FHS JURISPRUDENCE

DIPLOMA IN LEGAL STUDIES

(MAGISTER JURIS)

Examiners' Report 2004

PART ONE

A. Statistics

1. Numbers and percentages in each class/category

The number of candidates taking the examinations were as follows:

	2004	2003	2002	2001
FHS Course 1	224	244	236	231
FHS Course 2	29	23	28	25
Diploma	17	19	13	19
Magister Juris	44	58	39	36

Classifications: FHS Course 1 and 2 combined

	2004		2003		2002		2001	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	28	11.07	38	14.23	38	14.39	42	16.4
II.i	208	82.21	216	80.9	210	79.55	197	76.9
II.ii	17	6.72	13	4.87	11	4.17	15	5.9
III	0		0		3	1.14	2	0.8
Pass	0		0		2	0.76	0	
Fail	0		0		0		0	
Aegrotat	0		0		0		0	
Totals	253		267		264		256	

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

	2004		2003		2002		2001	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	5	17.24	7	30.43	14	50	9	36
I.i	24	82.76	16	69.57	14	50	15	60
II.ii	0		0		0		1	
Totals	29		23		28		25	

Results: Diploma in Legal Studies

All 17 candidates passed; one gained Distinction.

2. Vivas

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

3. Marking of scripts

Double marking of scripts is not routinely operated. 799 out of 2,328 (2277 FHS plus 51 DLS) scripts (34.3%) were second marked. This total compares with 30.8% in 2003. Third marking has only been used in exceptional cases (eg medical cases), but this year a change was made to the procedures to permit third marking of borderline scripts where the mark, if raised, might affect the candidate's overall result. 21 FHS scripts were read a third time. Further details are given in B and Part Two (A.1. and A.2.).

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B. New examining methods and procedures

There were no significant changes to the papers or examining methods this year. The procedures for ensuring the accuracy of marking were the same as in 2003 with one change. Last year borderline scripts with marks ending in 9 were re-read during the first marking process (ie before the first marks meeting of examiners), and were not read a third time (except in exceptional cases) between first and second marks meetings, even though, if the mark were raised, the candidate's overall result might be affected. Second marking during the first marking process is a different exercise to second marking between first and second marks meetings. When the second marker knows that the mark he awards may make a difference to the candidate's final overall result, there is a tendency to be generous at that stage. So second marking at this later stage gives that candidate an added advantage, which is avoided if all second marking of borderline scripts (marks ending in 9) is done before the first marks meeting. However, a candidate's overall standard across all subjects is not identified until the first marks meeting, and the correct final result may not be achieved unless a script identified as borderline (a higher mark may affect the final overall result) can be third marked. On the other hand, a candidate who has already had the advantage of his mark being raised on second reading has an additional chance of a further rise on third reading. In order to permit third marking but at the same time minimize the advantage to the candidate concerned, the Examinations Committee changed the procedures this year, so that second marking of all scripts with first marks ending in 9 (except those included in the random sample of scripts second marked to ensure uniform standards of marking) was delayed until the period between first and second marks meetings. Third marking was therefore confined (except for exceptional cases) to scripts which had been second marked as part of the sampling process.

Otherwise, the procedures for ensuring the accurate marking of scripts took the same two forms as last year. That is, first, during the first marking process 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 chosen at random were 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.

Second, scripts were automatically second marked if they were out of line with other marks achieved by the candidate in question. The test applied was whether the script was 4 or more marks below the average for the scripts of that candidate. 272 FHS and DLS scripts (11.7%) (269 in 2003 (11%)) 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 were second marked if a higher mark in that paper might affect the candidate's overall result.

C. Possible changes to examining methods, procedures and conventions

1. The procedures mentioned in B above worked smoothly. Setting and checking the paper and marking are the responsibility of a team of up to four members (larger subjects) and two members (smaller subjects). The leader of each team has considerable additional responsibility to ensure that procedures are carried out and deadlines met. The teams' experience of the operation of the procedures this year will need to be considered as part of a review of their operation, but the impression gained in the Faculty Office this year was that, now that members have become more familiar with the new procedures, the teams operated them quite satisfactorily.

2. The examiners applied the classification and results conventions as previously agreed by the Examinations Committee and notified to candidates, but applied them generously in awarding class I in the Final Honour School. It was apparent in the two marks meeting that the marks amongst candidates this year was lower than in recent years. One manifestation of this was a dramatic reduction from the figures in previous years of the number of candidates in class I having achieved 5 marks of 70 or above. The examiners were concerned about this and remedial action was taken, in the form of awarding class I to candidates who had 4 marks of 70 or above supported by at least 1 mark of 69 and 1 mark of 68. This added 7 candidates to the number in class I (otherwise there would have been only 21 candidates (8.3%) in that class).

D. Examination Conventions

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

PART TWO

A. General comments

1. Second marking

The procedures and changes to second marking were identified in Part One (A.3. and B) above. The effect of moving the second marking of borderline scripts with marks ending in 9 to the period between first and second marks meetings was to move 122 scripts (5.24%) from the first to the second marking process. The timetable for marking may need adjustment to accommodate the increased amount of second marking between the two marks meetings, but scope for this is limited as markers with heavy teaching duties have difficulty in fitting in much marking during termtime.

Resolving differences

As last year, markers were required to discuss their marks and, wherever possible, agree a mark. This worked well with only 8 scripts (12 in 2003) not receiving an agreed mark (out of 799 scripts second marked). For all of these scripts the examiners were able to allocate an appropriate mark, and in only one of these cases did the candidate's overall class depend upon the outcome.

Statistics on second marking and agreed marks

As last year, 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 optional subjects all scripts were second marked. 183 scripts were second marked on this basis (245 in 2003). These scripts 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*.
272 scripts (12%) were second marked on this basis (268 (11%) in 2003). These scripts exclude those marked on a borderline 9 mark (or failing); all such scripts are second marked and fall within (iii) below). A small number (8) identified as being 4 or more marks below the average but which might also, if raised, affect the final class are also included in (iii) below.

(iii) *Scripts second marked because they were borderline or failing*.
This year the failing scripts (marks below 30) included here were also special cases (eg medical evidence, short weight, breach of rubric). All scripts with marks ending in 9, whether second marked before or after the first marks meeting, are included here, together with scripts with marks ending in 8 and 7 where, if the mark were raised, the candidate's overall final result might be affected. In order to decide the winners of the Wronker overall prizes, a small number of scripts with

marks ending in 8 and 7 were second marked and are also included here. 344 scripts (15%) were second marked on this basis (224 (9%) in 2003).

First Mark	Number of Scripts		Number Second Marked in Higher Class		%		Number Agreed in Higher Class		%	
69	73	(72)	31	(21)	42	(29)	30	(21)	41	(29)
68	78	(36)	23	(7)	30	(19)	23	(7)	30	(19)
67	75	(25)	9	(8)	12	(32)	9	(8)	12	(32)
59	60	(57)	30	(39)	50	(69)	30	(39)	50	(69)
58	30	(18)	6	(8)	20	(44)	6	(6)	20	(33)
57	15	(10)	2	(4)	13	(40)	2	(4)	13	(40)
49	3	(4)	2	(1)	67	(25)	2	(1)	67	(25)
48	1	(2)	0	(1)	0	(50)	0	(1)	0	(50)
47	1		0		0		0		0	
Special/fail	8		3		38		2		25	

For the purposes of comparison the figures for 2003 are given in brackets

The overall success rate in reaching a higher class was 30.2% (38.9% in 2003; 25.7% in 2002). The success rate of borderline scripts ending in 8 and 7 was 20.7% (28.5% in 2003; 20.1% in 2002).

2. Third marking

Of the 21 scripts third marked, 20 were borderline and 1 identified merely as having a second agreed mark 4 marks below the candidate's overall average mark (and was third marked in error).

Second Marking	Number of Scripts	Number Third Marked in Higher Class	%	Number Agreed in Higher Class	%
69	3	1	33	1	33
68	3	0			
67	4	2	50	2	50
59	5	3*	60	2*	40
58	5	1	20	1	20
48	1	0			

* includes script third marked in error

The overall success rate in reaching a higher class was 28.6%.

3. 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 optional subjects) 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.

4. Medical certificates, dyslexia/dyspraxia and special cases

21 medical certificates were submitted and considered by the examiners (compared with 22 last year, 25 in 2002, 27 in 2001). In addition, 1 candidate was certified as dyslexic.

3 candidates wrote some or all of their papers in college (compared with 5 last year, 11 in 2002 and 5 in 2001). A further 3 candidates wrote some or all of their papers in a special room in the Examination Schools.

5. Materials in the Examination Room

There were no problems with the provision of statutory materials. The list of statutory materials is included in Appendix 2.

This year the application of the rules for seeking permission for the use of a bilingual dictionary was tightened up by the Proctors, who gave notice to candidates that late requests (ie after the date in Michaelmas Term for submission of examination entry forms) would not be readily granted . The absence of problems with unauthorized dictionaries in the examination room indicated that candidates had heeded the Proctors' warning.

For the first time this year, candidates were required to display their University card on their desk to enable their identity to be checked. Very few failed to bring their cards to each examination paper.

6. Legibility

Typing was requested from 17 candidates for a total of 65 scripts. This compares with 16 candidates for 43 scripts in 2003; 22 candidates for 36 scripts in 2002; 9 candidates for 23 scripts in 2001.

7. Short weight and breach of rubric

No change was made by the Examinations Committee to existing practice as to what to treat as short weight (or how to deal with rushed or incomplete answers).

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 question; 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.

The rubric for the Principles of Commercial Law paper this year required candidates to answer two problem questions, instead of one as in previous years, and the paper was not split into Parts A and B. Attention was not drawn to the change of rubric in the Notice to Candidates (Examiners' Edict) sent before the examination, nor announced in the examination room at the start of the paper, though candidates are routinely told by the invigilator to read the rubric on the front of the paper before they start writing. After the examination, a few candidates drew the attention of college tutors to the change of rubric which they had not expected, and, to quell any anxiety, college tutors were asked to reassure candidates that the examiners would look sympathetically on any breach of rubric. In the event, only two candidates answered one problem question instead of two, and the examiners decided not to apply any penalty.

Markers are 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 are encouraged to take an overall view of the quality of the script when deciding on the overall mark, even though this may not represent an arithmetical average.

8. Ethics

The Ethics paper is set and marked by Philosophy examiners and is routinely blind double marked. In the reports on the Final Honour School in 2002 and 2003, concern was expressed at the variations in the marks awarded; marks for 5 out of 16 scripts in 2002, and for 2 out of 16 scripts in 2003, showed a variation of two classes. This problem did not occur again this year; there was little difference between the two marks awarded and, except in one case, the markers were able to agree a mark for each candidate. In that one case, the Ethics mark did not affect the candidate's overall class and the examiners were able to allocate an appropriate mark to the script. Last year the examiners were concerned that the final marks of Ethics candidates were markedly lower than those for other papers they took. The occurrence of this problem was much reduced this year; in only 3 out of the 16 cases was the Ethics mark seriously out of line with marks for that candidate's other papers. However, the examiners did also look at the variation between candidates' marks for Ethics and their marks for the Jurisprudence paper. In 11 cases the Jurisprudence mark was higher than the Ethics mark (in 9 cases by 5 marks or more); in 4 cases lower (in 2 cases by 5 marks or more) and in 1 case the marks were the same.

9. Prizes

For the first time this year, a prize was awarded for the best performance in the Diploma in Legal Studies. Gibbs prizes used to be awarded on the results of a separate examination in October each year, but for the first time this year were awarded on the best performance in the Final Honour School in four subjects combined, Contract, Tort, Land Law and Trusts. The Gibbs prizes include a first prize (£500), one proxime accessit prize (£300) and up to three book prizes (£150 each).

10. The computerized database

In the end, the software worked satisfactorily with only a few minor hiccups, but, once again this year, there were delays in ironing out the problems which occurred last year, and in making some additional adjustments to provide mostly more statistical information for the examiners. The amended database was delivered four months late, leaving insufficient time for adequate testing and inevitably causing anxiety about its reliability. All this could, and should, have been avoided this year. A completely reliable and thoroughly tested database is an essential to ensure that the whole examining process runs smoothly in a period when everyone is very fully occupied and working under considerable time pressure, and it must be a first priority to provide this. The new syllabus for the FHS and the DLS will be examined for the first time in 2006 and that will require more new software which must be commissioned and produced in 2004-05 so that the problems encountered in the last few years do not occur again.

11. External Examiner

We were again very fortunate to have the services of Professor M. Bridge of University College London as our external examiner. His active involvement at all stages, together with his help in shaping and developing our procedures, were again invaluable and we are much in his debt. The external examiner reports to the Vice-Chancellor about his views of the examination process, and his report is attached as Appendix 1. Professor M. Blakeney of Queen Mary London was our second external examiner, but unfortunately he did not attend either marks meeting. However, he was kept fully informed at the earlier stages.

12. Thanks

Without the invaluable work of Julie Bass in the Faculty Office, the examiners could not function at all; her support at every stage is absolutely essential and her close attention to detail and ability to foresee problems and divert or solve them, keeps the whole process running smoothly and on time. We are greatly indebted to her. We are also very grateful to her assistant, Lorna Costar, and to Ray Morris and Simonne Samuelson, not least for many bicycle journeys making deliveries to and collections from the colleges. In addition to the examiners, 38 members of the Faculty were assessors, involved in setting and marking, and we owe our thanks to them all. The serious illness and sad death of Professor Peter Birks during the examination affected us all, and we are particularly grateful to those assessors who took on his marking duties.

B. Equal Opportunities issues and breakdown of the results by gender; ethnicity analysis

The gender breakdown for Course 1 was:

	2004				2003				2002			
	Males		Females		Males		Females		Males		Females	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
I	10	12	13	9	18	15	13	10	11	9	13	11
II.i	69	80	115	83	94	80	106	83	100	85	96	81
II.ii	7	8	10	7	5	4	8	6	3	3	8	7
III	0		0		0		0		2	2	1	1
Pass	0		0		0		0		2	2	0	
Total	86		138		117		127		118		118	

The gender breakdown for Course 2 was:

	2004				2003				2002			
	Males		Females		Males		Females		Males		Females	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
I	2	18	3	17	4	36	3	25	10	67	4	31
II.i	9	82	15	83	7	64	9	75	5	33	9	69
II.ii	0		0		0		0		0		0	
III	0		0		0		0		0		0	
Pass	0		0		0		0		0		0	
Total	11		18		11		12		15		13	

The gender breakdown for Course 1 and 2 combined was:

	2004				2003				2002			
	Males		Females		Males		Females		Males		Females	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
I	12	12	16	10	22	17	16	12	21	16	17	13
II.i	78	80	130	83	101	79	115	83	105	80	105	80
II.ii	7	7	10	6	5	4	8	6	3	2	8	6
III	0		0		0		0		2	1	1	1
Pass	0		0		0		0		2	1	0	
Total	97		156		128		139		133		131	

The examiners were not asked to produce an ethnicity analysis of the results. No question of ethnicity is asked in the examination entry form.

C. Detailed numbers taking subjects and their performance

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

	2004	2003	2002	2001
Land Law	249	266	263	256
Roman Law (Delict)	4	4	3	5
Comparative Law of Contract	8	14	10	9
Crim. & Pen.	59	69	59	73
Public International Law	91	101	91	87
History of English Law	14	8	8	8
EC Law	83	121	98	119
Ethics*	16	16	16	18
International Trade	16	9	17	9
Trusts	253	267	262	254
Administrative Law	250	266	264	249
Family Law	85	63	71	57
Company Law	39	40	54	44
Labour Law	43	55	61	36
Criminal Law	11	14	8	8
Principles of Commercial Law	33	23	28	39
Constitutional Law	11	13	8	8
EC Social/Environmental Law.	64	54	74	61
EC Competition Law	119	126	110	95
Copyright & Moral Rights	54	70	62	81
Lawyers' Ethics	9	18	11	12
Historical Foundations of Unjust Enrichment**	0	0	0	1
Personal Property	7	6	7	6

* This paper is not marked by FHS examiners
** Historical Foundations of Unjust Enrichment was not available in 2002, 2003 and 2004

2. Numbers writing scripts in Diploma in Legal Studies

	2004		2004
Contract	16	Comparative Law of Contract	1
Tort	16	Commercial Law	1
PIL	7	Criminal	1
EC Law	5	Company Law	1
International Trade	2	Jurisprudence	1

3. MJur candidates taking FHS papers

	2004	2003	2002	2001
Jurisprudence	0	2	2	3
Contract	10	16	14	19
Tort	0	0	2	3
Land Law	0	0	0	1
Comparative Law of Contract	0	1	2	2
Public International Law	4	2	9	0
European Community Law	13	24	0	0
International Trade	4	3	3	1
Company Law	10	8	13	11
Principles of Commercial Law	1	0	6	3
Constitutional Law	0	0	1	3
Trusts	1	0	1	3
Administrative Law	1	1	0	1
Labour Law	0	1	1	1
History of English Law	0	0	1	1
Criminal Law	0	1	0	0
Ethics*	0	0	0	1

* This paper is not marked by FHS examiners

4. Percentage distribution of final marks by subject: FHS Courses 1 and 2

	75-79	71-74	70	68-69	65-67	60-64	58-59	50-57	48-49	40-47	39 or less	Nos. writing scripts
Jurisprudence		3	7	12	24	37	9	8				253
Contract		4	12	9	20	36	9	8				253
Tort		6	8	7	20	41	6	11		1		253
Land Law		4	13	11	23	32	6	10		1		249
Trusts		6	8	6	21	40	9	9	1	1		253
Admin. Law		4	19	10	32	30	3	2				250
Comparative Law				13	50	38						8
Crim. & Pen.		10	20	3	12	36	7	12				59
PIL	1	8	12	9	18	47	2	3				91
History of English Law		7	7		21	57	7					14
Ethics		6	6	6	19	38		19	6			16
International Trade			19	6	19	38	6			13		16
ECL		6	6	4	16	57	4	7	1			83
Family Law	4	11	15	16	12	29	5	8				85
Company Law		10	10	3	23	40	5	5		3		39
Labour Law		5	19	9	35	19	2	9	2			43
Criminal Law			18	18	27	18	9	9				11
Principles of Commercial Law		19	9	19	19	28	3	3				33
Constitutional Law			18		27	55						11
Roman Law (Delict)			25	25	25			25				4
Personal Property		29		14	29	29						7
Lawyers Ethics		22	22		11	44						9
EC Competition		8	15	11	17	41	8	1				119
EC Social/ Environmental		3	6	2	16	61	3	9				64
Copyright		6	9	26	17	37		6				54

D. Comments on papers and individual questions

These appear in Appendix 3

M. Bridge (External)
P.J. Clarke
J.M. Finnis
J. Hackney
L.C.H. Hoyano
A.S. Kennedy (Chair)
G. Lamond
E. McKendrick
J. Payne

Appendix 1: Report of External Examiner
Appendix 2: Notice to Candidates (Examiners' Edict)
Appendix 3: Reports on individual papers

APPENDIX 3

REPORTS ON INDIVIDUAL PAPERS

JURISPRUDENCE

This year's paper included the usual range of topics. The questions on the nature of law placed the focus clearly on issues rather than particular theorists, and provided students with an opportunity to explore the relative persuasiveness of different theoretical approaches to those issues.

The most popular questions were 7(a) (interpretive approach to law), 9(a) (obligation to obey the law) and 10 (moral limits of the law), but this popularity was not matched by quality. Too many of the answers to 7(a) showed a weak grasp of Dworkin's account of interpretation as a general theoretical approach: in particular, many mentioned the 'three stages' of interpretation without discussing in any depth the crucial second ('interpretative') stage. A closer acquaintance with the text of *Law's Empire* was required. The answers to 9(a) were by and large uninspiring, superficially dealing with a range of arguments for an obligation to obey, rather than focussing on whichever arguments the candidates believed held the most promise. Question 10 produced a range of answers on the enforcement of morality, but few on the set question of whether *offensive* conduct may justifiably be prohibited by the law. Even on their own terms those answers were often very weak, rarely progressing beyond the now quite dated Hart-Devlin debate into the territory opened up by writers such as Feinberg, Raz and Dworkin, and rarely citing any instances of conduct which might be controversial (e.g. hate speech, public nudity, etc).

Other questions which were popular were 3 (sanctions), 4 (sources), and 11 (punishment). Here there was more evidence of active engagement on the part of candidates, though too many attempted to answer question 3 by re-hashing Hart's critique of the command theory of law. The myth that Austin believed the typical *motive* for obedience to a sovereign was *fear* of the legal sanction was regularly endorsed. The answers to question 4 were generally better, though few candidates paused to explain exactly what they understood a 'source' to be. The answers to question 11 often displayed little acquaintance with contemporary 'retributive' approaches, such as those adopting an expressive or communicative justification for punishment.

Overall, the most common failing identified by the examiners was a lack of a good, concrete understanding of the theorists being discussed. Too often views were attributed to a theorist which were simply wrong (e.g. that *Natural Law and Natural Rights* supports a duty to obey *all* unjust laws) or that were left hopelessly vague (e.g. that law 'involved' rules, or was 'like' art). It is not so much that candidates were lacking in detailed knowledge: what they lacked was a basic, clear and accurate understanding of the views being discussed.

CONTRACT

There are few general observations to be made about the standard of the candidates' performance in the Contract examination. The standard of performance was generally very competent. There were some excellent scripts and a few very weak scripts. The

most striking weakness was the apparent inability of candidates to handle statutory material. This was particularly noticeable in the answers to questions 9, 11 and 12 but it was also apparent, albeit to a lesser extent, in the answers to question 2.

Question 1. This was a popular question and the answers were generally competent. The most noticeable weakness was the failure to distinguish between the current role of estoppel and the role that estoppel ought to play. Some candidates discussed one issue to the exclusion of the other, whereas the question required candidates to discuss both aspects. Another weakness was that some candidates spent too much time on a discussion of consideration and did not relate that discussion to the question asked.

Question 2. The answers to this question were mixed. Many candidates dealt with section 2 to the exclusion of sections 1 and 3. The question asked candidates to consider the Act as a whole and not simply section 2. There were, however, some good discussions of the various issues that arise under section 2 of the Act.

Question 3. A very popular question which produced some very good answers. The better answers engaged in the debate between the majority and the minority in *Shogun* and knew their way around the different speeches. But some candidates simply discussed the pre-*Shogun* cases (historically and rather tediously) and then the majority in *Shogun* and did not engage seriously with the issues raised by the case.

Question 4. This was not a popular question. While it produced some very good answers, it also produced some very weak ones. A number of students used this question as a peg on which to hang an essay on a topic that was not elsewhere on the paper (for example, the 'relationship between privity and consideration'). Candidates who did not attempt to relate their answer to the question did not score well.

Question 5. This question produced a number of very good answers. But it also produced some weak answers, particularly in the case of candidates who appeared to be unaware of the distinction between procedural and substantive fairness.

Question 6. Another popular question which produced some very good answers. The question asked whether specific performance **should** be the primary remedy for breach of contract, not whether it **is** the primary remedy. Some candidates did not always distinguish in their answers between the current state of the law and what it ought to be. This issue was not confined to this question but it did arise here in a more acute form. Some candidates also used this question as an excuse to write all they knew about the 'performance interest' debate in the law of damages. This debate is obviously connected to the debate about whether or not specific performance ought to be the primary remedy for breach, but some candidates failed to make the connection and simply served up their prepared essay on the performance interest in the law of contract.

Question 7. This was not a popular question and it produced very few answers, which were either very good and thoughtful or rather weak and thin. Hardly anyone handled the **written** contracts point well.

Question 8. This question was popular and generally well done. There were some very good discussions of consideration. A minority did not spot the intention to create legal relations issue and a larger number of students failed to spot the *White & Carter* issue in relation to the claim by Frances. Some candidates appeared to assume that a question

which required a substantial discussion of the law of consideration could not raise issues from another part of the syllabus. This 'tunnel vision' was disappointing.

Question 9. The answers to this question were rather mixed. While there were some very good answers, a number of candidates were unable to analyse the Contracts (Rights of Third Parties) Act 1999 in any detail. They were aware of the general thrust of the Act but were unable or unwilling to examine particular sections of the Act and to apply them to the facts of the case. There were some very good discussions of *Panatown* and the relationship between H's claim and J's claim but a surprising number of candidates appeared to be unaware of the issue.

Question 10. Once again the answers to this question were mixed. The principal problem with the answers was that many candidates failed to deal adequately with the penalty clause/liquidated damages clause. A number of candidates were vaguely aware of *Dunlop* but their knowledge of the law (such as it was) seemed to stop there. Some candidates failed to separate out the issue of late completion from the issue of defective performance. While there were some good discussions of *Ruxley* a number of candidates failed to consider whether this case was distinguishable from *Ruxley* (in particular, that the £7m and £250,000 were both costs of cure). Issues of mitigation and contributory negligence were missed by many candidates.

Question 11. This was a popular question. The question produced some good discussions of frustration and mistake. The question also produced some inordinately long discussions of the offer and acceptance rules with candidates often spotting only on page 2 or 3 of their answer that it made little difference to the outcome. The principal weakness in the answers was that most candidates assumed that Olive and Quentin wanted to prove frustration rather than breach. Candidates' knowledge of the Law Reform (Frustrated Contracts) Act 1943 was patchy. The last part of the question ('would it make any difference…?') was not well done. It was generally tagged on to the end of the answer and not given much by way of serious thought. A few candidates saw the incorporation issue but very few discussed the potential application of the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1999.

Question 12. This question was done badly. Far too many candidates assumed that the Unfair Contract Terms Act 1977 applied to the facts of the case without taking the time to identify the sections of the Act which were applicable. Thus candidates launched into a discussion of the reasonableness of the clause without identifying the section which led them to apply the reasonableness test or even the section which contained the reasonableness test. Some candidates simply assumed that section 2 of the Act was applicable without asking themselves whether it was negligence liability that was being limited on the facts of the case. Few if any candidates examined the wording of the limitation clause itself. There were numerous vague references along the lines that 'courts do not want to strike down clauses in contracts concluded between commercial parties'. But there was little or no case-law to back up the assertion. The battle of the forms issue fared rather better but not significantly so. Overall, the answers to this question were extremely disappointing. The apparent inability of candidates to analyse and apply an Act of Parliament is extremely worrying.

TORT

Overall, the standard this year was rather disappointing. There were a larger than usual number of lower second and third class papers, and many of the upper second papers were at the lower end. A number of papers contained two good essays, but then two very weak answers to problem questions, which pulled down the overall mark of the paper: this demonstrates the importance of candidates knowing enough areas of the syllabus in sufficient detail to identify all the issues in a problem question, and also to refer adequately to the specifically relevant law. Having said this, there were few problem answers this year which left out whole aspects of the problem. Answers to essay questions could generally have been improved by closer attention to the question asked.

Question 1: Not many candidates attempted this question. Most of those who did answered reasonably well, with good knowledge of the relevant literature.

Question 2: There were some good attempts to answer the specific question posed, although many candidates wrote a critique of the test for establishing a duty of care, rather than really considering the function of the concept.

Question 3: This was a very popular question and generally well answered. Most candidates knew *Transco* well, and most structured their essays effectively by considering the three points made by Lord Hoffmann in the quotation.

Question 4: This was extremely popular and generally well answered. Most candidates showed a good knowledge of the cases, and the problems involved in 'loss of a chance' reasoning. Many commented well on the inconsistencies in the present law, both in relation to economic loss, and in relation to the *McGhee/Fairchild/Barker* line of cases.

Question 5: There were some reasonable answers to this question, although many candidates interpreted it narrowly. Most focussed their analysis on contractual arrangements between the Claimant and Defendant, rather than considering protection by contracts with third parties, including insurance. Also, some concentrated their analysis on the *Hedley Byrne* line of cases without considering the defective property cases or the relational loss cases.

Question 6(a): Only a very few candidates answered this question. The answers were mixed: the very best included a detailed critique of *Reynolds* and an appreciation of the distinction between statements about the claimant's public and private life.

Question 6(b): Again, this question was attempted by very few candidates, but most of the answers were very good, showing a wide knowledge of the relevant case law and an appreciation of the difficult issues involved.

Question 7: There were, again, very few answers to this question. Some were very weak and did not really tackle the issues raised at all.

Question 8: Most candidates answered the psychiatric damage points well, although few considered who the claimants would be able to sue (A, B or C). Some weak candidates talked about Emma being a primary victim even though she was physically injured. The economic loss points were dealt with less well, with surprisingly little knowledge of *Murphy*. Many candidates discussed *Hedley Byrne* or *Smith v. Bush* but not *Murphy* when considering the liability of Colin. A number thought that the Defective Premises Act applied, even though the building was a shop, and surprisingly few considered the distinction between damage to the extension and to the shop itself.

Question 9: The standard of answers to this question was very mixed. A few candidates answered the question without mentioning the Consumer Protection Act at all! Those who did, often did not consider the question of defectiveness carefully. Some, pleasingly, considered whether information could be a product, and some argued that the text of the book was not defective when Tom supplied it to Rex (s.4 (1)(d)).

Question 10: This was the least popular problem question. Some candidates considered the issue of liability of the public body very well indeed, but overall the standard both of knowledge and discussion was weak. A pleasing number of candidates discussed public nuisance.

Question 11: This was generally well done. There was some good discussion of both liability and remedies in relation to the noise, and most candidates had a good grasp of the operation of the Occupiers Liability Act 1984. The discussion of Robyn's claim was mixed: there were some excellent analyses of *Lippiatt* and *Hussain,* but some candidates ignored the third party point altogether. The consideration of Sam and Tracy's claims was often very thin, though there was some good discussion of public nuisance in relation to Tracy.

Question 12: The treatment of personal injury damages in this question was generally disappointing, with many candidates demonstrating a very low level of knowledge. Many candidates thought that *Hotson* prevented Eric from recovering for his loss of a chance of winning the kick boxing championship, and even from recovering for the 40 per cent chance of paralysis, thus confusing quantification and liability. Most did not mention provisional damages. There was some reasonable discussion of vicarious liability and breach, but the discussion of illegality was generally disappointing, and, in some cases, non-existent.

LAND LAW

All of the candidates for this paper were FHS candidates. This was the final year in which adverse possession will be examined. The adverse possession question (Q8) was answered by very few candidates. Those that did answer it showed a solid knowledge of the issues, although the answers were not inspiring.

Although the general standard of work was pleasing, with many candidates demonstrating a good grasp of the general principles, there were a number of disappointing aspects to the scripts taken as a whole. Formalities for the creation of legal interests in land were largely overlooked: the requirement that leases (aside from s 54(2) LPA, which was not well and accurately dealt with even where it was noticed) and easements start with a deed was missed by more than half the people who answered the questions dealing with it. The detail of the Land Registration Act 2002 was also often lacking, with vague reference being made to a paragraph number in Sch 2 without any appreciation of the precise provision or a thorough application of the provision to the issue at hand. This was particularly disappointing since all candidates have the detail of the LRA 2002 in their statute books in the exam. Too many candidates failed to address the particular question set and more answers than usual tackled the generalities of the topic (estoppels, contractual licences, common intention constructive trusts) without sufficient (or, in some cases, any) reference to the particular question set.

It was also common for candidates to advance the views of just one or two writers on a topic without sufficient regard to other views on the topic, or indeed the injection of their own critical analysis. This kind of limited treatment of unclear or controversial issues is antithetical to the "deep, detailed and nuanced reflection and discussion" which examiners wish to see. It is perhaps not surprising, given these points, that the top end of the scripts this year was rather disappointing. Fewer first class scripts were in evidence and many of those that were seen were bare firsts. Although individual questions were often handled well, with detailed critical analysis and intelligent discussion of the issues, too often this was not sustained throughout the script.

The following comments about individual questions highlight some of the weaknesses which emerged on a significant scale.

Question 1 (land registration). No particular problems emerged although weaker candidates tended to concentrate on the first question (the extent to which actual knowledge of unregistered equitable interests is reflected in the registration system) at the expense of the second (should it be?).

Question 2 (s 116 LRA). This was a very popular question. Too many candidates turned it into a general essay on estoppel, regurgitating the academic debate on the proprietary effect of estoppels, rather than addressing the detail of s 116. Stronger candidates dealt directly with the "mere equity" point and also dealt with the question of how rights arising under s 116 can be protected within the registration system.

Question 3 (common intention constructive trusts). There were no particular difficulties here, although again weaker candidates just tended to write everything they knew on common intention constructive trusts without specific reference to the role of intention, as required by the question.

Question 4 (the distinction between legal and equitable rights). Very few candidates attempted this question.

Question 5 (freehold covenants). There were no particular difficulties with this question, although again weaker candidates restricted themselves to a discussion of whether positive freehold covenants did have proprietary effect and did not specifically address the policy arguments in favour and against proprietary effect.

Question 6 (TOLATA). There were no particular difficulties with this question.

Question 7 (contractual licences). This was a popular question but again weaker candidates tended to confine themselves to a description of the current law on this issue and were marked down accordingly.

Question 8 (adverse possession). Very few candidates answered this question. (Candidates should note that this will be the final year in which this topic will be examined).

Question 9* (leases and licences). The lease/licence distinction was on the whole dealt with competently. However the two other issues, that it is question of formalities and whether the lease (or licence) would bind the third party, were dealt with less well. Surprisingly few candidates even referred to s 54(2) and fewer still were able to deal with

it accurately. This lack of detailed knowledge is particularly disappointing given that candidates have statute books in the exam room.

Question 10* (easements etc). Some confusion continues to exist regarding the new rules for easements over registered land, and too few candidates seemed to recognise the need to discuss the formalities of creating easements. Most candidates recognised the fact that in addition to easements this question required a discussion of proprietary estoppel and most also discussed the possibility of these interests arising as contractual licences, and the consequences of that. Fewer spotted the possibility of a lease between A and B.

Question 11* (mortgagee's rights, beneficial owner's rights). Most candidates dealt adequately with the position of the mortgagee, although weaker candidates tried to squeeze the clogs and fetters material into their answer when this was not relevant on the facts. A surprising number of candidates did not deal adequately with K's position vis-a-vis the bank and the discussion of whether she had consented to the mortgage was often dealt with too briefly (or not at all).

Question 12* (severance and the rights of occupiers under LRA 2002). No particular difficulties emerged here, although some candidates omitted any discussion of TOLATA at the end of their answers.

ROMAN LAW (DELICT)

There were four candidates. One scored a first class mark; two upper second class; and one lower second class. All questions on the paper were answered except (perhaps surprisingly) question 8. Strong answers - and there were a good number of them - presented a detailed and critical discussion of the law relevant to the question: in the texts, demonstrating a knowledge of the context of the particular extract and drawing out the controversies about it; in the essays, focussing on the precise question asked, and presenting evidence from both the texts and the commentators to answer it. The strongest answers also looked outside the detail of Roman Law to compare relevant modern approaches. Weaker answers failed to address essay questions in sufficient breadth or depth; but, in particular, showed an inadequate understanding of the texts. Candidates should understand the importance of mastering the texts: an answer which gives the examiner the impression that the candidate is looking at the text on the paper for the first time can quickly lead to disaster. But an answer which tells the examiner that the candidate knows the text well and understands it and its context can raise the mark substantially.

COMPARATIVE LAW OF CONTRACT

There were 9 candidates for this paper. The general standard of the answers was very good, showing a good understanding of the law in both the systems studied and a willingness and ability to compare them. While, though, individual questions were assessed as first class, no papers were placed in the first class overall. There were answers to all ten of the questions set, with questions 4 (on impossibility); 5 (on *vices du consentement*); 8 (*la cause*) and 9 (contracts for the benefit of third parties) being particularly popular.

CRIMINAL JUSTICE AND PENOLOGY

The standard of answers this year was generally very good. The best candidates displayed the ability to think critically about the terms of the question, deployed coherent arguments and marshalled persuasive evidence in support of those arguments. Weak answers showed little knowledge of the relevant literature, failed to tackle the question directly, made too many generalised statements, and tended towards repetition and vagueness. Popular questions were those on incapacitation, the size of the prison population, police charging, sentencing discretion, and the punishment of youth offenders. There were relatively few takers for the questions on Packer's models, institutional sexism, reintegrative shaming, and the deterrent effectiveness of community penalties.

An example of a question where candidates tended to respond uncritically was: 'Is there a need for further measures to boost the confidence of ethnic minorities in the operation of the criminal justice system?' Weaker candidates took this as an invitation to present a descriptive account of racial discrimination within criminal justice. The best candidates paused to consider why boosting confidence might be important in this context, noting, for example, how the police and the courts rely on cooperation from the public (whether in the guise of witnesses, victims, or suspects), cooperation that is unlikely to be forthcoming if the system is perceived as lacking in fairness. They also analysed the measures already in place in an attempt to identify whether *further* measures were necessary.

PUBLIC INTERNATIONAL LAW

The standard this year was solid and was a marked improvement upon the standard achieved by candidates in the examination in 2003. 102 (FHS, DLS and MJur) students sat the paper this year of which 23 achieved 70% or higher, 73 achieved 60% or higher, and only 6 dipped below 60%.

Current events doubtless contributed to the choice of questions, with question 14 on the use of force by states against Iraq being the most popular closely followed, however, by the >classics= on the relationship between international law and municipal law (Q10) and the sources of international law (Q2). Unlike in previous years, more candidates tackled the questions on the law of the sea (Q5) and state responsibility (Q6a and Q6b). The other questions dealt with the nature of public international law (Q1), recognition (Q3), subjects of international law (Q4), jurisdiction and immunities (Q7, Q8, Q9), settlement of international disputes (Q11, Q12), and the law of treaties (Q13a and Q13b). There seems to be a marked divergence in performance according to the style of question selected with students, as a rule, having more difficulties with the problem questions. In general, candidates could have improved their performance by making more use of state practice and by integrating both state practice and case law better into their general argument.

HISTORY OF ENGLISH LAW

There was again a relatively small number of candidates - 14 – attempting the paper, so that few patterns can be identified. The scripts were on the whole competent, with the large majority in the 2.1 range. The range of questions attempted was wide, with only Question 14 (trover and conversion, or alternatively nuisance) attracting no attempts at all. The majority of candidates showed sound competence across the range of questions they attempted, though a common weakness was lack of depth in the use of primary source material.

EUROPEAN COMMUNITY LAW

In an ideal world, one would be able to report that candidates had taken on board the criticisms from last year, resulting in a marked improvement. In a world of imperfections, it is pleasing to note that more candidates appear to have read more widely than the material found in that most prevalent of text books, with pleasing references to secondary literature and even mention of arguments of Advocate Generals. However, candidates were still content to focus on more predictable questions. The biggest disappointment was that very few, even of the very good candidates, were capable of answering the specific question asked. It is to be hoped that tutors and lecturers would continue to emphasise the importance of reading the examination question set carefully and being prepared to think in the examination, as opposed to merely reproducing essays on the same subject matter of the question that had gained tutorial success. Moreover, there were some areas in which candidates still appeared to live in ignorance of, or be incapable of using in a creative manner, some of the more recent seminal cases in the substantive areas covered by the syllabus. This is particularly true of the law relating to freedom of establishment which most candidates would appear to regard as 'an optional extra' as opposed to a fully established component of the syllabus. As a direct result of particularly the first of these two main weaknesses, there were still very few outstanding scripts; though, pleasingly, more Firsts were awarded and the general standard of scripts was higher than last year.

Q.1 – The question attracted too many answers discussing subsidiarity in general without relating this to the relationship between national courts and the European Court of Justice (interpreted as encompassing the Court of First Instance). The more creative candidates attempted to use the standard case law concerning subsidiarity as an example of action of the European Court of Justice and hence, mistakenly, as being indicative of the relationship between the national courts and the European Court of Justice. First class answers were able to analyse the different legal and political meanings of subsidiarity, examining how the allocation of power between the national courts and the European Court of Justice exemplified, or not, these different interpretations of subsidiarity, drawing upon cases examining the operation of article 234, direct effect, supremacy and the principle of national procedural autonomy.

Q.2 – The most popular and predictable question on the paper. It was pleasing to note a much greater awareness of the specific arguments of Jacobs AG. This attracted many standard answers. The better candidates were able to couple this awareness with a deeper understanding of the theoretical and political underpinnings of the scope of individual concern, as well as an ability to produce arguments based upon as opposed to merely citing the provisions of Article III-270(4) of the Draft Constitution.

Q.3 – The question was designed to stimulate a close comparative analysis between alternative modes of protecting human rights by Community law – through accession to the ECHR or by giving the Charter legal force. Too many answers focused on describing these two provisions, or discussing whether either would improve the protection of human rights, without specifically analysing the strengths and weaknesses of these different methods of protection. First class answers were more capable of discussing the type of protection needed at Community law, focusing more clearly upon the ability of either the ECHR or the Charter to achieve this goal.

Q.4 - A large proportion of candidates answered this question merely by critically analysing *Francovich* itself, most notably citing the criticisms of Harlow. There was also a distressing lack of awareness of *Köbler*, despite a quote from the case appearing in a later question. Better candidates were able to give a more detailed analysis of recent developments, analysing the shift in the scope of state liability, its justification and questioning its impact upon national procedural autonomy.

Q.5 – This question was, on the whole, very poorly done. Too many candidates appeared to believe that *Cassis de Dijon* and *Keck* were the only two cases relating to articles 28-30! Most candidates appeared to read the question as "Write everything you know about articles 28-30" as opposed to realising that they were required to critically assess whether the right balance had been drawn between the protection of consumers and the free movement of goods. Although some candidates were aware of the conflicting needs of consumer protection, very few were able to draw upon examples from the case law, or discuss the advantages and disadvantages of labelling in anything other than a superficial manner.

Q.6 – There was a large proportion of poor answers to the question, where candidates discussed direct effect and supremacy, without explaining the relationship to each other or to the issues raised by the quotation. The better candidates were able to explain the relationship between direct effect and supremacy, putting their arguments within the specific context of the quotation and the *Köbler* decision.

Q.7 – Candidates appeared to be reluctant to analyse the common and disparate principles found in the law relating to the fundamental freedoms, preferring instead to merely provide a general outline of the law, or to explain how all of the fundamental freedoms applied to indistinctly applicable rules, although not precisely in the same manner. Better candidates were able to provide a more in-depth analysis, questioning whether the fundamental freedoms were based upon a concern for the achievement of an internal market or for relieving discrimination, analysing *Keck* and its application to determine whether it is a disguised market access test and assessing whether the law should treat the movement of people or commodities in a different fashion.

Q.8(a) – This was the least popular question, attracting only a few mostly weak answers, with better candidates able to recognise the different models of the separation of powers that the Community may be said to adhere to.

Q.8(b) – Although the question attracted a reasonable number of answers, many candidates read the question as an opportunity to reproduce their essays on citizenship, without explaining how, or indeed if, citizenship could be said to have been designed to remedy the democratic deficit. Better candidates were able to assess the nature of the democratic deficit in order to assess whether citizenship was designed to and was capable of plugging the perceived gap.

Q.9 – The first half of the problem question required a straightforward analysis of the ways in which individuals can rely upon European Community law in their national courts, examining the conditions of and relationship between direct effect, indirect effect and state liability. Despite this, many candidates appeared to be unable to go beyond citing the relevant law, with very little attempt being made to explain the practical problems, apply information in the problem question or even assess the best course of action. One candidate shocked the examiners by appearing to be in ignorance of the existence of direct effect, vertical or otherwise, for directives. The second part of the question required a

detailed analysis of *Unilever* - recognising the different context and the novel suggestion that it could be used to annul a provision of and not an entire piece of legislation. Very few candidates appeared to go beyond merely citing the case, with many ignoring its existence altogether and merely discussing the standard problems of using state liability to remedy misimplementation of a directive, without recognising the considerable difficulties of classifying the factual scenario as misimplementation.

Q.10 – Again, the problem was designed to raise standard issues found in the free movement of workers – entry to seek work, entitlement to social advantages, the article 39(4) exception – with the more controversial issue of the treatment by Community law of those in same-sex relationships. The examiners had hoped that this would prompt engaging and creative discussion of recent developments of the use by the ECJ of article 8 ECHR and, perhaps, citizenship. Far too many candidates ignored this thorny issue, thereby missing an opportunity to enter into the debate needed to elevate their answers in to the dizzy heights of a high 2(i) or First.

INTERNATIONAL TRADE

There were 22 (FHS, DLS and MJur) candidates for this paper. Only three marks of 70+ were awarded and there were two third class marks. Overall, the standard was only reasonable, but this was in line with the expectations of the teaching group based on the seminars and tutorials for this cohort of students.

The problem questions proved to be more popular than the essays; many candidates answered three problems and one essay. Of the problems, question 6 proved most popular. The principal issue was the passing of property in bulk goods and the operation of section 20A of the SGA 1979. On the whole, it was handled well. The same could not be said of the other popular problem, question 7. It was a little alarming how many candidates either failed to see the relevance of such a leading case as *Kwei Tek Chao*, or, perhaps worse, could see its relevance but simply misunderstood what the case actually decides.

There was a fairly even take-up of the essay questions. The question which asked for critical assessment of two of three decided cases (question 4) tended to attract reasonable descriptions of the cases, but no real critical analysis. It was a weakness of the answers to question 5 that few candidates explained the different contexts in which it may matter what type of fob contract the parties may have entered.

TRUSTS

The Trusts paper contained fifteen questions, one of which offered an alternative and four of which were problems. It was divided into parts A and B containing six and nine questions respectively.

The most popular questions were 3 (an essay concerning the significance of presumptions in our understanding of resulting trusts), 8 (an essay on the basis for the enforcement of secret and half secret trusts), 10 (an essay on whether *Quistclose* trusts involve any departure from well-settled principles of trust law), 5 (a problem concerning the funds of an unincorporated association), 6 (a certainties problem), and 14 (a charities problem). The quality of answers to each of these questions was generally high, and there were very

few genuinely poor answers. That said, candidates were a little prone in these well-prepared areas to pay too little attention to the precise terms of the question. A greater willingness to do so could have made many adequate answers from knowledgeable candidates very much better. So, for example, answers to question 3 often ranged more widely than the question required. A precise analysis of the directly relevant case law and those parts of the recent academic debate relevant to the question of the operation of presumptions led to more impressive answers. A number of candidates who answered question 8 dealt well with the full complexity of the issues involved, although some thought only that such trusts "ought" or "ought not" to be enforced, without offering convincing reasons for why they thought so. The best candidates attempting question 10 were aware that Lord Millett has contributed to our understanding of *Quistclose* trusts not only through his speech in *Twinsectra*, and were able to consider his analysis alongside those offered or prompted by Professor Birks.

Two of the three popular problems (question 6, certainties; and 14, charities) were on the whole answered more convincingly than the other (question 5, unincorporated associations), where too many candidates reached for what they perceived to be the 'fair' answer on a dissolution without adequate reference to the conflicts in the authorities. The fourth problem (question 15) was a little more factually complicated (which may have discouraged some candidates from attempting it), but those who did so showed considerable skill in untangling the issues of principal and accessory liability for breach of trust, and of the tracing of assets, raised by it.

Of the remaining essays, questions 2 (on whether equity ought to assist volunteers where it would be inequitable not to do so), 4 (on the possible policy considerations underlying, and the possible need for reform of, section 53 of the Law of Property Act 1925), and 12 (on the relationship, if any, between liability for 'knowing receipt' and 'dishonest assistance') were frequently answered; but question 1 (on whether the rights of beneficiaries ought to be classified as rights *in rem*, *in personam*, or in some other way altogether), question 7 (offering alternatives (a) as to whether the operation of exemption clauses requires reform, and (b) on the circumstances in which a beneficiary ought to have access to trust documents), question 9 (on the range of circumstances in which constructive trusts arise), question 11 (on the relevance of a settlor's intentions to the variation of trusts under the Variation of Trust Act 1958), and question 13 (on the limits of the conflicts rule) rather less so. This will be the last year that a question on the Variation of Trusts Act appears on the paper, and it is proper to note its passing here - if only as a further warning to next year's candidates that the subject is no longer part of the syllabus. Of the other less popular questions, question 1 was more often the resort of the desperate than it was an opportunity for seriously careful thought. Why accessory liability, access to trust documents, constructive trusts, the conflicts rule, and the recent Law Commission Consultation Paper on exemption clauses attracted less interest is perhaps less obvious, although it may be that these interesting and important areas are perceived as being at the more difficult end of the spectrum of the syllabus. As has been noted in Trusts Examiners' reports before, question 4, although attempted quite frequently, was done well only by those prepared to discuss the leading cases, and appallingly by those who sought to answer it without doing so. Similarly the stronger answers to question 2 were those which sought to come to grips with the implications of *Pennington v Waine*.

Looked at in the round, it is still noticeable that the majority of candidates stick to the familiar ground of certainty requirements, unincorporated associations, formalities, charities and secret trusts, but there were also many very strong answers to the questions dealing with resulting trusts, the *Quistclose* trust and accessory liability. No examiner can

hope that each question will be equally popular, and there would seem in this subject to be a pretty healthy mix of interest in the more traditional - one might say 'chancery' - corners of the syllabus and in its more contemporary - one might say 'commercial' - reaches. There were certainly some very able candidates perfectly at home in both worlds, and confident to apply logic from one to the other, whilst being careful of the appropriate limits in doing so.

ADMINISTRATIVE LAW

Overall the administrative law paper well handled by candidates with the large majority obtaining a 2:1.

Question 1 – Not many candidates were able to get to grips with the concept of the rule of law in this context. Most answered by repeating the ultra vires debate with thin reference to the rule of law. Those who scored well on this question were those who engaged fully with the notion of the rule of law.

Question 2 (a) – This question was generally answered well. Candidates scored well where they critically examined the law/fact distinction.

Question 2(b) – Few candidates demonstrated a sound understanding of the case law on ouster clauses. Even fewer were successful in critically examining the constitutional issues surrounding this issue.

Question 3 - Candidates who scored well on this answer were able to demonstrate a full knowledge of the recent case law regarding judicial deference under the HRA as well as a fine tuned appreciation of the constitutional issues surrounding this question. Few candidates displayed a proper appreciation of the use of deference in the context of applying the proportionality test.

Question 4 – Good answers were able to highlight, in addition to a sound knowledge of the case law, the opposing interests of the individual and State in this context. Many answers simply ignored the issue of ultra vires representations and replicated their tutorial essays on legitimate expectations.

Question 5 (a) – Candidates needed to go beyond their stock tutorial essay on the Ombudsman. But aside from brief references to the question asked, few were able to engage properly with the question, and even fewer with the question of which standard of review ought to be applied.

Question 5 (b) – Very few candidates chose this question. Those who did answer this question, found it difficult to answer well, or to resist falling back on their prepared essays on the tribunal system.

Question 6 - In order to answer this question well candidates required a broad knowledge of the case law concerning natural justice and a capacity to deploy this knowledge in a broader theoretical framework. Most answers however, tended to focus on the case law without a clear overarching framework for their answer.

Question 7 - Generally the first part of this question was well answered although candidates struggled to provide an answer to the second part of the question.

Question 8 - Unless candidates were familiar with the recent case law regarding the meaning of public authority under the HRA they were unlikely to be able to provide a sound answer to this question. Few were therefore successful in scoring well here. Most fell back on the general public/private divide debate without considering the detail of more recent HRA cases.

Question 9 (a) - Generally candidates demonstrated a sound knowledge of the case law here, although some answers were rather narrow in their understanding of the tortious liability of public authorities.

Question 9(b) - No candidates attempted this question.

Question 10 - A broad question, but a candidate would not score higher than a low 2.1 if they simply embarked on a general constitutional discussion of the implications of the HRA. Excellent answers picked up on the specific impact of the HRA on administrative law doctrine.

FAMILY LAW

The questions in the paper this year had a strong policy orientation, asking quite wide questions, which required considerable skill in answering sharply and substantiating arguments with supporting evidence. Some candidates found this hard, but very many rose to the challenge extremely well, showing that they had indeed thought deeply about the issues, and could argue a case very persuasively. The answers tended to be unusually long, but also often enjoyable to read. The overall standard was high.

Question 1 asked whether English family law was unfair to men. This was actually rather less well done, many candidates unfortunately restricted themselves to a standard account of parental responsibility, some not even noting the current battleground over contact. On the whole the view was that while the law might often seem to be unfair to men, in fact there were good reasons for the distinctions which were made.

Question 2 asked about rights to know about genetic links. While there was very little reference to s 55A of the Family Law Act 1986, there was a good deal of informed discussion about the cases (including those dealing with human rights), and of the literature. Many candidates intelligently analysed the use of rights-talk in the context.

Question 3, on whether parenthood should ever be "attributed" on the basis of intention was extremely popular. There were many excellent answers, showing a good deal of thoughtful knowledge of the legal provisions. Weaker candidates spoke more of occasions (like adoption) where intention was a motive for acquiring parenthood, but not the basis of its attribution.

Question 4. Very few chose the option on shared parenthood, but very many tackled the one on whether the child's welfare should be paramount. Again, there were many intelligent answers, showing good knowledge of the case law and the literature. On the whole, the welfare principle received strong support.

Question 5, asking an assessment of the ECHR to English family law, was surprisingly unpopular: only 5 takers, one excellent, the others weak.

Question 6(a) on whether any risks to children under child protection law were acceptable was very popular, and often well done. Better candidates placed the law within the wider context of state intervention, but needed to produce good analysis of the leading cases to do very well. This was less often forthcoming, and candidates should have been more familiar with Lord Nicholls' judgment in *O & N*. The second option, on the historical position, was chosen only twice.

Question 7 on divorce reform was as popular as might be expected, and usually very competently done. Weaknesses included lack of appreciation of how the present system works in practice, and (quite frequently) misunderstandings about the pilots for the 1996 reform. Many candidates seemed to think that the reform was actually fully implemented for a trial period.

Question 8, asking whether marriage was under threat, was popular, and thoughtfully answered. Most saw any threats as coming from social factors, not legal change, and many considered the Gender Recognition Bill and Civil Partnership Bill as actually supportive of marriage.

Question 9 on the judicial role in financial provision was extremely popular, and candidates showed a pleasing desire to focus on the issue of whether recent developments demonstrated judges exceeded their proper function. This was rarely thought to be the case. There might have been more focus on whether we are moving to some kind of community regime, but candidates did not seem to think this was actually an issue.

Question 10 on whether opposite-sex couples should be able to enter civil partnerships was also popular, and sensibly answered. Opinion seemed split on the issue.

Question 11 on domestic violence was also widely tackled, and generally well done, candidates showing good knowledge not only of the civil law but also the problems confronting the criminal law in this area.

Question 12, asking whether the law sufficiently respected children, was quite often treated just as a question on children rights, but sometimes a more nuanced approach was adopted. Again, there were many very high quality answers.

COMPANY LAW

There were 50 candidates in all for this paper comprising 10 Mjur, 1 DLS and 39 FHS candidates. Overall the standard of the paper was high, the candidates have a solid grasp of the basic principles of company law and where relevant they addressed policy issues. All the questions except one had takers. The most popular question being number 11. Question 8, a question on corporate capital, had no takers. This reflects the continued unpopularity of the finance issues in company law. Company law at Oxford is a course which involves ultra vires contracts, minority oppression and breach of duty by directors. This is a very warped focus.

a) The most popular question was question 11, which deals with directors' duties and the jurisdiction of the shareholders to ratify breach of such duty. The answers were strong. However, answers to 11(b) (dealing with director's negligence) failed,

somewhat surprisingly, on a number of occasions, to deal with *Pavlides v Jenson* and *Daniels v Daniels*.

b) A number of candidates attempted the other corporate capital question, question 2, and the answers to this were normally very good and candidates can distinguish between a company parting with its assets and a company transmuting its assets, for example cash, into a loan.

c) Little comment is needed on the other questions:

(i) Question 3 was misinterpreted by 2 students who concentrated on directors' duties to individual shareholders and failed to address the issue of duties to creditors or other possible stakeholders. Students should be advised that in answering questions like 2, creditor interests must be taken into consideration.

(ii) Question 4, on reflective loss, was very well done indeed and this obviously is becoming a central issue in company law dealing with the nature of shareholder rights.

(iii) Question 5 (limited liability) was competently handled although the relevance of s.214 of the Companies Act could have been addressed more fully.

(iv) Question 6. This was very popular and well done. The students have obviously grasped the implications of Arden LJ's judgment for the derivative action in *Clark v Cutland*.

(v) Question 7. Many of the answers rightly identified the importance of *Gambotto* but the student's grasp of the case was not always secure.

(vi) Question 9 was competently done but not all students picked up the significance of Mary's initial position that she wanted to make her investment in the form of a loan rather than shares. This clearly indicated that she wanted a return on her investment.

(vii) Question 12 was only attempted by 3 candidates and I suspect that this is because they were frightened away by the fact that it appeared to deal with shares, although the primary focus of the question was alteration of shareholder rights.

LABOUR LAW

With a rather smaller pool of candidates than in the previous year, the standard of performance was generally high; the number of first class and high upper second class scripts was pleasing. However, there was a small group of seriously weak scripts, where one felt that the candidates had seriously under-estimated the demands of the course, perhaps over-encouraged by the apparent sufficiency of the co-ordinated programme of lectures, seminars and tutorials.

The spread of answers across the questions was satisfactory.

Question 1 (policy and legislation since 1997)
This was a very popular question. There were widespread deficiencies with regard to the narrative of developments in the period 1980 to 1997, often manifesting themselves in the misconception that the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Rights Act 1996 were programmatic pieces of legislation, rather than mere consolidations as the title of the former declares. Weaker candidates were unable to give a detailed account of post-1997 legislation.

Question 2 (EU institutions)
This question was answered by a relatively small number of candidates but those who did tackle it wrote interesting and well-informed answers.

Question 3 (types of discrimination)
This was a popular question and generally well-answered. The best answers considered the advantages and disadvantages of a single anti-discrimination statute. As in previous years, many candidates either ignored or had only a limited knowledge of the Disability Discrimination Act 1995.

Question 4 (equal pay)
Most candidates answered this question in an interesting way, focusing on the role of market forces as a defence to an equal pay claim. However, some were unable to discuss the relevant cases in sufficient detail.

Question 5 (worker)
This was a popular question but, as in previous years, many candidates spent too long discussing the concept of 'employee' when 'worker' was the focus of the question. Even good candidates were unable to give a full critique of the concept of 'worker', for example, by examining the courts' continued insistence on the need for 'mutuality of obligation'.

Question 6 (agency workers)
This question attracted a limited number of answers but those candidates who did tackle it wrote thoughtful and knowledgeable answers.

Question 7 (working time and pay)
This was a popular question but many candidates ignored the focus on definitional problems, preferring instead to write a general critique of all aspects of the legislation. It was clear that weaker candidates were simply regurgitating a prepared answer.

Question 8 (trust and confidence)
This question attracted many candidates. Most had a good knowledge of the key decision in *Johnston v Unisys*. However, there was some lack of clear understanding of the relationship between the common law of wrongful dismissal and the statute law of unfair dismissal, and misconception about the role of the law of constructive dismissal (perhaps now likely to be more carefully studied following the subsequent decisions of the House of Lords in this area).

Question 9 (redundancy)
This question attracted few answers but those candidates who did choose it tackled it competently.

Question 10 (consultation)
This was a popular question and was generally well-answered. However, many candidates assumed that the statutory recognition procedure was now the only route for a trade union to achieve recognition, ignoring the possibility of voluntary recognition entirely. Weaker candidates also tended to be vague about the various pieces of legislation on consultation and the differences between them.

Question 11 (discipline/expulsion)
This question was very well answered by some candidates who were able to draw on International Labour Organisation standards as the basis for their critique. Weaker candidates tended to focus on the 'right not to strike' rather than looking at the legislation in the round.

Question 12 (industrial action)
This question attracted few answers and some were weakened by idiosyncratic interpretations of the Rule of Law. The best candidates drew on key elements of Raz's definition (predictability, clarity and so on) to produce very thoughtful answers.

CRIMINAL LAW

There were 12 (FHS and DLS) candidates this year. The standard of answers was generally reasonable, although there were very few that were of first class. Many candidates appeared happy to understand the leading cases and principles, but not consider in detail the deeper theoretical issues offered by he subject. It may be that finalists studying criminal law are deceived into thinking the subject is straightforward simply because many of the cases are easily understood.

Comments on particular questions are as follows:

1. (Causation). This was not at all a popular question.

2. (Recklessness). Many candidates effectively discussed R v G. None unfortunately also considered how the rules on intoxication mean that a drunken defendant who did not foresee a result can still be taken to be reckless.

3. (Property Offences). Very few candidates attempted this question.

4. (Rape). This was a popular essay. Most accurately described the new law, but few undertook a consideration of the theoretical issues behind the reforms.

5. (Mistakes in Defences). The few who answered this question did so very well.

6. (Murder) This was a popular problem question. The causation issues raised by the weeds were generally ignored, but the intent issues were tackled well.

7. (Accessories). This was not a popular question.

8. (Property Offences). This was generally well done. Many missed the issue whether a kiss could be regarded as payment for the mending of the car when discussing the section 1 Theft Act 1978 offence.

9. (Defences). This was reasonably well done. The necessity issue threw some candidates and some appeared to ignore any issues relating to defences.

10. (Inchoate Offences). Hardly anyone attempted this difficult question

PRINCIPLES OF COMMERCIAL LAW

The general standard of the scripts was pleasingly high. Of the 34 (FHS and DLS) candidates, there were 9 with a first, 23 with a 2.1 and only two with a 2.2.

Of the essay questions, the most popular were question 1 on the Law Commission's provisional proposals on the reform of personal property security and question 4 on the difference between fixed and floating charges. The next most popular was question 5 but many candidates were here marked down for construing the question as simply requiring answers on the nemo dat rule and its exceptions. The question was essentially not on that topic but rather on implied terms, and whether they can be excluded, in contracts for the sale of goods. Question 3 on the function of a bill of lading, especially as a document of title to goods, and question 2 on assignment attracted barely any answers.

Of the problem questions, those on the passing of property in goods in bulk (question 6) and on priority (question 9) were the most popular and were, in general, well answered. Only a few candidates missed some of the subtleties in question 6; and in question 9 the examiners were pleased to see that most candidates were able to spot the probable circularity issue and also to understand where ring-fencing under the Enterprise Act 2002 came into play. Question 7 on bills of exchange was surprisingly popular although the quality of answers was mixed. Common faults were in failing to rely on s 29(3) of the Bills of Exchange Act 1882 and in failing to explain clearly why a particular party might be sued or wish to sue. In question 8, which was also popular, the nemo dat aspects were dealt with well; in contrast, the analysis of the relevant implied terms was often disappointing. Question 10 on agency attracted only a couple of rather weak answers.

CONSTITUTIONAL LAW

11 candidates took the paper. Their work was uniformly competent, but first-class marks were rare. Students sitting constitutional law in Finals have the opportunity to do some mature and creative work on some fundamental issues, and they would be well advised to seize it. This year's scripts did not take advantage of the work that some candidates will have done in EC Law, that most will have done in Administrative Law, and that all will have done in Jurisprudence (for example, the occasional rather casual use of material from the jurisprudence course did not display the care or seriousness that would be expected in the Jurisprudence paper).

EUROPEAN COMMUNITY SOCIAL, ENVIRONEMENTAL AND CONSUMER LAW

Q1 was popular and most candidates competently traced the history of the rise of the sector-specific competences and their impact on the law and politics of harmonisation. Most understood *Tobacco Advertising* (C-376/98) and *ex parte BAT* (C-491/01); the stronger candidates tended to be marked by a clear understanding that the Court's task is

thankless, given the incremental, ill-considered patterns of Treaty revision over time and the awkward reality of legislative functional creep. Being unable to spell "separate" is poor, and not readily forgiven when the word appears in the question, where it is correctly spelled.

In answering Q2 most students realised they needed to define legitimacy, and most did so reasonably successfully. The political context within which the subsidiarity principle operates was generally well understood and, gratifyingly, most candidates who answered this question understood why the Court did not consider subsidiarity in *Tobacco Advertising*. But few were aware of the relevance on this point of the ruling in *ex parte BAT*.

Relatively few candidates chose Q3 but several who did wrote very good answers linking the environment-specific debate with broader questions about governance in the EU.

Most candidates wrote answers to Q4. Most understood the relevant case law perfectly well. Stronger answers discussed the inadequacies of information provision as a technique of consumer protection, and connected this with the priorities revealed by examination of the case law. Stronger answers were also commonly marked by a readiness to consider just why the Court – and the EC more generally - should be competent to question product-related measures introduced by elected governments in the Member States.

Q5 and Q6a were unpopular, but Q6b attracted largely good answers showing familiarity with the case law, with the stronger scripts reflecting more generally on the nature of discretion allowed to implementing authorities by EC Directives and the very best adding in concern for legitimacy and governance in this context.

The candidates generally rose to the challenge set by most of the questions of the paper of drawing on both consumer policy and environmental policy, and the large majority of the scripts was encouragingly well-informed and thoughtful, with the very best typically marked by a questioning attitude to just *why* the EC has a policy on consumer and environmental protection and how this connects with the quest to improve the EU's legitimacy as perceived by the citizen (though, it should be added, setting the law in this broader context is not at all a pre-requisite to doing very well on this paper).

EUROPEAN COMMUNITY COMPETITION LAW

The examination was taken by 119 candidates. On the whole, the scripts showed a good command of the subject and good analytical skills. This is well reflected in the high percentage of first class results. The paper comprised six questions, two of which were problem based. The first question in the exam provided a choice between two sub questions; (i) state aids, and (ii) mergers and acquisitions. The subject of state aids was included in this year's exam to cater for students who attended the course in previous years and studied this topic, but sat the examination this year (the subject is no longer taught in the course and has been replaced with mergers and acquisitions). None of the students attempted the question on state aids. All the other questions were attempted by students, the most popular being the essay question on the modernisation of EC competition law and the problem question on Article 82.

INTRODUCTION TO THE LAW OF COPYRIGHT AND MORAL RIGHTS

On the whole this paper was well done. The most popular questions by far were those concerning economic theory and moral rights. The standard of answers to the moral rights question was high, but the economic theory question was less well done. Many students used this as an opportunity to reproduce their notes from the first seminar, rather than engaging with the question asked. In particular, only the better answers attempted to reinforce the claims that they made about the economic justification of copyright with any reference to the current state of the law. However, overall, the examiners were impressed by how sophisticated an understanding of the law of copyright and moral rights the students seem to have acquired in just four seminars of teaching.

LAWYERS' ETHICS

9 candidates took this paper and the overall standard was similar to recent years with some papers of very high quality indeed. Those who did less well tended to offer two answers of uneven length and quality which is surprising given the generous time allowance for this paper and the limited range of topics. Despite the small number of candidate, all essay questions were attempted. A few candidates narrowly avoided a lower second class mark. Conflict of Interest and Confidentiality remain the two most popular topics. Most candidates took proper account of recent developments relating to money laundering and were well-informed and prepared to look at the issues from a range of theoretical and critical perspectives. Not all who ought to have taken it into account deployed Rosalind Hursthouse's article "Normative Virtue Ethics" but those who did produced excellent answers. Once again, no candidate attempted the one problem question and it may be appropriate to replace it with an essay question in future.

PERSONAL PROPERTY

There were too few candidates sitting this subject to be able to draw any sensible conclusions