FHS JURISPRUDENCE

DIPLOMA IN LEGAL STUDIES

(MAGISTER JURIS)

Examiners' Report 2008

.PART ONE

A. Statistics

1. Numbers and percentages in each class/category

The number of candidates taking the examinations was as follows:

	2008	2007	2006	2005
FHS Course 1	205	201	229	241
FHS Course 2	33	31	30	30
Diploma	16	21	18	15
Magister Juris	34	38	43	48

Classifications: FHS Course 1 and 2 combined

	2008		2007		2006		2005 *	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	41	17.23	40	17.24	43	16.60	29	10.70
II.i	172	72.27	176	75.86	192	74.13	219	80.81
II.ii	18	7.56	14	6.03	21	8.11	18	6.64
III	6	2.52	1	0.43	2	0.77	3	1.11
Pass	0	0	0	0	0	0	1	0.37
Fail	1	0.42	1	0.43	0	0	1	0.37
Honours **	0	0	0	0	1	0.39	0	0
Totals	238		232		259		271	

* Old Regulations ** 'declared to have deserved Honours'

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

	2008		2007		2006		2005 *	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	7	21.21	9	29.03	10	33.33	8	26.67
II.i	25	75.76	21	67.74	18	60	21	70
II.ii	1	3.03	1	3.22	1	3.33	1	3.33
III	0		0		1	3.30	0	
Totals	33		31		30		30	

* Old Regulations

Results: Diploma in Legal Studies

6 candidates (37.5%) were awarded the Diploma with Distinction. 10 candidates (62.5%) passed.

2. Vivas

Vivas are no longer used in the Final Honour School. Vivas can be held in the Diploma in Legal Studies but none was held this year.

3. Marking of scripts

Double marking of scripts is not routinely operated. 727 out of 2,199 (2,136 FHS plus 63 DLS) scripts (33.06%) were in fact second marked. This total compares with 28.73% in 2007, 35.15% in 2006 and 34.3% in 2005. Third marking may be used in exceptional cases (eg medical cases) and 1 FHS script was read a third time. Further details about second marking are given in Part Two (A.1.).

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B. New examining methods and procedures

There were no significant changes to the examining methods this year. The procedures for ensuring the accuracy of marking were the same as in 2007, 2006 and 2005. In a change from 2007, second marking of all scripts with marks ending in 9 took place before the first marks meeting; and all scripts identified on first marking as short weight were also second marked before the first marks meeting. This facilitated a reduction in the number of scripts which had to be second marked in the short time between the two marks meetings.

The procedures for ensuring the accurate marking of scripts took the same two forms as in the last three 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 after the first marks meeting 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. However, in a change from previous years, the final mark awarded by the examiners in such cases was not (except in exceptional cases) to be below the mark awarded by the first marker (i.e., the second marking of scripts identified as 4 or more marks below the average for the candidate's other scripts could normally result in the first mark either being confirmed or raised, but not lowered).

As in previous years, all scripts with marks of 49, 59, 69 were second marked and also all scripts with marks below 40. 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 up to three 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, and no changes appear to be required.

2. The examiners applied the classification and results conventions as previously agreed by the Law Board and notified to candidates. As already determined by the Law Faculty Board (and notified to the students who will be affected), with effect from the Examination in 2009 the convention for the award of Second Class Honours, Division 1, is to change to require 6 marks of 60 or above, and no more than one mark below 50 (which must not be below 40), rather than, as hitherto, requiring 5 marks of 60 or above, and no more than one mark below 50 (which must not be below 40) .

D. Examination Conventions

These are detailed in paragraph 10 of the Notice to Candidates (Appendix 2 to this report).

This year there were two changes to the conventions:

In the FHS, alternative criteria were added for the award of First Class Honours: *5 marks of 70 or above, with no more than one mark below 60 and no mark below 50*. Two candidates benefited from this change and were placed in First Class with a marks profile which included one Lower Second Class mark.

In the Diploma in Legal Studies the convention for the award of the Diploma with Distinction was changed to *one mark of 70 or above, no mark below 50, and an overall average mark of 65 or above* (formerly two marks of 70 or above, and the third mark of 60 or above). This change resulted in a significant increase in the number of Distinctions awarded (6 candidates; only one would have been awarded a Distinction on the old convention).

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 and was reviewed by the Examinations Committee in 2005 which concluded that there was no scope for seeking alterations, as it is important that candidates have sufficient time before the start of the examination for revision and a later start date would create an unmanageable overlap with the BCL and MJur examinations. However, removing the second marking of all scripts ending in 9, and all short weight scripts, to the period before the first marks

meeting helped to mitigate the pressure of the second marking conducted between the two marks meetings.

Resolving differences
As last year, first and second markers were required to discuss their marks and, wherever possible, agree a mark. This worked well with all scripts receiving an agreed mark (out of 727 scripts second marked). In some previous years there had been scripts on which the markers were unable to agree a mark: these were then third marked (5 in 2006; 3 in 2005).

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. Ethics papers were also second marked before the first marks meeting. In addition, this year, all scripts ending on 9 and potential short-weight scripts were marked before the first marks meeting, together with all scripts given a mark below 40 on first marking. In total, 410 (18.64%) scripts were second marked on this basis. In 2007, 2006 and 2005 these scripts excluded those marked on a borderline 9 mark and potential short-weight scripts, and so the figures for marking before the first marks meeting in those years (183 (8.51%) in 2007, 281 (11.77%) in 2006 and 261 (10.5%) in 2005) are not directly comparable with 2008. This year there were 10 scripts with marks below 40 (0.45%) (compared with 10 (0.46%) in 2007).

(ii) *Scripts which had been marked 4 or more below the average mark for that candidate*.
223 scripts (10.14%) were second marked on this basis between first and second marks meetings (224 scripts (10.41%) in 2007, 272 scripts (11.4%) in 2006 and 326 scripts (13.12%) in 2005). A small number (7) 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*.
This year all scripts with marks ending in 9 had been second marked already before the first marks meeting, and the markers had determined whether the mark should be raised to the higher class. in reviewing candidates' marking profiles at their first marks meeting the examiners therefore identified as borderline those 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, the Gibbs prizes (performance in Contract, Tort, Land Law and Trusts) and some individual subject prizes a small number of scripts with marks ending in 8 and 7 were second marked and are also included here. 100 scripts (4.5%) were second marked on this basis.

First Mark	Number of Scripts	Number agreed in Higher Class	% agreed in Higher Class
68	39 (66)	10 (10)	26 (15)
67	35 (63)	4 (10)	11 (16)
58	12 (47)	6 (18)	50 (38)
57	13 (33)	4 (9)	31 (27)
48	1 (0)	1 (0)	100 (0)
47	0 (1)	0 (1)	0 (100)

For the purposes of comparison the figures for 2007 are given in brackets.

The overall success rate of borderline scripts ending in 8 and 7 reaching a higher class was 25.00% (23.08% in 2007, 18.77% in 2006 and 23.9% in 2005).

2. **Third marking**
There were no scripts third marked because of failure by markers to agree a mark. The examiners arranged for the re-reading of one script in the course of deciding on the classification of a particular candidate.

3. **Examiners' agreed marks**
The examiners considered and settled the marks of a number of scripts. In most cases this was because of short weight (see 8, below) or because of information in medical certificates.

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 was only in the second full week of the examination (when candidates took two optional subject papers) that two papers 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**
25 medical certificates were forwarded to the examiners (compared with 19 in 2007; 24 in 2006 and 33 in 2005). In addition, 10 candidates were certified as dyslexic or dyspraxic (including 1 candidate not so certified but experiencing similar effects, and 1 candidate who also had a medical certificate which is included in the 25 such certificates).

7 candidates wrote some or all of their papers in college (compared with 5 in 2007; 11 in 2006 and 6 in 2005). A further 16 candidates wrote some or all of their papers in a special room in the Examination Schools. 3 candidates had special arrangements in the examination room (eg water, dextrose sweets) because of medical conditions, and 2 candidates suffered disturbed sleep because of a fire alarm in their college one night.

The following additional specific details have been requested by the Proctors. In the FHS 20 medical certificates and similar documents (from 8.40% of candidates)

were forwarded to the examiners under sections 11.8 – 11.10 of the EPSC's General Regulations for the Conduct of University Examinations (see *Examination Regulations* 2007, page 34), and in 3 cases the candidate's final result was materially affected. No medical certificate was forwarded to the examiners in respect of DLS candidates.

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.

A new timetable was introduced this year by the Proctors for candidates to apply for permission to use a bilingual dictionary. In previous years, permission had to be sought at the time when candidates submitted their examination entry forms (in Michaelmas Term) and late applications were not permitted. This year, candidates were allowed to submit their applications (through the appropriate college officer) until Friday 2 May (week 2, Trinity Term). No problems were encountered with unauthorized dictionaries in the examination room.

Candidates are 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 identity and handwriting checks carried out by the staff of the Examination Schools.

7. **Legibility**
Typing was requested from 13 candidates for a total of 26 scripts. This compares with 13 for 35 scripts in 2007; 23 for 50 scripts in 2006 and 12 for 52 scripts in 2005.

8. **Short weight, breach of rubric, short answers and misunderstood questions**
No change was made to existing practice as to what to treat as short weight, although in this year's Notice to Candidates new guidance (with worked examples) was given of the penalties which would normally be imposed for short-weight answers. A number of candidates still fell into the trap of answering only one part of a two-part question, or two parts of a three-part question, and their marks were reduced by the examiners in accordance with the published practice.

In a change from past practice, this year all scripts identified by the first marker as short weight were second marked during the first marking process.

New guidance was given to markers about the treatment of misunderstood questions. The marker was instructed to consult the other marker(s) of the paper in order to discuss the appropriate mark for the question in the light of the particular misunderstanding, thus giving the markers the opportunity to consider as a matter of principle how serious the misunderstanding was (and so to ensure that similar misunderstandings would be treated in a similar way in marking). The markers would consider the published assessment standards to determine whether the particular misunderstanding merited, e.g., a third class mark or a lower second class mark.

9. **Ethics**
This was the final year in which the Ethics paper was available for FHS Jurisprudence candidates. The Ethics paper is set and marked by Philosophy

examiners. In 2009 the Law Faculty's new optional paper on Moral and Political Philosophy, which is designed to replace the Ethics paper for Law candidates, will be examined for the first time.

10. The computerized database

The computer software worked satisfactorily as regards the entry of marks and the production of mark sheets for consideration by the examiners at their two marks meetings. However, at a very late stage a problem was discovered in relation to the production of the college marksheets, and the examinations officer had to conduct a full manual check on the accuracy of every candidate's reported marks. This was very unsatisfactory. The existing (and now very old) software is still being used, and amended from year to year, pending the development of a new database. We hope that the Faculty will give appropriate priority to the acquisition of a new database, to remove an unnecessary burden which presently falls on the examinations officer. However, the examiners were confident in the light of the checks conducted by the examinations officer, that the reported classifications and marks were accurate.

11. External Examiners

This year we had the valuable assistance of Professor S. Shute of Birmingham University (for his second year) and Professor R. Buckley of Reading University (for his first year). Their active involvement and advice at all stages was extremely helpful and we are very grateful to them. 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

We can only repeat and re-emphasise what has been said by successive Boards of Examiners: that our examination could not have been conducted so smoothly without the efficient and tireless work of our examinations officer, Mrs. Julie Bass. Her contribution to the examinations process is invaluable; she anticipates and provides solutions for problems even before they arise. We are extremely grateful to her. We are also very grateful to Ann Kennedy, Director of Examinations, who was available throughout to give advice and to assist with difficulties when they arose. In addition to the examiners, 46 colleagues 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:

	2008				2007				2006				2005			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	16	18	18	16	15	16	16	14	16	17	17	13	14	12	7	6
II.i	64	70	83	73	65	69	90	80	71	75	103	77	91	79	107	85
II.ii	6	7	11	10	9	10	4	4	7	7	13	10	5	4	12	10
III	5	5	1	1	0		1	1	0		1	1	3	3	0	
Pass	0		0		0		0		0		0		1	1	0	
Fail	0		1	1	1	1	0		0		0		1	1	0	
Hons.	0		0		0		0		1	1	0					
Total	91		114		90		111		95		134		115		126	

The gender breakdown for Course 2 was:

	2008				2007				2006				2005			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	4	33	3	14	2	14	7	41	4	31	6	35	4	36	4	21
II.i	8	67	17	81	11	79	10	59	7	54	11	65	7	64	14	74
II.ii	0		1	5	1	7	0		1	8	0		0		1	5
III	0		0		0		0		1	8	0		0		0	
Pass	0		0		0		0		0		0		0		0	
Fail	0		0		0		0		0		0		0		0	
Total	12		21		14		17		13		17		11		19	

The gender breakdown for Course 1 and 2 combined was:

	2008				2007				2006				2005			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	20	19	21	16	17	16	23	18	20	19	23	15	18	14	11	8
II.i	72	70	100	74	76	73	100	78	78	72	114	76	98	78	121	83
II.ii	6	6	12	9	10	10	4	2	8	7	13	9	5	4	13	9
III	5	5	1	1	0		1	1	1	1	1	1	3	2	0	
Pass	0		0		0		0		0		0		1	1	0	
Fail	0		1	1	1	1	0		0		0		1	1	0	
Hons.	0		0		0		0		1	1	0					
Total	103		135		104		128		108		151		126		145	

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

	2008	2007	2006	2005
Roman Law (Delict)	2	3	1	3
Comparative Law of Contract	6	5	16	11
Criminal Justice and Penology	58	60	72	71
Public International Law	59	78	69	71
History of English Law	16	16	20	16
Ethics *	14	14	10	10
International Trade	20	21	26	22
Family Law	73	84	94	99
Company Law	28	26	45	45
Labour Law	48	65	61	60
Criminal Law	5	8	11	6
Principles of Commercial Law	28	31	50	32
Constitutional Law	5	8	10	6
Taxation	16	12	27	22
Environmental Law **	10	10		
EC Competition Law and Policy ***		5		
Copyright Trade Marks & Allied Rights **	32	19		
European Human Rights Law ***	39			
Personal Property ****	8			
Copyright, Patents and Allied Rights ***	9			

* Not marked by FHS examiners
** Examined for the first time as a standard subject in 2007
*** Examined for the first time as a standard subject in 2007, but not available in 2008
**** Examined for the first time in 2008
***** Examined for the first time as a standard subject in 2008

2. Numbers writing scripts in Diploma in Legal Studies

	2008	2007	2006
Contract	16	19	17
Tort	16	19	15
EC Law		5	4
Comparative Law of Contract	6	2	2
Company Law	2	3	6
Jurisprudence		5	1
Principles of Commercial Law			1
Public International Law	1	4	5
Criminal law		2	3
Copyright, Trademarks and Allied Rights	2	2	
Trusts		1	
International Trade		1	
Labour Law	2		
History of English Law	2		
Copyright, Patents and Allied Rights	1		

3. MJur candidates taking FHS papers

	2008	2007	2006	2005
Jurisprudence	0	3	0	0
Contract	9	7	9	14
Tort	0	0	0	1
Land Law	1	0	0	0
Family Law	0	0	0	1
Comparative Law of Contract	1	0	0	0
Public International Law	0	4	4	5
European Community Law	5	5	4	11
International Trade	0	0	2	2
Company Law	14	9	10	9
Principles of Commercial Law	0	0	3	0
Constitutional Law	1	1	1	0
Trusts	3	2	3	1
Administrative Law	0	1	1	1
Labour Law	0	2	1	1
Criminal Law	0	1	1	1
Copyright, Trademarks and Allied Rights	0	2		
Ethics	0	1		

4. **Percentage distribution of final marks by subject: FHS Courses 1 and 2**
(figures are rounded. Zero means less than 0.5%. Blank space means no scores in range)

	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	0	5	9	4	16	42	8	13	1	1	1	238
Contract		7	10	7	23	37	6	10		1		238
Tort		6	9	5	22	39	5	12	1	1		238
Land Law**	0	6	13	11	19	33	6	8	0	2	2	236
Trusts		5	11	12	21	30	5	12	1	1	1	238
Admin. Law*	1	6	12	14	24	32	3	6	0	1	0	237
Comparative Law of Contract			33		33			33				6
Crim. & Pen.		9	14	12	34	28	2	2				58
PIL		7	8	7	36	29	7	7				59
History of English Law		6	6	6	19	50		6		6		16
Ethics		7	7	14	21	29	14			7		14
International Trade		10	10	10	30	30	5	5				20
EC Law**		2	13	7	27	40	4	5	1	2		236
Family Law	1	5	11	19	33	27	1	1				73
Labour Law		2	19	6	44	19		8		2		48
Company Law*		4	26	11	26	30					4	28
Criminal Law					40	60						5
Principles of Commercial Law		11	7		25	25	14	11		7		28
Constitutional Law					40	40	20					5
Taxation		6	25	13	31	25						16
Roman Law (Delict)					50	50						2
Copyright, Trade Marks and Allied Rights		6	9	9	34	28	3	9				32
Environmental Law		20	10	10	30	20		10				10
Copyright, Patents and Allied Rights		22	11	22	22	22						9
European Human Rights Law		5	23	5	26	38	3					39
Personal Property		38				38	13				13	8

*1 candidate entered for, but did not write, this paper
** 2 candidates entered for, but did not write, this paper

D. Comments on papers and individual questions

These appear in Appendix 3

R.A. Buckley (external)
A.S. Burrows
J. Cartwright (Chair)
J. Dickson
G. Lamond
L. Lazarus
D. Nolan
S.C. Shute (external)
R.J. Smith
N.E. Stavropoulos

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

APPENDIX 1

REPORT ON THE 2008 EXAMINATION IN THE FINAL HONOUR SCHOOL OF JURISPRUDENCE

(i) Academic standards

I am satisfied that the standards set for satisfying the examiners in the Honour School of Jurisprudence and the Diploma in Law are appropriate.

(ii) Assessment processes

The assessment processes are rigorous, and the notable efficiency of the Chairman and the Examinations Officer in managing the process, including the identification of those cases likely to require special consideration by the Board of Examiners, contributed greatly to the smooth running of the examination; and left an impression of an operation efficiently and conscientiously conducted.

Although the Honour School of Jurisprudence does not routinely double-mark scripts, elaborate steps are taken to ensure equity of treatment which are at least as effective as universal double-marking. The range of statistical information available to the Board of Examiners, enabling it to compare the performance of individual markers, was impressive. In practice a substantial number of scripts are double-marked; not only borderline cases but also all those scripts in which the candidate's performance was 4% or more below his/her performance on the other papers. The criteria used to select scripts for double-marking as borderlines, and the stage in the exercise at which the second marking takes place, do, however, need to be kept under review to reduce the danger that those double-marked at an early stage (eg on the basis merely of a borderline mark on the particular script) are not at a relative disadvantage as compared with those candidates who benefit from double-marking at a later stage once they have been identified as being on a borderline between classes.

The classification conventions operated by the Honour School are much more straightforward than those now sometimes found elsewhere, where the complexity of the criteria largely obviates the need (or opportunity) for the exercise of discretion by boards of examiners. Although the approach adopted in the Honour School has the not inconsiderable virtue of being easy to understand, it necessarily requires the classification conventions to be accompanied by the existence of a wide general discretion to disapply them. The exercise of this discretion is inevitably crucial in a small but significant number of cases. The readiness of the examiners to exercise this discretion, and the consistency with which they do so (not merely in the same year but across different years), is especially significant in view of the drastic consequences which the conventions attach to a single weak or failed script. It is therefore desirable for all the cases potentially likely to call for the exercise of this discretion to be considered together as a group, ideally at the final meeting. Furthermore, in view of the frequency with which the composition of boards of examiners change at Oxford, it is also desirable that examples of the use of the discretion in previous years should be available to the Board. In fact this was the procedure adopted in the examination which is the subject of this report, and it is to be commended as good practice.

(iii) Comparability of standards

I am satisfied that the standards and levels of achievement are equivalent to those achieved, and to be expected, at an elite higher education institution.

(iv) Issues worthy of consideration

The examinations in the Honour School of Jurisprudence are fairly and efficiently conducted, and there are no urgent issues which require consideration by the Faculty of Law. In the long term, however, it might be worthwhile for some consideration to be given to whether the combination of straightforward conventions and overriding general discretion represents the best way of achieving fairness and consistency in the assessment of candidates. Alternative approaches could be worthy of consideration in which such factors as overall averages, and the possibility of strength in one area compensating for weakness in another, are explicitly reflected in the conventions.

(vi) Good practice

Where examiners have a wide general discretion to exercise it is desirable for the cases in which it might be exercised to be considered together as a group after all the marking has been completed, and for the examiners to be assisted by examples of the exercise of the discretion in previous years.

R A BUCKLEY

Professor of Law
University of Reading

9 July 2008

The Vice-Chancellor
University of Oxford
Wellington Square
Oxford OX1 2JD

15 October 2008

Dear Vice-Chancellor

External Examiner's Report for the Final Honour School of Jurisprudence and Diploma in Legal Studies, University of Oxford, 2008

I was appointed an external examiner for the Final Honour School of Jurisprudence and Diploma in Legal Studies in October 2006 for a period of two years. In this capacity I attended a number of examiners' meetings in Oxford during the academic year 2007-2008.

I found the examination process for the FHS/DLS to be thorough and well run. I was particularly impressed by the attention to detail, hard work and skill shown by members of the Examination Board and I consider its Chair, John Cartwright, excellent – one of the best chairs of any examination board on which I have had the privilege to sit.

The smooth running of the examination process was also greatly assisted by the care shown by Mrs Julie Bass, the Law Faculty's highly efficient Examinations Officer, and by Ann Kennedy, the Law Faculty's Director of Examinations. Both are to be commended for the support they gave to the process.

The standards applied in assessing candidates on the FHS/DLS were at least equal to those applied by comparable universities and the procedures used in marking and classification were robust, consistent and reliable.

I have only one other comment about the process. This year the Board considered a number of cases in which medical certificates had been submitted by candidates but these certificates were not sufficiently precise to tie the condition the candidate had experienced to a particular paper in which the candidate's performance had dipped. My view is that the University could usefully review the guidance it gives to Colleges to ensure that any certificates issued by College Doctors indicate which, if any, of the papers taken by a candidate might plausibly have been affected by the candidate's medical condition.

I hope these comments are of help.

Yours sincerely

Professor Stephen Shute
Deputy Pro-Vice-Chancellor

APPENDIX 3

INDIVIDUAL REPORTS

JURISPRUDENCE

This year's paper included the usual topics. The question about the prohibition or discouragement of non-harmful conduct (Q13) was the most popular. Many candidates offered essays based on textbooks, showing a superficial grasp of Mill's harm principle and repeating textbook examples. The weaker essays ignored the distinction between prohibition and discouragement, addressing the general question whether it is permissible for the law to enforce popular morality. There was homogeneity further up the scale, with several very similar essays which seemed to summarize the relevant lecture. A handful of candidates offered high quality critical discussions that did more than repeat what others have said.

The question on punishment (Q14) was also popular. Many candidates offered caricatures of utilitarian explanations of punishment, which were easy to dismiss. Modern retributivist arguments were frequently poorly understood.

There was considerable homogeneity in the responses to the questions on the role of evaluation in legal theory and on the rule of law (Q2 and Q12, respectively), many of which seemed to follow closely the relevant lecture.

Nearly every one of those who attempted Q1, on coercion and the law, agreed that not every law need provide for a sanction, offering Hart's arguments against Austin in support, yet thought that law is essentially coercive all the same. There was more variety regarding that part of the question, with several thoughtful attempts to explain law's coercive character.

Q6, which invited candidates to imagine that judges treat the best interpretation of legal practice as determining the law, was mostly treated as a general invitation to describe Dworkin's theory of law. Many candidates refused to entertain the hypothetical, offering reasons why judges couldn't or shouldn't behave as stipulated. Only a small handful considered whether the stipulated judicial behaviour might be compatible with a conventionalist explanation of law.

Overall, candidates showed a decent grasp of Raz's explanation of the nature of law. The general level of understanding of Finnis's views was poorer. Hart's theory of law seems to have declined in prominence.

CONTRACT

In general terms, the Contract paper was well-answered, especially the problem questions. Each of the problem questions proved popular. Among the essay questions, the most popular were question two, on the voluntary nature of contractual obligations and its relationship to privity, and question five on the irony of the Court of Appeal's call for flexibility in the *Great Peace* case.

A common weakness in the answer to question two was a failure to address the specific question asked with many candidates thinking it sufficient to trot out a standard essay on privity (including arguments about the details of the Contracts (Rights of Third Parties) Act 1999).

Some of the candidates answering question one ('Agreements to negotiate in good faith should be enforceable') failed to realise that the question was on certainty and the decision on the lock-in agreement in *Walford v Miles*. It was not a question asking for a general essay on good faith in contract still less on renegotiated contracts and the issues of consideration and duress.

Problem question eight (on offer and acceptance and, to a limited extent, remedies) exposed a fundamental misconception among a surprisingly large number of candidates who thought that an offer to be held open until a certain date is binding. Without consideration it is not binding and can be revoked without any liability. Very few candidates considered whether, assuming that there was a valid contract, Bill could claim mental distress damages applying *Farley v Skinner*. Some simply said, inaccurately, that one cannot claim damages for disappointment in contract.

Question nine (on consideration, promissory estoppel and duress) was well answered, although a common weakness, when discussing promissory estoppel, was in not analysing whether the effect of the doctrine is suspensory or extinctive and what that would mean on these facts. Some of the discussion of economic duress was also very thin.

Answers to question ten on misrepresentation (plus possible incorporation as a term) and a 'no-reliance' clause sometimes suffered from being poorly structured. Weaker candidates missed the issue of whether a 'no-reliance' clause counts as an exclusion clause. Many, while pointing out the difference between reliance and expectation damages, failed to apply that distinction correctly, or at all, to the figures given.

On question eleven (a) (frustration) there was a marked improvement over some past years on how to apply the Law Reform (Frustrated Contracts) Act 1943. But many answers to eleven (b) (damages and exclusion) were somewhat disappointing in that many candidates failed to discuss fully the remoteness rules which were applicable even though the main claim was for loss of a chance.

The final problem question ((a) on intention to create legal relations, consideration and the Contracts (Rights of Third Parties) Act 1999 and (b) on mistake as to identity) attracted many excellent answers.

TORT

The fundamental doctrinal error committed by many candidates was to be beguiled into a false belief in the hegemony of negligence law. Thus, as in previous years, problems were analysed as common law negligence, without reference to obviously applicable statutes (which are bolded on the core reading list) or other causes of action, and essay questions expressly stated to be about tort law were answered only in relation to negligence. Indeed, these errors were so common as to give rise to the inference that the candidates were frequently attempting questions on which they had not had tutorials, or had not revised at all. Moreover, exceptional cases such as *Fairchild* and *Barker* were assumed to supplant all of the orthodox rules. There

were also difficulties with problem technique: candidates fell into difficulty by misreading the facts of problems, or inventing them to fill in gaps in their knowledge of the legal principles which were engaged by the facts stated.

Question 1 (tort theory)
The most common error here was not to define distributive justice, and indeed a good many candidates seem to equate it with corrective justice. Many went straight to loss distribution mechanisms but few considered the express invocation of distributive justice to *restrict* the reach of tort in cases such as *White* and *McFarlane v Tayside Health Authority.*

Question 2 (damages)
The question on compensation for personal injury and wrongful death attracted fewer candidates than in previous years, possibly because of recent syllabus changes and the absence of a lecture series dedicated to this topic for the past two years. The weaker answers simply summarised the rules for calculating compensation, and did not address existing statutory solutions to the difficulties with the lump sum system, such as court-imposed periodical payments, provisional damage awards and structured settlements.

Question 3 (psychiatric injury)
This continues to be by far the most popular topic year on year, and this year the vast majority of candidates attempted it. There were very many pedestrian answers considering only the distinction between primary and secondary victims. Many did not consider *White* from which the quotation in the essay title was derived. The best answers considered the implications of post-*Alcock* developments such as *W. v Essex, Rothwell*, and the problems of reconciling employer's liability for stress-related illness with *White*.

Question 4 (loss of a chance)
This question attracted many very good to excellent answers. However, many candidates concentrated on medical negligence, and paid scant if any attention to the other half of the equation, liability for loss of a chance of financial gain. A considerable number also offered a pedestrian narrative of causation cases, many of which were largely irrelevant to the question, such as *Baker v Willoughby* and *Jobling v Associated Dairies*.

Question 5 (defamation and freedom of expression)
Defamation attracted fewer candidates than in past years, perhaps because it has not been possible to offer a lecture series on this topic for the past two years. Most candidates discussed the creation by the House of Lords of a qualified privilege defence for responsible journalism, but overlooked other cases where the ECHR guarantee of freedom of expression has influenced the defamation rules in English law, such as reportage and remedies.

Question 6 (economic torts)
Very few candidates attempted this question, but those who did generally handled it very well, paying acute attention to the reasoning in *OBG v Allan* and its implications for mapping the territory of economic torts.

Question 7 (foreseeability)
Many candidates equated "tort" with negligence, ignoring the other torts in which foreseeability of harm is -- and is not – a required element. Some offered a discussion of duty of care and breach, overlooking that the question was confined to tortfeasors, so that these elements would already have been proved.

Question 8 (problem: occupier's liability, employers' liability defences)
This was the most popular problem in the paper. Common errors here included thinking that there could be only one occupier of premises; failing to consider the nature of the relationship between Tony and Socket and the applicability of the Employer's Liability (Defective Equipment) Act 1969; considering that faulty wiring in the building causing a blackout could not render otherwise innocuous structures dangerous; assuming that a duty automatically arises under Occupier's Liability Act 1984; and overlooking possible defences. A great many candidates did not know that the Unfair Contract Terms Act 1977 s 2(1) applies only to attempted disclaimers or restrictions of business liability, an important issue on the facts. Many also did not consider whether UCTA 1977 can apply to trespassers.

Question 9 (problem: product liability)
An astonishing number of candidates did not appreciate that a product liability problem required consideration of the Consumer Protection Act 1987. Some of those who did discuss the Act did not address any of the relevant cases. Many candidates thought that the cat's prize-winning potential constituted pure economic loss, rather than consequential financial loss from property damage so as to be recoverable under the CPA. Few considered that the value of the cat might be enhanced by its past and future winnings beyond the initial £100 purchase price so as to meet the minimum statutory value. Many did not go on to consider an alternative claim in common law negligence. The majority of answers did not consider whether Jimmy's post-traumatic stress disorder might be recoverable as personal injury under the CPA.

Question 10 (problem: nuisance)
This was a very popular question, and was generally well done. The best answers distinguished the rules in private nuisance, public nuisance and negligence as they might apply to the parties' claims for different heads of damage, and offered an acute analysis of the implications of the cases on liability for natural hazards for the claim regarding the tree. There were also good answers on remedies. However, many candidates did not recognize the possible significance of the decreased purchase price for Annie's claim.

Question 11 (problem: vicarious liability, negligent mistatement, public authorities)
This problem was generally answered quite well. However, there were some perplexing gaps in many candidates' knowledge: that sexual abuse constitutes an intentional tort of trespass to the person; that there can be vicarious liability for intentional torts under *Lister v Hesley Hall*; that the House of Lords has now recognized that social services can owe a duty of care to children at risk of abuse under *JD v East Berkshire*, but not to their parents; that there is a nominate tort of breach of statutory duty; and that the liability of a negligent referee to the recipient of the reference would require an extension of *Spring v Guardian Assurance.* Some also overlooked the facts distinguishing the claims of Betty and Lindsey.

Question 12 (defective premises, negligent professional services, vicarious liability
There were many good answers to this question. However, the markers were disconcerted to discover how many candidates felt able to discuss a problem about defective premises without any reference to the Defective Premises Act 1972. There were some excellent answers analysing whether the building was a dwelling so as to come within the statutory liability, and if not, whether there had been consequential damage to other property so as to circumvent *D & F Estates* and *Murphy v Brentwood.*

LAND LAW

Most candidates did well in both essay and problem questions, displaying a good knowledge of the material and a fair degree of skill (at the top end, real power) in deploying it. There was mercifully little of the "argument by proxy" that the examiners have encountered in other years, where a candidate, instead of making or reporting an argument in his or her own words, simply drops the name of some scholar who has at some time addressed the topic. In case there are any who remain attracted by that approach, we take this opportunity to emphasise its unsatisfactoriness.

There were however surprisingly many significantly weaker scripts. Some of the deficiencies were ones of technique, most often a failure to address the question set or to organise the material clearly. But others were substantive. Most strikingly, a number thought that LRA 2002 Sch 3 para 2 entitled an occupier of land to remain in occupation after the land's transfer, even if s/he had only a right in personam or indeed no right to be on the land at all. It is shocking that a student could get a week into Land Law, let alone sit Finals, thinking that.

Questions 2 (contractual licences), 3 (*Stack v Dowden*), 6 (easements), 7 (*Street v Mountford*) and 9 (proprietary estoppel) were substantially the most popular. Some of them merit individual comment:

Q 3 (*Stack v Dowden*). A number of answers passed judgment on the impact of *Stack v Dowden* without explaining what led them to ascribe that impact to it: that is, without actually analysing what was said in the case. A number, too, made insufficiently critical use of certain extra-judicial statements recently made about the decision by one of the participants in it; it was as if they simply signed up to the last thing they had read or heard. Some use was made of the more recent caselaw, but within this, *Abbott v Abbott* was curiously inconspicuous (perhaps because it was – unsurprisingly – played down in those recent extra-judicial statements?).

Q 6 (easements). The question required only mainstream knowledge, but weaker scripts often displayed ignorance or basic misunderstanding of at least some of the relevant rules. Candidates were also often challenged to work with, rather than merely allude to, *Re Ellenborough Park*. Some candidates wrote about restrictive covenants, despite the absence from the question of any indication that these were involved.

Q 7 (*Street v Mountford*). This question featured some possible "reverse shams": points at which, while the parties' written agreement pointed to a lease, their behaviour on the ground was arguably more suggestive of a licence. A number of answers simply announced that the written agreement alone mattered – a position which, taken at face value, would negate the whole doctrine of shams.

Q 9 (proprietary estoppel). The biggest issue in this question was as to quantum, but some candidates made no reference to *Jennings v Rice*. Indeed, a number managed to muster no authorities on the topic at all.

ROMAN LAW DELICT

The results of the FHS exam were alright. In view of the way both candidates dealt with some particulars questions we concluded that they must not have prepared themselves for the exam as sufficiently as necessary.

COMPARATIVE LAW OF CONTRACT

The general standard was good to very good, though there were several candidates performing at a lower second level and only at two at first class. Overall, the candidates who did well were those who marshalled arguments and materials from both the laws studied so as to respond to exactly the question as set.

All the questions were answered by one or more candidates. Questions 1 (tempering freedom of contract with contractual justice), 2 (significance of French codification and use of authority in both laws) and 3 (comparing conceptions of contract in the two laws) were much less popular. Apart from these questions, comments on individual questions are as follows:

Question 4 (comparing *erreur sur la substance* with English law). This was a popular question and candidates demonstrated a good understanding of the differences between the French law of *erreur* and the English law of mistake. Better answers also explained how the law of misrepresentation plays some of the role of French *erreur*.

Question 5 (commenting on proposed new French approach to supervening circumstances). This was not a very popular question, but those candidates who responded to it engaged well with the proposals as well as with the existing laws.

Question 6 (right to performance). This was a popular question, with candidates generally showing a good understanding of the significance of *exécution en nature* and remedies for breach of contract in English law.

Question 7 (good faith in English contract law in the light of the French experience). This was quite a popular question. Some answers demonstrated a sophisticated understanding of the role of good faith in French law and its possible role in English law.

Question 8 (rights for third parties to contracts). This was a very popular question with many candidates providing very good discussions of both laws, some explaining the significance of extra-contractual liability/tort liability for some of the French developments.

Question 9 (formation of agreement and role of the *juges du fond*) This was a quite popular question and candidates generally explained both the substantive laws and the institutional contexts well.

CRIMINAL JUSTICE AND PENOLOGY

This was a strong year for the FHS Criminal Justice and Penology paper. With the exception of the last question on actuarial justice and the question on the right against prison overcrowding, there was a good spread of questions attempted across the paper. Most

candidates were able to draw on a wide variety of sources and those who obtained in the high 2:1 range and above were able to integrate a diverse range of empirical and legal material with sociological analysis and normative theory. Clearly the best candidates were able to harness the full range of materials in this subject while answering the questions directly. We were impressed that such a large proportion of candidates aimed their answer so clearly at the question set, and we would hope to see this replicated in future years. Those candidates that scored less well were inclined to stick to their tutorial essays instead of approaching the question directly. This was most evident in the material on youth justice where candidates clung to their essays on differentiation, rather than exploring the rationales behind recent changes in youth justice legislation. Candidates that scored least well tended to demonstrate a thin knowledge of the sources and either answered the questions without demonstrating knowledge of a diverse range of sources on the subject, or failed to answer the question directly.

Candidates were evidently put off by questions they had not fully anticipated from previous years. This was a little disappointing as those that did try and engage with novel questions did well. For example, candidates who avoided answering question 5(b) on prison overcrowding and opted instead for question 5(a) often demonstrated a clear understanding of the issues around prison overcrowding, but were disinclined to combine this knowledge with a basic understanding of the Convention and the cases dealt with in the prisoners' rights lectures in order to answer this question. We would encourage candidates in future years to try and take more risks in this regard.

Nevertheless, overall it was encouraging to see such a high proportion of scripts in the first class/high 2:1 range, and conversely such a low proportion of scripts in the 2:2 range.

PUBLIC INTERNATIONAL LAW

The level of performance was, in overall terms, very good. Among those who obtained 2:1 class marks, there were a number of students who may likely have achieved a higher, possibly First class, mark if they had integrated a greater degree of analysis of the material being considered into their answers instead of employing a more descriptive approach.

More generally, a number of papers would have scored higher if they had answered the specific question being asked rather than providing a formulaic, general essay on the topic of the question. Moreover, greater attention to detail and less inaccuracies in a number of cases would have also seen higher marks.

HISTORY OF ENGLISH LAW

Every question was attempted by at least two candidates. The most popular questions were 1 (real actions), 2 (entails), 8 (trespass and case) and 9(b) (money obligations in assumpsit). In general terms candidates might have done better had they made better use of cases. The new standardised sources handout makes a failure to do this less acceptable. Question 1 suffered from lack of balance and the unwillingness or inability to treat all the elements evenly. Question 2 was generally well done and there was some clear thinking on the nature of

conditions and their abandonment but a tendency to rush at and through this question was surprisingly common. For some candidates a simple account of how the formedon writs worked would have provided at least a core structure around which to explain the changes. Question 8 was competently done but here especially a greater familiarity with the cases would have helped considerably. Answers to 9(b) too often suffered by incorporating far too much detail from 9(a) and in consequence giving too little attention to the particular ways in which agreements to pay money had to be worked their way into the action on the case. Of the remaining questions it is worth mentioning that 5 (Why did English lawyers need to invent uses and trusts?) while good enough on the motivations of settlors, were woefully inadequate on why these motivations could not have been achieved using the existing common law armoury.

EUROPEAN COMMUNITY LAW

The overall quality of scripts was broadly similar to past years in this subject. Better candidates demonstrated the ability to use in-depth knowledge in creative and thoughtful ways to analyse the specific questions set. In common with past years, too many candidates simply offered answers on the general area of law referred to in the question. In addressing questions inviting comment on quotations, too few candidates examined in a systematic and well-structured way the specific points made in the quotation. In weaker scripts, it was also troubling to see some basic errors of fact (see comments on specific questions below), and, in many scripts, to see sloppy use of important terminology and other errors in expression, such as the use of "Attorney-General" instead of "Advocate-General", and references to the "Constitutional Reform Treaty." Although not related to the substance of answers, it was also noted that many candidates mistakenly assume that commentators in the field are male, in particular, Gráinne de Búrca. There was also an imbalance in questions selected by candidates with very few candidates attempting questions 1, 8 and 9, and those who did select those questions on the whole offered poor answers to them. This may indicate that some candidates were not sufficiently prepared across the breadth of the syllabus in this subject.

Q1: Few candidates attempted this question and on the whole it was not answered well. Some candidates offered summaries of citizenship law with too little reference to the specific question set. Too few candidates offered in-depth consideration of what a constitutional legal order might amount to in the EC context.

Q2: This was an extremely popular question but many candidates were content to offer a rather "standard" essay on subsidiarity in general and paid too little attention to the specific points raised in the quotation. Stronger answers led the reader through the quotation and the issues it raised in a systematic way. There were some troubling omissions in a significant amount of answers, e.g. lack of discussion of the measures introduced by the Amsterdam Protocol.

Q3: Too many candidates focussed solely on the first sentence of the quotation, and then ignored, or inadequately engaged with, the second sentence. Weaker candidates mistakenly asserted that there were few fundamental rights cases against EC institutions. *SPUC v. Grogan* was regularly discussed in answers to this question, and very regularly misunderstood. This was particularly disappointing as last year's examiners report drew attention to candidates' lack of understanding of this case. Better answers revealed thoughtful and subtle knowledge of relevant case law, and made creative use of cases such as *Schmidberger* and *Omega* to consider whether the ECJ has acted in an expansionist or limiting capacity.

Q4: This question produced generally satisfactory answers although the depth of analysis and knowledge of case law was thin in some cases. Better answers were not content merely to run through the relevant case law but actually considered in depth the nature of a co-operative relationship in the context of the particular challenges facing the EC and the ECJ at various points in their history. Some candidates revealed inadequately precise knowledge of the rules regarding the obligation of final courts to make preliminary references laid down in CILFIT.

Q5: This question was popular and was answered well in the majority of cases. Stronger answers brought in creative and thoughtful points of analysis of their own and were not content merely to repeat points of analysis mentioned in the lectures on this topic. It was disappointing that several candidates did not appear to understand the detail of the indirect effect and incidental effect case law or the relations between various parties in these cases.

Q6: This question was not very popular but those candidates who selected it tended to produce very good answers. Strong candidates offered a thorough consideration of the several possible objectives of the ECJ in developing the principle of state liability, and used thorough knowledge of case law to consider the development of the law in this area and the extent to which it had been sensitive to Member States' concerns.

Q7: This was a popular question but too few candidates paid acute attention to the specific quotation in answering it. Most candidates were content to approach the issue via a discussion of the standing requirements in Art 230 (4) and of Advocate-General Jacobs' view of the law in this area in the *UPA* case. Stronger candidates paid attention to the wider issues raised in the quotation regarding the function of judicial review, considered what would be required of judicial review in the case of a supranational body such as the EC, and also moved beyond standing to examine issues such as grounds and intensity of review.

Q8: Very few candidates attempted this question and answers were weak, did not answer the question set well, and revealed a lack of detailed knowledge of relevant case law.

Q9: Few candidates attempted this question and many of those who did revealed inadequate knowledge of free movement of persons law and the details of Directive 2004/38. Issues such as whether the scenario involved a purely internal situation and the effect of the *Garcia Avello* case regarding part (a), the relevance of the *Akrich, MRAX* and *Jia* cases regarding part (b) and the relevance of cases such as *Graf* regarding part (c) were often missed entirely or inadequately dealt with.

Q10a: Too many candidates offered a relatively unstructured narrative of the development of free movement of goods law from *Dassonville* to *Keck* and beyond without relating this knowledge to the specific issues raised in the quotation. Strong answers considered the ECs competence to harmonise under Art. 95 vs. ECJ control of national barriers under Art. 28 case law in analysing the quotation.

Q10b: Most candidates attempting this question spotted the relevant issues relatively well but some did not deal with them with the required precision or depth. Particularly troubling was a lack of understanding by some candidates of the relation of the respective justificatory routes under Art. 30 or the *Cassis* mandatory requirements line of case law to justifying distinctly and indistinctly applicable measures. Discussions of whether the national measures at issue met the

relevant standards of justification and proportionality were disappointingly brief and inadequately focused on the specific facts of the question.

COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS

Students performed very well overall in this subject. In copyright, the majority of students answered questions 1, 3 and/or 5 (on theory, originality and human rights), with only a small number attempting questions 2, 4 and/or 6. The strongest answers were on theory and originality. In trade marks students focused overwhelmingly on questions 8 and 10 (unusual marks and confusion), and did both to a consistently reasonable standard.

INTERNATIONAL TRADE

The standard was similar to that of the last few years.

Of the essays, question 1 was the most popular, but the answers tended to deal either with the *Groom v Barber* issue or with *Gill v Duffus*, when the question had been deliberately drafted to encompass both. Those who did deal with both aspects tended not to bring out the fact that while *Gill v Duffus* deals with non-conforming goods, the *Groom v Barber* problem concerns goods lost or damaged after shipment, ie when risk would usually have passed.

Question 2, on the passing of property, was also reasonably popular. Weaknesses included spending too much time on the significance of the passing of property – which was not really necessary – and getting waylaid by discussions of risk and title conflicts.

Question 3, on the autonomy principle in letters of credit, was done by only three candidates, but the answers were good, combining a clear outline of the principles with a sophisticated analysis of them, and drawing effectively on the academic literature.

Question 4, on documents of title, was the least popular on the paper, attracting only two answers, one of which was much stronger than the other.

It is difficult to generalise about the final essay question, question 5, which asked candidates critically to evaluate two out of four cases, except to say that those commenting on the two most popular cases, *The Starsin* and *The Afovos*, generally did so in a perceptive and critical way.

Question 6, on bills of lading as receipts and deviation, was the second most popular problem question. Weaker candidates failed to structure their answers around the claims the parties might have, and in general the treatment of the counterfactual at the end was very thin.

Question 7, on rights and liabilities attaching to bills of lading, was the least popular of the problem questions. It was a very complex question, but in general those who did it handled it well, though there tended not to be enough detail on the infestation claims, and no-one really challenged Lord Hobhouse's "mutuality principle".

Question 8, on risk and parties, was reasonably popular. The answers varied enormously, with the weaker ones tending to be poorly structured and confused in their analysis. Errors included

mixing up the passing of property and the passing of risk, not connecting the *Himalaya* clause to the Hague-Visby Rules, and forgetting about the Hague-Visby Rules time bar.

Question 9, on remedies, was the most popular problem question, but in general the answers were a little disappointing. Some candidates missed the *Panchaud Freres* issue altogether, and few of those who mentioned it identified its significance. Some answers revealed quite basic misunderstandings of the market loss damages issue.

Question 10 was reasonably popular even though it raised a number of different issues from across the reading list. The answers were generally of a high quality, and there were some excellent discussions of the *Cunningham v Munro* problem. Unfortunately, however, some candidates were waylaid by red herrings such as the action for freight and the status of the notice as to expected readiness to load, and the need to establish a second breach in order to recover damages over and above demurrage was often missed.

TRUSTS

The general standard of scripts was somewhat disappointing. It does not seem to be attributable to the nature of the questions asked: there was no evidence that candidates struggled to meet the requirement to answer four questions, including at least one problem question. Nor were any difficulties caused by the new format of the paper (the removal of the former Part A and Part B headings). Rather, a large number of scripts shared specific, undesirable features. First, there was a tendency to place unjustified weight on general statements, often unsupported by case citations or other evidence. For example, the idea that trusts are "facilitative" was often used as a conclusive argument in favour of recognising the legal validity of an intended arrangement (such as purpose trusts in Question 2; the *Quistclose* trust raised by Question 9; and the bequests in Question 11). Yet the fact that trusts are often deliberately set up cannot mean that their substance should be unregulated; after all, contracts are "facilitative" yet rules as to their substance are still taken seriously. Second, and linked to this first point, there was a widespread failure to state specific *tests*, drawn from statute or case-law, when considering a specific point. So in Question 2, for example, candidates often raised and discussed a "certainty" issue without ever stating the specific test applied by the courts. Third, and linked to the first two points, candidates only rarely gave direct answers to the direct questions asked. For example, in Question 4, candidates often discussed particular cases but failed even to attempt to formulate a list of generalised situations in which a failed gift can take effect as a trust. Similarly, in Question 10, very few candidates addressed the central question of whether it is possible to have a purpose which is for the public benefit but is nonetheless outside the list of charitable purposes permitted by the Charities Act.

With these general points in mind, the individual questions will be briefly discussed.

Question 1: Rarely answered. As expected, the few answers tended to be either very good (bringing a broad range of examples to bear and setting out contrasting views of the fundamentals of a trust) or very bad (simply discussing particular examples of trusts, without justifying why those examples might be fundamental or important).

Question 2: Very popular. Predictably, many candidates focussed on "exceptions" to the rule without discussing how, if at all, those cases shed light on the question asked (future candidates should be aware that we may already have reached the limits of what "trusts of imperfect

obligation" can teach us). Better answers thought about the purpose of the rule in relation to the fundamental nature of a trust and considered alternative options (eg permitting a purpose trust policed by a nominated enforcer).

Question 3: Reasonably popular, but perhaps less so than past resulting trusts questions. It may be that some candidates realised they had little to say about the specific focus of the question and so (wisely) avoided it. There were some very good answers from candidates who thought carefully about so-called "automatic" resulting trusts and how, if at all, they can be compared with so-called "presumed" resulting trusts. It was disappointing how rarely candidates focussed in detail on even one or two decisions discussing "automatic" resulting trusts; as previous examiners' reports have noted, there is a rush to discuss the theory, without pausing to consider the law.

Question 4: Reasonably popular. Good answers included, but were not limited to, a careful consideration and comparison of *Pennington v Waine* and *T Choithram v Pagarini*. A possible test based on "unconscionability" was widely rejected by candidates, but few went on to consider whether, in light of that view, *Pennington* was necessarily wrongly decided; and still fewer considered whether a more specific meaning of "unconscionability" could be deduced from the facts of that case.

Question 5: Rarely answered: it may be that candidates are not confident with the notion of a "liability to account". Some very good answers drew a link between the requirement of receipt and the notion of the defendant holding something on trust for the claimant; other equally good answers pointed out the potential confusion caused by the use of the "constructive trustee" label.

Question 6: Moderately popular. It was important to discuss trusts of the family home; but equally important not to discuss them exclusively. There were some good answers but disappointingly few considered why, in practice, it matters whether a trust is labelled "constructive" as opposed to, for example, "express". Candidates would do better to regard themselves as dealing with the difficult practical questions of what the law is and should be; and not simply as judges of an academic beauty contest.

Question 7: Not very popular; but those who did answer often did so very well and had thought carefully, for example, about the implications of the approach taken in *Bristol & West Building Society v Mothew*.

Question 8: Not very popular. Better answers distinguished carefully between "dishonest" and "careless" conduct, as well as considering the wider policy questions and whether and when a clause protecting a supposed trustee can, if valid, be inconsistent with the presence of a trust.

Question 9: Reasonably popular. Some very good answers carefully considered what a loan involves; what a trust involves; and the different stages of a *Quistclose*-type transaction. Some answers were clearly held back by a desire to hold a general discussion of the various academic views of the *Quistclose* trust without showing how, if at all, the differences between those views have any effect on the particular question asked.

Question 10: Very popular. Candidates were clearly familiar with the relevant provisions of the Charities Act 2006. But, as noted above, surprisingly few answers directly addressed the central question.

Question 11: Very popular. The chief problems were noted above. In (i) some candidates considered the word "deserving" to give complete freedom to the party making the selection. In both (i) and (ii) a surprisingly large number of candidates failed to apply the correct test to a gift based on equal division. And in (iii) it was disappointing that more candidates did not focus on *re Barlow*. On the other hand, there were some very good answers which: in (i) carefully considered the effect of appointing a third party to assist, considering the difficulties with Lord Denning's favoured approach in *re Tuck*; and in (iii) discussed the possible problems with the approach adopted in *re Barlow*.

Question 12: Very popular. The best candidates responded carefully to the novel problems raised by considering the underlying purpose of the secret trusts doctrine as developed by the courts. When dealing with *re Gardner (No 2)*, too many candidates simply stated that the reasoning is considered to be incorrect, without pausing to explain why that is the case. Surprisingly, many candidates failed to discuss whether the secret trusts rules apply to dealings with a freehold exactly as they apply to dealings with a Ferrari.

Question 13: Very popular. The best answers carefully considered the scope of, and possible tension between, the House of Lords' decisions in *Grey v IRC* and *Vandervell v IRC*. Some candidates, however, simply took the view that *any* dealing by B with a right under a trust must be made in signed writing; they did not do well on this question. The point about B having shares in a *public* company was frequently overlooked, even by candidates who expressly discussed *Neville v Wilson*.

Question 14: Not very popular. There were a large number of points in this question and candidates were not expected to spot every one. But, having spotted a particular point (eg whether "backwards tracing" should be allowed; whether the rule in *Clayton's Case* should apply to the dealings with the current account), candidates were expected to deal with that point carefully. There was instead a tendency for candidates simply to state (often unorthodox) conclusions.

ADMINISTRATIVE LAW

The FHS Administrative Law paper was generally done well by the candidates and there were a significant number of first class papers. The best candidates showed a good understanding of the positive law, combined with an appreciation of the broader normative/policy issues that were relevant to the question set. The very best candidates also managed to integrate the secondary literature fully into their answers.

The weaker candidates demonstrated the flaws commonly found in such scripts: a failure to address the question set; inadequate knowledge of the relevant law; and insufficient/scant understanding of the broader issues that were relevant to the questions on the paper. This was especially disappointing because of the wide choice of questions on the examination paper.

The most popular questions were those on the meaning of public authority under the Human Rights Act 1998, judicial review of fact, rationality review, legitimate expectations, and standing. The quality of the answers varied significantly. The best answers showed a real understanding of the positive law, combined with appreciation of the policy issues and

secondary literature. By way of contrast the worst answers displayed all the weaknesses mentioned in the preceding paragraph.

There were, by way of contrast, relatively few answers on fettering of discretion, the Tribunals, Courts and Enforcement Act 2007 and the provision of reasons. Those who did attempt the first two of these topics did not in general produce good answers, largely because they did not have sufficient grasp of the positive law, but there were however some good answers on the third of these topics, the provision of reasons and judicial review.

FAMILY LAW

Generally, the standard of answers was good. In recent years, the trend has been for few papers below 60, but also few exceptionally high quality papers. This year, building on a similar approach last year, three more difficult thematic questions were included in the paper to provide a clear opportunity for students to more easily demonstrate first class analysis; of these, one (Q 1) proved very popular, one less popular (Q 8), and one was attempted by very few (Q 12(a), Q 12(b)). The quality of answers to three questions was generally very similar to the more standard topic-specific questions; only a few students used one or more of these questions to demonstrate a deeper understanding of the interconnections between theory, case law and statute, and empirical research. As in recent years, this year there were very few Lower Seconds and also few excellent First Class papers. The examiners were also concerned at the level of generality of some answers, and a lack of both citation of and engagement with the detail of the applicable statutes and case law. Comments on particular questions follow:

Question 1. Choice. This was a very popular question, and most candidates were able to draw on a range of situations in which choices were at stake. That said, few students considered beyond a superficial level when family law actually respected individuals' choices, and what might justify varying approaches in different contexts.

Question 2. Marriage. This was another popular question, but answers were very mixed in quality. Some students used this question to present a pre-prepared essay on civil partnership, with insufficient focus on marriage. There were also some very general answers that focused either solely or predominantly on the academic literature, and even then not so much on the role of marriage as a legal concept, but simply on its social and religious significance. The best answers reflected upon the institution's various legal purposes and some of the current or potential alternative options for their satisfaction.

Question 3. Parenthood and parental responsibility. This question was generally fairly well answered by students, though fewer students got to grips with the complexity of the competing and complementary roles of biological and psychological ties between adults and children. The question asked whether the law "should" reflect the approach in the quotation although some students limited themselves to considering whether the law does so at present.

Question 4. Welfare principle. This was a less popular question, and one that was not well answered by quite a number of those that attempted it. Candidates often discussed child protection and welfare in very general terms, without focusing on the appropriate role of the s1 Children Act 1989 "welfare" principle. There was also little attention given to the second part of the question, which invited comparison of the role of the principle in the public and private law contexts.

Question 5. Residency and contact. This question was generally reasonably well answered, with some awareness that different considerations may shape the debate in the two contexts. There were, however, very few candidates that demonstrated awareness of the recent debate over the Children and Adoption Bill and the decision not to include a presumption of joint residency in the 2006 Act.

Question 6. Children's rights. Answers to this were somewhat varied in quality. Too many candidates produced pre-prepared essays on children's rights and welfare in broad terms, without focusing on the subset of issues identified in the question. Most students covered all of the pertinent case law, but few discussed the applicable UNCRC and ECHR rights in detail. The best answers considered whether freedom of expression and participation issues required different balances to be struck both in comparison with each other, and in comparison to other situations in which children's rights and welfare appear to conflict.

Question 7. Divorce. This was a very popular question, but also disappointing in the quality of answers received. Students often confused facts and grounds of divorce in relation to s1 Matrimonial Causes Act 1973; some also incorrectly based their arguments on the suggestion that England and Wales does not yet have no-fault divorce. Many essays contained an over-emphasis on the mechanics of Part II of the Family Law Act 1996, and inadequate focus on the issues identified by the quotation, as well as discussion of a full range of possibilities for reform.

Question 8. Gender discrimination. This question was generally fairly well answered, with most students comparing a range of contexts including financial provision, divorce, and residency and contact disputes. There was, however, a disappointing assumption made by some students that any differential treatment necessarily needed to be seen as discrimination, as well as little detailed discussion of the appropriate role of Article 14 of the ECHR in such a debate. Some students also discussed at length the Civil Partnership Act 2004 and gave examples of discrimination on the grounds of sexual orientation, assuming without more that this could be treated as gender-based discrimination. In the legal parental status and parental responsibility context, the better answers considered whether differential treatment was connected to the adult's sex or a narrower connection to the child, such as evidenced in *Re G*, which reflected a preference for the gestational female parent over the social female parent.

Question 9. Financial provision. This was a very popular question, which was frequently answered at too great a level of generality, with insufficient attention to the detail of the statutory provisions. Quite a few answers evidenced some uncertainty over the relationship between the principles in *White*, *Miller/McFarlane* and s 25 Matrimonial Causes Act 1973. There was a similar level of confusion over the "yardstick of equality," which was frequently stated to be a test from which departure may then be justified. Answers to this question tended to set out the marriage/civil partnership breakdown context, then the regulation of cohabitees, but very few went beyond simple assertions as to whether outcomes in either context were "fair"/"unfair" to consider whether the two contexts required different types of "fairness" and, if so, how those might be understood.

Question 10. Parents' rights. Despite being a fairly straightforward question, very few students answered this. Perhaps the reference to parents' rights rather than children's rights put off students, though, once beyond that initial change of perspective, this question should have invited good answers.

Question 11. Domestic violence. This was slightly more popular than in more recent years. Despite the explicit reference to children in the quotation, very few students deviated from a pre-prepared general discussion of domestic violence and the difficulties it creates for legal regulation. As a result, while this was solidly answered by the majority, very few students produced excellent answers.

Question 12. (a) Discretion and indeterminacy. Very few students attempted this question, but those that did, did so very well. (b) Family law and society. More popular than (a), this was still only answered by a handful of students. That said, answers to (b) were generally very thoughtful and high quality, drawing on a range of dilemmas over recent reforms and possible future reforms across family law.

COMPANY LAW

The standard of the candidates was very satisfactory. All questions were attempted although there was the usual concentration on the student favourites, for example, Q.2 (Limited Liability, Q.4 (Nature of the Corporate Constitution, and Q.6 (Derivative Actions and Minority Protection). What was different from the past is that many candidates attempt the questions on Capital and there were some excellent answers to Q.7 dealing with Capital Maintenance. The answers to Q.3 (Nature of Floating Charge) were particularly strong. This paper attracts quite a number of MJur candidates and their performance was very strong and no different from that of the FHS candidates.

LABOUR LAW

Candidates generally performed well in this year's FHS Labour Law examination. Most candidates achieved a mark of at least 60, and a good number of candidates achieved high 2.1 and first class marks. The very best scripts contained legal analysis of exceptional sophistication. There were also very few examples of poor scripts that relied upon general knowledge of policy debates in economics in the absence of appropriate legal analysis. Once again, a fair number of candidates produced two or three excellent answers while neglecting the fourth question. Candidates should take care to ensure that they avoid excessive selectivity in revising topics for FHS Labour Law.

Question 1 attracted very few answers, which were generally of patchy quality. General knowledge and trite political assertions are no substitute for analytical engagement with the detailed canvas of the legal framework. Question 2 was very popular. While some candidates interpreted this as an invitation to describe general problems with the personal scope of statutory employment rights, better candidates engaged specifically with the internal logic of common law contractual techniques in this context. Furthermore, better candidates also looked beyond 'casuals' to consider the position of other kinds of atypical work and related problems with contractual techniques (eg agency work). Question 3 was relatively popular and well-answered, while questions 4 and 5 attracted few takers. Question 6 was very popular and it attracted a spread of abilities. The best candidates engaged with the detail of the definition of 'reflexive' law provided in the quotation, applying this appropriately and critically to the legislative framework *and* relevant interpretive case law. Weaker candidates tended to get preoccupied with the policy debates surrounding the individual opt-out from the 48 hour

maximum working week. Question 7 was also popular and it was generally well-answered, with better candidates exploring the multiple controversies inherent in the *Johnson* judgment and its aftermath. Question 8 was less popular and proved to be a challenging question for candidates. Very few candidates teased out the various possible meanings of 'dispute resolution'; fewer still engaged appropriately with the legal detail, exploring the possible tensions between 'dispute resolution' and 'justice in dismissal'. Questions 9 and 10 were both popular and well-answered by most candidates. Question 11 was a discriminating question. Many candidates were very familiar with *ASLEF v UK* and its possible implications for statutory reform; very few candidates were sufficiently familiar with the detailed nuances of the common law position. This made the comparative slant of the question very tricky for many candidates. Question 12 was answered by a minority of candidates, with many of those candidates neglecting the second part of the question.

CRIMINAL LAW

There were five candidates for the Criminal Law paper. All of the papers were of a mid-2:1 quality. The papers displayed a good general knowledge of the cases and materials and a sound grasp of the basic principles and doctrines of criminal law. The papers did not, however, demonstrate great depth over the theoretical issues in criminal law nor the possible lines of analysis raised by the problem questions.

PRINCIPLES OF COMMERCIAL LAW

The standard of scripts this year was variable. There were some excellent ones, which demonstrated a good knowledge of the material, together with an ability to apply the law to factual problems in a nuanced and subtle way, and a good critical ability. More candidates than usual answered three or four problem questions, rather than tackling essay questions. For some candidates this was unfortunate, if their knowledge of the area of law covered by the problem turned out to be patchy, but generally the problems were competently and, in some cases, skilfully answered.

As usual, the best essays focused strongly on the question posed, and applied a rigorous test of relevance to the material discussed. This was particularly true of questions 1 (reform of the law relating to registration and priority of security interest) and question 4 (the effects of crystallisation). In answering the latter question, candidates largely dealt well with the theoretical basis of the floating charge, but some were surprisingly weak on the practical effects of crystallisation, with no candidates mentioning the question of priority over execution creditors. Question 3 was not attempted at all, and question 2 only by 2 candidates. The best answers to question 5 (holder in due course) did not just repeat the statutory provisions, but considered the case law critically.

Question 6: Most candidate displayed moderate to good knowledge of the law relating to retention of title. Some worked out that Thornton could continue to retain title to the linen even though it was mixed with identical linen belonging to Hale, on the basis of co-ownership, although no candidate cited *Glencore*, and some thought that the co-ownership would be equitable. Only a minority of candidates picked up the warehouseman's lien. There was some very good discussion of the *Associated Alloys* case in relation to the money in Hale's bank

account, with the best answers considering in detail whether the decision would be followed by an English court.

Question 7: There were some good answers, with the best including some nuanced discussion of the balance between disclosure of idiosyncrasy and reliance on the seller's skill and judgment, in relation to whether a condition should be implied under s.14(3). The discussion of the enforcement of the bill of exchange was often brief, with some candidates not considering at all the possibility of Commercial Bank suing Bertram, and then Bertram suing Alexander.

Question 8: Most, but not all, candidates spotted that the sale to Bell, Cumnor and Glenmire was not ex-bulk. Those who assumed that s.20A applied, struggled to explain the relevance of the undertaking to pack up Forrester's wine, or the removal of Bell's and Cumnor's wine to Pole' s warehouse. Most, however, discussed the significance of these events well.

Question 9: This was the least popular problem, but engendered some very good answers, including some detailed and subtle analysis of the application of *Spectrum* to a charge with a right to substitute and a 'payment waterfall'.

Question 10: Few candidates did all parts of this question equally well. Many candidates thought that the sale to Henrietta was valid on the basis of apparent authority, despite the fact that the only holding out of authority was by Fred, and therefore failed to discuss the possible application of s.2(1) Factors Act. Many also thought that Lesley's purchase was on the basis of undisclosed agency, even though she had been in correspondence with George, whose position as agent was clear from the headed notepaper. The best candidates attempted to tackle the consequences of Edwina's inability to ratify the sale to Keith as the agency was undisclosed.

CONSTITUTIONAL LAW

There were only six candidates sitting the paper, so comments will remain general and in relation to the most popular questions, in order to ensure that individual candidates are not inadvertently referred to. The questions analysing fundamental principles of the constitution were more popular than questions on devolution or on civil liberties. The standard of the scripts was generally good. However, candidates did not have a detailed knowledge of the law and were less able to spot some of the more subtle issues raised by the questions, preventing candidates from performing at the highest level. In particular:

Question 2(a) (Separation of Powers): Candidates were able to discuss the extent to which the United Kingdom constitution complied with the principle of the separation of powers, but were less able to determine the extent to which compliance with this principle was a necessary feature of constitutional government.

Question 5 (Parliamentary Sovereignty): Candidates were able to give an account of parliamentary sovereignty and an assessment of the extent to which this principle may have been undermined by recent legal developments, but were less able to discuss other assessments of the importance of the principle to the United Kingdom constitution, or to recognise that its importance may differ between the different component parts of the United Kingdom.

Question 7 (European Union): Candidates were able to give an account of the nature of direct effect, indirect effect and the principle of state liability, but were less able to explain how this demonstrated different ways in which European Union law asserted its supremacy over the laws of the United Kingdom and often failed to determine whether this relationship was unavoidable.

Question 8 (Human Rights Act): Candidates demonstrated a good awareness of the provisions of the Human Rights Act 1998 and understood arguments from democratic dialogue, but were less able to assess whether such arguments demonstrated that the lack of democratic accountability of the judiciary was a strength or a weakness.

TAXATION LAW

The performance of the candidates in the taxation law exam was very. The answers to the questions were generally of a high standard with candidates making very good use of relevant cases and statutory provisions. In particular, those candidates who used the literature referred to on reading lists properly in their answers were duly rewarded. Those answers to essay questions which were not focused on the precise question asked, but instead provided a general description of the area, were not awarded high marks.

As in prior years there were 8 questions (6 essays and 2 problems) which gave considerable choice given that the students all cover all of the core material in a seminar format. Q.8 (the problem question on employment and self-employment) was attempted by nearly all the candidates whilst only two students attempted Q.4 (receipts). The problem questions were very popular – almost all the candidates attempted at least one of the problems and a third answered both problems.

Q.1 on the criteria of a 'good tax' required integration of tax policy and technical material for a complete answer and in general the answers were very good. Q.2 concerned capital taxation policy (IHT and CGT); the answers were weaker and unfocused with little engagement with the literature. Most answers to Q.3 on anti-avoidance were quite good. However there is a tendency for students to fall into a standard historical overview of the cases which produced weaker answers than those which focused on the specific question asked. Q.4 on trading receipts required a broad technical understanding and familiarly with the cases. The answers were very well done by the two candidates who attempted this question. Q5 on trusts was popular and the answers generally good; the best candidates demonstrated a good understanding of the technical rules and particularly the effects of the 2006 changes. Q6 concerned the common law tests for determining whether a taxpayer is employed or self-employed, and the different regimes governing the deductibility of expenses. Answers that analysed the case law on both issues in some depth and discussed the policy issues raised were awarded high marks.

Turning to the problem questions, Q.7 and Q.8 were both generally well done. The facts in Q7 raised a host of major and minor CGT, IHT and income tax issues. Most of the candidates attempting this question provided very strong, complete and well-organised answers and were duly rewarded. In Q.8 concerned employment benefits and the deductibility of self-employment expenses. The best answers considered the applicability of the rules on 'lower paid' employees, analysed the taxation of employer-provided accommodation in some depth, and discussed the *Sharkey v Wernher* point.

ENVIRONMENTAL LAW

Generally speaking the responses to questions were good and many responses to questions were excellent. In the latter category were those responses which engaged in careful detail with the reasoning of the cases, were based on a good working knowledge of the legislation, displayed a subtle appreciation of the academic arguments and a nuanced understanding of the environmental problems. In these answers, candidates could also operate right across the subject and see relationships between different areas of environmental regulation.
Weaker answers tended to be very general and miss a substantial number of issues and/or be formulaic in the discussion of legal issues. Despite the fact that a problem question was optional, similarly to last year the vast majority of students attempted one problem question.

EUROPEAN HUMAN RIGHTS LAW

The examination was in two parts, with candidates required to do at least one question from each part. All candidates complied fully with the rubric. Candidates were evaluated according to four main criteria: (i) the extent to which the essay answered the question posed; (ii) the structure and clarity of the argument; (iii) the use of primary materials (Convention and case-law) and of secondary materials; and (iv) critical analysis and innovative thinking. Overall, the standard was good, but some candidates let themselves down by providing a bland response, which, although showing a good knowledge of the cases and materials, tended to ignore the challenge posed by the question, particularly in relationship to the quotation provided.

Question 1 (evidence obtained in breach of a Convention right) was the most popular question. While most candidates showed a reasonable knowledge of the cases, many ignored the thrust of the question: namely, Sir Nicholas Bratza's preference for an intrinsic as against an instrumental rationale for rejecting the use of such evidence. The best candidates were able to address this issue. Question 2 (private life and positive duties) was also attempted by a significant number of candidates. Here too some candidates ranged too widely over the whole of Article 8, rather than focusing on the three aspects of private life identified in the quote, namely autonomy, personal development and the ability to establish and develop relationships with other human beings. Good candidates showed a good knowledge of different understandings of the concept of private life, particularly the work of Feldman, and were able to link this to the development of positive duties. Question 3 required candidates to consider the concept of substantive equality. While there were some excellent responses to this question, many of those attempting it showed too little understanding of this concept. Question 4 (democracy) was slightly less popular, but there were some first class responses amongst those that did. The weaker candidates tended to generalise too much. Question 5 (margin of appreciation) attracted relatively fewer responses and among these the standard varied widely. Again, the better candidates were able to focus their response on the quote given.

Among Part B questions, there was a wide spread of questions answered, reflecting the fact that students could choose three from among the available options in the course. Of these the most popular was 7(b) on surveillance, where candidates showed a thorough knowledge of the case-law and were able to link the cases to the issues well. There was, however, a tendency to take a standard line against surveillance of all kinds, with few candidates presenting the arguments justifying surveillance even if only to demonstrate their weaknesses. Questions 8

(socio-economic rights), 6(a) (retrospective criminal laws) and 7(a) (right to a home) were generally well done, showing a good appreciation of the issues as well as an ability to apply a range of critiques to the case-law. Question 6(b) (prisoners' rights) was reasonably well done, but candidates tended to stick to a single approach, without sufficient engagement with the case-law or other critical literature. There were fewer responses to questions 9 (overlapping jurisdictions) and 10 (extraterritoriality), but in both cases, there some very good responses.

COPYRIGHT, PATENTS AND ALLIED RIGHTS

The answers were at a generally high standard. Students dealt particularly well on the patents side with a question directed to a liberalisation to facilitate export of essential medicines to developing countries, and on the copyright side with a question on *Sawkins*. Doctrinal essays in patent law were not as well written. However there remained in both areas evidence of a good understanding of complex concepts and an ability to critique some of the implicit policy choices of the law.

PERSONAL PROPERTY

This was the first year in which Personal Property was examined as a full paper. Overall, the performance of candidates was impressive, with thoughtful use made of points raised in seminars and tutorials. The best candidates combined a detailed knowledge of the principal cases and statutes with a sharp analysis of their underlying principles. Although there were only eight candidates, each of the ten questions was answered at least once: indeed, with the exception of Question 7, each question was answered at least twice. There was no especially popular question, with Questions 2 and 9 were marginally the most tackled. As a group, Questions 8-10 did not attract noticeably more or fewer answers than Questions 1-7. Candidates tackling Questions 8-10 had a clear idea of what was required when answering those questions: they were prepared to use the given facts as a means to analyse the underlying principles, considering not only what the law may currently be, but also what it should be.

Question 1: Well handled; the best answers focussed on specific aspects of English personal property law and also discussed the different meanings that might be given to "ownership".

Question 2: Popular and generally well done; although some answers were rather vague in explaining the possible idiosyncrasies of damages in conversion. The better answers focussed on specific decisions and compared the approach applied by the courts to conversion cases with those taken to other torts.

Question 3: This question was not always well done: some candidates failed carefully to explain the issue in question. There was also a tendency to focus on academic views without considering the important practical consequences (for example to third parties) of the power to rescind a transfer of title.

Question 4: Reasonably well done; the best answers also considered cases dealing with a mistaken physical transfer of goods.

Question 5: Candidates answering this question had a good knowledge of the statutory rules and performed accordingly well.

Question 6: Answers to this question would have attracted better marks if they had: (i) distinguished different types of situation in which it might be said that title to goods has been destroyed; and (ii) considered what practical issues turn on the question asked.

Question 7: This question received only one answer.

Question 8: This question was generally well done, with the points of principle well discussed. Weaker answers failed to distinguish the specific issue raised in (a) from that in (b), instead simply relying on the statement that a contract of hire, by itself, does not give a hirer a property right.

Question 9: Some very good answers carefully dealt with the facts and considered possible weaknesses in the reasoning of some of the leading cases.

Question 10: Candidates well versed in the relevant provisions of the Factors Act 1889 took on this question and showed their knowledge to good effect.