FHS JURISPRUDENCE

DIPLOMA IN LEGAL STUDIES

[MAGISTER JURIS]

Examiners’ Report 2003

PART ONE

A  Statistics

1.  Numbers and percentages in each class/category

The number of candidates taking the examinations were as follows:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FHS Course 1</td>
<td>244</td>
<td>236</td>
<td>231</td>
<td>244</td>
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<td>FHS Course 2</td>
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<td>22</td>
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<tr>
<td>Diploma</td>
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<td>19</td>
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<tr>
<td>Magister Juris</td>
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</table>

Classifications: FHS Course 1 and 2 combined

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>38</td>
<td>38</td>
<td>42</td>
<td>37</td>
</tr>
<tr>
<td>II.i</td>
<td>216</td>
<td>210</td>
<td>197</td>
<td>183</td>
</tr>
<tr>
<td>II.ii</td>
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<td>40</td>
</tr>
<tr>
<td>III</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Pass</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Fail</td>
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<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Aegrotat</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td>267</td>
<td>264</td>
<td>256</td>
<td>266</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>I</td>
<td>7</td>
<td>14</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>II.i</td>
<td>16</td>
<td>14</td>
<td>15</td>
<td>19</td>
</tr>
<tr>
<td>II.ii</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td>23</td>
<td>28</td>
<td>25</td>
<td>22</td>
</tr>
</tbody>
</table>
Results: Diploma in Legal Studies

All 19 candidates passed; two gained Distinctions.

2. Vivas
Vivas are no longer used in the Final Honour School. There may be vivas in the Diploma in Legal studies, but none was held this year.

Double marking of scripts is not routinely operated. 741 out of 2406 scripts (30.8%) were in fact second marked. This includes 12 scripts of candidates for the Diploma in Legal Studies. The total compares with 19% in 2002. Further details are given in B and Part II below.

B New examining methods and procedures

There were no significant changes to the papers or examining methods this year. However, there were changes to procedures for ensuring the accurate marking of scripts.

These changes took two principal forms. First, during first marking checks were made to ensure that markers were adopting similar standards. In larger subjects, this took the form of a statistical survey of marks and distribution between classes. Where any significant discrepancy was found, scripts were second marked to establish whether similar marking standards were in fact being applied. In smaller subjects, a proportion of scripts was second marked with the same objective. The purpose of making checks at this stage is to ensure that first markers can adjust their marks (for all scripts) if they are out of line with other markers.

The second change was that scripts were automatically second marked if they were out of line with other marks achieved by the candidate in question. The test adopted was whether the script was 4 or more marks below the average for scripts of that candidate. 269 scripts (11% of all scripts) were second marked on this basis.

As in previous years, all scripts with marks of 49, 59, 69 were second marked, as were all failing scripts. In addition borderline scripts with marks ending in 8 (or 7, if the record was strong) were second marked if a higher class in that paper could affect their class overall.

C Possible changes to examining methods, procedures and conventions

1. The changes mentioned above, a significant change from past practice, worked smoothly. However, markers’ experience of their operation will need to be considered as part of a review of their operation.

2. The examiners applied the conventions as previously agreed by the Examinations Committee and notified to candidates. There was some concern that a few candidates failed to obtain a First Class when they had four First Class marks, high supporting marks and a high average mark. Although the examiners decided that it was inappropriate to develop additional criteria in the midst of the examination process, some considered that further thought should be given to this question. Others were entirely content with the existing conventions, at least absent any truly exceptional circumstances.

D Examination conventions
These are detailed in paragraph 7 of the Notice to Candidates (Appendix 2 to this report).

Part II

A General comments

1. Second marking
The changes to second marking were identified in Part I above. The examiners considered that the new procedures operated well, though the additional burden on members of the Faculty was considerable and may not be sustainable within the present timetable.
Resolving differences

With a greater number of scripts being second marked, the examiners (with the support of the Examinations Committee) abandoned the old practice of adopting the higher of the first and second marks. Markers were required to discuss their marks and, wherever possible, agree a mark. This request for agreement worked well, with just 12 scripts not receiving an agreed mark (out of 741 scripts second marked).

For 6 of these 12 scripts, the examiners were able to allocate an appropriate mark (in some cases, there was a small difference and the absence of an agreed mark was an oversight). In none of these cases decided on by the examiners did the overall class depend upon the outcome. For 6 scripts, a third marking was undertaken to resolve the difference.

This change of practice led to some candidates being awarded a lower class for a script than would have occurred previously. This was almost always because the agreed (or third mark) was in the lower of the two classes awarded by first and second markers. For candidates being second marked on borderlines, this occurred in 2 cases out of 91. It was more common for the agreed mark to be in the lower class where scripts were second marked to ensure consistency between markers. There were 14 instances (spread over 10 subjects) where this occurred. The higher (unaccepted) mark was the first mark in 7 of them and the second mark in the remaining 7 (of the latter, 4 would not have been second marked on the principles applicable to borderline and failing scripts). It is interesting that scripts second marked to ensure consistency were more likely not to receive the higher class. This may be explicable on the basis that, at this stage, markers are still in the process of settling marking standards: the first mark is provisional at that stage.

On the other hand, 6 candidates received a higher class in papers because of second marking to ensure consistency (excluding candidates who would have been second marked under the rules applying in 2002). Further, 27 candidates received marks in a higher class when scripts were marked because they were 4 below average (1 went down a class). Taken together, the changes to the number of scripts being second marked and to the treatment of divergent first and second marks appear to have operated to the benefit of candidates.

Statistics on second marking and agreed marks

There were three separate grounds for second marking. Second marking was undertaken blind.

(i) Checks to ensure consistency between markers. The scripts were chosen at random, though in some small options all scripts were second marked.

245 scripts were second marked on this basis, the great majority being in smaller options. These numbers exclude those marked on a borderline 9 mark (or failing); all such scripts are second marked and fall within (iii) below.

(ii) Scripts which had been marked 4 or more below the average mark for that candidate.

268 scripts (11% of all scripts) were second marked on this basis. A further 75 scripts identified as being 4 or more below average had already been second marked as part of the checks to ensure accuracy (they are included in (i) above). A small number identified as being 4 or more below average might also have affected the final class and are included in (iii) below.

Of these 268 scripts, 203 were second marked within 3 marks of the first mark. Perhaps the most telling figure is the agreed mark. This varied from the first mark by 4 marks or more in 29 cases (11%). The agreed mark was 10 or more marks different for 3 scripts.

(iii) Scripts second marked because they were borderline or failing.

The relatively few failing scripts were all second marked prior to the first marks meeting; in each case, the markers decided that the script deserved to pass. 224 borderline scripts were marked. The equivalent figure was 331 in 2002. It should be noted that some scripts with marks ending 7 and 8 had been second marked as part of the checks to ensure accuracy; these are not included in the 2003 figures. Scripts with marks ending in 9 were generally second marked before the first marks meeting (all borderline marks ending in 9 were second marked at some stage); all these are included in this category.
The overall success rate in reaching a higher class was 38.9% (25.7% in 2002). This is coloured by there being many more borderline 9 scripts in 2003, which have a stronger chance of rising on second reading. The success rate of borderline scripts ending in 7 and 8 was 28.5% (20.1% in 2002).

2. Examination schedule
As in previous years, the Examination Schools were responsible for producing the timetable. An attempt was made to avoid candidates’ having two papers on the same day. It is only in the second full week of the examination (when most candidates took two options) that two subjects were timetabled for the same day. Without extending the examination period, it proved impossible to ensure that no candidate had two papers on the same day. The examiners requested one variation from 2002 to avoid two relatively popular options being scheduled for the same day; this request was acted upon.

3. Medical Certificates, dyslexia/dyspraxia and special cases
22 medical certificates were submitted and considered by the examiners (compared with 25 last year, 27 in 2001, 21 in 2000). In addition 5 candidates were certified as dyslexic or dyspraxic.

5 candidates wrote some or all of their papers in college, as compared with 11 last year, 5 in 2000 and 11 in 1999. A further 6 candidates wrote some or all of their papers in a special room in Examination Schools.

4. Materials in the Examination Room
There were no problems with the provision of statutory materials, save that it proved impossible to acquire additional copies of the specified edition of one collection of statutes. The problem was solved by providing a more up to date edition for Diploma in Legal Studies candidates. They were individually informed about this change. The list of statutory materials is set out in Appendix 2.

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.

5. Legibility
Typing was requested from 16 candidates for a total of 43 scripts. This compares with 22 candidates for 36 scripts in 2002 and 9 candidates for 23 scripts in 2001.

6. Short weight and breach of rubric
No change was made to existing practice as to what to treat as short weight (or how to deal with rushed or incomplete answers). However, the Examinations Committee formally adopted the sanctions applied in 2002.

Where a full question has been omitted, 10 marks are deducted for a paper requiring four questions to be answered. Suppose a candidate has answers marked at 62, 67 and 72 on a paper requiring four answers. The mark over the three questions averages at 67. 10 marks are deducted on account of the omitted fourth answer; this produces a final mark of 57. Pro rata deductions are made for the minority of papers where 2 or 3 answers are required and where part of a question has been omitted. Breach of rubric incurs similar penalties, but breach of rubric is treated as if half a question has been omitted.

Markers were reminded that a single very weak answer should not be allowed to reduce the overall mark by more than 10 marks; it should not be treated as worse than an omitted answer. More generally, markers were encouraged to take an overall view of the quality of the script when deciding on the overall mark, even though this might not represent an arithmetical average.
7. Ethics
The Ethics paper is set and marked by Philosophy examiners and is routinely blind double marked. In the last report, concern was expressed at the variations in the marks awarded. Although the incidence of this problem was reduced this year, 2 out of 16 scripts showed a variation of 2 classes. Apart from these two scripts (the class in Ethics was not relevant to the overall class of either candidate), the Ethics examiners were able to agree a mark for each candidate. The point of major concern this year was that the final marks of Ethics candidates were markedly lower than those for other papers they took. The most likely explanation is that law candidates find it difficult to adjust to the requirements of philosophy. However, it seems appropriate that law students should be warned in the Faculty Handbook of this under-performance.

8. Prizes
The examiners noted with regret that there is no prize for candidates for the Diploma in Legal Studies. This is especially significant as Diploma students are not eligible for subject prizes.

9. The computerised database
At an early stage of the examination process (January and February), it appeared that the Faculty had no facilities for developing the examination software. This was a matter of considerable concern to examiners. The software had been written for the 2002 examination and, although in many ways an improvement to systems used previously, caused difficulty in the production of an accurate class list on time. The far-reaching changes to second marking in 2003, coupled with the correction of those existing problems, meant that development of the software this year was inevitable. For an extended period, it was unclear whether a reliable system would be operative this year and whether the examiners would be able to produce results within their published timetable. This situation plainly should never have arisen and the resultant pressure upon hardworking staff within the Faculty Office was especially intolerable. It should be stressed that the problems were not limited to the convenience of the examiners: until changes were made, there was a real chance that the results might be erroneous. In the event, the work was done in time for the inputting of marks, though without allowing sufficient time for checks to be made and defects corrected in time for further testing (problems in transmitting marks to the Examination Schools caused a delay in publishing the results). It is imperative that in future years the examiners have appropriate resources in this area: it simply cannot be regarded as a luxury.

10. External Examiner
We were fortunate to have the services Professor M. Bridge of University College London as our external examiner. He was very actively involved at all stages and his help and guidance were invaluable. 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. Professor M Blakeney of Queen Mary College, London was our second external examiner. Unfortunately, unforeseen circumstances prevented him from attending either marks meeting. However, he was kept fully informed at all stages.

10. 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. In particular, the examiners could not function at all without the invaluable work of Julie Bass in the Faculty Office, but we are also greatly indebted to her assistant Lorna Costar and all those who assisted when help was required. Timothy Endicott acted as secretary. In addition to keeping a watchful eye on the paperwork, he played a very important role in discussing changes of papers with assessors who had set them. In addition to the examiners, 44 members of the faculty were assessors, involved in setting and marking.
**B  Equal opportunities issues and breakdown of the results by gender; ethnicity analysis**

The gender breakdown for Course 1 was:

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<tr>
<th></th>
<th>2003</th>
<th></th>
<th>2002</th>
<th></th>
<th>2001</th>
</tr>
</thead>
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<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
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</tr>
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<td>Pass</td>
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<tr>
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</tr>
</tbody>
</table>

The gender breakdown for Course 2 was:

<table>
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<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
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</tr>
<tr>
<td>Total</td>
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<td>12</td>
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<td></td>
<td></td>
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The gender breakdown for Courses 1 and 2 combined was:

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<th></th>
<th>2002</th>
<th></th>
<th>2001</th>
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</thead>
<tbody>
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<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
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<td>22</td>
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<td>21</td>
</tr>
<tr>
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<td>79</td>
<td>115</td>
<td>83</td>
<td>105</td>
</tr>
<tr>
<td>II.ii</td>
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<td>4</td>
<td>8</td>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>III</td>
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</tr>
<tr>
<td>Pass</td>
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<td>0</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>128</td>
<td>139</td>
<td>133</td>
<td>131</td>
<td>113</td>
</tr>
</tbody>
</table>

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).

**C  Detailed numbers taking subjects and their performance**

1. Numbers writing scripts in optional subjects: FHS Courses 1 and 2:
<table>
<thead>
<tr>
<th>Course</th>
<th>2003</th>
<th>2002</th>
<th>2000</th>
<th>2001</th>
</tr>
</thead>
<tbody>
<tr>
<td>Roman Law (Delict)</td>
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<td>3</td>
<td>5</td>
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<tr>
<td>Comparative Law of Contract: (French)</td>
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<td>10</td>
<td>12</td>
<td>9</td>
</tr>
<tr>
<td>Crim &amp; Pen</td>
<td>69</td>
<td>59</td>
<td>77</td>
<td>73</td>
</tr>
<tr>
<td>Public International Law</td>
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<td>91</td>
<td>84</td>
<td>87</td>
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<tr>
<td>History of English Law</td>
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<td>23</td>
<td>8</td>
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<tr>
<td>ECL</td>
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<td>124</td>
<td>119</td>
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<tr>
<td>Ethics</td>
<td>16</td>
<td>16</td>
<td>17</td>
<td>18</td>
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<tr>
<td>Philosophy of Mind*</td>
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<td>17</td>
<td>20</td>
<td>9</td>
</tr>
<tr>
<td>International Trade</td>
<td>267</td>
<td>262</td>
<td>263</td>
<td>254</td>
</tr>
<tr>
<td>Trusts</td>
<td>266</td>
<td>264</td>
<td>262</td>
<td>249</td>
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<tr>
<td>Family Law</td>
<td>63</td>
<td>71</td>
<td>50</td>
<td>57</td>
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<td>Company Law</td>
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<td>49</td>
<td>44</td>
</tr>
<tr>
<td>Labour Law</td>
<td>55</td>
<td>61</td>
<td>32</td>
<td>36</td>
</tr>
<tr>
<td>Criminal Law</td>
<td>14</td>
<td>8</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Principles of Commercial Law</td>
<td>23</td>
<td>28</td>
<td>30</td>
<td>39</td>
</tr>
<tr>
<td>Constitutional Law</td>
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<td>8</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>EC Soc/Environ.</td>
<td>54</td>
<td>74</td>
<td>55</td>
<td>61</td>
</tr>
<tr>
<td>EC Competition Law</td>
<td>126</td>
<td>110</td>
<td>106</td>
<td>95</td>
</tr>
<tr>
<td>Copyright &amp; Moral Rights</td>
<td>70</td>
<td>62</td>
<td>89</td>
<td>81</td>
</tr>
<tr>
<td>Lawyers' Ethics</td>
<td>18</td>
<td>11</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Historical Foundations of Unjust Enrichment</td>
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<tr>
<td>Personal Property</td>
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<td>7</td>
<td>8</td>
<td>6</td>
</tr>
</tbody>
</table>

*Philosophy of Mind was withdrawn as from end September 2000

2. Numbers writing scripts in Diploma in Legal Studies:

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<tr>
<th>Course</th>
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<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
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<td>18</td>
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</tr>
<tr>
<td>Tort</td>
<td>17</td>
<td>PIL</td>
</tr>
<tr>
<td>Crim &amp; Pen</td>
<td>2</td>
<td>Company Law</td>
</tr>
<tr>
<td>Comparative Law: Contract</td>
<td>3</td>
<td>Constitutional Law</td>
</tr>
<tr>
<td>Criminal Law</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

3. MJur candidates taking FHS papers

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurisprudence</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Contract</td>
<td>16</td>
<td>14</td>
<td>19</td>
<td>13</td>
<td>13</td>
</tr>
</tbody>
</table>
### Percentage Distribution of Marks by Subject (Course 1 and Course 2):

#### (a) Detailed table

<table>
<thead>
<tr>
<th>Subject</th>
<th>75-79</th>
<th>71-74</th>
<th>70</th>
<th>68-69</th>
<th>65-67</th>
<th>60-64</th>
<th>58-59</th>
<th>50-57</th>
<th>48-49</th>
<th>40-47</th>
<th>39 or less</th>
<th>Nos. writing scripts</th>
</tr>
</thead>
<tbody>
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<td>5</td>
<td>4</td>
<td>9</td>
<td>12</td>
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<td>12</td>
<td>10</td>
<td>1</td>
<td>1</td>
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*This paper is not marked by FHS examiners.*

4. Percentage Distribution of Marks by Subject (Course 1 and Course 2):
### (b) Summary by class

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<th>Third</th>
<th>39 or less</th>
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</table>
For both tables, \textit{final marks} for subjects are summarised (in previous years, \textit{first marks} have been summarised). However, the figures for ‘All papers’ in (b) are for first marks.

\textbf{D Comments on papers and individual questions.}

These appear in Appendix 3

\begin{center}
\begin{tabular}{|l|c|c|c|c|c|}
\hline
Subject & 25 & 67 & 8 & 1 & 126 \\
\hline
EC Competition & 16 & 77 & 6 & 2 & 54 \\
EC Social/ Environmental & & & & & \\
Copyright & 18 & 75 & 7 & & 70 \\
\hline
\end{tabular}
\end{center}
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 college tutor/adviser without delay.

1. Timetable and Place of FHS/MJur/Diploma in Legal Studies Examination

All examinations will be taken at the Examination Schools in the High Street. *Sub fusc* must be worn. You are advised to reach the Schools no less than ten minutes before the stated time of the examination. 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. Notices in the Schools will direct candidates to the appropriate room. Seating in the examination room will be in alphabetical order, and desks will be identified by name only. Desks and even rooms may sometimes be changed for papers taken by smaller numbers of candidates, so candidates should check on the notice board in the Schools for each paper.

The timetable is attached to this notice as Schedule 1. No candidate is believed to have offered more than one of the papers scheduled for the same time. If you think that it is wrong, you must inform the Chair of Examiners through your college tutor/adviser without delay.

2. Examination Numbers and Anonymity and Examination Protocol

You will be informed of your examination number and you should bring with you the note advising you of that number or devise some way of remembering it. You must not write your name or the name of your college on any answer book. Use only your examination number.

The Examination Protocol giving guidance on the conduct of the examination is attached to this notice as Schedule II, and you should read it 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 (but it will be available from the invigilator).

3. 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 specifically to candidates. The list is attached to this notice as Schedule III.

Dictionaries
Non-native speakers who wish to use a language dictionary must submit their application to the Proctors at the same time as the examination entry form. 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 Chair 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.

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

Rough work
If you wish to write plans or rough drafts, you may do this either in the same booklet as your answers (but cross out the rough work) or in a separate booklet (indicating that this is rough work) which must be handed in along with your answer booklets.

Candidates’ scripts
(i) **Anonymity** - to ensure anonymity you must write your **examination number only** in the appropriate place on the first page of each answer booklet. You must not write your name or college even if the booklet contains a box labelled “name and college” (that box must be left blank).
(ii) **Legibility** – Candidates must not write in pencil. 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
(iii) **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.

4. Viva Voce Examination in the Diploma in Legal Studies

The viva voce examination is an integral part of the examination in the Diploma in Legal Studies 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”. There have been no vivas in the past few years so a viva is not very likely, but it is a possibility. The viva voce, if required, will be held on Tuesday 15 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 Monday 7 July. Candidates are advised to leave with their college tutor a telephone number at which they can be contacted on or after Monday 7 July.

5. Change of Options

The Chair of Examiners gives notice of consent to any variation of options made without direct reference to the Chair but reported to the Head Registry Clerk by Friday of the first week of Trinity Term (2 May 2003), except any variation which will affect the timetable. The University Offices will advise on the point whenever variations are reported.

6. Form and Scope of Papers, etc

Where a question includes a quotation, it will normally be attributed to the author. Where a quotation is not attributed, it will normally be the case that it has been drafted for the purposes of the examination paper.

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) **Contract** – the Sale and Supply of Goods to Consumers Regulations 2002 are on the syllabus but the Regulations will not be provided in the examination room because questions will not be set that necessitate a detailed knowledge of them.

(ii) **European Community Competition Law** – students will be required to display a good knowledge of Council Regulation 1/2003. As the latter will not be in force until May 2004, students must also be familiar with the existing regime under Regulation 17/62.

(iii) **Family Law** – Adoption and Children Act 2002: Candidates may be expected to have knowledge of the background and the most important provisions of the Act.

(iv) **Land Law** – questions will be set on the basis that the Land Registration Act 2002 is in force. Problem questions should be answered using the Land Registration Act 2002, and not the Land Registration Act 1925, regardless of whether the former was in fact in force at the relevant dates.

(v) **Principles of Commercial Law** – students should assume that the Enterprise Act 2002 is NOT yet in force. The Sale and Supply of Goods to Consumers Regulations 2002 are on the syllabus but the Regulations will not be provided in the examination room because questions will not be set that necessitate a detailed knowledge of them.

(vi) **Personal Property** – the number of questions this year will be 6 and not 8 as was the case last year.

### 7. Marking Conventions

**Final Honour School**

The University requires scripts to be marked on a scale from 1 to 100. In the FHS marks of 70 and above are class I marks; marks of 60 to 69 are class II.i marks; marks of 50 to 59 are class II.ii marks; marks of 40 to 49 are class III marks; marks of 30-39 are Pass degree marks and marks of 29 and below are fail marks. The assessment standards are shown in the paper attached as Schedule IV. For the award of degree classifications, marks in a Special Subject paper have the same weight as those in a Standard Subject paper.

It is important to appreciate that the classification conventions set out here are not inflexible rules. The examiners retain a discretion in dealing with unusual cases and circumstances. Subject to that caveat, the conventions that will normally be applied are as follows:

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

(b) For the award of **Second Class Honours, Division 1**, 5 marks of 60 or above are needed, and no more than one mark below 50 (which must not be below 40).

(c) For **Second Class Honours, Division 2**, 5 marks of 50 or above are needed, and no marks below 40.

(d) For **Third Class Honours**, 9 marks of 40 or above are needed, although a candidate may exceptionally be allowed one mark below 40.

(e) For a **Pass degree**, 5 marks of 40 or above are needed, and no marks below 30, although a candidate may exceptionally be allowed one mark below 30.

**Diploma in Legal Studies**

The University requires scripts to be marked on a scale from 1 to 100. In the DLS marks of 70 and above are Distinction marks and marks of 40 to 69 are pass marks. Marks of 39 and below are fail marks. The assessment standards are shown in the paper attached as Schedule IV.

It is important to appreciate that the conventions set out here are not inflexible rules. The examiners retain discretion in dealing with unusual cases and circumstances. Subject to that caveat, the conventions that will normally be applied are as follows:

(a) For the award of the Diploma in Legal Studies a candidate must secure 3 marks of 40 or above.
(b) For the award of a Distinction a candidate must secure two marks of 70 or above, with the third mark of 60 or above.

8. Incomplete Scripts

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. The precise degree of the penalty which is incurred will depend upon the extent to which the script is short weight. For example, in a system of numerical marking the marker will award some marks to an answer which is incomplete in the sense that a part of the question has not been answered. But where a question has been completely left out, then candidates must realise that this will result in a reduction in the candidate’s class in that paper. Where a candidate completes the correct number of questions, but fails to answer a question which is compulsory (eg where the candidate does not answer a problem question as required by the rubric of the subject paper) then marks will be deducted and this may result in a reduction in the candidate’s class in that paper.

9. Publication of Class List

The Examiners expect to publish the class list for the Final Honour School and the results list for the Diploma in Legal Studies on Wednesday 16 July. If there are vivas 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; your college office will advise you on how you may obtain these.

10. Illness or other Causes affecting Candidates for Examinations

The Proctors have authority to authorise special arrangements for candidates who for medical or other sufficient reasons are likely to have difficulty in writing their scripts or completing the examination in the time allowed. If this applies, you should consult the appropriate college officer, (usually the Senior Tutor). Where a candidate’s performance in any part of an examination is likely to be, or has been, affected by factors, such as illness or disability, of which the Examiners have no knowledge, the candidate may, through the appropriate college officer, inform the Proctors of these factors, and the Proctors will pass this information to the Chair of Examiners if, in their opinion, it is likely to assist the Examiners in the performance of their duties. See further Examination Regulations 2002 pages 999 – 1002.

Mr R. J. Smith
Chair of Examiners
28 February 2003

Schedule I – Examination Timetables
Schedule II – Examination Protocol
Schedule III – Materials in the Examination Room
Schedule IV – Assessment Standards
## Schedule I

**SECOND PUBLIC EXAMINATION**  
**TRINITY 2003**

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

<table>
<thead>
<tr>
<th>Day</th>
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<tbody>
<tr>
<td>Thursday</td>
<td>29 May</td>
<td>2.30 pm</td>
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| Saturday | 31 May     | 9.30 am| Special Subject Papers (2 Hours):  
European Community Social, Environmental and Consumer Law.  
European Community Competition Law.  
Introduction to the Law of Copyright and Moral Rights.  
Lawyers' Ethics.  
Personal Property. |
| Monday   | 02 June    | 9.30 am| Contract                                                                 |
| Tuesday  | 03 June    | 9.30 am| Tort                                                                     |
| Wednesday| 04 June    | 9.30 am| Jurisprudence                                                            |
| Thursday | 05 June    | 9.30 am| Land Law                                                                 |
| Friday   | 06 June    | 9.30 am| Trusts                                                                   |
| Saturday | 07 June    | 9.30 am| Administrative Law                                                       |
| Monday   | 09 June    | 9.30 am| European Community Law.  
2.30 pm Public International Law. |
| Tuesday  | 10 June    | 9.30 am| Criminal Justice and Penology.  
Company Law.  
2.30 pm Roman Law (Delict).  
Family Law. |
| Wednesday| 11 June    | 9.30 am| Labour Law.  
Criminal Law.  
2.30 pm History of English Law. |
Constitutional Law.  
2.30 pm Principles of Commercial Law. |
| Friday   | 13 June    | 9.30 am| International Trade                                                     |

Candidates are requested to attend at the EXAMINATION SCHOOLS.

Chairman

R.J. SMITH

04/02/03  
DJUR&S0203T
DIPLOMA EXAMINATION
TRINITY 2003

Diploma in Legal Studies

Monday  02 June  9.30 am Contract.
Tuesday  03 June  9.30 am Tort.
Monday  09 June  9.30 am European Community Law.
               2.30 pm Public International Law.
Tuesday  10 June  9.30 am Criminal Justice and Penology.
               Company Law.
Wednesday 11 June  9.30 am Criminal Law.
               Constitutional Law.

Candidates are requested to attend at the EXAMINATION SCHOOLS.

The VIVA VOCE examination, if needed, will be held on Tuesday, 15 July 2003. Candidates will be notified if they are required to attend.

R. J. SMITH
Chairman

27/02/03
MLLS0203T
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.
Schedule III

FHS/M.JUR/DIPLOMA IN LEGAL STUDIES 2003

MATERIALS IN THE EXAMINATION ROOM 2003

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

Company Law


There is no substantial difference between the editions as far as FHS/Diploma in Legal Studies/MJur candidates are concerned. Copies of the 15th and 16th editions have been placed at the reserve desk in the Bodleian Law Library for candidates’ reference in advance of the examination.

Comparative Law of 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

I.Dennis (ed), Criminal Law Statutes 2002/3, Sweet and Maxwell, 2002

European Community Law

Rudden and Wyatt’s EU Treaties and Legislation, 8th edition, OUP, 2002

Family Law

Blackstone’s Statutes on Family Law, 10th edition 2001-2002

International Trade


Labour Law

Butterworth’s Student Statutes, Employment Law, Deborah Lockton, 3rd edition, 2000/2001
Land Law

Sweet & Maxwell’s Statutes Series, Property Law 2002/3, 8th edition

Principles of Commercial Law


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

Trusts

Sweet & Maxwell’s Statutes Series, Property Law 2002/3, 8th edition

European Community Competition Law (Special Subject)

1. Rudden and Wyatt’s EU Treaties and Legislation, 8th edition, OUP, 2002
2. Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty – OJ 1999 C288/2
3. Regulation 1/2003, O.J. L/1, 4 January 2003

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

Rudden and Wyatt’s EU Treaties and Legislation, 8th edition, OUP, 2002
EC Directive 89/622 OJ 1989 L359/1
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, 5th edition
ASSESSMENT STANDARDS

There follows a statement of the standards which the examiners apply in their grading of your individual answers. This statement focuses upon the examiners’ expectations in the Final Honour School of Jurisprudence and the examination for the Diploma in Legal Studies, which the faculty considers appropriate for students who have reached that stage of their studies. In Law Moderations, examiners are looking for the same kinds of qualities, but with the recognition that the students taking the examination are at an early stage in their studies.

**first class (70% and above)**

First class answers represent a level of attainment which, for an undergraduate, can be regarded as exceptionally good. They show several of the following qualities:

- acute attention to the question asked;

- a deep and detailed knowledge and understanding of the topic addressed and its place in the surrounding context;

- excellent comprehensiveness and accuracy, with no or almost no substantial errors or omissions, and coverage of at least some less obvious angles;

- excellent clarity and appropriateness of structure, argument, integration of information and ideas, and expression;

- identification of more than one possible line of argument;

- good appreciation of theoretical arguments concerning the topic, substantial critical analysis, and (especially in the case of high first class answers) personal contribution to debate on the topic.

**upper second class (60-69%)**

Upper second class answers represent a level of attainment which, for an undergraduate, can be regarded as in the range reasonably good to very good. To an extent varying with their place within this range, they show at least most of the following qualities:

- attention to the question asked;

- a clear and fairly detailed knowledge and understanding of the topic addressed and its place in the surrounding law;

- good comprehensiveness and accuracy, with few substantial errors or omissions;
• a clear and appropriate structure, argument, integration of information and ideas, and expression;

• identification of more than one possible line of argument;

• reasonable familiarity with theoretical arguments concerning the topic, and (especially in the case of high upper second class answers) a significant degree of critical analysis.

lower second class (50-59%)

Lower second class answers represent a level of attainment which, for an undergraduate, can be regarded as in the range between reasonable, and acceptable but disappointing. To an extent varying with their place within this range, they generally show the following qualities:

• normally, attention to the question asked (but a lower second class answer may be one which gives an otherwise upper second class treatment of a related question rather than the question asked);

• a fair knowledge and understanding of the topic addressed and its place in the surrounding law;

• reasonable comprehensiveness and accuracy, possibly marked by some substantial errors or omissions;

• a reasonably clear and appropriate structure, argument, integration of information and ideas, and expression, though the theoretical or critical treatment is likely to be scanty or weak.

third class (40-49%) and pass (30-39%)

Third class and pass answers represent a level of attainment which, for an undergraduate, can be regarded as acceptable, but only barely so. They generally show the following qualities:

• the ability to identify the relevant area of the subject, if not necessarily close attention to the question asked;

• some knowledge and understanding of the topic addressed and its place in the surrounding law, notwithstanding weakness in comprehensiveness and accuracy, commonly including substantial errors and omissions;

• some structure, argument, integration of information and ideas, and lucidity of expression, though these are likely to be unclear or inappropriate and to offer negligible theoretical or critical treatment.

essays and problems

The above statements apply not only to answers to essay questions but also to answers to problem questions. In particular, good problem answers will explore different solutions and lines of argument. The very best answers might offer a critical or theoretical treatment of the doctrines under discussion.
SUPPLEMENTARY NOTICE TO CANDIDATES

Criminal Law

The attention of candidates offering Criminal law is drawn to the following special notice:

Candidates will be expected to have outline knowledge of relevant provisions of the Sexual Offences Bill 2002 as originally published, but detailed knowledge of its clauses will not be required.

Mr R.J. Smith
Chair of Examiners
2 May 2003
Contract and Tort

Schedule III of the Notice to Candidates (sent to you in Hilary Term) informed you that Blackstone’s Statutes on Contract, Tort and Restitution (by Francis Rose), 12th ed, 2001/2002 would be provided in the examination room.

It has been discovered that the University has insufficient copies of this edition, which is now out of print. It has been decided that all candidates for the Diploma in Legal Studies will be provided, in the Contract and Tort papers with the 13th edition of Blackstone’s Statutes on Contract, Tort and Restitution (by Francis Rose), 2002/2003.

There are limited differences between the two editions and the 13th edition is available at the reserve desk in the Bodleian Law Library for candidates’ reference in advance of the examination.

For the avoidance of doubt, this notice does NOT apply to candidates for the Final Honour School of Jurisprudence or Magister Juris.

Mr R.J. Smith
Chair of Examiners
2 May 2003
APPENDIX 3

INDIVIDUAL REPORTS

JURISPRUDENCE

All questions were attempted. The most popular were Q. 12 (legal enforcement of moral beliefs), Q. 14 (obligation to obey law), Q.5 (one right answer), and Q. 1 (definability of law), each attempted in a third or more of scripts. The least popular were Q. 16 (property) and Q. 10 (separation of powers).

Q. 1 was rarely well answered. Many took it as simply an invitation to describe and assess one or two (or three) definitions or accounts of law. Many asserted that Hart defined law, certainly a defensible assertion but one that needs to be advanced with due awareness of Hart’s claims that law cannot be (usefully) defined, claims of which surprisingly few candidates showed awareness. (Similarly, in relation to Q.8, rather few recognised in “prophecies of what the courts will do” the voice of Holmes as relayed by Hart in the first pages of The Concept of Law.) Many showed no interest in the difference between (i) defining or explaining law as a kind of institution or process or arrangement found in many times and places and (ii) identifying a rule of law as a valid element in an extant legal system. Similar unawareness of this and analogous distinctions was also evident among the 10% of candidates who attempted Q. 2 (law and the law).

Not unexpectedly, many of the 25% of candidates who attempted Q. 4 were much more interested in describing theories of the justification of punishment than in answering the question whether any such theories illuminate the propriety of penal (= exemplary?) damages in e.g. tort.

Q.5’s chestnut about correctness in hard cases is still approached with little attention to what makes cases hard (controversial, difficult). Many proceed on the assumption that it is because there is a “gap” in the law, or some conflict between rules (or perhaps principles). Is that really what made Donoghue v Stevenson or McLoughlin v O’Brian difficult? On another front: many candidates wanted to link the issue to positivism and anti-positivism, though – not surprisingly – there was much less agreement about whether it is positivists or anti-positivists who (dis)believe in the one-right-answer thesis.

Q. 12 revealed that few candidates think of justice as a matter of morality, and confirmed yet again that many think Devlin opposed decriminalisation of homosexual conduct, and that quite a few think the reason why it is morally wrong to enforce moral beliefs is because there is no moral right or wrong.

Q. 14 revealed widespread vagueness about “civil disobedience”; very few candidates entertained the possibility of a practice in which a law is broken in public protest against the supposed injustice of some other law or governmental or social arrangements, and the protestor treats the undergoing of penalties for the breach as part of the protest’s point. As to the obligation to obey law generally, Finnis’s claim that there can be a collateral moral obligation not to be seen to violate an unjust law is widely read as the claim that there is always an obligation to comply with unjust laws.
CONTRACT

All questions attracted some answers. There was no discernible preference for essay or problem questions. Last year’s paper saw many candidates obsessed with discussing claims for misrepresentation when more obvious actions for breach were appropriate. This year, termination for breach of contract was an obsession, whether the question warranted lengthy discussion of this issue or not.

Question 1 (Mistake) attracted many very good answers. Indeed, for many candidates their strong answer to this question was to raise the class of their script. Many had correctly anticipated a question on this case and several first class answers were provided. Surprisingly many thought that the quotation came from a decision of the House of Lords. This is very disappointing in at least two respects. First many had clearly chosen to answer the question without reading the case, presumably relying on their dim recollection of the update lectures. Second it demonstrates that an alarming number do not know what the initials M.R. signify.

Question 2 (Consequences of Breach) was intended by the examiner to draw out answers dealing with penalty clauses and equitable relief against forfeiture. Many candidates, perfectly legitimately, chose to tackle the question as relating to the parties’ freedom to either classify of term (conditions, warranties etc) or agree to exclusion clauses. Some first class answers ambitiously chose to deal with all of these topics.

Question 3 (Formation) predictably attracted a number of weaker answers where candidates trotted out their tutorial essays on offer and acceptance. Unless directed at the question set, these answers attracted the predictable mark.

Question 4 (Meaning of Loss) attracted some sophisticated answers from candidates familiar with the article and the case (Panatown) which Professor Burrows was discussing. Some weaker candidates attempted to answer the question without any reference to Panatown and achieved poor marks.

Question 5 (Unfair Terms) was unpopular. Few of those who attempted an answer referred to the Law Commission Consultation Paper which discusses the problem posed.

Question 6 (Undue Influence) resulted in some first class answers from those who had gone to the trouble of reading the House of Lords decision in Royal Bank of Scotland v. Etridge. Some bold candidates who had not taken the trouble to do this, attempted to answer the question as if the last word on the topic was still Barclays Bank v. O’Brien. Their valour was not reflected in the marks awarded.

Question 7 (Privity) attracted fewer answers than expected, presumably because of the need to discuss the impact of the Act on the doctrine of consideration. The wording of the question did not deter some candidates from regurgitating their tutorial essays on privity, tediously listing the ‘exceptions’ to the doctrine and concluding that because of these exceptions the Act is a jolly good thing. The marks for such answers were not high.

Question 8 was for many candidates an opportunity to display their familiarity with the decision in Ruxley Electronics v. Forsyth. However, much less competence was demonstrated in discussing the possibility of clause 2 being penal and many were clearly unfamiliar with the rules determining when the contract price is payable.
Question 9 caused many candidates difficulty. Many of the potential claims \( C \) has are unlikely to succeed. Candidates were clearly unhappy in giving \( C \) the bad news. The issue as to whether silence can ever constitute acceptance was poorly tackled. Most contented themselves with stating that silence cannot be acceptance, cited Felthouse v. Bindley and moved on. Some felt that this did not lead to a particular just conclusion and sort to avoid the result by interpreting the advert as an offer. This approach was not looked upon favourably.

Question 10 was well tackled by many. For some the difficulty of carefully discussing the issues of consideration, promissory estoppel, duress and termination proved too much and they concentrated on one or two of these issues.

Question 11 required the candidates to discuss whether the contract was or was not frustrated and, because this is uncertain, the consequences of both conclusions. It was also necessary to consider the difference non-payment of the price made in both these situations. These different alternatives proved too much for some. A disappointingly large number failed to discuss the Law Reform (Frustrated Contracts) Act 1943 in any detail. As the Act is to be found in the book of statutes provided in the exam room this was especially disappointing.

Question 12 on misrepresentation proved popular. The major difficulty was that some candidates did not structure their answers logically and consequently missed points. Unfortunately the nature of the business sold did not cause some of the weaker candidates to remember that the assessment of damages in contract and tort can lead to different results.

**TORT**

There were 284 candidates for this paper. After first marking, 16 per cent (46 candidates) were awarded a mark of 70 or more, 62 per cent (176 candidates) a mark between 60 and 69, 21 per cent (60 candidates) a mark between 50 and 59, and one per cent (2 candidates) a mark below 50. A number of borderline scripts moved up a class on second marking. The standard was similar to that of the last few years, though the percentage of marks in the lower second range was a touch higher.

The only general comment to be made is that far too many candidates omitted whole issues raised by one or other of the problem questions. This was particularly evident in question 8, where as many as half missed out the illegality point, and in question 12, where a good few either ignored the damages issues, or dealt with them in a wholly inadequate way. It must be emphasised that such lapses are likely to have a severe impact on a candidate’s mark for the question in question.

**Question 1 (Duty/Economic Loss Essay)**

This was a popular question. Most candidates chose not to limit their answers to recovery for pure economic loss. Of those that answered on duty of care in general, too many simply ran through the development of the different duty tests, without considering the quotation. Stronger answers focused on proximity, and some of the analysis of that concept was impressive. The best answers considered the way in which proximity has been used to restrict recovery for economic loss and nervous shock, and drew upon the case law in those areas. Some of the candidates who answered on economic loss alone analysed the governing concepts to very good effect. Weaker candidates simply summarised the law, and a surprisingly high number looked exclusively at Hedley Byrne and White v Jones, ignoring the law on defective products and premises, and relational economic loss.
Question 2 (Liability of Public Authorities Essay)
This was a fairly popular question, and the answers were generally of a high standard. However there were four weaknesses. First, the approach of candidates to the topic was often unsystematic, with interesting analysis of the X and Barrett cases, but no attempt to fit those decisions into an overarching conceptual framework. Secondly, there was a tendency to focus on the human rights angle and the public policy arguments, while skating over the control mechanisms employed by the courts. Thirdly, some candidates were not up to speed on the latest Strasbourg case law, and hence were trapped in an Osman time warp. And finally, some answers failed to address the specific problem of liability for failure to exercise a statutory power.

Question 3 (Remoteness of Damage Essay)
This was not a very popular question. Analysis of the first part of the question was skewed towards the older case law, such as Doughty v Turner and Hughes v Lord Advocate. There was surprisingly little on Jolley v Sutton, and few candidates considered the potential significance of Page v Smith to this area. Some also failed to discuss the egg-shell skull rule. The normative part of the question was frequently ignored. Those candidates that did deal with it made trenchant criticisms of the foreseeability approach, but generally failed to consider what alternative test might be adopted.

Question 4 (Consumer Protection Act/Rylands v Fletcher Essay)
A fair number of candidates answered one or other part of this question. Answers on the Consumer Protection Act tended to be good, and were characterised by impressive analysis of the recent case law and an effective comparison of the statutory regime and the position at common law. Weaknesses were a failure to distinguish between different types of defect, and a tendency to focus exclusively on the defectiveness issue, omitting analysis of other aspects of the legislation. Most candidates who answered on the rule in Rylands v Fletcher also did well. There was good awareness of the distinction between the rule and private nuisance, and of the options for its future development. Some of the weaker answers focused exclusively on the history of the rule and the recent case law, however, and a good many candidates assumed that a requirement of foreseeability was necessarily incompatible with strict liability.

Question 5 (Defamation Essay)
This was a noticeably unpopular question. The few answers that there were tended to be quite narrow in their focus. Much ink was spilt on the distinction between libel and slander and the Reynolds case, but less was said about the strictness of the liability. There was also a general failure to unpick the quotation.

Question 6 (Tort Reform Essay)
This was a popular question. Weaker answers simply considered the Atiyah/Burrows debate, while the stronger ones asked whether a public policy point of view was the appropriate one, and engaged in a systematic analysis of the costs and benefits of the tort system. Some candidates had little or nothing to say about the general issue of tort reform, and looked instead at specific areas of the law. The suspicion must be that these candidates had not actually studied the subject, and were simply casting round for a fourth question to answer.

Question 7 (Economic Torts Essay)
Very few candidates attempted this question. Inevitably, one of those that did mistook it for a question on recovery for pure economic loss in negligence. Those that discussed the economic torts generally did well, although a few contented themselves with an overview of the topic, and failed to address the role that the economic torts play in practice.
Question 8 (Factual Causation/Illegality Problem)
Unsurprisingly, this was the most popular question on the paper, and there were some excellent attempts to work out the precise scope of the *Fairchild* decision. There were also some serious misunderstandings, however. A fair few candidates claimed that, post-*Fairchild*, any defendant whose negligence increases the risk of injury to another in any circumstances is liable if that injury eventuates, while others confused the evidential gap problem with the over-determination one. Moreover, the treatment of the latter problem was generally poor. Too many candidates simply cited *Baker v Willoughby*, without subjecting the reasoning in that case to critical analysis. As for the illegality point, an astonishingly high proportion of answers failed even to mention it. Of those that did, very few considered the seriousness of the illegality and the degree to which it was connected to the incident.

Question 9 (Liability for Third Parties/Vicarious Liability Problem)
This was a reasonably popular question, but the answers were not especially good. The analysis of the third party issue was generally weak. Mention was often made of *Dorset Yacht*, but not of Lord Goff’s speech in *Smith v Littlewoods*, and there was virtually nothing on whether deliberate third party acts go to duty or legal causation. The treatment of vicarious liability was better, but too many candidates over-emphasised the control test, and there was not enough discussion of the *Lister* case.

Question 10 (Breach of Duty/Volenti/Nervous Shock Problem)
This was a popular question. Most candidates dealt with the nervous shock issues well, and recent case law was put to good use when considering the position of Isla. On the downside, almost no-one got the *Bolam* test exactly right, quite a few candidates discussed Gerald’s duty to disclose material risks even though he had clearly complied with it, and the misapprehension that s 2(1) of the Unfair Contract Terms Act 1977 rules out any kind of volenti argument in a personal injury or death action was rife.

Question 11 (Nuisance/*Rylands v Fletcher*/Economic Loss Problem)
Surprisingly, this was not a popular question. This may have been because candidates mistakenly believed that it raised defamation issues. Those that answered it tended not to do well. Candidates were pretty ropey on the basics of *Leakey* liability, and very few mentioned the impact of the *Holbeck Hall* case. Another common weakness was applying *Rylands v Fletcher* defences – like act of God – to claims in nuisance. Finally, most of the answers skated over the issues raised by Lionel’s counter-claim, such as whether organic crops are abnormally sensitive, and genetically modified ones a non-natural use of land.

Question 12 (Occupiers’ Liability/Damages Problem)
This was a very popular question. Most answers were strong on the occupiers’ liability issues, particularly Quentin’s claim, and good use was made of the recent case law on the 1984 Act. The analysis of Steve’s position was generally less thorough, however, and too few answers mentioned *Ferguson v Welsh* and *Haley v LEB*. More generally, insufficient consideration was given to the “Who is the occupier” question. The treatment of the damages part of the question was all too frequently atrocious. Many candidates failed to address it at all, while some of those that did had clearly not studied the topic.

LAND LAW

The paper followed the customary format. Two general points are worth mention. First, this was the first paper in which candidates were required to apply the Land Registration Act 2002. No particular difficulty seems to have been encountered in this respect, to put it no higher (and
a number of answers deserved it to be put considerably higher). Second, a conscious effort was made to ensure that problem questions were not so packed with points as to obstruct the deep, detailed and nuanced reflection and discussion that the examiners hoped to see. The resulting answers were in a spectrum ranging from satisfactory to excellent in their delivery of such reflection and discussion.

The general standard of the work offered in candidates' scripts was pleasing, thanks above all to the amount of real effort and success in being intelligent about this subject (reports not many years ago spoke of some disappointment in this respect). The following comments about individual questions highlight only the weaknesses which did emerge on a significant scale.

Question 1 (mortgages). Some, though trying to stick to the question, lacked a very firm idea of the concept of "security" which was its focus.

Question 2 (the balance between beneficiaries and purchasers when trustees deal wrongfully with the trust land). Very few attempted this question: perhaps its subject-matter is something about which we do not think very overtly in tutorials.

Question 3 (rights of occupation under trusts of land). No difficulties.

Question 4 (adverse possession). No difficulties. (Candidates should note that next year, 2004, will be the last diet of final examinations for which this topic remains on the syllabus.)

Question 5 (severance). No difficulties.

Question 6 (the mission of the Land Registration Act 2002). No difficulties, though a number of candidates gave little attention to the implicit question "Is there anything about electronic conveyancing that requires a revision in one’s weighting of the familiar considerations?".

Question 7 (homesharers’ rights). Some candidates did not altogether succeed in harnessing their thoughts on this the topic to the slightly provocative terms of the question (though others did succeed, admirably). In addition, candidates’ thoughts were not always fully digested: assertions that the ostensible constructive trusts applied by the judges are “really” express or resulting, for example, were not always accompanied by a satisfactory explanation of why they could not be constructive, or a clear statement of just how much of the extant doctrine is and is not covered by the “explanation” (the issue of quantum being particularly neglected in this respect).

Question 8 (sham devices in licences). Some difficulty is evidently experienced with mapping the law on shams. There was a tendency to throw Bruton at this question without a very clear account of its precise relevance.

Question *9 (licences, Bruton leases). Candidates sometimes overlooked, or botched, the formality points. Perhaps more surprisingly, not all were on top of the law regarding the Ashburn Anstalt constructive trust, and/or succeeded in applying that law confidently to the facts. Some were more dogmatic than they had business to be about the applicability and ambit of Bruton. It is worth observing that dogmatism about (especially) unclear or controversial rules is antithetical to the “deep, detailed and nuanced reflection and discussion” which, as mentioned earlier, examiners wish to see in problem answers as much as in essays.

Question *10 (freehold and leasehold covenants, easements). Although the difficulty, posed by the facts, for the running of the benefit of the freehold covenants eluded some, most were acute
to it; and there was a greater degree of success with leasehold covenants than last year. Some candidates found it hard to separate the running of benefit and of burden and apply different rules to them. There was some confusion about the new rules for easements over registered land.

Question *11 (proprietary estoppels). No difficulties - a matter for applause, in view of the very recent and difficult nature of some of the relevant law, especially that regarding quantum.

Question *12 (easements). A number of candidates overlooked the fact that one of the easements was reserved, rather than granted (though those who did not overlook it had a good sense of its significance). Some continue to find the rules on implied grant/reservation difficult. Again, there was some confusion about the new rules for easements over registered land.

**ROMAN LAW**

All the candidates showed a good grasp of the subject and an ability to adapt the evidence to different angles of analysis. This came across well in the essay questions. However, the candidates were less comfortable with the compulsory text questions. The present mode of delivering the course may have to be adapted to give more explicit attention to that style of question.

**COMPARATIVE LAW**

The general standard this year was high, and most candidates displayed not only a very competent grasp of relevant principles of both French and English, but also—and this is most important—a good grasp of comparative law techniques. The very best candidates were able to weave together their exposition of the two systems’ law, in well-structured answers, and discussed how the one system cast light on our understanding of the other. But it was notable (and pleasing) how few candidates fell into the trap of just setting out the two systems’ law in juxtaposition with a concluding “comparative” paragraph.

There were hardly any answers to questions 1 (la doctrine/academic writing), 9 (discussion of two from a list of French law terms or concepts) and 10 (problem on force majeure/frustration), and these were generally not so well done (and often were the candidate’s last answer). All other questions received many answers—marginally the most popular was question 4 (offer and acceptance), followed very closely by questions 3 (la cause), 6 (third party rights) and 7 (mistake/erreur).

Points on which candidates could have improved their performance this year are similar to those on which comments might appear in most years’ examiners’ reports: paying closer attention to the question (or, no doubt, thinking harder about it before putting pen to paper); raising the whole range of issues relevant to an answer; and being careful to articulate points (of both English law and French law) accurately. For example, only the strongest answers to question 2 (legal limitations on substantive contents of loi and statute) explored clearly and accurately the range of pre- and post-enactment controls of legislation in the two systems, discussing the protection of fundamental rights and the relationship to Europe, and the distinction between “legal” and non-legal limitations. And the better answers to question 6 (third party rights) saw that there was a slant to the question that required candidates to discuss not only how the two systems have developed direct third party rights in contract, but also why
the development has been different. Some good answers took the opportunity to discuss the systems’ different legal reasoning here; others (equally good) discussed the question from a perspective of the historical development of contract law. But only candidates who showed that they had seen that there was more than just “the privity question” scored the highest marks.

CRIMINAL JUSTICE AND PENOLOGY

The paper consisted of 12 questions, three of them with alternatives: a wide choice. All questions were attempted, but by far the most popular were those that dealt with: victim participation in the criminal process; alternatives to imprisonment; limits to police and prosecution discretion; juvenile justice; and the extent to which crime could be prevented through punishment. At least a quarter of the candidates tackled questions on sentencing, prison privatization and dangerous offenders. On the other hand very few tackled questions on: actuarial justice; criminal statistics; race or gender discrimination and parole.

The general standard of answers was very satisfactory, although relatively few received first class marks. As has too often been the case in the past, candidates were more at home in dealing with the broader issues of policy or principle than they were with empirical data pertinent to the question. Relatively few research studies were cited and then not always accurately or with any critical acumen. Candidates need to show that they are much better informed than a ‘broadsheet’ newspaper reader.

PUBLIC INTERNATIONAL LAW

Iraq proved a preoccupation with many of the candidates, in some cases regardless of pertinence to the question. Indeed, this provokes a general remark regarding the scripts this year, which is that many answers tended to be a generic response to an anticipated “question on X” rather than a genuine attempt to shape the material to the specific question posed. For example, responses to question 2 tended to elaborate generally upon the traditional methods of customary law formation without addressing the second part of the Charney quote regarding a “more structured method” of customary law creation. Similarly, responses to question 7 tended towards description of the case law and statutory provisions, without focusing on whether a “problem” with the legal status of unrecognised entities exists. On the whole the responses demonstrated a solid grasp of case law and doctrine, but state practice was often lacking. Surprisingly this was most notable in the responses to question 12, where there were remarkably few references to state practice in respect of humanitarian intervention, with many candidates confining their instances solely to NATO involvement in Kosovo (and with scant reference to a voluminous literature).

Some questions were well-handled, however, including question 14 where a number of candidates chose to address more generally “[t]he acid test of effectiveness of international law”. As in previous years, few candidates tackled question 3 on the law of the sea, and surprisingly few were tempted by the essay question on state responsibility found in question 10. Taken as a whole there was no indication of divergences in performance according to the style of question selected, i.e. whether essay or problem question, with the paper in any event leaving question choice entirely open to the candidates. In sum, some disappointing performances in the 2.ii range, the usual preponderance of marks in the 2.i range, and some exceptional responses in the first class range, including an outstanding prize-winning script of near publishable quality.
HISTORY OF ENGLISH LAW

Given the small number of candidates attempting the paper few patterns can be identified. The scripts were on the whole strong, with the weaker scripts produced by failures of time control leading to weak final answers. There was some clustering on Questions 8 (a) (assumpsit) and 9 (tresspass and case), and no-one attempted Questions 7 (strict settlement) 13 (negligence) or 14 (classical contract law), reflecting the concentration of the tutorials on the period down to c. 1600; otherwise the distribution of questions chosen was even, most candidates showing competence in dealing with both property and obligations questions.

EUROPEAN COMMUNITY LAW

General – this was not a particularly difficult or demanding paper, yet it yielded few first class answers and a much higher than expected number of lower second class answers. Within the 2.1 bracket, there was considerably more bunching around the 62% mark than the 67% mark. All of this was dispiriting and disappointing. Overwhelmingly the causes were the same:

1) unwillingness to pay sufficiently close attention to the detail of the questions asked (and clearly this is an unwillingness rather than an inability) coupled with a stubbornness to force pre-prepared arguments into essays where they did not really fit. This last was a particularly prominent feature of answers to Q3 (on Art. 234).

2) poor knowledge of even the highest-profile cases – only a minority of candidates appeared to know (for example) the reasoning employed by Jacobs AG in the UPA case, notwithstanding the fact that it could have been a surprise to no-one that a question on the issue of direct and individual concern was likely to be asked this year. Almost all the candidates who attempted this question (Q2) knew the issues in outline, but there was a level of detail that was missing in the vast majority of answers. The same problem blighted many answers to Q7 (on subsidiarity) and Q8 (on free movement of goods), where Dassonville, Cassis and Keck often appeared to be the only cases that candidates had actually read. We exaggerate not.

3) chronic over-reliance on one source: namely Craig and de Burca’s Text, Cases and Materials. It may be that this is, at least in part, the cause of problems (1) and (2) above. In the view of the examiners, the problems outlined above are now so serious that the entire EC Law teaching team needs urgently to reconsider their choice of recommended reading. For whatever combination of reasons it is clear that the present selection is not working to its optimum for the majority of students who sit this paper. Somehow the students are coming away from the materials (1) without having reflected on a sufficiently broad range of issues and (2) without having learnt the detail of even the leading case law in sufficient detail and depth.

Q1 (38 answers) – generally quite well done. Most candidates actively addressed all four issues raised in the quotation, and a gratifyingly high number were prepared to reject, or at least to examine critically, the underlying assumptions. Stronger answers included comparisons between the EU and other international organisations and between the EU and federal states, and very strong answers interrogated the value of such comparisons. On the down side very few answers treated the EU as anything other than monolithic, though the Q plainly invited consideration of different implications pillar by pillar. And it seems that despite the relatively high number of female role-models in the upper echelons of academic EU law, gender stereotyping nonetheless has deep roots: few imagined the author of the quote to be anything other than male. She is not.
Q2 (72 answers) – very popular. Sometimes quite well handled, but too many students churned out a pre-prepared answer with some description of old cases that had little to do with the Q asked. Better answers focused on the recent case law, with the very best offering some detailed analysis. Very few addressed the question of whether reform properly belongs with the judiciary or the process of Treaty revision and, as ever, almost everyone assumed more judicial review is inevitably a good thing without questioning that assumption. All terribly predictable...

Q3 (75 answers) – generally very badly done. Far too many candidates handicapped themselves by answering the question they hoped would be asked (viz “Write all you can remember about what Craig and de Burca contains on the subject of preliminary rulings”) rather than the Q that was asked. Dozens and dozens of answers talked of cases such as CILFIT and Foglia v. Novello as representing “weaknesses” in the procedure without explaining why they might be seen as weaknesses. Some answers asserted that the rule in Foto-Frost constituted a further weakness, but very few offered any analysis of the way the courts have handled the issue through the development of case law on interim relief. Painfully few answers analysed the courts’ difficulties in keeping to the interpretation/application distinction. The few stronger answers identified a variety of perceived weaknesses of the relationship established by Article 234, as demanded by the Q, and put them in the context of possible alternative arrangements.

Q4 (53 answers) – a mixed question, that attracted often rather woolly answers. Too many answers completely overlooked the fact that the quotation commenced with the words “Recent case-law...” and offered detailed accounts of Van Gend en Loos, Defrenne v. Sabena, etc. Better answers dealt with problems of indirect effect and of “incidental” direct effect, the best answers examining these doctrines with reference to the terms of the question (i.e., “uncertain boundaries” and “dubious justifications”), but very few answers attempted to ponder what “a more flexible vision” might look like. This is the sort of question that ought to have appealed to strong candidates, as it was a quotation rich in possibility and inviting considered analysis rather than description of the familiar, but all too often it appealed to weaker candidates desperate to find a fourth question to answer that was as predictable as QQ 2 and 3 were perceived as being. A real shame and for many good candidates a lost opportunity.

Q5 (65 answers) – like Q3, this Q had a particular focus and was emphatically not an invitation to “write all you know” about the Charter. Fewer candidates fell into the trap of treating it as such than were pitfallen on Q3 but most of the discussion lacked sparkle. Strong answers were able to examine the Charter in detail and to reach different conclusions on the desirability of judicial enforceability in relation to different rights. Hardly anyone picked up on the issue of where such arguments about the legal status of the Charter ought to prevail – is this a question for the courts, for the Constitutional Convention, for the IGC, or for some combination of these?

Q6 (41 answers) – not as popular a Q as we had thought it might be. Most candidates argued the Court had “gone too far” in some of its rulings on the impact of EC law on national procedures and remedies, which is a perfectly tenable view, but few explained the benchmark against which they measured such activism. Knowledge of case law since Factortame and Francovich was patchy. Some candidates knew Van Schijndel and Peterbroeck (etc) in some detail. Others did not mention them at all. Critical appraisal of Francovich seemed limited to those candidates (about one third?) who had read the Harlow article.

Q7 (33 answers) – with relatively few answers, this was reasonably well handled, with most candidates able to separate legal and political functions of subsidiarity and to discuss the
development of the subsidiarity principle in the EC’s institutional culture and in EC law. Strong answers contrasted the Court’s reticence in breathing justiciable life into the subsidiarity principle with its more ambitious reading of the citizenship provisions in the Treaty. Few candidates knew of the ruling in Case C-491/01 ex parte BAT (which is perfectly excusable), but, more seriously, too many candidates were imprecise in their analysis of Case C-376/98 “Tobacco Advertising”. Many candidates criticised the Court for failure to review the challenged Directive in the light of Article 5(2) EC without addressing the point that – as far as the Court was concerned – its annulment for (in short) violation of Article 5(1) EC rendered discussion of subsidiarity superfluous. As with QQ 2 and 8, even the best answers demonstrate insufficiently detailed knowledge of the leading case law.

Q8 (56 answers) was handled desperately badly. Students should be advised that answering a problem question as if it were an essay question inviting a general overview of the law is plain daft. Far too many answers simply waved limply in the direction of Cassis, “Irish Souvenirs” and Keck, making little or no attempt to examine with care the issues raised in a question deliberately heavy with factual background – the plausibility of X’s justification, whether the damage done to E’s commercial freedom by Z is sufficient to take the matter over the “Keck threshold” and therefore to require justification (and would it be justified?)

Q9 (29 answers) was handled better than Q8, but too many candidates read the question with insufficient care and attention. In particular the question of whether A, as a national of X living and working in X, obtains any rights under EC law was ignored by some. Others were aware of Case C-60/00 Carpenter, but little knowledge of what was at stake in the case. More generally too many answers lacked structure and analytical precision.

Q10 (10 answers) … very few takers to a relatively straightforward problem on what is clearly an unpopular area of the syllabus.

INTERNATIONAL TRADE

The general standard seemed slightly lower than in many previous years. In particular, there were few really outstanding scripts.

No-one attempted question 1 which was a general question on fob and cif contracts of sale. There were some good answers to question 2 (on The Starsin [2003] 2 WLR 711 and the Contracts (Rights of Third Parties) Act 1999). Most correctly realised that the 1999 Act does not apply to contracts of carriage covered by COGSA 1992 except as regards the enforcement of exclusion and limitation clauses. No-one considered the difficult issues raised by the application of the Act to charterparties. Question 3 (documents of title to goods) and 4 (passing of property) produced acceptable, if largely uninspiring, answers. On question 4a no-one suggested that the passing of property might turn on what type of fob one is dealing with; and there was perhaps insufficient attention paid to the leading case of The Cuidad de Pasto [1988] 2 Lloyd’s Rep 208. Some attempted question 5 (on letters of credit) without realising that the question was focusing on whether there is, or should be, a nullity as well as a fraud exception to the autonomy principle.

Of the problems, question 6 on Grant v Norway (1851) 10 CB 665 etc was popular and was largely well-answered. Some did not see that the final part was designed to elicit the response that the statutory overruling of Grant v Norway in the Hague-Visby rules and COGSA 1992 s4 does not apply to non-negotiable sea waybills. Few attempted question 7 on two difficult
aspects of spent bills of lading (the second focussing on The Berge Sisar [2001] 2 WLR 1118). Question 8 on laytime and freight in a voyage charterparty was well-done by those who attempted it, although few mentioned that discharge at a port 450 miles away would mean that M was not entitled to freight applying Hopper v Burness (1876) 1 CPD 137. Question 9 (on passing of property in goods in bulk) was popular but some answers were disappointing in failing to make the essential point that the scheme under s20A and 20B of the Sale of Goods Act 1979 is likely to be displaced by contrary agreement in international sales so that ‘cash against documents’ will still be the general rule for the passing of property. Question 10 (on damages under Kwei Tek Chao [1954] 2 QB 459) was popular but some answers failed to make clear that special ‘loss of market’ damages would be unavailable in parts (b) and (c), in contrast to part (a).

TRUSTS

Overall, although there were some very good scripts, this paper seemed to cause difficulties to a considerable number of candidates. The reasons for this are not altogether clear: candidates, often, seemed unable to write four, relevant questions; and even where they did so, the standard of knowledge, and argument, was often disappointing. This is surprising, because the availability of the "core list" for Trusts indicates to all concerned both in the teaching and study of the subject what is reasonably required.

Comments on the individual questions are as follows:

Question 1: Rights of Beneficiary under a Trust
This attracted a wide range of answers, including some who wrote on specific areas of the law of trusts without any attempt to relate their answers to the question asked. The best candidates were able to link in both the fixed and the discretionary trusts, and point out the various contexts (and commensurate difficulties) in which the issue had arisen.

Question 2: Resulting Trusts
The quotation, which is from a case with which every undergraduate should be familiar, was designed to give those who answered the question the opportunity both to analyse the judicial approaches to the topic, and also to consider the academic responses thereto. The best candidates achieved both; but a significant number of candidates seemed to be able to do little more than to recount (not always accurately) what the major cases say, and not to engage in a discussion of the controversy to which the quotation gives rise.

Question 3: Unincorporated Association
The quotation, from re Bucks Constabulary, was designed to give the candidates the opportunity to deal with the question as to who "owned" property in an unincorporated association. The best candidates realised that the cases involving gifts to unincorporated associations might be of assistance; but, quite properly, placed the thrust of their answer on the dissolution cases – where the issue of ownership is fundamental to the resolution of the difficulties that arise. Some candidates, however, concentrated solely on the first issue: and did not address (even inferentially) the second; these candidates were penalised.

Question 4: Formalities
This question involved analysis both of the Law of Property Act Section 53(1)(b) and 53(1)(c). The best candidates were able to distinguish the two, and to point out that the policies might be either conflicting, or at least compatible, if not consistent. Some candidates concentrated
almost exclusively on 53(1)(c); and others did not really go beyond a somewhat simplistic interpretation of what the sections said, with inadequate reference to the case-law.

**Question 5: Covenants Problems**
This problem was designed to raise a number of issues on the vexed question of covenants to settle property, and, in particular, the relevance of the 1999 Act. Answers varied very considerably: only a very few spotted the range of difficulties in the question, and even considered the issue as to whether the 1999 Act applied to covenants at all.

**Question 6: Certainties**
This question raised a number of issues on certainty of objects and of subject matter, and the role of the third party in resolving such difficulties. Candidates did not always seem able to determine what were the precise issues involved, and then to analyse these issues in the light of the (not always easy to follow) case-law. The best candidates, however, were able to deal with these problems; but a depressing number seemed to think that a citation (with a somewhat limited analysis) of *McPhail v Doulton, Baden and Tuck* was all that was required.

**Question 7: Investment**
Very few candidates chose this question; and the answers indicated a workmanlike knowledge – and sometimes more – of the relevant issues.

**Question 8: Fiduciary Duties**
This question, again, was not popular; and the difficulties to which it gave rise were not always fully explored.

**Question 9a: Variation of Trusts**
Again, this question was not popular; but those who did answer it often displayed a very considerable knowledge of the legislation and the authorities thereunder.

**Question 9b: Delegation**
This question, which involved, again, knowledge of the legislation, was reasonably well done: though the difficulties, both ancient and modern, to which the law gives rise, were not always fully considered.

**Question 10: Charity**
This asked for a criticism of two things: first whether the heads accurately represented the institutions which have charitable status and, second whether the present law grants charitable status to the right range of organisations. The best candidates were able to make some very good points on both parts of the quotation; but a depressing number used the question as an excuse to write, rather generally, about what they thought was wrong with the law on charity, without necessarily referring to the question asked. Even worse, some just wrote all they knew about the *Pemsel* heads.

**Question 11: Knowing Receipt/Accessory Liability**
Again, this question tended to attract rather banal responses; candidates realised that there were differences between the two, but did not explain why these differences should exist, and whether it was, indeed, appropriate to regard them as in any way similar.

**Question 12: Quistclose Trust**
The quotation, from *Twinsectra*, gave the candidates a reasonably free rein to discuss the *Quistclose* trust, and some very good answers were presented. However, many candidates contented themselves with a fairly simple account of the possible solutions, without any
suggestion as to which was right, and without any suggestion as to the consideration of the Quistclose trust when properly analysed.

**Question 13: Secret Trusts**

This question was reasonably popular; but candidates seldom analysed the problem and its constituent parts through to its conclusion. The fact that an issue had not arisen in a decided case does not mean that the candidate should ignore it: it is for the candidate to argue, based on a combination of principle and authority, how a court might resolve such an issue.

**Question 14: Charities**

This question was popular, and although well done by some, raised a very considerable number of disappointing answers. In particular, the aspect of the question on the breeding of polo ponies was thought to involve the Recreational Charities Act – an approach which seemed to have little merit. (iii)(cy-près) was better done than might have been expected; and only a very few candidates who had only a little knowledge of cy-près attempted the problem.

**ADMINISTRATIVE LAW**

266 candidates took FHS Administrative Law. Approximately twenty-two percent obtained first class marks, with seventy-five percent obtaining upper seconds, and only three percent obtaining lower seconds. There were no scripts falling below a lower second. Overall, this profile demonstrates the high level of competence displayed by candidates in this paper.

The most popular questions were Question 2 (judicial deference under the Human Rights act 1998); Question 3 (the contribution of R v North and East Devon Health Authority ex p Couglang (1999); Question 7 (the liberalisation of standing rules and politicisation of judicial review) and Question 10(Wednesbury review in cases not involving human rights). The least popular questions were Question 4 (b) (the recommendations of the Leggatt Review); Question 5(b) (the relationship between decision-making functions and procedural requirements) and Question 9(a) (delegated legislation and public participation).

Overall, the standard of answers was good to very good, with many candidates making good use of caselaw and academic literature. The better candidates paid close attention to the question, while the poorer candidates provided rather general answers relating to the topic forming the focus of the question, but failing to grapple directly with the specific question posed. One striking feature of many of the scripts was the tendency for candidates to view the introduction of human rights as unduly thwarting the will of the democratically elected arm of the state, with surprisingly few candidates exploring human rights as protecting certain fundamental interests and values which thereby warranted special protection against encroachment from the majority. This seemed to stand in rather stark contrast to the kind of views expounded by candidates prior to the introduction of the HRA, when candidates appeared to express very strong support for more rigorous judicial scrutiny and protection of judicial review claims involving human rights.

Question 1 was reasonably popular. The best scripts made an attempt to address why administrative lawyers should care about the constitutional basis of judicial review (the more thoughtful candidates throwing doubt on whether the debate had any practical significance). Most candidates demonstrated a competent to very competent understanding of the debate about the constitutional foundations of judicial review as resting in the ultra vires principle or in the common law, handling the academic literature to good effect.
Question 2 was very popular. A majority of candidates demonstrated an awareness of the emergence of judicial deference as a distinct doctrine of interpretation in the adjudication of human rights claims under the HRA, although some did not. The better candidates were able to discriminate between rights enshrined in the HRA which permitted exceptions, and those which did not, and how the emerging doctrine of judicial deference may impact upon each of these kinds of rights.

Question 3 was also very popular. A great deal of discussion was given to the notion of substantive legitimate expectations with reference to the Wednesbury standard of review. The better candidates queried how helpful the three-fold classification established between different kinds of claims in Coughlan was actually helpful, in terms of identifying how a case could be readily and fairly allocated to one of the relevant classes, given the significant consequences on the likely outcome of the case.

Question 4(a) was generally well answered. There were a large number of fairly general essays about the PCA, with the better scripts directly focusing on whether or not the PCA should be transformed into a small claims court.

Question 4(b) was unpopular, but when it was attempted, this was done to good effect.

Question 5(a) attracted a large number of responses. The better answers focused on why there should not be a duty to give reasons, the weaker answers focused on why there should be such a duty.

Question 5(b) attracted very few responses. The better scripts discussed the centrality of adjudication as the model upon which the doctrine of natural justice originated, referring to refinements to procedural fairness as the decision-making model in question shifts away from the adjudicatory paradigm.

Question 6 attracted a significant but small number of responses, generally focusing on the tort of negligence. Most candidates demonstrated a reasonable level of competence in handling the difficulties associated with identifying the appropriate liability rules that should attach to the civil liability of public authorities.

Question 7 was popular, generating answers of variable quality. Some were very good - demonstrating both how the case law demonstrates the liberalisation of standing rules and sound analysis of its likely impact on the independence of the judiciary. The weakest answers simply recited a series of well-known cases concerning group standing.

Question 8 was reasonably popular. The best answers showed an awareness of the definitional problems generated by the 'public/private' distinction, indicating how it may apply in both a procedural and substantive sense. The weaker answers often equated the distinction with the procedural exclusivity rule.

Question 9(a) was very unpopular, even more so then Question 9(b). Few candidates seemed to recognised that Question 9(b) was concerned with error of law, but those who did, answered the question with a high level of competence.

Question 10 was extremely popular. There were a disappointingly large number of candidates who interpreted this question as 'Is Wednesbury alive and well', and either ignored or overlooked the question's pointed focus on cases not involving human rights claims. As a
result, there were a large number of fairly general essays on the relative merits and demerits of a proportionality based test for merits review, with little (if any) discussion of claims not involving human rights.

FAMILY LAW

The performance in the family law paper was very pleasing. There were very few weak papers with most candidates revealing a good knowledge of the law and the theoretical issues. Comments on particular questions follow:

1. (Children’s right to know their genetic origins). This was a fairly popular question. Weaker answers just looked at the question in relation of adoption, while stronger answers considered the many areas of the law in which the right to know one’s genetic origins arose. The strongest candidates discussed the potential impact of the Human Rights Act 1998 on this issue.

2. (Same-sex marriage and the legal regulation of cohabitation). This question was not particularly popular, perhaps surprisingly given its topicality. A few candidates did not answer the question asked and only considered whether the law should permit same-sex marriage.

3. (Reform of financial provision on divorce). This was fairly popular and was generally well answered. Most candidates took the view that there was no need for reform of the present law.

4. (Contact). This was an unpopular question, but was well answered by the few who did.

5. (The welfare principle and the Human Rights Act). This was a popular question. The majority of answers were of a high quality showing an impressive awareness of the case law and academic commentary.

6. (The impact of the Children Act 1989). This was a very unpopular question, being answered by just two candidates.

7. (Reform of divorce law). This was answered by many candidates. Most showed a good awareness of the problems surrounding the implementation of the 1996 Act. Although the large majority of candidates were in favour of reforming the divorce law, few had concrete proposals for what should replace it.

8. (Adoption). Some candidates used this question to simply describe the Adoption and Children Act 2002. Stronger candidates did this while also seeking to ascertain a modern role for adoption.

9. (Child protection and the s.31 threshold criteria). This was a well answered question with some effective analysis of the leading decisions of the House of Lords, while considering the appropriate role of the threshold criteria.

10. (Domestic Violence). This question was answered very well. There was a general consensus that marital status should not be relevant in domestic violence law. There was, however, a variety of opinions on whether property rights should be a relevant factor.

11. (Parental Responsibility). This was a very popular question. A few weak scripts tried to turn the question into a discussion of whether unmarried fathers should be given parental
responsibility automatically. But most answers demonstrated effectively the ambiguities surrounding the concept of parental responsibility.

12. (Children’s rights). This was a popular question. Weaker candidates considered only whether children should have rights. There were some very good answers which considered arguments that there were dangers that children’s rights could be misused by others for their own purposes.

**COMPANY LAW**

There were 50 candidates in all for this paper, comprising 40 FHS candidates, 2 candidates for the Diploma in Legal Studies, and 8 M.Jur. candidates. Overall the standard was high, with candidates displaying a good understanding of the basic principles of Company Law. There were very few disappointing scripts and one or two papers were outstanding.

There was no question which was untouched. Only three candidates answered question 12, dealing with company capital, which continues the previously noted unpopularity of financial questions. The other three problem questions by comparison proved very popular with a large number of students answering at least two problem questions. Indeed a small number of students answered three problem questions. On the whole the problem questions were handled competently by students. However, the answers to question 9, dealing with company contracts, often failed to refer to the issue of attribution at all, and some answers demonstrated some confusion regarding the exact decision reached by the Court of Appeal in *Smith v Henniker-Major*. A number of candidates were also rather weak on a discussion of s 320 Companies Act in the second part of this question. In question 10 it was unfortunate that a number of candidates failed to appreciate (or discuss) the different advice that would be given to a majority and to a minority shareholder, despite having this issue specifically highlighted in the question. *Bhullar* was generally dealt with well but a number of candidates failed to make any reference to the issue of the remedy which Gavin might obtain, or the route by which he might obtain it. Question 11 was generally answered adequately but unexcitingly, with almost no candidates tackling the subject of class rights.

The other questions which attracted only three answers apiece were question 2, a general and very broad question regarding company law reform, and, perhaps more surprisingly, question 3 which dealt with one aspect of directors’ duties. Those that did answer question 3 were often somewhat confused about the ambit of the question, including material regarding various breaches of directors’ duties which did not involve self-dealing at all.

Question 1, regarding the issue of reflective loss, was popular and produced some impressive analyses of *Johnson v Gore Wood* and *Giles v Rhind*, although few candidates referred to the insolvency aspects of this issue. Question 4 was generally handled well, although some weaker candidates confined themselves to just one or two issues, such as ss 213 and 214 Insolvency Act 1986, without appreciating the wider range of issues which were in need of discussion. Question 5 attracted a lot of answers and the issue of derivative actions was dealt with competently by most candidates, although one or two unfortunately spent large portions of their answers discussing s459, which had minimal relevance to this question. Those that specifically tackled the issue of reform, as requested, generally did well. On the whole the answers to question 6 demonstrated a lot of knowledge and understanding although weaker candidates who treated this as an opportunity to write all they knew about lifting the veil, without specific reference to the topic of corporate groups, were marked down accordingly. Not many candidates tackled question 7 and those that did tended to produce unexciting
answers which were confined to explaining the role which shareholders have in the management of the company rather than the issue (stated in the question) of the role which they should have. Question 8 was handled well by the relatively few candidates who tackled it.

LABOUR LAW

The Labour Law paper was taken this year by candidates with a wide range of abilities, although the standard of the majority remained high. With the exception of the very weakest candidates, most had a detailed knowledge of the relevant case law and statutory provisions. The main difficulty for many candidates lay in focusing clearly on the question set instead of producing a general discussion of the topic or regurgitating a tutorial essay.

All the questions on the paper were attempted by at least one candidate, with Question 1 (on the underlying policy of Labour Law) and Question 4 (on part-time work) attracting the lowest number of answers. Question 3 (on discrimination law) was relatively popular, although most candidates focused on sex discrimination law and neglected other possible grounds of discrimination. Question 6 (on the concept of ‘worker’) produced some outstanding answers, although some weaker candidates wrote largely about the concept of ‘employee’ instead. Question 7 (on wrongful and unfair dismissal) was very popular and gave rise to a variety of approaches, though it was surprising that few candidates considered why Johnson was seeking damages at common law instead of using unfair dismissal law. Question 9 (on collective bargaining) was answered by a few candidates. The best answers gave detailed consideration to the notion of a ‘right’ to engage in collective bargaining; weak answers simply described the statutory recognition procedure. Question 10 (on Wilson v UK) was attempted by a large number of candidates, on the whole with some success, although it was striking to note that hardly any mentioned the Human Rights Act 1998 when assessing the impact of the decision on English law.

CRIMINAL LAW

There were 17 candidates, including one for the M.Jur and 2 for the DLS. The questions answered by all of these were:

Q.1 = 3 (dishonesty and fraud)
Q.2 = 3 (mens rea and strict liability)
Q.3 = 8 (provocation)
Q.4 = 6 (intention)
Q.5 = 3 (duress and self-defence)
Q.6 = 6 (complicity, incitement, conspiracy)
Q.7 = 4 (burglary, theft, handling, dishonesty)
Q.8 = 9 (manslaughter and other offences against the person)
Q.9 = 5 (mostly on the 1978 Theft Act)
Q.10 = 12 (sexual offences)
All of these papers were double marked. The standard on the whole was a bit disappointing, and we certainly hope that the seminar for those reading the subject will be resumed in future.

The sample is too small to draw clear conclusions from the distribution of answers, and should not be taken as either for nor against suggestions raised in the HT 2003 Moderators Report.

**PRINCIPLES OF COMMERCIAL LAW**

The general standard of answers was extremely pleasing, with very few weak scripts and a good number of first class scripts. Most candidates appeared to have a good grasp of the relevant principles and were able to apply them accurately to the fact situations set out in the problem questions.

**Essay questions**

Of the essay questions, all were popular except for question 5, (on how one might structure a loan) which no one answered. Many candidates treated question 1 (protection of a bona fide purchaser) as an opportunity to discuss the exceptions to the nemo dat rule in relation to sale of goods. While this was a perfectly justifiable interpretation of the question, it was pleasing that some candidates also discussed other areas where protection is (or is not) provided for bona fide purchasers, such as bills of exchange, assignment of receivables and assets subject to security interests. Question 2, a critical examination of the Law Commission’s proposals for reform of the law relating to company charges, attracted much sensible and detailed discussion. Weaker answers tried to cover too much ground in the time available, leading to some superficiality. There were only four answers to question 3 (an explanation for the rule that an undisclosed principal cannot ratify the acts of an agent): all were of a good standard. Question 4, on the importance of the concept of possession in commercial law, attracted a variety of responses. The best analysed the practical as well as theoretical importance of possession, particularly constructive possession, and showed a grasp of the underlying policy issues.

**Problem questions**

Question 6 was popular. Most of the candidates discussed *Agnew v. Commissioners for the Inland Revenue* [2001] 2 A.C. 710 well: although the relevance of classifying Vincy’s charge as floating was not always correctly appreciated. The point on *Dearle v. Hall* (1823) 3 Russ. 1 was also not fully discussed by all candidates.

Question 7 attracted answers of mixed quality. Not all candidates discussed the possibility that the two watches formed a bulk (though several who picked up the point argued convincingly against such a conclusion). Some candidates were weak in their discussion of the law on mistaken identity: the nature of the distinction is such that an appreciation of the detailed reasoning in the cases, especially *Shogun Finance Ltd v. Hudson* [2002] 2 WLR 867, was necessary.

Most candidates who attempted question 8 had a good general grasp of the law relating to bills of exchange, although several failed to mention *Jade International Steel v Nicholas (Steels) Ltd* [1978] QB 917. Disappointingly few candidates discussed the points on sale of goods (whether there was a breach of s.14(3) of the Sale of Goods Act 1979, and whether Henry had accepted the equipment) in any detail.
Question 9 was generally answered well, with most candidates displaying accurate knowledge of the interface between sections 20A and 25 of the Sale of Goods Act 1979. Several candidates assumed that the wheat pledged by Oliver Ltd. to Usury Bank was still part of the bulk (although in fact it had been removed from the bulk and placed in O’s own warehouse). This illustrates the importance of reading all the facts set out in problem questions very carefully indeed.

Question 10 was the least popular problem question, but generally was answered extremely well, with thorough and accurate analysis of each of three parts.

CONSTITUTIONAL LAW

The Constitutional Law paper was generally well done by the few candidates who took it. It was slightly disappointing that more reference was not made to materials studied in other areas of the FHS, especially Jurisprudence and Administrative Law, which could have complemented the answers given.

EUROPEAN COMMUNITY SOCIAL, ENVIRONMENTAL & CONSUMER LAW

This batch of scripts was, on the whole, very encouraging, disgorging an above-average percentage of First class results, with two particularly fine scripts scoring 76. Lower Second class scripts were few and far between, though there was one Third Class script. The majority of students had clearly engaged seriously with the course and there was a gratifyingly advanced level of understanding of the law and policy in this area. Most candidates were as comfortable analysing Treaty provisions and secondary legislation as they were in dealing with case law. The Questions which invited consideration of both consumer and environmental law were tackled with vigour and imagination by a number of candidates and it was here most of all that particularly good marks were earned by those drawing comparisons and contrasts. The one frequently visible flaw affected Question 1: some candidates erred by examining national measures. This could not attract credit. And, also with respect to Question 1, the role of the principle of subsidiarity in controlling the manner of exercise of Community powers could usefully have been examined more fully in some weaker scripts.

INTRODUCTION TO THE LAW OF COPYRIGHT AND MORAL RIGHTS

The paper comprised six essay questions covering copyright theory and subject-matter, parody, moral rights and defences, of which candidates had to answer two. Overall, candidates' performance was satisfactory, with the usual spread of marks. Such discrepancies as occurred between preliminary marks on double-marking were quickly and satisfactorily resolved by the examiners.

LAWYERS’ ETHICS

The scripts for Lawyers' Ethics were of an impressively high standard overall. There were six questions on the paper. Question 6, a problem question, attracted only one answer, and Question 1 (a general question on the role of lawyers in society) also had few takers. Candidates were most comfortable when writing about specific doctrines such as confidentiality and conflict of interest, and the ethical issues in criminal cases. The many good
scripts showed an excellent knowledge of the case law, a grasp of the philosophical underpinnings of the doctrines and an understanding of the academic debates (both in this country and in the United States). Most candidates also adopted a critical view of the various materials. All in all, a special subject well done.

PERSONAL PROPERTY

With only six candidates taking this paper, meaningful conclusions are difficult to draw. Of those six, two achieved a First, and the rest 2:1s. So the standard generally was good. The most popular questions were 1 (ownership) and 4 (proprietary restitution for wrongs). No candidate attempted questions 3 (nemo dat exceptions in sale of goods) or 5 (passing of property in a bulk).