

LAW MODERATIONS – HILARY TERM 2018

MODERATORS' REPORT

PART I

(A) STATISTICS

Numbers and percentages of those passing and failing

Numbers

	2018	2017	2016	2015	2014
Distinction	34	37	26	34	36
Pass	166	176	180	177	168
Pass in 1 or 2 subjects only	2	-	3	-	-
Fails	-	-	-	-	-
Total	202	213	209	211	204

Percentages

	2018	2017	2016	2015	2014
Distinction	16.83	17.37	12.44	16.11	17.65
Pass (without Distinction)	82.18	82.63	86.12	83.89	82.35
Pass in 1 or 2 subjects only	0.99	-	1.44	-	-
Fails	-	-	-	-	-

Number of vivas

Vivas are not held in this examination.

Number of scripts double or triple marked

Scripts in this examination are not automatically double marked. Following the agreed procedures, scripts were double marked during the first marking process to decide prize winners and when a fail mark had been awarded. Some further double marking was done in the first marking process to police borderlines and check awards of very high and very low grades. Once the marks were returned, the following classes of script were second marked:

- (i) Papers awarded 68 or 69 were double-marked when the candidate had achieved 68 or above in another paper, and there was a reasonable prospect of altering the **candidate's overall classification**.
- (ii) Papers of a II.I standard **which were 4 or more marks below the candidate's average**.
- (iii) Where a candidate had one mark at or above 60 or two marks at or above 58; and where their overall average mark was below 60.
- (iv) Where a candidate had one mark above 60 and two marks of a II.II standard and the average mark across all three papers was above 59.
- (iv) Where a Course 2 candidate had an average, over the three papers, of less than 60.

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Second marking scripts of a II.II standard which were 4 or more marks below the candidate's average did not impose a significant additional burden on the examiners. The second marking of papers where the overall average mark was below 60, but above 59 with one paper marked at above 60, was also thought to be a useful addition to the second marking criteria, and it did not impose a significant additional burden on examiners. The Moderators accordingly supported the continued use of these second marking categories.

Markers this year loyally followed the general instruction that the whole of the marking scale be used and grades at the higher end of the 60s and also above 70 be used liberally. This was particularly true of marks above 70. This resulted in a small group of candidates obtaining outstanding marks across all three subjects. The borderline grades of 58, 59, 68, and 69 were also used at the first marking stage, and each subject group engaged in double marking in order to test the lines between II.II, II.I and I class grades. We adopted the policy of ensuring that, when checking scripts across the marks for calibration purposes, these borderline scripts were chosen for double marking at the first marking stage.

There were 87 scripts second marked this year, compared to 93 scripts last year. No scripts were triple marked

Number of candidates who completed each paper

202 candidates sat each of the three papers.

(B) EXAMINATION METHODS AND PROCEDURES

Incomplete answers and breaches of rubric

As last year, 'short weight' and associated phenomena were dealt with by the award of the mark merited by the work the candidate had actually presented. The only rubric breaches this year occurred in criminal law, where candidates had failed to complete four questions, thereby failing to answer two problem questions or one essay question. No further action was taken other than awarding a mark of zero for the answers which were not completed.

Consistency of marking

Steps were taken to review the consistency of markers' profiles after 25 scripts, and also at the end of the first marking stage. The Moderators agreed that investigation and explanation should follow if either an individual marker or a team of markers awarded fewer than 15% or more than 20% I class marks, or fewer than 5% or more than 10% II.II (or worse) marks. Any anomalies identified as part of this process were addressed within the marking groups.

(C) PRACTICE WITH REGARD TO SETTING PAPERS

Each paper was set by the relevant Moderator or other member of the examination team, acting in conjunction with the paper's other markers.

Past papers were available via OXAM.

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PART II

(A) GENERAL OBSERVATIONS

Marking timeline

The usually tight timetable for Mods was exacerbated further this year due to the timing of Easter. All the markers showed exceptional zeal and promptness early in the marking period. All markers also cooperated effectively to ensure that second marking took place efficiently, accommodating conferences and childcare over the school holidays.

Medical certificates and special cases

25 candidates had special arrangements for sitting their examinations. There were ten 'Factors Affecting Performance' applications in total. No candidate's final result was affected.

Release of grades

The grades for all students were released without error, on Wednesday, 4 April 2018.

Thanks

The Moderators are extremely grateful to Gráinne De Bhulbh, Examinations Officer, for her competence, efficiency and good humour throughout the examination process.

(B) GENDER etc. (equal opportunities issues and breakdown of the results by gender; Course 1 and 2 performances; ethnicity analysis)

The gender breakdown for Course 1 and Course 2 combined was:

	2018		2017		2016		2015	
Result	Gender	No	Gender	No	Gender	No	Gender	No
Distinction	F	17	F	16	F	7	F	18
	M	17	M	21	M	19	M	16
Pass	F	104	F	106	F	102	F	109
	M	62	M	70	M	78	M	68
Two Paper Pass	F	2			F	3		
	M	0			M	0		

While the disparity between the proportion of women and men who earned Distinctions continues to narrow, it remains high.

The difference in the comparative performance of Course 1 and Course 2 candidates has been entirely erased in the current year – 17% (30/176 candidates) in Course 1 and 15% (4/26 candidates) in Course 2 achieved Distinctions in each group respectively, and 17% in the combined cohort.

The Moderators were not asked to produce an ethnicity analysis of the results and do not have the data to do so.

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(C) SUBJECT REPORTS

A Roman Introduction to Private Law

General comments

A new rubric was introduced in this subject in 2017: candidates are now obliged to answer a compulsory gobbet question (with an internal choice of two out of six texts) and at least one out of three problem questions. At the same time, the syllabus was adjusted to admit more detailed treatment of certain aspects of the law of contract, including the role of vitiating factors such as mistake and duress in the context of sale (*emptio venditio*) and *stipulatio*, and the rules regarding the passing of risk, latent defects and eviction in the context of sale in particular. The changes in the rubric appear to be well understood by students; there were no breaches. However, the problem question which dealt with the new contract material (question 3) was noticeably unpopular compared to the other two (although this should be seen in the context of candidates' marked general preference for property-law topics), and those candidates who did attempt it did not always have a firm grip on the operation of the rules on risk and warranties. It seems that students might benefit from more practice in problem questions dealing with this central material. More generally, candidates' answers to the problem questions tended to state the relevant law in general terms only, omitting to apply the law to the facts. But overall there were some exceptionally strong scripts, with a substantial number of distinctions; the great majority of answers offered were at 2.1 or first-class level.

A further general point: some candidates were puzzled by the use of the terminology 'CE' in the problem questions and asked questions about its meaning in the exam itself; it is suggested that tutors advise their students of the existence of these alternatives to the more traditional 'BC' and 'AD' terminology used in much of the secondary literature.

Questions

Q1: (a) was generally well-answered; many candidates were able to refer to secondary literature, and most offered a thoughtful and nuanced account of the meaning(s) of 'natural law'. Likewise (b), although there was significant confusion here in relation to the reference to 'foreigners', which tended to be understood to refer to peregrine ownership rather than to foreign legal systems; weaker answers to this question tended to deal with ownership and possession in general terms only, rather than paying close attention to the text. Answers offered to questions (c) and (e) showed good knowledge of the relevant doctrines and their context. Questions (d) and (f) were unpopular, and some candidates appeared to have only a vague grasp of the issues raised by the latter text, in particular the standard set with reference to the 'most careful head of a family'.

Q2: The most popular of questions 2–10. While generally strong on the ownership aspects, candidates tended to overlook the theft issues raised by the first, second and third paragraphs of the problem (*furtum conceptum* etc), despite the prominence given to these issue in Gaius's Institutes. The *rapina* issue in relation to the cow was also not well handled. Relatively few candidates displayed knowledge of possessory interdicts. Few candidates addressed in any detail the issue of *accessio temporis* (cumulation of periods for *usucapio*) raised by the final paragraph.

Q3: This question has already been addressed under 'general comments' above. Specifically, the *dicta promissave* aspect (i.e. the assertion that the goats are of a specific type) was well handled by only a few candidates, with many asserting only that an *actio doli* was available to H against I. Only one or two candidates noted that if risk had passed, I was obliged to assign her rights of action in delict against L to H.

Q4: This question was well handled by most candidates; the best were able to offer detailed accounts of the issues surrounding *culpa*, in/direct infliction of harm and calculation of damages under the *lex Aquilia*, and of the scope of liability for *furtum*. There was some tendency to assume that the original

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meaning of the *lex Aquilia* was still determinative of the scope of liability in the late classical period, and some candidates assumed that the remedies set out in the Twelve Tables for *membrum ruptum* etc were still available.

Q5: This unpopular question was generally well answered by those who attempted it.

Q6: A popular question that was generally well answered. Some weaker candidates focused exclusively on the rules regulating praedial and personal servitudes, omitting to discuss their functions, particularly in the case of usufruct.

Q7: Another popular property question. Stronger answers considered *traditio* alongside the obviously relevant *mancipatio* and *in iure cessio*. Knowledge of specific formalities was rewarded, as were attempts to define 'form'. Candidates who focused only on the *actio Publiciana* did less well, particularly if they treated the question as a pretext for a general discussion of the concept of ownership. Finally, there was evidence here of a rather loose grip on chronology; some candidates spoke of the 'expanding Empire between the time of Gaius and Justinian', while others seemed to miss the point that *usucapio* has its origins in the Twelve Tables. Some candidates erroneously discussed the degeneration of the contract of *stipulatio*.

Q8: This question was generally well answered. In addition to an exposition of the classical system of contracts, the best answers considered the rise of vitiating factors such as mistake and duress in the context of the later *stipulatio*, as well as the demise of its verbal form and – in some cases – the role of pacts and innominate real contracts in the generalisation process.

Q9: This unpopular question was generally very well answered. There was, however, a tendency for some candidates to write an essay setting out the history of *iniuria*, rather than tackling the issue of protected interests.

Q10: Only a few candidates attempted this question; among those that did, answers were oddly bifurcated, with some candidates producing excellent accounts and others struggling to reproduce sufficient relevant detail.

Constitutional Law

General Comments

The overall standard was strong and there were a number of scripts that were very good indeed. Some questions were especially popular, notably those touching on human rights law, whereas questions concerning devolution and parliamentary privilege were only considered by a few candidates. That said, some questions clearly required an overview of the constitution as a whole – predictably, those who could address it in the round fared better than those who could discuss it only in part. The best answers demonstrated an impressive grasp of the detail of constitutional law and practice, considering and deploying effectively a wide range of relevant case law, and engaged intelligently with questions of constitutional principle. Some scripts were held back by considering only a fraction of the material relevant to some question, developing answers that were partial and limited, or by repeating familiar tropes about the material rather than making out a sustained, thoughtful argument.

Questions

Q1. This question was not especially popular but proved rewarding for those candidates who used it as an opportunity to reflect on the character of the UK constitution, and the vexed question of whether it is or political or legal or something else, and on the nature of constitutionality. The best answers

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illuminated more general claims about constitutional principle by relevant discussion of aspects of constitutional law and practice, considering the changing shape of the constitution over time.

Q2. This was a popular question. Some candidates went astray in taking it simply as an opportunity to examine the merits of the Supreme Court's judgment, or worse as an invitation to discuss prerogative powers quite apart from the context of *Miller*, rather than reflecting on the precise question posed and thus on the relevance of the judgment, if any, to the doctrine of parliamentary sovereignty. The best answers addressed intelligently the detail of the judgment and unravelled its implications with care.

Q3. This was a popular question and prompted many strong answers. The best considered closely the detail of the case law over time, rather than simply mentioning one or two well-known cases, and developed a sustained argument about the merits of the *Ullah* principle. Too many candidates failed to address the second limb of the question concerning whether UK courts should accept the principle and/or took the question rather to be one about the merits of the Human Rights Act more generally.

Q4. Not many candidates addressed this question about convention. Of those who did, some were able to critically evaluate the statement and to make a powerful argument about how conventions relate to the constitution more generally and constitutional *law* in particular. However, a number of candidates did not identify functions (plural) which conventions perform in the constitution.

Q5. This question was reasonably popular and prompted a wide range of answers. As in past years, some candidates devoted relatively too much time to the voluminous literature on the separation of powers, considering typologies of separation that left relatively little time for study of the UK constitution in particular. Others, who fared rather better, outlined interesting arguments about how the separation of powers is manifested in the UK constitution and in particular consider whether the latter is "firmly based" on the former. Again, only some scripts adequately considered the second limb of the question, which invited reflection on what should be.

Q6. This question was reasonably popular and was fairly well-answered. Some scripts uncritically assumed that the UK is an executive dictatorship rather than arguing in detail that this is the case. The best answers addressed with care the constitutional norms that govern the relationship between executive and Commons, putting this in the context of Parliament and electoral democracy as a whole, and using this analysis to engage wider questions of constitutional principle.

Q7. Relatively few candidates answered this question. Some scripts displayed close acquaintance with the relevant case law and were able to situate privilege in the context of Parliament's position within the constitution as a whole. Weaker scripts considered few cases and had a limited grasp of the arguments of principle that might be made for or against reform or abolition.

Q8. Again, this was not a terribly popular question but was answered well by some. The best scripts were able to address effectively the origin and direction of the devolutionary settlements, while considering and evaluating the overall shape of the territorial constitution, giving some but not excessive attention to the position of England therein.

Q9. This was a popular question, which attracted a range of answers. The best scripts were able to explain with care the nature of the Human Rights Act, to address in detail the salient lessons arising out of the history of its operation, and to identify and evaluate the major arguments of principle for or against the Act. Weaker scripts were limited in their grasp of case law, or even the structure of the Act, and also had a much less rich understanding of the controversy surrounding the Act.

Q10. This was a reasonably popular question. Some scripts took it as an opportunity simply to write about the rule of law in general, which risked excessive focus on the theoretical literature or uncritical discussion about what courts do in enforcing the law. The best scripts engaged closely with the question of whether the rule of law is "the ultimate controlling factor", including how important it is in explaining the constitutional position of the courts and, especially, in considering whether it justifies, requires or permits qualification of the doctrine of parliamentary sovereignty.

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Criminal Law

General Comments

The criminal law exam this year featured eight essay questions, at least one of which was to be answered, and five problem questions, at least two of which were to be answered, to complete four questions. No candidate attempted to breach the rubric, and the only scripts which failed to abide by it were the few which were incomplete. There was evidence of rushed fourth questions, in some cases, significantly underperforming compared to the rest of the script. Most candidates seemed to have recognised the importance of timing spent on answers equally across their questions. Doing otherwise will almost always lose marks: even if a candidate does not think s/he knows much about the next question, the time spent thinking and writing about will usually achieve more than diminishing returns after 45 minutes on the first question. Whether as a matter of timing, or style, candidates should write in prose. The richness of their answers is diminished by note-form answers and they thereby risk losing marks. This applies to problem questions and essays. Candidates were broadly able to show strength in both essays and problem questions, but there seemed to be a trend towards answering only one essay, and essay marks were often the lowest in a script. Given the richness of the theoretical material in the criminal law, and the very wide choice of questions in the exam, candidates appear to have under-prioritised essay preparation in criminal law. Across all 13 questions, the average mark ranged from 61 (Q8) to 67 (Q2 and Q9). That relatively narrow range is itself interesting, suggesting that variation across the content and complexity of the questions was largely evened out by the end of the process.

Questions

**Q1: 'The best test for criminal culpability is a willingness to impose risks on others.'
Do you agree?**

43 candidates attempted this question and the average mark awarded was 64%. The core of this question was an analysis of what culpability should do within the criminal law, and what role willingly imposing risks plays within that. Key evidence was the test for intention and recklessness, subjective and objective registers of culpability and what it means to "impose" risks. In respect of the last point, stronger candidates might mention constructive liability and the Law Commission's rejection in 2015 of a general endangerment offence.

**Q2: 'When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts... [Second] the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.' (Lord Hughes of Ombresley, *Ivey v Genting* (2017))
What function does dishonesty perform in the property offences and is the best test for dishonesty a purely objective test?**

98 candidates attempted this question, and the average mark awarded was 67%. This was a simple enough question, asking for the function of dishonesty within the property offences (what dishonesty does and what it is there to do) on the one hand, and then asking whether a purely objective test was the best, encouraging candidates to engage with what "best" might mean, particularly in light of the function described. There were some good answers. Most (though sadly not all) candidates were aware of what *Ivey v Genting* did, and that, as covered by the quotation, its new test is not purely objective. Almost all candidates identified a core function of dishonesty, of identifying wrongdoing, since the physical components of the offence are so slim. Some managed not to refer to section 2 of the Theft Act 1968, and some managed to miss the other fault element, the intention to deprive the

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other of the property permanently. Weaker candidates used the essay as a chance to say which out of *Ghosh* and *Ivey v Genting* was the better test. Too few candidates could expose critique of the *Ivey* decision, though many were aware of those parts of Edward Griew's work which seems to have played a significant role in the decision.

Q3: 'The perfect form of each offence against the person has narrow and clear definitions of harm, avoids constructive liability and fits within a clear hierarchy of offences.'

Do you agree? How could the current offences against the person be improved?

38 candidates attempted this question, and the average mark awarded was 66%. The question brought out a key issue in the offences against the person: what the best offences would be (definition, principle and hierarchy) and asked how the current offences could be improved. The question allowed a mix of practical and "blue sky" thinking about the improvement, but few candidates engaged with those possibilities in any detail. Troublingly few candidates were able to say anything about the Law Commission, let alone its 2015 proposals. Most candidates were able to identify some harms within the Offences Against the Person Act 1861, though not all of them (few addressed poisoning for some reason, nor the resist of arrest or threatening to kill) and many missed quite how many offences are constructive (e.g., ss. 47, 20, 23 and, depending on your viewpoint, s. 18). Better candidates were aware that some of the problems in offences against the person are connected to wider difficulties in the criminal law, whether in the definition of fault elements or in matters like self-defence and intoxication or insanity. Top students drew out some interesting issues across the OAPA and SOA, like consent.

Q4: What does the content of defences tell us about the content of fault elements in the criminal law?

Only 6 candidates attempted this question, with no one receiving less than a 2.1 mark, and the average mark awarded being 64%. This was a challenging question about the structure and content of criminal offences, using defences as a way to understand fault. Candidates needed to discuss useful examples of defences, from both the category of capacity, and from general defences, and show what they tell us about fault. Good examples were Insanity, intoxication, automatism on the one hand, and the sense of justifications and excuses on the other. Top candidates discussed the balance between offences and defences in creating criminal offences and its implications.

Q5: Are inchoate offences like attempt, conspiracy, encouraging and assisting, and fraud the future of the criminal law?

Only 4 candidates attempted this question, and the average mark awarded was 65%. The question allowed either or both of: "future", meaning predictive, and "future", meaning normative. That is, candidates could have described what the law will be, and/or say what it should be. The key issue was why it will be and/or why it should be. Few candidates engaged with both aspects of the question. Many were able to cover the basic details of the Criminal Attempts Act 1981, the Criminal Law Act 1977, the Serious Crime Act 2007 and Fraud Act 2006. Any trends towards, or against, inchoate liability was important to answering this question, as was the role of outcomes, or results, in what the "future" holds.

Q6: Should consent be the foundation of sexual autonomy under the Sexual Offences Act 2003 but irrelevant to property offences?

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42 candidates attempted this question, and the average mark awarded was 65%. This was the second most popular essay question, and it typically produced slightly unbalanced answers: more confident about consent under the Sexual Offences Act 2003 than within property offences. Some candidates thought the definition of consent, as well as the definition of "sexual autonomy" were important concepts worth defining, and were rewarded accordingly, particularly where they did so with authorities. On the property offences, most candidates could refer to *Gomez* and *Hinks*; though far too few referred to s. 2 of the Theft Act 1968 on a belief in the owner's consent making an appropriation statutorily not dishonest, nor the absence of the effect of s. 2 within the Fraud Act 2006. Some good use was made of commentators like Herring, Simester and Shute, and Bogg. A few candidates even made good use of criminal damage and its defences.

Q7: 'The law governing homicide in England and Wales is a rickety structure set upon shaky foundations.' (Law Commission)

Do you agree? What should the law governing homicide be?

28 candidates attempted this question, and the average mark awarded was 66%. Once again, a simple enough question, and a well-known topic. Once again, this was often not reflected in the answers given in the exam. Candidates seemed to have a remarkably shaky understanding of the Law Commission's proposals, or indeed, of any proposals of their own. Candidates who attempted to differentiate a "rickety structure" from "shaky foundations", such as by setting out underlying principles and then showing how different offences are built upon them, were rewarded.

Q8: Should all participants in criminal offences be treated the same?

24 candidates attempted this question, and the average mark awarded was 63%. This question asked candidates about what participation is, and what it should be. Answers were expected to cover who is a principal, who is an accomplice, what the difference in law between them is (e.g., an accomplice can only be liable if there is in fact an offence committed by a principal, subject to the limited exceptions to the derivative liability principle; an accomplice requires some level of fault even if the principal does not). Given the form of the Accessories and Abettors Act 1861, this question should have given ample space for questioning whether being tried, convicted and sentenced as a principal is the right solution for accomplices. There was space for discussion of how issues of evidence, and parasitic liability might arise. Candidates who wanted to discuss general matters of fairness or the individual circumstances of individual defendants needed to reflect more on what "treated the same" could possibly mean there. The question gave rise to some of the weakest answers in the exam.

Q9: The new Eastdoor shopping centre recently opened to much applause in Cowford. One of the new restaurants, The Guzzle Station, features an all you can drink soda fountain, where customers bring their own cup and simply pay once they have had their fill. Lee tastes a range of flavours before putting his cup in his bag and walking out without paying by pretending to need the toilet and simply not returning. While cleaning the men's toilets, Michelle sees local football legend Nigel, whom she finds incredibly attractive, using the facilities. As he is washing his hands, Michelle puts her hand over Nigel's mouth and kisses the back of her hand, thinking that this was not anywhere near as inappropriate as actually kissing Nigel's lips. Unfortunately, chemical residue from cleaning products was still on her hand and Nigel had an allergic reaction to it, rendering him unconscious. In the commotion of Nigel's collapse, Oliver, an unruly teenager, stuffs more toilet paper in the toilet than the pipes can handle and flushes the toilet, causing the toilet to become blocked.

What criminal offences, if any, have been committed?

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121 candidates attempted this question, and the average mark awarded was 67%. This was the most popular question on the exam by a clear margin. It was roughly in three parts. First, candidates had to consider theft, fraud and making off without payment. Listing the offences that might be engaged is good, but candidates were rewarded for an awareness of the reality that prosecutions are unlikely, and sentencing no greater, for multiple offences in respect of the same facts. The point when L was dishonest, and/or made the relevant misrepresentation was key to deciding which offence was most appropriate. Discussion of whether L stole the cup used to take the drink was not relevant to the facts as given. Second, for M, discussion of battery and sexual assault were merited, along with the implications of N's being rendered unconscious, e.g., whether s. 47 OAPA or another offence was appropriate. Stronger candidates tended to dismiss the poisoning offences in ss. 23 and 24 OAPA, and might have mentioned the rule of causation that a defendant takes a victim as the defendant finds him or her, sometimes unhelpful attributed as a rule of "eggshell skull" to *R v Blaue*. Finally, whether O committed criminal damage was normally done well.

Q10: Xavier and Yvette used to be business partners with Ziggy but always suspected Ziggy had not treated them fairly. Yvette agreed to help Xavier teach Ziggy a lesson. They wait until they thought Ziggy would be asleep and pick the lock to his front door. Ziggy is, in fact, awake and goes downstairs, armed with a spray-bottle of ammonia which he had been using to clean a stain from the carpet. When Xavier moves to attack him, Ziggy sprays Xavier in the face, causing temporary blindness, and then punches Xavier hard enough to break his jaw. Yvette starts to flee, but Ziggy chases her out the door and tackles her on the street just beyond the door. Ziggy punches and kicks her repeatedly, causing significant injuries. Yvette manages to kick out and hits Ziggy in the neck, rendering him paraplegic. What criminal offences, if any, have been committed?

105 candidates attempted this question, and the average mark awarded was 66%. Y and X might be liable for a conspiracy: the issue is to do what? Seems, from later events, to involve either a property offence or violence, with criminal damage to the lock a possible small issue to be added on. Burglary, assault, ss. 47, 18 or 20 of the OAPA 1861 were then up for discussion in various forms, before discussion of self-defence. Section 76(5A) of the Criminal Justice and Immigration Act 2008 was needed. NOTE: the question under s. 76 is "whether the degree of force used by D against a person ("V") was reasonable in the circumstances" and in a householder case, "D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was grossly disproportionate in those circumstances." That is NOT the same thing as saying D can use up to grossly disproportionate force, it is only that a jury can say anything is reasonable but not grossly disproportionate force; they could decide that actually proportionate force was unreasonable. See *Ray*. With respect to self-defence, candidates were rewarded for seeing the differences between Z's different actions, and also between those actions and Y's actions.

Q11: Erica and Frank are security guards employed by the Cinderfountain museum. Erica works in the control centre, monitoring the CCTV cameras and Frank is currently assigned to protect the Eye of Final Honours, a precious jewel, while it is on loan to the museum during the half term school holidays. One day, Gertrude, who is celebrating surviving another tutorial, comes in after a few too many drinks at the Hawk and Teenager pub nearby. Gertrude stumbles into Frank, knocking him over and causing him pain in his leg. Embarrassed by her clumsiness, she reaches out to help him up, but then slips over as she tries to pull him up, hitting her head hard against the floor. Frank and Erica do nothing to help, each deciding to focus on protecting the Eye of Final Honours. Another visitor eventually arrives and calls for an ambulance, but Gertrude dies in hospital. She would have survived if she had been taken to hospital sooner. What criminal offences, if any, have been committed?

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110 candidates attempted this question, and the average mark awarded was 64%. The first part of the question concerned injury, either ABH or GBH committed against F, and the role of intoxication. It was evident that many candidates did know the outline of the rules on intoxication. It was equally evident that too many did not. The rest of the question required very careful discussion of the law of homicide, and when there is a duty to act. Far too many candidates were quite willing to say simply that *Miller* and *Evans* would be applied and F was under a duty to act since he contributed to or created the dangerous situation. Such an approach would need to be argued very cogently indeed. Candidates needed to consider what contractual duties could generate a duty to act, and to whom, and whether F and E were in any different position from each other.

Q12: Ash, Brock and Clemont are playing the incredibly popular smartphone game PoketiCreatures. Players seek to 'catch' fantastical creatures by using software on their phones which connects to the internet and a GPS system to provide a map. Once a creature is 'caught' on the phone, it can be traded with other players. Ash catches a Fantastisaur, the rarest creature in the game, which makes Brock very jealous as he has been trying to catch one for years. That evening at a restaurant, Ash is telling Brock and Clemont for the tenth time about how the catch makes Ash the best player in the country. Brock and Clement agree, in front of Ash, that if Ash keeps talking about it, the two of them will smash Ash's phone. When Ash gets up to go to the toilet he leaves his bag at the table. Brock suggests to Clemont that Clemont get out Ash's phone and transfer the Fantastisaur to Clemont's own phone in exchange for a very common creature. Clemont does so. When Ash gets back, he notices that the transfer has happened, flies into a rage and stabs Clemont in the neck with a piece of cutlery. Clemont is taken to hospital, where a tired junior doctor, Misty, does not bandage the wound properly and Clemont dies.

What criminal offences, if any, have been committed? Would it make any difference if Ash, while being 16 years of age, had the mental age of a 9-year-old?

65 candidates attempted this question, and the average mark awarded was 66%. Candidates were called upon to discuss conspiracy to commit criminal damage, and perhaps threats to damage property, before turning to theft. Candidate who considered precisely what property was under the Theft Act 1968, rather than stating that the Fantastisaur was property without much comment, were rewarded. The question then required an examination of homicide, particularly murder and loss of self-control, combined with medical negligence twist. The medical negligence issue was largely done well, with good authorities and some candidates briefly considering any liability on the part of M. A troubling number of candidates missed the last sentence of the question, or chose not to answer it. Many of those who did attempted to use diminished responsibility, clearly unaware of the Law Commission's failed attempt to include developmental immaturity in that defence.

Q13: Tim is convinced that if he shakes someone's hand, that person will want to have sex with him. This belief has not been proven wrong in the past since Tim happens only to have shaken hands with people who have wanted to have sex with him. Tim meets Ulysses in a bar, and, attracted to him, moves to shake Ulysses' hand. In fact, Ulysses does not like shaking hands, so does not take the hand that Tim offered. Tim therefore grabs Ulysses' hand in order to shake it. The night progresses, and they decide to go back to Tim's flat. Both have been drinking, and Tim is unsure that he can cycle home safely but it would take too long to walk. Ulysses says "Of course you can get home safely, Timmy, and even if you do go wrong, who cares?". When they get to Tim's flat, Tim puts on some music which graphically describes sex acts; Ulysses says he does not want to listen to it, but Tim insists. Tim leads Ulysses to a room which turns out to be Tim's bedroom and motions for Ulysses to recline on the bed; Ulysses does so but finds the whole experience very unpleasant and freezes in fear. Tim interprets this as Ulysses being overcome with excitement, and tries to penetrate Ulysses

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anally, but falls asleep before he can do so.

What criminal offences, if any, have been committed?

109 candidates attempted this question, and the average mark awarded was 67%. This question brought out excellent nuance in some of the best answers. There were difficult issues of consent in respect of the handshake, typically dealt with better by those who went beyond an implied consent approach and into what society accepts for such situations. The possible section 4 Sexual Offences Act 2003 offence relating to the graphic music was spotted by a few candidates, many others seemed to be trying hard to make it into a different offence. Discussion of attempted rape was the final offence, needing careful use of the 2003 Act, and of the Criminal Attempts Act 1981, and the case law on circumstances. Candidates who reasoned through the three different interpretations of the 1981 Act's position on circumstances, and showed the extent to which the difference was relevant, were rewarded. Candidates who missed that the fault element for consent is different under s. 1 of the 2003 Act compared to the law prior to the Act, stating instead that the fault required was recklessness as to consent, tended to do less well.