FHS Jurisprudence and Diploma in Legal Studies
Examiners' Report 2022

Preliminary note

PART I

STATISTICS

A.

(1) Numbers and percentages in each class/category

(a) Classified examinations

FHS Course 1, BA Jurisprudence

Class	Number			Percentage (%)		
	2021/22	2020/21	2019/20	2021/22	2020/21	2019/20
I	37	51	54	21.89	25.24	30.86
II.I	120	147	120	71.01	72.77	68.57
II.II	8	2	1	4.73	0.99	0.57
III						
Pass	2			1.18		
Fail	2	2		1.18	0.99	0.98

FHS Course 2, BA Law with Law Studies in Europe

Class	Number			Percentage (%)		
	2021/22	2020/21	2019/20	2021/22	2020/21`	2019/20
I	5	11	12	27.78	39.28	6.66
II.I	12	17	13	66.67	60.71	93.33
II.II	1			5.56		
III						
Pass						
Fail						

FHS Course 1 and 2 combined

Class	Number			Percentage (%)		
	2021/22	2020/21	2019/20	2021/22	2020/21	2019/20
I	42	62	66	22.34	26.96	30.84
II.I	133	164	133	70.74	71.30	68.70
II.II	9	2	1	4.79	0.87	0.46
III						
Pass	2			1.06		
Fail	2	2		1.06	0.87	

(b) Unclassified Examinations

Diploma in Legal Studies

Category	Number			Percentage (%)		
	2021/22	2020/21	2019/20	2021/22	2020/21	2019/20
Distinction	10	8	11	30.30	32	36.67
Pass	22	17	19	66.67	68	63.33
Fail	1			3.03		

(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, but none has been held for the last seven years.

(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 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. This sample comprised at least six scripts, or 20% of the scripts, whichever was larger. Further, any scripts where the first mark ends 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. In 2021/22, 515 scripts were second marked prior to the first marks meeting.

Following the first marks meeting additional scripts were sent for second marking in three situations. The first concerned scripts that were 4 marks or more below the candidate's average mark. The second was where a script had been marked at 58 and an increase to a mark of 60 would result in a First; the third was where a script had 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 a First.

In 2021/22, 283 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. 4 scripts were third marked.

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

	Number			Percentage %		
	2021/22	2020/21	2019/20	2021/22	2020/21	2019/20
Total Scripts	2178	2162	1915			
First stage	515	571	395	23.65	26.41	20.62
Second stage	283	173	188	12.99	8.00	9.81
All second marking	798	744	583	36.64	34.41	30.44

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 was used for the examination component (see above). Following the first marks meeting, additional second marking took place. Some scripts were sent for second marking where one or both elements were 4% below the candidate's average. Second marking also occurred where the combined marks left the student on the borderline between classifications. 36 Jurisprudence scripts were second marked after initial profiles were considered.

NEW EXAMINING METHODS AND PROCEDURES

B.

1. Format of exams

Coursework

Three papers (History of English Law, Comparative Private Law and Advanced Criminal Law) were assessed by way of essays written over the course of a working week. The assessments for Comparative Private Law and Advanced Criminal Law took place in Week 0 of Trinity Term and Week 9 of Hilary Term respectively. History of English Law had assessments in both of

those weeks in order to accommodate candidates who were also taking Comparative Private Law or Advanced Criminal Law as their other options.

Open-book examinations

Candidates sat examinations online using the Inspera platform. This platform enabled students to write answers directly into the system and thus avoided the need for any files to be uploaded (in contrast with the Weblearn platform, which had been used previously). Candidates were allowed four hours per exam save for Jurisprudence which paper candidates were required to answer in three hours. In order to accommodate time zone differences and candidates who were permitted additional time, each paper had to be completed within 25 hours with the four-hour (or three-hour) period commencing when the candidate opened the paper via the Inspera system. Because of the open-book nature of the exams, no material was made available to candidates beyond case lists (which were made available via Canvas). Candidates were forewarned in the Notice to Candidates that they themselves would be expected to ensure that they had access to relevant materials.

2. Operation of Exams and use of ARD Database

The examinations went smoothly and the Inspera system worked well. In the small number of instances when problems arose, these were almost all down to incorrect use of the Inspera system.

3. Examination Board

Examination Board meetings: The ARD Database worked efficiently, and all marks were available for the first marks meeting. During the first marks meeting any second marking was identified in relation to borderline classifications. Profiles were then considered at the second marks meeting on 12 July 2022. The Examination Board approved the prize list and confirmed the final marks by correspondence and a secure, private SharePoint site. 6 candidates still have pending grades due to plagiarism concerns. These were returned to the Board by the Proctors and the marks will be confirmed via correspondence shortly.

MCEs: In 2020, the University instituted an enhanced MCE procedure which permitted candidates to submit a student impact statement and to submit MCEs directly. The Examination Board considered 73 MCEs in total. Two candidates were elevated to a 2:1 on the basis of strong 2:2 profiles and relevant MCEs. Two candidates were elevated to a Pass from a Marginal Pass. One candidate had a paper disregarded and their classification confirmed in recognition that the paper in question had been severely affected by illness. This allowance was made in circumstances where an MCE that would have secured the student concerned extra time arrived too late for the MCE recommendation to be put into effect. One candidate submitted the incorrect handwritten paper to the submission point (after encountering problems submitting the script through Inspera). Concerns were expressed that the student may have used the time to improve their answers. However, the Examination Board accepted the explanation given in the MCE and the paper was marked with no penalty imposed.

Decisions made in respect of individual cases: 14 candidates (16 individual papers) were penalised by the Examination Board for poor academic practice and/ or plagiarism. Penalties ranged from 3 marks to 10 marks (the maximum marks an Exam Board can impose on a paper). 8 candidates (28 individual papers) were sent to the Proctors due to plagiarism concerns. 12 papers were penalised, 8 being given a mark of 0 and 4 being given between 12

and 15 mark penalties. 10 papers were sent back to the Exam Board to impose a penalty for poor academic practice and 6 papers were cleared of plagiarism.

4. Recommendations

ARD Database: It is proposed that changes be made to the Database to identify more systematically instances where second marking should be undertaken.

Examination and marking conventions: The Board asked that clauses be added to the Examination Conventions to stipulate penalties for extensive typographical errors, and that Undergraduate Studies Committee consider whether more specific rules could be agreed to determine when further marking should take place.

5. Thanks

The Examination Board expresses its graduate to the external examiners, who contributed significantly to the work of the Examination Board.

PART II

A. GENERAL COMMENTS ON THE EXAMINATION

The proportion of Firsts awarded is the lowest in three years, and moves to be more in keeping with pre-pandemic results. Students were given three hours to sit the examinations (two hours for the Jurisprudence exam). Withdrawals and suspensions stayed at the same level as 2021 (23 withdrawals/suspensions), however this was significantly lower than the figure of 30 for 2020.

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

FHS Course 1, BA Jurisprudence

	2022				2021				2020				2019			
	Female		Male		Female		Male		Male		Female		Male		Male	
	%	No	%	No	No	%	No	No	%	No	No	%	No	%	No	%
I	14	13	32	24	23	31	28	23	31	28	23	31	28	29	15	15
II.I	78	73	63	47	51	68	96	51	68	96	51	68	96	69	83	84
II.II	4	4	4	3			2			2			2	1		
III																
Pass	2	2												1	1	1
Fail	1	1	1	1	1	1	1	1	1	1	1	1	1			
Total		93		75	75			75			75				99	

FHS Course 2, BA Law with Law Studies in Europe

	2022				2021				2020				2019			
	Female		Male		Female		Male		Male		Female		Male		Male	
	%	No	%	No	No	%	No	No	%	No	No	%	No	%	No	%
I	30	3	25	2	4	57	7	4	57	7	4	57	7	33	6	29
II.I	70	7	63	5	3	43	14	3	43	14	3	43	14	67	15	71
II.II			12	1												
III																
Pass																
Total		10		8	7		21	7		21	7		21		21	

FHS Course 1 and 2 combined

	2022				2021				2020				2019			
	Female		Male		Female		Male		Male		Female		Male		Male	
	No	%	No	%	No	%	No	No	%	No	No	%	No	%	No	%
I	16	16	26	33	27	33	35	27	33	35	27	33	35	29	21	17
II.I	77	79	52	65	54	66	110	54	66	110	54	66	110	69	98	82
II.II	3	3	2	3			2			2			2	1		
III																
Pass	2	2												1	1	1
Fail					1	1	1	1	1	1	1	1	1			
Total	98		80		82		148	82		148	82		148		120	

The imbalance in the number of men and women attaining Firsts has increased since 2021. The 17 percent gap for 2022 means there is work to be done.

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

Students on the BA programmes take nine papers as part of the FHS examinations. These are made up of seven compulsory papers and two optional papers. Students chose from a list of 25 option papers for this year's FHS. The distribution of students across the option papers is shown below.

	2022	2021	2020	2019	2018	2017
Advanced Criminal Law	23	31	25	15	-	-
Civil Dispute Resolution	12	15	4	5	5	-
Commercial Law	12	20	-	11	25	11
Company Law	6	14	12	13	2	20
Comparative Private Law	14	14	15	17	14	11
Competition Law and Policy	9	24	17	15	1	33
Constitutional Law	3	8	5	9	6	9
Copyright, Patents and Allied Rights	-	-	-	9	34	29
Copyright, Trade Marks & Allied	16	31	16	15	18	13
Criminal Law	3	8	5	9	6	5

	2022	2021	2020	2019	2018	2017
Criminology and Criminal Justice	16	20	16	16	12	27
Dissertation	17	-	-	-	-	-
Environmental Law	12	22	12	16	3	6
Human Rights Law	20	20	18	17	20	19
Family Law	20	41	57	60	49	29
History of English Law	14	3	5	3	2	5
International Trade	5	15	10	13	8	5
Employment (Labour) Law	13	1	13	15	21	15
Media Law	41	23	30	28	1	20
Medical Law and Ethics	29	51	85	73	78	47
Moral and Political Philosophy	23	35	17	24	34	18
Personal Property	8	16	12	2	17	13
Public International Law	33	31	29	41	46	39
Public International Law (Jessup Moot)	1	5	6	3	4	
Roman Law (Delict)	5	16	5	7	9	18
Taxation Law	19	15	27	16	22	12

Students on the DLS take three papers, and choose from a shortened list of FHS option papers. The distribution of DLS students across the core and option papers is as follows:

	2022	2021	2020	2019	2018	2017
Administrative Law	4	-	1	-	1	-
Advanced Criminal Law	-	1	-	-	-	-
Commercial Law	6	1	-	-	-	-
Civil Dispute Resolution	1	-	-	-	-	-
Company Law	9	8	12	6	-	6
Competition Law and Policy	14	4	5	5	-	5
Constitutional Law	4	2	4	4	3	5
Contract	24	19	25	22	28	27
Copyright, Patents and Allied Rights	-	-	-	3	3	2

	2022	2021	2020	2019	2018	2017
Copyright, Trademarks and Allied Rights	4	4	6	2	4	4
Criminal Law	1	-	2	-	6	-
Criminology and Criminal Justice	3	3	2	3	4	2
Environmental Law	1	3	1	4	1	-
European Union Law	4	3	3	4	5	8
Family Law	-	-	-	1	-	-
History of English Law	-	1	-	-	1	-
Human Rights Law	2	-	-	-	4	5
Labour Law	-	-	1	2	3	2
Media Law	1	2	1	-	-	-
Medical Law and Ethics	-	-	-	4	3	-
Public International Law	5	6	5	9	5	3
Roman Law (Delict)	1	-	2	-	1	-
Taxation Law	2	2	-	4	-	-
Tort	15	23	17	23	23	22
Trusts	1	2	1	4	4	4

The distribution below is shown as percentages. Where 0 is shown, less than 0.5% of students fell into this range. A blank field indicates that no students fell into this range.

	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	187	1	15	16	17	43	68	5	7	10			
Contract	185		11	29	12	25	59	8	8	23		5	2
European Union Law	182		15	31	19	51	39	11	4	10		2	
Jurisprudence	180		14	17	38	65	41	2	7	1			
Land Law	183		9	22	17	39	37	24	9	21		4	1
Tort	184		8	31	30	53	45	7	6	4			
Trusts	183	1	9	18	17	31	59	23	6	15	1	2	1
Advanced Criminal Law	23			6	8	7	1	1					
Civil Dispute Resolution	12		1	4	3	2	2						
Commercial Law	12		1	2		6	1	2					
Company Law	6		1	1		2	2						
Comparative Private Law	14	2	2	1	1	3	3		1	1			
Competition Law and Policy	8			1	1	3	3						
Constitutional Law	3					1	2						
Copyright, Patents and Allied Rights	-												
Copyright, Trade Marks and Allied Rights	15		2	2	1	5	3			2			
Criminal Law	3				1	1							1
Criminology & Criminal Justice	16		4		1	6	4						
Dissertation	17		4	6	1	5	1						

	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
Environmental Law	12		1	3		5	3						
Family Law	20		4	5	3	6	2						
History of English Law	14		1	4	1	6		1	1				
Human Rights Law	19		4	1	3	5	5	1					
International Trade	5		2	3									
Employment (Labour) Law	12		2	2	1	1	3	1	1	1			
Media Law	41		4	7	4	13	10		1	1		1	
Medical Law and Ethics	28		3	8	1	15	1						
Moral and Political Philosophy	21		1	3	6	6	3		2				
Personal Property	8		3	2	1		1	1					
Public International Law	33		4	9	11	5	3	1					
PIL Jessup Moot	1		1										
Roman Law (Delict)	5		1	1		3							
Taxation Law	19		2	2	6	3	2	3		1			

D. COMMENTS ON PAPERS AND INDIVIDUAL QUESTIONS

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).
The overall standard of scripts was good, and there were very few low marks. But outstanding work was rare. Most candidates showed a sound understanding of the law and the academic literature. Creative thinking backed up with careful support was rewarded with first-class marks. Anyone aiming to do their best on the Administrative Law exam should aim very deliberately to make something of the question asked, and not to write an essay commenting on the general area of the question. Comments on particular questions follow, showing the approximate percentage of candidates who attempted each one:
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. (~40%) The question asked 'What is the purpose of administrative law?', but most candidates treated the question as if it asked what was the purpose of judicial review of administrative action! Good answers, unsurprisingly, addressed administrative law. Most candidates made some attempt at explaining different theoretical models, but there seemed to be a lot of copying from tutorial essays. 2. (~15%) The question asked how s 6 of the HRA has affected administrative law; a number of candidates made the mistake of treating it as if it asked what counts as a 'public authority' for the purposes of section 6. Even a good essay on that different question provides only a fragment of an answer to the question that was set. 3. (~15%) There were some very good essays on tribunals; the best explained what would count as success for the 2007 reforms. 4. (~50%) The second part of the question asked perfectly clearly whether courts should defer to an administrative authority's interpretation of its own policies. A number of candidates treated the question as if the second part asked, instead, whether a court should defer to an administrative authority's judgment when the court is reviewing its discretionary decisions in general. Some misinterpreted this question as being about the error of fact/error of law divide. There were, however, some really excellent answers –the ones that dealt with the question that was set. 5. (~80%) A very open question, dealt with very well by some candidates. In tackling a general question on a standard topic that is bound to be popular, it is a very good idea not to trot out a general tutorial-style essay. 6. (10%) Well done; it was surprising that relatively few candidates attempted this question.

7. (~15%) Some candidates attempted this question in spite of not knowing what it was asking. Those who understood it gave some excellent discussions of judicial review of exercises of prerogative and other powers not conferred by a statute.

8. (~70) Some candidates unfortunately treated this question as an opportunity to write a general essay on legitimate expectations. Good answers pointed out a variety of ways in which administrative authorities might act consistently or inconsistently, and made clear arguments as to the role that the law ought to have in securing the right forms of consistency.

9. (a) (~15%) A small number of outstanding answers pointed out the radical diversity of public authorities' duties in public law, and showed a sound understanding of the role of duties of care in negligence law.

(b) (~0%)

10. (a) (10%) For some reason, some candidates treated this as if it were a question about standing. Good answers treated it as what it is: a question concerning the granting of 'relief' (a question that is related to the grant of permission to bring a claim for judicial review).

(b) (70%) Very many candidates answered this. An easy question on a popular exam topic can be a trap; good answers resisted the temptation to waffle. Very few answers actually addressed (1) what was to be lost with the removal of 'sufficient interest' and (2) how sufficient interest is actually contextualised in the case law.

The moral of the story is, read the question! And then, answer it!

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).
The essays were, by and large, of a high level. The results were broadly in line with students who had worked hard consistently in the year. The standard in a take-home exam is appropriately high given the resources available to the candidates. Part A contained a compulsory question covering the material across the course. This Part's general question required reference to multiple areas of the course if candidates were to do well. It could not be answered well by reference to one or two topics from within Part B, nor by material which lightly skated on the surface of more than two of those Parts. While the word limit prevented very long engagement with all the specific topics in the course, candidates were rewarded for knowing enough, and thinking enough, to select the best material to support the argument they were making. Appropriate referencing was not only expected, but entirely necessary.
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 concerned what the criminal law does "better" than other areas of law. It was a compulsory question. Candidates did better if they explored what criminal law does at all, and what other areas of law do, and set standard for what "good" and/or "best" would mean in this context. Picking the right examples from across the course was very important.

Question 2 picked up a quote from Coffee, arguing that tort law prices while criminal law prohibits. The nature of tort obligations, and the implications of punishment and prices for that nature were open to candidates. Better answers tended to look at not just the general principles, but how Coffee's claim would carry through to the content of the rules themselves, if at all, and on the conceptual underpinnings of the claim, such as in the law and economics literature in the USA.

Question 3, "What would be the best definition of the offence of rape in England and Wales? Why?" was a popular question. Candidates seemed to have engaged well with the texts from the course, and a range of preferences for the law and underlying theory were argued for, sometimes fiercely. The best answers engaged with the normative claims and practical issues with them. There was a lot of material to engage with and produce a careful answer, which could be implemented into the law with the least difficulty.

Question 4, "What, if anything, about terrorism requires a different approach than that taken by traditional criminal law? How well does the current law respond to acts of terrorism?" Was generally popular as well, requiring a careful exposition of the criminal law in its "traditional" form, and the reasons terrorism might be different, as well as an assessment of the current law against some criteria for effectiveness.

Question 5, "What can court orders tell us about the rules being enforced by those orders?" This question was not popular. It asks candidates to consider the nature of criminal, and perhaps even civil, enforcement, as a means to understand the content of the rules being enforced. This corresponded with one set of seminar, lecture and tutorial in the course, and required discussion of the various orders through which the criminal law can be enforced even aside from the nature of a conviction as a sanction.

Question 6, "How can criminal law best be deployed in the context of financial wrongdoing?" This question was also not popular. It too built on a part of the course, here relating to regulation, and including issues like how "credibility chips" should best be used within the criminal law. To be answered well it required a standard of what "best" would mean in this context. It required analysis of what, if anything, makes financial wrongdoing any different to other forms of wrongdoing.

Question 7, "'You cannot criminalise hate, only the extra harm that hate does.' Do you agree? How does the law of England and Wales respond to hate and discrimination? This was the first question we have had on the course, as the topic was added in 2021-2. The question prompted candidates to consider whether hate is only ever an aggravating feature or can be the grounds for a discrete offence on its own. The question required discussion of what the law could do, and what it does now. Candidates did better if they considered carefully what "hate" and "discrimination" could be, and focused their answer within the scope of the Advanced Criminal Law Course.

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).
13 candidates sat the exam including one DLS student. Overall, the examiners were very impressed by the standard of answers with 5 first class and a significant number of high 2i scripts. All questions were attempted save for the question on history. Questions on fair trial rights, judicial impartiality, mediation, costs and legal professional privilege were particularly popular. Better candidates demonstrated a strong command of the materials on the reading list and thoughtful, nuanced reflections of the issues raised by the primary and secondary materials. Weaker scripts tended to answer the question too narrowly, or too broadly.

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).
There were some very pleasing, but no absolutely outstanding, scripts in Commercial Law this year.
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 had surprisingly few takers – nemo dat essay questions are typically quite popular. The reason may well be that the question asked not just about the statutory exceptions to nemo dat, but also for exceptions in equity. This might have caused many candidates to avoid this question – those who opted to answer it unfortunately simply ignored the reference to equity, leading to mediocre marks. Question 2 This question also had few takers. Better answers showed awareness of the recent Law Commission proposals and engaged with the question whether the suggested reforms would also be welcomed if introduced across the board. Question 3 This was a popular question producing some very pleasing answers, showing a thorough knowledge of the literature. The best answers took issue with the quote and sought to justify undisclosed agency based on commercial expediency. Question 4 This was not a popular question. Those that attempted it tended to focus on the existing English rules relating to characterisation, some choosing to concentrate on the sale/security, others on the fixed/floating charge distinction. Better answers explained the

largely unimplemented reform proposals of the Law Commission and contrasted English law with Art. 9 UCC and legal regimes throughout the Commonwealth based on it.

Question 5

This was the most popular essay question, rather surprisingly, with some excellent answers setting out the reasons why anti-assignment clauses are included in contracts and the reasons why these might be a bad thing, before turning to the Regulations and how they have attempted to improve the law.

Question 6

This question was the most popular problem question. It was not exactly a difficult question, and as such it was necessary to get almost everything right in order to achieve a first class mark. One common failing was not to consider the arguments that the other side might rely on and explain how they might be dealt with. For example, the projector is damaged beyond repair by the exploding lamp – of course, it is likely that this will be a breach of s. 14(2) SGA, but what about the argument that Ben should not have ignored the warning light? Another problem was that many candidates did not stop to think what remedies Ben might seek in the different scenarios. Thus, in (a), damages will compensate Ben fully, why spend (sometimes a lot of) time discussing rejection and acceptance? Under (c), many candidates thought the small print on the website constituted an exclusion clause and wrote about incorporation and, worryingly, s. 62 of the Consumer Rights Act (even though Ben was clearly not a consumer), when actually the question was concerned both with the effect of the pandemic (the projector/lamp had not been used) and whether the instructions should have been more prominent (i.e. written on the actual projector) in order to make sure that buyers are able to maintain the projector properly – lack of easily accessible instructions amounting to a breach of the term implied by s. 14(2) SGA. Finally, many candidates simply applied Ritchie in the final scenario, without stopping to think what use it would be to Ben to know why precisely a lightbulb failed!

Question 7

This was the second most popular question and most candidates dealt with it well. The main problems were that hardly any considered whether some of the sales might constitute consumer transactions – Luke was a 'collector and dealer', after all, so this requires at least to be discussed. Although the question was primarily about property and risk, contractual claims against the seller should not be ignored entirely!

Question 8

This was also a popular question. Most candidates handled it well. The very best answers saw the point that where it is clear that the agent is acting against the interests of her principal there can be no actual or apparent authority. Most candidates thought that the promise of the 'free' masks could not be enforced for want of consideration; only a few argued that entering into the long-term supply contract might well be sufficient consideration.

Question 9

Only one person answered this question so that it would be inappropriate to comment.

Question 10

While this had few takers, it was mostly well done; there was, however, a tendency to opt for one solution and to discount others.

COMPARATIVE PRIVATE 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).

Two papers were set for this year's exam (by extended essay) in "Comparative Private Law". Some candidates sat their paper at the end of Hilary Term, others at the beginning of Trinity Term.

Each of the papers contained three demanding and far-reaching essay questions of a comparative nature, two focusing on the law of obligations, namely contract or tort/delict, and the third focusing on property law. Candidates were required to answer one of these questions by reference to English law, French law, and German law, using the material which featured on the reading list. There was a good spread of questions answered, with all of them being tackled by at least one or two candidates and the property essays being slightly more popular with candidates than the obligations essays.

The overall quality of the submitted work was remarkably good, with relatively few papers displaying significant weaknesses and a considerable number of really outstanding contributions. Candidates opted for a range of different approaches and structures for their essays, some of which were more successful than others. The best answers were those which demonstrated a thorough understanding of the law in each legal system on its own terms, while drawing out comparisons and contrasts between the systems and managing to weave all this into an elegant, thoughtful and engaging comparative argument. Typically, essays which focussed directly and explicitly on the question set achieved higher marks than those which resorted to more generic comparative observations.

Most candidates drew on a wide range of literature from the reading list and many put the information thus obtained to good or excellent use in supporting their argument. The examiners were particularly impressed by a few scripts whose knowledge of the relevant law(s), ability to deal with a wide range of materials, level of engagement, depth of analysis and sophistication of argument far exceeded that which one would normally except to encounter at an undergraduate level. All in all, the examiners were thus very happy with candidates' performance.

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 of which four were essay questions and four problem questions. Following the successful change of format initiated two years ago, all

candidates were asked to answer three (instead of four) questions, including at least one problem question, in four hours.

Essay questions were of a mixed nature, probing the student's ability to reflect on transversal, topical, timeless, and/or very focused elements of the course.

Twenty-four students were registered to sit the examination, with twenty-three of them submitting answers that could actually be marked. Overall, the scripts showed a very good command of the subject and good analytical skills. The average mark was 65,5% with three students achieving a first class honours. 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 (ie two, sometimes even three problem questions). First class answers generally displayed excellent grasp of the underlying material, evidenced by sustained references to case law and commentary, combined with robust analytical engagement and creative —sometimes highly innovative— 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 first essay question required candidates to reflect on a quote drawn from Advocate General Rantos' Opinion in the Servizio Elettrico Nazionale case, which states that Article 102 TFEU does not prevent the acquisition or maintenance of market dominance on the merits. Overall, the seven students who attempted this question performed very strongly. The average mark obtained was 66,5%, with one candidate achieving a mark of 70% or above.

The second essay question required students to reflect on a quote by former European Commission Director-General for Competition, Alexander Italianer, which essentially dealt with the timeless issue of how to distinguish between "by-object" and "by-effect" restrictions of competition. Given that this is a staple of the course, it was unsurprising to see that sixteen students attempted the question. Three of them achieved a distinction mark; the average was 66,5%.

Question three required candidates to discuss the somewhat provocative statement, according to which EU merger control is currently unfit for purpose. This was an unpopular question with only two students attempting it with neither of them receiving a mark of 70% or above. The average was 63,5%.

In question four, candidates were given the opportunity to reflect on a topical issue: the (in)effectiveness of contemporary competition law in digital markets and the role of regulation in safeguarding competition in these markets. This question was similarly unpopular as only three students attempted it. While the average mark was 61%, performances were very uneven as one student achieved 69% and another 50%.

Problem questions focused on the application of Article 101 TFEU, Article 102 TFEU, the European Merger Regulation and the enforcement of competition law, with significant crossover in all four of the questions on offer.

Question five contained a multitude of issues including whether there was jurisdiction, several potential restrictions under Article 102 TFEU (predominantly), and the EUMR, as

well as the lawfulness of acts carried out by the European Commission in the context of a dawn raid. On the whole, the seven students who attempted this question performed very strongly. The average mark obtained was 66,5%, with one candidate achieving a mark of 70% or above.

Question six similarly cut across several areas of the course touching on abuses of dominance, potential collusive behaviour, and, again, the lawfulness of acts carried out by the European Commission in the context of a dawn raid. Students were also tested on their ability to properly assess joint ventures (ie full functionality under the EUMR or cooperative under Article 101 TFEU). This was a very popular question. Overall, students performed to a very high standard, averaging 66,5%. Of the sixteen candidates who attempted it, one obtained a mark of 70% or above.

Question seven essentially probed candidates' ability to assess, under Article 101 and/or 102 TFEU, potentially problematic coordination between competitors in a tight oligopolistic and multi-sided market where a new player was threatening the incumbents. There was also an important merger-related component. The question was not a popular choice with only four of the students who submitted a script attempting it. Performance-wise, the standard was once again very good with an overall average of nearly 66%. There were no marks of 70% or above.

Question eight mainly touched upon vertical restraints under Article 101 TFEU. There was also an important joint venture component to address. Ten students attempted this question. The overall average mark was 63%, but performances were quite uneven. No candidate obtained a mark of 70% or above.

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).
The general standard of the FHS constitutional law paper was solid. 7 candidates sat the paper this year, with marks ranging from 60 to 68; something which indicates that while all candidates were able to show some signs of solid 2:1 ability, few candidates this year were able to demonstrate clear first class ability. The differences in mark achieved owed a great deal to the amount of focus on the particular question attempted. Most candidates were able to write something relevant and broadly engaging in response to a question, but some did not demonstrate sufficient focus on the particular question that had been asked. Therefore, while there were times when candidates would offer cogent arguments, and interesting ideas, examiners weren't always in a position to reward these with higher marks because of the disconnect between a candidate's answer and the question the examiners had set. It is also important to highlight the importance of primary sources. Candidates invariably relied heavily on secondary literature to frame their analysis, and found it more challenging when pushed to engage with primary sources which had perhaps not yet been written about as thoroughly. On one hand, this might indicate an unfamiliarity with the sources themselves, suggesting closer scrutiny of these might have been an advantage. On the other hand, it may indicate candidates felt less confident applying the concepts and principles they'd learnt about without the security of a second opinion to rely on. If the

latter, the examiners would encourage candidates to try and embrace such opportunities as a chance to show their learning. While examiners do place weight on accuracy, they are also often willing to reward intellectually creativity – even where this might introduce slight inaccuracies – when that creativity is utilised within the context of an otherwise well-argued and engaging argument.

CONTRACT 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).
Among the essays, question 5 (Interpretation) and question 6 (Consideration/Privity) were most popular, followed by question 2 (Remoteness). As question 5 invited candidates simply to 'discuss' a leading dictum from the decision in Wood v Sureterm, the better answers imposed a structure, building on the elements identified in Lord Hodge's dictum, such as objectivity, literalism, contextualism and the 'quality of the drafting'. Question 6 was concerned with the relationship between consideration and privity and the effect of the 1999 Act. The weaker answers failed to address this aspect, and the weakest were either a general discourse on either consideration, or privity, alone. Question 2 was generally done well, with the best of the answers focused on the relationship between the test in Hadley v Baxendale and the 'assumption of responsibility' approach advocated in The Achilleas, and aware of the recent decision of the Privy Council in the Global Water case. Question 1 (Common Mistake), question 3 (Good Faith), question 4 (Protection of Consumers) and question 7 (analysis of either The Law Reform (Frustrated Contracts) Act 1934, s.1, or the Misrepresentation Act 1967) were attempted by only a handful of candidates.
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).
Problem 8 was in three parts. A surprisingly large number of candidates failed to spot that there was a potential penalty in part (a) and, in part (c), very few candidates dealt with the distinction between the right to terminate under the general law for 'repudiatory breach' and the right to terminate under the express provision set out in the contract for 'serious breach'. In part (b), many candidates failed to detect the potential relevance of an implied condition under s.14 of the Sale of Goods Act 1979 and the right to reject for breach. Problem 9 was potentially large because of the uncertain status of the claimant as consumer, or non-consumer. The best answers considered both hypotheses, but high marks were also awarded to answers which dealt with the question of the claimant's status and then chose to focus primarily on the consumer, or non-consumer outcome. On the whole, the non-consumer law was dealt with better than the consumer law. A number of candidates failed to see the full ramifications of a consumer claim, i.e. that both the Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008 came into play; and some failed to see that there were possible claims for both misrepresentation ('misleading' conduct) and breach of contract, notwithstanding the inclusion of an express guarantee of performance.

Problem 10 was also in three parts. Most candidates saw the potential for frustration in part (a), but few considered the question of the construction of the contract (was it for 'storage capacity' or for use of the warehouse destroyed in the fire). Part (b) was concerned with a limitation of liability and, as is often the case, the question of incorporation was dealt with better than any question of interpretation or the application of the Unfair Contract Terms Act 1977. Part (c) was quite challenging. Some candidates thought it raised a question of interpretation, but few saw the possible case for an implied term (i.e. that the defendant could not move the storage venue) and, as a result, the potential relevance of the express term that no terms could be implied.

Problem 11 raised issues of variation (Roffey, Foakes v Beer etc), duress, privity and remedies. On the whole, the variation and duress issues were dealt with best, though some candidates focused almost exclusively on the question of consideration and overlooked the potential relevance of promissory estoppel, notwithstanding the obvious similarity between one aspect of the problem and the facts of Collier v Wright. Most candidates identified the issue of 'lawful act duress' and most were aware of the recent decision in Times Travel, with the best answers offering quite a sophisticated analysis of the reasoning of the majority. Quite a number of answers dealt only with privity and remedies (third party loss, Panatown etc.) only as an afterthought.

Problem 12 was a further question divided into three parts. In part (a) as many candidates discussed termination (which was of little practical use to the claimant) as discussed specific relief (specific performance, injunction) or a claim to 'gain-based' damages (account of profits, negotiating damages). Part (b) on mistaken identity was generally done quite well, but some candidates were confused as to the distinction between a void and voidable contract. Part (c) on undue influence and third-party notice was also generally done well; weaker answers dealt only with one aspect and not the other, or thought that the advice of a solicitor was always sufficient to protect a bank 'put on enquiry'.

COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS

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 invited candidates to evaluate a classic topic of copyright: how to navigate the idea/expression dichotomy. Two candidates answered this question and both were of a good standard. Both answers focused on subject matters and copyright infringement, but the better answer provided a careful and thorough analysis of not only why the courts do not provide clear guidance but also why the current state is desirable for different reasons. There are several ways to address this question: ideas/expression through the lens of subject matter, limitations on copyright to accommodate the public interest, justification, and copyright infringement.

Q2 invited candidates to consider the extent to which new technological developments will affect the originality requirement for copyright subsistence. Many candidates successfully answered this, considering different tests adopted by the UK (labour, judgment, skills) and the EU (author's intellectual creation) and how the UK should/will follow the EU after Brexit. Some candidates extended their analysis to AI, but a few were distracted by the topic and drifted from the focus of the question. There are several themes to consider:

Given the proliferation of technology, shall we increase the originality standard to raise the bar of copyright subsistence? What would be the outcome if we did so? Is it desirable to have more or fewer works protected under the copyright regime? Whether the concept of originality needs to be revisited more fundamentally in light of AI?

Q3 invited candidates to evaluate the role of moral rights within the UK context. This question proved the most popular as more than half of the candidates opted for it. Most answers stayed in the conventional space, arguing that the UK's moral rights are insufficient to protect the author's rights compared with the civil rights approach such as France and the CJEU. Candidates identified the following weaknesses of the UK regime: assertation in the right to attribution, the narrow interpretation of derogatory treatment, and the potential for waivers. A few took a bold and creative approach to suggest that the authors might need to reconsider the significance of moral rights, particularly in the internet era. Maybe it is time to move on. Some candidates merely described the law (what are moral rights and how are they regulated) answering what they knew rather than what the question asked.

Q4 invited candidates to assess whether current copyright provisions need to add fundamental rights as an additional ground of fair use in addition to the express statutory exceptions. Only two attempted this question, and the quality varied. In general, both answers highlighted the most relevant case from the CJEU (Spiegel Online) and examined the ambiguity of the InfoSoc Directive, which in turn affected the UK's implementation. The better answer examined not only the current provisions but also explored the link between copyright and fundamental rights. It also analysed the public interest defence under the CDPA (s 171(3)).

Question 5 invited candidates to consider the extent to which UK trade mark law is equipped to reconcile conflicting interests in relation to non-traditional marks. As an open-ended question, the challenge was for candidates to select a line of analysis from within the options. The options included: distinctiveness (both inherent and acquired); the extent to which precise representation on the register can act as a filter; policy exclusions such as substantial value; refining the scope of infringement; supplementing defences and so on. Better answers focused on specific categories of marks (e.g. shapes or colours) and identified precisely what a balanced system should look like (e.g. facilitating undistorted competition). Relevant analysis ranged across categorical exclusions for certain types of marks, alternatively the advantages of a case-by-case determination and the need to connect registrability to infringement. On the whole, answers were of a high standard.

By contrast, the responses to Question 6 were more variable. When considering the range of functions recognised in trade mark law, weaker answers tended to ramble through the expansion of trade marks into brands – via the image and investment functions – debating that development in isolation from the question. More closely reasoned analysis challenged the definitional clarity of the functions and the conditions under which harm to them could be measured or else presumed. Where the harm rationale was unconvincing, the best candidates considered alternative rationales to justify the protection of the expanded functions.

Question 7 attracted several good answers to the challenge of addressing the problem of registered but unused marks, i.e. clutter. Thoughtful responses began by identifying the registration paradigm (as opposed to a use-based system) within which the problem arises. They went on to identify the problems caused by clutter and the inadequacies of the current approach, including the unsystematic and expensive nature of bad faith invalidations and ensuing commercial delays. Some creative answers grappled with the

difficulty of objectively identifying subjective intention, at the heart of bad faith. The best answers closely engaged with the UKCA's interpretation of the SkyKick approach and whether additional reform mechanisms could supplement bad faith. Unrealistic responses advocated entirely abandoning a registration-based system in favour of a use-based one, or proposed unworkably expensive or examination-intensive 'cures'.

Disappointingly, Question 8, on artificial intelligence and trade mark law, was not attempted by any candidate.

Most candidates correctly identified the key issues in Question 9, such as qualifying subject matter, including A Blue Sunday, 2 CDs, and a DVD, fixation/duration/originality of these works, and co-authors/joint-authors, particularly in the case of A Blue Sunday. Once copyright subsistence was identified, most answers established copyright infringement in CD 1 and the DVD. The candidates rightly parsed the different economic rights infringed: reproduction, performance, and distribution. The moral rights were the right to paternity to Lan's old works, the right to object to false attribution on CD 2, and the right to the integrity of A Blue Sunday. Better answers covered less obvious angles such as attribution rights not being applied to performance and whether the band's name is subject to copyright. Disappointingly, no candidate identified whether the footage in the new DVD could benefit from a review/quotation defence.

Q10 consisted of two scenarios. The first one required the candidates to apply the law on whether Lee's picture "Press Pause to be Happy" was infringed by Chicca. The majority of answers highlighted two important issues: the idea/expression dichotomy of the two protected works and substantiality, relating to whether Chicca's photo is copied from Lee. One issue deserving attention was whether the technique used is common/popular? Better answers analysed whether Lee's posting the screenshot of the advertisement on the blog is a copyright infringement and if so, whether any defence applied. Regarding the dispute between the Oxford Chronicle and Lee, most candidates correctly identified that reporting current news/events does not apply to photographs. The second part required candidates to consider the nature of the contract between Lee and CK. Is it an assignment or license? Who is the author/owner? To what extent does the contract clause affect CK's right to modify the picture? Most candidates identified the moral rights issue as the right to integrity, but better answers clarified the contractual provision.

The problem relating to the chocolate biscuit in Question 11 proved popular, being attempted by around half the candidates. The registrability assessment required an analysis of distinctiveness, both inherent and acquired as well as whether any of the policy exclusions – technical result and substantial value in particular – applied. It was disappointing to see several candidates did not develop the inherent distinctiveness test (London Taxi) in detail. Most candidates also missed the significance of applying for vehicles. This might help with inherent distinctiveness (the shape did not relate to the goods) but there was no evidence of any intention to actually use the sign for that class of products, suggesting bad faith (SkyKick). Infringement analysis required candidates to assess whether the defendant's use was relevant use as a mark in relation to goods, whether confusion (including post-sale confusion) or any of the dilution claims applied and if the mark was not successfully registered, whether there might potentially be a passing off claim. This question was generally answered competently.

The hypothetical problem relating to Spotify in Question 12 required: (a) the application of the case law on the distinctiveness of slogans in particular; (b) whether the YouTube use and the t-shirt use (separately analysed) passed the infringement thresholds (use in the course of trade, in relation to goods), whether there was meaningful tarnishment or

alternatively due cause and whether there might be any other defence available; and (c) composite mark infringement analysis for the SPORTIFY mark, with an emphasis on blurring as well as (potentially) unfair advantage. This question was attempted by 6 candidates and the quality of answers varied across the three parts.

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).
Four candidates sat the exam, one Diploma and three second BAs. The syllabus for this paper is not the same as for Law Moderations exam and candidates should familiarise themselves with its scope. The examiners decided not to award a prize this year.

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).
This year 19 candidates ultimately took this paper after three students withdrew. As per the instructions, six papers were marked by the second assessor, representing the range of marks and including any borderline papers. The agreed marks ranged from 63% (upper second class) to 74% (first class). In addition, several further scripts were double marked following the first marks meeting. The papers were stronger than in previous years, although it is unclear why this might be the case or whether it reflects a more industrious cohort this year. In any event, the result was gratifying as teaching on the course had been as challenging this year as in the pandemic year. Attendance in person was more intermittent, and tutors reported the usual technological challenges with the few online sessions. There were several distinction marks achieved, although the highest mark was 74. The first class answers were well written, critically engaged with the academic literature, and showed a good understanding of the theoretical perspectives underpinning arguments raised within the literature or by criminal justice professionals. Those papers that were awarded an upper second class mark showed attention to detail and a sound knowledge of policy, practice and academic debate. The students on this option have considerable discretion in responding, choosing four out of 12 questions (three for DLS students). The course tutors are considering restricting this degree of choice slightly, from 12 to 10 questions next year in order to discourage selective preparation for the exam. In our view, none of the papers were poor and almost all showed a good appreciation of criminal behaviour, and criminal justice policy and practice. As is generally the case on this exam, some questions were more popular than others. The sentencing guidelines question and the victimization surveys questions proved most popular. The CPS and defence advocate questions attracted fewest responses.

ENVIRONMENTAL 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).
All questions were answered. Overall, a very solid set of responses. Higher marks went to those answers that addressed the question (and not a different question), made excellent use of relevant legal material, and did more showing than telling in making arguments.

EU 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).
Question 1 was a very popular question, with the majority of candidates selecting it as one of the four answers. Unfortunately, quite a few answers reproduced a standard essay on the absence of horizontal direct effect of Directives and how the consequences of this absence were minimised by broadening the concept of 'the state', the duty of consistent interpretation and the 'incidental effect' of Directives. Better answers explored the tension between asking the national courts to take all appropriate measures and accepting limited effectiveness of Directives in horizontal cases, and offered insightful criticism or justification of that tension. Question 2 was also very popular but attracted many answers discussing subsidiarity as a stand-alone principle, rather than focusing on its role in the context of Article 114 TFEU. The best essays discussed the interpretation of Article 114 focusing on the weaknesses of this provision as a review standard and made a connection between the Internal Market/harmonisation rationale and the ineffectiveness of the subsidiarity principle. Question 3 attracted only a few answers, generally engaging with the question well. Some answers discussed only the older case law or related the question only to the issue of 'scope of EU law', rather than seeing horizontality of the Charter as the question that follows the issue of EU law's material scope. Question 4 was a fairly popular question. Unfortunately, some answers bore little relation to the question in that what was offered was a generic essay on citizenship which did not discuss at all 'the right to lead a normal family life'. Very good answers discussed the Citizenship Directive and Mary Carpenter and the Zambrano case law. Question 5 was another fairly popular question. Candidates tended to discuss Francovich in more general terms, why the principle of state liability was introduced and what functions it might perform but not touching on the institutional competence issue, which was clearly introduced by the quotation. Question 6 was a moderately popular question, attracting many standard answers providing a static account of national procedural autonomy as restricted by equivalence and effectiveness, without considering why EU law safeguards states' legislative competence in the sphere of remedies and procedures and what this safeguarding would have to look like to be more effective. The better answers focused on the reason why involvement of the Member States is indispensable and why national regulatory autonomy

in this sphere should be respected.

Question 7 proved to be another fairly popular question that attracted both very good and less good answers. Many candidates incorrectly restricted the question to the issue of the individual concern test. The better answers correctly identified the consequences, or the absence thereof, of classifying an EU act as that of 'general application' and reflected on the distinctions which Articles 263 and 267 TFEU use to regulate access to judicial review.

Only very few candidates attempted Question 8. Most candidates gave a generic account of the case law on when a national measure constitutes a MEEQR. With the exception of a handful of answers, candidates failed to observe that the issue should have been discussed along two axes – first, the effect of Article 34 TFEU on national measures which had little, if any, effect on trade and those that concern trade but are not affecting cross-border trade, and second, the interaction between Article 34 TFEU and the justifications in producing deregulation.

Question 9 was another question selected by only very few candidates, which, however, attracted many good answers, covering such issues as when someone is considered a worked in EU law, what rights non-economically active citizens have in another Member State, and what state conduct constitutes a restriction on free movement.

Question 10 proved the least popular question, attracting answers of all standards. Failure to refer the case to the CJEU was the aspect candidates found least challenging. Better answers considered the interplay between the duty to disapply incompliant national legislation and the complex way in which EU law regulates the remedial measures that should follow disapplication.

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).
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).

HISTORY OF ENGLISH 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 were 15 candidates, including some candidates whose assessment was held over from 2020-21.

The form of assessment by two extended essays worked well. All candidates showed extensive reading and work, and it was pleasing to see polished, erudite and interesting essays showing that the historical method had enlarged students' appreciation of the development of the common law as a cultural and political system as well as a structure of rules and procedures. Many candidates showed a deep interest in connections between law and society, others concentrated on the internal evolution of doctrine; the best candidates did some of both.

The most popular questions embraced development of uses and trusts, the nature of leases, the changing doctrine of consideration, and the production of contract law from trespass doctrine. Only a few candidates chose questions on precedent, legal estates, or nuisance, and none wrote on the forms of action for tort based on cause of harm. In past years we have seen reverse preferences, and in any case learning in one area of the course can always afforce understanding in different areas, eg estates is a prelude to trusts, and trespass a prelude to nuisance and assumpsit.

The best papers produced a fresh framework of analysis drawing on secondary sources, but escaping the standard textbooks, eg Baker, Simpson, Ibbetson, to produce an original account founded on close reading of sources. Some candidates drew material from class essays too rigidly without close enough attention to the question being asked. For example a deep concentration on the run-up to the 1536 Statute of Uses, without a clear explanation of inheritance, feudal incidents, mortmain, and conveyancing issues that preluded that famous statute, and without scrutiny of the post-1536 evolution of trusts, did not do all the necessary work. Similarly in the essays on consideration and emergence of assumpsit, it was important to give a well-governed account dealing with the chronology of curial experimentation in different courts using different writs to enforce entire promissory obligations or alternatively/concurrently damages for defective performances. Some candidates who wrote on leases clung too closely to the account given in Sir John Baker's textbook, rather than interrogating it in the light of the chronology of the remedies and of the other studies on the reading list, which showed that many perspectives were possible in explaining the relationship of obligations to estates. The lease, like the use/trust, slowly developed proprietary qualities as social and economic practices changed, as fiscal and credit contexts shifted, and as courts competed in new ways for business; the better candidates appreciated these subtleties.

HUMAN RIGHTS 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).

22 candidates sat the FHS Human Rights Law paper. 5 received First Class marks overall; 14 Upper Second Class marks overall; and 3 Lower Second Class marks overall.

The scripts were mostly of a high quality, with stronger answers taking care to reflect on the extent to which the operation of specific human rights might be affected by the location of their foundation in either or both of the European Convention on Human Rights (ECHR) and the common law. Many questions also sought to encourage reflection about the respective roles of the European Court of Human Rights (ECtHR) and national-level courts in protecting relevant rights, and the extent to which different rights diverge in their

substantive characters. It was encouraging to see that answers often sought to pursue either theme, or indeed both.

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 aimed to encourage discussion of an over-arching nature, in particular concerning the extent to which the ECHR could be identified with the notion of balance. Stronger answers took care to consider how balance might best be understood in this context, and the extent to which a balance of some sort might be seen as inevitable in systems of human rights protection.

Question 2: This question required evaluation of the treatment of the right to a fair hearing under both Article 6 of the ECHR and the common law. Given the quantity and complexity of relevant case law, candidates were assisted by seeking to impose a clear structure on the legal protections and by associating this with the interests and values intended to be protected.

Question 3: This question entailed a comparison between the ECHR margin of appreciation and notions of deference at national level. Given how widely the margin has been criticized for unpredictability, stronger answers moved beyond this and considered, for example, what relevant notions of deference may suggest about the roles and self-perception of the courts by which they are applied.

Question 4: This question encouraged candidates to present a systematic account of what – in their view – most clearly explained the uncertainties often associated with the right to private and family life. Apart from seeking to compare the parts played by the right's underpinning content and judicial interpretative techniques, stronger answers sought to ask how far these factors could be neatly separated.

Question 5: Stronger answers took care to articulate criteria for assessing the appropriate degree of protection to be accorded to freedom of expression. Among other possibilities, these could have related to the values underpinning the right, to other substantive factors concerning its nature, and to the appropriate roles of the ECHR and ECtHR – or to some combination of these factors.

Question 6: Successful responses presented detailed examples relating to one of the rights to life and to freedom from torture when measuring the extent to which strong distinctions are possible between judicial approaches to 'qualified' and 'unqualified' rights. Stronger answers also took care to evaluate the general bases for separating each type of right and to evaluate relevant case law in the light of these points.

Question 7: Given that this question expressly invited comparisons between freedom of religion and belief and other rights when considering the certainty of the subject-matter protected, stronger answers sought both to provide bases for measuring un/certainty and to consider whether there was anything in the character of the right(s) in issue which might be thought to contribute to relevant substantive assessments.

Question 8: Given the essay's focus on the term 'robust', successful answers took care to provide clear criteria for identifying matters as 'robust', and then for evaluating the judicial scrutiny of ECHR Article 14 in the light of these. Successful treatment of the Protocol 12 part of the question ideally also involved reference to the current state-of-play in relation to the Protocol's status.

Question 9: Stronger responses sought to consider how far judicial treatment of extra-territoriality was driven more by the nature of the ECHR generally and how far by the nature

of the right(s) in play – and, as an underpinning point, whether these factors were meaningfully separable. Successful treatment of the factors required careful attention to the structure of relevant arguments.

Question 10: Differing emphases were possible in response to this question. As a foundational matter, it was necessary to engage with the two quotes so as to present an overall evaluation of the roles of the ECtHR and national courts. However, greater discretion was possible concerning how far proposals for a 'British Bill of Rights' were to be considered in terms of their content (something which has varied over the years) or in more conceptual terms by reference to the appropriate roles of the different courts.

INTERNATIONAL TRADE

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 only five candidates for this paper, but the standard was very high. The most popular essay was question 2 (deviation) which was answered very well, making good use of the 'trade' case law and also comparing deviation more generally with the doctrine of fundamental breach in the general law of contract.
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(b) (the 'autonomy principle') was also attempted by multiple candidates and a high standard was reached by making good use of the case law (The American Accord, Montrod) and commentary. There was one attempt at question 3 (burden of proof under the Hague Visby Rules, Volcafe etc) and no attempt at questions 1(a) (the nature of a c.i.f. contact), 4 (s.20A of the Sale of Goods Act 1979), or 5 (privity in overseas sales). As for the problems, they proved more popular than the essays, as is often the case, though there was only one paper which answered only problems. Question 7 (mainly passing of property and risk) and question 9 (mainly remedies (Kwei Tek Chao) and risk (Manbre/Groom)) were the most popular. In what was a high standard overall, a weakness in one or two answers to question 9 was the conclusion that the variation in part (a) raised the sort of issues seen in the Gill & Duffus case when, in fact, it meant that both the goods and the documents were conforming; the issue in fact raised was the possible loss of any right to reject (and therefore claim 'Kwei Tek Chao' damages) because of the 'acceptance' argument seen in cases like Panchaud Freres. The very best of the answers to question 7 dealt comprehensively with both property and risk and, in relation to the latter, considered the possibility of claims both for want of care of the cargo and unseaworthiness, and the ramifications thereof. Questions 6 (mainly f.o.b. and damages for delayed loading; demurrage), 7 (mainly liability/quantum issues for lost or damaged containers) and 10 (mainly risk and deck stowage) were less popular, but also done well. In part (c) of question 6, the potential relevance of the decision in the Suisse Atlantique case was not fully explored, but this is a minor quibble in what were high quality scripts from all candidates.

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 answers to this year's paper were fairly evenly distributed across questions 1 to 8, though questions 2 and 3 were answered less frequently than questions 1 and 4 to 8. Few candidates took up question 9 or 10. The clustering of answers around the topics of (i) the authority of law/obligation to obey and (ii) the moral limits of the law that has been observed in some past papers was not seen this year. Question 7 required candidates to relate the question of the obligation to obey the law either to the issue of consent and democratic participation or to an individual's expert knowledge of the area covered by the law. Most of the candidates who answered question 7 adequately explored these particular issues rather than producing a set answer on the general question of the obligation to obey, and were rewarded accordingly. Some candidates took question 5 to be a question about the general authority of the law/obligation to obey or forced on answer on that topic. Those who correctly read question 5 as concerning the moral limits of the law and the legitimacy of the various means (eg, coercive vs non-coercive) the law might use to help people lead valuable lives, gave better answers. The answers to question 8 were generally competent, but it is worth noting that most focussed almost exclusively on analysing Hart and his direct critics rather than comparing Hart's rule of recognition to alternative theories such as Kelsen's basic norm and his hierarchical conception of a legal system. Overall, the examination scripts reflected a good awareness of the main issues covered in the Jurisprudence course, and the candidates wrote essays that largely identified key points of contention and produced essays that argumentatively engaged with different points of view. Most marks fell within the 2:1 range, though there was a significant variation in the quality of argumentation between the top and bottom of that range. The number of first-class marks was similar to previous years. The qualities that distinguished such scripts were engaging with the precise terms of the question set; demonstrating knowledge of the relevant literature as well as the understanding that comes from deep rather than superficial reading; and offering an argument that employs critical analysis and responds to potential objections to the conclusion. Another feature displayed in some of the top scripts was the use of examples, which some candidates did by effectively drawing on cases or scenarios from other subjects they studied.

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).
The quality of this year's examination answers varied widely. The best scripts demonstrated excellent knowledge of the legal materials and clear evidence that the candidates had given careful thought to the subject's most complex issues. But there were some weaker scripts from candidates who had either failed to grasp the basics of the law or produced 'standard' answers which did not address the precise question set. Some students chose not to attend all of the seminars and tutorials this year, and it is possible that this explains the weaker scripts. We would certainly encourage students in future years to take full advantage of all the teaching on offer in this paper. The most popular questions on the paper were those dealing with the *Uber* decision, the band of reasonable responses test in unfair dismissal law, and the justification test in

equality law. On the whole, candidates showed good knowledge of these topics and were able to offer critical reflections, though only the very best candidates engaged fully with the questions set. For example, not all the *Uber* essays engaged with the idea of the 'death of contract' in the quotation, and most of the essays discussing the band of reasonable responses failed to identify a test that could be used instead.

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 a good spread of answers across the 11 questions on the paper. Whilst only very few candidates attempted four problem questions, the remaining scripts were split reasonably evenly between those answering one, two and three problem questions. Of the essay questions, 1, 3 and 6 attracted the most answers, with 1 the most popular overall. As for the problem questions, 9 was the most popular.

Most candidates seemed to manage well with completing the paper online in three hours and there was no noticeable increase in the number of scripts with one or more seemingly rushed answers. As with past open book exams, stronger candidates took the opportunity to tailor their answers specifically and carefully to the questions set, whereas weaker candidates often provided chunks of text which were not inaccurate, but also not on point. In relation to Q11, for example, there is absolutely nothing to be said for setting out the four re Ellenborough Park requirements in order to consider whether a right of way over neighbouring land can count as an easement. Requirements need to be applied to specific facts, not merely listed. Further, it seems that in some cases candidates saw the open book format as an opportunity to adorn their answers with superficial references to materials not on the Faculty's reading list, without demonstrating the familiarity with such materials which would come from having read them. It is important to remember that the paper is written with the Faculty's reading list in mind and deep knowledge of material on that list is much more useful than shallow references to material beyond it. Candidates should also remember that Sch 3 of the Land Registration Act 2002 can protect the priority of, but does not create, property rights.

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, the most popular essay question, provided strong candidates the opportunity to link their discussion of easements, and of Regency Villas in particular, with the arguments in favour of (or against) the numerus clausus principle. Candidates were also given credit for discussing other relevant areas of law, such as eg contractual licences. Surprisingly few answers dealt expressly with the idea of changes in the law over time indicated by the use of the word "weakening" in the question. Candidates who gave us the benefit of their thoughts on the means by which easements are acquired, without explaining how these were relevant to a question asking about a principle related to the content of property rights, did not fare well. Equally, answers on the numerus clausus with only minimal references to the law of easements were not successful. Surprisingly few answers dealt with Lord Carnwath's dissent in Regency Villas. Candidates who produced a pre-prepared essay on numerus clausus without addressing the precise question set did not score

highly.

Q2 led to some very good answers, discussing cases such as Cann and Flegg and focussing carefully on the specific situation set out in the question. A detailed discussion of what counts as actual occupation was not required or expected, but credit was given where such discussion was related to the broader overall question of determining when third parties should be bound by a pre-existing interest in land.

Q3 was reasonably popular and some very good answers carefully considered different aspects of the law of mortgages and linked them to the specific question asked. Fortunately very few candidates treated the question as one solely about clogs and fetters. Strong answers discussed specific ways in which the law might be changed and also its operation in practice, drawing on empirical studies encountered in their wider reading, such as work by Whitehouse. Strong candidates considered possession and sale as well as the formation of the mortgage agreement, and looked carefully at the nature and content of the duties owed by a mortgagee in relation to sale, rather than inaccurately stating that a mortgagee has a general duty of care to the mortgagor.

Q4 gave rise to some very good answers, which carefully considered the decision in Nasrullah and its implications for the aims of the registration system: the very best answers were able to discuss the distinction made by the Court of Appeal between fraudulent taking and other forms of fraud. Some answers assumed that Nasrullah was simply an attempt to resuscitate Malory and this suggested that some students had not read the relevant parts of Rashid as closely as they might have done, or perhaps at all. Stronger answers demonstrated the implications of the analysis for the registration system as a whole.

Q5, like all the questions, provided an opportunity for students who were willing to engage with the specific question asked. Some very good answers did this, and explored different meanings of "proportionate balance" across a number of different land law contexts. It was disappointing that many answers equated "principles of English land law" with case-law, not considering legislation or regulation. Answers that offered generic summaries of human rights questions, even if interesting, did not score highly.

Q6 similarly required answers to deal with the specific question asked and so it was a shame that some answers took the question to be simply one about whether adverse possession is a good thing or not. Despite the presence on the core reading list of not only re Nisbet and Potts Contract, but also a sub-heading of "Effect on Possessor of Pre-Existing Property Rights" almost no answers dealt with the priority aspect of the question, focussing instead exclusively on registration.

Q7 required some care in working through the possible acts of severance and their consequences, and candidates who showed such care were suitably rewarded, as were the few candidates who dealt with the occupation rent point.

Q8 was relatively straightforward and reasonably popular, but some of the standard mistakes that undermine covenants answers were made, such as thinking that the lease from H to K somehow turns the repairing covenant made between H and G into a leasehold covenant. It was apparent that very few candidates had read Smith and Snipes; those few immediately appreciated its relevance where an assignee seeks to enforce a positive covenant against the original covenantor. The strongest answers also considered the meaning of the term "owners of Walton Farm" and whether it would apply to a party such as J who acquired only part of the land retained by G on the sale to H. Perhaps it is

not too much to hope that, by the time we reach the centenary of the 1925 Law of Property Act, no Finals answers will refer to the role of notice in determining if a third party is bound by a restrictive covenant; we are not quite there yet.

Q9 was the most popular problem question and in general was well answered. As is often the case, students were often happy to express views on whether an apparent term was or was not a sham (or pretence) without stating what the relevant test is: a number of answers expressly claimed that it was simply a matter of fact as to whether a term is a sham or not. In contrast, some answers dealt very well with the difficulties of finding a right to exclusive possession in cases of multiple occupation. Surprisingly, several candidates thought that N's moving out would in itself constitute a severance of a joint tenancy with M. In relation to P, some answers spent valuable time considering if P had a Bruton lease without asking whether that would make any difference at all on the facts before them. A number of students seemed to think that a contractual licence is an equitable interest, either under Errington or, via an immediate constructive trust, under Binions v Evans: this was also a disappointing surprise.

Q10 exposed, as problem questions do, some misunderstandings about the admittedly convoluted rules to be applied following Stack and Kernott but many strong answers applied those rules very carefully to the specific facts. Many answers gave a prominent place to "fairness" in a general sense, without then reflecting on the relevance of the testamentary gift of the shares. The possibility of S claiming the whole interest in the house (via survivorship) was under-analysed.

Q11 proved problematic for the minority of students who decided it must be a question about easements and nothing else, and so then mentioned proprietary estoppel only in passing, or not at all. Nonetheless, almost all the answers had an appropriate focus on proprietary estoppel, even if surprisingly few took the hint in the facts to discuss Crabb v Arun DC as well as Cobbe. The possible relevance of overreaching on the sale to Y Ltd was almost entirely overlooked, whereas cannier candidates might have asked why the scrapyard was co-owned. The facts did not specifically state that Y Ltd had registered its title but answers were in no way penalised if they proceeded on the basis that such registration had occurred. One answer referred with confidence to what the Supreme Court had decided in Guest v Guest, but revision rather than prevision remains the best way to prepare for exams.

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).
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).

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).
The work in this year's examination was generally of a high standard, though there were only a few truly outstanding scripts. As usual, the paper was divided into Part A (moral philosophy, 8 questions) and Part B (political philosophy, 4 questions). Candidates had to answer at least one question from each part, and the overwhelming majority chose two questions from Part A. Answers were spread over all of the questions. As previous reports have emphasised, the stronger answers were those that focussed on the specific question set, and argued over its merits. Weaker answers provided a general exposition of the topic in issue, with only limited attention on the question. For example question 4 asked if Kant's moral philosophy was too egocentric. Weaker answers simply provided an account of Kant's arguments about the nature of morality. Stronger answers addressed the issue of whether the Categorical Imperative resulted in an over-emphasis on the agent's own actions, at the expense of considering how other agents might act. Similarly, question 9 on responsibility and freedom of the will invited a careful consideration of both the nature of freedom of the will, and what sort of freedom of the will (if any) was required for moral responsibility. The answers to part B were generally good. To take one instance, question 12 asked if justice was best viewed from behind a veil of ignorance. This invited a careful analysis of Rawls' theory of justice, particularly the role of the veil of ignorance in abstracting from individual's particular characteristics and circumstances. Strong answers displayed a good familiarity with the details of Rawls' arguments and the criticisms of his approach.

PERSONAL PROPERTY

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 paper. The paper comprised ten questions and candidates were required to answer four. The most popular questions were question 1 (on the protection of personal property), question 5 (on relativity of title), and question 6 (on the so-called exceptions to the nemo dat principle). The standard of answers was, on the whole, high: five candidates obtained an overall mark of 70 or above and no candidate received an overall mark below 60. The best performing candidates carefully considered the specific question posed, drew on their knowledge of Land Law and Trusts to make appropriate comparisons with the law of personal property, and combined detailed, accurate, and precise discussion of the case law with a sophisticated examination of pertinent conceptual and policy issues.

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).

The overall performance by students in this paper was excellent, with over 90% of students being marked at an Upper Second or First Class level (about 40% were awarded firsts). In general, the scripts reflected a high degree of conceptual clarity and understanding. Even the weaker scripts reflected understanding of core concepts, with the weaknesses deriving from limited engagement with the specific issues raised by the question, lack of structure and flow to the argument, lack of narrative development, and scanty use of case law, state practice and academic authority.

More generally, as in previous years, the weaker answers provided a general description of the topic or topics covered by the question without focussing on the specific issues raised. And, the best answers to both essay and problem questions made thoughtful use of case law and academic authority, thereby providing insightful analysis that demonstrably went beyond the basic textbook material.

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).

As in previous years, the paper contained a mixture of problem questions (4) and essay questions (6). Although not required to do so, all the 39 candidates who sat the exam elected to answer at least one problem question, many chose two, with selections focussing on the use of force (Question 6, 25 chose this), dispute settlement (question 8, 21 chose this), treaties (question 4, 12 chose this) and jurisdiction (question 5(b), 3 chose this).

The use of force problem question, as in previous years, proved one of the most popular, and elicited excellent answers from the candidates, with the best among them drawing on different scholarly positions and a range of state practice on the use of force against non-state actors and anticipatory self defence, as well engaging in a forensic analysis of the facts in light of the extensive case law. Also popular were the essay questions on custom (question 3, 29 chose this) and the problem question on dispute settlement (question 8, 21 chose this). The essay question on custom attracted strong responses, with the best answers going beyond an overview of the challenges in identifying custom, to discuss the value of flexibility and dynamism in the evolution of custom. The problem question on dispute settlement was also well done, although a few students failed to identify the 'indispensable third party' issue. The cross-cutting essay questions (question 1 that 10 chose and question 2 that 13 chose) attracted some interesting answers. These question gave students the most leeway in terms of constructing their response, and some rose to the challenge, using illustrations from across the breadth of international law, and even legal theory, to make their point. Less popular were the essay questions on state responsibility (5 chose this) and specialized regimes of international law (international environmental law, law of the sea, or human rights law, 6 chose this).

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).

We had considerably fewer students than in previous years, six, one of them a DLS student. The seminars have been more wonderfully intense and it shows: we see very impressive results in this exam.
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 are too few candidates to comment on the performance individually. Since similar marks spread evenly over all questions taken, no question can be identified as problematic.

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).
As in previous years, there were 8 questions (6 essays and 2 problems), providing students with significant choice. Q.4 (essay on tax avoidance) and the problem questions (Q.7 and Q.8) all proved very popular, despite there being no obligation to answer a problem. Q.6 (evaluating different deductions and exemptions) was the least popular question.
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, inspired by the recent Health and Social Care Levy, asked candidates to evaluate a hypothecated tax on income from labour. The best answers drew on a wide range of literature in their answers. Some students made the mistake of discussing only hypothecation or taxing labour and the weakest answers relied on vague and unsubstantiated assertions about tax generally. Q.2, on the role of Capital Gains Tax, was quite popular. The best answers discussed a range of issues with the legislation and demonstrated a nuanced understanding of the trade-offs in the design of the tax. Weaker answers either ignored the focus on using CGT as a backstop to income tax or relegated their discussion to just a single issue (often the rates). Q.3, on the capital tax treatment of trusts, invited students to blend the knowledge of the quite technical legislation with the wider literature on 'good tax design'. The strongest answers did so effectively, whereas less good answers were very descriptive and offered little analysis of the system. Q.4 provided a quote from a recent Supreme Court decision in the Ramsay line of cases. Overall, students handled this question well, although some made the mistake of providing a generic (and likely pre-prepared) discussion of all the cases in the abstract, rather than engaging with the issues raised in the question. Q.5, on the test for identifying a contract for services, asked students to consider both why courts had found the test difficult to apply and what Parliament should do about it.

Students generally did well with the case law, but weaker answers made the mistake of only answering the first part of the question.

Q.6, a two-part question, asked students to evaluate the rules for deductions from employment income and certain exemptions in Inheritance Tax. The best answers analysed the policy rationale behind the provisions in determining what was meant by 'too' restrictive.

Q.7 raised several issues across employment tax, CGT and trading. Common mistakes included insufficient discussion of the cases on the badges of trade and failing to discuss the relevance of the overpayment and whether it was taxable as employment income.

Q.8 largely concerned deductions from trading income, with some employment issues for the sake of comparison. Many students were quick to cite Mallalieu v Drummond, but made only passing references to it, rather than examining the test in detail. The best students recognised the issues surrounding the overly generous salary and the potential Marren v Ingles point at the end.

TORT

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).
Although the overall standard of scripts was reasonably good – the overwhelming majority of scripts were in the upper second class – there were few stellar scripts that were clearly first class. If there was a general weakness, it was in failing to answer the precise essay question set and avoiding direct engagement with the issue or set of issues raised by the question. There were some disappointing gaps in knowledge or misunderstandings which are addressed 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).
Q1. There were some good answers to this question which dealt with more than one of the economic torts and considered or could have considered restrictions such as (i) the restricted category of unlawfulness in the unlawful means tort, (b) the requirement of interference with a third party's *liberty* to deal requirement in that tort, (c) the requirement of inducing breach rather than causing non-performance of, or detrimental interference with, a contract, (d) the nature of the intention requirements in the different torts. Q2. There were very few if any answers to this question. The question invited discussion of whether public interest considerations were distinctively relevant to remedies. Possible topics that could have been addressed: (a) role of public interest in determining whether damages should be awarded in lieu of an injunction, (b) the conditions of application and justification of exemplary damages, (c) limitations on the extent of compensatory damages, (d) the justification of disgorgement for torts. Q3. (a) The better answers dealt with multiple defences in answering the defamation question and assessed whether there are other problems with the defences beyond vagueness so as to assess whether that is the 'central' problem (if it is indeed a problem).

(b) This was not a popular question. It invited analysis of the elements of the tort and defences thereto and assessment of whether these (i) serve the alleged right in question (ii) adequately.

Q4. (a) The better answers were able to distinguish accurately between the different possible bases of duties of care in respect of pure omissions, such as assumption of responsibility and control, though there was not much treatment of the controversial issues surrounding the scope of these concepts. Few analysed the concept of a 'pure omission'; (b) Weaker answers tended to focus on general issues pertaining to duties of care, such as whether a general test for the existence of a duty of care is desirable or whether the law *post-Robinson* is satisfactory; there were few successful attempts to engage directly with the issue(s) posed by the question.

Q5. There were some strong answers here which zoned in on the central terms of the question – 'creation of risk', 'benefit' – and assessed whether the idea stated in the quotation fits with the scope of the current law, by reference to the leading authorities.

Q6. Few attempted this question. A convincing answer needed to say something about the concept of 'an individual right' and what it would mean for 'individual rights' to be the central goal of tort law.

Q7. There were some reasonably strong answers to this question. These were able accurately to state the law (or uncertainties in the law) after *Wilkes*. Answers tended to be on surer ground in relation to the law on defectiveness than in relation to the s.4(1)(e) defence.

Q8. This negligence problem raised issues of breach, factual and legal causation, and scope of duty. Most candidates spotted the issues at a general level, but few had precise command of the applicable authorities, in particular in relation to the law on factual causation in (b). In part (c), there was a tendency not to distinguish, in structuring the answer, between potential claims by Dima and Ed against Ben.

Q9. This was not a particularly popular question. It raised potential issues of harassment, *Wilkinson v Downton*, false imprisonment, and battery.

Q.10. Many candidates answered this question reasonably well. It clearly raised issues of private nuisance and *Rylands*. Public nuisance was also sometimes considered, though there was little suggestion on the facts that special damage had been suffered by L or M. It was also apt to consider whether, if M did not have title to sue in private nuisance/*Rylands*, she could recover in another tort (such as negligence) for the death of her dog. Some candidates reasonably assessed whether L's claim could be barred by the illegality defence.

Q.11. This question raised issues of negligence and liability under the Defective Premises Act 1972. few candidates considered the effect of the Court of Appeal decision in *Robinson v PE Jones* on the whether a duty of care in respect of pure economic loss would be owed by N to M.

Q.12. This popular problem raised issues of Occupiers' Liability, general negligence, and vicarious liability. A significant number of candidates analysed the final part of the question under OLA 1957; R's conduct was not, however, a danger due to the state of the premises or things done or omitted to be done on them (s 1(1)), as this has been interpreted in the case law.

Q.13. This problem raised issues of tort claims arising out of death, liability in negligence, including duties of care for pure omissions, psychiatric harm, causation, and defences.

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).
Although the exam was on the whole competently done, there was much evidence of candidates using essays prepared. This was even an issue in problem questions. Although doing this is not an examination offence, it has the tendency to mean candidates do not focus on the precise question asked. Indeed, the biggest complaint of the examiners this year was a failure to address the issues raised by either the essay title or the problem, with candidates simply writing all they knew about the topic. Of course, there were some excellent answers, but those who failed to address the question received little credit.
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 main issue here was that most answers did not consider the meaning of the phrase 'equity acts in personam', with too many students simply writing generic answers on the nature of the beneficiary's interest under a trust. Those who did address the quote were rewarded accordingly. Q 2. Good answers went to the heart of the quote, examining how the principle in Rochefoucauld v Boustead might apply in three-party cases, and explaining the tension between HHJ Matthew's reasoning and the language of s 53(1)(b), couched as it is in terms of admissibility, not enforceability and certainly not validity. Weaker answers included few cases and failed to engage with the quote. Q 3. This question was not often answered, but answers were strong. First class answers looked not only at Target and AIB, but explained the controversy surrounding the cases and commentary and their treatment in later cases. Good answers differentiated between claims for falsification and surcharge, and between claims against trustees and other fiduciaries for 'equitable compensation'. Q 4. This question was generally poorly answered. Candidates tended to write general answers on purpose trusts, without engaging with the ambiguities surrounding 'holding' by unincorporated associations and its relationship to trusts. Q 5. Strong answers focussed on the question whether the statute itself effected any change in the law, with good treatment of the Independent Schools decision and the different senses identified therein of 'public benefit'. Weaker answers were simply descriptive of the current position, and failed to engage with the language of 'presumption'.

Q 6. This question was sometimes answered well, with stronger answers making good use of reasoning in the cases, rather than simply comparing the views of commentators. Many, however, failed to engage with the quote and wrote all they knew about resulting trusts, sometimes to the extent of long discussions of presumed resulting trusts when the question clearly concerned only automatic resulting trusts. Such candidates did not score well.

Q 7. This question was not well handled. Strong answers went beyond recognising the link between the quote and the reasoning in Twinsectra to engage with the issue of 'subjective intention'. Weak answers, and there were many, simply talked about taxonomy or the desirability of Quistclose trusts without properly linking this to the quote.

Q 8. Very few candidates attempted this question.

Q 9. A question that produced very mixed responses. Strong answers went to the heart of the question about whether or not knowing receipt involves a real trust, contrasting the reasoning in Byers v Samba with Williams v Central Bank of Nigeria, and looking at the broader treatment of knowing receipt in the case law. Weaker answers tended to cling to the views of one or two commentators, without properly considering the cases, or simply set out the requirements of liability in knowing receipt.

Q 10. Few candidates attempted this question.

Q 11. A very popular question, attempted by almost all candidates. On (a) and (e), good candidates engaged with the question whether the fixed dispositions might be saved, while weaker candidates took for granted that the distinction in Re Baden (No 2), between evidential and conceptual uncertainty in the context of discretionary trusts, also applied to fixed trusts. Some even came up with the bizarre idea that the complete list was satisfied where the maximum number of possible members was known, presumably a confusion with the rules on certainty of term in leases of land. On (b), good candidates recognised that whilst the certainty of subject-matter rules for testamentary dispositions are different to those made inter vivos, that difference could not save the gift in this case. On (c), the main difficulty was candidates thinking that the uncertainty concerned who the trustee considered deserving, rather than whether 'friend' was certain—and even those who recognised this often wrongly cited Re Barlow as authority for the certainty requirements for powers of appointment. On (d), many candidates missed the fact that the issue related to the extent to which trustee discretions can cure what would otherwise be uncertain classes.

Q 12. A moderately popular question which was generally well done. Good candidates used the facts to discuss the tension between Grey v IRC and Vandervell v IRC; had a nuanced discussion of whether the creation of a sub-trust might be characterised as a transfer of rights; and recognised that the statements in Oughtred on vendor purchaser constructive trusts were part of the minority speeches only.

Q 13. Another moderately popular question. As regards the Victoria trust, most candidates understood the relevance of Re Rose and Mascall, but fewer dealt with (i) the significance of the form being handed only to one of the intended trustees, and (ii) whether there was any significance in the fact that the imperfectly transferred title was to be held on trust rather than outright. In that respect, there was also a possible complication with s 53(1)(b) LPA 1925, missed by most. As regards the Wendy trust, good candidates recognised the relevance of Choithram, discussing the ambit of the principle in that case.

Q 14. This question attracted few takers. Strong candidates showed acute awareness of the rules regarding mixing between trustee's and beneficiaries' funds and were able to advise not only on whether the beneficiary could claim any given right as a substitute, but whether they should do so. As an aside, many candidates for some reason talked about common law tracing—despite the fact the claimant in the question clearly only ever had equitable rights.

EXTERNAL EXAMINER REPORT FORM 2022

External examiner name:	Prof Gavin Phillipson	
External examiner home institution:	University of Bristol	
Course(s) examined:	Final Honours School of Jurisprudence/ Diploma in Legal Studies	
Level: (please *delete as appropriate*)	Undergraduate	~~Postgraduate~~

Please complete both Parts A and B.

Part A				
	*Please (✓) as applicable**	**Yes**	**No**	**N/A / Other**
A1.	Are the academic standards and the achievements of students comparable with those in other UK higher education institutions of which you have experience? *[Please refer to paragraph 6 of the Guidelines for External Examiner Reports].*	✓		
A2.	Do the threshold standards for the programme appropriately reflect the frameworks for higher education qualifications and any applicable subject benchmark statement? *[Please refer to paragraph 7 of the Guidelines for External Examiner Reports].*	✓		
A3.	Does the assessment process measure student achievement rigorously and fairly against the intended outcomes of the programme(s)?	✓		
A4.	Is the assessment process conducted in line with the University's policies and regulations?	✓		
A5.	Did you receive sufficient information and evidence in a timely manner to be able to carry out the role of External Examiner effectively?	✓		
A6.	Did you receive a written response to your previous report?	✓		
A7.	Are you satisfied that comments in your previous report have been properly considered, and where applicable, acted upon?	✓		

* ***If you answer "No" to any question, you should provide further comments when you complete Part B.***

Part B

In your responses to these questions, please could you include comments on the effectiveness of any changes made to the course or processes in response to the COVID-19 pandemic where appropriate.

B1. Academic standards

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?***

Comparable or higher.

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).***

Student performance was very good and consistent with previous years.

B2. Rigour and conduct of the assessment process

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 satisfied on all counts re the above. Everything was very clearly explained by the Chair and/or Paul Burns. The chairing of the meetings and oversight of the assessment process was I thought exemplary.

B3. Issues

Are there any issues which you feel should be brought to the attention of supervising committees in the faculty/department, division or wider University?

None – I am pleased that the Faculty of Law took up my suggestion whether a 5 or 10 point scale for assessing the severity of MCQs would allow for more fine-grained judgment and asked the University's Education Committee be asked to consider introducing a more nuanced MCE scale.

B4. Good practice and enhancement opportunities

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 t****hat should be noted and disseminated more widely as appropriate****.*

I think the guidance to Exam Boards on classification and taking account of mit circs s in 'Annex E of the Assessment support package' document is fairly helpful. Overall, I was satisfied that, as far as is realistically possible, the impact of mit circs was taken into account on classification in a way that was fair to the individual affected student but also to those who did not put in mit circs or whose mit circs were deemed to be incapable of affecting the outcome. I thought the Board, did an excellent job at giving proper consideration to the adverse impact of mit circs but without succumbing to the temptation of elevating classification out of sympathy for students who had suffered difficult circumstances.

B5. Any other comments

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. If your term of office is now concluded, please provide an overview here.

The final Exam Board meeting, at which candidates were classified, was extremely long; it started at 09.30 and ended I think around 18.15 (I had to leave at 17.15 for the school run). Apparently, this was a record at eight hours 46 minutes, though we did have a decent break for lunch! This does seem excessive to me; from my experience at other Law Schools, these meetings normally last between three and five hours. In particular the practice of considering appropriate penalties for plagiarism in the full meeting, rather than (as everywhere else I have had experience of) by a separate plagiarism panel, which meets before the full Board, struck me as curious and possibly unhelpful. I do think consideration should be given to considering these cases in a separate sub-panel of the Board, which would have the full documentation of the cases before them. This would also save at least some time in the full Board.

Finally I'm sorry to have to add that, at the time of writing this report, having now completed three years of external examining at Oxford I have still not been paid; before today my last correspondence on this was an email from me on 12th July, asking if the administrators now had all the information they needed. While staff in the Law Faculty have been apologetic and helpful, and I hope have now done what is necessary to resolve the matter, I have never had a reply about it from the External Examiner team at external-examiners@admin.ox.ac.uk: they were copied to an email by the Quality Assurance team SSD QA <qa@socsci.ox.ac.uk> and asked to contact me about on 7 June 2021 and I followed up in emails on 26 Nov 21, 17 Dec 21, and 18 Jan 22, none of which were replied to from the externals team.

From an email received today from the Law Faculty in response to my latest inquiry, I gather payments have now been or are being processed for the years 19-20 and 20-21 and will be for the academic year 21-22 once you receive this report. As I explained in some of my emails, the issue is not the money (which is of course modest) but more the seeming discourtesy and lack of concern displayed by the University to its external examiners who take on this additional work out of good will. I'd be grateful for a proper explanation and apology on this matter. It has also been somewhat mortifying that I have repeatedly had to chase on this (including again today). I understand that there can be administrative hold-ups and glitches but that should not stop staff from ensuring that at least emails are replied to in a timely manner

and matters chased up internally, instead of the external examiner themselves having to do so repeatedly. I made this point in an email sent 18 January of this year.

Signed:	**Gavin Phillipson**
Date:	**16 September 2022**

Please ensure you have completed parts A & B and email your completed form to: external-examiners@admin.ox.ac.uk and copy it to the applicable divisional contact set out in the guidelines.

E. NAMES OF MEMBERS OF THE BOARD OF EXAMINERS

Mr E Simpson (Chair)
Dr S Atrey
Professor P Eleftheriadis
Professor A Ezrachi
Dr K Grevling
Mr C Hare
Dr C Kennefick
Dr D Leczykiewicz
Dr C Panayi (External)
Prof G Phillipson (External