FHS JURISPRUDENCE

DIPLOMA IN LEGAL STUDIES

(MAGISTER JURIS)

Examiners' Report 2012

PART ONE

A. Statistics

1. Numbers and percentages in each class/category

The number of candidates taking the examinations was as follows:

	2012	2011	2010	2009
FHS Course 1	182	195	186	205
FHS Course 2	32	33	27	27
Diploma	31	32	32	17
Magister Juris	11	18	18	34

Classifications: FHS Course 1 and 2 combined

	2012		2011		2010		2009	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	45	21.03	42	18.42	35	16.43	44	18.96
II.i	158	73.83	166	72.81	159	74.64	164	70.69
II.ii	8	3.74	15	6.58	15	7.04	23	9.91
III	0		3	1.32	0		0	0
Pass	1	0.46	1	0.44	0		0	0
Fail	2	0.93	1	0.44	4	1.87	1	0.43
Totals	214		228		213		232	

Classifications: FHS Course 1

	2012		2011		2010		2009	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	34	18.68	24	12.31	27	14.51	34	16.58
II.i	138	75.82	151	77.44	143	76.88	147	71.70
II.ii	7	3.84	15	7.69	12	6.45	23	11.21
III	0		3	1.54	0		0	
Pass	1	0.54	1	0.51				
Fail	2	1.09	1	0.51	4	2.15	1	0.48
Totals	182		195		186		205	

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

	2012		2011		2010		2009	
Class	**No**	**%**	**No**	**%**	**No**	**%**	**No**	**%**
I	11	34.37	18	55	8	29.62	10	37
II.i	20	62.50	15	45	16	59.25	17	63
II.ii	1	3.12	0		3	11.11	0	
III	0		0		0		0	
Totals	32		33		27		27	

Results: Diploma in Legal Studies

7 candidates (22.5%) were awarded the Diploma with Distinction. 24 candidates (77.4%) passed.

2. Vivas

Vivas are no longer used in the Final Honour School. Vivas can be held in the Diploma in Legal Studies, and one was held this year, in relation to a candidate with a mark on one paper that would have entailed failing the examination. The candidate achieved a pass mark through the viva.

3. Marking of scripts

Double marking of scripts is not routinely operated. 648 scripts were in fact second marked (32.19 %), 362 before the first marks meeting, and 286 (53 borderline and 233 four or more below) between the two meetings. This total compares with 31 % in 2011, 37% in 2010, 33.61% in 2009 and 33.06% in 2008.

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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 2011, 2010, 2009 and 2008. As in 2011, second marking of all scripts with marks ending in 9 took place before the first marks meeting. Just as in 2011, the abolition of the concept of short weight (after the 2010 examinations) 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 five 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 (C.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 results in some extra second marking of scripts. An issue arising with respect to one particular paper is dealt with in paragraph C.4 below.

Secondly, 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 previous years, the final mark awarded by the examiners in such cases was not (except in exceptional cases) to be below the mark awarded by the first marker, while Section D.2.1 of the Instructions requires that, if a mark is, very exceptionally, to be lowered, the reason must be recorded on the mark sheet. As recommended by last year's Board of Examiners, this requirement was strictly enforced, that is, if there was no explanatory note, the first mark given was the one awarded.

As in previous years, all scripts with marks of 49, 59, 69 were second marked, as were all scripts with marks below 40, before the first meeting of the Board. In addition, between the two meetings of the Board, 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. Examining methods, procedures and conventions

1. The unanimous view of this year's Board was that steps should be taken to recognise that a higher percentage of our candidates in Law deserve to be awarded first class degrees than has previously been the case. In taking this position, they were conscious that there has been a gradual upward movement in that percentage, partly a function of a recent easing of the convention as to the number of first-class marks needed to achieve a first overall, but also partly of the efforts of previous Boards in encouraging markers to look for the positives, and of markers in doing so. However, this year's Board was struck by the fact that no other Oxford FHS with 40 or more candidates has a lower percentage of firsts than does Law. Therefore, having consulted appropriately, this year's Board issued a note to all setters and markers with that purpose in mind. In the event, for the first time (so far as this year's Board is aware), the percentage of first-class degrees achieved exceeded 20% (in fact, 21.03% of those that completed the examination).

2. Setting and checking the paper, and marking the scripts, are the responsibilities 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 reasonably smoothly.

3. The Examination Conventions are detailed in paragraph 12 of the Notice to Candidates (Appendix 2 to this report). The second table on the first page of this

report shows that the proportion of candidates achieving first-class degrees, this year, increased (see paragraph C.1 above) to 21.03% (from 18.42% in 2011, 16.43% in 2010, 18.96% in 2009 and 17.23% in 2008). The proportion of upper seconds also increased, to 73.83% (from 72.81% in 2011 – there were 74.64% in 2010, 70.69% in 2009 and 72.27% in 2008), whilst that of lower seconds decreased substantially, to 3.74% (from 6.58% in 2011, 7.04% in 2010, 9.91% in 2009 and 7.56% in 2008). The Examiners consider that the most pleasing feature is the percentage of firsts (see paragraph C.1 above), but the most noteworthy one the reduction in the number of lower seconds. The latter percentage is now so low that one may be forgiven for wondering if we now need to divide the upper seconds into two classes, just as the University divided the second into upper and lower classes about a quarter of a century ago.

4. There was an issue, in relation to one subject, to which reference should be made. The marks on the Land Law paper were, after first marking, significantly lower than those on the other papers, and, in particular, on the other six "compulsory" papers. This had several effects. First, something near to half of the Land Law scripts had to be re-read because of the convention relating to marks on a script four or more below a candidate's average for all of their scripts. Secondly, the Board took steps, by inviting second marking of scripts ending in 7 or 8, to make sure that borderline candidates with low marks in Land Law were given a full and proper opportunity of moving into the higher class. Thirdly, the Board thought it right to exercise its discretion, in more cases than would be usual, to allow a candidate that would not be placed in the higher class, on the ordinary conventions, to be placed there nonetheless (as to which, see paragraph A.3 in Part 2, below).

PART TWO

A. General comments

1. Second marking

The procedures for second marking were identified in Part One (B) above.

Resolving differences
As last year, first and second markers were required to discuss their marks and, wherever possible, agree a mark. This worked well. Indeed, there was but one case of disagreement, that case being resolved by award by the Board of the higher mark.

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*.
In total, 362 scripts (17.92%) were second marked on this basis. This compares with 351 (16.36%) in 2011, 420 (20.86%) in 2010 and 336 (15.70%) in 2009).

This year there were 16 scripts with marks below 40 (0.79%) (compared with 14 (0.65%) in 2011, 21 (1.04%) in 2010 and 6 (0.28%) in 2009).

(ii) *Scripts which had been marked 4 or more below the average mark for that candidate.*
233 scripts (11.54%) were second marked on this basis between first and second marks meetings (compared with 241 scripts (11.24%) in 2011, 196 scripts (9.73%) in 2010 and 228 scripts (10.65%) in 2009). Of those 233 scripts, 94 were in Land Law, so only 139 in all of the other subjects combined. In other words, there was a significant *reduction* in this kind of second marking in subjects other than Land Law.

(iii) *Scripts second marked because they were borderline.*
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.

As shown by the table below, 53 borderline scripts were sent out for second marking, on this basis, after the first marks meeting (compared with 71 in 2011). Although the number is markedly down on 2011, the overall proportion of scripts second marked at some stage (32.19%) is not dissimilar to 2011 (31%) and higher than 2007 (28.73%). As in 2011, 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).

First Mark	Number of Scripts	Number agreed in Higher Class	% agreed in Higher Class
68	32 (35)	12 (10)	38 (29)
67	13 (16)	6 (5)	46 (31)
58	6 (15)	1 (5)	17 (27)
57	2 (3)	0 (0)	0 (0)
48	0 (1)	0 (0)	0 (0)
47	0 (1)	0 (1)	0 (100)

For the purposes of comparison the figures for 2011 are given in brackets.

19 scripts were raised to a higher class (35.84%) compared to 21 (21.58%) in 2011, (14.07% in 2010, 18.43% in 2009 and 25.00% in 2008).

2. Third marking

Third marking may be used in exceptional cases (e.g. medical cases) and 7 FHS scripts were read a third time (5 in 2011).

3. The Board's marks and exercise of their discretion at their final meeting

The Examiners applied, as a general rule, the conventions as to classification and results as previously agreed by the Law Faculty Board, and notified to candidates. There were, as usual, some medical cases, where the Board thought it right to exercise their discretion to raise a mark. However, medical cases apart, because of the issue adverted to in paragraph C.4 above or otherwise, the Examiners waived conventions in six cases, and, in a further two cases, a mark was raised. The result, in all eight cases, was that the candidate was placed in a higher class overall. Of course, in every one of these cases, the Board's discretion was exercised with the full concordance of the External Examiners.

4. Examination schedule

As in previous years, the Examination Schools were responsible for producing the timetable. Though every effort was made to avoid candidates having two papers on the same day, and only in the second full week of the examination were two papers timetabled for the same day, the number of cases in which two papers did have to be taken on the same day was 32 (last year 31). That number is rather high, but, without extending the examination period, it does seem to be impossible to ensure that no candidate has, or, at worst, only very few candidates have, two papers on the same day.

5. Medical certificates, dyslexia/dyspraxia and special cases

16 medical certificates were forwarded to the examiners in respect of 15 candidates (compared with 59 in 2011, 34 in 2010, 31 in 2009 and 25 in 2008). Another document concerning one candidate was sent to the examiners by the Proctors. In addition, four candidates were certified as dyslexic or dyspraxic. The very steep decline, this year, in number of certificates, as against the previous rising trend, is to be noted.

4 candidates wrote some or all of their papers in college (compared with 13 in 2011, 6 in 2010, 4 in 2009 and 7 in 2008). A further 8 candidates wrote some or all of their papers in a special room in the Examination Schools (8 in 2011). 2 candidates had special arrangements in the examination room (e.g. medicines, seating) because of medical conditions, a decrease on 2011 (7), 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, 10 medical certificates and similar documents (10 candidates, 4.67% of candidates) were forwarded to the examiners under sections 11.8 -11.10 of the EPSC's General Regulations for the Conduct of University Examinations (see *Examination Regulations* 2011, page 34), and in only one of these cases (0.46%) was the candidate's final result materially affected.

In every case where a document of medical relevance had been sent by the Proctors to the Board, the Chairman reported its contents to the Board. Whether or not any action was taken by it, on the basis of the information received, the steps followed were

recorded by the Chairman and the Examinations Officer, such that that record forms an appendix to the official copy of the Minutes of the Board's final meeting. The Board is confident that, in taking all of these steps, it ensured not only complete fairness to the candidates affected, but also compliance with both the letter and spirit of the University Education Committee's "Policy and Guidance on Examinations and Assessment 2011", Annexe B.

6. **Materials in the Examination Room**

There were only two problems with the laying out, in the Examination Schools, of statutes and other materials on the candidates' desks, but each was spotted in good time, so that everything was in place before the examination in question began. As last year, the Chairman and the Examinations Officer paid a visit to the Schools some months before the examinations and threw out all the out of date law materials stored in the basement. Though the problem of candidates being given outdated statutes by the Schools was not eliminated last year, that seems to have been achieved this year. 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.

7. Legibility

In all cases in which a marker found a script illegible, the script was referred to the Chairman, for him to take a view on whether or not the script really was illegible. Because this issue is so obviously an individual one, where the Chairman himself would have found the script not to be illegible, he chose only to ask the marker to reconsider. In several cases, the marker maintained his or her position, so the script was formally identified for typing. In more than one of those cases, the Proctors later ruled, it seems on the basis of an appeal from the college of the candidate, to overrule the marker.

This year, typing was requested in respect of 12 candidates for a total 22 scripts. This compares with 9 for 13 scripts in 2011, 25 for 43 scripts in 2010, 16 for 51 scripts in 2009 and 13 for 26 scripts in 2008.

This year's Chairman was most unhappy with the system. In his view, there is little point in the Chairman being assigned such a difficult and delicate task, given that there is an appeal to the Proctors.

8. Absent answers, breach of rubric and short answers

In accordance with a new practice adopted in 2011, the mark given for a completely absent answer in any script (formerly known as short weight) 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 had been written, and the extent to which it covered the question.

9. Misunderstood questions

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.

10. The computerized database

The computer software worked satisfactorily as regards the entry of marks and the production of mark sheets for consideration by the examiners at their two marks meetings. However, the databases remain in need of modernization

11. External Examiners

This year we had the valuable assistance of Professor C. Redgwell of University College, London (for her second year) and Dr. J. Stanton-Ife of King's College, London (for his first year). Their active involvement and advice at all stages was extremely helpful and we are very grateful to them. This year, as last, 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.

12. Thanks

We can only repeat and re-emphasise what has been said by successive Boards of Examiners: that our examination could not have been conducted so smoothly without the efficient and tireless work of our Examinations Officer, Mrs. Julie Bass. Her contribution to the examinations process is invaluable; her dedication, detailed knowledge of every aspect of the examination process and patient guidance are deeply appreciated, as is her willingness to work long and, sometimes, quite unsociable hours. We are also grateful to Grant Lamond, Director of Examinations and to Timothy Endicott, Dean of the Faculty of Law, for their help and advice. In addition to the examiners, 55 colleagues were assessors, involved in setting and marking, and we owe our thanks to them all.

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

The gender breakdown for Course 1 was:

	2012				2011				2010				2009			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	15	18	19	19	14	17	10	9	16	18	11	11	20	21	14	13
II.i	64	76	74	76	63	75	88	79	66	76	77	77	66	69	81	74
II.ii	3	3	4	4	6	7	9	8	4	5	8	8	9	9	14	13
III							3	3								
Pass	1	1					1	1								
Fail	1	1	1	1	1	1			1	1	3	3	1			
Hons.																
Total	84		98		84		111		87		99		96		109	

The gender breakdown for Course 2 was:

	2012				2011				2010				2009			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	5	38	6	32	5	45	13	59	1	17	7	33	5	62	5	26
II.i	8	62	12	63	6	55	9	41	5	83	11	52	3	37	14	74
II.ii			1	5							3	14				
III																
Pass																
Fail																
Total	13		19		11		22		6		21		8		19	

The gender breakdown for Course 1 and 2 combined was:

	2012				2011				2010				2009			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	20	21	25	21	19	20	23	17	17	18	18	15	25	24	19	15
II.i	72	74	86	74	69	73	97	73	71	76	88	73	69	66	95	74
II.ii	3	3	5	4	6	6	9	7	4	4	11	9	9	9	14	11
III									0		0		0		0	
Pass	1	1					1	0	0		0		0		0	
Fail	1	1	1	1	1	1	3	2	1	1	3	3	1		0	
Total	97		117		95		133		93		120		104		128	

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

C. Detailed numbers taking subjects and their performance

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

	2012	2011	2010	2009
Roman Law (Delict)	7	6	7	6
Comparative Law of Contract	6	11	6	11
Criminology and Criminal Justice (previous to 2012 known as Criminal Justice and Penology)	32	40	39	42
Public International Law	37	43	46	44
History of English Law	4	10	8	13
Ethics *				1
International Trade	20		11	8
Family Law	44	58	54	65
Company Law	27	31	30	34
Labour Law	25	32	30	39
Criminal Law	7	6	8	5
Principles of Commercial Law	31	11	21	16
Constitutional Law	7	6	7	5
Taxation Law	6	14	10	12
Environmental Law	9	8	10	5
Competition Law and Policy	1	39	37	36

Copyright Trade Marks & Allied Rights**		12		19
European Human Rights Law	39	34	29	21
Personal Property	22	17	25	16
Copyright, Patents and Allied Rights	30	12	2	24
Moral and Political Philosophy	27	24		35
Commercial Leases**		6	7	7
Patents, Trade Marks & Allied Rights**		1	20	
Medical Law and Ethics	75	55	40	

*Not marked by FHS examiners. Ethics ceased to be a FHS option in 2008, although one candidate was allowed to take it in 2009.
** Not available in 2012.

2. Numbers writing scripts in Diploma in Legal Studies

	2012	2011	2010	2009
Contract	23	26	25	17
Tort	18	18	24	17
European Union Law (previous to 2009 EC Law)	10	11	8	5
Comparative Law of Contract		6	9	4
Company Law	7	4	6	3
Jurisprudence	3	6	1	
Commercial Law (previous to 2011 known as Principles of Commercial Law)	1		3	
Public International Law	9	5	5	1
Criminal Law	5	1	3	
Copyright, Trademarks and Allied Rights		4		1
Trusts		1	1	1
International Trade				
Labour Law	1	1	1	1
History of English Law		1		
Copyright, Patents and Allied Rights	1			
Constitutional Law	5	6	4	1
Competition Law and Policy		2	2	
European Human Rights Law	5	2	2	
Criminology and Criminal Justice (previous to 2012 known as Criminal Justice and Penology)	3		1	
Administrative Law		1	1	
Medical Law and Ethics		1		
Roman Law (Delict)	1			
Land Law	1			

3. MJur candidates taking FHS papers

	2012	2011	2010	2009
Jurisprudence				
Contract	3	6	6	6
Tort	1			
Land Law				
Family Law				
Comparative Law of Contract				
Public International Law	2	1	2	5
European Community Law				
International Trade				
Company Law	5	5	8	6
Principles of Commercial Law		2		
Constitutional Law		1		
Trusts			2	1
Administrative Law		1		1
Labour Law				
Criminal Law				
Copyright, Trademarks and Allied Rights				
Ethics				
European Human Rights		2		

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

(figures are rounded. Zero means less than 0.5%. Blank space means no scores in range)

	75-79	71-74	70	68-69	65-67	60-64	58-59	50-57	48-49	40-47	39 or less	Nos. writing scripts
Jurisprudence	2	8	7	5	23	36	7	9	0	1		214
Contract	0	7	14	7	26	34	4	7	0	1		214
Tort		5	11	7	29	40	2	4		1	1	214
Land Law		4	8	5	13	27	10	27	2	2	2	214
Trusts	0	7	16	8	27	32	5	3		0	1	214
Admin. Law		8	16	7	32	31	2	3			1	214
EU Law		8	19	6	24	36	3	3		0	0	214
Comparative			17	7	33							6

Law of Contract												
Criminology & Criminal Justice (previous to 2012 known as Criminal Justice & Penology)	3	10	6		32	45	3					32
PIL		3	21	9	9	48	3	3		3		37
History of English Law		25	25		50							4
Family Law		12	15	17	22	29					5	44
Labour Law		12	20	4	36	24	4					25
Company Law		9	4	4	30	39	13					27
Criminal Law			14		29	29	14			14		7
Commercial Law (previous to 2011 known as Principles of Commercial Law)		18	29	4	4	29	7	11				31
Constitutional Law			57	14	14	14						7
Taxation Law			20	20	60							6
Roman Law (Delict)		29	43	29								7
Environmental Law		11	33	11	33	11						9
Copyright, Patents and Allied Rights	4	18	11	14	32	11	4	7				30
European Human Rights Law		18	16	11	39	11		3			3	39
Personal Property		10	5	14	33	33		5				22
Competition Law and Policy			100									1
Medical Law and Ethics		14	14	3	29	34		4			1	75
Moral and Political Philosophy		7	11	11	41	30						27
International Trade		12	18	18	29	18		6				20

D. Comments on papers and individual questions

These appear in Appendix 3

D. Akande
A. Bogg
L. Hoyano
B. Lange
G. Loutzenhiser
P. Mirfield (Chairman)
E. Peel
C. Redgwell (external)
J. Stanton-Ife (external)
S. Wallerstein

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

Dr J Stanton-Ife,
Law Commission,
11 Tothill Street, London
SW1H 9LJ;
School of Law, King's
College London WC2R
2LS

The Vice-Chancellor, University of Oxford

13 September 2012

Dear Vice-Chancellor,

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

(a) Academic Standards
I am satisfied that the standards in place for the FHS/DLS examiners are appropriate.

(b) Assessment Processes
I am similarly satisfied with the assessment processes. I attended the two marks meetings in July of this year in my capacity of external examiner and, prior to that, was sent a complete set of examination papers and regulations and engaged with various discussions with the other examiners. My impression was of a rigorous examination process that takes fairness to students and fidelity to the University's regulations and guidance very seriously. Meetings were well run by the Chair, who was able to draw on good administrative support aided by a mixture of engaged and knowledgeable internal examiners as well as the external examiner already in place from last year.

The process is rather different from the one I have experienced over a number of years at the University of London. There one day, rather than two, is devoted to the marks meeting and about a dozen external examiners, rather than two, are appointed aiming to cover the diverse subject areas making up the law degree. The whole of the law faculty is required to attend. Further, there has been double marking of all scripts, rather than some only as in the Oxford system.

I thought the two examination days in Oxford a great advantage, as it allows discussion on the part of the Exam Board as a whole of inevitable difficulties or complexities while there is still some time to do something about them. In the light of the special complexities this year relating to the Land Law paper that emerged at the first meeting, it was helpful to know another meeting was soon to follow. The smaller number of internal and external examiners in Oxford, moreover, helps to keep

the discussion focussed. It is (or at least has been) an advantage of the London system, however, that the larger number of external examiners allows for the representation of a wider range of external experience and expertise (though this is currently under review, at least at King's College London, and may not survive as it is considered rather expensive).

In principle I think the double marking of each script is to be preferred, which is not the current Oxford way. However where there is such a comprehensive double marking system, there is constant pressure to compromise on 'blind double marking' and the advantages of double marking are fewer, I believe, where the second marker is aware of the mark already given by the first. It is also an expensive system. And on examining the rules determining which papers are to be second marked in Oxford, my impression is that they are well thought-out and do ultimately inspire confidence in the fairness of the outcomes of the system as a whole.

(c) Classification Conventions
The FHS/DLS classification conventions are clear and well applied.

(d) Comparability of Standards
Given the reputation and quality of the student intake I expected the standards to be very high and was not disappointed. Indeed I am aware of no higher standards in the UK. I was asked to look at a collection of scripts from the Jurisprudence and Medical Law and Ethics examinations and was satisfied by the fairness and appropriateness of the marking.

(e) Issues Requiring Consideration
The major issue under discussion this year related to the marking of scripts in one paper, namely Land Law. I have seen and endorsed the Chairman's separate report on this issue and do not think it would be useful for me to add anything further here, save perhaps to emphasise, as does that report, the importance of marking scripts as a whole, rather than purely by means of an aggregate of discrete marks.

Thank you

Yours sincerely

John Stanton-Ife

26 September 2012

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

Dear Vice-Chancellor,

External Examiner's Report 2012:
Final Honours School in Jurisprudence/Diploma in Legal Studies

Introduction

This was the second 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

Generally speaking 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 the marking of scripts, appears the ideal blend of expertise and efficiency. This year's Chair ran proceedings in exemplary fashion, including deft handling of a particular thorny marking problem referred to below, and was able to rely on the advice and expertise of other members of the Board. The practice of ensuring that at least one other member of the board has previously held this position introduces 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.

A recent feature of the process, initiated in the 2010/11 session, is the requirement for the external examiner 'to read papers on the II.ii/II.i borderline 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). Once again I welcomed this opportunity to review scripts at this crucial borderline, and indeed in the subjects referred to me 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. This year a particular problem arose with the marking of land law. The mean mark returned for this subject was out of line with other subjects (at least 4.5 below the other 'compulsory' subjects on the FHS) and, indeed, out of line with the mean mark in land law in recent years. This was alerted to the Chair of Examiners a week before the first meeting of the Board, and much time was appropriately devoted at that meeting to explaining the steps the Board might take to address the problem in terms of the impact on the classification of degrees. The steps taken have been set out in a detailed note prepared by the Chair of Examiners for the Examinations Committee, with full consultation with the Laws Examination Board, and I will not repeat the steps taken here. Suffice to say that I consider the Board to have taken the correct approach in addressing the particular problem, in order to ensure that the depressed mark in land law neither deprived candidates of a particular classification (which was felt to be the most important consideration) nor removed them from a borderline for papers to be re-read (though this resulted in nearly 100 scripts being re-read by the land law markers, and additional marking burdens falling on colleagues in other subjects).

Two matters highlighted in the note remain a concern. The first is how to treat a question misunderstood by candidates, or where serious mistakes have been made about the applicable law. There appeared to be some inconsistency between the markers as to the impact of such defect upon the mark awarded to the answer. Further guidance to examiners on this matter should be considered. While some thought might also be given to examining the consistency of marks profiles not only within but also between subjects, the difficulty in so doing is the real variations in performance which can arise in consequence of the diverse subjects forming part of the 'compulsory' syllabus, a diversity which is reflected in results in these subjects in other institutions.

Secondly, despite the exhortation in the Instructions to Markers to mark the script as a whole, there were examples of scripts where an arithmetic total was arrived at on a pattern of marks where in other subjects (and at other institutions) the final mark for the script would have been adjusted in the light of performance overall (e.g. a script with, say, two first class marks, an upper second, and a bare pass or fail mark). It might be helpful to provide further concrete guidance to examiners to ensure consistency of approach across subjects.

Classification Conventions

The FHS/DLS classification conventions are clear and were consistently and appropriately applied. The decision taken in 2010/11, and continued in 2011/12, to abandon the short-lived higher threshold for a 2:1 degree classification is 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 would conclude by noting that the Board, and in particular the Chair, handled the land law marking problem with considerable diplomacy and good judgment. Overall I am satisfied that no candidate was unfairly deprived either of a qualifying law degree, nor the appropriate classification, in consequence of the depressed land law marks. Good practice has been observed in detailing the steps taken and in making suggestions to the Examinations Committee of further steps which might be taken to ensure that such difficulty does not arise in future.

Yours sincerely,

Catherine Redgwell
Professor of International Law and Vice Dean (International)
Faculty of Laws
University College London

Appendix 3

REPORTS ON INDIVIDUAL PAPERS

JURISPRUDENCE

This year's paper featured the usual broad variety of topics, and, as is also usual, gave candidates a free choice of three questions from the sixteen set. Candidates' performance as a whole was broadly similar to previous years, but the examiners were pleased to see some very high quality scripts at the upper end of attainment. It should be noted, however, that even as regards strong first class scripts, performance was not always sustained at the same high level across all three questions answered. Maintaining precision in understanding, in critical analysis, and in responding to the exact question set across all questions answered is a vital skill in the examination context. As is also customary, each question was set in a way which invited candidates to consider an issue from a particular angle or with a particular concern or set of concerns in mind. It has frequently been commented on in the past that a major reason for some candidates under-performing is a failure to pay adequately close attention to the exact question set, and a tendency instead to repeat well-rehearsed points relevant to the topic in general terms.

This tendency, however, seemed somewhat lessened this year as compared with some previous years, with the majority of candidates making genuine and well-directed efforts to answer the specific question set rather than offering a tour d'horizon of the topic in general terms. Despite this relative improvement, some candidates still failed to pay adequate attention to the question set, and there is no room for complacency in this regard. All candidates would thus do well to note that current FHS marking guidelines include the statement that a lower second class answer may be one which gives an otherwise upper second class treatment of a related question rather than the question asked. Candidates who did not pay adequate attention to the specific question set were, as usual, penalised for so doing: further observations in this regard are offered below in the comments on individual questions.

Better performing candidates were able to use relevant jurisprudential literature in creative ways: not slavishly following the views of other theorists, but rather employing their ideas with precision and skill in order to open up creative and novel ways of thinking for themselves about the puzzles the questions raised. Depth and creativity of critical analysis, an ability to offer a carefully thought through and systematically argued independent view of one's own, and an accurate, subtle and nuanced understanding of the issues, and of alternative theoretical perspectives on them, also marked out stronger candidates.

Answers were spread more evenly across more of the questions set than in some previous years, with a considerable number of candidates attempting questions 2, 3, 5, 6, 7, 8, 10, 11, 12, 14 and 16. Significantly fewer candidates attempted questions 4 and 15, and very few candidates indeed attempted questions 1, 9 or 13. It may be useful for the Jurisprudence teaching team to review the extent to which some of the topics featuring in those less popular questions are still taught in lectures and tutorials. Further comments on the most popular questions are offered below.

Question 2 produced some thoughtful answers regarding the aims of natural law theories, whether and in what sense those aims can be said to be unique, and on whether eg Finnisian natural law can itself give sufficient place to and explanation of positive law such as to render any alleged rivalry between natural law and legal positivism illusory.

Question 3: stronger answers considered the various senses in which law might be thought to be simultaneously coercive and normative, and considered this issue both in relation to individual laws, and the social practice of law as a whole. Weaker answers restricted themselves to describing Hart's criticisms of the role of coercion in command theories, and offering some limited critical analysis of them.

Question 5: weaker answers were content merely to describe then contrast Hart and Dworkin on adjudication; more able candidates took seriously the need to consider exactly what kind of interpretation may feature in identifying legal rights and duties and whether such interpretation is necessary in all attempts to ascertain legal content.

Question 6 elicited some weak answers which failed to pay adequate attention to the question set and viewed it as an opportunity to write about whether there is a general moral obligation to obey the law. Stronger answers focussed well on what might be *important* about establishing a correct answer to that question.

Most candidates tackling question 7 were well-versed in R. P. Wolff's philosophical anarchist challenge to the possibility of legitimate legal authority, and in Joseph Raz's attempt to defuse the challenge in question. Stronger answers moved beyond an analysis of this debate to consider in detail, from the candidate's own point of view, whether accepting legal directives as authoritative: (i) involved individuals abandoning their autonomy, and (ii) if it did, whether any such abandonment was justifiable or not, and (iii) whether the idea of 'abandonment' was somewhat overstated and out of place in a more subtle understanding of the nature and value of autonomy and its role in our practical reasoning processes, and, more widely, in a life well-lived.

Question 8 was frequently answered with reference to Ronald Dworkin's theory of law and adjudication, and, in some cases, inadequate attention was paid to the sense in which his theory, and/or other theories are, and are intended to be, *predictive* in character. Much more use could have been made of American Legal Realist theories in addressing the specific question about prediction which this question asked.

Question 10 was very popular. Weaker answers discussed generally the relation between law and morality; stronger answers considered various different possibilities as regards which properties make a legal system into what it is, and the effect which the absence or partial absence of those properties may have on its existence.

Question 11 elicited some very good and well-focussed answers, which were precisely directed towards the question set. This marked a significant and welcome change from some previous years where candidates were mistakenly content to identify "the punishment question" and answer it in general terms by reference to the strength and weakness of various justificatory theories of punishment.

Question 12 also elicited some high quality and well-focussed answers, but unfortunately also attracted a number of weaker candidates who attempted to turn this question into a general

question about the enforcement of morality, and ignored the specific focus on moral education. Such candidates were penalised for reproducing well-rehearsed debates in non-creative ways. Candidates who did consider the specific character, challenges, and possible modes of moral *education* (eg considering whether non-coercive legal measures were more appropriate to and likely to be successful in this regard) were well rewarded.

Question 14 was not frequently attempted but those candidates who did attempt it used the ideas of theorists such as Raz, Fuller, Kramer and Simmonds rather well, in order to work through the complexity of the issues it raised.
Question 16 elicited many competent and thorough answers which made real efforts to compare and contrast civil disobedience with eg conscientious objection and/or law-breaking for personal gain.

CONTRACT

The essay questions (with the exception of Q2) were quite unpopular. Most candidates offered three problem answers. The usual points for the examiner's complaint were all present and correct. Mediocre essays tended to be over-general and to list authorities, rather than constructing an argument attacking the question or quotation set. Less successful problem answers did not engage sufficiently—or at all—with the trickier points raised by the facts.

Question 1
While most candidates were familiar with *Blake* and *Hendrix,* fewer discussed the basis for damages in lieu of injunction (*Wrotham Park*) and the proper occasion for each remedy, as discussed recently by Sales J in the *Vercoe* case. Even fewer discussed the problem of "skimping" canvassed by Lord Woolf MR in *Blake*, despite the reference to the defendant's "savings" in the question. The "should" sub-question divided candidates—some taking the moralist stance that obligations must not cynically be breached while others defended the "efficiency" of breach, provided the claimant's expectation interest receives adequate protection. Some confused the issue of the *claimant's* profits from breach of contract, discussing in this connexion the irrelevant doctrine of mitigation.

Question 2
This was extremely popular. It was not infrequently badly answered. Weaker answers talked in too general terms about whether consideration is still useful and therefore "necessary" and about the merits of estoppel in contract variation cases such as *Collier v. Wright*. The question clearly indicated the need to frame discussion around the issue of using promissory estoppel to generate a new claim ("as a sword"). Better answers discussed critically whether the sharp line between promissory and proprietary estoppel can be maintained and whether Australian "equitable estoppel", focusing on reversing detriment (*Waltons Stores v. Maher, Commonwealth v. Verwayen*), should be followed in England.

Question 3
Not a very popular question. Some weaker answers considered only the merits of the unfair terms legislation, or indeed the whole issue of construction in the general sense. Better answers considered the common law construction of exclusion clauses and how this compares with, and has been affected by, the legislation.

Question 4

Candidates were divided over the merits of Lord Hoffmann's restatement in the *Belize Telecom* case (although weaker answers did not even mention it). Few really addressed his Lordship's point that "implication in fact" is different in degree but not in kind from construction in the narrow sense. Candidates seemed less sure about the basis upon which terms are and should be implied "by law".

Question 5
Not a popular question. Those who answered it were usually able to illustrate their arguments with knowledge of the relevant cases, and the best candidates showed familiarity with theoretical discussions of the basis of undue influence by, e.g., Capper, Chen-Wishart and Birks & Chin.

Question 6
This was the second most popular essay question. Better answers engaged with Hedley's well-known explanation of the doctrine as a jurisdictional filter, the candidates evaluating whether that jurisidictional boundary has been drawn correctly in both the domestic and commercial cases. Weaker answers discussed the role of intention in the law of contract in a general way, or simply recited a few relevant authorities, often limited to just *Balfour v. Balfour* and *Jones v. Padavatton*. Several candidates got the outcome of *Kleinwort Benson v. Malaysian Mining* (the "letters of comfort" case) back to front.

Question 7
Those who attempted this question were mostly able to give an analysis of the 1943 Act and Robert Goff J's interpretation of s.1(3) in *BP v. Hunt*. Fewer engaged with Goff J's claims of what the Act was *not* intended to do, whether these were correct, and whether the fundamental philosophy of the legislation requires re-examination. Loss-sharing was universally taken to be an unarguable good despite being alien to both the 1943 Act and the common law.

Question 8
Most candidates competently advised Grundy whether they could continue with the building work, faced with Lord Blackberry's repudiation (analysing *White & Carter (Councils) Ltd v. Mcgregor*). It was normally assumed that the cost of the materials could be recovered without considering either mitigation or the cap on such damages discussed again recently in *Omak Maritime (The Mamola Challenger)*. It was universally recognised that Ambridge faced difficulties where the 1999 Act was excluded, given the absence of both privity and consideration. Nevertheless, some candidates seemed determined that Ambridge should recover notwithstanding the evident intentions of the contracting parties, speculating about agency, trusteeship and "*Albazero* claims" without considering whether any of these could co-exist with an express exclusion of third party rights. In the variant scenario when the Act had not been excluded, nearly all candidates advised that Ambridge had a claim although few considered which promise (Grundy's or Lord Blackberry's) was enforceable and on what conditions. While some candidates spotted the possibility for double recovery of damages and the crystallization of rights under s.2, these rarely received detailed treatment.

Question 9
All candidates discussed the difficulties of finding consideration in the "more for same" variation. Most simply applied *Williams v. Roffey Bros* although some subjected it to criticism and tried to distinguish it. Some answers even invoked promissory estoppel despite the plain inability for Zoë to use it "as a sword", as she would need to. Most answers

discussed economic duress, some asserting that *every* threat to breach a contract is illegitimate so that Zoë's possible good faith was irrelevant. Remedies and breach were less convincingly handled. Few discussed whether the obligation to deliver "white roses" was entire, or the strict compliance rule under s.13, Sale of Goods Act 1979 (sales by description). On damages for breach, most noted that Eddie might have a claim under *Jackson v. Horizon Holidays* although analysis of that decision rarely went beyond noting the reservations of the House of Lords in *Woodar v. Wimpey*. Most noted that Janette might be able to sue in her own name under the 1999 Act (but few considered the impact of this development on the reasoning in *Jackson*). Weaker candidates did not make clear whether the damages claim was being brought by Eddie or Janette (some suggested "both simultaneously"). The authorities on mental distress and loss of amenity were usually cited. There was one suggestion that a bride's state of overexcitement on her wedding day must be left out of account!

Question 10

Some candidates were very keen to discern a collateral contract notwithstanding the warnings of Lord Denning MR in *Esso v. Mardon*, the parol evidence rule and clause (a) of the contract. It was widely argued that Elmer was innocent of fault regarding his misrepresentation although some noted that the approach to s.2(1) in *Howard Marine v. Ogden* had been exacting (although could probably be distinguished). Many candidates, therefore, did not discuss damages under s.2(1) at all; of those who did, not all noted that under the "fiction of fraud" damages could extend to the "market fall": *Smith New Court Securities*. Most answers assumed that rescission would be available despite the lapse of time and preparation of the land for development; this was related, perhaps, to the frequent unquestioning acceptance of the proposition that s.2(2) is inapplicable once rescission is barred (*Zanzibar*). Of course there is authority in another first instance decision—and a strong argument of policy—to the contrary. Many candidates noted the similarity of *William Sindall v. Cambridgeshire County Council* on the exercise of the s.2(2) discretion (not all noted its equal relevance for the quantum of damages). The exclusion clauses were not always well analysed, there being a notable variation between candidates familiar with recent debates in *Watford Electronic*, *Springwell* and *AXA* and those reliant solely on older authorities such as *Walker v. Boyle*.

Question 11

Although this was a popular question it was nearly always done badly. Having cited *Carlill v. Carbolic Smoke Ball* few candidates clearly discussed the classic problem in unilateral contracts of the offer withdrawn before completion of the condition for claiming the reward. Some simply asserted that the contract was formed as soon as Caroline set out on the expedition, so that Alice's "revocation" was actually a repudiatory breach which Caroline could either reject (and carry on looking), or accept and claim "expectation damages" of £100,000. (The latter, given that the parrots had not been found, seemed a remarkable assertion; more promising although much less common was the suggestion of a "lost chance" claim under *Chaplin v. Hicks*.) Most candidates confidently asserted that Caroline could recover her expenditure to date, without noting that Alice could attempt to show that it would be wasted in any case (presumably the *Chaplin v. Hicks* award might operate as a cap). Better candidates noted an obligation (based on the dicta in *Errington v. Errington* and *Daulia*) not to revoke a unilateral offer of which performance (acceptance) had begun, although few analysed the nature of that collateral obligation and what remedies breach of it would afford. Some speculated unprofitably about whether the stock market collapse might have frustrated Alice's offer of a reward. On the variant facts, a surprising number of

candidates incorrectly analysed this as frustration too. Many simply asserted that impossibility must mean voidness for common mistake; some noted that Alice might be held to have promised that the macaws were still extant although very few noted the argument to the contrary, that given the parrots' rarity Caroline was taking the risk of just such a contingency.

Question 12
This question was surprisingly unpopular. Many (although by no means all) candidates were able to cite the leading authorities on unconscionability; many were surprisingly confident that Giles could avoid the contract on that ground when the unconscionability of the price was far from obvious. Few discussed the bars on rescission given the great lapse of time, and whether rescission would enable Giles to claim any of the profits from Scargill's iridium mine. While most candidates sensibly noted that there was no general duty to disclose information and doubted whether there was an exception here (unless unconscionability required Scargill to reveal his suspicions), some fell into disastrous error by assuming that Scargill's omission to speak was a *misrepresentation* before considering this irrelevant matter at some length. As for the unrestored land, nearly all candidates discussed *Ruxley Electronics* although few explored a possible "skimping" claim against Scargill or the relevance of the £100,000 price that Scargill had successfully extracted for the performance of this very restoration.

TORT

General comments
In general, there was a solid standard of performance in this paper. At the top end, there was a range of clear, insightful and comprehensive answers to some tricky essay and problem question, which showed wide reading, independent thoughts and critical analysis across the syllabus. At the same time, a number of candidates found it difficult to organise their answers into a clear, coherent structure, whether in formulating a response to an essay question or developing a framework in advising the various parties in the problem questions. There were also signs that some candidates had not ensured that they had command of the breadth of the syllabus – e.g. on issues such as standard of care and defences – which caught them out in answering a number of the problem questions where those issues arose clearly. Pleasingly, there were very few instances of candidates endeavouring to 'shoe-horn' prepared answers to other, hoped-for questions into the essays set here, and an encouraging number of candidates utilised the academic literature in developing their answers.

Individual questions

Question 1
This question was attempted by a goodly number of candidates, and there were some very good answers here, particularly in terms of relating the recent parliamentary developments to case law. However, some essays simply provided a general description of the law of defamation and did not focus sufficiently closely on the question. The best efforts were able to address a range of recent case law (e.g. developing *Reynolds* on both reportage and responsible journalism, addressing the defence of honest comment) and provided a critical assessment of the ongoing impact of the tort of defamation on expression. Some made good use of the proposed statutory reforms in this area, and provided critical discussion of their possible impact, in light of the case law and the impact of the ECHR.

Question 2
This was a rather popular essay question, and the markers were surprised at the number of candidates who did not discuss the reasoning in *Sienkiewicz* itself. Similarly, candidates who focused *only* on that case and omitted discussion of other important aspects (such as loss of a chance) were also more numerous than had been hoped. Whilst a few scripts contained some very careful consideration as to how the idea of 'certainties' compared to 'probabilities' in its impact on the shape of the law on causation in fact, quite a few seemed very confused about what type of approach would be underpinned by each of these rather than the other, particularly in relation to the loss of a chance case law. Those candidates who were able to address a wider range of issues (such as: evidentiary uncertainty, multiple defendants, loss of a chance), allied with a close analysis of the leading cases, and their difficulties and implications, were rewarded.

Question 3
This question was not answered by many candidates. Weaker answers tended simply to equate the law of torts as a whole with the tort of negligence, and then attempted to turn this into an essay about one or more aspects of the duty of care in general (a particular favourite was duties of care owed by public authorities), rather than actually answering the question set. Those candidates who were able to show a command of a wider range of torts and who could then relate this back to theoretical perspectives on the goals of the law of torts scored highly.

Question 4
Relatively few attempted this question, but there were some strong answers. The best candidates canvassed a wide range of the case law on public authority liability and were also able to refer to other areas of the law of torts where such fundamental rights arguments have been prevalent (including nuisance and trespass to the person), providing a critical assessment of the actual question set. Those who simply trotted out a general overview of some of the case law, without referring to the issue of developing the common law 'in harmony with' the ECHR did not score so highly.

Question 5
A small number of candidates answered this question, with some producing some clear, well argued and strong efforts. The best candidates were able clearly to separate out the two types of damages involved, before providing a critical analysis of the criteria for their award and their role in the law of torts. At the top end, the cases were examined critically and in detail, with references made to the Law Commission's proposals in the area; at the lower end, rather general and unfocused coverage of a few headline cases was provided, with minimal critical discussion.

Question 6
Very few candidates attempted this question: some performed very strongly, provided a clear and detailed analysis of the economic torts after *OBG* v. *Allan* and the *Total Network* case, unpacking the quotation in the question and assessing what might be the best approach in this area, using the literature well. As ever, some weaker candidates mistook this for a question about economic loss in the tort of negligence and duly received very few marks.

Question 7

This question attracted a significant number of candidates, many of whom were clearly familiar with the English case law and with the Canadian Supreme Court judgment in *Bazley*, from which the quotation in the question was drawn. Some very strong answers were right up-to-date in their coverage of the English cases post-*Lister* and were able to assess critically the ideas of principle and policy in the context of vicarious liability. Weaker candidates provided a general overview of a small number of cases (some using only parts of *Lister*) and did little to relate this to the question set, and made no reference to the academic literature in the area.

Question 8

This was a very popular question, which involved a wide range of potential legal issues; most candidates performed at least solidly in unpicking the various issues in private nuisance. However, the vast majority of candidates failed to consider the possibility of trespass on these facts, despite the very obvious circumstances given. Many candidates failed to notice the possibility of claims in public nuisance and in trespass to land. Often, a disproportionate amount of attention was paid to Angela's claim against Billy in private nuisance, leaving A's claims against Hyde and Jekyll largely ignored or addressed rather too rapidly and superficially.

Question 9

This was a very popular question. A common mistake was to think that establishing that a duty of care was owed meant that liability existed. The question raised important issues concerning breach and the standard of care that all but a small number of candidates ignored. Many also often failed to realise that Oksana might have claims against several characters in the question. Some defences that were squarely raised by the facts, including contributory negligence, illegality, and *volenti non fit injuria*, were barely mentioned. The strongest answers were able to impose a clear structure upon the facts and assess the position of the various parties under the occupier's liability legislation, negligence and employer's liability.

Question 10

Despite the rather convoluted fact scenario involved, a significant number of candidates answered this question. Some answers overlooked rudimentary issues in tort law raised by this question, such as the standard of care that children owe for the purposes of negligence, as well as the standard of care owed by drivers. Others focused entirely upon the Consumer Protection Act 1987, missing the various issues raised in the tort of negligence, and others seemed to have forgotten the need to consider causation and defences, as well as the numerous possible claims which might be advanced by each party. Again, the strongest answers succeeded in establishing a clear framework for analysing the issues and applied this consistently to each party throughout.

Question 11

A goodly proportion of candidates attempted this question. A significant number of answers disappointingly focused on defective products, rather than defective premises, when addressing the issue about the boiler. This was concerning, especially given that a boiler is itself discussed as a hypothetical example in *Murphy*. Also, many candidates focused solely on the issue of duty and omitted to discuss the questions of breach and the scope of the duty owed, with their implications for the range and quantum of damages potentially recoverable by Walter. Equally, a number of candidates showed an impressive grasp of the range of issues in negligence here, categorising the different types of damage suffered and sensibly analysing the key cases (*Hedley Byrne*, *SAAMCO*, *D&F Estates*) and considering (and

usually correctly rejecting) the possibility of relying upon section 1 of the Defective Premises Act 1972.

Question 12
There were many good answers to this question, the strongest of which were able to deal with the various duty, standard of care and causation issues clearly and effectively. However, disappointingly, some candidates were confused about the amount of evidence needed to satisfy the civil standard of proof, a significant number assuming that 50% was sufficient to establish causation on the balance of probabilities, when clearly it is not. Also, relatively few students seemed to be aware of *W* v. *Essex County Council* and its willingness to relax some of the *Alcock* criteria concerning secondary victims in the psychiatric injury area.

LAND LAW

Land law scripts this year showed a very wide range of facility with the subject matter and indeed general ability. The best – and there were plenty of these – showed real flair and perception in identifying issues and handling the case law and statutory provisions. However, the predominating standard was Lower Second, and there were significant numbers of Thirds and even Passes and Fails.

Though not a widespread phenomenon, it is worth noting that some scripts showed errors that the examiners found quite incredible. These included the assertions – which the surrounding discussions showed not to have been slips of the pen – that a right in rem is one which can bind only the original promisor; that even a right in personam will bind a disponee of land to which it relates if its owner is in actual occupation of the land, or if it has (somehow) been registered; that the current law on land registration is contained in the Land Registration Act 1925; and that a disponee is someone trying to effect a disposition.

More generally worrying, and at the root of the disappointing average standard, a large number of scripts contained very unenterprising answers, offering generalisations where specific detail was called for, and otherwise thinking and writing in a quite superficial way, without engagement or penetration. In particular, while the relevant (or sometimes not) cases and legislation were usually referred to, there was frequently no evidence that they had ever been read, certainly not assimilated. As has been said ad nauseam in previous examiners' reports, reading and reflecting on the leading cases and principal legislative provisions is an essential part of the acquisition of legal knowledge; it is crucial for any candidate aspiring to a mark of 60 or above to have read and reflected on the primary materials, and to base his or her answer around these materials.

For the first time this year, candidates were supplied in the examination room with a list of the cases appearing on the subject group's agreed reading list. Arguably, this did candidates a disservice, as pandering to the perspective that "remembering the names of the cases" is a difficult and distracting chore. This perspective would in fact be adopted only by one who rejected the lesson put forward in the previous paragraph. Students who properly read and reflect on the cases should have no more general difficulty remembering their names than they do remembering the names of breakfast cereals. To repeat: first hand assimilation of the primary materials (names included) is at the very heart of what students should be about for their three or four years; if they neglect it, and the examination finds this out, they have no-one to blame but themselves.

All questions attracted some answers, but essay questions 2 and 3, and problem questions 6, 7 and 10 were notably more popular than the others.

Question 1: this attracted few answers. Better answers demonstrated not only an understanding of the range of different formality requirements (including registration) but also tried to set out criteria for "appropriate use" both in terms of individual provisions and their interactions and systemic effects. Weaker answers tended simply to list well-known provisions and to invoke registration without explaining its significance.

Question 2: this was, unsurprisingly, a very popular question. It required candidates to consider the role of discoverability in limiting the scope of overriding interests. It was generally well done, with many candidates considering paragraph 2 of schedule 3 of the Land Registration Act 2002 in some detail, and making use of the copious case law to illustrate the tensions between the statutory wording and difficult factual scenarios. Other provisions in schedule 3 were sometimes overlooked or treated rather scantily, however. For example, it was frequently assumed that a lease attracting overriding status under paragraph 1 would inevitably involve the lessee's physical presence on the land, and the relevance to discoverability of the "exercised in the period of one year ending with the day of the disposition" exception in paragraph 3 was only sometimes commented on.

Question 3: this was also very popular. Many candidates did a very creditable (if often not very imaginative) job of dealing with the general question of whether contractual licences should operate in rem. Fewer were able to link this to the first part of the question and suggest why the treatment of an agreement for exclusive possession as a lease might be relevant. Those that did, such as by considering how the understanding of lease had expanded to include situations which might previously have been treated as licences, were duly rewarded.

Question 4: this was not a popular question. For the most part, answers dealt well with the actual occupation overriding interest aspect, and less well with overreaching. Very few considered other angles, such as the consent doctrine in *Bristol & West Building Society v Henning*.

Question 5: this also attracted few answers, many of which simply set out the many difficulties recognised in the law of freehold covenants especially, and to a lesser extent, easements. Better responses sought to tease out similarities and differences in both purpose and operation between freehold covenants and easements, and to consider whether these could be accommodated within a single institution.

Question 6: this very popular problem required discussion of the Supreme Court's decision in *Jones v Kernott*. The case was indeed named by nearly (though not absolutely) all candidates, but there was a wide variation in candidates' skill in using it, and indeed knowledge of its contents. Better answers rose well to the difficulties introduced by the initial presence of a third co-owner and the initial absence of the kind of personal relationship usually found in such cases, but there were plenty, at the other end of the spectrum, that showed no awareness even of the decision's "two question" analysis. Moreover, a significant number failed to address the question of the type of beneficial ownership involved (joint tenancy or tenancy in common), and its possible evolution (by severance), or else did so insecurely; it was surprisingly common to read that severance could be effected by will.

Question 7: this question was notable both for its popularity and for the deeply disappointing quality of candidates' responses. It was generally (and understandably, if not quite correctly) taken to demand inquiry after the existence of easements, and the question of whether the easements proposed could exist at all was in general adequately handled, though the discussion of the "occupation" difficulty was often wooden, and inattentive to the particular facts given. The issue of such easements' acquisition was very poorly treated, however. Some candidates overlooked it altogether (intimating that if the right fitted *Re Ellenborough Park*, the dominant owner automatically had it as an easement, full stop), and very many held that X can expressly or impliedly grant an easement to Y without a conveyance between them – that this can occur via a conveyance from X to Z, or even that "by implied grant" means "out of thin air". Further, and whether as a consequence of the foregoing or independently, a very large number of candidates omitted to discuss proprietary estoppel; the benefit and burden analysis in *ER Ives v High*; or the possibility of a "constructive trust" of the kind described in *Lyus v Prowsa* or *Binions v Evans* – all of which were clearly suggested by the facts. Moreover, even those who did find an estoppel right often overlooked or mistook the ensuing registration issue, taking it that equitable easements fall within paragraph 3 of schedule 3 to the Land Registration Act 2002, and/or that section 116 of the same Act itself suffices to make the right bind. However, the best, addressing paragraph 2 of schedule 3, noted both the similarity here with the actual occupation argument made in *Chaudhary v Yavuz*, and the reasons why such an argument might succeed on these facts where it had failed in that case.

Question 8: this was moderately popular, and generally done well. Candidates identified the similarity of the interest rate issue to *Multiservice Bookbinding v Marden* and often reflected on it effectively, and could discuss the circumstances in which an option contained in a mortgage is likely to be valid. The best answers confronted the mortgagee's possible bad faith directly, often making good use of *Quennell v Maltby* to do so.

Question 9: this was the least popular problem question. For the most part it was done competently, even sometimes very well, with answers addressing both the question of occupation rights and occupation rents, and the possibility of sale and the exercise of the court's powers under section 14 of the Trusts of Land and Appointment of Trustees Act 1996. Relatively few considered whether the beneficiaries truly had a right to occupy under section 12, particularly in connection with whether the property might be "unsuitable" for persons such as them, this being a rather obvious issue on the given facts. The best answers showed both a clear understanding of the statutory provisions and some creativity in finding legal solutions to the apparently intractable dispute, such as partition or a partial sale.

Question 10: this was the most popular problem, but once again it elicited many very weak answers. Most candidates appreciated the need to address the question of exclusive possession. The level at which they did so was frequently poor, however, above all as lacking proper conceptual organisation. The role of the sham/pretence concept was commonly not understood (which may have been the reason why many candidates omitted to mention the concept altogether); likewise the role of joint tenancy. Instead, candidates frequently adduced a set of random observations, desultorily retailing what they knew (or thought they knew) about keys, cleaning, separate agreements, interdependent relationships, etc, with no sign of awareness of the analytical significance of these. The foregoing-of-rent issue was particularly badly handled, perhaps a majority addressing this not as a possible reason to treat the occupants' seeming unity of interest (and so joint tenancy and so exclusive possession) as a sham, but in terms of the need for a lease to involve rent in the first place. Further, there was

a surprisingly wide divergence in candidates' treatments of the term requirement. The majority were familiar with the Supreme Court's decision in *Berrisford v Mexfield Housing Co-Operative Ltd* and applied or (in some cases very impressively) distinguished it as they thought appropriate. But a significant minority averred that the decision had simply demolished any term requirement, while others again made no reference to it, or indeed missed the issue entirely. Finally, despite the question's clear announcement that the lease (if it was one) had been registered, significant numbers entered upon discussions of overriding interests, or even constructive trusts (which some appeared to think required only notice on the part of the transferee).

ROMAN LAW (DELICT)

There were eight candidates for the FHS-exam, one being a DLS. No question chosen showed problems in the answering, the distribution was reasonable. The new instructions for marking FHS were applied, but it was not just because of this that the results were spectacular: five out of eight were Distinctions, two were high 2.1's; the DLS remained midway of 2.1. This proved to be a good year.

COMPARATIVE LAW OF CONTRACT

There were only six candidates this year, but all questions were answered except for Question 9(a) (*clauses pénales*). The overall standard was pleasing, but there were relatively few outstanding answers. Weaker candidates used a limited range of evidence in their answers, or gave only partial answers to the questions set, or made some surprising errors of detail of the law (more commonly errors in the English law than the French). By contrast, the strongest candidates made excellent use of a wide range of materials in backing up their arguments – both primary and secondary materials in both legal systems – and allowed themselves sufficient space in their argument to engage in a critical comparison of the relevant topics.

PUBLIC INTERNATIONAL LAW

The standard of performance in Public International Law this year was good but perhaps lower than the average performance in this subject in previous years. Of the 44 students who sat the paper, 23% were awarded first class marks (which was lower than the year below) and only 6 students got lower than a 2.1.

Although all the questions were answered by at least one candidate, questions 7 and 8 were answered by very few candidates indeed. Those who answered question 8 tended to give very good answers while the answers to question 7 were rather disappointing. In particular, the markers were mystified that those who chose to answer question 7 failed to spot that it was a question on the relationship between international law and English law.

As if often the case, many papers would have scored higher marks if candidates had answered the specific question being asked rather than providing a general essay on the topic of the question. Also students would have done well to pay greater attention to detail both in relation to the question asked and in relation to the material deployed in their answers. For example, answers to questions 5 dealing with the role of consent with regard to the

competence of the International Court of Justice to adjudicate ought to have dealt with the competence of the Court not only to make decisions on the merits but also with regard to provisional measures and in proceedings for intervention. Likewise, the answers to question 4 on the application of the rules in the Vienna Convention on the Law of Treaties tended to ignore discussion of the rules of interpretation. In addition, those answers ought to have focused on whether the rules regarding the effect of valid or invalid reservations work well for all type of treaties (especially those that do not involve a bilateral exchange of commitments, eg human rights treaties).

HISTORY OF ENGLISH LAW

There were a small number of candidates (withdrawals took their toll). Standards were high, with the best candidates marshalling primary and secondary materials with imagination and accuracy. Some of the answers, notably in the difficult areas of leases and early trusts, showed a tendency to repeat textbook treatments without deeper consideration, and some discussions were undermined by an obvious paucity of reading of the sources. Land title and registration attracted some good treatments, linking doctrinal and professional debates with movements in the wider economy. The treatment of contract and tort tended to be stronger, perhaps because the material joined up more easily to more familiar Romanistic and modern common law concepts.

EUROPEAN UNION LAW

This year brought a familiar pattern to the overall marks profile: a handful of very impressive scripts, a large clump of solid and competent scripts deserving a 2.1, and a shortish tail of thin and occasionally confused scripts. The long-standing dual complaint of the EU examiners that candidates tend to handicap themselves by (i) reading insufficiently widely and relying instead on just one textbook and (ii) answering the question they would like to have been asked rather than the one they have actually been asked could be aired once again - but not with any particular ferocity this year. The scripts were largely a good bunch. Complaint (ii) could be directed at answers to some questions more than others: not (much) at Qs 2, 3, 4, 5, but Q.6 was a shade too often answered with exclusive reference to Directives, despite the explicit contrast drawn in the Question between Treaty provisions and Directives, while Q.7 demanded and usually - but not always - received close attention to the Lisbon Treaty (and ideally the rulings in Inuit and Microban). Qs 1 and 10 were not at all popular and, as is often the way with slightly off-beat questions, attracted both brilliant and disastrous answers.

More specific comments designed to draw out where those who did not do so well took wrong turnings:

Q1: Candidates generally recognised that the Treaty does not reserve particular areas of competence to the Member States, and that the Court tends to interpret EU competences expansively. Case law on Article 114 TFEU was heavily relied on – that is appropriate, but an answer should not be confined to Art 114. Candidates generally did not sufficiently distinguish between legislative competence and the (wider) scope of application of the Treaty (in competition law and in free movement law).

Q2: Closer engagement with exactly what these 'political hot potatoes' might be would have been beneficial. Weaker answers displayed a startling – even shocking - lack of understanding of EU legislative processes by failing to appreciate the significance of the Protocol in granting a role to national PARLIAMENTS; in the worst cases, candidates appeared not to appreciate that national governments are already key players in the EU legislative process in the Council.

Q3: plenty of candidates invoked theoretical explanations for the EU legal order (e.g. legal pluralism, coordinate constitutionalism), but whereas some went on to show they really understood what is at stake, others displayed no real understanding, suggesting an acquisition of labels not content.

Q4: we are weary of reading scripts that betray lack of understanding of SPUC v Grogan.

Q7: weaker answers tended to show knowledge of the change in the text achieved at Lisbon but did not really put that change in context by showing awareness of the extent of the gap pre- Lisbon. A proper understanding of 'regulatory act' requires knowledge of EU legislative processes, which was lacking in some answers. As ever very few candidates seemed able to imagine that greater scope for judicial review might be anything other than a cause for celebration.

Q8: the question is not limited to free movement of goods or to free movement of persons but too many answers did so limit it.

Q10: Some errors on the scope of Dir 2004/38 were evident. There was also confusion about the basis for several decisions of the Court - EU Citizenship Treaty provisions or that Directive or general fundamental rights principles. Such answers were disappointing given the seminal importance of the recent rulings of Zambrano, McCarthy and Dereci.

INTERNATIONAL TRADE

There were 17 candidates and the standard was generally high, with five marks of 70 or better and a number close to that after second marking.

As now seems to be the norm with this paper, problem questions were preferred over those requiring an essay (a consequence, no doubt, of a certain emphasis in the course on problem questions). There was a relatively even distribution of answers to all five problems, but those on withdrawal (q.7) and the passing of property (q.8) proved marginally most popular.

There was a similarly even distribution in the answers to essay questions, with a slight preference for the essay on the passing of risk (q.5).

The answers to one type of question were not noticeably better than answers to the other.

There were few commonly occurring glaring errors, but some candidates were unsure of the precise basis of the decision in *Couturier v Hastie* and how it relates to the modern form of cif contract (q.5) and some failed to see that the question of whether the bill of lading was spent in q.8 had to be analysed in the context of the definition of a document of titled under the Factors Act.

TRUSTS

There were perhaps fewer First Class performances in Trusts this year than might have been hoped although the general standard of scripts was reasonable (only 9% were marked at 59 or below). Candidates showed a marked preference for certain questions, particularly those concerning recent theories of resulting trusts, *Quistclose* trusts, cohabitation trusts, and the nature of beneficial interests; correspondingly tending to avoid questions concerning the fiduciary and other duties of express trustees and their liability and remedies for breach. Theoretical answers all too often cited the same small number of authors in rather unreflective fashion, demonstrating little ability to place those theories in the context of case doctrine and practice. It is only to repeat the message of previous examiners' reports in Trusts to say that it is crucial for candidates aspiring to higher marks to read and think about the primary legal material, and to base their answers around that material - and, of course, to pay close attention to the precise question asked.

So, by way of example, Question 1 (about the nature of equitable property rights), although sometimes well-handled, often elicited answers which referred to 'rights against rights' and 'persistent rights' without clear explanation of what these concepts might mean, or assessment of their explanatory power. It was only the best answers which managed to approach these ideas through a sustained examination of relevant case law and doctrine. Similarly, many answers to Question 3 (a quotation from Arden LJ in *Pennington v Waine*, which candidates were asked to discuss) consisted of an outline of *Re Rose*, *Pennington* and *Choithram v Pagarani*, together with an unexplained affirmation or denial of Arden LJ's approach, but little more. Few candidates considered why Clarke LJ took a different view from Arden LJ, while still reaching the same conclusion, or analysed what Arden LJ might mean by "a principle which animates the answer to [a] question". Answers to Question 5 (concerning a quotation from *Jones v Kernott*) were often similarly unreflective, repeating the views of particular commentators without significant critical analysis (although there were also some very strong answers to this question); and many answers to Question 7 (concerning the circumstances in which resulting trusts ought to arise) re-hashed familiar debates without adequate reference to the breadth and complexity of relevant case law. Of course there were answers which cannot be criticised in these ways; but there could have been more.

The problem questions were generally less well-tackled than the essays, with candidates frequently missing the significance of particular points (for example of the codicil in Question 13 about secret trusts, or of the finer points regarding *Re Baden (No 2)*, *Re Tuck* and *Re Barlow* in the certainties problem (Question 12)). Question 11 (about the dissolution of unincorporated associations) was generally competently answered. Strong candidates had plainly read the relevant cases and could distinguish between them; weaker answers tended to name a general theory (e.g. the "contract-holding" theory) without explaining how or why such an approach ought to apply to the particular facts of the problem.

ADMINISTRATIVE LAW

This year, the standard of answers was generally high and comparable with the performance in previous years. In general, the first-class answer distinguished itself by having an acute attention to the question asked, more legal detail and a sustained argument throughout the

answer. Some of the weaker answers tended to be low on detail from either the case-law or academic commentary and relied instead on vague generalisations.

FAMILY LAW

The overall standard of papers this year was pleasing, though the top quality scripts had less of a sense of flair and original argumentation than we might have hoped for. Three general comments can be made, the second and third of which represent ongoing concerns from previous years. Firstly, we were particularly impressed with the spread of questions attempted by candidates. More students attempted the thematic questions (questions 8, 9, and 12) than in previous years and provided a good number of strong answers, which were rewarded accordingly. Secondly, there remains an ongoing concern that candidates do not cite the relevant statutory provisions, but either discuss the statute in general terms, or sometimes even approach the topic as if there are no relevant statutory provisions. This was most evident in relation to questions 4 and 5. Thirdly, there were still a notable number of topical essays, which did not focus on the precise question set. How this impacted on the quality of answers received will be mentioned below, where relevant.

Question 1. Residence and contact. In broad terms, this question was generally well done. Some students treated this as a topical question, overlooking the detail of the excerpt, and focusing on the nature of the approach taken to residence and contact disputes, and whether any presumptions or assumptions operated here. Other candidates focused heavily on relocation, assuming it was simply an aspect of residence without further analysis. Stronger candidates did well to focus on the interplay between rights and welfare in relation to mothers and fathers as required by the question, with some impressive integration of ECtHR jurisprudence and empirical evidence.

Question 2. Domestic violence. Approximately one-quarter of candidates answered this question and, in general, did so quite poorly. Most candidates saw this as a topical question and proceeded to provide a pre-prepared, textbook-like overview of the current legal approach to domestic violence, accompanied with a limited number of the standard reform arguments. The question asked candidates to consider whether domestic violence raised 'singular' difficulties for family law, which invited examination as to whether there is something unique about the nature of domestic violence – such as its occurrence within the protected private sphere of family life, the victim-centred goals for intervention, etc. – that makes it particularly problematic to respond to through family law. Comparison between the difficulties of child protective intervention and domestic violence intervention may have also offered additional insight.

Question 3. Nuptial agreements and financial provision. Overall, the quality of answers to this question was high. Whilst some candidates focused exclusively on pre-nuptial agreements (despite *Radmacher* doing away with that term), most candidates did very well to discuss the larger issue of nuptial agreements, and to consider the appropriateness of distinguishing between agreements based on the moment at which they were concluded. Weaker candidates expressed the decision in *Radmacher* imprecisely, whilst stronger candidates were careful in their presentation of the *ratio*, the concurring judgment, and the dissent. Stronger candidates also provided clear argumentation on the normative aspect, typically adducing autonomy-based contentions, arguments over the relationship between nuptial agreements and the default regime, and larger public policy concerns.

Question 4. Legal parental status and parental responsibility. This was the second most popular question on the paper, yet answers to it were of mixed quality. A good number of candidates failed to cite the applicable statutory provisions, whilst many treated the reference to 'biological parents' as inviting discussion of the significance of different types of biological connection, particularly gestational and genetic, without differentiation. A couple of candidates even suggested that gestation was not a biological connection, which needed to be understood as genetic only. Stronger answers paid attention not only to the appropriateness of characterising the current legal approach as one based on the rights of biological parents, but also to the place of 'best interests' in this approach.

Question 5. Divorce and dissolution. This question provided answers that were distinctly varied in terms of quality. Four candidates misunderstood the question, three treating it as being concerned with financial provision exclusively, and one as being about all of the legal regulation that follows divorce or dissolution. Weaker answers provided a general discussion of the possible aims of the divorce process with little reference either to the relevant statutory provisions or the case law. Stronger answers were both more in-depth and precise, with the best answers considering the aims set out in s1 FLA 1996 and the extent to which they are achievable and/or reflected in the current law. The better law reform answers tended to consider the extent to which law could achieve the key aims they had identified, whether substantive or procedural reform would be most desirable, and the potential consequences of such reform for the status relationships and their default financial provision regimes.

Question 6. Child protection. This was a popular question that was also generally well-handled. We were pleased that most candidates focused quite tightly on the detail of the excerpt in the question. Many candidates did well to critically analyse leading case law on the burden of proof at the threshold stage, particularly various judgments in the UKHL's decision in *Re B*. The best answers made sure to delineate each of the difficulties within the harm assessment as well as to discuss its relationship with the approach taken to establishing causation.

Question 7. Cohabitation and the financial consequences of separation. This question was not handled as well as expected. This was quite a focused question, which required students to know the detail of the Law Commission's recommendations as well as to be able to relate that detail to the current law's approach to the financial consequences of relationship breakdown for cohabitees. However, a number of candidates seemed confused about the precise qualifications proposed by the Law Commission for access to their more limited default regime for cohabitees, as well as about how that default regime compared to the approach currently taken upon the breakdown of marriage or civil partnership. In addition, several students saw this question as an opportunity to present a pre-prepared essay centred exclusively on trusts law and the family home (despite the Law Commission's recommendations being explicitly focused on maintenance), and were marked down accordingly.

Question 8. Thematic: Legal regulation of friendship. This question was aimed at picking up on deeper issues raised by the debate over the appropriate regulation of marriage, civil partnership, and cohabitation. Of the answers received, almost all handled it very well. As there were so few answers, however, it is not possible to comment in general terms.

Question 9. Thematic: Human rights instruments. As with the preceding question, there were too few answers to comment in general terms. Again, however, those that did attempt it, generally presented stronger answers.

Question 10. Deciding disputes affecting adolescents. Whilst generally well done by most candidates, a number did not focus on the precise question set. Several assumed that Abella J's remarks could be treated as inviting a generalised rights 'vs' welfare discussion, without explaining the basis for this assumption given that 'autonomy' and not 'rights' was raised in the question. Stronger candidates paid attention to the treatment of adolescents in particular, and carefully blended larger theoretical discussion with supporting case law examples from a number of contexts, particularly medical treatment, participation in private law disputes, and sometimes also freedom of expression and complaints about public law intervention.

Question 11. Civil partnership and same-sex marriage. This was the most popular question on the paper, with over three-quarters of candidates answering it. Some candidates did very well, and provided interesting arguments about the 'common law marriage' myth and the mistaken belief held by some members of the public and expressed in the media that we already have same-sex marriage, as well as some insightful discussion as to whether same-sex marriage would or could undermine marriage as an institution. Better candidates also sought to delineate the 'necessity' and 'desirability' of the proposed measures and to disaggregate the repeal of the CPA 2004 and the introduction of same-sex marriage. This latter, in particular, was very well done by a few candidates. Amongst the weaker answers, there was more generalised discussion of the nature of modern marriage without focusing on the precise question.

Question 12. Thematic: Discretion. This was the most popular of the thematic questions on the paper. Weaker answers focused on only one decision-making context. Stronger answers considered whether the nature of families and family law disputes made discretionary decisions inevitable, and whether that led to better or worse outcomes, which could vary by context. Better candidates also drew on examples from several contexts, including financial provision and s25 MCA 1973 and the operation of the s1 CA 1989 'best interests' principle in practice.

COMPANY LAW

Thirty-five candidates sat this paper, of whom seven were DLS candidates and five MJur. The general standard of the scripts was high. Only four scripts failed to obtain a 2:1 or better on first marking and some of those made it into the 2:1 category thanks to the second marker. As ever, the number of top-class scripts was slighter smaller on first marking (6 or 18%) than might have been expected. Three of these were MJur candidates. Comments on the individual questions, where appropriate, are as follows.

Q 4 (Adequacy of minority protection) This was a very popular question and produced some very good answers. It allowed candidates to survey a number of areas of company law and candidates were not penalised for not covering all conceivably relevant areas. (Curiously, no one thought that the conflict of interest rules applying to directors, for example, in the context of self-dealing transactions, were relevant.) However, those who chose to concentrate on only one area of minority protection (for the example the *Gold Reefs* line of cases did not do well). The best answers developed some criteria, beyond the generality that majority rule should not

be infringed too much, for assessing the adequacy of the protection currently provided by English law. In particular, they began to address the issue of identifying the characteristics of decisions which it was not appropriate to leave to majority rule.

Q5 (Most significant court decision or specific legislative reform since 1945). At first sight, this question is a give away. Just write you standard essay on the topic on which the examiner unaccountably forgot to set a specific question. It is actually much more demanding because it is not enough to show that your chosen reform was important for it is necessary also to produce some arguments for its being the 'most significant' post-1945 corporate law development. Rather few candidates rose to that challenge. Given that the most popular choice for the most significant reform was the statutory derivative action introduced by the 2006 Act, it is easy to see what the challenge was. Those who did well emphasised (a) the conceptual changes and (b) the medium-term potential for the courts to take a bold line – and then explained why (b) would be significant if it occurred.

Q6 (Articles and shareholder agreements compared). This was quite popular and was generally competently done. Most of the differences were accurately identified but the structuring of the essays left something to be desired. Perhaps the question did not press the candidates sufficiently to engage in overall assessment.

Q7 (Development by courts of a duty upon directors towards creditors) This was a popular question which was well done and produced some very good answers. The best answers were able to analyse the risks faced by creditors and the existing legal mechanisms for dealing with them, so as to argue whether or not the proposed extended duty would have a significant role to play. There were some poor answers by candidates who seemed unaware of the common law developments on directors' duties to creditors and even of the existence of s 214 of the Insolvency Act 1986.

Q 8 (Comment on either par value or piercing the veil on the basis the company is a sham). Not a popular question and few good answers. A surprising number of candidates chose not to answer 8(i) at all (par value), presumably because they had nothing to say, since the question was clear that both (i) and (ii) had to be attempted.

Q 9 (Problem. Possible breaches of directors' duties arising out of a failed acquisition). This was a reasonably popular question. Nearly all candidates accurately identified the duties which were at issue. There was a near-universal tendency, however, to leap to the conclusion that some or all of the duties had been broken. Despite lip-service to the subjective nature of the s 172 duty or courts' expressed desire to avoid hindsight with breaches of negligence-based duties, the argument that the acquisition turned out badly, therefore there was a breach of duty was everywhere on display, either expressly or impliedly. Politicians would have loved this stuff. Those candidates who consider further duties were quick to deduce from the fact that a third party brought the acquisition opportunity to the attention of a director that that director failed to exercise independent judgement - or from the fact that G was later ennobled that he had received a benefit in return for what he did as director. All these arguments were of course possible – and the question was designed to raise them – but cool and thoughtful analysis was not the hallmark of the advice offered to the potential institutional litigant. On a different note, there was little understanding displayed of the role of a non-executive chair of the board; he was treated just as any other non-exec.

Q10 (Problem: veto right in minority shareholder). This was a relatively unpopular question and not well done. Too many candidates tackled it without any knowledge of the procedures to be followed for a reduction of capital. The 'veto right as a class right' issue was fully explored by only one candidate. Despite the fact that the veto right was a shareholder right, too many candidates were side-tracked into a lengthy discussion of directors' duties and too few considered the question of whether the exercise of the veto right might fall within the unfair prejudice provisions, even though it was a right held by a non-controlling shareholder.

Q11 (Agency) This was a popular problem and was reasonably well done. However, a number of candidates with knowledge of s 40 of the Act seemed to know neither s 39 nor s 41. As for the relationship between the managing director (A) and his assistant (S), there was often unclarity whether the analysis was that S had actual authority by way of delegation from A or ostensible authority by way of a representation made by A to the third party.

LABOUR LAW

The performance in this paper this year was generally very satisfactory. There were very few poor scripts and a fairly high proportion of 1st class scripts. A small number of candidates had under-estimated or failed to put in the amount of work which is required for a mastery of this subject, but this was mercifully unusual. The tendency identified in the 2010 report towards excessive generality in responding to specific questions (not specifically remarked upon in the 2011 report) was this year avoided by the great majority of the candidates. There was a welcome concern on the part of many candidates to articulate a clear argument at the outset of each answer, and then to pursue that argument through the answer. There was, however, quite a marked tendency to choose questions on the collective rather than the individual aspects of labour law; this is not in itself a difficulty, but future candidates should make sure that they have not neglected the latter aspects of the syllabus.

Question 1: (Law of fundamental social rights or law of labour market) There were very few takers for this question; their answers could generally have been improved by further efforts to get to the core of the question, and to provide specific examples in illustration of general arguments.

Question 2: (Classification of 'employees'/ 'workers' and inequality of bargaining power) This was a very popular question; many answers could hve been improved by an appreciation of the need to deal both generally with the way in which this classification is made and specifically with the notion of 'sham contracts'.

Question 3: (The impact of the 'atypical work' Directives) No candidate attempted this question; it is to be hoped that candidates are not in general neglecting this important topic.

Question 4: (Direct and indirect discrimination) This was a moderately popular question which produced answers of widely varying quality. The weaker answers could generally have been improved by a firmer grasp of the structure and legislative strategy of the Equality Act 2010.

Question 5: (Positive duties upon public authorities to promote gender equality) This question, on a topic which the great majority of candidates had probably not studied in detail, produced a small number of answers, which were generally satisfactory.

Question 6: (Persistence of gender pay gap) Among the most popular questions, this produced a brood spread of quality of answers, mainly differentiated by the degree of effort which the candidates made to relate statistics about the gender pay gap – which most candidates produced in quantity – to the law of equal pay itself.

Question 7: (National Minimum Wage and Working Time Directive) A small number of candidates answered this question; only the best of them considered the variations in the formulation and interpretation of the concept of 'working time' in the two different contexts in the way that the setters had hoped they would do.

Question 8: (unfair/ wrongful dismissal procedure) This was a reasonably popular question. Candidates varied widely in the extent to which they had considered and understood the recent but centrally significant decision in *Edwards v Chesterfield NHS Hospital Trust.*

Question 9: (Trade union recognition and workers' choices) This was a popular question that attracted a range of quality in responses to it. The strongest answers were those which combined both a detailed analysis of the statutory provisions concerning trade union recognition and a normative analysis of workers' 'voice' in issues concerning their representation in collective bargaining.

Question 10: (Fundamental right to consultation) This was another popular question. A feature distinguishing the best answers from the others was a willingness to compare and contrast the claim to a fundamental right to consultation with the more specifically recognised claim to a fundamental right to collective bargaining.

Question 11: (Freedom of association and collective bargaining – conformity with Article 11 ECHR) This was yet another popular question. The better answers focused particularly upon the question of whether and to what extent English law had responded to the interpretation of Article 11 which assigned to it the special function of maintaining the right to collective bargaining. (Candidates who, as most did, answered more than one of the last four questions could with advantage have cross-referred between their answers in this respect.)

Question 12: This attracted many answers, which were generally of good quality. Only the very best answers, however, went to any real depth in exploring the nature of the distinction between a right to strike and a liberty to strike, or considered whether and how far a right to strike extends to industrial action short of a strike or incidental to a strike.

CRIMINAL LAW

Twelve candidates took this paper. Overall the candidates' performance was satisfactory, with many different levels of ability displayed. As ever, better candidates paid close attention to the term of essays questions and ventured their own points of view in careful dialogue with leading doctrinal analyses. The basic issues raised by problem questions were generally well spotted, but some of the finer and more controversial legal issues were overlooked in surprisingly many scripts, even those at the upper end of the cohort. Candidates should be

encouraged not to tackle problem questions expecting to find the one 'correct' answer, but instead to look for any relevant ambiguities in the law or in the facts and construct the two sides of the argument (defense, prosecution) in a creative way.

1. Victim's role in causation. This was a popular question. It was generally well answered, with candidates showing adequate knowledge of the relevant law. Better candidates defended their own proposal for a coherent and normatively sound causation principle.

2. Relevance of motive. Very few candidates attempted this question.

3. Negligence. This was answered by only a few candidates. Answers were generally competent if somewhat narrow in focus.

4. Basic v specific intent. This attracted very few but very good answers.

5. Necessity. A number of candidates attempted this question. Generally the answers showed reasonable competence on the legal and doctrinal status of the defence. Better candidates attempted to locate necessity within the broader structure of defences and their theoretical underpinnings, such as the distinction between justifications and excuses.

6. Homicide and defences (in particular, murder and partial defences). This was a very popular question. Answers were generally good. Not many candidates, however, dwelled on the *mens rea* problem raised, or considered other homicide offences as fallback charges. Only the best candidates discussed the relevant subtleties of the loss of control defence, involving as yet unsettled questions of legal interpretation. A number of candidates wrongly treated separate events as a single point in time, and an even greater number of candidates used the *Woollin* test as the default standard for establishing the *mens rea* of murder, when it is only applicable to a rare kind of case.

7. Sexual offences (plus secondary and inchoate liability). This was a rather popular question. Answers were generally competent on the law. But most candidates showed a disappointingly poor grasp of the mechanics of the presumptions in the Sexual Offences Act.

8. Non-fatal offences against the person. This was also a fairly popular question. The basic issues were generally well spotted, and the order of analysis was generally sound. Better candidates focused on the points of contention raised, such as the nature of bodily harm and the nature and relevance of consent. Remarkably few candidates seemed aware of the difference in scope between s47 and s20 of the Offences Against the Person Act, an issue central to the first part of the question.

9. Complicity and inchoate liability. Very few candidates attempted this question.

CONSTITUTIONAL LAW

The standard of answers for this year's paper in Constitutional law was very high. The papers which received a first distinguished themselves by acute attention to the question, thoughtful and considered responses to that question and an ability to make and sustain an argument throughout the answer. The second class answers tended to engage to a lesser degree with

the question or fail to address some part of it. Overall though, the standard was impressive this year.

TAXATION LAW

The tax markers were impressed with the overall quality of scripts this year. The number of candidates was smaller than in previous years, but it was a strong group, with all 5 papers marked at 65 or better, and 1 awarded a first class mark. The candidates made very good use of relevant cases and statutory provisions. Those candidates who used the wider 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— but 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.2 (policy essay on inheritance tax) and Q.8 (employment tax problem) were the most popular, attempted by all of the candidates. Q.3 on tax avoidance was the least popular, attempted by none of the candidates. This was somewhat surprising, as in prior years this subject has been very popular. It may result from this year's question being focused more on the proposed statutory GAAR than the *Ramsay* line of cases. The problem questions were popular, with all the candidates (although not required to do so) attempting at least one and nearly all attempting both problems.

Q.1 on tax policy invited the candidates to assess the advantages and disadvantages of a high income tax rate as compared to a 'mansion' tax. Candidates were expected to consider issues including choice of tax base, progressivity, equity, economic incentives, liquidity, and valuation. Q.2 involved an assessment of inheritance tax and was attempted by all candidates. It required integration of tax policy literature and technical material for a complete answer. The answers were much better overall than answers to capital tax policy questions in previous years. Q.3 concerned tax avoidance and the proposed GAAR; it was not attempted. Q.4, on the capital taxation of trusts, although not frequently attempted, was dealt with well, indicating a good understanding of the technical rules and the effects of the 2006 changes. Q.5 on the employee/self-employed distinction and the deductibility of expenses was challenging, requiring a strong familiarity with both the cases and the statutory material. Part 1 of Q.6 required an assessment of the generosity of the CGT system, e.g. in comparison with income tax, on features including rates and annual exempt amounts, combined with a discussion of the relevant differences between capital gains and income. Part 2 concerned the role of motive in taxation, inviting candidates to consider the 'badges of trade' and explain why motive mattered for CGT and ITTOIA purposes. Although not frequently attempted, this two-part question was handled well in terms of both its policy and case law aspects.

Turning to the problem questions, the answers to Q.7 and Q.8 were generally very good, with the marks on Q.8 slightly higher on average than those for Q.7. Q.7 concerned the taxation of receipts and expenses of a self-employed taxpayer. The facts in Q.8 raised a broad spectrum of major and minor employment tax issues. The best answers analysed these issues in depth, making good use of the facts provided and drawing on the extensive case law to provide relevant and succinct advice.

ENVIRONMENTAL LAW

As in past years, the general quality of the answers was impressive. Students had clearly engaged with, and reflected on, the syllabus including the detail of the law. Excellent answers were those in which students addressed the question head on and displayed a mastery of the technicalities of the relevant areas of the law. Weaker answers were vaguer in their discussion of legal frameworks, less subtle in evaluation, and were more random in their discussion of legal detail. The engagement with the non-legal aspects of the syllabus (policy, social science understandings of environmental problems) was particularly pleasing.

MORAL AND POLITICAL PHILOSOPHY

As usual, the paper was divided into Part A (moral philosophy, 8 questions) and Part B (political philosophy, 4 questions). Candidates had to answer one question from each part, and the overwhelming majority chose two questions from part A.

The paper was generally well answered, with questions 3 (utilitarianism), 9 (liberty) and 11 (justice) the most popular. Every other question bar q. 7 (moral luck) had its takers. The main weaknesses in answers lay in writing too generally about the topic, rather than concentrating on, and building an answer around, the set question. The question on utilitarianism, for example, asked whether the apparent demandingness of the theory was simply due to human imperfection. The answers that excelled addressed the issues of (a) what demandingness might involve (knowledge? will? sacrifice?) and (b) which imperfections might count (fallibility? partiality?), and asked if the flaw lay with us or with the theory (or a bit of both). Similarly, q. 9 (liberty) on the distinction between negative and positive freedom required an examination of the tenability, and robustness, of the distinction, as well as an evaluation of the significance of such a distinction. Q. 11 (justice) required a focus on Rawls' theory of the veil of ignorance, and an analysis of whether it is the right way to go about assessing principles of justice.

EUROPEAN HUMAN RIGHTS LAW

43 candidates took this paper. There were 14 Firsts (32.5%); 26 2:1s (62%); 2 2:2s and 1 fail.

1 – Bankovic: The Bankovic question was very popular. Most students had a general sense of what was going on in Bankovic and Al-Skeini, though too few explained Bankovic's position on the divisibility of rights, and few properly set out the tests for control ultimately adopted by Al-Skeini. Excellent answers were able to draw upon the other case law of the Court to contextualize the Al-Skeini judgment.

2 - Proportionality: This was a popular question, but too few answers directed themselves to both parts of the question. Some students gave a suitable overview of the theory on proportionality, but then failed to explain how proportionality was used by the ECtHR. Conversely, some students explained the cases without grappling with the theoretical debates.

3 – The case against judicial review: Few answered this question, though the strong candidates answered it well. The question was designed to call upon theoretical material as well as the material taught by Murray Hunt on parliamentary engagement with human rights.

4 – Fair trial: This was answered fairly well and fairly frequently, though the weaker candidates avoided the question of hierarchy.

5a and 5b – Prisoner's rights and prisoner voting: Students who answered these questions tended to provide an essay which half answered the question on prisoner's legal status, and half answered the question on voting rights. This gave the impression that students were delivering prepared essays which were not tailored to the question being asked.

6 – Right to security: Few answered this question really well, but those that did do well were able to engage with both the theoretical and case material.

7 – Religion: The excellent answers to this question provided a thematic discussion of the case law.

8 – Inequality: The inequality question drew a large number of answers. It was competently handled – those who were vague in their discussions of the cases did less well, those who marshaled the case law in a detailed and structured way did better.

9 – Socio-Economic rights: There were a fair number of responses to this question. Answers that performed well located a detailed discussion of the cases within a theoretical overview of the distinction/similarity between civil/political rights and socio-economic rights.

10 – problem question. The problem question did not draw many answers. Excellent responses offered a clear and structured way of working through the question. Generally students needed to grapple in more detail with the nature of the expression and persons involved, drawing on the case law (especially the most recent Von Hannover decision). Some students went off-track by discussing issues related to hate speech and sexual orientation. Students who dealt clearly with the balancing between privacy and expression performed very well.

A general note on exam style: candidates should do everything they can to avoid the passive voice when they write at high speed. Invariably sentences that began in the passive voice ended in confusion. They were also a terrible waste of words. The most inventive use of the passive voice was to be found in the clause: "to this argument it could be retorted that …". But candidates preceded most of their substantive points with such mangled constructions as "it might be said to be argued that …". As a consequence, at least one third of the word count in such essays was superfluous to their argument.

Finally, there is a consistent failure to draw more explicitly upon academic material as well as case law. Some of the essays wrote as if the ideas were their own without referencing the academic sources where they came from. This was even more pronounced when students relied heavily on the academic outputs of their lecturers without acknowledging their source.

COPYRIGHT, PATENTS AND ALLIED RIGHTS

This paper was answered extremely well over all. (A higher than usual number of papers was second-marked in order to ensure that the first-marker was not being unduly generous. Bother markers were in full agreement that the standard was very high.) Particularly impressive was students' handling of the EU/EPC-dimension and combined doctrinal & theoretical analysis. In Part A (copyright) the most popular questions were 1, 2 and 4. The small number who attempted question 3 or 5 did so very successfully, demonstrating a detailed knowledge of the domestic and European case law, including cases not on the reading list. Answers to question 6 differed in focus and strength: the best engaged deeply with the quote, considering the nature of copyright as property and wider issues concerning the abusive use of rights. Among the weaker answers were some which used the question as a hook on which to hang a prepared essay on copyright duration. In Part B (patents) the most popular questions were 8, 9 and 11. Question 8 was in general handled well, though some focused their answer too narrowly on the medical field, and a small number failed to refer to that field. Question 9 attracted very good theoretical discussion, and question 11 some excellent doctrinal analysis.

PERSONAL PROPERTY

The paper was generally well done with most candidates turning in mid-2.1 standard papers. There were few outstanding papers, but equally few very poor papers. The problem questions were generally unpopular and a high proportion of candidates elected to do four essay questions.

Q 1: The most popular question of the paper and generally well done. Most candidates correctly identified Cochrane v Moore as the source of this possible rule and were able to give a good account of the case. The best answers not only discussed the 'exceptional cases' which involved symbolic delivery, but were also able to ask if these cases are genuine exceptions to the rule or merely examples of the courts stretching the elements of a 'delivery'.

Q 2: Another popular question. Most candidates were able to explain the difference between a claim in tort law and a vindicatory action. However, surprisingly few identified the main difference between conversion and the vindicatio, namely that strict liability is much wider with the former. This was the 'unfortunate consequence' alluded to in Weir's quote.

Q3: The question was generally well done by those who attempted it. It did attract some poor answers which discussed whether a chattel lease is a property right. However, most candidates realised that the question was not about chattel leases in particular, but any covenant relating to a chattel.

Q 4: This was also a very popular question. Most candidates who attempted this question limited their answer to a discussion of the OBG v Allan case. This is surprising as the question makes no mention of the case or the tort of conversion. The best answers were able to ask if 'transferability' was a workable test in relation to other areas of personal property law, such as the rules governing the creation and transfer of property rights.

Q 5: A fairly popular question and generally done well, although it attracted very few outstanding answers. Few candidates asked what Blackburn meant when he said that the need

for specific goods is '… founded on the very nature of things.' Those that did were able to explain the problems that we would run into (particularly in relation to third-party effect) if there was no such rule.

Q 6: Not attempted by many candidates and attracting some quite poor answers that just gave an account of the Armory v Delamirie line of cases. The better answers asked whether possession had a wider role, in particular whether the law recognises 'possessory rights'.

Q 7: Attempted by very few candidates. Answers were generally very good with most focusing on the difficultly of distinguishing between mixture and accession, and the problem of identifying a principal/subsidiary relationship between chattels. The best answers also explored the possibility of an underlying rule that could explain all three methods of acquisition.

Q 8: Generally well done. Candidates lost marks for failing to give sufficient detail of the cases they discussed, particularly the rescission cases. Many candidates (surprisingly) failed to identify Carl's possible BFP defence to Andrew's claim in conversion for the bank notes.

Q 9: The most popular problem question, it attracted answers of a mixed quality. Most dealt well with the delivery part of the question. However, many candidates lost marks for their discussion of transfer by deed and sale. Many assumed that the letter used by George was a deed, even though there is nothing in the question to suggest this. This was frequently followed by a confused account of the formality requirements for deeds. Many candidates did not identify that there was a possible transfer by sale as well.

Q 10: Attempted by only one candidate.

MEDICAL LAW AND ETHICS

The standard of scripts was generally satisfactory but weaker overall than previous years. There were also fewer outstanding scripts than previously. Despite some carefully worded questions, many candidates unfortunately offered prepared essays on the standard points of debate in response. This was particularly disappointing given the attention paid in the course to encouraging students to develop their own ideas and reasoned arguments to substantiate them. The use of the passive voice in these essays meant that it was unclear in many scripts whether the arguments presented were those of the candidate, or taken from the secondary literature. Candidates would be well-advised to take a more direct approach to expressing themselves when making an argument by clearly presenting their own position and offering reasons in support of it. Directness, however, should not be confused with merely presenting a string of position statements, as many candidates did. Unsubstantiated references to vague schools of thought ("pro-choice supporters", "the anti-euthanasia camp" and the like) also did little to help the quality of argument and analysis in many scripts. Such cursory references resulted in over-simplification of the range of views on controversial issues. Those few students who answered the questions asked, and demonstrated nuanced depth of analysis and excellent knowledge of the cases and secondary literature were rewarded accordingly.

COMMERCIAL LAW

General Observations

The result of the examination in Commercial Law was pleasing overall, with 13 First Class scripts out of a total of 29. With just a few exceptions, most candidates displayed a good to excellent understanding of the subject matter.

Question 1

This question could be understood in a variety of ways. It was possible to write a case comment on the *Harlingdon & Leinster* decision, and some candidates did this very well, showing that they had read the case very carefully indeed and were familiar with the factual and legal background. On the other hand, it was entirely possible to interpret the question to be about the *caveat emptor* principle and the extent to which the Sale of Goods Act in general, and s. 13 in particular, departs from it. The best answers discussed the case against the background of the Act and *caveat emptor*.

Question 2

This was a popular question, but candidates generally fell into the error of interpreting Art 2.2.4 of the UNIDROIT Principles of International Commercial Contracts to be a codification of *Watteau v Fenwick* (missing the important word 'such' in (2)). This shows again the importance of taking the time to read the question carefully! Nevertheless, there were some good answers discussing the rule in *Watteau* and whether it is appropriate in the modern law of agency.

Question 3

This question found few takers. The better answers discussed the quote in the context of the existing law - posing the question whether, given that it is now common practice to register negative pledge clauses in floating charges, and given the fact that it is now highly unusual for a charge instrument *not* to contain a negative pledge, the presumption outlined by Wright J should now be reversed. It was just about permissible to turn the question into a wider question on notice filing, but this did not really permit the candidates who did this to engage with the quote in any detail.

Question 4

This question invited a general discussion of the case law relating to the characterisation of purported sales of receivables, but it was also appropriate to discuss extended retention of title clauses. It was surprising that only a minority of candidates contrasted the English law with Art 9 of the Uniform Commercial Code. The best answers identified the two possible extremes: a fully functional approach on the one hand, ignoring the terms of the transaction entirely and looking solely at the aim pursued by the parties, and a formalistic approach on the other, looking exclusively at the wording of the instrument, before then identifying the position of English law between these two extremes. A number of candidates successfully contrasted the English approach to characterising sales with the English approach to deciding whether a charge is best classified as fixed or floating.

Question 5

Most answers to this question turned very quickly to a discussion of notice filing and the recent Law Commission proposals, without really engaging with *Dearle v Hall*. Better answers looked at *Dearle v Hall* in its historical context, identified the thinking behind the rule and then went on to consider the extent to which the rule was able to function in modern receivables financing, discussing the reform proposals only at the end.

Question 6
This was a popular question; however, it was surprising that there were few answers that were entirely correct, particularly given the fact that it raised very few, if any, difficult issues. Thus, very few candidates identified the relevance of the conditional sale of 'Ram at Dusk', or the *Employers' Mutual v Jones* issue raised by the sub-sale of 'Sheep in the Moonlight'. It was also surprising that very few candidates noticed that taking possession of paintings in reduction of an existing overdraft is unusual, so that there should have been some discussion of whether this transaction could be described as being 'in the ordinary course of business'.

Question 7
This was a straightforward implied terms question, but it did require solid background knowledge of general contract law and of the Unfair Contract Terms Act 1977 in particular. As the question involved a sale and a sub-sale, it was particularly important to identify who was suing whom, and only a minority of candidates attempting the question did this. Most candidates did, however, spot the relevance of WonderChem agreeing with Slug Ltd to use a nitrogen or potassium base. When it came to the exclusion clauses, many candidates, possibly because they assumed that exclusion clauses were only relevant when it came to the Contract Law paper, did not analyse them properly; even if they did, many jumped to the conclusion that Boris was or was not a consumer, without considering the arguments for and against in any detail.

Question 8
The better answers to this question identified why ownership of the sunflower oil was relevant (namely that Gussie's insurance company needs to know whom to pay). Many candidates missed the significance of the delivery order (and the fact that it was issued by Travers). Other than that, most candidates managed to produce a reasonable analysis of how s. 20A would be applied to this sort of situation.

Question 9
This was a complicated question and, unsurprisingly, there was no 'perfect' answer. Still, there were a number of valiant attempts that were rewarded accordingly.

As always with questions of this kind, it was key to discuss the assets separately, and most candidates appreciated this. They were then able to discuss the issues arising in their proper context. It was slightly disappointing that most candidates shied away from the most difficult issues, in particular the attempt to create a fixed charge over book debts by appointing one of the chargor's employee's as the chargee's agent.

Question 10
Key to this question was that it was not entirely an agency question but also raised some implied terms issues. It was also important to consider what Prometheus Ltd would want to achieve in each fact scenario - a number of candidates made the mistake of launching straight into a discussion of *Armagas v Mundgas* and *First Energy*. Few candidates discussed the relevance of the forged letter, and the extent to which case law on office stationary can be applied to digital document templates. The second part of the question, although it raises issues reminiscent of *Said v Butt*, is clearly not on all fours with that case, and this was appreciated by most candidates.

CRIMINOLOGY AND CRIMINAL JUSTICE

34 candidates sat the paper, including three DLS students. Six candidates were awarded a First Class mark, and these were scripts that engaged convincingly with the literature and developed an answer to the precise question. Two candidates attained marks in the 2(2) range, and the remainder were in the 2(1) class. As in previous years, some of the weaker candidates did not bring sufficient detail to their answers, and were unable to draw on research findings or to develop persuasive arguments.

Every question on the paper attracted a few answers. Most popular were Question 7 on policing, where the better candidates showed good knowledge of the literature and a critical awareness of impending changes, and Question 12 on the role of victims (some candidates failed to develop their answer so as to deal with all 3 situations required by the question). Question 6 on gender and race attracted some thoughtful answers, whereas some candidates embarked on an answer to Question 8 on sentencing guidelines apparently without much knowledge of how the English legislation 'binds' sentencers. In general, there is room for improvements in essay technique, in using research findings, and in developing rigorous arguments.