LAW MODERATIONS – HILARY TERM 2007

MODERATORS' REPORT

PART 1

(A) STATISTICS

1. Numbers and percentages of those passing and failing

	Numbers				Percentages		
	2007	**2006**	**2005**		**2007**	**2006**	**2005**
Candidates entered for 3 papers							
Total	232	233	240				
Pass (without Distinction)	203	203	197		87.5	88.6	82.1
Distinction	29	26	39		12.5	11.4	16.3
Pass in 2 Subjects only		4	3			1.7	1.3
Fails		0	1			0	0.4

2. Number of vivas

Vivas are not held in this examination.

3. Number of scripts double or treble marked

Scripts in this examination are not automatically double marked, but some 55 scripts were second marked. Scripts were double marked to decide prize winners; or where first marking left the candidate just below a Distinction (one mark of 70 or above and one or more marks of 67, 68 or 69, *or* two or more marks of 68 or 69); or where the first marker had given a failing grade; or where the marks on first marking had left any Course 2 candidate with an average mark marginally below the 60 required for automatic continuation on that course.

4. Number of candidates who completed each paper

232 candidates sat the three papers.

(B) NEW EXAMINATION METHODS AND PROCEDURES USED OR CONTEMPLATED

No new methods or procedures were employed this year, and none were contemplated.

(C) PRACTICE WITH REGARD TO SETTING PAPERS

In each subject, the final paper was set by the relevant Moderator acting in conjunction with other markers.

Past papers were available via Oxams.

PART II

(A) GENERAL OBSERVATIONS

As always, the Law Faculty Examinations Officer, Julie Bass administered the Law Faculty examinations with exemplary skill and professionalism. The Invigilators at the Examinations School also helped the examining process to run very smoothly. As with previous years, each paper was marked by a team of two or three markers, co-ordinated by the relevant Moderator, and with cross-checks aimed at ensuring a fairness and consistency. This year a new computer programme was introduced which enabled more comprehensive data analysis than was available before.

The proportion of Distinctions was slightly higher than last year. The general view among the Moderators was that the scripts at the very top end were of exceptional quality. With that said, there were a considerable number of papers which were disappointing mainly due to candidates failing to address the question set and engaging in superficial analysis.

Medical certificates and special cases

Four candidates had special arrangements for the sitting of their examinations. Seven medical certificates (3% of candidates) were forwarded to the Moderators under sections 11.8 – 11.9 of the EPSC's General Regulations for the Conduct of University Regulations (see *Examination Regulations* 2006, page 34). In all of these cases the candidates' final result was not materially affected.

(B) GENDER (equal opportunities issues and breakdown of the results by gender; ethnicity analysis)

The computer programme now permits the automatic generation of a gender breakdown. The gender breakdown for Course 1 and Course 2 combined was (the figures are rounded):

	2007				2006				2005			
	MALES		FEMALES		MALES		FEMALES		MALES		FEMALES	
	No	%	No	%	No	%	No	%	No	%	No	%
Distinction	16	16	13	10	10	11	16	12	19	18	20	15
Pass	83	84	120	90	81	86	118	87	87	81	110	83
Partial Pass	0	0	0	0	3	3	1	1	1	1	2	2
Fail	0	0	0	0	0		0		0		1	1
Total	99		133		94		135		107		133	

The Moderators were not asked to produce an ethnicity analysis of the results and do not have the data to do so.

CRIMINAL LAW

The best scripts in the cohort displayed an impressive ability to engage with the relevant legal principles, sensitive to the subtleties of judicial reasoning and legislative technique and locating this within a sophisticated understanding of the underlying theoretical context. However, too many candidates were content with a superficial description and analysis of those judgments and statutes falling within the general doctrinal ball park of the question attempted. Often, more precision was needed so that candidates might focus on the specific legal controversies and ambiguities raised by the question. In particular, identification of the relevant law should provide the point of departure for analysis, not its destination. This was particularly true when candidates attempted problem questions. It is not enough to cite and describe relevant case law accurately on the basis of a broad similarity with the fact situations outlined, as if that were enough to answer the question. Candidates must be prepared to work imaginatively with relevant judicial reasoning and statutory material and *explore* the legal difficulties raised by the problem. The best candidates managed to do this

exceptionally well; too many candidates, however, did not display these qualities and were content to ignore the nuances.

Question 1: This was an extremely popular question, although the vast majority of candidates attempted (b) rather than (a). Part (b) attracted many answers of very decent quality, distinguishing direct and oblique intent and analysing the difficulties and complexities raised by that interface. Fewer candidates engaged with the interesting range of secondary literature on intention, or the difficulties with the phrase 'entitled to find' in the *Woollin* direction. Part (a) was less popular, and attracted answers of variable quality. Too many candidates slipped into a generalized discussion of the merits and demerits of codification without relating this to the definitional problems with intention. Furthermore, only a few candidates realised that intention might be relevant outside of the offence of murder and that this might raise distinct problems, since the question referred to 'intention in the criminal law'.

Question 2: This was also a very popular question which was generally well answered. A surprising number of candidates didn't discuss s. 74 of the Sexual Offences Act 2003 and its inter-relationship with s. 76; very often, those candidates analysed 'nature' and 'purpose' as if these were inter-changeable concepts without a difference in meaning. Furthermore, the pre-SOA 2003 case law was sometimes discussed without any suggestion as to its interpretive relevance to the current definition of rape.

Question 3: This question did not attract many answers, although many of the candidates attempting this question did a very good job of engaging precisely with the quotation provided, demonstrating an outstanding appreciation of the legal framework, reform proposals, and theoretical critiques of the current law.

Question 4: Part (a) attracted relatively good answers, although we felt that candidates might have been more ambitious in teasing out the debates concerning the theoretical bases of these

two defences, so that the theory might speak to the law in an illuminating way. Most candidates were well acquainted with the recent Law Commission proposals. Part (b) was more open-textured than part (a), and better candidates were prepared to move the discussion beyond a pedestrian journey through self-defence, drawing interesting comparisons with other defences that were potentially relevant.

Question 5: This was not a popular question in either of its guises. In particular, part (b) had more than its fair share of answers that simply ignored the defence of diminished responsibility or gave it only a cursory treatment.

Question 6: This was undoubtedly the most popular question on this year's paper. It attracted some answers of exceptional quality. It also exposed the weaknesses of many candidates who thought that it was sufficient just to state and describe the authorities of *Brown*, *Dica*, and *Konzani* given their broad relevance to the issues raised. Better candidates interrogated subtleties such as the parties' marital status, the use of a condom, the relevance of D's mens rea to the availability of consent as a defence, and explored those problems using their legal reasoning from the relevant authorities.

Question 7: This was relatively popular with candidates. Some candidates failed to appreciate the relevance of omissions liability to the problem, and a surprising number of candidates only considered one species of involuntary manslaughter rather than considering other possibilities. Reassuringly, the causation points were generally addressed competently and demonstrated a sound understanding of the relevant legal principles.

Question 8: Again, this question was relatively popular. While the best answers were of outstanding quality, it attracted some weak answers with candidates lacking a sound understanding of the *Majewski* principles and their inter-relationship with various kinds of

mistakes in defence. Disappointingly, very few candidates analysed the multiple tensions between *Majewski*, *O'Grady/O'Connor*, and *Jaggard v Dickinson*.

Question 9: This was less popular than other problem questions, but it was reasonably well answered by most candidates.

Question 10: Again, this was less popular than other problem questions. It attracted some excellent answers, although a surprising number of candidates struggled with the statutory concept of 'sexual' in addressing the sexual assault point. Many candidates also completely ignored the potential issues with respect to automatism, and the difficulties and ambiguities in the criminal law's threshold of voluntariness.

CONSTITUTIONAL LAW

There were some excellent responses to the constitutional law paper in which candidates addressed the questions with analytical sophistication and an excellent command of legal detail. A good number of the papers however were very disappointing. Those weaker papers tended to suffer from two main problems. First, in many cases candidates' depth of understanding was very poor and the analysis of legal issues very superficial. This resulted in either only a very general discussion of issues and/or an incorrect use of legal material. Second, weaker candidates failed to properly address the question and rather than identifying what were the relevant issues or themes raised by a question repeated a series of facts about the general subject matter. Most candidates tended to tackle the same questions (Qu 1, 2, 4 and 9).

Question 1 (separation of powers) A very popular question. Very good answers addressed both parts of the question with an excellent discussion of legal scholarship, case law, and

legal frameworks. Poorer answers tended to be merely descriptive of the doctrine and to misrepresent different academic views on the role of that doctrine

Question 2 (Parliamentary sovereignty) Again, a very popular question with some outstanding answers which charted the historic development of the doctrine and which analysed Lord Hope's statement carefully in light of the judgment in *Jackson* and developments in the area more generally. Poorer answers tended to be descriptive, misunderstood the details of the doctrine, and tended to focus on the impact of EU law to the exclusion of all else.

Question 3 (Constitutional conventions OR ministerial responsibility) Less popular questions which tended to be answered poorly in that candidates provided examples of conventions or ministerial responsibility being breached rather than addressing the question.

Question 4 (the rule of law). A very popular question with responses of highly varied quality. Many of the weaker answers were a description of formal and substantive conceptions of the rule of law with little reference to the question or even the UK constitution.

Question 5 (Devolution) Some very good answers to these questions in which candidates carefully looked at the legal implications of devolution and showed that they were in command of the detail. Poorer answers tended to be vague descriptions of the legal and institutional frameworks.

Question 6 (Direct effect) Mixed answers to this popular question. The good answers addressed both parts of the question with a very good command of the legal detail. Weaker answers recited the case law, often quite inaccurately.

Question 7 (Freedom of political speech) A handful of answers to this question which varied in quality. The weaker answers tended to be very descriptive and engage in very superficial analysis of the law.

Question 8 (Police powers) There were very few answers to this question.

Question 9 (HRA) A very popular question with some excellent answers which displayed an excellent command of the material. Many answers however were poor descriptions of the Act which tended to rely on one or two cases for explaining how the two sections operate.

Question 10 (Prerogative powers) A relatively popular question with some excellent answers although many answers were considerably weak and failed to address the question. In particular, a number of candidates chose to focus on the judicial review cases without addressing the challenges of codifying the prerogative.

A ROMAN INTRODUCTION TO PRIVATE LAW

This is the first examination in which the revised subject, "A Roman Introduction to Private Law" has been sat. It will be remembered both that it is a compulsory subject (unlike the former Roman Law paper) and that the syllabus has been modified to allow more consideration of the influence of Roman law on the mediaeval and modern world.

Generally, the scripts were of a good standard, some very good indeed. Most candidates showed a sound grasp of the private law concepts involved, and sometimes showed an impressive sophistication in dissecting difficult doctrine and placing it in its due historical context.

Comments on the individual questions are as follows:

Q 1 and Q 2 [the "gobbet" questions]. Candidates sometimes focussed too broadly (e.g. using a text on the consent of the owner in theft as an excuse to write a mini-essay on theft) or (occasionally) misrecognised the text (a few candidates in 1(d) wrote on usufruct rather than on real contracts). However, the general standard of these was good.

Q 3 (Justinian's codification). Well done, on the whole, though some candidates wrote more about the process of compilation than was necessary. Only a few reached a high standard of historical analysis of the problem addressed by the question, which was to explain the possible purposes of the Justinianic legislation. Some investigated interpolation controversies impressively. A very few attempted a mechanical line by line analysis of the starting quotations.

Q 4 (Influence of the Institutes on medieval and modern law). The key word in the question was "Institutes"; some candidates wrote a more general answer on the influence of the Corpus in general. The best answers showed a sophisticated understanding of the importance of the Institutional framework, both ancient and modern, and could discriminate between different periods and places where the Institutes exercised the imagination of lawmakers. Some made the mistake of turning the question into a praise of Gaian taxonomy without showing the requisite historical learning of its actual influence.

Q 5 (EITHER) Written and spoken agreements OR nominate contracts and the stipulation. This question was perhaps less well done than many. Candidates tended to use it as an excuse to write all they knew about contract(s) [which was often considerable]; further, some candidates did not indicate which alternative question they were answering. The best answers investigated form and cause intelligently in the one case; or the role of channelling forms of contract with associated menus of duty in the other.

Q 6 (Ownership). On the whole, well done – sometimes very well done – with candidates showing a good understanding of the issues of ownership which the question raised. A few candidates penalised themselves by writing on ownership and possession at large, without focussing their attention on the question. It was notable that many candidates saw how servitudes, whether praedial or personal, represented a different type of challenge to absolute ownership than did the relativity of claims introduced by the Actio Publiciana.

Q 7 (natural modes of acquisition). Candidates mainly spotted (and developed) the issues, and applied the law to the problems with accuracy and (in some cases) ingenuity.

Q 8 (Lex Aquilia). The candidates answered this question well; although some weaker candidates tended to write an "all I know" essay. The best candidates had a real understanding both of the history of the Lex and its application to an ever-widening range of situations, as well as the controversies about how the rules relating to calculation of damages operated. The theory that 'highest value' was an attempt to address the changing value of slaves and herding animals across the agricultural year was not popular this year, indeed hardly mentioned; but many other juristic reconstructions were cited.

Q 9 and Q 10 (problems). These were answered by a small number of candidates; the best were able to raise (and analyse) a range of points, showing that they understood the relevant law and how to apply it; the weakest tended to spot a few points, and deal with them in a somewhat peremptory way. Q 9 elicited some sophisticated analyses of the workings of praedial servitudes and of both Aquilian liability and aspects of sales law involving shifting of risk. The very few who answered Q 10 were rewarded for examination of how iniuria can operate to defend personality interests alongside property rights. The issues of usucaption and *causa* in this problem were mainly missed.

Overall, the experience of the markers was that the first year of the new course had been a success, with students entering into the issues of Roman Law with erudition and intelligence. The only real area of concern was the average quality of historical reasoning in the areas covered by Q 3 and Q 4; and we also note the marked tendency of candidates to avoid problem questions.