

FHS JURISPRUDENCE
DIPLOMA IN LEGAL STUDIES
(MAGISTER JURIS)

Examiners' Report 2005

PART ONE

A. Statistics

1. Numbers and percentages in each class/category

The number of candidates taking the examinations were as follows:

	2005	2004	2003	2002
FHS Course 1	241	224	244	236
FHS Course 2	30	29	23	28
Diploma	15	17	19	13
Magister Juris	48	44	58	39

Classifications: FHS Course 1 and 2 combined

Class	2005		2004		2003		2002	
	No	%	No	%	No	%	No	%
I	29	10.70	28	11.07	38	14.23	38	14.39
II.i	219	80.81	208	82.21	216	80.9	210	79.55
II.ii	18	6.64	17	6.72	13	4.87	11	4.17
III	3	1.11	0		0		3	1.14
Pass	1	0.37	0		0		2	0.76
Fail	1	0.37	0		0		0	
Aegrotat	0	0	0		0		0	
Totals	271		253		267		264	

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

Class	2005		2004		2003		2002	
	No	%	No	%	No	%	No	%
I	8	26.67	5	17.24	7	30.43	14	50
II.i	21	70	24	82.76	16	69.57	14	50
II.ii	1	3.33	0		0		0	
Totals	30		29		23		28	

Results: Diploma in Legal Studies

All 15 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. 851 out of 2,484 (2,439 FHS plus 35 DLS) scripts (34.3%) were in fact second marked. This total compares with 34.3% in 2004 and 30.8% in 2003. Third marking was used in exceptional cases (eg medical cases) and 4 FHS scripts were read a third time. Further details are given in Part Two (A.2.).

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 2004 and 2003. Second marking of all scripts with marks ending in 9 (except those included in the random sample of scripts second marked to ensure uniform standards of marking) was delayed, as in 2004, until the period between first and second marks meetings. They were therefore all marked as borderline in the sense that the markers treated them as likely to affect the candidate's overall classification if the mark were raised and there is a tendency amongst markers to be generous at that stage. Third marking was confined to scripts which had been second marked as part of the sampling process.

The procedures for ensuring the accurate marking of scripts took the same two forms as in the last two years. 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. 326 FHS and DLS scripts (13.12%) (272 (11.7%) in 2004; 269 (11%) in 2003) were second marked on this basis.

As in previous years, all scripts with marks of 39, 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. 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. These procedures worked very smoothly except in two large subjects.

In one large subject a marker had to withdraw due to illness and a fifth marker was added to the team to complete the first marking. Second marking of the scripts was spread amongst the three original members but the second marker could not contact the withdrawn first marker in order to agree the marks, so two sets of marks were returned for 9 candidates. In all these cases the examiners were able to allocate an appropriate overall script mark. (See also Part Two (A.3.)).

In the other large subject a marker was not able to produce their first marks in time for the marks to be included in the team's statistical survey of marks and distribution of classes, which under the procedures takes place approximately half way through the first marking process. The team was thus not able to check during first marking whether all members of the team were applying similar marking standards. When the marker was able to produce the information, it was clear that their marking profile was out of line with the profiles of other members of the team, but it was too late for remedial action to be taken before the deadline for return of first marks to the faculty office. Instead, the team checked the marking standards applied by sampling of scripts with first marks ending in 8 or 7. The differences between the two sets of marks returned for those scripts were minimal, and, where the marks were not agreed (11 cases) the examiners were able to allocate an appropriate overall script mark (see also Part Two (A.3.)). As an additional safeguard to ensure accurate overall classification of candidates, between the first and second marks meetings of the examiners all borderline scripts (with first marks ending in 9 or with first marks ending in 8 or 7 where the mark, if raised, might affect the candidate's overall classification) were second marked by the members of the team with reliable first marking profiles. Any script where the first mark was out-of-line with the candidate's other marks was also second marked (see Part One (B) and Part Two (A.1.(ii))).

2. The examiners applied the classification and results conventions as previously agreed by the Examinations Committee and notified to candidates. Unlike the experience last year, it was apparent in the two marks meetings of the examiners that the number of candidates in class I, having achieved 5 marks of 70 or above, was likely to be in line with the number placed in class I in 2004. However, the examiners did review the marks profiles of all candidates who achieved 4 marks of 70 or above and considered whether any of them should be placed in class I. Only one such candidate had supporting marks of at least one 69 and one 68, and this candidate was placed in class I.
3. The classification convention for class III reads: "9 marks of 40 or above are needed, although a candidate may exceptionally be allowed one mark below 40." The examiners read this to mean that the policy of the Law Faculty is that, only in exceptional circumstances, should a candidate with a mark below 40 be permitted

to achieve an honours degree. A candidate who might, for example, otherwise have marks in the class II.ii range but whose mark in one subject drops below 40 (even if still a pass mark between 30 and 39), is denied an honours degree and, in effect, drops two classes unless there are exceptional circumstances which permit the examiners to place them in class III. The convention might be appropriate for very weak candidates with low marks in several subjects, but seems unduly harsh for candidates with marks in higher ranges, but one mark below 40. The examiners recommend that the classification convention be reconsidered by the Examinations Committee. (In applying the convention this year, the examiners took account of the full range of marks achieved by the candidate which, in 3 cases, justified placing the candidate in a class higher than class III).

4. Change of form and rubric of Land Law paper (for first examination in 2006)

In the Land Law examination paper in 2006 there will be 10 questions, 5 (instead of 4) of which will be problem questions. FHS candidates should answer 4 questions including at least two (instead of one) problem questions; DLS candidates should answer 3 questions including at least one problem question.

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 for second marking were identified in Part One (B) above. The timetable for marking is tight, especially between first and second marks meetings when some markers are also marking BCL and MJur scripts, but also before the first marks meeting as markers with heavy undergraduate and graduate teaching duties have difficulty in fitting in much marking during termtime. The timetable is now the subject of review by the Examinations Committee

Resolving differences

As last year, markers were required to discuss their marks and, wherever possible, agree a mark. This worked well with (excluding the 20 scripts mentioned in Part One (C.1.) above) only 3 scripts (8 in 2004 and 12 in 2003) not receiving an agreed mark (out of 851 scripts second marked). For all of these scripts the examiners were able to allocate an appropriate mark, and in none of these 23 cases did the candidate's overall class depend upon the outcome.

Statistics on second marking and agreed marks

As in the last two years, 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. 261 (10.5%) scripts were

second marked on this basis (183 in 2004 and 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.*

326 scripts (13%) were second marked on this basis (272 (12%) in 2004 and 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 (4) identified as being 4 or more marks below the average but which might also, if raised, affect the candidates final overall result 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). 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 and the Gibbs prizes (performance in Contract, Tort, Land Law and Trusts), a small number of scripts with marks ending in 8 and 7 were second marked and are also included here. 264 scripts (10.6%) were second marked on this basis (344 (15%) in 2004 and 224 (9%) in 2003).

First Mark	Number of Scripts	Number in Higher Class after Second Marking	%	Number agreed in Higher Class	%
69	71 (73)	18 (31)	25 (42)	18 (30)	25 (41)
68	94 (78)	19 (23)	20 (30)	15 (23)	16 (30)
67	71 (75)	5 (9)	7 (12)	3 (9)	4 (12)
59	51 (60)	23 (30)	45 (50)	22 (30)	43 (50)
58	74 (30)	24 (6)	32 (20)	24 (6)	32 (20)
57	59 (15)	21 (2)	36 (13)	17 (2)	29 (13)
49	4 (3)	3 (2)	75 (67)	3 (2)	75 (67)
48	2 (1)	0 (0)	0 (0)	0 (0)	0 (0)
47	5 (1)	3 (0)	60 (0)	3 (0)	60 (0)
Special/fail	16 (8)	3 (3)	19 (38)	3 (2)	19 (25)

For the purposes of comparison the figures for 2004 are given in brackets

The overall success rate in reaching a higher class was 26.6% (30.2% in 2004; 38.9% in 2003; 25.7% in 2002). The success rate of borderline scripts ending in 8 and 7 was 23.9% (20.7% in 2004; 28.5% in 2003; 20.1% in 2002).

2. Third marking

Of the 4 scripts third marked, 3 had marks below 40 and the fourth was re-read to resolve a difference between first and second markers. The marks of none of these scripts were raised into a higher class

3. Examiners' agreed marks

In 23 cases, which include the 20 cases discussed in Part One (C.1.), the first and second markers did not agree the marks and the examiners were able to allocate an appropriate overall script mark. In 10 of these cases the examiners' mark was in a higher class than the first marker's mark; in 12 cases in the same class; in 1 case in a lower class. In only 2 of these cases did the mark awarded make a difference to the candidate's overall result.

4. 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.

5. Medical certificates, dyslexia/dyspraxia and special cases

33 medical certificates were submitted and considered by the examiners (compared with 21 in 2004; 22 in 2003; 25 in 2002). In addition, 3 candidates were certified as dyslexic.

6 candidates wrote some or all of their papers in college (compared with 3 in 2004; 5 in 2003; 11 in 2002). A further 6 candidates wrote some or all of their papers in a special room in the Examination Schools. 4 candidates had special arrangements in the examination room (eg water, dextrose sweets) because of medical conditions.

6. 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.

Having tightened up last year on the application of the rules for seeking permission for the use of a bilingual dictionary, the Proctors this year ruled that late applications would not be granted. The absence of problems with unauthorized dictionaries in the examination room indicated that candidates had taken note of this ruling.

As last 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. Those who did so fail were required to undergo identify and handwriting checks carried out by the staff of the Examination Schools.

7. Legibility

Typing was requested from 12 candidates for a total of 52 scripts. This compares with 17 candidates for 65 scripts in 2004; 6 candidates for 43 scripts in 2003; 22 candidates for 36 scripts in 2002.

8. 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 3 candidates who submitted short weight scripts had special (medical) circumstances. Of the 2 candidates who committed a breach of rubric, 1 had special (medical) circumstances.

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.

9. Ethics

The Ethics paper is set and marked by Philosophy examiners and is routinely blind double marked. In the past (recently in 2002 and 2003) concern has been expressed at the variations in the marks awarded, but there was little difference between the two marks awarded in 2004 and, this year, the markers submitted agreed marks for every question and the overall script mark. In 2003 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 in 2004; in only 3 out of the 16 cases was the Ethics mark seriously out of line with marks for that candidate's other papers. This year in only 1 out of the 10 cases was the Ethics mark out of line with that candidate's other papers, and not seriously out of line as it was one of two first class marks in an otherwise class II.i profile. The examiners also looked at the variation between candidates' marks for Ethics and their marks for the Jurisprudence paper. In 2 cases the marks for these papers were the same, and in 1 case the Jurisprudence mark was 4 marks higher than the Ethics mark. In all the other 7 cases, the Jurisprudence mark was lower than the Ethics marks (in 1 case 10 marks lower; in 3 cases between 5 and 7 marks lower; in 3 cases between 1 and 4 marks lower).

10. The computerized database

The computer software worked satisfactorily with only a few minor hiccups. The new syllabus for the FHS and DLS will be examined for the first time in 2006 and

that will require a new database which must be commissioned and produced during the summer 2005 in order to be ready for next year's examinations.

11. External Examiners

This year we were very fortunate to have the services of Professor C. Mitchell of King's College London and Professor F. Rose of Bristol University.

Their active involvement and advice at all stages was invaluable and we are much in their debt. The external examiners report to the Vice-Chancellor about their views of the examination process, and their reports are attached as Appendix 1.

12. Thanks

The examiners would be completely lost without our examinations officer, Mrs. Julie Bass. She is a superb organizer, with a sharp eye for detail and deadlines and she keeps us all up to the mark. She is always ahead of us in anticipating problems and in diverting or solving them. No matter how hectic the examination period, she is always calm and cheerful. We are very greatly indebted to her. We are also very grateful to others in the faculty office; Marianne Biese, Felicity Butcher, Lorna Costar, Jennifer Kotilaine, Ray Morris and Caroline Norris, who have helped us not least in making deliveries to and collections from colleges. In addition to the examiners, 44 members of the faculty were assessors, involved in setting and marking, and we owe our thanks to them all.

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

The gender breakdown for Course 1 was:

	2005				2004				2003				2002			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
I	14	12	7	6	10	12	13	9	18	15	13	10	11	9	13	11
II.i	91	79	107	85	69	80	115	83	94	80	106	83	100	85	96	81
II.ii	5	4	12	10	7	8	10	7	5	4	8	6	3	3	8	7
III	3	3	0		0		0		0		0		2	2	1	1
Pass	1	1	0		0		0		0		0		2	2	0	
Fail	1	1	0		0		0		0		0		0		0	
Total	115		126		86		138		117		127		118		118	

The gender breakdown for Course 2 was:

	2005				2004				2003				2002			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
I	4	36	4	21	2	18	3	17	4	36	3	25	10	67	4	31
II.i	7	64	14	74	9	82	15	83	7	64	9	75	5	33	9	69
II.ii	0		1	5	0		0		0		0		0		0	
III	0		0		0		0		0		0		0		0	
Pass	0		0		0		0		0		0		0		0	
Fail	0		0		0		0		0		0		0		0	
Total	11		19		11		18		11		12		15		13	

The gender breakdown for Course 1 and 2 combined was:

	2005				2004				2003				2002			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
I	18	14	11	8	12	12	16	10	22	17	16	12	21	16	17	13
II.i	98	78	121	83	78	80	130	83	101	79	115	83	105	80	105	80
II.ii	5	4	13	9	7	7	10	6	5	4	8	6	3	2	8	6
III	3	2	0		0		0		0		0		2	1	1	1
Pass	1	1	0		0		0		0		0		2	1	0	
Fail	1	1	0		0		0		0		0		0		0	
Total	126		145		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

	2005	2004	2003	2002
Land Law	271	249	266	263
Roman Law (Delict)	3	4	4	3
Comparative Law of Contract	11	8	14	10
Crim. & Pen.	71	59	69	59
Public International Law	71	91	101	91
History of English Law	16	14	8	8

EC Law	70	83	121	98
Ethics*	10	16	16	16
International Trade	22	16	9	17
Trusts	270	253	267	262
Administrative Law	269	250	266	264
Family Law	99	85	63	71
Company Law	45	39	40	54
Labour Law	60	43	55	61
Criminal Law	6	11	14	8
Principles of Commercial Law	32	33	23	28
Constitutional Law	6	11	13	8
Taxation**	22			
EC Social/Environmental Law.	58	64	54	74
EC Competition Law	146	119	126	110
Copyright & Moral Rights	46	54	70	62
Lawyers' Ethics	12	9	18	11
Personal Property	9	7	6	7

* This paper is not marked by FHS examiners

** This paper was examined for the first time in 2005

2. Numbers writing scripts in Diploma in Legal Studies

	2005		2005
Contract	15	Constitutional Law	1
Tort	14	Criminal	1
EC Law	8	Company Law	1
Comparative Law of Contract	4	Jurisprudence	1

3. MJur candidates taking FHS papers

	2005	2004	2003	2002
Jurisprudence	0	0	2	2
Contract	14*	10	16	14
Tort	1	0	0	2
Family Law	1	0	0	0
Comparative Law of Contract	0	0	1	2
Public International Law	5	4	2	9

European Community Law	11	13	24	0
International Trade	2	4	3	3
Company Law	9	10	8	13
Principles of Commercial Law	0	1	0	6
Constitutional Law	0	0	0	1
Trusts	1	1	0	1
Administrative Law	1	1	1	0
Labour Law	1	0	1	1
History of English Law	0	0	0	16
Criminal Law	1	0	1	0

* One candidate did not write this paper

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	1	7	10	7	19	44	6	7				271
Contract		5	10	7	18	42	5	9	1	1		271
Tort		7	8	10	21	34	10	9	1			271
Land Law		3	9	4	14	43	9	5		1	2	271
Trusts		3	11	9	24	40	6	6			1	270
Admin. Law		6	15	8	28	35	3	4				269
Comparative Law		9	9	9	36	27		9				11
Crim. & Pen.		1	8	6	35	45	4					71
PIL	1	9	13	11	30	29	1	4			1	71
History of English Law		6	6	6	38	38		6				16
Ethics		11	11	11		67						10
International Trade		18	9	27	9	32				5		22
ECL	1	1	11	3	14	41	3	17	1	4	1	70
Family Law	5	14	11	14	22	25	5	1	1			99
Company Law		7	11	20	13	33	9	7		3		45
Labour Law		7	13	12	40	27		2				60
Criminal Law				17	17	17		33			17	6
Principles of Commercial Law		6	13	3	19	34	16	9				32
Constitutional Law				17	33	33				17		6

Taxation		5	14	14	23	32	5	9				22
Roman Law (Delict)		33			67							3
Personal Property			11	11	33	11	11	11		11		9
Lawyers Ethics		33	8	17	25	17						12
EC Competition		5	11	3	45	29	2	5				146
EC Social/ Environmental		9	17	7	33	29		3			2	58
Copyright		11	11	15	20	30	4	7			2	46

D. Comments on papers and individual questions

These appear in Appendix 3

J. Gardner
K.D. Grevling
L.C.H. Hoyano
A.S. Kennedy (Chair)
A.V. Lowe
C. Mitchell
F.Rose
E.J.F. Simpson
W.J. Swadling
S.J. Whittaker

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

University of Oxford

FHS Jurisprudence, Diploma in Legal Studies

External Examiners' Report

In this report I have adopted the headings suggested for external examiners' reports by the University, which are based on the QAA code.

(a) the academic standards demonstrated by the students and, where possible, their performance in relation to students on comparable courses;

The academic standards demonstrated by the students were excellent. The percentage of 1st class degrees awarded was in line with comparable degree courses, and the percentage of 2:1 degrees awarded was significantly higher.

(b) the strengths and weaknesses of the students as a cohort;

The great majority of the students were well able to analyse legal problems intelligently and accurately, to illustrate their answers by reference to relevant authority, and to write clearly and succinctly. As a body, the students demonstrated strength in depth, and there was no significant 'tail' of students performing at a 2:2 level or below, of the kind which characterizes the student bodies of most comparable institutions.

(c) the quality of teaching, learning and assessment methods that may be indicated by student performance;

Entry onto the Oxford degree course is highly selective and so it would be worrying if the students did not perform to a high level by the end of their degree course. Nonetheless, the fact that most of them turned in examination scripts to a consistently good 2:1 standard is a strong indicator that the teaching, learning and assessment methods used are of a high quality. The question arises, whether greater efforts might be directed towards enabling those students who are currently recording very good 2:1 marks to raise the quality of their work to a 1st class standard? Obviously, most comparable universities would be delighted if this were the only teaching challenge which lay before them.

(d) the extent to which standards are appropriate for the award or award element under consideration;

The marking standards and degree classification criteria used are entirely appropriate for the award of a BA degree or diploma in law.

(e) the design, structure, and marking of assessments;

The assessments all took the form of a closed-book examination. I played a full role in the scrutiny meetings at which all the examination papers were reviewed by the board of

examiners, and I was satisfied that the papers set were carefully thought out and fair to the candidates.

I come from an institution where blind double-marking of examination scripts is undertaken and I regard this as the most desirable marking method. However, I recognise that the number of scripts and tight time constraints under which the Oxford examiners work would make this difficult to achieve, and I consider that the system which Oxford has adopted in its place goes a long way towards achieving a comparable level of impartiality and fairness to the candidates. With one exception, the internal markers within particular subjects managed to achieve a remarkable level of consistency across the scripts. With one exception, the attitude taken by the internal markers towards the range of marks which they should use, particularly at the higher end, was consistent across different subject areas. Corrective measures were successfully taken to redress the former problem. However, the latter problem needs to be addressed. Personally I believe that a generous use of marks above 70% would be appropriate, given how difficult it is under the Oxford system of achieving a 1st class degree overall, but whether or not the view is taken that the full range of marks in the 70-85% range should be used, it is important for all the examiners to take the same attitude towards this question.

(f) the procedures for assessments and examinations;

The system of holding two examiners' meeting, with extensive double-marking of borderline scripts between the meetings, gave the candidates every chance of moving up a degree classification if it was found on a further look that they deserved to do so. Although time-consuming and labour-intensive this system is more than fair to the candidates: borderline scripts were double-marked even if this would make no difference to a candidate's overall classification.

In my opinion the Board took an exceptionally rigorous view of the circumstances in which a candidate achieving fewer than five 1st class marks out of nine (or more accurately, eight and a half) should be awarded a 1st class degree. I respect the determination which members of the Board displayed in holding a firm line at this boundary: under the Oxford system a 1st really does mean a 1st. However, I believe that some relaxation of these standards could be permitted without these standards being unduly compromised particularly where evidence of chronic medical conditions is presented to the Board.

On the subject of medical evidence and mitigating circumstances generally, it also appears to me that the system of referrals by the Proctors to the Board does not work as smoothly as it should, as it is insufficiently clear where responsibility lies between these two bodies in assessing (1) whether a candidate's circumstances merit being drawn to the Board's attention at all, and if so (2) how much weight the Board should attach to them when acting in its classificatory role.

(g) whether external examiners have sufficient access to the materials needed to make the required judgements and whether they are encouraged to request additional information;

At my request, samples of scripts were made available for my inspection, and the Chair of the Examinations Board was open and helpful in responding to my enquiries about the examination process.

(h) the coherence of the policies and procedures relating to external examiners and whether they match the explicit roles they are asked to perform;

The University's policies and procedures relating to external examiners for the law degree and law diploma courses are coherent and match the roles which the externals are asked to perform.

(i) the extent to which the external examiners' comments in his/her previous report have been considered and appropriately acted upon;

This heading is inapplicable as this is my first year in post.

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Eternal Examiner's Report 2004-2005

Interim report

As this is an interim report, I shall address briefly the headings suggested by the Assistant Registrar based on the QAA Code and include some observations about various matters.

Standard of students

The class lists, resulting from a careful and professional examination process applying proper and fair standards, demonstrate a strong cohort of candidates who have generally performed better than the national average.

Quality of teaching, learning and assessment methods

These are clearly of a high order. In particular, the assessment process, which is the element with which I was involved, is the most painstaking and carefully structured assessment process which I have ever encountered.

Appropriateness of standards

These were entirely appropriate.

Design, structure and marking of assessments

Fine. See further below.

Procedures for assessments and examinations

Fine. See further below.

Position of external examiners

The external examiners were treated equally with the internal examiners. We had full opportunity to participate in the examination process, in accordance with the guidelines, and our views were fully taken into account.

F.D. Rose
Professor of Commercial Law
University of Bristol

Further comments

Medical complaints

Each year degree examinations appear to attract an increasing number of medical certificates. There seemed to be quite a high number of certificates in this examination. These obviously need to be dealt with properly and cautiously. Some appear to concern comparatively minor complaints, in particular recording the anxiety which accompanies every candidate for such an examination; some are uncertain (because in effect the doctor is merely repeating what the candidate has told her/him); and some are patently serious. In my view, the Board gave full and proper consideration to all medical certificates, even where it was apparent that they were unlikely to have any effect at all on the overall assessment. However, the effect of serious medical conditions needs to be kept under review. For example, a candidate who is patently suffering from a serious condition requiring frequent visits outside the examination room should not be forced to leave the examination early by an inflexible rule, or the inflexible application of a rule, that in no circumstances may a candidate leave the room in the last half hour. More generally, it may be helpful to consider whether a clearer statement should be made as to the effect of illness on marks (so that a paper which appears to have a low mark because of illness does not need to be remarked) or on the final degree classification, in particular whether the medical condition simply explains a performance which is suspected to be below par or whether in a borderline case it is, as in some universities, a legitimate factor in justifying a higher class.

The division between classes

Roughly speaking, most universities seem to operate on the basis that the candidate should be placed in the class in which half of the marks have been gained, so long as the other half is in the next lower class, this rough guideline being subject to various compensating factors. However, this practice cannot operate where the candidate has an uneven number of papers. Thus, the Oxford requirement that the candidate needs a majority of marks in the target class (five out of nine) would *prima facie* appear to make it harder to achieve the higher class, although this may be counter-balanced by the impression that most candidates appear to achieve higher than average marks in their Special (“half”) Subject.

In practice, the method works reasonably well at the 2.i/2.ii borderline. However, it tends to operate restrictively for candidates bidding for a First, where the class marks are (in one sense quite rightly) more difficult to gain. Given that law students, whose entrance performances are normally higher than students in many other subjects, traditionally achieve fewer Firsts than candidates in other subjects, a more generous convention might well be appropriate at that level.

A different problem generally arises at the lower end of the scale, where performances are more likely to throw up inconsistencies. Although few Oxford Law candidates who complete the examination are awarded less than a Second Class degree, it is gratifying to note that the Board is still prepared to acknowledge a poor performance where this is justified. However, problems inevitably occur at the lower end of the scale, where “rogue” marks (out of line with the candidate’s general performance) are more likely to occur. In one sense, these have previously been considered and are dealt with by the classification criteria. These may appear to operate unduly harshly where a single bad performance appears to bring a candidate down one or even two classes below the overall performance

in the other papers. It seems right to assume that the classification criteria have been deliberately drawn up, in the light of experience, and the harsh effect of, say, a fail mark may rightly have a severe effect. After all, it is generally not difficult for candidates to bring themselves within the range of pass marks. However, examiners, particularly those with experience of practices in other universities, are naturally reluctant to award a class which appears markedly below the candidate's general standard of performance. Again, the appropriateness of the classification criteria must remain a matter for continual review.

So far as the marking scales are concerned, these are a matter for individual universities. In particular, though a newcomer may find it unsettling at first that Oxford fixes the pass mark at 30 rather than at 40, like most universities, this works consistently with practice elsewhere if the standard for a pass is the same. But, given that Law degrees have professional implications, and that 40% is the pass mark for a qualifying law degree, it would seem appropriate that in this respect Oxford follows convention elsewhere.

Second marking

In my experience, good academics generally mark to a consistent standard and second marking is as a general rule an unnecessary safeguard against possible errors. In particular, where there is a large volume of scripts and limited marking time, it is preferable to concentrate time on the initial marking, especially in a research driven university, for which time is particularly precious. However, there are always problematic cases. The Oxford Law examiners have established a sensible system of limited double marking (and occasionally triple marking) for cases where marks may prove to be controversial or decisive to the overall class. In the more important cases double marking needs to be completed to ensure just results. Nonetheless, the compromise falls on the side of caution and there is room for some reduction.

Balance of papers

Law examiners in most subjects have traditionally had to strike a balance between the number of essays and problems set and to be answered. In several universities there seems to be a drift away from setting and/or requiring answers to problem questions and there is evidence of that trend in Oxford. This may be unfortunate, as problem questions are searching and demanding in a different way from essay questions. In particular, in an inherently practical subject, they are a valuable way of testing a candidate's ability to apply knowledge. It is therefore important to keep under review the appropriate balance in individual papers and the overall examination between the different types of question and to resist the temptation simply to prefer setting essay questions.

Coverage

Institutions need to make decisions as to the scope of a syllabus and the extent to which candidates are able to concentrate on particular parts of the syllabus in the examination. It is noticeable that the Contract paper appears to be exceptional in the breadth of coverage necessary in order to complete the examination satisfactorily. It may therefore in practice be more demanding than other papers. However, as Contract is a compulsory subject, so that all candidates are required to attempt one paper requiring full coverage and are

therefore treated equally, this may not be a problem. The extent to which papers enable selective or complete coverage will no doubt be a matter for continual review.

Draft papers

As in most examinations, there was some evidence that one or two draft papers were prepared a little more hurriedly than might be ideal. This is a common occurrence in a busy teaching year. However, this may unnecessarily complicate the work of the scrutiny committee, particularly where no member is an expert in the subject; and, where the proof meeting has to consider a redraft, it means that the redrafted part is not subject to the two-stage scrutiny normally provided by a scrutiny and then a proof meeting. In the interests of the smooth running of the examination process and the interests of the candidates, it is obviously necessary for paper setters to be constantly vigilant in ensuring that papers are as well prepared as possible as early as is possible.

APPENDIX 3

REPORTS ON INDIVIDUAL PAPERS

JURISPRUDENCE

This year's paper included the usual range of topics. The question on protecting people from degrading themselves (Q.9) was the most popular. However, with very few exceptions, the question was handled in a very pedestrian way. Many candidates took this as an opportunity to summarise the Hart-Devlin debate, the most tried possible way of proceeding, typically resulting in essays that missed the point of the question. Few candidates improved their overall grade by tackling this question and many damaged their overall grade. In some cases this was enough to bring the overall grade down into a lower class.

Candidates who came with pre-prepared essays, especially those based on lecture handouts, often missed the point of questions and were penalised accordingly. The question on the place of obligations in law and on the no obligation to obey/no right to disobey conflict were particularly afflicted by this kind of mishandling. Many students treated them as the question 'is there a moral obligation to obey the law?', leading to countless shallow and repetitious answers. A handful of candidates offered pre-prepared essays on the justification of punishment in response to Q.15 ((justice and nature) or Q.9. Q.12 on sociological investigation into the effects of law was taken by some candidates as an invitation to discuss feminism.

Candidates generally did better on questions about the nature of law and nature of adjudication. Many candidates showed a decent understanding of the main themes in The Concept of Law, Natural Law and Natural Rights, Law's Empire, and/or The Authority of Law, and a few showed excellent command of this material. There were some very competent answers to the question on Hart's endorsement of soft positivism (Q.7), but most revealed a superficial grasp both of Dworkin's notion of legal principles and of Hart's notion of a rule of recognition.

CONTRACT

Overall, the standard for this paper was quite good, with some excellent scripts and a only a very few poor scripts.

Question 1. This was a fairly popular question. Many candidates described the law governing specific performance and the 'performance interest' in damages for breach of contract. Some produced interesting and thoughtful discussions on the nature of 'rights' to performance in the light of these remedies and of such cases as *Panatown* and *Ruxley v Forsyth*.

Question 2. This was quite a popular question. It required both an explanation of what is meant by an 'objective view' of the existence of agreement and then its illustration. While the better answers took this task on well, weaker answers simply described cases within the law of offer and acceptance and then asserted that these demonstrated an objective

view; some candidates even thought that the doctrine of consideration reflects an objective view of *agreement*.

Question 3. This was not a popular question. The best of the answers were very good indeed, looking at a range of situations where a principle of good faith would affect the law governing the making of contracts and the significance of recognition of a principle rather than relying on piecemeal solutions. Some candidates included material on fairness or good faith in performance of the contract even though the question drew attention by use of italics to its limitation to the making of contracts.

Question 4. This was a very popular question. It required candidates to address both the theoretical and practical impact of section 1 of the Contract (Rights of Third Parties) Act 1999. Many scripts produced good discussions of the background to the Act, the Act itself (and section 1 in particular) and of the journal literature on the Act.

Question 5. This very popular question required discussion of both the usefulness and reform of consideration. It produced some very good answers; weaker candidates tended simply to describe the various rules governing consideration without relating them to the question.

Question 6. This question was also popular. Many answers demonstrated a very good grasp of the relevant case law. Some (and especially the better answers) picked up and developed the analogy of frustration found in the dictum of Lord Phillips quoted by the question.

Question 7. This was not a popular question, but it did produce some interesting discussions of the law's approach to contractual interpretation (express and implied terms).

Question 8. The quality of the answers to this problem was somewhat disappointing. Many candidates appeared to think that while signature did bind a person to terms one then needs to look as a matter of course at the wider issues of notice. The treatment of the possible remedies of A in the problem was generally good. However, the treatment of the application of the Unfair Contract Terms Act 1977 and even more the Unfair Terms in Consumer Contracts Regulations was often weak, with little proper grasp as to how to apply these provisions. This was all the more surprising given the comments in the FHS examiners' report on the contract paper of 2004 which drew attention to the disappointing handling of legislative material and in particular the legislation controlling unfair contract terms.

Question 9. This was a very popular question and generally competently handled, with the better answers setting out the various possibilities in a clear structure. Many answers demonstrated a good understanding of the tortious nature and measure of damages for liability for fraud and under section 2(1) of the Misrepresentation Act 1967.

Question 10. This was a fairly popular question. Part (a) was generally well handled with candidates explaining the possible recourse of both R and J. Part (b) was typically less well done, with candidates often showing a rather shaky understanding of the rules governing the availability of termination for breach of contract. Part (c) was generally well done, with discussion both of the issue of the existence of intention to create legal relations and the availability for L of the action for the agreed sum. Oddly, some

candidates saw Part (c) as a case of a unilateral contract even though the facts specifically stated that L agrees to act 'in return' for M's promise to pay him money. As to the claim for the agreed price, better candidates explored the need for co-operation by M and/or the legitimate interest of M in continuing performance.

Question 11. This was a very popular question. Part (a) was dealt with well, students setting out both the conditions for frustration and the effects under the 1943 Act on the facts. Part (b) was identified by many candidates as an example of self-induced frustration but a number did not then go on to explain that this amounts to breach, and then to consider N's remedies for breach. Part (c) elicited good accounts of *Stilk v Myrick* and *Roffey*, better answers considering the significance in this respect of R's not taking on extra employees as had been envisaged.

Question 12. This was not a popular question. When it was answered, Part (a) received a very mixed response; Part (b) was generally well-answered, candidates exploring the significance of *Etridge (no.2)* in relation to the facts of the problem.

TORT

The calibre of the scripts this year was once again disappointing. A particularly notable deficiency was lack of knowledge about statutes which have been superimposed on common law fields of liability, such as the Occupiers Liability Acts 1957 and 1984, the Consumer Protection Act 1987, the Fatal Accidents Act 1976, and the Defective Premises Act 1972. While a disconcerting number of candidates appeared not to know of the existence of the statutes, many others lacked detailed knowledge of the provisions, notwithstanding that the statutes are available in the examination room. The relatively high proportion of lower second-class and third-class marks was largely attributable to very weak problem technique and inadequate revision across topics on the syllabus, so that candidates were driven to attempt problems with issues they were not equipped to address. As ever, the most common failing in essays was not to answer the question asked. The examiners were driven to the conclusion that many candidates had simply not read enough and failed to read with sufficient care and think about what they had read.

Question 1. The better answers here tackled less obvious issues such as the encroachment of negligence into particular areas of nuisance and whether *Rylands v. Fletcher* properly fits within nuisance. The weaker answers did not address imaginatively what reforms were necessary to cure the deficiencies they identified.

Question 2. This was the most popular question by a substantial margin. Most candidates were aware of, and competently discussed, the recent cases of *Fairchild*, *Chester v Ashfar* and *Gregg v Scott*. The weaker answers simply offered a narrative without critical analysis of the matrices of facts setting up the conceptual problems, and the reasoning and the assertions in the quotation in the question.

Question 3. The weakest answers ignored the claims made in the quotation, and offered everything the candidate knew about the negligence liability of public authorities. Very few answers appreciated that the question was about tort liability in general, and so went beyond negligence. The best answers here analysed the significant reversal of the judicial aversion to holding public authorities liable in tort since 1999, and the reasons therefor, including the influence of the Human Rights Act 1998.

Question 4. This was the second most popular essay question. Few candidates actually addressed the assertions made in the passage quoted. Many offered an outline of the requirements for vicarious liability, but comparatively few analysed the implications of *Lister* for the 'course of employment' requirement, and its applicability outside intentional torts.

Question 5. Very few candidates attempted the question on economic torts; those who did so handled it very well.

Question 6. The best answers here considered the anomalies in this area, such as the immunity of builders to subsequent purchasers for having created the defect whereas private surveyors are liable for failing to detect the selfsame defect. They also tested the logic of the defect/damage distinction and the exceptions to that immunity mooted in *D & F Estates* and *Murphy v Brentwood*, and discussed the rejection of *Murphy* by many Commonwealth courts. A surprising number of candidates did not refer at all to the Defective Premises Act (the reason given by the House of Lords in *Murphy v Brentwood* for overruling *Anns*), or did not appreciate the limitations of that statute.

Question 7. The weaker answers did not address the question as to the extent to which insurance, and the capacity of a party to insure against loss or liability, *is* and *should be* relevant to tort liability. Many simply replayed the Atiyah/Burrows debate, with occasional discussion of the New Zealand no-fault system thrown in. Some candidates were under the misapprehension that the claimant's motor vehicle insurer will indemnify the claimant for personal injury.

Question 8. Many candidates assumed that Janet and Leo could only sue the (presumably impecunious) skateboarder Harry, and not the Borsetshire CC from whose premises he had leapt. Fewer still considered whether BCC could be liable in public nuisance (*Lippiat, Hussein*). Some went into a discussion of justiciability respecting the decisions of public authorities, without appreciating that public authorities as occupiers are as subject to the Occupiers Liability Acts 1957 and 1984 as anyone else. Most candidates were able to discuss whether the Occupiers Liability Act 1957 or 1984 applied, and the implications of *Tomlinson v Congleton CC*. The psychiatric injury issue was generally well handled, although a common failing was a lack of understanding of the consequences of the categorisation of Janet as a primary or secondary victim. Several candidates thought that Janet did not have a close tie of love and affection with her baby due to her postnatal depression!

Question 9. Many candidates did not appreciate that the Consumer Protection Act might apply to all of the potential claims in the problem. Some thought that section 5(3) means that a person injured by a product in commercial use cannot sue under the Consumer Protection Act. A disconcerting number did not cite the Consumer Protection Act at all, inexplicably preferring to apply the fault-based common law doctrine of product liability in *Donohue v Stevenson*. Very few candidates realised that Betty could sue her employer under the strict liability provisions of the Employer's Liability (Defective Equipment) Act. Most candidates spotted the illegality defence in relation to the driver's use of a mobile telephone, but were unable to discuss the criteria for the defence developed at common law. The better answers also discussed the Law Commission's proposals to reform the defence.

Question 10. Some candidates wasted time explaining and applying the three stage test for duty of care, and breach and foreseeability of damage, when they were instructed that both accidents were caused by negligence of Nancy and Alex respectively. Some candidates applied *Baker v Willoughby* without appreciating that it was distinguishable on the basis that the second accident was causally related to the first. Very few candidates displayed the detailed knowledge of damages for personal injury and wrongful death required to answer the question competently. A significant number of candidates misinterpreted *Hunt v Severs* as simply meaning that damages for cost of care are held in trust for the carer, notwithstanding that the carer is the tortfeasor. There was also much confusion about loss of a chance as a causation issue and as a quantification issue.

Question 11. Some candidates mistakenly thought that the Congenital Disabilities (Civil Liability) Act 1976 applied to make the doctor liable to Will, notwithstanding that the doctor was not responsible for the disabilities being present. On the issue whether the parents could recover any portion of the costs of caring for Will, few candidates were able to discuss whether *Parkinson* has survived *Rees*. Even fewer noted the distinction between 'wrongful conception' and 'wrongful birth' claims, and its implications for the mother's claim for the pain and suffering of the pregnancy and delivery under *McFarlane*. Quite a few candidates thought that the exclusion of the operation of the Contract (Rights of Third Parties) Act could be invalidated under UCTA, and therefore that Tom and Ursula (or Will) could sue in contract. The best answers reasoned by analogy from third party claims under *Hedley Byrne* such as *White v Jones*, *Junior Books* and *Henderson v Merrett*.

Question 12. Comparatively few candidates attempted the defamation question. Common failings included missing publications and hence causes of action and failure to discuss the liability of publishers in the chain for subsequent republication. The defence of qualified privilege was frequently overlooked or misunderstood in relation to the criteria in *Reynolds* for journalists to be protected by qualified privilege, and to Delia's claim for slander arising out of Adam's press conference. Honest or fair comment was also often conflated with qualified privilege.

LAND LAW

There was a disappointing number of top quality scripts in this subject this year. Apart from a small group at the top end of the range, the scripts displayed a number of general weaknesses:

- (1) excessive dependence on the secondary literature on controversial issues, as opposed to the cases and statutes themselves;
- (2) a weak grasp of, and ability to manipulate, elementary and uncontroversial rules - primarily shown in the problems but also present in essays; and
- (3) a marked tendency to wordiness and rhetorical repetition, and to dealing with short and relatively straightforward points at excessive length, leaving insufficient time to address the meat of the question.

The questions attempted showed strong clustering on Qs.2 (lease/licence) 3 (shared homes) and 10 (problem on licences and estoppel interests). Few candidates attempted Q.1

(general issues on property rights and *numerus clausus*) and very few indeed Q.7 (problem on TLATA)

Q.1 was mainly used to write about a single topic, without showing much depth grasp of the principled issues involved.

Q.2 produced numerous broadly competent 'standard answers'. The better answers noted that later case law has shown that the concept "exclusive possession" is difficult to tie down, and illustrated this with reference to the multiple occupation case-law and *Bruton*.

Q.3 again produced a lot of broadly competent 'standard answers', mainly based on articles by Gardner and Eekelaar; very few candidates grasped the certainty/cost of litigation problem. Answers very commonly displayed confusion between resulting trusts and 'common intention' constructive trusts. Many answers spent too long describing the common law, paid insufficient attention to whether or not a statutory scheme could work, and made the assumption that such a scheme could not have flexible application.

Q.4 (mortgages) tended to be answered with a mere catalogue of cases. Stronger candidates were able to identify the tension between the idea that the mortgage as a property interest is to be merely a security, and 'freedom of contract' ideas.

Q.5 (joint tenancies) was again written through the literature, with few candidates showing a depth grasp of the case law in relation to severance; there was a lot of unnecessary exposition of the nature of joint tenancies and tenancies in common.

Q.6 (overriding interests and the changes made by LRA 2002) was on the whole surprisingly badly done, many candidates either writing only on actual occupation, or giving no more than a run through LRA Schedule 3 without any clear sense of what had changed or ability to go into depth.

Q.7 was attempted by very few candidates and done either fairly well or very badly (wholly off the point). Even the strongest candidates showed little understanding of the implications of the presence of successive interests in the problem for the trustees' duties and the application of TLATA.

Q.8 (problem on easements) was on the whole competently handled. Weaker candidates showed a 'blunderbuss' approach, reciting the general criteria for whether a claimed interest could be an easement whether or not they were relevant to the particular facts, or spending substantial space on whether the (expressly granted and undisputed) right of way over the perimeter road was capable of being an easement.

Q.9 (problem on covenants) showed that (1) most candidates could discuss the problems of positive covenants competently, but (2) only a moderately large minority could handle the issues of the running of the benefit. Less seriously, there was a lot of discussion of s 79 and associated issues on the running of the burden, but many candidates failed to make the elementary point that the burden would only run if the covenant was protected by registration, and a significant minority thought this point turned on the doctrine of notice. The lease and sublease gave rise to a great deal of confusion, some candidates invoking the L&T(C)A while others thought that the effect was to relieve the head lessor of liability.

Q.10 - most candidates showed a fair grasp of the principles of proprietary estoppel once they got there. But many believed that U or V had (or could seriously argue they had) leases; the resulting/constructive trust confusion noted in relation to Q.3 showed up again with *Gissing* cited as authority for the view that U had an interest under a resulting trust; and a number of weaker candidates argued that U might have an easement. The clear majority of candidates who attempted this question mistakenly thought that T would only be bound if U or V had overriding interests and hence wasted some time discussing actual occupation.

ROMAN LAW: DELICT

The small number of candidates for this exam precludes discussion of individual questions.

Generally speaking the standard was high. The essay questions (Qs.5-10) in particular showed detailed knowledge of primary texts and secondary literature. However, those questions which required candidates to comment on individual set texts (Qs.1-4) were less well handled; candidates tended simply to paraphrase the texts, or made general remarks about their subject matter, rather than commenting specifically on their particular significance. There were also occasional signs of inaccurate translation.

COMPARATIVE LAW OF CONTRACT

In general, this was a very sound set of scripts, with very few real weaknesses and some very pleasing strengths.

All questions were answered. By far the most popular question was no. 6 (third party rights), which was answered by 14 candidates. Other questions which attracted a significant number of answers were nos. 3 (*erreur, dol*, mistake, misrepresentation: 9 answers), 4 (formation of contract: 8 answers), 7 (frustration: 10 answers) and 8 (*inexécution*: 8 answers). The other questions received between 1 and 3 answers.

Most candidates showed a very sound grasp of the relevant principles of both English and French law, and of comparative law techniques. The strongest candidates directed the focus of their answers to the particular question asked; thought hard about the issues involved and were prepared, where appropriate, to think across from one tutorial week's work to another; and presented clearly argued essays which wove together from the start the relevant strands of the two systems' legal principles in a comparative assessment. For example, in answering question no. 6 all candidates were able to discuss the *stipulation pour autrui*, and compare it with the Contracts (Rights of Third Parties) Act 1999; but what distinguished the stronger scripts was the ability to look at other aspects of third party rights in French law (*actions directes*) and English law (for example, the contract/tort boundary). The best answers to question no. 3 looked in equal measure at the different elements set for discussion (*dol* as well as *erreur*; misrepresentation as well as mistake), compared them in a sophisticated argument and—most important—discussed them in the light of the quotation which was set. And the stronger answers to question 4 looked at the whole range of relevant material for contract formation (not just offer and acceptance).

Because of the change of syllabus for the new structure of FHS options in 2006, this was the last year when constitutional law was taught and examined in detail. The question directed at that topic (question 2) was answered by just three candidates, but all three did so very well indeed.

CRIMINAL JUSTICE AND PENOLOGY

This year 71 candidates sat the FHS Criminal Justice and Penology paper, with the vast majority producing answers of a solid upper second-class standard. Although most candidates displayed an adequate knowledge of the academic literature and research, many of the scripts lacked depth and failed to engage critically or normatively with the questions asked. Disappointingly, few candidates were prepared to risk taking a clear position in response to questions, and as a result produced answers that frequently amounted to little more than a reasonably well-rehearsed summary of relevant parts of the faculty reading list. It is also worth noting that many candidates seemed to be a number of years out of date as regards developments pertaining to sentencing and the role of the CPS, and perhaps overly reliant on a number of key sources (most obviously Sanders and Young's Criminal Justice textbook).

PUBLIC INTERNATIONAL LAW

The performance of candidates in this exam was very good with 23% of students achieving first class marks overall and only 5% in the lower second category, the rest obtained upper second class marks. The answers to the questions were generally of a very high standard with candidates making very good use of relevant cases and literature. Apart from Qs.7 and 12, practically every question was attempted by a decent number of candidates. There appeared to be a preference for essay questions over problems but most candidates attempted at least one problem question. Those answers to essay questions which were not focussed on the precise question asked, but instead provided a general description of the area, were not awarded high marks. The best answers were those which went beyond merely parroting the standard description of the subject matter to be found in the textbooks and provided a sophisticated analysis of the issues raised by the questions. As was to be expected, the best answers were those that demonstrated a good knowledge of the literature in the area.

The best answers to the problem questions were those which identified all (or, at least, most) of the issues raised by the problem, and those in which candidates were prepared to engage in a discussion of debates surrounding the relevant applicable rules before applying their conclusions on those rules to the facts. Thus, those candidates who were willing in Q.10 to explore the different views as to the effect of invalid reservations did better than those who assumed that the answer to this issue was straightforward. Likewise, those answers to Q.11(a) which provided detailed analysis of whether there is a right of humanitarian intervention and whether international law allows anticipatory or preemptive self defence (and whether these are the same thing) were well rewarded.

HISTORY OF ENGLISH LAW

There were 16 candidates with two producing First Class marks and one Lower Second. There were effectively 16 questions, of which 15 were attempted. The paper was unusual in that for the most part it did not offer the opportunity for candidates to design their own answers around a general question. Most questions had a particular slant and those candidates who did best were showing some indication that they had registered this. In the words of the late Professor Birks: 'Never answer the question you wished the examiners had set (usually your tutorial essay); always answer the question they actually have set. If you feel really bold, answer the question they think they have set.' Indeed on some of these questions a bit of boldness and courage would not have gone amiss, nor indeed would a bit more technicality. The balance between 'astonishing structures' and 'actual desires' [Question 7] is as able to be considered then as now. This is not to suggest that the examiners had a 'model' answer to any of these questions, but they had 'model' enquiries and they were not well disposed to those who took key words from questions and wrote general answers around those key words with little or no regard for the actual slant to the question.

EUROPEAN COMMUNITY LAW

The anxiety expressed by the examiners last year that a substantial number of candidates had evidently decided to limit their reading to one (albeit outstandingly good) source, namely Craig and de Burca's monumental textbook, does not apply to this year's experience. There was clear evidence that a good number of candidates had read widely and many were able to reflect thoughtfully on the rich material available in the scholarly literature. Overall, then, this was a reasonably encouraging batch of scripts, although rather too many perfectly able candidates handicapped themselves as a result of poor exam technique. If the examiners want candidates to write a loose baggy monster about a topic then that is what they will ask for. But (in particular) Qs.1, 2, 3, 4 and 6 were more sharply focussed than a simple invitation to write all you know about x. Some candidates wrote answers to Q.4 that ranged broadly across the relationship between domestic and EC legal systems - direct effect, incidental effect, Francovich - which did not do justice to the particular question asked. On Q.6 a significant proportion of candidates did not get beyond a very rudimentary trot from *Dassonville* via *Cassis* to *Keck*, bolted on to a thin and vague conclusion that reform is required. Q.3 above all attracted a high percentage of answers that were not sufficiently tightly connected to the question set. This is by no means disastrous, because a good understanding of the law is of course rewarded, but a candidate squanders marks by writing a breezy summary that is only tangentially related to the question asked. So the lesson is - by all means put the law in its wider context but be sure to answer the question!

Qs.7 and 8 had few takers, and Q.5 only a few more. The remaining questions were more-or-less equally popular. In most instances the examiners got by and large what they expected, but some unexpected features deserve comment.

In Q.1 most answers were heavily biased in favour of the treatment of the subsidiarity principle by the Court rather by the political institutions, which tended to lend an unfortunately imbalanced flavour to the account. Many candidates commented on the Court's reluctance to apply the principle with vigour: few strengthened their analysis by reflecting on what implications a more assertive judicial role may have for (an EC version of) the principle of separation of powers. Several candidates attractively put flesh on the bones by considering matters such as the Article 234 preliminary reference procedure and

choice between the Regulation and the Directive as a legal act from the standpoint of subsidiarity.

The stronger answers to Q.2 reflected on what it may mean to speak of democracy in a non-State entity, and then proceeded to consider what this reveals about the supposed notion of a deficit. The core of the 'no European demos' critique was broadly understood. The question's invitation to focus on the Parliament allowed stronger candidates to develop ideas about whether a European Parliament can helpfully be regarded as a Parliament. Most answers sensibly interrogated the broader institutional context, though few seemed aware of any objection to creating an elected Commission. There are plenty.

In Q.9 a significant minority of candidates were imprecise in separating out issues relevant to the admissibility of the reference before the European Court and issues pertaining to the obligation or discretion of the referring court. And a smaller, though still not insignificant, minority revealed horrible confusion by assuming that X had the option of pursuing an action under Article 230 against B (and that this might affect the admissibility of the reference).

In Q.10 a significant minority of candidates considered only questions of procedure, most prominently standing, and failed to address the merits of the challenge.

INTERNATIONAL TRADE

The general standard of scripts in this paper was impressively high overall. After first reading of the FHS scripts, there were five 1sts, fifteen 2.1s, one 2.2 and one 3rd. Both MJur scripts were awarded marks of 70 or above.

Of the essays, the most popular were Q.5 on deviation and question four on the autonomy principle in documentary letters of credit. The few answers to Q.1 were slightly disappointing in failing to explain clearly the different views put forward in *The Starsin*: and it might have helped if candidates had first clarified the facts of that case. Q.3 (a difficult question on the consequences of using a sea waybill rather than a bill of lading) was well-answered by those who attempted it. Surprisingly, no FHS candidate attempted the essay on risk (question 2).

Of the problems, Q.6 on *Grant v Norway etc*, Q.7 on property in goods in bulk and claims under the Carriage of Goods by Sea Act 1924, and Q.10 on damages in cif contracts, including "loss of market" damages, were all very popular and attracted many excellent answers. In Q.6 some weaker candidates incorrectly thought that a seller under a cif contract is liable if the goods are not delivered to the port of destination; and in Q.7 a number of candidates failed to examine the Hague-Visby exemptions when discussing contractual claims against the carrier under COGSA 1924 (on the face of it, the carrier could rely on the exemption of "negligent navigation").

Problem Q.8 (on voyage charterparties and on whether third party stevedores could take a benefit of a clause that was invalid as between the contracting parties) attracted some reasonable answers. Q.9 on spent bills of lading was answered by only two candidates with mixed success.

TRUSTS

Easily the most popular question was Q.3(b) which produced generally strong, if not particularly original answers, from candidates who had obviously benefited from the resulting trusts lectures. Q.3(a) raised a central issue and would probably have been answered by more people had it not been presented as an alternative question. Most candidates were up to date with the family home cases and produced thoughtful answers. The *Quistclose trust* Q.7 also attracted many answers but it was disappointing that so many did not address the question. Many wrote their *Twinsectra* essays, or seizing on the word “unorthodox,” simply talked about the location of the beneficial interest or summarised their favourite articles. The most popular of the problem questions was Q.14 on Charities. This required candidates to demonstrate an understanding of the government’s plans for reform and those who ignored this instruction were penalised. Candidates were not provided with the Bill but ought to have had a better grasp of how it might change the law. Too many demonstrated a lack of knowledge of the law as it stands, e.g. the poor relations exception (14(d)), the concept of religion (14(c)) and the Recreational Charities Act (14(b)). Some answers gave the impression of almost being directed at previous years’ questions. It is a deficiency in students’ revision methods that they seem to concentrate heavily on mastering past examination papers at the expense of revising topics more generally and dealing with questions as they come.

Of the remaining Part A essays, Q.1 was deliberately framed so as to encourage candidates to go against the more popular student view and consider whether the beneficiary principle is about more than enforceability. Many rose to the challenge by citing a wide range of arguments, examples and authorities. A few wrote their *in rem/in personam* essay which often appears near the beginning of the Trusts paper, but not this year. Q.2, however, was not dissimilar to a question on last year’s paper, although more specifically geared to *Pennington v. Waine*. Some candidates with detailed knowledge of this series of cases were very comfortable with this essay. A surprising number ignored the quotation and wrote more generally about the perfection of imperfect gifts. This sometimes worked well but not when all discussion *Choithram* and *Pennington* was omitted. In Q.4 relatively few analysed the quotation and framed their answers on its terms but most wrote competently (but not sparkingly) about the contrasting equitable and contractual approaches to the distribution of assets upon the dissolution of an unincorporated association. The Part B essay questions relating to more specialised elements of the Trusts syllabus attracted the usual small number of high quality answers, notably in the case of Q.9, the demanding tracing question. Candidates also displayed their skills when writing about trustee investment decisions, Q.8 and conflicting duties Q.12. Q.10 attracted relatively few answers. Most were diligently confined to knowing assistance although it would have been acceptable to draw some contrasts with receipt-based liability. Q.11 had few takers although some wrote spirited rebuttals of the quotation.

Of the remaining problem questions, Q.5 was the most unusual in that *inter vivos* formalities normally appear in essay form. Its breadth and difficulty deterred all but a competent group who were prepared to think on their feet. They were amply rewarded for answers which were sensible and well-reasoned. That said, relatively few realised that (c) might raise the possibility of an initial resulting trust for Owen. The quality of the secret trusts answers Q.13 was much more mixed. (i) revealed that some candidates did not know what a half secret trust actually is. In (ii) there was widespread ignorance of the communication rules for trustees holding as joint tenants and little critical discussion of the law such as exists. Most tackled (iii) by way of proprietary estoppel (competently

handled) rather than a reconsideration of the merits of *Re Gardner No.2*. These topics are favourites with examiners yet they continue to trip up many candidates. The better prepared also discussed whether a secret trust could be set up over real property, and endeavoured to disentangle the different interests of Boris' executors and Cleo in (i). Relatively few pursued this to its logical conclusion: that the former would argue that there was no trust on the face of the will and that that Adam might have failed to set up a fully secret trust. It was relatively easy to identify those who really understood Certainties in Q.6. Issues frequently overlooked or not really understood include "half my wealth" and the *Re Tuck* points in (a) and administrative unworkability in (b). *Baden 2* was applied in a ritualistic fashion but the small size of the gift attracted little discussion. (c) was a type of reverse *Burroughs v. Philcox* situation which many convincingly argued was void unless the conceptual uncertainty element could be severed. In (d) many worried that the subject matter or the boundaries of the class were uncertain. Few addressed the implications Vera having a mere power, or how she might actually exercise it, if at all (probably nominating a few beneficiaries each year) and whether this would actually make life difficult for the trustees. Capriciousness or unworkability received scant attention. Overall, the general quality of the answers was sound but relatively few were clearly first class.

ADMINISTRATIVE LAW

The answers demonstrated, with few exceptions, an acceptable level of *general* understanding, and at the top end of the range there were a number of extremely well-informed, intelligent and sophisticated analyses. Nonetheless, many answers contained persistent, if not constant, repetition of the analysis and arguments of text books, lectures and journal articles, accompanied by occasional "howlers" concerning the facts of cases – suggesting that, for far too many candidates, much or virtually all reading had been concentrated on secondary sources.

Questions 3, 4 and 6 were the most popular in terms of responses; questions 5(a), 5(b), 10(a) and 10(b) the least popular.

Comments concerning individual questions are as follows:

1. At the top end, there were some good answers to this question. However, there was a range of views as to what "public law theory" meant. Far too many candidates treated the question as an excuse to discuss at a general level either the *ultra vires* versus common law debate, or the 'traffic lights' debate, without considering how either debate was relevant to the reference in the question title to an understanding "of administrative law".
2. Most candidates answered this question competently. The question was drafted so as to permit broad analyses of the ambit of judicial review for jurisdictional error, error of law more broadly, and error of fact. Some candidates also treated the question as an opportunity to analyse judicial deference – something that was entirely permissible given the wording.
3. This question was also broadly drafted, allowing for discussion of the basis and guiding principles of the law concerning procedural fairness and legitimate expectations, as well as deeper analysis of the extent to which these areas are inter-linked. The best answers took account of these points. Unfortunately, the quotation from Lord Denning in *Schmidt*,

repeated in the essay title, seems – despite its generality and importance – to have been unfamiliar to and/or misunderstood by many candidates. It seems that the words “legitimate expectations” trigger set piece essays which are of reasonable quality in themselves but which often do not provide a response to the question posed.

4. In general this question was competently answered, and sometimes answered very well. Most candidates appreciated that the question was concerned with substantive rather than procedural protections (contrast with the comments concerning question 3) and answered it accordingly. However, weaker answers were generally of a ‘write all you know about legitimate expectations’ variety.

5(a). An unpopular and generally not very well-answered question. Candidates appeared to have a variety of views as to the definition, nature and workings of inquiries, and few devoted attention to the role of inquiries within the broader structures of constitutional accountability.

5(b). Also an unpopular question. Most candidates who answered this question concentrated only on the Parliamentary Commissioner for Administration, ignoring the deliberately broader focus of the question (on “public sector ombudsmen”, in the *plural*).

6. At the top end, there were some very good answers which focused on conceptual similarities and dissimilarities between *Wednesbury* and proportionality review, and the extent to which ‘spill-over’ is possible from areas of domestic law that are directly affected by EU or Convention principles to areas that are not. Far too many candidates, however, seemed unaware of the context in which the Taggart argument (quoted in the question title) had been made, or with the details of that argument. Weaker answers were of a ‘write all you know about the future of *Wednesbury* unreasonableness’ variety.

7. Very many highly competent answers were produced in response to this question, many of which displayed a sound knowledge of the case law and literature concerning the differential standing requirements in judicial review cases brought under the Supreme Court Act 1981 and the Human Rights Act 1998. Nonetheless, not enough candidates sought to analyse the “function” which standing rules should properly serve. Those who did so were rewarded accordingly.

8(a). This question produced far too many mechanical recitations of the impact of the Civil Procedure Rules, which often failed to explain (perhaps through lack of understanding) precisely how those rules affect the rationale behind *O’Reilly v. Mackman*. Some candidates seemed to have insufficient knowledge of *O’Reilly v. Mackman* to produce a convincing answer to the question.

8(b). Many candidates displayed a good knowledge of the differences between the relevant tests, and of the conceptual significance of those differences. However, some candidates treated the question as an opportunity to present a general analysis of the pros and cons of the public law-private law distinction, without trying to tie such arguments in sufficiently closely to the question that had been asked.

9. Answers to this question were far too frequently confined to discussions of negligence, despite the very obvious hints in the title (“the distinction *between* statutory *duties* and *powers*”, “whether *or not* they were careless” (emphasis added)) that the question demanded at least some discussion of other torts. If the analysis of tortious liability of

public authorities is to be of any value in the study of administrative law, candidates need to be aware of and to be prepared to discuss the full range of relevant torts. The excessive focus, on the part of most candidates, on negligence is therefore discouraging.

10(a). Generally, this question was answered competently. However, candidates could have done more to analyse the meaning of “secondary legislation”: most seemed content to confine their attention to measures falling within the scope of the Statutory Instruments Act 1946.

10(b). This seemed frequently to be a question of last resort for those who chose to answer it. Generally, answers were confined *either* to the making and enforceability of contracts *or* to contracting-out and the emergence of the ‘contract state’. Far too few candidates attempted to produce an integrated analysis of the two areas, let alone to tackle the normative question posed in the essay title.

FAMILY LAW

The quality of the answers was high this year. 30% were marked at 70 or above. 8% were marked below 60. This is interesting in view of the “new” way in which the subject was taught this year. Students received only 4 tutorials, 2 in Michaelmas Term and 2 in Hilary Term, though there was a full range of lectures, plus 2 revision seminars in Trinity Term. It is possible that this arrangement gave students a longer time to work on a smaller range of topics, and the papers gave the clear impression that these students were more willing than their predecessors to put forward their own “take” on issues about which they had seemingly given a good deal of thought prior to the examination. It is possible that the range of topics covered, or covered very fully, was narrower, but coverage in examinations tends to be narrow in any case.

A minor quibble: too many students referred to the Children Act 1989 as the Children’s Act. This is sloppy, and can be irritating.

1. The question whether it is possible to create a perfect law for the dissolution of marriage was predictably popular. Candidates expressed clear views on what they thought was necessary to improve the law, often referring to the principles set out in Part I of the Family Law Act 1996, and generally seeing the tension between fault and no-fault arguments. Most tried to frame their answers around the form of the question. Many dismissed the possibility of a “perfect” law on the grounds that the facts of each case are different. This is not a strong argument because a “perfect” law could simply make the facts irrelevant. The stronger difficulty lies in differing ideologies of marriage (or the role of the law in relation to it) which may be held by legislators, and candidates who saw this were rewarded.

2. The quotation from *White v White* was used as a springboard by many for a general discussion of post-divorce financial adjustment, which was quite proper. But candidates who focused on the idea of “fairness” tended to do better because this enabled them to discuss the underlying principles of this jurisdiction.

3. The question whether contact was a right of the child or the parent was usually answered by denying that it was the right of either, and that the welfare principle made this clear. A reference to the human rights jurisprudence was necessary to bring an answer into

the first class category, as was also some reference to the draft Bill on enforcement, which had been discussed in revision seminars.

4. The question of the value placed on genetic parentage was extremely popular, and generally very well done. The topic of parentage seemed to grip the students' imaginations, and they showed very good knowledge of the legal structure of parenthood, and the issues involved, including the human rights dimension.

5. Parental responsibility was predictably popular. The answers tended, though, to take the present structure as given, and then conclude that it was obviously necessary to have provisions which set out the rights and duties of parents; whereas the question could be whether those rights and duties might be incorporated into legal parenthood, so we would not need an additional vehicle to convey them. But very few took this point.

6. The question asked, first, the extent to which same-sex and unmarried opposite-sex relationships were legally recognised, and, second, whether the conclusion of this trend would be the redundancy of marriage. Too many candidates missed out the first part, going straight into a discussion of the role of marriage. They were marked down for doing this: a good answer needed to give a reasonable coverage of the ways the law presently recognises unmarried relationships.

7. (a) Only two candidates answered the question whether the law should pay more attention to family rights than to the rights of individuals.

(b) Many candidates responded to the question whether children can have rights. The answers were frequently very thoughtful, many candidates wanting to express their personal viewpoint, not accepting the arguments of theorists at face value. Many thought that children could perhaps not meaningfully be said to have rights since either they could not enforce them or they were subject to the welfare principle. More should have considered whether this could mean that children could not have rights under human rights conventions. Strangely no one mentioned the *Denbigh School* case (discussed in revision seminars) and very few mentioned *re Roddy* (right to expression).

8. No one attempted the question on taking risks in child protection.

9. The question on interests in the home of an unmarried partner elicited the standard type of answer on the relevant trusts doctrines, but many answers failed to take up the second limb of the question, which concerned occupation rights.

10. A few candidates answered the question on nullity, usually well.

11. There were only a couple of answers on adoption.

12. A handful of candidates answered the question on domestic violence. The relevant provisions of the DVCVA 2004 were usually well known; but the broader second limb on the legal response to domestic violence tended to be less fully covered than it was last year, perhaps because this was not one of the topics covered in tutorials.

COMPANY LAW

The paper attracted mainly competent answers. A number of candidates were thrown by the fact that there was no question based entirely on the unfairly prejudicial remedy: they attempted to rewrite questions accordingly.

Question 1 (creditors) attracted some good answers, though some answers revealed insufficient knowledge of the area.

Question 2 (minority shareholders) tended to be rewritten by candidates so that it related to directors' breach of duty rather than unfair decisions. They were not penalised if their answers were otherwise good. Knowledge of the material on altering articles was surprisingly patchy.

Question 3 (enforcement of articles) was generally well attempted, though a few candidates wrote about derivative actions.

Question 4 (corporate governance) attracted very few answers.

Questions 6 and 11 (capital) attracted relatively few answers, but some quite good ones.

Question 7 (winding up) attracted a few answers, some of which showed pleasing knowledge both of the winding up principles and the modern effect of s 459.

Question 8 (directors duties) was fairly popular. The better answers gave careful thought to the role of a statutory code.

Question 9 (validity of decisions problem) was popular, but attracted a mixed quality of answers. Rather too many candidates were unclear about the role of the various principles (especially ss 35 and 35A) they were seeking to apply.

Question 10 (directors duties problem) was popular and generally well done.

Question 12 (veil problem) attracted a number of answers, though some seemed unsure of the principles to be gleaned from the cases.

LABOUR LAW

General

- Despite our criticisms with regard to the questions individually, our overall view is that the 61 candidates generally performed well, marks clustering round 68. There were a few very strong scripts, a reasonable proportion of first class marks, and very few markedly weak scripts.
- The level of knowledge and argument was generally satisfactory, but our expectations of detailed treatment of legislation and case-law were not always fulfilled.
- Although many candidates established a safe base for many of their arguments from the distinctions between neo-liberal economic policies, institutional economics perspectives, and rights-based approaches, these arguments were quite

often over-played and over-simplified.

- There was a predominant focus on questions 4, 10, 11, but not a bad spread of answers.

Particular questions

- 1 Post 1997 labour law policy agenda - there was a general tendency to regard post-1997 labour policy simply as 'third way'. There was often a lack of attention to the EU dimension of the question.
- 2 Failure of Equal Pay legislation - few candidates seemed able to put Equal Pay fully into empirical context. Although many candidates gave a solid critique of the legislation's use of a comparator, and of the material factor defence, few were able to explore alternative approaches.
- 3 Change in definition of unlawful discrimination - only few candidates looked at new treatment of harassment. Only stronger candidates looked at changes in qualitative definition as well as scope.
- 4 Casualisation and the response to it - definitional differences between 'employee', 'worker' and 'employed person' were often not accurately understood. There was often an over-narrow focus on that aspect of the question. Few candidates dealt with *Carmichael v National Power*. Yet again, weaker candidates focused heavily on the definition of employee.
- 5 NMW & Working Time - only a few very good candidates dealt with the definition of working time under the two pieces of legislation, or with the difference between domestic and EU based measures. A surprising number thought NMW an EU inspired measure.
- 6 Regulation of temporary work - very few candidates answered this and not very well.
- 7 Family friendly measures - again few takers and not very high quality answers.
- 8 Hepple & Morris on EU 2002 - a small number of answers, but some of good quality.
- 9 Flexicurity - tendency to talk over-generally about wrongful dismissal and unfair dismissal. Few candidates were able to give a helpful definition of flexicurity.
- 10 Recognition and Consultation - as was the case last year, candidates tended to forget that recognition can be achieved voluntarily, and focused too heavily on Schedule A1 as the main mechanism. Also, there was a general tendency in this question to put down a lot of detail without developing very specific arguments (rather like 9).

- 11 Freedom of Association - rather variable as to how far candidates provided an account of (i) *Wilson & Palmer*, *Wilson v UK* or (ii) other aspects of the question.
- 12 Industrial action, reduction of - many candidates omitted to deal with the changes to the law of unfair dismissal as it affects industrial action. Few candidates had any sense of the historical development of the law here.

CRIMINAL LAW

There were 8 scripts in criminal law this year: 6 of them FHS, 1 MJur and 1 DLS. Overall the standard was disappointing. Candidates often seemed content to engage in pedestrian description of an area of criminal law broadly touched on by the question, with little focus on the question set. Better scripts adopted an analytical approach with some attempt to engage with more difficult theoretical arguments in the secondary literature.

Question 1. This attracted some decent answers. Better candidates grappled with some of the interesting theoretical points related to practical indifference as a species of recklessness. Generally, though, most candidates trotted out the differences between *G* and *Caldwell*, avoiding any engagement with the subtleties in the various judgments in *G*.

Question 2. No candidates attempted this question.

Question 3. The answers were generally disappointing with no exploration of the idea of moral luck and its relevance to specific areas of the criminal law.

Question 4. This attracted answers of very poor quality. Candidates had little idea of what the rule of law means, its importance and implications in the criminal law, and indeed the basic contours of the rape offence in SOA 2003.

Question 5. A surprisingly large proportion of candidates made no reference to the recent work of the Law Commission on the future of provocation and its relationship with diminished responsibility. Furthermore, only a few candidates made reference to the rich theoretical debate on the nature of excuses that the provocation controversy has precipitated.

Question 6. This was generally well answered.

Question 7. This question attracted answers of variable quality. Many candidates made no reference to *Dica*. Those that did were reluctant to tease out the complexities in the judgment, particularly its relationship with *Brown* and *Clarence*. The causation point was also missed by most candidates.

Question 8. This was generally well answered.

Question 9. This was generally well answered.

Question 10. This was generally well answered.

PRINCIPLES OF COMMERCIAL LAW

Question 1(a). No candidates at all attempted this, admittedly very difficult, question. It called for a discussion of relative title, drawing on the seminal articles by Battersby and Preston and Ho.

Question 1(b). A small number of candidates answered this question. Most dealt adequately with what a bill of lading is and what different meanings the term 'document of title' has in the current law. Very few then went on to discuss what a bill of lading does and to what extent it is still a useful instrument given the possibilities offered by modern communication methods.

Question 2. A number of candidates attempted this question. Most of them described the problem s. 20A was designed to solve, referring to cases such as *Re Wait* and *Re Goldcorp*. They then assessed whether the section achieved what it purported to achieve, namely to prevent a buyer who has fully paid for goods being compelled to prove in the liquidation or bankruptcy of the seller, even though it can identify the bulk of goods from which the seller's obligations ought to have been met. Very few answers focused on the fundamental question whether justice really is served by preferring such a buyer to a buyer who cannot point to a specific bulk, but who nevertheless paid in full for goods to be supplied. Instead, most answers focused on problems of overselling or on the mechanics of the operation of s. 20B. While these questions are important, it would have been good to see a more fundamental criticism of the reforms.

Question 3. This was quite a popular question. However, a large minority of those attempting it failed to appreciate that the quote from Lord Keith's speech in *Armagas v Mundogas* is really concerned with apparent authority created by a representation by the agent itself. Consequently, they launched into a general discourse about the different kinds of authority, which was disappointing.

Question 4. Another popular question. Candidates here displayed good knowledge of characterisation issues, describing the steps the courts go through in characterising these transactions reasonably well. Only a couple of first class answers, however, did what the question requires, namely *compare* between these different approaches.

Question 5. A significant minority of candidates attempted this question. The circularity problem described by Goode in the quote has become more relevant with the enactment of the Enterprise Act 2002: the 'unsecured creditors' lifeboat' introduced by the Act makes a satisfactory solution to the conundrum more important than ever. Most answers correctly outlined the two cases in which the problem has been the subject of judicial discussion: *Re Woodroffes* and *Re Portbase*. Most went on to express a preference for the former solution. One excellent answer referred to the recent House of Lords decision in *Buchler v Talbot*, drawing the appropriate parallels in an entirely convincing manner.

Question 6. This was a popular problem question. The question invited candidates to decide whether (a) a purported sale was actually a sale or a disguised grant of a security interest and (b) whether a purported retention of title was effective. Most students managed (a) adequately, analysing the transaction carefully and looking at the business reality of the transaction, while referring to the appropriate authorities. The quality of answers to (b) was more varied.

Question 7, This question focused on nemo dat exceptions and the passing of title generally. It was attempted by a fairly large number of candidates. Unfortunately, the answers revealed significant gaps in understanding.

- (a) A look at *the whole* of s. 12 of the Sale of Goods Act would have helped a good many candidates. Particularly worrying was that a few candidates seemed to think that a thief somehow acquires voidable title to stolen goods, so that property passes to a subsequent purchaser unless such title is avoided first.
- (b) This part of the question called for a careful analysis of the facts. Again, good answers were rare, with most candidates jumping straight to *Shogun Finance* without paying much attention to the important question why the case was relevant in the first place.
- (c) A surprisingly high proportion of candidates missed the crucial fact that Ted took possession of the book before returning it to Sigmund to be repaired and as such Sigmund's possession was interrupted. This meant that the most important issue was not even alluded to by many candidates.

Question 8. This was probably the most popular problem question. Most candidates dealt with the issues very well. Most recognised that the charge was taken directly from *Spectrum* and had, at the time of the examination, been upheld as fixed by the Court of Appeal. Good answers discussed, as it turns out, rightly, whether *Spectrum* was likely to be upheld by the House of Lords. Although different candidates came up with different figures when it comes to the final distribution of assets, the underlying issues were dealt with well.

Question 9. The main issue, missed by many candidates, in the first half of the question was whether George is acting in the course of a business. The second half of the question then requires consideration of agency issues: is Eric acting as principal or as agent for Hans? Both possibilities needed to be considered. Unfortunately, the vast majority of candidates missed the agency aspects of the question completely.

Question 10. This fairly standard question on bills of exchange was extremely popular. Most candidates saw the relevance of *Clifford Chance v Silver*, and most came to the correct conclusions. The best answers also considered the sales aspects of the question: was Anthea able to reject the car for breach of section 14(2)? On the whole the responses to this question were very encouraging, however.

CONSTITUTIONAL LAW

Only 6 FHS candidates sat this paper. Qs.2 (reform of the Lords), 8 (law of assembly and ECHR), and 10 (European Constitution) were not attempted by any candidates. Qs.1 (rule of law), 3 (European Community law), 11 (devolution), and 12 (arrest and detention) were each attempted by only one candidate. 2 candidates attempted Q.6 (freedom of expression and ECHR); 3 candidates attempted Q.5 (prerogative powers); and 4 candidates attempted one or other leg of Q.7 (was Parliament born unfree? or ECA and HRA as exemplars of "constitutional statutes"). Qs.4 (constitutional conventions) and 9 (separation of powers) were very popular, both being attempted by 5 of the 6 candidates.

No paper was short-weight. Nearly all candidates exhibited adequate knowledge of the basic legal materials and of the literature but too often from only one side of the

controversies expressed or implied in the questions. Surprisingly those who attempted the first leg of Q.7 neglected to mention *MacCormick v Lord Advocate (1953)*.

It is inappropriate to offer much by way of generalization on so limited a sample but overall the standard was satisfactory rather than high and generally there appeared to be little, if any, enthusiasm to engage with the more theoretical aspects of the topics or sufficiently, if at all, to criticize. The overall level of intellectual maturity and insight was slightly disappointing.

TAXATION LAW

This was the first year in which this option was taught and examined. Candidates had seen two practice papers and numerous additional questions. There were 8 questions which gave considerable choice in view of the fact that all students covered the same material in a seminar format. Of the 22 candidates, 4 were awarded first class marks, 15 upper seconds, 3 lower seconds and there were no third class marks. This was a pleasing first year. Most students showed a good overall understanding of the issues and the functioning (or problems with) the tax system. There were some impressive papers but not enough students showed signs of reading beyond the textbooks and key cases. This could mean that ideas and arguments were rehearsed without a sufficient degree of critical analysis for a first or high upper second. There were, however, notable exceptions amongst those awarded higher marks and those who used the literature referred to on reading lists properly in their answers were duly rewarded.

There was a tendency in some areas to answer pre-prepared questions rather than those asked. For example the question on avoidance (Q.3) required detailed case law analysis but some students fell too easily into a standard overview, although others answered the question very well indeed. All questions were attempted and answers were fairly evenly spread over the questions except that there were fewer than average attempting the problem question on trading income (Q.8) and Q.5 on reservation of benefit and more than average attempting the policy question on 'progressivity' in taxation (Q.1).

Some of those who did answer Q.8 showed a firm grasp of the intricacies of profit definition for tax purposes. The progressivity question required integration of policy and technical material for a complete answer and some weaker answers did not achieve this. Qs.2 and 4 attracted a range of answers of mixed ability- again the best answers engaged with some of the extensive literature and considered the rationale of the taxes discussed as well as the detailed rules. It was not surprising that the reservation of benefit question (Q.5) did not prove popular, despite the excellent guest lecture the students had on the topic, as the new anti-avoidance provisions in this area are complex and not yet fully explored in the text books. Answers to Q.6 on the classification of workers for tax purposes contained plentiful information but needed more critical analysis and closer attention to the wording of the question in some cases. Q.7, the problem question on employment taxation, required careful structuring for a good answer as the same basic facts needed to be reviewed twice, applying the rules to different salary levels to which different provisions apply. Some students increased the difficulty they encountered in producing a good answer by not planning their structure carefully. A few students discussed whether this question was about employment at all. This may have been an example of using a pre-prepared answer, as one of the questions in the collection did require a discussion of the difference between an employee and self-employed person

whilst this question stated that the taxpayer was employed and then continued his employment so that it should have been clear to anyone reading the question properly that there was no need to discuss the definition of employment for tax purposes.

EUROPEAN COMMUNITY SOCIAL ENVIRONMENTAL AND CONSUMER LAW

The overall standard was high. In answers to the first question candidates showed good knowledge of the case law of the European Court of Justice. Answers to Q.2 highlighted the links between consumer protection measures and the internal market and contrasted the free standing competence to legislate for environmental protection. Both Qs.1 and 2 were popular. Q.3 prompted a number of well informed answers on the precautionary principle. Q.4 on consumer policy produced some good answers in which candidates systematically analysed and discussed the various points raised in the quotation. Some candidates attempting Q.5 (Aarhus Convention) wrote in rather general terms but most wrote well organised and well informed answers. Answers to Q.6(a) on environmental assessment showed extensive knowledge of European and UK case law. Q.6(b) (implementation of directives) produced some good answers but a number of candidates saw it as an opportunity to write rather generally about European environmental and consumer protection law.

EUROPEAN COMMUNITY COMPETITION LAW

The examination was taken by 146 candidates. The paper comprised six questions which were all attempted by candidates. Q.1 focused on the European Merger Regulation and provided a choice between a problem and an essay question. Q.2 addressed the new enforcement regime under Regulation 1/2003. Q.3 dealt with refusal to deal by a dominant undertaking and Q.4 targeted the pro-competitive and anti-competitive effects of vertical agreements. Qs.5 and 6 included problem questions on Articles 81 and 82 EC. On the whole, the scripts showed a good command of the subject and good analytical skills.

INTRODUCTION TO THE LAW OF COPY RIGHT AND MORAL RIGHTS

The paper this year covered the usual spread of topics and was very well done overall. Students overwhelmingly favoured the questions on duration and parody, which offered the greatest scope for general discussion of the arguments for and against protection. Whilst some used those questions as an opportunity to reproduce the prescribed Spence articles on copyright justifications and parody, many also showed a deep engagement with the questions and brought their own critical perspectives to bear. Of a more consistently high standard were the answers to the moral rights and originality questions, which tended to reflect a deeper engagement with the theory and its implications for the law. Relatively few attempted the questions on infringement and defences, confirming a general impression that students found the theoretical aspects of the course easier than its doctrinal aspects.

LAWYERS' ETHICS

12 candidates took this paper and, as usual, it was a pleasure to read their scripts. All six questions found some takers. Qs.1 (ethical implications of fiduciary relationship) and 2 (ethical position of prosecutor) were very popular whereas Qs.6 (problem) and 4 (ethical implications of the adversarial system or “cause lawyering”) attracted relatively few candidates (actually only one candidate each). Qs.3 (general ethical theory) and 5 (duties to the client as paramount?) were attempted by about one-third of the candidates.

Overall the standard was high. No paper was short-weight. All candidates exhibited sound legal skills and revealed a commendable knowledge of the basic legal materials and of the literature. Several candidates were somewhat weaker on philosophical analysis and ethics in general and relatively few candidates attempted to relate issues in lawyers’ ethics to legal theory but there were some impressive papers which did so very successfully.

PERSONAL PROPERTY

As only nine candidates sat this paper, the numbers are too small to draw any meaningful conclusions.