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 (%)		
	2022/23	2021/22	2020/21	2022/23	2021/22	2020/21
I	30	37	51	14.78	21.89	25.24
II.I	159	120	147	78.33	71.01	72.77
II.II	11	8	2	5.42	4.73	0.99
III	1			0.49		
Pass	1	2		0.49	1.18	
Fail	1	2	2	0.49	1.18	0.99

FHS Course 2, BA Law with Law Studies in Europe

Class	Number			Percentage (%)		
	2022/23	2021/22	2020/21	2022/23	2021/22	2020/21`
I	6	5	11	17.14	27.78	39.28
II.I	29	12	17	82.86	66.67	60.71
II.II		1			5.56	
III						
Pass						
Fail						

FHS Course 1 and 2 combined

Class	Number			Percentage (%)		
	2022/23	2021/22	2020/21	2022/23	2021/22	2020/21
I	36	42	62	15.19	22.34	26.96
II.I	188	133	164	79.32	70.74	71.30
II.II	11	9	2	4.64	4.79	0.87
III	1			0.42		
Pass	1	2		0.42	1.06	
Fail		2	2		1.06	0.87

(b) Unclassified Examinations

Diploma in Legal Studies

Category	Number			Percentage (%)		
	2022/23	2021/22	2020/21	2022/23	2021/22	2020/21
Distinction	5	10	8	18.52	30.30	32
Pass	22	22	17	81.48	66.67	68
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.

(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 2022/23, 296 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. 1 script was third marked.

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

	Number			Percentage %		
	2022/23	2021/22	2020/21	2022/23	2021/22	2020/21
Total Scripts	2322	2178	2162			
First stage	654	515	571	28.17	23.65	26.41
Second stage	296	283	173	12.75	12.99	8.00
All second marking	950	798	744	40.91	36.64	34.41

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. 21 Jurisprudence exam scripts were second marked after initial profiles were considered.

NEW EXAMINING METHODS AND PROCEDURES

B.

1. Format of exams

Coursework

Five papers (History of English Law, Feminist Perspectives in Law, Dissertation, Comparative Private Law and Advanced Criminal Law) were assessed by way of essays written over the course of a working week. The assessments for Feminist Perspectives in Law and Advanced Criminal Law took place in Week 0 of Trinity Term and Week 9 of Hilary Term. Feminist Perspectives in Law had assessments in both of those weeks in order to accommodate candidates who were also taking Comparative Private Law or History of English Law as their other options. One student took Advanced Criminal Law in Trinity term due to a dispensation approved by EdC.

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 three hours per exam save for Jurisprudence which paper candidates were required to answer in two hours.. 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 11 July 2023. The Examination Board approved the prize list and confirmed the final marks by correspondence and a secure, private SharePoint site. 3 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 99 MCEs in total. Four candidates were elevated to a 2:1 on the basis of strong 2:2 profiles and relevant MCEs. Three students were elevated to a 1st, due to the MCE. Two candidates had individual course marks amended. Three candidates with MCE's have pending plagiarism cases that are with the Proctors.

Decisions made in respect of individual cases: 18 candidates (22 individual papers) were penalised by the Examination Board for poor academic practice. Penalties ranged from 3

marks to 10 marks (the maximum marks an Exam Board can impose on a paper). 3 candidates (5 individual papers) were sent to the Proctors due to plagiarism concerns. Only one outcome has been received so far, the Proctors have confirmed one paper has been given a 0, with a cap on the resit. So far, no papers have been returned to the Exam Board to impose a penalty for poor academic practice.

Marking and Assessment Boycott: In April 2023, the University and College Union implemented a Marking and Assessment Boycott which continued through the examining period. Two papers were affected, and as a result 31 candidates were left with one mark missing from their marks profiles and 2 candidates with two marks missing.
The University agreed that all such candidates could be given a provisional classification based on marks available, and on the understanding that when the missing marks were available, classifications could be raised, if appropriate, but not lowered. The Board determined that it wished to seek further assurances as to the likely performance of candidates in the papers for which marks were missing, so organised an indicative marking of the scripts in question[1]. On the basis of the results of this exercise, the Board was content to award classifications to all candidates on the basis of marks available.

[1] This entailed assessing each script to determine whether the candidate would at least attain the minimum pass mark. The exercise was undertaken by the second marker for one paper, and for the other, by a postholder who was not one of the appointed examiners for the paper but who had some expertise in the field in question.

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.

Final Examinations: The Board discussed splitting Final examinations between second and third year, rather than all examinations being sat in candidates final year.

Approving alternative examination arrangements for students with disabilities: The Board requested confirmation on whose decision it is to approve alternative exam arrangements for students with disabilities. Two students in 2022/23 split their exams, over two terms or over two years.

5. Thanks

The Examination Board wishes to express its sincere gratitude to the external examiners, who contributed enormously significantly and helpfully 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 roughly the same level as 2022. There were 26 withdrawals/suspensions this year, and 23 withdrawals/ suspensions in 2022.

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

FHS Course 1, BA Jurisprudence

	2023				2022				2021				2020			
	Female		Male		Female		Male		Female		Male		Male		Female	
	No	%	No	%	%	No	%	No	No	%	No	No	%	No	No	%
I	14	11	16	20	14	13	32	24	23	31	28	23	31	28	23	31
II.I	97	79	62	78	78	73	63	47	51	68	96	51	68	96	51	68
II.II	9	7	2	2	4	4	4	3			2			2		
III	1	1														
Pass	1	1			2	2										
Fail	1	1			1	1	1	1	1	1	1	1	1	1	1	1
Total	123		80			93		75	75			75			75	

FHS Course 2, BA Law with Law Studies in Europe

	2023				2022				2021				2020			
	Female		Male		Female		Male		Female		Male		Male		Female	
	No	%	No	%	%	No	%	No	No	%	No	No	%	No	No	%
I	4	19	2	15	30	3	25	2	4	57	7	4	57	7	4	57
II.I	18	81	11	85	70	7	63	5	3	43	14	3	43	14	3	43
II.II							12	1								
III																
Pass																
Total						10		8	7		21	7		21	7	

FHS Course 1 and 2 combined

	2023				2022				2021				2020			
	Female		Male		Female		Male		Female		Male		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	No	%	No	No	%
I	18	12	18	19	16	16	26	33	27	33	35	27	33	35	27	33
II.I	115	79	73	78	77	79	52	65	54	66	110	54	66	110	54	66
II.II	9	6	2	2	3	3	2	3			2			2		
III	1	0.7														
Pass	1	0.7			2	2										
Fail	1	0.7							1	1	1	1	1	1	1	1
Total	145		93		98		80		82		148	82		148	82	

The imbalance in the number of men and women attaining Firsts has decreased since 2022. The percentage gap has reduced from 17% difference in 2022 to 8% difference in 2023.

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.

	2023	2022	2021	2020	2019	2018	2017
Advanced Criminal Law	35	23	31	25	15	-	-
Civil Dispute Resolution	28	12	15	4	5	5	-
Commercial Law	17	12	20	-	11	25	11
Company Law	22	6	14	12	13	2	20
Comparative Private Law	1	14	14	15	17	14	11
Competition Law and Policy	3	9	24	17	15	1	33
Constitutional Law	6	3	8	5	9	6	9
Copyright, Patents and Allied Rights	-	-	-	-	9	34	29
Copyright, Trade Marks & Allied	16	16	31	16	15	18	13

	2023	2022	2021	2020	2019	2018	2017
Criminal Law	6	3	8	5	9	6	5
Criminology and Criminal Justice	18	16	20	16	16	12	27
Dissertation	18	17	-	-	-	-	-
Environmental Law	4	12	22	12	16	3	6
Human Rights Law	7	20	20	18	17	20	19
Family Law	38	20	41	57	60	49	29
Feminist Perspectives in Law	22	-	-	-	-	-	-
History of English Law	7	14	3	5	3	2	5
International Trade	4	5	15	10	13	8	5
Employment Law	15	13	1	13	15	21	15
Media Law	30	41	23	30	28	1	20
Medical Law and Ethics	68	29	51	85	73	78	47
Moral and Political Philosophy	23	23	35	17	24	34	18
Personal Property	20	8	16	12	2	17	13
Public International Law	33	33	31	29	41	46	39
Public International Law (Jessup Moot)	4	1	5	6	3	4	
Roman Law (Delict)	17	5	16	5	7	9	18
Taxation Law	30	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:

	2023	2022	2021	2020	2019	2018	2017
Administrative Law	1	4	-	1	-	1	-
Advanced Criminal Law	-	-	1	-	-	-	-
Commercial Law	4	6	1	-	-	-	-
Civil Dispute Resolution	1	1	-	-	-	-	-

	2023	2022	2021	2020	2019	2018	2017
Company Law	8	9	8	12	6	-	6
Competition Law and Policy	1	14	4	5	5	-	5
Constitutional Law	2	4	2	4	4	3	5
Contract	17	24	19	25	22	28	27
Copyright, Patents and Allied Rights	-	-	-	-	3	3	2
Copyright, Trademarks and Allied Rights	7	4	4	6	2	4	4
Criminal Law	2	1	-	2	-	6	-
Criminology and Criminal Justice	3	3	3	2	3	4	2
Environmental Law	2	1	3	1	4	1	-
European Union Law	6	4	3	3	4	5	8
Family Law	-	-	-	-	1	-	-
History of English Law	-	-	1	-	-	1	-
Human Rights Law	8	2	-	-	-	4	5
Employment Law	2	-	-	1	2	3	2
Media Law	3	1	2	1	-	-	-
Medical Law and Ethics	1	-	-	-	4	3	-
Public International Law	-	5	6	5	9	5	3
Roman Law (Delict)	3	1	-	2	-	1	-
Taxation Law	3	2	2	-	4	-	-
Tort	16	15	23	17	23	23	22
Trusts	4	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	246		22	28	21	70	76	9	6	10		3	1
Contract	266		12	24	12	69	83	14	12	34	2	1	3
European Union Law	250	2	12	25	18	43	85	16	12	27	1	6	3
Jurisprudence	259		18	8	41	92	82	6	11	1			
Land Law	244		10	22	20	50	80	22	17	17		4	2
Tort	263		15	37	23	84	64	12	11	12	1	2	2
Trusts	253		8	15	7	58	78	16	18	34	2	14	3
Advanced Criminal Law	38		2	12	7	14	3						
Civil Dispute Resolution	29		3	7	5	13	1						
Commercial Law	21		1	3	1	6	4	3		1	1		
Company Law	30		4	3	3	6	10	1	2	1			
Comparative Private Law	2			1			1						
Competition Law and Policy	4			2						2			
Constitutional Law	8		2	1	1	3				1			
Copyright, Trade Marks and Allied Rights	23		1	4	2	7	4	1		4			
Criminal Law	8			3	4	1							
Criminology & Criminal Justice	20		4	5	2	7	2						
Dissertation	18		1	5	4	6		1				1	
Environmental Law	6		1	1			3	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
Family Law	38		6	4	7	7	10	1	2	1			
History of English Law	7		1	2	1	3							
Human Rights Law	16		3			6	5	1		1			
International Trade	4			2			2						
Employment Law	17		1	1	2	5	7		1				
Media Law	33		2	6	6	8	7	2	1				
Medical Law and Ethics	75		10	11	16	14	14	7	2	1			
Moral and Political Philosophy	23		1	4	3	9	3	1		2			
Personal Property	20		4	8		7						1	
Public International Law	33		5	5	10	9	4						
PIL Jessup Moot	4		4										
Roman Law (Delict)	10		1	3		6							
Taxation Law	33		2	6	2	16	5		1	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).
Good overall quality this year. The best papers combined sharp focus on questions with strong legal understanding. Some answers, however, seemed to rehash tutorial essays.
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: Popular question. The strong answers showed a detailed grasp of the Rose Theatre Trust case. Weaker ones summarised generic debates about liberal versus restrictive standing rules. Question 2: Strong answers integrated several strands: parliamentary sovereignty, the ultra vires debate, and recent case law including Privacy International. Weaker answers tended to ignore the ultra vires debate. Question 3: Few takers, but those who did often excelled by criticizing the Adams case. Question 4: Very popular. Weaker answers confused the focus with a debate on reasonableness and proportionality. The better ones cited specific decisions like Brown (and of course Carlile) to make their point. Question 5: Another hit among students. Most answered directly. The standout answers discussed contracts, alternative remedies, and 'intermeshing' with government bodies as ways to reconcile Datafin and Aga Khan. Question 6: Chosen by a fair number but caused confusion. Good answers discussed Gallaher in the context of consistency cases like Mandalia and Lee Hirons. Few distinguished, as needed, between consistency with policies versus consistency between cases. Question 7:

A tough one. Those who got it addressed the challenge of applying a review ground across different contexts and considered the tension between informed elections and non-bias.

Question 8:

Popular but often misunderstood. Many thought it was about the divide between proper purposes and relevancy, missing that it was actually about that divide's relationship with rationality and proportionality.

Question 9:

Not many takers. Those who did generally advocated for greater compensation but did so formulaically.

Question 10:

Quite popular, particularly the part about the Upper Tribunal. Discussions often stuck to the Tribunal's creation and the Cart decision. Stronger answers went beyond to consider the normative issues.

In sum, good work but some room for focus and depth.

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 paper continues to be popular with undergraduates, with 34 sitting the exam this year. There were 7 questions on the exam. Candidates were forced to sit the five-day exam over seven days due to a decision of the central university imposed without time to be challenged. In order to offer candidates the ability to do any two of those papers as their two options, one of the three, this year ACL, was offered in two different slots: week 9 of Hilary term, or week 0 of Trinity term (where only a very small number of students were involved). This form of assessment, open-book with a five-day time period to complete the examination, and Turnitin review of the scripts submitted online, was designed to allow the candidates to engage more deeply with the material. By and large this hope continues to be realised, with generally solid answers submitted by candidates. There were no breaches of rubric, though any candidates who did not fulfil the terms of the question, such as by not focussing on the topic or topics requested, were not rewarded. As there were 14 questions in total, and because of the identification risk involved for the second exam, it is not proposed that examiner reports address each question. The overarching message is that lengthy and careful preparation in understanding the source material, engagement in the seminars, and thoughtful addressing of the question seem to have paid off in the exam. Candidates who did not attempt to construct an answer which did more than quote from sources without a strong argument did not do as well. The comments below relate to the Hilary Term 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).
In Part A, candidates this year were even better prepared than in previous years, with consistently strong steps to define the question's terms and deploy a coherent argument to address them. Candidates did best when they considered a range of principles in the criminal law, and how they were represented in legal doctrine, as well as what reform to those principles was merited. Candidates who selected only two or three principles, without showing how those were representative of the wider issues, did not do as well. In Part B, questions largely tracked the key topics from the seminar and lecture pairings. The most popular were the questions on sexual offences, tort/crime and terrorism. Candidates who answered on sexual offences by considering underlying theoretical tensions of what a new and separate offence of obtaining sex by deception might involve tended to do well; candidates who has wanted a different question, and tried to answer that, did not. For the tort/crime question, candidates had to consider what a law's "focus" was, and how claimants and defendants might fit into that. Better answers involved considering multiple stages of the construction and application of liability, and where the law imposed its more characteristic or important requirements in each field. The terrorism question turned on motive, and candidates did better if they worked out what motive was, and how it was different to other states, like intention or purpose.

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).
N/A

COMMERCIAL LAW

General comments: Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).
The Commercial Law students did well this year. Although there were just a few truly outstanding scripts, the overall quality was high. There was a tendency to answer more than the requisite two problem questions, with some students choosing to answer no essay questions at all. This may well be because this was an open book exam and students wanted to avoid being suspected of having pre-written their essays. Good essay answers avoided this suspicion by truly engaging with the question, analysing it and then answering it, instead of reproducing knowledge that might well be relevant to the question, but might easily have been prepared in advance.
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, surprisingly, had no takers.

Question 2

Only two students answered this question so that commenting on the answers would be inappropriate.

Question 3

Again, just two answers.

Question 4

Ditto.

Question 5

This question elicited a number of good answers. To answer it well, students had to highlight that both declaration of a trust over a debt and the intervention of an undisclosed principal are means by which the intention of the debtor (to deal only with its creditor) can be frustrated, and to engage with the relevant caselaw. Some good answers were critical of this, arguing that this was, yet again, an example of form prevailing over substance, while others disagreed, arguing, along with the courts, that an anti-assignment clause should ban assignments but nothing else. There were a number of answers that decried the enforceability of anti-assignment clauses generally. These tended to do poorly, given that they showed insufficient engagement with the question asked (whose focus was on trusts and undisclosed principals, not the general desirability of enforcing non-assignment clauses).

Question 6

This was a popular problem question. The best answers queried, for each transaction, whether the agent possessed actual authority first and only discussed apparent authority where this was necessary. It was disappointing that many candidates, even though they had been warned that agency questions need not necessarily involve the decision in Watteau v Fenwick, and even though the question was clearly set up to be entirely different to the facts in that case, discussed it anyway. On the other hand, it was pleasing that a good many candidates were familiar with Lysaght v Falck and applied it well to these facts, and that most saw that the First Energy case was clearly distinguishable from the facts given in the question.

Question 7

This was also a popular question. The best answers analysed the three clauses in their entirety, asking whether, read together, they could make business sense (meaning that the extended retention of title might, in fact, work), while standard answers tended to say that the case law established that extended retention of title arrangements hardly ever work, without explaining why or why this arrangement might be different. It was encouraging that most students saw the possibility that the mortgage of the milling machine might be legal and thus take priority over prior equitable charges.

Question 8

This was, again, a popular question that elicited many excellent answers. Most candidates saw the difficulty that recharacterization of an initially perfectly unobjectionable fixed charge as floating following a change in the way that it was operated might not, on the strict wording of the statute, deprive it of its original priority (because it was not floating 'as created') and the best answers suggested how a court might deal with that difficulty. Only very few candidates realised that the liquidator might still be able to pursue Elrond if the latter failed to obtain a good discharge by paying into the account with Happy Bank.

Question 9

This was a fairly standard sale of goods question. Most candidates dealt with it well, although some did not fully engage with the difficulties raised by a mixed sale of goods and supply of services contract. One common failing was an obsession (shared, to some extent, by the textbooks and the cases on our reading list) with whether defective goods can be rejected. In practice, damages will be all the buyer wants and this, we would argue, is such a case.

Question 10

This was a comparatively easy question, leading some candidates to see difficulties where there was none.

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).
This course did not run in 2022/ 2023. One candidate was examined. It is not possible, in these circumstances, to make any substantive comments.

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).
This was a retake so no report has been submitted.

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).
Eight students took Constitutional Law for the Final Honours School (answering four questions out of ten) or for the Diploma in Legal Studies (answering three questions from the same question paper). Their work was generally very good, with several strong

papers. The added contribution that gained first-class marks tended to involve a combination of independent thinking, sustained argument, and detailed grasp of the materials. Questions on parliamentary sovereignty were unsurprisingly popular; a very wide-open question on the House of Lords was rather surprisingly popular. Students taking this paper at Finals benefit from having studied other subjects such as Jurisprudence and Administrative Law, and the results tend to be very good indeed when they make well-judged use of those sources of insight into the nature and operation of the UK constitution.

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).

While there were a few stellar scripts, the overall standard was not particularly high this year: the examiners found it difficult to reward many scripts with first class or strong upper seconds, and there were a significant number of 2:2 scripts.

It may be exasperating to read the familiar observation that this was frequently the result, in the essay questions, of a failure to engage sufficiently with the question set, or an insufficiently analytical approach being adopted. Still, so it was.

For instance, in relation to Q2, some answers largely reported the division of approach between the Justices in Times Travel without analysing the claims being made in the judgments and relating this analysis to an assessment of the claim in the quotation.

As to the problems, the main concern was simply that weaker candidates had insufficient familiarity with the applicable rules and principles and/or missed substantial issues in the problems. For instance, a surprising number of scripts missed the consideration and/or promissory estoppel issues in Q9.

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. (a) The best scripts analysed the different parts of the claim made in the quotation – weaker scripts wrote only about whether the performance interest is the 'fundamental aim' of damages for beach. Better candidates were aware of the rationalisation of the reliance measure as an evidential proxy of the performance interest and could explain this clearly.

(b) The overwhelming majority of answers – reasonably enough – focussed entirely on specific performance. Also within the question, however, were, e.g., injunctions, debt/orders for the agreed sum.

2. As noted above, better answers gave an analytical treatment of the arguments for and against the existence of lawful act duress as a normative matter. Essays which focussed purely on the detailing the current scope of the doctrine after Times Travel did not answer the question. Nor was the question addressed solely by an assessment of the merits of the majority and the minority in Times Travel. Virtually no one addressed whether an

unlawful threat should be sufficient for a contract to be voidable for duress – a claim also made by the quotation.

3. Better answers were able clearly to explain the concept of practical benefit, whether it should apply to decreasing as well as increasing pacts, showing awareness of the decision of the CA and UKSC in MWB, and generally offer arguments for particular positions on the scope of consideration and promissory estoppel. Too often there were merely assertions that such-and-such would distort the doctrine or amount to an unjustified extension, without explaining why.

4. Very few candidates attempted this question. Good answers needed to give a clear account of the current position in light of The Great Peace and then consider analytically whether the elements of the doctrine result in an overly restrictive approach.

5. Not a particularly popular question. Somewhat open-ended, but it plausibly required an analysis of s.62 of the CRA. Attention could also profitably have been given to any of ss.63-69; s.71.

6. Again, this was a relatively open-ended question. It could reasonably have been answered with reference to eg interpretation, rectification, implied terms, offer and acceptance, and if suitably directed to the question, the law on vitiating factors. Better answers needed to probe the claim that the current law is 'resolutely objective' through analysis of apparent instances of subjective intentions being considered (e.g. rectification for common mistake, the rules on acceptance of mistaken offers).

7. Strong answers needed to explain at least some of the pre-1999 routes around privity and assess whether the 1999 Act met a need, and give some assessment of the strength of this objection to the Act compared to other possible objections.

8. This question raised (potential) issues of offer and acceptance, consideration, promissory estoppel, duress, remedies for breach/misrepresentation, and penalties. The examiners did not expect detailed treatment of all of these issues, and some of the more straightforward points could be dealt with briefly.

9. In the main, a question about remedies for breach of contract and/or misrepresentation, both at common law (where relevant) and under the CRA 2015 and CPUTR 2008. Not many candidates showed sound familiarity with the remedies provisions in the CRA 2015.

10. An unpopular question. It required analysis of whether GG would be liable to pay H in the event that H was liable to I for I's fee. This, in turn, required analysis of whether I had accrued the right to payment and if so, whether this was a cost 'reasonably incurred' by H, if H had the power to terminate I's contract, and was instructed to do so (whether H had such a power was an open question). The other part of the question mainly concerned whether GG could sue under the 1999 Act, but also raised issues of remoteness, incorporation, and exclusion of liability.

11. This question raised for analysis potential issues of unilateral mistake, rectification, common mistake, and undue influence.

12. A question concerned primarily with frustration and the availability of rights to terminate after breach.

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).
. For Q1, the second most popular copyright essay topic, candidates were invited to analyse the extent to which the 'fair dealing' defences outlined in the Copyright, Designs, and Patents Act 1988 (CDPA 1988) strike a balance between copyright owners and users. In general, many of the responses demonstrated a reasonable understanding of the purposes, applications, and limitations of fair dealings. However, a few answers were purely descriptive and lacked critical analysis. While some candidates focused on the rights of owners, a more balanced approach that incorporates nuanced and thoughtful analysis from the user's perspective would receive a higher score. Additionally, candidates could have explored the contrasting approach of the UK's limited fair dealing provisions with the more flexible fair use framework adopted in the United States. Those who situated fair dealing within the broader context of the copyright system performed better. The current regime exhibits a clear bias toward copyright owners, with features such as extended protection terms, restricted acts, and a low threshold for originality. It is noteworthy that only with the Shazam (2021) case did parody emerge as a viable defence for the first time. Q2 invited candidates to discuss the importance of the public domain, as recognised by copyright law, in fostering creativity. Out of the three candidates who tackled this question, two of them delivered exceptional answers that showcased originality and insightful observations. One particular response stood out for its adept use of an art movement in the introduction, effectively emphasising the importance of the public domain. Answering this question requires a comprehensive grasp of copyright principles (originality, ideas/expression dichotomy...) and the ability to weave together its intricate facets. The term "public domain" denotes works unprotected by copyright due to expiration or their ineligibility for protection, such as ideas, themes, and styles... While a strong answer can emphasise the benefits derived from a diverse and abundant range of resources available in the public domain, it is crucial to address the concerning trend of diminishing the public domain, resulting from the expansive reach of copyright and the overlapping of rights. Q3, the most popular essay question, invited candidates to critically evaluate the concept of "authorship" in copyright law. While some answers were incomplete, most responses displayed a commendable level of quality. Many candidates demonstrated an understanding of the importance of authorship in copyright and addressed the challenges posed by AI in this context. However, a few answers strayed off course by becoming overly fixated on AI and losing sight of the question's intended focus. Copyright law was originally conceived with the traditional concept of a human author at its core, giving rise to key principles such as originality, moral rights, and the duration and scope of protection. A strong answer would not only recognise individual authors but also consider a broader range of scenarios, such as collaborative works, commissioned creations, and those

generated by artificial intelligence or algorithms. Unfortunately, some students veer off track when they excessively dwell on whether AI can be considered an author, neglecting other equally significant aspects.

Q4 poses the question of whether Internet intermediaries should play a more active role in addressing copyrighted content uploaded by third parties in comparison to the time when "safe harbours" were established for hosting services. Only one student attempted to answer this question, providing a high-quality response. A strong answer to this question would involve an analysis of the current regime's "safe harbour" provisions in the E-commerce Directive which acknowledge the significant challenges faced by intermediaries in monitoring and managing user-generated content on a large scale. In addition, candidates were expected to consider the evolving landscape, particularly the European Union's development of Article 17 and its potential impact on the freedom of information and expression.

Q5 required candidates to assess the extent to which the trade mark system is equipped to exclude marks which – if protected – would have significant anticompetitive effects. The challenge here lies in finding a rule that is broad enough to be flexible – excluding technical and aesthetic features as well as those valued by consumers beyond these two silos – and yet practically workable. The CJEU has been experimenting with broadening out the 'substantial value' policy exclusion in cases such as Hauck and Gomboc. The crux of the debate is over how to establish competitive necessity as a workable test. This was a popular question and most of those who attempted it moved creatively beyond the existing case law and scholarship on the existing silos, including useful comparative references to US law.

For Q6, candidates were asked to consider how best to evidence tarnishment, or the negative associations that might attach to a mark through unauthorised third party use. The current "logical deductions" approach presents a lower threshold, where speculative claims about improbable harm are encouraged, based on circumstantial evidence. Recent empirical studies show that marks are surprisingly immune to tarnishment in many categorically presumed situations. Better answers drew analogies with other areas of law such as defamation, which also operates according to presumptions; shifted the debate to whether more robust defences were needed to offset presumptive harm; critically engaged with whether likelihood of confusion surveys were an appropriate analogy; or else compared tarnishment to other forms of dilution such as blurring, which also operate on the basis of circumstantial evidence of harm. This question produced some exceptional essays in response.

Q7 required candidates to engage closely with the fundamental trade mark concept of distinctiveness, or the commercial origin indicating ability of a sign. The question directed the analysis towards the following fault line: a non-traditional mark (NTMs), such as a particular shade of colour, may work well to indicate origin but may also need to be accessed by other traders in their packaging or advertising. Does the distinctiveness test have the capacity to exclude marks on a normative basis, or does the factual determination of origin indication override any such availability concerns? And does the supposedly factual assessment of origin indication itself rest on a series of judicially derived legal presumptions, such as the perception of the average consumer? Weaker answers tended to merely describe the tests for inherent and acquired distinctiveness for NTMs while better answers showed precisely how the standard tests provided some normative bandwidth for excluding problematic signs.

The four candidates who attempted Q8 directly answered the question with varying success. Those who focused specifically on whether generous defences might offset a very broad, proprietary set of image rights, sufficiently undoing any damage the latter might generate, did better. Especially where they detailed how specific defences might operate, drawing on comparative experiences in other jurisdictions. More conventional answers merely argued that passing off was adequate.

For Q9, the majority of the answers correctly addressed the key issues in the question, including qualifying subject matters (a digital sketch and a 1-page writing), authorship/ownership (with emphasis on Lee's contribution), and the ideas/expression dichotomy (between Mai's and Lee's works). However, few candidates viewed the writing as a literary work instead of a dramatic work following Shazam. To provide a strong answer, candidates needed to analyse the ideas/expression dichotomy between Mai's and Lee's work and assess whether Lee's contribution to lightning and historical research met the originality threshold to be considered a joint author.

Regarding copyright infringement, the candidates rightly parsed the different economic rights infringed: reproduction and performance. Most candidates performed well by establishing similarities between the two shows, such as lotus, farmers, and dragon dance themes. However, a critical answer would go further by answering the questions: are they simply themes or expressions of an idea? Also, a few candidates noticed the subtle difference in durations between the two shows, showcasing their attention to nuanced details.

Many answers correctly addressed moral rights, particularly the right to attribution. Some candidates argued that Lee had violated Mai's right to integrity, treating her work derogatorily. Unfortunately, they did not provide further substantiation.

Almost all complete answers considered different potential defences, such as quotation, criticism, review, and reporting current events. While candidates acknowledged the use of taking pictures, no one paid attention to Vin's extensive review of the show. The question remains whether this usage qualifies as "fair" dealing.

Q10: The first part of this question focused on various trade mark infringement issues: whether the use of TESBURY'S BIG TIME!!! infringed the word mark PRIME-TIME and whether the shape and appearance infringed the respective 3D marks. Perceptive candidates identified sub-issues such as whether contextual factors led away from confusion and whether certain forms of dilution would nevertheless succeed. For the latter, whether the 3D bottle marks had a reputation and whether there might be due cause needed attention. Word marks in the comparison list required close attention to the double identity criteria, while better answers drew out the comparative advertising defence. The second part of the question called for an analysis of image protection via passing off (Fenty), as well as – for the trade mark infringement aspect – whether there might be a referential use (parody) defence.

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 FHS criminal law paper was sat by seven candidates. The paper consisted of seven essays in Part A, of which candidates had to do at least one, and four problem question in Part B, of which candidates had to do at least two, but in total to do four questions. Answers were generally well-presented, addressing the question, and with appropriate authority to back up their claims about the law. The best answers contained more comprehensive treatment of the essay or problem questions, appreciating more doctrinal detail, and presenting better arguments about how the law would be applied in practice

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 complex question, requiring the law of omissions to be used as a prism for the role and function of the actus reus component more generally. It required an analysis of what the actus reus component was and did, contrasted with the classic place where it might be said to be absent but where in fact the law tends to phrase the absence as a duty to comply which was breached. It was not a popular question.

Question 2 was a simple question requiring assessment of the fault standards in homicide, requiring treatment of both different forms of manslaughter and murder.

Question 3 required a comprehensive look at the law of complicity, judging it against some specified standards.

Question 4, somewhat more popular than some other questions, asked about what differentiates the three paradigmatic sexual offences in the Sexual Offences Act 2003, sexual assault, assault by penetration and rape. To do well, candidates had to discuss both the technical doctrinal requirements of the offences, as well as the underlying rationales for them.

Question 5 was also unpopular, asking about responsibility and culpability within the scheme of criminal liability, as seen through the way defences affect one, both or neither of them.

Question 6 asked about the offences against the person, and the role of constructive liability. Candidates needed to engage with the fuller range of these offences, from assault/battery through s. 47, s. 20, s. 18 and ss. 23 and 24 to really do well. Constructive liability, as a sub-species of strict liability, itself has significant academic discussion behind it, which would have enriched an answer.

Question 7 was very unpopular, and concerned suggesting or agreeing crime, particularly requiring a descriptive and normative assessment of the SCA 2007.

The problem questions in Part B mixed different elements of the syllabus, with a set of facts ending with the question of what offence, if any, had been committed. Question 8 involved the OAPA, intoxication, and sexual offences. A defence of self-defence seems unlikely on the facts. Question 9 concerned a botched conspiracy to murder, potentially an attempted murder, and an accidental injury and then killing of one of the criminals. Question 10 had a somewhat time-sensitive sexual offences focus, requiring careful consideration of the offence of rape in two circumstances, as well as some other minor offences. Finally, Question 11 considered insanity, duress and GBH.

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).
21 candidates took this paper in 2022/2023. As per the instructions, seven papers were marked by the second assessor, representing the range of marks and including a few borderline papers. The agreed marks ranged from 61% (upper second class) to 74% (first class). The papers were generally of a very high quality with nine candidates achieving distinctions and the vast majority achieving grades above 65%. That said, the examiners had the impression that students were quite risk-averse, rarely trying to step outside the established terms of the debate or making connections between topics where this could have helped develop a more original line of argumentation. The first class answers were well written, critically engaged with a very good range of academic literature, and showed a good understanding of the theoretical perspectives underpinning the different arguments made in the literature. The two papers which received 74% and 73% added a more original angle on the question. Those papers that were awarded an upper second class mark showed attention to detail and a sound knowledge of policy, practice and academic debate. While none of the papers were poor and almost all showed a good knowledge of the topics they chose, a few essays were too short to develop a rigorous answer (in the region of 650 to 850 words) and a couple of papers made claims about key social theorists like Max Weber and Michel Foucault while lacking even a basic understanding of who these theorists were, when they wrote, and what they argued. Attendance at seminars would have helped avoiding such mistakes. While attendance in person at seminars was quite good in Michaelmas Term, it dropped significantly towards the end of Hilary Term, which, while understandable, was a shame as the papers would have benefitted from a better overarching understanding of the course as opposed to merely detailed knowledge of the chosen topics. The majority of students chose to answer the questions on 1) Packer's models of criminal justice, 2) the role of race in the criminal justice system, 3) sentencing guidelines, and 4) victim participation. Questions on abolition and the sociology of punishment were less popular. Overall, this was an extremely strong cohort, and we congratulate students on their brilliant results.

EMPLOYMENT 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 Employment Law paper consisted of ten questions of which candidates are expected to tackle four. This year's paper attracted a good spread of answers across all ten questions on the paper and a generally high standard of responses. We could be confident that all candidates had a sound grasp of Employment Law and a good understanding of the underlying political and economic issues. Probably the biggest challenge for candidates this year was ensuring that they spent roughly equal amounts of

time on each of their four answers. Candidates are offered the opportunity to practise their exam technique by doing a collection and we would strongly encourage candidates in future years to avail themselves of this opportunity.

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).
Students were offered the choice of ten questions, including eight essay questions and two problem questions. Some questions were more popular than others – in particular, questions relating to planning law, air quality and environmental impact assessment, and waste were chosen most frequently. All questions were answered bar one, which was a problem question on water pollution. The overall quality of responses was good. Generally students displayed a confident grasp of the content of the course. The majority of students showed a good understanding of the relevant legislative frameworks and case law. Excellent students were able to tie the legal material to deeper questions about the purpose of a particular regime, or to critique the operation of a regime. Less strong students tended to write descriptive responses, or did not develop their arguments in enough depth. The majority of students chose to answer a problem question, which showed their applied understanding of the topic.

EU 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 exam again covered all the topics that students had come to expect from previous years' papers. This should offer a measure of reassurance to candidates. In all, however, in the third year of online, open-book exams, it worked against many. A large proportion of scripts consisted of what read like pre-prepared set pieces that paid scant attention to the question. What made this doubly frustrating for the markers was the length of these answers. Large numbers of scripts featured pieces that only just stayed below the 2000-word limit. Much, sometimes most, in these answers was purely descriptive or otherwise redundant. Some description is unavoidable to set the backdrop for an argument. Beyond this, however, it is mere empty straw: it fills the pages, but it does not earn any points. The same applies for arguments that are not reasonably prompted by the question. The most successful answers were those that seemed to have been written from scratch and with close attention to the question asked. Typically, these would identify this year's specific twist to a traditional question, set out the candidate's argument at the beginning, and develop this in clearly defined steps from a critical discussion of case law and secondary literature.

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

Few students chose this question. Those who did often confined themselves to a summary of *Dassonville, Cassis, Keck,* and a variety of other judgments. Critical reflection on AG Jacobs's opinion, including the concept of 'unfettered access to the whole of the [EU] market', and on the literature on free movement of goods, was rare.

Question 2

This question attracted only a moderate number of answers. Of those, few noticed that this is not a quote from *Ruiz Zambrano*, but from an earlier judgment. Even fewer candidates engaged critically with the quote, for example by considering why the questions are 'conceptually distinct' when under the four freedoms, EU law is only applicable if the situation is not wholly internal, and what Articles 20, 21 mean by the 'right to move and reside freely within the territory of the Member States'. Too many answers consisted of a run-through of the case law, with some literature thrown in without sufficient critical discussion.

Question 3

This was the least popular among the questions on substantive law. Too many answers engaged superficially with the question, choosing instead to retell the facts of *Carpenter* and a variety of other cases without sufficient critical reflection.

Question 4

Among the institutional/constitutional questions, this had the fewest takers. Answers mostly addressed the advantages and disadvantages, in terms of policy, of extending the application of Charter rights to the relations between individuals. Legal arguments and a close engagement with the text of the quote were less frequent.

Question 5

This, together with questions 6 and 7, attracted by far the most answers. The better answers were accurate on what *Smith v Meade* decided, and placed it in the context of the law on the direct effect etc. of EU law, considering its connection with cases such as *Marshall* and *Egenberger*, and engaging critically with its reasoning. Weaker answers merely ran through the classic cases or rehearsed the conventional arguments in favour of the horizontal direct effect of Directives.

Question 6

This was another question that many candidates answered. Given the prominence of the *Mangold* judgment in the quote, some comment on it was expected for a very good answer. Weaker answers did no more than retell the main judgments in this area, both from the CJEU and the German Federal Constitutional Court. Better answers engaged directly and critically with the question of which courts (national or the CJEU) have the last word regarding supremacy.

Question 7

The weaker answers to this popular question all but ignored the quote, and launched into a discussion of *Foglia v Novello.* Some also gave a précis of the situations in which the CJEU will refuse to entertain a preliminary reference. Few attended to cases in which the parties were also in agreement. Stronger answers discussed the function of preliminary references, and its implications for the Court's case law on their admissibility.

Question 8

The fair number of candidates who chose this question mostly identified that this was this year's iteration of the 'procedural autonomy of the Member States'-question. While most mentioned the principles of 'equivalence' and 'effectiveness' applicable in this context, too often this was followed by the traditional account in the literature of 'three phases' in the case law, without sufficient critical engagement.

Question 9

Problem questions in EU law usually attract around 10% of each year's cohort, and this FHS was no exception. Most answers demonstrated a solid understanding of the applicable principles and the method of answering a problem question. Some candidates, however, struggled to identify which freedoms were involved, or to develop in a systematic manner a solution to the legal issues that arose from the facts.

Question 10

Of the two problem questions, this was the slightly more popular choice. It also produced fewer satisfactory answers. Rather than considering the admissibility and substantive merits of the action, some candidates treated the question as an invitation to discuss the policy implications of the CJEU's jurisprudence. Some also gave the impression of having only a superficial understanding of Article 114. Too few looked beyond Article 114, or considered the peculiar way in which the Regulation was adopted.

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).
Family Law attracted a mixed set of scripts this year. A good number of candidates gave thoughtful analysis of the precise question asked with detailed discussion of the law and academic literature. Nonetheless, a number of scripts gave very generic answers that covered the broad subject area rather than focusing on the question asked. Disappointingly, some scripts appeared to have been pre-prepared in response to different questions to those asked.
Comments on individual questions: Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).
Question 1 (children's rights): This was a moderately popular question. Good answers gave a thoughtful analysis of the theoretical accounts of children's autonomy and decision-

making and queried how to define 'mistake'. These answers also considered and contrasted the current law in areas such as medical law and children's participation in decision-making. This included some very strong analysis of recent cases such as Re X (A Child) (No. 2) and R (Bell) v Tavistock. A number of weaker essays gave a very general account of the children's rights 'debate' with no focus on whether this included the right to make 'mistakes', these candidates also gave little attention to the current law.

Question 2 (parent-child relationships): This was a popular question and often done well. Most candidates confined their answers to child arrangements orders. Good answers carefully considered the 'presumption of parental involvement', enforcement of child arrangements orders, Practice Direction 12J and the extensive research literature concerning the risk of harm in child arrangements cases. Very few candidates addressed the position of children in care who are living apart from their parents. Those that did were able to compare the value given to maintaining parent-child relationships in these different circumstances.

Question 3 (domestic abuse): This was another popular question and generally done well. Candidates tended to have a very good understanding of the Domestic Abuse Act 2021 and analysed the changes to the current legal framework including the definition of domestic abuse, civil remedies and the criminal law.

Question 4 (non-status relationships): This question attracted relatively few answers but those that did answer it had a good knowledge of the current law and proposals for change, including the recent report of the House of Commons' Women and Equalities Committee. The best answers gave thoughtful analysis of the proper role of the state in regulating intimate relationships.

Question 5 (financial provision on divorce): This was a very popular question and answers demonstrated a sound knowledge of the statute and the detailed case law concerning its application. Relatively few candidates engaged with the quotation in any detail or questioned its implications for the courts' approach, those that did generally achieved the highest marks for this question.

Question 6 (parental responsibility): This question received relatively few answers. Those that did answer the question generally gave a good account of parental responsibility and whether its allocation and regulation should aim to encourage its responsible use. Candidates gave good analysis of the law on allocation and termination of parental responsibility as well as parental disputes about its exercise. A number of strong answers also considered cases, such as Gard, on the question of the limits of the proper exercise of parental responsibility.

Question 7 (child protection): Candidates answering this question generally focused on the threshold criteria and the complex case law concerning its interpretation and application. A disappointing number of these answers gave little attention to the question asked and only superficial reference to the aims of child protection law. In contrast, there were a number of very strong answers, which gave thoughtful consideration to the question and included facets of the law other than the threshold, including family support, s20 accommodation and the position of children in care.

Question 8 (biological parenthood): This was a popular question and was generally well answered. Candidates considered the different means by which the law recognises parenthood and how it ought to accommodate competing understandings of parenthood. Many candidates considered the role of biology in particular areas of the law, including surrogacy, transgender parenthood and the possibility of recognising multiple parents. The question of 'knowledge of parentage' was less well done, with some candidates omitting it altogether. Nonetheless, some candidates gave a very good account of the issue and considered the law on declaration of parentage, birth certificates and access to information on gamete donors.

Question 9 (Heenan quotation): this question attracted relatively few answers but those who did so generally did well. These candidates used the quotation to critique the relationship between autonomy and family life. Candidates drew on examples from throughout the course, with popular topics being the regulation of adult relationships, financial provision on relationship breakdown and domestic abuse.

FEMINIST PERSPECTIVES

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).

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).
It was pleasing to see that all eight questions were answered by the seven candidates. Question 8 on the development of trespass on the case was the most popular question, followed closely by question 6 on the eclipse of debt by assumpsit. The best answers were firmly based on the relevant question and they interrogated the sources (especially the primary sources) with rigour and appropriate historical imagination; the best answers also had an excellent structure and they treated comprehensively the principal issues in the topic.

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).

15 candidates sat the FHS Human Rights Law paper, of whom 7 were DLS candidates. 3 received First Class marks overall; 11 Upper Second Class marks overall; and 1 Lower Second Class marks overall. The level of performance was thus generally strong.

Notwithstanding the political debate on-going during the course of the academic year – and only seemingly concluded after the examination had taken place – concerning the future of the Human Rights Act 1998 (HRA) and alternative mechanisms for protecting human rights in national law, candidates were generally careful to reflect in a theoretically astute as well as practically well-informed fashion on the extent to which significance needed to be paid both to the substantive content of rights protected under the European Convention on Human Rights (ECHR) and to the nature of relevant enforcement mechanisms. Candidates were generally also helpfully aware of the significance of case law from each of the European Court of Human Rights (ECtHR) and national courts, and where relevant from the Court of Justice of the European Union (CJEU).

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 was designed to encourage candidates to apply knowledge of the operation of the margin of appreciation to assessing how it might most plausibly be understood and evaluated. Stronger responses aimed to do this, while also considering more exactly what might be meant by a 'pragmatic mechanism' concerned with 'case-by-case' decision-making.

Question 2: A sufficient understanding of the role of common law human rights – including in situations in which ECHR rights might not be visibly available – was necessary when answering this question. Stronger responses sought to locate matters within the framework of debate about the respective roles both of different bodies of human rights law and of courts at national and trans-European level.

Question 3: Some good but perhaps rather generally-focused answers appeared in response to this question. However, stronger responses took the trouble to explore how far the debate about the desirability of extra-territorial application was something context-specific and how far it formed part of broader concerns at national level – reflected by the establishment of the *Independent Human Rights Act Review* cited in the question title – about the ambit of legal liability relating to ECHR rights.

Question 4: This question was designed to attract a wide range of possible responses, in particular given the on-going debate (referred to above) concerning the future of the HRA. Some strong answers were produced, but more could sometimes have been done to evaluate how far determination of relevant issues – whether considered at ECtHR or at national legal level – depended on 'conceptual' or 'technical' legal categorisations as opposed to other factors.

Question 5: This question offered a choice between evaluating the treatment of freedom of expression in the specific situation of speech which induced harassment, alarm or distress, and in relation to the presentation of ideas more broadly. Despite the differences of focus, each part was thus aiming to encourage candidates to think clearly about how far context is and should be crucial when evaluating the protections offered to expression. The strongest answers also considered whether expression was any more context-dependent than other 'qualified' Convention rights in these regards.

Question 6: Debate has long existed concerning whether private life is more uncertain than other legally-protected human rights: and, if so, whether this is due to the range of fact-situations potentially falling within its scope or to something logically innate within its nature. The present

question was designed to address this issue directly, and stronger answers showed an awareness of its relevance in relation to a wide range of situations.

Question 7: Given the many evaluative terms found in the essay question ('sufficient', 'protection', 'invidious', 'better', 'interpreted' and 'applied' – and, by implication, 'better interpreted' and 'better applied') stronger answers displayed an awareness both of the range of practical responses which were possible and of the criteria for measuring the desirability of different approaches. Productive lines of inquiry thus involved reflection upon the connection between the content of substantive legal arguments – not least, when based on relatively 'abstract' provisions such as those found within ECHR Article 14 – and factors concerning their practical legal delivery (the latter aspect being of particular relevance in a precedent-based system such as that in play in the UK).

Question 8: Stronger answers sought to engage with issues both at an abstract/general level and in relation to well-known contentious questions relating to the manifestation of religious belief. Any assessment of what was meant by a 'fair assessment' required engagement with such points. As with discussion of expression or privacy, stronger responses also showed an awareness of debate concerning whether a context-specific answer was necessary in this area of human rights law, or whether more generally-applicable criteria might play a role in producing a satisfactory conclusion.

Question 9: In response to either part of the question, good-quality answers demanded engagement both with the details of relevant ECtHR case law (including its reception at national level) and with the possible and preferable interpretation of specified evaluative terms or criteria. Such terms or criteria included 'coherent', 'freedom from' and 'how' in question 9(a), and 'little', 'anything' and 'absolute' in question 9(b).

Question 10: The potential subject-matter of the question – all parts of Article 6 – was wide, requiring those seeking to develop a strong response to be extremely clear from the outset both about how they understood the notions of 'precise requirements .. as protected' and 'always .. subject to contestation' and to consider how far Article 6 differed from other Convention rights by reference to such notions. Suitably focused – and thus stronger – answers therefore tended to highlight the inter-connection between general themes and specific examples in relation to Article 6.

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 four candidates for this paper. With so few candidates, it is difficult to generalise about the overall standard. No candidates attempted questions 5 or 9. Questions 1, 2, 3 and 4 were attempted by only one candidate, and so it is not appropriate to comment on those questions. Of the remaining questions, the most popular were 7 and 8, which were attempted by all candidates, followed by questions 6 and 10 (both attempted by two candidates).

The answers to question 6 were of a high standard, although more attention was required to the scope of Article III.8 of the Hague-Visby Rules, and to the precise workings of the Contracts (Rights of Third Parties) Act 1999 in this context. It also needs to be remembered that the Hague-Visby Rules do not apply automatically to contracts of carriage covered by seawaybills.

In their answers to question 7, some candidates failed to consider whether F might in the circumstances be entitled to substantive damages for the documentary breach (since he might have to pay market loss damages to J). There was also some confusion over the scope and significance of the Panchaud Freres doctrine. The quality of the discussion of possible deceit claims varied widely, and the remoteness issues were either ignored or dealt with superficially.

Some answers to question 8 failed to consider the possibility of claims against the carrier for non-delivery where a party was likely to lose the title conflict. There was little depth and detail on the counterfactual point concerning the pledge of a spent bill of lading, and on the question of liability for freight. By contrast, section 20A was generally dealt with competently.

The answers to question 10 would have benefitted from a clearer and more helpful structuring of the issues raised. Candidates tended to ignore the potential complications arising from the operation of the Mash & Murrell warranty in the f.o.b. context, while some misread the facts as meaning that all the potatoes had perished, when in fact only some had, which had implications for the freight issue. Candidates tended to do well on the basic cargo claims and there was some sophisticated discussion of what amounts to an unauthorised deviation and the consequences thereof.

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 marks profile of the scripts overall was similar to recent years, although there was some disappointment at the quality and quantity of scripts at the very upper end of attainment. The reasons for this are unclear, but there might, perhaps, be a tendency with open book exams for candidates to "play it safe" and offer lots of information on the views of other legal philosophers rather than "taking a chance" and trying to offer independent-minded arguments of their own. Candidates who did offer the latter were rewarded well for their efforts, and future candidates should be encouraged to strive to offer more of their own arguments backed up by their own examples: arguments do not need to be flawless to evidence excellent abilities of reasoning and analysis and to attain very high marks. Poorer answers did not respond in a focussed way to the specific questions set – some examples of this are given in the comments on individual questions below. Some candidates - perhaps mindful of the need to avoid plagiarism – quoted from other legal philosophers rather extensively in their answers, offering, for example entire paragraphs in the form of quotations. While this is, of course, not plagiarism, nor is it evidence of a candidate's ability to offer personal contribution and in-depth critical analysis of their own. Candidates might be better advised to summarise the views of others concisely in their own words where appropriate to do so and to devote the bulk of their answers to developing their own stance on the question they are addressing. Situating one's views amongst other commentators in the field is, of course, part of the task, but ultimately marks are awarded on the basis of how well the candidate addresses and wrestles with the puzzles raised by the questions set.

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).
This year, candidates' answers were distributed across a fairly broad range of questions, although questions 3 and 10 were attempted relatively rarely. Question 1 was answered reasonably well, with stronger answers focussing on the specific issues raised in the quotation. Question 2 was very popular, although some candidates could have done better by responding precisely to the part of the question that focussed on the issue's importance for *theories of law*. Question 3 on jurisprudential methodology was attempted so rarely that it is difficult to draw any general conclusions. Candidates who focussed on and interrogated the terms "understand" and "accept" were particularly rewarded for their efforts with Question 4. Questions 5a and 5b were popular, and the specific focus of each of these alternatives worked reasonably well to ensure that fewer candidates than has sometimes been the case merely offered their "standard" essay on moral obligation to obey the law. Disappointingly, however, some answers to Question 5a attempted to "semi-detach" the issue of consent as a ground of moral obligation to obey the law from the issue of moral obligation to obey the law more generally, and then took the opportunity to write more of their answer on the latter theme. The question, however, clearly asks whether we are under a moral obligation to obey the law *because we have consented to do so* and answers needed to focus on this in order to demonstrate acute attention to the question set. Question 6 was answered fairly well although some candidates needed a finer-grained understanding of aspects of Dworkin's views. Answers to question 7 were thoughtful on the whole, although some could have benefitted from further consideration of what values might be served by the restrictions discussed. Questions 8 and 9 on the whole elicited knowledgeable answers with a good standard of critical analysis. Too few candidates answered Question 10 for meaningful conclusions to be drawn.

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).
The overall standard of scripts in Land Law this year was competent, but not outstanding. There was a relatively low percentage of first-class answers and the average mark across the cohort was in the low 60s. Many otherwise competent answers fell short of the highest standard because of a failure to engage adequately with the precise question asked and with the detail of the law. This affected answers to both essay questions and problem questions. For essays, there was a tendency to put forward fairly generic arguments on the relevant topic, focused on broad questions of policy and unsupported by much legal analysis. For example, Q4 asked whether "[i]nstead of being reformed, the doctrine of adverse possession should have been abolished by the Land Registration Act 2002", inviting candidates to reflect on how the 2002 Act had "reformed" the "doctrine of adverse possession" and whether it would have been better for the 2002 Act to have abolished the doctrine. Disappointingly few candidates took the opportunity to evaluate the detail of the 2002 Act reforms, as compared to the workings of adverse possession under the 1925 Act, and to ask whether there was any case for preserving the surviving methods for obtaining a registered title by adverse possession under schedule 6. Instead, many candidates wrote general answers on the case for adverse possession, its value in

proving titles in unregistered land and so on, without commenting in any way on how the 2002 Act had altered the law.

Similarly, in the context of problem questions, there was a tendency to cite relevant cases in rote fashion, as authority for a general rule that governed the problem facts, without paying adequate attention either to the particular facts of the problem or to the context-sensitive features of the legal reasoning in the cases. For example, Q7 involved two clauses of an apparent lease that were potentially inconsistent with a grant of exclusive possession, as well as a purported grant of a lease that was void for an uncertain term. Most candidates cited a string of cases about the meaning of exclusive possession and 'sham terms' in response, as well as citing the key decisions on uncertainty of term (Prudential, Berrisford etc) in considering the effect of an uncertain term. However, there was a reluctance to engage with the reasoning in the cases, and to compare the facts that were considered significant by the courts in these cases with the facts of the problem. A related problem, flowing from a lack of close attention to the terms of the question, was a failure to appropriately weigh the issues, paying more attention to those issues that were especially complex or difficult on the facts and less attention to those issues that were straightforward. For example, in Q7, some candidates wasted time talking about whether or not rent is necessary for a lease, ignoring the fact that this was not a live issue on the facts of the problem.

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

Question 1: This was a fairly popular question, and was generally well-answered. The best answers engaged critically with the concept of 'full-blooded ownership' and examined how justifications for the numerus clausus principle relate to that concept, as well as offering thoughtful perspectives on whether English land law as a whole is "too lax" in its commitment to the principle. Some candidates lost marks for providing generic answers that focused only on the numerus clausus principle, outlining general arguments about the merits of the principle and the argument that some cases (such as Manchester Airport v Dutton) violate the principle; these answers fell short of the highest standard because of their failure to address the precise question, which was about whether the cases involve inroads into the rights of "landowners" of a kind that might prejudice their claim to "full-blooded ownership".

Question 2: This was a popular question. The best answers focused tightly on the question of how and to what degree Art 8 had changed land law and made sophisticated normative arguments about what ought to be the case. Weaker answers were vague about either human rights side of the question or the land law side, with some showing limited awareness of the meaning of proportionality and others writing general answers about human rights/judicial deference/the margin of appreciation, without identifying the effect of their arguments on any particular doctrine of land law.

Question 3: This was not a popular question and was not, in general, well-answered. The question required candidates to consider how the current law differs from the statement, as well as whether it ought to. That is, a good answer needed to offer some account of when actual occupation does not confer priority – for example, because of overreaching or because the occupier does not have a property right, as in Ainsworth – as well as some account of rights that are overriding independently of actual occupation (implied and prescriptive easements, short leases). Very few answers addressed the first part of the question, although more dealt well with the second part of the question on overriding

interests other than interests of those in actual occupation. A number of candidates wrote about alteration and rectification of the register, without explaining what this had to do with the question.

Question 4: This was a very popular question and attracted a range of answers. Strong answers evaluated the current law of adverse possession in detail, including close scrutiny of the precise terms of schedule 6. Weaker answers, as noted above, offered generic arguments for and against adverse possession. It was notable that a minority of answers to this question cited no law at all, commenting neither on the statutory provisions of the 2002 Act nor on any case law and instead focusing exclusively on a survey of academic literature about the theoretical implications of 'squatter's rights'. Given the terms of this question, these answers scored particularly poorly.

Question 5: This was a very popular question and attracted a range of answers. The best answers offered a developed normative account of what it would mean for the law on this question to be "in a satisfactory state", considering factors like the importance of legal certainty and the need to achieve a fair outcome in individual cases and sensitively considering how these factors play out in the family homes context. Weaker answers were vague on the law (e.g. failing to address the joint names / sole names distinction or the continuing relevance of Rosset), inattentive to the reasoning in leading cases (e.g. mischaracterising or ignoring the reasoning in cases like Stack and Jones) or lacked engagement with the normative issue.

Question 6: This was a relatively unpopular question, but was generally very well-answered by those who chose to address it. Most candidates gave good accounts of the scope of the s 36 jurisdiction to postpone possession, and the relationship between possession and sale, and engaged well with policy issues.

Question 7: This was a very popular question. Most answers accurately identified the legal issues around the grant of exclusive possession and certainty of term. Weaker answers, as noted above, cited a number of cases on the exclusive possession issue but did not engage with the reasoning in these cases or consider how the facts of the problem might be different. A number of candidates asserted that a lease that was found to be void for an uncertain term would always be interpreted as giving rise to a periodic tenancy, on the authority of Prudential, without commenting on Javad v Aquil on the role of intention in this context. The discussion of Berrisford on the certainty point suggested a lack of attention to the judicial reasoning in that case, with a number of candidates asserting on the strength of the first-instance judgment in Southward that the rule in Berrisford depends on proof of positive intention to grant a lease for life without evaluating whether such an interpretation of the law is consistent with the Supreme Court judgments in Berrisford itself. Only a minority of candidates identified the formality issues raised by this problem, or the implications of the formality issues for the question whether any lease was legal or equitable (and, therefore, for whether it could be overriding under para 1 rather than para 2 of schedule 3 of the LRA 2002).

Question 8: This was a popular question, and attracted a range of answers. Most candidates identified the legal issues governing each purported easement, and accurately described the law on the implied creation of easements. Not all candidates identified the importance of the distinction between implied grant and implied reservation, in relation to Penelope's supposed vehicular right of way, but the majority did. This was a problem where failure to engage with the facts was particularly significant, with a number of candidates losing marks for skipping relevant issues or giving too much attention to issues that were straightforward on the facts (e.g. whether a right of way can be a legal easement

– it can.) Not all candidates identified the priority issues, but those who did, and who gave full consideration to all the elements of schedule 3 para 3 of the LRA 2002, were rewarded.

Question 9: This was not a popular question, and attracted a mix of answers. Some answers failed to cite section 58 of the 2002 Act to explain how registration confers title or to distinguish between the different stages of a schedule 4 rectification claim and the stages of a schedule 8 indemnity claim (e.g. some candidates were vague in their handling of questions about when fraud or lack of proper care became relevant, and the difference between the fraud or lack of proper care of the present registered proprietor vs the lack of proper care of the applicant for rectification or an indemnity). Good answers dealt competently with the relevance of the void/voidable distinction to the meaning of 'mistake', the question when the holder of a registered charge was to be treated as being in possession for the purposes of a sch 4 claim, and the effect of Nasrullah analysis on both the rectification/alteration and indemnity questions.

Question 10: This was a very popular question and was generally handled well. Most candidates spotted the relevance of the burden and benefit principle and the requirements of that principle, engaging well with the facts of the problem on this point. Most candidates also identified the scheme of development point and gave some attention to the question of how a scheme of development is to be established, although the precise requirements to find such a scheme were skimped in some cases. Not all candidates were able to distinguish between positive and negative covenants, with particular confusion being caused by a covenant that (like the covenant in Tulk v Moxhay itself) had both positive and negative aspects; some candidates seemed to think that the negative aspect of the covenant would render its positive aspect enforceable against a third party, while others concluded that having any positive aspect would render even the negative aspects unenforceable.

Question 11: This was a popular question and generally handled well, both by candidates who adopted a 'trusts of the family home' approach to the B v C dispute and by candidates who adopted an estoppel analysis. Some candidates missed the relevance of Goodman v Gallant and wasted time on asking whether the title was held by A and B as joint tenants or tenants in common in equity. A surprisingly large minority of candidates asserted that a joint tenancy could be severed by will. Most candidates who applied a proprietary estoppel analysis identified Guest v Guest as relevant but not all were able to apply the Guest v Guest approach to the facts and some rushed the elements of the estoppel claim, finding that the elements were made out very quickly without any consideration of the leading cases of Thorner and Cobbe.

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).
N/A
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).

MEDICAL LAW AND ETHICS

General comments: Please comment on the overall quality of the scripts, the distribution of marks and anything else worth noting and learning from (including suggested actions).
While there was some good papers in this year's group, the examiners were in general somewhat disappointed with the overall quality. Much of this was seemingly linked to a resistance amongst candidates to take intellectual risks and really make an argument in response to the questions posed. These questions were deliberately open-ended to give candidates scope to take them where they wished to, intellectually, but sadly many instead elected to take a safe path and produce work that was largely based on splicing together the work of various academics. This resulted in essays that offered no clear position or thesis, but instead read as a string of quotations and references, which was both difficult to follow and did not produce a strong response to the question. Such efforts were not rewarded, particularly those that almost entirely set aside the question asked, instead offering what often appeared to be pre-prepared pieces of writing. The examiners strongly urge candidates to stop focusing on demonstrating knowledge of the reading (though this is required), and instead aim to produce a cogent, considered argument that addresses the question asked. Candidates also often failed to critically evaluate the scholarship they cited, choosing instead to simply list views, rather than outlining why one or other view might be preferred. This was particularly rife in relation to 'relational autonomy', where candidates rarely offered a detailed, accurate explanation of what relational autonomy means, nor any explanation of why they did or did not find the concept useful. Instead, it appeared candidates felt they must include relational autonomy, when the examiners have repeatedly stressed that candidates are not expected to share the views of those who teach them, but must instead bring their own thinking to the table. Candidates also struggled with the 'discuss in relation to two topics' element, often (despite warnings against this) separating their essays into two sections, each covering a different topic, with little or no attempt to integrate them. Again, such papers were not rewarded. There was also a widespread lack of detailed understanding of some of the decisions and a lack of reference to the actual reasoning offered in those judgments. Candidates should check the basic rules of punctuation (for example, footnote references come after the full stop) and should not include text in the footnotes other than citations. Those concerns aside, there were papers that offered insightful, detailed critical evaluations of the law, or engaged in the ethical debates that were explored in the course. The best avoided the 'does this explain the law?' approach (which does not work well), and instead appreciated that their task was often to consider whether the law was right --- that is, given the ethical issues at play, is the law as it should be? Some of the strongest essays did this very well, offering analyses of the key decisions interwoven with thoughtful explorations of the ethics (and the various ethical theories) to produce highly considered, effective responses to precisely the question asked.

MORAL AND POLITICAL PHILOSOPHY

General comments: Please comment on the overall quality of the scripts, the distribution

of marks and anything else worth noting and learning from (including suggested actions).
There were 23 candidates for Moral and Political Philosophy. The work in the examination was generally of a solid standard, though there were few 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, though there were slightly fewer takers for questions 6 (value pluralism), 8 (moral luck), and 10 (democracy), 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 general topic, with only limited attention on the question. Question 4, for instance, raised the question of whether there is a 'supreme principle' of morality, as Kant claims. Stronger answers explored the issue of whether Kant himself has multiple principles in his different versions of the Categorical Imperative, and whether morality does rest on a single foundation. Question 12, on liberty, raised the issue of whether we have an interest in liberty per se, or only interests in particular liberties. Better answers discussed the difficulties with considering liberty to have value in and of itself, e.g. to do wrongful actions.

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).
The paper comprised ten questions, including two problem questions. Candidates were required to answer four. The following questions were popular: question 1 (on conversion), question 2 (on chattel leases), question 3 (on relativity of title), question 4 (on security interests), question 7 (on 'nemo dat') and question 10 (on, inter alia, the acquisition of title through possession). The standard of answers was, on the whole, very high: more than half of candidates obtained an overall mark of 70 or above and only one candidate received an overall mark below 60. The strongest answers paid very close attention to the question asked, displayed a deep knowledge of the primary and secondary materials, and advanced cogent and clear legal arguments.

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 the Public International Law and Jessup paper was excellent, with all students being marked at an Upper Second or First Class level (35% 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.

As in previous years, the paper contained a mixture of problem questions (3) and essay questions (6). Although not required to do so, almost all the candidates who sat the exam elected to answer at least one problem question, many chose two, with selections focussing on use of force (Question 8, 26 chose this), dispute settlement (question 9, 19 chose this), and immunities (question 7, 10 chose this).

The use of force problem question, as in previous years, proved the most popular, and elicited some excellent answers from the candidates, with the best among them drawing on a range of state practice, raising and applying all the relevant rules, and citing the full range of cases. Also popular were the essay questions on custom (question 3, 24 chose this), state-centricity of international law (question 1, 23 chose this), the third world approaches to international law (question 2, 12 chose this) and state responsibility (question 6, 10 chose this). Less popular were the questions on recognition (question 4, 6 chose this) and treaties (question 5, 6 chose this). The best responses to the custom question went beyond illustrating the difficulties in identifying and applying custom and discussed the value and limits of dynamism and flexibility in law-making. It was heartening to see keen interest in and engagement with alternate approaches to international law, including third world and feminist approaches. Introduced relatively recently in the syllabus, these approaches were referenced by candidates not just in the question on third world approaches, but across other essay questions, for instance the question on state responsibility.

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. Some scripts even sloppily 'copied and pasted' from tutorial essays (in some instances comments from the tutors were also included in the script). We would strongly discourage this practice as such text is likely to detract from the flow of the narrative in direct response to the question. The best answers to both essay and problem questions directly answered the question and made thoughtful use of case law and academic authority, thereby providing insightful analysis that demonstrably went beyond the basic textbook material.

ROMAN LAW (DELICT)

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

The undergraduate cohort on this course made up around two thirds of the overall number of participants. Some DLS participants had no previous knowledge of Roman law, or less than the Oxford students who all have had Roman Law (Mods).

Uptake was spread evenly across the questions bar Q8, which attracted no taker. Candidates are asked to take (at least) two out of four exegetical questions from the set texts. Here, Q1 was a clear favourite. Quite a few candidates took more than the two mandatory Qs from this subset.

Most candidates showed a good to very good understanding of the substantive Roman law of delict and the procedural law accompanying it. The better answers embedded each quote in its immediate context within the Digest and cross-referred to related passages further afield. Ideally, this would set the framework for a discussion of controversial

questions. The best answers enriched this discussion with opinions gleaned from modern scholarship and even commented on the question of interpolations.

In view of the small number of candidates, it appears inopportune to try to draw any general lessons from their answers to individual questions. The overall result was in line with the long-term average.

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 (analysing the capital tax treatment of houses) 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 asked candidates to discuss the tax policy objectives and tensions from dwindling taxes on diesel and petrol. The best answers engaged with a wide range of literature on the aims of taxation in their answers, and drew comparisons with other taxes that have objectives additional to raising money, eg sugar, alcohol and tobacco taxes. The weakest answers relied on vague and unsubstantiated assertions about good tax design generally. Q.2, on the trade-offs between efficiency and equity in taxing capital, was fairly popular. The best answers focused on the rates of CGT and IHT as directed by the question, and considered the meaning and trade-offs between efficiency and equity as considered in a range of academic writing. They also focused on the role of CGT as a backstop to income tax versus the different objectives of IHT. Q.3 provided a quote from a recent GAAR Advisory Panel opinion on the application of the 'double reasonableness' in the statutory GAAR. 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. Better answers identified that the statute specifically includes exploiting shortcomings in the tax legislation as one factor indicating the taxpayer's course of action was not reasonable, and focused on how this should apply when in the Panel's view the shortcoming was obvious. Q.4, on the case law test for identifying an 'employee' for tax purposes, asked students to consider if the flexibility of the test outweighed concerns over the certainty of application. Better answers examined a wide range of cases in appropriate depth, considered why courts had sometimes found the test difficult to apply and what Parliament should do about it. Students generally did well with the case law, but weaker answers said little about the IR35 regime, whether the current test could really distinguish employment from entrepreneurial activity, and indeed whether it should attempt to do so.

Q.5, 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.6, a two-part question, asked students to evaluate the taxation and reliefs for houses under the CGT and 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 business tax, CGT and trading. The 'wholly and exclusively' test as it applied to rental clothing and vacations was generally well done. Common mistakes included no mention of the badges of trade and failing to discuss the relevance of the overpayment and whether it was taxable as employment income.

Q.8 concerned a mix of issues from employment tax, inheritance tax and CGT. 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 reservation of benefit issue on the gift from the uncle.

TORT

Comments on individual questions: Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).
Question 1 (a): This essay question called for discussion of the Supreme Court's recent and landmark decision in Fearn v Board of Trustees of the Tate Gallery (and more particularly the principle endorsed by the majority that an occupier will not be liable in nuisance if they 'are merely using [their] premises in a common and ordinary way and acting with as much consideration for neighbouring occupiers as can reasonably be expected'). Weaker answers tended simply to summarise the facts and outcome of the case. Better answers engaged meaningfully with the legal issues that the case raised (including the principle mentioned above) and debated whether the reasons given by the majority or minority were preferable. A handful of students engaged with the academic literature, which generally paid dividends. Question 1(b): This essay question required students to consider a passage doubting the utility/vitality of the rule in Rylands v Fletcher. Candidates were expected to demonstrate knowledge of, in particular, decisions such as Transco and Cambridge Water, among others. Good answers generally engaged well with defences to liability, which constitute an important limit on the scope of the rule. Some candidates usefully considered wider issues, such as the relationship between the rule in Rylands v Fletcher on the one hand and law of nuisance and/or tort of negligence on the other. Question 2: This essay question concerned the law of punitive damages and, in particular, the categories test. A meaningful number of students answered this question, and the essays were generally strong. It was essential for students to demonstrate an understanding of the decision in (at least) Rookes v Barnard. Better answers engaged well with the theoretical debates regarding punitive damages and showed familiarity with the Law Commission's important report on the subject. Some students were able

constructively to relate the question to debates regarding the functions/goals of tort law.

Question 3: This essay question required students to address the Supreme Court's decision in Secretary of State for Health v Servier Laboratories Ltd, which concerned (in particular) the 'dealing' requirement of the tort of causing damage by unlawful means. It was an unpopular question, perhaps surprisingly given that the decision on which it focused is a recent and significant one at the ultimate appellate level. Weaker answers generally failed to demonstrate awareness that the case was about the 'dealing' element of the tort. Better essays tended to consider what Servier might mean for the other economic torts.

Question 4: This essay question required students to consider a passage from Jane Stapleton's work doubting the utility of Part I of the Consumer Protection Act 1987 (CPA). Many students ventured answers to the question. Unimpressive answers tended simply to summarise certain provisions of the statute and to outline a couple of relevant cases but without linking the analysis to the question. Better answers engaged directly with Stapleton's criticisms and were able to provide evidence/argument in support of a sustained thesis. Some of the stronger essays considered issues such as the apparently very small number of products liability claims that come before the courts, the excessive complexity of the CPA and the relationship between the CPA and the tort of negligence. The best answers addressed whether (as Stapleton doubts) the CPA truly imposes strict liability.

Question 5: This essay question presented students with the opportunity to consider individualist vs collective models of tort law in the context of the decision in Fairchild. Students were given a quotation from the work of Sandy Steel and David Ibbetson for this purpose. Answers to the question tended to be rather mediocre. Few students were able to grapple satisfactorily with the important theoretical issue that Steel/Ibbetson had identified (which is clearly visible not only in Fairchild and in related cases but in other areas of tort law too). Relatively few students properly appreciated how and why the House of Lords' decision in Fairchild involved a shift towards what Steel/Ibbetson had dubbed the collective model.

Question 6: This essay question called for students to address whether the different rules that the law lays down regarding the liability of occupiers to visitors and non-visitors are needed (and not, as many students thought, how visitors and non-visitors are in fact treated differently). Strong essays explored and critiqued possible justifications for the differences. They were also able to draw upon cases by way of example in support of the analysis offered.

Question 7: This essay question concerned the six-stage model for the tort of negligence expounded by Lord Hodge and Lord Sales in Khan v Meadows. Students were invited to consider whether it promoted or hindered understanding of the cause of action. Weaker answers simply set out the new model and explained the decision in Khan more generally. Better answers engaged critically with the model's individual components. Some good answers considered whether the criticisms that Lord Burrows (among others) have offered regarding the model are sound.

Question 8: This (very popular) problem question was mainly concerned with the law governing claims in respect of negligently caused psychiatric injury although it also raised issues of breach of duty, causation and contributory negligence. Students were expected to apply the primary/secondary victim distinction and the rules established by Alcock more generally. Stronger students appreciated that there are miscellaneous rules concerned

with persons who suffer psychiatric injury because they consider themselves to be instruments of death, injury or imperilment. Weaker answers often considered non-issues, such as whether Daniel was somehow liable for the tort of negligence (which he was clearly not given the total absence of any evidence that he was at fault).

Question 9: This problem question was concerned with the law of defamation. Although attempted by only a relatively small number of students, the answers offered were generally strong. It was essential for students to show that they understood the elements of the torts of libel/slander and also the principal defences to liability arising thereunder. Good answers addressed whether Leo was responsible for the publication to Mary, which turned on whether the publication was negligent. Stronger answers also addressed whether Leo was liable for the consequences of the re-publication to Nigel (e.g., Beckham) and whether Mary was herself liable for those consequences. It was important for students to identify the claim against Ingrid (which raised an issue as to whether any qualified privilege defence was lost due to the revenge motive). Students were expected to consider, as regards the claim against Oscar, the reference requirement (e.g., E Hulton & Co v Jones) as well as section 4 of the Defamation Act 2013 and connected case law (e.g., Lachaux).

Question 10: This problem question was intended to be relatively straightforward, as it raised fairly pedestrian/core issues in the law of torts, particularly breach of duty and contributory negligence. The examiners were surprised that students often exhibited a poor understanding of the law governing these central areas. Students were expected to apply to Peter the rules regarding the standard of care (e.g., Nettleship v Weston; Mansfield v Weetabix). They were also required to apply the principles that determine whether contributory negligence exists and the apportionment statute (e.g., Froom v Butcher; Jackson v Murray). The facts also raised the illegality defence and students were required to consider in this regard the Patel and Gray tests as explained by Henderson (the number of students who were apparently unaware of any of these three cases decided at the ultimate appellate level was a matter of some concern). Few students appreciated that Quentin's failure to take the medication which he had been prescribed might constitute contributory negligence and/or a failure to mitigate his damage (although some good answers addressed the relevance of Spencer in this connection), and some students instead considered, oddly, whether Quentin's (unidentified) doctor might somehow be at fault for his omission.

Question 11: This problem question raised issues regarding false imprisonment, vicarious liability, battery and self-defence, harassment and trespass to land. It was a popular question. Many students handled the false imprisonment and vicarious liability issues competently (although some students wrongly concluded that Sam could not be liable for false imprisonment on the basis that Tim had suffered no damage, which was a clear error given that the tort is actionable per se). However, the rest of the question was, on the whole, often handled poorly. Few students demonstrated an adequate understanding of the tort of battery or the defence of self-defence, both of which were directly raised by the facts. The important and highly relevant House of Lords' case of Ashley v Chief Constable of Sussex was often not discussed. The tort of harassment, when dealt with, was usually addressed as an afterthought, and almost no students appreciated that Victor's sticking notes on the windows of Wendy's house amounted (or at least arguably amounted) to a trespass to land.

Question 12: This problem question raised general issues regarding the tort of negligence in the property damage context. Students were expected to consider whether Yasmin's failure to secure the door to the building constituted an act or omission. They

were also required to address whether the unusually high value of the damaged artwork raised issues concerning remoteness. Few students noticed that there was a significant issue as to whether Aline's loss of data constituted property damage or pure economic loss (and often simply assumed that it was one or the other without discussion). And, surprisingly, few students appreciated the direct relevance of the law of contributory negligence in this connection on account of Aline's omission to back-up the data. Most students realised, however, that the facts concerning the Juvenile Detention Centre called for discussion of Dorset Yacht. Weak answers veered into largely irrelevant issues, such as the rule in Rylands v Fletcher (a claim for which was a non-starter for various reasons including the fact that the water in issue had not been accumulated by Xavier on his land, the fact that the presence of water in pipes was almost certainly not an extraordinary and unusual use of the land (Transco), that the defence of act of third party would very likely apply even if the elements of the cause of action were satisfied, etc).

Question 13: Although this problem question involved issues regarding defective premises, a surprisingly number of students failed to discuss the provisions of the Defective Premises Act 1972 (DPA). Few students realised that there was no claim under the statute in respect of the low ceiling because it did not render the property unfit for habitation. Conversely, most students were able competently to discuss the facts concerning the boiler and realised that they were inspired by a hypothetical example that had been given in Murphy v Brentwood. The question also presented issues concerning professional negligence, which required students to consider whether George had assumed responsibility for Brenda's interests in issue and whether, even if he had, any breach of any assumed duty might not be causally relevant. Most answers omitted to consider whether s 2A of the DPA gave Brenda a claim against David in respect of the defective wiring. Stronger students appreciated that Brenda might have a psychiatric injury claim based on the Court of Appeal's decision in Attia.

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).
The overall standard this year was disappointing. Many candidates were let down by a failure to engage with the question asked, apparently relying on prepared answers, and insufficient use of case law. The essay questions all addressed things clearly on the syllabus, but in being more varied than in some previous years apparently drove many candidates to answer more problem questions. Many candidates were unable to manage their time effectively and provided unfinished, rushed and/or note-form answers, particularly when answering problem questions.
Comments on individual questions: Please comment on the overall quality of answers, notable weaknesses in the answers (and/or question) and anything else worth reporting and learning from (including suggested actions).
Question 1. This was a moderately popular question which sharply divided candidates. Strong answers engaged directly with quote; considered the meaning of rights 'in rem' and 'in personam'; engaged with a range of ways the rights of beneficiaries under a trust might be conceptualised; and made use of a range of cases from across the course. Weaker answers appeared to be prepared answers to the question 'is a trust beneficiary's right proprietary' that did not engage closely with the specific question asked, were over reliant

on commentary, and predicated on a simplistic or underexplored understanding of the 'in rem/in personam' distinction.

Question 2. This question attracted relatively few answers. Strong candidates distinguished between the two senses of public benefit identified in the Independent Schools case, and divided up their answers to address the different treatment of the public benefit requirement in cases concerning, eg, education, religion, and relief of poverty. Weaker candidates provided a generic treatment of the 'public benefit' requirement and failed to carefully consider the quote. Many seemed simply to insert their prepared essays on the effect of the 2011 Act on the public benefit requirement.

Question 3. This attracted few answers. Strong answers engaged with the quote in detail, in particular Eve J's reasoning as to the effect of the Judicature Acts on voluntary covenants to settle, and were able to critically analyse Eve J's view. Weaker candidates wrote more general essays on covenants to settle or the maxim that equity will not assist a volunteer. Bizarrely, some candidates argued that Re Pryce would be decided differently since the passing of the Contracts (Rights of Third Parties) Act 1999.

Question 4. This was a very popular question which, on the whole, was very badly answered. Too many candidates took for granted that the question was asking about how resulting trusts should be categorised—sometimes with a fig leaf paragraph stating that this is what the question was really about. The examiners chose not to focus on this and were disappointed that many students decided to answer the question they wished the examiners had asked rather than the question they actually asked. The best answers looked at different kinds of reasons for the law to recognise resulting trusts—in particular, looking at their functions, not only their taxonomy.

Question 5. This question attracted few answers. Weak answers simply listed the ways an unincorporated corporation might 'hold' property—thereby evading the issues in the question entirely. Strong answers looked at the contradictions in the case law on the nature of the rights of members under so-called contract holding theory, in particular, the proprietary and contractual aspects.

Question 6. This was a moderately popular question, though again generally poorly answered. The better answers engaged with the question whether Millett LJ was right to suggest that unconscionability caused constructive trusts to arise—in particular, given those constructive trusts that arose in response to events other than wrongdoing. Many weaker answers simply discussed whether constructive trusts were best understood as court orders. Others displayed very limited knowledge of the case law and speculated in vague terms about the role of 'unconscionability' in the law of trusts.

Question 7. This question attracted few answers. Weaker answers tended to open-endedly discuss the Trustee Act 2000 or fiduciary duties. Strong answers provided a cogent account of the nature of fiduciary duties and explained the possible distinction between the duty of care and skill and fiduciary duties in light of Bristol v Mothew.

Question 8. This question did not attract many answers. Strong answers engaged with the quote in light of the conflict between the reasoning in Williams v Bank of Nigeria and Byers v Saudi Bank. Weak answers simply asserted that the statement was wrong, typically over-relying on commentary and using little case law.

Question 9. This question attracted very few answers indeed.

Question 10. Strong answers here engaged with the reasoning in Target and AIB, and evaluated the quote with reference to how later judges have applied the principles from those cases. Weaker answers tended to show only a superficial understanding of the reasoning in the cases themselves.

Question 11. A problem question of two parts, generally reasonably well done. Most students identified the Quistclose style trust, though some went into 'essay mode' causing timing problems elsewhere in the paper. The tracing points (including those concerning tracing through mixed funds, 'backwards' tracing, and the lowest intermediate balance rule) were generally well done, with better candidates standing out by showing how the different tracing issues interrelated .

Question 12. This was a popular problem question, generally reasonably well done. Most candidates identified the major issues and cited the right cases. The better candidates properly discussed whether buying the car amounted to detrimental reliance; the relationship between Curtis and Pennington; and the relevance of Zeital v Kaye. Weaker candidates missed the significance of the need for a specific expected cause of death for the doctrine of donatio mortis causa to take effect.

Question 13. This was a very popular question that was typically poorly done. Common errors included candidates failing to characterise whether dispositions were fixed or created discretionary trusts or powers; not setting out properly tests for certainty of object; and peremptorily concluding how the facts given applied to legal tests. Many candidates misunderstood and misapplied the distinction between 'conceptual' and 'evidential' certainty.

Question 14. This was a moderately popular question, that was generally well done. Most candidates handled well the issues relating to vendor-purchaser constructive trusts and sub-trusts, but few noticed the significance of whether one treated the VPCT as involving a true transfer or not. Likewise, most candidates recognised that N's instruction raised a question about whether Vandervell or Grey applied, and better answers resolved this by reference to the reasoning in the cases themselves and relevant commentary. Finally, weaker candidates noted the significance of s 53(1)(b) in the final part, but did not go on to consider the potential conflict between the reasoning of Rochefoucauld v Bowstead and Solomon v McCarthy.

EXTERNAL EXAMINER REPORT FORM 2023

External examiner name:	Emmanuel Voyiakis	
External examiner home institution:	LSE	
Course(s) examined:	Honour School of Jurisprudence (Course I 3rd year)	
Level: (please *delete as appropriate*)	Undergraduate	

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].*	x		
A2.	Do the threshold standards for the programme appropriately reflect: (i) the frameworks for higher education qualifications, and (ii) any applicable subject benchmark statement? *[Please refer to paragraph 7 of the Guidelines for External Examiner Reports].*	x		
A3.	Does the assessment process measure student achievement rigorously and fairly against the intended outcomes of the programme(s)?	x		
A4.	Is the assessment process conducted in line with the University's policies and regulations?	x		
A5.	Did you receive sufficient information and evidence in a timely manner to be able to carry out the role of External Examiner effectively?	x		
A6.	Did you receive a written response to your previous report?			x
A7.	Are you satisfied that comments in your previous report have been properly considered, and where applicable, acted upon?			x

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

Part B

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?*

Overall, the standard is very high, and compares favourably to every higher education institution I have experience of.

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).*

I'm not sure about the difference between this and the previous question!

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.

The rigour of the exam paper scrutiny and the final exam board are unparalleled in my experience. The processes are thorough and fair.

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 come to mind. The final exam board is a veritable marathon, but I cannot fault the process. The only point I would raise is that the practice of at home online assessment carries significant logistical and plagiarism risks, so I would encourage the University to keep its availability under review.

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**.***

As far as I could tell, the assessment methods are fairly traditional, but they work very well for an undergraduate law degree.

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.

Signed:	Emmanuel Voyiakis
Date:	July 29, 2023

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)
Professor P Eleftheriadis
Mr C Hare

Dr C Kennefick
Dr D Leczykiewicz
Dr M Jackson
Professor N Bui
Professor A Layard
Professor E Voyiakis (External Examiner)
Professor C Fenton- Glynn (External Examiner)