**LAW MODERATIONS – HILARY TERM 2021**

**MODERATORS’ REPORT**

**Part I**

1. **STATISTICS**

Number of candidates in each class

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **2021** | **2020** | **2019** | **2018** | **2017** |
| **Distinction** | 42 | 42 | 30 | 34 | 37 |
| **Pass** | 198 | 162 | 189 | 166 | 176 |
| **Pass in 1 or 2 subjects only** | 2 | 1 | 2 | 2 | - |
| **Fails** | 2 | - | - | - | - |
| **Total** | 244 | 205 | 221 | 202 | 213 |

Percentage of candidates in each class

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **2021** | **2020** | **2019** | **2018** | **2017** |
| **Distinction** | 17.21 | 20.49 | 13.57 | 16.83 | 17.37 |
| **Pass (without Distinction)** | 81.15 | 79.02 | 85.52 | 82.18 | 82.63 |
| **Pass in 1 or 2 subjects only** | 0.82 | 0.49 | 0.90 | 0.99 | - |
| **Fails** | 0.82 | - | - | - | - |

Number of vivas held

Vivas were not held in these examinations.

Number of scripts second marked

Scripts in this examination are not automatically double marked. Instead, scripts are double marked during the first marking process to decide prize winners, and when a fail mark has been awarded. Further double marking takes place during the first marking process if the marking profiles of those marking a particular paper appear misaligned, or if a profile contains an unusually large number of very high or very low grades.

Once first marks are returned, the following classes of script are second marked:

* Where a candidate has an average below 60
* Where a candidate is borderline in terms of getting a distinction: where a candidate has 2 marks at or above 68 but does not yet have 2 marks at or above 70, scripts with marks at 68 and 69 will be remarked.
* Where a script is 4 or more marks below the candidate’s average.

After the release of marks to candidates, a small number of cases were discovered in which second marking should have but had not occurred. The appropriate second marking was then undertaken and required adjustments to marks were made.

1. **EXAMINATION METHODS AND PROCEDURES**

Online examinations

Law Moderations took place as scheduled in 9th week of Hilary Term. As in 2020, the examinations were open book and took place online. Candidates were given 3 hours to complete their answers and 1 hour to download papers and upload scripts.

Word limits and rubrics

A word limit of 2000 words was applied for each question. Given that most scripts were submitted in a PDF document, checking the word count for any answer was not straightforward. Markers were asked to notify Paul Burns of any script that seemed unduly long. A sample of scripts for each paper was also checked against the word limit.

One breach of rubric was reported, for which a penalty of 10 marks was applied.

Mitigating circumstances

36 candidates submitted mitigating circumstances applications. The Moderators assessed the seriousness of each application at a preliminary meeting of the Board. Those assessments were used to determine whether to adjust the results of each candidate at the Board’s final meeting. The results of 5 candidates were adjusted on the basis of their application.

Late penalties

Penalties for late submission of scripts were applied in accordance with a scale set out in the Examination Conventions. 9 penalties were applied in the first instance, of which 4 were subsequently overturned or reduced on appeal.

The possibility of late submission may well be eliminated in future years. If it is not, the form in which marks are communicated to candidates should clearly indicate whether a late penalty has been applied, and if so to which paper(s).

Processing marks

Last year’s report noted some difficulties in the processing of marks. It observed that there is no dedicated database for Law Moderations. One result is unduly heavy reliance on Excel Spreadsheets. Another is that different pieces of information of relevance to each candidate are stored in different places, increasing the risk that errors will be made in the recording of marks. If remote examinations are to take place in future years, the need for a database that collates all relevant information—and presents it clearly—is acute.

Examination conventions

The Notice to Candidates was emailed to candidates on 22/1/21 and the Examination Conventions were emailed to candidates and uploaded to Canvas on 27/1/21.

**Part II**

1. **General comments on the examination**

This was the second year in which Law Moderations took place online. It was the first in which most candidates studied remotely for the duration of their course, having been prevented from coming to Oxford by the COVID-19 pandemic.

The statistics in Part 1 show that the overall pattern of results this year was broadly comparable to previous years. Though the percentage of students achieving Distinctions was somewhat lower than in 2020, it remained higher than in 2018 and 2019.

1. **EQUALITY AND DIVERSITY**

Breakdown of results by gender for Course 1 and Course 2 combined.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **2021** | **2020** | **2019** | | **2018** | | **2017** |  |
| Result | Gender No | Gender No | Gender | No | Gender | No | Gender | No |
| Distinction | F 19 | F 21 | F | 18 | F | 17 | F | 16 |
|  | M 23 | M 21 | M | 12 | M | 17 | M | 21 |
| Pass | F 126 | F 96 | F | 118 | F | 104 | F | 106 |
|  | M 72 | M 66 | M | 71 | M | 62 | M | 70 |
| Two Paper Pass | F 2 | F - | F | 1 | F | 2 | F |  |
|  | M 0 | M - | M | 1 | M | 0 | M |  |
| One Paper Pass | - | F 1  M - | - |  | - |  | - |  |
| Fails | F 2  M 0 |  |  |  |  |  |  |  |

The percentage of male students obtaining Distinctions was unchanged from 2020. The percentage of female students obtaining Distinctions declined. 24% of male students, and 13% of female students, obtained Distinctions in 2021. A gap of this magnitude is clearly cause for concern.

Appendix A of this report contains a gender breakdown by paper. It shows that the gap was higher in Criminal Law than in Constitutional Law and A Roman Introduction to Private Law, but that male students obtained Distinctions at a higher rate in all three papers.

1. **Comments on papers and individual questions**

A Roman Introduction to Private Law

Sat online for the second year in a row, candidates in this paper clustered in the mid-to-high 2:1 range. There were several truly excellent scripts at the top end of the mark scale, but as in 2020 the comforts of the open book format can allow perennial issues in exam technique to be exacerbated. Some general guidance:

* With essays, candidates must ensure they answer the *precise* question posed rather than view it as a launchpad for an answer on the general topic. For instance, essays on the *actio Publiciana* and the concepts behind the Roman law of property are asked on a frequent basis, but the questions always have some particular angle to them. Ask yourself why the examiner has posed the question in the manner they have – what does the phrasing or the tone of the question suggest that wouldn’t be found in a more generic essay question?
* With gobbets, resist the temptation to drift away from the text set and remember that it is vital to explain what is going on in the text itself. Comparisons with neighbouring texts in the same Institutes or companion texts in the other Institutes are certainly viable, but only to build upon an existing analysis of the text.
* Problem questions are not just about knowledge of the framework of rules governing an area of law – they require the application of those rules to the facts in a sensitive, balanced and rigorous manner. Candidates often let themselves down by offering a good account of what the law demands, but then failing to really analyse the facts through those rules.

These issues often mark the borderline between a good 2:1 script and a first class script. That said, our overall impression this year was that candidates had shown real fortitude in persevering with their studies despite exceptionally difficult circumstances, and ought to be commended for their efforts.

**Question 1**

Candidates were required to offer commentaries on two texts from a selection of six.

1. concerned decrees of the senate as a source of law under Justinian. Answers tended to focus on the shifting authority of the senate between the republic and empire, and offered only tentative thoughts on the dynamic Justinian alludes to: was expediency really the reason for the shift, or was it to do with masking the rise of imperial power?
2. concerned the formal modes of conveyance, *mancipatio* and *cessio*, as used in classical law. Candidates were expected to note the difference between the two modes, and to explore Gaius’s explanation of why *mancipatio* was to be preferred (which after all seems at odds with what we read in many textbooks).
3. concerned the effect of surrendering an usufruct (1) to the dominus; and (2) to a third party. Candidates were expected to explain the difference between the two scenarios, ideally linking it to Gaius’s language of “merger” in the middle of the text. There were some excellent answers considering the powers vested in an usufructuary, and the conceptual implications of a grant of an usufruct on the enjoyment dimension of *dominium*. Candidates who offered a general account of both personal and praedial servitudes struggled to impress.
4. concerned impossible conditions in the *stipulatio*, and candidates were expected to explore both the idea of impossibility and the nature of conditions, as well as their interaction in this text. Some candidates drew attention to the omitted latter part of the text and the comparison Gaius made with legacies; though this was not expected as succession is not part of the syllabus, where intelligent points were made they were duly rewarded.
5. concerned the species of *furtum* under Justinian, and the significance of the disappearance of the earlier “satellite” actions. There were many hidden points buried in the text that stronger candidates exploited, such as the idea of “knowing” receipt and how that differed from the rather obscure classical law.
6. concerned the evolution of *iniuria* up to classical law. Stronger answers recognised the link between the different examples Gaius employs and different stages of the delict’s apparent development (e.g. the XII Tables origins connected, arguably, to physical violence, as well as the later special edicts), and the open-ended nature of “in many other ways” as a possible reference to the role of *contumelia* as a generalising force.

In general the last two gobbets, concerning the law of delict, were more popular, and better handled, than the first four.

**Question 2**

This problem, primarily concerned with contract but with a healthy undercurrent of delict, was the least popular of the three set. Candidates were required to begin by construing the initial agreement (probably an *emptio rei speratae*, though other possibilities were intelligently offered), with attention being paid to the parties’ intentions as to outcome, and the difficulties with the determination of the price. Candidates were then required to discuss the legal consequences of the three outings in light of their contractual analysis, and to ensure they were consistent in their reasoning. The first outing raised a straightforward breach by B for intentionally selling a portion of the catch to C. The second outing required a discussion of the contract in relation to the three fish caught, and some discussion of the nets becoming tangled and subsequently cut. This was most plausibly dealt with under chapter three of the *lex Aquilia*, where damages could be considered in relation to (1) the net itself; (2) the lost catch; and (3) the inability to go on a third outing that week, and the potential contractual liability flowing from that. The frustrated third outing depended heavily on how the initial contract was construed, and the point at which it perfected.

The difficulties of the initial contract led to an interesting variety of approaches in answers, and there were answers at the top end of the scale that took very different approaches. It is a useful reminder to students that the goal is not to be *right* (insofar as problems can be explored in different but plausible ways – you of course don’t want to get the law wrong!), but to show off analytical abilities. Recognising the good faith character of the contract was an essential step in working through the central contractual aspect of the problem.

**Question 3**

This problem mixed together issues from across the law of property and delict. The initial dispute between the neighbours tripped many candidates up. The shortcut required discussion both of whether it *could* be a servitude (clearly yes), and whether it *was in fact* a servitude (i.e. had it been created?). Awareness of the Justinianic *quasi-traditio et patientia* and/or long use was rewarded. The issues concerning S’s drumming were harder still, but the examiners were looking for sensible analysis. Credit was given, for example, for an awareness of the Rodger thesis on neighbourly behaviour, which again was rewarded or for informed analysis of the possible application of the delict of *iniuria*. Candidates who showed a sensitivity to how the two analyses might differ (e.g. the toleration of the trespass by S versus the objections of I) fared well here.

The second paragraph raises a variety of issues: (1) the ripping up of the hedge, probably a delict under chapter 3 of the *lex Aquilia*; (2) the construction of the wall and planting of the vines, a pair of *accessio* issues; and (3) the (in)ability to obtain compensation for labour and materials via the *exceptio doli*, requiring possession on the part of S (insofar as it can only work if I brings a *vindication*). These issues were typically dealt with well.

The third paragraph introduced a range of delicts. The *furtum* of the statue raised interesting questions as to (1) whether it was manifest when the shadow was caught in the window frame or N was trapped by the chasing dog; and 2) whether S could be considered liable under *ope consilio* having paid for N’s services and encouraged the theft. The possibility of a contract between S and N was infrequently explored, and received the perfunctory treatment it deserved (by virtue of its clear incompatibility with good faith if a consensual contract) when spotted. The death of the dog and the broken statue raised straightforward claims under chapter 3 of the *lex Aquilia*, with a possible difference in the analysis of fault between the two.

Candidates tended to find the first paragraph difficult, but more than made up for it in their analyses of the remainder of the problem.

**Question 4**

This two-part question was very popular, but clearly caused many candidates difficulties.

The initial problem on porcine sales raised textbook issues on error in delivery. It required candidates to keep separate the questions of sale and delivery. There was a temptation, which many could not resist, to see the error in the *traditio* (i.e. the delivery of the wrong pig) as invalidating the sale as an *error in corpore*. As the sale had already concluded by the time of the delivery, this took candidates down the wrong path. Candidates were expected to consider (1) whether the delivery of the wrong pig was effective to transfer ownership of it (raising the debate as to the requirements for an effective *traditio* in classical law); (2) the effects of the subsequent disposition to a third party; and (3) what remedies, if any, existed.

The second problem was more comfortably handled, but the fact that the problem raised easier issues caused candidates to overlook some of the more complex issues. The transformation of grapes into wine and wine (plus honey) into mead as a pair of specificationes was straightforward, though the wine was often overlooked. The ownership of the bees and their *animus revertendi* was dealt with well; whether (and at what point) they had been stolen less so.

**Question 5(a)**

This essay was on the nature of the periodisation of Roman history. It required an exploration of the language of “classical” and “legal science”, and how they contrast with the post-classical notion of “authority”. Candidates tended to focus heavily on the role of the jurists. Sometimes this gave way to note regurgitation, rather than keeping a sharper focus on the style of legal reasoning (and in particular the *absence* of authority in most situations in classical law). Strong use was made of the *ius respondendi* in classical law, and the Law of Citations and Digest in post-classical law as means of comparing the role of juristic literature in the two periods. Candidates who showed a sensitivity for how the jurists operated in the classical period, and how the expectation of citable sources affected this dynamic, did well.

**Question 5(b)**

This essay received so few answers that general comments are not possible.

**Question 6**

In terms of its content, this essay was a relatively straightforward question on the concepts behind the Roman law of property. Its focus was specifically on the dynamic between *dominium* (quiritary ownership) and bonitary ownership, and candidates who kept their focus on these two (rather than possession and bona fide possession) tended to do better than those who gave essays that felt prepared for a different essay on the same topic. Some excellent use was made of the Institutes of Gaius (e.g. G.2.40-41) to challenge the idea that the jurists refused to recognise divided ownership, as well as material on usufruct (and the language of division and merger found in that context) to really engage with the perspective of the question. Candidates who paid close attention to the terminology and assumptions of the quotation were rewarded; those who delivered a pre-prepared essay on the Roman law of ownership tended to struggle.

**Question 7**

This essay was on the characterisation of the *stipulatio* as being “loosely…a written contract” in both the late Republic and Justinianic law. It was difficult to do the essay justice without engaging with what Nicholas meant by a written contract (i.e. whether writing was essential to the formation of the contract or merely (strong) evidence of the obligation’s existence). There was a tendency towards offering an overview of the contract’s development from the XII Tables through to Justinian. Those who kept their focus on the periods identified by Nicholas, and who engaged (approvingly or not) with his opinions, tended to fare better. Some made interesting arguments based on the potential difference between an oral and a verbal contract.

**Question 8**

This essay was again relatively straightforward, and generally done competently. Candidates were expected to go beyond just offering a contract-by-contract account of Roman structure. Stronger answers recognised that even if the *bona fidei* contracts typically did map onto types of commerce, examples such as *locatio conductio* show that some were more precisely focused on particular patterns of commercial behaviour than others (*societas* or *mandatum*). At the same time, it was important to recognise *stipulatio* as a contract that could cut across all manner of commerce. The stronger answers were largely differentiated by how much detail they could bring into their answers while still maintaining focus on the question.

**Question 9**

Though popular, this essay was more nuanced than many candidates appeared to realise. A full answer required reflection on the dynamic between the expansion of *contrectatio* and a sharpening focus on the requisite mental element, and the shifting boundaries between *furtum* and other forms of wrongdoing. Answers had a tendency to focus on *contrectatio* to the exclusion of the other aspects of the question. Excellent use was made of Digest texts in support of the argument, and in particular examples involving interference with a part of a larger thing wherein questions of intention are used to determine what it is that has been stolen.

**Question 10**

This essay was on the Roman conception of delict. Candidates were expected to reflect on the category of delicts, and whether Ahren’s focus reflected the Roman understanding. Candidates sometimes got unnecessarily distracted by the initial part of the quotation, and spent a significant amount of time exploring the various sources of obligations. While relevant, this did reduce the time available for assessing Ahren’s characterisation of delict. There were many different directions in which this answer could be taken, but the phrasing of the quotation placed the focus on (1) “necessary reparation”, which mapped onto whether damages were penal or compensatory; (2) “damage caused”, and the range of harms covered by delict (overlooked by virtually all candidates); and (3) “by fault or by fraud”, and the range of fault standards employed in the various delicts.

Constitutional Law

Constitutional law was conducted this year under the open book 3+1 model and again against the backdrop of coronavirus, with many of our students studying remotely for at least part of the time leading up to their exams. Despite the obvious difficulties associated with these circumstances the students in general did well. 16% achieved distinctions, 77%, marks between 60 and 69, 6% marks between 50 and 59, and 1% marks below 50. Habits that brought students down included writing to the word limit as opposed to aiming for efficiency and clarity in exposition and, as is perennially true, writing in general terms about (some of) the concepts in questions as opposed to answering the specific question asked. Some comments on individual questions:

1. Question one had relatively few takers. Those who answered it well engaged in detailed analysis of the rule in Pepper v Hart and the courts’ subsequent retreat from it. They also bought to bear a range of normative principles in assessing the constitutional appropriateness of such a rule. Worryingly, some students took the question as a launchpad to discuss privilege and the debates around section 3 and section 4 of the Human Rights Act, neither of which were within its remit.
2. Good answers to the question spent time unpicking what it would mean for the rule of law to be a legal principle and using this concept to interrogate aspects of the caselaw in a focussed way. Bad answers wasted too much time on the general debate concerning ‘formal’ and ‘substantive’ understandings of the rule of law.
3. Question 3 asked students to analyse one of the lynchpin arguments in Miller (no 2) in detail. Strong answers focussed on the implications and importance of Parliamentary Sovereignty for the wider constitutional landscape, using this to discuss the appropriateness of the court’s control of the prerogative power to prorogue Parliament. Less good answers talked generally about legal controls on the prerogative.
4. Question 4 was inevitably a popular one but this fact, combined with the hackneyed nature of the usual examples, meant that it was hard for individual candidates to really stand out. Stronger answers focussed on how questions concerning conventions might or might not be nested in broader legal questions and how this affects the legitimacy of court engagement with conventions.
5. This was again a popular question. The most obvious answer was ‘no’ with better candidates going on to specify what implications for our more general understanding of the separation of powers follow from the connections between legislative and executive branches.
6. Question (a) was reasonably popular and was on the whole done quite well. Detailed understanding of the theoretical components of federalism provided students a useful launchpad into understanding the similarities and dissimilarities between devolution and federal systems of government. Question (b) was less popular but was in general handled sensitively, with acute understanding of the details of the institutional context.
7. Question (a) was well handled, with excellent answers analysing the various possible functions associated with section 4 in light of its constitutionally ambiguous nature. Question (b) had a large number of takers and was handled in a competent if unexciting manner. Excellent answers did more than list the various circumstances in which UK courts will decline to follow the decisions of the ECtHR, integrating their analysis into a more general theoretical framework concerning the point or purpose of the Human Rights Act.
8. Question 8 had few takers and was answered in varying degrees of sophistication. Good answers considered in detail the nuanced relationship between political parties and democratic constitutionalism.
9. Question 9 was well answered by those who attempted it, focussing in particular on the question of whether a written constitution would frustrate or further the principle that the people’s representative should be the author of its most basic laws.
10. Question 10 was very popular but was answered for the most part in a generic and uncritical manner. A number of candidates also devoted significant time to discussion of the principle of legality, a topic not obviously within the remit of the question.

Criminal Law

The examination took place remotely for the second consecutive year. Candidates were given four hours to complete and upload their answers. Given the enormous disruption created by the COVID-19 pandemic, it was cheering to see so many strong scripts. 19% of scripts achieved a mark of 70 or more. 72% achieved a mark between 60 and 69. 7% scored between 50 and 59. 2% scored under 50.

Q 1 – Candidates were asked whether self-defence should be available to those who make unreasonable mistakes of fact. The question attracted few takers. Better answers observed that reasonable mistakes are required in cases of duress and asked whether there are good reasons for the two defences to diverge. It was encouraging to see some students engage with whether the right to life is adequately respected by the current law in homicide cases.

Q 2 – Candidates were invited to consider the conditions under which interventions by victims should constitute a *novus actus interveniens*. This question was also unpopular. Good candidates discussed the merits of *Kennedy (No.2)*, *Roberts* and *Blaue* among others. A puzzlingly large number of candidates appeared unaware of one or more of these cases. The best answers, predictably, were those that addressed the normative question. Such answers not only considered the state of the current law, but asked *why* human interventions should break causal chains, and what this implies for the acts and omissions of victims.

Q 3 – This question invited discussion of recent decisions on the *mens rea* of attempts. There was some excellent discussion of how best to understand and distinguish *Pace*, *Khan*, and *A-G’s Ref (No. 3 of 1992)*. The best candidates were well-versed in academic debates that have sprung up in the wake of those cases and had interesting things to say about where the law should go from here.

Q 4 – Candidates were asked to measure the law of homicide against the demands of the correspondence principle. With some honourable exceptions, the question was not answered well. Numerous candidates misunderstood the correspondence principle itself, and there were often mismatches between what candidates said about the principle, and what they said about which homicide offences are compatible with it. To pick just two examples: (i) the correspondence principle is concerned with whether AR elements of an offence have corresponding MR elements. It is not concerned with coincidence in time, or with the scope of criminal defences; (ii) if (as Ashworth says) the principle is only satisfied by offences that require subjective MR about each element of the AR, it cannot also be true that the principle is satisfied by the offence of gross negligence manslaughter.

Q 5 – Candidates were asked whether English law takes a coherent approach to intoxication. The first challenge here was to get clear about the approach. To repeat a point made in last year’s report, intoxication is not a defence. Indeed, it is more accurately thought of as the opposite: while defences exculpate, the intoxication rules inculpate—they help prosecutors secure the conviction of defendants who would otherwise be acquitted. The best candidates had a firm grasp of this point, and of the difficulties the courts have faced in determining both the scope and nature of the inculpatory rules. They also faced up to the question of what a coherent approach would be in this context, and of the extent to which English law has succeeded in taking one.

Q 6 – Candidates were asked to consider whether defendants who transmit disease should be liable under both the OAPA 1861 and SOA 2003. The question was popular. Most candidates were aware that disease transmission is treated very differently under the two statutes. Many referred to *Dica*, *Konzani*, *B*, *Lawrance* and other relevant cases. The best candidates engaged thoughtfully with possible justifications for the differences in treatment and offered their own view of the conditions under which disease transmission ought to attract liability of each kind.

Q 7 – Candidates were asked to consider both a descriptive question (does the Fraud Act criminalise lying?) and a normative one (would it be objectionable if it did?). The first question was handled reasonably well. Most candidates saw that not all lies constitute fraud, and that not all fraud necessitates lying. Better candidates engaged carefully with the statutory provisions to explore the properties a lie would need to possess to fall within the scope of fraud. Engagement with the normative question was generally less successful, with many candidates showing little awareness of the rich debates about the proper scope of the criminal law.

Q 8 – Candidates were asked whether English law is too lenient in its treatment of the inadvertent. Candidates did well to begin by explaining what they took inadvertence to mean. Most discussed the definition of recklessness, with reference to *Caldwell* and *G*. Better answers also considered other areas of the course, including (for example) the Sexual Offences Act 2003, gross negligence manslaughter, and the definition of dishonesty post-*Ivey*. The best saw the need to engage with basic principles of criminal law to determine whether and when inadvertence ought to attract criminal liability.

Q 9 - This problem focused on defences. One set of issues concerned whether D commits criminal damage under duress. The best candidates considered whether D would be deprived of the defence because of her voluntary association with E (*Hasan*). They also noted that E would remain secondarily liable for D’s offences even if D benefited from the defence (*Bourne*). A second set of issues concerned possible defences to D’s use of force against F. Candidates tended to consider the possibility of duress of circumstances. Few explored the possibility that D might plead self-defence given the decision in *Hichens.*

Q 10 - This problem focused on complicity. The quality of the answers varied widely. The weakest misstated the basic requirements of secondary liability as set out in *Jogee*. The best had read the case and were able to use it to explore a range of issues. These included (i) the difference between an intention that the crime be committed (not required) and an intention to assist or encourage its commission (required); (ii) the possibility of secondary liability for manslaughter where the principal offender is liable for murder; (iii) the conditions under which an ‘overwhelming supervening event’ precludes secondary liability.

Q 11 - This problem focused on non-fatal offences and homicide. As to the former, candidates tended to assume, without argument, that both injuries would amount to ABH. Some also assumed that, if ABH was indeed caused, consent could not be legally valid. The best candidates considered whether the rule in *Brown* applies in the absence of a direct intention to harm. When discussing homicide, most candidates rightly considered the issue of contemporaneity, and engaged with the relevance of *Clinton* to a possible partial defence of loss of control.

Q 12 - This problem focused on property offences. Most candidates saw that P might be liable for encouraging fraud. Some thought—wrongly—that O could only be liable for attempted theft. Candidates who scored well considered both whether P went far enough to attempt criminal damage and whether what P intended to cause would indeed constitute damage.

Q 13 - This problem focused on sexual offences. Some candidates concluded that A had consented to B’s touching, and/or that B had a reasonable belief in A’s consent. Given that consent requires agreement by choice, and that the reasonableness of a belief in consent depends on the steps taken to ascertain its presence, these were surprising conclusions to say the least. C’s liability called for discussion of *Bingham* and *Devonald*. A’s liability called for discussion of *Assange* and *Lawrance*. Weaker candidates omitted one or more of these cases. The best had intelligent things to say about which decision a court would be likely to follow on the facts.

Thanks

The Moderators are extremely grateful to Heather Schofield and Paul Burns.

Thanks are also due to markers for keeping to schedule during an exceptionally difficult year.

Board of Examiners

Dr J Edwards (Chair)

Prof W Ernst

Dr T Adams

Appendix A

Breakdown of results by individual paper and by gender

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Criminal Law** | Student Count | 75 – 79 | 71 – 74 | 70 | 68 - 69 | 65 – 67 | 61 – 64 | 60 | 58 – 59 | 50 - 57 | 48 - 49 | 40 - 47 | 39 or less |
|  | **Number** | | | | | | | | | | | | |
| **Criminal Law -All** | 243 | 0 | 13 | 32 | 35 | 85 | 47 | 9 | 10 | 8 | 0 | 1 | 3 |
| **Female** | 148 | 0 | 5 | 12 | 24 | 53 | 30 | 8 | 7 | 5 | 0 | 1 | 3 |
| **Male** | 95 | 0 | 8 | 20 | 11 | 32 | 17 | 1 | 3 | 3 | 0 | 0 | 0 |
|  | **Percentages** | | | | | | | | | | | | |
| **Criminal Law -All** | 100 | 0.00 | 5.35 | 13.17 | 14.40 | 34.98 | 19.34 | 3.70 | 4.12 | 3.29 | 0.00 | 0.41 | 1.23 |
| **Female** | 61 | 0.00 | 3.38 | 8.11 | 16.22 | 35.81 | 20.27 | 5.41 | 4.73 | 3.38 | 0.00 | 0.68 | 2.03 |
| **Male** | 39 | 0.00 | 8.42 | 21.05 | 11.58 | 33.68 | 17.89 | 1.05 | 3.16 | 3.16 | 0.00 | 0.00 | 0.00 |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **A Roman Introduction to Private Law** | Student Count | 75 – 79 | 71 – 74 | 70 | 68 - 69 | 65 – 67 | 61 – 64 | 60 | 58 – 59 | 50 - 57 | 48 - 49 | 40 - 47 | 39 or less |
|  | **Number** | | | | | | | | | | | | |
| **Roman Law - All** | 241 | 5 | 16 | 30 | 20 | 82 | 62 | 12 | 7 | 3 | 0 | 2 | 2 |
| **Female** | 147 | 1 | 9 | 17 | 13 | 47 | 39 | 9 | 7 | 2 | 0 | 1 | 2 |
| **Male** | 94 | 4 | 7 | 13 | 7 | 35 | 23 | 3 | 0 | 1 | 0 | 1 | 0 |
|  | **Percentages** | | | | | | | | | | | | |
| **Roman Law - All** | 100 | 2.07 | 6.64 | 12.45 | 8.30 | 34.02 | 25.73 | 4.98 | 2.90 | 1.24 | 0.00 | 0.83 | 0.83 |
| **Female** | 61 | 0.68 | 6.12 | 11.56 | 8.84 | 31.97 | 26.53 | 6.12 | 4.76 | 1.36 | 0.00 | 0.68 | 1.36 |
| **Male** | 39 | 4.26 | 7.45 | 13.83 | 7.45 | 37.23 | 24.47 | 3.19 | 0.00 | 1.06 | 0.00 | 1.06 | 0.00 |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **Constitutional Law** | Student Count | 75 – 79 | 71 – 74 | 70 | 68 - 69 | 65 – 67 | 61 – 64 | 60 | 58 – 59 | 50 - 57 | 48 - 49 | 40 - 47 | 39 or less |
|  | **Number** | | | | | | | | | | | | |
| **Constitutional Law - All** | 241 | 0 | 14 | 25 | 21 | 68 | 78 | 15 | 12 | 5 | 0 | 0 | 3 |
| **Female** | 147 | 0 | 5 | 15 | 11 | 37 | 51 | 11 | 9 | 5 | 0 | 0 | 3 |
| **Male** | 94 | 0 | 9 | 10 | 10 | 31 | 27 | 4 | 3 | 0 | 0 | 0 | 0 |
|  | **Percentages** | | | | | | | | | | | | |
| **Constitutional Law - All** | 100 | 0 | 5.81 | 10.37 | 8.71 | 28.22 | 32.37 | 6.22 | 4.98 | 2.07 | 0 | 0 | 1.24 |
| **Female** | 61 | 0 | 3.40 | 10.20 | 7.48 | 25.17 | 34.69 | 7.48 | 6.12 | 3.40 | 0 | 0 | 2.04 |
| **Male** | 39 | 0 | 9.57 | 10.64 | 10.64 | 32.98 | 28.72 | 4.26 | 3.19 | 0.00 | 0 | 0 | 0.00 |