

**FHS JURISPRUDENCE**  
**DIPLOMA IN LEGAL STUDIES**  
**(MAGISTER JURIS)**

**Examiners' Report 2013**

**PART ONE**

**A. Statistics**

**1. Numbers and percentages in each class/category**

The number of candidates taking the examinations was as follows:

	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>
FHS Course 1	198	182	195	186	205
FHS Course 2	31	32	33	27	27
Diploma	32	31	32	32	17
Magister Juris	20	11	18	18	34

**Classifications: FHS Course 1 and 2 combined**

<b>Class</b>	<b>2013</b>		<b>2012</b>		<b>2011</b>		<b>2010</b>		<b>2009</b>	
	<b>No</b>	<b>%</b>								
I	37	16.15	45	21.03	42	18.42	35	16.43	44	18.96
II.i	180	78.60	158	73.83	166	72.81	159	74.64	164	70.69
II.ii	8	3.49	8	3.74	15	6.58	15	7.04	23	9.91
III	2	0.87	0		3	1.32	0		0	0
Pass	0		1	0.46	1	0.44	0		0	0
Honours*	1	0.43								
Fail	1	0.43	2	0.93	1	0.44	4	1.87	1	0.43
<b>Totals</b>	<b>229</b>		<b>214</b>		<b>228</b>		<b>213</b>		<b>232</b>	

\* 'declared to have deserved Honours'

**Classifications: FHS Course 1**

Class	2013		2012		2011		2010		2009	
	No	%								
I	30	15.15	34	18.68	24	12.31	27	14.51	34	16.58
II.i	156	78.78	138	75.82	151	77.44	143	76.88	147	71.70
II.ii	8	3.49	7	3.84	15	7.69	12	6.45	23	11.21
III	2	1.01	0		3	1.54	0		0	
Pass	0		1	0.54	1	0.51				
Honours*	1	0.50								
Fail	1	0.50	2	1.09	1	0.51	4	2.15	1	0.48
<b>Totals</b>	198		182		195		186		205	

\* 'declared to have deserved Honours'

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

Class	2013		2012		2011		2010		2009	
	No	%	No	%	No	%	No	%	No	%
I	7	22.50	11	34.37	18	55	8	29.62	10	37
II.i	24	77.40	20	62.50	15	45	16	59.25	17	63
II.ii	0		1	3.12	0		3	11.11	0	
III	0		0		0		0		0	
<b>Totals</b>	31		32		33		27		27	

### Results: Diploma in Legal Studies

10 candidates (31.25%) were awarded the Diploma with Distinction. 22 candidates (68.75%) passed.

#### 2. Vivas

Vivas are no longer used in the Final Honour School. Vivas can be held in the Diploma in Legal Studies, but none was held this year (1 in 2012).

#### 3. Marking of scripts

Not all scripts are double marked. 607 scripts were in fact second marked (29.50 %), 306 before the first marks meeting, and 301 (72 where the first marker's mark was just below a borderline and 229 where the first marker's mark was four marks or more below the candidate's average mark) between the two meetings. This total compares with 32% in 2012, 31 % in 2011, 37% in 2010 and 33.61% in 2009.

### B. New examining methods and procedures

1. Examining methods were substantially unchanged this year. The procedures for ensuring the accuracy of marking were the same 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 markers comparing their average marks and distribution of candidates 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. As in 2012 and 2011, second marking of all scripts where the first marker had given a mark ending in 9 (69, 59, 49) or a mark below 40 also took place before the first marks meeting.

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. The Instructions sent to markers requires that if a mark is, exceptionally, to be lowered, the reason must be recorded on the mark sheet. This requirement was strictly enforced, so that in the absence of an explanatory note the first mark given was the one awarded.

As noted above, all scripts where the first marker had given a mark ending in 9 (69, 59, 49) or a mark below 40 took place before the first marks meeting. In addition, between the two marks meetings of the Board, borderline scripts with marks ending in 8 and some of those ending in 7 ( - those where the first marker's overall mark for the script ended in 7 but the marker had identified one or more of the candidate's answers on the script as being in the class above the borderline) were second marked if a higher mark in that paper might affect the candidate's overall result.

2. A new examining method will be used in 2014, when in place of a three-hour examination in Jurisprudence candidates will be required to write an essay of between 3,000 and 4,000 words (to be submitted at the end of the summer vacation following the candidate's second year) and sit a two-hour examination. The 2012-13 Board was responsible for preparing and issuing the Examiners' Edict relating to the Jurisprudence essays and supervising the setting and issuing of the essay titles. Although the Jurisprudence essay titles are set by a far larger team than that which is responsible for any of the other examination papers the process for drafting and perfecting them proceeded smoothly.

### **C. Examining methods, procedures and conventions**

1. In 2011-12 the Board was of the opinion that a higher percentage of candidates in Law deserved to be awarded first class degrees, and issued a note to all setters and markers with the goal of advancing that end. The 2012-13 Board shared the opinion of its 2011-12 predecessor and issued a similar note. The Board also made a change to the Instructions issued to markers in order to emphasize that markers are not obliged to give a script an overall mark that is simply the arithmetical mean (rounded up if ending in a decimal of .5 or higher) of the marks given for each question answered. In the event, however, the percentage of first-class degrees achieved in summer 2013 was significantly lower (16.15%) than in the previous year (21.03%).

2. As in previous years, responsibility for setting and checking each paper, and marking the scripts, is allocated to teams of up to four members in larger subjects and up to three members in 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 (as noted in C.1, above) that the proportion of candidates achieving first-class degrees, this year, fell to 16.15%, considerably below the level achieved last year (2012: 21.03%). This proportion was also below the levels achieved in the previous four years (18.42% in 2011, 16.43% in 2010, 18.96% in 2009 and 17.23% in 2008). The proportion of upper seconds increased to 78.60%, a figure above the proportion of upper seconds in the previous 5 years (2012: 73.83% , 2011: 72.81%, 2010: 74.64%, 2009: 70.69%, and 2008: 72.27%). The proportion of candidates awarded lower seconds was marginally lower in 2013 (3.49%, 2012: 3.74%), but there was a small increase in the number of candidates obtaining results below this level. There was no change in the Examination Conventions between 2012 and 2013, so the explanation for the changed proportions must lie elsewhere.

## **PART TWO**

### **A. General comments**

#### **1. Second marking**

The procedures for second marking were identified in B.1, above.

##### *Resolving differences*

Where a script was second marked, first and second markers were instructed to discuss their marks and, wherever possible, agree a mark. No problems with this were reported to the Board.

##### *Statistics on second marking and agreed marks*

As noted in A.3 above 607 scripts were second marked in 2013, a proportion (29.5%) that is lower than the overall proportion of scripts second marked at some stage in 2012 (32%) and 2011 (31%). The difference is largely attributable to fewer scripts being second marked as part of controls for consistency *before* the first marks meeting. Clearly how many scripts are second marked at this stage (*before* the first marks meeting) may vary in accordance with the number of people in each marking team and whether their average marks and profiles are found to be diverging during the marking process, but the Board has not investigated whether these possibilities are the reason for the difference.

The scripts that were second marked can be divided into four groups. Second markers marked scripts without knowing the mark that the first marker had given, but were told the reason why the script had been identified for second marking (e.g. that the first mark was 'four or more below').

- (i) *Checks to ensure consistency between markers before the first marks meeting.*

In total, 306 scripts (14.85%) were second marked on this basis. This compared with 362 (17.92%) in 2012, 351 (16.36%) in 2011 and 420 (20.86%) in 2010).

This year there were 12 scripts with marks below 40 (0.58%) (compared with 16 (0.79%) in 2012, 14 (0.65%) in 2011 and 21 (1.04%) in 2010).

- (ii) *Scripts which had been marked 4 or more below the average mark for that candidate.*

229 scripts (11.11%) were second marked on this basis between first and second marks meetings (compared with 231 scripts (11.54%) in 2012, 241 scripts (11.24%) in 2011 and 196 scripts (9.73%) in 2010).

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

As noted in B.1 above, all scripts where the first marker had given a mark ending in 9 (69, 59, 49) were second marked before the first marks meeting. (The number of scripts in this category forms part of the number recorded in (i), above.) The Board also, after reviewing candidate's marks at the first marks meeting, sent out for second marking borderline scripts (that is all of those with marks ending in 8, and those with marks ending in 7 where the first marker had identified one or more of the candidate's answers on the script as being in the class above the borderline) where a higher mark in that paper (and no more than one other paper) might affect the candidate's overall result and the script had not already been second marked before the meeting.

As shown by the table below, 72 borderline scripts were sent out for second marking after the first marks meeting on this basis (compared with 53 in 2012).

<b>First Mark</b>	<b>Number of Scripts</b>	<b>Number agreed in Higher Class</b>	<b>% agreed in Higher Class</b>
<b>68</b>	<b>40 (32)</b>	<b>11 (12)</b>	<b>27 (38)</b>
<b>67</b>	<b>17 (13)</b>	<b>7 (6)</b>	<b>41 (46)</b>
<b>58</b>	<b>12 (6)</b>	<b>2 (1)</b>	<b>16 (17)</b>
<b>57</b>	<b>3 (2)</b>	<b>1 (0)</b>	<b>33 (0)</b>
<b>48</b>	<b>0 (0)</b>	<b>0 (0)</b>	<b>0 (0)</b>
<b>47</b>	<b>0 (0)</b>	<b>0 (0)</b>	<b>0 (0)</b>

For the purposes of comparison the figures for 2012 are given in brackets.

21 scripts were raised to a higher class (29.16% of those sent out at this stage) compared to 19 (35.84%) in 2012, 21 (21.58%) in 2011, (14.07% in 2010 and 18.43% in 2009).

- (iv) *Scripts second marked after the first marks meeting to assist with the award of prizes.*

Two of the 72 borderline scripts included in the above table 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).

## **2. Third marking**

Third marking may be used in exceptional cases, but this year the Board did not send any scripts for third marking (7 scripts were third marked in 2012).

## **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 cases where medical or other special factors had been drawn to the Board's attention, and in some of these the Board decided that it was appropriate to classify a candidate otherwise than in accordance with the conventions, or to raise a mark.

This year's Examiners were also empowered to re-consider the classification of a candidate where special information was forwarded to them only after the final meeting.

## **4. Prizes**

Where a prize is available for a particular subject the decision as to which candidate should be awarded that prize was taken by members of the team marking the subject concerned. The winners of the prizes that take into account performance across more than one subject were decided by the Examiners. One difficulty that emerged at a late stage this year is that there is no straightforward and fool-proof method of discovering which candidates are eligible for the prize for the best performance by a senior status candidate. (The Chairman resorted to asking each College to identify eligible candidates by name, and the list of names so acquired was then converted into a list of candidate numbers.)

## **5. Examination schedule**

The Examination Schools were responsible for producing the timetable. Unless the examination period is extended it is not possible to schedule the papers so that no candidate has more than one examination on any day. This year 24 candidates had two papers on one day, which was somewhat fewer than in the last two years (32 in 2012, 31 in 2011).

Markers in two subjects that were timetabled for the morning and afternoon of the same day raised the question whether there should be a convention that popular pairings of

options should not be timetabled on the same day, or a convention that subjects that were thought to be particularly onerous by students should not be timetabled on the same day. The Board is not inclined to recommend the adoption of any such convention and is of the opinion that it is better to set a timetable that aims to meet the needs of those candidates who have special requirements (e.g. some candidates have medical conditions which mean that they should only sit one examination each day) and that otherwise aims to minimise the number of candidates who must sit two papers on a single day.

The Board also briefly discussed the question whether it would be better for candidates to have their final examinations spread over a longer period – currently most candidates take six of their nine papers on six consecutive days. The Board’s opinion is that this question raises broader issues than it would be appropriate for a single year’s examiners to seek to resolve.

## **6. Medical certificates, dyslexia/dyspraxia and special cases**

Medical certificates or similar documents were forwarded to the examiners in respect of 29 candidates (compared with 16 in 2012, 59 in 2011, 34 in 2010, 31 in 2009 and 25 in 2008). This represents a rise on the number received in 2012, but to a level below that seen in 2011. In addition, three candidates further were certified as having specific learning difficulties, such as dyslexia or dyspraxic. (The certificates or similar documents related to two candidates sitting for the Diploma in Legal Studies and to 27 FHS candidates.)

The examiners have not sought to calculate how many candidates sat one or more papers in a special room in the Examination Schools or in college. But in the case of 18 candidates (including those certified as having specific learning difficulties) the documents forwarded to the examiners reported that adjustments had been made in respect of all or part of the examination.

In the FHS, medical certificates and similar documents relating to 18 candidates were forwarded to the examiners for such action as the Examiners might think suitable under clauses 11.8-11.10 of the Regulations for the Conduct of University Examinations. (More than one certificate was received for some of these candidates, and in some cases the certificate was *also* forwarded to explain adjustments already made.) In the case of two of these 18 candidates the eventual classification of the candidate was affected by the certificate, and in the case of one further candidate the examiners decided that it was appropriate to amend the mark achieved in a particular paper. The Examiners also had to consider one case under clauses 11.2 – 11.7 of the Regulations, and in this case the medical certificates were highly significant.

In every case where a document had been sent by the Proctors to the Board, the Chairman reported its contents, in an anonymised form, to the Board so that it could be taken into account when classifying the candidate’s performance. The record of the decisions taken forms an appendix to the official copy of the Minutes of the Board’s final meeting. In reaching its decisions the Board paid careful attention to guidance on “The use of medical and other certificates in examinations and assessment”, found in the “Policy and Guidance for Examiners and others involved in University Examinations Examinations, Michaelmas Term 2012”, Annexe B.

## **7. Materials in the Examination Room**

No problems with candidates sitting in the Examination Schools being given outdated materials, or the like, were noted this year, though the examiners had to deal with a case where there was a delay in providing the right materials to a candidate sitting a paper separately.

The list of statutory materials is included in Appendix 2.

## **8. Legibility**

This year, typing was requested in respect of 10 candidates for a total 13 scripts. This compares with 12 for 22 scripts in 2012, 9 for 13 scripts in 2011, 25 for 43 scripts in 2010 and 16 for 51 scripts in 2009. Fortunately, the difficulties noted by last year's Chairman with candidates appealing against requests for typing did not recur this year

## **9. Absent answers, breach of rubric and short answers**

In accordance with the practice adopted in 2011 and 2012, 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.

This year's examiners had to consider what adjustment, if any, ought to be made to the mark of a candidate who failed to follow the rubric on a paper which specified that a minimum number of problem questions had to be answered. The examiners consider that it would be helpful for a standard adjustment for such a breach to be promulgated (at least for the common case where candidates are required to answer four questions of which at least two are problem questions and a particular candidate only answers one problem question), rather than each year's examiners having to consider the matter afresh.

## **10. Misunderstood questions**

Guidance was again given to markers, as in previous years, about how they should treat misunderstood questions. This instructed the marker 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 providing the markers with the opportunity to assess how serious the misunderstanding and ensure that it, and similar misunderstandings, could be treated in a similar way across the marking team.

## **11. The computerized database**

The examiners did not experience any problems with the computer software used to record marks and the mark sheets used by the examiners at their marks meetings. Last year's examiners reported that "the databases remain in need of modernization", and we have not been told that any modernization has occurred.

## 12. External Examiners

This year we had the valuable assistance of Dr. J. Stanton-Ife of King's College, London (for his second year) and Professor P. Mitchell of University College, London (for his first year). They were involved in all the stages of the process, and provided much valuable advice: we are very grateful to them. This year, as last, the external examiners each looked at ten scripts on the 2.1/2.2 borderline in their specialist subjects. The external examiners' reports to the Vice-Chancellor about their views of the examination process are attached as Appendix 1.

## 13. Thanks

Successive Boards of Examiners have reported that the efficient and tireless work of our Examinations Officer, Mrs. Julie Bass, is crucial to the examinations process. We agree wholeheartedly. The current process depends on her dedication and expertise, and we are very grateful for all the work that she did to ensure that the process flowed smoothly. In addition to the examiners, 58 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:

	2013				2012				2011				2010			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	15	15	15	14	15	18	19	19	14	17	10	9	16	18	11	11
II.i	75	79	81	77	64	76	74	76	63	75	88	79	66	76	77	77
II.ii	3	3	5	4	3	3	4	4	6	7	9	8	4	5	8	8
III	1	1	1	0.9							3	3				
Pass					1	1					1	1				
Fail			1	0.9	1	1	1	1	1	1			1	1	3	3
Honours*			1	0.9												
<b>Total</b>	94		104		84		98		84		111		87		99	

\* 'declared to have deserved Honours'

The gender breakdown for Course 2 was:

	2013				2012				2011				2010			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%												
I	3	30	4	19	5	38	6	32	5	45	13	59	1	17	7	33
II.i	7	70	17	80	8	62	12	63	6	55	9	41	5	83	11	52
II.ii							1	5							3	14
III																

Pass																
Fail																
<b>Total</b>	10		21		13		19		11		22		6		21	

The gender breakdown for Course 1 and 2 combined was:

	2013				2012				2011				2010			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	18	17	19	15	20	21	25	21	19	20	23	17	17	18	18	15
II.i	82	78	98	78	72	74	86	74	69	73	97	73	71	76	88	73
II.ii	3	3	5	4	3	3	5	4	6	6	9	7	4	4	11	9
III	1	0.9	1	1									0		0	
Pass					1	1					1	0	0		0	
Honours*			1	1												
Fail			1	1	1	1	1	1	1	1	3	2	1	1	3	3
<b>Total</b>	104		125		97		117		95		133		93		120	

\* 'declared to have deserved Honours'

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

	2013	2012	2011	2010
Roman Law (Delict)	2	7	6	7
Comparative Law of Contract	5	6	11	6
Criminology and Criminal Justice (previous to 2012 known as Criminal Justice and Penology)	22	32	40	39
Public International Law	42	37	43	46
History of English Law	4	4	10	8
International Trade	14	20		11
Family Law	46	44	58	54
Company Law	26	27	31	30
Labour Law	21	25	32	30
Criminal Law	10	7	6	8
Commercial Law (previous to 2011 known as Principles of Commercial Law)	23	31	11	21

Constitutional Law	10	7	6	7
Taxation Law	13	6	14	10
Environmental Law	5	9	8	10
Competition Law and Policy	30	1	39	37
Copyright Trade Marks & Allied Rights	2		12	
European Human Rights Law	26	39	34	29
Personal Property	20	22	17	25
Copyright, Patents and Allied Rights	40	30	12	2
Moral and Political Philosophy	24	27	24	
Commercial Leases*			6	7
Patents, Trade Marks & Allied Rights*			1	20
Medical Law and Ethics	96	75	55	40

\* Not available in 2013.

## 2. Numbers writing scripts in Diploma in Legal Studies

	2013	2012	2011	2010
Contract	24	23	26	25
Tort	20	18	18	24
European Union Law (previous to 2009 EC Law)	6	10	11	8
Comparative Law of Contract	6		6	9
Company Law		7	4	6
Jurisprudence	4	3	6	1
Commercial Law (previous to 2011 known as Principles of Commercial Law)	2	1		3
Public International Law	3	9	5	5
Criminal Law	2	5	1	3
Copyright, Trademarks and Allied Rights	1		4	
Trusts	3		1	1
International Trade				
Labour Law	3	1	1	1
History of English Law	1		1	
Copyright, Patents and Allied Rights	1	1		
Constitutional Law	8	5	6	4
Competition Law and Policy			2	2

European Human Rights Law	7	5	2	2
Criminology and Criminal Justice (Criminal Justice and Penology <i>before</i> 2012)	3	3		1
Administrative Law			1	1
Medical Law and Ethics			1	
Roman Law (Delict)	2	1		
Land Law		1		

### 3. MJur candidates taking FHS papers

	2013	2012	2011	2010
Jurisprudence				
Contract	6	3	6	6
Tort		1		
Land Law				
Family Law	2			
Comparative Law of Contract				
Public International Law	2	2	1	2
European Community Law	1			
International Trade				
Company Law	4	5	5	8
Principles of Commercial Law			2	
Constitutional Law			1	
Trusts				2
Administrative Law	1		1	
Labour Law				
Criminal Law				
Copyright, Trademarks and Allied Rights				
Ethics				
European Human Rights Law	2		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		7	8	7	22	45	7	4	1			229
Contract		5	15	3	16	46	5	8	1	0	0	229
Tort		5	10	13	28	32	7	4			1	229
Land Law	0	6	10	9	21	36	10	5	1	1	0	229
Trusts		5	11	6	27	42	3	5		0	1	229
Admin. Law		4	10	8	29	39	7	3			1	229
EU Law	0	6	9	1	24	42	3	13		1	0	229
Comparative Law of Contract		20	20			40		20				5
Criminology & Criminal Justice (previous to 2012 known as Criminal Justice & Penology)		5	19	10	24	24	19					22
PIL	2	5	10	5	27	44		7				42
History of English Law		33		67								4
Family Law		9	16	5	33	28	7				2	46
Labour Law		14	10	5	48	24						21
Company Law		8	13	13	38	21	4				4	26
Criminal Law				10	20	60			10			10
Commercial Law (previous to 2011 known as Principles of Commercial Law)		5	15		30	35	5	10				23
Constitutional Law		20	10	30		40						10
Taxation Law		33	8	8	17	33						13
Roman Law (Delict)		50	50									2
Environmental Law		20	20		40	20						5
Copyright, Patents and Allied Rights		8	15	3	43	25	8					40
European Human Rights Law		13	33	13	33	4					4	26

Personal Property		15		10	40	35						20
Competition Law and Policy		7	14	11	36	32						30
Medical Law and Ethics		7	13	5	33	33	8	2				96
Moral and Political Philosophy		14	14		27	32	9	5				24
International Trade		14	14	14	21	21		14				14
Copyright, Trade Marks and Allied Rights			50			50						2

#### **D. Comments on papers and individual questions**

These appear in Appendix 3

R. Bagshaw (Chairman)  
 J. Gardner  
 B. Lange  
 G. Loutzenhiser  
 P. Mitchell (external)  
 D. Nolan  
 E. Peel  
 J. Stanton-Ife (external)  
 N. Stavropoulos  
 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

The Vice-Chancellor  
c/o Mrs Sally Powell, Assistant Registrar  
University of Oxford  
University Offices  
Wellington Square  
OX1 2JD

10<sup>th</sup> July 2013

Dear Vice-Chancellor

### **Faculty of Law FHS/MJur/Diploma in Legal Studies 2013**

I acted as the external examiner for the above courses. The following report is based on my scrutiny of the examination question papers, my attendance at the examiners' classification meetings, and my reading of a sample of examination scripts.

I have no hesitation in confirming that the University has been applying appropriately high academic standards in the assessment of these courses. There was abundant evidence of candidates' achievements being measured rigorously and fairly, and the standards for classification were clearly consistent with standards applied at comparable universities.

Several features of the examination process stood out. First, the clarity and simplicity of the classification conventions made the meetings smooth and efficient. There is always a temptation to tinker with examination rules, but, based on their application in the process I observed, the

current conventions would be difficult to improve on. Second, the Chairman of the Board demonstrated a mastery of the regulations, combined with an impressive level of preparation, which meant that issues were addressed with accuracy and confidence. Third, the meetings were conducted with a professionalism and focus that would be envied by many other institutions. All examiners were given ample opportunity to contribute their views on difficult or controversial questions, but discussions never descended into generalised debates or arguments. Finally, I would praise the administrative support provided, which (in my direct experience of it), was invariably prompt, efficient and skilful.

There are two broader issues which might need further consideration. The first relates to the examinations timetable. As you will know, there is a long-standing policy – I might even say a tradition - of holding all the final examinations for law within a two week period. I was not entirely convinced that this timetabling method allowed candidates the best opportunity to show their abilities, because it clearly has a tendency to reward candidates with the physical and mental stamina to withstand daily examination sittings. If candidates had more time between examinations (as they do, for instance, at UCL), it seemed to me that they would be better placed to demonstrate the creativity and critical thinking that the University rightly prizes.

The second issue concerns reliance on markers who are not University post-holders (and was an issue discussed in the examination meeting). I was not troubled by reliance on such markers – indeed, I think it is highly desirable to have assessment conducted by those who have been involved with teaching the course. It may be helpful to the Faculty’s continuing discussions on this issue to make clear that in the University of London we regularly have examination scripts marked by teaching fellows, although, of course, we routinely double-mark all examination scripts so the comparison is not exact.

As I hope is clear from this report, I was very favourably impressed by all aspects of the examination processes for these courses.

Yours sincerely

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The Vice-Chancellor, University of Oxford

18 September 2013

Dear Vice-Chancellor,

**External Examiner's Report 2013: 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.

Prior to the examinations I was sent a complete set of examination papers and regulations to inspect. I formed the impression that the examinations were lucidly written, fair and challenging.

I attended the two marks meetings in July. As was the case last year, 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. Preparation prior to the meetings on the

part of the Chair and administrative staff was also most thorough and the beneficial effects clear.

One new feature of the examination process this year is the introduction of a compulsory piece of coursework for all students as part of their compulsory Jurisprudence (i.e. Philosophy of Law) course. The effects of this addition remain to be seen as the first group of students to be examined this way will be the cohort of 2014. For my part, I think this is a welcome addition to the assessment of the Oxford undergraduates. The writing of a long, discursive essay outside of the examination hall will allow students to display deeper skills of argument. In short I believe that this change to the assessment will enhance the Oxford degree and benefit the students.

I remain a little uneasy about the fact that only a subset of the examination scripts is double-marked internally. I do, however, think the safeguards in place (double marking of scripts falling sufficiently far below a student's average mark and so on) are robust and that one can as a result be confident about the integrity and fairness of the system as a whole. Moreover, many institutions that do double mark all scripts do not insist on blind double marking, perhaps for reasons of cost, which I believe considerably waters down the benefit of comprehensive double marking. The Oxford system, I suspect, is superior to such a compromised double-marking system, where there is a danger of the first marker overinfluencing the second marker.

(c) Classification Conventions

The FHS/DLS classification conventions are clear and well applied.

(d) Comparability of Standards

As was the case last year, the standards of the Oxford examination are very high indeed. I do not believe standards are higher anywhere else 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

Some discussion took place in the meetings I attended of dangers posed by very inexperienced part-timers, something that needs to be taken seriously especially in a system in which some examination scripts are marked once only. I understand that some thought is to go into this problem over the next year, perhaps special arrangements for support may be given in future years to such markers by the various heads of the discrete marking areas.

In general, I have formed a very high impression of the examination process at Oxford in my two years as an external examiner. I believe that if the same care, thought and attention to detail is deployed in future years as have been on display in these two years, the undergraduate degree and its assessment will remain in very good health. .

Thank you

Yours sincerely

John Stanton-Ife

# Appendix 3

## REPORTS ON INDIVIDUAL PAPERS

### JURISPRUDENCE

Many themes of examiners' reports past can be reprised. As usual, a significant number of candidates had apparently arrived at Schools equipped with ready-made answers to questions they hoped to find on the exam paper, such as 'Do we have a prima facie moral obligation to obey the law?', 'Should morality be enforced?' and 'Who is the winner, Hart or Dworkin?' These candidates scanned the paper for questions that vaguely resembled those they had come ready to answer. They then wrote their ready-made answers with scant regard to the question asked. Of this the examiners took a dim view. However well-crafted a ready-made answer might be, its air of quality will not compensate for a lack of detailed attention to the specific question asked.

However there were signs of growing creativity at the top end, with several of the best candidates making unusually detailed use of legal materials, grappling with tricky questions that they cannot possibly have anticipated, showing detailed critical appreciation of particular propositions found in the literature, and just occasionally venturing novel lines of argument.

As usual, candidate interest was unevenly spread across the questions. The least popular, attracting only rare answers, were question 1 (about the compatibility of Kelsen's doctrine of the Basic Norm with Hart's doctrine of the Rule of Recognition); question 10 (about lawyers' supposed fixation with process); and question 12 (on whether there can be law without law-making institutions). The unpopularity of questions 10 and 12 may have been owed to the way they were asked, since several candidates revealed in worse answers to other questions that they could have written better answers to one or other of these.

On the other hand, questions 3, 4a, 6, 8, 9, 11, 13 and 14 were all very popular, accounting between them for the overwhelming bulk of candidate effort. The large number of answers to each of these makes it possible to offer the following comments on how they were handled.

Question 3 (on paternalistic laws): Few candidates gave enough attention to the first part of the question ('What is a paternalistic law?') Most gave a definition without discussion of alternatives. Some gave a slack or incoherent definition, sending their essays down the wrong path. In some cases the definition fluctuated (without explanation) as the answer proceeded. A substantial minority could not distinguish, and a smaller minority did not even try to distinguish, legal paternalism from legal moralism, even though Hart defended the former and objected to the latter. It is possible that Hart's defence of paternalism is, as Lord Devlin argued, a Trojan horse that can be adapted to enable a defence of moralism. But Devlin's argument clearly presupposes a distinction between paternalism and moralism. It does not license the collapse of the two ideas.

Question 4a (on whether coercion and/or authority are essential to law): Only the very best candidates noticed that the word 'essential' needed a lot of preliminary attention. Many swung blithely between questions about the nature of law and questions about motivating obedience to law, without noticing that it is a very tricky job to explain how the two relate. Candidates often used the 'coercion' part of the question to review Hart's critique of Austin;

much more rarely the discussion moved on to Raz's 'society of angels' thought-experiment, or Finnis's doubts about it. On authority, candidates often had less to say; few seemed to be aware that this is one of the main issues on which the debate between 'exclusive' and 'inclusive' legal positivists is focused.

Question 6 (on the justification of conscientious disobedience) attracted quite a few answers that were too general, and discussed the morality of obedience and disobedience more generally. Some were clearly writing pre-prepared answers. Better answers were narrow and attempted to explain the sense in which conscientious objection is conscientious, and why conscience matters. Many candidates emphasised personal autonomy, but few explored the relationship between autonomy and integrity, and few were able to bring out with any clarity the puzzle to which the second part of the question related (viz, that people who want to keep their own hands morally clean may be in some way selfish, because they care less about the hands of others).

Question 8 (on punishment) was most often treated as an opportunity to compare the rival 'textbook' theories of punishment. Many who treated the question that way thought, not unreasonably, that retributivists might be the most likely textbook theorists to insist on fair trials, while non-retributivists might be less interested. The better candidates realised that things are not so simple, and the very best candidates noted that one might want fair trials for reasons relatively independent of who ends up being punished under them, and hence relatively independently of whether one is a retributivist or a non-retributivist (just as one might want fair procedures in administrative law for reasons relatively independent of the results they yield).

Question 9 (on the proper point of view for jurisprudential inquiry) was taken as an opportunity by many to write what they knew about Finnis, with varying degrees of success. The best answers problematized the quotation by noting that 'point', 'objective', 'value' and 'significance' are not synonymous, and that there are deep problems about deciding who qualify as the relevant people when we talk about 'the people who ... engaged in' legal activities, practices, etc.

Question 11 (on moral reasoning by judges) was started on the wrong basis by many candidates, who thought it must somehow be the big Hart v Dworkin question. Those who thought that Dworkin would favour moral reasoning by judges were then naturally hard-pressed to find any way in which Hart would disagree; those who thought Hart would favour moral reasoning by judges were equally hard-pressed to find any dissent from Dworkin. Those who did better gave Hart and Dworkin only the lesser roles that they deserved. The best distinguished between cases in which judges might be forced by legal indeterminacies to fall back on moral reasoning, and other cases in which doing so would involve going against the law.

Question 13 (on connections between law and morality) was answered by more than a few candidates, in desperation, as a question about the legal enforcement of morality and/or the obligation to obey the law. These were possible but extremely strained interpretations of the question, which yielded poor answers. Better candidates at least recognised the question as an echo of a phrase occasionally used by Hart in characterising the legal positivist position. However surprisingly few candidates showed awareness of the various necessary connections between law and morality that had since been acknowledged by those who think of themselves as legal positivists, rejecting Hart's characterisation.

Question 14 (on the compatibility of Raz's thinking with Endicott's): Many candidates assumed that Endicott endorses a general moral obligation to obey the law, or inferred this from his statement rather automatically, with little or no discussion. From here they turned to examine different views (e.g. Raz v Finnis) on whether there is a general moral obligation to obey, and the relationship between those views. There was nothing in the Endicott quote to warrant the assumption that he supports the existence of a general obligation to obey the law. In fact the question was intended to elicit a discussion of whether, and why, it might be thought to have that implication. Only a minority of answers included such discussion.

## CONTRACT

The standard was reasonably high this year, candidates displaying a good knowledge of contract law by producing insightful essays and well-solved problem questions. It was noticeable that many candidates had heeded their tutors' advice to engage with the question asked in essay questions and to analyse problems in terms of the parties' objectives and causes of action. As every year, there were, of course, some exceptions!

Question 1: This general question was reasonably popular. The best answers focused on the meaning of 'agreement' and discussed the contrast between subjective and objective agreement. Lord Clarke's use of the word 'consideration' in its non-technical sense led a worryingly large minority of candidates to launch into a discussion of the eponymous doctrine – this again underlines the importance of reading the question carefully!

Question 2: The best answers to this question, attempted by a fair number of candidates, looked at both consideration and offer and acceptance, trying to work out what Hamson might have meant by describing them as an 'indivisible trinity'. The very best answers identified the notion of 'bargain' as key to the quote. More pedestrian answers wrote descriptively about consideration on the one hand and offer and acceptance on the other; a number of weaker answers focussed just on consideration or offer and acceptance. One candidate observed, having reflected on *Foakes v Beer*, that 'two birds in the hand are worth more than one in the bush'...

Question 3: This question had few takers, probably because of the specific cases mentioned in the quote. It was indeed important to set out their facts, and how they differed, and candidates failing to do this did not fare well. Good answers proceeded from the specific to the general, drawing conclusions from the conundrum posed by these seemingly irreconcilable decisions and writing more generally about the approach of UCTA to limit itself to limitation and exclusion clauses. Weaker answers began and ended with such a general discussion without reference to the cases mentioned.

Question 4: A reasonably popular question, but with few very good answers. The quote, and indeed the article from which it is taken, is about the remedies available to *the promisee* and the meaning of 'loss' in contract law. It is not about the exceptions to privity predating the 1999 Act, as many of the candidates attempting the question seemed to think. The more interesting answers looked at cases such as *Beswick v Beswick* (with one candidate, amusingly, asserting that Mrs Beswick was able to enforce her husband's contract as

‘dominatrix’) and *Panatown*, in order either to agree or disagree with Stevens that the promisee’s remedies prior to the Act were adequate.

Question 5: This question had hardly any takers. A good answer should have focused not just on the requirements of duress, but also at the consequences of it being made out (with Lord Saville’s claim that an agreement entered into under duress is ‘not valid’ presumably meaning that it is ‘not enforceable’ by the party asserting the pressure, as opposed to ‘void’).

Question 6: A reasonable number of candidates tackled this question. There were some very good answers, identifying the common ground between the Draft Common Frame of Reference and the English law on mistake, but also some rather shocking examples of many candidates’ inability to construe a legislative text. There were mercifully just a handful of answers focusing on aspects of the English law of mistake without any reference to the DCFR whatsoever.

Question 7: Again, a popular question with few outstanding answers. Most candidates launched straight into a discussion of the merits of and rules relating to specific performance, without noticing that the question asks whether it should be the *primary* remedy. The question does not ask if it should be the *only* or even statistically predominant remedy. Good answers first considered the meaning of ‘primary’ and then went on to consider whether such a change might colour the English attitude to contractual obligations generally (discussing standard specific performance cases such as *Argyll Stores* alongside other cases concerned with the performance interest, e.g. *Ruxley*, *Panatown* but also less obvious cases such as *Dunlop Pneumatic Tyres* and *Blake*).

Question 8: This was the most popular problem question. It required careful analysis of the different communications. Many candidates clearly started writing before they had thought their answers through to the end. Thus, almost everybody discussed whether the ‘leaflet inviting offers’ was an offer or an invitation to treat – the answer to this question being entirely irrelevant to the outcome. It was a frequent mistake to assume that the postal rule applied or not; better answers offered arguments for and against and then went on to consider both alternatives. There were some interesting musings on whether the postal rule can be justified in case of recorded delivery letters (given that the fact that the offeree can check whether or not the acceptance has been received deprives the postal rule of one important, if not the most important, rationale).

Question 9: This relatively popular question required careful analysis of the contractual relationships between employer, main contractor and sub-contractor. Most candidates managed this quite well. Some answers even managed to highlight the difference between this case and *Williams v Roffey*; here, it was actually questionable, in the light of *Ruxley*, whether rebuilding the pool was a ‘pre-existing duty’, so that agreement to do so for extra money was probably supported by consideration. Some candidates failed to spot that the liquidated damages clause might well fall foul of the rule against penalties, with some even thinking that UCTA and UTCCR somehow applied to it!

Question 10: Again, a reasonably popular question. The best answers considered whether Gerry was entitled to cancel the contract with Hasty as well as any damages Gerry might be able to claim for breach of contract. Candidates who failed to read the question properly did not spot that the contract contained an express cancellation clause, instead speculating whether making time of the essence was ‘reasonable’ under *Schuler v Wickman*. Good

answers considered not just whether Gerry could recover damages for hurt feelings and loss of reputation but also the ‘third party’ loss suffered by the charity.

Question 11: This was the second most popular problem question, and there were some excellent answers. The best ones focused on the question whether having the play in the college grounds could be said to be so central to the commercial venture that the inability to stage it there amounted to a frustration of purpose. A common mistake was to conclude that the contracts were not frustrated so that it was then unnecessary to consider the *consequences* of frustration under the 1943 Act. Good answers looked at both alternatives (frustration, anticipatory breach and *White v Carter*).

Question 12: This question was attempted by a fair number of candidates. It required consideration whether Ruth might be able to escape from the lease of the gallery on grounds of misrepresentation (and whether she might be entitled to damages in this respect), and whether Otto might be able to avoid the guarantee based on undue influence (or, on the alternative facts, duress and/or undue influence). Most candidates handled the misrepresentation aspects of the question very well, but then were not able to keep up the same high standard when it came to the undue influence part of the question. The unusual feature of the problem question was that the undue influence, if any, was not exerted by Otto’s daughter, Ruth, but by his wife, Nora (though this did not stop a large minority of candidates from discussing whether filial relationships give rise to a presumption of influence). The bank, of course, would be most likely to assume (and guard against) undue influence on the part of Ruth, and as such it is very doubtful that it would be fixed with sufficient notice, notwithstanding the fact that the *Etridge* guidelines were not followed to the letter.

## TORT

Although the overall marks profile was similar to that in previous years, it was disappointing that so many candidates failed to deal more convincingly with what was intended to be a fairly straightforward paper. One general point which can be made is that the treatment of general negligence law in problem questions frequently left a lot to be desired. All too often, candidates ritualistically applied the *Caparo* ‘test’ for the existence of a duty of care instead of considering and applying the relevant authorities on the particular duty question that arose. In addition, the treatment of the breach of duty issue was generally disappointing, with very few candidates identifying the relevant factors and considering how they played out on the facts.

### **Question 1 (pure economic loss and psychiatric injury)**

This was the most popular essay question, with more candidates choosing to answer part (b), on psychiatric injury, than part (a), on pure economic loss. The answers were generally competent, if uninspiring. The strongest answers tied their discussion of the legal rules in the two areas closely to the policy and other arguments for not equating these forms of damage with physical harm. Weaker answers consisted mostly of exposition of the law, coupled with a running commentary on the particular principles or rules identified, rather than building a coherent overall position. Some good use was made of the academic literature, particularly in part (a).

### **Question 2 (factual causation)**

This question was also popular, and was again usually handled with competence rather than flair. The typical answer ran through the *Fairchild* case and subsequent developments, without really getting to grips with the arguments for and against relaxing the rules on factual causation in cases of evidential uncertainty. There was a general tendency not to connect *Fairchild* to earlier case law, such as *Wilsher v Essex AHA*, and many candidates seemed to be labouring under the misapprehension that cases of mesothelioma raise unique difficulties of causal attribution.

### **Question 3 (product liability)**

This question was less popular than might have been expected, given the subject matter. It was reasonably well-handled, and candidates who answered it displayed a pleasing willingness to engage fully with the standard/non-standard product distinction. The principal weakness was concentrating almost entirely on the position under the CPA 1987, and either ignoring or skirting over the significance of the distinction in the common law of negligence.

### **Question 4 (economic torts)**

As ever, the economic torts proved to be a minority interest, but the minority generally impressed. Those who attempted this question generally handled it well, paying close attention to the quotation, taking a firm position for or against the proposition on which candidates were asked to comment, and making good use of both the case law and the academic literature.

### **Question 5 (vicarious liability)**

This was a fairly popular question, which called for a summary of the many recent developments in the law of vicarious liability and an evaluation of them. There were many good answers, which provided balanced coverage of the changes to the law and a critique informed by the various possible rationales of vicarious liability. Weaker answers tended to focus entirely or unduly on one aspect of the recent case law, and to express conclusions without properly justifying them.

### **Question 6 (remedies)**

This was the least popular question on the paper. There were so few answers that it is not possible to comment in general terms.

### **Question 7 (insurance and tort law)**

This question was also not especially popular. There were some very good answers, which took the question seriously and addressed both its descriptive and normative aspects. Candidates who tried to twist the question in order to reproduce tutorial essays on tort reform did not score highly.

### **Question 8 (omissions/causation problem)**

This was a fairly popular question, but few of the answers really impressed. The question called for in-depth analysis of the case law on omissions and loss of a chance, as well as a good understanding of the way that the different elements of the cause of action for negligence inter-relate. Instead, far too many candidates were waylaid by red herrings, seduced by the vacuous simplicity of the *Caparo* 'test' for duty, or tripped up by the intricacies of the loss of a chance issue. It was particularly disappointing that so many candidates discussed at length the possible liability as occupiers of the council into whose swimming pool the deceased child had fallen, despite the fact that (a) the council was left unnamed (examiners' code for 'ignore this possible party'); (b) there was *no indication*

*whatsoever* that there was anything wrong with the state of the swimming pool; and (c) the very next question was squarely and obviously on occupiers' liability, and experience would suggest that it is unlikely that two problem questions would be set on the same topic in the same paper. Candidates should not leave their common sense at the entrance to the Schools. Another common error was the belief that the failure of a number of different parties to assist the deceased gave rise to a multiple causation problem along the lines of *Baker v Willoughby* or *Performance Cars v Abraham* (it did not). There was also a marked tendency to confuse the omissions issue with the (often overlapping) question of liability for deliberate third party conduct.

### **Question 9 (occupiers' liability and general negligence problem)**

This was one of the two most popular problem questions. The occupiers' liability aspects were generally handled reasonably well, although the treatment of the breach issue was frequently woefully inadequate (and sometimes altogether absent), and many candidates simply assumed that the occupiers' liability legislation covered the possible claims by Ian and Janet, without considering whether their injuries were caused by the state of the premises, or by activities on the premises. Even candidates who did recognise that Ian and Janet's actions would probably be in common law negligence tended to make a hash of them anyway. It is remarkable that the egg-shell skull rule is not only widely misunderstood as a remoteness of damage rule, but also generally believed to apply at the breach of duty stage of the negligence enquiry as well! As for Janet's psychiatric injury claim, the unthinking application of the *Alcock* secondary victim criteria to a cinemagoer traumatised by the fictional events depicted in a horror film was disappointing, but predictable.

### **Question 10 (nuisance problem)**

This was the other problem question that proved particularly popular. It was generally well-handled, and there was a pleasing awareness of the implications of the most recent case law. Perhaps the chief weakness was the failure to organise the multitude of issues raised into a coherent structure for the purposes of analysis. As ever, the reduction in the rental value of the property was too often described as 'pure' (as opposed to 'consequential') economic loss, and the mistaken belief that the *Dobson v Thames Water Utilities* decision has implications for the standing issue in private nuisance was widespread. Pleasingly, public nuisance was less often overlooked than in the past, perhaps because the facts of the problem were not dissimilar to those of one of the leading public nuisance cases. Stronger answers often adverted to the possibility of relief under the rule in *Rylands v Fletcher*.

### **Question 11 (standard of care and defences)**

This question was reasonably popular. It called predominantly for discussion of defences, but many candidates instead chose to focus on non-issues, such as whether motorists owe their passengers a duty of care and whether a motorist who is drunk takes reasonable care of other road users. Some candidates seemed to be unaware that the approach to the doctrine of illegality adopted in *Pitts v Hunt* has been superseded by the decision in *Gray v Thames Trains*. Nor was the law concerning contributory negligence handled particularly well, overall. Many candidates forgot that contributory negligence that is not causative of the claimant's damage will not count against the claimant, while most candidates overlooked the fact that accepting a lift from a driver who is known to be drunk is a classic instance of contributory fault.

### **Question 12**

This question was also reasonably popular, and overall it was well handled. Weaker answers tended to omit discussion of the exceptions to the rule that slander requires proof of damage. Discussion of the *Reynolds* defence, a central issue, was generally too hurried.

## LAND LAW

Q1 The question addressing the evidence for context making a difference to land law was a reasonably popular question, and some answered this very well indeed. Candidates chose a large variety of areas to discuss (co-ownership, trusts of the family home, estoppel, mortgages, lease-licence, and licences), and serious engagement with the question led to high marks even for those who focused only on a small number of areas. Some candidates, however, used the question as an excuse simply to describe the current law on acquisition of interests in the family home, and failure to examine the relevance and role of context meant that they were not given high marks.

Q2: This was probably the least popular essay question but again attracted some interesting answers. The best answers covered a range of case law, examining the rationale for, and implications of, the *Bruton* case, and also discussing case law that illustrates a heavy contractual influence as well as case law demonstrating the impact of leases as ‘estates’.

Q3. This was a popular question. The majority of candidates answered this question fairly well, explaining the overall aim of the register and the tension between protecting dynamic and static security. Most discussed the interests in Schedule 3, but better candidates also referred to other aspects of the LRA, such as the conclusiveness of title and alteration. Whilst most candidates noted that registration protects dynamic security, only a small number commented that it can also –through registration – be a means of protecting static security, that is ensuring that someone with an interest in land can be sure that he will not be deprived of it against his will.

Q4. This was generally well answered, although candidates too often stated: ‘as McFarlane rightly notes’ as if that were a satisfactory substitute for providing a developed and rational argument. Further, the question did not call for an explanation of modes of creation of easements and candidates who devoted much of their answer to this got no credit for this part of the discussion, unless they explained how the rules on creation relate to principles about the kind of rights that can constitute easements.

Qu 5: Although the question asked about the mortgagee’s ‘exercise of his rights over his security’, many candidates took this to be a general discussion about fairness and mortgages. Those who focused their answer specifically around remedies, such as possession and sale (rather than a wide ranging discussion of that included clogs and fetters, and fair terms), were given higher marks. Although there were some very good answers, many candidates struggled to display any detailed knowledge of the law in this area.

Q6. This was a popular question that was generally fairly well done. Candidates considered a range of possibilities that Bala might draw on to argue that her ‘right’ is binding on Cain (and therefore that Cain would need to counter): leases (but noting problems of certainty and formalities); contractual licence (but is there a contract, and in any event can a contractual

licence bind third parties?); and estoppel. On the latter, few candidates gave sufficient consideration to how the estoppel would work to restrict Cain's ability to evict Bala.

Q7. This question calls for a discussion of severance and occupation rents. In relation to severance, better candidates not only referred to *William v Hensman* in an outline way but considered in detail how the specific facts of the problem might apply given how *William v Hensman* has been applied in more recent cases. Some raised the issue as to whether the reconciliation between D and E might have any effect on a severance (can severance be undone?). Most candidates referred in some detail to the statutory right to occupy under s 12 Trusts of Land and Appointment of Trustees Act 1996 and the rights to exclude in s 13, but few really focused on the questions raised: whether G and F could recover shares and some 'compensation' for being excluded (and how this might be calculated). Instead, many discussed whether Damian *would be able to exclude* them as if this was the current issue rather than something that had happened in the past before the property was sold.

Q8. This question called for a discussion of three different issues: enforcement of a negative covenant by and against a successor; enforcement of the positive landscaping covenant by the original coveantee against a successor, and enforcement of payment towards maintenance of the road. In relation to the negative covenant, the easiest means of Ken being able to enforce was to rely on statute (the Contracts (Rights of Third Parties) Act 1999 Act, or possibly s 56 Law of Property Act 1925) (assuming he is the owner of a 'nearby house'). Several candidates missed this, but discussed scheme of development intelligently. The positive covenant clearly invited a discussion of 'benefit and burden' and cases such as *Rhone v Stephens*; many candidates missed this. Few showed a detailed knowledge of the case law such as *Thamesmead*, or *Wilkinson v Kerdene*. The road issue was even less well done. It could arguably be seen as within the covenant (a construction point as to whether landscaping includes road repairs), but many (possibly correctly) said there was no covenant to pay but nonetheless found liability through benefit and burden, not appreciating that there must be an underlying covenant that the benefit and burden principles relate to. Schemes of development were also often used as magic wands to make everything pass, irrespective of benefit and burden, and whether covenants existed.

Q9 A very popular question that was generally reasonably well answered. The majority of candidates discussed both proprietary estoppel and common intention constructive trust reasonably well. What was a little disappointing is that where both concepts were discussed there was little attempt to consider whether these claims can equally (or should be able to) co-exist on the same set of facts. Most candidates drew the important distinction between sole name and joint names and considered whether recent case law applies in the same manner to both. Surprisingly few drew attention to the fact that Raj already owned the property before the conversations with Queenie and her moving in.

Q10 This question raises lots of issues, particularly in relation to Tulip Lodge. Candidates were rewarded for clearly identifying the issues that arise.

The issue in relation to Rose Cottage was relatively straightforward: was Tammy's beneficial interest binding on CBS by virtue of para 2, Schedule 3, Land Registration Act 2002?

Tulip Lodge was more complex. Some candidates overcomplicated the nature of W's interest, a periodic tenancy, by considering much more unusual leasehold possibilities. Many got in a muddle over formalities. Both in this and other questions several candidates assume that if formalities are not present for a legal interest this does not matter because there can,

nonetheless and absent formalities, be an equitable interest. In this problem, if Willy has a periodic tenancy then section 54(2) Law of Property Act 1925 becomes relevant.

Some candidates ignored Tammy in relation to Tulip Lodge; or, if they noted that she was joint legal owner they made no mention of the fact that her signature had been forged. Better candidates addressed the issue of forgery, the severance of the beneficial interests, and issues that thereby arise under the Trusts of Land and Appointment of Trustees Act 1996 should the Clayfield Building Society wish to press for sale.

Some general comments: It was relatively rare for a script to go beyond providing a reasonably good descriptive account of the law. As has been commented on previously, candidates too frequently refer to commentators as if this is a satisfactory alternative to engaging with the case law itself in a detailed manner. Many of those receiving firsts wrote accurate, thorough accounts of the law, covering all of the points expected, and without significant error or omission. But the best answers were able to demonstrate a deep and detailed knowledge of the law (case law and statute), to offer a critical account of the law, and – where appropriate – provide a normative analysis. These were unusual, even within the first class marks awarded.

### **ROMAN LAW (DELICT)**

There were two candidates for the FHS-exam and two for the DLS. No question chosen showed problems in the answering, the distribution was reasonable.

### **COMPARATIVE LAW OF CONTRACT**

All questions were answered: the most popular was question 4 (*la cause*), followed by questions 5 (*force majeure*), 7 (third parties), 2 (duty to negotiate in good faith) and 6 (mistake of quality). The overall standard this year was good, and notably better at the top end than in recent years. The two best scripts (one FHS, the other DLS) had clear first class answers on every question, and were quite remarkable in the range and depth of the material on which they drew in both jurisdictions to illustrate their comparisons, showing excellent comparative technique and giving their own ideas. There were also fewer weaker scripts this year, although even in otherwise sound or rather good scripts the marks for individual answers were sometimes pulled down by common weaknesses: not answering the question sufficiently closely, or writing a rather general answer which touches on the question rather than meeting the challenge of the question head-on; dealing with a limited range of relevant issues; not providing evidence from the cases or other materials in support of points made; and sometimes simply getting things wrong (more commonly, as has been noted in previous years' reports, in relation to English law than French law).

### **PUBLIC INTERNATIONAL LAW**

The overall performance of students in this paper was weaker than in preceding years with fewer students awarded first class marks than has been the case recently. It is not quite clear what accounts for this difference.

One change in the paper, as compared with immediately preceding years was the increase in the number of problem questions on the paper (4 out of the 9 questions). Although candidates were not required to answer a problem question, almost every candidate, if not all, attempted at least one problem question. Towards the top end of the marks scale (high 2.1 and above) there does not appear to have been any significant difference between answers to problem and essay questions. However, it does appear that more marks below 60 were awarded to answers to problem questions than to essay questions. Usually, this was because candidates had failed to spot all the issues arising from the problem or had addressed important issues only very briefly. However, it is important to stress that answers scoring below 60 account for a small proportion of marks and the poor marks obtained by some answers to problem questions does not account for the (comparatively) depressed marks across the board. Most answers were above 60 but much fewer this year were deserving of a mark above 70. Perhaps students need to be reminded that the best answers are those that displayed wide reading of the literature and good command of relevant debates, theories, cases and other authorities. The very best answers considered different approaches to the issues identified and, most importantly, provided evidence of personal reflection on those issues by setting out an argument which indicated the candidate's own views.

## **HISTORY OF ENGLISH LAW**

Four candidates attempted this paper. A good standard was reached overall, with one clear first, and three strong upper seconds. Candidates engaged well with the questions, and showed a pleasing level of engagement with the sources and debates of the subject.

The favourite questions answered included: the nature of nuisance; development of leases; land registration; the history of uses; the history of inheritance and settlements; equitable intervention in relationships of contract and of account; and the rise of the doctrine of consideration. The questions on tort and strict liability attracted no takers this year.

The examiners noted a tendency on the part of some students to rely on generalities and avoid a close engagement with case law in some topics. More legal detail, in addition to broad historical analysis of the contending policies of the law, would have been welcome. That said, nearly all students were good at unpicking a series of decisions that built up remedies and developed fresh doctrine; and there were some very skilled analyses showing how "leading cases" (and sometimes "leading statutes") could have a great impact on particular legal concepts and institutions.

## **EUROPEAN UNION LAW**

*General comments*

In general, there was a solid standard of performance in this paper, although perhaps with more significant variations than one might have hoped. At the top end, answers offered clear, well structured and highly focused analysis of the range of issues raised in each question, showing a pleasing command of a wide range of case law and academic literature, as well as a strong critical approach. Equally, weaker candidates often struggled to offer structure, focus and any real detail in case law analysis, instead settling for rather superficial discussion in the general area of the question, rather than actually trying to answer what had been asked.

Sadly, a rather significant number of candidates proved keen to try to ‘shoe-horn’ prepared answers to other, hoped-for questions into the essays set here, and did not perform as well as they should have done as a result. It bears repeating that trying to learn essay answers in this way will never be a sensible approach to examination revision, nor does it foster clear, structured understanding of the material, as was evident from some of the answers provided here when an under-prepared candidate was forced to think for themselves in answering an unexpected question.

### *Individual questions*

#### **Question 1**

This question was attempted by a relatively small number of candidates overall, and produced a wide range of answers of varying quality and focus on the issues raised by the question. Weaker students used it as an opportunity to provide a fairly descriptive tour through the headline case law without making any real effort to link this to what the question actually asked, while others tried to shoe-horn an prepared answer on *Keck* or *Trailers* and *Jetskis* into this question. The strongest candidates were able to use a wide range of case law on the scope of Article 34 TFEU’s prohibition, as well as judgments concerning mandatory requirements, Treaty-based exceptions and the role of fundamental rights to provide a nuanced and well developed analysis, often making impressive use of the academic literature on these topics.

#### **Question 2**

A broad question on the Court’s development of general principles as a source of law elicited a reasonable number of answers which took varying approaches. Weaker efforts were largely descriptive without really engaging with the question, while others focused solely on fundamental rights or endeavoured to write only about the *Mangold* case and its progeny. Better candidates were able to address the different elements of the question (gap-filling, drawing upon national law, etc) and provided a focused and critical analysis of a range of case law and secondary literature to provide a clear and more rounded discussion.

#### **Question 3**

This quotation from the Court’s *Unibet* judgment concerned the principle of effective judicial protection and its implications for the challenge of national provisions in the light of EU law requirements, and attracted a significant number of often rather strong answers. Weaker candidates discussed only *Unibet* without addressing the broader issue of the autonomy of the national legal order, or else tried to fit a prepared answer into the question without any adjustment. Good answers were able to discuss a range of the Court’s case law on national remedies and procedures, while also addressing the literature and the specific issue raised in *Unibet*, often with very pleasing cross-references to the EU’s judicial system and the arguments concerning access to justice and effective judicial protection raised in cases like *UPA*.

#### **Question 4**

The combination of issues of competence conferral and subsidiarity in this question required answers which were able to look broadly enough at the EU's decision-making procedures in the context of the roles of both the political institutions and the judiciary. The strongest efforts were able to analyse the Court's case law on Article 114 TFEU and on the principle of subsidiarity, assessing the extent of judicial control provided and whether stronger such control was possible (and even desirable). The best candidates were also able to consider these topics in the context of EU decision-making, assessing the performance and potential of the Lisbon Treaty's new mechanism and role for national Parliaments. A number of excellent efforts did this, using a range of literature and providing a nuanced and critical analysis. Poor efforts, meanwhile, addressed only one or some parts of the question, often descriptively and did not always focus any discussion on the points actually raised in the question.

#### **Question 5**

This was another popular question, which generated some excellent answers which showed both breadth and depth of understanding and analysis of the myriad issues involved. The best answers offered a clear and structured discussion of the points emphasised in the question, before going on to question the assumptions underlying those points by using the case law (both pre- and post-Treaty of Lisbon) and academic literature sensibly. Weaker efforts failed to tease out the issues in the quotation, or focused only on one or two issues, or provided little or no case law to support any arguments made. Some endeavoured to squeeze a prepared answer on the EU's accession to the ECHR into this question, when this was clearly only one part of the broader picture involved here.

#### **Question 6**

By far the most popular question on the paper (almost every single candidate attempted it), most candidates showed at least a solid grasp of the key principles and cases under the various headings referred to in the quotation. The best answers were able to cover the breadth of the topics raised in a clear and critical fashion, while retaining a strong focus on the question and offering an integrated, critical analysis of the problems currently experienced, as well as those which might arise were horizontal direct effect to be accepted for directives. Weaker efforts simply missed out or skated over some key elements, or showed clear misunderstanding of some key cases and/or their implications (*Francovich* and *Brasserie du Pêcheur* were often particularly weakly handled, it seemed, alongside the usual difficulties experienced with explaining the 'incidental effect' case law, which often leads candidates to make claims that its impact is more far-reaching than it really is (in one way or another)).

#### **Question 7**

Almost no-one attempted this question, which focused upon the application of 'rules of reason' when assessing justifications offered by Member States for restricting free movement in the fields of establishment and services. Few of those who did attempt the question got to grips with the subject matter or the issues raised by the quotation in a convincing manner.

#### **Question 8**

A decent number of candidates offered answers to this question, which addressed questions of legal pluralism and claims to the supremacy of EU law, while also referring to certain pluralistic elements in the EU's institutional set-up. Weaker answers offered only a general discussion of the supremacy of EU law and national reactions to it, often ignoring the institutional issues altogether and not using any of the crucial theoretical literature concerning the legal pluralism analysis and debate. Stronger attempts were able to engage with the case

law at EU and national level while placing this nicely into the context of the academic debates: one or two exceptional answers were able to draw upon their knowledge from Jurisprudence to provide a strong, critical analysis and were duly rewarded for their ambition.

### **Question 9**

This problem question concerned the operation of the EU's judicial system in the specific context of a challenge to the validity of an EU measure, although a number of candidates seemed not to appreciate this and tried to address the whole question as if it concerned free movement law and nothing else. Others focused so much on issues of *locus standi* (sometimes showing a good grasp of notion of 'regulatory acts', although many remained deeply confused on that matter too) that they either forgot to raise any issues concerning grounds of challenge (fundamental rights (e.g. property, *Kadi*, etc), proportionality, competence) to the EU measure or they ran out of time to do so. Very few candidates considered the question of possible remedies that the applicants might wish to seek (interim relief, damages claim against the EU institutions). Those candidates who were able to provide a clear and well structured answer which addressed the range of issues were rewarded, and some stronger answers also considered the question of whether only some parts of the EU measure might be challenged, while leaving others intact.

### **Question 10**

Very few candidates chose to answer this question, which was a fairly straightforward problem concerning freedom of establishment, free movement of workers and EU citizenship, combining aspects of the primary Treaty rules and case law with the relevant legislation. Some tried to approach the question solely by reference to the legislation, others used only the case law (and relatively little of it at that); those who were able to combine the two clearly and accurately when analysing the various situations presented on these facts were well rewarded.

## **COPYRIGHT, TRADE MARKS AND ALLIED RIGHTS and COPYRIGHT, PATENTS AND ALLIED RIGHTS**

Answers on the FHS IP papers were of a high standard overall. With respect to copyright: 50 per cent of students taking the papers answered question 1, on copyright harmonization, 50 per cent answered question 2, on literary copyright in headlines, and 25 per cent answered questions 3 and 4 respectively, on *NLA v Meltwater* and the impact of constitutional values and rights on the UK law of copyright and/or privacy. The best answers to question 1 were those which engaged in detail with the Recital, and related their discussion to European copyright law rather than simply using the question as an opportunity to talk generally about the rationale for copyright. The best answers to question 2 were those which dealt fully with its second part (rather than focusing on its first), and which adopted a clear benchmark for their critique. In relation to the copyright problems: the most popular was question 11, answered by 60 per cent of students. This and question 10 were both done well overall, though some students were let down by their failure to organize their answers properly.

With some exceptions, students' performance in the patents part of the Copyright, Patents and Allied Rights paper was generally consistent with their performance in the copyright part, which was pleasing, though students seemed slightly less comfortable with the patents problem questions than with the copyright ones: only 40 per cent of students attempted

question 9 or 10. A common weakness in answers to question 5 (attempted by 34 per cent of students) was a tendency once again to focus on the first part of the essay by describing the categories of subject matter currently excluded from UK patentability without also considering the second part; and a failure when considering the second part to offer a clear reference point for students' analysis. Answers to question 8 (attempted by 34 per cent of students) were generally good, as were answers to questions 6 and 7 (attempted by 27 and 40 per cent of students); though some students were unclear on the details of the unitary patent regulation and their difference from earlier drafts. Of the three students to sit the Copyright, Trade Marks and Allied Rights paper, all answered questions 1 (on copyright harmonization) and 6 (on passing off), and two answered questions 7 and 9. The standard of answer was, once again, consistent across both sections of the paper.

This was the first year in which students were required to answer a problem question on the FHS IP papers, and were also given the opportunity to weight their choice of questions towards one of the two assessed regimes. Only 14 per cent of students elected to answer two problem questions. 45 per cent of FHS students answered 2 questions from each of the assessed regimes, with 39 per cent of FHS and DLS students answering an additional copyright question, 17 per cent answering an additional patent question, and 66 per cent (2 out of 3) answering an additional trade marks question.

## INTERNATIONAL TRADE

There were 13 candidates and the standard was generally high, with four marks of 70 or better and only two a little below 60.

The tendency of candidates to concentrate on problems eased a little and the essays on deviation (q.3) and demurrage (q.5) proved to be quite popular; and were generally answered well. The question on 'spent bills' was not popular. In question 6, a number of candidates failed to identify that the scenario created in part (c) was covered by the *Procter & Gamble* decision, and some candidates were uncertain as to the effect of the marks referred to in question 9, but otherwise there was no recurring issue in the answers to problems which were generally fairly evenly distributed over the questions set. The exception was question 10 which attracted only a handful of answers.

## TRUSTS

The standard was thought to be generally good. A considerable number of candidates tackled more than one problem, **Q.14** being the least popular. Of the essay questions, **Qs. 7, 8 and 10** had relatively few takers.

**Q. 1** The best answers had a clear idea of what *Shell v Total* [2010] 3 All ER 793 is about, and in particular why it is controversial, and the interaction of property ideas and tort claims. Weaker answers tended to read as pre-prepared responses to a differently-focused question.

**Q. 2** Weaker answers asserted the benefits of formality requirements generally, especially because of a need for 'certainty', without actually specifying why particular certainty was

needed in the s53(1)(c) context - e.g. allowing trustees to know who their beneficiaries are and avoid paying trust funds *ultra vires*.

**Q. 3** Candidates drew on a wide range of relevant case law although relatively few used the post- *Pennington v Waine* [2002] 4 All ER 215 cases on imperfect gifts.

**Q. 4** Very few candidates looked beyond the increased list of purposes and the nature of public benefit - and the latter sometimes without reference to *Independent Schools Council v Charity Commission for England and Wales* [2012] 1 All ER 127. Really good answers could do that in full detail, but could also think more widely and ambitiously about reform possibilities.

**Q. 5** While there were some excellent and interesting answers, many were content to write out standard, pre-prepared *Quistclose* essays.

**Q. 6** Lots of good answers focused on the difference between remedial and institutional constructive trusts. A few very good ones really engaged with the argument that all constructive trusts are necessarily (not just coincidentally) remedial.

**Q. 9** Candidates were generally good at explaining why professional and lay trustees should or should not be treated differently in relation to exemption clauses. Few explored the gross negligence point.

**Q. 11** Many answers went through the three certainties in a mechanical fashion, repeatedly and at length, at the expense of addressing specific issues raised by the facts, e.g. whether capriciousness might apply to (iii) and what this concept might mean. Administrative unworkability was often raised in (i), but not fully analysed in relation to a fixed trust. The test for a fixed trust of this kind is 'complete list', not 'any given postulant' - an error made by quite a few candidates. The nature and width of the power in (iv) stumped many. Some candidates thought that there could be subject matter problems with unallocated sums of money in will trusts (also asserted in **Q.13**). As always, a few claimed that 'the residue' is uncertain.

**Q. 12** Some candidates just saw the different possible analyses (*Re Denley* [1969] 1 Ch 373, *Re Lipinski's Will Trust* [1976] Ch. 235, contract holding etc) as alternatives to be set out, and which the court would 'choose' from, rather than providing solid argument and analysis to explain why a particular 'choice' would be correct in principle. Many were prepared to follow *Hanchett-Stamford v AG* [2008] 4 All ER 323 through to its logical conclusion while some appeared not to have read it.

**Q. 13** Candidates were generally very good on the difference between fully and half secret trusts, and on the communication and acceptance rules. They were less strong on the relevance of s53(1)(b), on the 'floating' nature of the trust of the money left to Fahan, and on the codicil. In relation to Enid, there was a split between those who said that she could simply take the money, and those who thought that there would be a resulting trust for Don's estate. But few made a strong case for one view or the other - most treated their own view as self-evidently correct. Few candidates distinguished the position of a secret trustee who witnesses the will, and the beneficiary of the secret trust in the like position.

**Q. 14** While some candidates struggled to distinguish between existing and future property (or simply ignored the issue), most appreciated the implications of valuable consideration. *Re Ralli's Will Trusts* [1964] Ch 288 was unquestioningly extended to the executors of third party wills.

## ADMINISTRATIVE LAW

Generally candidates answered this paper at a reasonable level, with a decent showing of First Class scripts, but it was also noticeable that some candidates were content simply to produce what looked like expanded notes from lectures or summaries of text book passages as aspects of their answers. Furthermore, there was a tendency for many candidates to try to produce stock standard answers rather than really dealing with the question that was set. Candidates need always to remember that analytical rigour, originality and relevance are rewarded in the F.H.S.; the mere reproduction of material or production of a standard-form answer tends not to be.

Most of those who answered question 1 did so with reference to the *ultra vires*/common law debate, though some tried to introduce other topics with 'constitutional' dimensions. Rather fewer noted the significance of the words 'be seen as' than might have been hoped.

The best answers to question 2 sought to consider 'deep level' issues such as whether any branch of law could ever be completely 'open' and have no standing limits at all. More standard answers focused on policy arguments concerning access to justice, administrative inconvenience and judicial overload.

Stronger answers to question 3 considered whether different answers to the question might be produced depending on the subject-matter of the expectation concerned (substantive versus procedural) and drew on arguments concerning the possibly emerging role of proportionality in both the *Wednesbury* and legitimate expectation spheres. Weaker answers discussed the development of the case law tests generally.

Both parts of question 4 sought to encourage engagement with the nature of proportionality review. Stronger answers to question 4(a) thus asked what might actually be meant by 'a review of the merits' as opposed to any other type of review, and whether – by reference to case law since the entry into force of the Human Rights Act 1998 – concerns relating to 'merits' might be seen as exaggerated. Stronger responses to question 4(b) sought clearly to explain the distinction which Lord Mance was seeking to draw between the 'assess for itself' and 'complex series of questions' approaches (if, indeed, a clear distinction could be drawn). Weaker answers tended to talk about general proportionality versus *Wednesbury* issues, or about the operation of proportionality (and often deference) generally.

Question 5 was drafted to allow candidates to discuss bias as well as fair hearing issues if they chose. As such, it was a little puzzling that some candidates were concerned to discuss the nature of decision-making processes themselves. The best answers usually displayed knowledge of a wide variety of areas, though some weaker candidates engaged in reproduction of text book arguments about special advocates, with insufficient thought to how the material could be made relevant to the question.

Generally, candidates who answered question 6(a), on *Cart* and *Page*, did well, often displaying an impressive understanding of the contexts of those cases and the existence of debates about the ambit of each. Question 6(b) was intended to allow strong candidates to analyse the case law in the light of theories concerning the reviewing court's role (and its limits), but sadly rather too many candidates produced standard answers on the evolving standard of review for jurisdictional error, or the boundary between error of law and error of fact scrutiny.

Question 7 produced some impressive answers in which candidates thought carefully about the theoretical arguments for and against the public law-private law distinction, and used the case law in support of or opposition to such arguments. Weaker responses quickly turned into general discussions of the distinction in the exclusivity or *Datafin* lines of cases, and/or under the Human Rights Act 1998.

Not many candidates answered question 8. Strong answers drew attention to the point that there were several different types of ombudsmen, making a uniform response to the question difficult. Weaker answers took the form of general essays on the PCA.

Stronger answers to question 9 included discussion of whether the distinction made in the title between 'policies' and 'decisions' was a plausible one, as well as of the extent to which any meaningful exercise of discretion had to involve a 'choice'. It was encouraging to see that many candidates who attempted the question selected examples from across the whole field of administrative law, rather than just focusing on the classic 'fetter of discretion' cases.

While a small number of candidates answered question 10 in relation to tort and public bodies, practically no one answered in relation to contract.

## **FAMILY LAW**

The standard of answers in Family Law was similar to that of recent years. Most answers demonstrated a good, detailed understanding of the law and secondary reading, though few candidates seemed to have reflected deeply on the subject themselves and there were consequently disappointingly few truly excellent scripts. The most significant overall weakness was a tendency to answer with standard answers rather than engaging with the precise terms of the question set. This was a particular problem for questions 3, 4 and 10. Some candidates also limited their engagement with the cases to bald assertions that a particular case was authority for the proposition that the candidate was making, rather than offering detailed analysis of the reasoning in those cases.

Question 1. Parental responsibility. This was a popular question and was generally well answered. Most candidates were able to give a good account of the courts' approach to the allocation of parental responsibility, with answers demonstrating a strong knowledge of the case law on the subject. Weaker answers tended to be vague on the question of whether parental responsibility granted meaningful rights. Some of the best answers reflected on the interaction between parental responsibility and legal parental status, supported by some very good discussions of the recent case law on children born to lesbian couples with a known biological father.

Question 2. Section 8 Children Act 1989. The answers to this question were mixed in quality. The strongest answers gave detailed consideration to the question of whether the introduction of such a presumption could be supported by the research evidence. Such answers also tended to give careful analysis of case law in considering whether the courts already operate a de facto presumption in favour of parental involvement. There was a tendency for candidates to address the question solely in terms of contact orders despite the fact that the question referred to all section 8 orders. There was also a tendency to focus exclusively on court decisions, with little consideration of the impact that a change in the law might have on the majority of disputes, which do not reach the courts.

Question 3. Marriage. This was the most popular question on the paper and attracted some excellent answers, along with a large number of mediocre responses. Unsurprisingly, given the topical nature of the subject, many candidates had prepared a 'same-sex marriage' answer and saw this as the opportunity to give it, with little attention to the actual question asked. Disappointingly, only the best candidates considered the meaning of 'personal commitment' in any detail, with many weaker candidates uncritically accepting it as the 'modern' basis for marriage. In contrast, the best answers produced some thoughtful responses on the meaning of 'personal commitment' and what distinguished those forms of commitment that warranted legal regulation. These answers were grounded in detailed consideration of the law on the validity of marriage and the rights and obligations that attach to it. Whilst the matter of same-sex marriage was undoubtedly of great importance in answering the question, few candidates went beyond this to consider other restrictions on those whom the state permits to marry.

Question 4. Equality between spouses and former spouses. Although it attracted some strong answers, this question was generally not well answered. Most answers concentrated on the courts' role under section 25 Matrimonial Causes Act 1973. This aspect of the question was generally well done, with many candidates demonstrating a strong knowledge of the statutory provisions and the detailed case law on the subject. Unfortunately, surprisingly few candidates considered the meaning of equality in depth, with many appearing to assume that it simply meant a 50:50 split in assets at the point of divorce. Very few candidates gave any detailed consideration to the position of spouses whilst the marriage subsists, with some ignoring that part of the question altogether.

Question 5. Parents' rights. This question attracted solid answers, with a few very strong answers. The most significant weakness was that many candidates answered primarily in terms of children's autonomy with little attention to the specific, albeit related, question of parental rights. Answers generally showed a good, nuanced understanding of the case law, although a worrying number of candidates had misunderstood the House of Lords' decision in *Williamson*, considering it to be a case brought by the children against their parents.

Question 6. Domestic violence. This was another popular question and was generally solidly answered. Most candidates were able to give detailed answers on the differing definitions of domestic violence, with particularly strong analysis of the new Home Office definition, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and the Supreme Court decision in *Yemshaw*. Most candidates also demonstrated a good knowledge of the core academic arguments on the problems of definition.

Question 7. Cohabitation. Whilst some candidates were able to demonstrate detailed understanding of the differing legal positions of separating spouses and cohabitants, weaker

candidates often lacked clarity on this point, with some vaguely asserting that developments in trusts law could eliminate any difference. The best candidates gave detailed consideration to exactly what forms of obligation should be imposed on couples, with the majority favouring (sometimes rather uncritically) a system based on the Law Commission's recommendations on the subject.

Question 8. Private ordering. This was the least popular question on the paper. It attracted too few answers for detailed comment.

Question 9. Welfare. This was a popular question and often well answered. Most candidates were able to give a good account of the extensive academic work on the strengths and weaknesses of the welfare principle. The best answers assessed these arguments through a detailed critical analysis of the case law on the welfare principle.

Question 10. Divorce and dissolution. This was not a popular question and was generally not well answered. In many answers there was a reluctance to consider the meaning of 'morality' and what the 'moral values' in question might be. Most candidates were able to give an accurate account of section 1 Matrimonial Causes Act 1973 but the normative part of the question was less well done, with many candidates simply seeing it as a 'no fault divorce' question and answering that question in very broad terms.

Question 11. Parenthood. This question attracted some very strong answers. The best answers demonstrated a strong knowledge of the theoretical arguments on the purpose of legal parental status and a thoughtful approach to the way in which the law responds to competing parental claims. These answers also contained detailed analysis of the statutory provisions and case law in the context of this theoretical discussion. There was some confusion amongst weaker candidates on the detail of the Human Fertilisation and Embryology Act 2008

Question 12. Gender. There were mixed answers to this question. The best candidates had clearly benefitted from the seminars on this subject and were able to reflect on the theoretical work on the relevance of gender in family law and policy, drawing on well-considered examples from across the syllabus. Weaker answers described several areas of law and the potential impact of gender on those areas but did not attempt to reflect on connections between those areas.

## COMPANY LAW

The standard of answers was generally high, with candidates displaying a good understanding of the basic principles of company law. There were few disappointing scripts and some excellent ones.

There was no question that was untouched. The most popular problem questions were question 9 (minority shareholder protection, unfair prejudice, winding up under s. 122(1)(g)) and question 10 (corporate opportunities, derivative actions, reflective loss). Few candidates tackled question 11 (s. 213, s.214, directors' duties to creditors, shadow directors) or question 12 (class rights, financial assistance, reduction of capital and repurchases of shares). In question 9, most candidates dealt adequately with the unfair prejudice and minority shareholder material, although weaker candidates did not focus sufficiently on the particular

facts of this problem question and produced relatively generic answers to this material. The issue of winding up under s. 122(1)(g) was handled less well, and was even ignored by some candidates. The answers to question 10 were generally good. Stronger candidates paid close attention to the facts of this question and dealt fully with the reflective loss issue at the end. Few candidates dealt well with the question of Carol's claim qua creditor against Alan and Bruce. Some seemed to think this was an issue of directors' duties, failing to spot that this was a single creditor that was bringing a claim, and that this was therefore an issue that could be dealt with as part of the reflective loss point (was this separate and distinct loss for Carol?)

Of the essay questions, questions 2 (limited liability), 4 (majority rule principle), 5 (directors' duties), and 7 (articles of association) were the most popular. On the whole candidates had a sound grasp of the issues in answering these questions. Weaker answers tended to provide rather generic answers to the material, not focussing closely enough on the particular question set. For example, in question 2 some candidates discussed the concept of limited liability and the circumstances in which the veil is sometimes lifted, but did not really address the issue raised in the question of the circumstances in which the principle of limited liability *should* be curtailed or set aside. Those candidates that were prepared to tackle this aspect of the question were well rewarded. Similarly in question 4 many candidates contented themselves with a discussion of majority rule and how difficulties *are* resolved, but did not discuss how, in their view, the difficulties *should* best be resolved. In question 5 stronger candidates were able to do more than recite the provisions dealing with directors' competence and directors' loyalty, and discussed the relationship between the two. Question 7 was generally well handled. Questions 1 and 6 were not popular but were generally well handled by those that chose them. Question 3 (capital maintenance) and question 8 (the role of the law in directors' duties) also attracted some good answers.

## LABOUR LAW

Candidates offering Labour Law in 2013 showed a good understanding of the subject. Most were able to explain the relevant statutory provisions and cases clearly and there were very few weak scripts. However, the usual tendency to regurgitate lecture notes or tutorial essays in the general vicinity of the question was in evidence in some answers. Stronger candidates paid close attention to the question set and showed that they had thought carefully about the legal and policy issues raised.

All twelve questions attracted at least one answer, with questions 2 (personal scope), 6 (equal pay), 7 (minimum wage and working time), 9 (wrongful dismissal), 10 (consultation and collective bargaining), 11 (freedom of association) and 12 (industrial action) proving most popular.

Question 2 asked candidates to explore the relationships between the concepts of employee, worker and employment under a contract personally to do work. Most candidates showed a good knowledge of the legal tests, though some were unable to say very much about the third test as interpreted in the *Jivraj* case.

Question 6 attracted some thoughtful answers. Weaker candidates tended to focus either on a critique of equal pay legislation or on the structural causes of the gender pay gap instead of tackling both parts of the quotation.

There were some excellent answers to question 7 in which candidates thought carefully about the definition of 'light regulation' and applied it to the relevant legal materials. Weaker candidates offered a more general critique of the working time and minimum wage regimes.

Question 9 was the most popular question on the paper, no doubt because the Supreme Court's decision in *Edwards* has attracted a great deal of attention. The best answers to this question demonstrated careful thinking about the relationship between contract law and labour law. Surprisingly few candidates discussed the recent *Geys* decision.

Both alternatives in question 10 were competently done, though in answers to question 10(a) there was insufficient discussion of what a 'fundamental right to collective bargaining' might entail.

Question 11 attracted some good answers, though weaker candidates did not focus clearly enough on the 'rights of trade unions' which were at the heart of the question, offering instead a general critique of the law on freedom of association.

Question 12 threw up a more general problem with many of this year's scripts: a tendency to equate a 'rights-based' approach to labour law with a more worker-protective approach to labour law. Only the very best candidates spent time explaining the Article 11 case-law on the right to strike and its limitations and uncertainties. Most simply assumed that any problems they could identify in English law on industrial action could or would be remedied using Article 11.

## **CRIMINAL LAW**

Twelve candidates took the FHS exam. Most candidates displayed a decent knowledge of the subject but no candidates performed at a first class level. Though, in general, candidates have shown a good understanding of both structure and substance it is suggested that they need to take a more rigorous approach and improve their knowledge and engagements with the very rich secondary literature. A second general observation concerns answers to problem questions. In answering problem questions it is important to set out clearly all the elements of the offences, and apply each of the elements and not merely the problematic ones. Better answers followed the structure carefully supporting their answers in relevant case-law.

In Part A questions 1, 3 and 4 attracted most of the answers, whilst question 2 attracted only 1 answer. In part B questions 6 and 7 were the most popular, and there were good answers that followed the structure of the offences carefully. Nevertheless, in analyzing Ingrid's liability in question 7 most students failed to consider public defence (defence of others) and instead, incorrectly, concentrated on the defence of duress of circumstances. Question 8 received only 1 answer.

## **CONSTITUTIONAL LAW**

The Constitutional Law paper was as usual taken by a small number of FHS candidates, so it would not be appropriate to provide detailed remarks on each of the questions. The answers

were distributed fairly evenly across most of the questions set. The overall standard was good, and a few of the scripts were excellent. The questions on the House of Lords and devolution attracted some of the better answers; a couple of them were especially strong, with original and creative arguments. In contrast, the answers to questions on parliamentary sovereignty, constitutional conventions, and separation of powers were weaker and tended to be formulaic, with few candidates venturing beyond textbook accounts.

## **TAXATION LAW**

The tax markers were very impressed with the overall quality of scripts this year. Of the 12 candidates sitting the exam, all achieved a 2-1 or 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.4 (policy essay on inheritance tax) was the most popular question, attempted by 11 of the 12 candidates. Q.6 on capital gains tax avoidance was the least popular, attempted by only one of the candidates. The problem questions were popular, with the majority of candidates (although not required to do so) attempting at least one of the problems.

Q.1 on tax policy invited the candidates to discuss progressivity. Candidates were expected to consider issues including economic incentive effects, equity and administrative issues, and to engage with the literature. Q.2 concerned tax avoidance and the pending introduction of the UK GAAR; it was attempted by 7 candidates. Q.3, on the capital taxation of trusts, was not frequently attempted. The better answers showed a good understanding of the technical rules and the effects of the 2006 changes. Q.4 involved an assessment of inheritance tax and was attempted by almost all candidates. It required integration of tax policy literature and technical material for a complete answer. Q.5 on the deductibility of employment expenses was challenging, requiring a strong familiarity with both the cases and the statutory material. Part 1 of Q.6 required an assessment of trading and non-trading receipts. Part 2 concerned the statutory rules and case law on transfers at an undervalue, inviting candidates to consider the relevant rules both from an income tax and capital gains tax perspective.

Turning to the problem questions, the answers to Q.7 and Q.8 were generally very good. Q.7 primarily concerned the cases on the employee/self-employment characterisation borderline, along with the taxation of receipts and expenses. The facts in Q.8 raised a broad spectrum of major and minor employment tax, capital gains tax and inheritance tax issues. The best answers analysed these issues in appropriate depth, making good use of the facts provided and drawing on the extensive case law to provide relevant and succinct advice.

## **ENVIRONMENTAL LAW**

Overall the quality of answers was very good. Students displayed a solid working knowledge of the relevant legal material and there were impressive attempts to address the questions asked. Problem questions were popular even though they are not compulsory. Stronger answers integrated the legal material with a nuanced understanding of environmental problems. Weaker answers were those that tended to rely on generalities.

### **MORAL AND POLITICAL PHILOSOPHY**

This year 22 candidates sat the paper in Moral and Political Philosophy. The average mark was 65, with a range of 16 marks between best and the weakest scripts. Six scripts received first-class marks. These were of a very high standard, with candidates displaying keen analytical insight, knowledge of the material that went beyond the main works, and well structured and well-written answers that offered good arguments. Scripts in the second-class range, and especially below II/1, were marked by a tendency to repeat what must have been material from class notes on issues that were similar to, but not the same as, those raised in the questions. This was endemic in the answers on utilitarianism, on the commensurability of value, and on agent regret. Several of the weaker papers seemed to imagine that the examiners had laid traps in formulating the questions. They were almost always wrong, and wasted time in pointless disambiguation where there was no ambiguity, or elaborate discussion of the least relevant idea, or even word, in the question. On the whole, Part A was better handled than Part B: candidates found it hard to apply what they had read to the concrete examples in the questions of Part B. Finally, though there was some excellent work in normative ethics, no candidate displayed any sophistication in the meta-ethical problems in the questions on moral objectivity or moral progress.

### **EUROPEAN HUMAN RIGHTS LAW**

On the whole this paper was answered well by those candidates who took it, both in relation to the typical mark per question and the average overall mark. It was clear that most candidates had thought carefully about what each question required: a crucial pre-condition to success in any F.H.S. essay or problem answer. There were no obvious signs that large numbers of candidates had allowed rhetoric to trump legal (and, where appropriate, philosophical and/or otherwise normative/principled) analysis, something which was encouraging.

The examiners were of the view that most questions were answered enthusiastically and well. Question 8 (discussion of the quote from Tsakyrakis) possibly produced the most divergent range of answers, maybe because the quote struck in an unexpected direction in terms of the perspective adopted by many candidates. This struck the examiners as rather telling: plainly it is a point of the F.H.S. to encourage students to entertain, and where necessary – and often more importantly – to rebut, heterodox thoughts. This being so (and whatever the merit of individual heterodox thoughts), it seemed a shame that far too many candidates were simply unwilling to fully engage with the thoughts contained within the quote which provided the basis for question 8.

The examiners were also powerfully struck by the fact that only one candidate sought to answer the problem question (question 10). This is not atypical, on a paper-by-paper basis, given the general reluctance of candidates within Oxford to address problem questions. In the examiners' view, however, it is an undesirable phenomenon in the present paper for two reasons. First, and at a general level, high-quality legal reasoning usually entails the bringing to bear on a particular practical fact-situation of the type of normative/analytical/principled criteria which someone who has thought overall and carefully about the relevant subject is able to deploy. Such a capacity will not emerge among candidates unless the faculty encourages problem questions to be answered in examination papers. Secondly, and more specifically, since the title of the present paper is *European Human Rights Law* (emphasis added), with an emphasis on the jurisprudence of the European Court of Human Rights, it needs to be remembered that the Strasbourg Court is keen to stress that many of its conclusions are fact-specific or case-specific. Far too many examination candidates were keen to draw very general conclusions from rather specific judgments: something which needs to be countered, assuming that it entails a more specific focus on individual and practical issues, in line with the E.Ct.H.R.'s reasoning.

### **PERSONAL PROPERTY**

The paper was generally done well, with no candidates achieving lower than a II.I mark, and with a few candidates turning in outstanding scripts. Unlike previous years, the problem questions were popular, with very few candidates electing to do four essay questions.

Q 1: This question was quite popular and attracted a range of answers. Most answers were able to explain what the tort of conversion is, and how it differs from other forms of protection (namely the vindicatio). Good answers were able to focus on particular aspects of the tort, primarily its strict liability and approach to causation, and either criticise or defend these features.

Q 2: Poor answers to this question focused on the tort of conversion, and were not able to see that the implication of this quote is that a lease of a chattel is a type of property right. A surprising number of answers ignored the second part of the question, which asks candidates to consider the debate over chattel leases in the wider context of the *numerus clausus*.

Q 3: As always, the security question was the least popular question. Only one candidate attempted this question (and did a very good job at it).

Q 4: A popular question and generally done very well. Good answers displayed knowledge of both the relevant case law and the periodical literature on passing of title.

Q 5: Another popular question that was generally done well. All answers were able to discuss how the Sale of Goods Act 1979 works in respect of unascertained goods. Most answers were able to consider what amounted to ascertainment, and how it differed from unconditional appropriation. Good answers then discussed possible exceptions to these rules, particularly s 20A.

Q 6: This was a popular question, but often attracted the weakest answers in exam scripts. Many candidates were able to identify cases that could be analysed either as transfer or

destruction (such as the so-called 'exceptions' to the nemo dat rule), but were not able to sustain any real argument as to which was the better analysis. Consequently many answers to this question were too descriptive.

Q 7: This question was not attempted by many candidates, and those who did it tended to answer only the first part of the question. Few considered if it was a property right and what implications this would have for the numerus clausus.

Q 8: One of the most popular questions. The vast majority of answers were able to identify the relevant rules from *Parker* and *Waverly*. The good answers offered a critical analysis of these rules when they considered how to apply them to facts in the problem. Very good answers were able to give a full account of the *Bridges* case, and its subsequent interpretation, when asking how the goods left in the shop should be treated.

Q 9: This problem was also fairly popular. Most candidates were able to give a competent answer that addressed all of the issues. A number of candidates lost marks by suggesting the wrong test to be applied in relation to the graffiti (mixture or manufacture instead of accession). A few of those who did correctly identify accession as the relevant rule, failed to explain why this was so, or failed to consider the consequences of accession.

Q 10: Another fairly popular problem question that was done quite well. The best answers were able to discuss revocability of gifts.

## MEDICAL LAW AND ETHICS

### *General comments*

This year's Medical Law and Ethics paper was designed to challenge students, and it was apparent from the scripts that this goal was achieved. The standard of answers was considerably weaker than previous years, a result that can be partially attributed to the fact that the questions were set in such a way as to make it very difficult for students to offer prepared essays with much success. Many students appeared to approach the paper with a preconceived idea of what it would ask. With prepared papers at the ready, many were determined to offer these, sometimes quite regardless of what the questions actually asked. This 'shoe horning' approach was generally unsuccessful, resulting in unfocused answers that did not directly engage with what had been asked. Such answers were penalised accordingly, and future students are strongly advised to avoid taking this approach to the examination.

Students also tended to decide that they would narrow the focus of the questions by outlining the scope of their answers. While some narrowing was appropriate and wise, many took this too far by concentrating on only one area. In doing so they failed to give sufficiently broad responses that teased out the issues raised across a range of areas. This was particularly problematic since many questions called for an analysis across a number of related legal issues. Those who took a broader approach were able to draw comparisons between different areas, and consequently highlight and explore inconsistencies in the law. Good answers also explored some of the foundational principles underpinning medical law generally and some of the more specific areas within it.

Despite the weak cohort overall all, there were a number of very strong scripts, which were characterised by acute attention to the precise question asked, and useful exploration of the case law and secondary literature. Above all, such scripts presented considered, logical arguments (both ethical and legal) in response to the questions, with a number presenting some truly innovative thinking.

As a final point, many candidates' spelling and general standard of written English was surprisingly weak, and all students of MLE should ensure they are able to spell 'Caesarean' if they wish to answer a question on reproduction.

### *Individual questions*

Question 1: This question invited a discussion of the personal importance of reproduction and the role of the law in enabling people to reproduce as they wish. The best answers considered the distinction between reproductive liberty and autonomy, the impact of reproductive decisions on future persons, and the state's rights and responsibilities to citizens in this context. Weaker answers tended to focus solely on one area, such as pre-implantation genetic diagnosis, without providing any sophisticated analysis of the specific concerns raised by those areas, nor discussing the wider issues around autonomy. Those wishing to write on this in the future are advised to have a solid understanding of the non-identity problem.

Question 2: This question demanded acute attention to the relevance of the mother's body sustaining the life of the foetus, rather than a general discussion of the ethics of abortion and the status of the foetus. Despite this, the majority were determined to discuss foetal status at length, often without tying it to the question asked. A small minority, however, presented responses that focused sharply on the concept of sustenance. First class essays also explored decisions beyond that to terminate, some drawing effectively on *Winnipeg*, to explore how the law might respond to other potentially harmful decisions a pregnant woman might make. The very best examined the limitations on ability of the law to regulate such actions, even if they might harm a future child, but noted that we might still consider such decisions morally problematic. Good answers also examined Judith Jarvis Thomson's work in a detailed, critical manner, examining the relationship between the interests of mother and foetus. Weaker responses merely described the violinist thought experiment without offering much analysis of Thomson and others' arguments.

Question 3: This question required students to examine both the legislative framework regulating the use of tissue and the relevant case law. It required a critical appraisal of these, as well as suggestions for reform. Those offering prepared essays on whether human tissue ought to be treated as an item of property did not fare well unless they tied this discussion directly to the question asked.

Question 4: A very popular question, which inspired some excellent responses. These concentrated firmly on the current problems and those that might arise following liberalisation. The very best examined how the law might be liberalised, and the various implications of different liberalisation approaches.

Question 5: Worryingly, many responses to this question demonstrated a weak understanding of what is meant by 'respect for bodily integrity' in medical law. Strong answers critically examined the distinction between respecting choice, and merely respecting decisions to exclude others from our bodies.

Question 6: Also quite a popular question, and many answers were rather good, with most candidates offering a good overview of the current law. Many also drew effectively on the secondary literature. Good answers explored the importance of respecting patient choice, and the need to see capacity as operating on a spectrum. The best answers considered issues of dignity, how we should account for the interests of carers and family members, and the complexities involved in determining what constitute a patient's 'best interests'.

Question 7: This was a difficult question and was intended to push candidates to engage with what limitations, if any, the law should impose on individual autonomy in the context of medical decision-making. Strong answers did not shy away from examining the merits (or otherwise) of paternalism head on, and offered sophisticated analyses of the role of the law in this area. Good candidates also drew out inconsistencies in the current law, particularly in the context of assisted suicide.

Question 8: The question asked students to consider whether medical negligence provided the right amount of protection for the interests of patients, yet a great many students chose to offer a prepared essay on loss of chance in response, often making only the most cursory attempt to link this discussion to the question. Better answers covered wrongful life, birth and conception, the *Bolam* test and the impact of *Bolitho*, and the provision of information about risks cases. The best prefaced their discussion of the cases with an analysis of what 'patient interests' might encompass and what the right amount of protection might be. Happily, some also considered other interests that might be balanced against these, such as those of medical practitioners and the wider community.

Question 9: This was not a popular question. Few candidates picked up all the issues, but stronger answers discussed loss of chance, uncertain causation, responsibility for acts of third parties, and the application of *Bolam* and *Bolitho* in the context of complementary medicine. Greater discussion of the ethical issues raised by the problem would have been welcome.

## COMMERCIAL LAW

Overall, the standard was rather disappointing this year. There were few really good scripts, and many candidates displayed a lack of consistency of real engagement and depth of analysis. There were quite a few examples of good candidates, whose overall script was let down by one weak answer.

Question 1: This was not a popular question and few answers, if any, recognised that complexity has come for consumers from keeping old remedies such as rejection and combining them with new remedies in part 5A.

Question 2: Quite a large number of candidates attempted this question, with mixed result. Many claimed that the problem sections 20A and 20B were enacted to solve was that of *London Wine* and *Goldcorp*, (where there was no identified bulk) rather than specifically a problem relating to goods in bulk, exemplified by *Re Wait*.

Question 3: Again, this was a popular question, and elicited some really excellent answers.

Questions 4 and 5: These were done well but only by very few candidates.

Question 6: This was a very popular question, and was done reasonably well, although in many cases the overall analysis could have been clearer. Very few answers explained the relationship between the rejection of the pumps by Newtown and the rejection by Gamp of the motors or explored the significance of *Hendy Lennox* in this regard. In relation to the retention of title clause, many candidates discussed all the clauses rather than considering which applied to the assets which were available for Pinch.

Question 7. This was, again, quite a popular question. The candidates discussed the ‘bulk’ point well, and showed some knowledge of the interrelation between the *nemo dat* exceptions and sections 20A and 20B. However, very few discussed section 24 and *Pacific Motors* in relation to Sigma. Even more disappointingly, very few discussed the position of Friendly Finance, and whether its interest was absolute or by way of charge.

Question 8. This was generally well done, with some quite sophisticated answers on the characterisation of the two charges. Few candidates, if any, discussed the significance of the blocked account being at a third party bank.

Question 9. Very few candidates attempted this question, but it was well done by those who did.

Question 10. This was the most popular question on the paper and was done by nearly all candidates, though with rather mixed results. There seemed to be considerable confusion about when it was best to rely on apparent authority and when section 2(1) Factors Act was more appropriate, and many candidates found the multi-layered agency hard to analyse. However, there was some good discussion of the various factual points, such as whether ‘modern’ could give notice of a restriction not to sell books written before 1900!

## **CRIMINOLOGY AND CRIMINAL JUSTICE**

In total twenty-four 24 candidates sat the paper. Eight 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. As a general comment the examiners found the quality of scripts somewhat higher this year compared to previous years. One reason for this may be the introduction of a revision seminar at the end of the course, which almost all students attended and which was well-received. 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 for the position that they had adopted. Every question on the paper attracted a few answers. The most popular were the questions on sentencing, where the better candidates showed good knowledge of the literature and a critical awareness of the issues.