of the property by D, C can no longer pursue a proprietary claim that D transfer the property to C, (or if appropriate back to T or to a new trustee), D incurs a personal liability to account or pay compensation to C as if D were a trustee of the property. From the moment when D learns of the breach of trust, D comes under a personal obligation to restore the trust property to its equitable owner, and to act as its custodian in the meantime. That obligation, together with the concomitant liability to account, is often described as a form of constructive trusteeship.' (LORD BRIGGS in *Byers v Saudi National Bank (*2024))**

**Discuss.**

This question asked candidates to assess the nature of the claim in knowing receipt. A good answer would have dissected Lord Briggs' quote, who speaks of a 'compensatory claim' brought by the trust beneficiary. Does this work? It is not normal to see trust beneficiaries having rights enforced through compensatory awards, although *Target* and *AIB* are obviously framed in this way. Moreover, what is it which generates this award? Lord Burrows in the same case insists it must be a wrong, but that is firmly resisted by Lord Briggs, with the three other members of the court leaving the question open. But if not a wrong, what is it? Unfortunately, Lord Briggs does not say. All we are told is that the defendant is treated 'as if he were' a trustee, which can only mean that he is not a trustee at all, though how in the same breath Lord Briggs talks of custodial duties is difficult to explain. A good answer might discuss the Mitchell and Watterson thesis, noting that it was

accepted by the Court of Appeal in *Byers*, but seemingly not when the case reached the Supreme Court. It would also discuss the Birks/Nichols unjust enrichment explanation, a route expressly left open by Lord Burrows in *Byers* itself.

Despite being an entirely predictable question, it had very few takers. It is therefore not possible to comment on how candidates answered it.

**Question 5**

**'Unincorporated associations do not have separate legal personalities. Almost all the myriad legal problems to which they give rise stem from this.' (LEWISON J in *Hanchett-Stamford v A-G* (2008)).**

**Discuss.**

A good answer would explain what is meant by an unincorporated association, why it has no legal personality, and why this causes 'myriad legal problems', discussing both attempted transfers of rights to such associations and the status of those rights on dissolution. As to the first, it would discuss the different possible constructions a court might put on a transfer. As to the second, it would discuss the different approaches to distribution on dissolution, taking note of Lewison J's statement in *Hanchett-Stamford* itself that the only logical approach is one marrying up the question how the rights were received with how they are to be distributed on dissolution. It would also examine the strange form of co-ownership Lewison J identifies and the correction of the mistake made by Walton J in his otherwise excellent judgment in *Re Bucks*.

As with question 5, this had almost no takers, despite being a topic regularly appearing on the exam.

**Question 6**

**To what extent can trustees have regard to ethical considerations when investing the trust fund?**

A good answer would discuss the evolution of the case-law from *Buttle v Saunders*, *Cowan v Scargill*, and *Harries v Church Commissioners for England* through, more recently, to *R (Palestinian Solidarity Campaign Ltd) v Secretary of State for Housing, Communities & Local Government* and *Butler-Sloss v The Charity Commission for England and Wales*, where the *Palestinian Solidarity case* is discussed in detail. The question is not confined to trusts for persons, so a good answer would address both charitable and non-charitable trusts. Although written descriptively, credit would be given to those who go further and ask whether the present state of the law is satisfactory.

This question again had very few takers.

**Question 7**

**'If and when section 199 of the Equality Act 2010 comes into force, Parliament will have abolished the wrong presumption.'**

**Discuss.**

This was a question about so-called presumed resulting trusts, more accurately, those resulting trusts which arise because of a fact proved by presumption rather than by

evidence. Orthodoxy has it that in certain circumstances a 'counter-presumption' arises, a 'presumption' that the transferor or provider of purchase money intended to make a gift to the transferee. This 'presumption' of advancement will be abolished if and when s 199 comes into force. In discussing whether this was the right 'presumption' to abolish, a good answer would address two points, first, the content of the presumption generating the 'presumed resulting trust', and second, whether the presumption of advancement is really a presumption at all. As to the first, a good answer would discuss the competing views (declaration of trust (Lord Nottingham in *Cook v Fountain*), unexpressed intention to create a trust (Mee) and no intention to benefit the transferee (Birks/Chambers)), as well as what the House of Lords held in *Westdeutsche*, deciding which is correct. That, in turn, will determine whether it should have been abolished. As to the second issue, there is Australian authority to the effect that the presumption of advancement is no presumption at all, that the situations falling within it are simply those where the presumption generating the resulting trust does not apply. If true, candidates should ask whether cases such as *Warren v Gurney* were rightly decided and what the effect of s 199 will be on such a case if it comes into force.

This was a moderately popular question. Although there were some good answers, many candidates just trotted out their prepared essays on resulting trusts in general, with little focus on the specific question posed. Some even talked about automatic resulting trusts, which were clearly of no relevance. There was also commonly a misstatement of what *Westdeutsche* decided, again indicating that it had not been read. It avowedly did not decide that the 'presumed resulting trust' arose because of a suspicion of gifts - that was the Birks thesis which the House of Lords specifically rejected. There was also some nonsense about the presumption of advancement being misogynistic, yet a moment's thought would reveal that the only people being discriminated against are husbands and fathers. The examiners were also told that it is designed to protect women in vulnerable situations, which once again is nonsensical.

**Question 8**

**'An express trust is a substantive institution. Constructive trust, on the other hand, is purely a remedial institution. … [There is not] the substance of a trust.' (POUND)**

**Discuss.**

A good answer would explain exactly what Roscoe Pound meant by this statement and how its meaning seems somehow to have become lost in translation as it moved across the Atlantic. Pound was comparing express trusts and constructive trusts. For him, express trusts were genuine trusts, with the trustee coming under duties of trusteeship. This is what he meant by saying they are 'substantive'. By contrast, the phrase 'constructive trust' was, for him at least, merely a formula for equitable relief, the defendant being liable to the making of the same remedial orders, eg, to pay money, to convey a right, as could be made against express trustees. However, the reason for the making of such orders would not be a breach of trust but something else, eg, unjust enrichment or wrongdoing such as breach of fiduciary duty.

This is not, however, how constructive trusts are perceived in England and Wales, at least not always. The English orthodoxy is that constructive trusts are no different from express trusts, save that they arise for reasons other than declarations of trust. Though there are in English law instances of constructive trusts in Pound's remedial sense of the phrase, the prime example being orders made against dishonest assisters of breaches of trust to reinstate the trust fund, these are generally seen as anomalies (cf Lord Browne-Wilkinson's

puzzlement over the 'knowing assistance constructive trust' in *Westdeutsche*). Further, and beyond the personal liability instances, some see there as being two types of constructive trust, 'institutional' and the 'remedial', an obvious corruption of Pound's typology. A good answer would ask what these terms mean and explain their incidence in English law.

Though popular, this was, on the whole, poorly done, with most candidates not bothering to try to work out what Pound was even talking about but coming up with vague statements such as because express trusts require the three certainties and constructive trusts do not, constructive trusts are remedial and express trusts are substantive. More plausibly in light of cases such as *Goldcorp*, others saw 'remedial' as concerned with discretion. This was not, however, what the question was getting at, which was not about remedial constructive trusts in particular but about constructive trusts as a whole and their relationship to their express siblings.

**Question 9**

**'The fiduciary duty to account for profits is a rule governing the conduct of fiduciaries which exists in its own right. … It is not just a discretionary equitable remedy for the breach of some other duty, such as the conflict rule, nor is it necessarily triggered by some other breach, although it very often is. A fiduciary may come to generate a profit out of his role as such without committing any breach of trust. …. The wrong which may lead to a court order for an account of profits is, in such a case, no more or less than the failure to account itself, by a fiduciary who wishes to keep the profit for himself.' (LORD BRIGGS in *Rukhadze v Recovery Partners GP Ltd* (2025))**

**Discuss.**

A good answer would break down the quote from Lord Briggs, asking whether it is really feasible to say that in the case of the liability to account for gains made in a situation of conflict we are not in the realm of remedies for breach of fiduciary duty but instead concerned with obligations completely independent of wrongdoing, a primary as opposed to a so-called 'secondary' obligation. It would explain why Lord Briggs analysed things the way he did and whether it was possible to refute the defendant's causation argument without it. It would then ask whether such a view can be squared with the result in *Rhukhadze* itself, where the trial judge gave an allowance of 25% for work and skill in providing the services. How is this to work? Is the defendant supposed to calculate this figure themselves and hand over only 75% of their gains? Moreover, does the same primary duty thinking apply to losses as well as gains, as, eg, in *Nocton v Lord Ashburton*? Further, is it possible to imagine situations where gains must be given up absent a breach of duty? Finally, does it make sense to say that orders to perform this primary duty are not responses to wrongs? Candidates might ask whether the view of judges such as Lords Leggatt and Burrows, who see this as an instance of the commission of a wrong at the start, are more defensible.

The question had few takers. Although there were some excellent answers, there was a marked failure to engage with the quote. So, for example, there was general discussion of *Boardman v Phipps* being too harsh. That may well be true, but it was not what the question asked. Others railed against strict liability, but again, that was not the issue. Finally, there was a general failure to discuss the alternative views of Lords Legatt and Burrows.

**Question 10**

**'Equitable compensation for breach of trust is designed to achieve exactly what the word compensation suggests: to make good a loss in fact suffered by the**

**beneficiaries and which, using hindsight and common sense, can be seen to have been caused by the breach.' (LORD BROWNE-WILKINSON in *Target Holdings Ltd v Redferns* (1996))**

**Discuss.**

This question asked candidates to discuss the correctness of the decision of the House of Lords in *Target Holdings v Redferns*. A good answer would describe the facts and decision, contrasting the decisions of both the Court of Appeal and the House of Lords, and pointing out the difficulty caused by the way the claim was framed, viz, using the language of compensation for breach of trust. Given that, it is little wonder that the House of Lords thought causal issues were relevant. The difficulty, of course, is that beneficiaries of trusts are traditionally seen as having no claims for their personal losses, only to sue in a representative capacity for restoration of the trust fund. In that respect, it should be asked whether Lord Millett's attempt to produce the same result by bringing the case within the traditional accounting mechanism can work. This was, of course, rejected in *AIB,* but that does not make it wrong. However, if it is wrong, the question then is whether the result in either *Target* or *AIB* can be defended in some other way. In that respect, a good answer would ask whether Lord Reed's notion in *AIB* that where the trust is merely the mechanism for the performance of the contract, the normal contractual rules should apply, is superior.

Surprisingly, this question had few takers, making it difficult to give feedback on the quality of answers.

**Question 11**

**Basil holds 100,000 shares in Fawlty Ltd, a private company. He declares in writing that he holds 50,000 of those shares on discretionary trust for those to whom in his own opinion he owes a moral obligation, with a power to appoint such shares to any person in the world save his wife and children. He further declares in writing that he holds 25,000 of the 100,000 shares on discretionary trust for tall vegetarians resident in Cowley.**

**Advise Basil on the validity of the trusts.**

This was a problem question on certainty of subject-matter and objects of two self-declared trusts. As to certainty of subject-matter, a good answer would ask whether the decision of the Court of Appeal in *Hunter v Moss* can apply to the situation of two sequential trusts and, if not, whether the reformulation by Briggs J in *Pearson v Lehman Bros* fares any better. There was also the more general issue as to the correctness of *Hunter v Moss*. As to certainty of objects of the first trust, a good answer would identify the test for discretionary trusts ('any given postulant') and ask whether it is satisfied in the case of 'persons to whom the settlor owes a moral obligation', noting that the approaches of Sachs and Megaw LJJ in *re Baden (No 2)* might yield different results. It would then ask whether any uncertainty of objects was cured by the opinion clause. In this respect, it should discuss more than simply the minority judgment of Lord Denning MR in *re Tuck*. As to the power of appointment contained in the first trust, there being no uncertainty of objects involved, the issue was whether considerations of administrative workability are applicable to such powers. As to the second trust, the issue again was whether it satisfied the any given postulant test, which in turn required an application of the various views expressed in *re Baden (No 2)* and, where they yielded different results, advice on which would be ultimately preferred.

This was a popular question and produced some good answers. However, there were many poor ones as well. The first problem was with subject-matter. Most candidates simply said this was not problematic because *Hunter v Moss* held that no difficulty with certainty arose where the subject-matter of the trust was 'intangibles'. Yet this word appears nowhere in the judgment of Dillon LJ. And though there was often mention of the co-ownership model adopted by Briggs J in *Pearson v Lehman Bros*, few, if any, asked how this could work in the scenario posited in the question of two sequential trusts of the same bulk.

As to the objects of the two trusts, for the first, there were wildly inaccurate accounts of what the various judges said in *re Baden (No 2)*, with Sachs LJ, according to some at least, laying down the 'one person test', a test expressly rejected (in respect of powers) in *re Gulbenkian*. Moreover, there was a general failure to decide which of the three approaches was most consistent with *McPhail* and therefore most likely to be endorsed by the UK Supreme Court should the issue come before it. Then, as to the opinion clause, though there were some good treatments, many confined themselves to Lord Denning's minority judgment in *re Tuck*. The issue of administrative workability with respect to the power was generally well done, though some candidates got themselves completely and unnecessarily muddled by the idea of a discretionary trust being subject to a power. Finally, as to the second discretionary trust, though most managed to state correctly the test for certainly, its application left much to be desired. So, for example, the examiners were sometimes told that 'tall' was conceptually certain.

**Question 12**

**Advise on the validity of the following provisions in Nigel's will, who has just died:**

**i. £100,000 to A, in trust to educate the children of millionaires in Oxford;**

**ii. £100,000 to B, in trust to support my needy relatives;**

**iii. £100,000 to C, in trust for the printing, publication and propagation of the writings of Ben Bowstead;**

**iv. £100,000 to D, in trust to advance the worship of the moon.**

**Ben Bowstead was a nineteenth century hermit who claimed to be Jesus Christ returned to earth in the Second Coming. He had only a handful of followers.**

This was a question on charitable testamentary trusts. As to the four different trusts:

i. a trust to educate the children of millionaires is abstractly beneficial and no issues of personal nexus arise, so the public benefit requirement would seem to be satisfied. However, there are dicta to the effect that a trust which excludes the poor, as this one seems to do, is void: *re Resch's WT*; *Independent Schools Council v The Charity Commission for England and Wales*; *Merton LBC v Nuffield Health*. A good answer would ask whether these dicta are correct or betray a misunderstanding of the legal (as opposed to lay: *cf Pemsel*) meaning of charity;

ii. prior to the 2006/11 Acts, this trust would have been valid, the public benefit requirement being held inapplicable to trusts for the relief of poverty by the Court of Appeal in *re Scarisbrick*. The question then is whether this conclusion survived the enactment of the new legislation, with its statutory requirement that all charitable trusts satisfy the public benefit test. The TTC in *A-G v Charity Commission for England and Wales* held that

*Scarisbrick* was still good law. A good answer would therefore set out the reasoning of the court and ask whether it is convincing;

iii. this raised the question whether cases such as *Thornton v Howe* and *Re Watson* would be decided the same way today. The latter case, eg, talks of an 'assumption' of public benefit where the purposes are of a religious nature. However, has this 'assumption' not been abolished by s 4(2) of the 2011 Act?;

iv. the final trust raised a question as to what amounts to advancement of religion for the purposes of the 2006/2011 Acts. Clearly, such trust would not have qualified as charitable before the Acts as no higher being, no god, is involved and so a good answer would consider the 'definition' of charity contained in s 3(2) of the 2011 Act (which tells us that 'religion' includes 'a religion which does not involve belief in a god') and how far worship alone is sufficient.

This question generally attracted the weakest answers of all. Particularly problematic was the fact that most candidates answering this question missed altogether that it concerned charities, and so did not use the term once. Such candidates thought the question concerned certainty of objects, despite the fact that this was clearly the subject-matter of question 11. Though a number did better and spotted that the question involved a series of purpose trusts, they still said nothing about charities, choosing instead to discuss *Re Denley* for each of the four trusts. Candidates should have known that there is almost always a charities question on this exam and that this had to be it; no other question came anywhere near it. Candidates who failed even to discuss charity failed this question.

**Question 13**

**Fred holds outright a parcel of shares in Momo Ltd, a private company. He is also a beneficiary of a trust of shares in Nono Ltd, also a private company, of which Oscar is the trustee. Fred wants to vest both his interests in Gary to hold on trust for Helena. Gary agrees to act as trustee. As to the Momo shares, Fred completes a share transfer form in favour of Gary but does not, as required by the company's rules, first offer the shares for sale to the other shareholders; he hands the transfer form to Helena. He also hands Helena an unsigned note stating that she is now the beneficiary of a trust of the Nono shares, which Helena shows to Gary.**

**Fred is now insolvent and his trustee in bankruptcy seeks your advice as to whether the Momo shares and Fred's interest under the trust of the Nono shares are available to satisfy his debts.**

This was a problem question on the constitution of trusts. As to the Momo shares, on the assumption that the registration of Gary as shareholder had not yet taken place, the question was whether the court would nevertheless see there as being a perfect trust. Applying *Milroy v Lord*, it would be impossible to see Fred as having declared himself a trustee of the shares. However, according to the Court of Appeal in *re Rose*, that apparently will not preclude the finding of a constructive trust. The most obvious argument for such a trust here would be *re Rose* itself, which would require candidates to articulate exactly what the rule was in that case, ie, whether filling in the form was enough (as Clarke LJ held in *Pennington v Waine*), which has happened here, or whether Fred must have done all in his power to transfer the shares, which has obviously not happened here, with the shares not being first offered for sale to the other shareholders (for some reason not problematic in *Pennington* itself) and the form handed to the transferee (as Arden LJ held in *Pennington*). A very good answer might query how such things can generate trusts and ask whether *re*

*Rose* is consistent with the general rule in *Milroy* that 'there is no equity in this court to perfect an imperfect gift'.

Another possibility would be the alternative route taken by the Court of Appeal in *Pennington* itself, holding that a constructive trust arises at the point when it becomes 'unconscionable' for the donor to resile from their gift. As that case demonstrates, however, there can be different views as to exactly what triggers that unconscionability, with Arden LJ saying it was the donee signing the consent forms to become a director (though without explaining why this mattered) and Clarke LJ saying it was the testatrix's estate trying to go back on a gift which the donor/testatrix had intended. Recent decisions such as *Kahn v Mahmood* further show the instability of this 'doctrine'. A good answer would question the pedigree of this doctrine, which is arguably based on a misreading by Arden LJ of *Choithram v Pagarani*.

As to the Nono shares, perfection of the trust would require the assignment by Fred of his interest under the trust to Gary, such assignment needing to be in signed writing: s 53(1)(c) LPA 1925. This was obviously not the case here. An argument that that provision is confined to interests under trusts of titles to land is no longer tenable following *LA Micro*. The question then is whether we might see the effect of Fred's unsigned note as, on the one hand, a self-declaration of trust, or, on the other, as taking the case outside the statute through the purposive reasoning of Lord Upjohn in *Vandervell v IRC*.

The question produced some muddled answers. As to the trust of the Momo shares, the first point of confusion was the statement that, since the declaration of trust was in writing, the requirements of s 53(1)(c) LPA 1925 were satisfied. This left the examiners baffled, as s 53(1)(c) says nothing about the creation of trusts, being instead concerned with the disposition of interests under already existing trusts. They can only think that because many of the cases on s 53(1)(c) concern shares, and the present facts concerned shares, that candidates somehow thought the statutory provision always applies whenever shares were involved. Yet simply reading the one short sentence contained in s 53(1)(c) would show such thinking to be wrong. Most did, however, identify the problem as a failure to constitute the trust and the possible application of *Re Rose*, though almost no candidate discussed the reasoning in the case itself. Nor did anyone notice the extended discussion of the issue in *Pennington v Waine*, again demonstrating that candidates are not familiar with primary materials. Moreover, when candidates moved on to *Pennington v Waine*, most simply accepted it uncritically. Though they noted Briggs J's attempt to bring it within the proprietary estoppel doctrine in *Curtis v Pulbrook*, few went on to explain that that was not how the case was argued and that in *Khan v Mahmood* Marcus Smith J expressly rejected any requirement of detrimental reliance. Finally, many discussed matters which were clearly of no relevance, the most notable being *LA Micro*. Though they acknowledged that it had no application here as there was no contract, they had obviously prepared it and wanted to demonstrate that fact to the examiner. They got no credit for doing so.

Question 14

Tim holds £1,000,000 on discretionary trust for a class of certain objects. In breach of trust, he makes the following transfers out of the trust fund:

i. he uses £100,000 to discharge his own liability to His Majesty's Revenue & Customs; the discharge of this debt enables him to use money he holds outright to purchase a large block of shares, which he still holds, which have since tripled in value;

ii. he uses £100,000 to discharge a debt secured by a legal charge on his fee simple title to land;

iii. he uses £100,000 to pay off his credit card bill, with which he had previously purchased a title to a yacht;

iv. he pays £100,000 into his personal bank account, in which there is already £100,000, so raising the balance to £200,000. He withdraws £50,000 from the account, which he uses to buy a title to a car which the vendor is instructed to convey to Tim's wife. Though the rest of the money in the account was spent on expensive holidays, bringing the balance to zero for some time, it now has a credit balance of £250,000, the source of which is an inheritance from Tim's mother.

Tim is now insolvent.

**Advise Brian, a member of the class of objects of the trust.**

This was a problem question on tracing. Given Tim's insolvency, a personal claim against him will be worthless, so candidates got no credit for discussing it. The issue instead is whether there are any substitute rights which Brian can claim as trust 'property'.

A preliminary issue is whether, as a member of the class of objects of a discretionary trust, Brian can even sue. If tracing is all about vindicating 'property' rights, then it is difficult to see how Brian meets this requirement. Of course, it is not about that, otherwise there could be no tracing in the case of the misapplication of funds by a charitable trustee, but a good answer would at least consider the issue.

Going through the transactions in turn, we know that it is impossible to trace into the discharge of unsecured debts: *re Diplock*. Candidates should, however, ask whether a causal (rather than transactional) link will suffice, thus giving a claim to the shares bought with money which would otherwise have been used to pay the HMRC debt. As to the discharge of the secured debt, tracing does now seem to be possible. Cases such as *Boscawen v Bajwa* allow this through subrogation to the rights of the security-holder, though it is difficult to see exactly who on the present facts would be subrogated. As to paying off the credit card bill previously used to purchase the title to the yacht, this raised issues of backwards tracing, and candidates needed to discuss the applicability of *Brazil v Durant*. Finally, the payment into the trustee's personal account etc raised issues as to the payment out from a mixed fund (*re Hallett*; *re Oatway*), the lowest intermediate balance rule (*Roscoe v Winder*) and the position of possibly innocent third parties.

This was a popular question, though many candidates erroneously thought that the first three parts all concerned backwards tracing. This was difficult to fathom as in both i. and ii., though debts were discharged, no rights had previously been acquired on credit. Some candidates did, however, speak of subrogation to the charge in ii. and backwards tracing in iii., though many then simply dismissed the possibility of backwards tracing for want of evidence of a co-ordinated scheme. But, as noted above, the examiner (deliberately) did not give candidates enough facts, and it was therefore for them to discuss what more facts were required.

## University of Oxford External Examiner Report

17.B1. a) How do academic standards achieved by the students compare with those achieved by students at other higher education institutions of which you have experience?
I was very impressed by the academic standards achieved by the students, and these were certainly comparable with those achieved by students at my university and higher than those achieved by students at other higher education institutions where I have acted as an external examiner. I was able to make an assessment of this in relation to the sample of scripts and dissertations that were sent to me for review across different papers and in relation to the programmes as a whole.

18.B1. b) Please comment on student performance and achievement across the relevant programmes or parts of programmes and with reference to academic standards and student performance of other higher education institutions of which you have experience (those examining in joint schools are particularly asked to comment on their subject in relation to the whole award).
The student performance and achievement across the relevant programmes was excellent. As an external examiner, I participated fully in the scrutiny of the exam papers earlier in the examination process and was able tosee that the exam papers set were rigorous and intellectually challenging, and it was impressive to see that the candidates performed overall to a very high standard across the programmes. More so, considering that candidates in the examination for the Honour School of Jurisprudence courses (I and II) sat nine exam papers in a single examination period. In all other institutions where I have acted as an examiner (including my own),candidates have never sat more than five papers in a single examination period. This denotes, in my view, that Oxford students in these programmes not only show a high degree of resilience but also an exceptional level of academic performance and achievement, which is higher than the student performance in other higher education institutions of which I have experience. The performance of the candidates in the Diploma in Legal Studies was very good and comparable to similar programmes in other higher education institutions.

19.B2. Please comment on the rigour and conduct of the assessment process, including whether it ensures equity of treatment for students, and whether it has been conducted fairly and within the University's regulations and guidance.
I was thoroughly impressed by the rigour applied to the entire assessment process. In the earlier stages of the process, the scrutiny of the exam papers was carried out with painstaking dedication and attention to detail by the Board of Examiners under the direction of the Chair of Examiners, and I had the opportunity to be fully
involved both in the main meeting and then in receiving the comments from the examiners. Later in the process, I was sent a sample of scripts to review and given access to marks in individual questions and reconciliation sheets. Finally, the final Exam Board provided a very clear example of an extremely rigorous method of classification of candidates, with ample opportunity for discussion among Board members and detailed consideration of individual cases. I therefore have plenty of evidence to conclude that I am entirely satisfied with the soundness and fairness of the process followed.

20.B3. Are there any issues which you feel should be brought to the attention of supervising committees in the faculty/department, division or wider University? If you acted as external examiner for multiple courses, please indicate whether the issues related to all or selected courses.
No.

21.B4. Please comment/provide recommendations on any good practice and innovation relating to learning, teaching and assessment, and any opportunities to enhance the quality of the learning opportunities provided to students that should be noted and disseminated more widely as appropriate.
As I mentioned earlier, I thought that the assessment process was, in its entirety, an example of very good practice and that the Chair and Board of Examiners showed an exemplary dedication to ensure fairness and equity of treatment of the candidates. My only comment, which is not for the Board of Examiners but in relation to the enhancement of learning opportunities, is that it emerged during the discussion of certain examination-related issues that perhaps the teaching of certain subjects is not as co-ordinated between colleges (in the sense that certain topics in the syllabus may not be covered in some colleges but may be covered in others) as it should ideally be in order to ensure parity in the exam preparation of all students. I wonder whether this is something that might be considered to ensure a level playing field across the students in the University.

22.B5. a) Please provide any other comments you may have about any aspect of the examination process. Please also use this space to address any issues specifically required by any applicable professional body.
I have no further comments but would like to thank the Chair of the Board of Examiners, the Board of Examiners, Ms Francesca Padley, and Mr Dominic Wilson for their support and guidance throughout the process, for their efficiency, and for providing a collegial and helpful environment to carry out my role. It has been a pleasure working with them.

## University of Oxford External Examiner Report

17.B1. a) How do academic standards achieved by the students compare with those achieved by students at other higher education institutions of which you have experience?
The academic standards achieved by the students are at the higher end of achievement compared to students at other higher education institutions with which I have had experience.

18.B1. b) Please comment on student performance and achievement across the relevant programmes or parts of programmes and with reference to academic standards and student performance of other higher education institutions of which you have experience (those examining in joint schools are particularly asked to comment on their subject in relation to the whole award).
The levels of performance and achievement are at the higher end of achievement compared to students at other higher education institutions with which I have had experience.

19.B2. Please comment on the rigour and conduct of the assessment process, including whether it ensures equity of treatment for students, and whether it has been conducted fairy and within the University's regulations and guidance.
I was particularly impressed with the rigour of the assessment process, in all of the setting of the assessments, the marking, and the detailed examination of candidates in the Examiners' meeting. Great care was taken by all involved to ensure that students were treated fairly and transparently.

20.B3. Are there any issues which you feel should be brought to the attention of supervising committees in the faculty/department, division or wider University? If you acted as external examiner for multiple courses, please indicate whether the issues related to all or selected courses.
As a first time external at Oxford, there are two issues I would like to raise. The first is the lack of a process for ensuring that students at different colleges are taught a module in a roughly consistent way. While the lectures are uniform, I understand that individual colleges allow their tutors to teach the syllabus of the module in different ways. While I understand the academic freedom arguments behind this approach, there seems to me to be a real possibility of unfairness depending the topics chosen by the individual tutor in the College and the difficulty of individual questions on the paper. Personally, I am not convinced this can be adequately solved by ensuring that the questions on the paper cover all possible permutations of teaching that might have been carried out by tutors. This was not a matter for the Examiners' meeting but it arose in the context of a case of potential unfairness arising from this system hence my knowledge of it. The second issue I would raise is the continuing use of asynchronous assessment as part of these programmes. Advances in AI have made it virtually impossible to prevent students using AI to answer written asynchronous assessment and virtually impossible for it to be detected when used. Again, this is not a matter for the Examiners' meeting but there were certainly examples noted of significant discrepancies between asynchronous components of assessment for a module and invigilated, synchronous components. It should also be noted that the use of asynchronous assessment is increasingly being targeted by regulators of the legal profession internationally so there are some regulatory risks about retaining asynchronous assessments, certainly in the traditional core law modules. Clearly Oxford is not unique in navigating these challenges but, in terms of integrity of assessment, it is something that needs to be acknowledged and responded to appropriately. Increasingly, declarations made by students that they have not improperly used AI is being seen as an inadequate response.

21.B4. Please comment/provide recommendations on any good practice and innovation relating to learning, teaching and assessment, and any opportunities to enhance the quality of

the learning opportunities provided to students that should be noted and disseminated more widely as appropriate.
I have mentioned above the excellence of the assessment process. The reading of papers by non-specialist member of the Board allowed for ambiguity to be identified and corrected if required.

22.B5. a) Please provide any other comments you may have about any aspect of the examination process. Please also use this space to address any issues specifically required by any applicable professional body.
I have nothing to add to the substance beyond what I have said above. My final point will not be popular but I nonetheless think it is worth saying. There were only two external examiners for the law programmes for which I was an external examiner. Other law schools have many more. Comparatively, Oxford asks a lot of its external examiners. I was paid the standard rate for an external examiner on programmes where we are asked to do considerably less. No one becomes an external examiner for the money; we do it because of its importance to ensuring the integrity and transparency of assessment regimes across university. That said, I was remunerated at not much above the minimum wage given the time I put into the process. For the reasons I have indicated, I think Oxford, at least for the programmes for which I was an external, appears rather stingy.