

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

**Examiners' Report 2014**

**PART ONE**

**A. Statistics**

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

The number of candidates taking the examinations was as follows:

	<b>2014</b>	<b>2013</b>	<b>2012</b>	<b>2011</b>	<b>2010</b>
FHS Course 1	183	198	182	195	186
FHS Course 2	32	31	32	33	27
Diploma	31	32	31	32	32
Magister Juris	12	20	11	18	18

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

<b>Class</b>	<b>2014</b>		<b>2013</b>		<b>2012</b>		<b>2011</b>		<b>2010</b>	
	<b>No</b>	<b>%</b>								
I	46	21.40	37	16.15	45	21.03	42	18.42	35	16.43
II.i	163	75.81	180	78.60	158	73.83	166	72.81	159	74.64
II.ii	5	2.33	8	3.49	8	3.74	15	6.58	15	7.04
III	0		2	0.87	0		3	1.32	0	
Pass	1	0.47	0		1	0.46	1	0.44	0	
Honours*	0		1	0.43						
Fail	0		1	0.43	2	0.93	1	0.44	4	1.87
<b>Totals</b>	215		229		214		228		213	

\* 'declared to have deserved Honours'

### Classifications: FHS Course 1

Class	2014		2013		2012		2011		2010	
	No	%								
I	34	18.58	30	15.15	34	18.68	24	12.31	27	14.51
II.i	143	78.14	156	78.78	138	75.82	151	77.44	143	76.88
II.ii	5	2.73	8	3.49	7	3.84	15	7.69	12	6.45
III	0		2	1.01	0		3	1.54	0	
Pass	1	0.55	0		1	0.54	1	0.51		
Honours*	0		1	0.50						
Fail	0		1	0.50	2	1.09	1	0.51	4	2.15
<b>Totals</b>	183		198		182		195		186	

\* 'declared to have deserved Honours'

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

Class	2014		2013		2012		2011		2010	
	No	%	No	%	No	%	No	%	No	%
I	12	37.5	7	22.50	11	34.37	18	55	8	29.62
II.i	20	62.5	24	77.40	20	62.50	15	45	16	59.25
II.ii	0		0		1	3.12	0		3	11.11
III	0		0		0		0		0	
<b>Totals</b>	32		31		32		33		27	

### Results: Diploma in Legal Studies

4 candidates (12.90%) were awarded the Diploma with Distinction. 27 candidates (87.10%) 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 (nor in 2013).

#### 3. Marking of scripts

Not all scripts are double marked. 572 scripts (29.5 %) were in fact second marked, 267 of them before the first marks meeting, and 305 between the two meetings (made up of 62 where the first marker's mark for the script was just below a borderline and 171 where the first marker's mark was four marks or more below the candidate's average mark. These figures exclude the double marking of the 'Jurisprudence new syllabus' scripts and essays. Of these 13 scripts were just below a borderline (made up of 4 where both the script and essay were double marked and 9 where only the script was double marked) and 59 where

the first marker's mark was four or more below the candidates average mark (made up of 51 scripts only and 8 script and essay).

The 29.5% total this year compares with 29.5% in 2013, 32% in 2012, 31 % in 2011, and 37% in 2010.

#### **4. Withdrawals from the examination**

The figures tabulated above do not include withdrawn candidates. This year 10 candidates withdrew from the FHS, all from Course 1.

### **B. New examining methods and procedures**

1. A new examining method, known as 'Jurisprudence New Syllabus', was introduced in the Jurisprudence paper for the 2014 FHS. This new method applied to course 1 candidates only. Course 2 candidates (and occasional course 1 students who had come back into residence after an intermission) continued to sit the old-style jurisprudence examination (known as 'Jurisprudence Old Syllabus'). By the time of the 2015 FHS, course 2 will have fallen into line with course 1.

In place of the three-hour examination associated with Jurisprudence Old Syllabus, Jurisprudence New Syllabus candidates are required to write an essay of between 3,000 and 4,000 words (submitted at the end of the summer vacation following the candidate's second year) and then to sit a two-hour examination at the end of the final year. The 2012-13 Board was responsible for preparing and issuing the Examiners' Edict relating to the summer essays for the 2014 FHS, and also for supervising the setting and issuing of the associated essay titles. The 2013-14 Board is grateful for this preparatory work done by its predecessor Board. The 2013-14 Board has in turn performed the same tasks in relation to the 2015 FHS. As last year, the issuing of the edict and drafting and revising of questions proceeded smoothly.

The essays for the 2014 FHS were available for marking in October 2013, soon after the submission deadline. The markers were given a long lead time, with a deadline at the end of Hilary Term for handing over to second markers, and a deadline late in the Easter Vacation for agreed marks to be submitted. The marking of the essays, like the setting of the questions, involved a large team of assessors. Each Jurisprudence 'mini-option' (there were 13 mini-options for the 2014 FHS) had its own trio of questions and its own pair of dedicated assessors. In general the marking and exchanging of marks went smoothly. The procedure and criteria of selection for second marking were the same for each batch of essays as for 'smaller subjects' in the rest of the examination (see point 2 below). During the original marking process this appears to have gone smoothly. However once the Examiners came to determine which Jurisprudence material was to be sent out for second marking between the two marks meetings, the application of the relevant criteria proved more problematic. The problems and the way they were solved are outlined in Part Two below.

Part Two below also includes some commentary on candidate performance in Jurisprudence New Syllabus, and in particular on how candidates fared in the essays as compared with

their performance in the two-hour examination paper, and other relevant comparisons. There are also some remarks on plagiarism in Part Two below.

2. Apart from the Jurisprudence innovation just described, examining methods were substantially unchanged. The procedures for ensuring the accuracy of marking were the same as in the last six 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 where the second mark was lower.

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. Where a candidate had a medical certificate (now strictly speaking a 'Part 11' certificate) the Board very occasionally required a second marking of additional scripts that nearly met these desiderata (e.g. 67s without any hint of 70).

### **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%). In view of that slump, the 2013-14 Board adopted a further measure, sending a reminder note on the same topic to all markers at the beginning of the examination period. Although the impact of such measures is impossible to gauge, the Examiners are pleased to note that the share of candidates obtaining first class degrees has returned to the healthier level of just above 21%, similar to 2012.

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). There was no change in the Examination Conventions between 2013 and 2014, nor between 2012 and 2013. Leaving aside the slump in first class degrees in 2013, already mentioned in point 1, the only noticeable change is the continuing decline in the number and percentage of candidates in the lower second class. In effect, the upper second class now performs the role that was once performed by the undivided second class degree and some Examiners predictably ask themselves whether too wide range of abilities and achievements are crowded under this single umbrella. A further (somewhat corroborative) comment on the award of lower seconds appears in Part Two below.

## **PART TWO**

### **A. General comments**

#### **1. Candidate complaints relating to conduct of examinations**

Two candidate complaints were received by the Proctors during the examination period and forwarded to the Chair for investigation and comment. These came from different candidates and related to different papers. Neither complaint was upheld by the Proctors but there was a common theme underlying the two of them, which in the view of the Examiners calls for the attention of the Examinations Committee and other relevant Faculty committees. For that reason we outline the complaints here.

(a) *Land Law*. A candidate complained that the case list provided in the examination, and available on the Faculty's Weblearn site beforehand, provided inconsistent and therefore misleading information. The case list included not only the names of cases but also, interspersed among them, the names of relevant statutes complete with the numbers of the relevant provisions. Many but not all of these statutory provisions were included in the Statute Book provided in the examination. In an effort to be helpful, the case list identified two provisions not in the Statute Book with the note 'NB Not included in Statute Book.' Unfortunately this was not done consistently. The candidate complained that another provision not included in the Statute Book was not marked with the same note on the case list, and that he/she had therefore assumed that it would be in the Statute Book. The provision was claimed to have been relevant to one of the candidate's answers. The Chair confirmed the inconsistency on the case list, which was regrettable. However the Chair pointed out that the candidates are told in advance which Statute Book in which edition is to be provided in the examination room. The candidate should therefore have satisfied himself or herself about its contents rather than making an inference from the notes on the case list. The Proctors rejected the complaint but asked for the issue to be drawn to the attention of the Examiners. (The Chair also studied the case lists and Statute Books for

papers that had not yet been sat to ensure that the same issue would not arise again. It did not.)

(b) *Criminology and criminal justice*. A candidate complained about the inclusion of a question on youth justice, a topic which, in his or her view, lay beyond the syllabus. Investigation revealed that there had been two versions of the agreed reading list for the course, one (including the youth justice topic) published on Weblearn before the start of MT and the other (omitting the youth justice topic) published after the start of teaching but before the deadline for finalization of the agreed reading list. At least some candidates had been told in class not to expect a question on youth justice in the examination because it had been removed from the syllabus. However the setter of the paper had not been made aware of the re-issue of the agreed reading list, nor of any related class announcement. Moreover the setter adopted the established method of obtaining draft exam questions from the various teachers on the course, and received one on youth justice from the person who normally teaches that topic, without any indication that the teaching had not been provided this year. The setter therefore had no reason to think that the question was invalid. In response to the candidate complaint the Chair advised that: (1) the question on youth justice was valid as it is for the Examiners to identify changes to the syllabus in the Notice to Candidates, and no change of syllabus from previous years had been so identified; some candidates had indeed successfully answered the question; (2) the candidate had anyway not been disadvantaged by the extra question as no topic had been omitted from the examination to make way for the youth justice question, and elements of youth justice were included incidentally in other topics that were taught. The Proctors rejected the complaint but asked for the issue to be drawn to the attention of the Examiners.

The Examiners in turn would like to draw attention to questions of wider Law Faculty policy thrown up by these complaints. They concern the relationship between the teaching groups and the Examiners. In each of the matters raised, the Examiners tend to think that the teaching group went beyond its remit in shaping candidate expectations about the examination – in both cases trying to be helpful. In the case of Land Law, the case list tried to be a bit more than a case list, and in the process gave what candidates could reasonably have interpreted to be authoritative statements about materials available in the examination room. In the case of Criminology the subject group purported to vary the syllabus for the examination, in a way that candidates may reasonably have taken to be authoritative, without requesting any indication of a syllabus change in the Examiners' Notice to Candidates. Although changes to the agreed reading list do of course bear on the particular materials with which candidates may be expected to be familiar in the examination, the Examiners tend to think that a change to the agreed reading list is different from a change in the syllabus to be examined. The Examiners invite the Examinations Committee, and other relevant Faculty committees, to confirm the authority of the Examiners in respect of (a) materials in the examination room and (b) year-to-year variations in the examination syllabus, and to remind subject groups that communications to candidates on topics (a) and (b) need to be issued by the Examiners, not by the subject groups themselves.

In the process of reflecting on the Criminology complaint the Examiners became aware of wider doubts about how and by whom the syllabus for an examination paper is managed, ignoring for now the year-to-year changes that are promulgated in the Notice to Candidates. The removal of syllabus explanation from the Examination Regulations (the 'Grey book') led to its inclusion in the Faculty's Student Handbooks, but this change was made without (in the Examiners' view) sufficient attention being given by the Faculty Board to the

question of who has authority to determine the syllabus for an examination and how that authority is to be exercised and at what point(s) in the examining cycle, and how candidates and others (including setters and markers) are to be made aware of the relevant authority and its exercise. There appear to be very significant divergences in understanding of how the division of powers between subject groups and Examiners is supposed to work in this area. This problem seems to lie behind the more specific problem that arose in the Criminology paper. Again the Examiners invite the Examinations Committee, and other relevant Faculty committees, to reflect on this significant constitutional problem.

## **2. Jurisprudence New Syllabus: challenges in the examining process**

The Examiners faced some new challenges in working with the bifurcated marks for Jurisprudence New Syllabus. The Faculty Board had determined that candidates would ultimately be advised of two marks in Jurisprudence, one for the essay and one for the two-hour examination, with the overall Jurisprudence mark (needed for degree classification purposes) constituted by simple arithmetical averaging of the two marks. An initial problem was to adapt the marks database software to show the necessary marks in an intelligible format. It was decided to list two Jurisprudence marks on the main candidate profiles used by the Examiners – one for the essay and one for the two-hour examination – with the arithmetical average of the two shown as the total mark for the paper. It was then necessary to create a subsidiary profile for each candidate revealing the individual marks for the two questions attempted during the two hour examination. This was not ideal. Not only did the extra documents need to be produced but the already long first marks meeting was occasionally further delayed as the Examiners stopped to consult sub-profiles for various purposes, e.g. to see whether a 67 total, with (say) a 68 in the exam, included a 70 or better in one or other of the individual exam answers, so as to trigger a borderline remarking.

The main difficulty, however, was in deciding what counted as a remarking in Jurisprudence. Jurisprudence New Syllabus is unique among FHS subjects, not only in having an essay component, but also, consequently, in having two components marked separately, such that no one marker ever takes an overall view of any candidate's performance in the paper. The Examiners had to decide whether to depart from this approach when it came to remarking between the two marks meetings. Should a candidate near the first class borderline with a 68 in Jurisprudence, comprised of (say) a 66 in the exam and a 70 in the essay, enjoy a remarking of both parts or just of the 66 part, and if of both parts then of both parts by the same second marker, and if so then should that be the second marker of the exam script even if the essay were on a very specialized topic? And what if the essay had already been double marked but the exam had not, or vice versa? And should the second-marker be told that a script was borderline when in itself it was (say) a 65 but brought the candidate to a borderline in combination with (say) a 73 essay? The permutations and associated puzzles, it emerged, were many, and the Examiners had no alternative but to develop a system of sorts as they went along.

After some false starts the Examiners settled on the principle that the separate marking of essay and exam script should continue to apply at the point of second marking. In the event that a candidate found himself or herself near a borderline with his or her overall Jurisprudence mark showing a 7, 8 or 9, remarking was generally confined to the lower-scoring of the two components. In some cases this meant that second markers were advised that they had a borderline script when it was in fact a script currently resting on (say) a 56

or a 65. An explanation was provided to second markers to the effect that the borderline situation triggering the remarking might have arisen from the combination of the two Jurisprudence components, and might not be visible in this one component taken alone. A similar approach was taken with the 4-below: unless both components were 4-below, in which case both were remarked, only the lower-scoring of the two components was sent for remarking. None of this was perfect and the Examiners found it extremely tricky to apply the same principle to every permutation. In some cases the attempt to resolve a borderline by remarking one component made the situation more tense by bringing a candidate who has been, say, a 68 overall in Jurisprudence to 69 overall. Since the Examiners were instructed to award the arithmetical average of the two Jurisprudence components, they were stuck with that 69, which is an unhappy mark to leave on any borderline profile, especially if the replacement of the 69 with a 70 would by itself yield a first class degree.

Clearly these problems are not yet solved and successive Boards of Examiners will need to continue to refine the approach with experience. The main overarching goal that the 2013-14 Examiners set themselves was not to allow the inevitable teething troubles with their own process to reap unfairness on any candidate. By taking great care with individual cases, and resolving any uncertainties borne of the novelty of the situation to the advantage of affected candidates, this result was achieved.

An additional logistical problem worth noting, for the consideration of future Examiners, is this. The assessors of the Jurisprudence essays fulfil their marking duties earlier in the year than other assessors and are not always available during the examination period and it is not always reasonable to ask them to be available. By that time they may, for example, be on leave. In such cases it may be necessary to find a substitute second marker for a particular Jurisprudence essay where the second marking is to take place between the first and second marks meetings.

### **3. Jurisprudence New Syllabus: candidate performance**

During the marking of the Jurisprudence examination scripts, in the new two-hour variant, two of the assessors reported to the Chair their disquiet about the general quality of work on display. This compared with the positive impressions reported by some markers of the Jurisprudence essays. A matching discrepancy was apparent in the marks as reported to the Examiners. The average essay mark was 65.6. The average exam mark for the New Syllabus candidates was 62.9. A more striking picture can be seen by comparing the number of candidates whose essay mark was four or more above their exam mark (75 candidates) with the number of candidates for whom the reverse was true (30 candidates). Included in the first of these numbers are six candidates whose essay marks were two classes higher than their exam marks.

It seems that, as hoped, the introduction of the essays has enabled some candidates to show strengths that the old examination-only system did not enable them to display. (See the markers' reports under the heading 'Jurisprudence Mini-Option Essays' in Appendix 3 below.) The worry is that perhaps the introduction of the essays has also depressed performance in the remaining exam component, perhaps by making students blasé, or perhaps by distracting them too much from the core issues in Jurisprudence that remain examinable, or perhaps both. At any rate more than a few students gave themselves an early advantage with their Jurisprudence essays only to neutralize it in their exam script. There

was certainly evidence of otherwise well-prepared students who knew relatively little of the core Jurisprudence New Syllabus material, and who ‘winged it’ to very embarrassing effect. (See the exam markers’ detailed report under the main ‘Jurisprudence’ heading in Appendix 3 below.)

It is worth noting, however, that Jurisprudence (for Old Syllabus and New Syllabus candidates alike) was the last examination in the timetable. Many students would have come back to the Examination Schools to sit it after finishing their other exams two or three days earlier. This came about because of the need for a complicated re-timetabling exercise to meet the needs of a particular candidate (see point 9 below). It was perhaps on reflection a regrettable decision to leave the Jurisprudence examination so late. Perhaps some students were unable to motivate themselves to put much work into it, or treated it as an afterthought, in a way that had little to do with the advent of the New Syllabus. It is worth noting that there were 46 candidates who took the Jurisprudence Old Syllabus examination this year, mainly course 2 students. They had written no essay and the whole of their Jurisprudence mark therefore rode on the examination. In that group the average exam mark was 62.8, on a par with the average exam mark of the New Syllabus candidates. Last year’s Old Syllabus average was 64.1.<sup>1</sup> These figures suggest that perhaps the advent of the essay was not the problem. Instead the problem was the sequencing of the examinations.

#### **4. Jurisprudence New Syllabus: plagiarism in essays**

At the time of approving the plan for an essay component in the FHS, some members of the Faculty expressed concern about the risk of plagiarism. The Examiners have not found much to bear out this concern. Of course there could be instances of cheating that have eluded detection. However the Examiners are fairly confident that the system rooted out what few problems there were. Only in two instances did the concerns warrant the taking of further steps, explained below.

The first level of checking for plagiarism, built into the Examination Regulations, was the creation of automated Turnitin reports that attach a score to each essay. The score is the percentage of text in the essay discovered by the Turnitin application that matches digital source material already ‘known’ to the application. This includes not only published material that is online and searchable (e.g. via Google Scholar and Google Books) but also material submitted for examination in Oxford or elsewhere that has previously been scored by Turnitin. The Turnitin report includes not only the score itself but also a snapshot of the various fragments of text that match ‘known’ digital sources, identifying those sources by name and coding them so that a preponderance from a single source, or an extended passage of lifted material, can be spotted instantly. Turnitin has been used for some time in the BCL/MJur Jurisprudence and Political Theory examination and elsewhere in the University. It does not identify plagiarism on its own, because the percentage score includes correctly cited and quoted text in the essay, which can generally be distinguished from ‘suspect’ text only by a visual inspection. The point of Turnitin is to flag up for further visual inspection those essays that have an unusual proportion of derivative material, identified mainly by its phraseology. Up to a point Turnitin can identify tweaked phrasing as well as phrasing that has simply been cut and pasted without artifice.

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<sup>1</sup> This is the average after first marking; we have not been able to locate the final marking figure for the 2013 FHS cohort. Typically, however, the average goes up slightly on second marking.

The second level of checking for plagiarism was as follows. The raw Turnitin scores were inspected in October by the Chair of Examiners (who also happened, this year, to be convenor of the Jurisprudence Subject Group in the Faculty). A judgment was made about the threshold Turnitin score above which the Chair would make his own inspection of an essay and its associated Turnitin report with a view to seeing whether there was anything suspect in it. This year this threshold was set at 15% (i.e. essays at 16% and above were checked). 54 candidates scored 16% or above. The Chair looked at the essays and reports in enough detail to set aside those whose high score was a consequence of extensive quotation, correctly attributed. Several of the very high scores were indeed the result of extensive (excessive) quotation. The Chair did not concern himself with these essays because the mark awarded would inevitably reflect the relative paucity of original contribution; there was nothing relevantly suspect in these cases. The Chair also ignored stock phrases and the like. He was left with 8 essays in which there was some cause for concern, only one of which was regarded by the Chair as showing evidence of intentional lifting of significant material. The others showed scattered instances of incorrectly or incompletely attributed material, or occasional short phrases that coincided with some found elsewhere. Nevertheless all 8 of these were specifically flagged to their respective markers as giving some cause for concern. Markers were asked to reflect on these essays and to report back to the Chair anything that struck them as pointing to examination malpractice.

This led to the third and perhaps most important level of checking. Markers were on the lookout for oddity, not just in the flagged essays but generally. The essay identified by the Chair as probably containing intentionally lifted material was also so identified by the marker. The essays was reported to the Proctors who determined that the correct way to deal with the case (6% of the essay, made up of phrases scattered through the text, lifted from a textbook that was not cited) was for the Examiners to deduct marks for 'poor presentation, short weight, or derivative work' rather than invoke the Proctor's disciplinary process for plagiarism. This verdict was passed back to the marker who carried out the appropriate assessment in the way instructed by the Proctors, and without further intervention by the Examiners. Subsequently a second flagged essay was reported by its marker as giving cause for concern in a similar way, albeit on a lesser scale (several phrases from a single uncited source). The Chair advised the marker that in view of the Proctors' verdict on the earlier case the essay would not be reported to the Proctors as a plagiarism case. The marker was advised to deal with it in the same way as the Proctors had instructed in the previous case, by treating the problem as bearing on the overall quality of the work, leading to a lower mark than might have been obtained had the work been free of lifted phrases.

The Examiners are of the view that plagiarism is not, at this stage, a significant issue in relation to the Jurisprudence essays. However vigilance will obviously be required to ensure that future candidates do not become more lax in their standards. It is inevitable that past essays for at least some mini-options will enter circulation among subsequent cohorts of candidates, and more generally the essay may come to be thought of as an exercise that can be gamed. Turnitin will pick up common text but candidates may still be tempted to take less immediately obvious short cuts.

## **5. 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 572 scripts were second marked in 2014, a proportion (29.5%). That is the same percentage as in 2013, but a couple of percentage points lower than in 2011 and 2012. Last year's examiners noted some possible reasons for the reduction in overall second-marking. We will not repeat them here. We do not think that the reduction gave any cause for concern.

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, 267 scripts (12.95%) were second marked on this basis. This compared with 306 (14.85%) in 2013, 362 (17.92%) in 2012 and 351 (16.36%) in 2011.

This year there were 6 scripts with marks below 40 (0.29%) (compared with 12 (0.58%) in 2013, 16 (0.79%) in 2012 and 14 (0.65%) in 2011.

- (ii) *Scripts and essays which had been marked 4 or more below the average mark for that candidate.*  
230 scripts (11.15%) were second marked on this basis between first and second marks meetings (compared with 229 scripts (11.11%) in 2013, 231 scripts (11.54%) in 2012 and 241 scripts (11.24%) in 2011. The figure of 230 includes 59 Jurisprudence New Syllabus remarks. That figure in turn divides into 51 where the only item remarked was the Jurisprudence script, and 8 where both script and essay were remarked.

(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, 62 borderline scripts were sent out for second marking after the first marks meeting on this basis (compared with 72 in 2013). The table below excludes the 'Jurisprudence new syllabus' borderline scripts and/or essays. In the 13 cases where either the script and/or the essay was second marked, 8 (61%) moved into the higher class overall.

<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>33 (40)</b>	<b>6 (11)</b>	<b>18 (27)</b>
<b>67</b>	<b>16 (17)</b>	<b>3 (7)</b>	<b>19 (41)</b>
<b>58</b>	<b>11 (12)</b>	<b>7 (2)</b>	<b>64 (16)</b>
<b>57</b>	<b>2 (3)</b>	<b>0 (1)</b>	<b>0 (33)</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 2013 are given in brackets.

21 scripts were raised to a higher class (29.16% of those sent out at this stage) compared to 21 (29.16%) in 2013, 19 (35.84%) in 2012, 21 (21.58%) in 2011 and 14.07% in 2010.

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

This year there was no remarking of scripts or essays for the purpose of determining to whom a prize should be awarded.

## **6. Third marking**

Third marking may be used in exceptional cases, this year the Board sent 8 scripts for third marking (no scripts were third marked in 2013).

## **7. 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 (see point 10 below for details).

There were also a few cases in which, although there was no medical certificate, the application of the conventions gave the Examiners cause for concern. The examiners stopped to consider the cases of two candidates who remained nail-bitingly at the first/upper second borderline, even after second marking, with (in one case) three marks of 70+ and two 69s, and (in another) three marks of 70+ and one 69. Exceptionally, the Examiners exercised their discretion to bring the first candidate up to first class, but did not agree to do so in the case of the second. It was agreed that this should not be taken to represent the birth of any new convention.

Another candidate was in the position that if one low mark were to go up by a small fraction that would make all the difference between a third class degree and an upper second class degree, with no space (according to the conventions) for the award of a lower second class degree. This is because the 'no mark below 40 rule' applies equally to the upper second and to the lower second class. The Examiners agreed to exercise their discretion in favour of an award of a lower second class degree as a *tertium quid*. Some disquiet was expressed about the existence of this dramatic precipice in the conventions (although it was agreed that the conventions would have been respected had the case not been precisely as it was).

## **8. Prizes and identification of best performance**

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. In the case of Jurisprudence, where the two parts of the examination were marked separately and no single marking team existed, the Chair made a shortlist of possible prize-winners and the Examiners made the final decision. The winners of the prizes that take into account performance across more than one subject were decided by the Examiners, and where there were multiple contenders the decision was made on the basis of shortlists provided by the Chair showing the relevant mark profiles.

Last year's difficulty with the criteria for the award of the Prize for Best Performance by a Senior Status candidate has been resolved. The Examiners were provided with tighter criteria and the selection was unproblematic.

The Examiners received and discussed a proposal that the candidate with the best performance in each paper should be identified (and the information passed to their College tutor alongside the usual marks breakdown) even where the paper in question does not carry a prize. The proposal was adopted but with some notes of caution. In particular the Examiners took the view that they might not want to identify a best performance in a paper with a very small number of candidates (say, fewer than five), and that they might not want to identify a best performance even in a paper with a larger number of candidates if the candidate with the best performance did not attain a high enough mark (say, if the mark was less than 70). In the event it did not prove necessary to invoke either of these exceptions

but future Examiners may wish to remain alert to them, on the assumption that the practice of identifying a best performing candidate in no-prize papers is to continue.

## **9. Examination schedule**

The Examination Schools were responsible for producing the timetable, and did so efficiently in consultation with the Examinations Officer and the Chair. Within the available examination period it is not possible to schedule papers so that no candidate has more than one examination on any day. This year 28 candidates had two papers on one day (24 in 2013, 32 in 2012, 31 in 2011). Last year a proposal was made that 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. This proposal was rejected at the time and the examiners made no attempt to adjust the timetabling for the popularity or the supposed burden of the subject. However the popularity of options does tend to have an indirect effect on how they are timetabled: simply attempting to minimize the number of candidates who have two papers on one day tends to place the most popular options on different days. The process of timetabling for such minimization is already complicated enough without attempting to adjust for additional desiderata.

This year there was, however, a complication that was out of the control of the Examiners. After it was finalized and indeed circulated the timetable had to be rejigged to meet the needs of a candidate with a severe medical condition. In order to provide the mandated pattern of papers for this candidate, who would otherwise have been subject to an unmanageable period of incarceration, various otherwise undesirable changes were made to the timetable, including the scheduling of a compulsory paper at the very end of the examination period (see point 3 above). The candidate for whom the changes were made did not in the end sit the examination.

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

The procedures for dealing with special cases have changed. Candidates who have conditions calling for extra writing time, word-processing, rest breaks, or other special arrangements for the sitting of the examination are no longer dealt with by the Proctors' Office. These ('part 10') candidates are catered for by the team in the Taught Degrees Examinations Office at the Examination Schools, and the Chair is copied in for information. These 'part 10' cases are therefore dealt with differently from the 'part 11' cases in which the Proctors rule that certain information is to be drawn to the attention of the Examiners about medical conditions or other matters that may have affected performance in the Examination. Part 10 cases do not concern the Examiners at the marks meeting, and do not need to be noted by them unless they also reflect or give rise to some part 11 situation that is separately documented. This also means the end of the 'cover sheets' which used to be attached to the scripts of candidates with certain specific learning difficulties, such as dyslexia or dyspraxia, and the intended use of which used to puzzle markers and examiners. Now the question of how dyslexia or dyspraxia is to be accommodated in the sitting of the exam is clearly differentiated from the question of whether any significance ought to be attached to it in the consideration of marks and the classification of degrees.

Part 10 certificates were forwarded to the Examiners in respect of 16 candidates, 13 of them in course 1, one in course 2, and two in the DLS.

Part 11 certificates were forwarded to the examiners in respect of 18 candidates (15 in course 1, 3 in course 2, none in the DLS). Given the change in procedures it is unclear whether and how this figure is to be compared with the figures for medical certificates provided in previous Examiners' Reports (29 candidates in 2013, 16 in 2012, 59 in 2011, 34 in 2010, 31 in 2009 and 25 in 2008).

In every case where a part 11 certificate 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, Michaelmas Term 2013*, Annexe B.

Two of the 'part 11' candidates received a higher degree classification than they would otherwise have received because the information in the Part 11 certificate led the Examiners, in the exercise of their plenary discretion, to discount one paper mark that was radically out of line with all the others on the candidate's profile. In three further cases, on the strength of information in part 11 certificates, scripts were sent for remarking as 'borderline' which would not otherwise have been selected for remarking under that heading. In the event these three candidates were not lifted into a higher class by this process. In two further cases, part 11 certificates explained the slightly late delivery of Jurisprudence essays in October 2013, and the 'academic penalty for late delivery' authorised by the Proctors at the time was therefore waived. In the remaining eleven 'part 11' cases the information in the part 11 certificates was held not to be capable of affecting the Examiners' judgments (typically because the candidate's mark in the affected paper(s) was not out of line with his or her other marks, or because no amount of remarking or discretion could imaginably have affected the candidate's classification, which was not near any borderline).

## **11. 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. On one occasion some desks had the wrong books on them before the start of the examination but this was spotted and rectified before the candidates arrived. (See point 1 above for comments on a candidate complaint concerning the materials supplied in one paper. The problem was not, however, with the materials but with the way in which the candidate had formed his or her expectations about them in advance of the examination.)

The list of statutory materials is included in Appendix 2.

## **12. Legibility**

This year, typing was requested in respect of 11 candidates for a total 24 scripts. This compares with 10 for 13 scripts in 2013, 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.

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

In accordance with the practice adopted since 2011, the mark given for a completely absent answer in any script (formerly known as short weight) was zero. No other penalty was applied. 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. Again, no other penalty was applied.

Last 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 matter was considered by the Examinations Committee of the Faculty and the suggestion made last year, namely that 10 marks ought to be subtracted from the overall mark in the paper, was endorsed. This penalty was implemented this year in the case of one candidate on one paper.

This year there also arose the question of what penalty, if any, ought to be applied if a Jurisprudence essay fell below the minimum word limit (3000 words) or above the maximum word limit (4000 words) specified in the Regulations. There were four candidates who wrote less than 3000 words. This year no specific penalty was applied. Markers applied the principles used for ‘short’ examination answers above, namely to assess the attempt for what it is worth in comparison with fuller answers. This approach treats the ‘3000-4000 word’ instruction in the Regulations as a piece of guidance on what will qualify as an adequate but not excessive treatment of the subject. It does not treat it as a requirement, breach of which will be penalized, akin to a rubric violation. This is only one possible approach. The Examinations Committee may wish to consider whether a different approach is to be preferred.

### **14. 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.

### **15. 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 are not

aware that any modernization has occurred. The need for modernization is made more urgent by the revised mode of examination in Jurisprudence, which now necessitates the provision of two separate profiles for each candidate – the main profile, used for classification, and a sub-profile showing the breakdown of Jurisprudence marks, referred to mainly for the purpose of determining whether remarking was called for in the case of candidates with 67 marks. See above

## 16. External Examiners

This year we had the valuable assistance of Professor P. Mitchell of University College, London (for his second year) and Dr P. Syrpis of the University of Bristol (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 borderline scripts in their specialist subjects. The external examiners' reports to the Vice-Chancellor about their views of the examination process are attached as Appendix 1.

## 17. 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, 56 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:

	2014				2013				2012				2011			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	18	24	16	15	15	15	15	14	15	18	19	19	14	17	10	9
II.i	54	73	89	82	75	79	81	77	64	76	74	76	63	75	88	79
II.ii	2	3	3	4	3	3	5	4	3	3	4	4	6	7	9	8
III					1	1	1	0.9							3	3
Pass			1	1					1	1					1	1
Fail							1	0.9	1	1	1	1	1	1		
Honours*							1	0.9								
<b>Total</b>	74		109		94		104		84		98		84		111	

\* 'declared to have deserved Honours'

The gender breakdown for Course 2 was:

	2014	2013	2012	2011
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	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%												
I	8	53	4	24	3	30	4	19	5	38	6	32	5	45	13	59
II.i	7	47	13	76	7	70	17	80	8	62	12	63	6	55	9	41
II.ii											1	5				
III																
Pass																
Fail																
Honours*																
<b>Total</b>	15		17		10		21		13		19		11		22	

\* 'declared to have deserved Honours'

The gender breakdown for Course 1 and 2 combined was:

	2014				2013				2012				2011			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	26	29	20	16	18	17	19	15	20	21	25	21	19	20	23	17
II.i	61	69	102	81	82	78	98	78	72	74	86	74	69	73	97	73
II.ii	2	2	3	2	3	3	5	4	3	3	5	4	6	6	9	7
III					1	0.9	1	1								
Pass			1	1					1	1					1	0
Honours*							1	1								
Fail							1	1	1	1	1	1	1	1	3	2
<b>Total</b>	89		126		104		125		97		117		95		133	

\* 'declared to have deserved Honours'

Of the 10 candidates who withdrew from the examination (all course 1, not included in the tabulated figures above), 9 were female and 1 was male.

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

	2014	2013	2012	2011	2010
Roman Law (Delict)	5	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)	18	22	32	40	39
Public International Law	38	42	37	43	46
History of English Law	12	4	4	10	8
International Trade	15	14	20		11
Family Law	55	46	44	58	54
Company Law	22	26	27	31	30
Labour Law	19	21	25	32	30
Criminal Law	6	10	7	6	8
Commercial Law (previous to 2011 known as Principles of Commercial Law)	30	23	31	11	21
Constitutional Law	6	10	7	6	7
Taxation Law	18	13	6	14	10
Environmental Law	7	5	9	8	10
Competition Law and Policy	35	30	1	39	37
Copyright Trade Marks & Allied Rights	5	2	*	12	*
European Human Rights Law	43	26	39	34	29
Personal Property	8	20	22	17	25
Copyright, Patents and Allied Rights	16	40	30	12	2
Moral and Political Philosophy	30	24	27	24	*
Commercial Leases	*	*	*	6	7
Patents, Trade Marks & Allied Rights	*	*	*	1	20
Medical Law and Ethics	62	96	75	55	40

\* Not offered

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

	2014	2013	2012	2011	2010
Contract	24	24	23	26	25
Tort	19	20	18	18	24
European Union Law (previous to 2009 EC Law)	13	6	10	11	8
Comparative Law of Contract		6		6	9
Company Law	13		7	4	6
Jurisprudence	3	4	3	6	1
Commercial Law (previous to 2011 known as Principles of Commercial Law)		2	1		3

Public International Law	3	3	9	5	5
Criminal Law	1	2	5	1	3
Copyright, Trademarks and Allied Rights	2	1		4	
Trusts		3		1	1
International Trade					
Labour Law	4	3	1	1	1
History of English Law		1		1	
Copyright, Patents and Allied Rights	1	1	1		
Constitutional Law		8	5	6	4
Competition Law and Policy	5			2	2
European Human Rights Law	3	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

	2014	2013	2012	2011	2010
Jurisprudence					
Contract	4	6	3	6	6
Tort			1		
Land Law					
Family Law		2			
Comparative Law of Contract					
Public International Law		2	2	1	2
European Union Law	1	1			
International Trade					
Company Law		4	5	5	8
Principles of Commercial Law				2	
Constitutional Law				1	
Trusts					2
Administrative Law	1	1		1	
Labour Law					
Criminal Law					

Copyright, Trademarks and Allied Rights				
Ethics				
European Human Rights Law	5	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 (Old & New combined)		3	5	13	25	41	8	4	0	0		215 (43 & 172)
Contract	0	9	16	7	24	35	3	4		0	1	215
Tort	0	6	9	6	21	41	6	10	0	1		215
Land Law	0	7	13	8	21	32	7	8	0	1	1	215
Trusts		2	7	9	30	45	4	3		0		215
Admin. Law		6	18	9	35	28	2	1	0			215
EU Law		5	13	13	32	34	1	1		0		215
Criminology & Criminal Justice		6	22	17	22	33						18
PIL		8	11	8	26	45					3	38
History of English Law		9	9	9	27	27	9	9				12
Family Law		12	10	10	32	32	4					55
Labour Law		11	42	16	21	11						19
Company Law		5	14	5	29	43	5					22
Criminal Law			20			60	20					6
Commercial Law		7	27	3	17	27	10	10				30
Constitutional Law			60		20			20				6
Taxation Law		12	12	18	35	18		6				18
Roman Law (Delict)		40	20		20	20						5
Environmental Law		29		43	29							7
Copyright, Patents and Allied Rights	13	20	13	20	13	20						16
European Human Rights Law		18	31	15	21	10	3	3				43
Personal Property			38		25	25		13				8

Competition Law and Policy		6	15	12	32	32				3		35
Medical Law and Ethics		7	19	5	50	19						62
Moral and Political Philosophy	3	7	10	17	17	40	3	3				30
International Trade		13	7	7	13	53	7					15
Copyright, Trade Marks and Allied Rights			40		60							5

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

These appear in Appendix 3

N. Bamforth  
J. Dickson  
J. Gardner (Chairman)  
L. Hoyano  
L. Lazarus  
A. Kavanagh  
P. Mitchell (external)  
D. Nolan  
P. Syrpis (external)  
L. Zedner

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

# Appendix 1

## REPORT OF THE EXTERNAL EXAMINERS

26<sup>th</sup> August 2014

### External Examiner's Report

I was very pleased to act as an External Examiner for the Final Honour School of Jurisprudence and the Diploma in Legal Studies Examinations for the 2013-14 academic year. I did not attend the meetings in March and April 2014 at which the exam papers were prepared, but did attend the two marks meetings in July 2014.

There is no doubt that threshold academic standards were maintained throughout the process; that the assessment process was fair and rigorous; and that academic standards were at a very high level.

In particular, I was impressed by the clear and timely manner in which all communication between the University and me was carried out; by the level of detail in the 2013 Examiners' Report, which was circulated prior to the March exam paper meeting and the attention devoted therein to a comparative statistical analysis of the results of the candidates; by the strenuous efforts made by all the examiners to apply classification conventions fairly to all candidates; and the huge efforts made by the Chairman of the Board of Examiners and the Examinations Officer. I was also impressed by the quality of the scripts I was given to look over in European Law.

There were, in addition, a number of issues which provoked discussion at the marks meeting in July, on which it may be helpful to comment further.

First, the new format of the jurisprudence paper, which combines assessment by essay with assessment by examination. In my view, the introduction of assessment by essay is long overdue – it is not uncommon in other institutions for as much as 1/3 of the final assessment of students to be on the basis of coursework. The assessment by essay nevertheless caused some difficulties for you. First, it was noted that the marks for the examination were lower than in other papers, and lower than in previous years. It was felt difficult to know why – perhaps because it was 'only' a two hour exam, perhaps because it was the last exam, and perhaps because students devoted more time and effort to the essay. This should be further investigated in the coming years. Secondly, there were some problems combining the essay mark with the mark for the examination. The two elements of the assessment (weighted 50/50) were considered separately, and combined arithmetically. In my view it would be better (as in fact happens in all other papers) for the two to be considered together 'in the round', so as to enable one to come to a view of the appropriate mark (and class) to award to any candidate, which encompasses both elements of the assessment.

Second, there were some issues raised relating to the scope of the syllabus (and, a more minor matter, the case list) in some papers. It is important that a clear system is devised, enabling the syllabus to evolve, and at the same time ensuring that it is easy for teaching teams and students alike to identify the syllabus on which the examination will be based.

Third, there was some discussion about classification conventions. The Oxford system is based on the amount of papers which fall in particular classes; rather than on a system based on averages. In my view, the current system works well. Where it produces what may be thought to be anomalous results, the exam board retains enough discretion to ensure fair outcomes; and I was encouraged that the Board was prepared to exercise that discretion. My institution, the University of Bristol, changed from a system like Oxford's, to one based on averages two years ago. It has necessitated a number of changes to our practices, not all of which were anticipated in advance. In particular, it necessitated the giving of higher first class marks (so that first class work is appropriately rewarded); and the development of a different (and more intensive) approach to borderline scripts; as borderline candidates are much more difficult to identify. Any decision to change to a system based on averages would need significant thought.

Finally, there was some discussion about second marking. I do not want to enter the debate on whether all scripts should be second marked (for what it's worth, I am certainly confident that the current system is fair to all candidates). The issue I want to comment on is the rationale for looking at some scripts a second time. At present, those that are looked at again are those which are overall just the wrong side of a borderline, where an increase in the mark for a particular paper could bring the overall classification up; and those where the mark for the particular paper is 4 below the candidate's overall average. The issue is whether marks should be amended upwards or downwards, or only upwards, on second marking. My view is that only upwards amendments should be possible. The aim is not to ensure that the mark is 'correct'; if that were the rationale, papers on both sides of borderlines would be routinely remarked. The aim is to ensure that the classification is correct; and moving marks down does not affect the final degree classification.

I look forward to continuing in this role in the coming year.

Yours,

Dr Phil Syrpis  
Reader in Law

15<sup>th</sup> July 2014

### **Final Honour School/Diploma in Legal Studies**

I am submitting my report, as requested, on the examinations for the Final Honour School of Jurisprudence and the Diploma in Legal Studies programmes for 2013-2014.

The examination question papers and scripts that I reviewed left me in no doubt that appropriate academic standards are being demanded, and applied, in both programmes. It was also clear that the Law Faculty is actively developing new methods of assessment which are appropriate for these programmes, such as the introduction of assessment by essay in Jurisprudence (which counted for 50% of the final mark). Candidates' excellent performances in this essay component suggest that it provides a welcome opportunity for students to develop their own original ideas and insights at greater length, and in far more congenial conditions, than is ever possible in a traditional limited time, closed-book examination. I would unhesitatingly support any future proposals to give the assessed essay greater weight, and to introduce it into other suitable subjects.

As was the case in 2012-2013, I was very impressed indeed by the organization and efficiency with which the examination process was handled. Helpful information was sent to me very promptly, and the meetings of the Board of Examiners were (again) conducted with a skill, effectiveness and good spirit which would be envied at other institutions where I have acted as an External Examiner. Both the Chairman of the Board and the Examinations Officer showed an exceptional mastery of the procedures, and the Board members were highly conscientious in their determination that candidates' scripts should be assessed both thoroughly and fairly.

There are three specific points, which arose in the course of the meetings, and which the appropriate committees may wish to consider further.

First, there was general concern about the application of the Marking Conventions for the classification of degrees to those candidates who had performed consistently at the upper second class level in seven papers or even eight papers, but had evidently struggled in their other one or two papers, obtaining a mark below 40 for one of those papers. The effect of the Conventions is that such candidates are ineligible for the award of a lower-second class degree, and there was a general unease that dropping two degree classes, despite the overwhelming preponderance of upper second class marks, might be too extreme an outcome.

Second, the conventions in relation to second marking may need to be reconsidered. It appeared that where a script was second-marked because it was four below the candidate's overall average, the practice was that the first mark should not be reduced, but should only be raised or left unaltered. Where, however, a script was second-marked because the candidate's performance in other papers raised the possibility of a higher degree class, it seemed that the first mark could be moved either up or down. Whilst reasons were given in support of each practice, the overall position did not seem to be obviously coherent, and perhaps suggests a lack of clarity about the underlying purpose of second marking. If the purpose of such marking is to identify errors, then it should be possible for the scripts second-marked as four below average to have their marks reduced. If, on the other

hand, the purpose of such marking is to attempt to treat candidates as generously as possible, there seems to be no justification for reducing borderline marks.

Third, there was a discussion about whether an announcement should be made of the best performances in those papers for which no prize currently exists. The Board favoured such an announcement, a decision with which I agreed, but I could not help feeling that the absence of prizes in several papers was very unfortunate. It suggested that those papers were in some way inferior to the papers in which a prize existed. Might the Law Faculty be able to create Law Faculty Prizes in those papers as an interim measure, with the prize funds coming from a central budget, and at the same time investigate obtaining donations to fund named prizes in the future? That would ensure that the outstanding achievements of candidates in every paper were recognized equally.

Yours sincerely

Paul Mitchell  
Professor of Laws

# Appendix 3

## REPORTS ON INDIVIDUAL PAPERS

### JURISPRUDENCE

The 'New Syllabus' paper contained ten questions on a wide variety of jurisprudential topics, chosen so as to provide for the full spectrum of interests that individual candidates (as well as different tutors) may reasonably have in the subject. The questions were phrased so as to invite candidates to engage critically with particular jurisprudential debates, and encourage them to offer focused, thesis-driven answers in the context of which they can draw helpfully on their knowledge of relevant literature. By the same token, the questions were phrased so as to discourage candidates from offering bland, descriptive surveys of the literature, or from regurgitating old tutorial essays produced in answer to different questions.

At the high end of the field – that is, the high 2.1 to 1<sup>st</sup> class range – the examiners were pleased to find a good number of candidates who demonstrated excellent jurisprudential knowledge and impressive analytical ability. As befitting a philosophical subject, the best answers to individual questions were often radically different from each other, both in terms of the particular thesis offered (equally-impressive answers often offered diametrically opposed takes on particular issues) and in terms of the literature that candidates found useful to draw upon in the course of offering their theses. What the best answers all had in common was merely engagement with precisely the question answered, a sound understanding of the particular debate or debates that the question elicits, and an answer in the shape of a coherent thesis, built (at least in part) upon familiarity and the ability to engage critically with some relevant literature.

Pleasing as the high end was, perhaps the most striking feature of the field overall this year was the rather high number of papers that can be described as belonging in the low end – that is, in the range of 2.2 (and, in a handful of cases, below) to borderline 2.1. The examiners can only speculate as to the reasons for the relatively high number of truly weak efforts – perhaps it was the fact that, for the first time, the exam only accounted for 50% of the overall mark in the subject, with some candidates neglecting to adequately revise the subject as a result, perhaps it was the fact that it was the last exam in this year's calendar, or some combination of both reasons or other reasons still. Be that as it may, the weaknesses exhibited by the many scripts belonging in this category can roughly be divided into matters of technique and matters of substance, albeit the two types of weakness proved to be by no means mutually exclusive.

In terms of technique, the field contained a rather high proportion of answers of a highly polemical nature, with one-sided and often anecdotal or speculative argumentation, insufficient precision and attention to detail, and insufficient attention to the precise terms of the question. In terms of substance, the predominant problem afflicting the weaker efforts appeared to be simply insufficient familiarity with the literature – a problem which, in turn, further contributed to the tendency to offer one-sided and speculative argumentation where critical engagement with the relevant literature would have reaped far richer rewards. Indeed, in numerous instances such lack of fundamental knowledge manifested itself in candidates appearing altogether ill-informed not only of the range of existing views on a particular debate, but of the very nature of that which has been debated.

The examiners found this sort of lack of expertise rather surprising, particularly in light of the rich provision of lectures in this subject. Even incomplete attendance in the ‘Guide Through the Subject’ lecture series, for example, would have furnished all candidates with at least a modicum of background knowledge, and at least some familiarity with the very questions that legal philosophers actually debate – enough, at any rate, so as not to attribute to various contemporary and historical figures views which have never crossed their minds (or, at any rate, their word processors), and so as not to describe such figures as engaged in a debate over something which in fact has never been debated by anyone, and usually for fairly obvious reasons.

These latter observations can be illustrated by reference to a selection of the paper’s questions.

In the very popular question 4, candidates were invited to discuss the quote ‘[s]ince few would abide by the law that sets the speed limit on motorways if not for fear of punishment, it is appropriate to liken such a law to the orders of a gunman’. A surprising number of answers appeared to be informed by the fiction that the question ‘why do most people abide by the laws by which they abide’, rather than a matter for a simple survey (should anyone be interested), is the subject of an age-old philosophical debate, and one on which various historical characters (John Austin, Herbert Hart...) have expressed some entirely speculative (and usually truly bizarre) views. Many such answers further took the shape of quibbling with the first part of the quote (!), in the process offering an impassioned defence of the current speed limit on UK motorways, and arguing that most people in fact abide by those for some very profound reasons. It is hard to imagine that any exposure, however minimal, to the actual philosophical debate to which this question alludes, or the reading of any primary source relating to that debate (eg anything *by* John Austin or Herbert Hart), could have left candidates with the impression that these sort of considerations are in any way at stake in this context.

Similarly, in answer to question 2 – ‘Are judges ever permitted not to apply existing law? Do they ever have an obligation not to apply existing law?’ – numerous candidates appeared to be blissfully unaware of the contentious nature of the phrase ‘existing law’, or the way in which different views on the scope of ‘existing’ law or the means by which judges are able to find it may inform one’s position on the issue. Such candidates usually answered the question by way of offering some variation on the theme that judges are unelected and therefore should only apply existing law (unless perhaps some terrific injustice is at stake).

In answering question 9, which invited candidates to discuss the quote ‘[t]he doctrine of binding precedent constrains judges’ ability to make law more than it expands it’, only a minority of candidates appeared conscious of the fact that the doctrine of binding precedent can be understood as *constituting* judicial law making in the first place. Many answers thus took the shape of arguing that judges would be ‘making more law’ if not for binding precedent – a baffling thesis in and of itself, and doubly baffling not only for those who are familiar with the established philosophical debates implicated in this question, but for any student of law in a common law jurisdiction.

Finally, question 8 – ‘When the law enforces morality, does it make us less free?’ – produced many of the more inspiring (as well as most diverse) answers, but also a good number of answers informed by a rather implausible understanding of the terms of the question, rooted in the misattribution of crass and implausible views to various historical figures, and sometimes involving the remarkable failure to observe that when the law prohibits (for example) wanton

violence it does not only make us less free (to inflict wanton violence) but also more free (from being subjected to wanton violence). Again, this sort of treatment of the question struck the examiners as incompatible with exposure to any primary literature or attendance in any of the lectures offered on the topic, whereas the many knowledgeable, imaginative and philosophically nuanced answers to the same question (usually grounded in some discussion of topics such as the true meaning and value of political freedom, the aims and the actual scope of the legal enforcement of morality, and so on) revealed what rich intellectual rewards await those candidates who do engage with the subject seriously, and go to the trouble of acquiring some expertise within it.

The Jurisprudence ‘Old Syllabus’ paper provided for candidates who began their course before Michaelmas Term 2011 was identical save that six additional questions were provided covering topics no longer on the syllabus. Candidates taking the ‘Old Syllabus’ paper were required to answer three questions instead of two, and did not write an essay.

### **JURISPRUDENCE MINI-OPTION ESSAYS (topics in alphabetical order)**

**Anarchism:** The majority of candidates made relevant use of literature in addressing the question and showed adequate grasp of pertinent concepts. One of the most noticeable shortcomings in the weaker essays was the failure to consider a sufficient variety of writings and points of view. The best essays, on the other hand, made rich use of relevant resources in a systematic attempt to develop and adequately defend a line of argument.

**Contract Theory:** The Theory of Contract essays fell broadly into two groups. About half of the candidates produced essays in which they engaged seriously and patiently with the pertinent philosophical literature, so as to offer a thoughtful, thesis-driven treatment of the essay question. The reward for these candidates was threefold: marks in the high 2.1 to 1st class range, as well as some useful groundwork for the final exams in both contract law and jurisprudence. The other half produced essays in which they relied primarily on contract law textbooks (or, at any rate, textbook-like treatment of the material), with nuanced philosophical theses from the literature summarised sketchily and endorsed or rejected without sufficient reason or argumentation – such candidates reaped none of the three rewards.

**Criminal Defences:** There were 13 candidates for this mini-option. Answers ranged widely from more doctrinal treatments to more purely philosophical ones. Both were equally acceptable approaches so long as they answered the question asked, which almost all did. A couple of less good essays went through well-known positions in a well-known order with well-known objections. Even these, however, were orderly and sensible and achieved marks of 60 or above. At the upper end – four candidates attained 70 or above – there were original ways of thinking about the subject, signs of extensive further reading, and a smooth integration of law and theory. Answers, as well as very good answers, were more or less evenly divided between the three questions asked.

**Freedom of Speech:** Twenty-three candidates submitted essays for the mini-option on Free Speech. The most popular questions were those on democracy and hate speech, followed by the question on pornography. The quotation from JS Mill had the fewest takers. There was no significant variation in marks by question attempted, with the exception of the Mill quotation. There, the common weakness was a lack of attention to the specific issue raised therein, namely, the relation between the individual interest in free expression and the public interest

in it: candidates preferred to write more generally about Mill's views. Otherwise, the standard of writing and argument was good, and among the four candidates who got first-class marks on this component it was excellent. There was a sharp and wide divide between, on the one hand, the best answers and those getting marks in the top of the second class range and, on the other, answers scoring below that. The weaker answers were longer, but not much better, than a typical tutorial essay and they mainly repackaged material from the classes. Two candidates flattered the examiner with copious quotations from his writings on the subject: those who found something to disagree with generally gave better answers. Finally, the attention of all candidates is drawn to the importance of using the time available to do further research and reading in the area, to engage in deeper reflection than a tutorial essay allows, and to display complete command of a recognized method of scholarly citation, preferably OSCOLA.

**Morality and the Nature of Law:** There were three questions, covering the material discussed in class. The first asked whether the thesis that social facts ultimately explain the content of the law be reconciled with the view that there is some necessary connection between law and morality. The second asked whether it is in the nature of law that it is defective if it fails to give decisive reasons for compliance. The third asked whether moral principles may play any role in the explanation of legal obligation other than as considerations that help to fill gaps left open by authoritative legal texts. The answers were evenly spread among the three. The overall quality of the essays was surprisingly high, clearly exceeding that of essays written for the general FHS paper in Jurisprudence. The better essays showed a good level of comprehension and included critical discussion of the relevant philosophical views.

**Judicial Review of Legislation:** In this mini-option candidates performed well when their essays focussed on the specific problems raised in the materials and seminars and gave pointed answers to the questions. Some of the stronger candidates effectively used independent research, but others relied on the set materials to make arguments of the same quality. The weaker candidates rehashed arguments from the general part of the Jurisprudence course in a way that dealt only superficially with the questions set.

**Justice and Taxation:** 10 candidates chose this mini-option. The question offering a quotation from John Rawls as the starting point for analysis proved the most popular, with a question about predistribution the next most frequently attempted. All candidates scored above 60, and there were three distinction marks. The strongest answers contained evidence of independent reading beyond the prescribed materials, and a willingness to engage in original thinking. Weaker candidates were sometimes unwilling to reach a clear view about the precise point raised by the relevant question.

**Justice in the Law:** This mini-option attracted 24 candidates. The vast majority - 17 candidates - attempted the essay on Hart's troublesome 'germ of justice' thesis, the topic which arguably had the closest connection with the rest of the Jurisprudence syllabus. The standard of answers was impressive. Many candidates showed reading beyond the reading list, and there was little sign of the classic errors associated with Hart's sayings on this theme. One memorable answer scored an outstanding 76, with a highly original point at its core and a relentless but economical argument to back it up. Even the less memorable answers to this question were clustered in the high 60s, showing good evidence of careful reading and independent thought. The other questions (on the decisiveness of injustice objections to law and on the distributive aspect of adjudication) were not attempted by enough candidates to allow much in the way of general observation. However the answers on adjudication included the second best script, attaining 75 - another memorable one, with extremely good examples and a very deep grasp of

the literature. There were no notably poor answers to any question. In the round, the essays in this mini-option gave every cause for celebration and showed what Oxford law undergraduates can achieve when given an opportunity to work on a tricky topic in a more sustained way.

**Law and Social Theory:** All of the essays were of a good quality, and some really excellent, obtaining first class marks. The great majority of essays were written on the Hannah Arendt question, with a handful attempting the question on Marx. No-one attempted the Weber question. Most essays demonstrated a good level of understanding of the subject, but the best showed a spirited engagement in it and a good capacity for independent research. The main criticism would be that some essays, although making interesting points, lacked a clear structure and tended to obfuscate their content.

**Strict Liability in Criminal Law:** This mini-option was taken by four candidates. The essay questions dealt with the issues of the justifiability of punishment for offences lacking mens rea; what strict liability offences could tell us about the nature of criminal liability; and what sense could be made of the idea that there could be offences that were not (strictly speaking) crimes. All of the essays displayed a very good engagement with the literature and a sound grasp of philosophical argumentation. One essay was of a first class standard, and the rest were of a mid- to upper-2:1 quality.

**Theory of Discrimination Law:** For this mini-option, the question concerning sex discrimination against men was the most popular, followed by the one on indirect affirmative action. The strongest candidates not only had a good grasp of the prescribed material but had also done some independent scholarly research. They also connected the specific issue confronting them with broader theoretical debates, used relevant doctrinal material to further theoretical inquiry, showed original thinking and wrote well-structured essays. The weakest candidates failed to delineate and focus on the precise question asked and simply presented general summaries of arguments that others had made.

**Tort Theory:** The most popular question for the tort theory mini-option concerned that on theories of corrective justice. Many candidates wrote thoughtful answers to this question that demonstrated a good understanding of the voluminous and often highly complex literature in this area. Some candidates read beyond the suggested materials. The other two questions, on the distinctiveness of tort law, and on the significance of defences in the context of strict liability, were also tackled by many candidates. One difficulty from which quite a number of the essays suffered was that they left the reader uncertain until near the end of it, and sometimes even at the end of it, as to the candidate's precise thesis. Another problem was that candidates sometimes did not separate distinct argument and slid from one to another, thereby creating the impression that the candidate was unaware of the slide. Candidates that merely recounted arguments made by theorists performed poorly.

**What Law Cannot Do For Us:** Candidates for this mini-option generally engaged with either or both of the two core problems raised in the seminars: (1) injustices generated by legal systems and (2) injustices legal systems are unable to tackle. However, few candidates, if any, were able neatly to distinguish between these two problems. The best scripts went beyond the arguments and legal examples presented in seminars and grappled with the problems in their own critical voice. Some candidates elegantly brought to bear the discussion on topics in a range of different legal areas. As in any jurisprudence paper, some candidates were let down by a tendency to make vague claims and/or arguments from authority, unsupported by careful reasoning.

## CONTRACT

All the questions were attempted, with Essays 3 and 6, and Problems 8 and 12 being by far the most popular questions. The overall standard was higher than that of recent years.

**Q1:** on implied terms attracted a reasonable number of answers and candidates did a reasonably good job of answering this question. More attention should be paid to the specific quote which directs candidates to issues that should be discussed.

**Q2:** almost all candidates avoided what was really a very straightforward question about *OFT v Abbey*, criticisms of the SC decision in its interpretation of reg 6(2) on the exclusions from review for 'core' terms, and the extent to which the proposed regulation in the cl 67 Draft Consumer Rights Bill meets the criticisms, in particular the notions of 'prominence' and 'average consumer' contained therein.

**Q3:** Almost all candidates attempted this essay, but many treated it as a general question about the abolition of the doctrine of consideration, and offered their pre-formulated answer to that. Better answers specifically addressed the three propositions in the quote, and arguments on both sides before coming to a conclusion.

**Q4:** A reasonable number attempted this question, but again many offered a general essay on the desirability of the Act rather than addressing the specific focus of the question on the conflict between the interests of the promisee and the third party, ie when might the Act give the third party an action and protect it in a way that might contradict the intention of the promisee? The normative question was often ignored.

**Q5:** A few answers offered to this question and they could be improved by closer attention to (i) the meaning of 'procedural' and 'substantive' unfairness, (ii) the extent to which the vitiating factors address either sort, and (iii) the arguments on either side of the normative question.

**Q6:** The second most popular essay question with most agreeing with the quote and offering a variety of evidence, too often too limited to damages and then only discussing a few doctrines there. Discussion of specific performance, termination and agreed remedies such as agreed damages, gives a better picture of the descriptive question. There was often a rather cursory answer to the question of what 'other factors' determine the available remedies.

**Q7:** Some answers to this, reasonably well done but some failed to discuss mistaken background assumptions (ie *Bell v Lever* and that line of cases, including *Great Peace*) and confined themselves to mistaken identity. Many did not offer any alternative solutions to the problems.

**Q8:** A very popular question answered by most candidates and generally well answered. Re action by BH: some failed to discuss why Blackpool might not apply here, and even if it does,

what the remedy would be. Re P: some failed to argue alternative analysis of P's statement, including uncertainty and so no contract; the possibility that term (b) comes under UCTA; and the possibility of distinguishing from Ruxley over the installation of the wrong system because M is president of the Buy British Association. On the second part, discussion of postal rule and revocation generally fine but many omitted the mistake of price point.

**Q9:** A relatively straightforward question that not very many attempted, raising unconscionable bargains, (not mistaken identity as it was irrelevant to F's decision to contract), frustration and promissory estoppel.

**Q10:** A reasonable number answered this relatively straightforward question involving undue influence, Etridge (here the focus should be on the bank's acts/omissions) and remedies for breach (invoking the penalty rule, bar to specific performance, injunction, Blake and Wrotham Park).

**Q11:** A reasonable number of answers here. Some neglected to examine possible claims by Tom's estate, and by Violet under CRTPA. Is damages for breach to be calculated on the basis of the price as being £10,000, £14,000, or £5,000? This depends on analysis of duress, consideration, and perhaps promissory estoppel. If the exclusion clause is struck out, what is Tom's loss? Almost all failed to spot that V cannot appeal to UCTA or UTCCR- hence the total exclusion of liability is valid and V gets nothing. There is also an interpretation point: can parties have intended to exclude all and any liability? Ie allow Bob simply to throw over the contract? Re Dora: some assumed the contract was frustrated without arguing the issue.

**Q12:** Another very popular question. Some failed to spot that statement (i) may have been honest and on reasonable basis, and that statement (ii) asks about the significance of H's own failure to check and honouring of loyalty cards. Bar to rescission of delay? Some misunderstanding of when section 2(2) Misrepresentation Act applies and failure to acknowledge the difficulties of calculation on the facts. Still some unnecessarily prolonged discussion of actions for fraud and negligent misrepresentation. The entire agreement clause is the same as that in AXA. It is effective to exclude any collateral terms, although this is subject to UCTA s.3(2)(b)(i). It is ineffective as a no-representation clause. In any case, it is subject to s.3 Misrepresentation Act.

## TORT

The tort examiners were disappointed by the overall calibre of the scripts this year. There was also ample evidence that diligent revision could enable candidates to identify and handle the issues in each of the 12 questions, given the significant number of outstanding scripts. Many candidates seemed to have difficulty sustaining quality across four answers, suggesting inadequate revision and updating of a paper which most study in tutorials early in the Final Honour School when their skills are not as finely honed as they should be and need to be at the end of their degree. There was also ample evidence of failure to learn proper examination technique from collections. The most common errors were:

- assuming that examiners devote a lot of intellectual energy and words in a problem question setting up non-issues or ones that can be answered dismissively in one sentence;

- giving the examiners the pleasure of guessing who is suing whom, in what tort, or under what statute;
- assuming that multiple parties are in an identical position so that they can be dealt with all together without searching for distinguishing facts or legal positions;
- failing to consider alternative causes of action or alternative routes to liability or alternative defences;
- making contradictory arguments without signifying that they are advanced in the alternative;
- failing to consider how leading cases on an issue might be distinguishable on the facts of the problem;
- narrowing their revision to too few topics, preventing them from addressing a complete problem question or from thinking across topics in their essays;
- misreading the facts, whether inadvertently or deliberately so as to eliminate issues;
- inventing facts which contradict the stated facts;
- misreading or ignoring statutes, or thinking that citation of the statute suffices without considering its requirements to set up liability;
- writing extended paragraphs in essays and problem answers on what they thought the examiners should have asked, but (mysteriously) did not; and
- failing to use the basic common sense with which all lawyers should be endowed. Thus the examiners were repeatedly informed that rainfall is an extraordinary/non-natural/dangerous use of land by the owner, as are trees, silt and drainage ditches, and that grazing cattle on pastures is an hypersensitive (and non-natural) use of farmland. The victim of a theft can be sued by the thieves because they were able to steal his cars. Etc etc...

**Question 1** *Defamation Act 2013* The relatively few candidates who tackled this question generally produced strong answers, although they tended to overlook whether the Government's assertions in the press release that the Act simultaneously enhanced protection for freedom of speech and for reputation were logically consistent and attainable in legislation dealing with. The strongest candidates considered what 'rebalancing' might mean.

**Question 2** *Economic torts* As in past years, few candidates attempted this question, but those who did produced very strong answers paying close attention to the question.

**Question 3** *Exclusion of liability* Few candidates attempted this question which the examiners had hoped would tempt candidates to 'think outside the box', and the answers were generally disappointing. Most did not notice that the question was not restricted to negligence, and few showed any inclination to address this normative question with the thinking untrammelled by existing authority for which the examiners had hoped.

**Question 4** *Loss of a chance* The most common errors were: assertions that tort law never compensates for lost chances; failing to distinguish between loss of a chance as a causation (gist damage) issue and as a quantum issue; considering that *any* reduction of a chance below the (marginally greater than) 50% threshold would satisfy the causation requirement (many thought that a reduction from 51% to 49% would suffice for gist damage); focusing solely upon medical negligence and ignoring the cases of economic loss of a chance, such as *Kitchen* and *Allied Maples*; and failure to address the questions as to rationality and reform. *Chester v Afshar* featured in many answers, but only a few explained how the case could be reconfigured as a loss of a chance case. A dismaying number of candidates thought that joint and several

liability under *Barker* and the Compensation Act 2006 were relevant to loss of a chance, without explaining why.

**Question 5 Remedies** Most of the answers were pedestrian accounts of whether a list of remedies (usually limited to damages) were claimant-sided or defendant-sided, without considering the “protected interests” referred to in the quotation.

**Question 6 Merger of non-delegable duty and vicarious liability** This was a very popular question, and there were many strong answers comparing the protection of vulnerable claimants provided by non-delegable duty in *Woodland* with the vicarious liability line of authority from *Lister* and *Catholic Child Welfare*. However, many other answers overlooked the distinction between non-delegable duty as primary liability and vicarious liability as secondary liability and whether this was an insurmountable obstacle to merger, or failed to consider whether non-delegable duty is strict or fault liability.

**Question 7 Pure economic loss** The weakest answers offered a general essay on policy considerations governing the English courts’ alleged reluctance to recognise tort recovery for pure economic loss or simply wrote about *Murphy* and nothing else. Very few considered whether it was just for builders not to have common law negligence liability for creating a defect whereas engineers and architects are liable for designing the same defect under *Hedley Byrne*, as are surveyors for failing to detect that defect.

**Question 8** This was a very popular question. A depressing number of candidates offered negligence as an alternative to liability under the Occupiers’ Liability Acts, ignoring section 1(1) of both statutes which states that the statute replaces the common law. The strongest answers paid close attention to the facts in analysing whether the 1957 or 1984 Occupiers’ Liability Act applied, and analysed the liability issues using both routes in the alternative. A large number of candidates made basic errors regarding the Unfair Contract Terms Act, overlooking its restrictions or assuming that exclusions of business liability for personal injury must be reasonable; many others, however, offered incisive analyses of the applicability of section 1(3)(b) to St Donal’s, and whether UCTA applies at all to the Occupiers’ Liability Act 1984, or whether the exclusion clause would be upheld by the court at common law given the particular circumstances of its wording and its execution by Ciara’s mother. Other defences such as contributory negligence were often ignored. Regarding Imogen, many candidates assumed that she could not have a case under either Occupiers’ Liability Act because of the nature of her injury. Many applied *Alcock* on autopilot, without consideration of the disruption of the primary and secondary victim categories in *W v Essex*.

**Question 9** Most candidates tackled this question. The examiners were astonished that so many candidates concluded that the claim against Roderick must lie in *Rylands v Fletcher*. Other common errors here were: the failure to consider alternative causes of action such as public nuisance for Sarah’s injured back (and the problem of establishing a causal link between the personal injury and the flooded road) or negligence; assertions that pure economic loss is not recoverable as a matter of principle in private or public nuisance, simply unthinkingly trying to apply the negligence cases on the topic; and overlooking the natural hazards line of authority from *Leakey* and *Holbeck Hotel*. The claim against Sarah regarding the wind turbines was generally handled much better, with most candidates showing some knowledge of the UKSC judgment in *Coventry* (which had been widely publicised in the examiners’ notice), although many identified only some of the issues to which the judgment was relevant, suggesting they had read only a summary.

**Question 10** This was also a popular question and was generally quite well handled by candidates. The most common errors were: assuming that causation could be established between the contraceptive pill consumed by Dora and the pregnancy; overlooking the relevance of the recall notice for causation and defences; failing to consider whether the wrongful conception line of cases at common law applied under the Consumer Protection Act 1987; assuming that *Parkinson* (CA) is still good law after *Rees* (HL); and assuming that the Congenital Disabilities Act was relevant to John's condition. Regarding Laura, most candidates concluded that there was no assumption of responsibility and did not go on to consider the nature of the legal malpractice claim against her and its connection with the Consumer Protection Act claim.

**Question 11** A great number of candidates, having identified that this question dealt with defences, donned their blinkers and became oblivious to any other issues, losing many marks as a result. Some wasted much precious time on the trite, and hence unnecessary, point of the duty of care of a driver, ignoring the trickier issues of duty relating to Bruce. The strongest answers here considered claims against Bruce for breach of statutory duty and negligence, and by Simon for conversion, but most candidates overlooked their positions altogether. The best answers recognised that each claimant's situation had to be considered individually with regard to defences, closely considered the nature of the illegal activities which were causally related to the particular injury and noted the limitations imposed by the Road Traffic Act on the *volenti* defence regarding some but not all claimants.

**Question 12** The strongest answers here considered whether Jane's statement was actionable at all, and analysed critically all of the ingredients in the *Hedley Byrne* cause of action. Too many candidates did not notice that Robert's claim involved employer's liability, and failed to apply the requirement of the Employers Liability (Defective Equipment) Act that the manufacturer be at fault, or to note its odd juxtaposition with the Consumer Protection Act 1987 imposing strict liability on the manufacturer. Fewer still considered the fall-back position of common law employer's liability under *Wilson* and the difficulty for the employee in showing that the employer should have known about the defect. A great many candidates, seeing the word "asbestos", leapt to the conclusion that *Fairchild* had to be relevant and invented facts to make it so, often overlooking that Robert *had* contracted bronchitis on the given facts. Most candidates identified *Rothwell* as being relevant to the pleural plaques, but very few attempted to distinguish it on either of the two bases offered by the facts in the problem.

## LAND LAW

In general the performance on this paper was good, although it was rather disappointing to find only a few papers that were outstandingly good (and to find a few that were outstandingly weak). Even within the stronger scripts there was often a difference in the quality of answer to essays, on the one hand, and problem questions, on the other hand—although not always at the expense of the problems. A good number of candidates chose to answer three or even four problem questions, and some of these were clearly playing to their strengths in so doing, although there were also too many candidates who can write good essays but fall down in their approach to problems. The general strengths and weaknesses were those with which the examiners in this paper are all too familiar, including the fact that too many candidates had a very imprecise knowledge of key statutory provisions; and having the case list in the

examination did not appear to help those candidates who could not find any appropriate authority for even the most mainstream points in their answers.

In essays the best answers gave a clear and focused response to the question, picking up its nuances and its limits; the weaker answers wrote apparently prepared answers to a question which was broadly (but not quite) along the lines of the set question, or saw the question as one on which to hang a discussion of a related topic which was not (or not quite) what the question was asking.

The most popular essay question was question 3 (common intention constructive trust), closely followed by question 5 (proprietary estoppel): both elicited some very strong answers, but also weaker answers which displayed a limited knowledge of relevant cases and literature. In question 3, *Rosset* was sometimes read as simply applying a resulting trust analysis, and too often candidates wrote only on *Rosset*, *Stack v Dowden* and *Jones v Kernott*; and some did not fully address the two points asked in the question (existence of the trust and the shares under the trust). The weaker answers to question 5 did not get to grips with the minimum equity principle, and wrote a general, unfocused essay listing remedies awarded in the cases. Some of the candidates who attempted question 1 (*numerus clausus*) ought not to have done so: there were some who treated it as a principle which relates only to legal (and not equitable) rights; and others who thought that it was asking about formalities, overriding interests and s. 62 LPA 1925. Some answers to question 2 (conclusiveness of the register and the impact of mistake and fraud on the security of the register) gave a very well-targeted discussion of relevant issues, including rectification and the problems raised by forged instruments; only a few tried to turn it into “the question on overriding interests” in spite of the fact that the question made clear that it was not. Many candidates who answered question 4 (balancing of the creditor’s and others’ interests and wishes in sale under a trust of land) discussed the relevant cases well, although some assumed that the question required consideration only of bankruptcy (or, alternatively, considered only the non-bankruptcy cases).

In problem questions the best answers identified the relevant issues, had a clear structure, and supported the argument with relevant statutory and case-law authorities, noting where the facts of the question were not directly addressed by the authorities and therefore where there is room for argument about the answer. The weaker answers showed some serious misunderstandings of particular legal rules. There were some candidates who said that occupation (or, more particularly, the operation of paragraph 2 of Schedule 3) on its own creates a right in rem; or that a purchaser was bound by an interest but appeared to think that they need not explain how or why; or thought that the doctrine of notice is still relevant to the priority of equitable (or sometimes even legal) interests in registered land (fortunately, by way of counter-balance, there were candidates who effortlessly traced their way through ss. 28 and 29 and the correct paragraph(s) of Schedule 3 of the Land Registration Act 2002). Several candidates were eager to use estoppel at points where it was not relevant: it seemed that they thought that if all else fails then there must be an estoppel and thereby showed an unsound knowledge of cases and the basic principles.

The most popular problem question by some margin was question 8 (leases), which required candidates to show their understanding of formalities for the creation of leases, the requirements of a lease (including the problem of uncertainty of term, and the lease/licence distinction) and the circumstances in which a lease binds a purchaser of the reversion. Many candidates did this well, but weaker candidates had difficulties with the detail of the formality rules (and many did not see the problem in finding an equitable lease from an agreement which

does not satisfy the requirement of writing for a contract under s.2 Law of Property (Miscellaneous Provisions) Act 1989); some thought that equitable leases cannot bind purchasers irrespective of the priority rules; but some also thought that a lease, “being a right in rem,” binds a purchaser without apparently thinking that any further explanation of the priority rules was necessary. Amongst those that did apply the priority rules, some used paragraph 2 of Schedule 3 without even considering whether paragraph 1 might cover the case. The omission of *Mexfield* by a number of candidates was disappointing—as was the fact that many of those who cited the case were very vague as to the precise analysis employed. A surprising number of candidates had apparently not heard of the implied periodic tenancy.

Question 6 (easements) was also very popular, and produced some good, well-structured answers. Most candidates could discuss the authorities on parking, and saw that there is a problem in finding that there can be an easement to receive a satellite television signal. The easement of drainage seemed to be rather more difficult, some candidates having peculiar beliefs that drains are either (a) negative easements or (b) give rise to positive obligations. Candidates sometimes had difficulty working out how the possible easements might have been created on the facts: there were too many assumptions that the rights of way over the driveway or the use of the garage were created by necessity—often using a floating and indefinite idea of the doctrine. Too many candidates failed to notice that C’s claim to use the driveway would be based on a reservation by A, rather than a grant (but at least only a very few candidates thought that the sale of number 7 by A to C could create an easement over number 8), although a fair number of answers did consider the benefit/burden doctrine in this context.

Questions 7, 9 and 10 were less popular, and sometimes had the feel of being the candidates’ last choice of question. Question 7 (contractual licence/proprietary estoppel) was based on the facts of *Errington* but had to be re-assessed in the light of the current law (and in registered land). Most answers dealt with the estoppel argument well, but only a few candidates appeared to have noticed that one of the intended beneficiaries of the planned ultimate transfer was a baby. A few candidates turned the question into mainly (or even exclusively) the common intention constructive trust and set off on a lengthy explanation of *Stack v Dowden* and *Jones v Kernott*. Question 9 (covenants) was generally not well done. It was disappointing how few candidates noticed that Quentin had bought plot 2 before the covenants were given to Peter by Rachel (plot 3) and by Susan (plot 4), and so Tanya could not acquire the benefit of the covenant given by Rachel and Susan simply by virtue of acquiring the land from Quentin. However, many candidates did save their analysis by seeing (often as an alternative to the erroneous *s.78/Federated Homes* analysis) that the facts pointed towards a scheme of development. There were the usual few candidates who, seeing that Ursula was a tenant of Rachel, assumed that the binding force on Ursula of the covenants given to Peter by Rachel depended on the operation of the Landlord and Tenant (Covenants) Act 1995; and a worrying number of candidates who knew that whether a restrictive covenant binds a purchaser depends upon the doctrine of *Tulk v Moxhay* but apparently thought that the rule was simply that: under *Tulk*, a restrictive covenant is an interest in land which binds the purchaser—no mention of the conditions for the operation of the doctrine, the operation of the priority rules (including registration), etc. Question 10 (mortgages) attracted good answers from candidates who had a detailed knowledge of the authorities on mortgages and could apply them to the terms of the mortgage given in the question, pointing out the nuances between the facts of the question and those in the cases which stand as the closest relevant authority; but also rather weak answers from candidates who did not seem to know which authorities were relevant to each different type of clause, sometimes even thinking that the presence of any clog would invalidate the whole mortgage; and making errors about the cases and their relevance to the facts: for

example, a number of candidates thought that *Multiservice* linked only interest (not capital) to the Swiss franc or treated it as only a broad authority on the validity of foreign currency mortgages.

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

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

### **PUBLIC INTERNATIONAL LAW**

The overall performance of students in this paper was good with 17% of students achieving First Class marks and only 2% of papers marked below an Upper Second. As in the previous year, there were 4 problem questions on the paper (out of 9 questions). Candidates were not required to answer a problem question, and, on the whole, essay questions were more popular than problem questions. Nevertheless, practically every candidate answered at least one problem question, with a majority of candidates answering more than one problem question. All the questions on the paper were attempted. However, as is often the case, the question on international law in domestic courts (a topic dealt with in the lectures but not covered in tutorials) proved to be the most unpopular question.

As in previous years, the weaker answers were those which tended to provide a general description of the topic or topics covered by the question without focussing on the specific issues raised by the question. The best answers were those which made good use of cases and periodical literature, thereby providing analysis that went beyond the lecture material and the material included in the textbooks.

There were some very good answers to Question 1 on customary international law with some students producing excellent assessments of what constitutes state practice, and of the interaction between practice and *opinio juris*. The best answers to Question 3 were those which examined the problem of countermeasures in response to violations of *erga omnes* obligations, under the law of state responsibility. However, credit was also given for intelligent integration of the problems in relation to humanitarian intervention, or of denial of immunity for international crimes or alleged violation of *jus cogens* norms. As was to be expected, the best answers to the problem questions were those which identified all the issues arising from the problem and paid the greatest attention to the important issues. It is a matter of some concern that some candidates answering the problem question on the jurisdiction of the ICJ (Q. 7) did not realise that the existence of one basis for jurisdiction would suffice even if other alleged grounds for jurisdiction turn out to be non-existent.

### **HISTORY OF ENGLISH LAW**

There were 11 candidates. Attempts were spread roughly evenly across the range of all the questions. The scripts were on the whole competent, though few were really strong. To the extent that substantive weaknesses can be identified in weaker scripts, they were failure to

focus the answer on the exact question set, and problems with the control of chronology of the developments discussed.

## EUROPEAN UNION LAW

The scripts were generally of a high standard this year. Candidates demonstrated a sound level of knowledge and understanding of European Union law. There was also evidence of candidates having read more widely than the standard references. Better-placed candidates also demonstrated a good ability to develop their own perspective on European Union law and to use their knowledge and understanding of the law to provide an accurate and well-argued response to the specific question set. One element of concern was a noticeable reluctance amongst candidates to answer problem questions and the relatively weaker standard demonstrated in answers to problem questions. In particular, it was worrying that some candidates attempted to answer the free movement of workers problem by referring predominantly to the case law, as opposed to using the requisite provisions of the Treaty, Directives and Regulations that had been provided to candidates in the examination.

*Question 1 – judicial review.* This was a popular question. All candidates demonstrated a good knowledge of the problems concerning the narrow interpretation of ‘individual concern’ found in Article 263 TFEU. Candidates were also aware of the narrow interpretation of ‘regulatory acts’ found in the same Treaty provision. Weaker candidates used this question as an opportunity to provide standard arguments of the need to broaden standing. Stronger candidates recognised the specific issue here regarding whether more individuals should be able to bring direct challenges concerning the legality of non-legislative as opposed to legislative actions. These candidates were also more able to recognise the distinct nature of the EU, particularly concerning how those who cannot challenge the legality of EU acts directly through article 263 may nevertheless be able to do so indirectly through article 267 and to provide a more balanced account of the relative disadvantages and advantages of direct and indirect challenges.

*Question 2 – horizontal direct effect of Directives.* This was another popular question. Most candidates were very familiar with the arguments for and against granting horizontal direct effect to Directives and demonstrated a sound understanding of the complex case law in this area. Better candidates were able to focus more specifically upon the lack of legal certainty caused by indirect effect, exclusionary effect and the horizontal application of general principles and the possible lack of certainty caused by granting horizontal direct effect to Directives. They also evaluated clearly whether granting horizontal direct effect to Directives would eliminate or create further legal uncertainties. These candidates were also able to evaluate whether an increase in legal certainty was a sufficient reason to grant horizontal direct effect to Directives.

*Question 3 – human rights.* Although the quote was from the *Zambrano* decision, this question required candidates to evaluate the extent to which the EU should protect human rights and was not a question about citizenship. Most candidates demonstrated a sound understanding of the role played by the EU in the protection of human rights. Better candidates were able to move on from a descriptive or historical account and evaluate more clearly whether the EU should protect human rights beyond those instances when Member States were acting within the sphere of EU law and, if so, whether this would extend to all or only some human rights.

*Question 4 – remedies.* Although fairly popular this question was not, on the whole, done well by candidates. Most candidates saw that the question concerned remedies and the balance with national procedural autonomy and proceeded to give an historical account of the how far the CJEU has modified national procedural autonomy to provide an effective protection of legal rights. This gave rise to the situation where a fair number of candidates appeared to argue that that factor that determined the extent to which EU law can modify national laws to ensure an effective system of remedies was the principle of effectiveness. Better candidates were able to provide a more detailed account of the case law applying the principle of effectiveness, listing the factors that influenced the court when balancing effectiveness and national procedural autonomy. Very few candidates were willing to assess what factors should influence this balance.

*Question 5 – subsidiarity and competence.* Question 5(a), concerning subsidiarity, was one of the most popular questions on the paper. This contrasts with 5(b) which was attempted by very few candidates. Most candidates were able to give a good account of the strengths and weaknesses of the legal and political enforcement of the principle of subsidiarity. Better candidates were able to evaluate its role as a cause or possible solution to the ‘creeping competences’ of the European Union. It would appear that very few candidates were able to think about the extent to which the competences of the EU expand through its role in regulating national laws that may impede the free movement provisions. Candidates are to be encouraged to think more about this issue and to see connections between the different topics studied in EU law.

*Question 6 – article 267.* This was not as popular as other questions. Weaker candidates focused on the way in which the preliminary reference procedure has altered over time, using this history to illustrate the nature of the relationship between domestic courts and the CJEU. Better candidates were able to think more clearly about how far preliminary references influence the potential uniform application of EU law, drawing, for example, from cases such as *Viking Line* and *Laval* to focus on the implications of the approach of the CJEU to determine the nature of its relationship with domestic courts.

*Question 7 – citizenship.* This was not a popular question. Weaker candidates focused on the more recent cases of *Zambrano* and *McCarthy* without looking at a wider range of case law on citizenship rights. Better candidates demonstrated a wider knowledge of the law on EU citizenship, as well as a showing a better ability to determine how far inconsistencies in the case law affected the utility of citizenship in EU law.

*Question 8 – primacy of EU law.* This was a fairly popular question. Candidates demonstrated a good knowledge of the case law from a range of Member States, although knowledge of Germany and the UK still appears to dominate. Better candidates were able to show a wider knowledge and also a better ability to not just describe ideals of legal and constitutional pluralism, but also to evaluate the benefits of these understandings of the nature of the European Union.

*Question 9 – free movement of workers problem.* This was a challenging question and fewer candidates were prepared to answer this. Unfortunately, some who were prepared to answer this question showed a lack of knowledge of the relevant Regulations and Directives governing this area of the law. Those who did have this requisite knowledge, supplemented by the case law, were rewarded.

*Question 10 – free movement of goods.* This problem question was more popular than the question on the free movement of workers with students generally having a good understanding of the case law. Some areas of weakness concerned issues as to whether Article 34 TFEU applies to private individuals and also some confusion surrounding the use cases.

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

### Copyright

This paper was once again taken by a very small number of students (four FHS and two DLS), increased from two FHS and one DLS student in 2012/13. The copyright questions were answered well overall; the average mark was 65 per cent. Even taking account of the small number of candidates, however, there was a disappointing lack of diversity in the questions attempted: four of the candidates attempted question 1 and only one candidate attempted either of the copyright problems. This lack of diversity was repeated across the paper as a whole. For example, five of the six candidates attempted questions 6 and 11 respectively, two attempted the same four questions (questions 3, 5, 6 & 11), and three attempted three of the same questions (questions 5, 6 & 11). One-third (four) of the questions on the paper were not attempted at all.

Regarding the substance of the copyright answers, please refer to the report prepared for Copyright, Patents & Allied Rights.

### Trade Marks

Six students (four FHS and two DLS) sat the CTM paper in 2014. The standard of the CTM papers was high, with two students achieving a first and the remainder receiving solid upper seconds. The FHS examination rubric required students to answer one copyright essay question (Part A); one trade mark essay question (Part B); one problem question, whether relating to copyright or trade mark (Part C); and a fourth question from anywhere in the paper. This gave students some flexibility when determining which questions they wished to attempt. In 2014, all four FHS students elected to answer three trade mark questions and one copyright question. The six CTM candidates answered slightly more essay than problem questions, although for the trade mark aspects, the average mark for both the essays and questions was the same (68%).

In relation to the trade mark essay questions, the questions regarding the role of misappropriation in passing off (question 5) and the consumer search cost rationale for trade mark law (question 6) were especially popular. All students were able to identify legal principles and cases that were relevant to these questions. In relation to question 5, better essays engaged closely with the reasoning in different cases and considered the broader context of the aims sought to be achieved by the tort of passing off. Students who performed well on question 6 were able to provide a lucid definition of the consumer search cost rationale, and drew from examples throughout the course to explore the degree to which trade mark law serves (and ought to serve) this and other goals. In relation to the trade mark problem questions, the main difference between stronger and weaker answers was that those who achieve a higher mark tended not to overlook issues raised by the question (thereby providing a more comprehensive answer) and structured their responses in a more logical manner.

## **INTERNATIONAL TRADE**

There were fifteen candidates for this paper. The overall standard was somewhat disappointing, although there were a couple of very impressive scripts. Some of the weaker scripts revealed significant misunderstandings, and some candidates failed to take on board the repeated admonitions to focus problem question answers around possible claims. Many candidates would have obtained higher marks in problem questions if they had gone beyond just stating and applying a particular rule and had also considered the appropriateness of the rule and/or the strength of the authority for it.

Of the essays, no-one answered question 4, and there were too few answers to questions 1(a), 1(b) and 5 for general observations to be made.

Question 2 (on the differences between c.i.f. and f.o.b. contracts) attracted some good answers, which emphasised that while there are undoubtedly fundamental differences between the two types of contract, there are also a number of contexts – most notably the passing of property and risk – where there are notable similarities when it comes to the practical operation of the two types of contract.

Question 3 (on the classification of the obligation to pay hire on time) was by far the most popular essay question, and was generally handled quite well, although many of the answers were a little superficial. The best answers considered all the relevant authorities, explained clearly what the different possible analyses were, and subjected them to systematic evaluation.

Question 6 (on remedies) was answered by eight candidates. The overall standard of the answers was somewhat disappointing, and a surprising number of candidates struggled with the basics of the *Panchaud Frères* doctrine and market loss damages (for example, some candidates thought these were for the loss of the right to reject the *goods*, as opposed to the loss of the right to reject the *documents*). There was no point in discussing E's right to reject the goods, since he had already accepted them.

Question 7 (on charterparties) was also answered by eight candidates. Stronger candidates went beyond merely articulating and applying the 'two breach' rule on damages in addition to demurrage and considered the strength of the authority for the rule and the arguments that have been made against it.

Question 8 (on the passing of risk and property, and title) was also answered by eight candidates. Again, the stronger answers went beyond the statement and application of the (apparent) rule that a seller can appropriate lost goods to a c.i.f. contract to evaluate the strength of the relevant authorities and the arguments for and against the rule. Remarkably, some candidates missed this point altogether in their rush to discuss the passing of property. As regards the passing of property, most candidates simply assumed that section 20A of the Sale of Goods Act 1979 was relevant at one point or another, even though this was by no means obvious.

Question 9 (deviation, deck cargo etc) was the most popular problem question, attracting ten answers. A surprising number of candidates waxed lyrical on the possibility of a *Eurymedon*-type implied contract without considering whether the stevedores might have a more straightforward route to protection via the Contracts (Rights of Third Parties) Act 1999. There was a fair amount of confusion as regards deck stowage, with many candidates wrongly asserting that the Hague-Visby Rules were inapplicable if cargo was carried on deck and the bill of lading said that it *could* be so carried (as opposed to saying that it *would* be so carried).

Some also failed to realise that unauthorised deck stowage is in itself a breach of the contract of carriage. Finally, there was insufficient discussion of the position under the contract of carriage at common law if the deviation displaced the Hague-Visby Rules.

Question 10 (on risk, and the bill of lading as receipt) was answered by seven candidates. Weaker answers jumped straight to the question of whether the statements on the bill of lading were binding on the carrier, without explaining why this mattered. In addition, some candidates focused entirely on the *deterioration* of the ginger, and failed to discuss the fact that it was also of inferior *quality*, and there was also a tendency to avoid addressing the legal position in the event that the deterioration was attributable to a combination of poor stowage and inappropriate packaging. The discussion of the relevant dicta in *Cunningham v Munro* tended to be rather superficial.

## TRUSTS

1. Although the first question was not a popular one, those who attempted it tended to give competent answers. Most were able to identify discretionary trusts, purpose trusts and charitable trusts as being relevant to the question. A number of candidates were also able to discuss the *Re Denley* and *Quistclose* trust cases. The stronger answers were able to ask, in respect of each of these categories, whether an equitable interest could be said to be held by a particular person. The best answers were able to link this to the debate over the nature of equitable interests.

2. This was a popular question that attracted a range of answers. Weaker candidates tended to offer a general discussion of formalities in the law of trusts, including much material that was irrelevant to the answer. For instance, many candidates discussed s.53(1)(c) (and the *Vandervell* line of cases) even though this has nothing to do with the creation of a trust (although some very good answers discussed the issue of whether the creation of a sub-trust might constitute a “disposition” within that provision). Most candidates, however, correctly identified s.53(1)(b) of the Law of Property Act and s.9 of the Wills Act as being the relevant to the question. Good answers discussed the meaning of ‘fraud’ and were able to link this, in particular, to the debate over the basis of secret trusts (i.e. the fraud theory versus the de hors the will theory). The best answers also considered what it means to ‘recognise’ a trust. It was asked whether the finding of a constructive trust in these cases could be said to be the ‘recognition’ of a trust that the settlor intended to create.

3. This attracted a number of good answers. Most candidates were able to elaborate Martin's justification for the outcome in *Hunter v Moss*, and why it may be justifiable for the law to treat intangibles differently from tangibles. However, most were also able to point out the limits of this justification, particularly when it comes to cases involving third parties. A number of candidates lost marks for failing to discuss recent case law which has sought to explain *Hunter v Moss* on the ground of a tenancy in common.

4. Question four was not attempted by many candidates but attracted a number of strong answers. Many answers focused on the issue of the settlor's intention, and how the theory may be ignoring his clearly expressed wishes. The stronger answers also discussed the problems associated with the finding of a contract, and the formalities required for the disposition of an equitable interest when a member leaves an association. Weaker answers barely explained the contract-holding theory or discussed the judgments expounding it.

5. This was one of the most popular questions on the paper and it attracted a range of answers. Poor answers would offer an account of the Birks/Chambers/Swadling debate over the basis of resulting trusts, without explaining its relevance to the 'retention' theory. Stronger answers critically analysed the retention argument by asking whether a legal owner has an equitable interest that he is able to retain. The best answers offered a detailed account of the relevant case law, particularly Megarry's judgment in *Vandervell* and Lord Browne-Wilkinson's speech in *Westdeutsche*.

6. Another very popular question attracting a range of answers. Again, the weaker answers offered a general account of the law and the standard academic objections to the *Quistclose* trust. Some candidates did this whilst offering no account of the rule against private purpose trusts, which was an important element of the question. The better answers were able to place *Quistclose* within the debate over private purpose trusts. Good answers were also able to analyse a number of the leading authorities (including *Quistclose* itself), and ask whether, on their respective facts, such trusts could have been for persons rather than purposes.

7. This question was attempted by a small number of candidates who offered, for the most part, a competent account of the consolidating effect of the Charities Act 2011 and some of the significant developments that found their way into the legislation.

8. Question eight attracted a number of strong answers that offered a robust justification for the decision in *Sinclair*. Good answers also tended to discuss, and attempt to justify, the apparent exceptions outlined by Lord Neuberger, where a beneficiary can bring a proprietary claim. A disappointing number of answers failed to consider the *FHR* and *Grimaldi* decisions.

9 and 10. These were two of the least popular questions on the paper and attracted only a handful of answers.

11. Question eleven was a fairly popular question that attracted some strong answers. Most candidates were able to identify *Grey v IRC* as being relevant to the first part of the question, and ask whether the facts disclosed the creation of a new trust rather than the disposition of an equitable interest. As to the second part of the question, many candidates attempted to show that it involved the creation of a sub-trust (although this was unlikely on the facts). A small number of very strong answers asked whether, if the trustee was likely to have consented (when he discovered the transaction), it could be analysed as a transfer similar to that in *Vandervell (No 1)*. The third part of the question typically attracted the weakest analysis, with only a small number of candidates identifying the possible relevance of s.53(1)(b), and many struggling to apply the principle in *Oughtred* to the facts.

12. This was attempted by a small number of candidates. Those who did often failed to identify the fraud on the power, and had difficulty in applying *Pitt v Holt* to the facts.

13. Question 13 was the most popular on the paper and, as one would expect, attracted a wide range of answers. Most candidates were able to apply the various approaches to the test for certainty of objects in *Baden (no 2)* to part (a). Part (b) was answered, on the whole, fairly well, as most candidates were able to identify the relevant test and explore the difficulties in applying it to the facts. Many candidates lost marks when answering part (c) as they were unsure of the relevance (or irrelevance) of *Re Barlow's WT*. Candidates also tended to lose marks by offering

a rather light analysis of the dispositions in parts (d) and (e). Some candidates thought that bequests of sums of money might fail for uncertainty of subject matter.

14. This question was attempted by a number of candidates and answers tended to be of a fairly good standard. Most were able to explain the difficulty in enforcing a covenant to settle. Strong answers offered a criticism of the *Re Pryce* line of cases, and considered whether the Contracts (Rights of Third Parties) Act 1999 has effected any changes to this area of law. Many candidates lost marks for failing to identify the possible relevance of the *T Choithram* principle to the constitution of the charitable trust. Although most candidates considered the *Re Rose* rule and *Pennington v Waine* in relation to the shares, very few asked whether the transferee had provided consideration by agreeing to act as a trustee for the charity.

Overall the examiners found that there were fewer first class scripts than in previous years. Although many candidates provided strong answers to questions 2 and 3, we also found that candidates tended to run into difficulties when faced with non-standard questions. For instance, when answering question 4, on resulting trusts, too many candidates slipped into giving a generic account of the controversy surrounding resulting trusts, rather than focusing on the notion of 'retention'. We were also disappointed to see so few answers to questions 9 and 10, which does raise the question of whether these topics (third party liability and tracing) should be emphasised more in the syllabus.

## ADMINISTRATIVE LAW

Overall the examiners did not think the quality of answers to this paper was quite as high as it has been in some previous years. In general terms scripts seemed to divide into two categories, some demonstrating a good grasp of the black letter law but lacking in theoretical or normative perspectives, while other papers were written at a very abstract and theoretical level, dealing well with those issues but without demonstrating a similarly detailed knowledge of the relevant cases. Our views of the answers to the particular questions were as follows.

1. This was not a particularly difficult question, but it was not one of the most popular on the paper. Good candidates covered a range of theories, but only the best answers managed the crucial requirement of tying the theory to practice, giving specific examples of how the different theories do or do not have a practical impact and whether and if so how these impacts are significant. Weaker candidates simply presented a list of theories without any very convincing attempt to assess them. There was also a marked distinction between the depth and sophistication of analysis and detail of the theories given by the stronger candidates as compared to the very two dimensional and simplistic accounts given by weaker candidates, who were often content to rely on basic shorthand descriptions of a particular theoretical perspective.
2. Since the quote for this question comes from a case on the core list for standing, some answers simply discussed the widening of the standing rules from *Fleet St Casuals* onwards and the reasons given, particularly in *Dixon* itself and *Bulger* etc for doing so. Stronger candidates were also able to include some reference to the academic literature on the pros and cons of this development and it was perfectly possible to write a first class answer taking only this approach. However, this question also produced some of the best answers on the paper as a whole, as some candidates engaged with a wider analysis of whether administrative law follows a 'public wrongs' or 'private rights'

approach more generally, discussing, in addition to the relevant standing cases, the need (or not) for reliance in legitimate expectations and waiver in cases of procedural fairness, as well as some references from their knowledge of private law.

3. This question required candidates to consider carefully the distinction (if any) between law and fact and the way that is defined in the cases, and in particular to examine whether there is any distinction between the ‘definition of X factor’ cases such as *Khawaja* and the ‘mishandling of evidence’ cases like *CICB ex p A*, not least because of the subsequent analysis by Craig and Elliott and the more recent decisions in *Connolly*, *Croydon*, *Bubb* etc. However, a surprising number of candidates were unable to discuss the case law with the necessary level of detail to do this properly. The last part of the question also required candidates to consider what they would put in place instead of the current law, if anything, but again this often received relatively brief and shallow analysis.
4. This question encouraged candidates to consider not only the benefits for individuals of legitimate expectations, but also whether, used properly, the law of legitimate expectations might provide benefits for decision-makers, as well as requiring candidates to consider whether the law is at present certain and predictable and whether it could be made so. A disappointing number of candidates failed to address these specific aspects of the question, instead delivering pre-prepared general essays on legitimate expectations, some of which seemed to address a question from a previous year on the relationship between legitimate expectations and other grounds of review. In particular, analysis of the potential benefits to public authorities and the relationship of this area to the work of Harlow and Rawlings was very often too brief or non-existent.
5. This question required candidates to address a very specific issue, namely the precise relationship between the functioning and operation of proportionality and *Wednesbury* rationality review. Disappointingly, many candidates simply reproduced a standard answer to the question whether proportionality *should* be adopted when in fact the question took the adoption of proportionality as a starting premise and asked candidates to decide whether any role would remain for *Wednesbury* review in those circumstances. Candidates were of course welcome ultimately to question that premise, but not to ignore it altogether. Many weaker answers also failed to engage in any particularly detailed analysis of what precisely proportionality review might entail and how exactly it differs, if at all, from *Wednesbury* review. Stronger answers analysed the structure and operation of both forms of review, in both domestic and European contexts such as *Fedesa* .
6. a) This was a classic example of a question which required students to demonstrate both a good grasp both of the relevant theoretical debates (such as the choice between dignitarianism and instrumentalism) and the application of those theories in practice, with specific examples from the decided cases where the adoption of one theory as opposed to another might be expected to make a difference. As a result all too often this question produced answers fitting the general pattern outlined above; those which demonstrated a good understanding of the underlying theories did not give many detailed examples from the case law, while answers which contained a good analysis

of the black letter law were often less able to demonstrate a similar understanding of the underlying theories and the relationship between the two.

b) Almost no one answered this question, which required candidates to critically assess case law such as *Bryan* etc, including *Alconbury*, *Begum*, *Croydon* and *Ali*, considering (a) the difficulties of establishing whether Art 6 is engaged in the first place and (b) the difficulties of establishing whether the case is one which can be ‘cured’ or not. One or two students misread this as a question about s 6 of the HRA, which of course it was not.

7. This question was relatively unpopular but generally well answered, although some answers lacked a sufficiently detailed coverage of a wide range of cases.
8. This question asked candidates to critically assess the appellate history of *Cart* and in particular the decision of the Supreme Court at the end of that process. Stronger candidates dealt specifically with Baroness Hale’s judgment as referred to in the question, focusing on the choice of the second tier appeals criteria and the role of economic efficiency a relevant factor as well as understanding the significance of the decision in general against the background of the administrative landscape and the relationship between courts and tribunals more generally.
9. This was a fairly standard question, but again the answers it produced were illustrative of the general pattern outlined above; strong answers contained *both* a good, wide-ranging discussion of the relevant academic literature and good specific examples from the case law to illustrate the points made. All too often, however, weaker candidates gave a random and general list of a few cases on deference without tying them into the academic debate, or conversely analysed selective examples from the academic literature without engaging with other views and without attempting to link those views to specific decided cases.

This question was reasonably popular, and again, stronger candidates were able to use a good, detailed knowledge of the case law to answer the specific question whether private law is able, without modification, to apply to public authorities as it does to private entities. As with other questions, however, weaker candidates simply gave a descriptive account of a list of cases without using them to illustrate a more sophisticated normative argument.

## FAMILY LAW

The overall standard of papers this year was high, with few weaker papers. Whilst there were a good number of Class I scripts, there were few top end 2i papers; this reflected the fact that, compared with previous years, there were fewer papers that displayed the hoped-for original analysis and deeper engagement with the case law, statutory material, and secondary literature. We would encourage candidates to take the time during revision to develop their own perspective on key debates and reflect on how to integrate that into essays that critically engage with the detail of the relevant legal material.

Four general comments can be made. Firstly, and most disappointingly, there were a surprising number of topical essays, which did not answer the precise question set. This has been an issue in previous years and remains to be so. Secondly, even when answering the specific question, many candidates still did not define their understanding of the terms employed in the question, but simply repeated them without explanation. Thirdly, a pleasing number of candidates attempted the thematic questions (questions 7, 10, and 12); these were generally well-handled, with candidates drawing on a good range of supporting contexts and carefully considering what broader conclusions, if any, might be drawn. Fourthly, there remains a degree of ‘statute blindness’, whereby candidates answer questions on statute-heavy issues such as legal parental status or parental responsibility without citing the governing statutory provisions at all or, if the statute is mentioned, the individual relevant sections and subsections are not.

**Question 1. Regulation of cohabitants.** This question was not handled as well as expected. Candidates were required to think carefully about how to understand ‘equality’ for the purpose of the question and to use their understanding to inform their critique of the current legal regulation of cohabitants. Few candidates attempted to engage with the notion of ‘equality’, but those that did tended to note that equality comprised a complex set of ideas, rather than the single principle suggested in the question, and that different aspects of equality – formal, substantive, as it relates to opportunity compared to outcomes, and so forth – suggested different comparative forms of treatment of cohabitants. A disappointing number of candidates focused exclusively on couples’ financial position upon relationship breakdown without exploring other areas of difference, such as in relation to acquisition of legal parental status and parental responsibility.

**Question 2. Child protection.** This question required candidates to evaluate both the current approach to interpreting and applying s31(2), particularly the UKSC’s recent decisions in *Re B* and *Re J*, as well as to consider how we might best improve English law on child protection. Addressing the latter necessarily entailed examining the centrality or otherwise of reforming s31(2), and the strongest answers displayed a keen awareness of the non-legal problems facing child protection and the relative significance of other legal issues, such as reform to the law on neglect. This question was also generally well-handled in terms of outlining the current law and assessing the extent to which the current difficulties with s31(2) in practice are judge-made or a product of the legislation. The best answers questioned whether, even if there are clearly identifiable problems with s31(2) in practice, these could be remedied by legislative reform.

**Question 3. Same sex couples and status relationships.** This was the most popular question on the paper, with well over half of candidates answering it. Answers ranged in quality. Weaker answers invariably focused almost exclusively on the extension of marriage to same sex couples, and ran through the standard arguments about the ‘purposes’ of marriage and how they related to same sex couples. These weaker answers tended to treat Lord Mackay’s comments as a trigger for a topical essay on marriage for same sex couples and the 2013 reforms. Stronger answers expanded their analysis to consider the broader range of issues raised by Lord Mackay’s comments. This included the relative significance of and relationship between the status label, the purposes, and conditions of marriage, as well as the suggestion that civil partnership and the extension of marriage to same sex couples had different aims, and that the Civil Partnership Act 2004 ‘successfully achieved’ its aim.

**Question 4. Legal parental status.** This question suggested a particular lens through which to view the debate over the underlying basis of legal parental status. A disappointing number of candidates overlooked the reference to ‘status’ (‘adult intimate *status* relationship’) in the

question, and simply produced a topical essay on legal parenthood. This weakness was compounded by a surprising lack of reference to the relevant statutory provisions, particularly in relation to artificial insemination and surrogacy. Stronger answers were careful to consider the relevance of not just marital status but also civil partnership and the new provisions regarding the consequences of the extension of marriage to same sex couples. Better answers also sought to draw together conclusions based on a number of contexts beyond natural procreation, including artificial insemination, surrogacy, and adoption. The best answers also delineated the types of consideration that might make reform necessary rather than just desirable.

**Question 5. Section 1 of the Children Act 1989.** Many candidates treated this question as an opportunity to present the standard criticisms of the ‘welfare principle’ such as uncertainty, indeterminacy, and so forth. Those who extended their analysis further were justly rewarded. In particular, better answers considered the original intentions of s1, against which its current role could then be evaluated, and extended their analysis to other aspects of section 1 than s1(1) and 1(3), particularly s1(2) and 1(5). Even amongst very strong answers, there was comparatively little discussion of the public law role of s1 and the interplay between the needs of the private law and public law contexts when assessing the current success of s1 in practice.

**Question 6. Reform to the family justice system, particularly residence and contact disputes.** This question required candidates to demonstrate an understanding of the larger process and systems by which family disputes are resolved. In order to provide a strong answer, candidates needed to define how they understood the term ‘family justice system’ and explore the criteria by which we might determine whether a family justice system is ‘justifiable’. Perhaps surprisingly, very few of those answering the question engaged with either of those terms. Weaker answers tended to focus on talking through the detail of the reforms contained in clauses 10-12 of the Bill. Stronger answers moved beyond this, including some impressive integration of empirical evidence on both methods of dispute resolution and outcomes for children and families, historical and conceptual critique of the introduction of ‘child arrangements orders’, and the current praxis of the family justice system.

**Question 7. Thematic: Religion.** There were too few answers to comment in general terms. Almost all answers, however, were Class I or upper end 2i in quality. Candidates did well to consider a range of contexts, such as the extension of marriage to same sex couples, religious arbitration in dispute resolution, parents’ disputes over religious upbringing, religiously-grounded decisions about children’s medical treatment. There was also generally careful consideration of what constitutes a ‘justified’ role for religion in particular contexts, and the potential to generalise across English family law.

**Question 8. Parental responsibility.** This was a popular question, answered by half of candidates. Unfortunately, the quality of answers received was more mixed than expected. A surprising number of candidates neither carefully distinguished between the ‘recognition’ and ‘regulation’ aspects, nor made sure to focus on functional parenting in particular; instead, many proceeded to produce a topical ‘status vs. functional’ essay on parental responsibility generally. Similarly, few explored by what criteria we might evaluate whether parental responsibility is ‘effective’. In relation to recognition, there was generally sound discussion of the case law, but surprisingly less common reference to legislative provisions regarding acquisition of parental responsibility. Some candidates who did not delineate recognition and regulation failed to discuss the detail of regulation, such as s2(7) Children Act 1989 and the judicial exceptions thereto, s8 specific issue orders, and limited-exercise awards of parental

responsibility. Reform arguments were varied and generally well thought-through, ranging from reforming the entire approach to legal parental status and parental responsibility to focusing on parental responsibility alone and addressing difficulties in regulation in practice.

**Question 9. Financial consequences of the breakdown of adult intimate status relationships.** Overall, the quality of answers to this question was high. Candidates generally engaged with a number of the critical issues raised by Thorpe LJ's comments, particularly the potential for distinguishing between a 'fair' outcome and an outcome that is 'not unfair', and the relationship between the judicial principles as developed from *White* onwards and the detail of s25 Matrimonial Causes Act 1973. Somewhat notably, relatively few candidates commented on the *Lawrence* context of Thorpe LJ's remarks and the extension of the default regime to civil partnership and marriage between same sex couples.

**Question 10. Thematic: Expert evidence and empirical research.** As with the preceding thematic question, there were too few answers to comment in general terms. Again, however, those that did attempt it generally presented stronger answers. Candidates drew on an interesting range of contexts, including residence and contact disputes (and reform thereto), child protection and the s31(2) Children Act 1989 'threshold', the current role for CAFCASS, the relevance of the 'common law marriage myth' and regulation of cohabitantes, reform to the family justice system more generally, and situations in which courts implicitly or explicitly assume empirical evidence supports their perspective without more (e.g. Baroness Hale in *Re B* and the 'special bond' of gestation).

**Question 11. Children's rights.** A popular question, with more than half of candidates answering it. Overall, the quality of answers to this question was high. Weaker answers tended to consist of a topical 'rights vs. welfare' essay and, in particular, overlooked the reference in the question to children 'be[ing] seen to' have children's rights in law. Stronger answers engaged with the term 'children's rights' and examined the relationship between 'children's rights' and 'human rights'. Answers generally drew on a range of supporting contexts in which children being seen to have children's rights might have impacted or have the potential to impact the process of reasoning adopted and/or the outcome reached. These ranged beyond the standard medical treatment discussion to include freedom of expression, freedom of religion, corporal punishment, knowledge of (parental) origins, child protection, and residence and contact disputes. A couple of weaker answers did lapse into detailed examination of the medical treatment context, including the debate over capacity to consent vs. refuse, and the nature of consent vs. refusal, without explaining the relevance of the debate to the particular question asked.

**Question 12. Thematic: Families and justice.** The third thematic question, candidates were asked to consider why families might be incompatible with the realisation of justice, and whether the current role for families is justifiable. Almost all answers handled the question well, and generally attempted to provide a definition of 'family' for the purpose of the question, as well as to consider what values might underpin a 'just society', such as autonomy and equality. In exploring incompatibility, answers considered issues such as the role for families in directing and restricting distribution of wealth and prioritising the interests of those in certain family relationships over those of others. The values candidates saw as part of a 'just society' necessarily impacted on the legal contexts discussed; examination of the justifiability of the current approach (*Radmacher*, etc.) and proposed reforms in relation to nuptial agreements, financial provision more generally, and the Marriage (Same Sex Couples) Act 2013 was common.

## COMPANY LAW

There were 34 candidates who sat the Company Law paper: there were 4 first-class marks, 29 upper-second class marks, 1 lower-second class mark and no third class-marks, with the marks ranging from 71 to 58. The paper was reasonably challenging, with a real focus on capital issues, but candidates did not seem overly phased by the capital aspects of the various questions. Surprisingly, the problem questions tended to be more popular than the essay questions. Overall, the standard was reasonable with only very few weak answers to questions, but equally with few really impressive answers. Marks tended to bunch around the middle-to-upper range of the upper-second class. In terms of individual questions:

Question 1: This question raised the scope and limits of the courts' powers at common law to recharacterise a transaction as an unauthorized return of share capital to its shareholders in light of the Supreme Court's decision in *Progress Property Co Ltd v Moore* (2010). The question was not popular at all and the few answers that the question solicited failed to demonstrate any real understanding of *Progress Property*, the prior case-law (such as *Re Halt Garage Ltd* (1964), *Aveling Barford Ltd v Perion Ltd* (1989) or *British & Commonwealth Holdings plc v Barclays Bank plc* (1996)) or the advantages and disadvantages of having a separate common law jurisdiction running alongside the capital rules in the Companies Act 2006 and the voidable transaction provisions in the Insolvency Act 1986.

Question 2: This was one of the more popular questions, with virtually every candidate being able to discuss confidently the principal differences between the statutory contract in the Companies Act 2006 and an ordinary contract. Some candidates were able to produce an extensive list of the differences, covering issues such as third party rights, implication of terms and contractual interpretation. Fewer candidates tackled the advantages and disadvantages associated with the contractual analogy in the Companies Act 2006 (an important point given that other common law jurisdictions get along perfectly well without any form of statutory contract). Those who did tackle the normative aspects of the question were suitably rewarded.

Question 3: This was an extremely popular question, which was answered by virtually every candidate. The question could hardly have come as a surprise given the two Supreme Court decisions in the preceding year. Although most of the candidates dealt with the issues in a perfectly competent manner, there was a lack of depth in the answers, with few candidates really getting to grips with the detail of Lord Neuberger's speech in *VTB Capital plc v Nutritek International Corporation* (2013) or Lord Sumption's speech in *Prest v Petrodel Resources Ltd* (2013). Most candidates preferred the Prest approach, but there was little attempt to deal with the tensions between the two decisions or the impact that these speeches might have on previous decisions, such as *Gilford Motor Co Ltd v Horne* (1933), *Jones v Lipman* (1962) or *Adams v Cape Industries plc* (1990)). Whilst most candidates discussed Lord Sumption's concealment/evasion dichotomy well, few mentioned the doubts expressed by the other members of the Supreme Court as to the comprehensiveness of that distinction.

Question 4: This was a surprisingly unpopular question eliciting only a couple of answers. Those candidates did a creditable job of discussing the limitations upon the control exercised by the general meeting over the board and were able to point to other mechanisms by means of which such control might be exercised, such as the use of non-executive directors, remuneration and audit committees and covenants in loan agreements.

Question 5: Another unpopular question that produced only very few answers. Unfortunately, most of the answers to this question were marred by a failure to set out with any accuracy the alternative test proposed by the High Court of Australia in *Gambotto v WCP Limited* (1995) or to indicate how this differed from the approach adopted in England. There was also little attempt to explain why the Privy Council in *Citico Banking Corporation NV v Pusser's Ltd* (2007) might have been so averse to adopting the *Gambotto* approach. None of the candidates seemed to appreciate that *Gambotto* has been equally controversial in Australia.

Question 6: No candidate attempted this question, despite the relationship between the derivative action and the unfair prejudice remedy being one of the more obvious issues left unanswered by the Companies Act 2006.

Question 7: This essay question was more popular than the others, with most candidates discussing the highly subjective nature of the duty and its relationship with the duty to exercise powers for a proper purpose. There was some useful discussion of the principal innovation of section 172 of the Companies Act 2006, namely the introduction of a non-comprehensive list of interests to be considered by the board when exercising its powers. Although most candidates raised the issue, there was much less in the way of "critical assessment". Most candidates who answered the question raised the fact that section 172(3) incorporated the common law principles concerning creditor interests, but again there was little analysis of whether the manner in which the directors' duties had been formulated in that regard was appropriate.

Question 8: Few candidates attempted this question, which was effectively asking about the correctness or otherwise of the House of Lords' decision in *Johnson v Gore Wood & Co* (2000). The question required an examination of the limits of reflective loss as recognized in *Johnson* and later decisions and a critique of that position in the light of the New Zealand Court of Appeal's decision in *Christensen v Scott* (1996). The more generous New Zealand approach was explicitly rejected in *Johnson*, so those candidates who had read that decision carefully should not have been entirely unfamiliar with the alternative approach that formed the basis of the quotation.

Question 9: This was the least popular of the problem questions, although still attempted by a reasonable number of candidates. Most candidates dealt with the issue of the alteration to the articles of association and considered the line of authority starting with *Allen v Gold Reefs of West Africa Ltd* (1900) and the resolution to remove Chris as director (although too few considered what, if any, effect the shareholders' agreement might have on this issue). Credit went to those candidates who ventured beyond those basic issues and considered such issues as the effect of the class rights, the consideration requirements for the new share issue, the restrictions on repurchase of shares and reduction of share capital, the breach of the proper purposes duty or the possibility of Chris applying for a winding up petition on just and equitable grounds. Some candidates did (justifiably) raise the possibility of Chris bringing an unfair prejudice petition, but uniformly failed to consider the impact that being a majority shareholder in the company might have upon the availability of such relief.

Question 10: This was a reasonably popular question, but on the whole was poorly answered. Most candidates spotted the basic issues relating to the company exceeding its capacity and the board exceeding its powers, but there was little detailed discussion of either *Smith v Henniker-Major & Co* (2002) or *EIC Services Ltd v Phipps* (2004). Other issues that required analysis included whether the share premium account could be used to issue bonus shares, the possible

relevance of the *Duomatic* principle, the role of the company secretary after *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd* (1971) and the impact of forgery upon the execution of corporate documents after *Lovett v Carson Country Homes Ltd* (2009). No candidate considered the possible impact of the Companies Act 2006, ss 43–47.

Question 11: This was the most popular problem question and, on the whole, candidates dealt well with the various breaches of duty that arose from the facts. In general, there were four common failings in answering the question: some candidates failed to consider the enforcement aspect of the question and the fact that they were being asked to advise a minority shareholder on the possibility of bringing a derivative action; a number of candidates failed to consider the remedial aspects of the question, in particular whether a proprietary remedy was available in respect of the bribe paid to Arthur (a point that was particularly topical in light of *FHR European Ventures LLP v Mankarious* (2013)); many candidates failed to pay proper attention to the role of Edward as non-executive director and did not spot the relevance of *Re Barings plc (No 5)* (2000) to the facts; and, finally, virtually every candidate dealt with the breaches of duty by the directors almost entirely by reference to the common law decisions and without paying close enough attention to the actual wording of the Companies Act 2006. Whilst it is clear that the common law continues to have relevance in this regard, the starting point for analysis must surely be the statutory duties themselves.

Question 12: This question was tackled by a reasonable number of candidates and was competently answered. Whilst candidates dealt well with the issues concerning the share price and the consideration received, there was less certainty about the class rights issues in the question, in particular how such issues might impact upon a formal reduction of capital. Whilst candidates dealt well with parts (a) and (c), few spotted the potential relevance to the reduction exercise of Fredrik being a creditor of the company.

## LABOUR LAW

Candidates achieved a very good standard, which was slightly higher on average than in previous years. All questions were attempted by at least two candidates. The central point of the questions was understood by all candidates. Better answers were clear, focussed on the question, with good detail about the law. Some aspects of some questions were not well tackled, as the following comments recite.

Question 1 on ‘zero-hours’ contracts turned out to be extremely topical. Candidates understood most of the issues well, but it was disappointing that they were unwilling to tackle directly the question of whether there can be such a thing (in law) as a zero-hours contract at all.

Question 2 was the most popular question and elicited good knowledge of the case-law. Weaker candidates omitted to discuss the significance of the decision of the Supreme Ct in *Jivraj*.

In Question 3 candidates in general refrained from trying to work out what kinds of legal concepts might be envisaged in the context of joint liability of two or more employers.

In question 6, no candidate seemed to know much about the facts or statistics about disparities of pay between men and women, or the effects of the minimum wage law, so they could not answer the question with any confidence or detail.

The broader aspects of question 7 that invited candidates to reflect on the inherent weaknesses of the attempts by the EU to regulate the labour market were not vigorously tackled.

Some candidates seemed not to appreciate the significance of the words ‘common law’ in question 8, which had the effect of limiting the question to the law of wrongful dismissal and excluding the statutory law of unfair dismissal.

## **CRIMINAL LAW**

Given that such a limited number of candidates sat the FHS paper, it would be inappropriate to provide detailed comments on each of the questions. For that reason, the comments that follow will be more general in nature. The overall standard was good, whilst one of the scripts was excellent. Those candidates that performed best displayed an ability to identify all the issues the questions raised and were able to discuss them in a sophisticated and coherent fashion. Those who were at the top of the marks scale were also able to engage substantively with the rich theoretical literature that abounds in this area and displayed a willingness to provide their own critique of the law. In relation to problem questions in particular, some candidates failed to set out clearly all the elements of the relevant offences / defences. Others did so, but failed to examine each element in a systematic fashion. In some instances, there were too many unsubstantiated assertions and insufficient analysis of the case law.

In Part A question 2 proved popular and was generally well answered. Some candidates were, however, unable to recite the precise terms of the Woollin direction. Given its importance, this is something that ought to be learned verbatim. In Part B questions 8 and 9 were popular. The scenarios in these questions raised a number of issues and there was a tendency not to identify and analyse all the potential sources of liability.

## **CONSTITUTIONAL LAW**

Seven candidates took this paper. In general the quality of answers was high, reflecting the advantages which can be gained from studying Constitutional Law as a Final Honour School subject alongside Administrative Law, Jurisprudence and EU Law. Not unexpectedly, most candidates focused their attention on the questions concerning Parliamentary sovereignty, EU law, Convention rights, the rule of law, separation of powers, constitutional conventions and prerogative powers. The stronger candidates drew links in most or all of their answers between the different aspects of the subject, seeking to demonstrate that no one issue concerning the allocation of power within the constitution can necessarily be considered in isolation.

## **TAXATION LAW**

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 13 of the 18 candidates. Q.5 on employment benefits was the least popular, attempted by only three 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 the merits of a tax on sugar. Most answers discussed ability to pay and neutrality in some depth. The better answers engaged with Adam Smith's other canons of taxation including certainty and admin/compliance, raised definitional and targeting issues, and considered alternative ways to evaluate taxes such as optimal taxation. Q.2 concerned tax avoidance and the new UK GAAR and was answered quite well overall. Those students who analysed a range of recent and older cases on the *Ramsay* principle, showed some appreciation for the details of the GAAR, and engaged with the extensive literature on avoidance were duly rewarded. Many of the answers to Q3 on the capital taxation of trusts were high-quality, showing a good appreciation for the operation of the CGT and IHT regimes as they apply to trusts. The better answers considered the pre-2006 regime and engaged with broad policy considerations such as neutrality and restricting tax avoidance. Q.4 involved an assessment of inheritance tax. The answers properly focused on the progressivity issue, with the stronger answers delving into the academic arguments for and against abolishing IHT, discussing other weaknesses and considering the relationship between IHT and CGT. Q.5 on employment benefits demanded a high degree of comfort with both the common-law convertibility principle and the statutory benefits code, along with an appreciation for how the two interact. Q.6 was a relatively straightforward two-part question and most answers coped well with the main issues. The best answers discussed the recent cases on 'residence' generally as well as the curtilage test, and focused on the 'motive' badge of trade along with a more general discussion of the badges.

Q.7 was the more popular of the two problem questions. Some candidates missed that the doctor was both an employee and carrying on a profession. Those who recognised that aspect, demonstrated a high degree of comfort with the cases on travel in particular and could move easily between the relevant statutory regimes for expenses of employees and the self-employed were well rewarded. The facts in Q.8 raised a broad spectrum of major and minor business tax issues. Candidates for the most part spotted the correct issues, but the depth of analysis of those issues was quite variable. Weaker answers lacked sufficient discussion of a range of relevant cases.

## **ENVIRONMENTAL LAW**

Overall responses from candidates were very impressive. Candidates knew and understood the law in considerable detail and also displayed a strong understanding of its surrounding context. Very strong answers displayed acute attention to the question asked and an outstanding knowledge of the relevant law. As in previous years, all questions on the paper were answered and the vast majority of students addressed problem questions although not required by the rubric.

## **MORAL AND POLITICAL PHILOSOPHY**

The examiners found less variance in candidates' performance than in previous years: four questions accounted for three quarters of all answers, and there was a striking similarity of approach among answers that got marks in the high 50s and low 60s. This suggests that some candidates prepared only a limited number of topics, and, instead of paying attention to the question asked, wrote generally about 'issues' that seemed prompted by it. First-class marks were obtained only by those who showed familiarity with the literature, careful attention to the

actual question before them, and skill in conceptual discrimination and argument, including, in particular, in considering objections to the line they were defending.

In Part A, candidates showed good command of first-order moral theories, and especially of utilitarianism and its deontological alternatives. The question on moral conflicts was well done. On the other hand, few had a secure grasp of meta-ethical issues. This was evident in answers to the question on moral objectivity, where hardly any candidates could distinguish semantic, epistemological, ontological, and practical versions of the thesis (or argue that these distinctions are unhelpful). And most showed little sensitivity to differences among various non-cognitivist doctrines, which they tended to lump together as a kind of undifferentiated ‘subjectivism’.

Most surprising was how poorly handled were the (famous) quotations from Kant and Bentham. Candidates are advised not to write about quotations from texts unless they have actually read those texts. And, if they have read them, they should also consider what they might have to say about *the particular passage quoted*. Without one exception, those who attempted the Bentham quotation treated it as asking, ‘What do you think about utilitarianism?’—ignoring the quotation’s key claims about the moral significance of reason and the capacity to suffer.

Answers in Part B were more accomplished than in previous years, with the most popular question being the one on equality. Most candidates argued similar lines here, but they did so with confidence and care. No candidate attempted the question on democracy, which was a surprising, given how often the issue was discussed in the media. Part B not only allowed candidates to explore the ‘political’ side of the paper; it also allowed them to use this material to reflect on practical issues. Few took the opportunity.

## EUROPEAN HUMAN RIGHTS LAW

Performance in the European Human Rights Law paper this year was impressively high. Of the 45 candidates who took this paper, 2 received lower seconds (4%), 24 received upper seconds (53%), and 19 received first class marks (19%).

The candidates who did best managed to answer the questions directly, combining detailed case analysis, academic sources and their own carefully developed arguments. Candidates who stood out also tended to choose less popular questions, in other words, those that weren’t immediately connected to tutorial essays. The most popular question by far was question 1 on extra-territorial jurisdiction, but candidates were also very keen on those related to the margin of appreciation (question 2), and whole life sentences (question 3(a)).

Candidates were less keen to answer questions where the substantive questions invited controversy, and which weren’t easily resolved in principle (such as those revolving around sexual orientation, religious belief and social tolerance more generally). Candidates need to be bolder in their embrace of ambiguity in the delivery of their arguments around these themes. Examiners would welcome answers which display a genuine sense of conflict within the existing case law as well as academic commentary.

Finally, the examiners were delighted to find that a number of candidates attempted the problem question (question 10). For this they were well rewarded, and some of the answers

were genuinely impressive indeed (often raising whole papers to first class standard). On the other hand, candidates who tried to wedge their pre-prepared prisoners' rights essay into their answers to either question 3(a) or 3(b) were less well rewarded.

Overall, however, this was a strong field and a well answered paper.

## **COPYRIGHT, PATENTS AND ALLIED RIGHTS**

This paper was answered to a high standard overall, with a number of truly outstanding scripts. As evidence of the strength of the cohort, it included three of the four top candidates in Schools, who placed first, second and third.

The most popular questions were questions 1 and 10, attempted by 59 per cent and 53 per cent of candidates respectively. There was a pleasing spread of answers overall, with no two candidates attempting the same mix of questions, and a pleasing consistency in the quality of answers across the two regimes. Of the 16 FHS candidates, 55 per cent attempted three copyright questions and one patents question, 20 per cent attempted two copyright questions and two patents questions, and 25 per cent attempted one copyright question and three patents questions.

### Part A: Copyright

Question 1: It was acceptable for candidates to consider either or both of the copyright and moral rights regimes when answering this question. Whatever their focus, however, answers needed to be supported by appropriate cases and other legal sources. Several candidates interpreted the essay in a way that enabled them to focus on originality, which was fine, but those who used the essay as a hook on which to hang a prepared essay were inevitably penalized. Given the use of the word "sufficient", candidates needed to engage with the extent to which authors' rights *should* be recognized, and to justify clearly their claims in that regard.

Question 2: This was among the more difficult essay questions, and was attempted by only 19 per cent of candidates, all of whom wrote essays of a very high standard, however. Answers needed to offer a full analysis of recent case law regarding both of the rights mentioned – including of *NLA v Meltwater* and *Infopaq*, and *Airfield*, *ITV*, *FAPL* and *Svensson* – and to frame that analysis as a convincing response to the quotation.

Question 3: After question 1, this was the most popular copyright question. And as with the answers to question 1, the quality of answers varied considerably, from Second Class to very clear First Class. To do well it was essential to demonstrate an understanding of the full breadth of reforms proposed to the law of fair dealing, and to be able to critically assess one or more of them *having regard to the pre-reform law*. Those candidates who used the question as an invitation to talk about parody with no or little reference to pre-reform law were unable to do well.

Question 4: As with question 2, this separated the strong from the weaker students. 25 per cent of candidates attempted this question, and all wrote First Class answers to it (and received First Class marks for their scripts overall). Most engaged with both the substantive and procedural aspects of *PRC v NLA* and considered the issue of deference from the perspective of each. A

deep understanding of that case and associated case law was essential to answer this question effectively.

### Part B: Patents

Question 5: This was the least popular essay question on the CP exam, and was attempted by only 12 per cent of candidates. To do well, candidates needed to demonstrate an understanding of the European and English law regarding patentable subject matter, including the Biotech Directive, and to be able to relate that law to policy considerations.

Question 6: This question was posed by Lord Hoffmann during his seminars. Any view was acceptable, but candidates needed to demonstrate an understanding of the basis for the Courts' distinction of *Biogen* in *Lundbeck* and an ability to critique it. To do this candidates needed to be able to step back from the analysis of Lord Hoffmann in *Lundbeck* and to comment on it, rather than merely repeating it and asserting it as correct.

Question 7: This was a difficult question and it was pleasing to see so many candidates attempt it (53 per cent). It did not require a knowledge of US law, nor of the *Warner-Jenkinson* case itself (though candidates were shown this case in the seminars). Broadly speaking, it raises the issue of the most appropriate method of determining the scope of a patent monopoly, and the place if any in that method of a (US or other) doctrine of equivalents. A couple of the outstanding answers to this question were notable for the originality of their analysis. All demonstrated a very good understanding of the UK law of claim construction and an ability to engage critically and thoughtfully with it.

Question 8: Answers to this question did not need to focus on the issue of patents for computer programs, nor to discuss the *Aerotel* litigation, though the strongest answers used that issue from which to derive the themes that informed their discussion of harmonization and the unitary patent system. A very detailed understanding of the unitary patent system was not required to answer this question effectively.

### Part C: Problem Questions

Question 9: Candidates needed to be able to identify and discuss a range of issues here, without repeating themselves, including: (a) Jenny's potential causes of action for breach of copyright in her photograph against Lewis (hyperlinking) and Melanie (redrawing), including any fair dealing defence that Melanie in particular might have had; (b) Kim's potential causes of action against Lewis and Melanie for breach of the literary copyright in her speech, including the uncertainty regarding the time at which that copyright came into subsistence and its relevance for her causes of action against Lewis particularly; and (c) Lewis's potential cause of action against Melanie for breach of copyright in his handwritten record of Kim's speech, including whether that copyright subsisted and if it did, the rights it conferred on Lewis and any acts of Melanie that infringed those rights. Candidates were not penalized for any confusion caused by the wording of this question, and in particular by the reference to Jenny being a painter on one hand and the description of her work as a photograph on the other.

Question 10: This question was popular and answered to a very high standard overall. All candidates demonstrated a good understanding of the legal position with respect to each of the listed subject matter, and most demonstrated a good understanding of the breadth of case and other law of relevance to them as well.

Question 11: As with question 9, this was a challenging question as much for the number of issues it raised as for their complexity. Regarding (a): Candidates needed to be able to work through the criteria for patent protection, noting that the approach would be the same under UK and European law except with respect to inherent patentability (the requirement for an invention) and inventive step. The trickier issues were whether the subject matter was an invention under UK law (cf under European law) and whether it was inventive. An understanding of the *Aerotel* test was important, as was an ability to reason through the question of inventive step in accordance with the UK and European tests. Regarding (b): Candidates needed to be able to apply the test from *Schütz v Werit*, and to recognize the unlikelihood of it being satisfied. The weight of this question is in part (a), in reflection of which candidates needed to spend comparatively little time on part (b).

Question 12: No candidate attempted this question.

### **PERSONAL PROPERTY**

1. This question attracted some strong answers. Most candidates were able to explain the interaction between property rights and torts, and how the latter can be said to be parasitic on the former. The better answers were able to refute the quote by showing that torts are crucial to our understanding of the scope and nature of property rights.

2. This did not attract many answers, with some candidates apparently thrown by the mention of a ‘presumption’ in the quote. Candidates that did attempt it tended to provide strong answers that were able to explain how the concept of ‘relative title’ works, and how it is different from presuming a litigant to be an ‘owner’.

3. This was one of the least popular questions on the paper. Those that answered it were able to show how the quote is too wide, because other persons (such as bailees) may have the ‘trappings of ownership’ but do not come within ss. 24 or 25.

4. This was one of the most popular questions on the paper and attracted a range of answers. Weaker answers tended to provide a general account of the facts and outcome of *Waverly BC v Fletcher*. The better answers critically analysed the rule applied in the case, particularly the problematic usage of the doctrine of ‘accession’. Good answers were also able to compare the rule to that found in *Parker v British Airways*, and ask whether there is any good reason for these cases to depart from the *Armory v Delamirie* principle.

5. This was another popular question. Most answers were able to identify the different types of uncertainty that arise as a result of the fact that title can be transferred by intention alone. Disappointingly, however, few candidates considered the ways in which the law attempts to ameliorate these uncertainties. In particular, few consider the role played by ss. 24 and 25 of the Sale of Goods Act in protecting third parties who are uncertain of who holds title to certain goods.

6. No candidates answered this question.

7. Only a couple of candidates attempted this question. Candidates tended to discuss the line between abandonment and transfer, and demonstrate how many of the putative ‘abandonment’ cases could be analysed as examples of transfers.

8. This was a popular question and most candidates did a good job in answering part (a), which is concerned with sale. Answers to part (b) tended to be much weaker, with many failing to realise that the answer turns upon the proprietary status of a chattel lease. Few candidates mentioned relevant cases such as *De Mattos v Gibson*.

9. Although not a popular question, it attracted a handful of strong answers. The best answers were able to discuss the possibility of transfer by attornment.

10. Most of the candidates who attempted this question were able to provide a decent account of specificatio and mixtures and apply these concepts to the facts. A number of candidates lost marks by failing to recognise the security element of this question.

### **MEDICAL LAW AND ETHICS**

This paper was generally well answered. A notable feature was that no candidate performed at below 2.1 level. The answers all demonstrated a good knowledge of the case law and of the theoretical material. It was pleasing to see a good number of candidates thinking through issues for themselves. What marked out the strongest papers was a careful attention to the question asked. Many candidates did not perform as well as they might because they wrote down everything they knew about the general topic, without sufficient focus on the question addressed.

This last point was well illustrated with the question on abortion (‘Although abortion is nearly always morally wrong, it should always be permitted in law.’ Discuss whether this could be a logically consistent view.). Many candidates who addressed this question wrote generally about disputes over the legal status of the fetus and the morality of abortion. With a few very impressive exceptions, the question being asked was not addressed, or only briefly alluded to.

A similar problem arose with the question on euthanasia, where many candidates were tempted to discuss all the issues they could think of relating to euthanasia, rather looking precisely at the argument raised in the quote by John Keown.

Few candidates attempted the short problem question. It should be noted that the question asked candidates to discuss the legal and ethical issues raised. Examiners were not, therefore, expecting the kind of answer one might find to a trusts law problem, with a focus only on the legal issues raised, but also a broad analysis of some of the ethical problems raised. Most candidates who attempted this question appreciated this and answered appropriately.

### **COMMERCIAL LAW**

The results this year were pleasing, with a high proportion of First Class scripts.

Question 1

This question did not have many takers. The question expressly refers to the way in which the Sale of Goods Act makes too much depend on the passing of property, and better answers focused on this rather than on other problems such as the recoverability of pure economic loss in tort (which was dealt with extensively by weaker answers).

#### Question 2

This question required a comparison of the English rules on the passing of property from a non-owner and UCC §2-403(2). A trap that a number of candidates fell into was to restrict the discussion of English law to s. 2(1) Factors Act 1889 when the question was, in fact, much wider. The best answers (of which there were quite a few) did not simply compare the two regimes but went on to point out weaknesses in both, concluding by suggesting reforms that would make this area of the law more satisfactory.

#### Question 3

A number of candidates who answered this question had not thought about the quote properly and thus failed to appreciate that Atiyah criticises s. 13 because it imposes an implied term which, in the vast majority of cases, will already be an express term of the contract of sale. They were, unsurprisingly, struggling to find something relevant to say. The best answers were able to explain some of the background, in particular that sale by description used to be a requirements of what is now s. 14(2).

#### Question 4

Not many takers – among those who did attempt this question there were a number of excellent efforts, carefully evaluating each side of the argument. The very best answers considered separately how reform could take place by judicial development of the law (and whether this would still be possible, given the very clear statements in some of the cases) and how Parliament might achieve it.

#### Question 5

This was a popular question which most candidates dealt with competently. The best answers identified the shortcomings of the old law before discussing the reforms and the extent to which these have and could have improved things.

#### Question 6

This question was one of the most popular problem questions. The best answers (and there were many good ones) considered the central issues (validity of the agency device, relevance of post-transaction conduct to characterisation, the effect of back-to-back retentions of title) in some depth. Many considered the impact of the recent Court of Appeal decision in *Wilson v Holt* and speculated on its chances of survival in the Supreme Court. A number of weaker answers simply assumed that the dissent in that case would be upheld and went on to apply it as if it were the law!

#### Question 7

Key to answering this (popular) question was dealing with the different assets separately. Better answers highlighted the controversial issues, expressed a view on the best way to resolve them, but then went on to consider the position that would obtain if that view was not endorsed by the court. Weaker candidates seemed to assume that there was one, global, order of priorities without relating this to individual classes of assets. Again, many were quick to express a view (for example, that failing to tick the box indicating a negative pledge clause in the particulars negated notice) and then went on to discuss the remaining issue on that assumption without

considering the alternatives. It was surprising that a number of candidates who had answered both Questions 5 and 7 bemoaned the continuing existence of the 21 day invisibility period in Question 5 but then failed to spot its relevance in Question 7!

#### Question 8

A single candidate tackled this question, and did so in convincing fashion. It is hard to see why the question was so unpopular, given that it deals with central topics covered in depth in seminars and tutorials (assignment, implied terms). It may be that assignment is perceived as a more difficult topic than it actually is.

#### Question 9

The main shortcoming of weaker answers of the question was that they did not consider the reasons why the incidence of property rights in the various trucks was important – this would have been easily avoided if candidates had asked themselves what the different parties were likely to want to achieve. They also ignored difficult issues (such as the sufficiency of part payment to trigger s. 20A SGA) rather than dealing with them. A surprising number of candidates failed to spot that, whether the risk had passed to Ed or not in scenario (iv), he would certainly be liable in negligence for the loss of the truck.

#### Question 10

While there were many excellent answers of this question, there were few that were equally good on agency issues and implied terms issues raised by the facts. Most candidates saw the relevance of *Ireland v Livingston* and went on to consider whether it would be applied to these (rather special) facts despite widespread doubts that it should continue to play a role in modern agency law. Although the question did raise undisclosed agency issues, it had nothing whatsoever to do with *Watteau v Fenwick*, so that it is surprising that a substantial minority of candidates felt compelled to discuss that case in detail. It was disappointing that only one candidate spotted the parallel between a prohibition of assignment (*Siu-Yin-Kwan*) and a prohibition of subletting in preventing (or allowing) the intervention of an undisclosed principal. In contrast, some answers did raise the possibility of s. 14(3) imposing a duty to inquire on a seller at an informational advantage vis-à-vis the buyer, particularly where the buyer was acting through an (uninformed) agent.

## CRIMINOLOGY AND CRIMINAL JUSTICE

Eighteen candidates sat this paper. The quality of scripts was generally very good and gave evidence of careful reading of the academic literature. The better answers closely addressed the question set, were grounded in a thorough knowledge of the academic debates, research findings and statistical evidence, and made reference to relevant criminal justice legislative and policy initiatives. The very best scripts engaged in sophisticated analysis and developed insightful and persuasive arguments in response to the question. A few scripts were particularly impressive and demonstrated an authoritative grasp of, and ability to engage in, academic debates in the field. The rump of scripts was well informed and well-argued but some were insufficiently substantiated. Failure to demonstrate a sound knowledge of relevant debates, policy developments, and legislation denied even good answers the highest marks. Many of the weaker scripts were well argued but gave scarce reference to the literature and to research findings. They tended to rely less upon the readings prescribed and more upon familiarity with general issues raised during the course or, at worst, anecdotal observations derived from the media.

The most popular questions were 5, 11, and 12 but answers were widely spread across all the questions, with no very obvious variation in quality between those topics that were the subject of tutorials or classes and those that had been covered only in lectures.