

**FHS JURISPRUDENCE**  
**DIPLOMA IN LEGAL STUDIES**  
**[MAGISTER JURIS]**  
**Examiners' Report 2002**

**PART ONE**

**1. Numbers taking Examinations**

The number of candidates taking the examinations were as follows:

|                  | <b>2002</b> | <b>2001</b> | <b>2000</b> | <b>1999</b> |
|------------------|-------------|-------------|-------------|-------------|
| FHS Course 1     | 236         | 231         | 244         | 245         |
| FHS Course 2     | 28          | 25          | 22          | 22          |
| Diploma          | 13          | 19          | 10          | 17          |
| Magister Juris * | 39          | 36          | 43          | 22          |

\*This refers only to the number of MJur candidates taking FHS papers. 23 took one paper and 16 took two papers.

**2. MJur candidates taking FHS papers**

There were no problems. During the first marking process 8 scripts were re-read in accordance with the guidelines for second marking (see 11(iv) below).

The numbers of MJur candidates taking FHS subject papers were as follows:

|                                    | <b>2002</b> | <b>2001</b> | <b>2000</b> | <b>1999</b> |
|------------------------------------|-------------|-------------|-------------|-------------|
| Jurisprudence                      | 2           | 3           | 2           | 1           |
| Contract                           | 14          | 19          | 13          | 8           |
| Tort                               | 2           | 3           | 1           | 3           |
| Land Law                           | 0           | 1           | 1           | 0           |
| Comparative Law: Contract (French) | 2           | 2           | 2           | 0           |
| Public International Law           | 9           | 0           | 1           | 0           |
| European Community Law*            | 0           | 0           | 6           | 0           |
| International Trade                | 3           | 1           | 1           | 1           |
| Company Law                        | 13          | 11          | 12          | 3           |
| Principles of Commercial Law       | 6           | 3           | 3           | 0           |
| Constitutional Law                 | 1           | 3           | 1           | 0           |
| Trusts                             | 1           | 3           | 0           | 3           |
| Administrative Law                 | 0           | 1           | 0           | 1           |
| Labour Law                         | 1           | 1           | 0           | 0           |
| History of English Law             | 1           | 1           | 0           | 0           |
| Ethics                             | 0           | 1           | 0           | 0           |

\*This paper is not now marked by FHS examiners.

### 3. Diploma in Legal Studies

Again there were no problems. All 13 candidates passed, and two gained Distinctions. 2 candidates had one of their scripts second marked and 1 candidate had two scripts second marked. Medical certificates were submitted for two candidates. No candidate had a mark below 50 (the pass mark is 40).

The subject papers taken by DLS candidates were as follows:

|                           | 2002 |                    | 2002 |
|---------------------------|------|--------------------|------|
| Contract                  | 11   | ECL                | 5    |
| Tort                      | 10   | PIL                | 2    |
| Land Law                  | 1    | Company Law        | 4    |
| Comparative Law: Contract | 4    | Constitutional Law | 2    |

### 4. Withdrawals

There were no withdrawals by DLS candidates but one withdrawal by a MJur candidate (doing FHS subjects). There were 15 withdrawals by FHS candidates, 6 of whom withdrew during the examination period. This compares with 13 withdrawals in 2001, none of whom withdrew during the examination period.

### 5. Numbers writing scripts in optional subjects: FHS Courses 1 and 2:

|                                       | 2002 | 2001 | 2000 | 1999 |
|---------------------------------------|------|------|------|------|
| Roman Law (Delict)                    | 3    | 5    | 3    | 2    |
| Comparative Law of Contract: (French) | 10   | 9    | 12   | 18   |
| Crim & Pen                            | 59   | 73   | 77   | 75   |
| Public International Law              | 91   | 87   | 84   | 72   |
| History of English Law                | 8    | 8    | 23   | 19   |
| ECL                                   | 98   | 119  | 124  | 145  |
| Ethics                                | 16   | 18   | 17   | 30   |
| Philosophy of Mind*                   |      | 1    | 2    | 2    |
| International Trade                   | 17   | 9    | 20   | 21   |
| Trusts                                | 262  | 254  | 263  | 261  |
| Admin. Law                            | 264  | 249  | 262  | 260  |
| Family Law                            | 71   | 57   | 50   | 52   |
| Company Law                           | 54   | 44   | 49   | 36   |
| Labour Law                            | 61   | 36   | 32   | 28   |
| Criminal Law                          | 8    | 8    | 9    | 15   |
| Principles of Commercial Law          | 28   | 39   | 30   | 37   |
| Constitutional Law                    | 8    | 8    | 5    | 15   |
| EC Soc/Environ.                       | 74   | 61   | 55   | 62   |

|   |     |    |     |    |
|---|-----|----|-----|----|
| EC Competition Law                          | 110 | 95 | 106 | 98 |
| Copyright & Moral Rights                    | 62  | 81 | 89  | 55 |
| Lawyers' Ethics                             | 11  | 12 | 10  | 15 |
| Historical Foundations of Unjust Enrichment | 0   | 1  | 2   | 0  |
| Personal Property                           | 7   | 8  | 6   | 8  |

\*Philosophy of Mind was withdrawn as from end September 2000

## 6. Examination Schedule

All special subject papers were taken together on Saturday 25 May (this year candidates were only permitted to offer one special subject), and all compulsory subject papers and Trusts were taken in the first week with only one paper timetabled for each day. Administrative Law and all other optional subject papers were taken in the second week with two (or more) papers timetabled for each day. Some candidates had two papers on one day, but the Examiners were not aware that any candidate had two papers on two days.

## 7. Materials in the Examination Room

There were no problems with the provision of statutory materials. The list approved for this is set out in Appendix 2. The list was approved and forwarded to the Schools in Michaelmas Term giving plenty of time for materials to be purchased etc.

A few candidates appeared unaware that the use of a bilingual dictionary requires proctorial permission which must be sought in Michaelmas Term at the same time as the submission of examination entries. Fortunately the current Junior Proctor was prepared to grant late permission. Examiners need to be wary of using unusual words in questions; a question in one paper included a quotation with an unusual word which had two meanings in the English/Greek dictionary consulted by a candidate, who chose the wrong meaning. (The Proctors notified the examiners and the candidate's script was re-read).

## 8. Conduct of Examination

Although it is no longer necessary for an examiner or assessor to be present for the whole of an examination, merely for half-an-hour before and after each examination commences, the chair (or deputy) does have to be there at the beginning and end of all papers. This is not just a formality as it is useful to pick up information about problems (eg missing candidates) at once, rather than have to try to reconstruct what may have happened later. The chair needs to keep track of special cases where scripts have been written other than in the examination room, as these have to be signed for later and markers need to be kept in touch with the whereabouts of scripts. This year printed mark sheets were produced by the computer programme for each marker which made it easier for markers to check that all their allotted scripts had been sent to them, particularly as often the examination numbers of candidates do not run in sequence.

## 9. Medical Certificates, dyslexia/dyspraxia and special cases

25 medical certificates were submitted (compared with 27 last year, 21 in 2000, 20 in 1999 and 22 in 1998). 3 candidates were placed in a class they would not otherwise have achieved as a result of the medical information. In addition 1 candidate was certified as dyslexic and 1 as dyspraxic and both wrote their papers in a special room in the Schools, the proctors allowing an extra 30 minutes. Two other candidates with physical disabilities also took their papers in a special room in Schools using word processors and, in addition, one was allowed an extra 30 minutes and the other 45 minutes. Where the Proctors had already taken into account and compensated for the difficulties

experienced by disabled candidates in writing their scripts by approving special arrangements such as extra time, rest periods and a longer timetable, the examiners did not further compensate by adjusting the candidate's overall result.

11 candidates wrote some or all of their papers in college, as compared with 5 last year, 11 in 2000 and 5 in 1999.

## **10. Legibility**

Typing was requested from 22 candidates for a total of 36 scripts. This compares with 9 candidates for 23 scripts in 2001. Typing was requested from 10 candidates in 2000 and from 12 in 1999.

## **11. Setting and Marking – new procedure**

2001 saw the introduction of numerical marking and the introduction of the system whereby setting and marking were spread amongst a larger number of faculty members. The procedures for setting and marking adopted last year were reviewed by the examiners and further refined. This was done to make more efficient use of the involvement of more markers and also to respond to the recommendations of the examiners and the external examiner in 2001, that there should routinely be more second reading of scripts, if possible before the first marks meeting as an early check on consistency amongst markers in each subject. Markers were also required this year to submit to the examiners marks for each question rather than one overall mark for the paper. A further check on consistency amongst markers in each subject and across all subjects is carried out by the examiners at the first marks meeting when the marking profile of all markers are scrutinised. The main features of the new procedure are as follows:

- (i) Each subject is the primary responsibility of a team of setters and markers with the primary setter acting as chair or leader. Each large subject (compulsory or quasi-compulsory subjects required for a “qualifying law degree”) has a team of 3 or 4 setters and markers and each small subject (optional subjects) a team of 2 setters and markers. The primary setter is responsible for ensuring that all the procedures for setting and marking are carried out by the team. In 2002 the primary setter was an examiner or an assessor with a substantial marking load, but as far as possible faculty members with responsibility for setting BCL papers were not chosen as primary setters of FHS papers.
- (ii) Each team has a primary setter and a primary checker and setting the paper is their responsibility, but the final draft is also considered and approved by all the markers in the team before being submitted to the examiners. Giving the job of setting the paper to two people rather than splitting it between all members of the team has advantages; it helps to ensure that the final version is coherent and to reduce the risk to security in circulating drafts.
- (iii) Administering the marking process is also the responsibility of the primary setter. Each team meets before marking starts to go through the questions in the paper and decide how each should be treated. Mid-way through the marking process each marker sends the marking profile emerging from the scripts marked so far to the primary setter for comparison with the profiles of other markers. This provides a rough check on the progress of marking and, if any profile seems to be out of line, enables any necessary discussion and possible corrective action to be taken.
- (iv) Markers are also asked to identify scripts they wish to have re-read by a second marker and, through the primary setter, to arrange for scripts to be re-read in accordance with specified guidelines:
  - (a) all scripts marked by the first marker with a mark ending in 9 (39, 49, 59, 69) should be read by a second marker;
  - (b) any script with an unusual feature, especially where there is a realistic chance of the overall class of the paper being changed (eg a rogue mark amongst a high profile created by the other marks), should be re-read by a second marker;

- (c) in subjects with only a small number of scripts, the first marker to have a sample of scripts re-read by a second marker as a check on assessment standards;
  - (d) any script where the overall mark is a failure (50 or below in the MJur, 40 in the DLS, 40 in the FHS (technically 30, but 40 required for an honours degree and for professional purposes)) should be re-read by a second marker;
  - (e) any outstanding script which might qualify for a prize should also if possible be re-read before the first marks meeting by a second marker;
  - (f) where there is a wide discrepancy between the marks of the first and second markers, this should be reported to the primary setter so that any necessary discussion and possible corrective action can be taken before both sets of marks are submitted to the examiners;
  - (g) where there is relative consistency between the marks of the first and second markers, there is no need to report this to the primary setter, and both sets of marks should simply be submitted to the examiners (who will take the higher of the two marks as the final mark for that paper);
  - (h) no script should be marked more than twice;
  - (i) further scripts with first marks ending below 9 (48, 58, 68) may have to be re-marked by a second marker after the first marks meeting if, looking at the candidate's marking profile across all papers there is a realistic chance of the overall class of the degree being changed.
- (v) At the first marks meeting the examiners scrutinise the marking profiles of all markers across each paper and across all papers. Where discrepancies appear, further re-marking by second markers may be required. The examiners also scrutinise the marks profile of each individual candidate and, applying the classification conventions, identify papers with borderline marks where re-reading by a second marker may result in a change in the candidate's overall classification. Re-reading may also be required in order to identify prize winners. Arrangements for re-reading are made through the primary setter of the particular paper.

Setters and markers accepted the discipline imposed on them by the new procedures and co-operated very well. There were a few difficulties, such as failure to notify members of the team and the chair of examiners of absence from Oxford between first and second marks meetings. The marking profile of one marker was identified at the first marks meeting as out of line with the other markers of that paper and, on inquiry, it appeared that the check on marking profiles mid-way through the first marking process had not been carried out satisfactorily. Adjustments to the marks were made where the adjusted mark was within the same class, but all scripts were re-read by a second marker where adjusting the first mark affected the class of the paper, or where the adjusted mark was borderline.

Now that the new procedure is in place, the examiners do not think it is necessary to have so many actual examiners to oversee the whole examining process (there were 13 this year, excluding the external examiner).

## 12. Second Marking – Statistics

There were 205 candidates with one or more scripts second marked. This compares with 52 in 2001. There were 2,376 scripts of which 449 (19%) were second marked (figures for 2001 are not available). In view of the continuing discussion about blind double marking, the following statistics on second marking of borderline scripts may be of interest. The figures include scripts which were identified for second reading by markers during the first marking process in accordance with the marking conventions, as well as scripts identified by the examiners at the first marks meeting where the mark might affect the candidate's overall class. The examiners treated as borderline marks ending in 9, 8 and 7 (eg 69, 68, 67). Scripts with marks ending in 9 were all second marked before or after the first marks meeting, but scripts with marks ending in 8 and 7 were second marked only if they were re-read during the first marking process (or were the first marks of the marker whose marking profile was identified at the first marks meeting as out of line with other markers) as a check on assessment standards or consistency of marking, or were identified at the first marks meeting as likely to affect the candidate's overall class. In accordance

with the marking conventions, all scripts with a failing mark (below 40) were re-read.

This amount of second marking is barely manageable within the timetable for the FHS examining process (which also has to include the DLS and FHS scripts of MJur candidates) and, if it becomes the pattern in future years, it will be necessary to extend the period available for marking or increase the number of markers. Neither is easy to accomplish as revision lectures and seminars occupy the first half of Trinity Term, and many faculty members are involved in examining in the BCL and MJur as well as the FHS. The faculty office also needs additional staff if processing of marks etc. in the FHS and DLS overlaps with the BCL and MJur. The examining timetable would have slipped this year but for considerable overtime working.

| First mark | No. of scripts | Second mark lower | Second mark the same | Second mark higher | Second mark 70 or above |
|------------|----------------|-------------------|----------------------|--------------------|-------------------------|
| 67         | 60             | 14 (23%)          | 22 (37%)             | 24 (40%)           | 4 (7%)                  |
| 68         | 78             | 22 (28%)          | 25 (32%)             | 31 (40%)           | 18 (23%)                |
| 69         | 67             | 20 (30%)          | 26 (39%)             | 21 (31%)           | 21 (31%)                |

| First mark | No. of scripts | Second mark lower | Second mark the same | Second mark higher | Second mark 60 or above |
|------------|----------------|-------------------|----------------------|--------------------|-------------------------|
| 57         | 27             | 4 (15%)           | 6 (22%)              | 17 (63%)           | 11 (41%)                |
| 58         | 41             | 14 (34%)          | 14 (34%)             | 13 (32%)           | 8 (20%)                 |
| 59         | 51             | 11 (22%)          | 20 (39%)             | 20 (39%)           | 20 (39%)                |

| First mark | No. of scripts | Second mark lower | Second mark the same | Second mark higher | Second mark 50 or above |
|------------|----------------|-------------------|----------------------|--------------------|-------------------------|
| 47         | 3              | 1 (33%)           | 1 (33%)              | 1 (33%)            | 0                       |
| 48         | 0              | 0                 | 1 (50%)              | 1 (50%)            | 1 (50%)                 |
| 49         | 4              | 1 (25%)           | 1 (25%)              | 2 (50%)            | 2 (50%)                 |

All scripts with pass or failing marks

| First mark | No. of scripts | Second mark lower | Second mark the same | Second mark higher | Second mark in higher class |
|------------|----------------|-------------------|----------------------|--------------------|-----------------------------|
| 29         | 2              | 0                 | 0                    | 2 (100%)           | 2 (100%)                    |
| 30-37      | 8              | 0                 | 2 (25%)              | 6 (75%)            | 4 (50%)                     |
| 38         | 2              | 1 (50%)           | 0                    | 1 (50%)            | 1 (50%)                     |
| 39         | 0              |                   |                      |                    |                             |
| Total      | 12*            |                   |                      |                    |                             |

\*includes 8 scripts first marked by marker whose marking profile was out of line with other markers.

### 13. Rogue Marks

27 scripts were identified at the first marks meeting as having a rogue mark, defined as at least 10 points below the average mark in that candidate's marks profile. Of these 11 were first marked by the marker whose marking profile was out of line with that of other markers. 6 of the 27 scripts were exceptionally read a third time as the candidates' first and second marks were below 40, which is required for a Class III Honours degree and also in some subjects for a "qualifying law degree", but in none of these cases did the third marker raise the mark to 40. Of the 27 scripts with rogue marks which were second or third marked, in 13 cases the re-read mark was unchanged or lower and in 14 cases the re-read mark was higher, but in only 5 of those 14 cases was the re-read mark in a higher class.

**14. Classifications: Course 1 and 2 combined**

|               | 2002      |          | 2001      |          | 2000      |          | 1999      |          |
|---------------|-----------|----------|-----------|----------|-----------|----------|-----------|----------|
| <b>Class</b>  | <b>No</b> | <b>%</b> | <b>No</b> | <b>%</b> | <b>No</b> | <b>%</b> | <b>No</b> | <b>%</b> |
| I             | 38        | 14.39    | 42        | 16.4     | 37        | 13.91    | 45        | 16.85    |
| II.i          | 210       | 79.55    | 197       | 76.9     | 183       | 68.80    | 188       | 70.41    |
| II.ii         | 11        | 4.17     | 15        | 5.9      | 40        | 15.04    | 31        | 11.61    |
| III           | 3         | 1.14     | 2         | 0.8      | 6         | 2.26     | 0         |          |
| Pass          | 2         | 0.76     | 0         |          | 0         |          | 1         | 0.37     |
| Fail          | 0         |          | 0         |          | 0         |          | 2         | 0.74     |
| Aegrotat      | 0         |          | 0         |          | 0         |          | 0         |          |
| <b>Totals</b> | 264       |          | 256       |          | 266       |          | 267       |          |

**Classifications: Course 2 (Law with Law Studies in Europe)**

|               | 2002      |          | 2001      |          | 2000      |          | 1999      |          |
|---------------|-----------|----------|-----------|----------|-----------|----------|-----------|----------|
| <b>Class</b>  | <b>No</b> | <b>%</b> | <b>No</b> | <b>%</b> | <b>No</b> | <b>%</b> | <b>No</b> | <b>%</b> |
| I             | 14        | 50       | 9         | 36       | 3         | 13.63    | 8         | 36.36    |
| II.i          | 14        | 50       | 15        | 60       | 19        | 86.36    | 14        | 63.63    |
| II.ii         | 0         |          | 1         | 4        | 0         |          | 0         |          |
| <b>Totals</b> | 28        |          | 25        |          | 22        |          | 22        |          |

**15. Percentage Distribution of Marks by Subject (Course 1 and Course 2):**

|                        | 80-89 | 75-79 | 71-74 | 70 | 68-69 | 65-67 | 60-64 | 58-59 | 50-57 | 48-49 | 40-47 | 39 or less | Nos. writing scripts |
|------------------------|-------|-------|-------|----|-------|-------|-------|-------|-------|-------|-------|------------|----------------------|
| Jurisprudence          | 1     | 1     | 8     | 9  | 11    | 19    | 35    | 9     | 6     | 0     |       |            | 264                  |
| Contract               |       | 1     | 10    | 11 | 13    | 19    | 33    | 7     | 6     |       |       |            | 264                  |
| Tort                   |       | 0     | 8     | 12 | 9     | 21    | 35    | 6     | 9     | 0     |       |            | 264                  |
| Land Law               |       | 2     | 9     | 11 | 5     | 20    | 37    | 6     | 7     | 2     | 1     |            | 263                  |
| Trusts                 |       |       | 3     | 7  | 5     | 25    | 40    | 7     | 7     | 0     | 4     | 2          | 262                  |
| Admin. Law             |       | 1     | 8     | 14 | 18    | 33    | 21    | 4     | 2     |       |       |            | 264                  |
| Comparative Law        |       |       | 20    | 10 | 0     | 40    | 30    |       |       |       |       |            | 10                   |
| Crim. & Pen.           |       | 3     | 8     | 5  | 5     | 29    | 39    | 3     | 7     |       |       |            | 59                   |
| PIL                    |       |       | 2     | 12 | 5     | 22    | 44    | 3     | 9     |       | 2     |            | 91                   |
| History of English Law |       | 13    |       | 13 | 13    | 13    | 25    |       | 25    |       |       |            | 8                    |
| Ethics                 |       | 6     | 6     | 19 | 6     | 6     | 36    | 5     | 10    | 1     |       | 6          | 16                   |
| International Trade    |       |       | 12    | 18 | 6     | 6     | 41    | 12    | 6     |       |       |            | 17                   |
| ECL                    |       |       | 6     | 13 | 11    | 16    | 23    | 6     | 18    | 2     | 3     |            | 98                   |

|                              |  |   |    |    |    |    |    |    |    |   |   |   |     |
|------------------------------|--|---|----|----|----|----|----|----|----|---|---|---|-----|
| Family Law                   |  | 3 | 11 | 14 | 7  | 15 | 27 | 6  | 13 | 1 | 3 |   | 71  |
| Company Law                  |  |   | 9  | 17 | 17 | 22 | 30 | 2  | 2  |   |   | 2 | 54  |
| Labour Law                   |  |   | 13 | 15 | 23 | 26 | 18 | 3  | 2  |   |   |   | 61  |
| Criminal Law                 |  |   | 13 | 13 |    | 13 | 50 | 13 |    |   |   |   | 8   |
| Principles of Commercial Law |  | 4 | 7  | 14 | 4  | 46 | 4  | 18 | 4  |   |   |   | 28  |
| Constitutional Law           |  |   | 13 |    |    | 13 | 50 | 13 | 13 |   |   |   | 8   |
| Roman Law (Delict)           |  |   |    | 33 |    |    | 67 |    |    |   |   |   | 3   |
| Personal Property            |  |   | 14 | 29 |    | 14 | 14 |    | 29 |   |   |   | 7   |
| Lawyers Ethics               |  |   | 18 | 18 |    | 36 | 18 | 9  |    |   |   |   | 11  |
| EC Competition               |  |   | 6  | 7  | 9  | 25 | 36 | 5  | 10 | 1 |   |   | 110 |
| EC Social/ Environmental     |  | 1 | 12 | 11 | 14 | 31 | 23 | 3  | 5  |   |   |   | 74  |
| Copyright                    |  |   | 8  | 15 | 21 | 23 | 26 | 5  | 3  |   |   |   | 62  |

## 16. Short Weight and Breach of Rubric

In response to the recommendation in last year's Examiners' Report, the examiners further clarified the meaning of short weight and breach of rubric and issued the following guidelines to markers:

- Where a whole question has been omitted, or where part of a question which was formally separate has not been attempted (fractional short weight), the marks for each other question should be recorded without deductions but with the extent of short weight indicated (eg 60/3).
- Where a question or part of a question has been answered briefly, it should be marked as a full answer to the question.
- A rushed (usually final) answer should also be marked as a full answer to the question, but the marker may, when taking an overall view of the quality of the script, compensate for the rushed question and adjust the marks accordingly.
- Depending on the nature of the misunderstanding (which may be plausible), a misunderstood question should be marked but the extent of any fundamental misunderstanding recorded.
- Questions answered in breach of rubric should be marked without deductions but the particular breach of rubric recorded.

There has been considerable discussion as to how to treat short weight, as defined above, and breach of rubric. Just averaging out the marks is likely to mean, if a whole question is omitted, that the candidate drops two classes in that paper (eg in a four question paper 70, 70, 70 averaged out ends up with a final mark of 52). What is being tested is quality of what is in the script, not quality divided by quantity. Markers were asked to identify all short weight scripts so that the examiners could discuss each case, average out the marks in the first instance but then consider whether, looking at the marks for the other questions, taking the average is fair to the candidate. Averaging out the marks might also be too harsh in dealing with breach of rubric and a deduction in the marks was preferred, but a deduction of 5 points made by last year's examiners was considered generous.

In the event only 2 scripts were short weight. In one case only 3 questions instead of 4 were answered, and the examiners reduced the final mark by 10 points which dropped the final mark into the class below. In the second case it was clear to the first marker that an answer booklet was missing, but a hunt amongst the scripts delivered to all markers of that paper and a hunt in the

Examination Schools failed to discover it. The script was re-read and the examiners decided not to reduce the overall mark (first and second markers marked all questions towards the top of a class). There was only one case of breach of rubric where the candidate answered 4 questions but failed to include a problem question. The examiners reduced the overall mark by 5 points to 40, but were influenced by medical information and noted that to reduce the mark further would mean that the paper would not count towards a “qualifying law degree”.

## 17. Ethics Paper

The Ethics paper is set and marked by Philosophy Examiners and is routinely blind double marked. In all cases the examiners treated the higher of the two marks submitted as the final mark for the paper. In 5 cases the higher mark was two classes above the lower mark. The examiners recommend that there should be discussion next year with the Philosophy Examiners as to how those examiners resolve such a wide discrepancy. Exceptionally 1 script was read a third time by a FHS of Jurisprudence examiner as the mark was crucial to the overall classification of the candidate, but the third marker did not raise the mark.

## 18. Gender Analysis

The gender breakdown was for Course 1:

|              | 2002  |       |         |       | 2001  |       |         |       |
|--------------|-------|-------|---------|-------|-------|-------|---------|-------|
|              | Males |       | Females |       | Males |       | Females |       |
|              | No.   | %     | No.     | %     | No.   | %     | No.     | %     |
| I            | 11    | 9.32  | 13      | 11.02 | 15    | 13.76 | 18      | 14.75 |
| II.i         | 100   | 84.75 | 96      | 81.36 | 89    | 81.65 | 93      | 76.23 |
| II.ii        | 3     | 2.54  | 8       | 6.78  | 4     | 3.67  | 10      | 8.20  |
| III          | 2     | 1.69  | 1       | 0.85  | 1     | 0.92  | 1       | 0.82  |
| Pass         | 2     | 1.69  | 0       |       | 0     |       | 0       |       |
| <b>Total</b> | 118   |       | 118     |       | 109   |       | 122     |       |

The gender breakdown was for Course 2:

|              | 2002  |       |         |       | 2001  |    |         |       |
|--------------|-------|-------|---------|-------|-------|----|---------|-------|
|              | Males |       | Females |       | Males |    | Females |       |
|              | No.   | %     | No.     | %     | No.   | %  | No.     | %     |
| I            | 10    | 66.67 | 4       | 30.77 | 2     | 50 | 7       | 33.34 |
| II.i         | 5     | 33.33 | 9       | 69.23 | 2     | 50 | 13      | 61.90 |
| II.ii        | 0     |       | 0       |       | 0     |    | 1       | 44.76 |
| III          | 0     |       | 0       |       | 0     |    | 0       |       |
| <b>Total</b> | 15    |       | 13      |       | 4     |    | 21      |       |

The gender breakdown for Courses 1 and 2 combined in 2002, 2001 and 2000 was:

|              | 2002  |    |         |    | 2001  |    |         |    | 2000  |     |         |     |
|--------------|-------|----|---------|----|-------|----|---------|----|-------|-----|---------|-----|
|              | Males |    | Females |    | Males |    | Females |    | Males |     | Females |     |
|              | No.   | %  | No.     | %  | No.   | %  | No.     | %  | No.   | %   | No.     | %   |
| I            | 21    | 16 | 17      | 13 | 17    | 15 | 25      | 17 | 20    | 15  | 17      | 13  |
| II.i         | 105   | 80 | 105     | 80 | 91    | 81 | 106     | 74 | 82    | 63  | 101     | 75  |
| II.ii        | 3     | 2  | 8       | 6  | 4     | 4  | 11      | 8  | 25    | 19  | 15      | 11  |
| III          | 2     | 1  | 1       | 1  | 1     | 1  | 1       | 1  | 4     | 3   | 2       | 1   |
| Pass         | 2     | 1  | 0       |    | 0     |    | 0       |    | 0     |     | 0       |     |
| <b>Total</b> | 133   |    | 131     |    | 113   |    | 143     |    | 131   | 100 | 135     | 100 |

## **19. Ethnicity Analysis**

The examiners were not asked to produce an ethnicity analysis of the results. No question about ethnicity is asked in the examination entry form (but it is asked, on a voluntary basis, in the matriculation forms).

## **20. Prizes**

Prizes are now available for all subject papers, including special subjects, with the exception of Comparative Law: Contract (French) and the special subjects EC Social, Environmental and Consumer Law and Personal Property. The Wronker Prize for Jurisprudence was split between two candidates.

## **21. External Examiner**

We were fortunate to have the services for a second year of Professor P.L. Davies of the London School of Economics as our external examiner. He was very actively involved at an early stage in helping us to map out new procedures for setting and marking and the instructions to markers. He also raised problems of interpretation of the Guidelines for External Examiners which will need to be dealt with before the 2003 examinations. He was also, of course, actively involved in both marks meetings. We are very grateful to him for his help and guidance. The external examiner will report to the Vice-Chancellor about his views of the examination process, and his report, when available, will be attached as Appendix 1.

## **22. Computer**

Last year the examiners and Julie Bass in the faculty office struggled with a university computer programme which did not fully meet our needs. A major and very welcome development this year was a computer programme written specifically by Peter Humphreys for the FHS and DLS examinations. The programme had to be written within a very short time span and, inevitably, there were some problems and adjustments which had to be made at the last minute, but Peter Humphreys was always on hand to deal with them and, through the hard work of him and Julie Bass often outside office hours, the examiners were able to complete the examining process within the previously set timetable. Having a computer programme designed to fit our particular needs made an enormous difference to the running of every aspect of the examination process. A few refinements have been identified for next year, but very few.

The programme requires a mark for each question in a candidate's script to be entered, and the computer then calculates the final mark by averaging, treating fractions by rounding up or down. This requires markers artificially to adjust the marks submitted for each question, so that the computer will produce as a final mark the overall mark the marker wishes to give after taking an overall view of the quality of the script. The examiners would have found it helpful to have had not only the marker's unadjusted mark for each question, but also as a final mark the mark which the marker (not the computer) awarded after taking an overall view of the quality of the script. It may or may not be possible for the computer to be programmed to cope with this.

## **23. Data Protection Act**

Under the application of the Data Protection Act, candidates were this year able to request that their names should not be included in the published class list, and a number of candidates did so request. The published class list is therefore no longer a complete list of results.

## 24. Thanks

The whole examination process requires the co-operation and exceptional effort of a large number of people, and the examiners are very grateful to all of them. Guglielmo Verdirame took over all the marking of one of the assessors who was taken ill. In the Faculty Office, the examiners could not function at all without the invaluable work of Julie Bass and, this year, Peter Humphreys, but we are also greatly indebted to Paul Blaikley and everyone who helped to deliver packages around the colleges especially Ray Morris and Simonne Samuelson. Julie Bass and Peter Humphreys put in a lot of overtime to keep us within the examining timetable. Staff in the Examination Schools gave help where needed (even keeping the chair and the invigilators in touch with the score in the World Cup matches!). Timothy Endicott acted as secretary and kept a watchful eye on the paperwork. In addition to the examiners, thirty-four members of the faculty were assessors, involved in setting and marking.

A.J. Ashworth  
A.S. Burrows  
J. Cartwright  
P.L. Davies (External)  
T.A.O. Endicott  
A.S. Kennedy (Chair)  
A.V. Lowe  
P.N. Mirfield  
D.P. Nolan  
R.J. Smith  
R.H. Stevens  
R.R. Stuart  
D.A. Wyatt  
K. Yeung

Appendix 1: Report of External Examiner  
Appendix 2: Notice to Candidates (Examiners' Edict)  
Appendix 3: Awards and Prizes  
Appendix 4: Degree Classification  
Appendix 5: Diploma in Legal Studies results  
Appendix 6: Reports on individual papers

UNIVERSITY OF OXFORD

FACULTY OF LAW

FINAL HONOUR SCHOOL OF JURISPRUDENCE (COURSE I AND COURSE II (LAW WITH LAW STUDIES IN EUROPE)) AND DIPLOMA IN LEGAL STUDIES

TRINITY TERM 2002

NOTICE TO CANDIDATES

*This document is traditionally known as the Examiners' Edict. It is the means by which the Examiners communicate to the candidates information about the examination. It is very important that you should read it carefully. Do not suppose from the fact that you may have seen Edicts published in previous years that you already know everything that is in this year's edition; and if you believe that it may contain an error, please notify your tutor without delay.*

**1. Timetable of written examinations**

The timetable is attached as the first schedule to this notice. No candidate is believed to have offered more than one of the papers scheduled for the same time. If you think that is wrong, you must inform the Chairman of Examiners through your college tutor without delay.

**2. Place of Examinations and Time of Arrival**

The examinations take place in the Examination Schools. *Sub fusc* must be worn. Notices in the Schools will direct candidates to the appropriate rooms. A bell will be rung some minutes before the Examination to give candidates time to move from the entrance of the building to the examination room. Furthermore, before the Special Subject papers (i.e. on the morning of Saturday 25 May) the bell will be rung a few minutes earlier than usual, in order to allow time for the candidates to find their allotted desks, and for certain forms to be filled in before the examination commences.

Seating in the examination rooms will be in alphabetical order, and desks will be identified by **name** only. Candidates should bring the note giving their examination number or devise some way of remembering it.

Desks and even rooms may sometimes be changed for papers taken by smaller numbers of candidates. Candidates should check on the notice board in the Schools for each paper.

Candidates should read the Examination Protocol, attached as the third schedule to this notice, before the start of the examination. Copies of the Protocol will not be provided on desks, and candidates must not take their own copy into the examination room.

**3. Use of dictionaries by non-native English speakers**

Non-native English speakers who wish to use a language dictionary must submit their application to the Proctors at the same time as the entry form is submitted. The general rules used by the Proctors are that language dictionaries are permitted under the following conditions:

- (i) the dictionary will be inspected by the Chairman of Examiners (or deputy) at the beginning of the examination;
- (ii) the dictionary must be handed to the invigilator, or left in a place which will be designated, at the end of each paper and kept under the control of the examiners until the examination is concluded;
- (iii) the use of electronic dictionaries is not permitted.

No other books or papers whatever may be taken into the examination room.

#### 4. Change of options

The Chairman of Examiners gives notice of consent to any variation of choice of options made without direct reference to the Chairman but reported to the Head Registry Clerk by Friday of the first week of Trinity Term, **except** any variation that will affect the timetable. The University Offices will advise on the point whenever variations are reported.

#### 5. Form and scope of papers, etc.

The form and scope of papers will be generally similar to that of those set last year. The number of questions set in each paper will also be similar to the number set in last year's paper. Attention is drawn to the following special notices:

- (i) **European Community Competition Law** – the law relating to the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty is to be found in Regulation 17/62. Candidates should have a general awareness of the proposed replacement for this regulation, the Proposal for a Council Regulation on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty and amending Regulations (EEC) No. 1017/68, (EEC) No. 2988/74, (EEC) No. 4056/86 and (EEC) No. 3975/87 (“Regulation implementing Articles 81 and 82 of the Treaty”) COM/2000/0582 final, and its possible implications for competition law.
- (ii) **Labour Law** – candidates will not be expected to have more than an outline knowledge of the relevant provisions of the Employment Bill/Act 2002.
- (iii) **Land Law** – candidates will not be expected to have knowledge of Law Commission Report No. 271 and the Land Registration Bill regardless of whether it has received the Royal Assent by the time of the examination. The examination paper will state that the facts of all problem questions should be treated as arising before the Bill/Act is in force. Similarly candidates will also not be expected to have knowledge of the Commonhold and Leasehold Reform Bill/Act 2002.
- (iv) **Trusts** – candidates will be expected to have knowledge of the Trustee Act 2000.

#### 6. Materials in the Examination Room

In some examinations statutes and other materials will be placed on the desks in the examination room. The list is prescribed by the Law Board and cannot be altered or updated other than by the Law Board: in the event of any emergency change, this will be notified to candidates specifically. The list is attached as the second schedule to this notice. Attention is particularly drawn to the note in that schedule regarding the use of Butterworths Company Law Handbook, 11<sup>th</sup> edition, 1997. Since there are insufficient copies of the 11<sup>th</sup> edition, the Law Board has agreed that the numbers should be made up with copies of the 13<sup>th</sup> edition, or the 14<sup>th</sup> or the 15<sup>th</sup> edition if copies of the 13<sup>th</sup> and/or 14<sup>th</sup> are no longer available for purchase. This is on the understanding that there is no substantial difference between the four editions as far as FHS/MJur candidates are concerned. However, it has been agreed that copies of the 11<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> editions should be placed at the reserve desk in the Bodleian Law Library for candidates' reference in advance of the examination.

#### 7. Candidates' scripts

- (i) **Anonymity.** The examination is marked anonymously. Accordingly candidates must not write their name or College on any scripts, even if the first page of an answer book contains a box labelled “name and college”. That box must be left blank and candidates must write their **examination number only** in the appropriate place in each answer book they use. Accordingly, *candidates must ensure that they know their examination number when entering the examination room.*
- (ii) **Rough work.** Candidates are no longer issued with coloured sheets of scrap paper for their work. Any plans, drafts or rough working should be written in the answer books: this may be done in the same answer book as the fair copy, in which case it should be clearly indicated to the examiners what is to be marked; or rough working may be done in a separate answer book, *which must be handed in along with the fair copy.*

- (iii) **Legibility.** Candidates submitting illegible scripts will be required to have them typed at their own expense. The examiners will make every effort to identify such candidates as early as possible, but this cannot be guaranteed. In particular, candidates who leave Oxford before the end of Trinity Full Term are taking serious risks. Candidates must not write in pencil.
- (iv) **Handing in scripts. It is the candidate's own duty to hand in his or her scripts by placing them in the appropriate numbered box, which will be pointed out by the invigilators.** Any candidate who does not hand in a script must inform an Examiner or invigilator before leaving the examination room.

## 8. Viva Voce examination

The viva voce examination is an integral part of the examination for those candidates who have been required to attend it. Candidates who are required to attend by the Examiners but fail to do so are deemed to have withdrawn from the examination, unless they can, through their college, satisfy the Vice-Chancellor and Proctors that they have been prevented from attending by "illness or other urgent and reasonable cause".

The Law Faculty has voted to abolish vivas for the Final Honour School but this will not come into effect until 2003. There have been no vivas for the past few years, and it is highly unlikely there will be any in 2002. In particular, unusual variation in the marks awarded to a candidate will not, of itself, justify a viva. Vivas are however a possibility.

Vivas are not abolished for the Diploma, but are also unlikely to occur.

### (i) Final Honour School of Jurisprudence

The viva voce examination, if required, will be held on Tuesday 9 July, beginning at 9.30 am, and candidates will be notified by the following procedure if their attendance is required.

Candidates will be asked at the first paper common to all (i.e. the Special Subjects) to fill in a viva voce notice, which will be supplied at the time, with a telephone number at which they can be reached on Wednesday 3 July. Candidates are advised to leave with their college tutor a telephone number at which they can be contacted on or after Wednesday 3 July.

### (ii) Diploma in Legal Studies

The viva voce examination, if required, will be held on Tuesday 9 July, beginning at 3.30 pm, and candidates will be notified by the following procedure if their attendance is required.

Candidates will be asked at their first paper to fill in a viva voce notice, which will be supplied at the time, with a telephone number at which they can be reached on Wednesday 3 July.

Candidates are advised to leave with their college tutor a telephone number at which they can be contacted on or after Wednesday 3 July.

## 9. Marking conventions

In deciding what classification a candidate's marks merit the Examiners retain a discretion, and will consider each candidate's marks individually. However, they have adopted a set of conventions, a summary of which is offered here to candidates, but as a general guide only. Marks are based on a numerical system.

### (i) Final Honour School

- (a) To obtain an Honours degree a candidate must normally have no mark under 40.

*First Class Honours* are awarded on a system whereby normally 5 marks of 70 or above are needed, with no more than one mark below 60 and no mark below 50.

*For the award of Second Class Honours, Division 1*, 60 is the lowest 2.i mark.

Normally 5 marks of 60 or above are needed, and no more than one mark below 50.

*For Second Class Honours, Division II, 50 is the lowest 2.ii mark. Normally 5 marks of 50 or above are needed.*

*For Third Class Honours, 40 is the lowest Third Class mark. Normally 9 marks of 40 or above are needed, although a candidate may exceptionally be allowed one mark below 40.*

*For a Pass degree, 30 is the lowest pass mark. Normally 5 marks of 40 or above are needed, and no marks below 30, although a candidate may exceptionally be allowed one mark below 30.*

For the award of degree classifications, marks in a Special Subject paper have the same weight as those in a Standard Subject paper.

*(b) Short weight*

A paper will not be deemed to have been fully answered if a whole question has been omitted, or, where part of a question is separately numbered or lettered, part of a question has been completely omitted, or if an optional question has been submitted in place of a compulsory question. A substantial reduction will be made in the final mark given to a short weight paper, which will be proportionally greater in the case of papers, such as Jurisprudence, where only three questions are to be attempted.

**(ii) Diploma in Legal Studies**

*To obtain a Distinction, normally two marks of 70 or above are needed, with the third mark of 60 or above.*

*To pass, a candidate will normally be expected to have no mark below 40.*

*Short weight: the same rules apply, mutatis mutandis, as apply to the Final Honour School.*

**10. Results**

The Examiners expect to publish the class list and the list for the Diploma in Legal Studies late on Tuesday 9 July. If there are vivas in the Final Honour School or in the Diploma course, the list will be deferred until after they have been held. The lists will be posted in the Examination Schools and in colleges. Please note that results will not be available over the telephone from the Examination Schools or from the Law Faculty Office. Individual Results Notifications are sent direct to candidates by post by the Examination Schools. Individual results will also be available through candidates' colleges, which will advise candidates on how to obtain them.

Ann Kennedy  
Chairman of Examiners  
17 February 2002

**Schedule I**

Timetables for FHS and DLS

**Schedule II**

Statutory materials available in the examination room

**Schedule III**

Examination Protocol – this must not be taken into the examination room.

**SCHEDULE I**

**SECOND PUBLIC EXAMINATION**

**TRINITY 2002**

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**Honour School of Jurisprudence (Course I & II)**

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|           |         |                        |  |
|-----------|---------|------------------------|--|
| Thursday  | 23 May  | 2.30 pm                | Ethics.  |
| Saturday  | 25 May  | 9.30 am                | Special Subject Papers (2 hours):<br>European Community Social,<br>Environmental and Consumer Law.<br>European Community Competition Law.<br>Introduction to the Law of Copyright and<br>Moral Rights.<br>Lawyers' Ethics.<br>Personal Property. |
| Monday    | 27 May  | 9.30 am                | Contract.  |
| Tuesday   | 28 May  | 9.30 am                | Tort.  |
| Wednesday | 29 May  | 9.30 am                | Public International Law.  |
| Thursday  | 30 May  | 9.30 am                | Jurisprudence.   |
| Friday    | 31 May  | 9.30 am                | Land Law.  |
| Saturday  | 01 June | 9.30 am                | Trusts.  |
| Monday    | 03 June | 9.30 am<br>2.30 pm     | Administrative Law.<br>Roman Law (Delict).   |
| Tuesday   | 04 June | 9.30 am<br>2.30 pm     | European Community Law.<br>Family Law.   |
| Wednesday | 05 June | 9.30 am<br><br>2.30 pm | Labour Law.<br>Criminal Law.<br>Criminal Justice and Penology.<br>History of English Law.  |
| Thursday  | 06 June | 9.30 am<br><br>2.30 pm | Comparative Law: Contract (French).<br>Constitutional Law.<br>Principles of Commercial Law.  |
| Friday    | 07 June | 9.30 am<br>2.30 pm     | Company Law.<br>International Trade.   |

**DIPLOMA EXAMINATION  
TRINITY 2002**

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**Diploma in Legal Studies**

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|           |         |         |   |
|-----------|---------|---------|---|
| Monday    | 27 May  | 9.30 am | Contract.   |
| Tuesday   | 28 May  | 9.30 am | Tort.   |
| Wednesday | 29 May  | 9.30 am | Public International Law.                                     |
| Tuesday   | 04 June | 9.30 am | European Community Law.                                       |
| Thursday  | 06 June | 9.30 am | Comparative Law: Contract<br>(French).<br>Constitutional Law. |
| Friday    | 07 June | 9.30 am | Company Law.  |

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# **Schedule II**

UNIVERSITY OF OXFORD

## **FACULTY OF LAW**

### **MATERIALS IN THE EXAMINATION ROOM 2002**

#### **HONOUR SCHOOL OF JURISPRUDENCE/DIPLOMA IN LEGAL STUDIES/MAGISTER JURIS**

##### **Company Law**

Butterworth's Company Law Handbook, 11th edition, 1997.

(N.B. If insufficient copies of the 11th edition, the 13th and/or 14th and /or 15th edition will also be used)

##### **Comparative Law: Contract**

Arts. 4-6; 1101-1122; 1126-1167; 1183-1184; 1382-1383 of the French Civil Code.

##### **Contract**

Blackstone's Statutes on Contract, Tort, and Restitution (by Francis Rose), 12th ed, 2001/2002

##### **Criminal Law**

The Theft Acts 1968 and 1978 (as amended by The Theft (Amendment) Act 1996)

##### **European Community Law**

Rudden and Wyatt, Basic Community Laws, 7th Edition, 1999

##### **Family Law**

Blackstone's Statutes on Family Law, 10<sup>th</sup> edition 2001-2002

##### **International Trade**

Butterworth's Student Statutes, Commercial and Consumer Law, 2nd edition, ed. Richard Hooley, 1999-2000

## **Labour Law**

Butterworth's Student Statutes, Employment Law, Deborah Lockton, 3<sup>rd</sup> edition, 2000/2001

## **Land Law**

Sweet & Maxwell's Property Statutes, 7th edition, 1997

## **Principles of Commercial Law**

Butterworth's Student Statutes, Commercial and Consumer Law, 2nd edition, ed. Richard Hooley, 1999-2000

## **Public International Law**

Blackstone's International Law Documents, 5th edition, 2001

## **Tort**

Blackstone's Statutes on Contract, Tort and Restitution (by Francis Rose), 12th ed, 2001/2002

## **European Community Competition Law (Special Subject)**

1. Rudden and Wyatt, *Basic Community Laws*, 7th edition, 1999
2. Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty – OJ 1999 C288/2
3. Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Art 93 of the EC Treaty
4. Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) to categories of vertical agreements and concerted practices
5. Commission Regulation (EC) No 2658/2000 – Block Exemption for Specialisation Agreements
6. Commission Regulation (EC) No 2659/2000 – Block Exemption for Co-operation in Research and Development

## **European Community Social, Environmental and Consumer Law (Special Subject)**

Rudden and Wyatt, *Basic Community Laws*, 7th edition, 1999  
EC Directive 89/622 OJ 1989 L359/1  
EC Directive 92/41 OJ 1992 L158  
EC Directive 98/43 OJ 1998 L213/9 (subsequently annulled)

**Introduction to the Law of Copyright and Moral Rights (Special Subject)**

Blackstone's Statutes on Intellectual Property, 5<sup>th</sup> edition

# Schedule III

## FHS/M.JUR/DIPLOMA IN LEGAL STUDIES 2002

### EXAMINATION PROTOCOL

1. Please check that you are seated at the right seat.
2. Do not turn over the examination paper or begin writing until you are told you may do so.
3. You may remove gowns, jackets and ties during the examination, but you must be correctly dressed in *sub fusc.* before you leave the examination room.
4. Do not put your name or college on any answer book. Write only FHS/MJur/Diploma in Legal Studies (whichever is appropriate), the title of the paper and your examination number in the spaces provided.
5. Please read the instructions on the front of your answer book and observe them.
6. If you have been permitted by the Proctors to use an English dictionary during the examinations, it will be inspected by an Examiner at the beginning of the examination. It should be left on your desk at the end of each paper until the examination is concluded.
7. You may not leave the examination room before 30 minutes after the beginning of any examination, nor in the last 30 minutes of any examination.
8. Do not bring refreshments into the examination room. Water is available in the lobby just outside the room. It is not to be brought into the room. If you would like a drink of water or to visit the lavatory please contact one of the invigilators by raising your hand.
9. If you require more paper, raise your hand (preferably with a piece of paper in it) and it will be brought to you.
10. Shortly before the end of each examination, you will be given an oral notice of the time remaining. At the end of the examination you will be orally notified to stop writing. Whatever you may have been told to the contrary, you are expected to stop writing within a minute of this notice and to put your papers together, if you have more than one book, tagging them together with the tag provided.
11. At the end of each examination, you will be called upon, a row at a time, to deposit your script in the boxes provided.
12. Do not write on any of the statutory or other material provided in the examination room. Statutes may be randomly inspected during the course of the examination to monitor this instruction. Leave the statutes on your desk when you leave.
13. At the end of the last examination, please go directly to your college. In order to avoid nuisance to other members of the public, the Proctors' rules clearly prohibit you from assembling for any purpose in a public place at the end of this paper.

3 Verulan Buildings Prize in Commercial Law

Anton Goldstein

Somerville

4 Essex Court Prize in International Trade

John David Meehan

St Catherine's

All Souls Prize for Public International Law

Benjamin John Atkinson

Mansfield

Ashurst Morris Crisp Prize in Lawyers' Ethics

Shabana Mahmood

Lincoln

Field Fisher Waterhouse Prize in EC Law

Prashant Gupta

St Catherine's

Hammond Suddards Edge Prize in Copyright and Moral

James Gordon Wilson

Balliol

Linklaters Prize in EC Competition Law

Sophie Anna Hashim

Pembroke

Littleton Chambers Prize in Labour Law

Mark Andrew Coates

Trinity

Manches Family Law Prize

Catherine Jane Antcliffe

Magdalen

Norton Rose Prize in Company Law

David John Michael Pygott Exeter

Simms Prize in Criminal Justice and Penology

Susan Paula Beresford St John's

Slaughter and May Prize in Contract

Catherine Jane Antcliffe Magdalen

Slaughter and May Prize in Legal History

David Philip Alexander Rees Magdalen

Wronker Law Prize (Overall best performance)

David Philip Alexander Rees Magdalen

Wronker Prize for Administrative Law

Sarah Caroline Alice Wilkinson All Souls

Wronker Prize for Jurisprudence (1 of 2)

Dominic William Oliver Mills Christ Church

Wronker Prize for Jurisprudence (2 of 2)

James Conrad Ballance St John's

Wronker Prize for Land Law

David Philip Alexander Rees Magdalen

Wronker Prize for Tort

David Philip Alexander Rees

Magdalen

Wronker Prize for Trusts

Roger Charles Alexander Kennell

Worcester

Wronker Proxime

Mark Andrew Coates

Trinity

Wronker Proxime

Anton Goldstein

Somerville

## APPENDIX 6

### JURISPRUDENCE

The paper contained a range of questions from the more to the less straightforward. Most candidates chose to persevere with the former, though the latter offered more opportunities to display a deeper grasp of the subject. Nonetheless, the overall quality of the scripts was reassuring. Pleasingly few candidates chose merely to rehearse arguments which they had heard in the Syndicated lectures.

The most popular questions (done by about two-fifths of candidates) were 4 (combination of primary and secondary rules as key to science of jurisprudence), 10 (moral obligation to obey unjust law) and 12 (immorality as sole limit to legal prohibition). Unsurprisingly, too many candidates took the opportunity to write all they knew (or had prepared) on Hart (q.4), the obligation to obey the law (q.10) and the legal enforcement of morality (q.12). But these questions required more focussed discussions of the particular issue raised. Those candidates who had thought carefully and laterally about these topics during their studies were able to successfully adapt their material to the question at hand, producing some outstanding answers. Common weaknesses, on the other hand, were as follows. Few candidates seemed to be familiar with the problems in Hart's analysis of the primary/secondary distinction, and many seemed at a loss to explain *why* the combination of these types of rules seemed to offer the 'key to the science of jurisprudence'. Again, although many candidates were familiar with a range of traditional arguments for an obligation to obey the law, few went on to ask how such arguments could ever provide a moral obligation to obey an *unjust* law, and fewer still considered whether laws could be unjust in significantly different ways. The term 'immorality' in question 12 brought about two common reactions in candidates: an uncritical equation of 'immorality' with *conventional* immorality, and the thoughtless articulation of moral subjectivist views. The first effect severely limited the interest of any discussion, whilst the latter produced deeply incoherent assertions about how the subjective nature of morality showed why we *should* not (morally or ... ?) be guided by it.

The next most popular group of questions (done by around a quarter of candidates) were 3 (purity as strength or weakness in Kelsen), 5 (connection of law to morality), 8 (law as interpretive concept) and 15 (a right to be punished?). The most straightforward question was that on law as an interpretive concept (q.8), which produced many spirited discussions of the strengths and weaknesses of *Law's Empire*, with honours fairly evenly divided between those persuaded and those unpersuaded by Dworkin's arguments. Question 3 invited a discussion of the 'purity' of Kelsen's theory which served to distinguish those with a knowledge of Kelsen's work from those with merely an acquaintance. Question 5 proved an unsafe haven for some candidates who wanted to write about the legal enforcement of morality. Better candidates used the open-ended nature of the question as a springboard for a variety of discussions, including Natural Law, Soft Positivism and/or anti-positivism. Question 15 proved heavy weather for those candidates determined to write on punishment despite having given no thought to the basic question whether punishment is (among other things) in the interests of the *punished*.

Questions with fewer takers (answered by about 15% of candidates) were 7 (common good), 9 (soft positivism), 11 (civil disobedience) and 14 (feminist jurisprudence). Answers to q.7 were disappointing: few candidates seem to have turned their minds to the question of the function(s) of law, and whether positivism provides a convincing analysis of this. More encouraging were the answers on soft positivism (q.9): most of those who chose to write knew what they were doing, and some excellent answers were given. Although the question on civil disobedience (q.11) dealt with an argument often raised by students, many seemed not to have thought the issue through. Answers to the question of feminist jurisprudence and the nature of law (q.14) divided into two: those writing a general essay on feminist jurisprudence, and those applying what they knew to the issue of the nature of law. The latter answers were invariably the better.

Finally, there were fewer takers for question 1 (general and descriptive theory of law), 2 (law-abiding citizen's perspective on law), 6 (valid law without courts), 13 (realism) and 16 (rights). In the case of questions 1, 2 and 6 this seemed symptomatic of an unwillingness to grapple with the *methodological* questions which underlie many of the substantive disagreements between legal philosophers. It would have been interesting, for example, to have heard the views of those studying Public International Law on question 6.

Two general points might be made about the scripts. One is to note the importance of candidates thinking laterally about the material they are studying, in particular on theories about the nature of law, rather than over-specialising. The second is to note the surprising number of candidates determined to write on a topic whether or not they are adequately equipped to answer the question asked.

47 papers were second marked.

## CONTRACT

The overall impression was one of high competence, though there were some extremely good candidates, as one might expect. There were very few poor papers. One consistent failing was a tendency to prefer to discuss (frequently untenable) claims for misrepresentation, whilst omitting discussion of more obvious claims for breach.

Though problem questions were significantly more popular than essay questions, the quality of answers to the latter tended to be rather better than to the former. There was a wide range in the popularity of questions. Question 8 was, by some distance, the most popular, Question 6 the least popular.

Question 1 was popular. There was much discussion of estoppel and the Atiyah/Treitel debate. Very few candidates discussed deeds. The better candidates made the distinction between formation and variation. The overall impression was one of soundness.

Though Question 2 was not popular, several that did answer it were able to offer sophisticated analysis of the effect of *Etridge (No. 2)*. The weaker candidates offered the examiner a general essay on undue influence.

Question 3 was very popular and, perhaps unsurprisingly, well-answered. The orthodox, Law Commission line was taken by the great majority, but the best of them were able to tease out the real difficulties of the solution, contained in the Act, to the (alleged) problem of privity. The weaker candidates failed to attend sufficiently to the express terms of the question.

Question 4 was attempted by very few candidates. A weakness was a tendency to fail to argue across the whole range of the question. In particular, representations were often neglected.

Question 5 was also unpopular. There was a tendency to focus too much upon the remoteness test for the award of damages under section 2(1), to the exclusion of other issues.

Question 6 was answered by so few candidates that comment would not be helpful.

Question 7 was popular. As expected, there was much discussion of *Ruxley et al.*, and the performance interest, but candidates were better served when they also demonstrated an understanding of the principles concerning the remedy of specific performance, and the difficulties attached to that remedy.

It seemed that almost everyone attempted Question 8. Though the overall standard was high, rather a lot of candidates were caught in the headlights of the offer and acceptance points and neglected the points about terms and mistake. It was a little disappointing that few candidates went beyond the slogan point in *Felthouse v Bindley*, that acceptance cannot be constituted by silence.

Question 9 was quite popular. There was a great deal of discussion of *Williams v Roffey Bros.*, but few candidates took the point that one might not need to 'invent' consideration here. The damages points (on the three alternative assumptions) were disappointingly dealt with by many candidates, and it was surprising how many seemed to be unaware of *Panatown*.

Question 10, also popular, was, in general, not answered well. Weaknesses were that the mistake points seemed to exclude from some candidates' minds the misrepresentation possibilities, and that the range of mistake issues was not always fully explored. It was pleasing that several candidates dealt well with the restitution and remedies points arising from the final paragraph.

Question 11 was the least popular problem question. Many did not see that there might be breach even if the exclusion clauses had been made part of the contract. Of greater concern was that a number of candidates wrote far too little on the UCTA elements.

Question 12, another popular question, provoked a greater proportion of weak answers than any other. Some candidates, very surprisingly, failed to see the frustration points. Many of those that did see them, did not go on to distinguish the various bookings in a sufficiently informed way. The 1943 Act points were rather neglected.

## TORT

One examiner and two assessors were responsible for the marking of the Tort scripts. Those involved met in advance to discuss the marking of individual questions, and a document running through the issues raised by the problem questions was agreed. E-mail correspondence ensured that individual marks profiles were compared as marking progressed. This proved most helpful.

There were 273 candidates for this paper. The standard was similar to that of the last couple of years. After first marking, 18 per cent (50 candidates) obtained a mark of 70 or more, 64 per cent (174 candidates) a mark between 60 and 69, 17 per cent (46 candidates) a mark between 50 and 59, and one per cent (three candidates) a mark below 50. A number of borderline scripts were bumped up a class on second marking.

Some general comments can be made. The first is that the standard of the analysis of the duty issue in negligence was surprisingly weak. A remarkable number of candidates appeared to believe that running through the three-stage *Caparo* 'test' was an adequate response to a novel duty question. Secondly, many candidates lost a lot of marks because they answered problem questions raising two main topics, even though they were clearly conversant only with one. This was particularly a problem with question 10 (candidates 'knew' nervous shock, but not damages), but it was also evident in some of the answers to question 11 (candidates 'knew' nuisance, but not occupiers' liability). Thirdly, there was throughout an over-emphasis on recent cases. For example, *Kane v New Forest District Council*, which did not appear to be particularly relevant, featured in a surprising number of answers to question 9. Perhaps students need reminding that recent does not necessarily mean important. And finally, special mention should go to two candidates: the (FHS) candidate who commented that "Robert might have a claim if the heart attack has proven fatal but *not* killed him"; and the candidate who concluded a problem answer with the remark that "If worst comes to worst, all sides will plead human rights violations".

### Question 1 (Duty/Breach Essay)

This was the fifth most popular essay question. The standard was not high, with many candidates trotting out prepared duty essays, and tagging on a basic analysis of breach at the end. A handful produced more inspired answers, which addressed the way in which recent case law (particularly on public authority liability) has tended to push issues from the duty stage to the breach stage of the negligence inquiry.

### Question 2 (Influence of the Negligence Principle on Nominate Torts Essay)

This was the sixth most popular essay question, and, again, most candidates trotted out a prepared essay, this time on the extent to which nuisance liability is fault-based. However, this time the ready-prepared answers were more to the point, and generally the standard was reasonable. The more adventurous considered the impact of negligence reasoning on liability under *Rylands v Fletcher* as well, while a courageous few looked at defamation, and the Consumer Protection Act. No one considered what 'the negligence principle' actually is.

### Question 3 (Vicarious Liability Essay)

This was the second most popular essay question. Answers were generally sound, though not enough candidates dealt in sufficient detail with the decision in *Lister v Hesley Hall*. Perhaps predictably, candidates did better at identifying changes in the relevant legal doctrines than at relating these to "changing social and political conditions".

#### Question 4 (Tort Reform Essay)

This was the fourth most popular essay question. The standard of the answers was generally high. Most candidates had a good understanding of the issues and the arguments, and some produced very thoughtful essays. The biggest failing was writing on the tort reform debate in general terms, rather than addressing Professor Burrows' argument centred on individual responsibility.

#### Question 5 (Factual Causation Essay)

This was by far the most popular essay question. The standard of the answers was generally high, and many were impressively thoughtful. However, not everyone realised that the *Baker v Willoughby* problem is not one of proof, and a surprising amount of ink was spilt on *Fairchild*, even though their Lordships' reasoning had not yet been revealed to the expectant masses.

#### Question 6 (Economic Loss Essay)

This was the third most popular essay question. The standard varied considerably. The stronger candidates addressed the question head-on, and skewed their analysis accordingly, with a particular emphasis on *White v Jones*. Weaker candidates wrote a general economic loss essay. A common flaw was a lack of detail and close analysis of the case law.

#### Question 7 (Economic Torts Essay)

Predictably, this was by far the least popular essay question. About half of the handful of candidates who answered it mistook it for a question on economic loss (!). Those who wrote on the economic torts did so very well.

#### Question 8 (Product Liability Problem)

This was the fourth most popular problem question. The question was admittedly difficult, but the standard of the answers was still disappointing. Many candidates failed even to consider the application of the Consumer Protection Act to the chicken sandwich, dealing with it as raising only common law issues, as per *Donoghue v Stevenson*. The nitty-gritty of the Act (who can be liable; the defence of non-commercial production/supply etc) was generally ignored, as was the third party point, and the treatment of the defectiveness issue was too often superficial. Several candidates laboured under the misapprehension that section 5(3) of the Consumer Protection Act 1987 is about the product which *causes* the injury.

#### Question 9 (Public Authorities etc Problem)

This was the most popular problem question. The quality of the answers was reasonably high, but there were some recurrent weaknesses. As far as the liability of the council was concerned, quite a few candidates did not mention *Stovin v Wise*, while a couple of those who did got the result wrong. Few distinguished the crew's actual inspection of the relevant area of cliff face (which was not negligent), from their anterior decision to limit themselves to a roadside inspection (which may have been). Of the other issues raised, surprisingly few candidates spotted the point about the standard of care applied to a 13 year old (here, in the context of contributory fault), but the other standard of care point (viz. the ex-paramedic good Samaritan) was dealt with fairly well, as were the causation issues. Most responses to the tricky issue of the liability of the switchboard operator lacked imagination.

#### Question 10 (Nervous Shock and Damages)

This was the second most popular problem question. The standard of the treatment of the nervous shock issues was generally high, but a majority of candidates were let down by their weak analysis of the damages aspect of the question (for a minority, the problem was the other way round – weak on nervous shock, strong on damages). A remarkably high number missed damages out altogether, some dealing with it as a question of pure economic loss (some candidates also thought that a claim by an owner for damage to his car is a claim for pure economic loss). Those who dealt with damages tended to do so at a high level of generality, and their treatment lacked bite. Very few took the *Davies v Taylor* point, and the analysis of section 4 of the Fatal Accidents Act, and of *Hunt v Severs*, was weak.

#### Question 11 (Nuisance and Occupiers' Liability)

This was the third most popular problem question. The standard of the answers was sound, with most candidates covering the basics, but few excelling. As far as the nuisance half of the question was concerned, candidates were generally weak on the impact of planning permission and the circumstances in which a landlord is liable. The treatment of public nuisance was abysmal. Few candidates noticed that the obscene phone calls were made by third parties, and the calls triggered

many an irrelevant reference to the Protection From Harassment Act. Virtually no one dealt with the difficult question of Yasmin's abnormal *insensitivity* to noise, though for some reason many candidates felt that her deafness made her more vulnerable to the dirty raincoat brigade. Quite a few candidates who attempted this question were clearly under par on occupiers' liability. Even those more familiar with the topic often assumed that a person who could not read a notice excluding them from property was necessarily a visitor. The clamour for multilingual signs was unexpected.

#### Question 12 (Defamation and Negligent Misstatement)

This was by far the least popular problem question, though a fair few had a crack at it. The answers were not particularly impressive. The negligent misstatement points were too often dealt with in one superficial paragraph at the end. As for the defamation issues, many failed to consider Gareth as a potential claimant, the justification point was generally missed, and the defence of fair comment was too often applied to what looked to be a statement of fact.

## LAND LAW

The paper was, on the whole, not badly done. There was a dearth of truly excellent scripts, i.e. really high-quality detailed analysis and critique, but a very large proportion of candidates were in the 2:1 range, or at the lower end of the First Class. Only a very small number of candidates fell into the Third Class, and no one failed the paper. The general points that may be made are the customary ones: candidates, both in essay and problem questions, did not always relate their knowledge to the question asked; and too often saw a key phrase such as 'adverse possession'; and then wrote all they knew about it, often making peripheral reference to the precise question set. The candidates who directed themselves at the question asked were, of course, suitably rewarded. Brief comments on the questions are as follows:

- Question 1 [Adverse possession] Candidates tended often to write a general essay on the subject, rather than to home in on difficulties; but the better candidates referred both to recent case law, and the work of the Law Commission.
- Question 2 [TOLATA] Candidates saw the word 'trustees' and often concentrated their answer on that word; the better candidates however realised that the more latitude that was given to trustees, the less scope there would be for the settlor and beneficiaries, or indeed the court, to have a role; and the implications that this had for the balance should therefore be considered.
- Question 3 [Estoppel] This question was aimed at a discussion of the remedy which was required to satisfy the equity. The question attracted some very good answers, noting the possible ranges of satisfaction, and the reasons therefor; weaker candidates, inevitably, took refuge in a general discussion on the subject, with cases such as Sledmore v Dalby, either being referred to briefly or, in some cases, not at all.
- Question 4 [Purchasers/occupiers] Many candidates used this as an opportunity to write all they knew (which was often a considerable amount) about LRA 1925 Section 70(1)(g). Not every candidate realised that the question was not restricted to land of registered title; and of those who wrote only on registered title, a surprising number did not consider that overreaching was a topic that should be discussed. The best answers, again, however showed a good understanding of the legal and policy issues involved.
- Question 5 [LPA Section 62] Candidates often appreciated the problems with Section 62; but were not always willing to compare Section 62 with (for example) Wheeldon v Burrows; and very few candidates mentioned that Section 62 might possibly have some role in the law of covenants (although not "metamorphic") see e.g. first instance in Federated Homes and Roake v Chadha. However, again, the best candidates were able to point out the problems that the section had caused and raised the question whether the section was in fact being used far too broadly.
- Question 6 [Lease/contract] This was a very popular question; a small number of candidates wrote about leases in general, some discussed Street v Mountford; the best candidates

(of which there are a considerable number) used the question as a proper opportunity to deconstruct Bruton v London and Quadrant. These were suitably rewarded.

- Question 7 [Land registration] Candidates tended to write somewhat mundanely on this topic; and not every candidate realised that there was more to the question than rectification and indemnity. Peffer v Rigg and Lyus v Prowsa were not always fully discussed.
- Question 8 [Joint tenancies] Candidates tended to write rather generally on this, rather than concentrating on the key word 'need'. Again, the best candidates focused on the arguments and did well.
- Question 9 [Mortgage problem] This problem deliberately raised issues both as to the equity of redemption and as to the remedies of the mortgagee. Most candidates made a reasonable attempt at the question; but the detailed analysis of the case law (and particularly the distinctions in the material on clogs and fetters) was sometimes sparse and uninformed.
- Question 10 [Lease/agreement for lease/licence problem] Candidates here often spotted that there might be difficulties with the arrangement between Eve and Fiona, but seemed unwilling to tease out the alternatives which might include lease, agreement for a lease and licence. The case law (Antoniades etc) was not often as fully discussed as it might have been; even though there is a considerable amount of material in the cases, in the periodical literature, and the text books on the point. Walsh v Lonsdale was not mentioned as often as it should have been.
- Question 11 [Non-matrimonial property] This question was, on the whole, well done; though a number of candidates did not always seem well acquainted with Mortgage Corporation v Shaire, and made heavy weather of finding that Briony had a beneficial interest; candidates also seemed under-informed as to the impact of TOLATA s.14, and the general implication of there being a trust of land.
- Question 12 [Covenants] Most candidates worked through this problem logically and sensibly; although the reference to the lease seemed to cause candidates more problems than might have been expected.

### **ROMAN LAW (DELICT)**

The questions were answered well, albeit without flare. The sample is too small to draw any general conclusions.

### **COMPARATIVE LAW: CONTRACT (FRENCH)**

Of the ten questions set, all were answered by candidates, with the exception of question 8 (which asked about the existence of fundamentally different conceptions of contract in the two systems). Questions 3 (concerning offer and acceptance) and 10 (implied agreement and privity of contract) were particularly popular.

In general, candidates demonstrated a very good understanding of the substantive laws of the two systems under discussion and a good understanding of how to undertake the comparison which the paper (and the course itself) requires.

### **CRIMINAL JUSTICE AND PENOLOGY**

This paper was taken by 59 candidates. Ten were awarded First class marks, 41 placed in the upper second class, and the remaining 8 in the lower second class. In general the scripts showed some improvement on those of the previous year. There was a greater willingness to engage with the

question, and a realisation of the need to support propositions with authority or detailed facts. There were a few outstanding scripts, and many of those in the upper second class were creditably strong.

The questions that proved most popular with candidates were 3 and 10. Question 3 asked about the introduction of the Victim Personal Statement: the best answers showed knowledge of the initiative, and of the research (particularly that of Hoyle and Sanders) which has a bearing on it, whereas others confined themselves to a standard essay on the arguments for and against. Question 10 asked about the aims of the youth justice system, and drew some very well-informed and thoughtful answers, many showing not only an understanding of the historical developments but also an appreciation of the role of the Youth Justice Board.

Among the other questions, Question 1 on the police was answered well by only a few candidates. As often seems to happen, a relatively specific question attracts too many general answers. Question 2(a) was rather poorly answered on the whole, since few candidates seemed to know about either the Auld proposals or the earlier proposals of the Royal Commission on Criminal Justice, although they were happy to discuss the arguments for and against plea bargaining. Hardly any candidates tackled Question 2(b). Question 4 on non-custodial penalties allowed many candidates to demonstrate their general knowledge of the available measures, but few focused on the precise question and few showed awareness of new measures such as the drug treatment and testing order.

Question 5, on sentencing guidelines, attracted answers that were mostly strong in discussing guideline judgments but not well informed on either the powers of the Sentencing Advisory Panel or the various U.S. guidelines systems. Question 6(a) on restorative justice drew some good and well-informed answers, whereas Question 6(b) on the effectiveness of penal measures received few answers. Relatively few candidates tackled Question 7, but many attempted Question 8 on the prison system, mostly showing a good general knowledge of the system's problems and sometimes thoughtfully disputing the notion that the prisons are 'in crisis'. Question 9 on prisoners' rights drew only a small number of answers, as did Question 11 on discrimination in criminal justice. A surprisingly large minority of candidates attempted Question 12 on representations of crime in the official statistics. The question was an unusual one, but candidates seemed to have focused their revision on the British Crime Survey and many wrote authoritatively about it and its limitations.

## **LEGAL HISTORY**

This was a demanding paper and allowances were made for this in the marking. The general standard was good and those who did not do even better tended to fail either because they were too content with textbook accounts or because they wrote answers in differing degrees at a tangent to the question set. So, for example, in question 1 (trespass and case) not picking up the distinction in the quotation between innkeepers and carpenters, and writing the prepared answer cost marks. So too, in question 6 (heritability and alienability), neglecting to set out what a fee simple might be, despite the clear invitation to do so. Some of this looks like a failure of courage/energy rather than lack of intelligence or industry, but all three are needed to excel.

## **PUBLIC INTERNATIONAL LAW**

The quality of this year's scripts was noticeably poorer overall than the quality in previous years. (For the avoidance of doubt it should be emphasised that each individual script was marked to the same standard as in the past, so that, say, a 70 this year is as good as a 70 last year. There were fewer 70s). The reasons for this is unclear, but the evidence unequivocal. There was a widespread failure to understand elementary components of the subject, such as: the manner in which customary international law is formed, and the significance of national laws and national court decisions in that process; the legal effect of reservations to treaties; the distinction between the significance of nationality in the context of jurisdiction and its significance in other contexts, such as diplomatic protection and the use of force; and the circumstances in which State immunity arises as an issue.

All questions attracted at least some answers.

Question 1 attracted some adequate but unexciting answers. General questions such as this offer an opportunity for students who have a particular interest in some aspect of the course to set out their views; but they are by no means soft options for those seeking to avoid questions that demand more specific answers.

Question 2 was poorly answered for the most part. Few candidates fully understood either the significance of the *North Sea Continental Shelf* and *Nicaragua* cases, or the relevance of national law.

Question 3 was perhaps the best answered, overall. While a surprising number of candidates thought it unnecessary to consider *Trendtex* or the *Tin Council* litigation, at least the fundamental elements were well understood.

Question 4 was not answered well. Those who knew of the *Island of Palmas* case and recognised that the quotation dealt with the acquisition of territory could have made much more of the tension between the need for stability of territorial title and the development of legal principles such as the prohibition or the acquisition of territory by force, and self-determination, which may threaten to undermine such stability. The few candidates who supposed that the question was about the formation of customary international law, and answered accordingly, were not harshly treated; though even if the question had asked what they seem to have thought that is asked, their answers were not good.

Question 5 was answered gratifyingly well. Despite the inability of large numbers of experts who emerged in the wake of the B52s to appreciate that international law had few, if any, difficulties in analysing the Al Q'aida question within the established framework, most candidates who attempted this question gave shrewd and intelligent answers.

Question 6 saw many competent answers, though few of them delved in any depth into the law on State immunity. A handful of candidates failed to see that there was a State immunity issue here at all. That is troubling, and suggests that students need to practice the craft of analysis of factual situations, and not simply to learn the principles under each legal heading. Problems do not arise ready-labelled.

Question 7 was answered by many students, and by some of them with an impressive grasp of the details, and the implications, of the Commission's work.

Question 8 also was answered by many students. Almost all set out the basic principles well (though some thought, wrongly, that all military bases are the sovereign territory of the State of the forces using them), but few gave sharply focussed answers.

Question 9 was, in general, answered adequately, though all of those who attempted the question would have been assisted by having a greater knowledge of alternatives to the ICJ as a forum for dispute settlement.

Question 10 attracted few good answers. Many candidates appear to think that it makes no difference whether a reservation is accepted or rejected; and few had considered how far international law permits States to escape treaty obligations – under the doctrine of *rebus sic stantibus*, for example. There were, however, some perceptive comments on treaty negotiation.

Question 11, in surprising contrast to question 3, was generally not well answered. While practically all candidates understood the need for the incorporation of treaty obligations via legislation, fewer considered the role of unincorporated treaties in the interpretation of English law; and very few recalled the role of Executive certificates in the context of recognition and State immunity.

Question 12 had few answers. Those who attempted it understood the principles of the law of the sea but paid little attention to the problem of dealing with wrongful acts to which large numbers of States make small and indistinguishable contributions.

Question 13 was answered with some flair by some candidates, who had clearly given prior thought to the issue. Others answered it adequately.

Question 14 – another opportunity to select a topic on which to write – was less well answered. Few candidates had thought in sufficient depth about the topics on which they wrote.

Overall, there are three main lessons to be drawn from this year's scripts. Firstly, students need to concentrate on understanding the element of the subject, which they can do by focussing on the casebook materials. Second, thinking about the subject is far more important, and far more useful, than trying to memorise abstract rules. Third, students need to practice the analysis in legal terms of factual situations. In this way they will gain a surer grasp of how the law operates.

### EUROPEAN COMMUNITY LAW

Overall performance was good. Many candidates were clearly pleased to have the opportunity to discuss the Charter of Fundamental Rights at length (question 2), and the question on EU Citizenship attracted many competent takers (question 1). Most answers to problems demonstrated knowledge and analytical ability. But some candidates at least seemed to have prepared a limited number of set piece essays which they were determined to present whether called for or not; some candidates were insufficiently familiar with case-law to be able to match it to the facts of the problems set, and some candidates were clearly discomforted when questions raised more than one issue (e.g., standing *plus* grounds for annulment *plus* Community liability in question 8; measures having equivalent effect on imports and exports *plus* discriminatory internal taxation in question 10).

### INTERNATIONAL TRADE

Of the 17 FHS candidates, five obtained a First Class mark, nine 2.1's and three 2.2's. Of the MJur candidates, there were two 2.1's and a fail.

The most popular essay questions were those on the autonomy principle in letters of credit and cif sales (question 3), fundamental breach and deviation (question 4(a)), cancellation and withdrawal clauses (question 4(b)) and fob contracts (question 5). These were largely well-done although some missed that the essential point of 4(b) was to ask what difference it would make if failure to provide a ship on time or to pay hire on time were treated as always constituting a breach (of condition) rather than merely triggering the right to cancel or withdraw. The question was not asking for a contrast between conditions and innominate terms. The best answers to question 3 pointed to the wider range of exceptions to the autonomy principle in cif sales than in relation to letters of credit. In relation to question 5 there was a surprising lack of clarity in weaker candidates' answers as to the three different types of fob contract set out by Devlin J in *Pyrene*. Of the few candidates who attempted question 1 (bills of lading/charterparty overlaps), one erroneously saw much of it as dealing generally with the question of whether a bill of lading evidences or contains the contract of carriage. The difficult essay 2 on Lord Hobhouse's view of bills of lading as a 'transferable attornment' was well done by the one candidate who attempted it correctly drawing heavily on the reasoning in *The Future Express*.

Almost everyone answered problem question 6 on parties and the 'identity of carrier' issue (with particular reference to *The Starsin*). A common weakness was the failure to consider whether D had a claim against C under the cif contract applying, eg, *Mash & Murrell v Emanuel* and s.14 Sale of Goods Act 1979. That the stevedores might now be able to rely on the Contracts (Rights of Third Parties) Act 1999 s.1, 6(5), rather than invoking *The Eurymedon*, was missed by a few candidates.

Also very popular was question 7 on *Grant v Norway* etc. Some weaker candidates failed to clarify the point of establishing 'an estoppel' against the shipowners (ie it goes to proving that the carriers were in breach but one still has to clarify what the nature of the breach is). Most missed the argument that even if C did not reject the goods, market loss damages applying *Kwei Tek Chao* would be available. Most also failed to see the final point that the statutory amendments to *Grant v Norway* in the Hague-Visby rules and Carriage of Goods by Sea Act 1924 s.4 would not apply to a non-negotiable sea waybill.

The next most popular problem was question 10 which included issues on risk in fob and cif contract and remedies where a bank fails to pay on a letter of credit. An initial difficulty which candidates should have addressed more carefully was what type of fob contract one was here concerned with.

Question 8 on spent bills of lading and *The Berge Sisar*, and question 9 on the passing of property in goods of bulk, (including a final issue on s.24 of the Sale of Goods Act 1979) were both well done by the few candidates who attempted them.

## TRUSTS

In an effort to encourage candidates to tackle a wide range of questions and not simply reproduce prepared material, this paper did not feature such traditional student favourites as the four-part charity problem or essay questions along the lines of “what are the various rationales for secret trusts” and “write all you know about dispositions under s.53(1)(c) of the LPA.” This met with some success, though in the process it exposed some serious weaknesses in problem technique and the superficiality of many students’ understanding of some topics. Candidates really should not count on particular topics arising at all on the examination paper, let alone in a specific form. It was not surprising that there were few takers for questions 1 (nature of beneficiary’s interest), 9 (trustees’ duties), 10(b) (*Romalpa* clauses) and 14 (tracing), though the latter three were largely answered by students who knew what they were doing. Candidates seemed to relish, and answered well, Q.2 (role of intention in resulting trusts), Q.8 (remedial constructive trusts), Q.13 (knowing receipt), and Q.10(a) on *Quistclose* trusts, despite the recent decision of the House of Lords in *Twinsectra v Yardley*. Most writers seemed to have been briefed pretty thoroughly by their tutors, or perhaps had even read the case. Those who confined their answers to the Court of Appeal decision were not penalised. Q.5 on incompletely constituted trusts was generally handled adequately. Although few saw the *Re Ralli* point, most were prepared to advance views on whether the new Act applied to covenants and to these factual situations. The secret trusts essay (Q.11) was less popular than usual. Perhaps some individuals, though unfortunately not all of them, were deterred by not knowing what on earth the “rules of probate” are. The quality of the answers was distinctly variable. There were excellent and thorough answers at the top end, even from candidates apparently unfamiliar with *Oakley* but who were generally knowledgeable about the topic and prepared to think about the quotation. Others hardly mentioned s.9, let alone s.15 or the pertinent cases. The weakest wrote out their tutorial essay without the slightest attempt to relate it to the question. The answers to the unincorporated associations problem (Q.6) were sound but unimaginative and unoriginal.

Charities is sometimes thought to be favoured by less able candidates, and this may partially explain the disappointing responses to Q.12 on novel purposes under the fourth head. Many answers ranged aimlessly across all four heads, some candidates desperately seizing on the word “policy” to give a little structure to the essay. A surprising number did not even mention the standard cases on how new causes might be evaluated under the fourth head. The straightforward *cy-près* problem - Q.7 - produced worse answers still. Many candidates apparently had little idea how the courts might discern a general charitable intention and cited few of the obviously relevant cases. Despite the clear wording of the problem, time was wasted discussing whether the animal causes were charitable. Even more disastrously, some concluded that they were not, and largely bypassed *cy-près*. In Q.4, too many candidates also ignored the instruction not to discuss perpetuities.

The main cause for concern lay in the lack of real understanding of the issues arising in the area of certainties - Q.4. A huge number of candidates claimed that (b) was unworkable rather than capricious, unthinkingly asserting that the sheer size of the class (tall vegetarians living in Cambridge) meant that it was impossible to administer the trust. There was a tendency to write about all the judgments in *Baden (No 2)* without considering whether the disparities in approach made the slightest difference in this case. In part (c), many got bogged down in certainty of subject matter and did not progress to gifts with a condition precedent. The vast majority had no idea what (d) might be about except that it was clearly void because the trustees could not tell who was or was not a member of the class! Another basic misunderstanding reared its head in Q.5(a) when it was claimed that the discretionary trust in favour of Angus’ three children was conceptually uncertain because the trustee had to select the most deserving child.

## ADMINISTRATIVE LAW

The bulk of scripts showed a good, if unadventurous, appreciation of administrative law. Candidates seemed to rely heavily on lectures and on a narrow range of materials (particularly the writings and lectures of Professor Craig); flashes of original thought were rare, and well rewarded.

### Question 1

The answers to this question rarely strayed beyond the predictable bounds of the *ultra vires* debate, summarising the views of a small number of commentators. The very best candidates made a real attempt to consider the implications of parliamentary intent in wider terms.

Some candidates answered this question solely on the basis of the case law on jurisdictional error. While it is clear that this case law is relevant to the question, the examiners thought that this answer was too narrow.

### Question 2

Generally well done.

### Question 3

The majority of candidates set to reproduce their tutorial essays on the Parliamentary Commissioner for Administration, and were undeterred by the irrelevance of this answer to the question asked.

### Question 4

On the whole this was well done, but virtually without exception candidates had misunderstood *R v. Monopolies and Mergers Commission ex. p. South Yorkshire Transport*. Candidates appeared to think that this case allowed some errors of law to go unchallenged.

### Question 5

Generally well done, but few seemed to have a strong grasp of the functioning of proportionality. Few candidates were able to articulate the difference between “anxious scrutiny” and proportionality. Few candidates picked up on the effect of the “due deference”, “discretionary area of judgement” or “margin of appreciation” doctrines on the potential impact of scrutiny under the proportionality test. Candidate who displayed knowledge of the different structures of Convention rights in this context were well rewarded.

### Question 6(a)

This question was skilfully answered by those who attempted it. Two candidates claimed that bias was shown “when a man is a judge in his own court” – an intriguing maxim.

### Question 6(b)

Answers to this question showed a good grasp of the law, but frequently failed to move beyond the law to engage with the principles underpinning it. The concept of “fairness” proved a false friend, concealing the true rationale of decisions.

### Question 7

While candidates displayed a broad understanding of the cases there was little deeper analysis of the detail. Weaker candidates did not distinguish between establishing a substantive legitimate expectation and the test for upholding that expectation.

### Question 8

Candidates were united in an unjustified belief that a discussion of the advantages of a procedural divide addressed the question asked. This indicated a rather narrow understanding of the public-private split.

Question 9(a)

Good, but candidates were frequently confused about the distinction between Cane's categories of surrogate, associational and public interest standing. Weaker candidates failed to engage with the cases in any depth.

Question 9(b)

Generally well answered.

Question 10(a)

Candidates tackled this difficult area well, showing a good grasp of recent case law.

Question 10(b)

This was rarely attempted, but some candidates produced reasonable responses.

## FAMILY LAW

As last year, there was a significant proportion of very strong scripts: over a quarter fell into the first class. The only difference from last year was a slightly larger proportion of lower second to upper second marks. These tended to be papers where candidates traded in generalities, leaving out points of detail or illustrative examples necessary to give substance to the statements being made. There were not many which made mistakes or mistook the question. The very best papers, however, were those which did not necessarily put on display vast quantities of information, but which focused sharply on the relevant issues, using the information in a purposeful way.

Question 1 (tension between protecting private life and children's welfare under the HRA): this was answered by surprisingly few candidates, despite the availability of recent literature dealing with the issue. Candidates (like some courts) still seem a little uncomfortable dealing directly with human rights issues, so even those who attempted this question did not do it particularly well.

Question 2 (rights v welfare). As might be expected, this was extremely popular: the verdict seems split about equally between rights and welfare approaches. Some answers were very good indeed.

Question 3 (importance of genetic relationship): also a popular question. It gave a good deal of scope to consider a wide range of issues, from surrogacy and IVF, to parental responsibility and adoption. Good answers succeeded in seeing this wide range, while keeping focused on the genetic link.

Question 4 (Thorpe LJ's dictum in *Bellinger*). This was attempted by 15 candidates, and a few very good answers embarked on a detailed analysis of the application of marriage law in cases of various sexual ambiguities. Some saw the statement in very revolutionary terms, perhaps overlooking the fact that Thorpe LJ still stated that the marriage contract "is regulated by the state".

Question 5 (adoption reforms). Despite the relative paucity of literature on this issue, given that the Bill is not yet enacted, this question attracted many answers. Yet some candidates were very well informed (whether by attending lectures or through their own efforts) and used the information to excellent effect. A few had not really appreciated the central thrust of the reforms.

Question 6 (The Children Acts 1948 and 1989). This was directed at those students who had attended lectures covering this subject. Interestingly, no one answered the question!

Question 7 (The withdrawal of the divorce reforms). Almost all candidates had a shot at this question, which required not only giving an account of the main features of the reforms and the reasons why they

were abandoned, but also an assessment of the system it leaves in place. Not all candidates did both these things, but many did. Knowledge was generally good. Most thought it was a good idea to withdraw the reforms.

Question 8 (Mediation). A handful of students took this question on, perhaps rather bravely because they are not always very familiar with the mediation literature. Most (but not all) contrasted it with lawyer negotiation. A few were aware of the attempt to link it to legal “help” in the Family Law Act and the economic assessments of this.

Question 9. (Financial provision on divorce). This question required not only a knowledge of the circumstances surrounding the 1984 amendment, and the line taken by the courts from then until *White*, but also an assessment of *White* and a conclusion whether where we are now is better than where we might have been if the 1984 amendment had not been made. Thus it elicited some of the very best answers.

Question 10. (Unmarried v unmarried couples). Some took this very narrowly, confining themselves to one or two issues, eg the context of domestic violence. However, most handled the question well.

Question 11. (Child protection law striking a balance between children’s and parent’s interests). Most candidates tackled this question well, many covering “voluntarily” looked after children as well as the more usual context of child protection issues. The one surprise was the paucity of references to the emergence of a “proportionality” test (especially since the question was prefaced with a quote from the ECHR).

Question 12. (Parental responsibility). Probably the most popular question, along with 7. What will candidates do when the law is reformed (when presumably the subject will lose at least some of its bite)? Some candidates confined themselves to showing that PR was a stamp of approval, without really trying to see whether it was “anything other” than this, as the question asked.

## COMPANY LAW

The quality of papers in Company Law was very pleasing, with some extremely good answers. Most students demonstrated at least a solid understanding of the main principles.

Overall, candidates appeared to show a strong preference for essay-type questions, rather than those of the problem-solving variety. It was notable that some candidates submitted very strong essays, with noticeably poorer quality problem questions. This may suggest a tendency for some candidates to prepare 'standard' essay responses in the hope that a similar essay question would appear on the paper, but were not in fact as confident with the relevant rules, principles and cases when required to apply these to specific problem scenarios. Consideration might be given in future to increasing the number of compulsory problem questions, which appears to be a very effective means for testing the depth of a candidate's understanding of the material, and the way in which different doctrines and statutory provisions relate to each other.

Only five candidates answered question 1, and these answers were fairly disappointing. Very few candidates appeared to have any knowledge of the on-going debates concerning corporate governance that appear so frequently in the financial press and in reform debates.

Question 2 was reasonably popular, and well answered by those who attempted it.

Question 3 (minority shareholder remedies) and question 4 (separate corporate entity) were the two most popular questions on the paper, with some very good responses to each. In answering question 3, a number of candidates chose to focus on the rule in *Foss v Harbottle* referred to in the quotation, rather than on the question, which asked them to evaluate s 459 of the Companies Act 1985.

Question 4 was generally well answered, although there were a number of rather pedestrian essays. A large number of candidates appear to conflate the doctrine of separate corporate entity with the doctrine of limited liability. The better answers distinguished between the two.

A modest number of candidates responded to Question 5, and did so admirably. No candidate attempted Question 6, concerning misconduct by corporate controllers. This was particularly disappointing, all the more so in light of the spectacular corporate collapses in recent months. This area of the syllabus may need further attention.

Question 7 was attempted by a small number of candidates, who generally demonstrated a sound understanding of the difficulties associated with characterising a charge as fixed or floating.

Likewise, only a small number of candidates attempted question 8 (capital maintenance rules), but these answers were of a pleasing quality.

Question 9 was the most popular of the problem answers. There were very few outstanding answers. A large number of candidates discussed the legal nature of the company's articles of association and the extent to which they may be enforceable by individual action, but failed to discuss the legal restrictions on alteration of the articles. Others overlooked minority shareholder remedies.

Question 10 was reasonably popular. Some candidates displaying an impressive knowledge of the cases concerned with corporate opportunity and directors' duties. The better candidates discussed whether the board of directors could ratify a breach of directors' duty, or whether only general meeting ratification would suffice. A few of the weaker candidates failed to discuss the problem of reflective loss in Question 10 (b).

Question 11 was answered by about 20 candidates. Most of the responses had no difficulty in identifying the main issues. The better answers engaged with the facts in greater detail than the weaker answers.

Question 12 was answered by only 4 candidates, again demonstrating students' dislike for topics associated with corporate finance and capital

## **LABOUR LAW**

Last years good standard was sustained over a significantly larger field of candidates. The concerns of recent years, that a pure essay form of exam might be seen to invite or excuse a concentration on general theory at the expense of detailed knowledge of case-law and statute law, continue to be felt, but there was some improvement in this respect this year. Candidates should be aware of the importance which is attached to that balance.

Another kind of gap begins to open up between the better and the weaker scripts; while the better candidates display awareness of the centrality to many aspects of labour law of EC Law measures and policy development, and of the jurisprudence of the European Court of Human Rights, the weaker candidates continue to write as if all the positive law and policy development was entirely domestic to the UK.

1. There were virtually no problems of short weight, and the spread of answers across the questions was satisfactorily broad.
2. Comments on questions the answers to which raised particular concerns:-
3. Third way and welfare state. A popular question generally giving rise to good answers, but pre 1990s legislative history was sometimes weak.
4. Fundamental human and social. A small number of quite good answers; this instantiates the point made in general paragraph 2 above.
5. Minimum Wage and Working Time. Some good answers on minimum wage; more detailed knowledge about regulation of working time would have been welcome.
6. Employees/ workers. A popular question, but very few commented on the now significant EC

law dimension.

7. General principle against discrimination. A popular question producing a lot of good work, but this was the most important instance of the problem raised in general para 2 above, as answers were often incomplete in failing to refer to EC law measures.
8. Temporary and fixed-term workers. Candidates seemed not very well-informed about this body of law, which is of growing importance.
9. Equal pay legislation. A popular question producing some good work.
10. Unfair dismissal and wrongful dismissal. Answers were strong with regard to unfair dismissal but often weaker with regard to wrongful dismissal.
11. Interlocutory injunctions. Attempted by few candidates, and knowledge about this topic seemed patchy.
12. Individual right to strike. The distinction between strike action and industrial action short of a strike often needed to be made more clearly.

## **CRIMINAL LAW**

Eight candidates sat this paper (one having withdrawn). There were two First Class papers, five Upper-Second Class papers, and one Lower-Second Class paper (at the high end of 2.2). All the candidates showed a good general understanding of the law, and had clearly worked hard to do themselves justice. The marks in this paper have steadily improved since the institution of special classes in HT for Senior Status students a few years ago, and it is to be hoped that these classes will continue.

## **PRINCIPLES OF COMMERCIAL LAW**

Of the 28 FHS candidates, five obtained Firsts, sixteen 2.1's and seven 2.2's. Amongst the six MJur candidates, there was one Distinction.

Each of the essay questions attracted a significant number of answers (with the exceptions of the alternatives 3(b) (negotiability), 3(c) (undisclosed agency) and 3(d) (set off) which hardly anyone attempted). Answers to question 1 on characterisation were sometimes disappointing in failing to clarify the 'internal' and 'external' approaches and in failing to make reference to Lord Millett's speech in the *Agnew* case. The best answers to question 2 saw it as an opportunity not only to criticise the present English rules on priorities, but also to look generally at the justification for real security. In other words, the question was not principally directed to arguments in favour of reforming English law in line with, eg, the Uniform Commercial Code Art 9.

Many of the answers on constructive possession (3a) were rather pedestrian and some weaker candidates failed even to mention the importance in this context of bills of lading. Most who answered question 4 chose to discuss retention of title clauses. The candidate who wrote on the Sale of Goods Act 1979 (which is largely based on the Sale of Goods Act 1893) as 'the most significant development in commercial law in the 20<sup>th</sup> century' was not well rewarded. The *Dearle v Hall* question (question 5) in general attracted good essays, although it would have enhanced several answers to have explained what block discounting means, and to have fully set out what the rule on *Dearle v Hall* lays down.

The most popular problem questions were question 6 (fixed and floating charges and priorities, including negative pledge and automatic crystallisation clauses), question 8 (on bills of exchange) and question 10 (on the passing of property in goods in bulk and constructive possession and pledges in relation to such goods). Some weaker candidates failed to challenge the description of the charge as 'fixed' in question 6 despite the fact that Bardwell Ltd was left free to dispose of the plant and machinery in the ordinary course of business. Perhaps not surprisingly, many candidates found it difficult to be sure of the rules on the priority of successive floating charges dealt with in cases such as *Re Automatic Bottle Makers* and *Re Benjamin Cope*. The main weakness in answers to the bills of

exchange problem was a failure to relate what was being discussed to the question: that is, candidates were content to discuss the claims as between the different parties without clarifying when those claims would become relevant (eg a person higher up the 'chain of liability' can seek compensation from those below if it has had to 'honour' the bill of exchange). Again not surprisingly, there was some confusion over the difference between personal and real defences and, in particular, whether total or partial failure of consideration may be a defence other as between immediate parties. In question 10, many candidates failed to mention that a pledge of a statutory document of title only constitutes a pledge of the goods if carried out by a mercantile agent (Factors Act 1889, s.3). Some candidates also failed to pay close enough attention to the precise wording of s.20B Sale of Goods Act 1979 (on deemed consent to dealings).

Only a handful of candidates attempted question 7 (on the seller in possession exception to the 'nemo dat' rule under s.24 and retention of title clauses) and question 9 (on various exceptions to the nemo dat rule, including mercantile agents, estoppel, ss.23 and 25 Sale of Goods Act 1979, and remedies for breach of contract and misrepresentation). Most answers were satisfactory although some weaker candidates failed to appreciate that the third 'Orange Lady' part of question 9 was raising a 'remedies' issue and not an exception to the 'nemo dat' rule.

## **CONSTITUTIONAL LAW**

Eleven candidates sat the paper: eight for the FHS, two for the Diploma and one for the MJur. Two received marks above 70, five between 60 and 69, and four between 50 and 59. The understanding of the subject was generally competent, but the results were only distinguished in the few cases in which the candidates addressed the questions clearly and directly. Most candidates discussed the topic of each question in general terms instead.

The more popular questions were 1. ('What does the United Kingdom constitution constitute?'), 4. ('Is the Human Rights Act 1998 a constitutional statute?'), 5. (quotation from Finnis about the rule of law), and 10. (judicial review of the prerogative).

All candidates attempted question 1, and most read it as if it said 'what constitutes the United Kingdom constitution?' Those students were not penalized because of the slightly obscure wording, but there were rewards for students who explained what the constitution does.

Standard answers to question 2 explained what the Human Rights Act does; outstanding answers also explained what 'constitutional statute' might mean. Cases decided under the Act were not generally discussed in detail.

Some essays on the rule of law question more or less ignored the quotation, or said whether they agreed with the quotation without addressing what the question asked about the quotation.

Even the very decent essays on judicial review of the prerogative did not sufficiently focus on the issue of 'justiciability' which the question asked them to address.

## **EC SOCIAL, ENVIRONMENTAL AND CONSUMER LAW (SPECIAL SUBJECT)**

The general standard of performance was very good. The majority of papers displayed a good general knowledge of the subject. Excellent answers (and there were a number of them) were those that addressed the question, made judicious use of case law and secondary material, identified broader themes, and structured their answers around sustained arguments that related to the question being answered. Such papers clearly showed wide-ranging and critical reading, independent thinking, and an excellent knowledge of legislation and case law.

All questions on the paper were attempted by at least a good handful of students. Question 1 (Art 28) and Question 4 (How surprising was the Tobacco Advertising case) were the most popular questions and produced some excellent answers in which candidates displayed an ability to link different areas of

the course and engage in critical analysis. These questions did produce, however, some of the most lacklustre answers in which students simply described the law (often not particularly well) with no reference to the question. Good answers to Question 1 were those that really critically evaluated the reasoning in the Article 28 case law. Excellent answers to Question 4 were those that could place the *Tobacco Advertising* case and its reasoning in the context of the development of EC consumer protection law.

A similar pattern could be seen in regards to Question 2 (environmental law) and Question 3 (consumer protection law). There were some stunning answers here in which students displayed a great deal of critical thinking but also a number of answers that were blandly descriptive. There were some good answers to Question 5 (access to justice etc in environmental law) but there were also a number of answers that recited different examples without discussing the links between them or imparting any understanding of the EC law framework itself. Question 6(a) (EIA) was done quite well although a number of students concentrated on UK cases as opposed to analysing ECJ case law which was what the question asked. Question 6(b) (implementation) produced some thoughtful responses about the problems of implementation but in others resulted in 'kitchen sink' answers.

### **EC COMPETITION LAW (SPECIAL SUBJECT)**

There were 115 candidates for this paper. The most popular questions were 6(a) and 5(a), and the least popular were 3, 2(b), 6(b) and question 4, which was not attempted by any candidate. The standard of the answers was generally high, in particular with regard to answering problem questions, although some essay questions were often used as an opportunity to demonstrate pre-prepared answers to similar questions, or to cite knowledge without applying it specifically enough to the question set.

#### *Question 1*

The good answers to this question critically analysed Regulation 17/62, in order to assess the ways in which it imposed an excessive burden on industry and did not ensure an effective protection of competition, looking at the proposed draft regulation to assess how far it answered these criticisms. However, many candidates used this question to provide a pedestrian essay on problems posed by the proposed removal of the notification procedure and providing article 81(3) with direct effect, without relating this information specifically enough to the issues raised by the question. Moreover, many candidates did not analyse the proposed changes to the investigation procedure.

#### *Question 2a*

The answers to this question were, on the whole, of a high standard, with candidates able to explain the economic problems posed by the regulation of oligopolies, critically assessing how far both article 81 and collective dominance under article 82 can solve these difficulties. The better candidates were able to bolster this analysis by explaining how Regulation 17/62 added to the problems of control, as well as analysing whether oligopolies would be better controlled through the Merger Regulation. Weaker candidates explained how far articles 81 and 82 controlled oligopolies, without assessing why oligopolies posed problems, or whether the current control was effective.

#### *Question 2b*

There were very few good answers to this question. Most candidates used the question as an opportunity to describe different types of vertical agreement and to assess the provisions of Regulation 2790/99, without analysing whether EC Competition law provided an effective control over these agreements. The better candidates were able to make some interesting comments about the conflict between inter and intra-brand competition, but on the whole these arguments were not taken far enough.

#### *Question 3*

The small number of candidates who answered this question demonstrated a good general knowledge of the law relating to State aids. However, very few candidates were able to critically assess the law, in order to determine whether EC Competition law concentrated too much upon ensuring the promotion of competition, remedying defects in free market mechanisms, as opposed to resolving the social problems posed when firms fail. Moreover, very few candidates were aware of social problems arising other than unemployment – for example environmental issues.

#### *Question 4*

This was a broad question, aimed to analyse the way in which EC Competition law was able to regulate agreements affecting both the EU and non-EU markets. No candidates answered this question.

#### *Question 5a*

On the whole this question was answered well, with candidates showing a good knowledge of the law, in particular of Regulation 2790/99, and a good ability to apply this to the different agreements found in the question. In particular, candidates demonstrated a good ability to assess whether there was an agreement or a concerted practice between the firms involved. However, few used the cases on collective dominance to assess whether there may also be liability under article 82. Candidates were less familiar with the details of case law concerning selective distribution agreements and franchise agreements, and although candidates were aware of recent case law involving the distinction between agreements and unilateral action, there were few who knew the cases in sufficient detail to apply them accurately to the facts. In addition, many candidates did not advise the Commission on the procedures it should use under Regulation 17/62.

#### *Question 5b*

Candidates answering this question showed a good general knowledge of the rule of reason debate. However, too many candidates answered this question by giving an account of the case law, without assessing whether the EU should adopt a rule of reason approach, or by discussing the reasons why the EU does not adopt a rule of reason approach, without assessing whether the case law clearly demonstrated that such an approach had been rejected. Very few candidates were able to use arguments from the proposed plan to give direct effect to article 81(3) to assess whether this would provide a shift towards a rule of reason approach and whether such a shift would be desirable.

#### *Question 6a*

This question was answered very well on the whole, with the better candidates able to use the facts well to spot the different possible market definitions, with their ensuing different answers to the question of whether A and B were dominant firms. The better candidates also analysed whether there was any possible collective dominance. Candidates also had a good general knowledge of possible abuses, although many were not aware of recent case law on predatory pricing and were not able to distinguish between fixed costs and variable costs and there was also general ignorance of “English clauses”. Also, although many candidates were able to advise firms as to their ability to complain to the Commission or to bring proceedings in national courts, few were able to state which course of action would be preferable for the different firms involved.

#### *Question 6b*

Very few candidates answered this question well. Many who answered the question were unable to distinguish between anti-competitive (designed to remove competitive firms from the market) and exploitative (designed to exploit consumers) abuses of a dominant position. Consequently, answers often just gave a description of different abusive practices for the purpose of article 82.

### **INTRODUCTION TO THE LAW OF COPYRIGHT AND MORAL RIGHTS (SPECIAL SUBJECT)**

On the whole this paper was very well done, with 21% of candidates achieving marks of 70 or more and only 10 of candidates receiving marks of less than 60. In particular, it was impressive how many students showed an ability to bring a detailed knowledge of the law to a quite sophisticated discussion of copyright policy. Question 5 on copyright and the new technologies was particularly well done by students who had obviously developed a real interest in this topic. The only disappointment was that the problem question (Question 6) was not popular and was generally done less well than the essay questions.

### **LAWYERS' ETHICS (SPECIAL SUBJECT)**

Twelve candidates attempted this paper but one subsequently withdrew and that paper was not assessed. By and large the remaining scripts were highly competent but truly outstanding answers were fewer and farther between than last year. Overall the standard was marginally down on previous

years but the proportion of first class papers remains significantly higher than the average for the School as a whole. Four candidates achieved 70 or better on first reading; four candidates achieved marks below 70 but 65 or better; and three candidates scored marks of 64 or less. However, there were fewer first class answers overall than in the past and even the strongest candidates this year struggled to produce two very good answers. Accordingly a number of papers were as much Upper Second as First Class and some difficult borderline decisions were required. One novelty (for this examiner) this year was a tendency of several candidates to start their answers in the small lined box on the front page of the Examination booklet, although it is plainly marked "for Examiners' use only". No candidate was penalised for this but it is not a practice which should be encouraged.

Question 5 ("Should lawyers obey the law?") surprisingly found no takers. Question 3 (criminal defence paradigm) was attempted by about a quarter of the candidates and was done rather poorly and sometimes as an alternative opportunity to discuss confidentiality, perhaps because the confidentiality question was genuinely testing. Role morality was insufficiently explored. One candidate chose to treat the question as an open-ended opportunity to review a range of theories of law and legal ethics and produced an essay of a pleasingly high standard.

Question 6 (problems) was also attempted by about a quarter of the candidates but those who attempted it offered competent rather than compelling solutions. There was also a tendency to cut the rope rather than unpick the knot and candidates appear to need reminding that in a question divided formally into parts marks may be lost simply by offering substantially less on one part no matter how well other parts have been done.

Questions 1, 2, and 4 were each attempted by about half the candidates. Question 4 (philosophical and theoretical status of the duty of confidentiality) was the most popular and was really very well done, attracting the three highest marks for individual questions though there was a very small number of weaker responses. Although members of the Board of Examiners had identified this in advance as potentially a difficult or opaque question, and sought justification for its inclusion and an explanation of its terms, candidates had plainly attended to the texts and commentaries and understood the range of philosophical and legal issues raised.

Question 2 (conflict of interest) was also popular but too many answers were merely diligent rehearsals of the legal and ethical issues without any critical review of the philosophical assumptions underlying the relevant codes. Question 1 (applied ethics) was attempted by almost half the candidates. It generated some wonderfully fluent, full and critically engaged answers although on occasion fluency substituted for substance and reference to the appropriate critical literature and crisp examples.

### **PERSONAL PROPERTY (SPECIAL SUBJECT)**

This special subject was taken by only a small number of people. It is difficult to draw useful general conclusions from such a sample. The answers were very encouraging, showing energetic commitment to the subject and evidencing the value of studying it. Most candidates were able to make links between their personal property, their trusts and their land law. The liveliness of the answers reflected the spirit of the class. One change that may be necessary is a cut in the number of questions in the exam paper. At the moment the candidates are being asked to answer two questions from eight, in two hours. It is this examiner's view that the number of questions should be cut to six. At the moment the exam may be just a little too easy, in that there is a good deal of scope for concentrating on particular parts of the syllabus. This suspicion apart, the subject appears to be in good health.