FHS JURISPRUDENCE

DIPLOMA IN LEGAL STUDIES

(MAGISTER JURIS)

Examiners' Report 2010

PART ONE

A. Statistics

1. Numbers and percentages in each class/category

The number of candidates taking the examinations was as follows:

	2010	2009	2008	2007
FHS Course 1	186	205	205	201
FHS Course 2	27	27	33	31
Diploma	32	17	16	21
Magister Juris	18	34	34	38

Classifications: FHS Course 1 and 2 combined

	2010		2009		2008		2007	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	35	16.43	44	18.96	41	17.23	40	17.24
II.i	159	74.64	164	70.69	172	72.27	176	75.86
II.ii	15	7.04	23	9.91	18	7.56	14	6.03
III	0		0	0	6	2.52	1	0.43
Pass	0		0	0	0	0	0	0
Fail	4	1.87	1	0.43	1	0.42	1	0.43
Totals	213		232		238		232	

Classifications: FHS Course 1

	2010		2009		2008		2007	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	27	14.51	34	16.58	34	16.58	31	15.42
II.i	143	76.88	147	71.70	147	71.70	155	77.11
II.ii	12	6.45	23	11.21	17	8.29	13	6.46
III	0		0		6	2.92	1	0.49
Fail	4	2.15	1	0.48	1	0.48	1	0.49
Totals	186		205		205		201	

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

	2010		2009		2008		2007	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	8	29.62	10	37	7	21.21	9	29.03
II.i	16	59.25	17	63	25	75.76	21	67.74
II.ii	3	11.11	0		1	3.03	1	3.22
III	0		0		0		0	
Totals	27		27		33		31	

Results: Diploma in Legal Studies

10 candidates (31.25%) were awarded the Diploma with Distinction. 22 candidates (68.75%) 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. 745 out of 2,013 (1,917 FHS plus 96 DLS) scripts (37%) were in fact second marked. This total compares with 33.61% in 2009, 33.06% in 2008 and 28.73% in 2007. Third marking may be used in exceptional cases (e.g. medical cases) and 33 FHS scripts were 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 2009, 2008 and 2007. As in 2009, 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 again 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 four 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, as in 2009 and 2008 but not in 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 smoothly, and no significant changes appear to be required.

2. The examiners applied the classification and results conventions as previously agreed by the Law Faculty Board and notified to candidates.

D. Examination Conventions

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

In 2009, a new convention was applied for the first time for the award of Second Class Honours, Division 1, requiring 6 marks of 60 or above, and no more than one mark below 50 (which must not be below 40), rather than, as hitherto, 5 marks of 60 or above, and no more than one mark below 50 (which must not be below 40). This convention was also applied in 2010.

As the second table on the first page of this report shows, the proportion of Second Class Honours, Division 2 decreased this year to 7.04% (from 9.91% in 2009, 7.56% in 2008 and 6.03% in 2007). The proportion of Second Class Honours, Division 1 increased this year to 74.64% (from 70.69% in 2009, 72.27% in 2008 and 75.86% in 2007). The examiners considered that these changes reflected the fluctuations that one might expect from year to year.

The examiners paid particular attention to candidates with marks profiles close to the new borderline, i.e. those with 5 but not 6 marks of 60 or above. Following the first marks meeting the examiners ensured that existing marks of 59 of such candidates (which had already by that stage been marked twice) were marked for a third time. At the second marks meeting a small number of candidates had profiles including 5 marks of 60 or above together with at least one mark in another paper of 59 or 58. The examiners considered that they retained a general discretion over the application of the convention at this borderline (as elsewhere). In 2009, this discretion was only exercised in cases in which there was a relevant medical certificate. In 2010, the

examiners considered that they should also exercise discretion where the candidate's *average* mark for all papers was clearly in the Second Class Honours, Division 1 bracket (i.e. 60.0 or above). This resulted in two candidates being awarded Second Class Honours, Division 1, with five marks of 60 or above and an average in that class. The external examiners strongly supported this approach, which was felt to be an accurate reflection of the achievements of the candidates in question. The Law Faculty Board will no doubt wish to keep under review the operation of this convention and the examiners' exercise of discretion.

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 (as in 2008) 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 almost all scripts receiving an agreed mark (out of 745 scripts second marked). There were only three cases of disagreement. In two of these, the disagreement was resolved by third marking, and in the other case, the examiners awarded a mark to the script.

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. 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, 420 (20.86%) 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 2009 and 2008 (336 (15.70%) in 2009 and 410 (18.64%) in 2008 were second marked on this basis). This year there were 21 scripts with marks below 40 (1.04%) (compared with 6 (0.28%) in 2009 and 10 (0.45%) in 2008).

(ii) *Scripts which had been marked 4 or more below the average mark for that candidate.*
196 scripts (9.73%) were second marked on this basis between first and second marks meetings (228 scripts (10.65%) in 2009, 223 scripts (10.14%) in 2008 and 224 scripts (10.41%) in 2007).

(iii) *Scripts second marked because they were borderline.*
This year all scripts with marks ending in 9 had already been second marked 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 and the Gibbs prizes (performance in Contract, Tort, Land Law and Trusts), a small number of scripts with marks ending in 8 and 7 were second marked and are also included here.

First Mark	Number of Scripts	Number agreed in Higher Class	% agreed in Higher Class
68	85 (89)	13 (11)	15 (13)
67	71 (79)	4 (13)	6 (16)
58	75 (72)	13 (17)	17 (23)
57	37 (47)	6 (10)	16 (21)
48	3 (6)	2 (3)	67 (50)
47	6 (0)	1 (0)	17 (0)

For the purposes of comparison the figures for 2009 are given in brackets.

The overall success rate of borderline scripts ending in 8 and 7 reaching a higher class was 14.07% (18.43% in 2009, 25.00% in 2008 and 23.08% in 2007).

2. Third marking
There were 2 scripts third marked because of failure by markers to agree a mark. The examiners arranged for the third marking of 33 borderline scripts in the course of deciding on the classification of candidates, with particular attention paid to those affected by the convention on the borderline between Division 2 and Division 1 of the Second Class (as described above in Part One (D).

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

34 medical certificates were forwarded to the examiners (compared with 31 in 2009, 25 in 2008 and 19 in 2007). In addition, three candidates were certified as dyslexic or dyspraxic. Three candidates missed one paper and one candidate missed two papers because of illness.

6 candidates wrote some or all of their papers in college (compared with 4 in 2009, 7 in 2008 and 5 in 2007). A further 4 candidates wrote some or all of their papers in a special room in the Examination Schools. 5 candidates had special arrangements in the examination room (e.g. water, dextrose sweets) because of medical conditions.

The following additional specific details have been requested by the Proctors. In the FHS 25 medical certificates and similar documents ((22 candidates) 11.73% 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* 2009, page 34), and in 4 cases the candidate's final result was materially affected. One medical certificate was forwarded to the examiners in respect of a DLS candidate.

6. Materials in the Examination Room

There were three instances in which the Examination Schools had either failed to lay out the required materials on candidates' desks or had laid out incorrect materials. Fortunately, these errors were discovered by the Chairman in good time before the start of the relevant examinations and were resolved before the candidates entered the examination room. The list of statutory materials is included in Appendix 2.

Candidates whose course of study commenced in Michaelmas Term 2009 (i.e. Diploma in Legal Studies candidates) were not permitted the use of a bilingual dictionary in the examination room (see *Examination Regulations 2009*, Part 13, 13.7 (page 39)). The examiners took particular care to avoid unusual words in the question papers (particularly in problem questions) and no difficulties appear to have been caused by this change.

For those candidates whose course of study commenced prior to Michaelmas Term 2009 (i.e. FHS candidates) this new regulation did not apply. These candidates had to seek permission to use a bilingual dictionary at the time when they submitted their examination entry forms (in Michaelmas Term) and late applications were not permitted. 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 25 candidates for a total of 43 scripts. This compares with 16 for 51 scripts in 2009, 13 for 26 scripts in 2008 and 13 for 35 scripts in 2007.

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, as in previous years, this year's Notice to Candidates gave guidance (with worked examples) of the penalties which would normally be imposed for short-weight answers.

The examiners had cause to consider the proper approach to persistent short weight, both in the sense of more than one short weight answer in a single paper, and in the sense of short weight answers appearing in more than one paper. The examiners took the view that the existing practice as to short weight was relatively generous to candidates. As a result, where a candidate had omitted more than one question, the examiners applied the full short weight penalty to each omitted question (unless relevant medical evidence required a more generous approach). The Law Board may wish to review the short weight rules in the light of experience in this year's Law Moderations, in which an omitted question was simply given a mark of zero.

As in 2009, all scripts identified by the first marker as short weight were second marked during the first marking process.

Guidance was again given to markers, as in previous years, 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. 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, the databases are urgently in need of modernisation. Law Board had agreed to introduce new software in 2010. However, this has not happened. This is problematic. The fact that the existing system works at all is largely due to the hard work, knowledge and ingenuity of Julie Bass in dealing with the existing system, and fixing problems as they arise. However this is not a good long term solution. The Examiners urge the Law Board to consider this issue again as a matter of urgency.

10. External Examiners

This year we had the valuable assistance of Professor R Brownsword of King's College London (for his first year) and Dr S Watterson of the London School of Economics (for his second 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.

11. 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 Edwin Simpson, Director of Examinations, who was available throughout to give advice and to assist with difficulties when they arose. In addition to the examiners, 52 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:

	2010				**2009**				**2008**				**2007**			
	Male		**Female**		**Male**		**Female**		**Male**		**Female**		**Male**		**Female**	
	No	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	16	18	11	11	20	21	14	13	16	18	18	16	15	16	16	14
II.i	66	76	77	77	66	69	81	74	64	70	83	73	65	69	90	80
II.ii	4	5	8	8	9	9	14	13	6	7	11	10	9	10	4	4
III	0		0		0		0		5	5	1	1	0		1	1
Pass	0		0		0		0		0		0		0		0	
Fail	1	1	3	3	1		0		0		1	1	1	1	0	
Hons.	0		0		0		0		0		0		0		0	
Total	87		99		96		109		91		114		90		111	

The gender breakdown for Course 2 was:

	2010				**2009**				**2008**				**2007**			
	Male		**Female**		**Male**		**Female**		**Male**		**Female**		**Male**		**Female**	
	No	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	1	17	7	33	5	62	5	26	4	33	3	14	2	14	7	41
II.i	5	83	11	52	3	37	14	74	8	67	17	81	11	79	10	59
II.ii	0		3	14	0		0		0		1	5	1	7	0	
III	0		0		0		0		0		0		0		0	
Pass	0		0		0		0		0		0		0		0	
Fail	0		0		0		0		0		0		0		0	
Total	6		21		8		19		12		21		14		17	

The gender breakdown for Course 1 and 2 combined was:

	2010				2009				2008				2007			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	17	18	18	15	25	24	19	15	20	19	21	16	17	16	23	18
II.i	71	76	88	73	69	66	95	74	72	70	100	74	76	73	100	78
II.ii	4	4	11	9	9	9	14	11	6	6	12	9	10	10	4	2
III	0		0		0		0		5	5	1	1	0		1	1
Pass	0		0		0		0		0		0		0		0	
Fail	1	1	3	3	1		0		0		1	1	1	1	0	
Total	93		120		104		128		103		135		104		128	

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

	2010	2009	2008	2007
Roman Law (Delict)	7	6	2	3
Comparative Law of Contract	6	11	6	5
Criminal Justice and Penology	39	42	58	60
Public International Law	46	44	59	78
History of English Law	8	13	16	16
Ethics *		1	14	14
International Trade	11	8	20	21
Family Law	54	65	73	84
Company Law	30	34	28	26
Labour Law	30	39	48	65
Criminal Law	8	5	5	8
Principles of Commercial Law	21	16	28	31
Constitutional Law	7	5	5	8
Taxation Law	10	12	16	12
Environmental Law **	10	5	10	10
Competition Law and Policy ***	37	36		5
Copyright Trade Marks & Allied Rights **		19	32	19
European Human Rights Law ****	29	21	39	
Personal Property **	25	16	8	

Copyright, Patents and Allied Rights ****	2	24	9	
Moral and Political Philosophy*****		35		
Commercial Leases*****	7	7		
Patents, Trade Marks & Allied Rights	20			
Medical Law and Ethics	40			

* Not marked by FHS examiners
** Examined for the first time as a standard subject in 2007, but not available in 2010
*** 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 in 2009 but not available in 2010
****** Examined for the first time in 2010

2. Numbers writing scripts in Diploma in Legal Studies

	2010	**2009**	**2008**
Contract	25	17	16
Tort	24	17	16
European Union Law (previous to 2009 EC Law)	8	5	
Comparative Law of Contract	9	4	6
Company Law	6	3	2
Jurisprudence	1		
Principles of Commercial Law	3		
Public International Law	5	1	1
Criminal Law	3		
Copyright, Trademarks and Allied Rights		1	2
Trusts	1	1	
International Trade			
Labour Law	1	1	2
History of English Law			2
Copyright, Patents and Allied Rights			1
Constitutional Law	4	1	
Competition Law and Policy	2		
European Human Rights Law	2		
Criminal Justice and Penology	1		
Administrative Law	1		

3. MJur candidates taking FHS papers

	2010	2009	2008	2007
Jurisprudence				3
Contract	6	6	9	7
Tort				
Land Law			1	
Family Law				
Comparative Law of Contract			1	
Public International Law	2	5		4
European Community Law			5	5
International Trade				
Company Law	8	6	14	9
Principles of Commercial Law				
Constitutional Law			1	1
Trusts	2	1	3	2
Administrative Law		1		1
Labour Law				2
Criminal Law				1
Copyright, Trademarks and Allied Rights				2
Ethics				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*	1	4	9	6	19	42	6	9		2	1	213
Contract*		6	15	6	20	44	4	5		1		213
Tort		5	8	6	23	46	5	5		1	1	213
Land Law*		2	11	3	24	44	6	7		2	1	213
Trusts*		4	10	7	18	36	11	12	0	0	1	213
Admin. Law	0	4	19	14	28	23	6	3	0	0	1	213
Comparative Law of Contract		33			50	17						6
Crim. & Pen.		8	17	8	31	33					3	39
PIL		9	18	4	33	27	2	7				46
History of English Law		13	25	25	25		13					8

International Trade		9	18	9	36	18		9				11
EU Law		6	7	5	27	38	8	7		1	1	213
Family Law		8	12	12	37	29	2				2	54
Labour Law		7	11	11	19	41	4	4			4	30
Company Law		7	4		29	50	4	4			4	30
Criminal Law			29	14	14	43						8
Principles of Commercial Law*		6	17	11	6	44	11	6				21
Constitutional Law					67	17	17					7
Taxation		10	40	10	20	10		10				10
Roman Law (Delict)			50		33	17						7
Environmental Law		10	40		30	20						10
Copyright, Patents and Allied Rights					50		50					2
European Human Rights Law		11	26	11	30	22						29
Personal Property		4	20	12	36	20				4	4	25
Commercial Leases		14	29	14	14	29						7
Competition Law and Policy		3	11	6	43	31	3	3				37
Medical Law and Ethics			30	8	25	30	5	3				40
Patents, Trade Marks and Allied Rights		5	16	11	53	16						20

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

D. Comments on papers and individual questions

These appear in Appendix 3

R. Brownsword (external)
M. Chen-Wishart
P. Eleftheriadis
A. Ezrachi
A.C.L. Davies (Chair)

K. Grevling
S. Talmon
S. Watterson (external)
S. Whittaker
L. Zedner

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

APPENDIX 1

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The Vice-Chancellor, University of Oxford
c/o Mrs Sally Powell

21 July 2010

Dear Vice-Chancellor

External Examiner's Report 2010:
Final Honours School in Jurisprudence/Diploma in Legal Studies

I am pleased to enclose the following report, in my capacity as external examiner for the University of Oxford's Final Honours School in Jurisprudence/Diploma in Legal Studies for the academic year 2009-2010.

(a) *Academic Standards*

I am satisfied that the standards set for satisfying the FHS/DLS examiners are appropriate.

(b) *Assessment Processes*

Based on all that I have witnessed in my capacity as external examiner this year, I am satisfied that the FHS/DLS assessment processes are rigorous; that they ensure equity of treatment for its candidates; and that they are fairly conducted in accordance with the University's regulations and guidance.

An important feature of the FHS/DLS examination process is that it does not involve comprehensive double-marking of scripts. Nevertheless, I continue to be satisfied that everything is done, short of comprehensive double-marking, to ensure consistency in the marking process. Indeed, in my 2009 report, I explained that the FHS/DLS examination process incorporates an elaborate system of checks which mean that, in practice, it is probably better able to ensure consistency than a simple system of comprehensive double-marking. I remain of this view, and I refer you to the reasons I gave in my 2009 report. I have no doubt that the degree classifications of FHS/DLS candidates which result from this system of checks are robust.

As external examiner this year, I did not witness the deliberations of individual subject groups. However, as in 2009, I did attend the Board's First and Second Marks Meetings. The conduct of both meetings was again exemplary. The new Chair of the Board and the Examinations Officer had prepared meticulously. This preparation, and the Chair's effective chairing of the meetings, enabled the Board to perform its functions in an efficient yet rigorous way.

I have only two further comments to add regarding these assessment processes. First, an innovation this year was the preparation and distribution of tables which listed the mark profiles of candidates whose results placed them just below an important classification borderline. These tables allowed very easy comparison of the mark profiles of similarly placed candidates, and facilitated the difficult task of classifying them in a fair and consistent manner. This was particularly the case at the 2:1/2:2 borderline, where the new – and unusually demanding – threshold for a 2:1 degree classification has presented some real dilemmas for the 2009 and 2010 Boards. I deal with this further in (c)(ii) below.

Secondly, I was impressed with the manner in which the Board responded to what was perceived to be an unusual variation between the marking profiles of the markers of one of the FHS papers. In my 2009 report, I noted that at its First Marks Meeting, the Board receives full statistical information which enables it to compare the marking profiles of individual markers across a particular paper, as well as the marking profiles of different papers. In the ordinary course, the risk of significant variations between individual markers' marking profiles appears to be addressed through interim checks on the consistency of marking conducted within the groups of markers marking a particular paper. However, in the case of one 2010 FHS paper – very unusually – the Board was not wholly confident that those checks had been adequate.

Steps were taken by the Chair and the Board to address these worries which were appropriate and proportionate, and likely to remove the risk that any candidate's degree classification might be adversely affected by an unusually adverse mark in that one paper. These included: (i) contacting the marking group to verify that the system of internal checks was properly implemented; (ii) directing re-marking of potentially problematic scripts (a process of re-marking which tended to follow in any case because of the '4 below the aggregate' second marking rule); (iii) being sensitive to the need to give candidates the benefit of the doubt in the rare cases in which there was a significant risk that their degree classification might have been adversely affected by an unusually adverse mark in the paper in question.

Sensible recommendations were also made for the future strengthening of the system of checks on marking consistency. In particular, it was suggested that individual markers should be instructed to exercise *ongoing* oversight, *after* a marking group had met to conduct an interim review of marking practices, over whether their marking profile is starting to depart significantly from what the group had identified as the 'norm'.

(c) *Classification Conventions*

The FHS/DLS classification conventions are clear and simple, and avoid much of the complexity one encounters elsewhere. There are, however, two important features of these classification conventions which require further comment.

(i) The short-weight scripts conventions

The FHS/DLS conventions regarding short-weight scripts continue to present difficulties. Normal practice elsewhere is: (i) to mark a missing or partial answer *as it stands*, with a missing answer awarded a mark of 0, and a partial answer awarded a mark appropriate to the partial answer offered; and then (ii) to award an overall mark for the script based on the aggregate mark for *all* answers, divided by the number of questions the candidate was *required* to answer. The elaborate rules in the FHS/DLS conventions for dealing with short-weight scripts are rather different, and almost inevitably, substantially more generous to candidates than this. It is not clear why Oxford has opted to follow this different practice, and I would encourage the Examinations Committee to consider whether a new convention should be introduced, which would bring Oxford's practices into line with that of other universities. I understand that this step may already be under consideration.

(ii) The threshold for a 2:1 classification

A new, higher threshold for a 2:1 degree classification was introduced for the first time last year. In my 2009 report, I wrote that:

> *"It is apparent that the new 2:1 classification threshold was introduced with the aim of increasing the exceptionally low number of candidates awarded a 2:2 classification. It is also apparent that, at least at first sight, the new classification threshold is markedly more exacting than one can find in other institutions. At least two-thirds of a FHS candidate's scripts must be at 60 or above: i.e. at least six of nine. This contrasts with common practice elsewhere, where a 2:1 classification is typically awarded where a candidate has at least half of his or her scripts at that level, at least in the absence of marks below 50; and where conventions may well allow a 2:1 to be awarded to a candidate with a weaker overall mark profile on the basis of 'exit velocity', or perhaps a good aggregate mark. Indeed, the new FHS conventions can seem all the more exacting when judged in light of a combination of circumstances which distinguish the FHS examination process from that of comparable UK institutions: that all courses are examined by an unseen written examination; that all examinations which bear upon a candidate's final degree classification must be sat in one sitting, reflecting studies spanning a period of more than two years; and that there is no provision for selective, deferred sitting of fewer than all papers, forcing a candidate having difficulties to sit all nine papers, or none."*

I then went on to give a number of reasons why it might be necessary to hesitate before reaching the conclusion that the rigorous new 2:1 threshold is unduly high:

> *"Simple comparisons with other institutions' practices have to be treated with caution, because of the different contexts within which these practices operate. Elsewhere, the norm is for candidates' degree classifications to be based on assessments – by examination and/or coursework – in their second and third years. This is important, for the reason that law candidates, who are typically new to the subject at the start of their undergraduate studies, tend to display a clear upward trajectory in their mark profiles as they progress through their three years of study. The corollary is that in an annually-assessed system, there is a real risk that candidates who are consistently performing at 2:1 level at the end of their degree may*

> *find their degree classifications depressed by their relatively weaker second year results. Oxford's FHS candidates do not confront the same dilemma. Their second year studies are not examined until the end of their final year when they are at their most mature. A further corollary is that they have an opportunity to revisit and reflect on their studies earlier and more often than is possible in an annually-examined system. In light of the exceptional nature of Oxford's FHS examination system, it is doubtful that its candidates are really prejudiced by the new, more stringent 2:1 threshold, relative to their law colleagues at other institutions."*

On further reflection following the deliberations of the Board this year, I am no longer confident that I was right to reach this conclusion.

The overriding difficulty is that a candidate with 5 of 9 papers at 60 or above is, on balance, a 2:1 candidate – and would be so classified, without hesitation, by other, comparable institutions (at least in the absence of one or more marks below 50). It does not seem equitable that a candidate with this profile should be sacrificed simply for the purpose of achieving some overall balance in Oxford's FHS degree classifications – *a fortiori* in light of the importance of a 2:1 classification to a candidate's job prospects. Oxford, of any institution, should be able to answer criticisms that almost all of its candidates achieve 2:1 degrees or better – if such criticisms do indeed exist – with the response that (i) it draws its students from among the very best and (ii) a number of features of Oxford's tuition and examination systems – noted in (d) below – are conductive to high achievement in the FHS examinations.

I am now more strongly of the view that the proper way forward is *either* (i) to return to the old convention, whereby 5 of 9 papers at 60 or above would generate a 2:1 classification (at least in the absence of one or more 'low' marks); *or* (ii) to mitigate the new convention at least to the extent of allowing 5 of 9 papers to generate a 2:1 classification if the candidate has an overall aggregate mark of 60.0 or more across its 9 papers.

It would be understandable if a rapid return to the old convention would not be acceptable to the Examinations Committee. I would, however, encourage the Examinations Committee to give clear endorsement to a practice of mitigating the new convention in the manner just indicated. In my 2009 Report, I noted that the 2009 Board did not feel able to use its overriding general discretion to achieve this mitigation. I wrote that:

> *"the application of the new classification convention is, of course, subject to the Board of Examiners' overriding general discretion; but the exercise of this discretion seems fraught with difficulty. Faced for the first time with applying the new 2:1 threshold, some members of the Board of Examiners were initially of the view that a candidate with five of nine papers at 60 or above, and an overall average of 60 or more, was a 2:1 candidate, and deserved to be classified as such. The Board ultimately resisted this, concluding that it was inherent in the new convention that more was required. The difficulty then lay in identifying what that 'something more' was. After discussion, the Board took the view, based upon the candidates before it, that its discretion to award a 2:1 should only be exercised in favour of borderline candidates with an average of 60 or more, who had submitted evidence to suggest that their under-performance was the result of a medical condition."*

The 2010 Board took a different view. Exercising their overriding general discretion, candidates with 5 of 9 papers at 60 or above were awarded a 2:1 where they had an overall aggregate mark of 60.0 or more across their 9 papers, even in the absence of medical evidence. I consider that this was a proper exercise of their discretion, and that it is a precedent which should be followed by future Boards.

(d) *Comparability of Standards*

The final classification profile of the FHS cohort was – once again – impressive. As in 2009-2010, there were an exceptionally large number of strong performances, and an extremely small number of weak performances. In last year's report, I wrote that:

> "*[t]his profile is as expected, given the high quality of Oxford's intake, and the fact that all FHS/DLS examinations are sat in one sitting, at the end of a candidate's studies. Candidates are then at their most mature; they no doubt benefit from cross-fertilization between their nine FHS papers; and they have a chance to revisit and reflect on their work more often and more fully than is possible in an annually-examined system. No doubt too, Oxford's tutorial system, and its regular writing requirements, enables weaknesses to be anticipated more readily*."

I remain of this view.

(e) *Issues requiring consideration*

I have nothing to add under this heading, beyond what has already been said in relation to the short-weight scripts convention and the threshold for a 2:1 degree classification.

(f) *Good practice*

I remain impressed with the steps taken during the FHS/DLS examination process to ensure consistency in marking. In last year's report, I wrote that:

> *"The First Marks Meeting, which enables the Board of Examiners to conduct a general review of marking practices and to direct the focused re-marking of scripts of 'borderline' candidates, seems particularly well-designed to ensure the robustness of Oxford's final degree classifications. The task of the Board in carrying out its functions at the First Marks Meeting is also greatly assisted by the exceptional volume and range of information made available to it by the Chairman of the Board and the Examinations Officer. This information includes: the marking profiles of all first-markers; the marking profiles for each FHS/DLS paper divided by marker; and full mark breakdowns for every candidate, on first marking and re-marking, which disclose the candidate's overall mark for each paper, their attainment in individual questions, and the name(s) of the marker(s)."*

I remain of this view.

Yours sincerely

Dr Stephen Watterson
Senior Lecturer in Law
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From: Professor Roger Brownsword, School of Law, King's College London

EXTERNAL EXAMINER'S REPORT 2010

Final Honour schools in Jurisprudence and Diploma in Legal Studies

Introduction

In academic year 2009/10, I have acted as one of the two external examiners for the University of Oxford's Final Honours School in Jurisprudence and the Diploma in Legal Studies.

Generally speaking, the standards that are applied and the practice that is followed are exemplary and I will be short in confirming formally that this is the case. However, there is one issue—namely, the FHS convention for the award of a 2:1—that continues to be a cause for concern. My co-external, Dr Watterson, reported on this in some detail last year; but the matter remains problematic and, for this reason, most of my remarks in this report will be focused on this particular issue.

First, let me deal with the standards and the practice in general and then I can turn to the 2:1 convention.

Academic standards

It goes without saying that Oxford is a standard-setting University. The academic standards applied to the undergraduate law finalists and to the DLS students are entirely appropriate.

Practice and procedure

The practice of assigning examination business responsibility to a small group of Faculty members, on a rotating basis, is both fair and efficient. The process, from start to finish, was conducted in a thoroughly professional manner.

The scrutiny of draft examination papers was meticulous. As an external, I was given the opportunity to read both first draft and second draft question papers before they were finalised by the committee.

After the examinations, I attended two marks meetings. At the first of these meetings, borderline and problem cases were identified and a long schedule of scripts for second or third marking was drawn up. At the second meeting, the classifications were finalised. At both meetings, full consideration was given to any medical certificates.

Like most law schools, in the larger subjects, Oxford has to rely on team marking. Ideally, the work of each student would be blind double-marked and then there would be some cross-checking. However, this is not reasonably practicable. Instead, Oxford operates with sampling and team review, followed by the committee comparing the mark profiles for individual subjects and individual markers. Where there are deviations that are outside the standard range, they are investigated. This is not perfect, but it seems to me to be an acceptable second-best practice.

The 2:1 convention

The context for the debate about the 2:1 convention is the Faculty's recent concern that, in the final classification list, the 2:2 class is becoming under-populated—or, to put this slightly differently, the concern is that it is simply too easy to graduate with a 2:1. The Faculty's response was to change the convention for the award of a 2:1. Essentially, the new convention requires a student to achieve six (rather than five) 2:1 marks in his or her final array of nine marks.

For what it is worth, I have some sympathy with the view that it is becoming too easy to graduate with a 2:1. In the best law schools, the vast majority of students are expected to, and they do, graduate with a 2:1. Where, as in most law schools, students have a split final, the conventions often allow students to graduate with *four* (sic) 2:1 marks out of nine—typically, this happens where "exit velocity" counts. Some of these students, scraping in right at the bottom end of the class, are less than compelling 2:1s. In this light, we might think that the currency is being devalued; and we might reason that the previous Oxford convention, requiring five out of nine, was perfectly defensible (even if it was already a notch more demanding than the conventions applied in many law schools).

It is too early to assess the impact of the new convention (now requiring *six* out of nine). Thus far, the evidence, as I understand it, is that the convention has not dramatically reduced the proportion of 2:1 awards. However, it has produced a small number of hard cases that have seriously troubled the examiners. The paradigm is a student with five 2:1 marks, four 2:2 marks, and an average mark that is 60 or above. Reflecting on such a hard case, the background convention is open to the objection that it requires the examiners to treat a student unfairly in order to maintain a background class policy. How might this sense of unfairness, if it is not self-evident, be articulated?

First, there is the comparison with other law schools. Oxford, as I have said, is one of the standard-setters. But, by raising the bar to six 2:1s, it is setting a standard that other law schools do not, and surely will not, follow. In consequence, Oxford law undergraduates are being put at a significant disadvantage relative to their counterparts in, say, the London law schools. So long as students graduate with a degree classification rather than a transcript of their marks, the new convention unfairly understates the academic credentials of some Oxford law students as well as putting them at a potential disadvantage when they try to proceed with their professional legal qualification.

Secondly, while the bar for a 2:1 has been raised, the bar for a First (at Oxford and elsewhere) is significantly lower. At this level, four in the class will often suffice. Is this not arbitrary and unfair? To be sure, the old convention (requiring five in the class) is open to the same objection. However, the new convention, moving to six in the class, accentuates this contrast. How can this be justified? Why so easy on borderline first-class students and so tough on clear 2:1s?

Thirdly, there is a danger of a serious disconnect between the classification conventions and the classes of the individual marks. In most law schools, the classes achieved in the individual marks do most of the work. These marks are translated into a final degree classification by conventions that employ tests of preponderance, median, average, aggregate, and so on—sometimes with some local idiosyncrasies thrown into the mix. However,

whatever the particular conventions, the translation does not produce a degree classification that is significantly different to the impression conveyed by the marks. Yet, the new Oxford convention does just that: in some cases, the new convention translates the marks in a way that suppresses the natural outcome. Now, it might be objected that there is nothing natural about the translation; that we mark in accordance with one set of conventions; and then we classify using another set of conventions. Following this approach, if the new convention does not stem the tide of 2:1s, the bar could be raised again, requiring say seven in the class. While there might be no reason, in principle, against disconnecting the classes represented by the individual marks from the final degree classification, it would be unfair to do this without giving clear notice that this is what is being done.

Having said this, is it correct to say—in the way that I put it several paragraphs ago—that the examiners are *required* by the new convention to deny a 2:1 to the paradigmatic hard case? This year, the examiners exercised their residual discretion to award a couple of such students a 2:1; and, one way forward would be to operate the discretion at the margins in this way. However, this leaves unaltered the (2:2) status of students who have five in the class but whose average fails to make it to 60. When these students would be treated as clear 2:1 students in all other law schools, it remains arguable, to put it at its lowest, that this is still unfair.

Unfortunately, any adjustment to the classification conventions will invite accusations of inconsistency. However, most lawyers would agree that, in the long run, a little inconsistency is better than the perpetuation of a serious injustice. I am conscious that it will not be easy to address, once again, the 2:1 convention. However, my view is that the Faculty needs to reconsider its concern about the under-population of the 2:2 class and, with that, its new convention for the award of a 2:1. Essentially, there are two questions: first, whether the mechanical application of the five in the class convention makes it too easy to achieve an overall classification of a 2:1; and, secondly, if so, how the convention and/or its application should be modified so that there is more discrimination in the award of a 2:1.

While it is not for me to decree how these questions should be answered, let me close by indicating how I think the Faculty should, and how it should not, be steered by practice elsewhere in the sector. To start with the latter, I do not think that Oxford should slavishly follow practice elsewhere. If the Faculty judges that a mechanical application of a five in the class convention is unsatisfactory, then it should not adopt such a convention. The fact that many other law schools operate with just such a convention is not a sufficient reason for adopting this standard. By contrast, if the Faculty is minded to depart altogether from a five in the class convention, rather than finessing it in some way, then I do think that practice elsewhere should be taken into account. It is not so much that law schools elsewhere default to the five in the class convention, but that this retains a reasonable connection between the class designations employed in the marking scheme and the class designations used in the overall degree classification scheme. The new (six in the class) convention stretches the connection to breaking point and, if for no other reason, it calls for urgent reconsideration.

APPENDIX 3

JURISPRUDENCE

The paper contained 16 questions on a wide variety of jurisprudential topics and debates, chosen so as to provide for the full spectrum of interests that individual candidates (as well as different tutors) may reasonably have in the subject. The questions were phrased so as to be as clear and precise as possible, leaving little doubt as to the particular issue or proposition with which candidates are invited to engage in each case (in certain cases, eg questions 12 and 14, with some repetition so as to dispel any possible doubt as to what it is exactly that is being asked), and so as to encourage and make it easier for candidates to offer focused, thesis-driven answers, and discourage them from offering bland descriptive surveys of literature, or from regurgitating old tutorial essays produced in answer to different questions.

The examiners were pleased to note that the great majority of candidates clearly had understood the nature of the challenge, and had risen to it impressively. At the mid-to-high end in terms of achievements – indeed, the great majority of cases – candidates offered thesis-driven essays in answer to precisely the question asked, drawing helpfully on relevant and, where appropriate, up-to-date literature, evaluating it critically and deploying it in the service of their theses rather than describing it for no particular purpose or without thematic justification. Unsurprisingly, in light of the philosophical nature of the subject, candidates who exhibited these qualities usually did very well quite regardless of the orientation of the particular thesis they offered; indeed, in the case of each one of the paper's questions, different answers which were awarded a First often offered sharply contrasting theses. For example, first-class answers to all the questions of the yes/no (or the 'do you agree') type included both varieties of answers; first class answers to question 2, which invited candidates to consider whether they agree with any one of three, mutually-exclusive claims, included answers expressing support to any one of the three, and in some cases to none; and so on.

The inverse of this characterisation of the stronger efforts (mid-to-high end) naturally accounts for the general character of the range of weaker ones (average and below), and it was indeed predominantly those themes – engagement with the precise question asked, knowledge and focused deployment of relevant literature, ability to engage with it critically and sometimes originally – that accounted for the difference between greater and lesser achievements. The examiners noted, however, that weaknesses tended to be aligned to one another if anything more systematically than the strengths. Thus the minority of candidates who elected to eschew direct engagement with the precise terms of a question and offer instead an answer of the form of 'here is everything I happen to know about x', tended not to know all that much about x; those who sought to simply *show* brute knowledge rather than *do* something with it, usually ended up revealing lack of knowledge. That phenomenon accounted for the very small number of truly disappointing (below 2.2) efforts, where the examiners regrettably found themselves unable to reward an earnest engagement with a question or sound knowledge per se.

These general observations can be illustrated by reference to a small selection of some of the more popular of the paper's questions.

Question 4: This very popular choice invited candidates to consider the correlation, if any, between views expressed in the context of two sets of debates: that between legal positivists and natural lawyers, and that concerning the existence or scope a moral obligation to obey the

law, by reference to a statement denying any such (necessary) correlation. First class answers to this question fell anywhere within the spectrum between hearty endorsement and combative refutation, but naturally with all successful answers paying close attention to the particular qualities or theses that render a theoretical stance on the nature of law an example of legal positivism or natural law, and, correspondingly, on the question as to whether any of *those* has any particular view on matters regarding the moral obligation to obey the law as its inevitable corollary. By contrast, less successful efforts often followed the strategy of simply comparing the view on the moral obligation to obey the law of someone who happens to be known as a natural lawyer (John Finnis was a popular choice here) and someone who happens to be known as an exponent of legal positivism (usually Joseph Raz), while paying scant regard to what it is exactly that *makes* the chosen protagonists, respectively, a natural lawyer and a legal positivist, and whether that, in turn (and inasmuch as it is true of all other members of those schools of thought), necessarily underpins their views on the moral obligation.

Question 15: Whereas this question, concerning the law's role in providing solutions to coordination problems, elicited a good number of distinctive and interesting answers (again, often representing contrasting viewpoints, and representing them well), it was, unfortunately, chosen by quite a few candidates who did not seem to know what a coordination problem is, and could not provide a single example of such a problem. In light of the fact that candidates only needed to answer three questions out of 16, the examiners were somewhat baffled by those instances.

Question 16: Given the fairly specific nature of the statement the candidates were invited to discuss – containing not only a view on the limits on the legitimate criminalisation of conduct, but also a particular reason for it – as well as the fact that the theoretical debate to which it is addressed is lively and very much ongoing, it was unsurprising to find that most candidates paid good attention to both parts of the statement, and offered between them a wide range of interesting and plausible theses, supported by allusion to both classic and contemporary literature. It *was* surprising to encounter some answers which paid scant attention to the constitutive parts of the statement, and which often showed no familiarity with relevant literature of the past 50 years or so, in some cases marshalling the Wolfenden Report or the Devlin-Hart debate as the state-of-the-art in this arena.

CONTRACT

The general standard of the answers for this paper was good, with a considerable knowledge and understanding of the cases, legislation and literature being demonstrated.

Essays were generally well-structured and well-argued, although, as in previous years, at times candidates sought to use an essay written for a different question to respond to a question actually put.

As regards the problems, many candidates answered questions 8 (offer and acceptance) and 10 (misrepresentation), sometimes very well indeed. As regards question 8, it was, however, regrettably common for candidates to argue that the conclusion of a contract between A and B ruled out the conclusion of a contract between A and C.

Question 9 was quite popular, with a number of candidates responding well both to the issues raised by the contract terms (especially in relation to their control by legislation) and to the remedies available. Compared to previous years, the ability of candidates to apply the Unfair Contract Terms Act in particular had improved.

Question 11 (consideration/promissory estoppel) was generally quite well answered, though a number of candidates appear to see *D & C Builders v Rees* as a case on economic duress in contract (even though it does not refer to 'duress' and predates *The Siboen and The Sibotre* by nearly ten years). Too many candidates failed to see that payment of a lesser sum before full payment is due provides good consideration.

Question 12 was generally well-answered, with good discussions both of the conditions of frustration and its effects under the 1943 Act and of the alternative analysis in terms of remedies for breach of contract.

TORT

Overall the tort scripts seemed rather disappointing, though some were clearly good. Too many candidates seemed inclined to offer bland and general answers to the essay questions, and slips and omissions were widespread in answers to the problem questions.

Q. 1 (essay, duties of care). This essay question was reasonably popular. The quotation in the question referred to impossibility of predicting outcomes by 'the mechanical application of verbal formulae', and some of the best answers provided an account of what these 'verbal formulae' might be. Some of the weakest answers provided general descriptions of various judicial approaches to identifying duties of care.

Q. 2 (essay, CPA 1987, Part 1). This essay question asked whether Part I of the Consumer Protection Act 1987 could be described as a 'compromise'. The best answers considered what competing positions might have been 'compromised' by the legislators. Weaker answers tended to go little beyond describing major features of the statutory provisions.

Q. 3(a) (essay, remedies other than compensatory damages, designed for the Tort syllabus taught after Trinity Term 2007). Very few candidates attempted this question, so it is not possible to offer any general comments about the answers to it.

Q. 3(b) (essay, compensation on death, designed for the Tort syllabus taught before Trinity Term 2007). Very few candidates selected this question, but only a handful of candidates would have studied the version of the syllabus that it was designed to reflect.

Q. 4 (essay, defences to libel). This essay was reasonably popular. The best answers considered a good range of defences and how the definition of their elements related to freedom of expression. Weaker answers tended either to mention only one or two defences or to offer rather vague descriptions of the relevant law.

Q. 5 (essay, no-fault road accident scheme). Only a few candidates selected this question. Some of them treated it as an opportunity to recycle a general essay about alternatives to fault-based tort liability.

Q. 6 (essay, non-delegable duties). This question was chosen by only a small number of candidates. Many of those who selected it obtained above average marks by offering clear arguments in favour of, or more often against, the current law.

Q. 7 (essay, professional negligence leading to the birth of a child). This question was reasonably popular, and a substantial proportion of answers were very satisfactory or better. Some candidates, however, managed to make errors as to what the leading cases had actually decided.

Q. 8 (problem, occupier's liability, failure to rescue, psychiatric injury). This was a very popular problem question. Most answers were satisfactory. There was no unanimity as to whether occupiers ought to warn visitors about the dangers of walking on frozen ponds. Some candidates *assumed* that the park keeper would be subject to a duty to attempt to rescue the boy after he had fallen into the pond, but offered no explanation for how this duty could be established: others, however, apparently assumed that it was pointless to consider whether such a duty could be established in the circumstances. Some candidates also had unusual views as to the application of general tort defences to children (for example, a handful of candidates thought that contributory negligence could not be invoked against a ten year old).

Q. 9 (problem, economic torts). Only a handful of candidates attempted this question, but many of the answers were good, and exhibited a satisfactory grasp of the complexities that it raised.

Q. 10 (problem, causation, assessment of loss). This was a very popular problem question, but seemed to cause difficulties for many of those who attempted it.
The problem centred around a claimant who believed that a fall was caused by either oil spilled by one potential defendant or by a second potential defendant running towards him shouting 'I am going to get you'. The examiners expected this to be identified as primarily a causation problem. A significant number of candidates, however, thought that detailed argument was necessary to establish whether it was potentially tortious to spill oil and leave it near steps on a public pavement, and to run towards people shouting 'I am going to get you'. On the causation issue itself, a surprising number of candidates did not correctly identify the nature of the difficulty, and some of those who did asserted (without assessing the obstacles) that *Fairchild* provided a straightforward solution.
Later elements of the problem raised the issue of how to deal with a claim for loss of earnings where the claimant had suffered two injuries *each* of which was sufficient to cause such a loss, and whether the claimant could make a claim against a negligent doctor for 'loss of a chance' and for injuries suffered in a subsequent accident which would not have occurred 'but for' the doctor's negligence. Very few candidates identified all three of these issues, and even fewer dealt with them well, but there was no obvious pattern as to which points candidates overlooked most frequently.

Q. 11. (problem, private nuisance, *Rylands* v *Fletcher*, etc). This was a very popular problem question, but some points in it caused problems for a substantial number of candidates. For example, one of the potential claimants was a student living in a house purchased by her father: most candidates realised that *Hunter* v *Canary Wharf* might cause difficulties if a person with her status attempted to bring a claim in private nuisance. Some candidates, however, solved matters by claiming that such a student was likely to have a sufficient interest in land, or could claim under the Human Rights Act 1998 (despite the fact that the defendant was not a public authority!). Two further issues which were only dealt with

infrequently were how to deal with damage to personal property (a car) resulting from an escape of a dangerous substance and when an occupier might be liable for problems for neighbours being caused by her guests.

Q. 12 (problem, pure economic loss). This problem question attracted fewer answers than 8, 10 and 11 (but far more than 9). The best answers provided clear and well-supported accounts of the factors relevant to when a duty will be owed by someone giving advice or performing a service, and accurate accounts of s. 1 of the Defective Premises Act 1972.

LAND LAW

Amongst compulsory papers, Land Law was not alone in attracting fewer first class scripts than one might have expected. The problem questions were popular but candidates were too often unable to give a clear, ordered treatment to the key issues. In each problem question, there was no important point that went unseen by all candidates; but disappointingly few candidates were able to spot and deal satisfactorily with a sufficient number of those important points to earn a first class mark. Future candidates may wish to note the importance, in problem questions, of achieving an adequate balance of coverage – there was a widespread tendency for candidates to spend disproportionate time on a relatively straightforward aspect of a problem question (e.g. can a right of way count as an easement?) whilst only skating over the more relevant and more difficult issues.

Of the essay questions, Question 4 (occupation rents) had very few takers – this was a little surprising given the relatively recent case-law and academic commentary in the area. The remaining essay questions were all reasonably popular. As is always the case, the higher essay marks went to candidates who addressed themselves to the actual question set – for example, credit was given to candidates who considered by what criteria an aspect of a registered conveyancing system may be considered unsatisfactory (Question 1) and to those, still rarer, candidates, who considered which, if any, developments might mean that there are *no longer* any convincing arguments for recognising any contractual licences as property rights (Question 2). Questions 3 and 5 gave candidates the opportunity to produce a general argument by drawing together different specific points on, respectively, mortgages and leases. Candidates who focussed only on one such specific point (e.g., in relation to Question 5, the *Bruton* decision) fared less well than those who related such discussions to the broader question asked.

Each problem question received a good number of answers, with Question 10 marginally the least popular. Question 6 invited candidates to consider the application of *Stack v Dowden* and subsequent cases: stronger candidates were able both to suggest possible conclusions based on the *Stack* approach, and to use their discussion to highlight some of the difficulties with that approach. A surprising number of candidates assumed the question was solely about the establishment of a beneficial interest, and so failed to consider the question of how such a right, acquired by J, might bind L.

Question 7 concerned easements – only very few candidates, determined that there should be a problem question about *Street v Mountford* and shams, managed to misinterpret it as such. The fact that leases were involved did however cause even better candidates some problems, which was surprising. The primary purpose of Question 8 was to invite candidates to consider the status of *Crabb v Arun* in the light of *Yeoman's Row v Cobbe* (as interpreted in *Thorner v*

Major). Stronger candidates rose to the challenge, but many candidates suffered from a tendency (noted in previous examiners' reports) to discuss proprietary estoppel without referring to the decided cases.

Question 9 focussed on freehold covenants, and invited candidates to consider some of the means by which a positive covenant may have an effect on a third party. A clear structure, involving careful consideration of each specific promise and its possible effects, is crucial when tackling such questions and disappointingly few candidates succeeded in properly organising their answers. Question 10 concerned severance, and stronger candidates were able to apply the principles set out in the decided cases, along with their own considered judgement, to the novel facts presented. It was surprisingly common for candidates, having dealt carefully with the possible operation of survivorship between Fred and Jane, not then to consider its possible application to Geoff and Henry.

ROMAN LAW (DELICT)

Six candidates took the FHS exam. The choice of questions was evenly spread over the candidates, with three questions being popular with a majority. The overall results were from satisfying to excellent.

COMPARATIVE LAW OF CONTRACT

The standard this year was notably higher than in recent years, both across candidates generally and (in particular) at the top end of the field. One third of the candidates wrote first class papers, and there were few weak answers and even fewer weak papers overall. In general terms, the high quality of the better answers was displayed through a combination of detailed and accurate knowledge of the law in both systems (including, in the stronger papers, a very pleasing grasp of reform proposals in French law and current debate in academic writing), thoughtful comparative discussions, and good attention to the precise questions set.

All questions were attempted except 7(a) (interpretation). The most popular by a margin were questions 3 (mistake), 5 (third party rights) and 8 (specific enforcement). The least popular were questions 7(b) (terms) and 9 (judicial discretion) – neither of them easy questions, but the few candidate who attempted them used wide-ranging comparative materials and arguments and were rewarded for their efforts.

CRIMINAL JUSTICE AND PENOLOGY

Thirty-seven candidates sat this paper. The quality of examination papers was generally very good and evidenced careful reading of the academic literature. The best answers engaged closely with the question set; demonstrated a thorough knowledge of and ability to engage with the academic debates; supported arguments with research findings and statistical evidence; and displayed a good understanding of the relevant legislation. The very best scripts also developed independent lines of thought or novel approaches that made a real contribution to the debate. As in previous years, however, many of the weaker scripts gave scant reference to the literature, to the research findings, and still less to the legal framework

and provisions. These scripts relied upon familiarity with general issues raised during the course but would have needed to be far better substantiated to score higher marks.

By far the most popular questions were 8, 9, 10, 11, and 12 which corresponded to the weeks in which tutorials were held. Many answers to Q.8 suffered from insufficient familiarity with the provisions of the Criminal Justice Act 2003 and its implementation. Many of those answering Q.9 reinterpreted the question (about achieving legitimacy in the prison system) to write instead about prison privatisation with only scant reference back to the issue of legitimacy. The best answers to this question demonstrated a sophisticated understanding of the meaning and complexities of achieving legitimacy within prisons. Questions 10, 11 and 12 generally attracted better answers that engaged more directly with the terms of the questions set. The best of these evidenced a wide and critical reading of the literature. Question 4 was also popular and generally very well answered. Every question on the paper received at least a few answers and many of the best answers were written in response to topics that had been the subject of classes and lectures rather than tutorials, perhaps because there was less temptation to reproduce tutorial essays irrespective of the question set.

PUBLIC INTERNATIONAL LAW

There were some 47 FHS, DLS and MJur students who wrote the Public International Law examination paper. The level of performance of these students was, in overall terms, very good, with only very few students obtaining a 2:2. The large majority was in the mid to upper 2:1 range and a considerable number of students achieved a first class mark. It is however noteworthy that none of the DLS and MJur students achieved a first. While these students showed very good knowledge of the law, their answers were largely descriptive and did not critically engage with the question.

All questions were answered by at least two candidates. However, there was a clear preference for questions 3 [use of force], 6 [sources of international law], and 9 [immunity and human rights] which were all answered by more than 35 candidates.

As in previous years, among those who obtained 2:1 class marks, there were a considerable 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. For example, in question 2 [recognition of States], many students simply gave an overview of the constitutive and declaratory theories of recognition without relating these to the question and asking what the theories meant in a situation where a State purported to abolish the practice of formally recognizing new States.

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. For example, in question 3 [use of force] most students gave a good overview of the law on self-defence but only very few students seized on the distinction in the question between ‘pre-emptive’ and preventive’ self-defence. Few students actually defined the terms before using them. Moreover, greater attention to detail and less inaccuracies in a number of cases would have also seen higher marks.

HISTORY OF ENGLISH LAW

There were six candidates for the paper on the revised syllabus. All wrote at a high standard. There were two candidates for the paper on the old syllabus, one of whom produced a high 2.1 script and one a high 2.2. The questions attempted on both papers were widely spread, so that no significant comments can be made on the answers to individual questions.

EUROPEAN UNION LAW

The EU law paper was done reasonably by the candidates, but the papers nonetheless exhibited certain recurrent weaknesses.

Question 1 was tackled by a number of candidates, but there were relatively few good answers. A significant number of candidates sought to answer the question as if it were solely concerned with subsidiarity, and some sought to 'turn' the question into one concerning competence.

Question 2 on direct effect of directives was one of the most popular questions on the paper. There were some good answers, but many candidates failed to address all of the qualifications to the rule that directives do not have horizontal direct effect.

Question 3 on preliminary rulings was generally answered reasonably by those who attempted it, although the latter part of the question, which was concerned with possible improvements to the preliminary ruling procedure, was generally done less well.

Question 4 was concerned with the way in which the ECJ has interpreted national procedural autonomy in differing ways over time. Some candidates misinterpreted the question and wrote on matters such as subsidiarity. There were, however, some detailed and knowledgeable answers to this question.

There were relatively few answers to question 5 on citizenship. There some well-informed scripts, but many candidates failed to specify the ways in which either the ECJ's reasoning might be felt to be dubious, or why the results of the case law might be thought to be dubious or questionable.

Question 6 on free movement of economically active persons, and the extent to which the case law prioritized economic and social concerns, was attempted by few candidates. The answers showed a reasonable grasp of the primary case law, but were less good at integrating material from the relevant regulations and directives.

Question 7 on fundamental rights was very popular, and there were some good answers. There were, however, many scripts that exhibited 'classic' exam errors: either not reading the question that was set, or ignoring it and producing the standard tutorial essay instead. Thus some scripts ignored the focus of the question, which related to the extent to which Member States were bound by fundamental rights, pre and post Lisbon. Many other candidates addressed the relevant case law, but did not draw any analytical conclusions as to the extent to which Member States were and should be bound by EU fundamental rights.

Question 8 on locus standi was tackled by most of the candidates. The answers showed a good knowledge of the existing case law, although there was greater variation in the understanding of the changes made by the Lisbon Treaty.

There were very few answers on question 9, concerned with free movement of services.

There were, however, many attempts at the problem on free movement of goods in question 10. There were some good answers, but many candidates missed points. Thus, for example, many assumed that that the answer to part (b) was the same as that to part (a).

INTERNATIONAL TRADE

There were eleven candidates for this paper. After second marking, three candidates were awarded a mark of 70 or more, seven a mark between 60 and 69, and one a mark between 50 and 59. The standard was similar to that of the last few years.

Of the essays, no-one answered question 2(b), and only one person answered questions 1, 2(a), 3 and 4(a), so no general comments can be made about these questions.

Two candidates answered question 4(b), on the Carriage of Goods by Sea Act 1992. Both answers were very strong, and the candidates navigated their way effectively through the intricacies of the legislation, dealing with a host of issues, including the closing of the 'property gap', the s 4 'estoppel' and the benefit/burden point.

Question 5, on the identity of the carrier problem, was the most popular essay question, but still only attracted three answers. These answers were generally good and comprehensive, and there was some sophisticated analysis of the case law. A weakness was not paying sufficient attention to why the identity of the carrier might matter.

Question 6, on the passing of property, was the most popular problem question, and was answered by all but one of the candidates. The standard was generally high. Weaknesses included misreading the facts (the bulk was not identified in the contract); not considering the meaning of 'payment' in s 20A SGA 1979 specifically; mistakenly assuming that there would be an action on the sale contract in respect of the deteriorated potatoes (risk would surely have passed); and asserting that the operation of s 20A was subject to a *contrary intention* of the parties, when in fact it is subject to their *agreement otherwise*, which is not the same thing. Some candidates also seemed to assume that the passing of property was relevant only to possible tort claims by the buyers, when in fact its chief significance would be their ability to take the remaining potatoes out of the seller's insolvency.

Question 7, on the passing of risk in cif contracts, was reasonably popular (seven answers). The standard was middling. Disappointingly, in some answers there was confusion between the passing of risk and the passing of property, and on (b) there was a tendency either to apply s 6 SGA 1979 (even though that applies only to specific goods) or simply to cite *Couturier v Hastie* without considering the precise ambit of that decision and/or its relevance to the modern cif contract. The distinctions between specific, quasi-specific and generic goods were frequently overlooked.

Question 8, on remedies, was the second most popular problem (eight answers) and was generally handled quite well. There was some confusion about the significance of the *Panchaud Frères* decision, which is not about the recovery of market loss damages, but about the buyer's right to reject the goods when he has previously accepted non-conforming documents. This led some candidates to overlook the pre-eminent issue in (a), which was whether H could reject the sugar.

Question 9, on charterparties and freight, was the least popular problem question (four answers), and the standard was unexceptional. There was some confusion about the significance of the cancelling clause, and some candidates missed the connection with the *Stanton v Richardson* issue. Candidates also tended to attach more importance to the

classification of the seaworthiness obligation as an innominate term than was appropriate on these facts.

Question 10, on bills of lading as receipts, was reasonably popular (six answers), but was handled less well than the other problem questions. Some candidates jumped to the conclusion that the key issue was whether or not the carrier was estopped from denying that a contract of carriage had been made in respect of the empty container, without first considering whether the shipment of an empty container (as opposed to nothing at all) might be enough to bring a contract into existence, or whether a contract might have been formed *before* shipment was due to take place. Many candidates also missed the deck cargo issue raised by the loss of the first container, and the risk issue raised by the theft of the consoles from the second container.

TRUSTS

The best scripts this year reflected an excellent knowledge and understanding of trusts law principles and a first class analytical ability. However the majority of scripts were no better than competent.

Many candidates failed to achieve more than a low 2:1 mark through their weak analysis of problem questions and their failure to display any familiarity with the facts and reasoning of leading cases. It was disappointing to note that a great many candidates, set a problem question that required them to state and apply the test for certainty of objects of a discretionary trust, could only do the first of these things – i.e. having stated the 'is or is not test' they then proceeded to discuss the facts of the problem in broad impressionistic terms ('"craftsmen" seems about as certain as "relatives" to me') suggesting that they had failed to grasp the point of having a test at all. The essays written by many candidates suggested some familiarity with secondary sources (i.e. lectures, textbooks, articles) but very little with the case-law.

Consequently they lacked freshness and precision, and read like a series of half-remembered, half-understood, received opinions.

ADMINISTRATIVE LAW

The examination paper was drafted to be testing, and to discourage generalised answers that simply replicated lectures or tutorial essays. In particular, those who had carefully prepared by reading the secondary literature on the core reading list were at a clear advantage. Those who did not take the hint were penalised; those who did were rewarded. There were some outstanding answers, and some that were appalling. Students need to be reminded that it is simply foolish not to have covered the reading on the core reading list by the end of their third year at least.

There was a rather worrying tendency to rely on gross over simplification of cases (such as *Page*), even when it was clear that a close reading of a particular case was necessary. Previous Examiners' Reports have mentioned that some students did not distinguish between EU law and the ECHR; this is still the case. And students apparently need to be reminded also that although references to popular culture may, on occasion, be helpful, reliance on

Simon Cowell as an authority is unlikely to win the candidate many friends among the examiners.

Question 1 (quotation from *Jain*) elicited some good answers from those who focussed on the issue asked, rather than simply regarding the question as the occasion for a general trip through the liability in negligence of public authorities. Relatively few candidates seem to understand that there are *different* torts applicable to public bodies, and several simply jumbled all the torts up together. Those candidates who discussed the possible role of the HRA instead of tort liability were rewarded, as were those who set the issue raised in the context of proposals for reform to cater for those who failed to secure tort remedies in *Jain*-type situations.

Question 2 (jurisdictional error) was popular, if often not very well done. Some candidates chose to concentrate almost entirely on review of errors of fact, perhaps anticipating a question specifically on the effect of *Croydon* on *E*. Few examined exactly what *Page* had decided. Those who were able to discuss alternatives to the current approaches under discussion in the scholarly literature (particularly by Williams, who was quoted in the question) were rewarded. Those who critically discussed the nuances of the *Croydon* case were rewarded.

Several candidates who attempted question 3 (central purpose of judicial review), considered that a detailed analysis of the academic debate between *ultra vires* and common law theories of judicial review was sufficient. That was not the view of the examiners. Rather than it being a question on the *source* of judicial review, what was sought was a discussion on its *purpose*. The better answers considered 'good administration' alongside other purposes that have been identified, and some questioned whether any one 'central purpose' could be identified. Some answers made excessive, uncritical, and somewhat ill-informed use of Harlow and Rawlings' 'green light theory'. The best answers drew from specific examples, including legitimate expectations (*Nadarajah*) and standing (*Dixon*). Weaker answers adduced a range of cases that had no more than a tenuous link with the theme of good administration.

Question 4 (fair hearing), required candidates to consider both common law and Article 6 ECHR. Simply recounting common law case law did not suffice. Nor was there much sympathy for candidates who ignored the second limb of the question that directed attention to whether common law and Article 6 served different purposes. This issue drew some interesting responses drawing on the academic literature. There is still a significant degree of misunderstanding over the question of bias and in particular the differences between the test for bias and automatic disqualification (one candidate, possibly influenced by football rules, seemed to think that automatic disqualification was some sort of penalty for having been biased).

Question 5 (fettering discretion) required an analysis of the case law dealing with the fettering of discretion as well as consideration of that dealing with contractual liability. Those (few) who attempted this question were more usually prepared to attempt the former than the latter, which is further evidence that contractual liability appears to be seldom studied. The role of contract seems to be seen by those who have not studied contractual liability as involving only issues of contracting out of public functions. Since the question asked is specifically adverted to in the core reading list, the paucity of good answers is troubling.

Question 6 also had few takers. Those who recognised the question as requiring a detailed analysis of the recent *Cart* decision did well, particularly if they were also stimulated to consider the differences between SIAC and the Upper Tribunal.

Question 7 (legitimate expectations) generated the best howler (the three categories in *Coughlan* were not 'hermeneutically sealed') as well as some powerful answers analysing the differences between the standards of review in general and as applied in the 'legitimate expectations' case law, particularly *Coughlan* and post-*Coughlan*. The best answers sought to link the appropriate standard of review with the purpose(s) of protecting legitimate expectations in the first place. Weaker answers concentrated on pre-*Coughlan* case law. Weaker answers showed that candidates often did not seem to understand what was meant by 'standard' of review and seemed to confuse it with something like the 'test for the existence of legitimate expectations'. Many students erroneously believed that proportionality *is* the current standard of review for substantive legitimate expectations, while too few attended to Lord Mance's comment on the issue of proportionality in *Bancoult*. Indeed, *Bancoult* was too frequently ignored entirely.

Question 8 (remedies) required a comparison between PCA remedies and public law remedies. Most who answered the question preferred to see it instead as involving a detailed discussion of the PCA (with some vague generalities about public law remedies – mostly inaccurate – thrown in). Some did not understand that 'public law remedies' was not intended to generate a discussion of the whole of judicial review, but was specifically focussed on the remedies available in judicial review. Some students mistakenly compared the PCA's jurisdiction with *private law remedies* against public authorities.

Question 9 (judicial deference) included a quotation from Allan referring to deference as 'pernicious', which some candidates did not appear to understand. Apart from the fact that the article from which the quotation was taken was on the core reading list and therefore should have been read and understood, the examiners expected that Oxford FHS law finalists should be familiar with the word. The question resulted in both the best and worst answers. The former involved situating the quotation in the larger context of both academic and judicial consideration of the term, and attempted to distinguish different interpretations of the meaning of 'deference'. The best answers distinguished between *reasons* for judicial deference and the desirability of a *specific doctrinal approach* to judicial deference. Those who distinguished between deference in Convention rights adjudication and deference in the law of judicial review were rewarded

Question 10 (standing) was also a popular question. The quotation from Miles (why did so many candidates assume she was male?) was wrongly seen by some as the occasion for a lengthy discussion of the public-private divide. The better candidates saw it as the opportunity to discuss the function of public law adjudication, and the role of standing in that. The best answers addressed Harlow's arguments against broader rules of standing. Candidates were expected to consider the HRA's standing requirements. Two candidates consistently referred to the *World Development Movement* case as the 'WMD case'.

FAMILY LAW

There were slightly fewer top quality papers this year than in recent years, although the overall standard was nevertheless good. Four general comments can be made. Firstly, a large number of candidates did not tailor their answers to the precise question set but produced pre-packaged essays on the standard debate in that context. This was particularly a problem for questions 5, 8 and 9(b). Secondly, and relatedly, a good number of students failed to engage, or engage sufficiently, with issues raised in quoted excerpts, proceeding as if the extract were not part of the question. This particularly affected candidates' ability to do well in response to questions 1, 5, and 10. Thirdly, a number of candidates did not pay attention to the scope of the question, needlessly dropping marks. This was a key issue in relation to question 1 (which was about all adult intimate relationships, not just marriage) and question 9(a) (which was not confined to pre-nuptial agreements or marriage). Fourthly, there were a surprising number of candidate who did not cite the basic applicable statutory provisions.

Question 1. Regulation of adult intimate relationships. This question was very popular, but answers were of mixed quality. Some students focused on marriage exclusively. Many focused on the justifications for marriage more generally, without getting to grips with the detail of the quoted excerpt, particularly the tension created by the suggestion that there are good reasons to value marriage in society, thus interfere with it, but that it needs to be seen as a personal and private choice by individuals.

Question 2. Child protection. This question was more popular than in recent years, though again the quality of answers varied. There was generally good discussion of law reform, but a tendency to overlook need to consider how much the difficulties with child protection lie at the feet of legislators and courts, rather than elsewhere, an issue implied by the question's use of the term "can." Similarly, many candidates presented a solid discussion of problems in the current approach, but did not question whether law reform could redress those problems, and whether the legal problems identified, such as in relation to the s 31(2) "threshold," were the most significant issues affecting the child protection system. That said, some candidates handled this question very well, and the number of interesting issues raising other than the typical "threshold" debate showed they had given this some real thought.

Question 3. Parenthood. In broad terms, this question was generally well done, though a number of students just did not cite the statutory provisions, even when listing off the content of the provisions in itemised terms. Some candidates confused "parentage" and "parent," assuming "parentage" dictated the content of "legal parent" and that that was the critical difference between "parentage" and "parenting." The more interesting answers reflected on both what threatens parents' interests, and the relevance of parents' interests here compared with children's.

Question 4. Domestic Violence. This question was not as popular as in recent years, but the quality of answers was higher overall. A good number of candidates carefully dissected the civil and criminal law approaches to suggest varied and contradictory models of "domestic violence" in the current law. Poorer quality answers discussed the approach to domestic violence more generally, without focusing on the definitional issue.

Question 5. Divorce. This question was quite popular but poorly handled. A surprising number of candidates were confused about the nature of the current approach, and that it is a

"no fault" system. This was reflected by candidates presenting arguments against moving to a "no fault" approach, and talking of the current "fault" grounds. Further, despite the focus of the question, there were a significant number of pre-packaged essays on the fate of the Family Law Act 1996, with insufficient attempt to relate back this standard essay to the quoted excerpt in the question.

Question 6. Thematic: multiculturalism. This question was the least popular on the paper. As there were so few answers, it is not possible to comment in general terms.

Question 7. Thematic: sexual orientation. This was the most popular of the three thematic questions on this paper. There were some good wide-ranging answers that had regard to both adult-related and child-related points of differentiation. Several candidates showed some confusion over Arts 8 and 12 ECHR, notably the distinctions between the two as applied to same-sex relationships. There was also a disconcertingly prevalent assumption that all differential treatment is necessarily discriminatory.

Question 8. Children's rights. This was by far the most popular question on the paper, though there were relatively few top quality answers. There were a surprisingly high number of pre-prepared "rights" vs. "welfare" essays, but relatively few that got to grips with what differences it might make to a child which approach the law adopts in terms of matters such as outcomes or respect for children in terms of the process of decision-making. More sophisticated answers also considered the impact of understanding the "approach" referenced in the question as matters considered by courts, or also as the framework for decision-making itself.

Question 9. (a) Financial provision: private ordering. This was the less popular of the two questions on financial provision, and it was generally not well handled. There were two respects in which candidates tended to unduly restrict the scope of the question. Firstly, a number of students produced pre-packaged essays on pre-nuptial agreements, and overlooked the need to consider not only other agreements, but also consent orders as regards status relationships. Secondly, most students failed to include comparison with the role for private ordering in the context of non-status relationships, focusing their discussion on the marriage context.
(b) Financial provision: compensation. Whilst this was the more popular of the two questions on financial provision, a number of students failed to adequately focus on the issue of compensation, and produced much broader essays, devoting significant analysis to considering the role of equality in the current law and more normatively. There was also little discussion of the case law that was specifically concerned with compensation, with students tending to confine themselves to the leading decisions that set out the broader principles. Some candidates were uncertain on the relationship between contributions and compensation.

Question 10. Contact. This question was not particularly popular, but answers tended to be generally good. The weaker candidates focused their discussion solely on the term "assumption" in the excerpt, debating whether there was a "presumption" of contact in the current law, and how that might relate to an "assumption." Stronger answers also engaged with the second aspect of the excerpt, considering the basis for any such assumption.

Question 11. Thematic: meaning of 'family.' Of the thematic questions, this was the best handled, with some thoughtful and inspired answers, which drew on a range of contexts, from

reforms to legal parental status in the HFEA 2008, the approach taken to the non-resident parent's claim for contact in both the domestic and European court, civil partnership, and the ongoing debate regarding the legal regulation of former cohabitees' financial relationships.

Question 12. (a) United Nations Convention on the Rights of the Child. There were too few answers to this question to make it possible to comment in general terms.
(b) "Parental responsibility" and the Children Act 1989. This was less popular than the parenthood question, and answers varied in their quality. Many candidates were content to outline the "parental responsibility" concept and then critique its current role and application in the case law. Too few candidates considered its purpose at the time of enactment, and the intention behind distinguishing legal parental status from parental responsibility. Of those that did, however, there were some excellent critiques of the concept on its own terms, particularly in light of the status triggers, as they continue to be expanded in the HFEA 2008, and the joint birth registration reforms.

COMPANY LAW

The paper contained some quite challenging questions, especially the essays. However, nearly all candidates impressed by focusing on the central issues raised and showed a good knowledge and understanding of the relevant material. At the top end, there were some very impressive answers.

Nearly all the questions (including all the problems) attracted a good number of answers. Given the traditional reluctance of candidates to answer questions on corporate capital, it is pleasing to note that the two capital questions both attracted quite large numbers of answers and that they were accurately and perceptively dealt with.

LABOUR LAW

In general the paper seems to have afforded the candidates an adequate opportunity to do justice to themselves. The standard of performance was generally satisfactory, and very comparable with that of the previous year. A widespread deficiency, as ever, consisted in the tendency to treat a specifically focused or directed question as an invitation to a general and not strongly directed treatment of the whole topic concerned. We also noticed some instances of inaccurate attribution of opinions to academic writers.

Question 1 (economics approach v human rights approach)
3 answers, which were fairly good. We were concerned that candidates would locate their arguments in positive law.

Question 2 (current influence of collective laissez-faire)
Scarcely any answers – but good ones.

Question 3 (sham contracts and concepts of 'employee' and 'worker')
A popular question. Weaker candidates failed to link their answers strongly to the concepts of employee and, even more so, worker. On the other hand, other weaker candidates did not sufficiently focus on sham contracts, that is to say they answered as if it were a question on the definitions of the 'employee' and the 'worker'.

Question 4 (temporary agency work)
A small number of answers. Our impression was that few candidates had mastered this topic in detail.

Question 5 (aims of a single equality statute)
A popular question. Weaker candidates largely remained at the level of a general assessment of the state of employment equality law.

Question 6 (employment discrimination and harassment)
Scarcely any answers – this was clearly viewed as difficult.

Question 7 (measures to reduce gender pay gap)
A popular question. Weaker candidates tended to talk about the narrative of the gender pay gap rather than about measures to reduce it.

Question 8 (concept of 'working time')
A popular question; we were especially looking for analysis of the concept of working time – so discussion of it in the context of the National Minimum Wage was also appropriate; weaker candidates were very prone to view this question as satisfied by a general discourse about working time regulation.

Question 9 (balance between control of substance and of procedure in the law of unfair dismissal)
A popular question eliciting some strong answers. But there was a widespread weakness in the discussion of controls upon procedure. Weaker candidates were surprisingly prone to view this as primarily about the relationship between the common law of wrongful dismissal and the statute law of unfair dismissal.

Question 10 (Exclusion of political extremists from trade unions)
A very popular question, which produced answers right along the spectrum.

Question 11 (Consultation as substitute for trade union recognition)
A moderately popular question; few candidates really tackled the 'substitution' question in a direct way.

Question 12 (Right to strike)
A very popular question, which like question 10 produced answers right along the spectrum; weaker candidates failed to explore Article 11 of the ECHR and the relevant case-law of the ECtHR, and our courts' failure to take account of that.

CRIMINAL LAW

FHS Criminal Law attracts a small cohort, and the performance this year across the cohort exemplified a good standard. All candidates would have benefited from a deeper engagement with the wide and sophisticated secondary literature in criminal law and theory, weaving this into an engagement with the nuances of the substantive criminal law. Too often that synthesis was underdeveloped in the candidates' work. What follows are specific observations on particular questions that were especially popular and/or problematic for candidates. Question

1 was very popular. Some candidates were content to trot through the specific rules on provocation/loss of control, pointing to discrete interpretive difficulties. Other candidates explored the general theoretical basis of defences without engaging with the specific doctrinal rules in a systematic way. The best answers achieved a pleasing synthesis of theoretical engagement with a close analysis of how the theoretical problems were implicated in the legal rules and principles. Question 3 was also popular. The answers tended to be rather formulaic, trotting through the standard textbook accounts of the law and trotting out the standard textbook criticisms. Better candidates engaged with the issue of what we might mean by 'coherence' in this context, and engaged with what coherence might entail in original and imaginative ways. Question 4 attracted some good answers, with better answers locating analysis of necessity within a wider appreciation of cognate general defences. Question 6 was extremely popular this year. Candidates very often focused upon consent issues and dealt with the question of 'reasonable belief' in an extremely cursory fashion. Yet what 'reasonable' might entail in this context is a difficult and contested legal question that demands a sensitive and nuanced engagement with the precise statutory definition. Sometimes difficulties and apparent inconsistencies in the jurisprudence were skirted over or ignored. For example, on the matter of 'purpose' under s 76 of the Sexual Offences Act 2003, there are real difficulties in reconciling *Jheeta* and *Devonald*. Yet many candidates simply cited these judgments as if they expressed identical legal propositions. Candidates should also be cautious in their use of pre-2003 case law. A particular favourite was *Linekar*. Candidates need to explain in what ways, using reasoned arguments, how such case law is relevant in construing statutory concepts that came after those judgments. Question 8 was also extremely popular. Candidates engaged with the issues on complicity and joint unlawful enterprise and dealt with them in an adept way. However, the offences in the Serious Crime Act 2007 were largely ignored by candidates, or if they were mentioned they were dealt with in a very superficial manner.

PRINCIPLES OF COMMERCIAL LAW

There were some pleasing scripts, and the general standard was reasonable. Many scripts were rather mixed, in that the answers to some questions were very interesting and accurate, but the script as a whole was let down by one weak problem answer, or an essay which failed to address the question posed. Some problem answers were hard to follow as the structure adopted was not clear. Generally speaking it is best to structure an answer to a problem question either by party (where the question relates to causes of action) or by asset (where the question relates to the distribution of assets on insolvency).

Question 1
Hardly any candidates really addressed the issue raised by the question, which was whether buyers of goods should be able to discover about security interests or retention of title devices affecting those goods by searching a register. Most candidates treated it as a general essay on reform of the registration of security and quasi-security interests, with some even considering the position relating to receivables when the question was specifically limited to goods.

Question 2
The best answers to this question focused specifically on the position of consumers, and particularly on the interaction between the regime in part 5A of the Sale of Goods Act and the general law of rejection. The weakest merely included an account of the present law, with very little criticism or suggestions for reform.

Question 3
Very few candidates attempted this question. This is a shame, as it raised some interesting issues.

Question 4
The best answers to this question focused on the given quote which is extremely critical of *Bolton v Lambert*. Few candidates, however, had sufficiently detailed knowledge to identify the main problems with that decision or to put it in context. Having run out of things to say, many then attempted a 'scattergun' approach, discussing all manner of agency-related issues (most popular was the case of *Watteau v Fenwick*) however little these had to do with the quote!

Question 5
This was a very popular question, and was generally well answered, with some candidates concentrating on the characterisation of fixed and floating charges, some on the characterisation of sales and charges, and some comparing the approach of the courts in the two situations.
Question 6
This was a popular question and was done reasonably well. The better scripts made subtle arguments about what Andrew was held out as authorised to do, and discussed section 15A Sale of Goods Act in relation to the anteater feed as well as the point on rejection.

Question 7
This again was fairly popular, with generally some good discussion on the distinction between fixed and floating charges. A number of candidates completely ignored the question of whether Kevin took subject to the charge over the paintings (which should have been discussed even if the author concluded that the charge was floating). A few candidates failed to structure their answer asset by asset, which made the answer very hard to follow.

Question 8
This was a very popular question and was generally well done. There were some good discussions of the effect of *Shogun Finance*, although not that many candidates considered whether section 25 applied if the contract had been successfully rescinded before the sale to Quentin. A few answers pleasingly picked up the point that a sale to a jeweller of a family heirloom was unlikely to be a sale in the ordinary course of business of a mercantile agent.

Question 9
Most of the answers showed a good understanding of the rules on sale of goods out of a bulk. There were some good discussions of the interaction between section 24 and section 20A in relation to Secundus. Weaker candidates failed to notice that the sale to Quartus is a sale of specific goods rather than goods in bulk because the bulk was exhausted.

Question 10
This question was less popular and was quite challenging but received a number of good answers. A few very good answers considered the interesting question of whether the reasoning in *Hendy Lennox* applied to the buttons even though it was economically impractical to remove them. A few answers, perplexingly, treated the negative pledge clause in the charge over the receivables as an anti-assignment clause.

CONSTITUTIONAL LAW

This paper was taken by a small number of candidates so it would not be appropriate to comment in detail on individual questions. Questions on 'core' constitutional law topics (such as separation of powers, the Rule of Law and sovereignty) proved relatively popular, with few candidates attempting questions on devolution or civil liberties. On the whole, the answers showed a good knowledge of the subject, though several candidates did themselves a disservice by regurgitating prepared answers instead of focusing on the precise terms of the question set.

TAXATION LAW

The answers to the questions on the tax law paper 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 focussed 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 lectures, seminars and tutorials. Q.7 (the problem question on trading, capital gains and inheritance tax) was attempted by eight of the ten candidates whilst only one candidate attempted Q.5 (employment benefits). As in the previous year the problem questions were very popular – almost all the candidates attempted at least one of the problems and six answered both problems.

Q.1 on 'tax base' required integration of tax policy and technical material for a complete answer. The answers were mixed, with some candidates failing to adequately explain how a consumption tax works. Q.2 concerned capital taxation policy, with a focus on inheritance tax; answers that engaged with the literature as well as the statutory material were awarded high marks. Most answers to Q.3 on tax avoidance were quite good. In the past there has been a tendency for students to fall into a standard historical overview of the *Ramsay* line of cases which produced weaker answers than those which focused on the specific question asked, but this was not the case this year. The answers to Q.4 on capital taxation of trusts were generally quite strong; the best candidates demonstrated a good understanding of the technical rules and the effects of the 2006 changes. Q.5 on employment benefits was challenging, requiring a strong familiarity with both the cases and the statutory material. Q6 concerned specific aspects of the capital gains tax; most answers were quite good.

Turning to the problem questions, the answers to Q.7 and Q.8 were quite mixed in quality and overall not as strong as problem answers in previous years. The facts in Q.7 raised a host of major and minor trading, capital gains and inheritance tax issues; the inheritance tax issues were not handled as well as the trading versus capital gains issue. The key issue in Q.8 was whether the taxpayer was employed or self-employed. The best answers analysed this issue in some depth, making good use of the facts provided and drawing on the extensive case law.

COMPETITION LAW AND POLICY

The paper consisted of eight questions, four of which were essay questions and four of which were problem questions. Candidates were asked to answer four questions, including at least two problem questions. The examination was taken by 35 candidates. On the whole, the scripts showed a very good command of the subject and good analytical skills with 17 per cent of the candidates achieving a first class mark.

ENVIRONMENTAL LAW

The scripts this year were very impressive. Students focused carefully on the questions being asked and displayed a good understanding of both the legal and the interdisciplinary material. The most outstanding scripts were those in which the candidate showed that they had thought about, and reflected on, all the material in the course, and particularly the implications for legal doctrine and how the law operates. As with previous years, the vast majority of students answered a problem question even though they were not compulsory. Weaker answers were those that were vague and were not grounded in the law or the academic literature.

EUROPEAN HUMAN RIGHTS LAW

This year 29 students took European Human Rights Law. There were 10 firsts and no 2:2s. Students tended to take most of the essay topics on which they received tutorials. Disappointingly, no student answered the problem question. Students who ventured to answer less popular questions were well rewarded.

Generally the standard of the answers were high. The weaker answers tended not to deal with the law at all, or to cite cases without accuracy as to their facts, reasoning or result, and were penalised accordingly. There was a sense however that students who had mastered the theory of human rights, the academic literature and the detail of the case law were well placed to receive a first class mark. The rate of first class marks in this course was particularly high (34% receiving firsts) which indicates that the students who made the effort to engage with the variety of materials offered to them did well.

A good year.

COPYRIGHT, PATENTS AND ALLIED RIGHTS

Two students sat this exam, having deferred sitting the 2008/09 exam. The students performed better on Part A, the copyright section, than on Part B, the patents section.

PERSONAL PROPERTY

This year's paper was generally well done and a good number of candidates performed very well indeed. There was a reasonably even split amongst questions, with almost all candidates attempting at least one of Questions 8 to 10. Questions 5, 7 and 9 were the least popular, but even these questions attracted some very good answers.

The best answers to Question 1 considered the practical implications of considering a party as *the* or *an* owner, rather than treating the issue as purely semantic. When answering Question 2, some candidates fell victim to the temptation to produce a standard discussion of the possible proprietary status of a contract of hire, without averting to the specific question asked. Question 3 was well dealt with by the best candidates, who took advantage of the opportunity for a wider discussion of the concept of property, whilst also taking care to relate that discussion to the scope of the tort of conversion. Question 4 also produced some thoughtful answers, although candidates did less well if they gave a general discussion of *nemo dat* exceptions, without focussing on the specific statutory examples mentioned in the question. Question 6 was competently done, although only the very best candidates adequately dealt with the "should" part of the question.

Question 8 required candidates to apply decisions on finding and the best candidates were able both to set out the principles laid down in those cases, and to appraise those principles critically. Some candidates denied themselves higher marks by going straight to the criticisms, without first being clear as to the actual principles applied in the cases. Candidates probably had most difficulty with Question 10, which required both a careful appraisal of the decision in *Car & Universal Finance v Caldwell*, and consideration of section 25 of the Sale of Goods Act 1979, but those candidates who dealt successfully with this complicated area of law were suitable rewarded.

COMMERCIAL LEASES

Between the candidates, most questions on the paper were attempted. No candidate attempted question 9 (a problem question dealing with the exercise of a break clause). The examiners were pleased with the overall quality of the scripts. In the strongest scripts candidates discussed case law and statute in a detailed way, as well as showing an understanding of how the commercial context impacts on legal questions.

In question 1 credit was given to candidates who not only addressed general principles of contractual interpretation, but illustrated by reference to cases drawn particularly from the commercial lease context. In question 3, the strongest candidates discussed the distinction between remediable and irremediable breaches with reference to detailed case law but also explained the legal significance of this distinction. In question 5, the strongest answers addressed 'flexibility and choice' from more than one angle (for example, alienation, choice of terms, and security of tenure as well as upwards only rent review).

MEDICAL LAW AND ETHICS

This was the first year that Medical Law and Ethics was offered as an FHS option, and the overall standard of the scripts was pleasingly high, as evidenced by the fact that nine candidates of 40 were awarded a First in the paper. Most candidates had successfully integrated ethical theory and practical ethics with their legal analyses, and drew on a wide range of sources to dissect the competing arguments. The only disappointment was how few candidates attempted the problem question about clinical negligence, and usually with very limited success, overlooking the more subtle issues regarding causation, medical products liability and anxiety as to a future outcome as actionable damage.

PATENTS, TRADE MARKS AND ALLIED RIGHTS

In Part A, the Trade Marks section, the overall standard was high. Most of the students answered questions 3, 4, and 6. Answers on question 3 regarding the nature of goodwill were generally solid. A significant minority of students misunderstood the Schecter quotation in question 4, which was taken from an assigned article. Few students answered question 1, which required across several areas within the law of trade marks and passing off, and these few answers tended to be weaker than the answers for 3, 4, and 6.

The standard in Part B, the Patents section of the examination, was generally high, though slightly lower than the standard for Part A. All of the questions were answered by at least two students, the most popular being question 9 (claim scope and interpretation) and question 10 (inventive step). Whilst the majority of answers to these questions were of a 2:1 standard, higher marks could have been achieved by a more sophisticated analysis of the material to respond to the question more directly. In answering question 9, there was a tendency by some students to merely rehash an earlier tutorial essay on the topic, this approach was easily identified and resulted in lower marks. Question 8 on computer programmes and question 7 on prior art for novelty and inventive step were generally answered well. There was a variety of approaches to the issue of morality in question 11. The better answers considered the issue broadly looking at justifications for protection, subject matter and the relevant statutory provisions. The weaker responses tended to focus only on the latter.