FHS Jurisprudence and Diploma in Legal Studies
Examiners' Report 2017

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PART I

A. Statistics

Numbers and percentages in each class/category

(a) Classified examinations

FHS Course 1, BA Jurisprudence

Class	Number			Percentage (%)		
	2016/17	**2015/16**	**2014/15**	**2016/17**	**2015/16**	**2014/15**
I	38	31	44	20.11	19.25	23.78
II.I	146	122	130	77.25	75.78	70.27
II.II	5	8	11	2.64	4.97	5.94
III						
Pass						
Fail						

FHS Course 2, BA Law with Law Studies in Europe

Class	Number			Percentage (%)		
	2016/17	**2015/16**	**2014/15**	**2016/17**	**2015/16**	**2014/15**
I	11	7	8	31.43	24.14	26.66
II.I	23	22	21	65.71	75.86	70.00
II.II	1		1	2.86		3.33
III						
Pass						
Fail						

FHS Course 1 and 2 combined

Class	Number			Percentage (%)		
	2016/17	**2015/16**	**2014/15**	**2016/17**	**2015/16**	**2014/15**
I	49	38	52	21.87	20.00	24.18
II.I	169	144	151	75.45	75.79	70.23
II.II	6	8	12	2.68	4.21	5.58
III						
Pass						
Fail						

(b) Unclassified Examinations

Diploma in Legal Studies

Category	Number			Percentage (%)		
	2016/17	**2015/16**	**2014/15**	**2016/17**	**2015/16**	**2014/15**
Distinction	9	12	9	26.47	36.36	26.47
Pass	25	21	25	73.53	63.64	73.52
Fail						

Vivas

Vivas are no longer used in the Final Honour School. Vivas can be held for students who fail a paper on the Diploma in Legal Studies, but none have been held for the last four years.

Marking of scripts

Second marking

General procedure

A rigorous system of second marking is used to ensure the accuracy of marking procedures. This second marking occurs in two stage.

The first stage takes place during initial marking before the first marks meeting. In larger subjects, marking teams meet to ensure that a similar approach is taken by all markers. Where there is a discrepancy in marking profiles among the team, a sample of scripts are sent for second marking to ensure consistency. In smaller subjects, a random sample of scripts are second marked, again to ensure consistency of marking. This sample should be at least six scripts, or 20% of the candidates, whichever is larger. In all subjects, any script where the first mark ends with a 9 (69, 59, 49) or any mark below 40 is also second marked at this stage. In 2017, 343 scripts were second marked prior to the first marks meeting.

Additional scripts are sent for second marking following the first marks meeting. In all instances, where a script mark was 4% below the candidate's average mark, the script was second marked. Further, where a script ended with an 8 and where a change in one or more scripts could affect the candidate's overall award classification, the script was second marked at this stage, and was flagged as a borderline script. In previous years, scripts ending with a 7 may also have been sent for second marking as borderline scripts, but it was decided by the Examiners not to do so in this academic year. In 2017, 227 scripts were second marked following the first marks meeting. 169 scripts were marked because they were 4% below the candidate average, and 57 scripts were second marked as borderline. One script fell into both categories.

Jurisprudence procedure

As the two elements of the Jurisprudence subject are marked separately, a slightly different procedure is used for second marking.

During first marking, the standard procedure is used for each element. That is, a random sample of at least six essays from each mini-option is second marked, including any essays which are on a borderline between classifications. Profiling and sampling are employed for the examination.

Following the first marks meeting, more second marking occurs. Some scripts are sent for second marking where one or both elements is four below the candidate's average. Second marking of both elements occurs where the combined marks leave the student on the borderline between classifications.

There were 32 instances of Jurisprudence second marking between the marks meetings. 10 were due to the result being 4% below the student's average, and 22 were due to a borderline mark emerging when the two elements were combined. The 22 borderline scripts are included in the total of 57 borderline scripts which were second marked between meetings.

Agreeing marks

Where a script is second marked, first and second markers were instructed to discuss their marks and, wherever possible, agree a mark. Where such agreement is not possible, the Examiners may exercise their discretion to decide on the appropriate mark for the script. This was not required in 2017.

Marks are not generally lowered as a result of second marking between the marks meetings. There were three instances where second markers recommended a reduction in the candidate's score. A rationale for these recommendations was provided to the Examiners at the second marks meeting. In each case, the Examiners decided to retain the original mark.

Issues with second marking

There was some confusion around the procedure for second marking prior to the first marks meeting. This seems to have been caused by the difference in procedure for large and small subjects, and by the difference in second marking procedure for other courses, such as the BCL and MJur.

Confusion also arose about whether the markers needed to agree the marks, where the second marking took place after the first marks meeting. These issues were resolved before the marks meeting. Given the tight time frame, though, it would be best to avoid a recurrence of this issue.

It was agreed to review the Instructions to Markers document, to seek to provide additional clarity around these issues.

Overall, the level of second marking seems to be lower this year, when compared with previous years.

	Number			**Percentage (%)**		
	2016/17	**2015/16**	**2014/15**	**2016/17**	**2015/16**	**2014/15**
Total Scripts	2244	1954	2091			
First stage	348	327	330	15.50	16.73	15.78
Second stage	227	294	307	10.12	15.05	14.68
All second marking	575	621	637	25.62	31.78	30.46

As shown by the table below, 68 borderline scripts were sent out for second marking after the first marks meeting on this basis, compared to 82 in 2016.

First mark	Number of borderline scripts	Scripts moved to higher class	% moved to higher class
69	17	6	35
68	36	11	31
59	1	0	0
58	4	1	33

Third marking

Third marking is only used in exceptional cases. In 2017, 4 scripts were sent for third marking. This is a significant drop from 2016, when 12 scripts were third marked.

B. New examining methods and procedures

New examining methods and procedures

The examination format for all exams remained the same, with the exception of Medical Law and Ethics. Students taking this paper were asked to complete two 3,000 word essays in Week 9 of Hilary Term, with the questions for the essays chosen from a list of three options.

The process for setting the Medical Law papers worked reasonably well and marking proceeded smoothly. The Committee notes the course convenors' concerns that candidates found the limited choice of open questions very challenging, and supports their intention to set a greater number of narrower questions next year to give candidates more direction in framing their answers.

Examination schedule

At the 2016/17 meeting of the Law Examinations Committee, it was decided to extend the period of examinations for the FHS, to allow students recuperation days between exams. As a result, the first FHS examinations took place on Wednesday in 5th Week of Trinity term. This was put in place for the 2017 FHS exams, and will remain in place for the 2018 exams.

It was also agreed at the same meeting that the order of the compulsory papers should not remain static, but should rotate on an annual basis. Compulsory paper will move one place later in the timetable from year to year, and the final compulsory paper each year will become the first compulsory paper in the subsequent year.

Materials in the Examination Room

In keeping with last year's practice, case lists were included at the end of each exam paper, rather than providing them to students separately. This reduced the risk of students not having access to the required materials from the start of the exam.

C. Examiners' Edicts and Examination Conventions

Examination Conventions were introduced for the 2016 FHS, and were also used in 2017. The FHS/DLS Examiners' Edict was circulated to students by email, directing them to the published version of the Conventions on the Faculty's Weblearn site. A copy of the Examination Conventions is included in Appendix 1.

PART II

A. General comments on the examination

Examination papers

As in previous years, responsibility for setting and checking each paper is allocated to teams of up to five members in larger subjects and up to three members in smaller subjects. The leader of each team has considerable additional responsibility to ensure that procedures are carried out and deadlines met.

Special examination arrangements

Students who require special arrangements to complete their examinations may apply for accommodation through the Proctors.

In 2017, there were 27 FHS students accommodated in this way, and no DLS students.

Withdrawals from the examination

14 students withdrew from the FHS in 2017; 12 of these students were from Course 1, and 2 from Course 2.

Candidate complaints relating to conduct of examinations

There were no student complaints received about the conduct of the examinations.

Factors affecting performance (FAP)

Where students believe that factors outside of their control may have affected their performance in one or more examinations, they may apply to have these factors taken into account by the Examiners. In 2017, 46 such applications were received for FHS students, and 1 was received for a DLS student. This compares to 37 FHS applications and no DLS applications in 2016.

Following the procedure of recent years, a subset of the Board met prior to the first marks meeting to discuss the individual applications, and to evaluate and band the seriousness of each application. A scale of 1 to 3 was used, with 1 indicating minor impact, 2 indicating moderate impact, and 3 indicating very serious impact. To preserve the principle of blind marking, when reviewing the applications, the Examiners had access to an anonymised summary of each student's application. When reaching their decision, the Examiners took into consideration the severity, timing and relevance of the circumstances, and the strength of the evidence. The Examiners also noted whether all or a subset of

papers were affected, being aware that it is possible for circumstances to have different levels of impact on different papers. A formal record is kept confirming a) the fact that information about special circumstances has been considered by the Examiners, b) how that information has been considered, and c) the outcome of the consideration together with the reasons for the decisions reached.

The banding evaluation was recorded on the appropriate form, and these banding forms were brought to the two meetings of the Board of Examiners to inform the decision making process. The Board of Examiners also had access to the anonymised summary of applications, in case further discussion was required. A formal report of action taken was completed at the results confirmation meeting.

In a new process for this year, the decision of the Examiners regarding FAP applications was recorded in eVision, and was made available to students when their results were released.

Addressing issues on individual exam scripts

Legibility of examination scripts

This year, examiners deemed 12 scripts, from seven candidates, to be illegible. These scripts were sent to the students' Colleges for typing. The cost of this transcription is covered by the students in question. This represents a decline in the number of illegible scripts, with 23 scripts needing to be typed for 12 students in 2016.

Absent answers, breach of rubric and short answers

As in previous years, markers were asked to note where students had failed to answer sufficient questions, where there were rushed or incomplete answers, or where there was a script completed in breach of the exam paper rubric.

Where students did not answer sufficient questions, the missing question(s) were given a mark of 0. Where an answer was rushed, written in note form, or missed a part of the question, it was awarded a mark above 0 as appropriate.

Where students do not complete a particular exam in compliance with the rubric, the question marks remain as determined by the marker, but the script mark is reduced by 10% by the Board of Examiners.

Misunderstood questions

As in previous years, guidance was given to markers about how they should treat misunderstood questions. The marker should consult with the other marker(s) of the paper in order to discuss the appropriate mark for the question in the light of the particular misunderstanding. This provides the markers with the opportunity to assess the seriousness of the error, and to ensure that any similar misunderstandings could be treated in the same manner across the marking team.

Marks entry database

The database used for marks entry and report generation did not cause particular issues in 2017. However, given the tight time frames involved, the reliance on the database means that it remains a threat to the smooth running of the examination process.

External Examiners

This year we had the valuable assistance of Dr A Sanders of LSE (for her second year) and Dr J Murphy of Lancaster University (for his first year). They were involved in all the stages of the process,

and provided much valuable advice: we are very grateful to them. This year, as last, the External Examiners each looked at ten borderline scripts in their specialist subjects. The External Examiners' reports to the Vice-Chancellor about their views of the examination process are attached as Appendix 2.

Examiners' discretion at the marks meetings

As a general rule, the Examiners applied the conventions for classification and results, as previously agreed by the Law Faculty Board and notified to candidates. There were, as usual, some cases where Factors Affecting Performance had been drawn to the Board's attention, and the Board decided that it was appropriate to classify a candidate otherwise than in accordance with the conventions.

The Examiners, in the exercise of their discretion, to award a higher degree classification than they would otherwise have done in respect of five candidates. The Examiners carefully considered all part 13 applications but in no other case did they consider it appropriate to alter any mark or the final degree classification.

Prizes

There are 28 subject prizes available for FHS students. The marking team for each subject nominated a candidate to be awarded the relevant subject prize, and this nomination was approved by the Examiners.

There are four additional prizes for overall performance, which are awarded to FHS and DLS students. A list of nominees is prepared ahead of the meeting. The Examiners review the nominees' marks profiles in the second marks meeting, and decides on the winners on that basis.

Gibbs' Prizes are awarded by the University, for performance across fours of the compulsory papers. The winners of these prized were also decided by the Examiners.

The prize winners were well spread across the University, with 27 students, coming from 21 Colleges, winning a prize.

Thanks

The Chair of Examiners is grateful for the support and help of all those who participated in the examining process, including the external examiners. During the course of this year, Julie Bass - who has run the exam process so effectively for many years - moved on to a new role. Julie's contribution to the Faculty has been outstanding, and, as many Faculty members will have reason to appreciate, she has steered the exams with a competent good humour, saving many of us from many errors. Given this change in personnel, a particular burden fell on members of the Faculty Office who would not normally have helped run the FHS exams. We all owe a special debt of gratitude to Paul Burns and Laura Gamble, who both provided exceptional support, and ensured that all ran smoothly. During the marking process Grainne De Bhulbh was appointed, and has shown herself to be a worthy successor to Julie.

B. Equality and diversity issues, and breakdown of the results by gender

FHS Course 1, BA Jurisprudence

	2017				2016				2015				2014			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	21	27	17	15	16	22	15	17	27	29	17	18	18	24	16	15
II.I	56	71	90	82	52	72	70	79	59	64	71	76	54	73	89	82
II.II	2	2	3	3	4	6	4	4	6	7	5	5	2	3	3	4
III																
Pass															1	1
Total	79		110		72		89		92		93		74		109	

FHS Course 2, BA Law with Law Studies in Europe

	2017				2016				2015				2014			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	6	35	5	28	3	33	4	20	3	25	5	28	8	53	4	24
II.I	11	65	12	67	6	67	16	80	9	75	12	66	7	47	13	76
II.II			1	5							1	6				
III																
Pass																
Total	17		18		9		20		12		18		15		17	

FHS Course 1 and 2 combined

	2017				2016				2015				2014			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	27	28	22	17	19	23	19	17	30	29	22	20	26	29	20	16
II.I	67	70	102	80	58	72	86	79	68	65	83	74	61	69	102	81
II.II	2	2	4	3	4	5	4	4	6	5	6	5	2	2	3	2
III																
Pass															1	1
Total	96		128		81		109		104		111		89		126	

C. Detailed Numbers on Candidates' Performance in Each Part of the Examination

Students on the BA programmes take nine papers as part of the FHS examinations. These are made up of seven compulsory papers and two optional papers. Students chose from a list of 23 option papers for this year's FHS. The distribution of students across the option papers is shown below:

	2017	2016	2015	2014
Commercial Law	11	17	22	30
Company Law	20	10	18	22
Comparative Private Law	11	12	10	
Competition Law and Policy	33	28	42	35
Constitutional Law	9	5	9	6
Copyright, Trade Marks & Allied Rights	13	8	12	5
Copyright, Patents and Allied Rights	29	22	22	16
Criminal Law	5	5	9	6
Criminology and Criminal Justice	27	24	21	18
Environmental Law	6	9	4	7
Human Rights Law[1]	20	19	30	43
Family Law[2]	49	29	51	55
History of English Law[3]	2	5	2	12
International Trade	8	5	15	15
Labour Law	21	15	15	19
Media Law[4]	1	20	12	
Medical Law and Ethics[5]	78	47	44	62
Moral and Political Philosophy	34	18	26	30
Personal Property	17	13	16	8
Public International Law	46	39	40	38
Public International Law (Jessup Moot)	4			
Roman Law (Delict)	9	18	9	5
Taxation Law	22	12	12	18

[1] Change of title in 2016
[2] Change of syllabus in 2015
[3] Change of syllabus in 2015
[4] New course in 2015
[5] New examination structure in 2017

Students on the DLS take three papers, and choose from a shortened list of FHS option papers. The distribution of DLS students across the option papers is as follows[6]:

	2017	2016	2015	2014
Administrative Law		2		
Company Law	6	6	6	13
Competition Law and Policy	5	3	6	5
Constitutional Law	5	5		
Contract	27	27	28	24
Copyright, Patents and Allied Rights	2	6	4	1
Copyright, Trademarks and Allied Rights	4	2		2
Criminal Law		1	4	1
Criminology and Criminal Justice	2	2	2	
Human Rights Law[1]	4	5	5	3
European Union Law	8	7	7	13
Family Law[2]			1	
Jurisprudence[7]				3
Labour Law	3	2	1	4
Medical Law and Ethics	3			
Public International Law	5	3	10	3
Roman Law (Delict)	1			
Tort	23	22	26	19
Trusts	4	4	2	

[6] Papers not included on this list have not been taken by any DLS students for the last four years
[7] Due to the change of syllabus in 2015, it is no longer possible for students on the DLS to take Jurisprudence as an option

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Students on the MJur programme have the option of taking one FHS paper as part of their graduate programme. In 2017, 13 students availed of this option.

	2017	2016	2015	2014
Administrative Law			1	1
Commercial Law		1		
Company Law	2	5	3	
Constitutional Law			1	
Contract	6	8	10	4
Copyright, Patents and Allied Rights		1		
Copyright, Trademarks and Allied Rights	1			
European Human Rights Law		1	2	5
European Union Law				1
Human Rights Law	1			
Personal Property	1			
Principles of Commercial Law		1		
Public International Law	1	1	1	
Tort		1	4	
Trusts	1	1	1	

The distribution below is shown as percentages. Where 0 is shown, less than 0.5% of students fell into this range. A blank field indicates that no students fell into this range.

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	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
Administrative Law	**224**	0	8	13	12	31	23	5	4	2	0		
Contract	**224**		7	19	3	23	35	5	4	5			
EU Law	**223**		4	8	4	31	42	6	2	3			
Jurisprudence	**224**	1	9	5	13	32	38	2	1				
Land Law	**219**	0	7	13	8	30	23	8	4	6			
Land Law (old regs)	**5**			40	20		40						
Tort	**224**		2	20	12	37	18	8	2	2			
Trusts	**224**		3	9	7	24	33	8	8	7	0	1	0
Commercial Law	**10**		10	20		20	20	20		10			
Company Law	**18**		6	17	17	22	39						
Comparative Private Law	**11**	9	36	9	18	18			9				
Competition Law and Policy	**32**		3	22	6	25	38	3	3				
Constitutional Law	**9**		11	33		44	11						
Copyright, Patents and Allied Rights	**27**		11	15	11	56	7						
Copyright, Trade Marks and Allied Rights	**12**			25		58		8	8				
Criminal Law	**5**			20	20	40		20					
Criminal Law (old regs)	**4**			25		25	50						
Criminology & Criminal Justice	**26**	4	8	15	23	42	8						
Environmental Law	**6**		33	17	17	33							
Human Rights Law	**19**		11	26	5	32	21	5					
Family Law	**47**		6	19	9	38	23	2		2			

	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
History of English Law	**2**			50			50						
International Trade	**7**		14	29	14		29			14			
Labour Law	**21**	5	5	10	5	38	33		5				
Media Law	**1**								100				
Medical Law and Ethics	**65**		9	9	9	40	25	3	3	2			
Medical Law and Ethics (old regs)	**5**		20			20	60						
Moral and Political Philosophy	**31**		6	16	16	35	19		3	3			
Personal Property	**13**		8	15	8	23	31	8	8				
PIL	**43**		9	5	23	26	19	5	7	5	2		
PIL Jessup Moot	**4**		100										
Roman Law (Delict)	**8**		13	25	25	25	13						
Taxation Law	**20**		20	20	5	40	15						

D. Comments on papers and individual questions

Administrative Law

General Comments

224 candidates sat this paper. In general, the standard was high, with **Q2**, **Q6a**, **Q8** and **Q10** proving the most popular among candidates. In contrast, no-one answered **Q9b**. The best answers displayed strong knowledge of relevant case law and academic debates, were closely focused on the questions as they had been asked, and involved criticism and close analysis.

The examiners were concerned by the tendency to cite Rebecca Williams' lectures as authority for propositions, *regardless* of whether the points concerned had actually been advanced in lectures or even related to a subject that had been discussed. Candidates must appreciate that examiners are unlikely to be impressed by blanket citation from a particular source, whatever it may be, regardless of its actual relevance.

Questions

Q3 attracted many good answers, but weaker responses tended to be unduly general and/or to be unaware that the quotations were from a majority and a *dissenting* judgment in *YL*. There was too much of a tendency to regurgitate standard essays rather than dealing specifically with the two quotations.

While answers to **Q4** were often of a high standard, weaker responses focused narrowly on closed material procedures (perhaps because it appears to be a 'current' issue) rather than seeking to bring the widest range of material into play.

A surprising number of candidates read **Q7a** as being about ouster clauses or the law/fact distinction, rather than about jurisdictional error – the more obvious subject of Lord Diplock's *dictum* – and neglected to discuss *Cart* in detail. Ouster clauses and the law/fact distinction are important topics and might have been included as secondary matters within answers, but much more careful explanation of their relevance was needed.

Answers to **Q7b** often failed to engage sufficiently with the specific detail of the *Croydon LBC* and *ex parte A*-type cases, alongside the *Khawaja* and *Zerek*-type cases.

While **Q8** was very popular, too many candidates approached it without any detailed knowledge or understanding of s.84 of the Criminal Justice and Courts Act 2015, despite the reference to this provision in the question title. Some merely assumed s.84 dealt with standing, some confused it with s.31 of the Senior Courts Act 1981 and some did not mention it at all. None of these approaches was rewarded with high marks.

Finally, rather too many candidates treated **Q10** as a chance to produce a general answer rather than one focused on the quote set out in the question. A surprisingly large number of candidates also seemed unaware that Forsyth, like Elliott, supported the modified *ultra vires* position and departed from Wade's traditional stance.

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Commercial Law

General Comments

Overall the paper was reasonably well done, with some very good scripts indeed. The main fault in the essay questions, as is often the case, was the failure to answer the precise question posed, and in the problems was failure to identify all of the issues raised, and to discuss some of the more interesting points raised on the given facts.

Questions

Q1: This was a reasonably popular question, but some answers were marred by a failure to discuss the usual remedies of a commercial buyer (such as the right to reject the goods) and instead a focus on aspects of the sale of goods which are not remedies at all, such as the passing of property, and the classification of the terms of the sales contract.

Q2: This was tackled by very few candidates indeed.

Q3: Not many takers for this one, either, but the few who attempted it did a very good job. It was particularly impressive that some candidates came with their own ideas as to how the retrospectivity fiction might be useful in areas of the law that we had not covered on the course, e.g. limitation periods.

Q4: This question produced some good discussion of characterisation of transactions, demonstrating a good knowledge of the case law.

Q5: This was tackled by very few candidates.

Q6: This was a very popular problem. It raised squarely question as to whether the contract between Yellow Ltd and Beaker Ltd was a contract of sale, or a sui generis contract following the Supreme Court decision in *PST Energy 7 Shipping LLC v O.W. Bunker Malta Ltd.* Most candidates mentioned the case, but many only discussed it briefly in the context of whether a claim could be brought under section 49 of the Sale of Goods Act 1979 and missed the related ramifications for whether the contract included terms implied by that Act, and whether section 6 of the Unfair Contract Terms Act 1977 applied.

Q7: This was another popular question. While many candidates discussed the application of section 2(1) of the Sale of Goods Act, few mentioned the relevance of section 2(2), or discussed the criteria for the application of section 24. There was also very little discussion of whether Dodgy's liability for the faulty door handle was strict (under a term implied by the Sale of Goods Act) or was for the breach of the duty of care and skill implied by the Supply of Goods and Services Act in a contract for services.

Q8: Relatively few candidates tackled this question. There were a number of different points, which not all candidate untangled, some of which depended on a careful reading of the facts. Some candidates did not spot, for example, that the 'negative pledge' clause only prohibited the grant of a security interest and not the absolute assignment of receivables, while the automatic crystallisation clause was triggered by an attempt to dispose of the receivables (and not by the actual disposition).

Q9: This was a very popular question and was generally very well done, the best candidate questioning some of the more obvious conclusions which might be thought to follow from too basic an application of the statutory provisions to the facts.

Q10: This question, which required consideration of how to structure a secured transaction, was attempted by very few candidates.

Company Law

General Comments

There were 26 students who sat the Company Law paper (including FHS, DLS and MJur students). The breakdown of marks was four first-class marks, 20 upper second-class marks and two lower second-class marks. The marks ranged between 71 and 57 and the mean mark was 64.6. In terms of the individual questions:

Questions

Q1: This was a reasonably popular question that attracted mainly mid-2.1 answers. The quote invited candidates to compare the jurisdiction to grant relief from unfairly prejudicial conduct under CA 2006, s 994 with the common law jurisdiction to invalidate resolutions on the grounds that they were not passed *bona fide* in the interests of the company as a whole. Whilst candidates were able to discuss each jurisdiction on its own terms (and make interesting critiques of each) there was little attempt made to compare and contrast the two forms of relief.

Q2: This was a popular question, which on the whole was competently answered, but there was little by way of first-class quality in the responses. There were two main weaknesses: first, there was a failure to discuss the cases dealing with the corporate opportunities doctrine or the "scope of business" test in sufficient detail, particularly *Bhullar*, *O'Donnell* and *Tao*; and, secondly, there was a failure to tackle the more normative aspect of the question and whether it was appropriate that company directors should or should not be treated in the same way as those managing a partnership.

Q3: This was a reasonably popular question that produced the most divergence in terms of quality of answer. The very best answers contextualised the *BAT* decision, discussed the development of the *West Mercia* line of cases (including its inclusion in CA 2006, s 172(3)), the development of, and justifications for, wrongful trading liability and compared the scope of those two forms of creditor protection. Weaker answers tended to consider wrongful trading and *West Mercia* separately without discussing their inter-relationship. The weakest answers tended to omit consideration of one or other jurisdiction.

Q4: An unsurprisingly popular question that tended to elicit good answers, although some answers displayed significant weaknesses. As well as a failure to engage with the case-law in a clear manner, the principal weakness was a failure to engage with the quote. Stronger answers tried to explain what was meant by the distinction between "lifting" and "piercing" and tried to map the decided cases onto that distinction. The very best answers attempted to critique the distinction and explain how it failed to explain the decided cases in a comprehensive manner.

Q5: A relatively unpopular question that was not especially well answered. Most candidates read the question as an invitation to write an answer to the question set on previous examination papers about the differences between the statutory contract and an ordinary contract. Whilst some of this material might be relevant, the question was focused upon the proper conception of a company as either a legal person or a bundle of contracts. Nobody really engaged with this issue. The lesson is that candidates must really answer the actual question posed.

Q6: An unpopular question that was in general poorly answered. Whilst candidates were able to discuss the issue of ratification in a general manner and the better answers considered the significance of the *Re Duomatic* principle, there was a general failure to place ratification within a broader corporate governance context or to consider in a persuasive manner other mechanisms that might be deployed.

Q7: There were no responses to this question, which concerned the correctness of the *Mashonaland* principle.

Q8: This question concerning the relationship between the unfair prejudice and derivative action jurisdictions was not popular, but was generally well done (sometimes very well done) by those who attempted it. Once again, the key to success was to break down the quote into its constituent elements and to respond to those various elements in a systematic manner.

Q9: This was a very popular question raising a range of issues, including various breaches of directors' duties, the validity of weighted voting clauses, the reflective loss principle and a variety of shareholder remedies, including the derivative action. The issue that tended to separate first-class responses from upper-second-class responses was the issue concerning the double derivative action: whilst a number of candidates spotted the point, only the very best candidates knew how to tackle the issue and apply the common law requirements for a derivative action to the facts of the problem question.

Q10: This question dealing with various capital issues and the decision in *Russell* was only answered by one candidate, who answered it extremely well.

Q11: This was another unpopular problem question raising a range of issues including minimum capitalisation, breaches of directors' duties, corporate contracting, fraudulent and wrongful trading, shadow directors and lifting the corporate veil. Candidates did well in spotting as many issues as they did, but treatment tended to be rather superficial.

Q12: This question dealing with issues such as reduction of share capital, removal of directors, unfair prejudice and the issuing new shares was only answered by one candidate, who dealt with the issues well.

Comparative Private Law

General Comments

There were 11 candidates for this paper. The overall standard was very good indeed, with a number of excellent answers and papers. The best answers provided comparative reflections on the two or three laws under consideration, as well as explaining the material relevant to the particular question.

Questions

As regards Part A, all questions were answered, with **Q2** (contractual creditor's right to performance), **Q4** (fault and negligence) and **Q5** (comparative discussion of the main provisions on delict in the B.G.B.) being particularly popular.

Part B of the paper contained three questions on property and trusts, of which **Q9** (asking about the most significant differences between the English trust, the German *Treuhand*, and the French *fiducie*) was by far the most popular, while **Q7** (on the 'essence the law of property') was not attempted by any candidate.

Competition Law and Policy

General Comments

The paper comprised eight questions, of which four were essay questions and four problem questions. Candidates were asked to answer four questions including at least two problem questions. Problem questions focused on the application of Article 101 TFEU, Article 102 TFEU, The European Merger Regulation and the enforcement of Competition law, with significant crossover in two of the questions.

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The examination was taken by 37 candidates (5 were DLS students and 32 FHS students). On the whole, the scripts showed a very good command of the subject and good analytical skills, with 9 candidates being awarded an overall mark of 70% or above (1 was DLS and 8 FHS). As in previous years, there was a preference for problem questions over essay questions. There was no *significant* causal link between those students that tended to do better overall and whether those students were more likely to have spread their answers evenly across both problem questions and essay questions. Those students that did best, and those that did worst tended to have spread their answers across problem questions and essay questions. For instance, 5 of the 8 FHS candidates who received of overall marks of 70% or above answered 2 problem questions and 2 essay questions. Meanwhile, 3 of the 8 FHS candidates who received the lowest marks attempted 2 problem and 2 essay questions. First class answers generally displayed a strong grasp of the underlying material, underscored by significant and sustained references to case law and commentary, balanced with robust analytical engagement. Weaker answers tended to miss substantial issues, neglect critical analysis and misconceive the relevant law, or how that law ought to be applied to the facts.

Questions

The first essay question, **Q1**, focused on the issues raised by the case of Case C-286/13P *Dole Food Company*, wherein the Court of Justice fined the Dole company for taking part in a prohibited concerted practice in which price information was exchanged. This was the least popular question overall, attempted by just 4 students, one of whom was awarded a mark of over 70% for their answer.

The second essay question, **Q2**, sought to illicit responses from students in respect of the issues raised by the definition afforded to 'undertakings' for the purposes of EU Competition Law. The question was attempted by 6 students, who generally performed well on the question. 2 students were awarded 70% or above for their answers to this question.

Q3 asked students to comment on the case law, and approach taken by the European Commission, in relation to the issue of rebate schemes. It was the most popular essay question, attempted by 19 students. The average mark awarded for answers to the question was 66.5%. 5 students were awarded marks of 70% or above for their answers to this question.

In **Q4**, students were given the opportunity to comment generally upon what is considered an 'object' restriction for the purposes of Article 101(1) TFEU. It was the second most popular essay question, with 18 students attempting it. The average mark awarded for answers to this question was 66%. 4 students were awarded marks of 70% or above for their answers to this question.

Q5 contained a multitude of issues including jurisdiction, the compatibility of certain vertical agreements with EU law, the legality of actions by the European Commission. This was an unpopular problem question, with just 9 students attempting it. Of those that did, 2 answered the question very well, obtaining marks of 70% or above.

Q6 similarly contained cut across several areas of the course, with issues focusing upon compatibility of certain actions with Article 101 TFEU and Article 102 TFEU. This was the most popular question overall with all bar one student attempting it. Students performed strongly on this question generally, with the average mark being 66%. 7 students were awarded marks of 70% or above for their answers to this question. A further 9 students were awarded marks of 67% or above.

Q7 predominantly concerned issues in relation to the European Merger Regulation, with the question also testing students' understanding of the correct treatment of joint ventures under EU Competition Law. It was attempted by 27 students. The average mark awarded was 65%. 3 students were awarded marks of 70% or above for their answers to this question. 4 students were awarded marks of 67% or above.

Q8 predominantly concerned Article 101 TFEU issues in relation to both vertical and horizontal agreements. The question was attempted by 24 students. The average mark awarded for this question was 64%. Just 1 student was awarded a mark of 70% or above, while 6 students were awarded marks of 67% or above.

Constitutional Law

There were a relatively small number of candidates taking this paper. The general standard was high, with candidates answering a broad range of questions from the paper. As ever, many benefited from bringing insights drawn from Administrative Law and Jurisprudence to their answers.

Contract

General Comments

The standard this year was high. Many candidates displayed a very good grasp of contract law and were able to deal very well with the questions set, the difficult as well as the more straightforward issues. However, as in previous years, candidates were generally much less able to discuss and use relevant legislation (especially consumer contract legislation) compared to the common law.

Questions

Q1: This question invited students to retrace recent developments on how terms are implied in fact. Some answers owed much to a public lecture that Lord Sumption recently gave at the Law Faculty. The better answers developed their own ideas, discussing what 'construction' actually meant other than in the context of implying terms.

Q2: While there were quite a few excellent answers to this question, many candidates produced essays that were *either* on privity *or* on consideration. The best answers focused on the relationship between the two and realised that the criticism levelled at the 1999 Act presupposes one particular role of consideration which has recently been undermined in the case law.

Q3: There were many excellent answers to this question. The main problem with weaker answers was that they focused on *Shogun* itself without going through the (extensive) pre-*Shogun* case law on identity mistake. The best answers explained the underlying conflict and raised the argument that 'order' may not be an end in itself, arguing that the House of Lords should and could have come up with a solution that paid greater attention to the underlying merits in these types of cases.

Q4: The underlying assumption of the question was that 'contract as promise' suggests a focus on the performance interest, i.e. a preference for specific performance as opposed to damages, cost of cure as opposed to difference in value etc., whereas 'contract as bargain' is more geared towards a 'balance sheet' approach to remedies and a Holmesian attitude to breach of contract. Most students who attempted this question realised this and produced good discussions both of the underlying theoretical arguments and the relevant case law (*Argyll, Ruxley, Beswick, Panatown, ParkingEye*). One or two excellent answers challenged the underlying assumption set out above, arguing that one's vision of contract as based on promise or bargain need not necessarily be reflected in the remedial regime one chooses.

Q5: There were just a few answers to this question, most of which were rather descriptive. There was little discussion of the *purpose* of consumer protection. Better answers focused on the procedural/substantive dichotomy, pointing out that Part 2, like the common law, has more of a problem with procedural as opposed to substantive injustice (core terms, transparency requirements

etc.). There were a number of disappointing answers that ignored the reference to Part 2 of the Act, choosing to discuss the whole Act, and Part 1 in particular, instead.

Q6: This was a difficult question requiring candidates to draw together material from disparate areas of contract law. Good answers identified in the first instance how these labels (mere puff, representation, warranty, condition) help us decide whether something said will have any legal significance at all, whether it might enable one party to escape from the contract without giving it the option to enforce it, whether it will be able to enforce the bargain while being bound by its own primary obligations or whether it can suspend performance of primary obligations while enforcing the bargain. Most candidates set out the law relevant to the various distinctions (*Carlill*, *Bissett, Esso, Oscar Chess, Dick Bentley, Bunge v Tradax, Hong Kong Fir)* but disappointingly few candidates devoted much time to the second, evaluative part of the question.

Q7: The question was designed to elicit answers discussing the bases on which contracts can be avoided for either duress or undue influence, with candidates drawing parallels between the 'overborne will' theory and its rejection and the claimant/defendant sided views of undue influence. Similarly, parallels might have been drawn between 'illegitimate' in the context of duress and the 'undue' in undue influence. There were very few answers that did this; instead, most answers focused on the different 'social' roles the two doctrines were said to have, with duress operating in the commercial, undue influence in the family context. There was disappointingly little discussion of the overlap between the two doctrines.

Q8: This was a very popular question, generally handled very well. Most candidates realised that there were special rules applying to tenders and that the party inviting tenders might be bound to follow the rules and procedures it set out in the invitation to tender. Although most also realised that this can be achieved by a 'two-contract' analysis, it was disappointing that very few candidates realised that the rules of offer and acceptance might operate differently for the two contracts. Many answers conflated the two, with the weakest candidates simply applying the postal rule to the main (as opposed to the collateral) contract. Very few candidates discussed the meaning of 'received', and this was particularly disappointing since this was quite clearly flagged to be an issue by the facts. Most candidates did not pay sufficient attention to the question and did not realise that Anton had been written to as a local architect, while Cressida replied to an advertisement, and were then not able to discuss whether this was relevant under *Blackpool & Fylde*. In general, the second part of the question (Cressida) was less well done than the first, with little explanation as to how the criteria could be legally relevant to the decision-making.

Q9: This was another popular question, but answers were of variable quality. Most did a competent job of going through the requirements of misrepresentation, but a worrying number of candidates then went on to discuss the exclusion clause as if it were trying to exclude liability for *misrepresentation*. Despite the exclusion clause being a rather obvious hint, very few answers discussed the possibility that Jake might be liable for breach of contract, and only a vanishingly small minority of candidates were aware of ss. 13, 14(2) and 14(3) of the Sale of Goods Act 1979.

Q10: Again, this question was popular with some very good answers. Very few candidates, however, considered the state of the account between the parties more generally – most focused on each transaction/development and discussed whether, in isolation, this would be allowed to stand. Better answers asked what Yvette's objectives were, before then going through the facts to see how they could be realised. Few candidates discussed the possibility that the first variation might have been induced by duress, focusing entirely on consideration and *Williams v Roffey* (where duress had not been pleaded).

Q11: Most answers were sound, discussing frustration, possible breach by the Hotel and anticipatory breach by the Society. A significant minority of candidates thought that paying only half the deposit when booking a hotel room somehow engaged the common and/or unilateral mistake doctrines. Many candidates saw the possibility of legislative control of the 'non-refundable clause' either under the

CRA or UCTA s.3, but few discussed the question whether s.3 applied to a purported exclusion of liability to make restitution under the 1943 Act as opposed to liability for breach of contract.

Q12: There were a number of excellent answers to this question, but only a small minority of students were aware of the 'entire obligations' doctrine which might help Tim not to pay for the two nights spent at the hotel, while very few candidates discussed the statutory aspects of the second and third parts of the question (the CRA and the Consumer Protection from Unfair Trading Regulations 2008 respectively) with most focusing on *Ruxley*/the 'poor and ignorant' cases respectively). It was also disappointing that hardly any answers considered the remedial position vis-à-vis the hotel (i.e. whether the cost of the camping equipment was recoverable, and to what extent a claim for the cost of an alternative holiday was compatible with a 'disappointment' claim).

Copyright, Patents and Allied Rights; Copyright, Trade Marks and Allied Rights

General Comments

In 2016-2017 two intellectual property papers were offered: Copyright, Patents & Allied Rights (CP) taken by 29 candidates and Copyright, Trade Marks & Allied Rights (CTM) taken by 17 candidates. Both papers were answered to a high standard overall, with a number of scripts awarded a first class mark. There was a good mix of essays and problem solving, as well as a decent spread of answers within each category. The numbers in brackets below indicate the candidates who attempted a given question.

Copyright Questions

The copyright section was common to both the intellectual property options and attempted by 46 students.

Q1 was a popular essay question (29) asking whether reforming the originality test by raising the bar would help rebalance copyright law. Better answers began by setting out the filtering functions of originality and addressing why the threshold was set so low in the first place, connecting this to the theoretical foundations of copyright law. However, some candidates assumed the CJEU's approach has indeed raised the bar for originality and unconvincingly deployed pre-prepared arguments on the divergences between the UK and EU approaches to both originality and categories of works. Others more sensibly pointed out the limitations of rebalancing copyright via originality and intelligently speculated as to whether the scope of infringement could be better calibrated or defences made more meaningful instead.

Q2 asked candidates (20) to critique the CJEU's 'new public' test as a means of limiting the scope of the communication to the public right, when confronted with the issue of whether hyperlinking ought to be infringing. There were several good answers, which not only went into the specifics of the new public test (its subjectivity, the relevance of a 'profit motive' and its inherent design limitations as an 'escape from liability') but also addressed anterior questions such as whether hyperlinking is communication to begin with and the extent to which overbroad interpretations of an 'act of communication' from prior CJEU cases (on satellite broadcasts) had contributed to current doctrinal tensions.

Q3 asked whether the safe harbours insulating internet intermediaries from liability were still fit for purpose, in the face of increasing demands that they should do more to prevent online copyright infringement. This was attempted by fewer candidates (8) but those intrepid enough to do so tended to do well. They situated these calls for reform within the EU's Digital Single Market proposals (2016) while critiquing the fuzzy nature of the obligation being proposed (in draft Recital 39 and Art 13(1)) as well the risks of a general monitoring obligation being indirectly imposed, the detrimental impact on

human rights in the light of prior 'fair balance' case law and whether content recognition technology and automated policing (algorithmic justice) was being ushered in.

Q4 called for a fairly straight forward comparison between fair dealing and fair use. It was attempted by only 8 candidates but the issues were relatively straightforward: setting out the advantages as well as limits of the current 'fair dealing' approach; identifying the same for 'fair use' and – for the best answers – asking what form a 'fair use' test should take and the factors that it should regard.

Q9, the problem question involving the fireworks display, proved marginally more popular (17). It required candidates to demonstrate familiarity with subsistence criteria and identify several (potentially) protected works. It also tested the extent to which there was any infringement of rights, calling for an evaluation of the borderline between ideas and expressions, whether copying could be presumed as well as assessing whether a substantial part was taken. It also required candidates to evaluate defences such as quotation; parody; and the reporting of current events.

Q10, the other copyright problem involving three photography scenarios, attracted some commendably nuanced reasoning (13). Key issues related to the subsistence of copyright in the underlying subject matter of the photograph; initial and subsequent ownership of the copyright; whether there had been infringement in light of *Temple Island;* whether the communication to the public right was infringed; and whether any defences were applicable.

Patents Questions

The patent section was attempted by 29 candidates and there was an even spread across the questions selected in both the essay and problem sections of the paper.

Q5 proved popular (14) with some of the highest scoring answers. Candidates were expected to consider justifications for patents (e.g. incentives to innovation) and, in particular, the appropriateness (and effectiveness) of protecting second medical use inventions. Most candidates showed a good grasp of the inner workings of the patent system, including the requirement of novelty and the strict liability standard for infringement, and were able to engage in the broader protection of medicaments debate. Better answers took an extra step by offering thoughtful analysis of the Court of Appeal's judgment in Warner-Lambert v Actavis – from where the quote was extracted – with some appreciation of alternative proposals advanced in other jurisdictions (e.g. Germany, Spain) and in the literature.

Q6 invited candidates (16) to approach the distinction between discovery and invention under the laws of (a) patentable subject-matter or (b) novelty. In general, most successful candidates questioned the discovery-invention dichotomy (e.g. to what extent it has clear and precise boundaries, or is just policy-based) and went further to consider whether such a distinction would be useful or desirable in the current UK law framework. In Part (a), most candidates considered computer-related and biotechnological inventions as examples of initial discoveries that could render patentable inventions and the role of human intervention (if any) in drawing the borderline between those concepts. In Part (b), candidates made solid arguments relating to new uses of old products in the pharmaceutical and other fields; new dosage regimes; and the novelty requirement acting as a gatekeeper to preclude some kinds of discovery (e.g. an ex post explanation for a prior invention) from being patented.

Q7 required candidates (6) to show more extensive knowledge of the law of infringement. Less successful answers were framed as a more general debate on scope of protection while neglecting the role (if any) of prosecution history in claim construction. There were, however, some notable essays exploring the distinction between prosecution history as aid to construction or estoppel doctrine, and adopting US law as a clear benchmark to debate the UK position.

Q8 was not attempted.

Q11 was the most popular problem (7). Answers were of a very high standard, with candidates generally providing a well-structured analysis of the underlying invention. A few candidates, however, experienced difficulty in defining the invention and the person skilled in the art. Better answers stressed the differences between the UK and EPO approaches to subject-matter and inventive step, applying them correctly, and considered whether non-disclosure of the algorithm in the patent application could pose an issue of sufficiency.

Q12, which was less attempted (5), proved more challenging. While answers were generally at a good level, a few candidates overlooked issues of (i) patentability of the medical researcher's invention (instead assuming such a patent would be granted) and (ii) infringing acts that the pharmaceutical company could perform in making its product available in the UK. Most successful responses explored the interplay between sufficiency and support to the claim in determining scope of protection (as an issue underpinning claim construction).

Trade Marks Questions

This year 17 candidates opted for trademarks and attempted a mix of both essays and problem questions.

Q5 invited candidates (5) to consider the impact of the 2013 European Commission's proposal for legislative reform incorporating (while limiting the scope of) the trade mark functions theory developed in the jurisprudence of the Court of Justice of the European Union. All essays were of a high standard, with better answers offering more nuanced doctrinal and policy-based arguments on other trade mark functions.

Q6 proved the most popular (15) trade mark essay. While generally at a good level, most answers were limited to an overview of the three policy-based objections for shape trademarks which avoided engaging with the quote more directly. Most successful candidates discussed the gatekeeper role of the essential characteristics test and more controversial aspects of the recent case law on acquired distinctiveness of shape trademarks.

In **Q7**, the candidate (1) was expected to identify and discuss the UK case law relating to confusion taking place outside the point of sale, in particular whether initial interest and post-sale confusion were (and should be) actionable infringement.

Q8, on image rights, had some of the best answers (3) in the paper, with those most successful offering an in-depth critique of recent developments on the tort of extended passing-off in the UK by contrast and comparison with the treatment afforded to such rights in other legal systems.

Q11 (4) was a problem on trade mark registrability. Answers showed stronger analysis in the first part, with candidates accounting for the different (possible) trademarks that could be applied for followed by systematic application of the requirements of sign, graphic representation and distinctiveness. In the second part, however, candidates struggled with issues of sign and graphic representation; better answers considering the impact of product packaging within acquired distinctiveness assessment.

In **Q12**, candidates (7) performed well overall, but the analysis was underdeveloped for the following issues: defining possible (different) signs being used; running separate infringement assessments for each sign; considering the link requirement for dilution (which was often neglected) and all corresponding claims (instead of limiting analysis to a single cause of action).

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Criminal Law

General Comments

9 students sat the exam in total, four under the old regulations and five under the new regulations.

The standard of the papers overall was high, with a pleasing number of first class and high 2:I scripts.

The examiners feel it worth making a series of general comments in response to some common errors seen across the papers:

- Discussion of oblique intent and *Woollin*. The direction in *Woollin* itself makes clear that only when a direction on plain, direct intent is insufficient should the court trouble the jury with a direction in accordance with that case. The same goes for candidates answering problem questions. If an issue of oblique intent does not arise there is no need to spend precious exam time discussing *Woollin*.

- Causation goes to the question of whether the defendant can be held liable for the actus reus in the first place. A number of candidates in more than one question dealt with causation as if it was a wholly separate requirement unrelated to the elements of the offence.

- Even candidates sitting the old regulations paper, who did not have to consider liability under the Accessories and Abettors Act, did not refer sufficiently to liability under the Serious Crimes Act 2007. The complicatedness of this piece of legislation does not relieve candidates of the necessity of dealing with it when it arises.

- The time available for completing the paper is very short and thus there is no need for candidates to write out the facts or give general introductions to answers to problem questions. Instead candidates should be encouraged to dive straight into applying the relevant law to the facts of the problem.

- It is worth candidates being careful about the terminology and phrasing used. For example, victims are not required to 'prove' anything, and candidates should be clear about which party (prosecution or defence) does have the burden of proof on a particular issue and the standard of proof required (reasonable doubt as opposed to balance of probabilities)

- The best candidates did not simply repeat well known views by lecturers or writers of textbooks or articles. Rather, they engaged with those views, their support and drawbacks, and how they applied on the facts or issues in the question. This is particularly evident in essay questions on consent or complicity, but similarly so in problem questions. One such example was Baroness Hale's views in *Saik*: Baroness Hale said she would have convicted on the basis of a conditional intention, but also said that the majority agreed with her at least on the point that conditional intentions are valid forms of intention within conspiracy, the issue being how those two statements could be true required care with the facts and the concept of a conditional intention.

Since there were so few papers not all questions were attempted. Our comments therefore are as follows.

Essay Questions

The most popular essay question was that on complicity post-*Jogee* from the new regulations paper. This attracted a range of answers. The better papers were able not just to describe the decision in *Jogee* and how it altered the previous law, but to identify questions not answered by *Jogee* and how these might be answered in future.

Also popular were the questions on consent to sex offences, the pattern of available defences in the event of a charge of murder, and the *mens rea* of inchoate offences.

On sex offences the examiners expected candidates to deal in detail with both the relevant case law and a range of academic literature, developing a sophisticated map of the area with proposals for reform, whereas in fact candidates tended simply to describe Jonathan Herring's proposals and one or two decided cases. This approach was not rewarded with high marks.

The question on the *mens rea* requirements for inchoate offences was one instance where greater discussion of the SCA 2007 was necessary. Accounts of the *mens rea* of attempts and conspiracy were generally satisfactory, but it was not possible to do well on this question without covering the whole area it addressed.

Answers to the defences to murder essay question tended to be a little general and waffly, rather than dealing in detail with the relevant defences and the gaps between them.

One of the better essays seen by the examiners engaged well with both the case law and academic theory underlying the general defences.

Problem Questions

Of the problem questions, that concerning Goliath was answered by only two candidates, both sitting the new regulations paper. Issues of principal as opposed to secondary liability could have been dealt with better than they were and the interrelationship of omissions liability and causation also caused some confusion.

The problem concerning Robin was the most popular across the nine scripts. Candidates tended to deal well with either the issues of diminished responsibility or those concerning insanity, but not both.

The problem concerning Benny required candidates to consider issues of omissions liability, the boundaries of battery and the extent to which damage is specific to the particular victim. Candidates had a tendency to assume that existing case law applied without examining whether the facts of the decided cases could be distinguished from those of the question.

The problem concerning Hermione was also popular. Candidates had a tendency simply to discuss the existing law on vitiation of consent to sex in a general sense, much as they had done for the essay question, whereas in fact the question required a detailed and careful application of the decided cases to these facts. A number of candidates also failed to consider Inigo as a victim as well as considering him as a potential defendant.

Criminology and Criminal Justice

This year, the scripts were generally of a high quality, resulting in a slightly higher percentage of firsts than previous years. The best answers were those which laid out a clear and direct answer to the specific question posed, and conversely weaker responses lacked a clear 'narrative' in their response, or addressed a slightly different question. It is perhaps no coincidence that the better answers were almost always accompanied by a rough draft which outlined what the author intended to include when constructing his or her answer. The best answers also managed to combine references to statutory law (where appropriate) and the criminal justice research which had been cited or possibly discussed in the FHS lectures and the assigned readings for this option. A number of papers suffered from a lack of balance, in that the counter-arguments for a particular position were given insufficient or cursory coverage. Another weakness was failing to provide a coherent conclusion to the answer.

When the answer takes several pages of writing, the use of a clear and compelling conclusion strengthens the paper.

Environmental Law

This year saw a very good spread between the questions – almost all questions were answered by at least one student. The strongest answers engaged with the questions in a critical and reflective way while providing legal accuracy, attention to detail and a comprehensive coverage of the relevant legal material. Those who scored high marks were also able to connect the various topics studied. The weaker answers either misunderstood or failed to identify the specific question asked. Also, those who scored lower marks dealt with case law and the relevant legal provisions in a more superficial way without stating the implications or possible application of the relevant legal provisions. Overall, the students did very well in this exam.

European Union Law

General Comments

All ten questions attracted a decent number of takers, which shows a gratifying engagement with the whole sweep of the course, although **Q3** and **Q8** were more popular than most and **Q1** and **Q10** were less popular than most.

All scripts were written in the standard answer books. No one wrote on the side of a bus. We are grateful for this. Experiences suggest it is hard to tell the truth about the EU when using such a medium.

Questions

Q1: This was not popular and attracted more than its fair share of weaker students struggling for a fourth question to answer. Better answers tended to show that the Treaty provisions themselves are not written in identical terms and then reflect on whether the Court, which clearly has not explicitly embraced a fully convergent approach to the scope of the freedoms (e.g. Keck is not openly applied outside the sphere of goods), has nevertheless adopted a functionally comparable approach. Candidates earned credit for adding a normative dimension, which most commonly involved reflection on whether the influence of EU Citizenship and, more generally, the legitimating power of individual rights in EU law which stretches back to *Van Gend en Loos* should dictate a wider scope for the freedoms that affect people.

Q2: Weaker answers to this question were marked by i) an assumption that the question invited a candidate to write all they know about the standing rules under Article 263, and/or ii) an uncritical belief that the more judicial review, the better. Stronger answers made play of the meaning of the rule of law in the context of access to justice and adopted a more critical stance, seeking to explore where judicial review fits and should fit into the wider political context of legislative and administrative activity. Very good answers tended to be marked by willingness to consider how useful are models of the rule of law developed in a national context when exported to EU level.

Q3: "O it's the subsidiarity question!" thought too many students brightly, before trotting out their prepared answer. Yes, it is the subsidiarity question, but it has more focus than that. Answer the question! The stronger answers – and there were plenty – homed in on the political and legal roles of the principle and correctly concluded that, as things stand, it is the political process which is the more active arena (though still not a very active arena) in which to assert the values embedded in

subsidiarity. So there was room, embraced by stronger candidates, to unpack the word 'complement' in the question. Good answers looked at the Article 114 case law, very good answers showed awareness that Article 114 is not the only source of friction ('Monti II' took Article 352 as its base).

Q4: This was less popular than might have been expected, but it was tackled more successfully than most other questions. The risk was to ignore the question and to write a breezy essay about the Charter in particular or fundamental rights more generally, but most candidates avoided the trap and showed a good awareness of the *Digital Rights* case and tried to address the issues raised. In fact, few candidates lacked thoughtful things to say about the case, so perhaps the obvious need to know about at least some of its intricacies pushed less well-informed candidates to choose from elsewhere on the paper. Stronger answers tended to include comparative reflection on the functions of fundamental rights, and means to protect them.

Q5: There's plenty of meat in both the quote (is the Court's case law really open to such glib summary? Is it exaggerated to claim it has reserved this 'to itself'? and note too the emphasis not only on procedure but also on other 'forms of relief') and the question (how to judge whether it is justified, if it has even happened? What is adequacy?). So a simple uncritical trundle through the case law isn't enough, still less if it fails to show the Court's occasional pirouettes and deference to national autonomy. Stronger answers – of which there was a fair share - showed how the starting point of national procedural and remedial autonomy has been subverted by the Court but not in linear fashion; and reflected on the current and desirable division of labour between national judges and the Court of Justice. Very few candidates were aware that there is some EU legislative activity in the field too.

Q6: This was generally handled. Most candidates identified that the Court has not embraced Lord Slynn's caution and over time has instead rather increased the strength of the obligation to 'strain' language and has insisted that it applies to all relevant national law not just the act of implementation (Pfeiffer, Centrosteel, Adenler, Dansk Industri etc.), but that there are traces in the Court's case law of response to the alarms raised by Lord Slynn – especially the rule against contra legem interpretation and the special concern not to aggravate criminal liability. Stronger answers reflected on whether the costs of this approach – imperilled legal certainty, most obviously – justified the benefits – effective application of EU law, most obviously, and added comment on separation of powers/ rule of law too. The Question is mainly about consistent interpretation, but it is perfectly possible to mention other phenomena such as the rise of (horizontally applicable) general principles as subversion of the concern to protect legal certainty which is behind the (small) restrictions that attach to the obligation of consistent interpretation and/ or the resort to Francovich where other methods for securing application of EU law by national judges fall short. But an essay that simply described the development of direct effect generally, while paying little or no attention to the questions asked could not score well.

Q7: The trap for those with poor technique was to write about the minutiae of the operation of the preliminary reference procedure without addressing the – focused, pointed – question. Most candidates avoided the trap. There was good awareness that preliminary references have provided the Court with its main opportunities to advise national courts on the character of EU law (and the best answers knew that the Court has used the existence of what is now Article3 267 as one of its reasons to depict EU law as a new legal order). So too, more recently, the channel cut by Article 267 has allowed national courts to push the CJEU to think about matters such as fundamental rights, competence control and national identity. It is a dynamic pattern. Good answers picked up that both interpretation and validity of EU law are at stake; weaker answers didn't grasp that, in the absence of Article 267, Article 263 wouldn't help where interpretation rather than validity is the problem. Very few answers tried to compare/ contrast EU law with international law: that might have offered an interesting angle on the way that Article 267 TFEU makes EU law different.

Q8: This was the question that generated most surprise among the markers. It is intimidatingly broad and we suspected it would be a relatively unpopular question, tackled only by the very good and the very weak. But in fact only Q3 was more popular. The reason is that a lot of candidates saw an opportunity to write the answer they wanted to write about constitutional pluralism and, in particular,

about the case law of the CJEU and national (mainly UK and German) courts. That worked well for those who tied their discussion to what sovereignty and independence might mean, but it didn't work well for those who showed poor technique by refusing to moor their essay to the question asked and preferred instead to serve up a standard trudge through the familiar case law (Costa v ENEL, Brunner, Gauweiler, Thoburn and HS2 et al). Better answers tended to try to unpack what sovereignty and independence really mean in the EU and in an interdependent economic and political environment more generally. The more successful candidates suggested a distinction between the choice whether or not to be a member of the EU on the one hand and, on the other, the subsequent disciplines which are imposed on and accepted by the State that has made that choice to be a member (and, reciprocity of commitment being key, on all States). This would cover matters such as subjection to the discipline of QMV in Council (rarely mentioned), to the authority of the Court (always addressed), to the risk of competence creep (sometimes mentioned), etc.

Q9: This is a question which covers most of the main issues that arise under Article 34 and which allows good scope for candidates to show understanding of how to apply the law concerning both the definition of a trade barrier and that pertaining to justification. Most candidates did well, some were muddled.

On shop opening, the facts scream *Keck*, and main line of the argument should focus on whether this in fact is not of equal application to all traders, because the rule affects X more heavily than on-line sellers which are typically based outside S. Then don't forget justification: worker protection is plausible in principle, but maybe disproportionate. On advertising, *Keck* is sidestepped where an advertising ban has a differential impact unfavourable to imports. The nice twist here – spotted by a few candidates – is that the national rule seems to promote cross-border trade not to restrict it, which may mean it is not within the scope of Article 34 at all. But if it is, justification raises questions about freedom of expression v. preservation of public order/ equality. Then, finally, the third scenario invites discussion of free trade plus freedom of expression and of political dissent pitched against national identity under Art 4(2) TEU and preservation of public order, and proportionality too.

Credit was given to those knowing that, according to the Court, the Charter seems only to re-package existing material in this area, rather than effecting any change.

Credit would have been given to those who questioned whether such matters may be regulated by Directive 2005/29 on unfair commercial practices rather than Article 34 TFEU, and even more to those who wrote 'no, Directive 2005/29 concerns only harmonization of national rules designed to protect the interest of consumers, not anti-discrimination law'. But we didn't expect anyone to pick this up, and no one did.

Q10: This question did not attract many takers. It concerns a fairly straightforward discussion of the help gained from EU Citizenship (Ruiz Zambrano, Dereci, and, factually closest, Alokpa) and a fairly straightforward discussion of Köbler, applying Francovich to judicial malpractice (see also Ferreira da Silva e Brito). The tricky bit was to combine the two issues, which are remote from each other on the agreed reading list and the normal way of teaching the course. Those who did address this question typically did quite well, but some knew much more about one aspect than the other, and in a (happily) small number of cases only one of the two aspects was even recognised.

Family Law

General Comments

The standard of papers in Family Law was similar to that of recent years. Most answers were well focused on the question and demonstrated a good, detailed understanding of the law and secondary literature. A good number of strong candidates had thought carefully about the underlying theoretical debates in the subject and brought an independent analysis to their detailed understanding of the law.

As always, weaker candidates were vague on the detail of the law and tended to write topical answers rather than engaging with the detail of the question. There were also a number of sloppy errors. Several candidates referred to the Children's Act 1989 and a number could not state the presumption of parental involvement correctly. Generally, the standard was good and it was pleasing to see that all questions attracted a good number of answers.

Questions

Q1: This was a topical question given the recent litigation in *Steinfeld and Keidan*. Most candidates were able to give a good account of that litigation, whether of the High Court or Court of Appeal decision (the latter was handed down after the cut-off date and knowledge was not expected) although some candidates did not seem to be aware that the government had adopted a 'wait and see' policy rather than a permanent bar on opposite-sex civil partnerships. A good number of answers showed thoughtful reflection on the theoretical literature and on the relationship between civil partnership and marriage, both in law and theory. Answers were divided on the best way forward, with a small majority favouring the reform of civil partnerships to include opposite-sex couples. A number of good answers went beyond this topical question and addressed other aspects of the Civil Partnership Act such as the absence of consummation and adultery provisions and the role of religion in ceremonies.

Q2: This was another topical question and was generally answered well. The best answers noted that the question referred to the 'family justice system' and not only to court decisions. These answers were able to give a good account of the research literature and to consider aspects of the question such as: availability of legal aid; litigants in person; court facilities; mediation; and legal advice. Candidates were also able to give a good account of the impact of the presumption of parental involvement and the treatment of domestic violence in court decisions, although weaker candidates limited themselves to these points.

Q3: This question was also generally answered well with many candidates demonstrating a strong knowledge of the statutory provisions and the detailed case law on the subject. Most candidates were also able to reflect on the theoretical literature and particularly the tension in the quotation between individual fairness and articulating guiding principles. Some candidates questioned whether the aim of court-articulated guiding principles was legitimate or achievable.

Q4: This question was the most popular on the paper and was answered by around half of candidates. The best answers demonstrated a strong knowledge of the theoretical arguments on the purpose of legal parental status and a thoughtful approach to the way in which the law responds to competing parental claims. These answers often looked at the ways in which child arrangements orders and parental responsibility were used to recognize those with a parental claim who were not eligible for legal parental status. Weaker candidates often referred to these wider cases as if they were concerned with legal parental status, rather than acting in supplement to it.

Q5: Most candidates answering this question had a good understanding of the theoretical literature, with many addressing the issue of whether it would ever be possible or desirable to separate the interests of children and parents. Answers drew on case law from a range of contexts, including medical decision-making and the application of the presumption of parental involvement. Some strong answers compared assessment of welfare in private cases with the public law context in which the threshold operates before the welfare analysis.

Q6: This was another popular question. Most candidates focused on the threshold criteria and gave a good account of the complex case law on issues such as the burden of proof and the treatment of uncertain perpetrators. The strongest candidates also reflected on the wider child protection system, looking at issues such as: support for families with children in need; contact with family members and the duty to reunite for children in care; and care plans for adoption.

Q7: This question attracted some very good answers, which carefully reflected on the academic debates on the nature of rights and whether it is possible or desirable to conceive of a separate class of children's rights. Many of the good answers explored the questions of competence and vulnerability and considered whether they raised issues that were distinctive to children. The best assessments of these points also drew on the literature on the nature of childhood. Candidates successfully drew on case law from across the course to support their points. Weaker answers tended to rehearse the rights vs welfare debate without always explaining its relevance to the question.

Q8: This was not a particularly popular question but attracted some good answers, which demonstrated thoughtful consideration of the basis for regulating adult relationships. The question was normative but many of the good answers were able to support their answer with an accurate analysis of the relevance of status relationships to the current law. Weaker candidates tended to be vaguer on the detail of the law or polemical in their answers, without assessing the strength of opposing arguments.

Q9: This question was only answered by a small number of candidates but was generally well done. Answers tended to have a good understanding of the development of the definition of domestic violence and the academic critiques of its meaning. Candidates also showed a very good knowledge of the law, with many candidates drawing on the law on domestic violence and child arrangements orders, in addition to the areas covered on the domestic violence 'week'.

Q10: This question was generally answered well. Most candidates looked at the 'status' approach to allocating parental responsibility and assessed whether this resulted in adult interests being prioritized over those of children. Weaker candidates tended to confine themselves to the issue of allocation, with the weakest candidates mistakenly assuming that non-parents could apply for free-standing parental responsibility orders. Stronger candidates looked carefully at the definition of the term and the law's approach to disagreements between those with parental responsibility. Some very good answers also considered how parental responsibility is held and exercised for children who are subject to a care order.

Q11: Candidates answering this question were able to give a good account of the extent to which marriage has become contractual in nature. Answers drew on the provisions on divorce, nullity of marriage and nuptial agreements in answering the question. Given the volume of potentially relevant material, candidates made careful selection from these areas of the law in order to consider them in greater depth. Popular points included: consent and nullity of marriage; formalities and particularly restrictions on ceremonies; 'unreasonable behaviour'; and the Supreme Court decision in *Radmacher*.

Q12: This question was answered by a relatively small number of candidates. The best of those answers looked carefully at the meaning of autonomy and gave a critical assessment of the value that should be placed on it in family law. Candidate drew on a number of relevant areas of law, with the most popular being: forced marriage; nuptial agreements; and medical treatment of competent minors.

History of English Law

Two candidates sat this paper. They were at a good standard, with one achieving a 1st class result and one a 2.1. The stronger answers showed that the relevant candidate had thought hard about the core materials and going on to read beyond the basics, and was also adept at connecting legal movements to changes in society. The weaker answers tended to offer a more unstructured description of the positive materials. But overall the topics were covered well, showing that the students were committed and engaged.

Human Rights Law

Candidates generally did well in this paper, with 9 firsts out of 25 scripts, and the remainder above 60%.

There was an even spread of questions answered. Some trends became evident however with respect to certain questions. Quite a few candidates ran into some trouble on **Q1** which was asking about the margin of appreciation generally. They took the quote from Hutchinson to construe this as a question on life sentences specifically. The examiners noted the frequency of this confusion, and were careful not to penalize candidates too heavily. Nevertheless, we did feel the question beyond the quote was clearly focused on the more general discussion on the margin of appreciation and the UK's role in the Council of Europe system. Another difficulty arose where candidates who answered both **Q6** (which was on the concept of freedom of religion) and **Q9** (which was on the way in which the margin of appreciation has been applied to questions of same sex marriage under Article 14) had some difficulty with repetition of material. The candidates who chose both questions might have reconsidered their overall strategy either in their choice of questions overall, or in the way in which case law was marshalled in both questions.

Generally, candidates were well rewarded when they chose the problem question in **Q10**. The candidates who did very well distinguished between the rights arguments relating to Rachel (who was performing a religious cleansing ceremony while bathing in the water), and Leila (who was sitting on the beach for no specific religious purpose). There was also a trend to introduce Article 3 on the facts of Bernie and Elizabeth, which was unexpected, but some candidates reasoned through the ideas reasonably well when they did so.

Generally, the candidates who got first class marks for their essays displayed a strong understanding of the conceptual issues and the theoretical material with a comprehensive grasp of the case law. They were able to pinpoint the concrete case material inside of an overarching theoretical overview, and always engaged directly with the question. Candidates who achieved a high 2:1 were weaker on one of these factors, while candidates in the low 2:1 threshold were often criticized for making general and unsubstantiated assertions or for having a thin understanding of the material (either case law or secondary literature). Some candidates in the low 2:1 category saved themselves from going below the 60 line by engaging actively and intelligently with the question while marshalling a small selection of materials. The lowest mark given on one essay was 53 and the comment was simply: 'no material, simply an account of the candidate's opinion'.

Overall an impressive year in this subject.

International Trade

There were only seven candidates for the paper in International Trade which is a little lower than is customary. Of those seven, three were awarded marks of 70+, three between 60 and 69, and one between 50 and 59.

The essay questions were all set in core areas and this did result in their proving to be slightly more popular than has been the case in the past, but most candidates still preferred to answer more than the obligatory two problem questions.

Among the essays, the question on late payment of hire by charterers (**Q3**) proved to be most popular and was generally done well with candidates exhibiting a good working knowledge of the general law of contract as well as the particular problems said to be raised by cases of withdrawal. There were two essay questions which attracted no answer at all (**Q2** & **Q4**).

Q10 (passing of property; claims against the carrier for lost/damaged cargo) was answered by all candidates and generally done well. There were no answers to **Q9** (risk; termination for breach).

The main weakness in answers which attracted lower marks was, as ever, largely the result of not paying sufficiently close attention to the question set. In the answers to the problems this occasionally led to entire issues being overlooked altogether. This was not, however, a widespread problem and the overall standard was highly competent.

Jurisprudence

General Comments

Here are the percentages of candidates attempting each question (from a sample of 138 of the 2017 scripts):

1. 50%
2. 1
3. 74
4. 14
5. 10
6. 4
7. 20
8. 11
9. 2
10. 14

Q3 on obligation to obey was overwhelmingly popular, and **Q1** on the moral limits of the law was also very popular. The implication is clear: if you want to set your work apart, you can do so simply by answering other questions.

Questions

Q1: Are there actions that are wrongful, and that cause harm to others, that the law ought not to prohibit?

Some candidates, having spotted this as the 'moral limits of the law' question, wrote essays on the general topic, or wrote about the harm principle; none of them did well. It bears repeating that candidates are rewarded for answering the question that was actually set, rather than writing an essay on the general topic, or on some different aspect of the general topic.

Candidates who could not distinguish wrongful actions from actions causing harm would have done better to choose a different question. Candidates who said that wrongfulness is 'subjective' did poorly (because they did not do very well at explaining what they meant by 'subjective', or at explaining why their view was sound, and/or because their view made the question into a not-very-interesting question). The best answers demonstrated an understanding of the distinction between wrongfulness and harmfulness, and used examples of actions that are both wrongful and harmful to illustrate their views as to what the law should and should not prohibit.

Every student could learn from Mill's adept way of using instances to illustrate and to clarify an argument.

Q2: Can law regulate its own creation? Can it regulate itself in other respects?

Very few candidates attempted this, which gave those who did so an opportunity to distinguish themselves. There were some very good discussions of the nature of a legal system. Strangely, candidates tended not to answer the second part of the question. It is worth counting the question marks, and making sure you do something to respond to each one.

Q3: Does anyone ever have a moral obligation to act in accordance with an unjust law?

Three quarters of candidates answered this question. It was still possible to make a distinctive answer simply by doing one crucial thing: pointing out the variety of ways in which a law may be unjust. That was important because of the varying impact that diverse injustices may have on obligation to obey. A few excellent answers did this very well; poor answers treated 'unjust' as an unexplained black box in the middle of their argument.

Several candidates wrote essays arguing that there is no general obligation to obey the law, and then concluded briefly that there is therefore no obligation to act in accordance with an unjust law; this was an unsuccessful strategy, since the view that there is no general obligation to obey is compatible with the possibility that there can be an obligation to obey in particular circumstances, which may arise even in the face of some injustices in the law.

A small number of candidates noticed that the question asks about acting in accordance with an unjust law, as opposed to obeying an unjust law.

Q4: Are there functions that the law necessarily fulfils?

There were some very strong answers, addressing both the plurality of functions that the law might have, as well as how these functions were connected, and the necessity of those functions. The functions discussed were generally very abstract (such as coordination, or control of conduct); it would have been good if candidates had pointed out what aspects of life are and are not regulated by law. Some candidates wrote as if the word 'function' meant the same as the word 'purpose'.

Q5: 'What [legal] officials do about disputes is, to my mind, the law itself.' (Llewellyn) Do you agree? What implications does this view of the law have for legal philosophy?

It is absolutely essential for candidates to understand the question they are answering. There were some surprisingly poor answers to this question, by candidates who misunderstood Llewellyn's radical but very clear statement.

A very small number of candidates discussed Llewellyn's views effectively. But most who answered this question showed no familiarity with Llewellyn, and some candidates badly misread the question (sometimes, as if Llewellyn had said that what officials *ought to do* about disputes is the law itself). Several candidates took Llewellyn to be encapsulating Ronald Dworkin's view that the law is the set of principles to which a good judge would give effect in deciding a dispute; in fact, Dworkin's work was deeply opposed to the view expressed in the quotation.

There is no rule that you must not tackle a quotation from a person whose work you do not know, but doing so involves a serious risk of misunderstanding the quotation.

Incidentally, no candidate explicitly answered the second part of the question; they seemed to want it to take care of itself. You should count the question marks and address each one.

Q6: Can a court be both a court of law and a court of justice?

Few attempted this question. There were some first-class answers that addressed dilemmas that courts have faced in particular cases; some brought in equity very usefully. As with question 3, some candidates seemed very hesitant to say what justice is, or hesitant to commit themselves to the view that anything is just or unjust, and some said that justice is 'subjective', which made it very difficult to give a constructive answer to the question.

Q7: Explain the role of interpretation in law.

Answers to this question tended to be better focused and more imaginative than answers to other questions. Some excellent answers went beyond an exegesis of Dworkin to discuss features of law, disagreement, and language that make interpretation necessary.

Q8: Is law entirely a human artefact?

Candidates who answered this question generally had a good understanding of the readings but few illustrated their arguments with any independent ideas or examples. Some excellent answers focused on the word 'entirely', and argued that there are features of the law that could not be otherwise.

Q9: What role should the concept of the state play in legal theory?

There were some good answers to this question that addressed the relationship between law and the state; a small number of weaker answers left it rather unclear what the candidate understood the state to be. Excellent answers explained the purposes of legal theory in order to answer the question.

Q10: 'One argument advanced by the Lord Advocate and by Ms Mountfield QC on behalf of the first interested party is that the UK's withdrawal from the EU will alter the UK's rule of recognition: that is to say, the rule which identifies the sources of law in our legal system and imposes a duty to give effect to laws emanating from those sources. The status of the EU institutions as a recognised source of law will inevitably be revoked, sooner or later, following notification under article 50(2). Since that will be a fundamental alteration in the UK's constitution, it can only be effected by Parliamentary legislation. An Act of Parliament is therefore argued to be necessary before notification can be given.' (Lord Reed, *R (on the application of Miller) v Secretary of State for Exiting the European Union* (2017))

Evaluate this argument.

There were some excellent answers to this question. Some weaker answers did not really evaluate the argument, as the question asked, but focused on exegesis of Hart (and sometimes of Kelsen). Stronger answers explained why counsel in *Miller's* case might have referred to Hart's idea, and gave critical evaluations of the argument that explained the relationship between constitutional change in the UK, and change in rules of recognition.

Labour Law

General Comments

All questions on the paper were attempted by at least one candidate, with **Q1** (Brexit), **Q3** (agency work) and **Q10** (information and consultation) proving to be the least popular.

The general standard of answers was good with clear arguments and a reasonable level of legal detail.

Questions

Q2 (worker) was popular, but a number of candidates failed clearly to identify the elements of the statutory definition at the heart of the question. Several advocated a 'purposive approach' to the problem without explaining what that might entail.

Q4 (justifying direct discrimination) was generally well-answered, though few candidates were able to give any detail of the arguments used to justify direct discrimination where this is permitted (e.g. in relation to age). Stronger answers considered the implications for positive discrimination/affirmative action policies.

Q6 (working time) was popular, though few candidates paused to consider what the 'problems of working time in the modern economy' might be. Very good answers discussed the working time issues faced by workers in non-standard employment relationships as well as the more familiar problem of long working hours.

Q9 (trade unions' admission and expulsion decisions) was highly popular, but a surprising number of candidates did not discuss the applicable statutory provisions and chose to focus instead on the common law's treatment of the issue. The potential relevance of Article 11 ECHR was also somewhat neglected in some answers.

Q11 (recognition) elicited some good discussions of the problems associated with Schedule A1 Trade Union and Labour Relations Act 1992. The very best answers went on to assess the potential for Article 11 ECHR to be used to address these problems, drawing on the ECHR case-law.

Land Law

Essay Questions

Essay questions were answered well by most candidates. **Q1** (human rights) was only attempted by a few candidates. The question invited candidates to consider whether rights that are sometimes referred to as 'inherently limited' could ever engage Article 1 of the First Protocol (with discussion of cases such as *Sims v Dacorum BC*), and whether Article 8 is always engaged when a home is involved – including whether it can be raised as a defence to claims by private landowners (*McDonald v McDonald*). Candidates were also invited to consider when these Articles should be engaged. Those candidates who answered this question generally wrote interesting answers.

The second least popular essay was **Q5** (adverse possession) but this also attracted some interesting answers, considering what the basis for adverse possession is, whether Battersby's proposition was ever a convincing explanation, and particularly how the Land Registration Act 2002 impacts on this.

The remainder of the essay questions were all popular. **Q2** (trust rights being 'behind the curtain') required consideration of how statute and case law on overreaching and overriding interests applies to 'trust rights', but weaker answers neglected the focus on trust rights and used this as an opportunity to explain how registered land works more broadly. Strong answers considered both statutory provisions and how case law has applied these, some candidates also drawing on the reference to 'the whole set of rules' to note that the fact that there can be trusts 'hidden' behind sole legal ownership increases the situations in which trust rights might affect disponees, whereas 'consent' to a transaction can serve to have the opposite effect.

Q3 (covenants) was straightforward and generally reasonably well answered. The better answers not only explained the differential treatment of positive and negative covenants, but also demonstrated

strong attention to the second part of the question with detailed argument on whether this is justified and whether reform is needed.

Although **Q4** (resulting and constructive trusts) was not confined to family homes (the question asking for discussion of 'trusts of land' generally) most candidates wrote almost exclusively about family homes. As the quotation came from one of the leading family home cases this was an acceptable approach, but it was also possible to treat this as a broader question which would involve comparing these cases with non-family home cases.

Q6 (TOLATA) required consideration of the degree of flexibility in applications for sale of trusts of land, and good answers again considered both the statutory provisions and how they have been applied by courts, noting the distinctions between non-bankruptcy and bankruptcy cases, as well as whether this approach is right.

Problem Questions

Turning to the problem questions, there is a tendency for many candidates to provide a general explanation of the law with some rather brief reference to how it might relate to the facts involved. Better candidates demonstrate a more detailed and specific knowledge of the case law and statute (as appropriate), and also give careful and thoughtful consideration as to how the law applies to the particular factual scenario, drawing out areas of uncertainty and doubt.

The least popular problem questions were **Q8** (alteration) and **Q9** (mortgages).

Q7 involved, primarily, a discussion of estoppel in a commercial context. Candidates generally identified that the absence of formalities meant that there was neither a lease nor an enforceable agreement for lease. Those who spent time discussing the substantive requirements for leases were taking up valuable time and losing focus on the key issues. In discussing estoppel better candidates identified that the commercial context distinguished this from many recent estoppel cases and considered how *Cobbe v Yeoman's Row Management Ltd* might affect B's success, particularly in light of C's standing by whilst work was done by B, waiting to see if the shop was a success and reassuring B that the paperwork would shortly be dealt with. Good candidates were able to weave legal principles into the particular context to consider how issues such as 'unconscionability' or 'proportionality' might affect the outcome of any claim by B.

Answers to **Q8** were very mixed. In recent years there have been several important cases involving alteration of the register under the Land Registration Act 2002, as well as important academic commentary. A few candidates wrote excellent answers to Q8: when discussing whether D would be able to get the register altered they considered whether registration of F was a 'mistake', and whether this 'mistake' might mean that registering G was also a mistake, thus triggering the power to alter the register. The absence of clear judicial authority on this was noted, and the views of academic commentators referenced. Some answers claimed that D could assert an overriding interest against G but were vague as to what that interest might be (despite the recent decision in *Swift 1st Ltd v Chief Land Registrar*) and also showed little appreciation of the difficulties that would be involved, on these facts, in showing that any such interest had been protected as against G (section 29) by virtue of para 2 of Schedule 3. The question also invited candidates to identify the relevance of whether G (the registered proprietor) was in possession or not; the best answers demonstrated how this would affect the application of para 3 of Schedule 4, as well as considering the possibilities for indemnity. Unfortunately, several candidates did not sufficiently focus on the alteration powers in Schedule 4 (and some made only passing reference to alteration); although the examiners adopted a generous approach to marking this question those candidates who failed to see that this was a question involving alteration were, inevitably, given low marks.

Although the **Q9** on mortgages was not terribly popular it was generally reasonably well answered. Candidates discussed whether P would be able to take possession, noting the possible impact of the approach in *Quennell v Maltby* and s 36 Administration of Justice Act 1970. The enforceability (or not) of the option would affect O's ability to repay by himself selling some of the land and the better discussions of the case law on 'clogs' and 'unconscionability' considered whether the option formed part of the overall package although it also involved separate paperwork, raising the issues considered in cases such as *Warnborough Ltd v Garmite Ltd*.

Q10 (easements) focussed on three key issues: whether or not the rights to use the swimming pool and park the car were capable of being easements, and whether Q had the right to lay services. Better candidates provided thoughtful consideration, with reference to case law, to the issues of whether the pool and parking rights 'accommodated' the land and whether they were capable of being easements taking account of principles such as whether 'ouster' remains a key test, and the recreational nature of using the pool. A recent Court of Appeal decision, *Regency Villas v Diamond Resorts* [2017] EWCA Civ 238, came out since the exam paper was set. The examiners expected no knowledge of this case, and equally good answers were produced by candidates prepared to discuss it, and those who reflected on how the approach discussed in *Re Ellenborough Park* would apply to a right to use a pool. Weaker candidates stumbled on the issue of transferring these rights (if proprietary rather than personal) from M to R, and incorrectly attempted to use section 62 of the Law of Property Act 1925 to show that a new easement over T's land had been created by a conveyance between M and R. (Of course, only T can create rights that affect T's land - there is no conveyance between T and R, and the transaction between M and R cannot create new rights over T's land. Candidates frequently fall into this type of error in easement questions). Many candidates identified that Q would be unlikely to succeed in arguing that the expressly created right of way would be interpreted to include a right to lay services, but rather would have to show that it had been impliedly created (by necessity or common intention) on the transfer from T to Q.

Q11 required candidates to consider whether H & Co's right of storage could be binding on K. Although the right was described as a licence this is not necessarily determinative but candidates noted the difficulties involved with construing this as a property right that would provide security beyond the period of notice given by K. The most obvious option was a lease, and candidates considered various difficulties relating to exclusive possession (did J still have a right to enter?), certainty of term (taking into account that the factual scenario differs from that in *Berrisford v Mexfield*, particularly in the fact that H & Co is a company) and – if there were an implied periodic tenancy – the notice period. As a contractual licence, it would not be binding on K unless there was some kind of 'new obligation', perhaps using the constructive trust found in case law such as *Ashburn Anstalt*, and strong candidates paid careful attention to whether on the facts this might be the case or whether, for example, the reduction in price was simply to reflect the potential risk to K of recovering possession.

Media Law

The Media Law course did not run in the 2016-17 academic year, and one student took the exam. The script was doubled marked, and the examination process went without any problem.

Medical Law and Ethics

This was the first year that Medical Law and Ethics was examined via assessed essay, and in this report we endeavour to provide substantial feedback to assist future students on how to approach the essays. Major problems were:

- Shoehorning in of prepped essays rather than answering the question. This was problematic as it undermined how well such essays drew together the two areas of the course they were asked to

discuss. This was especially disappointing given that shifting to the extended essay form of assessment was intended to help students move away from offering prepared work in the exam.

- The majority of candidates tended to cover the two topics separately, discussing each in isolation in response to the question. This was unfortunate as it prevented many of them drawing out themes, contrasts, general concerns and the like. Some essays that drew on the two topics together and were much more successful in offering deep, engaged responses to the questions asked, and these were awarded appropriate high marks. The examiners were pleased to see a number of very positive examples of this approach.

- Many candidates tended to 'pull apart' or 'break down' quotations used within the question. Sometimes this is useful, but often it means the points in the quotation are over-simplified and are better read together as an entire statement.

- Some essays tended to treat case law itself as a source that supports a normative position. But candidates should be aware that the fact that a judicial opinion was given on X is not itself a form of 'proof' to support a normative position. We would prefer to see candidates drawing on and responding to the reasons offered in the judgments in a critical way (or as inspiration for reasons that might be supportive of the position they wish to take).

- As has been mentioned in previous years, candidates need to avoid assuming that all discussion around abortion necessarily reduces to a discussion of foetal personhood (and that that discussion reduces to the work of Judith Jarvis Thompson and responses to her arguments). Additionally, the examiners would welcome a much more nuanced exploration of abortion in future essays, which moves beyond casting the debate (erroneously) as merely binary opposition between 'pro-choice' and 'pro-life'. There is a range of views within the abortion debate and students are encouraged to capture this variance of opinion.

- While most students made a valiant effort to answer the questions asked, inevitably some avoided doing so and were marked down accordingly. The examiners would like to emphasise that in MLE, acute attention to precisely what the question is about is vital.

- A clear distinction needs to be maintained between the descriptive question of what the law 'is' and the normative question of what it 'ought' to be. On this, students are advised to explore the thinking of John Locke.

- The questions dealt with in MLE are difficult and students are encouraged not to avoid these by assuming the answers can be found by a 'balancing exercise' where the middle ground is simply chosen as an easy compromise (particularly where no sense of the weight of factors to be balanced is offered). Similarly, vapid conclusions based on 'common sense' and 'pragmatism' rather than clearly articulated reasons should be assiduously avoided.

- The examiners were disappointed to find so many students seemingly unaware of the problems of discussing the overriding of 'autonomy' in relation to people who have lost capacity, given the wide agreement that capacity is a fundamental condition for the possession of autonomy. There is, of course, debate to had on this point itself, but this was rarely noted by students.

These concerns aside, most essays demonstrated a pleasing level of knowledge of the case law and the literature, and almost all candidates made a very great effort to substantiate their views with reference to both. The level of research, attention to detail and attempts at argument were generally good. We would, however, urge candidates to be more courageous in future and really try to draw together the topics from the course and see connections and complexities, and to offer their own arguments in response to the question, rather than relying too much on paraphrasing the work of others.

Only five candidates sat under the Old Regulations (examination) and the standard of scripts was generally good, demonstrating the same strengths and weaknesses seen in previous years.

Moral and Political Philosophy

The work in this year's examination was generally of a high standard, though there were few truly outstanding scripts. As usual, the paper was divided into Part A (moral philosophy, 8 questions) and Part B (political philosophy, 4 questions). Candidates had to answer at least one question from each part, and the overwhelming majority chose two questions from Part A. Answers were spread over all of the questions, with only **Q1** (objectivity) and **Q2** (amoralism) attracting few takers. As previous reports have emphasised, the stronger answers were those that focussed on the specific question set, and argued over its merits. Weaker answers provided a general exposition of the topic in issue, with only limited attention on the question. **Q3**, for example, asked if the central flaw of utilitarianism lay in its commitment to negative responsibility. Good answers either agreed and explained why, or disagreed, pointing out arguably deeper flaws in utilitarianism, or rejected the evaluation of utilitarianism, embracing the use of negative responsibility. Similarly, stronger answers to **Q8** (moral luck) distinguished different types of moral luck and considered what type of control might matter to moral assessment.

The answers to Part B showed a good grasp of the theoretical approaches. The best answers to **Q9** (liberty) explored the issue of whether liberty had intrinsic value, whilst the stronger answers to **Q10** (equality) addressed Temkin's (qualified) defence of 'levelling down'. Answers to **Q11** (justice), on the other hand, generally struggled to see that distributive justice was not restricted to material resources, and that Nozick's theory presupposes a form of *self*-ownership. Finally, the best answers to **Q12** (democracy) explored what it would be for some form of democracy to be 'best', particularly 'in principle'.

Personal Property

General Comments

Of the 14 candidates who sat this paper, three scored Firsts, 10 achieved 2:1s, and one was awarded a 2:2.

General problems included poor knowledge of basic land and trusts issues, knowledge of which is assumed for this course. For instance, a number of candidates had misconceptions about the lease of land, with some thinking it only achieved proprietary status in 1925, and others thinking it was part of the feudal system of landholding. Another error was to think that the rights of beneficiaries under trusts have no third party effect, whilst yet another was that the Law of Property Act 1925 contains a finite list of property rights in respect of land. There was also a difficulty with problem question technique. When an examiner asks candidates to 'Advise Fred', he/she is not asking them to tell Fred the arguments he might raise in court. For a start, Fred will be a layperson and will not be arguing the case personally. Furthermore, simply listing the possible arguments cannot be enough without some advice on their chances of success. What is instead required is advise to Fred as to what will happen should the case come to court. In other words, what candidates are being asked to provide is the judgment of the court.

Questions

Specific issues with questions were as follows:

Q1: The main complaint here was a failure to pay attention to the question. Most answers discussed the issues of ownership in general, without noticing the specific reference to Ownership vs ownership.

Q2: Many candidates missed the normative part of this question, indicated by the use of the word 'should'. Some also thought that because a lessee in possession had a property right by virtue of that possession, that solved the question whether a lease of goods had proprietary status. Such candidates were rewarded accordingly.

Q3: There were some good answers to this question, though one or two candidates thought the fact that many cases of conversion did involve fault somehow meant that strict liability was unnecessary.

Q4: This question had almost no takers.

Q5: This question had no takers at all.

Q6: This question had almost no takers.

Q7: Although there were some good answers to the question, none noticed the indication in the question that bona fide purchase may not be an exception to the *nemo dat* rule at all.

Q8: This problem question on finding was popular and generally well done. However, many candidates missed the point that Sharon became a trespasser when she entered the SCR. A common error was also to think there could never be a claim in conversion unless there was first a demand and a refusal. Another problem consisted in the fact that candidates were often content simply to apply the law, e.g., that contained in *Waverley BC v Fletcher*, without offering any criticism. There is no difference between problem questions and essays in this regard. If a case is wrongly decided, the examiner wants to hear about it.

Q9: This had only one taker.

Q10: This problem question was popular, though many candidates failed to discuss English cases such as *Re Swan*. Moreover, if English law did allow life estates in chattels, the issue of what formality rules would apply would need to be discussed.

Public International Law

The overall performance by students in this paper was very good, with 61% of students achieving a high Upper Second or First Class mark (the same percentage as last year); and 88% of candidates achieved a mark of First Class or Upper Second. Only 10% of candidates achieved a Lower Second mark and 2% a Third, with no failing scripts. As in previous years, the paper contained a mixture of problem questions (3) and essay questions (6). Although not required to do so, the overwhelming majority of candidates elected to answer at least one, and in many cases two, problem questions, with **Q8** (dispute settlement) and **Q9** (use of force and responsibility) proving the most popular amongst them, with well over half the candidates attempting each. Equally popular was essay **Q1** (relationship between treaty law and customary international law), with essay **Q5** (jurisdiction) also attempted by over half the candidates. Very few candidates attempted **Q2** (interpretation of international law by domestic courts) and **Q6** (legal personality), nor was **Q7** attempted by many. This last was surprising given the factual similarity with the *Gabcikovo-Nagymaros* case, with the combination of treaty law and state responsibility. As in previous years, the weaker answers were those which tended to provide a general description of the topic or topics covered by the question without focussing on the specific issues raised. As always, the best answers to both essay and problem questions were those which made good use of case law and academic authority, thereby providing analysis that went beyond the lecture and basic textbook material.

Public International Law (Jessup Moot)

This was the first year for this option, open to students competing in the Jessup Moot. Assessment comprised submission of written work - the Memorial - and a written examination (2 questions in 1.5 hours, requiring response to one question from Part A and one question from Part B). Performance by students in this option was simply outstanding, with 100% of students (four candidates in total) achieving a First Class mark overall. Performance in both elements of assessment was clearly strong given the overall results, with marked excellence in the submitted Memorials in particular. In the written examination, no mark below 66% was awarded for any question, and final marks on the scripts were exclusively in the Upper Second or First Class range. Candidates scored particularly well in answers to questions focussing on treaty and/or customary international law (**Q1** and **Q3**), and on jurisdiction and immunities (**Q5** and **Q6**), displaying strong evidence of wide reading and an understanding of the subject extending well beyond the core syllabus.

Roman Law (Delict)

Nine students took the exam, one of them a DLS student. There were four marks of 70 or above (44%), the rest mostly upper 2.1s, with a pleasing overall average of 68.33.

All questions except **Q8** (compare aiding and abetting across the field of delict) were attempted; otherwise there was a reasonable spread. Three students choose to answer more than the two compulsory gobbets (**Q1** to **Q4**). **Q1** and **Q2** were a little more popular than the rest, being tackled by seven and eight students, respectively. Only one student answered **Q6**, pertaining to the practical differences between bringing a direct action and an *actio in factum*.

The overall standard was very pleasing: candidates demonstrated a good command of the set texts and familiarity with the relevant secondary literature; First class answers offered clear and sophisticated engagement with the questions posed, combining detailed doctrinal analysis with sensitive reference to historical context and to the broader conceptual underpinnings of the civil law of wrongs.

Taxation Law

As in prior years there were 8 questions (6 essays and 2 problems) which gave considerable choice since the students all cover all of the core material in lectures, seminars and tutorials. **Q2** (essay question on tax avoidance) was the most popular question, followed closely by **Q1** (essay on ability to pay) and Q.8 (problem on employment tax). **Q7** (problem on capital taxes and trading) was the least popular. Nearly all of the candidates attempted at least one of the problems—although not required to do so.

Q1 on tax policy invited the candidates to consider how well the UK income tax satisfies Adam Smith's ability to pay canon. The better answers delved into the difficulties in defining and measuring ability to pay, considered other canons of good tax design and used examples from the current regime. **Q2** concerned the cases on tax avoidance and was answered quite well overall. Those students who analysed a range of recent as well as older cases on the *Ramsay* principle, and engaged with the extensive literature on avoidance were duly rewarded. **Q3** on capital taxation of trusts invited the candidates to evaluate the CGT and IHT trust rules and how complex and fair those rules are. The better answers engaged with broad policy considerations such as neutrality and restricting tax avoidance and advanced both minor and fundamental reforms to the present regimes. **Q4** asked candidates to evaluate the effectiveness of the inheritance tax, which provided an opportunity to examine the statutory provisions in some detail and draw on the academic literature on the problems with the current regime. **Q5** concerned the different tax regimes applicable to employees and the self-employed, and required a good understanding of the law as well as an

appreciation for the topical nature of these issues as reflected in academic/policy work by e.g. the Office of Tax Simplification. **Q6** was a relatively straightforward two-part question on the law on capital versus income expenditure and also on the 'necessarily' aspect of the general test for employment deductions; better answers evaluated the statutory provisions and a range of relevant cases.

Q7 was the less popular of the two problem questions. It raised a number of issues on the taxation of a self-employed person, the meaning of 'trading' and the application of both IHT and CGT. The facts in **Q8** raised a broad spectrum of major and minor employment tax issues, particularly employee benefits but also deductions. Candidates for the most part spotted the correct issues, but the depth of analysis of those issues was variable.

Tort Law

Q1: A popular question. The best answers could clearly articulate the different justifications for vicarious liability, distinguished in their analysis between arguments which could (not) account for the *existence* of the doctrine, and those which would require changes in its *scope*, and developed their points through careful discussion of the leading authorities.

Q2: Only a handful of candidates answered this question, though it produced some excellent answers. These closely examined the different defences and explored their rationales.

Q3: Many, perhaps most, candidates answered this question. On the whole, however, it was not particularly well done. The level of critical analysis offered was generally rather thin: 'Academic X says decision Y was wrong' does nothing to advance an argument without explanation and engagement with X's reasoning for that view. More specifically, few candidates seemed to be aware of the controversy surrounding whether the scientific uncertainty and single agent restrictions of the *Fairchild* exception were 'coherent' limits to the exception. The Court of Appeal decision in *Heneghan* was often criticised for not applying the single agent requirement as if this restriction were self-evidently justified. Many candidates devoted undue time to two recent cases (*Williams v Bermuda*, *Heneghan*) at the expense of a full discussion of the leading cases and the arguments in the academic literature.

Q4(a): Few candidates tackled this question. Solid answers discussed the exceptions to the rule of no duty, such as control, assumption of responsibility, and creation of risk, questioning whether the authorities were fully consistent or clear in their effects.

Q4(b): A reasonably popular question. Good answers explored whether the 'proximity' limb of the test had any determinate meaning by reference to the leading authorities and examined possible inconsistencies in the application of the 'fair, just and reasonable' limb. Some also plausibly questioned the utility of any general test of duty of care, arguing that any test would inevitably be open-ended.

Q5: Very few candidates answered this question. It invited discussion, for instance, of exemplary damages, restitutionary damages, and vindicatory or 'rights-based' damages.

Q6: This question produced many answers. The better answers focused on the suitability of the *Patel v Mirza* approach to tort cases in particular, and compared it to the *Gray v Thames Trains* approach in this regard. Weaker answers tended to provide an overview of the broader controversies surrounding the defence in private law (as reflected in the judgments and earlier case law) without linking their discussion to tort law in particular.

Q7: A small number of candidates answered this question. It was generally well done, with better candidates being able to justify their views about the utility (or otherwise) of particular economic torts by reference to a good range of examples from the cases.

Q8: This was a relatively straightforward problem raising issues of private nuisance, *Rylands v Fletcher*, and public nuisance. It was generally competently done. However, many candidates were shaky on whether planning permission (weaker scripts applied the pre-*Lawrence* law here) affected the character of the locality, on the role of the defendant's own activities in determining the character of the locality (an issue that was often not discussed) and on remedies. Weaker scripts suggested that reasonable foreseeability of the type of harm was not a requirement under *Rylands v Fletcher*, or that the mere occurrence of property damage is sufficient to constitute actionable private nuisance, even if the damage was unforeseeable. Candidates also often seemed confused about the question of who can be liable in private nuisance, forgetting that the person who creates a nuisance is always liable for it, and not distinguishing the position of occupiers and landlords out of occupation when it came to nuisances created by others

Q9: This question raised a number of potential claims, mainly concerning the Occupiers' Liability Acts, which good candidates were able to present and analyse in a structured manner. Three points, in particular, to note. First, although the OLA 1957 has effect 'in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises…': s.1(1), many candidates simply applied the common law on duties of care in respect of psychiatric injury to Harriet's claim. Second, it should be remembered (as some weaker scripts did not) that a duty of care is not automatically owed under the 1984 Act, but only if the requirements of s.1(3) are satisfied. Third, only a few candidates considered whether it is in principle possible to exclude liability for breach of the 1984 duty (where it is owed). A number of candidates believed that s.65 of the Consumer Rights Act 2015 prohibits the exclusion of liability for breach of the duty (where owed) under the OLA 1984. This is not the case.

Q10: A reasonably popular question, mainly requiring application of the Consumer Protection Act 1987; it was generally well done. Stronger answers discussed the following issues in particular: (1) whether the chips being exposed to moisture by deliberate sabotage could give rise to the s.4(1)(e) defence; (2) whether in T's claim against Falswagen/Redix/Indol, E's conduct would break the chain of causation – some candidates usefully considered the relevance of *Howmet* here; (3) whether Ed could claim for damage to the car itself under the Act against F (no); (4) how the analysis of defect under s.3 CPA 1987 might be affected by the decision in *Wilkes v Depuy*.

Q11: The least popular of the problem questions, mainly concerned with negligence liability for pure economic loss and property damage. Competent answers considered each type of damage/loss in turn, considering whether it amounted to property damage or pure economic loss, then analysing the duty of care issue accordingly. Most could apply the principles established in the *Hedley Byrne* line of cases reasonably well to the claim by O against M. The answers generally dealt less well with the claim by O against U. Few considered: (1) whether the reasoning in *Murphy* would necessarily preclude U owing O a duty of care in relation to the tilting cucumber; (2) the possibility of M being vicariously liable in respect of any tort committed by U; (3) the application of the Defective Premises Act 1972 – that the Act only applies to work taken on in connection with (the provision of) *dwellings* (and whether that would apply to the facts) was not always picked up.

Q12: Many candidates attempted this question. Most candidates grappled reasonably well with the issue of whether Moira (or Plodstown through Moira) could be said to have assumed responsibility, and whether the facts could be distinguished from *Michael*. Few considered whether a duty of care would only arise if E relied upon M's assurance to his detriment. Most also dealt well with the causation issue of whether, assuming a duty of care and its breach, that breach was a cause of E's damage. The best scripts considered whether, if but-for causation could not be proven on the balance of probabilities, the *Fairchild* exception could be applied or recovery obtained for the loss of a chance.

Trusts

Q1: This question was fairly popular. Most answers could give a good account of the beneficiary principle, and ask whether Morice was actually authority for this principle. Most answers focused on the issue of 'enforceability' in the absence of a beneficiary. Few asked whether Lord Eldon was making a slightly different point, viz, that it is difficult to determine whether a trustee is acting within his powers when the trust is for a vague purpose rather than a person.

Q2: This was one of the most popular questions on the paper. Most candidates were able to show that the answer to this question depended, in part, upon which explanation of resulting trusts is adopted. However, the weaker answers confined their discussion to well-known academic theories (i.e. the Birks and Chambers thesis, and the Swadling thesis), and failed to engage with the case law specifically concerned with Quistclose trusts.

Q3: This attracted a range of answers. Several focused entirely on the issue of covenants to settle. Whilst not irrelevant to the question, it was puzzling that some answers could give detailed accounts of the covenants cases whilst ignoring the basic cases involving failed gifts. The best answers fully engaged with the normative aspect of this question, and asked whether cases such as Re Rose and Pennington v Waine undermined the rules of constitution of trusts and transfer of property rights.

Q4: This was another very popular question, which attracted some good answers, but many mediocre ones. The main difficulty was that few candidates attempted to define the terms 'constructive trust' and 'express trust'. Without a working definition of these terms, candidates struggled to place the resulting trust in either category. The same problem was also encountered as with answers Q2, i.e. that many answers focused almost exclusively on the academic arguments found in periodical literature, and gave almost no space to the relevant case law.

Q5 and Q6: These attracted very few answers. Some candidates did poorly on Q6 as they discussed the general topic of 'public benefit', rather than confining their discussion to the 'presumption' issue.

Q7: Some answers to this question focused solely on the question of whether fiduciaries ought to be liable for unauthorised profits at all, and ignored the important part of the question, which is whether the remedy ought to be personal or proprietary.

Q8: This was a popular question and attracted some strong answers. Weaker ones tended to assume that there is a singular beneficial interest, and failed to distinguish between rights against the trustee and rights relating to trust rights. There was also a tendency to confine discussion to the case of Shell v Total, and ignore the other cases on the reading list.

Q9: This was a popular question and attracted a range of answers. Better answers pointed out that normal constructive trusts are not created by a declaration and, consequently, an evidential requirement of writing would make no sense. The best answers were also able to examine whether, in cases such as Bannister v Bannister, the trust was properly categorised as 'constructive'. One difficulty was that many candidates confined their discussion to either section 53(1)(b) or section 53(1)(c). They were rewarded accordingly.

Q10 and Q11: These questions attracted very few answers, which was disappointing given the crucial practical importance of such topics.

Q12: This attracted a few answers. Most were able to discuss backwards tracing and the case of Brazil v Durant. Few answers actually considered what test is appropriate in the case of backwards tracing, i.e. whether is a purely causal link that is required, rather than a transactional one.

Q13: This was one of the most popular questions on the paper. As in previous years, some candidates lost marks on the three certainties question as they were unable to state the correct test for the different types of trust or other disposition. In particular, many were unsure how to use Re Barlow's WT in the question.

Q14: This question attracted very few answers.

E. Comments on the performance of identifiable individuals and other material which would usually be treated as reserved business

[Redacted for restricted circulation]

F. Names of members of the Board of Examiners

N Barber (Chair)
S Bright
P Eleftheriadis
I Goold
T Krebs
G I Lamond
J Murphy (External)
A Sanders (External)
W Swadling
S Weatherill

APPENDIX 1 – EXAMINATION CONVENTIONS

Law FHS Examination Conventions 2016-17

1. Introduction

Course Title: FHS BA in Jurisprudence (course 1) and BA Law with Law Studies in Europe (course 2)

Year to which conventions apply: students completing finals in 2016-17

Supervisory Body: Social Sciences Teaching Audit Committee

Purpose of Examination conventions:

Examination conventions are the formal record of the specific assessment standards for the course or courses to which they apply. They set out how examined work will be marked and how the resulting marks will be used to arrive at a final result and classification of an award.

Because certain information pertaining to examinations (for example, rubrics for individual papers) will only be finalised by the Examination Board in the course of the year, it will be necessary to issue further versions of this document. The version number of this document is given below. Subsequent versions will follow a numbering sequence from 1.1 upwards. Each time a new version is issued, you will be informed by email, and the updates will be highlighted in the text and listed below.

This version and subsequent versions can be obtained from the Weblearn site https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/undergrad/page/home

Version 1.5

Updates to previous Versions

Includes names of examiners, minor rubric change for Criminal Law (to indicate there will be seven rather than eight essay questions) and addition for Jessup Moot rubric.

2. Examination papers and rubrics

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

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

A list of standard optional subjects can be found at https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/undergrad/fhs_options

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

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

3. Materials available in the exam room

The list of materials available in the exam room for each paper will be included as an Appendix to a subsequent iteration of this document

4. Marking Conventions

4.1 University scale for standardised expression of agreed final marks

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

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

4.2 Qualitative assessment criteria

Timed examination answers

First class (70% and above)

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

- acute attention to the question asked;
- a deep and detailed knowledge and understanding of the topic addressed and its place in the surrounding context;
- excellent comprehensiveness and accuracy, with no or almost no substantial errors or omissions, and coverage of at least some less obvious angles;
- excellent clarity and appropriateness of structure, argument, integration of information and ideas, and expression;
- identification of more than one possible line of argument;

- good appreciation of theoretical arguments concerning the topic, substantial critical analysis, and (especially in the case of high first class answers) personal contribution to debate on the topic.

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

80+% A truly exceptional answer.

Upper second class (60-69%)

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

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

Lower second class (50-59%)

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

- normally, attention to the question asked (but a lower second class answer may be one which gives an otherwise upper second class treatment of a related question rather than the question asked);
- a fair knowledge and understanding of the topic addressed and its place in the surrounding law;
- reasonable comprehensiveness and accuracy, possibly marked by some substantial errors or omissions;
- a reasonably clear and appropriate structure, argument, integration of information and ideas, and expression, though the theoretical or critical treatment is likely to be scanty or weak.

Third class (40-49%) and pass (30-39%)

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

- the ability to identify the relevant area of the subject, if not necessarily close attention to the question asked;
- some knowledge and understanding of the topic addressed and its place in the surrounding law, notwithstanding weakness in comprehensiveness and accuracy, commonly including substantial errors and omissions;
- some structure, argument, integration of information and ideas, and lucidity of expression, though these are likely to be unclear or inappropriate and to offer negligible theoretical or critical treatment.

See 5.2 below for further information about how overall classifications are calculated.

Essays and problems

The above statements apply not only to answers to essay questions but also to answers to problem questions. In particular, good problem answers (2:1 standard) will explore different solutions and lines of argument. The very best answers (First standard) might offer a critical or theoretical treatment of the doctrines under discussion where appropriate and in addition to solving the problem posed.

4.3 Verification and reconciliation of marks

For all its undergraduate examinations – Mods, FHS, and the Diploma in Legal Studies, the Law Faculty does not operate a marking regime involving the blind double marking of all scripts. However, it does operate a rigorous process which incorporates extensive double-blind marking according to a system approved by the supervisory body. The Faculty takes a great deal of care to ensure the objectivity of marking procedures. The process begins with the team of markers for each paper meeting to discuss how to treat the marking of individual questions and then, as the marking progresses, liaising to exchange information about how candidates are handling questions. Once first marking has been carried out, marks profiles for each marker are compiled and compared with one another. If any profile looks to be out of line with that of other markers, then second marking of the scripts in question takes place, following which the two markers meet to compare the marks and agree a single final mark for the script in question. All scripts that on their first reading have been awarded failing marks (in FHS this includes scripts falling below the mark of 40 required for the paper to be counted towards the professional qualification) are second marked as are potential prize-winning scripts and any scripts identified by the first marker as unusual.

After this first stage, the Board of Examiners meet and compare the profiles for each paper, which may then lead to re-readings to address any anomalies. Second marking will also be applied for candidates whose overall marks profiles place them in the following categories: in the Diploma, those on the distinction and fail borderlines; in FHS, those on the borderline of any classification (e.g. 1st, 2:1 etc.) and those for whom any script has a first mark four marks or more below the candidate's overall average. Second marking may also be required to determine the winners of prizes. In exceptional circumstances (e.g. medical) third readings may take place.

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

4.4 Incomplete scripts and departure from rubric

The mark for a completely absent answer in any script will be zero, and the mark for a part answer, or a "skimped", "rushed final", "short" or "weak" answer, will be such a mark above zero as is appropriate, relative to more successful answers, in terms of the quality of what has been written, and the extent to which it covers the question.

The overall mark for a script will be arrived at by averaging the number of marks, including zeros, over the number of questions that should have been answered on the paper.

If a candidate completes the correct number of questions, but fails to answer a question which is compulsory (e.g. where the candidate does not answer a problem question as required by the rubric of that paper), marks will be deducted and this may affect the final result. It is therefore of the utmost importance that candidates comply with the rubric of the paper and answer the number and type of questions stipulated.

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

4.5 Penalties for late or non-submission (for Jurisprudence essays, Medical Law and Ethics essays, and Jessup Moot memorials)

The scale of penalties agreed by the board of examiners in relation to late submission of assessed items is set out below. Details of the circumstances in which such penalties might apply can be found in the Examination Regulations (Regulations for the Conduct of University Examinations, Part 14.)

Lateness	Cumulative mark penalty
Up to two hours late	2 marks
Up to 24 hours late	5 marks
Up to six calendar days late	10 marks
Beyond six calendar days late	A mark of zero will be awarded

Application to the Proctors for permission for late submission of the essays in *Jurisprudence and Political Theory* or the dissertation should, if at all possible, be made by the candidate's college on the candidate's behalf before the submission date, though retrospective applications are permitted in exceptional cases.

4.6 Penalties for over-length work (for Jurisprudence essays, and Medical Law and Ethics essays)

Where a candidate submits a piece of written coursework which exceeds the word limit prescribed by the relevant regulation, the examiners, if they agree to proceed with the examination of the work, may reduce the mark by up to 10 marks.

4.7 Penalties for plagiarism/poor academic practice

The Examination Board shall deal wholly with cases of poor academic practice where the material under review is small and does not exceed 10% of the whole.

Assessors should mark work on its academic merit with the board responsible for deducting marks for derivative or poor referencing.

Determined by the extent of poor academic practice, the board shall deduct between 1% and 10% of the marks available for cases of poor referencing where material is widely available factual information or a technical description that could not be paraphrased easily; where passage(s) draw on a variety of sources, either verbatim or derivative, in patchwork fashion (and examiners consider that this represents poor academic practice rather than an attempt to deceive); where some attempt has been made to provide references, however incomplete (e.g. footnotes but no quotation marks, Harvard-style references at the end of a paragraph, inclusion in bibliography); or where passage(s) are 'grey literature' i.e. a web source with no clear owner.

If a student has previously had marks deducted for poor academic practice or has been referred to the Proctors for suspected plagiarism the case must always be referred to the Proctors. Also, where the deduction of marks results in failure of the assessment and of the programme the case must be referred to the Proctors.

In addition, any more serious cases of poor academic practice than described above should also always be referred to the Proctors.

5. Progression rules and classification conventions

5.1 Qualitative descriptors

Qualitative descriptors are intended to provide summaries of the qualities that will be demonstrated in attaining each classification – First, Upper Second, etc. – overall.

The qualities a First overall will demonstrate include acute attention to the questions asked; a deep and detailed knowledge of the topic; excellent clarity and structure; and good appreciation of theoretical arguments.

The qualities an Upper Second overall will demonstrate include attention to the questions asked, a fairly detailed knowledge and understanding of the topic; good and accurate coverage of the topic; good clarity and structure; and reasonable familiarity with theoretical arguments.

The qualities a Lower Second overall will demonstrate include attention to the questions asked which may vary from adequate to disappointing; some knowledge of the and understanding of the topic; some coverage of the topic and a reasonable level of accuracy though possibly marked by substantial errors or omissions; a reasonable level of clarity and structure though theoretical or critical argument is likely to be insubstantial or weak.

The qualities a Third or Pass overall will demonstrate include the ability to identify the relevant area of the subject; a limited knowledge and understanding of the topic, usually marred by substantial errors and omissions, some degree of structure and argument, though ideas are likely to be unclear or inappropriate and to offer negligible theoretical or critical treatment.

Note that the aggregation and classification rules in some circumstances allow a stronger performance on some papers to compensate for a weaker performance on others.

5.2 Final outcome rules

The final outcomes rules are as follows, bearing in mind that the examiners have some discretion to deal with exceptional circumstances, in accordance with the Examination Regulations. For the award of degree classifications, marks in all standard subject and standard optional subject papers have the same weight.

First Class Honours are awarded on a system whereby, either four marks of 70 or above are needed, and no marks below 60, or alternatively, five marks of 70 or above are needed with no more than one mark below 60 and no mark below 50.

For the award of Second Class Honours, Division I, five marks of 60 or above are needed, and no more than one mark below 50 (which must not be below 40).

For Second Class Honours, Division 2, five marks of 50 or above are needed, and no marks below 40.

For Third Class Honours, nine marks of 40 or above are needed, although a candidate may be allowed one mark below 40.

For a Pass degree, five marks of 40 or above are needed, and no marks below 30, although a candidate may exceptionally be allowed one mark below 30.

6. Re-sits

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

7. Factors affecting performance

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

8. Details of examiners and rules on communicating with examiners

The names and positions of examiners are listed below. Students are strictly prohibited from contacting internal or external examiners directly.

Mr N. Barber (Chair)

Professor S. Bright

Dr P. Eleftheriadis

Dr I. Goold

Dr T. Krebs

Dr G. Lamond

Professor J. Murphy (External)

Dr A. Sanders London School of Economics (External)

Mr W. Swadling

Professor S. Weatherill

Appendix A

FORM AND RUBRIC OF EXAMINATION PAPERS IN THE FHS OF JURISPRUDENCE AND DIPLOMA IN LEGAL STUDIES 2017

Administrative Law

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

Commercial Law

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

Company Law

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

Comparative Private Law

There will be 9 questions, 6 in Part A (Obligations) and 3 in Part B (Property and Trusts). FHS candidates are required to answer 3 questions, including at least one question from Part A and at least one question from Part B. Problem questions may be asked but it will not be mandatory to answer a particular number of such questions.

Competition Law and Policy

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

Constitutional Law

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

Candidates are asked to note that some questions may involve a greater degree of mixing of topics than has been the norm in past papers.

Contract

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

Copyright, Patents and Allied Rights

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

Copyright, Trade Marks and Allied Rights

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

Criminology and Criminal Justice

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

Criminal Law (New Regulations) will be set on the basis of the 2016-17 core reading list. There will be 11 questions, 7 of which will be essay questions (Part A) and 4 of which will be problem questions (Part B). FHS candidates should answer 4 questions, including at least one question from Part A and at least two questions from Part B. DLS candidates should answer 3 questions, including at least one question from Part A and at least one question from Part B.

Candidates are reminded that liability for the offences in the Criminal Damage Act 1971, ss. 1-3 is examinable, but that liability for any of the offences in the Theft Act 1968, the Theft Act 1978 and the Fraud Act 2006 is not examinable.

Criminal Law (Old Regulations) will be set on the basis of the 2015-16 core reading list, and it is expected that candidates who received teaching in Criminal Law in or before the 2015-16 academic year will sit this paper. There will be 9 questions, 5 of which will be essay questions (Part A) and 4 of which will be problem questions (Part B). FHS candidates should answer 4 questions, including at least one question from Part A and at least two questions from Part B.

Candidates are reminded that liability for the offences in the Criminal Damage Act 1971, ss. 1-3 is examinable, but that liability for any of the offences in the Theft Act 1968, the Theft Act 1978 and the Fraud Act 2006 is not examinable. No question will be set requiring knowledge of liability under the Accessories and Abettors Act 1861 or (in so far as this is different) Joint Enterprise.

Environmental Law

There will be 10 questions including problem questions, but choice of questions will be unrestricted. FHS candidates should answer 4 questions and DLS candidates should answer 3.

European Union Law

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

Family Law

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

History of English Law

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

Human Rights Law

There will be 10 questions, one of which will be a problem question, but choice of questions will be unrestricted. FHS candidates should answer four questions and DLS candidates should answer 3.

International Trade

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

Jurisprudence

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

Labour Law

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

Land Law

Two Land Law papers will be set in 2017. Which version of the Land Law paper you will be set will primarily depend on which course you are studying.

For students who matriculated in or after October 2013 a paper will be set on the new syllabus (new regulations) for Land Law (including the topic 'Human rights as relevant to Land Law' and 'Acquisition of title by possession; Loss of title because of dispossession'). There will be 11 questions on this paper, 5 of which will be problem questions. FHS candidates taking this paper should answer 4 questions including at least one problem question. DLS candidates should answer 3 questions including at least one problem question.
In all cases, candidates will not be expected to display in-depth knowledge of human rights issues in answering problem questions.

For students who matriculated in or before October 2012 a paper will be set on the old syllabus (old regulations) for Land Law (including the topic 'Human rights as relevant to Land Law'; but not including the topic 'Acquisition of title by possession; Loss of title because of dispossession'). There will be 11 questions on this paper, 5 of which will be problem questions. FHS candidates taking this paper should answer 4 questions including at least one problem question.

In all cases, candidates will not be expected to display in-depth knowledge of human rights issues in answering problem questions.

Media Law (course not available in 2016-17, except to candidates who studied the course before 2016-17)

There will be 10 questions of which FHS candidates should answer 4.

Medical Law and Ethics (New Regulations)

Two essay questions will be chosen from a list of three questions.

Medical Law and Ethics (Old Regulations)

There will be 9 questions of which FHS candidates should answer 4.

Moral and Political Philosophy

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

Personal Property

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

Public International Law

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

Public International Law (Jessup Moot Option)

There will be nine questions, four in Part A and five in Part B. FHS candidates should answer two questions, one question from Part A and one question from Part B.

Roman Law (Delict)

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

Taxation Law

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

Tort

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

Trusts

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

Appendix B

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

Administrative Law

Administrative Law Case List 2016-17

Commercial Law

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

Commercial Law Case list 2016-17

Company Law

Butterworth's Company Law Handbook, 30th (2016) edition

Company Law Case List 2016-17

Comparative Private Law

Translations of Extracts from national and European instruments, as compiled by the teaching group and distributed in the course for the academic year 2016-2017

Competition Law and Policy

Blackstone's UK and EU Competition Documents, 8th (2015) edition, ed. Kirsty Dougan

Competition Law and Policy Case List 2016-17

Constitutional Law

Constitutional Law Case List 2016-17

Contract

Blackstone's Statutes on Contract, Tort and Restitution, 27th (2016-17) edition, ed. Francis Rose

Contract Case list 2016-17

Documents:

Consumer Protection from Unfair Trading Regulations 2008/1277 (as amended) (extracts)

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013/3134 (as amended) (extracts).

Directive on Unfair Terms in Consumer Contracts of 5 April 1993

Copyright, Patents and Allied Rights

Blackstone's Statutes on Intellectual Property 13th (2016) edition

Copyright, Patents & Allied Rights Case List 2016-17

Document:

Charter of Fundamental Rights of the European Union

Copyright, Trade Marks and Allied Rights

Blackstone's Statutes on Intellectual Property 13th (2016) edition

Copyright, Trade Marks & Allied Rights Case List 2016-17

Documents:

Charter of Fundamental Rights of the European Union

Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to Approximate the Laws of the Member States Relating to Trade Marks (codified version)

Criminal Law (new regulations)

Criminal Law Case List 2016-17 (new regulations)

Booklet of extracts from Criminal Law Statutes containing:

Accessories and Abettors Act 1861, s. 8

Offences Against the Person Act 1861, ss. 16, 18, 20, 23, 24, 47

Infanticide Act 1938, s. 1

Homicide Act 1957, ss. 1, 2, 4

Suicide Act 1961, ss. 1, 2, 2A, 2B

Criminal Procedure (Insanity) Act 1964 ss. 1, 4, 4A, 5, 6

Criminal Justice Act 1967 s 8

Criminal Law Act 1967, s.3

Theft Act 1968, ss. 1-6, 8, 9, 12, 21, 22, 25

Criminal Damage Act 1971, ss. 1, 2, 3, 5, 10

Criminal Law Act 1977, ss. 1 and 2 (not 1A) and 5(1), (6), (8) and (9)

Theft Act 1978, s.3

Magistrates' Courts Act 1980 s 44

Criminal Attempts Act 1981, s. 1

Law Reform (Year and Day Rule) Act 1996

Crime and Disorder Act 1998 s 34

Sexual Offences Act 2003, ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 73, 74, 75, 76, 77, 78, and 79(2), (3), (8) and (9).

Fraud Act 2006, ss. 1, 2, 3, 4, 5

Serious Crime Act, 2007 ss. 44, 45, 46, 47, 49, 50, 51, 56, 59, 64, 65, 66, 67 and excerpts from Schedule 3 (Listed Offences)

Criminal Justice and Immigration Act 2008 s 76

Coroners and Justice Act 2009, sections 54, 55, 56

Criminal Law (old regulations)

Criminal Law Case List 2016-17 (old regulations)

Booklet of extracts from Criminal Law Statutes containing:

Offences Against the Person Act 1861, ss. 16, 18, 20, 23, 24, 47

Infanticide Act 1938, s. 1

Homicide Act 1957, ss. 1, 2, 4

Suicide Act 1961, ss. 1, 2, 2A, 2B

Criminal Procedure (Insanity) Act 1964 ss. 1, 4, 4A, 5, 6

Criminal Justice Act 1967 s 8

Criminal Law Act 1967, s.3

Theft Act 1968, ss. 1-6, 8, 9, 12, 21, 22, 25

Criminal Damage Act 1971, ss. 1, 2, 3, 5, 10

Criminal Law Act 1977, ss. 1 and 2 (not 1A) and 5(1), (6), (8) and (9)

Theft Act 1978, s.3

Magistrates' Courts Act 1980 s 44

Criminal Attempts Act 1981, s. 1

Law Reform (Year and Day Rule) Act 1996

Crime and Disorder Act 1998 s 34

Sexual Offences Act 2003, ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 73, 74, 75, 76, 77, 78, and 79(2), (3), (8) and (9).

Fraud Act 2006, ss. 1, 2, 3, 4, 5

Serious Crime Act, 2007 ss. 44, 45, 46, 47, 49, 50, 51, 56, 59, 64, 65, 66, 67 and excerpts from Schedule 3 (Listed Offences)

Criminal Justice and Immigration Act 2008 s 76

Coroners and Justice Act 2009, sections 54, 55, 56

Environmental Law

Environmental Law Case List 2016-17

European Union Law

Blackstone's EU Treaties and Legislation, 27th (2016-17) edition, ed. Nigel Foster, OUP

European Union Law Case list 2016-17

Family Law

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

Family Law Case List 2016-17

History of English Law

History of English Law Case List 2016-17

History of English Law

History of English Law Case List 2016-17

Documents:

Magna Carta 1225 c. 36

Petition of the Barons 1258 c. 27

Statute of Gloucester 1278 c. 11

Statute of Mortmain 1279

Statute De Donis Conditionalibus 1285

Statute Quia Emptores 1290

Mortmain Act 1391

Statute Concerning Grants by Cestuy que Use 1484

Fraudulent Deeds of Gift Act 1487

Wardship Act 1490

Statute of Fines 1490

Recoveries Act 1529

Mortmain Act 1531

Statute of Uses 1536 Preamble & ss. 1, 4, 9

Statute of Enrolments 1536 (extracts)

Statute of Wills 1540

Act for Explanation of the Statute of Wills 1542 Preamble and ss. 14-16

Tenures Abolition Act 1660 Preamble and ss. 1-10

Statute of Frauds 1677 Preamble and ss. 4, 17

Promissory Notes Act 1704

Human Rights Law

Human Rights Case List 2016-17

Documents:

European Convention on Human Rights

European Charter of Fundamental Rights

Human Rights Act 1998

International Trade

Blackstone's Statutes on Commercial and Consumer Law, 20th (2011-12) edition, ed. Francis Rose

International Trade Case list 2016-17

Jessup Moot Public International Law (Exam)

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

Labour Law

Blackstone's Statutes on Employment Law, 26th (2016-17) edition, ed. Richard Kidner

Labour Law Case List 2016-17

Land Law (old and new regulations)

Sweet and Maxwell's Statutes Series, Property Law 8th (2002) or 9th (2003) or 10th (2004) edition

Land Law Case List 2016-17

Documents:

Consumer Credit Act 1974 ss. 140A-140C

Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 Art 60C (2) and 61(3)

Mortgage Repossessions (Protection of Tenants etc.) Act 2010 (in full)

Consumer Rights Act 2015, ss. 2, 61-69

ECHR (art 8, and protocol 1 art 1);

Media Law (Course not running in 2016-17, except for candidates who studied the course before 2016-17)

Blackstone's Media Law Statutes, 4th edition (2013)

Media Law Case list 2016-17

Documents:
Communications Act 2003, s.368E

Juries Act 1974, s.20A-20C

Police and Criminal Evidence Act 1984, s.8, s.9, s.11. s.13, s.14 and extracts from Schedule 1

Terrorism Act 2000, extract from Schedule 5

Criminal Justice and Courts Act 2015, s.33-35 and 37

Medical Law and Ethics (old regulations)

Medical Law and Ethics Case List 2016-17

Medical Law and Ethics Legislation

Personal Property

Personal Property Case List 2016-17

Public International Law

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

Taxation Law

Extracts from Tax Legislation compiled by the Law Faculty with permission from LexisNexis

Taxation Law Case List 2016-17

Tort

Blackstone's Statutes on Contract, Tort and Restitution, 27th (2016-17) edition, ed. Francis Rose

Tort Case List 2016-17

Trusts

Sweet and Maxwell's Statutes Series, Property Law, 8th (2002) or 9th (2003) or 10th (2004) edition

Trusts Case List 2016-17

Charities Act 2011, sections 1-5

APPENDIX 2 – EXTERNAL EXAMINERS' REPORTS

EXTERNAL EXAMINER REPORT FORM 2017

External examiner name:	Astrid Sanders	
External examiner home institution:	London School of Economics and Political Science	
Course examined:	FHS in Jurisprudence; Diploma in Law Examinations	
Level: (please *delete as appropriate*)	Undergraduate	

Please complete both Parts A and B.

Part A				
	*Please (✓) as applicable**	**Yes**	**No**	**N/A / Other**
A1.	Are the academic standards and the achievements of students comparable with those in other UK higher education institutions of which you have experience?	Yes		
A2.	Do the threshold standards for the programme appropriately reflect the frameworks for higher education qualifications and any applicable subject benchmark statement? *[Please refer to paragraph 6 of the Guidelines for External Examiner Reports].*	Yes		
A3.	Does the assessment process measure student achievement rigorously and fairly against the intended outcomes of the programme(s)?	Yes		
A4.	Is the assessment process conducted in line with the University's policies and regulations?	Yes		
A5.	Did you receive sufficient information and evidence in a timely manner to be able to carry out the role of External Examiner effectively?	Yes		
A6.	Did you receive a written response to your previous report?		I do not recall receiving a written response to my previous report	

			(however, this is not at all a criticism as I did not expect one).	
A7.	Are you satisfied that comments in your previous report have been properly considered, and where applicable, acted upon?	Yes		
** **If you answer "No" to any question, please provide further comments in Part B.** Further comments may also be given in Part B, if desired, if you answer "Yes" or "N/A / Other".*				

Part B

B1. Academic standards

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

I would repeat the comments I made last year to this same question: the standards at Oxford are high. Having looked at exam papers and student scripts, the questions set in the examinations are challenging and, overall, the way in which the students respond is impressive.

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

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

B2. Rigour and conduct of the assessment process

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

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

B3. Issues

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

There were two external examiners for Law, and both myself and the other external examiner suffered bereavements within our immediate families in the week prior to the first day-long exam meeting. I wonder if it might be a good idea to have a reserve external examiner, in case something similar happens again if one or both externals are suddenly unable to attend?

B4. Good practice and enhancement opportunities

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

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

B5. Any other comments

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

This was my second year as an external examiner at Oxford and thus concludes my term. As an alumnus of Oxford myself, both years, it was very interesting to see the examinations process from the other side, so to speak. I was very impressed, both years, with the meticulous care and attention to detail given to every student over the course of the two examination meetings. I was also very impressed with the meticulous care and attention to detail shown by both Chairs (Nick Barber this year and Lucinda Ferguson the previous year) and by the Examinations Officers (Paul Burns, Grainne de Bhulbh and, last year, Julie Bass).

Signed:	**Astrid Sanders**
Date:	**25 August 2017**

FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2017

EXTERNAL EXAMINER REPORT FORM 2017

External examiner name:	John Murphy	
External examiner home institution:	Lan	
Course examined:	FHS in Jurisprudence	
Level: (please *delete as appropriate*)	Undergraduate	

Please complete both Parts A and B.

Part A				
	*Please (✓) as applicable**	**Yes**	**No**	**N/A / Other**
A1.	Are the academic standards and the achievements of students comparable with those in other UK higher education institutions of which you have experience?	X		
A2.	Do the threshold standards for the programme appropriately reflect the frameworks for higher education qualifications and any applicable subject benchmark statement? *[Please refer to paragraph 6 of the Guidelines for External Examiner Reports].*	X		
A3.	Does the assessment process measure student achievement rigorously and fairly against the intended outcomes of the programme(s)?	X		
A4.	Is the assessment process conducted in line with the University's policies and regulations?	X		
A5.	Did you receive sufficient information and evidence in a timely manner to be able to carry out the role of External Examiner effectively?	X		
A6.	Did you receive a written response to your previous report?			N/A
A7.	Are you satisfied that comments in your previous report have been properly considered, and where applicable, acted upon?			N/A
* ***If you answer "No" to any question, please provide further comments in Part B.*** *Further comments may also be given in Part B, if desired, if you answer "Yes" or "N/A / Other".*				

Part B

B1. Academic standards

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

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

B2. Rigour and conduct of the assessment process

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

B3. Issues

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

B4. Good practice and enhancement opportunities

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

B5. Any other comments

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

My feeling was that having just TWO external examiners – as I understand it, the minimum required when it comes to 'signing off' the results – might be a little risky. This year, both external examiners suffered bereavements shortly before the two final meetings (at which, it was made clear, their attendance was firmly required). On top of this, a train strike coincided with the second of the two meetings just mentioned.

One or both of the examiners might have felt duty-bound to be elsewhere (e.g., a funeral), or they may have been forced (by virtue of the rail strike) to miss one/both of the meetings. Might I therefore suggest that a third external examiner – examiner C – be recruited in future. Having an extra external examiner would, I think, act as a useful cushion against unforeseen eventualities (like illness, strikes and bereavements) affecting external examiner A or external examiner B.

Reports of this kind are too often simply taken as an opportunity for criticism. But I should like to add a note or two of praise. First, I'd take this chance to record my gratitude to Nick Barber. I think that he chaired the meetings splendidly. Everyone had a good chance to voice their opinions on tricky matters that arose. But at the same time, the meetings were kept well on track in terms of the time taken, and in terms of keeping discussions 'relevant to the point' being discussed at any given juncture.

Secondly, I'd also extend a word of thanks to all the administrative staff and other committee members who were both welcoming and helpful. The help was much appreciated in relation to understanding particular examination rules and procedures. It is always useful, I think, to have a sense of perspective and background when it comes to making decisions about the application of certain rules and examiners' discretion.

Signed:	***John Murphy***
Date:	**24.viii.2017**