FHS JURISPRUDENCE

DIPLOMA IN LEGAL STUDIES

(MAGISTER JURIS)

Examiners' Report 2011

PART ONE

A. Statistics

1. Numbers and percentages in each class/category

The number of candidates taking the examinations was as follows:

	2011	2010	2009	2008
FHS Course 1	195	186	205	205
FHS Course 2	33	27	27	33
Diploma	32	32	17	16
Magister Juris	18	18	34	34

Classifications: FHS Course 1 and 2 combined

	2011		2010		2009		2008	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	42	18.42	35	16.43	44	18.96	41	17.23
II.i	166	72.81	159	74.64	164	70.69	172	72.27
II.ii	15	6.58	15	7.04	23	9.91	18	7.56
III	3	1.32	0		0	0	6	2.52
Pass	1	0.44	0		0	0	0	0
Fail	1	0.44	4	1.87	1	0.43	1	0.42
Totals	228		213		232		238	

Classifications: FHS Course 1

	2011		2010		2009		2008	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	24	12.31	27	14.51	34	16.58	34	16.58
II.i	151	77.44	143	76.88	147	71.70	147	71.70
II.ii	15	7.69	12	6.45	23	11.21	17	8.29
III	3	1.54	0		0		6	2.92
Pass	1	0.51						
Fail	1	0.51	4	2.15	1	0.48	1	0.48
Totals	195		186		205		205	

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

	2011		2010		2009		2008	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	18	55	8	29.62	10	37	7	21.21
II.i	15	45	16	59.25	17	63	25	75.76
II.ii			3	11.11	0		1	3.03
III			0		0		0	
Totals	33		27		27		33	

Results: Diploma in Legal Studies

9 candidates (28.1%) were awarded the Diploma with Distinction. 23 candidates (71.9%) 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. 660 scripts were in fact second marked (31%), 351 before the first marks meeting, and 309 (71 borderline and 238 for or more below) between the two meetings. This total compares with 37% in 2010, 33.61% in 2009, 33.06% in 2008 and 28.73% in 2007.

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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 2010, 2009 and 2008. As in 2010, second marking of all scripts with marks ending in 9 took place before the first marks meeting. Whereas in 2010 all scripts identified on first marking as short weight were also second marked, the abolition of the concept of short weight meant that scripts with absent answers (marked at zero) were second marked only if they were failing scripts.

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. The Instructions to Markers (D.8.1) now require markers to recalculate their averages at intervals during the marking process, and to resolve any late emerging differences in marking

profiles prior to the submission of first marks. This resulted in some extra second marking of scripts.

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 2010, 2009 and 2008, 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). The examiners noted, however, that some marks had been lowered without any reason being recorded on the marks sheet. They recommend that this requirement, laid down in Section E2.1 of the Instructions, be strictly enforced in the future.

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.

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 12 of the Notice to Candidates (Appendix 2 to this report).

The Law Faculty Board approved a return to the old convention for the award of Second Class Honours, Division 1 in 2011, namely 5 marks of 60 or above, and no more than one mark below 50 (which must not be below 40). In 2009 and 2010, 6 marks of 60 had been required. There were few problems in the classification of candidates close to the borderline.

As the second table on the first page of this report shows, the proportion of Second Class Honours, Division 2 decreased this year to 6.58% (from 7.04% in 2010, 9.91% in 2009, 7.56% in 2008 and 6.03% in 2007). The proportion of Second Class Honours, Division 1 decreased this year to 72.81% (from 74.64% in 2010, 70.69% in 2009, 72.27% in 2008 and 75.86% in 2007), mainly because more candidates got firsts. The examiners considered that these changes reflected the fluctuations that one might expect from year to year.

PART TWO

A. General comments

1. Second marking

The procedures for second marking were identified in Part One (B) above. This year the BCL and MJur examinations started a week earlier, which increased the pressure on many markers, and particularly the Examinations Officer, who had to prepare for the second FHS marks meeting and the first BCL meeting in the same week.

Resolving differences

As last year, first and second markers were required to discuss their marks and, wherever possible, agree a mark. This worked well. As in 2010, there were only three cases of disagreement, and in all three the disagreement was resolved by third marking (out of 351 scripts second marked before the first marks meeting).

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, all scripts ending on 9 or given a mark below 40 on first marking were second marked, as indeed were the contenders for all but two subject prizes. In total, 351 scripts (16.36%) were second marked on this basis. This compares with 420 (20.86%) in 2010, 336 (15.70%) in 2009 and 410 (18.64%) in 2008).

This year there were 14 scripts with marks below 40 (0.65%) (compared with 21 (1.04%) in 2010, 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*.

241 scripts (11.24%) were second marked on this basis between first and second marks meetings (196 scripts (9.73%) in 2010, 228 scripts (10.65%) in 2009, 223 scripts (10.14%) in 2008).

(iii) *Scripts second marked because they were borderline.*
This year virtually 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. Two borderline DLS scripts (and one failing FHS script) had not been second marked as required, but remained unchanged when remarked between the two meetings. They are not included in the table below. 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.

71 borderline scripts were sent out for second marking after the first marks meeting (compared with 277 in 2010). Although the number is markedly down on 2010, the overall proportion of scripts second marked at some stage (31%) is not dissimilar to 2010 (37%) and higher than 2007 (28.73%). The table below reveals that far more 57s and 58s were second marked last year, probably because six marks of 60 were required for an upper second class degree. No scripts, borderline or otherwise, were second marked for the purpose of determining the winners of the Wronker overall prizes and the Gibbs prizes (performance in Contract, Tort, Land Law and Trusts). 13 scripts were second marked for that reason in 2010.

First Mark	Number of Scripts	Number agreed in Higher Class	% agreed in Higher Class
68	35 (85)	10 (13)	29 (15)
67	16 (71)	5 (4)	31 (6)
58	15 (75)	5 (13)	27 (17)
57	3 (37)	0 (6)	0 (16)
48	1 (3)	0 (2)	0 (67)
47	1 (6)	1 (1)	100 (17)

For the purposes of comparison the figures for 2010 are given in brackets.

21 scripts were raised to a higher class (21.58%) compared to 39 (14.07%) in 2010 (18.43% in 2009, 25.00% in 2008 and 23.08% in 2007).

2. Third marking
Third marking may be used in exceptional cases (e.g. medical cases) and 5 FHS scripts were read a third time (33 in 2010).

3. Examiners' agreed marks
The examiners considered and settled the marks of a number of scripts. In most cases this was because of because of information in medical certificates. The shortweight

convention having been abolished, there was no question of the examiners imposing a penalty for missing answers. Two rubric violations were penalised in the conventional manner.

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

59 medical certificates were forwarded to the examiners in respect of 37 candidates (compared with 34 in 2010, 31 in 2009, 25 in 2008 and 19 in 2007). Another five documents concerning four candidates were sent to the examiners by the Proctors. In addition, four candidates were certified as dyslexic or dyspraxic. One candidate missed one paper and one candidate missed two papers because of illness.

13 candidates wrote some or all of their papers in college (compared with 6 in 2010, 4 in 2009, 7 in 2008). A further 8 candidates wrote some or all of their papers in a special room in the Examination Schools (4 in 2010). 7 candidates had special arrangements in the examination room (e.g. medicines, seating) because of medical conditions, an increase on 2010 (5), even though permission to take in water, glucose, blood testing kits or asthma inhalers no longer has to be sought from the Proctors.

The following additional specific details have been requested by the Proctors. In the FHS 4 medical certificates and similar documents ((4 candidates) 1.5% of candidates) were forwarded to the examiners under sections 11.8 -11of the EPSC's General Regulations for the Conduct of University Examinations (see *Examination Regulations* 2010, page 34), and in none of these cases (0%) the candidate's final result was materially affected.

6. **Materials in the Examination Room** There was only one instance in which the Examination Schools failed to lay out any statutes on a candidate's desk, but this was spotted in good time. The Chairman and the Examinations Officer paid a visit to the Schools some months before the exams and threw out all the out of date law materials stored in the basement, but the problem of candidates being given outdated statutes by the Schools has not been eliminated. The list of statutory materials is included in Appendix 2.

Students no longer have a dedicated desk for the entire examination period and must check where they will be sitting before each exam. Scripts are now collected by Schools staff who check that the front page of the booklet, especially the candidate number, has been filled in correctly. While this seems to have eliminated the need for handwriting checks, it took some time to clear the room at the end of the exam.

7. Legibility

Typing was requested from 9 candidates for a total 13 scripts. This compares with 25 for 43 scripts in 2010,16 for 51 scripts in 2009, 13 for 26 scripts in 2008 and 13 for 35 scripts in 2007. There is no obvious explanation for the sharp decrease in the number of scripts typed. There were no changes in practice and all requests were approved by the Chair.

8. Absent answers, breach of rubric, short answers and misunderstood questions

In a change to previous practice notified to candidates in the Edict, the mark given for a completely absent answer in any script (formerly known as shortweight) was zero. Where part of a question which was formally separate had not been attempted (formerly known as fractional short weight), or the answer was a "skimped", "rushed final", "short" or "weak" answer, it was awarded such a mark above zero as was appropriate, relative to more successful answers, in terms of the quality of what has been written, and the extent to which it covered the question. The overall mark for a script was arrived at by averaging the number of marks, including zeros, over the number of questions that should have been answered on the paper.

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 in need of modernization.

10. External Examiners

This year we had the valuable assistance of Professor C Redgwell of University College London (for her first year) and Dr S Watterson of the London School of Economics (for his third year). Their active involvement and advice at all stages was extremely helpful and we are very grateful to them. This year, at the request of the Law Board, the external examiners each reviewed ten scripts on the 2.1/2.2 borderline. 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; her dedication, detailed knowledge of every aspect of the examination process and patient guidance are deeply appreciated. We are also grateful to Grant Lamond, Director of Examinations, who was available throughout to give advice and to assist with difficulties when they arose, and to Timothy Endicott, for, amongst other things, lending the examiners his

temporary office for meetings. In addition to the examiners, 61 colleagues were assessors, involved in setting and marking, and we owe our thanks to them all.

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

The gender breakdown for Course 1 was:

	2011				2010				2009				2008			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	14	17	10	9	16	18	11	11	20	21	14	13	16	18	18	16
II.i	63	75	88	79	66	76	77	77	66	69	81	74	64	70	83	73
II.ii	6	7	9	8	4	5	8	8	9	9	14	13	6	7	11	10
III			3	3	0		0		0		0		5	5	1	1
Pass			1	1	0		0		0		0		0		0	
Fail	1	1			1	1	3	3	1		0		0		1	1
Hons.					0		0		0		0		0		0	
Total	84		111		87		99		96		109		91		114	

The gender breakdown for Course 2 was:

	2011				2010				2009				2008			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	5	45	13	59	1	17	7	33	5	62	5	26	4	33	3	14
II.i	6	55	9	41	5	83	11	52	3	37	14	74	8	67	17	81
II.ii					0		3	14	0		0		0		1	5
III					0		0		0		0		0		0	
Pass					0		0		0		0		0		0	
Fail					0		0		0		0		0		0	
Total	11		22		6		21		8		19		12		21	

The gender breakdown for Course 1 and 2 combined was:

	2011				2010				2009				2008			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	19	20	23	17	17	18	18	15	25	24	19	15	20	19	21	16
II.i	69	73	97	73	71	76	88	73	69	66	95	74	72	70	100	74
II.ii	6	6	9	7	4	4	11	9	9	9	14	11	6	6	12	9
III					0		0		0		0		5	5	1	1
Pass			1	0	0		0		0		0		0		0	
Fail	1	1	3	2	1	1	3	3	1		0		0		1	1
Total	95		133		93		120		104		128		103		135	

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

B. Detailed numbers taking subjects and their performance

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

	2011	2010	2009	2008
Roman Law (Delict)	6	7	6	2
Comparative Law of Contract	11	6	11	6
Criminal Justice and Penology	40	39	42	58
Public International Law	43	46	44	59
History of English Law	10	8	13	16
Ethics *			1	14
International Trade*******		11	8	20
Family Law	58	54	65	73
Company Law	31	30	34	28
Labour Law	32	30	39	48
Criminal Law	6	8	5	5
Principles of Commercial Law	11	21	16	28
Constitutional Law	6	7	5	5
Taxation Law	14	10	12	16
Environmental Law **	8	10	5	10
Competition Law and Policy ***	39	37	36	
Copyright Trade Marks & Allied Rights **	12		19	32
European Human Rights Law ****	34	29	21	39

Personal Property **	17	25	16	8
Copyright, Patents and Allied Rights ****	12	2	24	9
Moral and Political Philosophy*****	24		35	
Commercial Leases*****	6	7	7	
Patents, Trade Marks & Allied Rights	1	20		
Medical Law and Ethics	55	40		

*Not marked by FHSexaminers. Ethics ceased to be a FHS option in 2008, although one candidate was allowed to take it in 2009.
**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
******* Not available in 2011

Numbers writing scripts in Diploma in Legal Studies

	2011	2010	2009	2008
Contract	26	25	17	16
Tort	18	24	17	16
European Union Law (previous to 2009 EC Law)	11	8	5	
Comparative Law of Contract	6	9	4	6
Company Law	4	6	3	2
Jurisprudence	6	1		
Principles of Commercial Law		3		
Public International Law	5	5	1	1
Criminal Law	1	3		
Copyright, Trademarks and Allied Rights	4		1	2
Trusts	1	1	1	
International Trade				
Labour Law	1	1	1	2
History of English Law	1			2
Copyright, Patents and Allied Rights				1
Constitutional Law	6	4	1	
Competition Law and Policy	2	2		
European Human Rights Law	2	2		
Criminal Justice and Penology		1		
Administrative Law	1	1		
Medical Law and Ethics	1			

2. MJur candidates taking FHS papers

	2011	2010	2009	2008
Jurisprudence				
Contract	6	6	6	9
Tort				
Land Law				1
Family Law				
Comparative Law of Contract				1
Public International Law	1	2	5	
European Community Law				5
International Trade				

Company Law	5	8	6	14
Principles of Commercial Law	2			
Constitutional Law	1			1
Trusts		2	1	3
Administrative Law	1		1	
Labour Law				
Criminal Law				
Copyright, Trademarks and Allied Rights				
Ethics				
European Human Rights	2			

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

	75-79	**71-74**	**70**	**68-69**	**65-67**	**60-64**	**58-59**	**50-57**	**48-49**	**40-47**	**39 or less**	**Nos. writing scripts**
Jurisprudence	0	5	7	9	18	41	6	11	0	1		228
Contract		8	12	8	27	27	5	11	0	0	1	228
Tort		5	11	7	22	39	7	7		1	1	228
Land Law		5	14	12	22	32	6	6	0	1	0	228
Trusts		4	10	4	29	32	3	14	2	4	1	228
Admin. Law*		7	22	11	27	23	3	5	0		0	228
EU Law**	0	4	10	5	24	41	5	6	1	2	1	228
Comparative Law of Contract	9	18	9	9	27	18	9					11
Crim. & Pen.	5	3	3	8	18	53	3	8				40
PIL	2	9	12	7	30	26	5	9				43
History of English Law		10	20	20	30			10		10		10
Family Law		6	17	15	28	26	4	2		2		58
Labour Law		6	23	3	32	26	3	3		3		32
Company Law		10		7	27	27	7	10	3	7	3	31
Criminal Law			20	20		20	20	20				6
Principles of Commercial Law		10	10	20	10	30	20					11
Constitutional Law		40		20	20	20						6
Taxation		21	7	14	36	21						14

Roman Law (Delict)			40			40	20					6
Environmental Law		11	22		22	44						8
Copyright, Patents and Allied Rights	8	8	25	17	25	8				8		12
Copyright, Trademarks and Allied Rights					25	67		8				12
European Human Rights Law	3	13	19	23	35		3			3		34
Personal Property			13	19	13	38	6	6			6	17
Commercial Leases		17	17	33	17	17						6
Competition Law and Policy		3	8	5	42	39				3		39
Medical Law and Ethics		15	17	8	26	26	8					55
Patents, Trade Marks and Allied Rights						100						1
Moral and Political Philosophy		17	13	4	17	30	17					24

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

C. Comments on papers and individual questions

These appear in Appendix 3

D. Akande
A. Briggs
R. Bagshaw
M. Chen-Wishart
A. Ezrachi
K. Grevling(Chairman)
C. Redgwell (external)
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

Report of the External Examiners

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

15 August 2011

Dear Vice-Chancellor

External Examiner's Report 2011:
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 2010-2011.

(a) *Academic Standards*

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

(b) *Assessment Processes*

As in 2009 and 2010, 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.

As external examiner this year, I did not witness the deliberations of individual subject groups. However, as in 2009 and 2010, I did attend the Board's First and Second Marks Meetings. The conduct of both meetings was exemplary.

(c) *Classification Conventions*

The FHS/DLS classification conventions are clear and simple, and avoid much of the complexity one encounters elsewhere.

Both areas of concern highlighted in my 2010 report have been addressed. The unusual short-weight conventions have been amended, and the threshold for the award of a 2:1 degree classification has reverted to its earlier, less stringent level – requiring 5 of 9 marks at 60 or above, rather than 6 of 9 marks at 60 or above. In the wake of the latter change, I was asked to read a number of scripts at the 2:1/2:2 borderline, with a view to verifying the robustness of their marking. I was fully satisfied on reviewing these scripts that they were genuinely borderline scripts, and that they had been appropriately classified by their markers.

(d) *Comparability of Standards*

The final classification profile of the FHS cohort continues to be impressive. As in 2009-2010, and 2010-2011, there were an unusually large number of strong performances, and a very small number of weak performances. In my report from 2009, 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*

The major question which the Law Faculty will need to face over the next few years is whether it can continue to resist comprehensive double-marking.

The FHS/DLS examining process as currently devised seems particularly good at producing robust classifications – a primary function of the First Marks Meeting is to identify 'borderline' candidates, and direct the re-marking of potentially 'borderline' scripts which are likely to have a bearing on a candidate's overall degree classification, prior to the final Second Marks Meeting. The process is, however, less effective in guaranteeing the robustness of the marking of every script. This might be tolerable if only a candidate's degree classification ever mattered. However, if in future the focus of employers and others is on a candidate's complete transcript – on all of his or her marks – and not only on his or her bare degree classification, then the Law Faculty's current practice looks more questionable. It will be doing its students a disservice unless it can provide an assurance of marking consistency and quality across the board, and not only for those candidates who fall at or near a classification borderline after the process of first marking has been completed. Various measures are employed to this end – e.g. interim reviews of markers' marking profiles within subject-groups, and the re-marking of scripts that fall 4 or more below a candidate's aggregate. Nevertheless, it is far from clear to me that, individually or in combination, these are ultimately an adequate substitute for having two sets of eyes cast over every script.

There are other issues which arose in the course of the Board's two meetings which will be addressed in the Board's report, and which it is unnecessary for me separately to comment upon.

Yours sincerely

Dr Stephen Watterson
Senior Lecturer in Law
London School of Economics

4 October 2011

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

Dear Vice-Chancellor,

External Examiner's Report 2011:
Final Honours School in Jurisprudence/Diploma in Legal Studies

Introduction

This was the first year of my appointment as an external examiner for the University of Oxford's Final Honours School in Jurisprudence/Diploma in Legal Studies, when I attended the Board's First and Second Marks Meeting. In general I was very satisfied with the administration of the examinations process, and overall the standards applied and the practice followed was exemplary.

Academic Standards

I am satisfied that the academic standards applied to the undergraduate law finalists and to the DLS students are entirely appropriate. Oxford students continue to achieve the highest standards of performance compared with other higher education institutions.

Assessment Processes

The assessment processes I observed are rigorous, ensure equity of treatment of students, and have been fairly conducted within institutional regulations and guidance. An examinations board constituted by a smaller group of examiners drawn from the Faculty, yet able to rely on the energies and expertise of the wider Faculty for marking, appears the ideal blend of expertise and efficiency. I was initially surprised to learn that the Chair of Examiners is a one-year appointment, with each Chair in effect having to 'learn on the job'. Yet this year's Chair ran proceedings in exemplary fashion, and was able to rely on the advice and expertise of other members of the Board, at least one of whom had previously held this position, thus introducing welcome continuity. First rate administrative support – and further continuity – is provided by the Faculty examinations officer (Mrs Julie Bass) which also contributed to the smooth running of the meetings.

One irksome feature of the process prior to the final examinations board was the insistence on hard copy of materials, including of draft examination papers, and of comments upon them. I understand that it is contrary to current University of Oxford regulations to use email, even password protected, for the dissemination of, and return of comment upon, draft examination papers. This must surely be out of step with many, if not most, other institutions, and significantly increases pressures on external examiners with tight turn around times (and 9am Monday morning examinations meetings).

A new feature of the process for 2010/11 was the requirement for the external examiner 'to read papers on the II.ii/II.i boderline and to advise whether the Faculty as being

inappropriately harsh or generous'. This incorporates into the Oxford examining process an element of the 'usual' role for external examiners elsewhere (namely, to scrutinise borderlines, confirm fails and distinctions, and generally to comment on examining and assessment standards and practices). As such I welcomed the opportunity to review scripts at this crucial borderline, and indeed in the subjects referred to me (EU and Contract Law) I was wholly satisfied that the borderline had correctly been drawn, being neither too generous nor inappropriately harsh. Such good practice should be continued.

Where issues did arise in the assessments process, these were addressed professionally, appropriately and in a timely fashion. For example, the intellectual property paper contained parts A and B, the latter requiring re-marking owing to the examiner's failure to apply the appropriate marks scale. (This was a paper marked by an examiner external to the Faculty.)

One matter for concern is the apparently contuing difficulty in ensuring that up-to-date materials are available not only at Schools, but also in Colleges where examinations are being sat under special arrangements. By definition candidates sitting in the latter circumstances are generally more vulnerable to disruption. Yet, despite what I understand to be personal visits by the Chair of Examiners and Faculty examinations officer to Schools to weed out old materials, in several instances candidates sitting in Colleges were furnished with the wrong materials. While I am entirely satisfied that the arrangments made to respond to these individual students affected, and the thorough consideration of these cases by the Board, was appropriate, it is unfortunate to say the least that this difficulty continues.

In general I was also impressed by the manner in which the Board addressed what were perceived to be unusual variations between markers on the FHS, which included re-marking of scripts where first marks awarded deviated from the patterns of markers in a particular subject. However, in discussion of the statistics produced and tabled at the meeting, it became clear that certain further variables – such as whether the papers were sat mainly by FHS or DLS students – had not been factored into these statistics impacting on their usefulness as a tool for assessing individual marker's variation from the norm within particular subjects. Others had scripts attributed to them for marking when in fact other colleagues in the subject had taken this on. If such data is to continue to be used as a basis for requiring second (or even third) marking, some tweaking of it to ensure greater accuracy should be considered.

I am not entirely convinced by the present system of marking, for two reasons. The Proctors rule that automatically triggers a re-marking of a script *even where the outcome has little likelihood of affecting the overall degree classification* appears to give rise to much needless additional marking between the first and second examination board meetings. Not only did most, if not all, scripts come back within the same class and range of marks, but the safeguards already built into the Laws system of modified double marking, including the use of statistics to identify markers out of line with others in their subject group, offers quite robust safeguards and ensures 'true' marks awarded. Here the comparator is (appropriately) other marks *within* the subject; to use variations in marks *between* subjects as a justification for further double (or triple) marking of a paper is to misunderstand the nature of the legal enterprise and to presume that students will perform relatively equally across a diverse range of legal subjects.

Classification Conventions

The FHS/DLS classification conventions are clear and were consistently and appropriately applied. The decision in 2010/11 to abandon the short-lived higher threshold for a 2:1 degree classification was extremely welcome, and brings the FHS/DLS back into line with the final classifications practices of other leading institutions.

Further issues and good practice

I have already noted several issues above, namely: the continuing problem of outdated materials in Schools, where the Faculty appears to have done everything within its control to ensure accuracy; the rule regarding remarking of scripts within a certain degree of variation from a candidate's overall performance; and the prohibition in all circumstances on the use of email, even where password protected, in the approval of examination papers. Good practice has also been highlighted, including the use of external examiners with respect to confirming the appropriateness of the 2.i/2.ii borderline by checking a sample of scripts.

Yours sincerely,

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APPENDIX 3

INDIVIDUAL REPORTS

ADMINISTRATIVE LAW

Overall the quality of answers this year was high, and this was reflected in a relatively high number of first class marks being awarded. Beyond this, the more general comments are the same as every year; stronger candidates were able to demonstrate a good, detailed knowledge of the case law as well as academic commentary, were able to address both sides of the relevant debates, tailored their use of the material in a manner which answered the specific questions asked, and were able to present their own analysis and views. Weaker candidates failed to do one, more or even all of these things.

Q 1 This question was reasonably popular, attracting both strong and weak answers. Weaker candidates saw it as simply an opportunity to describe some of the academic debates on public law theory, and candidates who did so by focusing exclusively on the ultra vires debate were not rewarded with high marks. Stronger candidates were able to address not only a range of public law theories but also to show how such theories related to each other, and in particular, as the question required, were able to demonstrate with reference to specific examples from the decided cases what practical difference adoption of such theories was likely to make, if any.

Q2(a) This question was also reasonably popular; stronger candidates were able to give a detailed account of the existing status of *Wednesbury* review and proportionality in the current law, including the situations in which proportionality is used outside Human Rights Act Review. Such candidates were also able to engage not only with the more traditional case law and academic debates, but also with the more recent academic exchanges on the subject. Similarly, stronger candidates were able to refer to more recent case law such as *Paponette*, *Quila*, *Hounslow* and *Pinnock*. Weaker candidates referred only to the debate on the subject in general terms, without giving specific details of the precise status of the two approaches in the current law, or without referring specifically to academic commentary on the question. It is also worth pointing out that stronger candidates, regardless of the position they ultimately took in the debate, were able to address both sides of it, explaining why they found alternative viewpoints unpersuasive as well as outlining why they had adopted their chosen position. Weaker candidates, again regardless of their specific views, tended to write more one-sided answers which failed even to acknowledge the existence of an alternative viewpoint on the question.

Q2(b) Relatively few candidates attempted this question, which attracted very strong and very weak answers. Some of those who did, rather oddly, saw it as another opportunity to address the questions of *Wednesbury* and proportionality raised by q 2a. The strongest candidates used it as an opportunity to address the operation of judicial review more generally, and in particular relationships between the type of review (illegality, irrationality, procedural impropriety) and the intensity with which it should be conducted, as well as the appropriateness of court intervention in general.

Q3 This again was a fairly popular question, however it was fairly specific. Stronger candidates identified the choice between dignitarian and instrumentalist approaches to procedural fairness highlighted in the quote and were able to give specific practical examples where the choice between these two approaches might have a practical impact. Such answers also tended to include a variety of detailed references to case law, including recent cases such as *AF* itself on the relationship between procedural fairness and national security. Weaker answers tended to write generally about fairness and procedures without really identifying any relevant distinctions between different approaches, or without being able to cite practical examples, and some answers were clearly reproductions of pre-prepared procedural fairness essays on other less relevant topics.

Q4 Many candidates who answered question 4 assumed that it was 'the standing question', whereas in fact the question refers to 'factors' in the plural which influence the manner in which courts control access to judicial review. Thus although candidates could answer the question perfectly successfully by simply referring to the different possible approaches to the question of standing, and as always, stronger students did so by reference to a variety of detailed case law, the strongest answers were those which recognised that there were in fact other factors worthy of consideration here, such as the requirement that the body reviewed be public, time limits, permission, ouster clauses, etc.

Q5 This was one of the most popular questions on the paper. However, as is often the case there was a tendency among weaker candidates to write general 'legitimate expectation' essays, whereas stronger candidates noticed that the question in fact specifically refers to the interrelation of *policy* with legitimate expectations. Thus while references to promise-based legitimate expectation cases were relevant as a matter of comparison, candidates who focused exclusively on such cases without also addressing the question of policy-based legitimate expectations were not highly rewarded. Conversely, the beginning of the quote refers to the permissible use of policy in itself, and thus stronger candidates identified that this aspect of the question required a discussion of the rules contained in cases such as *British Oxygen* , and were able to integrate this with their discussion of legitimate expectations, rather than concentrating on that latter issue exclusively.

Q6 This was a reasonably popular question which in general was answered fairly well. Stronger candidates were able to address the current status of *E* with reference to the more recent case law of *Connolly* and *Croydon*, while weaker candidates were able only to address the status of *E* at the time it was decided. Reference simply to 'jurisdictional error' in the second half of the question allowed candidates to address reform of error of fact alone, or to integrate it with reform of error of law as they chose. Stronger candidates addressed this aspect of the question well, with a good account of their own views as well as reference to academic debate. As with question 2a, however, weaker candidates tended not to address positions other than their own.

Q7 This was not a particularly popular question which was generally well answered by reference to the case law on improper purposes and relevant/irrelevant considerations with good discussion of the relative competences of courts and initial decision makers to make such assessments. One or two weak candidates saw the reference to *World Development Movement* and mistakenly assumed that this was 'the standing question'.

Q8 This was a relatively popular question which was generally well-answered. As always, the strongest answers were those which were able to address a range of different academic

views but also to relate such discussions to the decided cases on the issue. Weaker answers failed either to include much academic commentary or to refer even to cases such as *Huang, A and X*, or *Miss Behavin'* and *Denbigh High School*, and tended to be very general indeed.

Q9(a) This question did not attract a large number of answers, but the answers it did attract varied in quality a great deal. The best answers were able to give a detailed analysis of *Cart* and the precise impact it should be regarded as having, combined with the authors' own views of these developments and good reference to secondary literature. Weaker answers were far more general.

Q9(b) This question attracted a few more answers than 9(a) but was still not one of the most popular questions. Weaker answers referred only to the Parliamentary ombudsman and tended to regurgitate pre-prepared essays on this subject. Stronger answers referred not only to other methods of holding public authorities to account but were also able to base their discussions in the more theoretical debates underlying this question.

Q10 Almost all answers to this question took the 'tort only' option of 10(b). Good answers formulated a coherent argument in answer to the question by reference to a variety of case law, including more recent cases such as *Jain* and *Connor*. Weaker answers did not answer the question, and tended to be confused about the particular tort, or aspect of a tort at issue in the cases they did cite. Given the specific question asked, it was also surprising that more candidates did not refer to the specific public authority torts such as misfeasance in a public office or state liability in damages under EU law. And again, there was a tendency for answers to this question to adopt positive or negative answers to the question asked, without evaluating the alternative perspective or any relevant academic commentary on the issue.

COMMERCIAL LAW

The paper was generally well done, although there were few outstanding scripts. Of the essay questions, only 2 and 4 could be said to have been popular, with a number of candidates choosing to answer three or even four problem questions. The main fault of the answers to the essay questions was that they were too general, and close attention to answering the question was therefore suitably rewarded.

Of the problem questions, question 6 was popular, and generally answered well, with many candidates recognising the relevant points. Better answers discussed to what extent Lloyd v Ritchie could be distinguished, and made sophisticated arguments on the question of what was a reasonable time. The treatment of Nigel's consumer claim was rather disappointing.

Question 7 was less popular but was well done, with some interesting discussion of the application of the *Associated Alloys* case. Question 8 was quite complex, and was unravelled well by a number of candidates, with some good discussion of the interface between negative pledge clauses and automatic crystallisation in relation to priorities.

Question 9 was the most popular, but the quality of the answers was mixed. A number of candidates failed to grapple with the issue of whether the source of the goods sold to Venus was sufficiently identified for there to be ascertainment by exhaustion, or, indeed, a bulk (in relation to the mints). There was some good discussion of the application of the *Carlos*

Federpiel case to the lollipops, but a number of candidates did not really take the point that a stamp, while it cannot be easily erased, can be covered up and the good reallocated.

Question 10 was reasonably well answered, with most points picked up although opinions varied considerably as to whether Fred was a good faith buyer.

COMMERCIAL LEASES

The commercial lease scripts were of pleasing quality. They revealed a good – often impressive - understanding of the case law and statutory material, as well as the contextual background. No candidates attempted questions 2 or 8, but given the small number of candidates for this paper this is not meaningful.

COMPANY LAW

Thirty-nine candidates sat this paper, of whom four were DLS candidates and five MJur. The general standard of the scripts was high. Three-quarters obtained a 2:1 or better, though the number of top-class scripts was slighter smaller than might have been expected. Comments on the individual questions are as follows.

1. [Derivative action] As expected, this question was popular and competently done. It produced, however, very few really top flight answers. Many answers were rather hazy about how the statutory procedure differs from the common law. A common mistake was to fail to grasp that the ratifiability of the wrong (as opposed to its ratification) was in principle a bar to action at common law, which made comparison with the statutory procedure more difficult. Few answers saw ratifiability and wrongdoer control as common expressions of the principle of majority rule. And few considered the incentive structure for shareholder litigation under the statutory procedure even if the courts approached it in a liberal spirit.

2. Raising of capital. This question was attempted by a substantial number of candidates. It was good to see this area of company law established in the delivery of the course. The material was confidently handled by the candidates. The main errors related to candidates' misunderstanding of the scope of the question. Many confined their answers to the legal capital or creditor protection rules relating to the raising of capital and so did not deal with pre-emption rights. A smaller number ignored the word 'raising' and strayed into capital maintenance, thus making the question impossibly broad for a 45 minute answer.

3. Approval mechanisms for breach of fiduciary duty. This question was attempted by a surprisingly small number of candidates, given its location in the central area of fiduciary duties. This may suggest that candidates spend too much time on the content of the conflict duties and too little on how directors' conflicts of interest are handled.

The popularity of Q10 (which was concerned with the substance of directors' duties) perhaps supports this conclusion.

4. Division of powers between board and shareholders. This was a very unpopular question, only two candidates attempting it, perhaps because it referred to immediately obvious body of legal doctrine.

5. How does a company act? This was not a popular question, though it was more popular than 4. This was surprising since it relates to a core area of legal doctrine. A number of candidates could not state precisely the rule in *Turquand's* case, which made their analysis of s 40 of the CA 2006 less sharp than it would otherwise have been. A small number of candidates mistook the question as one on legal personality/limited liability.

6. Enforcement of the articles as a contract. This was about as unpopular a question as no. 4. Those who tackled did not often identify all three of the main sources of difference: the public nature of the articles, the qua member requirement and the issue of internal irregularities.

7. Minority protection through law or contract. This was a popular question, but answers to it suffered from a lack of breadth. Often the question was treated as one about only either unfair prejudice or alteration of the articles. Also, the process of contracting was often equated with shareholders' agreements, so that the extent to which the statutory protections concerning class rights or unfair prejudice turn on some form of prior contracting was not brought out.

8. Partitioning assets. This was a popular question. Most candidates who answered this question could analyse the concept, in both its positive and negative aspects. However, very few candidates could identify the legal doctrines which effect partitioning, beyond limited liability. Even those who referred to separate legal personality often could not explain how it contributed to asset partitioning, except as an adjunct to limited liability. Almost no candidate referred to such matters as the nature of the shareholder's interest in the company or the 'lock in' of the shareholder's investment in the company. And very few answers dealt with asset partitioning within corporate groups.

9. This was not a popular problem and was not well done. The most common failing was to assume that, from the early stages of the events described, there was a clear breach of s 214 of the Insolvency Act (or even of section 213).

10. This was a popular question and was well done on the whole. A surprising number of candidates though that a sell-out remedy under the unfair prejudice provisions would suit C's needs, given that she did not want to be squeezed out. Little thought was given to alternative remedies under these provisions. A small number of candidates were side-tracked into considering the *Gold Reefs* line of cases, even though there was no obvious proposal to change the articles; and some candidates spent time on the derivative action even though D and her allies clearly controlled the board.

11. Few candidates attempted this question and it was not well done. Although the negligence issue, heavily flagged in the first para, was picked up, a surprisingly large number of candidates failed to identify the second para as raising improper purposes issues. No candidate spotted the potential infringement of the personal rights of Belinda.

12. This question was quite popular and was reasonably well done. Although nearly all candidates argued that the prefs had to be paid off at £1, not 95p as proposed, there was some haziness about the reasons for this conclusion. And candidates were rather better at saying what could not be done than at identifying alternative paths which might achieve the company's goals.

COMPARATIVE LAW OF CONTRACT

Overall the standard of performance in this paper was very good, with some outstandingly good scripts and very few below the upper-second class standard. Candidates demonstrated a very good understanding of the substantive laws of the two systems under discussion and a good understanding of how to undertake the comparison which the paper (and the course itself) requires.

All questions received responses, with questions 4 (third party suit on a contract) and 5 (frustration and *force majeure*) being particularly popular.

COMPETITION LAW AND POLICY

The paper comprised eight questions, four of which were essay questions and four problem questions. Candidates were asked to answer four questions including at least two problem questions.

The first essay question focused on the application of Article 101 TFEU to the exchange of information between competitors. The second essay question dealt with the European Commission's approach to conditional rebates and the differences between the effects based approach as manifested in the Commission Guidance Paper and the approach of the European Court. Question three focused on the distinction between violations by object and effect under Article 101 TFEU. Question four dealt with the Commission's investigation powers

and leniency procedure and their contribution to effective detection and punishment of cartel members.

Problem questions focused on the application of Article 101 TFEU, Article 102 TFEU, the European Merger Regulation and the enforcement of competition law by the European Commission.

The examination was taken by 39 candidates. On the whole, the scripts showed a very good command of the subject and good analytical skills.

CONSTITUTIONAL LAW

The twelve candidates did good work; the best papers offered clear and well-supported arguments in each essay, and reflected the students' ability to make creative use of their expertise in other subjects (especially European Union Law and Administrative Law). As always with constitutional law, there was a slight tendency for students to address the general topic instead of answering the specific question. Students can distinguish their work in this paper by focusing very alertly on the specific terms of the question.

CONTRACT

All the questions were attempted, with Essay 5, and Problems 8 and 10 being the most popular questions. The overall standard was comparable to that of recent years.

Q1: not attempted by many candidates but those who did, did reasonably good job of answering this wide ranging question. A few omitted reference to law beyond vitiating doctrines although the last phrase of the quote directed candidates to go beyond these. For example, reference could have been made to UCTA, UTCCR, and limits on agreed remedies.

Q2: A reasonable number of answers offered for this question and in general there was agreement with the quote but sometimes a failure to identify what ‘other’ factors in play might be, eg certainty, fairness.

Q3: Again, a good number of answers to this but responses of varying quality. Discussion of the limits on awarding specific performance required but sometimes omitted. The same with discussion of the limits on full expectation, eg cost of cure, and limits of mitigation and remoteness. Better answers developed the phrase ‘and nothing else’ around reliance damages and Blake.

Q4: Some attempts of this question very well done. Others plainly determined to write a different (pre-formulated question). Certainly, this is one that is easy to go off on frolics and fail to stick to the question, which is about the relationship between these doctrines. The question requires comparison of the basis and remedies for the doctrines and investigate the possibility of a common regime.

Q5: Popular question answered by almost every candidate. However, there was too often failure to notice the word ‘traditional’ regarding the bar against third party enforcement, and so many offered sketches of the CR(TP)A 1999 as evidence the statement was inaccurate.

More focus on identifying and comparing the basis of the consideration and the traditional privity rule was required. Too many sought to escape the intimate linking of the two topics by presenting consideration as simply "evidence of serious intention"; an idea comprehensively rejected in Eastwood v Kenyon.

Q6: Candidates had a tendency to simply run through the ICS Hoffmann principles on interpretation in agreement with the quote without exploring the possible criticisms and range of attitudes towards how free courts should be to interpret the parties' intentions beyond what is stated in written documents. Some good answers discussed the analogous attitude in AG v Belize on implied terms. Some discussion of the admissibility of pre-contractual negotiations.

Q7: Some good answers here, but too often the discussion was limited to the penalty rule, rather than recognising the potential breadth of the question as also taking in agreements to limit or exclude liability, for the remedies of specific performance or termination and, of course, the law's response to such agreements.

Q8: A very popular question answered by almost all candidates and generally well answered. Some failed to discuss the possibility that the statement may be honest and made on a reasonable basis and so remediable only as a breach, necessitating discussion of the possibility of the statement being a term. Some answers gave quite inadequate emphasis to the remedies for misrepresentation. A significant number did not seem to notice that they switched over to the test for damages for breach when discussing non-pecuniary damages. Under section 2(1) Misrepresentation Act, it is arguably recoverable since there is no remoteness limit.

Q9: (a) A question on whether a party can escape a guarantee via Etridge, occasionally (erroneously) treated as a question on consideration, and occasionally inadequately focussed on the position of the lender. (b) A question requiring discussion of Williams v Roffey but also of the possibility of frustration. Note that although inflation and fluctuations in the value of currencies will not normally frustrate the contract, but fluctuations of a wholly astronomical order may do so Davis Contractors v Fareham at 724; National Carriers v Panalpina at 712.

Q10: A good number answered this question. The offer and acceptance part was generally well done. The remedies for breach less so. In particular, the fact that termination would allow J not to pay was often not picked up. Surprisingly, some failed to spot the issue on whether L can affirm.

Q11: (a) remoteness as applied to impecuniosity; (b) Achilleas; (c) intervening cause; (d) claim of profits. Some saw, quite erroneously, a question about frustration throughout. Very few identified the issue in (c).

Q12: A surprising number insisted on discussing the issue of notice despite the contract having been signed. Although many saw that the issues related to UCTA and the UTCCR, they were not able to pinpoint the applicable sections and regulations and so offered rather vague discussion about unreasonableness and unfairness. Weaker answers wrongly claim that UCTA only benefits consumers. Some failed to discuss interpretation at all.

COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS

This Paper was done less well overall than Paper 0626 (Copyright, Patents & Allied Rights). The most popular questions from Part A (Copyright) were Questions 1 and 5, and Questions 8, 9 and 11 from Part B (Trademarks). In answering the Trademarks questions particularly, there was a tendency among many candidates to focus on a small number of sources and issues. This was disappointing, and accounts in part for the lack of First Class (1 of 16) scripts.

COPYRIGHT, PATENTS AND ALLIED RIGHTS

This Paper was done extremely well on the whole, as the high number of First Class (5 of 12) scripts reflects. Most candidates answered Questions 1, 3 or 5 from Part A (Copyright), and Questions 8, 9 or 12 from Part B (Patents). In Part A, the answers to Question 3 were of a particularly high standard, with many candidates displaying an excellent understanding of both the ECJ's decision in *Infopaq* and its possible and likely impact on the domestic law of copyright infringement, and drawing on a wide range of primary sources to support their analyses. In Part B, Question 12 was also answered extremely well overall, with students engaging deeply with the doctrinal and theoretical aspects of the question, and drawing on a range of cases and other materials to support their views. Our impression reading these scripts was that the students taking this paper were a self-selective group of highly able students not intimidated by the technical nature of the subject matter which Patents involve. There was evidence of deep engagement with all areas of the Law covered by the course.

CRIMINAL LAW

Six candidates took the FHS exam. Even within this small cohort a wide range of quality was on display, with a disproportionately high number of 2.2 scripts represented. The questions attempted were widely spread, so no significant comments can be made on answers to individual questions. Two general observations may, however, be offered. First, FHS candidates should be more ambitious in their engagement with the rich secondary literature on offer in this subject. Too often, the engagement displayed insufficient depth of analysis. Secondly, FHS candidates should avoid treating leading judicial authorities as if they could be characterised, reductively, as embodying a small number of simple and uncontroversial propositions to be applied in an easy and straightforward way. Better candidates were prepared to explore the nuances and wrinkles within and between judgments, especially in engaging with problem questions.

CRIMINAL JUSTICE AND PENOLOGY

38 candidates sat the paper. There were a few very good scripts which showed command of the main literature, used statistics and/or research findings where necessary to substantiate arguments, and engaged with the precise question set. There was a large group of scripts just below this, showing good knowledge and occasionally some of the best features. The weakest group of scripts was characterised by general answers, citing little authority, and citing either no statistics or statistics that were wrong.

Four questions attracted the most answers. Question 10 on young offenders was the most popular, and there were many good answers that explored the rationale for treating young people differently, that examined the features of the English youth justice system, and that ventured arguments specifically aimed at the question asked. Question 9 was also popular, but many candidates focussed too greatly on either restorative justice or the rest of the criminal justice system, rather than conducting the comparison invited by the question. Many candidates failed to spell out what restorative justice means in practice, or to draw on research findings; some others said far too little about the role of victims in the rest of the system, in matters such as sentencing, prosecutions, release from custody and so on. Question 8 invited candidates to test the net-widening theory: some candidates focussed their answers on the ASBO, whereas the better answers gave pride of place to an examination of the recent history of the use of community sentences, although too few included any discussion of fines. Question 7 asked about the effectiveness of prisons, and called for a methodical answer which began with an exploration of the purposes of imprisonment. Although there were some good answers, drawing on literature, research and statistics, too many candidates drifted away from the methodical approach and wrote discursively about prisons and their problems.

Questions 1 and 2 attracted very few answers, and Question 3 none at all. Question 4 was answered by a fair number of candidates, but rarely well. Weaker candidates seemed to latch on to this question as an excuse to conduct a fairly generalised tour of the theories of punishment, and very few candidates devoted much space to answering the two questions asked. Questions 5 and 6 attracted few answers, and Question 11 none at all. The other question that was answered by a moderate number of candidates was Question 12, in one of its two parts. The general level of answers was good, with the better candidates using research and statistics as well as engaging with the literature.

ENVIRONMENTAL LAW

The general quality of the papers was very good and in all of them there was clear evidence that the candidate understood the subject.

All questions were answered on the paper and the vast majority of candidates answered a problem question even though none was required. Overall, candidates' knowledge of the legal detail of the relevant regimes was solid, and there was also some very good integration of policy and academic literature into the analysis of legal issues. Weaker answers were those that did not answer the question properly and tended to be lighter on legal detail and analytical analysis. Stronger answers were those that applied in-depth knowledge of particular issues to the question at hand.

EUROPEAN UNION LAW

This year produced the usual mix of some very strong scripts, some weak ones and a solid mass in between that showed generally thoughtful and careful engagement with the issues covered in the course. Some questions were relatively popular (1, 2, 4, 5), some relatively unpopular (7, 8, 9), but no part of the course was ignored by candidates. Examination technique is a matter that has caused anxiety to the markers of EU law scripts in recent years - in particular the regrettable and necessarily punished tendency of some candidates to write

an answer containing all they know about particular topic while turning a blind eye to the particular nuances of the question they have in fact been asked. A tour d'horizon may be perfectly enjoyable to read but candidates should respect a question that demands a more focused gaze. Happily this year this mischief was rarely encountered. 2 attracted a handful of answers that erroneously treated the question to read "Please tell us everything you know about fundamental rights", but most answers were more sensitive to the question(s) asked, and other questions that might have been read in such improperly cavalier fashion - 5 and especially 1 - were in general not so treated and generated many fine answers.

EUROPEAN HUMAN RIGHTS LAW

Overall a very strong field. 35 candidates took this paper. There were 14 Firsts (40%); 19 2:1s (54%); 1 2:2 and 1 3rd.

Candidates who drew on case law as well as theoretical literature were in a strong position to do well. Candidates who also drew on the range of discussions in classes, lectures and tutorials (rather than just their tutorial essays) were very well rewarded.

Questions that stood out as worthy of particular comment for the examiners were as follows:

Question 1 was very rarely chosen. Those that did choose it were sometimes very good. The question was centred on the sovereignty issue (linked to the Pinto-Duchinsky debate). Candidates who attended the JCHR session would have been in a better position to answer this. But some candidates answered it by saying that Strasbourg had done more than the common law, and used a whole lot of random cases to show this. This somewhat begged the question however, as most of the criticisms are precisely about the fact that Strasbourg does more than the domestic courts.

Question 2: there was a tendency to focus on the cases, though excellent candidates did call upon the literature.

Question 3(a): was very popular. Those that drew on rights theory as well as cases did best on this question. But most of the answers overlooked that the question was really how to balance competing rights, rather than on the pros and cons of the margin of appreciation doctrine.

Question 3(b): candidates lost the opportunity to engage with the classes led by Murray Hunt in the course that dealt with parliamentary processes. Candidates slow to situate the question in the Interlaken process. Those that did well on this question, did this, and also noted exactly where cases were sensitive to democratic processes.

Question 4(a): would have been the better question to answer if candidates wanted a general discussion on prisoners' rights. The mistake was that they often chose 4(b) over this one, and ended up delivering unfocused answers to that.

Question 4(b): Candidates tended to answer Question 4(b) rather than 4(a), but they would have been better off answering 4(a) as the material they used to discuss this issue was often too broad and not clearly related to the voting question. The other mistake they made was to

view the restriction of the right to vote as a restriction of residual liberty, when in fact it is better characterised as a on personal liberty.

Question 7(b): Lost opportunity to comment on the limitations of the rights under Article 8(2). Most essays focused on the breadth. Few thought about the permissible limitations. Few gave it a structured defence, the best answers engaged with the underpinning principles binding the interpretation of the right together.

Question 8: Generally well answered. Candidates who drew on theoretical literature did better.

Question 9: Candidates that drew on the Murray Hunt classes and on the JCHR session did well. But the candidates often failed to relate it to the ECHR, falling back on the domestic context. Candidates could have done more with this question, which was rarely answered.

Question 10: Candidates who took the problem question in question 10 scored particularly well where they answered they identified the basic legal issues and even better where they were able to point to cases on each point.

FAMILY LAW

The examiners thought the overall standard of scripts in Family Law to be a little below average this year. While there were some strong scripts, few offered really novel analyses of the issues raised, and many candidates offered rather well-rehearsed answers which were not focused on the particular questions asked. This tendency was especially apparent with quotation questions: many candidates virtually ignored the quotation and simply offered a general answer on the same topic. The examiners would emphasise that quotations are part of the question, and should be analysed and discussed as a central part of candidates' answers.

Q1 (whether family law is outdated): Answers were quite varied, ranging from some of the strongest candidates (who wove together sophisticated analyses of five or six different areas of family law) to some of the weakest (who often gave this as their final answer, addressing just one or two narrowly chosen examples).

Q2 (legal relevance of marriage/CP): A popular question, but often poorly answered. The examiners were surprised by the number of candidates who claimed that marriage had no legal consequences at all, with only a minority of candidates able to identify a significant number of legal effects. It was also surprising not to find more references to *Radmacher v Granatino* [2010] UKSC 42: although the detail of the case as regards financial issues was not relevant to the question, much of the obiter discussion in both main judgments about the nature of marriage could have been used profitably.

Q3 (children's rights): This was the single most popular question, but answers were almost uniformly disappointing. Very few candidates seemed to understand Onora O'Neill's position, which was quoted in the question, and assumed her to be rejecting rights in favour of a welfare approach. Many answers consequently treated the question as an opportunity to repeat a very well rehearsed *rights vs welfare* debate, whereas the question called for something rather more ambitious, involving a subtle discussion of the different kinds of rights arguments that could be made.

Q4 (child protection): In general, answers to this question were rather good, with candidates drawing on a wide range of materials in their discussions of the (inherent) problems of child protection law and its practice in England and Wales. The best candidates looked in detail at Parts III and IV of the Children Act 1989, along with care plans and other issues arising after children are taken into care.

Q5 (cohabitants' property): Perhaps surprisingly, this was not a popular question, and those that did it too often ignored the family law context specified in the wording of the question. Answers which offered only a land law/trusts analysis of home ownership did not impress the examiners, while those who were more ambitious and family law-focused did well.

Q6 (domestic violence): Like Q5, this question's family law focus was often overlooked. While some discussion of criminal and civil law responses to domestic violence was appropriate, the question required specific discussion about the role of family courts in addressing domestic violence in order for higher marks to be obtained. The examiners were disappointed that so few candidates thought to mention the law's treatment of domestic violence in the context of child contact applications, and the lack of reference to *Yemshaw v Hounslow LBC* [2011] UKSC 3 in most answers was concerning.

Q7 (fairness in family finances): Another popular question, but many candidates seemed to want to write about the development of the law in this area, rather than to evaluate the concept of fairness critically. Only the strongest candidates seemed willing even to try to work out what fairness might actually mean, beyond listing the factors identified by Lord Nicholls and Baroness Hale in *White* and *Miller;McFarlane*. Given the quotations provided, the examiners were hoping for discussion of the different ways in which the idea of fairness might be used when making financial orders on divorce or dissolution.

Q8 (children's residence): There were only six answers to this question. While the examiners had not intended this question to be about relocation disputes, four of the six answers offered at least some discussion of relocation, and it was decided that this was a legitimate reading of the question. Otherwise, answers to this question tended to be good, with nuanced discussions of the various issues which the court might consider in a residence dispute.

Q9(a) (family law theory) and 9(b) (justice in family law): There were no answers to either of these questions. While hard, they offered good candidates the opportunity to say something interesting, and it was disappointing not to get any answers.

Q10 (contact): There were only eight answers to this question, which were of rather mixed quality. The examiners wonder whether the requirement to consider both public and private law was the reason why the question attracted so few answers, which may be a point to consider when teaching these topics in future.

Q11 (divorce/dissolution): Two particular points arose out of the answers to this question. First, it was truly astonishing how many candidates thought that the law did not regulate access to divorce or dissolution at present, as if the Matrimonial Causes Act 1973 were not a form of regulation. Second, it was surprising that few candidates thought to analyse the differences between divorce and dissolution: both were mentioned in the question, and this is one of the few points on which there is a legal difference between marriage and civil

partnership (adultery not a fact proving irretrievable breakdown of a civil partnership). The strongest answers drew on a wide range of materials, discussed what it means to regulate access to divorce/dissolution, and analysed why the state might want to do so.

Q12 (parental responsibility): A very popular question, and usually handled reasonably well. Most candidates spent most of their time discussing *orders* granting PR under s 4(1) of the Children Act 1989 and, while this aspect was relevant, it was certainly not the only thing that could have been brought in. Many candidates seemed content to follow the Reece/Harris and George analysis, but without considering the relatively narrow focus of those articles. A few candidates examined the legal limitations and confusions of PR, but only one or two ventured as far as noting the importance of PR for people other than the child's biological parents, such as step-parents (s 4A), non-parents with residence orders (s 12(2)) or local authorities (s 33(3)). An alternative approach, not taken by any candidates, would have been to discuss what the rights, duties, powers, responsibilities and authority comprised within PR are and how they work in practice.

HISTORY OF ENGLISH LAW

11 candidates took this paper. There was some clustering of attempts on question 9 (leases) (7 attempts) and 11 (origins of the trust) (9 attempts); there were no attempts of questions 3 formal and informal contracts), 6 (a) (relations of assumpsit and debt sur contract) or 12 (17th-18th century development of trusts law). The overall standard of scripts was good; the weaker scripts were merely consistently thinner in material used and less focussed in arguments than the stronger ones, rather than displaying particular difficulties in any specific area.

JURISPRUDENCE

This year's paper included the usual topics. The question about autonomy and perfectionism (Q6) was the most popular, closely followed by Q9 (whether the law demands obedience; whether it's ever rational to submit to it). Other popular questions included Q2 (the coerciveness of law), Q8 (the role of interpretation), Q13 (civil disobedience), Q14 (whether it's always wrong not to punish an offender), Q12 (the view that the rule of law is the virtue of an instrument), Q11 (inclusive legal positivism). There was significant homogeneity in the responses to some of the questions (Q6, Q8, Q12, Q11). Many answers to these questions appeared to be summaries of a textbook or one of the Guide lectures. There was more variety in the responses to some other questions (Q2, Q14, Q5, Q7). Q2 asked candidates to discuss a subtler version of the view that the law is essentially coercive (one due to Kelsen) than the one usually discussed in standard texts (Austin's). Q14 seemed to have encouraged candidates to give consequentialist views of punishment a bit more thought than usual. There seems to be no standard textbook response to the considerations in favour of natural law theories mentioned in Q5 and Q7.

The permissibility of using law to enforce morality, represented this year by Q6, has always been the most popular topic. In the past, candidates tended to caricature the perfectionist view and side with anti-perfectionism. This year confirms the more recent, opposite trend. Virtually all candidates embraced a form of perfectionism, while most caricatured or completely ignored the anti-perfectionist side. A great many scripts were very similar and

seemed to summarize the relevant lecture. There was more sophistication at the high end of the scale, including a handful of scripts that developed and argued against strong versions of the view that they rejected.

LABOUR LAW

The performance of the cohort this year was very pleasing. There were very few poor scripts and a relatively high proportion of 2.1 and 1st class scripts. In fairness to this year's cohort, the tendency identified in last year's report towards excessive generality in responding to specific questions was avoided. For the most part, legal detail was marshalled appropriately in a focused way to respond to the particular question at hand.

Question 1: There were few takers for this question. Those that answered the question did so well, achieving a sensible balance between analysing the legal detail of selected legislative provisions while locating this analysis within a wider ideological appreciation of Labour's goals and techniques in labour law in the period in question.

Question 2: This was not a popular question, but those candidates that did answer it addressed themselves to the normative dimension of whether labour law *should* be viewed as a 'burden' by engaging comparatively with other theoretical perspectives such as 'human rights' or 'social inclusion' or 'dignity'. This comparative approach proved very effective.

Question 3: This was an extremely popular question which attracted a wide range of quality in its answers. Some candidates viewed it as an invitation to answer the question 'who is an employee?' and those candidates did not score highly. Moreover, very few candidates engaged with more nuanced distinctions, for example whether 'mutuality of obligation' *means* the same thing for workers as for employees. It was assumed uncritically that the concept was identical and had identical implications for workers as for employees.

Question 4: This was a popular question that was well-answered for the most part.

Question 5: Again, this was a popular question. Candidates generally displayed an effective grasp of the legal detail of specific provisions in the Equality Act 2010, and the better candidates engaged in the comparative exercise with the pre-2010 Act approach by using the rich theoretical literature on equality as an interpretive framework.

Question 6: This question attracted very few answers. Needless to say, a good answer to this question necessitated a deep understanding of the rapidly evolving case law on age discrimination on which there is little secondary literature. A few brave souls responded to the challenge admirably.

Question 7: This attracted many answers, and it was here perhaps that the tendency to produce general overviews of the area of law in question was most marked. Better candidates elaborated on what might be meant by a 'problem of enforcement' and used this to structure the legal analysis.

Question 8: This was a less popular question. Candidates tended to be stronger on the statutory concept of unfair dismissal than the common law of wrongful dismissal. The common law material was often analysed in a very cursory way as an afterthought.

Question 9: This was a very popular question that attracted a range of quality in responses to it. Weaker candidates were inclined to present a detailed sequential trip through Schedule A1's provisions. Better candidates were more selective in their use of legal detail, and were better able to contextualise the method and operation of Schedule A1 within broader social, historical and ideological frames of reference.

Question 10: This was a very popular question. Candidates tended to be more comfortable with the statutory rather than the common law material. Better candidates engaged very precisely with the question whether trade unions were and should be treated like individual persons in determining their human rights claims in this context.

Question 11: This was not a popular question, but those that addressed it engaged very nicely with pinning down what employers' 'legitimate interests' might be in this area of the law, and how the law did and did not facilitate those interests.

Question 12: This attracted many answers, some of which were of outstanding quality. The best answers explored the permutations of 'right to strike' in the ECtHR's recent jurisprudence, acknowledging that there were many issues of difficulty in this formulation: who is the right-holder? For which legitimate purposes? Are procedural restrictions on the right's exercise compatible with its status as a right? These answers also engaged with the recent decisions in the English Court of Appeal on balloting and notice provisions in a very effective way.

LAND LAW

On the whole land law papers were reasonably well done with a pleasing number of first class scripts. Whereas examiners have often commented in the past on the failure to refer to formality issues, and relevant statutory provisions, most students were aware of the need to give consideration to these where appropriate.

Answers were spread across all of the essay and problem questions, although some were more popular than others.

Qu 1: this was not a terribly popular essay question. Some were well done and referred to the academic literature on whether the presumption of joint tenancy was 'fit for purpose', as well as the case law in the area, especially in relation to severance. Some, however, were rather weak answers that did not show a detailed understanding of how severance works.

Qu 2: this was, unsurprisingly, popular. Good candidates engaged with the wording of the question well and thought about the particular issues that it raised, making detailed reference to the wording of para 2, the case law on 'actual occupation' and the policy issues raised by the question.

Qu 3: again, this was a fairly popular question. Most candidates dealt with the debate as to the potential proprietary features of contractual licences well; the best candidates thoughtfully weaved this into a discussion of the nature of proprietary rights.

Qu 4: this had relatively few takers but was generally fairly well answered.

Qu 5: again, this was a very popular question which produced some really very good answers. Many usefully discussed whether *Rossett* still sets the test for establishment in sole name cases or has been altered by later cases, particularly *Stack v Dowden*. There was often impressive knowledge of case law and academic commentary. Weaker candidates tended to produce a pre-prepared account of the recent developments with only marginal application to sole name cases.

Qu 6: the primary focus of this question was on estoppel, and it was generally fairly well answered. The obvious issues to discuss are the requirements to establish a proprietary estoppel claim, the impact that this might have on third parties, and the remedies available to protect the rights. In addressing these issues candidates referred to both case law and academic commentary. Other issues were also touched on by strong candidates: whether the right applied only to the flat, or also the House; whether actual occupation of the flat could suffice to give rights under para 2 to the whole House; whether overreaching applied; and whether the claimant could claim against her parents.

Qu 7: this was generally reasonably well done. In considering the enforceability of the option to purchase strong candidates considered how to apply the general law to the specific factual context, taking account of the option price, the interest rate, and the fact that the option related to part only of the mortgaged property. In discussing the s 36 jurisdiction very few candidates considered that a distinction can be made between payment of arrears from income, and repayment of capital and arrears from sale.

Qu 8: although popular, answers to this question were often disappointing. In relation to Flat 1 many students were too ready to assume a 'sham' without discussion. In relation to Flat 2, many students spotted that there was an issue concerning the duration of the arrangement but surprisingly few were aware of the recent case of *Berrisford v Mexfield Housing Co-Operative Ltd*. Markers were generous to students who could identify the issue that was raised by the fact that the owner had promised not to end the tenancy if the tenants continued to pay the rent: whether or not students knew of *Berrisford* it was hoped that students might refer to this promise and consider whether it had any legal consequence. Few did.

Qu 9: Some students did well on this question. Many, however, did not discuss whether Harry could claim an occupation rent, even though the question specifically refers to this. When spotted, occupation rent was discussed fairly well, but several students stopped after concluding that payment was not possibly under TOLATA and were not aware of the possibility of using equitable accounting principles, as discussed in *French v Barcham*. In relation to the issue of sale, several students discussed in detail the application of the criteria referred to in section 15 TOLATA without noting that s 15(4) expressly states that it does not apply to insolvency situations. Those who did discuss the Insolvency Act generally did well although some failed to note the significance of the application being made more than a year after the bankruptcy.

Qu 10: this was (surprisingly) popular. It required a clear head in order to sort out the facts, particularly in relation to the question as to whether easements had been acquired. This is a common challenge for students. Those who carefully considered the following were well rewarded: the times at which easements might be acquired, who the owners and occupiers were of the dominant and servient lands at the relevant time, who would be the grantor, and how the rules for implied grant might apply to them. On the whole, the discussion of the substantive requirements for easements was fairly good.

MEDICAL LAW AND ETHICS

Medical Law and Ethics again proved to be a popular FHS option, and the standard of scripts was also high, with nearly thirty percent of papers being awarded a First. All questions proved popular, and most students were able to combine an exploration of the application of ethical theories with detailed consideration of how the law might regulate. Many showed an admirable grasp of the ethical literature and presented nuanced, thoughtful analyses of the issues. The relationship between law and ethics was also handled generally well. Weaker papers tended to avoid engaging with the more complex, subtle or vexed issues such as when life begins, but for the most part students made some attempt at dealing with these difficult questions. The very best papers focused sharply on what the questions were asking. For example, in response to Question 2, strong answers engaged directly with what might be required for the law on abortion to be 'satisfactory'. Similarly, there were many good explorations of how to decide which system might be preferred in regulating organ donations—'opt in' or 'opt out'—that attacked the consent and autonomy issues head on, rather than simply offering bland prepared essays about the pros and cons of each system.

MORAL AND POLITICAL PHILOSOPHY

There were 24 candidates. Seven obtained marks of 70 or above for the paper as a whole. Thirteen were between 60 and 68. Four candidates were in the high 50s. The mean mark was 65 and the median 64. As this profile shows, the paper attracts work of a reassuringly high quality. The best candidates have reached an impressive level of philosophical maturity in what we must assume to be a relatively short time.

Interest was not evenly spread across the paper. Candidates must answer at least one question from part A on moral philosophy and one from part B on political philosophy, but may choose their third question freely. This year the larger (8-question) part A attracted 37 answers. The smaller (4-question) part B attracted much more than its fair share of attention, with 35 answers. Perhaps this is not surprising. The connections with law, and with the topics studied in jurisprudence, are more evident in part B. However it did mean that two moral philosophy questions (question 1 on moral objectivity and question 4 on amoralism) were entirely shunned, while question 8 (on higher pleasures and pains) attracted only one answer.

Nevertheless the most popular question overall (20 answers) was in part A. It was question 6, on the place of rules in consequentialist moral thought. Although arguably a bit of an old chestnut, this question provided a good tool for comparison of candidates across the whole range of abilities. The best candidates set out the logical problem for consequentialists economically and were able to draw on detailed arguments owed to Rawls, Lyons, Hodgson and others in crafting a solution that they were willing to commit to. They were also able to distinguish various flavours of rule-consequentialism, including the ideal-world type associated with Hooker, and to distinguish the various flavours of rule-consequentialism from Adams' motive-consequentialism. At the other end of the scale were some candidates who painted the options with a very broad brush and/or sat on the fence about which to embrace. All else being equal, the highest rewards in this subject tend to go to candidates who relentlessly defend positions (whether their own or other people's) as opposed to candidates who even-handedly and non-commitally report the range of positions that have been taken.

The only other question in part A which attracted a significant number of answers was question 3, on moral motivations (7 answers). Few candidates were sufficiently familiar with the text of Kant's Groundwork to be able to explain that the question rehearsed three formulations of Kant's categorical imperative, all with supposedly identical implications. However all candidates recognised at least some Kantian terminology, and so Kant's general outlook was for the most part competently explained. Towards the bottom end were answers that were clearly descended from more general tutorial essays on Kant's ethics, with no particular focus on the aspects concerned with purity of motivation. The candidate with the best answer, however, went the other way. Having associated the formulations with Kant, he or she went to some lengths to show that (whatever Kant may have thought) the motivations mentioned in the question were different moral motivations with conflicting implications, thereby casting doubt on Kant's well-known moral monism.

Moving to part B, the most popular question was 12 on electoral majorities (12 answers). The approaches varied, with few regularities to report. Some of the less good answers question-beggingly assumed that there is some conceptual link between democracy and majority rule, and so shifted their attention to the problem of how to protect minorities in a democracy so understood (a rather different question from the one asked). The better candidates saw that there was no direct route from 'rule by the people' to 'rule by a majority' (even if the support of all is best it does not follow that the support of more is better than the support of fewer). This led them to look for indirect routes, particularly instrumental routes (holding governments to account, avoiding political logjam, etc.). The best candidates went further and asked what popular election had to do with legitimacy even when unanimous. The philosophical literature on this topic is of very variable quality. Several candidates did well to rise above it and to proceed by their own lights, distinguishing established positions as they went. Five were rewarded with marks of 70 or above.

Questions 9 and 10 were also popular (9 and 10 answers respectively). Question 9 on justice as the first virtue of social institutions was not particularly well done. More than half of the candidates took this to be an opportunity to discuss whether Rawls got his principles of justice right (with Nozick as the main rival). The question was clearly not about this; Rawls and Nozick could agree that justice is the first virtue of social institutions while disagreeing about what it requires. Only a trio of candidates really got to grips with the question asked, one focusing on the interesting question of whether family, friendship, college etc. could be thought of as social institutions in the relevant sense, and the others assuming a broadly Rawlsian idea of a 'social institution' while discussing rival candidates or the status of first virtue. Question 10 on the abuse of freedom also saw quite a number of generic answers focusing on Berlin's famous but treacherous contrast between positive and negative freedom. This contrast was hard to connect with the question, since the question was about the value of freedom and the Berlin essay was about its very nature. So answers taking this tack tended to be less successful. Also less successful were answers that tried to turn the question into one about the harm principle, the toleration of immorality etc. (capitalizing on reading from the jurisprudence syllabus). Again this involved twisting the question: Mill, Hart, Raz and others agree that some immoralities should be tolerated even if they involve valueless exercises of freedom. Possibly the question was too tricky in view of its only oblique connection with these well-known debates, but this did not stop a couple of the very best candidates from writing highly focused treatments using apt and imaginative examples.

Other questions attracted five or fewer answers, and there were not enough commonalities in these to allow for useful question-by-question comments on how they were handled. It is only

worth mentioning, perhaps, that among the very best answers overall were the two answers to question 7, on the moral significance of agent-regret, and one of the three answers to question 2, on the possibility of tragedy. These were answers of touching moral sensitivity and acute observation of the human condition going beyond the existing philosophical literature.

PERSONAL PROPERTY

The scripts were generally of a good standard with some candidates performing very well. Question 1 was attempted by a small number of candidates, with the best answers considering not just the concept of relative title, but also the rules governing the 'jus tertii', now containing in the Torts (Interference with Goods) Act 1977. Question 2 was generally well done, with the stronger answers considering all three modes of transfer (deed, delivery and sale). Answers to Question 3 were very good, with most candidates providing a good critical analysis of OBG v Allan and its implications for the scope of conversion. Answers to Question 4 tended to be overly descriptive, with very few candidates pointing out that mixtures do not necessarily have any legal consequences, for example, were the goods can be readily separated. Question 5 was very popular. Weaker answers tended to describe the facts and outcome of the case and its implications for the proprietary status of chattel leases. Stronger answers considered the numerus clausus issue and suggested tests for the proprietary status of chattel leases.

Questions 6 and 7 were not attempted by many and answers were fairly weak. Some candidates answering Question 6 failed to mention the current good faith purchase defences in the Sale of Goods Act, and some candidates answering Question 7 did not consider the difference between a claim in tort law (conversion) and a proprietary claim (the vindicatio). As to the problem questions, Question 8 (finding) and Question 9 (sale) were the most popular. Both were done reasonably well, although there were some weak answers which tended to provide overly descriptive accounts of the relevant rules without applying them properly to the facts in the questions. Question 10 (security) was attempted by a single candidate.

PUBLIC INTERNATIONAL LAW

There were 49 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. Some 12 students achieved a first class mark and the large majority achieved a 2:1. However there were also a number of weaker scripts in the 2:2 range.

All questions were answered by at least six candidates. However, there was a clear preference for questions 1, 3, 5 and 9 which were all answered by more than 25 candidates.

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.

More generally, a number of papers would have scored higher if they had answered the specific question being asked rather than providing a formulaic, general essay on the topic of

the question. Moreover, greater attention to detail and less inaccuracies in a number of cases would have also seen higher marks.

ROMAN LAW (DELICT)

Five candidates took the FHS exam. The choice of questions was evenly spread over the candidates, with two questions being popular with a majority. One question was not taken at all. The overall results were from satisfying to excellent.

TAXATION LAW

The examiners were most impressed with the quality of the tax law scripts this year. All 14 papers were marked at 2-1 standard or better, with 4 awarded first class marks. The candidates made very good use of relevant cases and statutory provisions. Those candidates who used the literature referred to on reading lists properly in their answers were duly rewarded. Those answers to essay questions which were not focused on the precise question asked, but instead provided a general description of the area were not awarded high marks—there were relatively few of these.

As in prior years there were 8 questions (6 essays and 2 problems) which gave considerable choice since the students all cover all of the core material in lectures, seminars and tutorials. Q.1 on tax avoidance was the most popular, attempted by 12 of the 14 candidates. Q.7 (the problem question on employment and capital taxation of trusts) was the least popular, attempted by only 4 candidates. The problem questions were less popular than in previous years. In the past almost all the candidates attempted at least one of the problems, but this year 6 of the 14 papers answered only essay questions. The average marks assigned to the problem questions were also slightly lower than those awarded on the essays.

Q.1 on tax avoidance was, as just said, very popular, and also very well done. Candidates demonstrated a high level of comfort with the *Ramsay*-line of cases in particular. Q.2 on progressivity was also very popular with the candidates. It required integration of tax policy literature and technical material for a complete answer. The answers were much better overall than answers to tax policy questions in previous years. Q.3 concerned capital taxation policy, with a focus on inheritance tax; answers that engaged with the most recent literature as well as the statutory material were awarded high marks. Q.4 related to the role of motive in the taxation of trades, inviting candidates to consider the ‘badges of trade’ and explain why motive mattered. The results were mixed, with many candidates failing to discuss enough of the most relevant cases. The answers to Q.5 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.6 on the employee/self-employed distinction and employment expenses was challenging, requiring a strong familiarity with both the cases and the statutory material in order to answer both parts succinctly.

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 broad spectrum of major and minor employment issues as well as issues related to the capital gains and inheritance taxation of trusts. Q.8 concerned the taxation of receipts and expenses of a self-employed taxpayer. The question focused in particular on the capital versus income

distinction. The best answers analysed these issues in some depth, making good use of the facts provided and drawing on the extensive case law.

TORT

The standard was generally satisfactory. However, many candidates struggled with the problem questions more than the markers had expected. Often their difficulties arose in the course of applying *basic* rules to complicated factual scenarios. It is also noteworthy that a substantial number of candidates seemed determined to find an opportunity to display their knowledge of some *exotic* rules - particularly the *Fairchild* doctrine - and rewrote the facts of the problems to meet this demand.

Q 1. (Test for a duty of care) This was a reasonably popular question. Some weaker answers provided rather general accounts of the topic 'duty of care'. Detailed assessments of academic writing relevant to the topic were relatively rare - perhaps surprisingly - and tended to score higher marks than general summaries of the case law.

Q 2. (Duties of rescuers; duties to rescue) This was a less popular question, but attracted some excellent answers. This said, it was also answered by some candidates who seemed unaware of which aspects of the relevant law might be unsettled or controversial.

Q 3. (Radical reform of libel) This was a less popular question. A small number of candidates answered it very well, but a significant number provided general essays about the tort, sometimes including a few criticisms in passing: For example, a surprising number of candidates argued that the boundary between libel and slander should be high on any reformer's agenda.

Q 4. (Overruling *Page* v *Smith*) This was a fairly popular question. The best answers incorporated issues raised in academic writing and problems illuminated by case law discussing *Page*. Some weaker answers were based on misrememberings of the judicial reasoning in the case, or primarily focused on arguments for reformulating the rules as to which *secondary victims* are owed a duty of care.

Q 5. (Economic torts) Very few candidates attempted this question, but some of those who did provided excellent answers, incorporating both assessment of academic opinions and critical analysis of recent cases. A few candidates made the mistake of approaching the question as if it was about liability for negligently-inflicted "pure economic loss".

Q 6(a) (syllabus after TT2007 - Punitive damages) Very few candidates attempted this question, but some of those who did provided very good answers. Some answers, however, presented arguments at the level of *general slogans*, and did not include enough of the detail of current law.

Q 6(b) (syllabus before TT2007 - Collateral benefits) Very few candidates in 2011 had studied Tort before TT207, and there were not enough answers to this question to form any *general* judgements.

Q 7. (Abolition of tort liability for personal injuries) This was a less popular question. Some candidates answered it very well, but others made little use of academic writing.

Q 8. (Problem. Product liability, etc.) This was a reasonably popular question. The markers were surprised how many candidates provided a satisfactory summary of the rules in Part 1 of the Consumer Protection Act 1987 but never identified what feature of the product (a brightly-painted, magnetic bead, marketed as a toy) they thought might make it 'defective' or what 'advance' might have occurred to have made a previously undiscoverable defect discoverable. (Regrettably, a handful of candidates attempted to answer the question without mentioning Part 1 of the Consumer Protection Act 1987.)

The issue of what damage might have been caused by each possible tortfeasor also caused more difficulties than the examiners had anticipated: a significant number of candidates thought that the factual scenario required discussion of the rules governing recovery for 'loss of a chance'.

Q 9. (Problem. Pure economic loss, etc.) This was a reasonably popular question. The opinion of candidates was divided as to whether postgraduate students assisting undergraduates might owe a duty to take reasonable care to ensure that they do not mislead. On the whole candidates seemed more comfortable advising on the half of the question dealing with misleading notes than the half dealing with a defect in a central heating system. Some candidates, however, provided a good account of *Murphy* v *Brentwood,* and the law relating to 'complex structures', and were duly rewarded.

Q 10. (Problem. Occupiers liability, Employers liability.) This was a very popular question. On the whole the portion that related to the possible liability of those who were *occupiers* (as a result of that status) was dealt with far better than the possible liability of those who were *employers* (as a result of that status). A considerable number of candidates asserted rather bold opinions about which possible claimants might be lawful visitors and which might be trespassers: very few approached the problem on the basis that both possibilities might be *arguable*. Even when candidates did consider both the '57 and '84 Acts, and correctly applied each to the appropriate facts, many failed to go on to explain what the substantive differences in the content of the duties under each Act are. Generally, the causation issue raised by a pianist suffering consecutive injuries to his hands was dealt with poorly.

(Unfortunately the instruction printed below this question was incorrect. As printed it said, 'Advise *Serge*', whilst it should have said 'Advise *Stella*'. This error was announced to the candidates in the Examination Schools within a few minutes of the start of the paper.)

Q 11. (Problem. Private nuisance, *Rylands*, etc.) This was a reasonably popular question. Most candidates provided some account of the legal rules relating to the relevant torts, but some struggled with explaining how the rules related to each other, and a number failed to deal with some of the difficult features of the problem – particularly the fact that the 'dangerous' chemical had escaped from a public road. Very few candidates appreciated that 'valuable fish' might not be part of the 'land' where they were located.
(Unfortunately this question contained a verbal error. A facility that started the problem as a 'meditation centre', correctly, was later described as a 'mediation centre'.)

Q 12. (Problem. Road accident, remoteness, defences.) This was a reasonably popular question. The markers thought that the question tended to require the application of relatively basic law to complicated facts, but many candidates seemed to struggle with this task. Only a few candidates managed to impose a sensible structure on the issues raised, and many seemed

reluctant to engage in *discussion* of some key stages (like causation), instead pursuing a rather scattergun approach Similarly, many candidates did not seem to appreciate how many of the characters might have *arguably* exhibited negligence towards others, and how this multiplicity might complicate issues such as the application of defences. A few candidates wrongly thought that the scenario required the application of *exotic* causation doctrines, such as that in *Fairchild*.

TRUSTS

There were fewer First Class performances in Trusts than one might have hoped for. There were no particular terrors in this year's paper, so the relative lack of strong performances may be attributable to candidates' general apprehension of the subject, as well as the place of the Trusts paper within the examination timetable. It should be emphasised that markers are not reserving marks of 70 or above for the mythical candidates who synthesise existing academic debates and put forward brilliant analyses of their own; rather, such marks are open to any candidate who produces a thoughtful answer to the actual question set, based on a detailed and critical analysis of the relevant statutes and authorities. At the risk of repeating the very clear message of previous examiners' reports in Trusts, it is crucial for any candidate aspiring to a mark of 60 or above to have read and thought about the primary legal material, and to base his or her answer around that material.

Of the problem-style questions, Question 11 (dissolution of unincorporated associations) was very popular. There was much to discuss, and the markers certainly did not expect candidates to spot and discuss all the possible arguments. The best answers were from candidates who had read the relevant cases and could distinguish between them; the weakest answers from those who named various general theories (e.g. the "contract-holding" theory) without understanding how such an approach might apply to the specific facts of the question. Question 13 (secret trusts) was also popular, and the better answers considered how different views as to the basis and justification of secret trusts doctrine might lead to different results when applied to the specific facts of the question. Questions 12 and 14 were less popular, although there were some very good answers to each question. Again, the best answers carefully considered the relevant cases and how the facts of the question might point out distinctions between the principles discussed in those cases.

Of the essay questions, answers were spread reasonably evenly across the questions, with Questions 3 (*Quistlcose* trusts), 4 (resulting trusts) and 8 (charities) the most popular, and Questions 9 (fiduciary duties) and 10 (tracing) finding few takers. Some of the answers were excellent, and engaged very closely with the primary material. Many answers, however, did not even attempt to address relevant decisions. This was particularly egregious in relation to Questions 4 and 5; although each question involved a quotation from a specific case, a surprisingly high proportion of answers failed to consider how the principles suggested in each quotation applied to that very case. Exegesis of academic views is no substitute for discussion of the actual authorities.