

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

Part I .....	2
A. Statistics .....	2
Numbers and percentages in each class/category .....	2
Vivas .....	3
Marking of scripts .....	4
B. New examining methods and procedures .....	6
New examining methods and procedures .....	6
Examination schedule .....	6
Materials in the Examination Room .....	6
C. Examiners' Edicts and Examination Conventions .....	6
Part II .....	7
A. General comments on the examination .....	7
Examination papers .....	7
Special examination arrangements .....	7
Withdrawals from the examination .....	7
Candidate complaints relating to conduct of examinations .....	7
Factors affecting performance (FAP) .....	8
Addressing issues on individual exam scripts .....	8
Marks entry database .....	9
External Examiners .....	9
Examiners' discretion at the marks meetings .....	9
Prizes .....	10
Thanks .....	10
B. Equality and diversity issues, and breakdown of the results by gender .....	10
FHS Course 1, BA Jurisprudence .....	10
FHS Course 2, BA Law with Law Studies in Europe .....	11
FHS Course 1 and 2 combined .....	11
C. Detailed Numbers on Candidates' Performance in Each Part of the Examination .....	11
D. Comments on papers and individual questions .....	17
Administrative Law .....	17
Civil Dispute Resolution .....	18
Commercial Law .....	18
Company Law .....	19
Comparative Private Law .....	20
Competition Law and Policy .....	20
Constitutional Law .....	20
Contract .....	20
Copyright, Patents and Allied Rights; Copyright, Trade Marks and Allied Rights .....	23
Criminal Law .....	23
Criminology and Criminal Justice .....	25

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

Environmental Law .....	25
European Union Law .....	25
Family Law .....	27
History of English Law .....	30
Human Rights Law .....	30
International Trade .....	30
Jurisprudence .....	31
Labour Law .....	33
Land Law .....	33
Media Law .....	35
Medical Law and Ethics .....	37
Moral and Political Philosophy .....	37
Personal Property .....	38
Public International Law .....	38
Public International Law (Jessup Moot) .....	38
Roman Law (Delict) .....	38
Taxation Law .....	39
Tort Law .....	39
Trusts .....	42
E. Comments on the performance of identifiable individuals and other material which would usually be treated as reserved business .....	44
F. Names of members of the Board of Examiners .....	44
Appendix 1 – Examination Conventions .....	45
Appendix 2 – External Examiners' reports .....	59

## PART I

### A. Statistics

Numbers and percentages in each class/category

(a) Classified examinations

#### *FHS Course 1, BA Jurisprudence*

Class	Number			Percentage (%)		
	2017/18	2016/17	2015/16	2017/18	2016/17	2015/16
I	38	38	31	21.11	20.11	19.25
II.I	139	146	122	77.22	77.25	75.78
II.II	1	5	8	0.56	2.64	4.97
III						
Pass	2			1.11		
Fail						

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

FHS Course 2, BA Law with Law Studies in Europe

Class	Number			Percentage (%)		
	2017/18	2016/17	2015/16	2017/18	2016/17	2015/16
I	10	11	7	30.30	31.43	24.14
II.I	23	23	22	69.70	65.71	75.86
II.II		1			2.86	
III						
Pass						
Fail						

### *FHS Course 1 and 2 combined*

Class	Number			Percentage (%)		
	2017/18	2016/17	2015/16	2017/18	2016/17	2015/16
I	48	49	38	22.53	21.87	20.00
II.I	162	169	144	76.06	75.45	75.79
II.II	1	6	8	0.47	2.68	4.21
III						
Pass	2			0.94		
Fail						

(b) Unclassified Examinations

### *Diploma in Legal Studies*

Category	Number			Percentage (%)		
	2017/18	2016/17	2015/16	2017/18	2016/17	2015/16
Distinction	7	9	12	20.59	26.47	36.36
Pass	27	25	21	79.41	73.53	63.64
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.

# **FHS Jurisprudence and Diploma in Legal Studies**

## **Examiners' Report 2018**

### 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 stages.

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. All potential prize scripts should be second marked at this time also. In 2018, 371 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. Where a candidate needed a change in only one script to alter their overall classification, and where the candidate had a script ending with a 7, this was also sent for second marking as a borderline script. In 2018, 270 scripts were second marked following the first marks meeting. 168 scripts were marked because they were 4% below the candidate average, and 103 scripts were second marked as borderline. Three scripts fell into both categories. There were also two potential prize-winning scripts second marked at this stage, as they had been overlooked at the first stage.

Particular attention was paid where the distribution of marks across questions for Trusts looked out of line with the rest of the candidate's performance. Four scripts were sent for additional marking where one or more of the question marks was significantly below the candidate's performance in the rest of the script. Each of these scripts was also four below the candidate's average, and so would have been second marked in any case, but the markers' attention was drawn to the marks profile for the script.

##### *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 the exam element. That is, profiling and sampling is undertaken for each marker. On the basis of a recommendation from the Examination Committee in September 2017, the Jurisprudence marking group agreed that all mini-option essays would be second marked at the initial marking phase. Though this change in policy did not work seamlessly, it did reduce the need for additional essay marking between the exam board meetings.

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

There were 43 instances of Jurisprudence second marking between the marks meetings. 11 were due to the result being 4% below the student's average, and 32 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. In 42 of the 43 instances, the exam was second marked. In 12 cases, the essay was second marked.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### *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 2018.

Marks are not generally lowered as a result of second marking between the marks meetings. There were two 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*

Steps taken following last year's confusion relating to second marking (which included clarifying the instructions to markers as well as introducing a requirement that all Jurisprudence Essays be second marked to avoid difficulties caused by the absence of markers following the first marks meeting) resolved most of the problems. There was a slight problem, again, involving the second marking of Jurisprudence Essays (one first marker had neglected to forward the marked essays to the second markers), but the Jurisprudence teaching group was able to resolve this.

Overall, the level of second marking has increased slightly this year, following a dip last year.

	Number			Percentage (%)		
	2017/18	2016/17	2015/16	2017/18	2016/17	2015/16
Total Scripts	2154	2244	1954			
First stage	371	348	327	17.22	15.50	16.73
Second stage	270	227	294	12.53	10.12	15.05
All second marking	641	575	621	29.75	25.62	31.78

As shown by the table below, 103 borderline scripts were sent out for second marking after the first marks meeting on this basis, compared to 68 in 2017. A lower proportion of borderline scripts were revised upwards on second marking, compared with last year.

First mark	Number of borderline scripts	Scripts moved to higher class	% moved to higher class
69	20	6	30
68	41	8	20
67	34	3	9
59	2	2	100
58	4	2	50
57	2	0	0

### ***Third marking***

Third marking is only used in exceptional cases. In 2018, 7 scripts were sent for third marking. This is an increase from the 4 scripts which were sent for third marking in 2017, but is still lower than the 2016 count of 12 scripts which were third marked.

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **B. New examining methods and procedures**

### **New examining methods and procedures**

The examination format for all exams remained the same, with the exception of Comparative Private Law. Students taking this paper were asked to complete a 4,000-word essay in Week 0 of Trinity Term, with the question for the essay chosen from a list of three options.

The Medical Law and Ethics paper retained the essay submission format which was introduced last year, with students being given a wider range of questions from which to choose. To this end, students completed two essays, from nine questions set.

### **Examination schedule**

As was the case in 2016/17, an extended period was used for the FHS examinations in 2017/18, to allow students recuperation days between exams.

Every effort was made to ensure that students did not have to complete two exams on a single day. However, given the combination of option selections, it was necessary that one DLS student take two papers on one day of the exams. The Examiners investigated alternatives to this situation, but any solution would have had a detrimental effect on the examination schedule of a larger group of students.

In keeping with the decision to rotate the order of the compulsory papers on an annual basis, the Administrative Law paper was held on the first day. Compulsory papers 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 line with practice from previous years, 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. In addition to this, and to enable students to familiarise themselves with the case lists as they would appear in the exam room, the formatted and finalised case lists were published to students three weeks ahead of the start of exams.

There were some issues relating to case lists in that a number of wrongly cited cases in the Tort case list, and a portion of the Copyright case list had inadvertently been omitted (and had to be distributed separately in the examination room).

There was also a slight problem in that a Statute Book was only located some minutes into the Jessup Moot examination, so that the candidate was provided with this a little late.

## **C. Examiners' Edicts and Examination Conventions**

Examination Conventions for the FHS exams were used in 2017, and were published to students in December 2017, with a Notice to Candidates informing them of this. The full FHS/DLS Examiners' Edict was circulated to students by email in March 2018, providing them with exam information and guidance. A separate Notice to Candidates was issued to students who were taking one of the papers which was assessed by essay submission, to inform them of the requirements and guidelines for submission.

A copy of the Examination Conventions is included in Appendix 1.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### 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 six 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.

Candidates are reminded that they have no legitimate expectation that papers will always follow the same pattern as papers in previous years or that the same topics will be examined as in previous years. It is the responsibility of Candidates to ensure that they are adequately prepared to answer questions taken from a subject's syllabus.

##### Special examination arrangements

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

In 2018, there were 55 FHS students accommodated in this way, and one DLS student. This is a substantial increase in the number of applications, when compared with the 27 FHS candidates accommodated in 2017.

##### Withdrawals from the examination

14 students withdrew from the FHS in 2018; 12 of these students were from Course 1, and 2 from Course 2. This is on par with 2017.

##### Candidate complaints relating to conduct of examinations

A formal complaint in the following terms was submitted to the Proctors by Mansfield College about this year's Trusts paper:

*Our students wish to make a formal complaint about the FHS Trusts exam this year. The students believe that the Trusts Exam was unduly narrow in scope by comparison to exams in previous years and in light of the divergence in topics covered by different tutors teaching Trusts. We would be grateful if these matters were taken into account by the Examiners in their marking.*

In addition, a number of informal complaints were received by the Chair of Examiners, both directly from candidates and through candidates' tutors. The Chair, in response to these complaints, sought the views of colleagues teaching Trusts on the paper, seeking to ascertain whether all the questions on the paper were on the Trust syllabus and whether there was a fair balance of questions on the paper giving all candidates an equal chance to complete it successfully. On the basis of responses received, the Chair prepared a detailed report which concluded that there had indeed been a potential problem in that not all students were taught tutorials on the law relating to charities. A knowledge of charity law was required for at least one out of four problem questions, with a second problem question involving a party that possessed charitable status (although no knowledge of actual charity law was required to answer that question satisfactorily). The report set out a number of options for the Board to respond should it find that there had indeed been a problem.

# **FHS Jurisprudence and Diploma in Legal Studies**

## **Examiners' Report 2018**

The Board took the view that, based on this investigation, it was clear that all of the topics on the paper were indeed on the syllabus, that there was a sufficient menu of choices and that there was no issue with the overall format of the paper. Moreover, the marks returned by markers (who had been informed about the complaints and bore them in mind during the marking of scripts) were in line with marks in previous years. It was therefore resolved that it would be unfair and unwarranted to change marks across the board, particularly since it was impossible to say how well or badly an individual candidate would have done had there been a different choice of questions. Nevertheless, the Board decided to scrutinise individual marks profiles very carefully, particularly where the Trusts mark would have made a difference to the overall classification.

### **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 2018, 33 such applications were received for FHS students, and one was received for a DLS student. This compares to 46 FHS applications and one DLS application in 2017.

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.

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 nine scripts, from five candidates, to be illegible. These scripts were brought to Exam Schools for typing, with the Colleges assisting in coordinating the transcription sessions. The cost of this transcription is covered by the students in question. This represents a decline in the number of illegible scripts, with 12 scripts needing to be typed for seven students in 2017.

#### ***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.



# **FHS Jurisprudence and Diploma in Legal Studies**

## **Examiners' Report 2018**

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**

For the most part, the database used for marks entry and report generation did not cause particular issues in 2018. However, there was an incident where a substantial amount of data that had been entered into the database from other sources did not automatically save as it should. As the data existed elsewhere, this was not a critical issue, and did not affect the students results or the conduct of the Examiners' meetings. It meant only that a day of processing time was lost.

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. Investigations are underway about replacing the database for future years.

### **External Examiners**

This year we had the valuable assistance of Dr J Murphy of Lancaster University (for his second year) and Prof Ben McFarlane of University College London (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. 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. However, in relation to the Diploma in Legal Studies, the Board noted that the application of this convention would result in the award of no Distinctions at all. It was noted that the convention, which required two out of three marks to be over 70 for the award of an overall Distinction, was markedly more demanding than the corresponding convention in relation to FHS candidates (requiring four out of nine marks over 70 for the award of a First Class). The Board therefore agreed to exercise its discretion to award Distinctions to those DLS candidates who achieved 70 in one paper, with an overall average mark of at least 65. It was resolved to propose to Examination Committee to make the convention less demanding for future years, along similar lines.

Generally 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.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

The Examiners, in the exercise of their discretion, decided to award a higher degree classification than they would otherwise have done in respect of two 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 were 27 subject prizes available for FHS students in 2017/18. 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 four of the compulsory private law papers. The winners of these prizes were also decided by the Examiners.

The prize winners were well spread across the University, with 23 students, coming from 15 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. This was the first year in which the excellent Julie Bass, who had previously run the examination process for a great many years, was not involved with the process at all. However, her successor, Gráinne de Bhulbh, has been extremely effective in the role and the Chair is particularly grateful to her. Every year's examination process has its own challenges and difficulties, but this year, owing to the complaints received in respect of the Trusts paper, has been particularly difficult. Gráinne navigated the troubled waters of Law Faculty politics with a calm and steady hand.

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

### FHS Course 1, BA Jurisprudence

	2018				2017				2016				2015			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	23	29	15	15	21	27	17	15	16	22	15	17	27	29	17	18
II.I	56	69	83	84	56	71	90	82	52	72	70	79	59	64	71	76
II.II	1	1			2	2	3	3	4	6	4	4	6	7	5	5
III																
Pass	1	1	1	1												
<b>Total</b>	81		99		79		110		72		89		92		93	

# FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018

## FHS Course 2, BA Law with Law Studies in Europe

	2018				2016				2015				2015			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	4	33	6	29	6	35	5	28	3	33	4	20	3	25	5	28
II.I	8	67	15	71	11	65	12	67	6	67	16	80	7	75	12	66
II.II							1	5							1	6
III																
Pass																
<b>Total</b>	12		21		17		18		9		20		12		18	

## FHS Course 1 and 2 combined

	2018				2017				2016				2015			
	Male		Female		Male		Female		Male		Female		Male		Female	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
I	27	29	21	17	27	28	22	17	19	23	19	17	30	29	22	20
II.I	64	69	98	82	67	70	102	80	58	72	86	79	68	65	83	74
II.II	1	1			2	2	4	3	4	5	4	4	6	5	6	5
III																
Pass	1	1	1	1												
<b>Total</b>	93		120		96		128		81		109		104		111	

## 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:

	2018	2017	2016	2015
Civil Dispute Resolution <sup>1</sup>	5			
Commercial Law	25	11	17	22
Company Law	2	20	10	18
Comparative Private Law	14	11	12	10
Competition Law and Policy	1	33	28	42
Constitutional Law	6	9	5	9

<sup>1</sup> New course in 2018

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

	2018	2017	2016	2015
Copyright, Patents and Allied Rights	34	29	22	22
Copyright, Trade Marks & Allied Rights	18	13	8	12
Criminal Law	6	5	5	9
Criminology and Criminal Justice	12	27	24	21
Environmental Law	3	6	9	4
Human Rights Law <sup>2</sup>	17	20	19	30
Family Law	60	49	29	51
History of English Law	3	2	5	2
International Trade	13	8	5	15
Labour Law	15	21	15	15
Media Law	28	1	20	12
Medical Law and Ethics <sup>3</sup>	73	78	47	44
Moral and Political Philosophy	24	34	18	26
Personal Property	2	17	13	16
Public International Law	41	46	39	40
Public International Law (Jessup Moot) <sup>4</sup>	3	4		
Roman Law (Delict)	7	9	18	9
Taxation Law	16	22	12	12

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<sup>5</sup>:

<sup>2</sup> Change of title in 2016

<sup>3</sup> New examination structure in 2017

<sup>4</sup> New course in 2017

<sup>5</sup> Papers not included on this list have not been taken by any DLS students for the last four years

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

	2018	2017	2016	2015
Administrative Law	1		2	
Company Law		6	6	6
Competition Law and Policy		5	3	6
Constitutional Law	3	5	5	
Contract	28	27	27	28
Copyright, Patents and Allied Rights	3	2	6	4
Copyright, Trademarks and Allied Rights	4	4	2	
Criminal Law	6		1	4
Criminology and Criminal Justice	4	2	2	2
Environmental Law	1			
European Union Law	5	8	7	7
Family Law				1
History of English Law	1			
Human Rights Law		4	5	5
Labour Law	2	3	2	1
Medical Law and Ethics	4	3		
Public International Law	9	5	3	10
Roman Law (Delict)		1		
Taxation Law	4			
Tort	23	23	22	26
Trusts	4	4	4	2

Students on the MJur programme have the option of taking one FHS paper as part of their graduate programme. In 2018, 24 students availed of this option.

	2018	2017	2016	2015
Administrative Law				1
Commercial Law			1	
Company Law		2	5	3
Constitutional Law				1
Contract	7	6	8	10
Copyright, Patents and Allied Rights	2		1	
Copyright, Trademarks and Allied Rights	1	1		
Environmental Law	1			
European Union Law	3			

## **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

History of English Law	1			
Human Rights Law	4	1	1	2
Land Law	1			
Personal Property		1		
Public International Law		1	1	1
Tort			1	4
Trusts	4	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.

## FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018

	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	215	0	9	13	11	20	31	6	8	1	0		
Contract	241	0	5	10	7	29	34	5	5	4			
European Union Law	217	0	6	16	9	34	29	1	2	2			
Jurisprudence	214	0	9	5	18	36	29	2	0	1			
Land Law	213	1	4	13	9	22	29	8	5	9		0	
Tort	236	0	6	14	11	34	27	3	2	3		0	0
Trusts	217	0	7	12	10	32	28	4	3	4			
Civil Dispute Resolution	5		20	40		20	20						
Commercial Law	25		8	8	8	24	28	4	8	8			4
Company Law	2			50		50							
Comparative Private Law	14		29	14	14		36		7				
Competition Law and Policy	1						100						
Constitutional Law	9		11	22	11	33	11	11					
Copyright, Patents and Allied Rights	37		3	19	11	35	24	3	3	3			
Copyright, Trade Marks and Allied Rights	22		5	9	9	36	32		5	5			
Criminal Law	12			17		8	58	8	8				
Criminology & Criminal Justice	16		13		13	50	13	6		6			
Environmental Law	4		25	25		25	25						
Family Law	60		3	27	13	35	20	2					
History of English Law	4		25		25	25	25						
Human Rights Law	17		24	35	24	18							

## FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018

	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
International Trade	13		23	31	15	8	8		15				
Labour Law	17		12	18	12	41	18						
Media Law	28		7	14	14	32	25		7				
Medical Law and Ethics	77		6	22	14	31	26						
Moral and Political Philosophy	24		17	21	17	29	13	4					
Personal Property	2			100									
PIL	50		6	18	4	30	24	4	8	4		2	
PIL Jessup Moot	3		67	33									
Roman Law (Delict)	7		14	29	29	14	14						
Taxation Law	20		10	20	10	35	20	5					



# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### D. Comments on papers and individual questions

#### Administrative Law

##### **General Comments**

215 candidates sat this paper. As ever, the standard was generally high, with **Q1**, **Q3**, **Q5** and **Q6** proving the most popular, and **Q10b** the least. Strong answers paid close attention to the question that had been asked, displayed good knowledge of relevant case law and academic arguments, and developed a clear position in response to the question. By contrast, general accounts of an area, paying little attention to the exact question asked, tended to attract middling marks

In 2017, the examiners reported their concern at a tendency to cite from lectures excessively and in inappropriate ways. This tendency unfortunately remained evident this year, and in addition some candidates seem to have memorised passages from the lectures and simply reproduced them. Similarly-structured paragraphs and even sentences were thus visible in the examination scripts concerned (as the scripts were written under examination conditions, prior memorisation is the only explanation). The examiners wish to state in the strongest terms that memorisation-and-reproduction of this type is inappropriate, and also that essays which follow the general pattern of lectures without further thought about the question are very unlikely to attract a strong mark. The Law Faculty might wish to think further about how these points could be made clear to candidates.

##### **Questions**

The strongest answers to **Q1** paid attention to the issue the essay was seeking to tease out, namely whether standing can be seen as an independent concept or whether it is merely a component part ('procedural' or otherwise) of the mechanisms in place for filtering out litigants. This required careful attention to relevant *dicta* and academic arguments. Weaker responses were more general.

In **Q3**, stronger candidates were able to give examples of unacceptable fetters of discretion before explaining why some (or most, or all) successful legitimate expectation claims did not fall within their remit. Good answers explored how far (if at all) substantive legitimate expectations might pose a greater danger of transgression than procedural ones. Some candidates also considered whether particular issues were raised in this context by expectations based on *ultra vires* assurances.

A pleasing number of answers to **Q5** sought to engage with the distinction drawn in Baroness Hale's *obiter dictum*. Strong answers went on to question how an 'ordinary administrative decision' might be identified and whether, should it be possible to distinguish such decisions from cases involving fundamental rights, a genuinely separate approach could be employed in each. However, a number of weaker candidates seemed unaware of developments in more recent Supreme Court cases (including *Keyu*, on the agreed reading list, from which the *obiter dictum* was drawn).

Rather too many answers to either part of **Q6** ignored the balance the question sought to get candidates to consider, or merely considered it in relation to the cases in which it is highlighted in text books. Better answers considered the balance across the whole terrain, and questioned what was meant by the 'right' balance. Stronger answers were also able to show how the distinction between errors of law and fact might itself be a mechanism for striking the balance posited in the question, whereas weaker candidates simply took the question as an opportunity to question the distinction concerned in general terms.

Turning to less popular questions, good answers to **Q8** either challenged the quote in the question title or tested it using analysis of the case law. Weaker answers ignored the quote or simply dismissed it. Stronger answers to **Q9** tried to identify whether there was a continuing point to the debate and, if so, what it might be. Weaker answers focused more generally on the debate's history. Strong

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

answers to **Q2** sought to consider the meaning of 'effective' accountability, whether by reference to the 'traffic light' debate or other literature, before examining the mechanisms concerned. Weaker answers tended to be general discussions. There were some very good discussions of improper purposes and irrelevant considerations in answer to **Q4**, but too few candidates took the chance to really link their analyses to the quote contained in the question.

**Q7** attracted a number of good answers in terms of the general debate about the appropriate tests for 'public'-ness, but more answers needed to focus on the specific and deliberately-focused query in the question about whether the much-criticised 'statutory foundation' test should be reinstated as a decisive criterion. Finally, there was a near-complete absence of answers to **Q10b**, but **Q10a** attracted some well-informed responses.

### Civil Dispute Resolution

This was the first year this option ran. 5 students sat the paper and the standard was impressively high. Several candidates demonstrated knowledge well beyond the reading list and all candidates engaged in critical reflection about the purpose and efficacy of the relevant rules and case law. 6 of the 10 questions on the exam paper were answered including one of the two problem questions. The questions on ADR, costs and funding, judicial bias and legal professional privilege were particularly popular and produced some excellent answers.

### Commercial Law

#### **General Comments**

This paper resulted in many good scripts, some outstanding, but also some rather weaker ones. The chief fault in the essay questions was, as is often the case, a failure to engage with the actual question posed. Many candidates scored more highly on the problem questions than the essay questions.

#### **Questions**

**Q1:** This was, perhaps surprisingly, not a very popular question. The best answers focused clearly on the question posed, and focused on the characterisation of *property* interests which had the effect of securing payment of an obligation, with good discussion of the characterisation of retention of title clauses, of structures such as sale and saleback or sale and leaseback, and (in a rather different vein) fixed and floating charges. Weaker answers tended to focus on characterisation which did not relate to property interests, such as the Supreme Court's approach to deciding whether an agreement was a contract of sale or not, in the *Bunkers* case.

**Q2:** This was not a very popular question, and attracted a mixed response. Better answers focused specifically on both parts of the question: is the stated purpose achieved and is more reform required?

**Q3:** This was a popular question, and attracted some very good answers which focused well on the ability of an anti-assignment clause to protect the debtor, as well as on the proprietary interest of the purported assignee. Some candidates, however, succumbed to the temptation to 'write all you know' about anti-assignment clauses, and, in particular, spent the whole answer discussing the *Barbados Trust* case without considering at all the other elements of protection that an anti-assignment clause may give to a debtor.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

**Q4:** This was not a popular question. It required a close analysis of both the remedies available under the Consumer Rights Act and a critical discussion of whether they would be advantageous to commercial parties.

**Q5:** This popular question required a discussion of both apparent authority and the scope and application of section 2(1), but also consideration of whether section 2(1) added anything to the rights of a claimant. This could include discussion of the requirement of holding out for apparent authority, section 2(2) (disposition after withdrawal of consent) or indeed the similarities between 'holding out' and mercantile agency.

**Q6:** This question required an answer which considered all options open to the financier in each situation (both 'true' security interests and quasi-security interests) with particular regard to protection against disposal by the financed business. Weaker answers failed to consider this latter point at all, and tended to focus on whether a fixed or floating charge would be most suitable with little consideration of quasi-security interests.

**Q7:** This was a popular question. Weaker answers failed to spot that there was no actual authority for any of the transactions, since Adali knew that they were not in Patricia's interest, and failed to discuss the significance, in terms of apparent authority, of Adali printing her own business cards. Few candidates spotted that part (c) required a discussion of *Hambro v Burnand*. Most candidates discussed the question of self-authorisation (which arose in part (d)) competently but only the better answers considered whether and how the facts could be distinguished from *First Energy*.

**Q8:** This question was very popular and was done well by many candidates. Weaker candidates did not structure their answers by considering the claim of different parties to each asset, and failed to work out what C (in particular) would be claiming, with the consequence that the treatment of the ROT clauses was far too extensive. Several candidates also misread the terms of the contract between S and C, and discussed at some length section 25 Sale of Goods Act in relation to the sales to X, Y and Z when in fact these were expressly authorised. There was some good discussion of what constituted a bulk, and of ascertainment by exhaustion.

**Q9:** This was, again, a very popular question, raising a number of different points in relation to sale of goods. Most candidates considered liability at all levels in the chain of contracts, and there was some pleasing discussion of the application of section 15A to the 'blue carrots' which were actually purple. The discussion of the application of section 14(3) to G's claim against J was also generally good, and most candidates discussed the application of UCTA to the limitation clause. Few candidates, however, picked up the contentious point raised by G's purchase of the crop-packaging machine, namely, whether G could reject the machine despite having (probably) acquired good title under section 24 Sale of Goods Act. The final point, the application of *Carlos Federspiel* to the sale of the watering machine, was generally well done.

**Q10:** This question was done by relatively few candidates, but attracted some excellent answers. The beset approach was to consider each asset separately, and, in each case, to identify the competing claims and their legal basis. By doing this, the relevant issues became clear, and the best answers were then able to discuss the complex questions of characterisation and priority clearly and effectively.

## Company Law

The Company Law course did not run in the 2017-18 academic year. Two students took the exam. The scripts were both double marked. The examination process was unproblematic.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### Comparative Private Law

This was the first year that this course has been examined by the submission of extended essays rather than traditional examination. The examiners consider that this new form of assessment has been very successful, with candidates being able to discuss the sources from the three laws and develop arguments in a sophisticated way not possible in a 3 hour paper.

All three of the possible questions offered to candidates were answered, with roughly the same number of candidates choosing the property topic as tackled one of the two obligations essays. Owing to the small numbers of candidates, this report will focus on general points rather than seeking to set out model answers to the questions, not least given that there were a number of ways in which the questions could properly be discussed.

Overall, the standard was very good indeed, with a number of outstandingly good essays. Better essays displayed the following attributes to a greater or lesser degree: attention to the particular question set; coherent and appropriate structure provided for the points made; clear, accurate and interesting use of the source material, with a fair balance between the three laws where relevant; appropriate referencing to the source material; and reflective comparison of the approaches taken by the three laws.

### Competition Law and Policy

The Course was not taught this year. The paper was taken by one student who attended the course in the previous academic year. The paper comprised eight questions, of which four were essay questions and four problem questions. The candidate was asked to answer four questions including at least two problem questions.

### Constitutional Law

Nine candidates took this paper overall and the general standard of scripts was high. Three students achieved first class marks, and the remainder scored in the upper second class band. **Q1** and **Q10** were the most popular, followed by **Q4**, **Q5**, and **Q7**. A majority of candidates answered one or more of these questions. They concerned Lord Steyn's conception of parliamentary sovereignty in *Jackson v Attorney General*, the appropriate use of s. 4 of the Human Rights Act 1998, constitutional statutes, codifying the British constitution, and constitutional conventions, respectively. Candidates seemed equally willing to answer discursive questions preceded by a quotation, as well as more specific questions. The strongest answers made a clear argument and drew upon detailed knowledge of case law, legislation, and academic literature in combination. Detailed knowledge of doctrine, which is often absent in this paper, was duly rewarded. No candidate answered **Q2** (on *Simms* and the common law protection of constitutional rights). Only one candidate attempted **Q3** (Parliamentary control of executive power), **Q6** (on *Miller* in the UK Supreme Court), and **Q9** (on Devolution).

### Contract

#### **General Comments**

The standard this year was generally good, with some excellent scripts. Many candidates showed a very good understanding of contract law and addressed questions accurately and by reference to the relevant authorities. As noted by earlier examiners' reports, some candidates were less able to discuss relevant legislation, especially consumer legislation, even to the extent that they did not identify the consumer law aspect of an essay or problem.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### Questions

**Q1:** This question required a description and an assessment of the present legal position as regards good faith in relation to both the conclusion and the performance of contracts. Candidates could answer by reference to areas of the law which expressly use the terminology of good faith and also discuss whether the law reflects good faith without using this terminology.

**Q2:** This question asked whether a promise to accept a lesser sum in full discharge of a debt *should* be legally enforceable, and, if so, invited discussion as to how this should be effected. This therefore required a discussion of the relevant law of consideration and also of promissory estoppel, drawing on the views of Lord Blackburn quoted. There were many excellent answers to this very popular question, showing a very good understanding of the relevant law and also of the views of scholars.

**Q3:** This question required consideration of the satisfactory (or otherwise) character of the law of duress and undue influence. This discussion could involve the issue whether or not there should be a distinction between duress and undue influence; whether the categories of undue influence should be retained; and whether the purposes of these laws (notably, the protection of consent or the sanctioning of bad behaviour) were effectively pursued. The question was generally answered well, but the vast majority of the answers did not also include discussion of the protection of consumers against "aggressive commercial practices" by Pt 4A of the Consumer Protection from Unfair Trading Regulations 2008.

**Q4:** This question required a critical assessment of the classic law of conditions, warranties and innominate terms, but better answers also included discussion of the use of express termination clauses and the significance of statutory rights of termination for breach of statutory terms (for example, in the Sale of Goods Act or the Consumer Rights Act 2015 Pt 1). The question was not very popular, but where it was answered it was answered well.

**Q5:** This question asked whether the identification of the "common intention of the parties" is the *sole* purpose of interpretation. A few candidates (properly) considered what is or could be meant by interpretation of the contract for this purpose (so as possibly to include the implication of terms), but most understood it to refer to the construction of express terms. This was a very popular question and attracted a number of very good and some outstanding answers, with candidates showing an excellent grasp of the relevant case-law and scholarly literature. The very best answers identified clearly other purposes of the interpretation of contracts and justified this by reference to authority.

**Q6:** This question required an explanation of the difference between the protection of the performance/expectation interest and the reliance interest (and their relationship) and also the various qualifications on recovery of damages based on these interests by the law governing particular heads of damage (for example, mental distress), remoteness of damage, mitigation and as seen in cases such as *Ruxley Electronics Ltd v Forsyth*. Better answers noted that the quotation is concerned with *compensatory* damages and therefore does not refer to punitive damages nor to monetary awards aimed at the reversal of the defendant's enrichment.

**Q7:** The proper starting-point of an answer to this essay was the modern role of specific performance under the general law, with reference in particular to its equitable and discretionary nature, to its relationship with damages, and the significance of contempt of court. It then required this role to be compared with the use of specific performance in the Consumer Rights Act 2015 Pt 1, where (in s.58) the court is given a power to order specific performance of the (secondary) obligations of the trader imposed by the Act as the corollary of the right to repair or replacement (goods contracts) and the right to repeat performance (services contracts). Such a comparison could involve consideration of the extent to which the normal understanding (and associated rules) of specific performance under the general law should be read into s.58 of the Act. This was a more difficult question and was not popular.

## **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

**Q8:** This problem question required candidates to distinguish between claims by A (who was clearly not a “consumer”) within contractual privity against her architect (B) and claims against the building contractors (C and D) under the Contracts (Rights of Third Parties) Act 1999. As between the two categories of claims, the latter were generally discussed well, with good discussions of the test of intention in s.1(1)(b) and (2) (and the relevance for this purpose of the printed term which had been struck out) and the question whether A had been sufficiently identified for the purposes of s.1(3) of the Act. In the case of claims by A against B, relatively few answers sought to identify the relevant terms of the contract between them (whether express or implied) nor the issue of their breach. In the case of both categories of claim, the problem required discussion of the remedies available for breach and, in particular, issues of the appropriate measure of damages, distinguishing for these purposes between the leaking roof and the tinted glass. Some of the better answers also identified the possibility of a claim in B (as promisee) for damages under *Alfred McAlpine Construction v Panatown* and the relationship between any such recovery by B and claims by A taking into account s.5 of the 1999 Act.

**Q9:** This was a very popular question and was generally well-answered, though a surprising number of candidates failed to see that (in part b) Geraint was a “trader” and Harriet a “consumer”. Part (a) required a relatively straightforward discussion of the general law of misrepresentation, both as regards rescission and damages. Better candidates also identified the possibility of a claim for breach of warranty (citing the clearly much-loved cases of *Oscar Chess* and *Dick Bentley Productions*) and saw its significance in terms of the measure of damages on the facts. On the other hand, a recurrent error was to view damages under s.2(2) of the Misrepresentation Act as an alternative to rescission at the choice of the representee, rather than being awarded only by the court and where rescission is inequitable. Part (b) required discussion of Harriet’s possible remedies as a consumer for breach of the statutory term in s.10 of the Consumer Rights Act and/or any right to redress under Pt 4A of the Consumer Protection from Unfair Trading Regulations 2008 and their differences from (and relationship to) her claims under the general law of misrepresentation, especially given s.2(4) of the Misrepresentation Act 1967. Better answers explored in detail the significance of these various remedies on the facts.

**Q10:** This very popular problem was concerned with the law of frustration but was also concerned with the law governing remedies for breach of contract. Most candidates structured their answers clearly, distinguishing the situations governed by the contract between I and J and then the contracts between J and his customers, K, L and M. In terms of the substance, there were some very good discussions of how the law of frustration may apply to these various contracts, but some candidates did not then see that, if a contract was not frustrated, then there would be issues of breach and remedies for breach. In terms of the effect of frustration, most candidates discussed the Law Reform (Frustrated Contracts) Act 1943, though some were confused as to the significance of “expenses” for this purpose, and some mischaracterised claims under the Act as claims for “damages”.

**Q11:** This problem was generally well-handled by candidates, who identified the possible claims by the parties, the significance for these claims of the four contract terms set out by the question and how these terms may be controlled by the law. As regards the relationship between DC and P, the first question (seen by relatively few) was whether the latter was in breach of an implied term in the contract by making the offensive joke; even fewer then considered whether any such breach justified DC in terminating P’s contract. If P was in breach, then clause (i) (and its possible control under s.3 of the Unfair Contract Terms Act 1977) became relevant; if P was not in breach or otherwise DC’s termination was not justified, then clause (ii) becomes significant subject to the law of penalties as set out in *Cavendish Square Holding v El Makdessi*. In the case of the contracts between DC and the two ball-goers, most candidates identified the latter as consumers and therefore discussed the relevance of s.62 of the Consumer Rights Act 2015 to the validity of clauses (a) and (b); some also noted the possible relevance (for O’s claim) of ss. 50 and 57 of the 2015 Act. Discussion of the nature and measure of damages (if available) for O and R were also discussed.

**Q12:** This was a very popular question, and many candidates identified the issues of offer, acceptance and the possible revocation of acceptance clearly, accurately and with appropriate

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

reference to the authorities. Better answers referred to the arguments for or against different positions as regards the proper test for communication of T's acceptance (and her possibly overtaking revocation of acceptance) with reference to the journal literature. If a contract had been concluded between S and T as a matter of agreement, a number of possible arguments could be raised by T to allow her to escape a contract which she no longer desires. These included (depending on the possible facts) common fundamental mistake, unilateral mistake, and misrepresentation (on the basis that S's statement as to the coin was true but in the context misleading). Some candidates saw that T was a consumer and S a trader and that therefore T could have a right to redress against S in respect of his alleged misleading action under the 2008 Regulations or (less likely) a claim for breach of the statutory term in s.11 of the 2015 Act.

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

60 candidates took one of the two papers on intellectual property law this year, with 38 taking the patents strand, and 22 taking the trademarks strand. Nine students achieved a first class mark.

Candidates are reminded of the importance of adhering to the rubric of the exam paper, as failure to do so can lead to heavy penalties.

### Criminal Law

Criminal Law is a subject that requires careful attention to detail, a solid knowledge of the specific rules applicable to different offences and defences and a methodical, detailed and accurate approach to the answering of problem questions. It is increasingly apparent that this is not particularly compatible with the time constraints of studying criminal law as part of either the second BA or the Diploma in Legal Studies, and the overall quality of the papers this year was very weak.

The examiners would also like to remind candidates that time in the exam is very precious and that it is not necessary to write out the essay questions nor to underline sub-headings in different colours or to use tip-ex etc. to correct mistakes.

### Questions

#### Part A

**Q1:** There were some good answers to this question which engaged both with the extensive academic literature (Smith, Norrie, Williams, Pedain etc) and with the details of the ruling in *Woollin* (spelled correctly) as well as other relevant cases such as *Matthews and Alleyne* and *Re A*. However, a lot of weaker answers waffled generally about how intent should usually be left to the jury and referred to vague concepts such as 'fair labelling' or 'fair warning' without being specific about how or why they were engaged, and without dealing with the academic commentary and case law described above.

**Q2:** This was a popular question and stronger candidates were able to contrast the reluctance to criminalise potentially non-consensual sexual contact in instances of deception with the highly protective nature of the law relating to consent to injury following *R v Brown*. However, a number of weaker scripts were confused about the specific details of the deception case law, eliding ss. 76 and 74 SOA 2003, and misunderstanding either which cases were most authoritative (citing *Devonald* rather than *Jheeta*) or what precisely the cases had said. Some candidates did not identify this second area of law as being relevant at all.

## FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018

**Q3:** This was also a popular question but it was a good illustration of the need to fulfil the requirement to pay careful attention to the question asked. Stronger candidates both established whether the current case law does distinguish justifications from excuses *and* whether this matters in practice, citing specific examples such as the duty to assist or resist, the rationality of partial as opposed to full defences, the objectivity of assessments of 'reasonableness' etc, while other, weaker answers just vaguely discussed the lack of a distinction in the existing law.

**Q4:** No candidate answered this question

**Q5:** This was not a particularly popular question. Stronger answers required a detailed knowledge of both the case law of inchoate offences and the theoretical discussions concerning the harm principle, while weaker answers tended just to waffle generally about the harm principle and to cite some vague case law.

**Q6:** Again, this question required careful attention to the specific issue raised. A number of candidates gave basic low level 2:1 answers to the question 'is the law of accessory liability better or worse after *Jogee*?' but only one or two engaged with the actual question of how the practical operation of the law might be related to an understanding of its underlying theoretical basis.

**Q7:** Good answers were able to contrast developments such as the Serious Crime Act 2007 with the development of the law relating to transmission of disease in *Dica* and were also able to engage with the underlying differences, advantages and disadvantages of the two methods of law reform.

### Part B

**Q8:** This was a popular question which required a detailed and accurate understanding of the law of causation as well as the law of homicide and offences against the person. A surprising number of candidates failed to note the *Gnango* transferred malice issue in the first section of the problem and there was a worrying lack of grasp of the detailed application of the rules of causation. A number of candidates were not clear on the specifics of 'involuntary manslaughter' and failed to notice that because there was foresight of an electric shock cases such as *Dawson* and *Watson* (dealing only with foreseeable psychiatric injury) were not relevant. A worrying number of candidates also failed to notice the intervening act of A choosing to shock himself in the last section of the problem.

**Q9:** This was not a particularly popular question. The first section required a detailed understanding of the mens rea for conspiracy including *Saik*, as well as the Serious Crime Act 2007. The rest of the problem required an understanding of both the Accessories and Abettors Act 1861 and the law of attempts. It also required candidates to address situations in which D2 has greater mens rea than D1 in both the AAA and SCA contexts, but very few candidates did this and in general the grasp of the law of inchoate offences was weak.

**Q10:** This was another popular question which required a detailed knowledge and application of the law concerning both sexual and non-sexual offences against the person. A worryingly large number of candidates assumed that because previous disease transmission cases had involved GBH (*Dica* etc), this was the only potentially relevant offence against the person, notwithstanding the fact that the facts clearly indicate the short duration and less serious nature of H's infection. Even those candidates who did identify ABH as being relevant failed then to deal with the question of whether there was an assault/battery occasioning it. Very few candidates noticed that in addition to I being liable for infecting H there was a s. 3 SOA 2003 issue regarding H in relation to I. Stronger candidates identified arson, murder, transferred malice and the loss of self control defence (inapplicable) in the latter half of the problem, but no candidates noticed that there was also a transferred malice issue, raising *AG's Ref 3/94*. Weaker candidates spent a long time discussing constructive manslaughter and an oddly large number of candidates tried to charge attempted criminal damage notwithstanding the fact that H succeeded in setting fire to a wheelie bin. A number of candidates also simply



# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

assumed without the necessary discussion that H could be charged with the attempted murder of J notwithstanding the fact that he had succeeded in killing K instead.

**Q11:** This was also a popular question which required detailed knowledge of the law of incapacity. A large number of candidates spent an unnecessarily long time on the more obvious aspects of the problem such as whether or not L had had sex with M (clearly yes) and whether M had consented (clearly no). Discussion of insanity in this context was generally good and some stronger candidates applied the decision in *R v B*, but the question of 'wrongness' in the defence of insanity escaped many candidates in weaker answers. Very few answers dealt with questions of therapeutic as opposed to voluntary, recreational intoxication and very few answers referred to (or applied accurately) the decision in *Jaggard v Dickinson*. Several answers failed to notice that there were two potential counts of criminal damage (one against L's own bike and one against N's) or to raise the potential charge of attempted criminal damage in relation to the damage to his own. There was no widespread grasp of or ability to apply the decision in *Lipman* to the last section of the problem and very few answers identified murder as a specific intent offence. Overall this was probably the problem question where a lack of a detailed understanding and grasp of the relevant rules and an inability to apply them accurately to the facts (even when those facts were distinguishable from the original case law) really reduced the marks received.

### Criminology and Criminal Justice

Again this year, the scripts were of a high quality. Without making a direct statistical comparison they came close to last year's distribution, and the 2017 scripts had been the best in several years. Consistent with the guidance the students were given in the revision and exam preparation class, the answers attracting the top marks had laid out a clear and direct answer to the specific question posed. Similarly, the weaker responses lacked a clear answer to the question posed on the exam, or addressed a different question. The best answers also managed to combine references to law and the empirical research which had been discussed in the FHS lectures, classes and tutorials as well as the assigned readings for this option. Two of the twelve questions posed, one on discrimination in the criminal justice system and the other on sentencing attracted a higher proportion of responses. The attraction of the former may be explained by the fact that this issue cuts across several topics discussed on the option, in both lectures and classes. There was a good dispersion of the marks, and the responses to the questions, although as with most years there was a cluster of marks in the mid-60s. There was only one weaker script and several strong answers with one achieving a strong distinction. Agreement was high between the examiners

### Environmental Law

Five students sat this paper including one DLS and one MJur student. Overall, the quality of answers was very good. There was also a diverse choice of questions picked (including non-compulsory problem questions) which is evidence that students are engaging with the whole course. The best answers really engaged with the questions and displayed an in-depth and nimble knowledge of the legal material and the issues that it raised.

### European Union Law

#### **General remarks**

Overall, we saw solid answers that evidenced a good grip and understanding of the subject, even if the level of legal detail varied across the scripts. All questions were answered although there was some clustering around **Q4**, **Q5**, **Q6**, **Q7**. Questions based on citations – e.g. **Q4** and **Q6** – were often

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

answered without engaging with the quote, which, however, meant that there was limited engagement with the question asked. Problem questions were unpopular but students who attempted these did very well.

### Questions

**Q1:** This question concerns subsidiarity and constitutional limits on EU's law-making powers. Weak answers identified only a legal or political constitutional safeguard but not both and offered limited or no discussion about the second part of the question. Mid-range answers critically engaged with the broad concept and application of decision-making competences; examined the relevant case law and discussed both political and legal safeguards, as well as their strengths and weaknesses. Strongest answers considered insights that can be gained from this exercise, as well as the distinct roles exercised by courts and parliaments in this context; carefully unpacked *Philip Morris*, and looked at possible alternatives as outlined in the secondary literature on the reading list.

**Q2:** This question has three parts, which weaker answers tended to overlook. Mid-range scripts skilfully engaged with the case law, explained how and why general principles are entrusted a range of different roles in EU law (tying the question also to supremacy and legitimacy of the EU legal order) and how the identification of these has not been a straightforward judicial exercise. Here the changes brought about by the Charter required thoughtful analysis. Stronger answers were able to point to a different set of ambiguous arising under the Charter, including determining the Charter's applicability, which called for a debate on *Fransson* and *Tele2*, as well as secondary literature from the reading list.

**Q3:** This was a fairly popular question. Weak scripts provided generalised answers, or/and failed to engage with the question. Mid-range scripts carefully examined Article 267 TFEU, explained the various roles enjoyed by the national and EU courts under the provision and tied the discussion to the development of the relevant case law, including *Köbler* and *Ferreira da Silva e Brito*. Stronger answers critically assessed the notion of 'cooperation', how it relates to supremacy and reflected on possible legal implications when cooperation of the type identified fails.

**Q4:** This was a very popular question but scripts that were outstanding were limited. All too often pre-recorded answers were produced that showed limited or no engagement with the question asked. Mid-range answers managed to position the quote in the relevant legal debates, and outline the various instances when an individual could enforce directives before national public bodies. Strong answers critically assessed the notion of 'consistency' and structured their analysis accordingly. Scripts that covered *Farell*, as well as AG Sharpston and AG Jacobs' call for change were awarded accordingly.

**Q5:** This was another popular question; weaker answers had a quick run through the relevant case law but showed limited or no understanding of it and failed to engage with the question asked. Stronger answers showed a deep understanding of the relevant jurisprudence – both from the national courts and the CJEU, while top scripts provided careful analysis in particular on the second part of the question and examined legal pluralism; legitimacy of the EU legal order; and ultimately sovereignty.

**Q6:** Here, the quote demands a discussion about the idea that Bobek suggests, which is that national procedural autonomy does not exist once the commitment to EU law, or legal pluralism is set out. The weaker answer, of which there were not many, failed to identify this, or to unpack the question. The stronger answers engaged with the relevant cases and secondary literature in explaining why the view outlined by Bobek is or isn't a useful way to imagine national procedures.

**Q7:** This was another popular question where the weaker answers failed to engage with the question and instead simply pencilled all they know about standing of individual applicants in EU law. Stronger scripts engaged with the case law; Article 47 of the Charter and examined what had changed, if at all,

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

under these legal revisions. The strongest scripts reflected on the legitimacy question and its relationship with broadening judicial review.

**Q8:** This was not a popular question but students who attempted it did well. Strong answers examined the type of justifications that are allowed under the free movement provisions and based on this, reflecting on the legal nature of the internal market and its values. Strongest scripts examined case law across all four freedoms, as well as discussed relevant primacy law provisions (eg Art 3 TEU) and values that the EU, through the market, seeks to fulfil.

**Q9:** Many overlooked the fact that the first part of the question – whether Phantasia can demand that chocolates are sold in specific shops – is an internal situation to which EU law does not apply. In examining the second and third part of part of the question – regarding Mania's and Coco-Loco's law's – strong answers examined the applicability of Art 34 TFEU through *Keck*, and *Commission v Italy* and *Jet-Ski*, and then moved to assess the possibility to justify such restriction based on Art 36 TFEU (subject to the proportionality test), and the Cassis-justifications. With regard to the labelling restriction, strong cases discussed *Gourmet*, *Douwe Egberts* and *Scotch Whiskey*. In the final part – regarding Orangeria's laws – Articles 45 and 49 TFEU were discussed, as well as Article 16 of the Charter.

**Q10:** This was not a popular question but students who attempted it did very well. Strong scripts evidenced great understanding of the citizenship directive and the case law, which, for the first part of the question meant examining, cases including *Rudy Grzelczyk*, *Baumbast* and *Dany Bidar*. The second part of the question – whether the university can deny Ygritte access to the university gym free of charge on the basis that she is not a national of Winterland – involved discussions on the applicability of citizenship and free movement provisions in private disputes (in the case the university was identified as a private institution), as well as an assessment of Article 18 TEU. The final part of the question was generally thoroughly analysed by assessing first whether Jon and Ygritte could rely on a *Carpenter*-type of scenario where Ygritte qualifies as a service provider, enabling Jon to stay as her partner, or/and as the father of Ygritte's future child. The latter point involved examining eg *Zambrano*, and *Dereci* and distinguish these from the current scenario.

## Family Law

### General Comments

This year's cohort was generally strong, with an impressive number of excellent scripts and very few weaker papers. With that in mind, the following comments focus primarily on identifying weaknesses to assist current and future candidates. Every question received a good number of answers, with **Q1** (civil partnership and marriage) and **Q9** (biology and parenthood) the most popular.

There were four general weaknesses that emerged during marking, which future candidates would do well to bear in mind. Firstly, there were too many topical essays that did not answer the specific question set. For example, some candidates treated **Q1** as a general question on marriage without sufficient focus on civil partnership. Secondly, answers containing interesting arguments were let down by simply not engaging enough with the legal material covered on the course. Thirdly, answers inaccurately recounted the critical facts and/or reasoning of the leading case(s) for the question selected. Key examples were as follows: **Q1** – *Steinfeld*; **Q3** – *Re J*; **Q9** – *Re G* and *Leeds Teaching Hospital*; **Q10** – *Gillick*; **Q11** – *Radmacher*. Finally, a number of answers were entirely silent on the leading case(s) for the question selected, where such lack of discussion inhibited the candidate's ability to answer the question. Two prominent examples were **Q1** – *Steinfeld* – and **Q8** – *Owens*.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### Questions

**Q1 (civil partnership and marriage):** As noted, weaker answers tended to comprise topical essays on marriage, and not to engage with *Steinfeld* and its discrimination arguments. There was also a disappointing tendency to approach marriage as necessarily religious, overlooking the role of civil marriage. Stronger answers discussed specific legal differences between civil partnership and marriage, as well as the differences that persisted in the form of marriage extended to same-sex couples. Better answers were more tightly focused on the debate over the abolition, closure to new entrants, or extension of civil partnership, and the potential impact of each option of marriage.

**Q2 (child arrangements orders):** Whilst relatively easy to do moderately well, fewer candidates produced stronger answers. To do well, candidates needed to develop their own criteria against which "success" could be measured, and then to evaluate the introduction of CAOs. Criteria for success, for example, might have included considering matters from the child's and adults' perspective, in relation to both substantive changes as well as the impact of the new language. Whilst the reforms in s1(2A)-(2B) Children Act 1989 were relevant, candidates needed not to assume their relevance but to explain how the CAO regime affected the potential impact of the presumption.

**Q3 (child protection):** A good number of answers demonstrated that candidates had reflected on the course materials and developed their own perspective on the significance of different features of the system in contributing to any larger failings. Stronger answers discussed issues such as the rise in the number of care applications (and possible explanations); current interpretation and application of the s31 Children Act 1989 threshold; the relationship between Part III and Part IV of the Act; outcomes for children in care; and cultural concessions and the over-representation of children from particular ethnic minority groups. Stronger answers also focused more precisely on the question, considering the aims of the system and the shortcomings as relative to these aims in terms of "intractability".

**Q4 (domestic abuse):** Answers to this question were somewhat mixed in quality. In particular, there was surprisingly little discussion of the reforms in the Serious Crime Act 2015. Indeed, a number of candidates argued for introducing recognition of "coercive" and/or "controlling" behavior as if the reforms had not been enacted. Otherwise, stronger candidates separated out the "necessity" and the "desirability" of reform, and a good number considered whether the language of "domestic" was more problematic than the debate over "violence" or "abuse".

**Q5 (financial orders):** This question proved more challenging than anticipated. Even good candidates sometimes struggled to accurately define and differentiate a "distributive" approach from a "redistributive" one. The former denotes entitlement, whereas the latter signifies supplication. Few candidates noted the current legal regime's three "distributive principles", and considered whether each of the principles is accurately termed such. Stronger answers drew on both the detail of s25 Matrimonial Causes Act 1973 and case law as evidence for a particular view of the regime, including such matters as s28 and termination of maintenance upon remarriage, and separation of assets and the reasoning in *Sharp*. In terms of whether the characterization of the regime matters, better candidates considered issues such as the ramifications for reform to maintenance and restricting maintenance to needs, the appropriate role for nuptial agreements, and the impact on how non-financial contributions should be treated.

**Q6 (statutory interpretation):** This question required candidates to consider whether there is a distinctive approach taken to statutory interpretation in family law. A good number of students focused on the difficulties created by the discretionary nature of critical family law statutes, and related this to the justifiability and viability of the aim of individualized justice. The best answers moved beyond discussion of s25 Matrimonial Causes Act 1973 and s1 Children Act 1989, and both discussed provisions such as s54 Human Fertilisation and Embryology Act 2008 and s31(2) Children Act 1989 and sought to draw broader conclusions on the issue of distinctiveness.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

**Q7 (sources of children's rights):** This question was generally well-answered, with candidates displaying a good knowledge of both the CRC and the ECHR as it applies to children, as well as the occasional discussion of other international instruments. Weaker candidates confined their answers to judicial decision-making, whereas stronger candidates considered non-judicial matters such as the broader impact of these instruments on establishing standards of children's rights and child rights impact assessments. Weaker answers also tended to be more descriptive and topical, and less focused on assessing the "importance" of international instruments.

**Q8 (divorce):** This question was more poorly handled than expected. Too many candidates did not engage at all with the detail of the excerpt in the question, but simply took it as an opportunity to present a topical, pre-prepared essay on divorce reform, without evidencing an understanding of detail of the judgments in *Owens*. Better candidates noted that the current law technically is 'no fault' if we maintain a strict distinction between the sole ground and the five facts, and cited the relevant legislative provisions. Stronger answers considered matters such as whether marriage would be undermined by the introduction of true 'no fault' divorce; whether there are any state interests that militate against unilateral divorce on demand; and how this debate fits with the extent to which individuals already can regulate aspects of their marriage, in terms of formalities or substantive consequences.

**Q9 (biology and parenthood):** Candidates needed to discuss both legal parental status and parental responsibility in order to do well. Weaker candidates tended not to discuss the statutory provisions either at all or to any extent. There was also apparent confusion by some regarding the nature of parental responsibility and eligibility to apply for a parental responsibility order. A surprising number of candidates seemed to think that there persists a status of legitimate / illegitimate children. Better candidates took a more nuanced approach to "biology" and considered separately the ongoing significance of gestation, genetics, etc. whereas weaker students tended to conflate genetics and biology, and then contrast this understanding of biology with gestation. Stronger candidates also made sure to discuss both the common law and statutory contexts, drawing together insights from the standard cases and more recent developments in relation to surrogacy.

**Q10 (childhood):** Answers to this question was rather mixed in quality, not least because some candidates took this as an opportunity to present a thematic essay on children's rights and welfare without focusing on the precise question asked about the current conception of childhood. Better candidates presented original, thoughtful perspectives on the current conception, as well as taking their own view as to what qualified as "justifiable" legal regulation.

**Q11 (nuptial agreements):** Aside from some surprising inaccuracies regarding the Supreme Court's decision in *Radmacher* (including the suggestion that the majority held nuptial agreements to be binding or enforceable), weaker candidates tended to overlook the arguments and conclusion reached in Law Com 343. Stronger candidates discussed matters such as whether the same approach should be taken to nuptial agreements as to civil partnership agreements; how the argument from autonomy should be weighed against the argument from certainty; how the law should respond to gender-based concerns; what impact "binding" agreements might have on the cohabitation and its legal regulation, and what it means for agreements to be "binding" in the family law context.

**Q12 (gender):** To do well, candidates needed to discuss both family law and the family justice system. Weaker candidates tended to focus exclusively on the former, as well as to conflate gender and sex with no discussion of how the two might differ and why that might be important. Stronger candidates discussed a good range of contexts so as to underpin either broader conclusions or insightful contrasts between contexts, including: the impact of the Gender Recognition Act 2004 on various domains; nullity in relation to marriage and civil partnership; financial orders and the role of contributions and compensation; the routes to acquisition of legal parental status, and the treatment of the "second female parent"; child arrangements orders and the presumption of spending time with both parents, as well as the treatment of transgender parents (eg. *J v B*); and the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on the legal response to domestic violence.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### History of English Law

Five candidates took the examination, comprising three FHS students, plus one MJur and one Diploma student each. One took a first class grade, with the remainder spread across the 2.1 range, mainly grouped towards higher upper seconds. All papers exhibited close attention to the subject and admirable engagement with a wide range of ideas.

Questions on the sources of law were relatively popular this year, with two candidates attempting the question on precedent and one each those on treatises, and on the role of statutes in common law development. The attempts were on the whole competent but would have benefitted from some comparative engagement with civilian sources and with modern debates, if only to show that the past can be a foreign country.

Two candidates attempted the land law question on feudalism, one that on estates and family settlements, and none that on leasehold. These questions tended to be rather superficially handled.

The question on uses and trusts attracted some excellent discussions, though there was some imbalance in the discussion of pre- and post-1500 materials; more information on the run-up and aftermath of the Statute of Uses would have been welcome, as directly elicited by the form of the question.

Three candidates attempted the tort law questions on nuisance - very successfully - and one that on actions on the case and the rise of the negligence concept.

Among the contract questions, three candidates attempted the question on the rise of assumpsit, with some weaker attempts not fully addressing the problem of concurrent liabilities. Two attempted the question on the origins of the doctrine of consideration, both strong; there were no attempts on the 'classical contract law' question.

All in all, this was a good year for the subject, though perhaps more intensity of learning and analysis might have been hoped for. The constraints of a three-hour exam in a reflective essay-oriented subject may partly explain the sense of the examiners that tutorial work was often at a considerably higher standard than that proffered in exam conditions.

### Human Rights Law

Candidates did very well in this paper, with 12 firsts out of 22 scripts. Of the remaining scripts, seven candidates got 66 or above, two candidates obtained a low 2:1, and one candidate failed.

Generally, the candidates who obtained first class marks used a wide range of sources within a well-structured and clearly argued framework. The candidates in the upper 2:1 range did less well on one of these factors, had gaps in their knowledge or were just a little too superficial in their coverage. The candidates in the lower range often made general and unsubstantiated assertions, confusing opinion for argument, or their basic knowledge was thin. There were no specific issues that stood out in relation to the essay questions, and generally, candidates were very well rewarded when they chose the problem question in **Q10**.

Overall, a very impressive year in this subject.

### International Trade

There were thirteen candidates for the paper in International Trade and the standard of the answers was high. Seven were awarded marks of 70 or more.

# **FHS Jurisprudence and Diploma in Legal Studies**

## **Examiners' Report 2018**

As now seems to be the norm, most candidates preferred to answer more than the obligatory two problem questions.

Among the essays, the question on deviation (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 deviation. There were very few attempts to answer the other essay questions, including none at all for Q5 (Action for the Price).

As for the problems, very few candidates attempted Q8 (risk; breach; seaworthiness). Other answers were fairly evenly spread among the other problems. The highest marks were awarded to answers which exhibited the clarity of analysis and organisation needed to avoid confusing the claims which may be made in the overlapping contracts which are often in play in overseas sales.

The main weakness in answers which attracted lower marks was, as ever, not paying sufficiently close attention to the question set. In the answers to the problems this occasionally led to entire issues being overlooked altogether.

### **Jurisprudence**

#### **General Comments**

On the whole, candidates exhibited a high standard of work in tackling the questions on this year's Jurisprudence paper. A higher proportion of candidates than usual paid very good attention to the specific question set, and some of the best answers exhibited acute and thoughtful focus in this regard. Answers appeared to be more evenly spread between questions than in some previous years, with all 10 questions on the paper being attempted by candidates, although a significant number of candidates restricted their focus to the issues raised by **Q1** and **Q9** (see below for discussion of individual questions). **Q1**, **Q6**, **Q7**, and **Q9** proved particularly popular, and a number of candidates attempted **Q3**, **Q5** and **Q8**. Fewer candidates attempted **Q2**, **Q4** and **Q10**, but some of those who did produced excellent and thoughtful answers. Almost all candidates understood the issues and theories they wrote about well; the best answers moved beyond capable and thorough discussion of those theories to offer thoughtful, analytically precise, and creative ideas of their own. Stronger answers tended to make good use of examples to illustrate and defend points, including examples drawn from other areas of their legal studies. It was encouraging to read the work of candidates who were not content merely with charting a safe course through the examination, and who were keen to wrestle with challenging and difficult issues in their answers. Such intellectually ambitious wrestling was rewarded.

#### **Questions**

##### **Q1: Could a moral obligation to obey the law vary from person to person?**

This proved to be a popular question and, happily, the majority of answers tackled the specific question set. Raz's work was frequently but not always precisely employed in answers, and for some candidates, giving an extended exposition of various legal philosophers' views came at the expense of adequate development and defence of their own views. The best answers considered carefully the various possible senses in which there could be person to person variability in the moral obligation to obey the law: eg variability as to the presence, strength, defeasibility, and the source of the obligation, and then used these reflections in developing a distinctive view of the candidate's own.

##### **Q2: Do judges need a theory of law to identify the legal rights and duties of the parties to a case?**

Relatively few candidates attempted this question, and, unfortunately, some of those who did paid inadequate attention to the main issue it raises, ie whether a *theory of law* is needed as regards those aspects of adjudication to which the question refers. Few candidates answered this question taking

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

the views of Dworkin as their main focus, which was surprising given Dworkin's views on uniting jurisprudence and adjudication. Better answers drew thoughtfully on their legal studies in a variety of subjects to provide illuminating examples of how judges identify litigants' legal rights and duties.

### **Q3: If a legal system conforms to the rule of law, does that make it a good legal system?**

A good number of candidates attempted this question, and most of them offered knowledgeable and thoughtful responses to it. Although some answers failed to move significantly beyond consideration of the alleged formal/substantive distinction in understanding the rule of law, many offered nuanced and subtle reflections on recent work on this topic by, amongst others, Simmonds, Kramer, and Waldron. Some of the best answers gave in-depth consideration to the various senses of "good" which might be relevant here, and used concrete examples effectively as a testing ground in developing a thesis of their own.

### **Q4: To what extent, if any, should a general theory of law facilitate moral criticism of the law?**

Relatively few candidates attempted this question, but several of those who did offered thoughtful and nuanced answers which analysed well the difference between a general theory of law *itself offering* moral criticism of the law, and a general theory of law *facilitating* moral criticism of the law.

### **Q5: 'Law's attitude is constructive: it aims, in the interpretive spirit, to lay principle over practice to show the best route to a better future, keeping the right faith with the past. It is, finally, a fraternal attitude, an expression of how we are united in community though divided in project, interest, and conviction' (DWORKIN). Discuss.**

The best answers to this question focussed on the particular words of, and issues raised by, the quotation, including the relation between Dworkin's understanding of law as an interpretive concept, and his views in respect of political obligation. Weaker answers discussed various aspects of Dworkin's views, but did not adequately attempt to tie these discussions to the specific points the quotation raises.

### **Q6: Is submitting to the authority of law incompatible with living an autonomous life?**

This was a popular question, with most answers offering an adept handling of the relevant issues and surrounding theoretical literature. The strongest answers displayed acute focus on the specific words of the question set, and interrogated with skill and precision what it means to submit to authority, and what truly constitutes autonomy, and the living of an autonomous life. Some thoughtful answers drew on candidates' studies in medical law, and in feminist jurisprudence, in considering various issues surrounding autonomous choice.

### **Q7: 'Is it possible for there to be a legal system in force which does not provide for sanctions or which does not authorize their enforcement by force? The answer seems to be that it is humanly impossible but logically possible' (RAZ). Discuss.**

This question was reasonably popular, and many answers drew well on material from across the breadth of the course in the course of tackling it. Some answers used knowledge of public international law to good effect here. The strongest answers considered what differences there might be between providing for sanctions and authorizing their enforcement by force, and also wrestled with both the character, and the point, of the alleged distinction between human possibility and logical possibility.

### **Q8: Must law be understood from the point of view of those who participate in a legal system?**

Although not one of the most popular questions, a fair number of candidates attempted it, and most of those who did offered thoughtful answers which were well-attuned to the methodological aspects of the issues it raises.

### **Q9: To what extent, if any, should a government use law to help its citizens become better human beings?**

This was a very popular question, and on the whole was answered well, revealing candidates to have thorough knowledge of the issues, and the theoretical approaches, relevant to it. Stronger answers considered what 'better' might mean in this context, and what might be the relevance of, and the limits



# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

of 'helping', rather than other possible modes of governmental action. Strong answers also made excellent use of contemporary and historical concrete examples from a variety of jurisdictions in developing and defending a distinctive thesis.

### **Q10: Is every law part of a legal system? Is any law part of more than one legal system?**

Very few candidates attempted this question, but those who did tended to offer thoughtful and creative answers to it which were admirably full of independent thought and critical analysis. Some of the strongest answers used examples drawn from public international law and from European Union law to reflect on the possibility of laws belonging to more than one legal system, and on the issues of how we identify which legal system(s) laws might belong to, and why that might matter.

## Labour Law

The quality of the scripts for this year's Labour Law course was good overall. There were a number of very strong scripts, and all candidates attained at least a good 2.1 mark. 17 candidates took the Labour Law paper this year, with five awarded a First class mark.

In general, the candidates displayed a sound and accurate understanding of the law and had clearly engaged well with the secondary literature to develop their viewpoints. The strongest candidates were able to put forward their own viewpoint, rather than relying on quotations and analysis from eminent authors. Attention to the specific question set was rewarded, whilst weaker candidates gave generic answers that were not tailored to the particular terms of the question. **Q1** and **Q2** (human rights), **Q4** (implied obligations) and **Q7** (regulation of pay and conditions) received very few responses. All of the other questions received a good number of answers. The questions that were very popular were **Q3b** (mutuality of obligation), **Q5** (unfair dismissal), **Q6** (common law development) and **Q10** (regulation of trade union membership).

**Q3b:** candidates were well-prepared for a question regarding the tests for 'employee' and 'worker' status. Strong answers to this question both queried the existence of the requirement of 'mutuality' at all and also analysed its transfer to other statutory concepts. Weaker answers tended to demonstrate some confusion regarding the complex and overlapping case-law in this area.

**Q5:** most candidates scored well on this answer. The best candidates offered a broad coverage of a variety of aspects of unfair dismissal law. Weaker answers offered only critique of the 'range of reasonable responses' in answer to the question.

**Q6:** this question received some very strong answers and all candidates demonstrated a solid grasp of the case-law. The best answers explained clearly the origins of the statement regarding the constitutional issues of developing unfair dismissal law and drew on the extensive academic commentary to inform their own analysis of the statement. Weaker candidates offered a general commentary on the pitfalls and problems with the *Johnson* exclusion zone.

**Q10:** many candidates answered this question by reference to the different roles of a trade union, which could form a good starting point. Good candidates demonstrated clear command of the statutory regulation and Strasbourg decisions, as well as offering interesting ways in which the regulation of trade unions could be reformed.

## Land Law

### **General Comments**

Overall, the standard this year was satisfactory. While there were fewer very bad answers than in previous years, there were, alas, a smaller number of excellent answers. This is somewhat

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

disappointing, especially given that the examination questions were not out of the ordinary and were largely concerned with topics and issues that form part of the core of Land Law.

### Questions

**Q1** was not popular. While there were some good answers, the examiners were disappointed by the fact that some candidates failed to notice that the question was largely about the *numerus clausus* principle. These answers received very low marks. The best answers paid close attention to the question that the examiners had actually asked and carefully examined how the law prevents, and whether it ought to prevent, landowners from conferring new kinds of proprietary interest in land.

**Q2** was extremely popular. This question is not only about overriding interests and those candidates who thought it was did not score highly. The best answers analysed and evaluated the law concerning the circumstances in which a purchaser of a registered estate will be bound by an overriding interest as well as the law concerning alteration of the register.

**Q3** was not very popular and attracted answers of variable quality. Whereas weaker answers focused solely on the law of severance, the best answers examined whether the traditional severance principles are compatible with the modern 'family homes' jurisprudence and considered how a joint tenancy might be transformed into a tenancy in common by virtue of the imposition of a 'common intention constructive trust'.

**Q4** was not very popular, but mostly attracted very good answers.

**Q5** was extremely popular and attracted answers of variable quality. While weaker answers neglected, or overlooked entirely, the second part of the question, the best answers precisely and accurately described and evaluated the relevant legal principles and cases.

**Q6** was not popular. The examiners were disappointed by the fact that a number of candidates wheeled out a pre-prepared answer on the justifiability of adverse possession and failed to consider or apply the law of the European Convention on Human Rights. The examiners did not ask whether the law of adverse possession is just; they asked whether it violates Article 1 of the First Protocol to the European Convention.

**Q7** was extremely popular. Most candidates dealt well with the question of whether A, B and C were entitled to exclusive possession. The best answers recognised that, since the sharing covenant provided that the 'licensor' could introduce a new occupier only if a bedroom were available, it was significantly different from the sharing covenants found in many of the cases. As to the formality rules, most candidates recognised that a legal lease must be made by deed unless the conditions specified in s. 54(2) of the Law of Property Act 1925 are satisfied, but many candidates failed to correctly identify these conditions or to apply the statutory provisions to the facts of the problem. As to J and K, most candidates properly examined the implications of fact that the landlord's power to serve a notice to quit was fettered: these candidates considered both *Berrisford v Mexfield Housing Co-operative* and *Southward Housing Co-operative v Walker*. The examiners were particularly impressed by the fact that some candidates considered the relationship between *Mexfield* and the formality rules. In relation to both properties, candidates who failed to address priority rules did not receive the highest marks.

**Q8** was fairly popular and, for the most part, it was answered well. The examiners were, however, concerned by the fact that some candidates appeared to not understand even the most basic aspects of the law of co-ownership. For example, some candidates thought that the parties could hold the legal fee simple estate as tenants in common. When D and E acquired the property, they could hold the equitable interest as tenants in common or as joint tenants. On the facts, a tenancy in common would be more likely but the examiners recognised that candidates could sensibly suggest from the case law that there was an equitable joint tenancy. If D and E had an equitable tenancy in common from the beginning, E's share would pass to F on E's death. Having usefully discussed this, several candidates

## FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018

then unhelpfully discussed the nature of F's rights after F moved in as if this were a trust being set up *ab initio* and F did not already have a share (which may, perhaps change in size following these events). Moreover, some answers contained only a cursory discussion of occupation rents and whether F's trustee in bankruptcy could obtain an order for sale. With respect to the occupation rent issue, the best answers considered *Davis v Jackson*. As to whether the court would grant an order for sale, the best answers considered s. 335A of the Insolvency Act 1986 and the relevant cases, including *Re Citro*.

**Q9** was popular but, in general, it was not answered well. While many candidates were able to properly identify and apply the *Re Ellenborough* requirements, most were unable to correctly apply the rules on the creation of easements to the facts of the problem. Far too many candidates overlooked the significance of the sequencing of the conveyances and maintained that G could grant an easement over No 24 to H after G had conveyed the freehold title to No 24 to K. But, as the examiners have pointed out many times, a person who does not have an interest with respect to certain land cannot grant an easement over it. With respect to those candidates who identified this difficulty, most were unsure as to how to deal with it. A few rightly considered whether a grant to H could be implied into the lease deed; hardly any considered whether the agreement between G and H could give rise to an equitable easement. As to whether K acquired an easement over No 25, many candidates wrongly applied the law on grants rather than the law concerning reservations. As to how the answers were structured, many candidates divided their answers into three parts and considered (1) whether a given right was capable of being an easement, (2) whether an easement was actually created, and (3) if it was, whether it would bind the servient owner's successor in title. While this is undoubtedly a useful way of framing the analysis, it must be applied to *each* potential easement in turn. Many candidates adopted the tripartite approach, but a significant number failed to apply it to each potential easement.

**Q10** was fairly popular. The vast majority of candidates were able to correctly apply the law governing the running of the burden of restrictive freehold covenants. Thankfully, far fewer candidates than in previous years maintained, overlooking the land registration principles, that a purchaser will be bound by a restrictive covenant if he purchases with notice of it. The law governing the running of the benefit of freehold covenants was not handled quite so well—a fair number did not mention annexation at all and, among those who did, many overlooked *Crest Nicholson v McAllister*. Some candidates wrongly treated a covenant 'to use for residential purposes' as a positive covenant, and a few failed to make clear the different principles that apply to positive as against restrictive covenants. Finally, some candidates mishandled or overlooked the 'How different...?' supplementary question.

**Q11** was fairly popular and, in general, it was answered well. Weaker answers considered whether T acquired an equity by estoppel and, if so, how the court would satisfy it, without considering whether the equity bound V and, if it did, whether the fact that V was a third party would affect the remedy awarded by the court. The best answers considered these issues and, with respect to whether T acquired an equity in the first place, carefully analysed, and applied or distinguished, *Crabb v Arun DC*, *Cobbe v Yeoman's Row* and *Matchmove Ltd v Dowding*.

### Media Law

#### **General Comments**

In the 2017-18 academic year, 28 students took the Media Law course. Six candidates gained first class marks, 20 gained upper second class marks, and two gained lower second class marks. The quality of the scripts was generally good, with most students demonstrating a clear grasp of the material and the surrounding debates. Some of the weaker answers tended to discuss general issues of media policy without engaging with the specifics of the law. The weaker scripts sometimes relied on the lectures too heavily, while the stronger answers brought in discussion from the secondary literature. The stronger scripts were well organised, structured the material in a way that directly responded to the question, and discussed the legal issues with precision.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### Questions

**Q1 (Digital intermediaries):** The question called on candidates to compare the legal treatment of hosts of third party content with that of traditional media organisations. Most candidates were familiar with notice and takedown procedures. The stronger scripts were able to draw on cases and examples from a number of different topics (for example citing the *R v F*, *Totalise*, the Defamation Act 2013 and the Digital Economy Act 2017).

**Q2 (Prior restraints):** Not a popular question (despite being covered in the lectures). The question was quite open ended and candidates could have drawn on both the theory of media freedom and a range of examples (including *Bonnard*, privacy injunctions, *Spycatcher*, and the BBFC) to analyse the issues.

**Q3a (Public interest defence and secrecy):** Most candidates were familiar with the arguments in relation to the *Shayler* decision. The stronger scripts engaged with the proposals put forward by the Law Commission and considered the merits and limits of a statutory commissioner. The stronger scripts also discussed some of the challenges in putting a public interest defence into operation (for example, looking at potential limits on open justice and the handling of the relevant evidence, etc).

**Q3b (General public interest defence):** Not a very popular question, attempted by one candidate. This is unsurprising, given that the arguments for such a defence are not as well trodden as those on other topics. The question invited candidates to consider whether the interests in newsgathering ever justify breaking the criminal law, for example by bribing an official for information or hacking an email account.

**Q4 (Controls on obscene content):** Most candidates were familiar with the limited enforcement of the Obscene Publications Act 1959, and the introduction of the Digital Economy Act 2017. A number also discussed the growth of possession offences. Some of the weaker scripts rehearsed the arguments for and against the regulation of obscene content and pornography. The stronger answers were more focused on the question, looking at the changing types of control and considering the reasons for the changes.

**Q5 (Privacy):** A number of candidates used the question to discuss the general issues relating to an expectation of privacy. The question focused specifically on the issue of public figures. There are a range of issues that can be discussed, such as the different types of public figure, how they are defined and how they came to be in the public eye. Stronger candidates discussed possible differences between holders of public office and celebrities, along with the connection to matters of general interest. Good answers also noted how the expectation will vary according to the type of information, and the extent of the intrusion.

**Q6a (Defamation Act 2013 and section 4):** The question invited candidates to consider the impact of the public interest defence on a range of different publishers. Most candidates were familiar with the decision in *Economou*, and also drew a comparison with *Reynolds*. Candidates also discussed the challenges in applying the reasonable belief standard to individual publishers. Some of the stronger scripts also considered whether individuals deserve such protection, whether s. 1 already provides protection and looked at the claimant's Art 8 rights.

**Q6b (The serious harm requirement under s. 1 of the Defamation Act 2013):** One candidate attempted the question. The question invited candidates to consider the impact of s. 1 on the presumption of damage (and whether a change is justified). The issue has been considered by the Court of Appeal in the *Lachaux* decision.

**Q7 (Source protection):** Most candidates set out the rationale for source protection, and the concerns about a chilling effect. Some questioned whether all sources are deserving of protection. The better answers were focused on the question and explored the difference between anonymous disclosure to the media and anonymous publication. The potential for anonymity rights to address the

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

shortcomings of the protection under s. 10 of the Contempt of Court Act 1981 was discussed (along with the problems associated with anonymous publications).

**Q8 (Media regulation):** Some of the weaker scripts used the essay as an opportunity to rehearse the familiar arguments about the merits of press regulation. While such matters are relevant to the question, it asked candidates to draw a comparison between the regulatory regimes for different media sectors. To address the question, candidates had to consider the rationale for differentiating between broadcast/print/digital and the impact of convergence. Many discussed the benefits of complementary methods of regulation and the very best scripts considered possible alternative models in relation to a converged media.

**Q9 (Access to information):** Relatively few candidates attempted this question. Those that did generally showed a good knowledge of the main features (and criticisms) of the Freedom of Information Act 2000. Some candidates also referred to the relationship between the ECHR jurisprudence and the decision in *Kennedy*. Fewer candidates attempted to answer the question with reference to open justice.

**Q10 (Contempt of Court):** Relatively few candidates attempted this problem question. To do well on such a question, it is important that candidates go beyond identifying the relevant issue and case law. Candidates need to analyse how the law will apply to the facts of the problem (and look for factors that may distinguish the problem from the leading cases) to assess the strength of the case.

### Medical Law and Ethics

Clearly students took on the advice offered in last year's examiners' report on Medical Law and Ethics, as the standard was substantially higher and most candidates avoided the problems seen in many essays last year. Almost without exception, essays drew the two topics together to answer the question, producing much more sophisticated answers. There was still a tendency to 'break down' the quotation, which should be avoided. As we noted last year, this can be useful, but candidates should judge carefully when such 'pulling apart' is required, and when it may over-complicate. It is also not necessary to define words as a matter of course, only when doing so will add to the analysis or where there is genuine lack of clarity. Candidates generally did a very good job of focusing on what the question actually asked, with only a few attempting to use prepared essays or writing on something else entirely. Knowledge of the case law and materials was good, and some essays in particular showed some excellent research. The examiners were very pleased to see candidates taking on the challenge of the extended essay in the spirit it was intended.

### Moral and Political Philosophy

Candidates performance on this paper was good, with about a third of the group attaining marks in the first-class range. In general, the scripts showed stronger knowledge of issues in normative ethics than in meta-ethics, and better performance on the moral philosophy side of the paper than on the political philosophy side. First-class scripts were distinguished by their care in responding to the precise question asked, their capacity to draw careful distinctions, and their willingness to consider possible objections to the arguments they advanced. The commonest error in answers below the median was a tendency to write about the closest general topic from the seminars rather than about the examiners' question. This was particularly evident in the questions on utilitarianism and the question on social equality. Those who answered discussion quotations drawn from Aristotle, Kant, or Mill did well only when their answers showed knowledge of the actual texts and concepts deployed in them; answers that used the quotations only as triggers to write about general issues struggled to get into the upper second class.

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **Personal Property**

The Company Law course did not run in the 2017-18 academic year. Three students took the exam. The scripts were all double marked. The examination process ran without incident.

## **Public International Law**

The overall performance by students in this paper was very good, with 56% of students achieving a high Upper Second or First Class mark (there were 12 firsts), and 86% of candidates achieved a mark of First Class or Upper Second. Only 12% 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 (three) and essay questions (six). Although not required to do so, the overwhelming majority of candidates elected to answer at least one, and in some cases two, problem questions, with **Q7** (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 **Q1** (essay on customary international law), with **Q3** (essay on statehood and international legal personality) and **Q5** (essay on immunity) also attempted by nearly half the candidates. Less popular was **Q2** (jurisdiction) and very few candidates attempted **Q4** (responsibility) and **Q6** (human rights, law of the sea, or WTO law). **Q8** was the least popular of the problem questions (treaty law and 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 second 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 (three candidates in total) achieving a First Class mark overall. Performance in both elements of assessment was clearly strong given the overall results, with the submitted Memorials in particular of very high quality. In the written examination, no mark below 67% was awarded for any question, and final marks on the scripts were exclusively in the Upper Second and First Class range. Candidates scored particularly well in answers to questions focussing on treaty and/or customary international law (**Q1** and **Q7**), displaying strong evidence of wide reading and an understanding of the subject extending well beyond the core syllabus.

## **Roman Law (Delict)**

Seven students took the exam. There were three marks of 70 or above (43%), three of the rest in the upper 2.1s, and one a lower 2.1. The overall average came out at 67.86. The result almost perfectly mirrors that arrived at last year, the overall average having come down ca. 0.5% and the share of firsts down from 44% to 43%. No significant change can be seen here. Students were willing to pick more problem questions than required, and occasionally candidates avoided essay questions altogether. 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.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### 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) and **Q1** (essay on progressivity) were the most popular. **Q5** (essay on employment status) and **Q8** (problem on self-employment with some capital gains tax) were less popular. Most 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 whether the UK income tax should be more progressive. The better answers delved into the meaning of progressivity, weighed up the advantages/disadvantages of increasing progressivity and considered the relevance of other criteria of good tax design such as efficiency and ease of administration. **Q2** concerned the cases on tax avoidance as well as the GAAR and was answered quite well overall. Those students who analysed a range of recent as well as older cases on the *Ramsay* principle, explored the GAAR legislation in some depth and engaged with the extensive literature on avoidance were duly rewarded. **Q3** on CGT invited the candidates to evaluate the CGT, especially in relation to the cases on the principal residence exemption. The better answers mixed broad policy questions such as the role of CGT in comprehensifying the income tax with a good appreciation for the cases including those on the meaning of residence. **Q4** asked candidates to evaluate the effectiveness of the inheritance tax, which provided an opportunity to examine the statutory provisions in some detail, consider the relationship between IHT and CGT, and draw on the academic literature. **Q5** concerned the different tax regimes applicable to employees and the self-employed; it required a good understanding of the law as well as an appreciation for the topical nature of these issues as reflected in recent policy work by eg the Taylor Review and the Office of Tax Simplification. **Q6** was a relatively straightforward two-part question on the capital taxation of trusts; better answers got into depth on the statutory provisions and made use of relevant literature.

The facts in **Q7** 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 especially on the meaning of income from employment. **Q8** was the less popular of the two problem questions. It raised a number of issues on the taxation of a self-employed person, especially on the deductibility of travel, and challenged candidates to think carefully about what is an 'asset' for CGT.

### Tort Law

**Q1a:** This was a reasonably popular question. Most answers discussed *Hedley Byrne*, focusing in particular on negligence liability for pure economic loss. Better answers referred to other areas of negligence law, in particular liability for omissions. The best answers considered the relationship between the categories of liability and non-liability in the tort of negligence and discussed how and why an assumption of responsibility can override the negative approach to duty dominating a particular category. The best answers also considered how assumption of responsibility differs, if at all, from *Caparo's* proximity, and discussed whether policy considerations play a more limited role in cases where the defendant can be regarded to have assumed responsibility to the claimant.

**Q1b:** This was one of the more popular essay questions in the paper. Weaker answers were restricted to discussing the *Caparo* test and its marginalisation in *Robinson*, without defining 'policy' or paying close attention to its significance in recognising and developing established duty categories. Better answers gave examples of cases that created new categories and discussed the role of policy reasons in these cases. Many answers compared Lord Reed's judgment in *Robinson* with that of Lord Mance (whose quotation was used in the question). The best answers defined 'policy' and discussed whether judges should use policy reasons at all to decide tort cases.

## FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018

**Q2:** This was one of the less popular essay questions that, when selected, attracted many good answers. Most candidates who answered this question discussed the conflict between protection of reputation and freedom of expression. The better answers addressed the quotation more directly and considered whether protection of reputation is a matter of public interest, and whether it is adequately safeguarded by the Defamation Act 2013.

**Q3:** This was one of the less popular essay questions. Candidates tended to focus on the standard of care in the tort of negligence. Most of them mentioned *Nettleship*, *Bolam*, *Mullin*, *Blake* and *Dunnage* to show that the standard of care is not modified to take into account the defendant's lack of experience or mental illness but is 'increased' for professionals and 'decreased' for children by reference to their age. The best answers mentioned instances where tort law could be regarded to adopt a subjective approach (*Paris v Stepney*, *Goldman v Hargrave*) and discussed how the objective approach can be justified by reference to the compensatory function of tort law.

**Q4:** Only a handful of students answered this question. Candidates who answered it focused primarily on judgments in *Lim Poh Choo* and *Heil v Rankin*. Better answers discussed how the rules regulating damages for personal injury enable judges to put a monetary value on non-pecuniary losses and considered the more theoretical question of whether money (damages) is always the best way to 'repair' harm.

**Q5:** This was a highly popular question. Weaker answers made little reference to cases and did not assess whether Lord Reed was right to claim that the idea that 'an enterprise which takes the benefit of activities carried on by a person integrated into its organisation should also bear the cost of harm wrongfully caused by that person in the course of those activities' has indeed been the most influential in recent development of vicarious liability. Many candidates did not distinguish between the defendant creating the risk of the tortfeasor wrongfully causing harm to the claimant and the defendant taking the benefit of the tortfeasor's services, and did not discuss whether a link between the two was required to impose vicarious liability. Better answers addressed this point and assessed whether the idea mentioned by Lord Reed in the quotation justified both the existence of the vicarious liability doctrine and its current scope. They also discussed alternatives to the enterprise benefit/risk theory and looked at cases in some detail, to identify outcomes which could not be explained by that idea.

**Q6:** This was a fairly popular question that attracted many pedestrian answers, which failed to focus on the quotation. While the quotation invited candidates to discuss the question of burden and standard of proof in relation to causation, most candidates chose to discuss the but-for test and its exceptions without explaining the connection with the issues of burden and standard of proof. Better answers considered whether the *Fairchild* rule changes the distribution of the burden of proof and the standard of proof. The best answers discussed cases in which a change to the standard of proof was attempted (*Wilsher*, *Hotson* and *Gregg*) and explained the policy issues standing behind the traditional rules on the burden and standard of proof, as well as their adopted and proposed departures.

**Q7:** As usual, the question on the economic torts was chosen by relatively few candidates, but attracted many excellent answers. Candidates discussed the changes which Lord Hoffmann's judgment in *OBG* introduced to the law of economic torts and considered the exact way in which these changes indicated an 'abstentionist' approach to liability or contributed to the law's coherence. The best answers evaluated the extent to which Lord Hoffmann's propositions were implemented in subsequent cases.

**Q8:** This question concerned mainly liability in the tort of negligence, with a particular focus on the issue of breach of duty, remoteness, contributory negligence, illegality, nervous shock. It also contained an element of battery, self-defence and (possibly) vicarious liability. There were very few outstanding answers to this question. Most answers dealt only with a sub-set of issues to which the problem gave rise, albeit in a competent manner. One common feature was that candidates did not



## FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018

discuss the issue of breach in sufficient depth. Few answers discussed defences or noticed that a tort of battery might have been committed by Adam against Diane and Diane against Adam. Many candidates restricted their discussion of the nervous shock issue to classifying Diane as a secondary victim and applying the *Alcock* criteria, without considering new categories of primary and secondary victims introduced by a later House of Lords judgment. The best answers discussed both Ben's and Connection Rail's breach in detail and considered whether the chain of causation was broken in Adam's case. They also included a good discussion of contributory negligence and illegality, the latter with express references to the difficulties created by the decisions in *Patel* and *Gray*.

**Q9:** This was a popular question dealing with product liability issues under both the Consumer Protection Act and the law of negligence. The weakest answers discussed liability of the battery producer and the phone producer exclusively in negligence, or exclusively under the CPA. Better answers included in-depth discussion of elements of statutory liability, including the routes to making both producers liable, whether the battery/phone was defective, and how this circumstance should be established in the light of the relevant case law (*A v NBA* compared with *Wilkes*). Good answers discussed issues of causation (*novus actus*), the development risk defence and which of George's harms/losses would be recoverable under the Consumer Protection Act. The best answers discussed liability in negligence in relation to losses not recoverable under the Consumer Protection Act. On 'defect', they considered how the particular factual circumstances (consumers' understanding of the risk, knowledge about the consequences of overheating) should affect the issue. They also discussed the issue of whether the phone was 'mainly for private use', the defect/damage distinction, and looked also at other defences, in particular that of contributory negligence. Disappointingly few answers dealt with the question of whether the lost data could constitute property damage.

**Q10:** This was one of the two most popular problem questions, concerning occupiers' liability, negligence and non-delegable duties. Most answers debated Hannah's status as a trespasser at the relevant time, and who was the occupier of the construction site. Better answers considered whether the fence and the 'Do not enter' sign were sufficient to turn Hannah into a trespasser and discussed the requirements of duty and breach under the Occupiers' Liability Act 1984 in much detail. Few candidates considered negligence liability of Ken to John (both children) and the issue of contributory negligence. Many answers erroneously presupposed that John's claim against the archery club had to be based on one of the occupiers' liability statutes. Better answers discussed personal liability of the archery instructors and the direct duty of care owed to students by the archery club in negligence and its breach. Most answers considered if the school owed a non-delegable duty to its students and whether liability of the external provider of extracurricular activities could be excluded. Only a few answers explained how the *Woodland* criteria were or were not satisfied. Most candidates mentioned the Consumer Rights Act 2015 to argue that the exclusion of liability did not affect Hannah's and John's claims, but a considerable number did not understand the specific provisions.

**Q11:** This was the most popular problem question, concerning liability in private nuisance, *Rylands v Fletcher* and public nuisance, with an element of negligence liability for loss of a chance of a financial gain. Most candidates answering this question dealt competently with the private nuisance element (Nina's claim against Larry), but many answers offered only a cursory explanation of why Larry's use of a washing machine at night was a nuisance or dealt appropriately with the special sensitivity point. The best answers addressed also who could sue and be sued, remoteness of damage and remedies. Most candidates correctly identified Larry's claim against Rebecca as based on *Rylands v Fletcher* and discussed the question of whether installing a home birth water pool should be considered a 'non-natural' or 'extraordinary use' of the apartment by Rebecca. While the majority of students correctly discussed the Steel Company's liability in public nuisance many of them failed to discuss the possibility of claiming for personal injury in this tort.

**Q12:** This was a less popular problem question. Many candidates correctly identified the relevant cases and questioned Tom's ability to claim in the tort of negligence against Beautiful Homes for the building work. Fewer candidates offered in-depth discussion of Beautiful Homes' liability for Wendy's faulty design and identified the clash between *Murphy* and *Hedley Byrne* in relation to in-house

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

designers. Most candidates discussed Wendy's liability as an architect under *Hedley Byrne* and *Smith v Bush*. Best answers mentioned also the Defective Premises Act and its applicability on the facts. Almost all scripts containing an answer to Q12 discussed Tom's claim against Ursula for a loss of chance of being awarded the chiropractic services contract correctly and by reference to the relevant case law.

### Trusts

#### General Comments

This Trusts paper produced significantly more first class scripts than in previous years and the quality at the top end was very high. The essay questions attracted many excellent answers which responded directly to the question asked, showing that candidates were well-prepared on the case-law and issues, and were able to apply their knowledge flexibly to present relevant and strongly-reasoned arguments in their answers. The general quality of answers to the four problems was also pleasing, with close attention usually being paid to the facts when applying the law. However, some mistook **Q12** as a problem testing knowledge of the 'three certainties', despite the facts being primarily directed to raising issues about charitable purposes.

#### Questions

**Q1:** What the examiners were looking for (and did not always find) was a discussion of discretionary trusts. The best answers drew imaginatively on a wide range of cases from the core reading list including *Gartside v IRC* and *Sainsbury v IRC*. Some also discussed the significance of *McPhail v Doulton* to the development of the modern discretionary trust. It was evident that some candidates had benefited from attending lectures.

**Q2:** This was a popular question and the answers it elicited were almost uniformly good and many were excellent. Candidates displayed a thorough understanding of the English law and gave subtle and interesting responses to both the "does" and "should" questions. They were also willing to engage with the Bermudan legislation, especially s.12B (enforcement) and to a lesser extent considered the potential boundaries of lawful purpose trusts in England and under s.12A.

**Q3:** This was the most frequently answered of the essay questions and the responses were generally good. A few did not focus on actual question or had nothing to say about the *Quistclose* trust as a constructive trust. Given that this is a predictable examination topic for which candidates should be thoroughly prepared, the range of cases discussed was sometimes disappointing, with essays focusing entirely on *Barclays Bank v Quistclose* and *Twinsectra v Yardley*. It was also surprising that some answers contained assertions about the trust in *Twinsectra* that were simply incorrect.

**Q:4** The answers were generally good, covering the cases and periodical literature, however some candidates wrote mainly about institutional constructive trusts. Given that remedial constructive trusts can be understood in many ways, one problem was that no definition was offered at the outset, another was the absence of discussion of cases that deal with the meaning of remedial constructive trusts. There was an over-reliance on Swadling's article, which deals with constructive trusts as remedies but is not necessarily directly about remedial constructive trusts.

**Q5:** Most candidates were able to discuss the nature and role of s.9, various types of fraud and alternative explanations for the enforcement of secret trusts such as the *dehors* the will theory. Weaker answers relied too heavily on the secondary literature and contained few references to the case law on secret trusts. Almost all the answers overlooked *donatio mortis causa* even though the incompatibility of this doctrine with s.9 was highlighted in *King v Dubrey*.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

**Q6, Q9, Q10:** These questions attracted too few answers to give a general comment.

**Q7:** This was a popular question. Although relatively few addressed the question of whether the 1999 Act applied to gratuitous promises enshrined in covenants, most answers were otherwise excellent, displaying a command of the case law and a strong grasp of the legislation.

**Q8:** This question was generally well done. Candidates were willing to focus on the quotation and discuss the relevance of the language of constructive trusteeship to both forms of liability. Some recognised the question as paraphrasing the Mitchell and Watterson article and were able bring the debate up to date by discussing more recent cases as *Williams v Central Bank of Nigeria*. The examiners were surprised to find that some candidates made the fundamental error of treating knowing receipt and dishonest assistance as proprietary rather than personal claims.

**Q11:** The incomplete share transfer was the main issue in this problem, and candidates paid commendably close attention to the facts when applying *Re Rose* and the *Pennington v Waine* line of cases. Some did not spot the relevance of *Choithram v Pagarani* but those who did often displayed a sophisticated grasp of principle. Candidates were not expected to know more than the bare bones of *donatio mortis causa* and the rule in *Strong v Bird*, but some were able to give impressively detailed and authoritative accounts of both doctrines.

**Q12:** This problem attracted a large number of answers, some outstanding. The best candidates displayed an impressively detailed knowledge of the Charities Act and the relevant case law. Having identified doubts about public benefit in relation to some or all of the bequests, many then considered whether they would pass muster if interpreted as trusts for human beneficiaries, in particular as discretionary trusts or under the *Re Denley* principle. Unfortunately, a significant minority of candidates were far too willing to override Gina's language as a mere expression of motive and treated the question as a standard three certainties problem, although the only difficult issues related to certainty of objects. This was generally well handled, however bequest (a) was sometimes misidentified as a fixed trust and *Re Manisty* was used to condemn the first three trusts as capricious. The examiners gave credit for analysis of alternatives even where the candidate did not show awareness of the charity law issues.

**Q13:** This was the least popular of the problems, although it still attracted a significant number of answers. The overall standard was good, although few addressed every point in the problem. Some did not realise that the initial task was to determine whether the ARA actually was an unincorporated association, and if not, explore alternative ways of analysing the two bequests. The best candidates also utilised *Burrell v CCO* for the *inter vivos* variation, and were able to analyse *Re Grant's WT* in relation to the role of the NRA.

**Q14:** This was the second most popular problem and generally well done. The sub-trust in (a) caused few difficulties and more enterprising candidates spotted the issue of certainty of intention in relation to Olivia's excited oral declaration. Anticipating that she might change her mind, others were quick to deploy *Rochevoucauld v Boustead* in relation to Greenacre without also considering the appropriateness of doing so. Scenario (b) proved the most difficult as some candidates failed to recognise it as a variation on *Re Vandervell (No.2)*. The best answers critically analysed the reasoning of Lord Denning. Many relied instead upon *IRC v Grey* and gave plausible reasons for identifying a disposition. Answers to scenario (c), a three-party version of *Rochevoucauld v Boustead*, were generally sound but some would have been improved by (i) discussing whether this gave rise to an express, resulting or constructive trust; (ii) explicitly addressing the question of whether the cottage went to Vera or Xavier.

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

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

[Redacted for publication]

## **F. Names of members of the Board of Examiners**

Dr T Krebs (Chair)  
Prof S Bright  
Prof L Fisher  
Dr I Goold  
Dr G Lamond  
Prof B McFarlane (External)  
Prof J Murphy (External)  
Prof D Nolan  
Prof E Peel  
Dr P Yowell

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **APPENDIX 1 – EXAMINATION CONVENTIONS**

### **Law FHS Examination Conventions 2017-18**

#### **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 2017-18

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 Board of Examiners in the course of the year, it will be necessary to issue further versions of this document. The version number of this document is given below. Subsequent versions will follow a numbering sequence from 1.1 upwards. Each time a new version is issued, you will be informed by email, and the updates will be highlighted in the text and listed below.

This version and subsequent versions can be obtained from the WebLearn site

<https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/undergrad/page/home>

#### **Version 1.1**

#### **Changes from previous version(s)**

Amendment to rubric for Criminal Law, and to Exam Room Materials for History of English Law

#### **2. Examination papers and rubrics**

(a) Course 1: Candidates will be examined in seven 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](https://weblearn.ox.ac.uk/portal/hierarchy/socsci/law/undergrad/fhs_options)

(b) Course 2: Candidates will be examined in seven 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.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### 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.

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **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.**

# **FHS Jurisprudence and Diploma in Legal Studies**

## **Examiners' Report 2018**

### *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*

Unlike other subject areas, the Law Faculty does not double mark all scripts for its undergraduate examinations. Instead, it operates 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. Where more than one assessment contributes to the overall mark for a paper, the assessment marks will be combined according to the weightings defined in the rubric.

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. 1<sup>st</sup>, 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 a 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 "skipped", "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.



# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

### *4.5 Penalties for late or non-submission (for Jurisprudence essays, Comparative Private Law 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 <sup>6</sup>
More than 14 calendar days after the notice of non-submission	Fail

Application to the Proctors for permission for late submission of essays 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, Comparative Private Law 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 Board of Examiners 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.

### *4.8 Penalty for non-submission of work (for Jurisprudence essays, Comparative Private Law essays, Medical Law and Ethics essays, and Jessup Moot memorials) or for non-attendance at an exam*

---

<sup>6</sup> Where more than one assessment contributes to the overall mark for a paper, it is possible to get a mark of zero for a submission, but still pass overall.

# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

Where a candidate fails to submit a piece of examinable course work, or fails to attend an examination, they must ask their college to apply for dispensation from the Proctors. If such dispensation is either not sought or not granted, the candidate will fail the FHS examination as a whole, and will have to repeat all parts.

### 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 II*, 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.

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **6. Resits**

A candidate who doesn't attain a classified result (i.e. who attain a fail or a pass) may apply to resit 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 of Examiners 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](http://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.

Dr T Krebs (Chair)  
Prof S Bright  
Prof L Fisher  
Dr I Goold  
Dr G Lamond  
Prof B McFarlane (External)  
Prof J Murphy (External)  
Prof D Nolan  
Prof E Peel  
Dr P Yowell

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## *Appendix A*

### **FORM AND RUBRIC OF EXAMINATION PAPERS IN THE FHS OF JURISPRUDENCE AND DIPLOMA IN LEGAL STUDIES 2018**

#### **Administrative Law**

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

#### **Civil Dispute Resolution**

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**

One essay question will be chosen from a list of three 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.

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **Criminology and Criminal Justice**

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

## **Criminal Law**

There will be 11 questions, 8 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.

## **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. The exam will have equal weighting with the Jurisprudence essay when calculating the overall mark for this course.

## **Labour Law**

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

## **Land Law**

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.

## **Media Law**

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

## **Medical Law and Ethics**

Two essay questions will be chosen from a list of nine questions. The essays will have equal weighting when calculating the overall mark for this course.

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **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.

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## *Appendix B*

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

### **Administrative Law**

Administrative Law Case List 2017-18

### **Civil Dispute Resolution (new course in 2017-18)**

Civil Dispute Resolution Case List 2017-18

Civil Procedure Rules 1998, parts 1, 3, 7, 12, 13, 24, 25, 31, 39, 44, 52

Arbitration Act 1996, ss. 1, 4, 9, 33, 37, 40, 42-44, 67-71, 81

Consumer Rights Act 2015, Schedule 8

Human Rights Act 1998, s. 12(3)

Senior Courts Act 1981, s. 49(2)

Practice Direction – Pre-action Conduct and Protocols

Directive 2013/11/EU on Consumer ADR

### **Commercial Law**

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

Commercial Law Case List 2017-18

### **Company Law (course not running, but one student carrying paper forward to this year)**

Butterworth's Company Law Handbook, 30<sup>th</sup> (2016) edition

Company Law Case List 2016-17

### **Competition Law and Policy (course not running, but one student carrying paper forward to this year)**

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

Competition Law and Policy Case List 2016-17

### **Constitutional Law**

Constitutional Law Case List 2017-18

### **Contract**

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

Contract Case List 2017-18

Documents:

Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/1277) (as amended) Pts 1, 2, 4A & reg. 29

Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (SI 2013/3134) (as amended) regs. 4 - 10 & 13; Schedules 1 and 2

Consumer Rights Act 2015 Pt 1 Chap. 1, extracts from Chap. 2 (ss. 3-24, 31), Chap. 4 & Chap. 5; Pt 2; & Sched. 2

Directive on Unfair Terms in Consumer Contracts (93/13/EEC) of 5 April 1993 (as amended)

### **Copyright, Patents and Allied Rights**

Blackstone's Statutes on Intellectual Property 13<sup>th</sup> (2016) edition

Copyright, Patents & Allied Rights Case List 2017-18

Document:

Charter of Fundamental Rights of the European Union

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **Copyright, Trade Marks and Allied Rights**

Blackstone's Statutes on Intellectual Property 13<sup>th</sup> (2016) edition

Copyright, Trade Marks & Allied Rights Case List 2017-18

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**

Criminal Law Case List 2017-18

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 ss. 1, 2

Crime and Disorder Act 1998 s. 34

Sexual Offences Act 2003, ss. 1-9, 13, 73-78, and 79(2), (3), (8) and (9).

Fraud Act 2006, ss. 1-5

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

Criminal Justice and Immigration Act 2008 s. 76

Coroners and Justice Act 2009, ss. 54-56

## **Environmental Law**

Environmental Law Case List 2017-18

## **European Union Law**

Blackstone's EU Treaties and Legislation, 28<sup>th</sup> (2017-18) edition, ed. Nigel Foster, OUP

European Union Law Case List 2017-18

## **Family Law**

Blackstone's Statutes on Family Law, 26<sup>th</sup> (2017-18) edition

Family Law Case List 2017-18

## **History of English Law**

History of English Law Case List 2017-18

Documents:

Magna Carta 1217 c. 3-6

Magna Carta 1225 c. 36

Petition of the Barons 1258 c. 27

Statute of Marlborough of 1267 c. 17

Statute of Westminster I 1275 c.48

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



# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

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, 8-9

Statute of Enrolments 1536

Statute of Wills 1540 Preamble and ss. 1-2

Act for Explanation of the Statute of Wills 1542 Preamble and ss. 1, 5, 7-9

Tenures Abolition Act 1660 Preamble and ss. 1-10

Statute of Frauds 1677 Preamble and ss. 4, 7-9, 17

Promissory Notes Act 1704

## **Human Rights Law**

Human Rights Case List 2017-18

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, 20<sup>th</sup> (2011-12) edition, ed. Francis Rose

International Trade Case List 2017-18

## **Labour Law**

Blackstone's Statutes on Employment Law, 27<sup>th</sup> (2017-18) edition, ed. Richard Kidner

Labour Law Case List 2017-18

## **Land Law**

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

Land Law Case List 2017-18

Documents:

Consumer Credit Act 1974 ss. 140A-140C

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

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

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

ECHR (art 8, and protocol 1 art 1)

## **Media Law**

Blackstone's Media Law Statutes, 4<sup>th</sup> edition (2013)

Media Law Case List 2017-18

Documents:

Communications Act 2003, s. 368E

Juries Act 1974, s. 20A-20C

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

Terrorism Act 2000, extract from Schedule 5

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

Digital Economy Act 2017, ss. 14-30.

Investigatory Powers Act 2016, ss. 28, 29, 113, 114, 154, 195 and 264

## **Personal Property (course not running, but three students carrying paper forward to this year)**

Personal Property Case List 2016-17

## **Public International Law**

Blackstone's International Law Documents, 13<sup>th</sup> (2017) edition

## **Taxation Law**

Extracts from Tax Legislation compiled by the Law Faculty

Taxation Law Case List 2017-18

# **FHS Jurisprudence and Diploma in Legal Studies**

## **Examiners' Report 2018**

### **Tort**

Blackstone's Statutes on Contract, Tort and Restitution, 27<sup>th</sup> (2016-17) edition, ed. Francis Rose  
Tort Case List 2017-18

### **Trusts**

Sweet and Maxwell's Statutes Series, Property Law, 8<sup>th</sup> (2002) or 9<sup>th</sup> (2003) or 10<sup>th</sup> (2004) edition  
Trusts Case List 2017-18  
Charities Act 2011, ss. 1-5

## **APPENDIX 2 – EXTERNAL EXAMINERS' REPORTS**

### **EXTERNAL EXAMINER REPORT FORM 2018**

<b>External examiner name:</b>	Ben McFarlane	
<b>External examiner home institution:</b>	University College London	
<b>Course examined:</b>	Jurisprudence FHS and DLS	
<b>Level:</b> (please <i>delete as appropriate</i> )	Undergraduate	

***Please complete both Parts A and B.***

<b>Part A</b>					
		<i>Please (✓) as applicable*</i>	<b>Yes</b>	<b>No</b>	<b>N/A / Other</b>
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? <i>[Please refer to paragraph 6 of the Guidelines for External Examiner Reports].</i>	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?				N/A
A7.	Are you satisfied that comments in your previous report have been properly considered, and where applicable, acted upon?				N/A
<p><b>* If you answer "No" to any question, you should provide further comments when you complete Part B. Further comments may also be given in Part B, if desired, if you answer "Yes" or "N/A / Other".</b></p>					

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **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?*

Evidence of some outstanding performances at the top end with some students achieving excellence across a very wide range of subjects.

- 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).*

I should mention here the DLS. The Examiners this year made in my view a very sensible decision to be more generous in interpreting the criteria for the award of Distinctions in the DLS. That interpretation was applied consistently and allowed sufficient recognition of some impressive DLS performances.

### **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.*

The process was conducted rigorously and fairly and equity of treatment for students was clearly an overriding concern for Examiners. I was impressed by the careful investigation and handling of concerns in relation to the FHS Trusts paper (see too B3).

### **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?*

No, but see B4 below.

### **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 that should be noted and disseminated more widely as appropriate.*

This is not a question of innovation, merely a reminder of standard good practice, but college tutors should continue to be careful to remind students that the sole constraints on setters of papers are the module syllabus and examination rubric and so students should not assume that particular topics within that syllabus either will or will not come up in the exam, or either will or will not be examined in a particular form (e.g. essay or problem question).

## **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

There is also a question as to good practice in teaching in relation to the number of topics included in a module syllabus. Convenors of modules should think carefully about the appropriate number of topics for a module and should not be afraid to reduce the number of topics, as there is a risk that the syllabus for a module can become too broad.

As far as best practice for the future is concerned, I also think that convenors of modules should be more actively involved in checking draft examination papers. Under the current system, it seems that the checker may be a relatively junior member of staff and, whilst Examiners do of course also carefully check draft papers, there is a strong argument that a further subject expert with knowledge of how a course has been taught in practice should also check the draft paper before it is submitted to the Examiners. At my own University, for example, it is always the subject convenor who has final responsibility for the exam paper.

### **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.***

The examination process overall was very thorough, but it is possible that the two long meetings of the Examination Board to consider marks could be more efficient. One suggestion would be to consider candidates in order of average mark, rather than in order of candidate number, to increase the chances of similar issues/ borderlines being considered closer together.

<b>Signed:</b>	<b>Ben McFarlane</b>
<b>Date:</b>	<b>15 August 2018</b>

**Please ensure you have completed parts A & B, and email your completed form to: [external-examiners@admin.ox.ac.uk](mailto:external-examiners@admin.ox.ac.uk), and copy it to the applicable divisional contact set out in the guidelines.**

# FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018



## EXTERNAL EXAMINER REPORT FORM 2018

<b>External examiner name:</b>	John Murphy		
<b>External examiner home institution:</b>	Lancaster University		
<b>Course examined:</b>	Law (FHS)		
<b>Level:</b> (please <i>delete as appropriate</i> )	Undergraduate		

**Please complete both Parts A and B.**

Part A					
		<i>Please (✓) as applicable*</i>	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? <i>[Please refer to paragraph 6 of the Guidelines for External Examiner Reports].</i>	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?	X			
A7.	Are you satisfied that comments in your previous report have been properly considered, and where applicable, acted upon?	X			
<p><b>* If you answer "No" to any question, you should provide further comments when you complete Part B. Further comments may also be given in Part B, if desired, if you answer "Yes" or "N/A / Other".</b></p>					

# **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

## **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?*

The standards achieved compared very favourably with those achieved by students at other Universities at which I have worked full time or served as an external examiner.

- 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).*

There was a higher incidence of first class honours achieved in the 2018 FHS cohort than at my own institution. There were practically no students at the 'lower end' (ie, in the 3rd class or 'bare pass' categories). This is, I think, a reflection of (i) the generally excellent teaching standards across the various colleges in which law is taught at Oxford and (ii) the obvious high calibre of nearly all the law students taking the exams.

### **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.*

There can be no doubt that the examination process was properly rigorous. Second marking was widespread, and – where necessary - third markers were used to ensure that all students whose initial marks placed them on the border between classes (eg, between the upper second and first class classes) were given every chance to secure a mark at the higher class where such a mark was, on closer inspection, warranted.

### **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?*

No.

### **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 that should be noted and disseminated more widely as appropriate.*

# **FHS Jurisprudence and Diploma in Legal Studies**

## **Examiners' Report 2018**

Notwithstanding the overwhelmingly complimentary comments above, I have three specific suggestions for changes/improvements in the future.

### **(a) Exam setting**

This year, as every year, the exam papers were scrutinised for content, typographical errors, wordiness etc. by a sub-committee of the Law Faculty in March/April. The number of people at the first meeting of that sub-committee was smaller than it ordinarily would have been due to the meeting being affected by strike action. This meant that certain papers were scrutinised less knowledgeably than others. To explain what I mean by this, let us take the example of the trusts paper.

This paper proved to be very controversial. Some students complained about (i) its content and (ii) the way in which it was formatted. As it turns out, neither I nor any member of the Exam Board was persuaded that either of these two complaints were grounded. Students do not have a 'right' to see any given topic appear in an unseen exam. And nor should they feel entitled to have a particular topic appear in a particular form (be that as an essay or a problem question). The paper was, happily, a fair one in the final analysis. But what if it had not have been? The questions that arose concerning the trusts paper should, I think, be taken as a valuable warning about how things *could go awry* if a particular paper is not properly scrutinised.

To avoid any such problem in the future, I think that it would make sense – at least in the core subjects where there are many Faculty members with the relevant expertise – to have the input of more than just one person when it comes to setting the exam. Perhaps exam setters should send their papers to another (more) experienced tutor in the same subject for initial scrutiny before that exam makes it way to the Faculty sub-committee charged with handling the year's exams business? This would mean that, whatever the composition of the Exam Board, most if not all exams, will have been checked by an expert in the field *before* that exam reaches them. It will not matter nearly so much, therefore, that there is, say, no criminal lawyer, or no land lawyer on the Exam Board who can attest to the fact that the paper tacks the core syllabus and that all questions are fair.

### **(b) August exams?**

I think it is worth considering introducing re-sits in papers that students fail in May. These re-sits could be taken in August.

On the existing examination rules – at least as I understand them – in order for a student to graduate with honours when he or she has failed a subject that cannot be compensated or condoned, that student must re-sit all nine papers the following summer. In one case this year, a student had a very strong second class profile in each of the other eight subjects but failed one subject with a mark of (I think) 34%. It seemed to me to be a disproportionate corrective that, in order for that student to graduate with honours, he or she would have to retake all 9 exams one year later. Requiring the student to take a re-sit exam in the failed subject in August seemed to me much fairer and more appropriate.

Of course, the introduction of August re-sits is not without bureaucratic consequences, so how do the pros and cons of adopting this form of solution compare?

#### ***In favour of August exams are the following thoughts:***

(i) The law could move on in several subjects before the next summer arrives. This would mean that the student who has already passed a subject may now, largely without tuition, have to learn brand new material on his or her own (rather than simply revise the law he or she learnt the previous year) in order to do well in a subject in which he or she has already satisfied the examiners;

(ii) most other institutions provide for such re-sits in August,

(iii) If the student were to attend a few 'revision classes' the following April, this would have a sizeable financial cost attached. Is such a cost warranted when all the student has done is fail one exam?

(iv) August exams have a double use: they could be taken by students who, for good reason, miss an exam in May (rather than fail that exam). Allowing students who miss an exam to take an exam in August avoids the need for some rather dubious speculation. For example, looking at collection marks is a questionable practice since we can never know for sure how seriously the student took those exams. Equally, looking for "strength elsewhere" can be problematic: there can be no guarantee that a student who scored well in, say, doctrinal subjects A, B and C would have done well in highly theoretical subject D when he or she missed the exam in subject D. By letting students who missed an exam for good reason take the relevant exam in



# FHS Jurisprudence and Diploma in Legal Studies

## Examiners' Report 2018

August a full honours degree can be awarded to the student without this element of gazing into the crystal ball.

### Arguments against August exams

(i) Students may learn to 'play the system'. That is, they may revise just, say, 7 subjects in May and then take the failed two in August in order to enhance their overall mark (by increasing the amount of revision time devoted to each subject. This is a risk, but I think it is a small – perhaps even negligible – one. Securing good jobs after one has graduated depends in part on good grades, but also in part on good references from tutors. I doubt that many students would want references that explained to a potential employer that he or she needed two attempts to pass a given subject.

(ii) The bureaucratic cost would be too high. Extra papers would undoubtedly require extra scrutiny and possibly another exam meeting in late summer. For the very small numbers who fail or miss exams, this may be considered a price that is too high. These are serious concerns, but they must not be overstated. First, re-sit papers would be few and far between, and I think that scrutiny could be conducted via email correspondence (just as was done in relation to a few exams the setting of which were affected by strike action this year). Equally, the objection – in essence – that "it is too much work for just a few students" is hard to reconcile with the fact that just this amount of work is already done for just a handful of students in some of the optional subjects. From memory, there were just two or three students who took the company law exam, and there were about four or five who took the exam in environmental law.

### (c) FAPs

Taking into consideration FAPs – especially in borderline cases – is entirely appropriate. But what the meeting revealed – at least to my eyes – is that it is sometimes difficult to justify doing A in relation to student X and doing B in relation to student Y when *both* their mark profiles *and* their FAP ratings were very similar *and yet the cases "feel very different"*. The difficulty, I think, inheres in the fact that the FAP ratings – of 1, 2 or 3 – are a little too crude. Where medical evidence in the case of student X was of the same broad kind as the medical evidence pertaining to student Y, it is easy to see why both received a FAP score of, say, 3. When X has a longstanding problem with depression and is has been on medication for a long time, this is a serious case. But ought it to be treated in the same way as Y's case where Y has longstanding problems with depression and attempted suicide a couple of days before the final exam? Neither students warrants a trivial ("FAP 1") or a moderate ("FAP 2"). And yet the details of the two cases suggest (to my mind at least) that a case can be made for treating X and Y differently. It might make more sense, then, to have categories 3A and 3B to take account of the fact that there is (or may be) a difference in gravity between two students. Although the example I give is a made up one, there were a number of cases where different students were rated at "FAP 3" and yet there was a profound difference between them. Maybe simply introducing more points on the scale (eg, a scale of 1 to 5) would help?

### 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.***

It was very pleasing to see that the Board this year introduced a more generous set of criteria according to which DLS students who had performed very well could be awarded a distinction. The previous threshold was altogether too high.

Finally, I should like to express to particular points of gratitude.

I was delighted to have had accommodation and parking arranged for me at New College and would like to thank Professor Bright for organising this. I hope that you will pass my thanks along to her.

## **FHS Jurisprudence and Diploma in Legal Studies Examiners' Report 2018**

Equally, I should like to convey special thanks to the chair of the exam board, Tom Krebs. He arranged two very agreeable lunches (one in the Spring at the scrutiny meeting, and one at the second exam board meeting). Again, I'd be grateful if you could convey my thanks to him.

<b>Signed:</b>	<b>John Murphy</b>
<b>Date:</b>	<b>17 July 2018</b>

Please ensure you have completed parts A & B, and email your completed form to: [external-examiners@admin.ox.ac.uk](mailto:external-examiners@admin.ox.ac.uk), and copy it to the applicable divisional contact set out in the guidelines.