FHS JURISPRUDENCE

DIPLOMA IN LEGAL STUDIES

(MAGISTER JURIS)

Examiners' Report 2016

PART I

A. STATISTICS

The number of candidates **taking the examinations** was as follows:

	2016	**2015**	**2014**	**2013**	**2012**
FHS Course 1	**176**	185	183	198	182
FHS Course 2	**30**	30	32	31	32
Diploma	**33**	34	31	32	31
Magister Juris	**20**	23	12	20	11

(1) Numbers and percentages in each class/category

(a) Classified examinations: FHS Course 1 and 2 combined

Class	**Number**					**Percentage (%)**				
	2016	**2015**	**2014**	**2013**	**2012**	**2016**	**2015**	**2014**	**2013**	**2012**
I	**38**	52	46	37	45	**20.00**	24.18	21.40	16.15	21.03
II.i	**144**	151	163	180	158	**75.79**	70.23	75.81	78.60	73.83
II.ii	**8**	12	5	8	8	**4.21**	5.58	2.33	3.49	3.74
III				2					0.87	
Pass			1		1			0.47		0.46
Honours**				1					0.43	
Fail				1	2				0.43	0.93
Totals	**190***	215	215	229	214					

* of the 206 candidates, 190 were classified and 16 withdrew

** 'declared to have deserved Honours'

(b) Classified examinations: FHS Course 1

Class	Number					Percentage (%)				
	2016	**2015**	**2014**	**2013**	**2012**	**2016**	**2015**	**2014**	**2013**	**2012**
I	**31**	44	34	30	34	**19.25**	23.78	18.58	15.15	18.68
II.i	**122**	130	143	156	138	**75.78**	70.27	78.14	78.78	75.82
II.ii	**8**	11	5	8	7	**4.97**	5.94	2.73	3.49	3.84
III				2					1.01	
Pass			1		1			0.55		0.54
Honours**				1					0.50	
Fail				1	2				0.50	1.09
Totals	**161***	185	183	198	182					

* of the 176 candidates, 161 were classified and 15 withdrew
** 'declared to have deserved Honours'

(c) Classified examinations: FHS Course 2 (Law with Law Studies in Europe)

Class	Number					Percentage (%)				
	2016	**2015**	**2014**	**2013**	**2012**	**2016**	**2015**	**2014**	**2013**	**2012**
I	**7**	8	12	7	11	**24.14**	26.66	37.5	22.5	34.37
II.i	**22**	21	20	24	20	**75.86**	70	62.5	77.4	62.50
II.ii		1			1		3.33			3.12
III										
Totals	**29***	30	32	31	32					

* of the 30 candidates, 29 were classified and 1 withdrew

(d) Unclassified examinations: Diploma in Legal Studies

Result	Number					Percentage (%)				
	2016	**2015**	**2014**	**2013**	**2012**	**2016**	**2015**	**2014**	**2013**	**2012**
Distinction	**12**	9	4	10	7	**36.36**	26.47	12.9	31.25	22.5
Pass	**21**	25	29	22	24	**63.64**	73.52	87.1	68.75	77.4
Fail										
Totals	**33**	34	33	32	31					

(2) Vivas

Vivas are no longer used in the Final Honour School. Vivas can be held in the Diploma in Legal Studies, but none were held this year (nor in 2014 or 2015).

(3) Marking of scripts

Not all scripts are second marked. The procedures for ensuring the accuracy of marking were the same as in the last six years.

Before the first marks meeting

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 previous years, second marking of all scripts where the first marker had given a mark ending in 9 (69, 59, 49), known as borderline scripts, or a mark below 40 also took place before the first marks meeting.

Between the first and second marks meetings

Firstly, 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 four 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, where the second mark was lower, in the absence of an explanatory note, the first mark given was awarded.

Secondly, as the marks from the Jurisprudence essays and scripts are aggregated only at the first marks meeting, borderline overall marks (ending in 9) may then emerge, which requires further second marking. This is discussed in Part II, section (A)(4).

Thirdly, 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.

Finally, where a candidate had submitted a 'Factors Affecting Performance' (FAP) application (part 13 of the *Examination Regulations* 2015), the Board occasionally required a second marking of additional scripts that nearly met these desiderata (e.g. 67s without any hint of 70).

Statistics

This year, 555 scripts (30.6%) were second marked, 334 of them before the first marks meeting, and 221 between the two meetings.

334 scripts (18.46%) were second marked before the first marks meeting. This second marking was either as part of the standard process of ensuring consistency between markers or to resolve a case in which the first mark awarded ended in a 9. This pre-first marks meeting number compares to 298 scripts (16.16%) in 2015.

Of the scripts second marked between the two marks meetings, 137 were scripts where the first marker's mark was four or more marks below the candidate's average mark; 82 were scripts second marked as borderline (ending in 7 or 8) in instances in which returning marks in the class above had the potential to affect the candidate's overall degree classification. Two scripts were both four or more marks below and borderline. In addition, 13 scripts were second marked as part of the Examiners' consideration of six candidates' part 13 ('Factors Affecting Performance') applications.

The figure of 137 (7.57%) for 'four or more marks below' second marking between marks meetings compares with 163 scripts for 2015.

The figure for 'borderline' scripts ending in 7 or 8, above, includes scripts identified in response to the application of expanded criteria for identifying 'borderline'. Twenty-one scripts in respect of 13 candidates were second marked on these expanded criteria. This is discussed in more detail in Part II, section A(4).

This year, there was one script with a mark below 40 (0.05%) (which rose to 40 or above as a result of second marking). This figure of one compares to four in 2015, six (0.29%) in 2014, 12 (0.58%) in 2013 and 16 (0.79%) in 2012.

The 30.6% total for second marking this year compares with 31.2% in 2015.

The figures detailed above exclude the second marking of the Jurisprudence scripts and essays. For the 2016 FHS, there were 70 cases of Jurisprudence second marking, which compares to 50 in the 2015 FHS (44 script only; six both essay and script).

Of the 70: 27 cases were just below a borderline for overall classification purposes (comprising: 24 where both the script and essay were second marked; one where only the essay was second marked; and 5 where only the script was second marked); 33 were cases where only the first marker's mark was four or more marks below the candidate's average mark (comprising 11 essay only; 22 script only); three were cases, which were both borderline for overall classification purposes and the first marker's mark was four or more marks below the candidate's average (in all three instances, only the script was second marked; and four were cases, which were part of an 'emergent 9', discussed in Part II, section (A)(4).

(4) Withdrawals from the examination

The table detailing the number of candidates taking the examination aside, the figures tabulated in this report do not include withdrawn candidates.

This year, 16 candidates (7.77%) withdrew from the Final Honour School, 15 from Course 1 and one from Course 2. This is an increase from the 2015 FHS, from which six candidates (2.71% of 221) withdrew.

B. NEW EXAMINING METHODS AND PROCEDURES

(1) Examining Methods

There were no new examining methods adopted for the first time for the 2016 FHS. 'Jurisprudence New Syllabus' was introduced for the 2014 FHS for Course 1 candidates, and for the 2015 FHS for Course 2 candidates.

(2) Examining Procedures: Materials in the Examination Room

There was one innovation to the materials available in the examination room for the 2016 FHS, which was introduced in response to particular problems that occurred in the 2015 FHS, as documented in last year's Examiners' Report. To remove the possibility that candidates would not have any Case List or the correct Case List provided at their desk, the decision was made to append the Case List to the printed examination paper, which was printed and distributed as a single document.

This change was noted in Appendix B of the Examination Conventions circulated to candidates. In the examination room, candidates were informed that, for ease of reference, they could separate the Case List from the rest of the examination paper if they so wished.

C. CHANGES IN EXAMINING METHODS, PROCEDURES, AND CONVENTIONS

(1) 'Fail' scripts comments form

In response to feedback from last year's External Examiners, a comments form for 'fail' scripts was piloted for the 2016 FHS. This was applied to all scripts receiving a mark of 29 or below, and completed by the set of internal markers who agreed upon the failing mark, for review by an External Examiner.

Instructions were circulated to markers, and it appeared to be well understood. As a result, the Examiners would suggest its future application to all scripts receiving a mark of 39 or below, given the consequences for the candidate of obtaining a 'pass' degree.

(2) Qualifying Law Degree

There has been a change to the role of the Examiners for Qualifying Law Degree purposes in respect of certification of a paper in which an FHS candidate receives a mark below 40.

The Solicitors' Regulatory Authority (SRA) regards 40 as the pass mark for the core subjects for a Qualifying Law Degree. In previous years, the Examiners certified whether, in their view, taking account of the evidence provided to them, the candidate with a mark of below 40 in a core subject, would have obtained a mark of at least 40 had the circumstances not occurred. The SRA made the final decision on what discretion could be applied, taking account of the Examiners' certification together with

evidence provided by other sources. As of the 2016 FHS, the SRA requires the Examiners to exercise that discretion on behalf of the SRA. The Examiners apply the same considerations as previously, and this change was straightforwardly implemented.

D. CIRCULATION OF THE EXAMINATION CONVENTIONS TO CANDIDATES

Examination Conventions were introduced for the 2016 FHS. The FHS / DLS Examiners' Edict was circulated to students to direct them to the published version of the Conventions on the Faculty's Weblearn site.

PART II

A. GENERAL COMMENTS ON THE EXAMINATION

(1) Candidate complaints relating to conduct of examinations

This year, there were no formal complaints made to the Proctors regarding the conduct of examinations.

(2) The Board of Examiners' marks and exercise of their discretion at their final meeting

As a general rule, the Examiners applied 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 part 13 applications ('Factors Affecting Performance') had been drawn to the Board's attention, and in some of these cases the Board decided that it was appropriate to classify a candidate otherwise than in accordance with the conventions. This is discussed in subsection (7), below.

(3) Percentages in each class/category (comment on Part I, section A(1))

Past Boards of Examiners were 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.

In the 2016 FHS, 20% of candidates obtained a first class degree, which marks a decline from 24% in 2015. A projected decline in the award of first class degrees was evident in the provisional classifications in the first marks meetings, as a result of which the Examiners adopted expanded criteria for 'borderline' second marking in instances in which the return of a mark in the higher class might impact on the candidate's overall classification. This is detailed in subsection (4), below.

The percentage of candidates awarded an upper second class degree was 75.79%, which compares to 70.23% in 2015 and a high of 78.60% in 2013. The percentage of candidates awarded a lower second class degree was 4.21%, which compares to 5.58% in 2015, against the backdrop of a gradual decline from 6.58% in 2011 to 2.33% in 2014.

(4) Second and Third Marking

This year, there are four matters which merit attention in respect of second marking.

(i) Jurisprudence

As Jurisprudence essay and script marks are not aggregated until the first marks meetings, aggregated marks ending in 9 are not apparent until that stage. Of the second marking in Jurisprudence noted in Part I, section A(3), 19 were cases involving such 'emergent' borderline cases; in 13 of these cases, both the essay and script were second marked; in one case, just the essay was second marked; and in five cases, just the script was second marked between the two marks meetings.

For the purpose of determining whether candidates were 'borderline' overall for the class above at the first marks meeting, the Examiners treated any aggregate Jurisprudence 9 on the basis that it would be returned in the class above. This triggered additional second marking in other papers. This year, five scripts in other papers were second marked as a result of this late aggregation.

(ii) Expanded criteria for identification of 'borderline' cases

As noted in the subsection (3), the Examiners adopted expanded criteria for 'borderline' second marking, in cases in which it had the potential to impact on the candidate's overall classification. More precisely, the Examiners agreed where the candidate was missing two higher marks:

- to apply the normal convention of second marking all scripts ending with 8; and second marking scripts ending with 7 where one or more of the questions answered by the candidate on the paper concerned had been awarded a mark in the higher class (ie. a script given an overall mark of 67 where one or more questions had been given a mark of 70 or more);
- where one or more scripts was being second marked under the normal convention, to exceptionally second mark any script ending with a 7, where there was no higher class element in the paper, but the raising of that particular mark might lead to the candidate being classified in a higher class than if the original marks remained unchanged.

At the suggestion of an External Examiner, the Examiners agreed to apply this exception to both the 1/2i and the 2i/2ii borderlines.

As noted in Part I, section A(3), 21 additional scripts in respect of 13 candidates were second marked on this basis. Four of these candidates had their overall classification raised through the second marking process, though that outcome may not be attributable to this relaxation alone (eg. sufficient marks may have been raised on papers being second marked on the normal convention).

(iii) Impact of 'borderline' case second marking

In the 2016 FHS, 82 'borderline' scripts were sent out for second marking after the first marks meeting, on the basis of either the normal convention or the expanded criteria.

This year, 24 scripts were raised to a higher class (29.26% of those sent out at this stage). Noting that only this year's figures include the expanded criteria, this compares to 12 (19.35%) in 2015, 16 (25.80%) in 2014, 21 (29.16%) in 2013, 19 (35.84%) in 2012, and 21 (21.58%) in 2011.

First Mark	**Number of Scripts**			**Number agreed in Higher Class**			**Percentage (%) agreed in Higher Class**		
	2016	2015	2014	**2016**	2015	2014	**2016**	2015	2014
68	**35**	30	33	**16**	7	6	**45**	23	18
67	**32**	22	16	**6**	4	3	**18**	18	19
58	**6**	7	11	**0**	1	7	**14**	14	64
57	**9**	3	2	**2**			**30**		
48									
47									

The table above excludes the Jurisprudence borderline scripts and/or essays since Course II candidates were not assessed under this new syllabus in the 2014 FHS. In the 33 cases where either the script and/or the essay was second marked, 11 (33.3%) moved into the higher class overall.

(iv) Third marking

Third marking may be used in exceptional cases. In the 2016 FHS, the Examiners sent eight scripts for third marking between the two marks meetings. This compares to 12 scripts in 2015 and eight scripts in 2014.

One Jurisprudence mini-option essay required third marking to resolve a difference between markers. This was the first case in which this issue had arisen since the introduction of 'Jurisprudence New Syllabus'. The third marker marked the essay 'blind'; when his or her mark was returned between those returned by the first and second markers, the third marker was instructed to either adopt the more generous of the first two marks or prefer his or her own. The Examiners considered this to follow the usual approach of favouring the candidate at second marking.

(5) Jurisprudence

(i) Identification of components for second marking

In respect of marks, which were four or more below the candidate's average, the Examiners continued to apply the principle adopted in the 2014 and 2015 FHS, that the separate marking of essays and exam scripts should also apply at the point of second marking. If an individual component was four or more marks below the candidate's average, it was sent for second marking.

In respect of 'borderline' aggregate marks, however, the Examiners sent both components to be separately second marked, regardless whether an individual component mark was borderline. That differs from, and is more generous to candidates than the approach taken in the previous two years in which second marking was generally confined to the lower-scoring of the two components. The approach taken this year made it more likely that markers may have been advised that they had a borderline script when it was in fact a script currently resting on (say) a 65 or a 71. An explanation was provided to markers to approach all second marking of non-borderline components on the basis that the particular mark he or she assigned may be critical to the candidate's overall degree classification.

(ii) Jurisprudence Mini Options: plagiarism in essays

All essays were submitted to the plagiarism checker software, *Turnitin*, which attached a score to each essay. The raw *Turnitin* scores were inspected for any possible evidence of cheating. As a result of that evaluation, two cases were further investigated but revealed no plagiarism.

Whilst ongoing vigilance is required, the Examiners take the view that plagiarism has not been a significant concern since the introduction of the Jurisprudence essays.

(iii) Jurisprudence Mini Options: late submission

This arose as an issue for the 2016 FHS. The Examiners exercised their discretion to impose penalties.

As of the 2017 FHS, penalties will follow a fixed scale, subject to a discretion to reduce the penalty.

(6) Withdrawals (comment on Part I, section A(4))

As noted, the number (and percentage) of withdrawals increased from six candidates (2.71% of 221) in 2015 to 16 candidates (7.77% of 206).

The Examiners propose monitoring this figure together with the number (and percentage) of applications made under part 13 of the *Examination Regulations* ('Factors Affecting Performance'), discussed in the next subsection.

(7) Special Cases: Part 12 and Part 13 *Examinations Regulations* 2015 Applications

The Taught Degrees Examinations Office at the Examination Schools are responsible for making arrangements in response to part 12 applications by candidates who have conditions calling for extra writing time, word-processing, rest breaks, or other special arrangements. The Examinations Officer (on behalf of the Chair) is given access to copies of the special arrangements applications via the 'SharePoint' secure website, which is managed by the Taught Degrees Team. Part 12 cases do not concern the Examiners at the marks meetings.

Part 12 certificates were forwarded to the Examiners in respect of 22 FHS and no DLS candidates. This compares to 27 FHS and two DLS candidates in the 2015 FHS.

Part 13 applications involve the Examiners in a two-stage process. Firstly, in accordance with procedure set down by the Education Committee, a subset of the Examiners (Dr N Barber, Ms L Ferguson (Chair), Mrs J Bass) met prior to the first marks meeting of the Board to discuss the individual applications and to evaluate and band the seriousness of each application on a scale of 1-3 with 1 indicating minor impact, 2 indicating moderate impact, and 3 indicating very serious impact. When reaching this decision, the subcommittee took into consideration the severity, timing, and relevance of the circumstances; and the strength of the evidence. The subcommittee also noted whether all or a subset of papers were affected, being aware that it is possible for circumstances to have different levels of impact on different papers. A record of the evaluation was recorded on the appropriate form included in Annex B of the *Policy and Guidance for Examiners and others involved in University Examinations, June 2015.*

Secondly, at the marks meetings, the Chair reported an anonymised version of the contents of every part 13 application to the Board so that it could be taken into account in relation to sending scripts for second marking, confirming marks for individual papers, and classifying the candidate's performance. A formal record was made confirming (a) the fact that information about special circumstances had been considered by the Examiners, (b) how that information had been considered, and (c) the outcome of the consideration together with the reasons for the decisions reached. The form for evaluating the circumstances and report of action taken was completed at the results confirmation meeting (the Final Marks Meeting) using the appropriate form included in Annex B of the *Policy and Guidance for Examiners and others involved in University Examinations, June 2015.*

Part 13 certificates were forwarded to the Examiners in respect of 31 FHS candidates (30 prior to the second marks meeting, and one thereafter). This compares with 37 FHS candidates in 2015. No applications were received in respect of DLS candidates; two such applications were received in 2015.

The Examiners took specific and individual account of all 'Factors Affecting Performance' submissions. The impact of these applications on individual candidates' paper marks and overall degree classifications is recorded in Part II, Section E (restricted circulation).

(8) Software and Database

This is the second year in which electronic mark sheet submission has been possible. This worked well for the most part. There were some difficulties in the software not rounding up half-marks; these were identified manually by the Examiners Officer and Chair.

The database is unable to automatically identify cases in which one of the two components of the Jurisprudence mark is four or more marks below the candidate's average, hence qualifying for second marking on that basis. These cases were identified manually by the Examiners. The database also caused some difficulties during the final

processing of marks at several different stage, which were rectified immediately by the Examinations Officer. It is clear that the database remains in need of modernisation.

(9) Prizes

The decision as to which candidate should be awarded the prize for each subject was taken by members of the team marking the subject concerned. In the case of Jurisprudence, the Examiners made the final decision on the basis of the combined overall marks (for the mini-option essay and the examination). The winners of the prizes that take into account performance across more than one subject were also 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.

This year, the Board did not request any additional remarking of scripts or essays for the purpose of determining to whom a prize should be awarded.

(10) 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.

In the 2016 FHS, 12 candidates sat their two optional subject examinations on the same day, seven of whom were sitting Medical Law and Ethics, the most popular optional subject this year. This compares to 20 in 2015, 28 in 2014, 24 in 2013, and 32 in 2012.

(11) Legibility

This year, typing was requested in respect of six candidates for a total of 15 scripts. This compares with 12 for 23 scripts in 2015, 11 for 24 scripts in 2014, 10 for 13 scripts in 2013, 12 for 22 scripts in 2012, and 9 for 13 scripts in 2011.

(12) External Examiners

This year, we had the invaluable assistance of Dr A. Sanders of the London School of Economics (for her first year) and Dr P. Saprai of University College, London (for his second year). They were involved in all the stages of the process. 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.

(13) Thanks

The internal Examiners would like to express their gratitude to the External Examiners for their hard work and very valuable advice and constructive oversight throughout the process.

Successive Boards of Examiners have reported on the tireless commitment, professionalism, and efficiency of our Examinations Officer, Mrs. Julie Bass. Her role is crucial to the examinations process and we are enormously grateful to her. Her judgment, expertise, and critical attention to detail ensured that this year's process ran smoothly. The Chair in particular owes a significant debt for her support and guidance over the course of the year.

In addition to the Examiners, 59 colleagues were assessors, involved in setting and marking, and second marking to very tight deadlines. We are grateful for their hard work, collegiality, and commitment to the task.

B. EQUALITY AND DIVERSITY ISSUES AND BREAKDOWN OF THE RESULTS BY GENDER

(a) The gender breakdown for **Course 1** was:

Class	**Number**								**Percentage (%)**							
	2016		**2015**		**2014**		**2013**		**2016**		**2015**		**2014**		**2013**	
	M	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**
I	**16**	**15**	27	17	18	16	15	15	**22**	**17**	29	18	24	15	15	14
II.i	**52**	**70**	59	71	54	89	75	81	**72**	**79**	64	76	73	82	79	77
II.ii	**4**	**4**	6	5	2	3	3	5	**6**	**4**	7	5	3	4	3	4
III							1	1							1	0.9
Pass						1								1		
Fail								1								0.9
Honours*								1								0.9
Total	**72**	**89**	92	93	74	109	94	104								

* 'declared to have deserved Honours'

(b) The gender breakdown for **Course 2** was:

Class	**Number**								**Percentage (%)**							
	2016		**2015**		**2014**		**2013**		**2016**		**2015**		**2014**		**2013**	
	M	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**
I	**3**	**4**	3	5	8	4	3	4	**33**	**20**	25	28	53	24	30	19
II.i	**6**	**16**	9	12	7	13	7	17	**67**	**80**	75	66	47	76	70	80
II.ii				1								6				
III																
Pass																
Fail																
Honours*																
Total	**9**	**20**	12	18	15	17	10	21								

* 'declared to have deserved Honours'

(c) The gender breakdown for **Course 1 and 2 combined** was:

Class	**Number**								**Percentage (%)**							
	2016		**2015**		**2014**		**2013**		**2016**		**2015**		**2014**		**2013**	
	M	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**	**M**	**F**
I	**19**	**19**	30	22	26	20	18	19	**23**	**17**	29	20	29	16	17	15
II.i	**58**	**86**	68	83	61	102	82	98	**72**	**79**	65	74	69	81	78	78
II.ii	**4**	**4**	6	6	2	3	3	5	**5**	**4**	5	5	2	2	3	4
III							1	1							0.9	1
Pass						1								1		
Honours*								1								1
Fail								1								1
Total	**81**	**109**	104	111	89	126	104	125								

* 'declared to have deserved Honours'

Of the 16 candidates who withdrew from the examination (15 from Course 1, 1 from Course 2), 9 candidates were female and 7 were male. Of the 6 candidates who withdrew (all from Course 1) from FHS 2015, 3 were female and 3 were 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 ON CANDIDATES' PERFORMANCE IN EACH PART OF THE EXAMINATION

(1) Numbers classified in optional subjects: FHS Courses 1 and 2

	2016	**2015**	**2014**	**2013**	**2012**
Medical Law and Ethics	**47**	44	62	96	75
Public International Law	**39**	40	38	42	37
Family Law	**29**	51**	55	46	44
Competition Law and Policy	**28**	42	35	30	1
Criminology and Criminal Justice	**24**	21	18	22	32
Copyright, Patents and Allied Rights	**22**	22	16	40	30
Media Law (new subject in 2015)	**20**	12			
Human Rights Law ˚	**19**	30	43	26	39
Roman Law (Delict)	**18**	9	5	2	7
Moral and Political Philosophy	**18**	26	30	24	27
Commercial Law	**17**	22	30	23	31

Labour Law	**15**	15	19	21	25
Personal Property	**13**	16	8	20	22
Comparative Private Law ˚˚	**12**	10	*	5	6
Taxation Law	**12**	12	18	13	6
Company Law	**10**	18	22	26	27
Environmental Law	**9**	4	7	5	9
Copyright Trade Marks & Allied Rights	**8**	12	5	2	*
Constitutional Law	**5**	9	6	10	7
Criminal Law	**5**	9	6	10	7
History of English Law	**5**	2***	12	4	4
International Trade	**5**	15	15	14	20

* Not offered
** Five old syllabus candidates and 46 new syllabus candidates
******* One old syllabus candidate and one new syllabus candidate
˚ previous to 2016, known as European Human Rights Law
˚˚ previous to 2015, known as Comparative Law of Contract

(2) Numbers submitted for unclassified examination in Diploma in Legal Studies

	2016	**2015**	**2014**	**2013**	**2012**
Contract	**27**	28	24	24	23
Tort	**22**	26	19	20	18
European Union Law	**7**	7	13	6	10
Company Law	**6**	6	13		7
Copyright, Patents and Allied Rights	**6**	4	1	1	1
Constitutional Law	**5**			8	5
Human Rights Law**	**5**	5	3	7	5
Trusts	**4**	2		3	
Public International Law	**3**	10	3	3	9
Competition Law and Policy	**3**	6	5		
Copyright, Trademarks and Allied Rights	**2**		2	1	
Labour Law	**2**	1	4	3	1
Criminology and Criminal Justice	**2**	2		3	3
Administrative Law	**2**				
Taxation Law	**2**				
Criminal Law	**1**	4	1	2	5

Family Law		1			
Jurisprudence			3	4	3
Comparative Private Law*				6	
Commercial Law				2	1
Roman Law (Delict)				2	1
History of English Law				1	
Land Law					1
International Trade					

* previous to 2015, known as Comparative Law of Contract
** previous to 2016, known as European Human Rights Law

(3) MJur candidates taking FHS papers

	2016	**2015**	**2014**	**2013**	**2012**
Contract	**8**	10	4	6	3
Company Law	**5**	3		4	5
Tort	**1**	4			1
Public International Law	**1**	1		2	2
Commercial Law	**1**				
Trusts	**1**	1			
Copyright, Patents and Allied Rights	**1**				
Human Rights Law**	**1**	2	5	2	
Personal Property	**1**				
Administrative Law		1	1	1	
Constitutional Law		1			
European Union Law			1	1	
Family Law				2	
Comparative Law of Contract					
Criminal Law					
International Trade					
Jurisprudence					
Labour Law					
Land Law					

** previous to 2016, known as European Human Rights Law

(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**
Admin. Law		6	21	11	26	31	4	2				190
Contract		5	13	6	28	39	4	4		1		190
EU Law		5	11	7	28	43	4	2				190
Jurisprudence		5	5	19	34	31	4	2				190
Tort		3	14	9	32	32	4	4	1			190
Trusts		3	11	5	23	45	4	9		1		190
Land Law	1	4	16	8	23	34	3	7	2	2		149
Land Law (old regs)		8	23	10	23	23	5	5		3		41
Medical Law and Ethics		6	17	13	40	21	2					47
PIL		10	3	15	28	28	13	3				39
Family Law		10	17	14	38	21						29
Competition Law and Policy		4	7	7	43	39						28
Criminology & Criminal Justice		4	13	13	50	21						24
Copyright, Patents and Allied Rights		5	23	5	23	45						22
Media Law		10	15	15	20	25	10	5				20
Human Rights Law		21	21	21	11	21		5				19
Commercial Law		12	12	6	18	29		24				18
Roman Law (Delict)		22	17	6	39	17						18
Moral and Political Philosophy		22	11		44	22						18
Labour Law		7	27	7	33	20				7		15
Personal Property		8	31	8	38	15						13
Comparative Private Law		17	25	8	33	17						12
Taxation Law		8	25		67							12
Company Law			10	10	50	20		10				10
Environmental Law		22		11	44	11		11				9
Copyright, Trade Marks		13	25	25	13	25						8

and Allied Rights												
Criminal Law				20	20	60						6
Constitutional Law		20	20	20		40						6
History of English Law		20		20	20	40						5
International Trade			40		20	20		20				5

D. COMMENTS ON PAPERS AND INDIVIDUAL QUESTIONS

These appear in Appendix 4.

E. COMMENTS ON THE PERFORMANCE OF IDENTIFIABLE INDIVIDUALS AND OTHER MATERIAL WHICH WOULD USUALLY BE TREATED AS RESERVED BUSINESS

[Appended for restricted circulation.]

F. NAMES OF MEMBERS OF THE BOARD OF EXAMINERS

R. Bagshaw
N. Barber
S. Douglas
P. Eleftheriadis
L. Ferguson (Chair)
S. Green
A. Kavanagh
A. Sanders (external)
P. Saprai (external)
W. Swadling

Appendix 1: Reports of External Examiners
Appendix 2: Notice to Candidates (Examiners' Edict)
Appendix 3: Part II, Section E: Factors' Affecting Performance Applications – Monitoring
Appendix 4: Reports on individual papers

APPENDIX 1

EXTERNAL EXAMINERS REPORTS

Title of Examination(s):		FHS Jurisprudence and Diploma in Legal Studies
External Examiner Details	**Title:**	Dr.
	Name:	Prince Saprai
	Position:	Senior Lecturer
	Home Institution:	Faculty of Laws, UCL

Please complete both Parts A and B.

Part A				
	*Please (✓) as applicable**	**Yes**	**No**	**N/A / Other**
A1.	Did you receive sufficient information and evidence in a timely manner to be able to carry out the role of External Examiner effectively?	Y		
A2.	Are the academic standards and the achievements of students comparable with those in other UK higher education institutions of which you have experience?	Y		
A3.	Do the threshold standards for the programme appropriately reflect the frameworks for higher education qualifications and any applicable subject benchmark statement? *[Please refer to paragraph 3(b) of the Guidelines for External Examiner Reports].*	Y		
A4.	Does the assessment process measure student achievement rigorously and fairly against the intended outcomes of the programme(s)?	Y		
A5.	Is the assessment process conducted in line with the University's policies and regulations?	Y		
A6.	Did you receive a written response to your previous report?	Y		

A7.	Are you satisfied that comments in your previous report have been properly considered, and where applicable, acted upon?	Y		

* ***If you answer "No" to any question, please provide further comments in Part B.*** *Further comments may also be given in Part B, if desired, if you answer "Yes" or "N/A / Other".*

Part B

B1. Academic standards

a. ***How do academic standards achieved by the students compare with those achieved by students at other higher education institutions of which you have experience?***

Having reviewed the examination papers and student scripts I can say with confidence that academic standards are appropriate and student achievement is comparable with similar institutions.

b. ***Please comment on student performance and achievement across the relevant programmes or parts of programmes (those examining in joint schools are particularly asked to comment on their subject in relation to the whole award).***

Student achievement is very high across both programmes.

B2. Rigour and conduct of the assessment process

Please comment on the rigour and conduct of the assessment process, including whether it ensures equity of treatment for students, and whether it has been conducted fairly and within the University's regulations and guidance.

I was extremely impressed by the conscientiousness and rigor with which the entire process was conducted. Procedures were explained clearly and rules applied fairly and consistently throughout.

The Chair and the Examinations Officer conducted the two Board meetings I attended in an exemplary and very efficient manner. The seriousness and care with which each candidate's performance was assessed was exceptional.

B3. Issues

Are there any issues which you feel should be brought to the attention of supervising committees in the faculty/department, division or wider University?

I expressed concern last year about how the marking conventions apply in certain cases. In particular how the requirements not to get a mark below a certain grade in one or more subject mean that students with

otherwise high averages see their degree classification drop off a steep cliff. This is a long standing issue which I know previous external examiners have commented on. I know that the University has looked into the issue and has tried to amend the conventions. I would strongly encourage the University to continue looking at ways to reform these conventions.

There was some discussion about whether examiners should be encouraged not to leave candidates on a mark ending in a 9, eg, 59, 69, etc. It was noted that this is now the practice at many other institutions, including my own. The rationale is to make examiners make a choice, so that students don't leave with a sense that they have just missed out on a higher grade. At Oxford, adopting such a convention would have the additional benefit of reducing the amount of scripts sent back for second marking. I would encourage Oxford to consider a change to practice in this context.

B4. Good practice and enhancement opportunities

Please comment/provide recommendations on any good practice and innovation relating to learning, teaching and assessment*, and any* ***opportunities to enhance the quality of the learning opportunities*** *provided to students t****hat should be noted and disseminated more widely as appropriate****.*

B5. Any other comments

Please provide any other comments you may have about any aspect of the examination process. Please also use this space to address any issues specifically required by any applicable professional body. If your term of office is now concluded, please provide an overview here.

Overall, I was very impressed with the professionalism and seriousness with which the whole process was conducted. I have every confidence in the practices and standards adopted at Oxford and how they are applied.

Title of Examination(s):		FHS in Jurisprudence; Diploma in Law Examinations
External Examiner Details	**Title:**	Dr
	Name:	Astrid Sanders
	Position:	Assistant Professor of Labour Law
	Home Institution:	London School of Economics and Political Science

Please complete both Parts A and B.

Part A				
	*Please (✓) as applicable**	**Yes**	**No**	**N/A / Other**
A1.	Did you receive sufficient information and evidence in a timely manner to be able to carry out the role of External Examiner effectively?	Yes		
A2.	Are the academic standards and the achievements of students comparable with those in other UK higher education institutions of which you have experience?	Yes		
A3.	Do the threshold standards for the programme appropriately reflect the frameworks for higher education qualifications and any applicable subject benchmark statement? *[Please refer to paragraph 3(b) of the Guidelines for External Examiner Reports].*	Yes		
A4.	Does the assessment process measure student achievement rigorously and fairly against the intended outcomes of the programme(s)?	Yes		
A5.	Is the assessment process conducted in line with the University's policies and regulations?	Yes		
A6.	Did you receive a written response to your previous report?			N/A
A7.	Are you satisfied that comments in your previous report have been properly considered, and where applicable, acted upon?			N/A

* ***If you answer "No" to any question, please provide further comments in Part B.*** *Further comments may also be given in Part B, if desired, if you answer "Yes" or "N/A / Other".*

Part B

B1. Academic standards

c. ***How do academic standards achieved by the students compare with those achieved by students at other higher education institutions of which you have experience?***

I would echo the comments of a previous external examiner for this question: the standards at Oxford are high. Having looked at exam papers and student scripts, the questions set in the examinations are challenging and, overall, the way in which the students respond is impressive.

d. ***Please comment on student performance and achievement across the relevant programmes or parts of programmes (those examining in joint schools are particularly asked to comment on their subject in relation to the whole award).***

Student performance was strong. More students would appear to have graduated with a First than at my home institution, however (having also looked at a sample of student scripts) this would seem to be fully justified. I was impressed by the quality of scripts that I saw.

B2. Rigour and conduct of the assessment process

Please comment on the rigour and conduct of the assessment process, including whether it ensures equity of treatment for students, and whether it has been conducted fairly and within the University's regulations and guidance.

I was extremely impressed with the level of detailed information provided to the board of examiners. I would also echo the comments of a different external examiner on this point: the seriousness and care with which each candidate's performance was assessed was exceptional.

B3. Issues

Are there any issues which you feel should be brought to the attention of supervising committees in the faculty/department, division or wider University?

I wonder if it might be worth revisiting the question of deadlines for the marking of coursework for the Jurisprudence module? An issue that arose during the first examiners' meeting was that this was the first opportunity to see a candidate's overall mark for Jurisprudence (tallying together the coursework and examination marks), which meant later notification than for other subjects if a student was on a borderline and second marking would be needed. I understand this is an issue that has already been discussed internally, but I wonder if it might perhaps be worth revisiting. I should also add that this comment is no way intended to discourage the coursework element of the Jurisprudence module (please see further my comments at B4).

B4. Good practice and enhancement opportunities

Please comment/provide recommendations on any good practice and innovation relating to learning, teaching and assessment*, and any* ***opportunities to enhance the quality of the learning opportunities*** *provided to students t****hat should be noted and disseminated more widely as appropriate****.*

I undertook my undergraduate studies myself at Oxford, and at the time, there were no coursework components to the law degree. It was very refreshing, during the course of this examination process, to see a coursework component now added to the Jurisprudence module.

B5. Any other comments

Please provide any other comments you may have about any aspect of the examination process. Please also use this space to address any issues specifically required by any applicable professional body. If your term of office is now concluded, please provide an overview here.

This was my first year as an external examiner at Oxford. As stated above, I undertook my undergraduate studies myself at Oxford, and it was most interesting for me to see the examinations process from the other side, so-to-speak. As is probably obvious from my comments above, I was very impressed. I would finally add my thanks to the Chair, Lucinda Ferguson, and Examinations Officer, Julie Bass, for their meticulous care and attention to detail.

APPENDIX 2

IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE

UNIVERSITY OF OXFORD

FACULTY OF LAW

FINAL HONOUR SCHOOL OF JURISPRUDENCE (COURSE I AND COURSE II (LAW WITH LAW STUDIES IN EUROPE)) AND DIPLOMA IN LEGAL STUDIES EXAMINATION 2016

NOTICE TO CANDIDATES

This document is traditionally known as the Examiners' Edict.

1. Examination Entry Details

Compulsory examination papers will automatically be attached to your academic record on registration, but **it is your responsibility to ensure that all of your examination entry details are correct via the Student Self Service** via the Oxford Student website (see www.ox.ac.uk/students/). For more information on examination entry see www.ox.ac.uk/students/academic/exams/entry

2. Timetable and Place of FHS/MJur/Diploma in Legal Studies Examination

All examinations will be taken at the Examination Schools in the High Street. *Sub fusc* must be worn. You are advised to reach the Schools no less than ten minutes before the stated time of the examination. A bell will be rung some minutes before the examination to give candidates time to move from the entrance of the building to the examination room. Notices in the Schools will direct candidates to the appropriate room. Seating in the examination room will be by desk number only. Seating charts will be displayed throughout the Examination Schools reception areas in each examination location, displaying candidate and desk numbers, as well as outside individual examination rooms.

The Examiners have tried to ensure that as few candidates as possible have more than one paper on the same day.

The examination timetables in respect of papers available in the FHS and Diploma in Legal Studies can be found at: www.ox.ac.uk/students/academic/exams/timetables. Scroll down the page to 'Honour School' in the list where you will find the FHS (DJUR/DJUS) and Diploma in Legal Studies (MLLS) examination timetables.

3. Examination/Candidate Number and University Card

Please bring your examination/candidate number with you to each examination paper, or devise some way of remembering this. In addition, please bring your University Card with you to each examination paper. Your University Card must be placed face up on the desk at which you are writing. You must **not** write your name or the name of your college on any answer book. **Use only your examination/candidate number**.

See http://www.ox.ac.uk/students/academic/exams/guidance for information on sitting your exams.

For further information see the Proctors' Disciplinary Regulations (*Examination Regulations* 2015, Part 19, pages 40-41) and Administrative Regulations for Candidates in Examinations (*Examination Regulations* 2015, Part 20, pages 41-42) http://www.admin.ox.ac.uk/examregs/information/contents/.

4. Materials in the Examination Room

In some examinations statutes and other materials will be placed on the desks in the examination room, and a list of these materials are attached as Appendix B to the Examination Conventions available at https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/undergrad. See also section 10 below.

Land Law (old and new syllabus)
Candidates will be provided with Sweet & Maxwell's Statutes Series, Property Law, 8th (2002), 9th (2003) or 10th (2004) edition. Since there are insufficient copies of the 8th edition, it has been agreed that the numbers should be made up with copies of the 9th and 10th editions. This is on the understanding that there is no substantial difference between the three editions as far as FHS and DLS candidates are concerned.

Trusts
Candidates will be provided with Sweet & Maxwell's Statutes Series, Property Law, 8th (2002), 9th (2003) or 10th (2004) edition. Since there are insufficient copies of the 8th edition, it has been agreed that the numbers should be made up with copies of the 9th and 10th editions. This is on the understanding that there is no substantial difference between the three editions as far as FHS and DLS candidates are concerned.

Legibility – Candidates are required to write legibly; Examiners are not bound to take account of illegible material and may ask for illegible scripts to be typed. If so, the script will be typed at the candidate's own expense. See further, *Examination Regulations* 2015, page 36, Part 16 Marking and Assessment (http://www.admin.ox.ac.uk/examregs/information/contents/) and the *Undergraduate Student Handbook, Final Honour School* 2015-16, page 45. The Examiners will make every effort to identify such candidates as early as possible, but this cannot be guaranteed.

5. Viva Voce Examination in the Diploma in Legal Studies

The viva voce examination is an integral part of the examination in the Diploma in Legal Studies for those candidates who have been required to attend it. Candidates who are required by the Examiners to attend but fail to do so are deemed to have failed the

examination, unless they can, through their college, satisfy the Proctors that they have been prevented from attending by "acute illness or other urgent cause". There has been only one viva in the past few years so a viva is not very likely, but it is a possibility. A viva will only be held in the case of a candidate who might otherwise fail the examination. The viva voce examination, if required, will be held on Tuesday 12 July, probably in the early afternoon, and candidates will be notified by the following procedure if their attendance is required.

Candidates will be supplied at their first paper with a viva voce notice, on which they will be asked to indicate a telephone number at which they can be reached on Monday 4 July. Candidates must also leave with their college tutor a telephone number and, if possible, an email address, at which they can be contacted on or after Monday 4 July.

6. Leaving the Examination Room

No candidate may leave the examination room within half an hour of the beginning of the examination and, to avoid disturbance to other candidates, candidates may not leave the examination room in the half an hour before the end of the examination. See *Examination Regulations* 2015, pages 40-41, Part 19 Proctors' Disciplinary Regulations (http://www.admin.ox.ac.uk/examregs/information/contents/).

A candidate who is taken ill while sitting a written paper may (with the invigilator's permission) leave the room and return while the examination is in progress to resume the paper on one occasion only (and no extra time shall be allowed). If the candidate is unable to complete the paper concerned because they have been taken ill a second time, they should inform an invigilator so that the incomplete script can be handed in. It is the candidate's responsibility to obtain a medical certificate explaining how their performance in the paper concerned may have been affected by illness. The Examiners will be made aware of any difficulties suffered by a candidate in the examination room only if the candidate subsequently obtains a medical certificate and that, plus any other relevant information, is submitted to the Proctors and passed by them to the Examiners. For the procedures to be followed see paragraph 13 below. See also *Examination Regulations* 2015, pages 41-42, Part 20 Administrative Regulations for Candidates in Examinations and page 32, Part 13, Factors Affecting performance in an Examination (http://www.admin.ox.ac.uk/examregs/information/contents/).

Candidates who fail to attend a paper without going through the correct procedure to withdraw from the examination are deemed to have failed the examination unless the Proctors give instructions to the Examiners about reinstating them. For the procedures for withdrawal before the examination and after the examination has started, see *Examination Regulations* 2015, Part 14, pages 29-33 (http://www.admin.ox.ac.uk/examregs/information/contents/). A candidate may not withdraw from an examination after the written part of the examination is complete. The point of completion is deemed to be the conclusion of the last paper for which the candidate has entered. Candidates should consult their college tutor if any of these provisions apply to them. see *Examination Regulations* 2015, Part 20, page 41-42, para 6 (http://www.admin.ox.ac.uk/examregs/information/contents/).

7. Change of Options

See *Examination Regulations* 2015, page 22, Part 9 (Times for Holding Examinations and Entry of Names of Candidates) (http://www.admin.ox.ac.uk/examregs/information/contents/).

8. Prizes

A list of prizes is given in the attached Schedule I.

9. The Question Papers

An Examiner will be present during the first half an hour of each examination paper to address any question concerning the paper.

Where a question includes a quotation, it will normally be attributed to the author. Where a quotation is not attributed, it will normally be the case that it has been drafted for the purposes of the examination paper.

The number of questions set in each examination paper and the rubric of each paper can be found as Appendix A to the Examination Conventions available on the Law Faculty website at https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/undergrad. See also section 10 below.

Attention is also drawn to the notice previously circulated to candidates dated 22 February 2016, attached as Schedule II.

10. Examination Conventions

Examination Conventions are the formal record of the specific assessment standards for the course or courses to which they apply. They set out how examined work will be marked and how the resulting marks will be used to arrive at a final result and classification of an award. They include information on: marking scales, marking and classification criteria, scaling of marks, progression, resits, use of viva voce examinations, etc. This is the first year the Law Faculty has sought to present these details in this form.

Format and rubric of papers

The Format and Rubric of Examination Papers for 2016 can be found as Appendix A to the Examination Conventions.

Materials in the examination room

The materials in the examination room for 2016 can be found as Appendix B to the Examination Conventions.

The Examination Conventions are available on the Law Faculty website at https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/undergrad and are also referred to on page 43 of the *Undergraduate Student Handbook, Final Honour School* 2015-16.

Late submission of Jurisprudence Essays

The Proctors may give leave to the examiners to impose an academic penalty for late submission, which will take the form of a reduction in the mark by up to one class (or its equivalent, ie., 10 marks). In determining the amount of the reduction, the examiners will

be guided by the evidence forwarded to them by the Proctors. See further *Examination Regulations* 2015 pages 30-31.

11. Academic Integrity: avoidance of plagiarism

Plagiarism is presenting someone else's work or ideas as your own, with or without their consent, by incorporating it into your work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this definition. Plagiarism may be intentional or reckless, or unintentional. Under the regulations for examinations, intentional or reckless plagiarism is a disciplinary offence. Further information about plagiarism and how to avoid it can be found at http://www.ox.ac.uk/students/academic/guidance/skills/plagiarism and you are strongly advised to consult this website. The University reserves the right to use software applications to screen any individual's submitted work for matches either to published sources or to other submitted work. Any such matches respectively might indicate either plagiarism or collusion. See also the Student Handbook 2015/16 incorporating the Proctors' and Assessor's Memorandum, section 8.8 (http://www.admin.ox.ac.uk/proctors/info/pam/).
Useful advice on plagiarism is also given in the Faculty's *Undergraduate Student Handbook Final Honour School* 2015-16, page 47 https://www.law.ox.ac.uk/sites/files/oxlaw/bcl_mjur_handbook_1.1_15_-16.pdf .

If the examiners believe that material submitted by a candidate may be plagiarised, they will refer the matter to the Proctors. For further information see the Student Handbook 2015/16 incorporating the Proctors' and Assessor's Memorandum, section 8.8.

12. Candidates with special examination needs

The Proctors have authority to authorise alternative arrangements for candidates who, for medical or other sufficient reasons, are likely to have difficulty in writing their scripts or completing the examination in the time allowed. Information on the deadline for applying for such arrangements can be found at https://www.ox.ac.uk/students/academic/exams/arrangements?wssl=1 or you should contact your College **immediately**. See further *Examination Regulations* 2015, page 26, Part 12 (Candidates with Special Examination Needs), page 25, Part 11 (Religious Festivals and Holidays Coinciding with Examinations) and page 23, Part 10 (Dictation of Papers and the Use of Word-Processors, Calculators, Computers, and other materials in examinations) (http://www.admin.ox.ac.uk/examregs/information/contents/).

Emergency examination adjustment:
In cases of acute illness when a Doctor's certificate is necessary, but when there is no time prior to the start of the exam to obtain one (i.e. the issue has occurred on the examination day or the night before), the request for alternative arrangements may be accompanied by a statement from either the College Nurse, Dean or Senior Tutor. Examples may include acute onset stomach issues, migraine, or panic attack, leading to a request for a delayed start, permission for toilet breaks in first and last 30 minutes, or move to College sitting. A Doctor's certificate must follow and should be provided within 7 days of the initial request.

13. Factors affecting performance in an examination

If your performance in any part of an examination is likely to be, or has been, affected by factors, such as illness, disability, bereavement, etc, of which the Examiners have no knowledge, you may, through the appropriate college officer, inform the Registrar of these factors, see *Examination Regulations* 2015, page 28, Part 13.2 – 13.3 (Factors affecting performance in an examination) (http://www.admin.ox.ac.uk/examregs/information/contents/). The Examiners cannot take account of any special circumstances other than those communicated to them by the Registrar. Candidates are advised to check with the appropriate college officer that any medical certificate for submission is complete (e.g. covers each paper where the candidate was affected by illness). The medical certificate must provide explicit detail about the factors that are likely to have affected your performance in the examination. See *Examination Regulations* 2015, page 28, Part 13.2 – 13.3 (Factors affecting performance in an examination) (http://www.admin.ox.ac.uk/examregs/information/contents/). Every effort should be made to ensure that medical certificates or other documentation are passed on to the Registrar as soon as possible.

14. Release of Results

Information on results can be found at https://www.ox.ac.uk/students/academic/exams/results?wssl=1. See also the *Student Handbook* 2015/16 (incorporating the Proctors' and Assessor's Memorandum), section 8.4, available on http://www.admin.ox.ac.uk/proctors/info/pam. The Examiners hope that this facility will available on Thursday 14 July (depending on the final Examiners meeting and the Examination Schools). Please note that results will not be available over the telephone from the Examination Schools or from the Law Faculty Office.

15. Appeals from Decisions of the Proctors and Examiners

For the procedures for appeals from the decisions of the Proctors, see *Examination Regulations* 2015, Part 18.1, page 39. For appeals from the decisions of the examiners, see *Examination Regulations* 2015, Part 18.2, page 39 (http://www.admin.ox.ac.uk/examregs/information/contents/). If you wish to raise a query or make a complaint about the conduct of your examination you should urgently consult the Senior Tutor in your college. Queries and complaints must not be raised directly with the examiners, but must be made formally to the Proctors through the Senior Tutor on your behalf, and no later than 3 months after the notification of the results. The Proctors are not empowered to consider appeals against the academic judgment of examiners, only complaints about the conduct of examinations. Further information about complaints procedures may be found in the *Student Handbook* 2015/16 (incorporating the Proctors' and Assessor's Memorandum), particularly section 11 and is available on http://www.admin.ox.ac.uk/proctors/info/pam. See also section 8: Examinations.

Mr R. Bagshaw
Mr N. Barber
Mr S. Douglas
Dr P. Eleftheriadis

Ms L. Ferguson (Chair)
Dr S. Green
Dr A. Kavanagh
Dr A. Sanders London School of Economics (External)
Dr P. Saprai University College London (External
Mr W. Swadling

26 April 2016

Schedule I – List of Prizes
Schedule II – Notice previously circulated to candidates dated 22 February 2016

SCHEDULE I

PRIZES IN THE FHS OF JURISPRUDENCE AND DIPLOMA IN LEGAL STUDIES 2016

The Examiners have discretion to award the following prizes:

Allen & Overy Prize
Best performance in European Union Law

All Souls Prize
Best performance in the FHS Public International Law paper

Diploma in Legal Studies
Best overall performance in the Diploma in Legal Studies

D'Souza Prize
Best overall performance in the Second BA

Falcon Chambers Prize
Best performance in the FHS Land Law paper

Francis Taylor Building Prize
Best Performance in the FHS Environmental Law paper

Gibbs Prize
Best performance in the combined FHS Contract, Tort, Land Law and Trusts papers. One proxime accessit and three book prizes

Law Faculty Prizes for Best performance in:
Copyright, Patents and Allied Rights
Copyright, Trade Marks and Allied Rights
Human Rights Law
Media Law
Medical Law and Ethics
Moral and Political Philosophy
Personal Property
Roman Law (Delict)
Criminal Law

Linklaters Prize
Best performance in FHS Competition Law and Policy

Littleton Chambers Prize
Best performance in the FHS Labour Law paper

Martin Wronker Prizes
Best overall performance in the FHS. One proxime accessit.
Best performance in the FHS Jurisprudence paper
Best performance in the FHS Tort paper

Best performance in the FHS Administrative Law paper

Norton Rose Fulbright Prize
Best performance in Constitutional Law

Penningtons Manches Prize
Best performance in the FHS Family Law paper

Pinsent Masons Prize
Best performance in the FHS Taxation Law paper

Quadrant Chambers Prize
Best performance in the FHS International Trade paper

Red Lion Chambers Prize
Best performance in the FHS Criminology and Criminal Justice paper

Slaughter and May Prizes
Best performance in the FHS Contract paper
Best performance in the FHS History of English Law paper

White & Case Prizes
Best performance in the FHS Company Law paper
Best performance in the Comparative Private Law paper

3 Verulam Buildings Prize
Best performance in the FHS Commercial Law paper

5 Stone Building Prize
Best performance in the FHS Trusts paper

SCHEDULE II

FHS OF JURISPRUDENCE AND DIPLOMA IN LEGAL STUDIES 2016

NOTICES PREVIOUSLY CIRCULATED TO CANDIDATES

22 February 2016 – A. Tort Law: Clarification relating to 'Breach of Statutory Duty'
B. Criminal Law: Clarification relating to 'Complicity'

IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE

UNIVERSITY OF OXFORD

FACULTY OF LAW

FINAL HONOUR SCHOOL OF JURISPRUDENCE COURSE I AND COURSE II (LAW WITH LAW STUDIES IN EUROPE) AND DIPLOMA IN LEGAL STUDIES EXAMINATION 2016

NOTICE TO CANDIDATES

A. Tort Law: Clarification relating to 'Breach of Statutory Duty'
B. Criminal Law: Clarification relating to 'Complicity'

The purpose of this notice is to inform you how the Examiners propose to deal with changes that have been made in the 2015-16 academic year to the core reading list and Teaching Convention for **Tort Law** and to the examinable topics for **Criminal Law**.

A. Tort Law: Clarification relating to 'Breach of Statutory Duty'

In Trinity Term 2015, the Tort Teaching Group agreed that the heading 'Breach of Statutory Duty' and the cases and other material under this heading should be removed from the core reading list. As a consequence, 'Breach of Statutory Duty' does not appear as a heading in the versions of the core reading list issued in the 2015-16 academic year and no longer appears as a topic in the Teaching Convention relating to Tort Law (since the Teaching Convention is expressed in terms of the topics that have 'headings' on the current core reading list). After consulting the Tort Teaching Group, the Examiners have concluded that the changes to the core reading list and Teaching Convention were not sufficiently substantial to make it appropriate to set a special paper for those candidates who will have received teaching in Tort Law before the 2015-16 academic year and consequently might have studied the material that formerly appeared under the heading 'Breach of Statutory Duty' on the core reading list. The Examination to be set on **Tort Law** in 2016 will consequently be prepared and marked on the basis of the material that is on the current core reading list. (For the avoidance of doubt, although the current core reading list does not contain 'Breach of Statutory Duty' as a heading, the list continues to contain material relevant to several instances of statutory liability.)

The core reading list relating to **Tort Law** is available on weblearn.

B. Criminal Law: Clarification relating to 'Complicity'

For the 2015-16 academic year, the Criminal Law Teaching Group agreed that the topic 'Complicity' should be removed from the list of examinable topics. After consulting the Criminal Law Teaching Group, the Examiners have concluded that this was a substantial change to the material that was examinable and that it is consequently appropriate to set a special paper for those candidates who received teaching in Criminal Law before the 2015-16 academic year and wish to apply to be examined on a paper that can include questions on the topic 'Complicity'. As a result, the Examiners propose to set two papers in Criminal Law in 2016.

Criminal Law (New Regulations) will be set on the basis of the current core reading list, and it is expected that candidates who did not receive teaching in Criminal Law before the 2015-16 academic year will sit this paper.

Criminal Law (Old Regulations) will be set on the basis of the current core reading list and the reading list for the topic 'Complicity'. Candidates who received teaching in Criminal Law before the 2015-16 academic year may apply to the Education Committee for permission to sit this paper. (For the avoidance of doubt, the Examiners will not expect candidates sitting **Criminal Law (Old Regulations)** to be aware of recent developments in the law relating to 'Complicity' that were not on the core reading list in the 2014-15 academic year, such as the recent Supreme Court decision in *Jogee*.)

The core reading lists relating to **Criminal Law (New Regulations)** and **Criminal Law (Old Regulations)** are available on Weblearn.

Lucinda Ferguson
Chair, FHS/DLS Examiners
22 February 2016

APPENDIX 3

Law FHS Examination Conventions 2015-16

Contents

1. Introduction

Course Title: FHS BA in Jurisprudence (course 1) and BA Law with Law Studies in Europe (course 2)
Year to which conventions apply: students completing finals in 2015-16
Supervisory Body: Social Sciences Teaching Audit Committee
Purpose of Examination conventions:
Examination conventions are the formal record of the specific assessment standards for the course or courses to which they apply. They set out how examined work will be marked and how the resulting marks will be used to arrive at a final result and classification of an award. Because certain information pertaining to examinations (for example, rubrics for individual papers) will only be finalised by the Examination Board in the course of the year, it will be necessary to issue further versions of this document. The version number of this document is given below. Subsequent versions will follow a numbering sequence from 1.1 upwards. Each time a new version is issued, you will be informed by email, and the updates will be highlighted in the text and listed below.
This version and subsequent versions can be obtained from the weblearn site
https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/undergrad/page/home
Version 1.1
Updates to previous Versions
None: this is the first version.

2. Examination papers and rubrics

(a) Course 1: Candidates will be examined in 7 standard subjects and two standard optional subjects and must have satisfactorily completed the Legal Research and Mooting Skills Programme. The standard subjects are:

(i) Jurisprudence
(ii) Contract
(iii) Tort
(iv) Land Law
(v) European Union Law
(vi) Trusts
(vii) Administrative Law

A list of standard optional subjects and their rubrics for papers will be published at https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/fhs_options no later than 5th week of Hilary Term in the year preceding the Honour School examination.

(b) Course 2: Candidates will be examined in 7 standard subjects (as for 2(a) above) and two standard optional subjects and must have satisfactorily completed the Legal Research and Mooting Skills Programme. Candidates are also required to have spent, after matriculation, one academic year in residence in a European university approved by examination regulation and to have attended such courses at the approved university as are approved in accordance with the Examination Regulations, and to have completed such examinations at the approved university as the faculty board may specify.

The rubrics for individual papers can be found at Appendix A at the end of this document.

3. Materials available in the exam room

The list of materials available in the exam room for each paper can be found at Appendix B at the end of this document.

4. Marking Conventions

4.1 University scale for standardised expression of agreed final marks

Agreed final marks for individual papers will be expressed using the following scale:

70-100	First Class
60-69	Upper second
50-59	Lower second
40-49	Third
30-39	Pass
0-29	Fail

4.2 Qualitative assessment criteria

Timed examination answers

First class (70% and above)

70-75% An answer that is exceptionally good and shows several of the following qualities:

- acute attention to the question asked;

- a deep and detailed knowledge and understanding of the topic addressed and its place in the surrounding context;
- excellent comprehensiveness and accuracy, with no or almost no substantial errors or omissions, and coverage of at least some less obvious angles;
- excellent clarity and appropriateness of structure, argument, integration of information and ideas, and expression;
- identification of more than one possible line of argument;
- good appreciation of theoretical arguments concerning the topic, substantial critical analysis, and (especially in the case of high first class answers) personal contribution to debate on the topic.

75-80% An answer that is exceptionally good and shows all of the qualities listed above. Will include a strong personal contribution to debate on the topic.
80+% A truly exceptional answer.

Upper second class (60-69%)

Upper second class answers represent a level of attainment which, for an undergraduate, can be regarded as in the range reasonably good to very good. To an extent varying with their place within this range, they show at least most of the following qualities:

- attention to the question asked;
- a clear and fairly detailed knowledge and understanding of the topic addressed and its place in the surrounding law;
- good comprehensiveness and accuracy, with few substantial errors or omissions;
- a clear and appropriate structure, argument, integration of information and ideas, and expression;
- identification of more than one possible line of argument;
- reasonable familiarity with theoretical arguments concerning the topic, and (especially in the case of high upper second class answers) a significant degree of critical analysis.

Lower second class (50-59%)

Lower second class answers represent a level of attainment which, for an undergraduate, can be regarded as in the range between reasonable, and acceptable but disappointing. To an extent varying with their place within this range, they generally show the following qualities:

- normally, attention to the question asked (but a lower second class answer may be one which gives an otherwise upper second class treatment of a related question rather than the question asked);
- a fair knowledge and understanding of the topic addressed and its place in the surrounding law;
- reasonable comprehensiveness and accuracy, possibly marked by some substantial errors or omissions;

- a reasonably clear and appropriate structure, argument, integration of information and ideas, and expression, though the theoretical or critical treatment is likely to be scanty or weak.

Third class (40-49%) and pass (30-39%)
Third class and pass answers represent a level of attainment which, for an undergraduate, can be regarded as acceptable, but only barely so. They generally show the following qualities:

- the ability to identify the relevant area of the subject, if not necessarily close attention to the question asked;

- some knowledge and understanding of the topic addressed and its place in the surrounding law, notwithstanding weakness in comprehensiveness and accuracy, commonly including substantial errors and omissions;

- some structure, argument, integration of information and ideas, and lucidity of expression, though these are likely to be unclear or inappropriate and to offer negligible theoretical or critical treatment.

See 5.2 below for further information about how overall classifications are calculated.
Essays and problems
The above statements apply not only to answers to essay questions but also to answers to problem questions. In particular, good problem answers (2:1 standard) will explore different solutions and lines of argument. The very best answers (First standard) might offer a critical or theoretical treatment of the doctrines under discussion where appropriate and in addition to solving the problem posed.

4.3 Verification and reconciliation of marks

For all its undergraduate examinations – Mods, FHS, and the Diploma in Legal Studies, the Law Faculty does not operate a marking regime involving the blind double marking of all scripts. However, it does operate a rigorous process which incorporates extensive double-blind marking according to a system approved by the supervisory body. The Faculty takes a great deal of care to ensure the objectivity of marking procedures. The process begins with the team of markers for each paper meeting to discuss how to treat the marking of individual questions and then, as the marking progresses, liaising to exchange information about how candidates are handling questions. Once first marking has been carried out, marks profiles for each marker are compiled and compared with one another. If any profile looks to be out of line with that of other markers, then second marking of the scripts in question takes place, following which the two markers meet to compare the marks and agree a single final mark for the script in question. All scripts that on their first reading have been awarded failing marks (in FHS this includes scripts falling below the mark of 40 required for the paper to be counted towards the professional qualification) are second marked as are potential prize-winning scripts and any scripts identified by the first marker as unusual.
After this first stage, the Board of Examiners meet and compare the profiles for each paper, which may then lead to re-readings to address any anomalies. Second marking will also be applied for candidates whose overall marks profiles place them in the following categories: in the Diploma, those on the distinction and fail borderlines; in FHS, those on the borderline of any classification (e.g. 1st, 2:1 etc) and those for whom any script has a first mark four marks or more below the candidates overall average. Second marking may also be required to determine the winners of prizes. In exceptional circumstances (e.g. medical) third readings may take place.

After this second stage, the Board of Examiners meet again and agree a final classification/result for each candidate, having taken account of medical and other special case evidence and having made appropriate adjustments for such matters as breach of rubric. The examiners also agree on the award of prizes at this stage.

4.4 Incomplete scripts and departure from rubric

The mark for a completely absent answer in any script will be zero, and the mark for a part answer, or a "skimped", "rushed final", "short" or "weak" answer, will be such a mark above zero as is appropriate, relative to more successful answers, in terms of the quality of what has been written, and the extent to which it covers the question.
The overall mark for a script will be arrived at by averaging the number of marks, including zeros, over the number of questions that should have been answered on the paper.
If a candidate completes the correct number of questions, but fails to answer a question which is compulsory (eg where the candidate does not answer a problem question as required by the rubric of that paper), marks will be deducted and this may affect the final result. It is therefore of the utmost importance that candidates comply with the rubric of the paper and answer the number and type of questions stipulated.
Candidates who write answers in note form may also expect to have their overall mark for the paper reduced.

5. Progression rules and classification conventions

5.1 Qualitative descriptors

Qualitative descriptors are intended to provide summaries of the qualities that will be demonstrated in attaining each classification – First, Upper Second, etc – overall.
The qualities a First overall will demonstrate include acute attention to the questions asked; a deep and detailed knowledge of the topic; excellent clarity and structure; and good appreciation of theoretical arguments.
The qualities an Upper Second overall will demonstrate include attention to the questions asked, a fairly detailed knowledge and understanding of the topic; good and accurate coverage of the topic; good clarity and structure; and reasonable familiarity with theoretical arguments.
The qualities a Lower Second overall will demonstrate include attention to the questions asked which may vary from adequate to disappointing; some knowledge of the and understanding of the topic; some coverage of the topic and a reasonable level of accuracy though possibly marked by substantial errors or omissions; a reasonable level of clarity and structure though theoretical or critical argument is likely to be insubstantial or weak.
The qualities a Third or Pass overall will demonstrate include the ability to identify the relevant area of the subject; a limited knowledge and understanding of the topic, usually marred by substantial errors and omissions, some degree of structure and argument, though ideas are likely to be unclear or inappropriate and to offer negligible theoretical or critical treatment.
Note that the aggregation and classification rules in some circumstances allow a stronger performance on some papers to compensate for a weaker performance on others.

5.2 Final outcome rules

The final outcomes rules are as follows, bearing in mind that the examiners have some discretion to deal with exceptional circumstances, in accordance with the Examination Regulations. For the award of degree classifications, marks in all standard subject and standard optional subject papers have the same weight.
First Class Honours are awarded on a system whereby, either four marks of 70 or above are needed, and no marks below 60, or alternatively, five marks of 70 or above are needed with no more than one mark below 60 and no mark below 50.

For the award of Second Class Honours, Division I, five marks of 60 or above are needed, and no more than one mark below 50 (which must not be below 40).
For Second Class Honours, Division 2, five marks of 50 or above are needed, and no marks below 40.
For Third Class Honours, nine marks of 40 or above are needed, although a candidate may be allowed one mark below 40.
For a Pass degree, five marks of 40 or above are needed, and no marks below 30, although a candidate may exceptionally be allowed one mark below 30.

6. Re-sits

A candidate who doesn't attain a classified result (i.e. who attain a fail or a pass) may apply to re-sit the following year. He/she should talk to the Senior Law Tutor in their College about the relevant procedures.

7. Factors affecting performance

Where a candidate or candidates have made a submission, under Part 13 of the Regulations for Conduct of University Examinations, that unforeseen factors may have had an impact on their performance in an examination, a subset of the board will meet to discuss the individual applications and band the seriousness of each application on a scale of 1-3 with 1 indicating minor impact, 2 indicating moderate impact, and 3 indicating very serious impact. When reaching this decision, examiners will take into consideration the severity and relevance of the circumstances, and the strength of the evidence. Examiners will also note whether all or a subset of papers were affected, being aware that it is possible for circumstances to have different levels of impact on different papers. The banding information will be used at the final board of examiners meeting to adjudicate on the merits of candidates. Further information on the procedure is provided in the *Policy and Guidance for examiners, Annex B* and information for students is provided at www.ox.ac.uk/students/academic/exams/guidance

8. Details of examiners and rules on communicating with examiners

The names and positions of examiners are listed below. Students are strictly prohibited from contacting internal or external examiners directly.
Ms L. Ferguson (Chair)
Dr S. Green
Mr N. Barber
Dr P. Eleftheriadis
Mr W. Swadling
Mr S. Douglas
Dr A. Kavanagh
Mr R Bagshaw
Dr P. Saprai, University College London, (external)
Dr A. Sanders, London School of Economics, (external)

Appendix A

FORM AND RUBRIC OF EXAMINATION PAPERS IN THE FHS OF JURISPRUDENCE AND DIPLOMA IN LEGAL STUDIES 2016

Administrative Law
There will be 10 questions of which FHS candidates should answer 4 and DLS candidates should answer 3.

Commercial Law
There will be 10 questions, 5 of which will be problem questions. FHS candidates should answer 4 questions including at least two problem questions. In problem questions candidates should assume that the only applicable law is English law. This paper is not available to candidates who are also offering Personal Property.

Company Law
There will be 12 questions, 4 of which will be problem questions. FHS candidates should answer 4 questions including at least one problem question. DLS candidates should answer 3 questions including at least one problem question.

Comparative Private Law
There will be 9 questions, 6 in Part A (Obligations) and 3 in Part B (Property and Trusts). FHS candidates are required to answer 3 questions, including at least one question from Part A and at least one question from Part B. Problem questions may be asked but it will not be mandatory to answer a particular number of such questions.
The examiners will expect appropriate reference to the provisions of the *Projet d'ordonnance portant réforme du droit des contrats, du régime général et de la preuve des obligations* (2015) as included in the course bundle of Legislative Materials as well as to the provisions of the French Civil Code (as it exists on 1 October 2015) even if the former is enacted and comes into force before the cut-off date.

Competition Law and Policy
There will be 8 questions, 4 of which will be problem questions. FHS candidates should answer 4 questions including at least two problem questions. DLS candidates should answer 3 questions, including at least one problem question.

Constitutional Law
There will be 10 questions of which FHS candidates should answer 4 and DLS candidates should answer 3.
Candidates are asked to note that some questions may involve a greater degree of mixing of topics than has been the norm in past papers.

Contract
There will be 12 questions, 5 of which will be problem questions. FHS candidates should answer 4 questions including at least two problem questions; DLS candidates should answer 3 questions including at least one problem question.

Copyright, Patents and Allied Rights
There will be 12 questions, 4 in Part A (Copyright), 4 in Part B (Patents) and 4 in Part C (Problems). FHS candidates should answer four questions, at least one question from Part A,

at least one question from Part B, and at least one question from Part C. DLS candidates should answer 3 questions; one question from Part A, one question from Part B, and one question from Part C.

Copyright, Trade Marks and Allied Rights
There will be 12 questions, 4 in Part A (Copyright), 4 in Part B (Trade Marks) and 4 in Part C (Problems). FHS candidates should answer four questions, at least one question from Part A, at least one question from Part B, and at least one question from Part C. DLS candidates should answer 3 questions; one question from Part A, one question from Part B, and one question from Part C.

Criminology and Criminal Justice
There will be 12 questions of which FHS candidates should answer 4 and DLS candidates should answer 3.

Criminal Law
There will be 9 questions, 5 of which will be essay questions (Part A) and 4 of which will be problem questions (Part B). FHS candidates should answer 4 questions, including at least one question from Part A and at least two questions from Part B. DLS candidates should answer 3 questions, including at least one question from Part A and at least one question from Part B.
Candidates are reminded that liability for the offences in the Criminal Damage Act 1971, ss. 1-3 is examinable, but that liability for any of the offences in the Theft Act 1968, the Theft Act 1978 and the Fraud Act 2006 is not examinable. No question will be set requiring knowledge of liability under the Accessories and Abettors Act 1861 or (in so far as this is different) Joint Enterprise.

Environmental Law
There will be 10 questions including problem questions, but choice of questions will be unrestricted. FHS candidates should answer 4 questions.

European Union Law
There will be 10 questions of which FHS candidates should answer 4, DLS candidates should answer 3.

Family Law
There will be 12 questions of which FHS candidates should answer 4 and DLS candidates should answer 3.

History of English Law
There will be 12 questions of which FHS candidates should answer 4 and DLS candidates should answer 3.

Human Rights Law (previously known as European Human Rights Law)
There will be 10 questions, one of which will be a problem question, but choice of questions will be unrestricted. FHS candidates should answer 4 questions and DLS candidates should answer 3.

International Trade
There will be 10 questions, 5 of which will be problem questions. FHS candidates should answer 4 questions including at least two problem questions. In problem questions candidates should assume that the only applicable law is English law.

Jurisprudence
There will be 10 questions of which FHS candidates should answer 2.

Labour Law
There will be 12 questions of which FHS candidates should answer 4 and DLS candidates should answer 3.

Land Law
Two Land Law papers will be set in 2016. Which version of the Land Law paper you will be set will primarily depend on which course you are studying.
For Course I and Diploma in Legal Studies students: a paper will be set on the new syllabus for Land Law (including the topic 'Human rights as relevant to Land Law' and 'Acquisition of title by possession; Loss of title because of dispossession').
There will be 11 questions on this paper, 5 of which will be problem questions. FHS candidates taking this paper should answer 4 questions including at least one problem question. DLS candidates should answer 3 questions including at least one problem question. In all cases, candidates will not be expected to display in-depth knowledge of human rights issues in answering problem questions.

For Course II (four year) students: a paper will be set on the old syllabus for Land Law (including the topic 'Human rights as relevant to Land Law'; but not on the topic 'Acquisition of title by possession; Loss of title because of dispossession'). There will be 11 questions on this paper, 5 of which will be problem questions. FHS candidates taking this paper should answer 4 questions including at least one problem question.
In all cases, candidates will not be expected to display in-depth knowledge of human rights issues in answering problem questions.

Media Law (new in 2014-15)
There will be 10 questions of which FHS candidates should answer 4 and DLS candidates should answer 3.

Medical Law and Ethics
There will be 9 questions of which FHS candidates should answer 4 and DLS candidates should answer 3.

Moral and Political Philosophy
There will be 12 questions; 8 in Part A (Moral Philosophy) and 4 in Part B (Political Philosophy). Candidates should answer 3 questions, including at least one from Part A and at least one from Part B.

Personal Property
There will be 10 questions, up to 3 of which will be problem questions but choice of questions will be unrestricted. Candidates should answer 4 questions. This paper is not available to candidates who are also offering Commercial Law.

Public International Law
There will be 9 questions of which FHS candidates should answer 4 and DLS candidates should answer 3.

Roman Law (Delict)
There will be 10 questions, 4 of which will require comment on selections from the set texts (in English), FHS candidates should answer 4 questions including at least two of the text questions; DLS candidates should answer 3 questions including at least one of the text questions.

Taxation Law
There will be 8 questions, 2 of which will be problem questions but choice of questions will be unrestricted. FHS candidates should answer 4 questions and DLS candidates should answer 3 questions.

Tort
There will be 12 questions, 5 of which will be problem questions. FHS candidates should answer 4 questions including at least two problem questions; DLS candidates should answer 3 questions including at least one problem question.

Trusts
There will be 14 questions, 4 of which will be problem questions. FHS candidates should answer 4 questions including at least one problem question; DLS candidates should answer 3 questions including at least one problem question.

Appendix B

MATERIALS AVAILABLE IN THE EXAMINATION ROOM: FHS OF JURISPRUDENCE/DIPLOMA IN LEGAL STUDIES/MAGISTER JURIS (All case lists provided in the examination room will be attached to the back of the examination paper)

Administrative Law
Administrative Law Case List 2015-16

Commercial Law
Blackstone's Statutes on Commercial and Consumer Law, 24th (2015-16) edition, ed. Francis Rose
Commercial Law Case list 2015-16

Company Law
Butterworths Company Law Handbook, 27th (2013) edition
Company Law Case List 2015-16
Small Business, Enterprise and Employment Act 2015, ss 15–16, 81–82, 87–90, 92, 97, 104–112, 117–119

Comparative Private Law
Translations of Extracts from national and European instruments, as compiled by the teaching group and distributed in the course

Competition Law and Policy
Blackstone's UK and EU Competition Documents, 8th (2015) edition, ed. Kirsty Dougan
Competition Law and Policy Case List 2015-16

Constitutional Law
Constitutional Law Case List 2015-16

Contract
Blackstone's Statutes on Contract, Tort and Restitution, 26th (2015-16) edition, ed. Francis Rose
Contract Case list 2015-16
Documents:
Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) (as amended) Pts 1, 2, 4A & reg.29.
Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) (as amended) regs 4 - 10 & 13; Scheds 1 and 2.
Consumer Rights Act 2015 Pt 1 Chap. 1, extracts from Chap. 2 (ss 3 – 24, 31), Chap. 4 & Chap. 5; Pt 2; & Sched.2.
Directive on Unfair Terms in Consumer Contracts (93/13/EEC) of 5 April 1993 (as amended)

Copyright, Patents and Allied Rights
Blackstone's Statutes on Intellectual Property 12th (2014) edition
Copyright, Patents & Allied Rights Case List 2015-16
Documents:
Charter of Fundamental Rights of the European Union

Copyright, Designs and Patents Act, 1988, Chapter III (as amended) ("Acts Permitted in Relation to Copyright Works")

Copyright, Trade Marks and Allied Rights
Blackstone's Statutes on Intellectual Property 12th (2014) edition
Copyright, Trade Marks & Allied Rights Case List 2015-16
Documents:
Charter of Fundamental Rights of the European Union
Copyright, Designs and Patents Act, 1988, Chapter III (as amended) ("Acts Permitted in Relation to Copyright Works")

Criminal Law
Criminal Law Case List (New Regs) 2015-16
Booklet of extracts from Criminal Law Statutes 2015-16 containing:
Offences Against the Person Act 1861, ss. 16, 18, 20, 23, 24, 47
Infanticide Act 1938, s. 1
Homicide Act 1957, ss. 1, 2, 4
Suicide Act 1961, ss. 1, 2, 2A, 2B
Criminal Procedure (Insanity) Act 1964 ss 1, 4, 4A, 5, 6
Criminal Justice Act 1967 s 8
Criminal Law Act 1967, s.3
Theft Act 1968, ss. 1-6, 8, 9, 12, 21, 22, 25
Criminal Damage Act 1971, ss. 1, 2, 3, 5, 10
Criminal Law Act 1977, ss. 1 and 2 (not 1A) and 5(1), (6), (8) and (9)
Theft Act 1978, s.3
Magistrates' Courts Act 1980 s 44
Criminal Attempts Act 1981, s. 1
Law Reform (Year and Day Rule) Act 1996
Crime and Disorder Act 1998 s 34
Sexual Offences Act 2003, ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 73, 74, 75, 76, 77, 78, and 79(2), (3), (8) and (9).
Fraud Act 2006, ss. 1, 2, 3, 4, 5
Serious Crime Act, 2007 ss 44, 45, 46, 47, 49, 50, 51, 56, 59, 64, 65, 66, 67 and excerpts from Schedule 3 (Listed Offences)
Criminal Justice and Immigration Act 2008 s 76
Coroners and Justice Act 2009, sections 54, 55, 56

Environmental Law
Environmental Law Case List 2015-16

European Union Law
Blackstone's EU Treaties and Legislation, 25th (2014-15) edition, ed Nigel Foster, OUP
European Union Law Case list 2015-16

Family Law
Blackstone's Statutes on Family Law, 23rd (2014-15) edition
Family Law Case List 2015-16

History of English Law
History of English Law Case List 2015-16

Human Rights Law
Human Rights Case List 2015-16
Documents:
European Convention on Human Rights
European Charter of Fundamental Rights
Human Rights Act 1998

International Trade
Blackstone's Statutes on Commercial and Consumer Law, 20th (2011-12) edition, ed. Francis Rose
International Trade Case list 2015-16

Labour Law
Blackstone's Statutes on Employment Law, 25th (2015-16) edition, ed Richard Kidner
Labour Law Case List 2015-16

Land Law
Sweet and Maxwell's Statutes Series, Property Law 8th (2002) or 9th (2003) or 10th (2004) edition
Land Law Case List 2015-16
Documents:
Consumer Credit Act 1974 ss 140A-140C
Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 Art 60C(2) and 61(3)
Mortgage Repossessions (Protection of Tenants etc) Act 2010 (in full)
Consumer Rights Act 2015, ss 2, 61-69
ECHR (art 8, and protocol 1 art 1);

Media Law
Blackstone's Media Law Statutes, 4th edition (2013)
Media Law Case list 2015-16
Documents:
Communications Act 2003, s.368E
Juries Act 1974, s.20A-20C
Police and Criminal Evidence Act 1984, s.8, s.9, s.11. .s.13, s.14 and extracts from Schedule 1
Terrorism Act 2000, extract from Schedule 5
Criminal Justice and Courts Act 2015, s.33-35 and 37

Medical Law and Ethics
Medical Law and Ethics Case List for 2015-16
Medical Law and Ethics Legislation

Personal Property
Personal Property Case List 2015-16

Public International Law
Blackstone's International Law Documents, 12th (2015) edition

Taxation Law
Extracts from Tax Legislation compiled by the Law Faculty with permission from LexisNexis
Taxation Law Case List 2015-16

Tort
Blackstone's Statutes on Contract, Tort and Restitution, 26th (2015-16) edition, ed. Francis Rose
Tort Case List 2015-16

Trusts
Sweet and Maxwell's Statutes Series, Property Law, 8th (2002) or 9th (2003) or 10th (2004) edition
Trusts Case List 2015-16
Charities Act 2011, sections 1-5

APPENDIX 4

REPORTS ON INDIVIDUAL PAPERS

ADMINISTRATIVE LAW

The candidates' performance in the Administrative law paper was encouraging this year. There were a significant number of first class scripts, circa 22%, and the general standard was high. There were very few weak scripts and most candidates who did not secure a first class received a good 2.1 mark in the mid to upper 60s. There were two particularly encouraging features of the candidates' performance in the paper this year.

First, they really did answer the question that was set. A repeated concern in all papers is that candidates often answer the question that they wish had been set, rather than the actual question on the exam paper, or that they simply produce a 'write all you know answer to the question', which does not focus on the actual question posed on the paper. This did not happen in this year's paper. The questions had a specific focus and most candidates produced answers that carefully addressed the issues raised in those questions. Candidates in future FHS exams who read this report should take this point on board, and recognize that this really matters in terms of the mark that will be secured on the paper.

Secondly, candidates had a good knowledge of both the primary sources, case law and statutory material, and of the secondary literature, and they deployed both to good effect in their answers. Candidates spend three years studying different legal subjects, including the secondary literature that is included on the relevant reading list. Notwithstanding this, it is frequently the case that when they sit the examination much of the material that they know is not evident from the examination scripts. The secondary literature will often not feature in the answers to the questions, or any reference thereto will be brief in the extreme. This is regrettable. It is encouraging that in this year's Administrative law paper the candidates integrated the academic literature into their answers and used it to good effect.

There was a good spread of answers to the questions on the paper. The most popular questions were those on legitimate expectations, standing, error of law and the division between illegality and irrationality for the purposes of judicial review. There were, however, also a significant number of thoughtful answers to other questions, such as those dealing with theory, Article 6 ECHR and the application of tortious principles to public bodies.

COMMERCIAL LAW

There was a reasonable spread of marks, with some very good scripts although there were a few weak ones. The very best exhibited good knowledge and understanding, but, even more importantly, the ability to apply that knowledge and understanding to the question posed or specifically to the facts of the problem. Failure to do this was the main reason for the weakness of some scripts.

1. This question was answered by only one candidate.

2. This question was answered by four candidates. While most candidates were familiar with the law relating to characterisation of commercial transactions, few really grappled with the question of how, if at all, the linguistic approach set out in the quotation was consistent with the courts' approach to characterisation.

3. This question was answered by ten candidates, and some of the answers were very strong. The best answers engaged critically with the courts' approach in both *Pacific Motor Auctions* and *Michael Gerson*, and demonstrated a good understanding of the changes each case brought about to the previous law.

4. Four candidates answered this question. The answers demonstrated a good knowledge of the general principles, with the best carrying out excellent critical analysis of a complicated area of law.

5. This question was answered by eight candidates. While most candidates treated it as an opportunity to discuss *Watteau v Fenwick,* the best candidates also demonstrated a good knowledge of the 'silence rule' in contract and discussed other areas of agency law where silence could arguably impose obligations.

6. This was a very popular question, and was answered by nearly all candidates, with rather mixed results. Although many candidates did mention it, knowledge of the decision of the Supreme Court in the case of *PST Energy,* which was delivered after the cut-off point, was not necessary to answer this question. Knowledge of the Court of Appeal decision in that case, though, was expected. Candidates who pointed out that the contract in relation to the copper bars might not be a contract of sale were suitably rewarded. On the basis that the Act applied, many candidates spent too long discussing the implied terms which could have been breached, and surprisingly few discussed the possible application of section 15A of the Sale of Goods Act. While most noticed the point about retendering, only the best really engaged with the scope of the principle from *Borrowman*. Surprisingly many did not mention section 49, and even more did not discuss the alternative action for damages for non-acceptance.

7. Five candidates answered this question, and it was generally done reasonably well. Better candidates discussed both the set-off and the sale of goods points in relation to Plantsareus in detail. Most candidates were well informed in relation to the rule in *Dearle v Hall* and the possibility of enforcing a trust of the promise where the benefit of a contract containing an anti-assignment clause had nevertheless been assigned. The very best candidates applied this law closely to the facts of the problem.

8. This question was answered by six candidates. Most dealt competently with the issues of goods in bulk and of appropriation, but very few even scratched the surface of the possibility of recharacterisation raised by the transaction with Fastcash, which was very similar to that in *Welsh Development Agency* and which required an analysis of that decision for a full answer to the problem question.

9. This question was answered by only two candidates. While not particularly difficult, it required careful analysis in dealing with each asset separately, in order to discuss the priority issues arising.

10. This was a popular question, which was attempted by twelve candidates. All but the weakest spotted the *Watteau v Fenwick* point in the first part, but not all discussed the addition of an extra party (Edith) into the traditional analysis. Weaker candidates did not realise the importance of the time that the contract was made in part (b) to whether there was any possible question of apparent authority. Discussion of the principle in *Brocklesby* (a case discussed in the course of the seminar) in part (c), especially in distinction to the general rule set out in section 2(1) of the Factors Act, was suitably rewarded.

COMPANY LAW

There were 21 candidates who sat the paper, representing a mix of FHS, DLS and MJur students. There were two first-class scripts, 18 upper second-class scripts and one lower second-class script. Overall, the standard of responses was good, with most candidates falling around the mid-point of the upper-second class (i.e. 65). The upside was that there were very few poor responses to questions, but unfortunately equally few very good answers. In terms of individual questions:

Question 1: A reasonably popular question (answered by 11 candidates) concerning the relationship between the derivative action and the unfair prejudice jurisdiction. Most candidates provided a reasonable account of that difficult relationship, but there was overall a failure to discuss the pre-2006 case law in detail or to consider the developing jurisprudence under s 260 regarding when the availability of alternative relief might justify refusing permission to continue the derivative action.

Question 2: A reasonably popular question (answered by seven candidates) concerning the contractual effect of the company's articles of association. Most candidates took this as the opportunity to deploy their prepared answer on the differences between the statutory contract and an ordinary contract. This was clearly directly relevant to the quote, but was only half the question. Too few went on to consider whether CA 2006, s 33 inappropriately limited the "stakeholders" in a company to the shareholders alone (which might arguably conflict with CA 2006, s 172). This is a salutary reminder to respond to the quote provided.

Question 3: This was the most popular question on the paper (answered by 16 candidates), which concerned the hazards of allowing limited liability. This elicited some of the better answers on the paper and candidates were able to discuss a range of economic arguments for and against the position adopted in the quote. Strong answers also discussed techniques (such as capitalisation, insurance and insolvency protections) whereby any losses to the creditors might be minimised. Whilst cases dealing with piercing the corporate veil were clearly relevant, weaker answers limited their analysis to this line of authority without placing it in its wider context.

Question 4: An unpopular question (answered by only three candidates) that elicited some strong responses. Candidates were able to discuss the detail of the two cases individually, as well as consider the advantage and disadvantages of the two approaches set out in the quotes.

Question 5: A reasonably popular question (answered by six candidates) that was generally answered well. The best answers discussed the theoretical and doctrinal justifications for wrongful trading, the reasons for its lack of impact, its relationship with other powers of the liquidator, and the reforms designed to increase the utility of this type of claim.

Question 6: A reasonably popular question (answered by eight candidates), which was answered in a very efficient manner, but with no really strong responses. Most candidates considered the problems with the minimum capital requirements as framed; better answers examined alternative techniques for protecting creditors; but there was little discussion as to whether there was any justification for a different approach between public and private companies.

Question 7: Nobody answered this difficult question about the current scope of the indoor management rule. Candidates might have considered the impact of CA 2006, s 40 on the rule in light of the *Smith* decision and whether the indoor management rule might have continued utility in relation to acts undertaken by the general meeting. With respect to acts of individual directors, candidates might have considered the displacement of *Turquand* by the rules of agency in *Freeman* as well as the recent suggestion that even questions concerning the execution of documents might nowadays be governed by notions of ostensible authority, rather than the technical indoor management rule.

Question 8: There was only one answer to this question concerning the interests that the board have to safeguard when exercising their powers and making business decisions, in particular whether the corporate interest should just be about "the unceasing quest for the extra dollar" or whether it should encompass other interests, such as employees, the environment and creditors. Candidates might have discussed the circumstances in which directors might wish to put the interests of other stakeholders ahead of shareholder profit maximisation. Candidates might also have considered the relationship between the corporate organs and the extent to which the board must consult the general meeting or the extent to which the general meeting might interfere with board decisions or policy with which they disagree.

Question 9: This was a popular question (answered by nine candidates). The answers were a mix of upper- and lower-second class responses, but notably there were no really strong answers. Whilst most candidates were able to discuss whether there was a breach of duty and what was the relevance of the weighted voting clause, too few were able to discuss in detail where the power to commence litigation lay and, more worryingly, most seemed unaware of the recent, low-level, controversial decisions (on the core reading list) to the effect that double derivative actions are governed by common law principles rather than the CA 2006.

Question 10: A reasonably popular question (answered by six candidates), which was on the whole not well answered. Whilst candidates dealt reasonably well with the issues surrounding the validity of the proposed constitutional alteration, they were much less sure-footed when it came to the issue of the binding nature of the contract and resolutions, particularly in light of the company secretary's forgery.

Question 11: A relatively unpopular question (answered by only four candidates) concerning shares issues, capital maintenance and alteration of class rights. Problem questions concerning corporate capital tend to be fairly self-selecting — those who attempted the question had clearly done their homework and responded effectively to most of the points raised. The principal weakness in the answers was a lack of precision in dealing with the statutory material — it is not enough to refer to the provisions of the CA 2006 in a general way, but rather candidates should aim to pinpoint the supporting material as much as possible.

Question 12: A reasonably popular question (answered by six candidates), which elicited some good responses. There were essentially two broad issues. The first issue concerning breaches of directors' duties was well handled, although candidates were less sure about the law's expectations of non-executive directors. The second issue concerning whether the liquidator could pierce the corporate veil or employ one or more of his or her statutory powers to recover the property/compensation was much less well handled. Candidates should be prepared for problems that mix topics together in order to test breadth of understanding, as well as depth of analysis.

COMPARATIVE PRIVATE LAW

There were 12 candidates for this paper. The overall standard was very good indeed, with a number of excellent papers. The strongest answers deployed detailed and accurate knowledge in answering the particular questions set with significant comparative reflection, although some candidates' overall mark suffered from their reproducing a pre-prepared essay as one of their three answers, even where their other two answers showed considerable reflection and skill. As regards Part A Obligations, all questions were answered, but questions 2 (conceptions of contract), 3 (specific enforcement and damages), 4 (extra-contractual fault) and 6 (on termination for breach) were more popular. As regards Part B, Property and Trusts, the most popular question was question 9 (on the difficulties the functional approach raises in the context of trusts), followed by question 7 (questioning the existence of an absolute notion of ownership in French and German law and its role in the reception of the common law trusts) and question 8 (on the protection of possession). Some of the answers to question 9 were rather disappointing, apparently addressing a rather different question on the essentials of the trust, but other candidates thought more carefully about the question and answered it well; there were some notably good answers to question 8.

COMPETITION LAW AND POLICY

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

The first essay question focused on 'puzzling changes' in respect of the scope of the 'object' concept under Article 101 TFEU and was attempted by over a third of students. Answers to this question were fairly strong. Just under a quarter of students who attempted the question obtained a mark of 70% or over. Amongst the remainder, the average mark obtained was 65%.

The second essay question dealt with the allocation of competence between the Commission and Member States in respect of Competition Law generally, thereby allowing students to draw upon materials from the entirety of the course. Only three students attempted this question.

Question three focused on the approach of the European Commission in its appraisal of dominance and abuse, thereby again allowing a wide ambit for engagement. 11 students attempted this question, with 3 obtaining a mark of 70% or over for the question.

In question four, students were given the opportunity to comment generally upon collective dominance and more specifically upon the approach adopted by the Court of Justice of the European Union in the case of *Sony v Impala*. The question was the least popular of all the questions, with no student at all attempting it.

Problem questions focused on the application of Article 101 TFEU, Article 102 TFEU, The European Merger Regulation and the enforcement of Competition law, with significant crossover in 3 of the questions.

Question five contained a multitude of issues including whether there were undertakings involved, several potential abuses under Article 102 TFEU, and the lawfulness of various acts carried out by the European Commission. Students performed relatively strongly on this

question on the whole and it was very popular (with all bar two examinees attempting it). The average mark obtained was 65%.

Question six similarly contained cut across several areas of the course, with issues revolving around jurisdiction, Article 101 TFEU, Article 102 TFEU and the European Merger Regulation. This was the second least popular problem question. However, students performed strongly on this question, with just under a quarter obtaining a mark of 70% or above.

Question seven predominantly concerned issues in relation to vertical agreements under Article 101 TFEU, abuses under Article 102 TFEU and the European Merger Regulation. It was the least popular problem question overall with only 11 students attempting it. However, those examinees who attempted the question performed very well, with 3 obtaining a mark of 70% or over and the rest performing extremely strongly.

Question eight was another very popular question with almost three quarters of the examinees attempting it. The question concerned a merger between a developer of navigation systems and a company specializing in the manufacture of passenger airplanes. In addition to assessing the merger, students were also asked to advise on the permissibility of a National Competition Authority reviewing it. It was the second most popular problem question. However, only two students obtained a mark of 70% or above.

The examination was taken by 31 candidates (4 Diploma and 27 FHS). On the whole, the scripts showed a very good command of the subject and good analytical skills, with 4 candidates achieving a first class mark. There was a slight preference for problem questions over essay questions, although the students who performed better overall tended to spread their answers across both. First class answers generally displayed a strong grasp of the underlying material, underscored by significant and sustained references to caselaw and commentary, balanced with robust analytical engagement. Weaker answers tended to miss substantial issues, neglect critical analysis and misconceive the relevant law.

CONTRACT

By way of general comment, the impression of the markers was that slightly more candidates than is customary chose to answer more than the mandatory two problem questions. This may reflect that the candidates preferred subject matter was assessed in problem form rather than essay, but beyond that no conclusions can be safely drawn.

Essays
In general, the higher marks were awarded to candidates who paid close attention to the question and sought to answer it. As is often the case, many settled for identifying in broad terms which topic or issue was to be addressed and then writing about it in rather general terms with only passing reference to the particular critical perspective which was invited by the question.

Question 1 invited a broad assessment of the potential impact of the Consumer Rights Act 2015 for the protection of consumers. It was less popular than might have been expected and the majority of answers were competent rather than insightful. The better of the answers distinguished clearly between those parts of the Act which were just consolidation and those which introduce substantive reform. The very best of the answers offered quite sophisticated

analysis of the new remedies for consumers and the changes introduced as a response to *OFT v Abbey National Plc*.

Question 2 proved popular and invited candidates to debate whether the rule against penalties should be abolished. Although set by reference to the decision of the Supreme Court in *Cavendish v Makdessi*, no detailed analysis of that case was necessary to produce a good answer, but some appreciation of the "recasting" of the rule was called for. Several of the best essays from any candidate were written in response to this question.

Question 3 was only answered by a very few candidates. It called for analysis of the contentious issues which have arisen in the drafting and application of section 2 of the Misrepresentation Act 1967. Not all candidates appeared to be aware that there are several such issues and not just the "fiction of fraud" which arises under s.2(1).

Question 4 was also popular. It invited discussion of the approach to terms implied in fact taken by Lord Hoffmann in the *Belize* case and by Lord Neuberger in the *M&S* case. Most candidates preferred the latter. Only a handful suggested that there may, in fact, be no difference in substance. The more sophisticated of the answers sought also to position the approach in *M&S* in the context of the approach of the Supreme Court to interpretation in *Arnold v Britton*.

Question 5 was concerned with the role of good faith, but was less popular than might have been expected. There were some quite sophisticated answers, but many candidates contented themselves with a somewhat incomplete narrative, or sought to answer the question solely in terms of the decision in the *Yam Seng* case when the question called for a broader analysis. Very few candidates considered it necessary to ask exactly what is meant by "good faith".

Question 6 was the most popular essay question but there were rather a large number of disappointing answers, due in part to candidates not appearing to dwell for too long on what was meant by the proposition that the rules of offer and acceptance are "out of date". Many wrote almost exclusively on the postal rule on the false premise that use of the post is out of date, while others just provided a general narrative on offer and acceptance. The better answers focused on whether *the rules* are out of date, including whether there should be any "rules" at all (cf. Lord Denning in the *Gibson* case).

Question 7 gave candidates the option of answering either a question on the benefit of hindsight in the assessment of damages, or a question on the scope of contributory negligence as a defence to the award of damages for breach of contract. Both are relatively narrow areas and this may explain why there were very few answers to either question, especially the latter. The question on hindsight was most obviously answered by reference to the decision of the House of Lords in *The Golden Victory*. Candidates who did not discuss this decision were disadvantaged not so much because of this omission, but because they did not offer a compelling or coherent analysis of what the benefit of hindsight might entail.

Problems

No one problem question proved to be much more popular than any other. By a relatively small margin, the most popular was Question 12 while the least popular was Question 10.

Question 8 was principally concerned with privity and the assessment of damages, including the inter-relationship between the two (e.g. the *Panatown* decision). An alarming number of

candidates failed to discuss the privity aspect of the question at all; of those that did, relatively few raised the possibility that there may in fact have been no privity issue if the contract was made with A and B, or with the "joint venture". Some of the discussion of the 1999 Act was rather vague or simplistic. As far as the damages element is concerned, most saw the potential relevance of the decision in *Ruxley* but too few saw the possibility of distinguishing it on the basis of the more commercial aspect of the contract and the nature of the loss flowing from the breach.

Question 9 was essentially in two parts: part payment of a debt and duress/undue influence/unconscionable bargain. The former was done much better than the latter (in a few cases the second part was not addressed at all). The best of the answers involved a clear analysis of *Collier v Wright* and the potential difficulty that the debtor had not been able to complete the part payment (full "satisfaction") because of the conduct of the creditor.

Question 10 was principally concerned with issues of remoteness and exclusion clauses. Although the question of incorporation was relevant, quite a number of candidates went into a lengthy discussion of whether a contract had been formed between the parties and on what terms. The markers were left with the impression that some candidates were determined to find a problem question on offer and acceptance and this was it. Such discussion was not entirely irrelevant, but in some cases it was discussed by candidates to the detriment of the many other (and more pertinent) issues which the question raised. The better of the answers considered the test for remoteness in light of the decision in *The Achilleas* and its application to the problem. It has to be reported (not for the first time) that some candidates do not know their way around the Unfair Contract Terms Act 1977.

Question 11 was principally concerned with misrepresentation, but also allowed for some discussion of breach of contract. Curiously some candidates spent a long time on whether the representations had impliedly become terms of the contract when one of them was expressly included. The principal weakness in many answers lay in the discussion of remedies. A contract is not rescinded *under* the 1967 Act and there is no *claim* for damages under s.2(2) of the same Act. Quite a number of candidates seemed unaware of the decision of the Court of Appeal in *Salt v Stratstone.*

Question 12 raised issues of frustration and mistake of identity. The majority of candidates identified the more obvious points but the higher marks went to those who went beyond that to discuss the less obvious, namely: the proper construction of the contract between M and N and its impact on a plea of frustration; whether the cases on self-induced frustration could be distinguished in relation to the contract between M and P; and the fact that in relation to the contract between M and Q the resort to the contract "in writing" was inconclusive because it was always going to be with a party named Q (a few candidates saw the potential relevance of the *Raffles* case).

CONSTITUTIONAL LAW

Ten candidates sat this paper, and in general the answers were of a high standard. Question 10(a) proved the most popular, followed by questions 3 and 6, with questions 10(b), 9 and 2 the least popular. The paper was designed to encourage candidates to bring into play evidence and argument from across the course in each of their answers, and stronger candidates were able to do this. Particularly encouraging were the many attempts to analyse (especially in

response to questions 1, 3, 5 and 7) notions of constitutionalism as a component part of answers to more specifically-focused questions, and more generally to link discussion of Parliamentary sovereignty with analysis of the rule of law and separation of powers. The best answers were those which involved a sophisticated use of the detail of judicial and academic arguments in order to produce clearly-focused responses to the question in play. Weaker answers tended to be more descriptive and general in their focus.

COPYRIGHT PATENTS AND ALLIED RIGHTS and COPYRIGHT TRADE MARKS AND ALLIED RIGHTS

General

In 2016 two intellectual property papers were offered: Copyright, Patents & Allied Rights (CP) taken by 29 candidates and Copyright, Trade Marks & Allied Rights (CTM) taken by 10 candidates. Both papers were answered to a high standard overall, with a number of scripts awarded a first class mark. There was a good mix of essays and problem solving, as well as a decent spread of answers within each category. The numbers in brackets below indicate the number of students who attempted each question.

Copyright

The copyright section was common to both the intellectual property options and attempted by the full cohort i.e. 39 students.

Question 1 was a popular essay question (16) inviting candidates to explore the theoretical foundations of copyright law. After contrasting the various theoretical justifications for copyright law, the better candidates considered whether a pluralistic approach to theoretical foundations was viable, while the more astute also drew linkages between theoretical foundations and doctrinal developments ranging across subsistence, infringement and limitations to protection.

Question 2 related to a proposal to dissolve the discrete categories of copyright works and was handled well (17). Thoughtful answers explored the work these categories did at present; the extent to which they had already been abolished in light of Court of Justice jurisprudence; whether the present legislative structure could be adapted to meet the proposal; and the extent to which the proposal would make a meaningful difference, including to the originality standard, as well as its implications for other aspects of copyright law, such as subject matter specific defences.

Question 3 invited candidates to consider the difficulties associated with a non-literal infringement test and many responded to this invitation (15). Most candidates related the conditions of subsistence – originality in particular – to the scope of protection and assessed whether *Infopaq* (C-5/08) (referenced in the question) had altered the doctrinal position at all. An exploration of some of the conceptual difficulties and implications for the new infringement test set apart the more sophisticated answers from the more conventional ones.

Although several candidates (8) attempted Question 4, all were drawn to part (a), relating to exceptions and limitations. In most answers the connection between the policy context and the specific contours of and preconditions for exceptions was underdeveloped, with some of the relatively weaker essays being found here.

Question 9 – the problem question involving the famous singer – proved popular (21) and was answered well. It required candidates to demonstrate familiarity with subsistence criteria and identify relevant protected works. It also tested the extent to which the acts of third parties (i) created new protectable works; while (ii) nevertheless infringing the singer's rights; and (iii) whether they would benefit from any defences. Better answers adroitly handled the hyperlink infringement issue as well as provided more detailed, structured analysis when considering defences.

Question 10 – the other copyright problem involving the celebrity chef – was significantly less popular (3) but attracted some of the best answers. Here two challenging issues related to whether copyright could be claimed in the dishes themselves (as opposed to the written down recipe) and in the chef's own image. Characterising acts of infringement such as reading aloud also proved challenging, while candidates were expected to consider defences. The quotation defence – although arguably applicable for this problem – was relatively neglected.

Patents

The patent section was attempted by 29 candidates, with 52% of the cohort attempting two or more patent questions. There was an even spread across the questions selected in both the essay and problem sections of the paper.

Question 5 was attempted by 9 candidates. It was divided into two elements. The first part of the question saw candidates to explore the philosophical justifications for granting inventors' rights. This part was addressed well with most candidates relying upon the economic/utilitarian rationale for protection. Better answers explored more than one foundation for patent rights, and offered an analysis of the limitations of each argument. The second part of the question (an 'ought' analysis) required consideration of the current patent regime in light of the most convincing rationale advanced. This offered wide scope, with many reviewing term of protection, exceptions to rights granted and patentable subject matter.

Question 6 – This was the most popular essay question (11). Candidates were asked to discuss Recital 22 of the Biotech Directive. The question was broadly structured around three elements: i) the controversial nature of gene patenting – most answers address the morality and public order provisions as relevant; ii) that gene patents should be subject to the same patentability criteria as other inventions – many candidates questioned the 'novelty' of such inventions, with better answers going on to consider relevance of the novelty of purpose/purpose limited patent argument; iii) the requirement that the industrial application of the gene sequence must be disclosed in the patent application – many answers discussed the controversial case law on industrial application. Better answers contrasted this approach by again considering the purpose limited nature of such patents.

Question 7 – This question required a discussion of the principles of claim construction with particular reference to the approach in both 'Improver' and Kirin Amgen. This question was handled well by all candidates (8). It was imperative that the interpretative bedrock as advanced in Kirin Amgen was presented. Answers mainly addressed the limitations of the Improver questions as discussed in Kirin Amgen. Yet, recognition was also given to the benefits of using a 'structured approach'. Better answers went beyond merely asserting the 'Improver test' and considered to what extent the Improver questions remain connected with established interpretative practice. The 'influence across Europe' of the Improver questions was not always addressed. Those that did often made a valuable comparative analysis between the UK and German approaches.

Question 8 – This proved to be the least popular of the essay questions (4). The quotation, from the Opinion on the proposed Directive on software-implemented inventions, required candidates to consider the debates surrounding the patenting of software driven technology. Answers that sought to address the contention made by the Opinion - that patent law creates an artificial distinction between software and technical contributions, given that all software operates on some form of technology, with the result that software per se will become patentable – achieved a good mark. The best answers went significantly beyond the distinction between the UK and EPO approaches, to consider if the concerns expressed in the quotation were born out in light of current legal practice.

Question 11 – This problem question was answered by 6 candidates. The answers had to address part (a) on patentability, and part (b) on the enforcement of the patent right. Part (a) required candidates to consider three main issues raised by the facts, the priority of the earlier filing; novelty/anticipation of the invention; and inventive step, with consideration given to the what is the prior art for the IS analysis. Part (b) raised the question of infringement, and any defences that may be applicable in the circumstances. Most issues raised by the facts were handled well, the better answers were achieved by those that paid attention to the finer points raised.

Question 12 – This problem attracted slightly more answers than Q11 (8). Again, the question was divided into two parts – (a) the validity of the patent, plus scope of rights; (b) patentability of the subsequent discovery, plus scope of rights. Part (a) required candidates to question several key points - the validity of the patent by addressing the issue of patentable subject matter (isolated genes), inventive step (including relevance of Canadian journal article), and whether Brenda's use fell within the scope of the claim, including any applicable defences. Many candidates also considered the issue of novelty and industrial application. Part (b) - better answers firstly considered what, if any, technical contribution is made by Brenda. Discussion centred around the question of patentable subject matter, and/or purpose limited nature of right. The scope of the rights was very much dependent upon identifying the technical contribution being made.

Trade Marks

This year 10 candidates opted for trade marks and attempted a mix of both essays and problem questions.

Only one candidate attempted Question 5 – the essay on lookalike products – but obtained a high first class mark for it. The question raised for debate the balance between enabling competition (through signalling product substitutability) while protecting the legitimate interests of trade mark owners. Testing the legitimacy of trade mark owners' interests was a crucial aspect of this essay, as was a detailed analysis of the borderline between misrepresentation and misappropriation.

Question 6 proved more enticing (4) with candidates exploring the three policy-based objections for shape trade marks – generic, technical or aesthetic shapes – in some detail, as influenced by recent case law of the Court of Justice. Those who provided thematic arguments spanning all three categories of objections, such as a critique of the 'essential features' gateway requirement, were rewarded.

Question 7 was the most popular trade mark essay (5) and while most candidates performed well when exploring the theoretical basis for free riding prevention, most struggled when considering doctrinal coherence. There was a creditable discussion of the manner in which free riding fitted within a functions-based analysis of trade mark law and the advertising function in particular. However a close study of the criteria for establishing free riding, such as the need to quantitatively but not qualitatively establish a reputation or whether image transference was a plausible mechanism, was missing from the majority of essays.

Question 8 was attempted by relatively fewer candidates (3), who competently analysed the tensions between trade mark protection favouring the proprietor and the expressive interests of competitors or the general public in using a mark. Good answers drew on decided cases to consider the detailed doctrinal issues within trade mark law which would help to achieve this balance such as the nature of the defendant's message, the conditions under which a parody defence could be run and the degree to which commercial use by the defendant was relevant.

Question 11 was a problem focused on trade mark registrability, including both absolute and relative grounds. It was evidently the more popular problem (7). Issues which allowed the better answers to stand out included a detailed analysis of acquired distinctiveness and the extent to which it required reliance on the trade mark as opposed to mere association; the detailed application of the policy exclusions for shape marks; and the characterisation of 'abstract' non-conventional marks as well as the extent to which they met the definitional criteria of a trade mark.

Question 12, only attempted by one candidate, was a problem relating to trade mark infringement and defences. Key issues included a detailed analysis of likelihood of confusion as well as dilution; whether descriptive use or honest concurrent use might be available as defences; and whether SEAINTEL would fail any of the absolute grounds of refusal when seeking registration.

CRIMINAL LAW

It is hard to draw particularly clear conclusions from only six scripts, but the examiners were disappointed that no paper achieved a first class mark – the highest mark given was 68. The better candidates correctly identified the majority of the relevant points and had a competent overall grasp of the subject, but the lack of first class marks was the result of remaining inaccuracies in the candidates' knowledge, or a failure to engage with the subject matter in a sufficiently sophisticated and detailed way. Weaker papers contained numerous inaccuracies or omitted significant aspects of the questions and demonstrated a degree of confusion even about issues such as the operation of the *Woollin* test.

Part A

Question 1: Candidates were invited to discuss the relationship between the focus of property offences on the manner in which consent is vitiated, as distinct from sexual offences, which are not structured in the same way. A good answer would have considered whether an offence akin to s 3 of the 1956 Sexual Offences Act on procuring sexual activity by false pretences would be a feasible or desirable addition to the current law on sexual offences as it is presently structured. Some candidates failed to discuss property offences at all, or discussed them without examining their inherent structure as compared to that of sexual offences.

Question 2: This was a reasonable popular question. Some candidates failed to identify the relevance of constructive or strict liability offences including the so-called GBH rule in murder. Other candidates confused the question of constructive mens rea with that of objective as opposed to subjective mens rea.

Question 3: This was not a popular question. Candidates were invited to discuss the various roles of 'reasonable people' as aspects of defences, mens rea criteria and as part of this to consider what characteristics or other features are attributed to such reasonable people in those different roles. Good answers would have considered whether the attribution of such characteristics made the concept of the reasonable person in those different contexts more or less useful.

Question 4: This question was reasonably popular and was generally answered in a satisfactory manner but such answers tended to be fairly basic, concentrating on cases such as *R v Brown* rather than examining the different roles consent can play as part of the actus reus or mens rea, or examining the role of consent in property offences as opposed to offences against the person, as a more sophisticated answer would have done.

Question 5: Again, answers to this question tended to focus simply on a comparison of justification and excuse, and that comparison tended to be undertaken at a fairly basic level. Better answers would have considered in detail how the operation of a defence might be affected by its underlying theoretical basis and would have considered the theoretical basis of specific defences in practice.

Part B

Question 6: This question was reasonably popular and was answered fairly well, although candidates did not demonstrate a detailed knowledge of the case law on vitiation of consent to sexual activity by deception. Discussion of the mens rea of inchoate offences was generally good.

Question 7: This question required knowledge of the Criminal Damage Act 1971, causation and homicide. Candidates were generally not able to deal with all of the relevant issues accurately and with a high degree of detail.

Question 8: This question required a detailed knowledge of the rules of intoxication and other forms of incapacity. It was answered reasonably well.

Question 9: This question required detailed knowledge of the law of causation as well as the self-defence and associated defences. Again, it was not answered with a high degree of detail or accuracy.

CRIMINOLOGY AND CRIMINAL JUSTICE

Twenty-six candidates sat this paper. The quality of scripts was generally good, with many candidates giving evidence of careful reading of the academic literature and the ability to produce thoughtfully constructed and on occasion elegant answers. The better scripts closely yet imaginatively addressed the question at hand, were grounded in a good knowledge of the academic literature, utilized statistical and other forms of evidence, and made reference to

relevant criminal justice legislation and policy. The very best developed insightful and persuasive answers, and demonstrated an ability to carefully weight competing arguments.

Even in the best scripts, however, there was a tendency for candidates to miss relevant current debates and policy developments, and many did not quite succeed in marrying elements of criminological theory to policy and more strictly legal concerns. As in previous years, switching between law and the empirical subject matter of criminology appeared to be a struggle for many.

The remainder of the scripts were generally well informed and appropriately structured, but some were insufficiently developed and substantiated, particularly in relation to marrying the discussion with wider themes and debates. Even the weaker scripts tended to be well argued on a rhetorical basis, but these generally failed to provide in-depth reference to the extant literature and research evidence.

Answers were attempted in relation to all 12 questions, with only two (2 and 10) answered just once. There appeared to be no particular variation in the quality of answers for those topics that were the subject of tutorials or classes and those that had been covered only in lectures.

ENVIRONMENTAL LAW

As with previous years, candidates' answers did not cluster around a few questions and this meant that nearly all questions on the paper had a number of responses. It was also the case that most candidates addressed a problem question even though it was not strictly required. The overall and very pleasing impression was that candidates were engaging with the whole of the environmental law syllabus. This was the first year in which the subject operated without legislative materials in the exam and this did not seem to cause a problem. Indeed, if anything the quality of many answers improved as candidates appeared to have spent more time in exam preparation in understanding the nature and scope of legislative obligations. Across the papers, answers were generally very good and displayed a solid understanding of the subject. Excellent answers were those that directly addressed the question and showed a good knowledge of legal detail and an appreciation for a diversity of scholarly views.

EUROPEAN UNION LAW

General remarks

The quality of answers did overall not deviate markedly from previous years. Questions on substantive law were again chosen less often than those on the other parts of the syllabus. As before, candidates' problem solving technique showed weaknesses. The uncritical reliance of many if not most candidates on one canonical text was again noticeable this year, although a good number had read more widely and used their reading to good effect. Awareness of a spectrum of opinion in the literature was as usual rewarded, even more if candidates were also able to contrast different opinions and to criticise them: this was never out of place, even where the question did not expressly demand it, as Q1 and 2; the hint was not missed in Q3, 4, and 6. Q5 and 7 trod entirely familiar ground, so much so that in Q5 the vast majority did not notice that this semi-problem question raised another constitutional issue besides subsidiarity. The examiners, with regret, pared down their expectations accordingly, but rewarded the few who had spotted the point after all.

Question 1 – Free movement: The first question invited reflection on 'market access' as a unifying principle for the interpretation of all four freedoms. The better answers, therefore, contemplated the Court's free movement jurisprudence in the round. The best noticed that the earlier judgment in *Gebhard* contains a unifying formula for services, establishment, and workers. Most answers rehearsed the development of the case law on the free movement of goods (*Dassonville – Cassis – Keck – Moped trailers*). The better ones analysed critically how previous formulae such as 'product requirements/selling arrangements' had fared. The best answers mentioned *Alpine Investments* and the question whether these categories could be transferred to the freedom to provide services and, by implication, to the other freedoms. Few answers attended to the meaning of 'market access' and to the question how it is different from the other two types of measure mentioned in the quote. Critical discussion of the literature led to high marks but was rare. No answer broached the suggestion in the literature that citizenship of the Union might serve, beyond the free movement of persons, as a unifying principle for all freedoms.

Question 2 – Citizenship of the Union: A good answer to this question required an explanation which rights individuals enjoy under Article 45 TFEU and under Dir. 2004/38 as well Reg. 492/2011, as interpreted by the Court. Few answers were both reasonably comprehensive and systematic in this respect. Most answers focussed on summarising the citizenship jurisprudence; the better ones did not only retell the cases but also critically reflected on them. Most answers came to the tenable conclusion that NicShuibhne's suggestion would lead to an extension of the rights that EU citizens enjoy, but only the better answers wondered whether Nic Shuibhne offers a workable, sensible, and desirable criterion.

Question 3 – 'National procedural autonomy': Most answers offered the required summary of the seminal cases to explain 'national procedural autonomy', especially the limitations of 'equivalence' and 'effectiveness', and the principle that Member States are under 'no duty to create new remedies'.

A good number of answers rehearsed the prevailing account in the literature that identifies three phases in the development of the jurisprudence. The best answers had reasoned objections to this interpretation. They pointed out that the term 'remedies' is ambiguous in that it encompasses both procedure and substance, with the judgments in *Francovich, Marleasing, van Duyn* etc. representing the substantive side. This ambiguity was noticeable in the quote with the unexplained shift in terminology from 'procedural rules' to 'remedies': this did not escape the very best answers.

The best answers also suggested that the clash between substantive EU rights on the one hand, and national procedural rules on the other, is solved in the same way as a conflict between substantive provisions on both sides: if a conforming interpretation of national law is impossible, EU law asserts is supremacy, as occurred in *Factortame*.

The depth of the preceding analysis was reflected in the stance candidates took with regard to the Bobek's assertion that there is 'no freedom of choice' for Member States and that judicial unification is 'limitless'. Bobek's contrasting judicial with legislative unification of remedies prompted some (misguided) discussion of EU competences (especially Article 114) and 'direct effect' etc. in weaker answers: in this, the confusion between substance and procedure returned.

Question 4 – 'Direct effect': All answers offered a summary of the case law regarding 'direct effect', especially that there is no 'horizontal direct effect' of Directives. Virtually all answers also showed familiarity with the line of argumentation found in the literature, to the effect that the Court works around this self-imposed, allegedly unwarranted restriction in several ways.

The better answers enumerated these, and the best had critical replies that took issue with the analysis offered in the quote, and even with the very terminology that is dominant in the literature. The best answers also highlighted that this terminology is not found in the jurisprudence, but presupposes a certain interpretation of that jurisprudence, which is neither inevitable in itself, nor necessarily the way the court approaches the question.

Question 5 – Subsidiarity: This question was largely a variant on past questions. Virtually all answers showed an awareness of at least some case law, and the better answers could coherently explain the connection between competences and subsidiarity. Most candidates were familiar with at least Protocol 2, some also with Protocol 1 to the Treaty, and even fewer with the negotiations of the Prime Minister of the UK with the leaders of the other Member States and the Commission in February 2016: these negotiations also touched on the involvement of national parliaments. The better answers could identify positions in the literature and discuss them critically, with the best ones integrating the discussion of case law and literature.
This was traditional FHS fare, and any position regarding the proposed veto was acceptable as long as it was reasoned. Worryingly, however, barely a handful of candidates noticed that the proposal was to be realised by means of a Regulation, whereas the present 'yellow' and 'orange card' mechanisms are laid down in a Protocol. The proposed Regulation could not lawfully be adopted (and hence not 'better protect' subsidiarity): a piece of secondary Union law cannot modify primary EU law, here the provisions in the Treaty on the adoption of secondary law. Instead, the proposal would require a Treaty amendment or (an addition to) a Protocol, so as to place it on the same level as the Treaty.
Those who saw this problem were awarded extra points, and those who came up with a solution even more. Nevertheless, it was possible for candidates to reach a first class mark for this question even if they had not spotted the only deviation from previous exam questions on this topic.

Question 6 – Scope of application of the Charter of Fundamental Rights: The answers to this question were largely disappointing. Students should have run through the case law, and noticed the shift in terminology from 'acting within the scope of EU law' (*Åkerberg* and earlier judgments) to 'implementing EU law' (Charter). This was recently clarified in *Dano* and *Alimanovic*, which recognised that the Member States' invoking permissible exemptions from free movement provisions does not amount to 'implementation' of EU law. There was also little explanation why the EU protects human rights in the first place (namely because EU law's claim to supremacy would otherwise deprive individuals of the protection they enjoyed under national law, see *Solange I*), and how this might influence the interpretation of Article 51 (*viz.* that 'implementation' is present only where the Member States 'stand in the shoes' of the EU). First class answers might also have reflected on the relationship between case law and primary Union law such as the Charter.

Question 7 – Supremacy: This question was even more conventional then Q5. Most candidates ran through the *'Solange'*-saga and then explained how this was reflected in recent UK case law; better answers drew on jurisprudence from other Member States as well. Overall understanding and accuracy in the details varied widely. The better answers critically analysed the quote, but also any voices in the literature that would debunk or endorse the position taken by the Supreme Court. Because it was difficult to say anything new, there was a premium on transparency and coherence of argumentation.

Question 8 – Procedural mechanisms for the uniform application of EU law: Virtually all candidates mentioned Article 267, and most discussed either *CILFIT* ('acte claire') or *Foglia* or both, therein largely reproducing interpretations found in the literature. Few mentioned that while the Court's judgments apply strictly only *inter partes*, in fact they bring clarification of the law *erga omnes*. A number of scripts also discussed the duty to refer and the consequences of its breach, as first laid out in *Köbler*.
Fewer answers saw the relevance of Article 263 for the question, but those who did correctly identified the Court's monopoly of quashing EU legislation (*Foto Frost*), as buttressed by Article 267(b) (*Süderdithmarschen*). No candidate saw that the Court under Article 263 also interprets the Treaty, including the four freedoms, which bind the Union legislature as much as the Member States. Not to have seen this point did not, however, lead to any deductions from the mark awarded.
Extra points were awarded for spotting, and even more for discussing, Article 258. Although this provision is not on the syllabus anymore, it could not have escaped the careful reader as the procedural backdrop to all cases '*Commission v [Member State]*' throughout the reading list.
Despite the clear wording of the question 'procedural mechanisms to ensure the uniform application of EU law', a small number of candidates discussed 'direct effect' etc here. Regardless of how one categorises these developments in the case law (see Q3), a thorough explanation would have been required in what sense they are 'procedural mechanisms', and how they relate to the 'application' of EU law, rather than being the very law that is to be applied.

Question 9 – Services and establishment problem: This question required careful analysis, not seen in many answers, of which freedoms were applicable: (a) and (b) concerned services, not workers; (c), establishment, not services; under (d), many candidates erroneously discussed the free movement of goods (*Moped trailers*), whereas Segs in the City does not propose to sell its Segways; what amounts to a restriction of each freedom, and whether the measures taken by Aachen and Germany fit that definition: the best answers criticised the criteria deployed by the Court, and offered an alternative approach. While this did not lead to any deductions, it was still disappointing that not even the DLS and Course 2 students seemed to be aware that Charlemagne's empire encompassed all six founding Member States of the (then) EEC, rather than being a precursor only of the Federal Republic (as is reflected in the city's other name, Aix-la-Chapelle); whether for the measure, if found restrictive, a ground of justification could be identified, either in the Treaty or as an 'imperative reason' pursuant to the Court's case law, which was also pursued by proportional means. If candidates had come this far in a technically competent way, (almost) any answer regarding proportionality was acceptable.

Question 10 – Competences and standing problem: As far as the admissibility of an action under Article 263 (standing) is concerned, the problem raised only two issues that required some more analysis, namely the involvement of associations, and that the challenge here targeted a Directive rather than a Regulation or Decision. As far as the validity of the Directive is concerned, whether to be discussed in the context of Article 263 or of 267(b), the question of EU competence under Article 34/114 arose, as well as that of subsidiarity. Candidates who focused exclusively on *either* admissibility *or* (more rarely) substantive grounds struggled to obtain high marks.

FAMILY LAW

The quality of answers was high, with very few weak papers. Most candidates prepared thoughtful answers and demonstrated a good understanding of the underlying theoretical debates in the subject. The best papers distinguished themselves by intense focus on the precise question, independence of analysis and detailed knowledge of the law. The weakest papers tended to lack sufficiently precise knowledge of the law and this was particularly evident in the discussion of areas such as financial provision and child protection in which there is extensive case law from the higher courts.

Question 1: This question attracted some of the strongest but also some of the weakest answers on the paper. The best answers demonstrated an impressive knowledge of the detail of the case law and statute and focused intently on the question of justification, with a strong knowledge of the academic literature on this issue. The weakest answers tended to assume that the answer to the question lay in 'fairness' without considering whether that term was capable of offering a *justification* for the courts' role. These candidates tended to give a very general explanation of the developments in the key cases of White and Miller/McFarlane without relating those developments to the question of justification.

Question 2: This question required candidates to consider the relationship between the allocation of legal parental status and the best interests of children. The best answers distinguished between rules that promote the best interests of children in general and the individualized welfare principle, noting that the latter is only a feature of this area law in limited circumstances (e.g. parental orders and adoption). These answers considered the competing considerations that might be relevant in allocating of parental status and the difficulties in assessing children's likely best interests across the range of circumstances in which a child may be conceived. The weaker answers tended to assume that best interests should be the primary concern of the law in this area, without critically evaluating that assumption. The very weakest answers confused the rules on allocation of legal parental status and parental responsibility and erroneously assumed that the welfare principle was generally applicable in relation to assigning parental status.

Question 3: This question, concerning the effectiveness of the law's response to domestic violence, received only a handful of answers. Those answers were, however, generally very strong. Good answers considered the theoretical literature both in defining domestic violence and the proper aims of the law against which effectiveness may be assessed. Candidates also covered a wide range of aspects of the law, looking at the topics covered on the domestic violence reading list and then beyond to other areas of the subject such as the courts' approach to domestic violence in making child arrangements orders.

Question 4: This question was the most popular on the paper and was answered by around two thirds of candidates. Candidates were fairly evenly split on the question of whether the legal institution of marriage should be abolished, with a slight majority in favour of its retention. The question was sufficiently open to allow a number of different approaches to it. Most candidates gave a good critical analysis of the current law on marriage, with strong answers drawing on a detailed understanding of various aspects of the law on nullity and divorce. Candidates arguing in favour of marriage tended to advocate reform of areas such as the law on consent, sexual relationships, formalities and the Gender Recognition Act. Some answers focused on the question of whether status relationships should remain the primary means through which the law regulates adult relationships, with many favouring an increased focus

on dependent and caring relationships regardless of form. Answers favouring status relationships also considered whether marriage was the appropriate status relationship to choose or whether civil partnerships could be adapted to provide a wholly civil legal status as a replacement for marriage. All of these approaches to the question produced successful answers.

Question 5: This was, perhaps surprisingly, not a particularly popular question but it was generally answered well. The question required candidates to look beyond the familiar topic of the relationship between genetics and parenthood and to also consider the wider recognition of biological ties in the law. Good answers considered a wide range of aspects of the law. Most answers considered the use of parental responsibility and child arrangements orders to recognize genetic fathers who did not have a primary parenting role, particularly in same-sex parenting cases. Most candidates also considered the relevance of genetics and gestation in disputes between parents, with some very good analysis of Baroness Hale's speech in *Re G*. Good answers also looked at the child protection context and considered whether the priority given to retaining care within the family, maintaining contact and reunification could be seen as having a biological basis. The best answers considered whether the value of biological ties varied between these contexts.

Question 6: This was a popular question and produced some very good answers but also some weaker, rather general answers. The best answers demonstrated a strong knowledge of the complex case law on the interpretation of s31(2) Children Act 1989 and gave a very good critical analysis of the law in the light of the quotation. The best answers also gave particular attention to the human rights context of the quotation and considered the extent to which those rights affected. Weaker answers often lacked detailed analysis of the relevant case law and ignored the human rights context of the question. A number of answers had misunderstood the case law on uncertain perpetrators, particularly *Lancashire* and *Re J*.

Question 7: This was another popular question and was generally well answered. The strongest answers combined an excellent analysis of the academic literature with careful consideration of the case law on welfare from a range of areas. Many candidates rejected the assumption behind the question, arguing that the principle was not indeterminate or that indeterminacy was a strength rather than a weakness. Other candidates identified weaknesses of the welfare principle that they ranked as more significant that indeterminacy, most notably the rights of children and the interests of adults. Weaker answers tended not to consider the meaning of 'indeterminacy' in any detail and were rather general in discussing the application of the welfare principle in practice.

Question 8: This question was only answered by a small number of candidates. Those answers tended to draw on two or three examples from across course including: child protection; nuptial agreements; dispute resolution; religious marriage; and cohabitation. Good answers distinguished carefully between the different contexts and the extent to which wider interests justified intrusion into the 'privileged sphere' in each.

Question 9: This question attracted a large number of answers, although they were of mixed quality. Quite a number of candidates focused primarily on the allocation of parental responsibility to unmarried fathers and on the related degradation thesis. Whilst this was certainly relevant to the question, a good answer also required consideration of the practical utility of parental responsibility. Surprisingly, only a small number of candidates considered the acquisition of parental responsibility by local authorities or by non-parents.

Question 10: This question attracted too few answers to give a general comment.

Question 11: This question asked candidates to evaluate whether children had benefitted from being recognized as rights holders by the UN Convention on the Rights of the Child and by the European Convention on Human Rights. Several candidates seemed keen to produce prepared answers on whether children could possess rights in theory or on whether children's rights differed from adults' rights. These theoretical questions *might* be relevant to the actual question asked but that link needed to be explained, something that was often lacking. There were, however, also some very good answers that maintained a close focus on the relevant instruments and the case law surrounding them and linked that discussion back to the theoretical debates. A number of weaker answers appeared to assume that welfare and rights were mutually antagonistic alternatives, without considering whether they could work in harmony together and whether rights benefitted children outside of areas covered by the welfare principle.

Question 12: This question was generally done well. Candidates tended to consider both the law on adult status relationships and on parenting relationships with a good focus on the question of *practical* relevance. Knowledge of both of these areas was generally high and answers reflected a strong understanding of the law and academic literature.

HISTORY OF ENGLISH LAW

Five candidates attempted this paper. The standard of scripts was good. The most popular question was Q 11 (a) (origins of the doctrine of consideration). It was slightly surprising in the light of previous years that Q 9 on the history of negligence attracted no attempts. Given the small numbers, no further comment is possible.

HUMAN RIGHTS LAW

A large proportion of candidates did very well in this paper. Out of the 25 candidates who took the exam, 11 obtained first class marks. There was one 2:2 and the rest were across the spread of 2:1 marks.

The absolute best essay answers were those which focused only on the question, which had a full coverage of the relevant case law, and which drew on the academic and analytical material available to frame the debates. Where candidates were able to achieve this they were richly rewarded. The candidates who covered case law at the expense of academic commentary, and the candidates who covered academic commentary at the expense of case law were almost always in the 2:1 range. The difference between them was in the depth of coverage or focus on the question set.

Students covered the full range of essay questions set, and there were no stand out misunderstandings of the question or of the material. It was sometimes evident that students had prepared essays for questions which weren't set. In these circumstances, such as the question on prisoner resocialisation, they were sometimes tempted to reframe subjects to fit the answers. This led to sometimes weaker results.

A final point is that the answers to the problem question were generally of a very high standard, and those that spotted all of the relevant legal questions did really very well indeed and were awarded marks in the high 70s. There was only one attempt which didn't quite make it to distinction level. As a consequence, students should be encouraged to attempt problem questions more often.

Finally, students are to be congratulated on managing to cover the full range of ECHR, EU and UK materials in their answers. This was a novel approach in the course this year, and students responded admirably.

INTERNATIONAL TRADE

There were five candidates for this paper. With so few candidates, it is difficult to generalise about the overall standard or about many of the individual questions.

The most popular essay question was question 5, where candidates tended to answer on *Gill & Duffus* and *Spar Shipping*. The answers to this question were generally sound, and adopted the requested critical perspective. Two candidates answered question 2, and one candidate answered each of question 1 and question 4. None attempted question 3.

As for the problem questions, the most popular was question 6, which was tackled by all five candidates. There were two aspects of this question that tended not to be handled as effectively as the others. One was the deck stowage issue, with some candidates failing to appreciate that unauthorised deck stowage is itself a breach of the contract of carriage, so that for the crate stowed on deck resort to article III.2 of the Hague Visby Rules was unnecessary. And the other was the possible claim against the stevedores in tort for their negligent handling of one of the crates of equipment. Question 9 (which was answered by three candidates) tended to be handled well, except that a couple of candidates missed the possibility of a freight claim by the carrier against M and/or N. Of the remaining problem questions, two candidates attempted question 10, and one candidate attempted each of questions 7 and 8.

JURISPRUDENCE

The examination scripts in this year's paper were generally sound, with many solid 2:1 performances, and a number of excellent first class answers. The first class answers displayed three qualities: (i) attention to the set question; (ii) a good grasp of the relevant literature; and (iii) the ability to use the knowledge to advance an argument and come to some conclusion. Answers in the 2:1 range lacked the full range of qualities seen in the first class answers, particularly in failing to focus their attention on the set question, or failing to provide a sustained argument in support of their conclusions. Answers in the lower second class displayed a weak knowledge of the material, and a tendency to simplistic positions. They also, too often, confused assertion of their preferred view with arguments in favour of it, and dismissal of alternative views with criticism of them.

By far the most popular questions were those on the moral limits of the law (question 6) and the obligation to obey the law (question 10). Some of the answers on the moral limits were excellent, engaging with the quotation from Raz to explore the basis of the harm principle and the enforcement of morality. Less good answers tended to either be unfamiliar with Raz's

perfectionist defence of the harm principle, and/or to fail to distinguish between the enforcement of positive morality and the enforcement of critical morality. Answers to the obligation to obey gravitated in two directions: at the lower end, pedestrian surveys of a range of well-worn and well criticised grounds for the obligation to obey; and at the higher end, informed engagement with arguments from co-ordination and expertise as possible bases for such an obligation.

Less popular, but with many takers, were questions 4 (law and the common good), 5 (whether law must claim authority), 7 (the rule of law) and 8 (Dworkin and the varieties of positivism). There were a range of excellent answers on these topics, particularly from candidates who could see the complexity of the issues at hand and advance a subtle response to those complexities. Less successful answers either lacked sufficient knowledge to address the set question, or were unable to see the potential weaknesses in their own views or the potential strengths in the views criticised.

Least popular were questions 1 (the nature of 'legal' obligation), 2 (the generality of the concept of law), 3 (the rule of recognition and/or the *Grundnorm*) and 9 (methodology in the theory of law), though those who knew what they were doing produced some very good answers.

JURISPRUDENCE MINI-OPTION ESSAYS (topics in alphabetical order)

Constitutions: Three candidates took this option. Two questions were attempted: on what determines the content of the ultimate rules of recognition of a legal system and on whether unconstitutional change of a constitution is always revolutionary. The standard of answers was good, in some cases even very good, but not excellent (no one scored above 68). The better essays attempted to go beyond presenting a collection of summaries of the readings and to produce their own argument, showing some evidence of independent research and thought. However, even those arguments were not developed enough to rise to a first class level.

Contract Theory: The field as a whole was impressive, with a high proportion of dissertations of a First Class standard or thereabout. All three questions were attempted, and it was pleasing to see First Class answers to the same question that had very little in common (in terms of the overall thesis, the focus chosen by the candidates, and even the literature discussed), yet were equally characterised by depth, nuance, originality, serious engagement with pertinent theoretical literature and close attention to the precise terms of the question.
The lower end of the achievement spectrum was characterized primarily by textbook-like treatment of the questions, with philosophical theses from the literature summarised sketchily (sometimes with one sentence) and endorsed or rejected without sufficient reason or argumentation.

Equality: Question 4, on the independent significance of equality, was the most popular of the three. Most who answered it did so by offering a competent summary of the literature, contrasting what Parfit calls the principle of equality both with Parfit's own priority view and Frankfurt's sufficientarian variant. These summaries tended to occupy too much of the essay, leaving little space for critical analysis of the positions being contrasted. The best answers engaged creatively both with the leveling down objection to the principle of equality, and Otsuka and Voorhoeve's recent criticisms of the priority view.

Question 5, on the grounds of equality, and Question 6, on luck egalitarianism, attracted only a handful of candidates. Question 5 invited discussion of the significance of interaction to egalitarian duties of justice: do those duties pre-exist interaction? If not, what kind of interaction generates them? Question 6 invited discussion of the role of luck in egalitarian thought: is the moral concern of egalitarians ultimately with ironing out the influence of luck on distribution, or is that concern to be found in a different place? There were some excellent answers to both these questions. Their authors worked hard to clarify the positions under discussion—rightly refusing to accept easy caricatures—and were able to expose vulnerabilities in even the strongest arguments for those positions. Careful work of this kind was richly rewarded by the examiners.

Feminist Jurisprudence: Which of the following concepts are most helpful in uncovering atriarchal bias in law: sex, sexuality, or gender? Why? This was not a popular question and the quality of the answers submitted varied. The good answers considered the central terms 'sex', 'sexuality' and 'gender' in considerable depth, making extensive use of the literature.

'Equality suffers from a "mathematical fallacy"—that is, the view that only things that are the same can ever be equal'. [Littleton, *Reconstructing Sexual Equality* (1987)]. Discuss. This was the most popular question. Most submitted essays dealt with it well. The excellent ones were able to combine an analysis of the legal materials from the reading list, especially the cases, with the theoretical literature.

Is gender equality the right lens through which to analyse prostitution and its legal regulation? This question was also reasonably popular and yielded solid responses. The best essays drew connections to theoretical questions discussed elsewhere in the reading list (especially week 1), especially for the framing discussion of what is 'gender equality'.

Freedom of speech: The essays showed a good standard of work this year, and the best first-class papers were really excellent, demonstrating thoughtful analysis, wide reading, and precise writing. By far the most popular questions were the topics on offence and on pornography. The quotation from Mill was less frequently attempted, and the essays less good, suggesting that the candidates had a weak grasp of Mill's general moral philosophy, and thus some uncertainty about the bearing of the claims in the quotation. A cluster of essays on offence and pornography did little more than summarise and elaborate notes from the class discussions—they received marks in the lower second class range. Those who scoured the internet for materials from the news, or works that were not peer reviewed wasted their time: none of this material added to their essays, and some of it took them down blind alleys.

Judicial Review of Legislation: The essays were spread fairly evenly over the three questions set. Most of them were impressive, skilfully addressing both practical issues in constitutional law and related questions of legal theory. All of the candidates demonstrated that they had carefully reflected on the material. The quality of argumentation varied: the stronger essays employed pointed and clear analysis, while others were more loosely written or lingered too long at a general level. Some candidates made creative use of examples from different constitutional systems, and others usefully engaged with articles beyond the reading list. While both of these strategies were successful, neither was necessary for a good mark. Some of the strongest points in the essays involved nuanced engagement with the academic literature on the reading list, and some candidates did this in a penetrating and profound way.

Justice and Taxation: 18 candidates chose this mini-option. The question concerning Robert Nozick's claim that "patterned principles of distributive justice institute (partial) ownership by others of people and their actions and labor" was the most frequently attempted, but both other questions were attempted by a significant number of candidates. One candidate scored below 60; there were seven marks of 70 or above. 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.

Law and Social Theory: The 19 candidates attempted the topics of Marx, Weber and Arendt in roughly equal numbers. Although most candidates were able to provide a clear and accurate account of the relevant ideas of Marx and Weber, essays on Arendt often lacked clarity in their accounts. Many candidates distinguished themselves by referring to a wide range of literature on these topics, with the better candidates demonstrating an ability to provide a good critical assessment of that secondary literature. Credit was given for attempts to provide and to discuss examples that might support or undermine the kinds of claims being investigated, such as comparing examples of modern welfare legislation with the Marxist thesis of law being an instrument of class oppression. The best answers reached a clear conclusion or set of conclusions that occupied a couple of pages of summary, explanation, and justification. Of the 19 candidates, 7 obtained marks of 70 or above.

Legal Pluralism: Four candidates attempted this topic and all achieved a good standard, demonstrating a good understanding of a wide range of literature. The topic of lex mercatoria received some particularly strong answers. The better essays achieved (a) a sustained critical analysis of some of the literature in which the strengths and weaknesses of viewpoints were examined with care and (b) a well-illustrated argument by using pertinent examples drawn from their knowledge of the law in other subjects ranging from Roman law to international law. Of the four candidates, one obtained a mark of 70 or above.

Morality and the nature of law: There were three questions, covering the material discussed in class. Most candidates attempted the question whether it's in the nature of the law that it purports to give rise to moral obligations. The overall quality of the essays was good, exceeding that of essays written for the general FHS paper in Jurisprudence. Weaker essays merely summarized some philosophical position. The better essays showed a good level of comprehension and included critical discussion of the relevant philosophical views.

Philosophy of Punishment: There were 21 candidates for this mini-option. Three candidates answered question 13 on the role and authority of the state to punish; two answered question 14 on proportionality and the principle of equal treatment; and sixteen answered question 15 on Utilitarian theories of punishment.

Really good answers were given to all three questions. The best were very well written and genuinely interesting to read. They engaged in an exceptionally focused and sustained way with the question set to provide insightful and often sophisticated answers. All evidenced really wide reading, thoughtful reflection on the academic debates and a very good appreciation of the complexities of the problems addressed. The best essays analysed the conceptual issues in play acutely and intelligently.

Most of the essays similarly drew on wide-reading, which was evidenced in their reference to and engagement with the academic literature. They demonstrated a good level of

understanding, although many stayed very close to the literature without really developing a sustained line of argument of their own. Most of these mid-range essays would have benefitted from deeper reflection on the question set, a greater willingness to develop a clear line of argument in answer to it, and closer attention to planning and structure.

The weaker essays either did not address the question set but instead simply offered an overview of the field in question or their answers were marred by misunderstandings or misrepresentation of the concepts and theories under discussion.

Happily, most essays drew effectively on the mini-option seminar discussions and gave evidence that the candidates had though hard about how to relate debates in the philosophy of punishment to their wider learning in the Jurisprudence course.

Statutory and Constitutional Interpretations: Essays were well-written and thoughtful but were let down at times by some lack of engagement with the relevant literature and by a failure to draw together disparate threads into a coherent argument and/or to address counter-arguments and alternative points of view

Theories and models of rights: This was a very difficult and demanding class in terms of subject matter. Most of the students fared admirably – especially given the equally challenging exam questions, which made the mere regurgitation of the course materials as answers an unprofitable approach. Recognising this prospect, however, a few students went on Google fishing expeditions to colour their answers. More often than not this harmed rather than helped them, for the students often misunderstood those additional sources and used them inaptly. Other students failed to grasp the essentials of the taught material. This was especially odd, as, despite being provided with the lecture notes (along with handouts), some students systematically presented the opposite of what was stated about philosopher X's view in the lectures as being the case. Unsurprisingly, most students had a very firm set of opinions about what 'a right' is and how best to model it. Even so, more work was needed *in terms of providing reasons/arguments* defending each examinee's preferred view, especially in light of the amount of time spent in class dealing with the criticisms and rebuttals to several candidate views. On the other hand, a few of the papers – even some of those that exhibited the above types of problems – displayed ingenious use of the course materials. Some brought together materials from different parts of the course in wholly novel ways in order to answer the exam question; others evidenced quite sophisticated levels of reflection on the problems inherent in trying to weigh and compare different philosophical accounts.

Theory of Public International Law: The 10 students who chose this mini-option performed well overall. The best answers engaged creatively with the questions and reflected carefully on the meaning of the different terms and concepts raised by the three questions. Many combined the materials studied in the seminars with independent research and/or their own examples relating to contemporary international affairs. Less sophisticated answers reiterated the standard debates on the importance of sanctions and consent in law and on the legal quality of international law without taking the specific nuances of the questions into account.

Theory of Discrimination Law: Question 35 on direct and indirect discrimination was the most popular, with some very good answers. The best students drew upon the interaction between law and theory, paid close attention to every aspect of the question, and had done some good quality independent research. On the whole, the quality of the answers was high. Poor structure and lack of a clear argument were penalised.

Theory of Intellectual Property: The essays submitted by students taking the Theory of Intellectual Property mini-option were of high quality overall. Of the eight submitted, three received marks of 70 or more, and the remaining five received marks of between 62 and 67. Five of the candidates attempted the question concerning gene patenting, and three of the candidates attempted the question concerning parody. The best essays on gene patenting were those that subjected Gray's notion of non-excludability to scrutiny while also going beyond that notion in answering the question. The best essays on parody were those that drew on a range of sources and connected their analysis of parody clearly to their philosophical discussion of authors' rights.

Tort Theory: Candidates were set questions concerning (1) the distinction between justification and excuses, (2) the rights-based model of tort law; and (3) the imposition of strict liability in tort law. Most candidates opted to write about either (1) or (2). Overall, the essays were of high quality. Many essays demonstrated reading that went well beyond the confines of the prescribed reading. The strongest essays tended to offer their own stance on the puzzles concerned and defended that position by reasoned analysis while the weaker essays usually consisted of summaries of the relevant literature. The better essays also had a clear structure and made a sustained argument throughout.

LABOUR LAW

On the whole, candidates in FHS Labour Law performed extremely well. The best scripts were attentive to the specific question set, and made an attempt to develop arguments that responded to that question. Weaker candidates tended to present more generic answers that were broadly relevant to a topic. Stronger candidates also engaged with the detail of legal reasoning in key cases relevant to the question, rather than name-checking judgments without deeper engagement. It was also pleasing to see that many candidates engaged with the secondary literature, where relevant, to support their arguments. Questions 1, 3, 9, and 10 did not attract many answers, but on the whole were very well-answered when attempted. The following questions were more popular, and warrant specific comment:

Question 2 was a popular question. Better answers addressed the issue of what 'purposively' might mean, and were able to identify the ambiguities in the case law on the content of 'purposive' interpretation. Those answers also attempted to compare the interpretive approaches across the three categories of personal work identified in the question, identifying similarities and differences (especially in relation to different 'worker' categories in *Jivraj* and *Bates van Winkelhof*). Candidates who treated the question as an invitation to trot out a generic answer on 'personal scope' fared less well.

Question 4 was popular and generally well-answered. Better candidates examined the distinction between 'direct' and 'indirect' discrimination across different 'protected characteristics', and used the relevant academic literature to assess whether the distinction had a normative significance that might illuminate some of the definitional problems and ambiguities in the Equality Act framework.

Question 5 attracted many answers, but there was an unfortunate tendency to treat this as a generic 'what are the failings of the Equal Pay legislation' question. The quotation was more specific than that, and better candidates attempted to address the particularities of the

quotation (in particular, the idea of the law having 'general limitations' in bringing about social change, and the links with collective laissez-faire and the historical controversies about the limits of legal regulation.)

Question 6 was less popular, but it was generally very well-answered. Candidates took seriously the reference to 'integrated' in the question, and explored what an 'integrated' legal strategy might look like. They also considered the ways in which working time and minimum wage regulation interacted with each other, for example on the issue of 'working time' and its definition and interpretation in the case law.

Question 7 was well-answered, with candidates demonstrating a pleasing ability to understand the pattern of judicial decision-making in *Addis*, *Johnson*, *Malik* and *Edwards*. The answers demonstrated a sophisticated grasp of the wider constitutional context, and more general issues raised by the interaction between statute and common law. It was also pleasing to see candidates arguing for a diverse range of positions on the problems thrown up by these cases, and using relevant legal material and secondary literature to support their arguments and diverse conclusions.

Question 8 was well-answered, with better candidates examining the significance of human rights law and its relevance to the development of the proportionality standard of review. Specifically, the existence of 'automatically unfair reasons' provided an example of how the legal framework treats some types of 'human rights' dismissals as not amenable to a proportionality analysis. In contrast to substantive review of dismissal decisions, candidates gave less attention to the role of procedural protections in unfair dismissal law.

Question 11 was very popular. The best answers considered the common law *alongside* the statutory regime of protection, in assessing whether the common law struck an appropriate balance between competing rights. Weaker candidates ignored the statutory framework altogether, which undermined the scope to develop a reasoned argument. There were also some interesting and imaginative comparisons between the relevant standards of protection under Article 11 of the European Convention on Human Rights and the common law regulation of trade union discipline and exclusion.

Question 12 was popular and generally well-answered. The best answers engaged with the controversies over the meaning of a 'right' to strike, and the differences between collective and individual rights in assessing the cogency of the quotation. Those answers also considered the significance of 'margin of appreciation' under Article 11 following *RMT v UK*, and developed their answers using appropriate legal detail from the domestic framework to support their arguments.

LAND LAW

The overall standard of answers in land law was pleasing. In contrast to remarks made in previous examiners' reports, many candidates made detailed reference to statutory provisions and were aware of formality requirements.

The most popular essay questions were questions 3 (alteration) and 4 (leases). Both were answered with reference to statute, case law and academic commentary and some answers were very good. In relation to question 4, although *Berrisford v Mexfield* was appropriately

mentioned by most candidates it was often explained as doing even more than that it does. For example, some candidates said it would convert *all* periodic tenancies into 90 year leases, and the cause of 'uncertainty of term' in the case itself was seldom referred to. As will be seen in the comment on question11, *Mexfield* seems to creep into areas and arguments where it does not belong.

Question 1 was only answered by a few candidates, and Question 2 on the new Regulations paper (adverse possession) was not very popular. Question 2 on the old Regulations paper (severance following relationship breakdown) was reasonably popular and generally reasonably well answered. Although interesting arguments can be made that recent cases, such as *Jones v Kernott*, challenge conventional approaches to severance, candidates did not receive high marks if they used question 2 as an opportunity to discuss (only) this line of cases without displaying any knowledge of what severance is or of the various 'acts of severance' under statute and common law.

In both questions 5 and 6 the candidates who obtained the highest marks not only explained the relevant areas of law in detail but also thought about what the ideas of 'burdens on land' (q5) and 'fairness' (q6) contributed to the analysis.

The covenants problem question (q7) was answered best by candidates who were able to follow a clear structure, explaining in detail the rules on the enforceability of covenants but also paying attention to which party was seeking to enforce a covenant and whether they could show that the benefit had passed to them (not infrequently, answers did not note that Brooke had bought Plot 7 prior to the covenants in relation to Plot 6 being entered; and several also assumed that it was Brooke who had promised to repair the roof). This careful attention to the ordering of transactions, and who is seeking to enforce the benefit against whom, is often overlooked in answers to covenants problems. Few candidates noted that the covenant not to cut trees was included only in the conveyance of Plots 1-6, and this might be relevant to whether there is a 'scheme of development'. In hindsight, it was unhelpful that the problem stated that the transactions took place before 2002 (when the Land Registration Act 2002 replaced the Land Registration Act 1925), but the key issue here is to note that the 'notice' requirement of *Tulk v Moxhay* has been replaced by the requirement of a register entry and a generous approach was taken to candidates in relation to this issue, with the very small number of candidates who identified this complication being duly rewarded.

Most candidates dealt reasonably well with both aspects of Question 8 which raised issues firstly in relation to interests that override and whether Nigel's conversation with Esme might prevent him from asserting priority over the mortgagee, and secondly as to whether Damien's licence would affect Caleb. The best answers payed close attention to the facts and how these might affect the application of case law; for example, factual differences between this situation and the (sole) occupier in *Link Lending*, this being a post-acquisition mortgage (unlike, eg, *Cann*); and that Damien's licence did not appear to be contractual.

In question 9 candidates generally noted that this was a sole name case and discussed the principles that they thought should apply to working out whether there was a trust, as well as the factors would be relevant to working out the size of any share that Jasmine had. Some candidates omitted any substantial discussion of whether Jasmine could require Henry to sell the house, requiring a discussion of the TOLATA 1996, and their marks reflected this. Several candidates usefully also considered whether, if sale were refused, an occupation rent might be payable.

In Question 10 most candidates focused on estoppel although some additionally – and intelligently - considered other, less probable, routes for K to succeed. The issue of estoppel was generally answered well with candidates addressing what is necessary to establish estoppel, the impact on third parties, and how relief is approached by courts. Better candidates engaged with factual detail in a more nuanced way: for example, was there really reliance and detriment on these facts, was Kian in occupation of the whole farm or only the cottage for the purposes of Schedule 3? Disappointingly few gave much thought to how unconscionability might play out in this factual situation, particularly given Lydia's changed personal situation. Some candidates, reluctant to find Mohammed bound, would grant a remedy against Lydia without explaining the basis for this or noting that this would be unusual.

The first part of question 11 focuses on how possession and payment of rent is understood in the context of a non-finalised 25 year lease. Although *Javad v Aqil* is the most useful case to refer to in this context, candidates were given credit for explaining the issues from general principles. A number of candidates, did, however see the *Berrisford v Mexfield* case as strongly relevant in a manner that was not clearly explained and is difficult to fathom given that the putative term here was certain. The second part of the question, to do with whether the father had a lease or a licence, and the impact of this agreement on William, was often dealt with in a fairly pedestrian manner. Again, the stronger answers thought more carefully about how the well known case law and principles might apply to this factual situation, given, for example, that Zara had copied the agreement from the internet (was there anything 'intentional' about the terms used?) and that the accommodation was a 3 bedroomed house for a family.

MEDIA LAW

The Media Law course ran for the second year in 2015-16 with 20 students taking the exam. Five candidates gained first class marks, twelve gained upper second class marks, and three gained lower second class marks. The stronger scripts engaged with the questions set, demonstrated a broad knowledge of the legal material, used the secondary literature and relied on a conceptual framework in their answers.

Q1. **Contempt of court.** The question invited candidates to consider the extent to which pre-trial publicity could be countered by measures targeting the juror rather than the media. Many candidates discussed the effectiveness of directions to the jury and the dangers of juror research. The stronger scripts also noted how the problem of media publicity can persist even when directions are effective, and also emphasized the role of contempt of court as a deterrent to the media. The weaker answers tended to set out the basic problems of contempt without exploring the issues in any further depth. This answer was mostly well done.

Q2. **Press regulation.** The question asked about the new system of press regulation and the possible alternatives, which allowed candidates to take the answers in various directions. Many candidates discussed the role of IPSO and questioned its independence. Others were more critical of the Recognition Panel. The best answers used the details of the scheme to illustrate their criticisms and avoided assertion. The weaker answers tended to provide a standard tutorial essay on press regulation, without fully engaging with both parts of the question.

Q3. **Protection of journalists' sources**. The question asked candidates to consider the balance between protecting journalists' sources and the competing legal interests that may be relied on

to secure a court order. Most candidates were familiar with the cases on journalists' sources and the issues concerning the interests of justice exception. Several candidates also commented on the weight given by the court to employers' interests in disciplining those who leak information. A number of candidates referred to PACE and RIPA. The better answers avoided simply reciting the authorities and considered the rationales for protecting sources and journalists' material.

Q4. The question was divided, giving candidates a choice of two issues:
4(a) – **Freedom of information**. The question asked candidates to consider the costs and effectiveness of the Freedom of Information Act 2000. This question was answered by two candidates.
4 (b) – **Open justice.** An open-ended question inviting candidates to critically assess the extent to which court proceedings are open to public scrutiny. The question was answered by one candidate.

Q5. **Privacy**. The question raised the issue of whether photographs taken in public places should be protected as private information. Many candidates showed a good knowledge of the main principles, discussing the more sensitive nature of photographs and the nature of the activity in the public place, as well as distinguishing between photographs taken of private and different types of public figures, adults and children. Stronger candidates drew upon some of the Article 8 decisions from Strasbourg and discussed the secondary literature. The weaker answers tended to slide into a general essay about misuse of private information, rather than the specific issue raised by the question.

Q6. **Interim injunctions**. The question invited candidates to compare the approach to interim injunctions in privacy and defamation. Nine candidates attempted this question, and included some very strong answers. Stronger answers compared the goals of defamation and privacy to consider whether the differing treatment in remedy was justified. Many referred to the role of Art 8 and discussed the secondary literature. The weaker answers seemed to miss the point of the question and simply discussed defamation and privacy law in general.

Q7. **Impact of the internet**. The question asked whether the current strategies for media law/regulation should be adapted in light of the digital media. The question allowed for candidates to select a number of issues to discuss as examples and the answer could be taken in many directions. Four candidates answered the question.

Q8. **Government secrecy**. The question was a fairly open-ended invitation to discuss the balance struck between media freedom and government secrecy. Five candidates answered this question, and the quality of answer was generally very good. The candidates had a good knowledge of the specifics and analyzed the material critically.

Q9. **The journalist/citizen distinction**. The question asked candidate to discuss a quotation stating that the distinction between journalists and citizens is now obsolete. Over half the candidates answered this question. Candidates could choose from a number of different areas of media law to answer the question. Many took issue with the view set out in the quotation. Many candidates also looked at the practical implications, such as how the protection for media freedom and the responsibilities imposed on the media can be more broadly applied. The weaker answers slid into a generic essay about the internet.

Q10. **Defamation**. The problem question raised a number of issues relating to the public interest defence and the responsibility for user comments. The best answers considered the types of factor likely to be relevant when applying s.4 of the Defamation Act 2013 and analyzed the facts closely, drawing analogies with earlier case law and evaluating the extent to which this would apply to the new defence, as well as distinguishing the different statements made.

MEDICAL LAW AND ETHICS

Overall this was a reasonably pleasing set of scripts. Most candidates showed a good awareness of the key cases and legal principles. They also showed a solid grasp of the primary literature. Very few scripts were below the 2.1 standard. There were, however, slightly fewer first class scripts than might be expected. There were two main reasons for this. The first was candidates were not subjecting the academic literature to the depth of analysis a first class answer would expect. For a first class answer more is required than summarising the views of others and simply stating "Prof X argues this, while Prof Y argues that." There needs to be thought given to why these learned people disagree and what the candidate sees as the attractions or disadvantages of the competing views. Second, too many scripts read like "well prepared chunks" to be inserted into any essay on a particular topic, rather than a genuine attempt to address the particular question addressed. First class essays typically demonstrate the candidate has, in the exam room, sought to use the material they have revised to answer the particular essay question asked.

Comments on particular questions are as follows:

1. End of life. This was a popular question. Generally candidates were better at discussing whether the law protected the right to death than whether the law failed to protect the right to life. The most impressive essays explored the relationship between the right to life and right to death and the extent they were, or were not, in competition.
2. Negligence. This question was not particularly popular, perhaps because it was not a "standard" clinical negligence question. A few weak answers simply discussed Montgomery. Just because the examiners use a quotation from a case, does not mean that the candidate is only expected to discuss that case. The best answers drew on a range of case law to explore the significance of autonomy in clinical negligence.
3. Presumption of capacity. This was a fairly popular question. It raised an issue which is rarely discussed in the literature and required candidates to think through the issue from first principles. There were some very impressive answers which drew on the autonomy literature and case law to explore what that had to say about a presumption of capacity.
4. Medical ethics and law. This attracted very few candidates. In a way this was surprising as it gave an opportunity for candidates to discuss any topic on the syllabus. However, candidates would need to be aware of the judicial use of abstract principles, which would have required a detailed knowledge of the leading judgments.
5. Interests of future children. Most candidates chose to discuss the question in relation to PGD. The majority of answers were perfectly respectable answers which summarised the views of leading authors on the issue, but failed to explore the deeper issues behind the debates or articulate why they found one set of arguments more convincing than another. There were a couple of excellent answers which got to grips with the "non-identity principle".
6. Ownership of bodily material. The strongest candidates were able to make insightful observations about the ambiguity of the quote (was it saying that the argument "people

do not own their bodies because it is not the product of their labour" was absurd; or was it saying it was absurd to argue that people own their bodies because it could not be said that bodies are the product of people's labour). Good answers were able to discuss Locke's property theory as it applies to the body ownership debate. There were quite a few weaker candidates who were not familiar with that argument, which is much discussed in the literature, and so struggled to make sense of the question.

7. Rationing. This question attracted few candidates. The better answers picked up on the focus on legal regulation and were able to discuss the literature on the proper role of the courts in this debate.
8. Fetal status. This was a very popular question. It was generally not particularly well done. Too many essays simply summarised some of the main views on fetal status, without focussing on the question asked. Even those that did focus on gradualism, many did not get to grips with why people find the approach attractive or what difficulties lawyers in particular might have in utilising it.
9. Problem question. This was not especially popular, but was generally well done. The best answers combined a careful analysis of the law and the literature around best interests.

MORAL AND POLITICAL PHILOSOPHY

In general, the work was of a good standard this year, though there were fewer really excellent scripts than in the recent past. The commonest failing in the answers to Part A was lack of deep engagement with the precise question set. The weaker answers often did little more than give a summary of issues raised in the seminar topic closest to the pertinent question. This was notable in the quotation questions, and puzzling in view of the fact that previous reports had stressed the point. So we stress it again: a summary of a 'topic' is not an answer to a question. In Part A, there was better performance on the questions on normative ethics than on the question on the subjectivity of morality: candidates struggled to distinguish the question whether some sort of subjectivist thesis is *true* from the question whether the issue *matters*. Though linked, these are not the same.

In Part B, candidates' showed good control of contending theories in political morality, with one exception: most seemed unaware of any possible justification for political authority apart from Raz's 'normal justification thesis'. This made answers to the question about government-without-consent quite patchy. More generally, some found it hard to apply what they clearly knew about liberty, authority, justice or equality to the institutional issues raised, none of which presumed more than very general knowledge of the relevant areas of law. The best answers deployed the theoretical frameworks they had learned to give an analysis of the actual legal and political issues at stake. Thus, the best answers on the question about liberty were alert to the fact that the question asked about the invalidity, not the prohibition, of slavery contracts. The best answers to the question on authority saw that it could be illuminating to explore why, if consent is unnecessary, referendums have sometimes been thought important in establishing constitutional authority.

Finally, the examiners commend the candidates on the standard of writing and presentation.

PERSONAL PROPERTY

Question 1: This was one of the most popular questions that attracted a range of answers. Most candidates were able to describe a proprietary claim and a tort claim, and the differences between the two. Weaker answers concentrated solely on the tort of conversion, even though the question referred to trespass and negligence as well.

Question 2: Most answers were able to explain and discuss the chattel lease cases, but few went beyond this. The stronger answers discussed restrictive covenants and security interests created by contract.

Question 3: This was a popular question. Weaker answers merely described the different legal consequences of mixture, manufacture and accession; stronger answers were able examine the difficulties in drawing lines between these doctrines.

Question 4: Although the few answers to this question were able to explain the different methods of transfer, not many were able to discuss the practical problems of effecting a transfer in a domestic context (as in the case of Ramsay v Margrett).

Question 5: This was a popular question which attracted several good answers. Most candidates were able to discuss the relevant rules and offer some thoughts on their underlying justification.

Questions 6 and **7** attracted very few answers.

Question 8: This attracted more answers than any other question. For the most part it was done very well, with candidates losing marks only when they missed one of the (several) issues arising from the facts. A surprising number of candidates thought that the ring had been abandoned when it was buried, even though there was no divesting intention.

Question 9 attracted very few answers.

Question 10: This was also a popular problem question. Most answers were able to discuss the question of whether title to the notes was transferred as part of the original sale. Where candidates struggled was in working through the consequences of the title not being transferred by the sale. Few discussed the question of whether there was a Thomas v Times type delivery of the notes.

PUBLIC INTERNATIONAL LAW

The overall performance by students in this paper was very good, with 61% of students achieving a high Upper Second or First Class mark and no paper marked below 58%. As in previous years, the paper contained a mixture of problem questions (3) and essay questions (6). Although not required to do so, the overwhelming majority of candidates elected to answer one or more of the problem questions, with question 7 (responsibility and the threat of use of force) and question 8 (dispute settlement) proving equally popular. Of the essay questions, question 1 (*opinio juris* and customary international law) was answered by over half the candidates with question 2 (universal jurisdiction) and question 5 (use of force and intervention) also popular. No candidate attempted question 4 (WTO or law of the sea), topics dealt with in the lectures

but not covered in the tutorials. However, in a departure from the previous year, the question on international law and domestic law, another topic dealt with only in the lectures, was attempted by several candidates, and answered very well indeed. 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. Two of the essay questions required discussion based on quotations from case law with mixed performances in response. In particular, a number of the candidates attempting question 2 were not sufficiently familiar with the case and the academic commentary to offer well-informed critique. As always, the best answers to both essay and problem questions were those which made good use of case law and academic authority, thereby providing analysis that went beyond the lecture material and the material included in the textbooks.

ROMAN LAW (DELICT)

The cohort of eighteen candidates was both larger and, on average, stronger than has been seen in recent years; seven candidates were awarded marks of 70 or above. All questions were attempted; there was a reasonable spread, with the most popular essay question, on the delict *iniuria*, attracting answers from ten candidates. The overall standard was very pleasing: candidates demonstrated a good command of the set texts and familiarity with the relevant secondary literature; First class answers offered clear and sophisticated engagement with the questions posed, combining detailed doctrinal analysis with sensitive reference to historical context and to the broader conceptual underpinnings of the civil law of wrongs.

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.2 (essay question on tax avoidance) was the most popular question; Q.4 (essay on employment status and taxation of employment benefits) was the least popular. The problem questions were popular, with nearly all of the candidates attempting at least one of the problems (although not required to do so).

Q.1 on tax policy invited the candidates to evaluate the proposal for a tax on sugary drinks from a tax policy perspective. The better answers delved into the purposes of taxation and applied the canons of taxation including equity, neutrality, certainty and admin/compliance to the proposal. Q.2 concerned the cases on tax avoidance and was answered quite well overall. Those students who analysed a range of recent and older cases on the *Ramsay* principle, and engaged with the extensive literature on avoidance were duly rewarded. Q.3 on capital gains tax policy invited the candidates to evaluate the CGT and IHT regimes as they apply generally and to trusts. The better answers engaged with broad policy considerations such as neutrality and restricting tax avoidance and advanced alternatives to the present regimes. Q.4 on employment versus self-employment and the taxation of employment benefits demanded an understanding of policy issues, recent reforms and relevant cases and statutes. Q.5 invited candidates to consider the capital/income distinction including the badges of trade and also with respect to receipts and expenditure. Q.6 was a relatively straightforward two-part question on the meaning of private residence and asset for CGT purposes; most answers identified and evaluated the key cases and statute.

The facts in Q.7 raised a broad spectrum of major and minor employment tax issues, particularly employee benefits. Candidates for the most part spotted the correct issues, but the depth of analysis of those issues was variable. Q.8 was the more popular of the two problem questions. It raised a number of issues on the taxation of a self-employed person and invited some tax planning advice concerning IHT and CGT. The better answers engaged at some length with the cases on deducting travel expenses and considered the timing issues raised.

TORT

Question 1 (Inducing breach of contract): There were relatively few attempts at this question. Those that focussed on the question as stated, and to focus on the secondary nature of the tort, tended to be good. Weaker answers offered merely a generic analysis of *OBG*.

Question 2 (Exemplary damages): There were even fewer answers to this question. Good answers were those that addressed the basic compensatory measure of tort damages, and analysed whether punishment (or deterrence, as a separate issue) has a place within that framework.

Question 3 (Defamation): Again, few candidates attempted this essay. Those who did so successfully focussed on the "balance" element of the question, and analysed specific parts of the 2013 Act and the changes that it made to the position at common law. Weaker answers were those that simply attempted a generalised analysis of the effects (or objectives) of the Act.

Question 4 (Vicarious/Non-delegable duties ('NDDs')): This was quite a popular question, and for the most part was answered very well. Excellent answers were those that addressed the specific question of whether NDDs have been developed because of the limitations on vicarious liability, and analysed whether one could ever be a legitimate substitute for the other. Those that dealt with the differences between the two phenomena, but did not directly address the question set, were given less credit. Most candidates seemed to have a sound grasp of the relevant case law in these areas and this was essential to the production of a good response.

Question 5 (Public authority liability for third parties): A fairly popular question, to which the quality of response was variable. Excellent answers picked up on the points of emphasis in the question: public authority liability, responsibility for the actions of third parties, responsibility for omissions and common law principles. Such answers also engaged thoroughly with specific opinions in *Michael* (and elsewhere), and included within their analysis a broader range of relevant case law. Less good, but acceptable answers analysed perhaps one or two of these, but did so in a way which covered the main premise of the question. Weak answers in some cases misunderstood, or seemed not to identify, the main point of *Michael*, or gave a generic account of the issues surrounding public authority liability.

Question 6 (Property damage/pure economic loss distinction): A moderately popular question. Strong answers dealt with both parts of the question – setting out the difference between these two categories (including discussions of cases that resist straightforward categorisation) and then evaluating the differing implications of each classification. (Curiously, more than a handful of candidates chose to explain the distinction between consequential economic loss and pure economic loss rather than that between property damage and pure economic loss.) Some answers showed an impressive range of case law knowledge, and brought in defective premises reasoning, for instance, to show how the distinction is not

always clear. Candidates seemed to find it easy to develop a strong line of argument here. Weaker answers were those that ignored the distinction, or failed to make it well, and particularly those which offered a non-specific essay on PEL, without comparative reference to property damage. Some answers revealed a lack of understanding of what pure economic loss is, with certain cases that are clearly property damage cases being said to involve pure economic loss.

Question 7 (Psychiatric injury - continued relevance of *Alcock* criteria): A popular question, with most candidates choosing Part A, on the continuing suitability of *Alcock*. Response to this varied significantly in quality. The strongest were those that dealt thoroughly with both stages of the questions – were the criteria *ever* fit for purpose, and are they still now. Some candidates did this very well indeed, developing a strong line of argument and carrying it through both stages. Some candidates pointed out how broadcasting of potentially distressing images is less regulated in the internet age than previously, and some (but not all) made a good attempt at explaining what the implications of this are in terms of *Alcock*. Many answers also made reference to changing social and medical approaches to psychiatric injury, but in several instances, this led candidates into error: too many candidates seemed to think that the *Alcock* criteria either recognise or deny that a psychiatric injury *exists*, rather than which instances of such injury can lead to recovery. *Alcock* does not attempt to state, as some candidates seemed to think, who has or has not suffered such injury, but merely who can recover for that injury and who has to bear their own loss. This was a very common mistake.

Question 8 (Nuisance): A very popular question, answered well on the whole. Strong answers considered potential claims in private nuisance and *Rylands* (as well as public nuisance where the nature reserve was concerned). There was, however, a disappointing lack of discussion of non-natural user and very few candidates applied *Transco* here. Such answers also analysed potential remedies with reference to *Coventry v Lawrence* (which also informed good responses to the locality considerations). Good answers also dealt with the windfall apples issue well, pointing out that the claimant had no right to those apples in the first place (*Bradford*). Weaker answers focussed on the malice here, suggesting this was enough to make the interference unreasonable. Most candidates identified C as having no claim for personal injury in private nuisance, although some did suggest she might try claiming in public nuisance, without explaining how this would be possible on the facts.

Question 9 (Occupiers' liability): Another highly popular question, which was also answered well in general. Excellent answers dealt with the interaction between the '57 and '84 Acts well by analysing the status of each potential claimant and recognising that some might be visitors for some activities and non-visitors for others. Good answers spelt out what the common duty of care is, and how F could have discharged this. Most candidates dealt well with the distinction between the warning and the attempted exclusion, although correct use of Consumer Rights Act 2015 and/or Unfair Contract Terms Act 1977 here was patchy. (Several candidates simply asserted that Freddie either was or was not a 'trader' and that the visitors either were or were not 'consumers' and provided no explanation as to what the legal consequences might be if a court disagreed with this classification.) Many candidates also failed to identify the stepladders as premises in their own right, and it was only very good answers that tended to deal well with potential claims against F and H separately, and how F might discharge his duty in relation to H. Weak answers here made reference only to the '57 Act and did not actually set out what the common duty of care requires. A couple of poor answers failed to deal with all potential claimants. (A surprising number of candidates cited s. 2(3) and s. 2(4) of the '57 Act as s. 3 and s. 4, and s. 1(3) of the '84 Act as s. 3.)

Question 10 (Product liability): Many candidates attempted this question, and produced good answers, although there were fewer excellent responses here than on other problems. Most analysed the CPA claim against K well, and dealt with the defect point in a robust way, taking into account the instructions and their inaccessibility. Almost none dealt with the potential causal issue arising from M's failure ever to read instructions. Some were confused about the relevance of the company having decided to implement a new design in future, with a number concluding that this proved the existence of a defect in the old model. A few scripts addressed the supplier point and the contributory negligence issue. Those who (correctly) identified that O was the producer of the blade that had injured M did not always go on to consider whether the *blade* was defective, or what defences might be available to O. A couple of candidates spent too much time on the potential common law claim, at the expense of a proper analysis of the statutory possibilities. Very few answers dealt well with the effects of L's intervention on liability for M's ultimate injury, although most tackled L's claim for psychiatric injury well.

Question 11 (Negligent misstatement, psychiatric injury): This was the least popular of the problem questions, and tended to be answered unevenly when it was attempted. Most answers dealt with breach and misstatement (as well as the effect of both) strongly and accurately, although the reference to relevant case law was generally narrow. There was also (both here and throughout the paper) too many purported applications of *Caparo* to situations which are established, rather than novel, duty situations and, particularly here, *novus actus interveniens* was not analysed in a particularly extensive or constructive way. Remoteness was also a point which here could have drawn out better analysis, and this element of the question was often overlooked.

Question 12 (Breach, causation, apportionment): Another popular problem question, and one which produced some excellent analysis. Generally, the breach question was dealt with well, despite a few candidates insisting that *Bolam* only applies in the medical context. Where *Bolam* was correctly used, however, this was done to good effect, particularly in tandem with *Bolitho*. The loss of a chance of financial gain issue was dealt with well only by the better candidates, referring to *Allied Maples* and *Chaplin*. Disappointingly, several ruled out a claim here, classifying it as pure economic loss. The causation issue was tackled very well, with most answers identifying it as a potential *Fairchild* situation, and explaining why. Excellent answers went on to analyse the full effects of this, pointing out that *Barker* applies to non-mesothelioma/asbestos claims, rather than s 3 Compensation Act 2006, leading to aliquot, rather than joint and several liability.

TRUSTS

It is once again necessary to stress four persistent themes from recent Trust Examiners' reports. First, that Trusts scripts can be a little lacklustre, particularly at the top end, which may well be a consequence simply of the position of the paper within the overall timetable. Secondly, that candidates are generally less proficient in this paper at handling problem questions than essays. Thirdly, that careful attention needs to be paid when answering essay questions precisely to what it is that the question asks; and, finally, that, whilst knowledge of secondary literature and commentary is an asset, it is no substitute for first-hand knowledge of the case law.

Question 1 (a quotation for discussion about the nature of equitable rights) elicited many pre-prepared answers that paid insufficient attention to the quotation, although there were of course a number of strongly argued exceptions.

Question 2 (about the operation, and possible need for reform, of ss 53(1)(b) and 53(1)(c) of LPA 1925) produced an over-concentration by many candidates on the operation of s 53(2), which was not mentioned in the question. Although s 53(2) may certainly have some relevance to the actual question asked, it frequently skewed candidates' attention too far from its main focus. Although again there were honourable exceptions, knowledge of the cases considering s 53(1)(c) was often sketchy.

Question 3 (a quotation for discussion from Lord Cross in *Dingle v Turner*) was not chosen by very many candidates, but when it was it was frequently handled adeptly. That said, there were also candidates who used the quotation simply as the springboard for a pre-prepared discussion of the *ISC* case, to which it was relatively ill-suited.

Question 4 (about the possibility of satisfactory analysis of *Quistclose* trusts) was chosen by a large number of candidates, and was sometimes answered well. The best answers successfully married discussion of both judicial and academic views; less good answers tended to plump for one solution or another with insufficient consideration of any remaining difficulties, and without adequate attention to the question asked.

Question 5 (a quotation from Lord Toulson in *Brazil v Durant* concerning a suggested relationship between the "lowest intermediate balance" principle and the "no backward tracing" principle) was chosen by relatively few candidates, but was frequently done well. The best answers not only discussed the point made in the quotation, but also set it in the context of the full judicial reasoning of the decision and of its outcome.

Question 6 (concerning the extent to which the liability of trustees for breach of trust can be excluded, and whether reform is required) and question 7 (about possible connections between the "conflicts rule", the "profits rule", the "self-dealing rule" and the "fair-dealing rule") were chosen by only a handful of candidates; but those answering them were generally well prepared. The unpopularity of these questions was perhaps unsurprising as far as Question 6 was concerned, but the examiners were disappointed that there were not more takers for Question 7. It may be that explicit mention of the "self-" and "fair-" dealing rules put people off.

Question 8 (concerning *Pennington v Waine*, and modern developments in trusts law generally relating to "conscience") was dealt with by some candidates very well, and by others much less so. Many candidates failed to distinguish sufficiently between the possible relevance of an affected conscience of a transfer*ee* as opposed to that of a transfer*or*.

Question 9 (asking whether any instances of resulting trusts are grounded in the reversal of unjust enrichment) and Question 10 (concerning the possible advantages of recognising remedial constructive trusts) were frequently chosen, and a good number of candidates answered them both. The better answers showed a strong awareness of the relevant academic debates, whilst also relating them firmly to the extant case law.

As indicated at the outset of this report, many candidates struggled to answer problem questions clearly and accurately. Question 11 (a certainties problem) was the most frequently chosen

problem, but the distinction between trusts and powers, and those between different forms of trusts and powers, were frequently ill-described. *Re Tuck*, *Re Barlow* and administrative unworkability were too often offered as rabbits from a hat, with insufficient analysis of their proper spheres of operation. Questions 12 (a problem about an unincorporated association) and Question 13 (a secret trusts problem) were also frequently attempted, but again often without sufficiently careful attention to the facts as set and the need for precise analysis of the relevant law applicable to them. Theories, such as "the contract holding theory", or the "*dehors* the will theory", were too often offered as complete answers in themselves, without adequate analysis of their relevance (if any) to the facts, or of possible limits to their healing powers. Question 14 (a problem concerning the liability of trustees and third parties for breach) was infrequently attempted, but prompted some strong answers, the best showing detailed knowledge of the range of possible remedies available, the relevant legal requirements for each, and due consideration of their suitability for the precise facts of the problem set.