

**FACULTY OF LAW**  
**POSTGRADUATE DIPLOMA IN INTELLECTUAL PROPERTY LAW**  
**AND PRACTICE 2009-10**

**Examiners' Report 2010**

**PART ONE**

**A. Statistics**

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

The number of candidates taking the examinations was 51 (including one candidate who took four papers and one candidate who took one paper).

| <b>Category</b> | <b>2009</b> |          | <b>2010</b> |          |
|-----------------|-------------|----------|-------------|----------|
|                 | <b>No</b>   | <b>%</b> | <b>No</b>   | <b>%</b> |
| Distinction     | 3           | 5.55     | 6           | 11.76    |
| Pass            | 50          | 92.59    | 42          | 82.35    |
| Fail            | 1           | 1.85     | 3           | 5.88     |
| <b>Total</b>    | <b>54</b>   |          | <b>51</b>   |          |

**2. Vivas**

Vivas are not used in this Diploma.

**3. Marking of scripts**

Double marking of scripts is not routinely operated. 151 out of 299 scripts (50.5%) (46.32% in 2009) were second marked. Third marking may be used in exceptional cases and 6 scripts (2.01%) (2.15% in 2009) were third marked. Further details about second and third marking are given in Part Two (A.1.).

**B. New examining methods and procedures**

The Diploma is jointly taught and examined by senior law practitioners (solicitors) who are members of the Intellectual Property Law Association (IPLA) and by members of the Faculty of Law. Teaching commences with a two-week residential course in Oxford in August/September followed by six workshops (two of which are revision workshops) spaced over the academic year. The candidates are all newly qualified or trainee solicitors or barristers. The Diploma examination is divided into Part I and Part II. Part I focusses on the practice of

intellectual property (IP) law and consists of four coursework assignments (two in Michaelmas and two in Hilary Term). Each coursework assignment is preceded by a one-day workshop on the relevant IP topic(s). Part II consists of two unseen two-hour examination papers covering the range of IP law, and are written at the end of Trinity Term.

In each paper (coursework assignment or examination paper) a proportion of scripts chosen at random were second marked as a check to ensure that markers were adopting similar standards. Where any significant discrepancy was found, scripts were second marked and markers adjusted their marks (for all scripts) if they were out of line with other marker(s). In addition, all scripts with borderline marks (ie. 47, 48, 49, 67, 68, 69, also 53 and 54 as a sub-55 mark bars a Distinction), all failing marks (49 or below), and any short weight scripts were second marked. In addition, 10 scripts (3.34%) were second or third marked by the examiners as an additional test of selected Distinction and failing marks.

### **C. Possible changes to examining methods, procedures and conventions**

1. Setting and checking the question paper for each coursework assignment (Part I) and examination paper (Part II) are the responsibility of a team of two (or more) members. The leader of the team has a considerable additional responsibility to ensure that procedures are carried out and deadlines met. These procedures worked smoothly and no changes are required.
2. The examiners applied the marking and results conventions as agreed by the Law Board and notified to candidates. For the award of the Diploma a candidate must have no mark below 50 in any of the six papers (four coursework assignments plus two examination papers).
3. A Distinction was awarded to four candidates who did not qualify under the results convention (3 marks of 70 or above, including 70 or above in at least one of the two examination papers, and no mark below 55) but who had 2 marks of 70 or above supported in two cases by a 69 and at least two other good marks, in one case supported by a 68 and three other good marks, and in one case by a 67 supported by three other good marks. The examiners consider that the terms of the convention may need adjustment, but they intend to conduct a full analysis of the 2009 and 2010 results and to consult colleagues before making any recommendation. There will be no change in the results convention for next year.

## **D. Examination conventions**

The Notice to Candidates (known as the Examiners' Edict) is attached (see Appendix 2) and the examination conventions are detailed in paragraph C.1. thereof.

## **PART TWO**

### **A. General Comments**

#### **1. Second and third marking**

The procedures for second marking were identified in Part One, B., above. First and second markers were required to discuss their marks and, wherever possible, agree the mark. This worked well with all second marked scripts receiving an agreed mark. Some additional second and some third marking (10 scripts) was used by the examiners to confirm Distinction and failing marks.

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

No medical certificates were forwarded to the examiners, and special arrangements were not required for any candidate.

#### **3. Materials in the examination room**

For the two examination papers (Part II) candidates were provided in the examination room with Blackstone's Statutes on Intellectual Property, 9<sup>th</sup> edition (2008) plus a set of loose documents (see Appendix 2 - Fourth Notice to Candidates). All candidates remembered to bring with them their University card (which has to be displayed on their desk to enable their identity to be checked). This year, for the first time, non-native English speakers were not permitted to have access to a bilingual dictionary in the examination room.

#### **4. Legibility**

No candidate was required to have either of their examination paper scripts typed (2 scripts typed in 2009).

#### **5. External Examiner**

We are much in debt to our external examiner, Dr. Tania Aplin of King's College London, who has been very actively involved at all stages of the examination process. We are very grateful for her help.

#### **6. IPLA Examiner**

We are also very grateful to Mr. Robert Anderson of Lovells who, as coursework co-ordinator, organised and supervised the teams of practitioners involved in the teaching and examining of the coursework assignments. His

advice and liaison with the teams ensured smooth progress of the examination process.

**7. Thanks**

In addition to the examiners, 16 colleagues were assessors, and we owe our thanks to them all. Mrs. Ellen Moilanen, Diploma Administrator, provides most excellent staff work behind the scenes and thus ensures that the Diploma runs smoothly for examiners, assessors and candidates. We are very fortunate to be in her hands and very grateful for all her hard work.

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

| Category    | 2009 |       |        |       | 2010 |       |        |       |
|-------------|------|-------|--------|-------|------|-------|--------|-------|
|             | Male |       | Female |       | Male |       | Female |       |
|             | No.  | %     | No.    | %     | No.  | %     | No.    | %     |
| Distinction | 1    | 4.55  | 2      | 6.25  | 1    | 5.26  | 5      | 15.63 |
| Pass        | 20   | 91.00 | 30     | 93.25 | 18   | 94.74 | 24     | 75    |
| Fail        | 1    | 4.55  | 0      |       | 0    |       | 3      | 9.38  |
| Total       | 22   |       | 32     |       | 19   |       | 32     |       |

**C. Percentage distribution of marks by paper**

|                             | 70 plus |     | 60-69 |     | 50-59 |     | Under 50 |    | Total |
|-----------------------------|---------|-----|-------|-----|-------|-----|----------|----|-------|
|                             | No.     | %   | No.   | %   | No.   | %   | No.      | %  |       |
| <b>Part I</b>               |         |     |       |     |       |     |          |    |       |
| Patents 1                   | 4       | 8%  | 26    | 52% | 19    | 38% | 1        | 2% | 50    |
| Patents 2                   | 2       | 4%  | 32    | 65% | 13    | 27% | 2        | 4% | 49    |
| Trade Marks and Passing Off | 17      | 33% | 7     | 14% | 24    | 47% | 3        | 6% | 51    |
| Copyright and Design        | 6       | 12% | 19    | 39% | 24    | 49% | 0        | 0% | 49    |
| <b>Part II</b>              |         |     |       |     |       |     |          |    |       |
| Intellectual Property I     | 6       | 12% | 40    | 80% | 4     | 8%  | 0        | 0% | 50    |
| Intellectual Property II    | 8       | 16% | 37    | 74% | 3     | 6%  | 2        | 4% | 50    |

**C. Comments on individual papers**

These appear in Appendix 3.

Mr. R. Anderson (IPLA)  
 Dr. T. Aplin (External)  
 Professor G. Dinwoodie  
 Ms A.S. Kennedy (Chair)

Appendix 1 – External Examiner’s Report  
 Appendix 2 – Notices to Candidates  
 Appendix 3 – Reports on individual paper

**FACULTY OF LAW**

**POSTGRADUATE DIPLOMA IN INTELLECTUAL PROPERTY LAW  
AND PRACTICE 2009-2010**

**EXTERNAL EXAMINER'S REPORT 2010**

**1. Introduction**

This was the second year of the Postgraduate Diploma in Intellectual Property Law and Practice. I am pleased to report that the programme ran even more smoothly and effectively than in the first year. I can also confirm that the academic standards of the Diploma were appropriate, the assessment processes were conducted fairly and in accordance with institutional regulations and the performances of students were satisfactory and in keeping with the standards achieved at comparable institutions. A more detailed discussion of these matters is set out below.

**2. Academic standards set for the award of Diploma**

The academic standards set for the Diploma are entirely in keeping with an award of this nature. The course covers the major intellectual property rights and expects candidates to have a very good knowledge of the key principles, controversies, and debates relevant to these rights. In the assignments, candidates are expected to apply their legal knowledge and legal reasoning skills to realistic factual scenarios. In the examinations, there is also the opportunity for candidates to engage with some of the wider policy debates occurring in the intellectual property field. In my view, this is an important balance to maintain and one that is likely to be facilitated by requiring students to answer at least one essay question on the examination.

Unlike most intellectual property programmes in the UK, this one gives equal weight, perhaps even greater weight, to patents, as compared with trade marks and copyright. It is commendable that the Diploma takes seriously this often overlooked area of intellectual property law, although for future years it might be worth reconsidering whether more weight should be given to copyright.

The teaching was delivered at a two-week residential course in Oxford in September 2009 and at six workshops spread over the academic year. This represents significantly more face-to-face teaching time than is available on other comparable Diploma courses offered by institutions, such as King's College London. A mixture of academics and senior law practitioners teaching on the Diploma makes for a rich learning experience for students. A core consistency has been maintained between the different teachers by the efforts of the Management Committee.

### **3. Assessment processes**

In Part I, candidates had to undertake four pieces of assessed coursework – two in patents and one each in copyright and trade marks. In Part II, candidates sat two unseen two-hour examinations – one in Patents and Breach of Confidence and another in Copyright and Trade Marks.

Part I focuses on the practice of intellectual property law by presenting candidates with realistic factual scenarios and asking them to apply their legal knowledge and legal reasoning skills. I had the opportunity to comment on all of the assignment questions, in advance of them being released to candidates, and was generally satisfied that they were aimed at key issues and were appropriately challenging.

Part II comprises two unseen two-hour examinations relating to the major intellectual property rights. I was given adequate opportunity to comment on the content and structure of the examinations and was satisfied that they reflected a good balance between problem and essay questions and an appropriate level of difficulty. However, I support the recommendation made at the Board of Examiners' Meeting on 23 July 2010 that making one essay question in the exam compulsory should be considered for 2010-11.

The assessment processes appeared to be rigorous and fair. The Scrutiny panel was given ample opportunity to comment on the forms of assessment and assessors generally appeared to carry out their marking duties promptly, consistently and in accordance with the marking criteria. I was generally satisfied that the marks awarded by the assessors were in keeping with standards at other comparable institutions which offer Diploma courses.

I was present at all Examination Boards, which were conducted with efficiency and entirely in keeping with the Examination regulations.

### **4. Standards of student performance**

Out of the Diploma cohort for 2009-10, 6 achieved an award of Distinction, 42 achieved an award of Pass and 3 candidates failed. There was an encouraging increase in Distinction awards (3 having been awarded in 2008-9) and a slight increase in fails (only 1 candidate having failed in 2008-9). This distribution of results is in keeping with levels of student performance on Diploma courses at other institutions.

The quality of the Distinction candidates was, I must add, particularly impressive and evidences the rigorous and excellent teaching that occurs on this programme.

Dr Tanya Aplin  
Reader in Intellectual Property Law  
King's College London  
24 September 2010

**IMPORTANT – TO BE RETAINED FOR FUTURE REFERENCE**

**UNIVERSITY OF OXFORD**

**FACULTY OF LAW**

**DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE 2009-10**

**NOTICE TO CANDIDATES**

*This document is traditionally known as the Examiners' Edict. It is the means by which the Examiners communicate to the candidates information about the examination. It is very important that you should read it carefully; **there are procedures to be followed and deadlines to be observed.***

**ROLE OF THE PROCTORS**

The University Proctors act as independent overseers of the conduct of examinations. They have a statutory duty (Statute IX) to see that examinations are properly conducted in accordance with the statutes and regulations concerning them. The University's *Examination Regulations* reserve to the Proctors certain powers in connection with the conduct of examinations, such as granting permission for late submission of written work. These powers are exercised independently of the University's Education Committee and of all divisional or faculty boards or other bodies responsible for the academic content of examinations. Fairness is thereby enhanced because candidates in all examinations are treated by the Proctors on the same terms. For the same reason candidates may not make direct contact with the Chair or Board of Examiners; any special applications concerning a candidate must be made through the Proctors. Candidates may not make direct contact with the Proctors; any special applications must be made by the Diploma Administrator on the candidate's behalf.

**ROLE OF THE DIPLOMA ADMINISTRATOR**

Any queries or difficulties concerning examination matters should be referred at once to the **Diploma Administrator, Mrs. Ellen Moilanen, in the Law Faculty Office (St. Cross Building, St. Cross Road, Oxford OX1 3UL). Telephone: (01865) 271457. E-mail address: ellen.moilanen@law.ox.ac.uk.** Should it be necessary to apply to the Proctors, the Diploma Administrator will contact them on your behalf.

Where the *Examination Regulations* refer to action by a candidate's college or the Senior Tutor of a candidate's college, please **substitute** the Diploma Administrator.

**CANDIDATE'S EXAMINATION NUMBER**

In all examinations candidates are identified only by their examination number. This is the number (six digits) which appears above the expiration date on your University Card.

**UNIVERSITY OF OXFORD EXAMINATION REGULATIONS 2009** (for academic year 2009-10)

Available on <http://www.admin.ox.ac.uk/examregs/>; extracts are given in Schedule IV attached hereto. This Examiners' Edict provides a guide to the rules for this Diploma programme, but in case of any conflict, the *Examination Regulations* prevail.

## A. INFORMATION FOR CANDIDATES REGARDING THE COURSEWORK ASSIGNMENTS (PART I)

### 1. *Timing*

#### (i) **First Coursework Assignment: Patents 1**

**Saturday 10 October 2009** - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 12 October.

**Friday 13 November 2009 (noon)** - Candidates must submit the required work to the Clerk of Schools, Examination Schools, High Street, Oxford OX1 4BG. (See further A.3. below)

#### (ii) **Second Coursework Assignment: Patents 2**

**Saturday 28 November 2009** - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 30 November.

**Friday 8 January 2010 (noon)** - Candidates must submit the required work to the Clerk of Schools, Examination Schools, High Street, Oxford OX1 4 BG. (See further A.3. below).

#### (iii) **Third Coursework Assignment: Trade Marks and Passing Off**

**Saturday 16 January 2010** - Assignment question paper will be handed out during the Workshop on this day, and will also be available from the Diploma Administrator on Monday 18 January.

**Friday 19 February 2010 (noon)** - Candidates must submit the required work to the Clerk of Schools, Examination Schools, High Street, Oxford OX1 4BG. (See further A.3. below).

#### (iv) **Fourth Coursework Assignment: Copyright and Designs**

**Saturday 27 February 2010** – Assignment question paper will be handed out in the Workshop on this day, and will also be available from the Diploma Administrator on Monday 1 March.

**Wednesday 7 April 2010 (noon)** - Candidates must submit the required work to the Clerk of Schools, Examination Schools, High Street, Oxford OX1 4BG. (See further A.3. below).

You may complete and submit a coursework assignment although you were not able to attend the relevant Workshop. It is your responsibility to obtain a copy of the question paper from the Diploma Administrator; an extension of the time for submission may not be granted solely because of non-attendance at the Workshop at which the question paper was handed out (see further A.4.(ii) below).

### 2. *Methods of Assessment and Format of Assignment*

Each coursework assignment shall be examined by means of an assessed written exercise of 3,000 words unless otherwise stated in the question paper (inclusive of footnotes but excluding bibliography and appendices). (see also A.4. below). For Marking Conventions see C.1. below, and for Assessment Standards see attached Schedule I. Each assignment will take the form of a practical exercise, such as drafting of statements of case or instructions to counsel.

The University has strict regulations governing assessment. One of these regulations stipulates that assessors may not give written feedback and comments on assessed work; hence you will receive only a mark for each coursework assignment and no comments on how that mark was reached. The mark will be that agreed by the examiners and so will not be disclosed until the final results of the Diploma examination are published (see E.1. below).

### 3. *Submission of Coursework Assignments*

#### (i) **Submission Requirements**

Candidates are required to submit **two typewritten copies** of each coursework assignment. The coursework assignment must be typed or printed on one side of A4 paper only, with a margin of 3 to 3.5 centimetres on the left-hand side of each page. The text should be double spaced and the footnotes and quotations should be single-spaced. Pages should be numbered and stapled together, not held together by a paper clip. You must **not** write your name anywhere on the coursework assignment or envelopes. All written work must be submitted in English.

Each coursework assignment should have a cover sheet attached to it containing the title and your examination number. It should also state the year of submission and the number of words (inclusive of footnotes but excluding bibliography and appendices).

**Two copies of each coursework assignment** must be delivered in an envelope to the Clerk of Schools, Examination Schools, High Street, Oxford. The envelope should be addressed to: The Chair of Examiners for the Diploma in Intellectual Property Law and Practice, and your examination number should be printed in the top right hand corner of the envelope. With each coursework assignment you must include: (a) a statement, signed by yourself, that, except where otherwise stated, the coursework assignment is entirely your own work, and that no help was received, even bibliographical, with its preparation; and (b) a second statement indicating which part or parts of the coursework assignment have formed part of a submission in another context. To assist you, these statements have been incorporated into the template **Declaration of Authorship** for completion (see Schedule V and D. (second paragraph thereof) below). Delivery may be by hand, by courier or by registered post, but, if not made by hand, the envelope containing your written work (and addressed as instructed above) must be placed inside a delivery envelope which should be addressed to The Chair of the Diploma in Intellectual Property Law and Practice Examiners, c/o The Clerk of Schools, Examination Schools, High Street, Oxford OX1 4BG. However delivery is made, the package **must arrive** by the deadline. **You are strongly advised to obtain proof of collection by a courier service or proof of posting.** (NB promises by the Post Office of 'next day delivery' may not be reliable).

At the same time as you submit hard copies of each coursework assignment to the Examination Schools, you must also submit electronically a copy of that assignment to the Diploma Administrator for the Examiners. A random sample of coursework assignments will be checked for plagiarism using the *Turnitin* plagiarism software. See further D. below.

#### (ii) **Late submission**

Application to the Proctors for permission for late submission of coursework assignments should be made by the Diploma Administrator, on the candidate's behalf, before the submission date. Written work submitted late (even a few minutes past the deadline) will not be released to the Examiners, but will be held by the Examination Schools and the Proctors informed. The Diploma Administrator, on the candidate's behalf, may write to the Proctors explaining the reason for late submission. The Proctors may permit the candidate to remain in the Diploma examination and to submit the work late, but will impose a late presentation fee (to cover administrative costs). In addition, the Proctors may give leave to the Examiners to impose an academic penalty, which will take the form of a reduction in the mark by up to one class (or its equivalent – 10 marks). In determining the amount of the reduction, the Examiners will be guided by the evidence forwarded to them by the Proctors and (insofar as the following matters

are dealt with by such evidence):

- (1) the degree of advantage gained by the extra time made available to the candidate relative to the time that was available to complete the coursework assignment by the original deadline;
- (2) the weight to be attached to the excuse given, if any, for late submission;
- (3) his or her performance in the coursework assignments (Part I) submitted by the deadline and the written examination papers (Part II);
- (4) the effect of any proposed reduction on the candidate's Diploma result as a whole.

Factors (2) – (4) may require a final decision on penalty to be delayed until all the marks for the written examination papers (Part II) are known. See further Schedule IV - *Examination Regulations* 2009, Part 16.8. Candidates should consult the Diploma Administrator if any of these provisions apply to them. See also B.6. below.

A candidate who fails to apply for or to obtain permission from the Proctors for the late submission of any written work, or non-submission (i.e. withdrawal from this examination unit (see B.7. below) will be deemed to have failed the entire Diploma examination (not just the coursework assignments (Part I)). Non-submission includes where the Examiners refuse to examine work which exceeds the word limit (see A.4. below).

#### **4. Length**

Candidates should take seriously the word limit imposed (see A.2. above). If the word limit is exceeded 'the examiners, if they agree to proceed with the examination of the work, may reduce the mark by up to one class (or its equivalent – 10 marks).' (See Schedule IV - *Examination Regulations* 2009, Part 16.6.). The Examiners are naturally bound by this. It is necessary, however, to give guidance on the meaning of a 'word' in this context. Because of the manner in which word count software operates, legal citations often inflate the count. The Examiners have therefore determined that an allowance of an extra 3% should be permitted to candidates (should they wish to use it) above the figure of 3,000 words. The word count which appears on the coursework assignments must be the actual word count produced by the software. The word count must include all footnotes, but not any bibliography nor appendices. You must ensure that any automatic word-count on the word-processing programme you use is set to count footnotes.

#### **5. Academic integrity – avoidance of Plagiarism**

See D. below.

#### **6. Illness or other Causes affecting Candidates for examination**

See B. 6. below.

#### **7. Withdrawal from entire Diploma examination**

See B.7. below.

## B. INFORMATION FOR CANDIDATES REGARDING THE WRITTEN EXAMINATION PAPERS (PART II)

### 1. *Timing and Place of Examination*

|                     |              |                          |
|---------------------|--------------|--------------------------|
| Friday, 2 July 2010 | 9.30-11.30am | Intellectual Property I  |
|                     | 2.30-4.30pm  | Intellectual Property II |

The written examination papers will be taken at the Examination Schools in the High Street, Oxford. Candidates are advised to reach the Examination 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 to the examination room. Notices will direct candidates to the appropriate room. Seating in the examination room will be in alphabetical order, and desks will be identified by **name** only. You will need your University Card for each paper (see B.3.(i) below). Dark formal attire must be worn.

### 2. *Method of Assessment and Examination Technique*

The substantive law elements of the course covered in the residential programme shall be examined by means of two written examination papers, each of two hours. For Marking Conventions see C.1. below, and for Assessment Standards see Schedule I. Sample questions will be provided and discussed in the two revision workshops, Saturday 21 November 2009 and Saturday 29 May 2010.

### 3. *Scripts*

#### (i) **Anonymity**

Please bring with you to each examination paper your University Card which must be placed face up on the desk at which you are writing. You must **not** write your name on any answer book. **Write your examination number only** (ie the six digit figure above the expiration date on your University Card) in the appropriate place in each answer book you use.

#### (ii) **Legibility**

Candidates must not write in pencil. Candidates submitting illegible scripts will be required to have them typed at their own expense. The examiners will make every effort to identify such candidates to the Diploma Administrator as early as possible. Please provide the Diploma Administrator with details of where you can be contacted by telephone and email in the week following the date of the examination papers. If any of your scripts have to be typed, you will be asked to return to Oxford to dictate your answers to a typist in the presence of an invigilator. At that time, further Instructions will be given to you by the Diploma Administrator.

#### (iii) **Rough work**

If you wish to write plans or rough drafts, you may do so either in the same booklet as your answers (but cross out the rough work) or in a separate booklet (indicating that this is rough work) which must be handed in along with your answer booklets.

#### (iv) **Handing in scripts**

It is the **candidate's own duty to hand in his or her scripts by placing them in the appropriate box**, which will be pointed out to you by the invigilator. Any candidate who does not hand in a script **must** inform an invigilator.

(v) **Incomplete scripts**

Where a whole question has been omitted, or where part of a question which was formally separate has not been attempted (eg. in a question divided into (a) and (b), and part (b) has not been attempted) a mark is awarded for the paper on the normal basis (i.e. by reference to the questions which have been answered), but a deduction is then made proportionate to the extent to which the candidate has failed to answer the required number of questions.

For example, if a candidate completes one question marked at 70 in a paper which requires 2 answers, the overall mark is recorded as '70/1' ('70 over 1 answer', to indicate the extent of the short weight relative to the requirements of the paper) and 20 marks deducted, making a total overall mark of 50 for the script. If a candidate completes one-and-a-half questions marked at 70, and '70/ ½' ('70 over half an answer') in a paper which requires 2 answers, the overall mark is recorded as '70/1 ½' ('70 over 1 ½ answers', to indicate the extent of the short weight relative to the requirements of the paper) and 10 marks deducted, making a total overall mark of 60 for the script. Other examples of short weight attract analogous proportionate responses.

Candidates who write answers in note form may also expect to have their overall mark for the paper reduced.

**4. Leaving the examination room, arriving late and failing to attend**

(i) **During first half hour and last half hour of examination**

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 within half-an-hour of the end of the examination.

(ii) **Examination Protocol**

An Examination Protocol giving practical advice on the conduct of the examination is attached as Schedule II. This should be read before the examination. The document does not have official status and will not be placed on desks in the examination room. The Protocol also refers you to the Proctors' Disciplinary Regulations (see Schedule IV – *Examination Regulations* 2009, Part 19) and Administrative Regulations for Candidates in Examinations (see Schedule IV – *Examination Regulations* 2009, Part 20). (See also E.3. below).

(iii) **Illness during the examination**

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 the performance in the paper concerned may have been affected by illness. The examiners will only be made aware of any difficulties suffered by a candidate in the examination room if the candidate subsequently obtains a medical certificate and that, plus any other relevant information, is submitted to the Proctors and passed on by them to the examiners. For the procedure to be followed see B.6. below.

(iv) **Late arrival**

A candidate who arrives more than half-an-hour after the time when the examination begins will be allowed by the invigilator to attempt the paper, finishing at the same time as the others. The circumstances will be reported to the Proctors, and the work shall not be taken into account by the Examiners without the consent of the Proctors. The candidate should

contact the Diploma Administrator as soon as possible so that a submission explaining the reasons for late arrival may be made to the Proctors.

(v) **Failure to attend the examination**

Candidates who fail to attend a written examination paper without having obtained the prior permission of the Proctors are deemed to have failed the entire Diploma examination (not just that particular part of the examination), unless the Proctors give instructions to the Examiners about reinstating them (see Schedule IV - *Examination Regulations* 2009, Part 14). This means that the names of such candidates have to be included on the results list under 'fail'. For the procedure for withdrawal (from the entire Diploma examination and from a particular part of the examination) before the Diploma examination and after the Diploma examination has started, see paragraph B.7. below (Schedule IV - *Examination Regulations* 2009, Part 14). The point of completion is deemed to be 'the conclusion of the last paper for which the candidate has entered, or the time by which a dissertation or other written material is due to be submitted, whichever is the later' (Schedule IV - *Examination Regulations* 2009, Part 20.6.). Candidates should consult the Diploma Administrator if any of these provisions apply to them.

**5. Academic Integrity – avoidance of Plagiarism**

See D. below.

**6. Illness or other Causes affecting Candidates for examinations**

The Proctors have authority to authorise special 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 (see Schedule IV - *Examination Regulations* 2009, Part 10). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 6 November 2009**. Where a candidate's performance in any part of an examination is likely to be, or has been, affected by factors, such as illness or disability, of which the Examiners have no knowledge, the candidate may, through the Diploma Administrator, inform the Proctors of these factors. Usually this will involve submitting a medical certificate to the Proctors, in which as much detail as possible should be recorded by the certifying doctor to explain the case. The certificate should indicate the medical reason for the special request. The candidate should request the certificate from the doctor at the time when the doctor is able to certify the facts. Once the final Examiners' meeting has taken place (23 July 2010) only in the most exceptional circumstances will the Proctors forward to the Examiners retrospective evidence that a candidate's performance may have been affected by medical or other factors. The Proctors will pass the information to the Chair of Examiners if, in their opinion, it is likely to assist the Examiners in the performances of their duties. See further Schedule IV - *Examination Regulations* 2009, Part 11. The Examiners cannot take account of any special circumstances other than those communicated by the Proctors. See also B.4.(iii) – (v) above.

The Proctors also have authority to authorise special arrangements for candidates who are forbidden for reasons of faith from taking examinations on religious festivals or other special days which may coincide with days on which examinations are set (see Schedule IV – *Examination Regulations*, Part 12). If this applies, you should consult the Diploma Administrator. Applications for such arrangements **must be submitted to the Proctors by Friday 6 November 2010**.

**7. Withdrawal from the Diploma Examination**

A candidate may withdraw from the entire Diploma examination at any time before the date for submission of the first coursework assignment (Part I). Withdrawal will be effected by the Diploma

Administrator on the candidate's behalf. A candidate may not withdraw from the entire Diploma examination, or any part of it, after the start of the first paper or date for submission of the first paper or other exercise unless by reason of illness or other urgent cause (see Schedule IV - *Examination Regulations* 2009, Part 14). A candidate may not withdraw from the Diploma examination after the written parts of the examination are complete. The point of completion is deemed to be the conclusion of the last paper for which the candidate has entered, or the time by which a dissertation or other written material is due to be submitted, whichever is the later. See further paragraph C.2. for provisions for re-examination. Candidates should contact the Diploma Administrator at once if any of these provisions apply to them; it may be necessary for the Diploma Administrator to apply to the Proctors on the candidate's behalf, and there are administrative consequences too.

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

### **(i) Statutes and other Source Materials**

The following statutes and other materials will be placed on the desks in the examination room. In the event of any change or addition, this will be notified specifically to candidates.

#### **Intellectual Property I and Intellectual Property II**

Blackstone's Statutes on Intellectual Property, 9<sup>th</sup> edition (2008)

### **(ii) Dictionaries**

The use of a bilingual dictionary by non-native English speakers is under review by the Education Committee. When available, further information will be circulated to candidates.

### **(iii) Other materials**

No other books or papers whatever, and no calculators may be taken into the examination room.

## **9. *Academic Integrity – avoidance of Plagiarism***

See D. below.

## **10. *The Question Papers***

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

### **(i) Format and Rubric of papers**

**Intellectual Property I and Intellectual Property II** – in each of the two paper there will be 4 questions. Candidates should answer two questions. Questions may cover more than one topic and candidates may be required to answer at least one problem question.

### **(ii) Special announcements**

**Intellectual Property I and Intellectual Property II** – candidates will not be expected to have detailed knowledge of developments after Friday 12 March 2010.

## **C. MARKING CONVENTIONS, ASSESSMENT STANDARDS AND RE-EXAMINATION**

## **1. *Marking Scale, Classification Conventions and Assessment Standards***

The University requires examination scripts and other written work to be marked on a scale from 1 to 100. In this Diploma, marks of 70 and above are Distinction marks and marks of 50 – 69 are Pass marks. Marks of 49 or below are Fail marks. For the Assessment Standards see Schedule I. Marks are awarded for each coursework assignment and for each written examination paper, giving a profile of six marks.

It is important to appreciate that the classification conventions set out here are not inflexible rules. The Examiners have a residual discretion to deal with unusual cases and circumstances. Subject to that caveat, the conventions that will normally be applied are as follows:

(a) For the award of the Diploma in Intellectual Property Law and Practice there must be no mark below 50. A mark below 50 may not be compensated by very good performance elsewhere

(b) For the award of a Distinction in the Diploma in Intellectual Property and Practice a candidate must achieve marks of 70 or above in at least one of the written examination papers (Part II), and marks of 70 or above in two or more of the other papers, and must have no mark below 55 in any paper. For this calculation, the coursework assignments count as four papers, and the examination papers count as two papers (making a total of six papers in all).

As for the discretion to depart from the normal conventions, candidates may be assured that it is not exercised except in very unusual circumstances (eg medical) in which the Examiners are convinced that the convention would yield an indefensible result. The discretion has to be exercised rationally, and the primary component of rationality in this context is that all candidates should be subjected to exactly the same rules. It follows that the discretion will not be exercised in favour of a candidate merely because the marks very narrowly fail to satisfy the convention or against a candidate merely because they only very narrowly succeed in satisfying the convention.

## **2. *Re-examination***

Candidates who fail any of the six papers (four coursework assignments and two examination papers), or who withdraw before submission of all the six papers, may re-take in the immediately following academic year **only** any paper in which they achieved a mark of 49 or below, and may carry forward the marks of any paper they passed (mark of 50 or above). But nothing in this paragraph shall prejudice the powers of the University's Education Committee and Proctors to permit partial re-takes in exceptional circumstances. If since the previous year there has been a change of syllabus, coursework assignments or examination papers shall nevertheless be set on the previous syllabus for the candidate who is re-taking them, but may not be taken by any other candidate.

## **D. *ACADEMIC INTEGRITY – AVOIDANCE OF PLAGIARISM***

Plagiarism is the copying or paraphrasing of other people's work or ideas into their own work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this description. Collusion is another form of plagiarism involving the unauthorised collaboration of students (or others) in a piece of work. The Proctors Disciplinary Regulations concerning conduct in examinations (Schedule IV – *Examination Regulations* 2009, Part 19.4. and 19.5.) state that 'No candidate shall present for an examination as his or her own work any part of the substance of any part of another person's work. In any written work (whether thesis, dissertation, essay, coursework, or written examination) passages quoted or closely paraphrased from another person's work must be identified as quotations or paraphrases, and the source of the quoted or paraphrased material must

be clearly acknowledged.’ See further Schedule III - the introductory text of the guidance issued by the University’s Education Committee. Examples of plagiarism and how to avoid it are given on <http://www.admin.ox.ac.uk/epsc/plagiarism>; 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 A.3.(i) (last paragraph thereof) above).

In this connection, you are required to complete and submit with each coursework assignment a **Declaration of Authorship**, including acknowledgement of the University’s right to check for plagiarism or collusion. A blank Declaration of Authorship for your use is attached as Schedule V. When submitting one of the coursework assignments (Part I) (see A.3.(i) above), **please complete a copy of this Declaration and enclose it in the envelope with the two hard copies of the assignment**. If the Declaration is submitted late, the Proctors may recommend that the examiners apply an academic penalty (Schedule IV – *Examination Regulations* 2009, Part 16.8.(6)).

If the Examiners believe that material submitted by a candidate may be plagiarised, they will refer the matter to the Proctors. The Proctors will suspend the candidate’s examination while they fully investigate such cases (including interviewing the candidate). If they consider that a breach of the Disciplinary Regulations has occurred, the Proctors are empowered to refer the matter to the Student Disciplinary Panel. For further information see the Proctors’ and Assessor’s Memorandum (E.3. below).

## E. GENERAL INFORMATION

### 1. *Publication of Results*

The Examination Schools are reviewing the details of examination results which candidates will be able to view within the Student Self Service webpage in OSS (<https://www.studentsystem.ox.ac.uk/>). The Examiners expect that this facility will be available by Tuesday 27 July (depending on the Examination Schools). Individual Diploma Confirmation Letters will also be sent by the Examination Schools to candidates’ home addresses (as contained within the Student Self Service webpage in OSS). Please note that results will not be available over the telephone from the Examination Schools and a results list will not be posted in the Examination Schools. Results will also not be available over the telephone from the Diploma Administrator, but an informal transcript will be sent by post to each candidates (and by email attachment if so authorised by the candidate concerned).

### 2. *Appeals from Decisions of the Proctors and Examiners*

For the procedures for appeals from decisions of the Proctors, see Schedule IV – *Examination Regulations* 2009, Part 18.1.). The appeal must be made within 14 days of the date of the Proctors’ decision. For appeals from the decisions of the Examiners, see Schedule IV – *Examination Regulations* 2009, Part 18.2., and Part 20, paragraph 7. If you wish to raise a query or make a complaint about the conduct of your examination you should consult urgently the Diploma Administrator. Queries and complaints must not be raised directly with the Examiners, but must be made formally to the Proctors through the Diploma Administrator, and no later than three 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 Proctors’ and Assessor’s Memorandum, particularly section 13 (see E.3. below).

### **3. *Proctors' and Assessor's Memorandum***

*Essential Information for Students* (known as the Proctors' and Assessor's Memorandum) contains much useful information and is available on <http://www.admin.ox.ac.uk/proctors>. Sections 9, 10, 11 and 13 have relevance for examinations.

Ms A.S. Kennedy (Chair)  
Mr. R. Anderson (IPLA)  
Dr. T. Aplin (External)  
Professor G. Dinwoodie

7 October 2009

Schedule I – Assessment Standards  
Schedule II – Examination Protocol  
Schedule III – Academic Integrity; avoidance of plagiarism  
Schedule IV – Extracts from *Examination Regulations 2009*  
Schedule V – template Declaration of Authorship

# SCHEDULE I

## DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2009-10

### ASSESSMENT STANDARDS

The University requires examination scripts and other written work to be marked on a scale from 1 to 100. Marks of 70 or above are Distinction marks, and marks of 50 – 69 are Pass marks. Marks of 49 or below are Fail marks. The standards applied to the assessment of the Coursework Assignments (Part I) and Written Examination Papers (Part II) are as follows:

**Distinction (70 and above):** Distinction answers are those that represent an excellent level of attainment for a student at postgraduate level. They exhibit 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 synthesis and analysis of materials, 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;
- advanced appreciation of practical arguments concerning the topic, substantial critical facility, and personal contribution to debate on the topic.

**Pass (50 – 69):** Pass answers represent a level of attainment which, for a student at postgraduate level, is within the range acceptable to very good. They exhibit 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 context;
- good synthesis and analysis of materials, 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;
- familiarity with practical arguments concerning the topic, and (especially in the case of high pass answers) a significant degree of critical facility.

**Fail (below 50):** Qualities required for a pass answer are absent.

## SCHEDULE II

### DIPLOMA IN INTELLECTUAL PROPERTY AND PRACTICE 2009-10

#### EXAMINATION PROTOCOL

**NB This is an unofficial practical guide to conduct and procedures in the Examination Schools. In addition, you should before the examination familiarize yourself with the Proctors' Disciplinary Regulations for Candidates in Examinations** (see Schedule IV - *Examination Regulations* 2009, Part 19) **and the Proctors' Administrative Regulations for Candidates in Examinations** (see Schedule IV - *Examination Regulations* 2009, Part 20). (The Proctors also draw attention to these Regulations in the *Proctors' and Assessor's Memorandum* – see Examiners' Edict, para. E.3.).

1. Please check that you are seated at the right seat in the examination room.
2. In order to prevent impersonation of examination candidates, during every written paper you must display your University Card face up on your desk.
3. Do not turn over the examination paper or begin writing until you are told you may do so.
4. You may remove jackets and ties during the examination, but you must be correctly dressed before you leave the examination room.
5. Do not put your name on any answer book. Write only Diploma in Intellectual Property and your examination number in the spaces provided.
6. Please read the instructions on the front of your answer book and observe them.
7. If you have been permitted by the Proctors to use a bilingual dictionary during the examination, it will be inspected by an invigilator at the beginning of the examination. It should be left on your desk until the examination is concluded. (NB The use of a bilingual dictionary is under review – see Examiners' Edict, para. B.8.(ii))
8. You may not leave the examination room before 30 minutes after the beginning of the examination, nor in the last 30 minutes of the examination.
9. Do not bring refreshments including bottled water into the examination room. Water is available in the lobby just outside the room. It is not to be brought into the room.
10. Do not bring mobile telephones or any other electronic devices into the examination room.
11. Do not bring any papers or personal belongings, such as coats and bags, into the examination room. All articles or equipment to be used in an examination must be carried into the examination room in a transparent bag. Non-transparent bags must be offered for inspection and, unless special permission is given by an invigilator, must be deposited at the place designated for the deposit of bags and other personal belongings.
12. If you require more paper, a drink of water or to visit the toilet please listen carefully to the instructions from the invigilator at the beginning of the exam to indicate your requirement.
13. Shortly before the end of the examination, you will be given an oral notice of the time remaining. At the end of the examination you will be orally notified to stop writing. If you have used more than one book, you must tag the books together using the tag provided.
14. At the end of the examination, you will be called upon, a row at a time, to deposit your script in the boxes provided.

15. At the end of the examination, please disperse as soon as possible. In order to avoid nuisance to other members of the public, the Proctors' rules clearly prohibit you from assembling for any purpose in the entrance of the Examination Schools or on the streets outside. The Proctors' Code of Conduct for post-examination celebrations is available on <http://www.admin.ox.ac.uk/proctors>.

## SCHEDULE III

### DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2009-10

#### PLAGIARISM

##### What is plagiarism?

Plagiarism is the copying or paraphrasing of other people's work or ideas into your own work without full acknowledgement. All published and unpublished material, whether in manuscript, printed or electronic form, is covered under this definition.

Collusion is another form of plagiarism involving the unauthorised collaboration of students (or others) in a piece of work.

Cases of suspected plagiarism in assessed work are investigated under the [disciplinary regulations](#) concerning conduct in examinations. Intentional or reckless plagiarism may incur severe penalties, including failure of your degree or expulsion from the university.

##### Why does plagiarism matter?

It would be wrong to describe plagiarism as only a minor form of cheating, or as merely a matter of academic etiquette. On the contrary, it is important to understand that plagiarism is **a breach of academic integrity**. It is a principle of intellectual honesty that all members of the academic community should acknowledge their debt to the originators of the ideas, words, and data which form the basis for their own work. Passing off another's work as your own is not only poor scholarship, but also means that you have failed to complete the learning process. Deliberate plagiarism is unethical and can have serious consequences for your future career; it also undermines the standards of your institution and of the degrees it issues.

##### What forms can plagiarism take?

- Verbatim quotation of other people's intellectual work without clear acknowledgement. Quotations must always be identified as such by the use of either quotation marks or indentation, with adequate citation. It must always be apparent to the reader which parts are your own independent work and where you have drawn on someone else's ideas and language.

- Paraphrasing the work of others by altering a few words and changing their order, or by closely following the structure of their argument, is plagiarism because you are deriving your words and ideas from their work without giving due acknowledgement. Even if you include a reference to the original author in your own text you are still creating a misleading impression that the paraphrased wording is entirely your own. It is better to write a brief summary of the author's overall argument in your own words than to paraphrase particular sections of his or her writing. This will ensure you have a genuine grasp of the argument and will avoid the difficulty of paraphrasing without plagiarising. You must also properly attribute all material you derive from lectures.
- Cutting and pasting from the Internet. Information derived from the Internet must be adequately referenced and included in the bibliography. It is important to evaluate carefully all material found on the Internet, as it is less likely to have been through the same process of scholarly peer review as published sources.
- Collusion. This can involve unauthorised collaboration between students, failure to attribute assistance received, or failure to follow precisely regulations on group work projects. It is your responsibility to ensure that you are entirely clear about the extent of collaboration permitted, and which parts of the work must be your own.
- Inaccurate citation. It is important to cite correctly, according to the conventions of your discipline. Additionally, you should not include anything in a footnote or bibliography that you have not actually consulted. If you cannot gain access to a primary source you must make it clear in your citation that your knowledge of the work has been derived from a secondary text (e.g. Bradshaw, D. *Title of Book*, discussed in Wilson, E., *Title of Book* (London, 2004), p. 189).
- Failure to acknowledge. You must clearly acknowledge all assistance which has contributed to the production of your work, such as advice from fellow students, laboratory technicians, and other external sources. This need not apply to the assistance provided by your tutor or supervisor, nor to ordinary proofreading, but it is necessary to acknowledge other guidance which leads to substantive changes of content or approach.
- Professional agencies. You should neither make use of professional agencies in the production of your work nor submit material which has been written for you. It is vital to your intellectual training and development that you should undertake the research process unaided.
- Autoplagerism. You must not submit work for assessment which you have already submitted (partially or in full) to fulfil the requirements of another degree course or examination.

### **Not just printed text!**

The necessity to reference applies not only to text, but also to other media, such as computer code, illustrations, graphs etc. It applies equally to published text drawn from

books and journals, and to unpublished text, whether from lecture handouts, theses or other students' essays. You must also attribute text or other resources downloaded from web sites.

### **Why should you avoid plagiarism?**

There are many reasons to avoid plagiarism. You have come to university to learn to know and speak your own mind, not merely to parrot the opinions of others. Still less to do so deceitfully, without attribution. At first it may seem very difficult to develop your own views, and you will probably find yourself paraphrasing the writings of others as you attempt to understand and assimilate their arguments. However it is important that you learn to develop your own voice. You are not necessarily expected to become an *original* thinker, but you are expected to be an *independent* one. By this we mean that you will learn to assess critically the work of others, weigh up differing arguments and draw your own conclusions. Students who plagiarise undermine the ethos of academic scholarship while avoiding an essential part of the learning process. Academic dishonesty can also have grave consequences for your university career. The Proctors, who are the university officers in charge of student discipline, regard [plagiarism in examinations](#) as a serious form of cheating for which offenders can expect to receive severe penalties.

### **Does this mean that I shouldn't use the work of other authors?**

On the contrary, it is vital that you situate your writing within the intellectual debates of your discipline. Academic essays almost always involve the use and discussion of material written by others, and, with due acknowledgement and proper referencing, this is clearly distinguishable from plagiarism. The knowledge in your discipline has developed cumulatively as a result of years of research, innovation and debate. You need to give credit to the authors of the ideas and observations you cite. Not only does this accord recognition to their labours, it also helps you to strengthen your argument by making clear the basis on which you make it. Moreover, good citation practice gives your reader the opportunity to follow up your references, or check the validity of your interpretation.

### **Does every statement in my essay have to be backed up with references?**

You may feel that including the citation for every point you make will interrupt the flow of your essay and make it look very unoriginal. At least initially, this may sometimes be inevitable. However, by employing good citation practice from the start, you will learn to avoid errors such as sloppy paraphrasing or unreferenced quotation. It is important to understand the reasons behind the need for transparency of source use. All academic texts, even student essays, are *multi-voiced*, which means they are filled with references to other texts. Rather than attempting to synthesise these voices into one narrative account, you should make it clear whose interpretation or argument you are employing at any one time (whose 'voice' is speaking). If you are substantially indebted to a particular

argument in the formulation of your own, you should make this clear both in footnotes and in the body of your text, before going on to describe how your own views develop or diverge from this influence. On the other hand, it is not necessary to give references for facts that are common knowledge in your discipline. If you are unsure as to whether something is considered to be common knowledge or not, it is safer to cite it anyway and seek clarification. You *do* need to document facts that are not generally known and ideas that are interpretations of facts.

### **Does this only matter in exams?**

Although plagiarism in weekly essays does not constitute a University disciplinary offence, it may well lead to College disciplinary measures. Persistent academic under-performance can even result in your being sent down from the University. Although tutorial essays traditionally do not require the full scholarly apparatus of footnotes and referencing, it is still necessary to acknowledge your sources and demonstrate the development of your argument, usually by an in-text reference. Many tutors will ask that you do employ a formal citation style early on, and you will find that this is good preparation for later project and dissertation work. In any case, your work will benefit considerably if you adopt good scholarly habits from the start, together with the techniques of critical thinking and writing described above. As junior members of the academic community, students need to learn how to read academic literature and how to write in a style appropriate to their discipline. This does not mean that you must become masters of jargon and obfuscation; however the process is akin to learning a new language. It is necessary not only to learn new terminology, but the practical study skills and other techniques which will help you to learn effectively. Developing these skills throughout your time at university will not only help you to produce better coursework, dissertations, projects and exam papers, but will lay the intellectual foundations for your future career. Even if you have no intention of becoming an academic, being able to analyse evidence, exercise critical judgement, and write clearly and persuasively are skills that will serve you for life, and which any employer will value.

### **Unintentional plagiarism**

Not all cases of plagiarism arise from a deliberate intention to cheat. Sometimes students may omit to take down citation details when copying and pasting, or they may be genuinely ignorant of referencing conventions. However, these excuses offer no protection against a charge of plagiarism. Even in cases where the plagiarism is found to have been unintentional, there may still be a penalty. It is your responsibility to find out the prevailing referencing conventions in your discipline, to take adequate notes, and to avoid close paraphrasing. If you are offered induction sessions on plagiarism and study skills, you should attend. Together with the advice contained in your subject handbook, these will help you learn how to avoid common errors. If you are undertaking a project or dissertation you should ensure that you have information on plagiarism and collusion. If ever in doubt about referencing, paraphrasing or plagiarism, you have only to ask your

tutor. There are some helpful [examples](#) of plagiarism-by-paraphrase on the next page and you will also find extensive advice and useful links in the section on '[Electronic resources](#)'. All students will benefit from taking the [online course](#) which has been developed to provide a useful overview of the issues surrounding plagiarism and practical ways to avoid it. Graduate students who complete this course can include it in their skills training record.

The best way of avoiding inadvertent plagiarism, however, is to learn and employ the principles of good academic practice from the beginning of your university career. Avoiding plagiarism is not simply a matter of making sure your references are all correct, or changing enough words so the examiner will not notice your paraphrase; it is about deploying your academic skills to make your work as good as it can be.

# SCHEDULE IV

## DIPLOMA IN INTELLECTUAL LAW AND PRACTICE 2009-10

### EXTRACTS FROM THE UNIVERSITY OF OXFORD EXAMINATION REGULATIONS 2009 (for academic year 2009-10)

The *Examination Regulations* 2009 are available at <http://www.admin.ox.ac.uk/examregs/>. For ease of reference, the extracts below cover regulations for the conduct of examinations of particular relevance to Diploma candidates, and include (inter alia) those provisions specifically referred to in the Examiners' Edict.

NB Where the *Examination Regulations* refer to action by a candidate's college or the Senior Tutor of a candidate's college, please **substitute** the Diploma Administrator.

#### REGULATIONS FOR THE CONDUCT OF UNIVERSITY EXAMINATIONS

It is suggested that these regulations are read in conjunction with the Education Committee Policy and Guidance on Examinations and Assessment (available at: <http://www.admin.ox.ac.uk/epsc/guidance>).

#### Part I Introduction

1.1. (1) These regulations shall, unless otherwise stated in any statute or in these or any other regulations, apply to University Examinations (including the First as well as the Second Public Examination) for all degrees except those referred to in paragraph (3) below.

(2) They also apply to University Examinations for all certificates and diplomas awarded by the University, and to any Examination described as a qualifying examination.

(3) ....

1.2. In these regulations unless the context otherwise requires:

(1) 'college' means any college, society, or Permanent Private Hall or any other institution designated by Council by regulation as being permitted to present candidates for matriculation;

(2) 'examiners' includes all persons approved to examine candidates for University Examinations to which these regulations apply;

(3) 'examination' includes the submission and assessment of a thesis, dissertation, essay, practical work, or other coursework and any other exercise which is not undertaken in formal examination conditions but counts towards or constitutes the work for a degree or other academic award;

(4) 'University Examination' means a group or number of examinations which a candidate must pass to obtain a degree or other award or to qualify as a candidate for a degree or other award of the University;

(5) 'supervisory body' means a Board of the Division or Faculty or other university body which has supervision over a University Examination;

(6) 'Board of Examiners' means the body of examiners, including external examiners, who are appointed to conduct a University Examination but does not include assessors.

(7) 'Senior Tutor' means the Senior Tutor or other proper officer of a candidate's college.

(8) words and expressions in the singular include the plural and those in the plural include the singular.

....

1.7. Council may authorise a supervisory body to make special regulations for a University Examination modifying the effect of these regulations on that Examination to the extent permitted by Council.

## **Part 2 Number of Examiners**

2.1. It is the duty of every supervisory body:

(1) to ensure that there is a sufficient number of suitably qualified examiners to prepare and examine every part of the University Examination for which it is responsible;

(2) to arrange for their nomination in accordance with Part 4 below.

....

**Part 3**  
**Qualifications of Examiners**

3.1. Examiners, other than...external examiners...must be members of a Faculty of the University.

3.2. The Pro-Vice-Chancellor (Education) and Proctors may for good cause dispense with the requirements of regulation 3.1 above.

....

**Part 4**  
**Examiners: Nominations and Vacancies**

....

**Part 5**  
**Examiners: Periods of Office, Casual Vacancies, Resignations, and Removal**

....

**Part 6**  
**Chairmen of Examiners**

6.1. The supervisory body responsible for a University Examination shall appoint a chairman of examiners as soon as practicable and in accordance with its standing orders and shall notify the Academic Registrar and Secretary of Faculties of the appointment.

....

6.5. As well as performing the specific duties laid down in these or any other regulations the chairman shall be responsible generally for ensuring that the business of his or her Board of Examiners is properly conducted and that the requirements of these regulations are fulfilled by that Board.

6.6. It shall be the duty of each chairman of examiners to ensure that account is taken of the *Policy and Guidance of Examiners and Chairmen of Examiners* published periodically by the Proctors and of guidance provided by the Education Committee so far as they are applicable to the University Examination for which his or her Board of Examiners is responsible.

**Part 7**  
**Assessors**

7.1. A Board of Examiners may in accordance with the provisions of this Part appoint as assessors other persons who are not examiners in the same University Examination to act with them in setting and/or marking any particular part of a University Examination.

....

**Part 8**  
**Approval of Conventions and Submission of Papers to Examiners**

....

**Part 9**  
**Times for Holding Examinations and Entry of Names of Candidates**

....

**Part 10**  
**Candidates with Special Examination Needs**

*Application of Part 10*

10.1.

(1) This Part is concerned with candidates for University Examinations who have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

(2) This Part shall apply to them if the impairment which they have significantly affects their ability to undertake any examination at or within the time allotted to it, or at the place where it is to be held, or in the manner in which it is normally undertaken by candidates.

(3) This Part in any case applies to every candidate who has a specific learning difficulty such as dyslexia, dyspraxia, dysgraphia, dyscalculia or attention deficit disorder.

(4) Candidates to whom this Part applies are called 'candidates with special examination needs' and those falling within paragraph (3) of this regulation are called 'candidates with specific learning difficulties'.

### *General Rules*

10.2. A candidate in any University Examination with special examination needs may apply to the Proctors through the Senior Tutor of his or her college:

- (1) for special examination arrangements relating to his or her condition; and
- (2) for the condition to be taken into account by the examiners as a special factor that may affect his or her performance in examinations.

10.3.

(1) An application under regulation 10.2 above shall be made as soon as possible after matriculation and in any event not later than the date of entry of the candidate's name for the first examination for which special arrangements are sought.

(2) The application must be supported by a statement from an educational psychologist or other suitably qualified medical practitioner (called in these regulations 'the consultant') approved by the Proctors.

(3) The consultant's statement must be based on an assessment of the candidate carried out by that person and on such further assessment of the candidate as the consultant considers necessary in order to form a judgement.

(4) The Proctors shall issue guidance periodically on the qualifications of consultants and the nature of the assessments that will be considered appropriate.

10.4.

(1) Where an application is made in respect of a candidate who is confirmed under regulation 10.3 above to have special examination needs, the Proctors shall ensure that arrangements are made for the examination of that candidate which are appropriate for him or her and fair in all the circumstances.

(2) These arrangements may include but are not limited to the provision of a room for the examination of the candidate, permission under Part 13 of these regulations for the dictation of papers and the use of a word-processor or other materials and equipment, the provision of an amanuensis, and the granting of extra time for the examination.

(3) The Proctors shall have regard to any recommendation made by the consultant in deciding what arrangements they should make.

10.5. Candidates who are confirmed under regulation 10.3 above to have a specific learning difficulty shall, where appropriate, be given extra time by the Proctors. Additional examination adjustments may be permitted on the recommendation of the consultant.

10.6 In the case of a candidate with a specific learning difficulty the Proctors shall also ensure that the appropriate statements explaining the effects of a specific learning difficulty are supplied to the chairman of the examiners of the relevant University Examination and the Academic Registrar and Secretary of Faculties shall ensure that they are placed on the candidate's examination scripts and any other work submitted for assessment, in order to assist the examiners in adjudicating the merits of the candidate's work.

*Visually impaired candidates*

10.7.

(1) This additional regulation applies to candidates who are visually-impaired.

(2) Where any college has a visually-impaired candidate for any University Examination, the Senior Tutor shall, not less than three months before the date of the Examination, inform the Proctors who will make the necessary arrangements (including provision for papers in Braille if appropriate) in consultation with the Chairman of Examiners and the Academic Registrar and Secretary of Faculties.

(3) When papers in Braille or another format are required, the chairman concerned shall submit a copy of the necessary manuscripts to the Academic Registrar and Secretary of Faculties at least eight weeks before the date of the beginning of the University Examination.

*Codes of practice*

10.8. In exercising their powers under this Part the Proctors and chairmen of examiners shall take full account of any relevant code of practice or other guidance adopted by the University in relation to persons who have a disability.

*Invigilation*

10.9. The invigilation of candidates with special examination needs for whom an examination room is provided shall be carried out in accordance with regulation 15.5 below.

*Continuity of arrangements*

10.10. Special arrangements approved by the Proctors under this Part shall normally apply to all University Examinations taken by the candidate during his or her course of study.

10.11

(1) It shall be the responsibility of the candidate to apply for any subsequent change to these arrangements which he or she may wish, and to inform the Proctors of any material change in his or her circumstances which might affect the suitability of those arrangements.

(2) In considering any request made under paragraph (1) the Proctors shall obtain and take into account the views of the consultant.

#### *Appeals under this Part*

10.12 A candidate who is dissatisfied with any decision made by the Proctors under this Part, or his or her college, may appeal against that decision in accordance with the provisions of regulation 18.1 below.

#### *Costs*

10.13. The costs of arrangements made under this Part shall not fall on the candidate.

### **Part 11 Acute Illness or other urgent causes affecting candidates**

#### *Application of Part 11*

11.1. This Part is concerned with candidates whose performance in a University Examination may be significantly affected by acute illness or some other urgent cause, not falling within regulation 10.1 above, which comes to the notice of a candidate's college before, during or after an examination.

#### *Non-appearance at an examination*

11.2.

(1) A candidate in any University Examination may, through his or her college, request the Proctors to accept a submission that the candidate will be or has been prevented by illness or other urgent cause from presenting himself or herself at the appointed time or place for any part of a University Examination.

(2) For the purposes of this regulation a candidate will be deemed to have presented himself or herself for a written paper if he or she was present in the place designated for that examination and had the opportunity to see the question paper there.

### 11.3.

(1) A request under regulation 11.2 above must be submitted in writing by the Senior Tutor or other proper officer of the candidate's college, with sufficient evidence to support it.

(2) Where non-appearance is caused by illness a medical certificate from a qualified medical practitioner must be sent, and this certificate must specify, with dates, the reason why the illness will prevent or has prevented the candidate from attending the examination.

### 11.4.

(1) If the Proctors accept a submission under regulation 11.2 above they shall send a copy of their decision promptly to the chairman of examiners of the University Examination concerned and inform the candidate's college and the Academic Registrar and Secretary of Faculties.

11.5. If the Proctors accept a submission under 11.2 above they may authorise the examiners either:

(1) to examine the candidate at another place or time under such arrangements as they deem appropriate; or

(2) if other work that the candidate has already submitted in the Examination is of sufficient merit, to act as if he or she had completed the part of the University Examination which he or she was unable to attend.

11.6. Where it is decided under paragraph (1) of regulation 11.5 above that a candidate is to be examined at a place or time other than that appointed for the examination the invigilation of the candidate shall be carried out in accordance with regulation 15.5 below.

### 11.7.

(1) Where it is decided under paragraph (2) of regulation 11.5 above that the examiners are to act as if the candidate had completed the part of the University

Examination concerned, and the University Examination is one in which Honours may be awarded, the examiners may adopt one of the following courses:

(a) if they consider the candidate has submitted enough work to allow them to determine his or her proper class, they may award the candidate the class his or her performance merits;

(b) if they are unable to adopt course (a) but consider, on the basis of the work submitted, that but for the candidate's absence he or she would have obtained classified Honours, they may deem the candidate to have obtained Honours and publish his or her name accordingly at the foot of the Class List under the words 'declared to have deserved Honours';

(c) if they are unable to adopt course (a) or course (b) but are nevertheless satisfied with the work submitted, they may include the candidate's name on the Pass List to show that the candidate has satisfied the examiners;

(d) if they are unable to adopt course (a), (b), or (c) they shall fail the candidate.

(2) Where the examiners have adopted course (b), (c), or (d) above it shall be open to the candidate to apply to Council for consideration of his or her standing for Honours at a future examination.

(3) Where it is decided under paragraph (2) of regulation 11.5 above that the examiners are to act as if the candidate had completed the parts of the University Examination concerned, and the University Examination is one in which Honours are not awarded, the examiners may adopt one of the following courses:

(a) if they consider the candidate has submitted enough work to allow them to determine whether it is of a sufficient standard to enable the candidate to pass the Examination they may include his or her name in the Pass List;

(b) if they are unable to adopt course (a), they shall fail the candidate.

#### *Factors affecting performance*

11.8. If it comes to the notice of a candidate's college before, during or after an examination that the candidate's performance in any part of a University Examination is likely to be or has been affected by factors of which the examiners have no knowledge, that college shall through the Senior Tutor inform the Proctors of this factor.

11.9.

(1) The Proctors shall pass this information on to the chairman of the examiners unless in their judgement it is irrelevant to the performance of the candidate in the examination.

(2) If the Proctors decide not to pass the information on they shall give reasons for their decision.

(3) The Proctors will normally not pass such information to the chairman of examiners if it is received after the final meeting of the examiners.

#### 11.10.

(1) If the University Examination is one in which Honours may be awarded the examiners may adopt one of the following courses, taking account of the information passed to them:

(a) if they consider the candidate has submitted enough work to allow them to determine his or her proper class, they shall award the candidate the class his or her performance merits;

(b) if they are unable to adopt course (a) but consider, on the evidence of the work submitted, that but for the illness or other urgent cause affecting the candidate's performance, he or she would have obtained Honours, they may deem the candidate to have obtained Honours and publish his or her name accordingly at the foot of the Class List under the words 'declared to have deserved Honours';

(c) if they are unable to adopt course (a) or course (b) but are nevertheless satisfied with the work submitted, they may include the candidate's name on the Pass List to show that the candidate has satisfied the examiners;

(d) if they are unable to adopt course (a), (b), or (c) they shall fail the candidate.

(2) Where the examiners have adopted course (b), (c), or (d) above it shall be open to the candidate to apply to Council for consideration of his or her standing for Honours at a future examination.

(3) If the University Examination is one in which Honours are not awarded the examiners may adopt one of the following courses, taking account of the information passed to them:

(a) if they consider that the candidate has submitted enough work to allow them to determine that it is of sufficient standard to enable the candidate to pass the Examination, they shall include his or her name in the Pass List;

(b) if they are unable to adopt course (a) they shall fail the candidate.

*Appeals under this Part*

11.11 A candidate or his or her college who is dissatisfied with any decision made by the Proctors or by the examiners under this Part, may appeal against that decision in accordance with the provisions of regulations 18.1 or 18.2 below.

**Part 12**  
**Religious Festivals and Holidays Coinciding with Examinations**

12.1. A candidate in any University Examination who is forbidden, for reasons of faith, from taking papers on religious festivals or other special days which may coincide with days on which examinations are set, may, through his or her Senior Tutor, apply to the Proctors for approval of special examination arrangements.

12.2. An application under 12.1 above shall be made as soon as possible after matriculation and in any event not later than the date of entry of the candidate's name for the first examination for which special arrangements are sought and shall specify the faith of the candidate concerned and the details of any days specially affected.

12.3.

(1) If the Proctors approve the application they shall notify the Academic Registrar and Secretary of Faculties who shall make reasonable efforts to ensure that an examination timetable is set such that special arrangements are not required.

(2) If the Proctors do not approve the application they shall give reasons for their decision.

12.4. If it is not practicable to adjust the timetable in the manner described in regulation 12.3 (1) above, the Academic Registrar and Secretary of Faculties shall notify the Proctors and the candidate's Senior Tutor and identify another date or time when the candidate must take that part, which will, whenever possible, be later than the date or time prescribed for the part in question.

12.5. Following such notification, the Senior Tutor shall make arrangements for the candidate to be examined at that alternative time and shall submit these arrangements to the Proctors for approval.

12.6. The Proctors shall notify the Chairman of Examiners and the Academic Registrar and Secretary of Faculties of special arrangements approved under this regulation.

12.7. When a candidate is to be examined on a date or at a time fixed by the Academic Registrar and Secretary of Faculties under regulation 12.4 above, the invigilation of the candidate shall be carried out in accordance with regulation 15.5 below.

#### *Costs*

12.8. The costs of arrangements made under this Part shall not fall on the candidate.

#### *Appeals under this Part*

12.9. A candidate who is dissatisfied with a decision made by the Proctors under regulation 12.3 above, or his or her college, may appeal against that decision in accordance with the provisions of regulation 18.1 below.

### **Part 13**

#### **Dictation of Papers and the Use of Word-Processors, Calculators, Computers, and other materials in Examinations**

##### *Dictation and the use of word-processors*

13.1. Unless permitted by the Proctors under Parts 10 or 11 of these regulations or under any other regulation, the use of word-processing and the dictation of papers in any University Examination is prohibited.

13.2.

(1) If the Proctors permit the use of a word-processor, whether for the candidate's own use or for use by an amanuensis during the dictation of papers, the Proctors shall specify in each case such detailed arrangements as they deem appropriate for the preparation and use of any equipment and computer software during the examination and for the conduct of the examination.

(2) The Proctors shall also specify the detailed arrangements to be made for the printing, handing in and recording of the candidate's script, and the number of copies to be made.

(3) The Proctors shall send the details of these arrangements promptly to the chairman of the examiners of the relevant examination, with copies to the Senior Tutor, and to the Academic Registrar and Secretary of Faculties.

(4) The arrangements for the collection of the examination paper by the invigilator and for the invigilation of the candidate shall take place in accordance with regulation 15.5 and 15.6 below.

13.3 The costs of arrangements made under regulation 13.2 above shall not fall on the candidate.

....

*Use of pencils*

13.6. Except for the drawing of diagrams, no candidate may use pencil for the writing of an examination unless prior permission has been obtained from the Proctors.

*Use of dictionaries*

13.7.

(1) Unless any regulation provides otherwise, the use of dictionaries of any kind shall not be permitted in any University Examination.

(2) This regulation shall not apply to candidates whose course of study commenced prior to Michaelmas Term 2009. Such a candidate whose native language is not English and who wishes to take into any examination a bilingual dictionary (covering English and the candidate's native language) must at the time of entering for the examination obtain permission from the Proctors through the Senior Tutor. Permission shall not be given where regulations or examiners' instructions have previously forbidden the use of dictionaries.

....

**Part 14**  
**Withdrawal from Examinations and Non-appearance**

14.1. This Part provides for candidates who wish to withdraw from any University Examination after their names have been entered under Part 9 of these regulations or who do not appear at the time or place appointed for taking any examination for which they have been entered.

*Withdrawal before the Examination begins*

14.2. A candidate whose name has been entered for a University Examination may withdraw from that Examination at any time before the start or (as the case may be) date for submission of the first paper or other exercise in the Examination.

*Withdrawal after the Examination has started*

14.3. A candidate who wishes to withdraw from a University Examination at any time after the start of the first paper or date for submission of the first paper or other exercise must inform an invigilator and the Academic Registrar and Secretary of Faculties at once and his or her college as soon as possible.

14.4.

(1) A candidate may not withdraw from a University Examination at any time after the start or date for submission of the first paper or other exercise in the Examination unless regulations 11.2-11.7 above apply to his or her case.

(2) If the candidate's college is satisfied with the reason given the Senior Tutor must as soon as possible notify the Academic Registrar and Secretary of Faculties.

(3) On receipt of the notice given under paragraph (2) above the Academic Registrar and Secretary of Faculties shall inform the chairman of the relevant examiners.

*Non-appearance at an examination*

14.5.

(1) Except in cases to which regulations 11.2-11.7 or 14.3 and 14.4 above apply a candidate who fails to appear for any part of a University Examination (including a viva voce examination) will be deemed to have failed the entire Examination or, in the case of a Second Public Examination taken over more than one year, the entire Part of the Examination.

(2) This regulation shall not apply where candidates fail to appear for, or to submit work in respect of, optional papers supplementary to the compulsory elements of the examination.

## **Part 15** **Supervision and Invigilation of Examinations**

....

*Invigilation in cases to which Parts 10, 11 or 12 or regulation 13.2 apply*

15.5.

(1) When a candidate is to be examined on a date or at a time or place fixed by the Proctors, or as the case may be by a chairman of examiners, under Parts 10, 11 or 12 or regulation 13.2 above, paragraphs (2)-(6) of this regulation and regulation 15.6 below shall apply.

- (2) Whenever possible the examination shall take place in a room managed by the Academic Registrar and Secretary of Faculties who shall be responsible for the appointment of an invigilator and other necessary arrangements.
- (3) If the examination takes place in a room provided by the candidate's college, the Senior Tutor shall appoint as invigilator for that part of the examination a person whose name is on the list of invigilators or some other suitable person whose name shall be approved by the Proctors.
- (4) If the examination is to take place at a time different from the time fixed for other candidates the Senior Tutor shall make arrangements to be approved by the Proctors for the isolation and supervision of the candidate during the period which begins at the time when the part of the examination is due to be taken by him or her and ends at the time at which it is taken by other candidates (or the other way round) which will ensure that the candidate is unable directly or indirectly to communicate in person, by telephone or by electronic or any other means with any other candidate, unless the Proctors otherwise permit.
- (5) When these arrangements are approved by the Proctors they shall communicate them to the chairman of the examiners and the Academic Registrar and Secretary of Faculties.
- (6) The provisions of this regulation shall apply with any necessary modification to practical examinations.

#### 15.6.

- (1) Where the Proctors have given permission for an examination to be held in a place or at a time other than that appointed for the examination, the invigilator or another person approved by the Proctors shall attend the Examination Schools at least 15 minutes before the examination begins, to receive the examination paper and any necessary writing materials from the Examination Schools, and should bring their University Card or other reliable evidence of their identity.
- (2) The invigilator should sign the list kept by the Academic Registrar and Secretary of Faculties of examination papers which are issued in this way.
- (3) The candidate's work must be handed as soon as possible after the time appointed for the collection of papers to the Academic Registrar and Secretary of Faculties, who shall make the appropriate entry in his or her register.

### **Part 16** **Marking and assessment**

#### *Adjudication on the merits of candidates*

16.1.

- (1) Every examiner who takes part in adjudicating on the merits of a candidate shall give careful attention to the examination of such candidates.
- (2) No examiner adjudicating on the merits of any candidate shall take account of any circumstances, not forming part of, or directly resulting from, the examination itself, except as provided in Parts 10 or 11 of these regulations.
- (3) The work of any candidate to whom Part 10 or 11 of these regulations applies shall be assessed with due and careful regard to the circumstances of that candidate and any relevant code of practice or guidelines adopted by the University in relation to such candidates.
- (4) In the case of a candidate against whom an order has been made by a University Court under section 11 (3) or section 21 (1)(e) of Statute XI or by the Appeal Court in similar terms (intentional or reckless breach of examination regulations), the examiners shall give effect to that order.
- (5) Where the Proctors have a recommendation to the examiners in respect of a candidate under section 32 (3) of Statute XI (breach of examination regulations which is neither intentional nor reckless) the examiners shall give due weight to the recommendation in assessing the candidate's work.

*Examination conventions*

16.2.

- (1) In adjudicating on the merits of candidates the examiners shall follow and apply the conventions approved under regulation 8.1 above subject to the right of the Board of Examiners in exceptional circumstances to make minor adjustments to the conventions during any particular Examination.
- (2) In cases of doubt or difficulty arising under (1), the examiners shall consult the Proctors.
- (3) Nothing in this regulation shall affect the authority of the examiners in the making of academic judgements on the performance of each candidate.

....

*Submission of theses or other exercises: exceeding word limits and departure from title or subject-matter*

16.6.

(1) Where a candidate for any University Examination in which a thesis (or other exercise) may be, or is required to be, submitted as part of that Examination presents a thesis (or other exercise) which exceeds the word limit prescribed by the relevant statute, or regulation, the examiners, if they agree to proceed with the examination of the work, may reduce the mark by up to one class (or its equivalent).

(2) Where a candidate submits such a thesis (or other exercise), the title or subject matter of which differs from that which was approved by the supervisory body concerned, the examiners (if they agree to proceed with the examination of the work) may similarly reduce the mark by up to one class (or its equivalent).

*Illegible scripts*

16.7.

(1) If a chairman of examiners shall consider that a script or scripts of a candidate in an examination are illegible, he or she shall thereupon inform the Proctors and the Senior Tutor or other proper officer of that candidate's college or other society or approved institution, provided that, if there shall be a dispute as to the illegibility of a script or scripts, the question shall be referred to the Proctors, whose ruling on the question shall be conclusive.

(2) The Senior Tutor or other proper officer shall then arrange for the candidate to dictate his or her illegible script(s) to a typist under the invigilation of a Master of Arts of the University or any other person who in the opinion of the Proctors seems suitable; the typist and invigilator having been approved beforehand by the Proctors. The dictation and typing shall be undertaken in a place to be approved by the Proctors, but subfusc need not be worn; the candidate shall dictate his or her script to the typist in the presence of the invigilator and shall ensure that the typescript is in every respect identical in form and content to the original script. No copies may be taken. The use of a tape-recorder is not permitted.

(3) The cost of the typing and invigilation shall not be a charge on the University.

(4) The examiners shall read the typescript page by page with the original script beside it and shall immediately report any discrepancy to the Proctors.

*Late submission of work*

16.8.

(1) Where a candidate for any written examination in which a thesis (or other exercise) may be, or is required to be, submitted as part of that examination wishes on some reasonable grounds to be permitted to present such thesis (or other exercise) later than the date prescribed by any statute, or regulation, the procedure shall be as follows:

(a) the candidate shall apply in writing through the Senior Tutor to the Proctors for such permission enclosing the grounds for the application;

(b) the Proctors shall consult the chairman of examiners about any such application and shall then decide whether or not to grant permission.

(2) If permission is granted, the examiners shall accept and mark such a thesis (or other exercise) as if it had been submitted by the prescribed date.

(3) If a candidate fails to submit a thesis (or other written exercise) on time without prior permission, the Proctors may after making due enquiries into the circumstances permit the candidate to remain in the Examination and to submit the work late under arrangements similar to those set out in paragraph (1) above. It shall be a condition of any permission granted under this regulation that the candidate shall pay a late presentation fee, the amount of which shall be determined by the Proctors according to the facts of the particular case.

(4) In cases arising under paragraph (3) above, the Proctors may give leave to the examiners to impose an academic penalty according to any established conventions agreed by the relevant supervisory body or, if there is none, according to guidance issued by the Proctors.

(5) The examiners shall give due consideration to either the conventions or the guidance issued by the Proctors, and in either case report back to the Proctors on the penalty imposed. They shall give a reasoned justification for their decision where this differs from the conventions or the guidance.

(6) Where provided for by regulation, submissions must be accompanied by a declaration of authorship and originality. The examiners are under no obligation to mark any submission not so accompanied. This declaration should be in a sealed envelope (which may be included inside the envelope used to hand in the written work). In the event that the Declaration of Authorship is submitted late, the Proctors may recommend that the examiners apply an academic penalty.

(7) A candidate who is dissatisfied with a decision made by the Proctors under this regulation may, or his or her college may, appeal against it in accordance with the procedure set out in regulation 18.1 below.

*Voting on candidates*

16.9.

(1) If in voting upon the place to be assigned to a candidate in any Class List the examiners shall be equally divided, the chairman of the examiners in that Examination shall (unless paragraph (2) below applies) have a second or casting vote.

(2) If the candidate in question shall be of the same college as the chairman of the examiners or of any college in which he or she is tutor or in which he or she has been tutor during the previous two years, or shall have been privately taught by him or her during the past two years, then the casting vote shall be with the senior of the examiners who is not disqualified on that ground.

....

**Part 17**  
Class and Pass Lists

....

*Preliminary or Qualifying Examinations for Master's Degrees, Diplomas and Certificates*

17.7. The examiners...for a diploma or certificate...shall:

(1) determine the candidates (identified only by their examination number) who have satisfied them;

(2) if the regulations governing the particular Examination permit, determine the candidates who have shown sufficient merit to obtain a distinction; and

(3) forthwith provide the information determined under paragraphs (1) and (2) above to the Academic Registrar and Secretary of Faculties.

17.8. In an Examination where a candidate is not required to pass in all subjects at one and the same Examination the examiners shall append to the names of those candidates who have not completed the requirements of the Examination a list of the subjects in which they have passed.

....

*Candidates who have failed*

17.10.

(1) If a candidate in any University Examination has been judged by the examiners to have failed the examination the examiners shall give notice of that fact, together with the name and college of the candidate, at the close of the examination to the Academic Registrar and Secretary of Faculties.

(2) If no candidate has failed the Examination, the chairman of the examiners shall give notice of that fact at the close of the examination to the Academic Registrar and Secretary of Faculties.

*Notification of results*

17.11. All notifications submitted to the Academic Registrar and Secretary of Faculties under this Part shall be made in a form provided by the Academic Registrar and Secretary of Faculties, unless he or she otherwise agrees.

17.12. All information submitted to the Academic Registrar and Secretary of Faculties under this Part shall be certified by the signature of all the examiners who have acted together in the assessment of the candidates in the Examination.

17.13. On receipt of the information provided under regulations 17.11 and 17.12 above the Academic Registrar and Secretary of Faculties shall arrange the production of Class and Pass Lists in a form which shall be determined by the Registrar from time to time.

17.14.

(1) All the lists drawn up under this Part shall be fair copies and shall show no name to have been added or erased or transferred from one position to another.

(2) After submission to the Academic Registrar and Secretary of Faculties examiners shall have no power to alter such lists except under paragraphs (3) and (4) below.

(3) Examiners may with the written consent of the Pro-Vice-Chancellor (Education) and Proctors issue a supplementary list or lists correcting an accidental error or omission in the original.

(4) A list shall be altered by the examiners to give effect to the outcome of any appeal made under regulation 18.2 below which affects a candidate's standing in that list.

*Custody of records*

17.15. The Class and Pass Lists drawn up and duly signed shall be circulated and published by the Academic Registrar and Secretary of Faculties according to the

requirements of the Education Committee and subject to the provisions of the Data Protection Act and the signed copy shall remain in the custody of the Registrar, and any question thereafter arising, with respect to the result of any Examination, shall be determined by reference to such lists.

#### *Forms of Certificates*

17.16.

(1) Degree certificates and other certificates for diplomas and other certificate courses shall be issued to successful candidates in forms prescribed by the Registrar.

(2) When a candidate has obtained a distinction in his or her Examination, or in any part of it for which a distinction may be awarded, the certificate or diploma, as the case may be, which is issued shall record that fact.

### **Part 18**

#### **Appeals from Decisions of the Proctors and Examiners**

##### *Appeals from decisions under Parts 10, 11, 12 and regulation 16.7*

18.1.

(1) A candidate who is dissatisfied with a decision made by the Proctors under Parts 10, 11, 12, or regulation 16.7 above, may, or his or her college may, appeal against it in accordance with the procedures set out in this regulation.

(2) An appeal must be made within 14 days of the date of the Proctors' decision.

(3) Any such appeal must be made in writing to the Chairman of the Education Committee.

(4) The appeal shall be determined expeditiously by the Chairman or another member of the Committee, other than one of the Proctors, nominated by the Chairman.

##### *Appeals from decisions of examiners*

18.2. Appeals from decisions of examiners shall be made in accordance with the Procedures for Handling Complaints (including Academic Appeals) laid down and published by the Proctors under section 20 of Statute IX and any Council Regulations made under that section and not otherwise.

### **Part 19**

#### **Proctors' Disciplinary Regulations for Candidates in Examinations**

*Made by the Proctors on 1 October 2003*

*Approved by Council on 30 October 2003*

1. These regulations are made by the Proctors in the exercise of their powers under section 22 of Statute IX and are designated by Council as disciplinary regulations under section 6 (2) of Statute XI.
2. In these regulations: (1) 'examination' includes where the context so permits the submission and assessment of a thesis, dissertation, essay, or other coursework which is not undertaken in formal examination conditions but counts towards or constitutes the work for a degree or other academic award; and (2) 'examination room' means any room designated by the University's Academic Registrar and Secretary of Faculties or approved by the Proctors as a place for one or more candidates to take an examination.
3. No candidate shall cheat or act dishonestly, or attempt to do so, in any way, whether before, during or after an examination, so as to obtain or seek to obtain an unfair advantage in an examination.
4. No candidate shall present for an examination as his or her own work any part or the substance of any part of another person's work.
5. In any written work (whether thesis, dissertation, essay, coursework, or written examinations) passages quoted or closely paraphrased from another person's work must be identified as quotations or paraphrases, and the source of the quoted or paraphrased material must be clearly acknowledged.
6. No person shall dishonestly give help to a candidate before, during or after an examination so as to give, or attempt to give, that candidate an unfair advantage in an examination.
7. No candidate shall take, or attempt to take, into an examination any unauthorised material (including revision notes) or equipment relevant to the examination nor use or attempt to use it.
8. No candidate shall copy from the script of another candidate or in any other way dishonestly receive help from another person in an examination.
9. Candidates may not communicate with any person other than an invigilator during an examination.
10. No candidate may leave or re-enter an examination room unless permitted by an invigilator.
11. No candidate shall enter an examination room more than thirty minutes after an examination has started except with the permission of the Proctors or an invigilator.
12. No candidate shall unless permitted by the Proctors or an invigilator leave an examination room:

- (1) within thirty minutes of the beginning of an examination; or
- (2) within thirty minutes of the time at which it is due to end.

13. No candidate may smoke in an examination room or in any building in which an examination is being held, or behave in any other way which distracts or is likely to distract other candidates.

14. Candidates may not use paper in an examination except that which is provided for them.

15. At the end of each examination candidates must hand back to an invigilator all the paper provided for writing their answers, including paper used for rough drafts and paper which has not been used. No paper must be removed from the examination room other than the question-paper for the examination that has just been completed.

16. Unless regulation 17 below applies, all articles or equipment to be used in an examination must be carried into the examination room in a transparent bag.

17. Candidates must offer non-transparent bags for inspection and, unless special permission is given by an invigilator, must deposit them at the place designated for the deposit of bags and other personal belongings.

18. No candidate shall take a mobile telephone into an examination room.

19. Candidates must present themselves for examinations in full academic dress.

20. Candidates must follow the directions of the invigilators and the Proctors during an examination, including a direction to leave the examination room and the building in which the examination is being held.

## **Part 20**

### **Proctors' Administrative Regulations for Candidates in Examinations**

*Made by the Proctors on 1 October 2005*

1. These regulations shall apply to all university examinations, including any examination described in any regulation as a qualifying examination.
2. In these regulations 'college' means any college, society, or Permanent Private Hall or any other institution designated by Council by regulation as being permitted to present candidates for matriculation.
3. It is the responsibility of each candidate to ensure that he or she hands in all the material he or she wishes to be considered by the examiners and to comply with

regulations relating to the submission of written work such as dissertations, essays and project reports. Once a candidate has submitted a piece of work, he or she may not withdraw that piece of work and substitute a revised version in the same examination without the Proctors' consent.

4. During every written paper, each candidate shall display his or her University Card face up on the desk at which he or she is writing.

5. A candidate who is taken ill while sitting a written paper may (with an 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 he or she has been taken ill a second time, he or she should inform an invigilator so that the incomplete script can be handed in. It is the candidate's responsibility to obtain a medical certificate, in accordance with the relevant provisions of the General Regulations for the Conduct of University Examinations, explaining how his or her performance in the paper concerned may have been affected by illness.

6. A candidate may not withdraw from an examination after the written part of the examination is complete. The point of completion shall be deemed to be the conclusion of the last paper for which the candidate has entered, or the time by which a dissertation or other written material is due to be submitted, whichever is the later.

7. Concerns about the conduct of an examination must not be raised directly with Examiners. A candidate on a taught course may communicate with Examiners about such matters only through the Senior Tutor or equivalent officer of his or her college. If such a candidate wishes to raise a query or make a complaint about the conduct of his or her examination, such query or complaint must be notified to the Senior Tutor or equivalent officer of his or her college not later than three months after the notification of the results of the examination concerned (when the matter will be dealt with in accordance with the Council Regulations governing the handling of complaints submitted to the Proctors). A candidate for a research degree or higher doctorate may communicate a query or complaint about the conduct of his or her examination direct to the Proctors: this must be done not later than three months after the notification of the results of the examination concerned (in accordance with the procedures set out in the Council Regulations governing the handling of complaints submitted to the Proctors).

## SCHEDULE V

### DIPLOMA IN INTELLECTUAL PROPERTY LAW AND PRACTICE

#### DECLARATION OF AUTHORSHIP

Name (in capitals): ..... Examination number: .....

Title of Coursework Assignment (in capitals): .....

Word count: .....

There is extensive information and guidance on academic good practice and plagiarism on the University website: [www.admin.ox.ac.uk/epsc/plagiarism](http://www.admin.ox.ac.uk/epsc/plagiarism).

*Please tick to confirm the following:*

I am aware of the University's disciplinary regulations concerning conduct in examinations and, in particular, of the regulations on plagiarism (see Schedule IV – *Examination Regulations 2009*, Part 19).

The Coursework Assignment I am submitting is entirely my own work except where otherwise indicated.

It has not been submitted, either wholly or substantially, for another degree of this University, or for a degree at any other institution.

I have clearly signalled the presence of quoted or paraphrased material and referenced all sources.

I have acknowledged appropriately any assistance I have received.

I have not sought assistance from any professional agency.

The electronic copy of the Coursework Assignment I am submitting is identical in content with the two hard copies of the Assignment I am submitting.

I agree that the Faculty of Law may retain the two hard copies and the electronic copy of this work until the publication of my final examination result. I agree to make any such electronic copy available to the examiners should it be necessary to confirm my word count or to check for plagiarism.

Candidate's signature: ..... Date: .....

.....

**Please submit this Declaration of Authorship inserted into the envelope in which you submit the two hard copies of the Coursework Assignment.**

## Individual Reports

### Coursework assignments

#### PATENTS 1

##### **General**

Most students showed a good understanding of the basic principles of validity and infringement. However it is clear that some students did not fully understand the basic principles. The following comments concern the more common issues arising from the answers.

##### **Question 1: Infringement**

**Who might sue and be sued for infringement and in respect of which acts? (Ignore issues of claim construction in this part.)**

##### **Acts of infringement**

Some acts if infringement were not considered by some students. It is worthwhile going methodically through the possible infringing acts set out in section 60 and each of the dealings by the parties. Several people failed to note that “keeping” an article may be an infringement.

Note that it is important to identify what each party has actually done. A party will not be found to have carried out an act of infringement merely by being associated with the party that carried it out. Thus supplies by St Hilda Developments are not supplies by Audrey although “common design” may arise. (See below.)

Also some students did not pick up the actionable “common design” between Audrey, the company and possibly Ms Bitumen. Here we are looking for an agreement or understanding to take part in a common venture (as opposed to mere “facilitation”.) This tortious liability arises from common law and not from the statute.

A number of students missed the fact that a number of acts within the claims took place prior to grant and if they did, failed to address the consequences of this. Technically these are not infringements but there may be liability for damages under the provisions of section 69 (2) and (3). (The alleged act must fall within the scope of the claims both as originally published and as granted.)

##### **Question 2: Infringement**

**Prepare advice covering the issues that may arise in an infringement action including the defences that may be raised and covering construction of each claim of the patent (not considering validity)**

There are indications that more attention needs to be applied to the concept of “purposive construction”. A number of students construed “plurality of ... groups” in claim 1 as covering one group only, which is almost certainly wrong. If a student decides to use the *Catnic/Improver/Protocol* questions, they need to be suitably rigorous in addressing the first question: “how the invention works” and then go on to consider whether the ‘variant’ affects the way that the invention works etc and if not whether this would be apparent to the skilled man. On the other hand it is clear from *Kirin-Amgen* that *Improver* is only a tool and the only compulsory question is “what would a person skilled in the art have understood the patentee to have used the language of the claim to mean?” In determining this it is important to read the specification as a whole and, in the context, decide what the patentee is saying. In this case it should have been noted that the emphasis of the patent is directed to increasing the number of (at least hydrophilic) groups. So there is no reason to depart from the usual meaning of “plurality” as “more than one”.

A number of students tried to ignore the added matter in the claims when determining infringement. Unless there is an amendment that can successfully remove the added matter (and this may not be possible – see below), this is not appropriate. Otherwise the claim must be construed for infringement purposes “as is”.

It is important to note that when considering infringement of a claim dependent upon another claim it is essential to determine whether the features of the other claim are present as well as those expressly set out in the dependent claim.

A number of students had difficulty with the concept of a “group”. A “hydrophilic group” is, for example, the nitrogen (or sulphur) atom plus the two or three oxygens to which it is attached. The reason why the Spider molecule has more than one hydrophilic group is that there is more than one “leg”, each with such a group of the end. *[But note that students were not intended to be marked down for having difficulties with the science here. All that was required was a demonstration that the law was understood and applied in a sensible manner.]*

Some students did not consider whether some of the chemicals supplied may have been “staple commercial products” in relation to claims under section 60(2). (Superchem and Alkali Supplies.)

Insofar as the original acts carried out by Audrey particularly in relation to the hockey kit was concerned it is relevant to consider whether this use was “experimental.” (Section 60(5)(b))

### **Question 3: Validity**

**Is the patent valid? Explain the issues relating to validity that may arise in relation to each claim**

**Novelty and Obviousness**

In order to score a high mark, a student, addressing novelty and obviousness, needed to show that he or she had considered each piece of arguably relevant prior art in respect of each claim of the patent.

Where claims cover different embodiments it is only necessary to show the prior disclosure of one embodiment falling within the claim in order to invalidate it. (Of course invalidity as a result of such an anticipation may be “curable” by an amendment excising the anticipated material.) Some students seemed to think (wrongly) that it was necessary to show that all alternative embodiments in the claim had been previously disclosed. Thus, to invalidate a claim to a surfactant, where a group is sulphonate or nitro, it is sufficient to prove prior disclosure of a surfactant containing a sulphonate group alone (and no nitro).

It is important to note that acts described in a prior art document may be a disclosure separate from the document reporting upon them. Hence the use on the Lesser Sandwich Islands may be a piece of prior art separate from the Journal. In this case it probably does not make a lot of difference because on the facts the Journal appears to contain the entirety of the available evidence of the use.

A number of students wrote off the Journal disclosure, since it does not enable the making of the bark. (The Islands cannot be located and the seeds, if they exist, are not available to the public). However, the students should still consider what information the Journal does disclose - multiple hydrophilic (oxygen containing) groups and hydrophobic (alkyl) groups. This is relevant for obviousness even if the disclosure is not enabling in itself.

In analysing whether the supply of Toadclean to Gary amounted to an anticipation, some students failed to appreciate that the relevant question is whether the supply to Gary made the invention available to the public - i.e. did the supply place the invention in his hands and was he free to disclose it to others?

Some students treated the prior art compendiously for obviousness. Unless it is shown why the skilled person would have combined the various items of prior art this is not enough.

### **Insufficiency**

Some students failed to spot pointers towards possible insufficiency arguments in the facts – for example, the clothes falling apart when treated with the “nitro group” Spiders, and the discovery that the branches need to be long enough to separate the groups by about 6 carbon atoms – more than the patent teaches.

Insufficiency cannot be cured by adding matter. (See below.)

### **Entitlement/obtaining**

A number failed to spot that if the “nitro” feature was obtained from Audrey - and to the extent that this is an inventive feature - section 72(1) (b) may apply.

### **Added Matter**

This was not always addressed. The underlined material in the specification as granted would seem to be contrary to section 72(1)(d). For example groups containing nitrogen/nitro groups were added. It does not seem that this material is “clearly and unambiguously disclosed in the application as filed either explicitly or implicitly”. The existence of added matter invalidates the whole patent unless it can be cured by amendment. (But bear in mind section 76)

### **Question 4: Amendment**

**Insofar as some of the claims may be found invalid what steps might the patentee take to remedy matters?**

The answers to this Question were a bit “thin” in some cases. It is not enough to mention the possibility of amendment in general terms; the amendments proposed to be made should be specified.

## **PATENTS 2**

### **Particulars of Claim**

Most students identified the correct parties, namely Ivor Inventor and Scotwind Limited. On the facts (he was said to control every aspect of the Scotwind business), Ewan could be joined as a co-defendant. If so, he would be a joint tortfeasor which would need to be pleaded, and particulars given to support the pleading. Given that Ivor was seeking a licence to resolve the dispute with Scotwind, it would be sensible to adopt a less confrontational approach.

Most candidates spotted that the former Supreme Court Act 1981 has now been renamed the Senior Courts Act 1981 and that damages would be sought in accordance with Regulation 3 of the Intellectual Property (Enforcement) Regulations 2006, SI 2006/1028.

### **Particulars of Infringement**

Most candidates identified that claim 3 was not infringed by the Vertical Axis Wind Turbine (VAWT) 100 as the start up flaps had the same cross-section as that of the blade. Although it was not entirely clear on the facts that all the other claims were infringed by the VAWT 100, it was appropriate to plead infringement, at least at the outset.

There was an issue as to whether the Scotwind Y cross-section end plates were “perpendicular” or not as required by all the independent claims 5, 6 and 10 and by all the

dependent claims. Consequently, the issue of purposive construction and references to case law, including the *Catnic* case, should have been discussed in the notes.

Under Section 60(2) (infringement by supply of means essential), the retro-fitting of end plates could only be pleaded in relation to claims 5 and 10 as these claims did not involve start up flaps. Most candidates also identified that it was possible to plead offering for use a process of claim 10 under Section 60(1)(c).

When providing particulars of knowledge, candidates needed to identify the difference between the knowledge required under Section 60(2), i.e. the purpose for which the fixed end plates were supplied to customers, and contrast this with the knowledge required under Section 60(1)(b) offering for use a process where the candidate needed to make it clear that the defendant knew of the patent or a reasonable person in the circumstances would have done so.

### **Defence and Counterclaim**

Although it was unclear to what extent Scotwind made serious and effective preparations in relation to end plates before the priority date, Section 64 should be pleaded. Many candidates did not plead it but did take the opportunity to refer to the possibility of doing so in the notes, which was an acceptable alternative.

### **Grounds of Invalidity**

Many candidates failed to plead the prior use, albeit on a remote island, of the end plates and start up flaps by Ivor Inventor, even though no members of the public may actually have seen them. This was an opportunity, infrequently taken, to discuss the *Windsurfing* and *Lux* cases in the notes. Noise reduction is an integer of the claim 10 and may not necessarily have been disclosed, although it is unclear as to whether this in itself can confer novelty.

The fact that Callum was sworn to secrecy may bind him but was not effective to prevent disclosure to the world at large of the modified VAWT. Callum did not, however, see the start up flap modification but could be called as a witness to give evidence as to the public nature of the end plate use that he saw.

US 4,253,247 discloses control elements which act as start up flaps (doubling also as brakes) in a variety of positions on the rotor blades but not at the ends of the rotor blades as required by claim 2, or a particular size (as in claim 3), or whether swivel access at a particular location (as in claim 4). Neither does it disclose end plates which all of the other claims require. Consequently, US 4,253,247 should only be pleaded against claim 1 on the basis of lack of novelty.

As to lack of inventive step, the public prior use should be pleaded (as well as to support the pleading of lack of novelty). Similarly, against all claims with start up flaps, US

4,253,247 should also be pleaded under lack of inventive step as well as US 4,000,000 discussed in the specification itself which discloses start up flaps on the rotor arms.

UK Patent 8063 and US Patent 5,358,275 disclose use of end plates at the end of wings in aircraft to reduce induced drag and, consequently, can be pleaded under lack of inventive step against claims 5-10. Many students pleaded that claims 5-10 lacked priority. This is the case, but lack of priority is only relevant if there is an intervening publication which then anticipates those claims, which there is not in this case. Candidates also incorrectly pleaded that this constituted added matter which is incorrect. Added matter is only relevant to changes to the claims and specification which occur during the course of prosecution of the patent, i.e. between the period of filing the complete specification and grant.

Although there is a hint of insufficiency in relation to the design of the end plates as the question states that some designs do not work, there is teaching in the patent as to the end plate shape and size. Consequently, unless there are some within this group which simply do not fulfil their promise, an insufficiency pleading is not likely to be successful and would detract from the case on lack of inventive step.

## **DESIGNS**

The majority of the answers were satisfactory to good. Generally, subsistence of UKUDR was tackled well. That being said, not that many papers actually tried to define what the design would be and far too many papers spent far too long on exclusions and how they might or might not apply, on facts where the outcome was not going to depend on them. Commonplaceness was also not addressed properly by many, who mistook commonplaceness for being the same as novelty. Many students properly understood the qualification issues; where they didn't understand it, this was disappointing because all of the information needed to answer this point was contained in the fact scenario. A large number of students went into the question of duration of UKUDR for which no points were given because on these facts it wasn't really an issue. Generally, UKUDR infringement was reasonably well dealt with, with only a few exceptions (some papers managed to apply a Community test to UKUDR infringement and vice versa, however). On Copyright, there was a huge variation between the way these issues were dealt with: generally the better papers identified the key issues and dealt with them, but a disappointing number of students misunderstood the application of copyright to these facts. On Community rights, subsistence was generally well done. Most students dealt well with the benefits of registering designs. Surprisingly, the part of the question which asked students for a summary of how the court would approach infringement of a registered design was not universally well handled and some students missed out on a lot of available and easy marks. Hardly anyone made an attempt to apply this to the facts. One aspect of the question which was badly dealt with by most papers was what could be done to dissuade retailers from dealing with the White Tiger products; even the best papers didn't do this particularly well. The question asked for a letter of advice and, overall, it was disappointing how many papers didn't attempt to give opinions or advice. The best papers (those in the high 60s and 70s) were leagues apart from the rest.

### **INTELLECTUAL PROPERTY I**

There were four questions on this paper, of which candidates were required to answer two. All but three of the candidates answered at least one problem question (questions 1 and 2), and the vast majority of candidates answered both problem questions. Those candidates who did answer the essay questions performed very well; these papers generally demonstrated very good knowledge of relevant case law and a willingness to consider that case law critically. Question 3 did not specifically ask about differing EPO approaches to the question of obviousness, but the examiners treated discussion of the EPO approach as pertinent to a critical analysis of alternatives and UK judicial discussion of the question. On the problem questions (Questions 1 and 2), most candidates identified most of the major issues and used all the relevant authorities very well. The weaker answers to question (1)(a) limited themselves to analysis of how the pieces of prior art specifically listed as items (i)-(iii) affected validity without proceeding further to consider other aspects of the fact pattern. On Question 2, candidates' answers were not adversely affected by the lack of knowledge (on the part of some candidates) of "gaskets".

### **INTELLECTUAL PROPERTY II**

There were four questions on this paper, of which candidates were required to answer two. Two questions focused on trade mark and passing off, one required discussion of copyright law, and one was a design law question. Two-thirds of candidates answered the copyright question; very few tackled the design question. Every candidate but two answered the Trade mark problem question (Question 2). The quality of answers to all questions was generally good. On the copyright question, answers demonstrated good knowledge of the slightly inconsistent case law on originality. Candidates also showed good awareness of the statute. On Question 2, candidates demonstrated good knowledge of case law since the cut-off date for the exam (e.g., the *Google France* opinion). However, answers based upon the law as of March 2010 were equally acceptable (though few in number). The biggest difficulty with question 2 was the number of issues raised by the fact pattern. Some candidates opted to analyse each issue equally, with semi-detailed analysis of all the issues. Other candidates provided in-depth detail of the principal issues and offered more skeletal analysis of other issues. Given the complexity of the question and resulting time pressure, examiners gave credit to either approach. The (very few) weaker papers, however, gave short shrift to important issues not because of the complexity of the question but because of recitation of too much boilerplate law unconnected to the facts presented.