LAW MODERATIONS – HILARY TERM 2016

MODERATORS' REPORT

PART I

(A) STATISTICS

1.   Numbers and percentages of those passing and failing

Numbers

	2016	**2015**	**2014**	**2013**	**2012**
Total	209	211	204	204	218
Pass (without Distinction)	180	177	168	166	184
Distinction	26	34	36	38	34
Pass in 1 or 2 subjects only	3	0	0	0	0
Fails	0	0	0	0	0

Percentages

	2016	**2015**	**2014**	**2013**	**2012**
Pass (without Distinction)	86.12	83.9	82.4	81.4	84.4
Distinction	12.44	16.1	17.6	18.6	15.5
Pass in 1 or 2 subjects only	1.43	0	0	0	0
Fails	0	0	0	0	0

2.   Number of vivas

Vivas are not held in this examination.

3.   Number of scripts double or treble marked

Scripts in this examination are not automatically double marked. Following the agreed procedures, scripts were double marked during the first marking process to decide prize winners and when a fail mark had been awarded. Some further double marking was done in the first marking process to police borderlines and check awards of very high and very low grades. Once the marks were returned, the following classes of script were second marked:

(i)   Papers awarded 68 or 69 were double-marked when the candidate had achieved 68 or above in another paper, and there was a reasonable prospect of altering the candidate's overall classification.

(ii)   Papers of a 2.1 standard which were 4 or more marks below the candidate's average.

(iii)   Where a candidate had one mark at or above 60 or two marks at or above 58; and where their overall average mark was below 60.

(iv)   Where a candidate had one mark above 60 and two marks of a 2.2 standard and the average mark across all three papers was above 59.

(v)   Where a Course 2 candidate had an average, over the three papers, of less than 60.

Second marking scripts of a 2.2 standard which were 4 or more marks below the candidate's average did not impose a significant additional burden on the examiners. The second marking of papers where the overall average mark was below 60, but above 59 with one paper marked at above 60, was also thought to be a useful addition to the second marking criteria, and it did not impose a significant additional burden on examiners. The Moderators accordingly supported the continued use of these second marking categories.

Markers this year loyally followed the general instruction that the whole of the marking scale be used and grades at the higher end of the 60s and also above 70 be used liberally. This was particularly true of marks above 70. This resulted in a small group of candidates obtaining outstanding marks across all three subjects. The borderline grades of 58, 59, 68, and 69 were also used at the first marking stage, and each subject group engaged in double marking in order to test the lines between 2.2, 2.1 and 1st class grades. We adopted the policy of ensuring that, when checking scripts across the marks for calibration purposes, these borderline scripts were chosen for double marking at the first marking stage.

4.   Number of candidates who completed each paper

209 candidates sat the three papers.

(B) EXAMINATION METHODS AND PROCEDURES

As last year, 'short weight' and associated phenomena were dealt with by the award of the mark merited by the work the candidate had actually presented. The only rubric breaches this year occurred in criminal law, where candidates had failed to complete four questions, thereby failing to answer two problem questions or one essay question... No further action was taken other than awarding a mark of zero for the answers which were not completed.

Steps were taken to review the consistency of markers' profiles after 25 scripts, and also at the end of the first marking stage. The Moderators agreed that investigation and explanation should follow if either an individual marker or a team of markers awarded fewer than 15% or more than 20% first class marks, or fewer than 5% or more than 10% lower second (or worse)

marks. This was the case in the Roman law paper (A Roman Introduction to Private Law) and was brought to the attention of the Moderator for that paper in the Moderators' meeting. It was clear that the group marking that paper had followed the procedures, meeting to agree marks after the profile of 25 scripts and the final profiles and had a satisfactory explanation for this divergence.

(C) PRACTICE WITH REGARD TO SETTING PAPERS

Each paper was set by the relevant Moderator acting in conjunction with the paper's other markers.

Past papers were available via OXAMS.

PART II

(A) GENERAL OBSERVATIONS

The Moderators are extremely grateful to Julie Bass, the Law Faculty Examinations Officer.

The tight timetable for Mods was maintained. All the markers showed exceptional zeal and promptness early in the marking period making this a smooth process, particularly given an early Easter break which occurred over the weekend before the first marking deadline. All markers also co-operated effectively to ensure that second marking took place efficiently, accommodating conferences and childcare over the school holidays.

Medical certificates and special cases

14 candidates had special arrangements for sitting their examinations. There were 9 medical certificates in total. No candidate's final result was affected.

Release of grades

The grades for all students were released without error, on Wednesday 6 April 2016.

(B) GENDER etc. (equal opportunities issues and breakdown of the results by gender; Course 1 and 2 performances; ethnicity analysis)

The gender breakdown for Course 1 and Course 2 combined was:

	2016		**2015**		**2014**		**2013**	
Result	Gender	No	Gender	No.	Gender	No.	Gender	No.
Distinction	F	7	F	18	F	17	F	19
	M	19	M	16	M	21	M	19
Pass	F	102	F	109	F	98	F	83
	M	78	M	68	M	68	M	83
Two Paper Pass	F	3						
	M	0						

| Withdrawn | F | 1 |
| | M | 1 |

These statistics yield a percentage comparison of Distinction performances as follows – F: 6.3%; M: 24.35%. This reveals a startling (and unexplained) disparity this year between the performance of women and men. Significantly fewer female candidates obtained Distinctions this year in comparison to previous years. There was also a significant reduction in the number of Distinctions awarded in general this year.

It was also possible to disaggregate the comparative performance of Course 1 and Course 2 candidates – 12.77% (23/180 candidates) and 10.34% (3/29 candidates) achieved Distinctions in each group respectively, and 12.44% in the combined cohort. This is out of line with the usual outcome, where the Course 2 cohort has tended to show special strength. Combined with a similar situation in 2014, there have now been two years in the previous three where the Course 1 cohort has out-performed the Course 2 cohort.

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

(C) SUBJECT REPORTS

A ROMAN INTRODUCTION TO PRIVATE LAW

General comments
This paper yielded a gulf in attainment between the strongest candidates and the weakest. Those attaining a Distinction mark were able to combine focussed and informative responses to a gobbet question, with thoughtful, relevant and persuasive responses to essays and (for the minority who attempted them) acute and accurate analysis of problem questions. A handful of papers were truly outstanding, and deserving of higher praise than the examiners were able to give. At the other end, too many candidates seemed to have formed the opinions that the questions on the paper were mere prompts to regurgitate a pre-prepared answer or general account of related legal rules, and that inattention to primary and secondary source materials could be excused by a series of bald assertions. Those candidates will, by and large, have been disappointed with the examiners' response. By contrast, the examiners were prepared to give due credit to those who made a genuine attempt to analyse and answer the question on the paper, even if there were significant errors or omissions in that analysis.

The reluctance of candidates to tackle problem questions, and the overall standard of answers to these questions, were disappointing. The examiners recognised that it is unrealistic to expect an exhaustive and error free analysis of every corner of detailed problems of the kind presented. Nevertheless, as in any private law subject (as well as in legal practice), candidates were expected to be able to identify the principal issues, to provide an accurate description of the applicable legal rules − with supporting references to source materials and, where appropriate, appreciation of the development of the law over time − and then to apply those rules to the stated facts. In many cases, these essential qualities were neglected.

The Roman Law subject group will be invited to consider possible changes to the format of the examination in light of the above comments.

Question 1 (gobbets)
This was the more popular of the two gobbet questions, with many candidates opting for gobbets (c) and (d). There were few responses to gobbet (a); of these, the best sought to explore how Roman law followed or did not follow the maxims set out in Justinian's Institutes (honesty, avoidance of harm, respect for another's entitlements). Weaker answers to gobbet (b) drifted from the assigned topic (Gaius' category of incorporeal things) to other aspects of the law of things, or drained the candidate's knowledge of things assigned by Gaius to this category in an unfocussed manner. The best responses tackled Gaius' division of things as either corporeal or incorporeal head on, and expressed a view as to whether his insight was brilliant or flawed (or a combination of the two). In responding to gobbet (c), many (rightly) focussed on common rules (for example, as to determination of the price) and on borderline situations (such as that of the goldsmith). Stronger answers also noted important differences between sale/purchase and letting/hire. In responding to gobbet (d), most candidates appeared aware of the debate between Jolowicz and Daube as to the original scope and effect of Chapter 3 of the Lex Aquilia but too many failed to set this debate in context or to record accurately the protagonists opinions. The more sophisticated approach to measuring the monetary award in classical law, and the views of more recent commentators such as Birks on this subject, were largely ignored.

Question 2 (gobbets)
Fewer candidates attempted this gobbet question. Gobbet (a) (sources) proved less popular than expected. The candidates who chose to deliver a general essay on sources of Roman law may, with the benefit of hindsight, wish that they had chosen differently. The responses to gobbet (b) encapsulated the range of ability on display. Stronger answers concentrated on the question presented by Justinian in the text, using their background knowledge of *occupatio* and of the concept of possession to give a concise, focussed answer. Others spoke, more generally (and less relevantly), of natural, original modes of acquisition, or of how ownership of wild animals could be lost. Very few candidates appeared prepared to tackle the topic of the scope of the contract of mandate (gobbet (c)). Gobbet (d) was the most popular, and stronger answers were able to link the approach taken to the assessment of compensation in *iniuria* to the nature of the delict in the classical and pre-classical law. Many, however, fell into the error of assuming that the gobbet related solely to the notion of aggravated (*atrox*) *iniuria*, missing the more general thrust of the given text.

Question 3 (sources)
This was a popular question. Stronger answers paid careful attention to the formulation of the question, with its injunction to discuss and illustrate the relative roles of the praetors and the jurists in developing the law. The delicts of *damnum iniuria datum* and *iniuria* provided fertile ground for this exercise, showing the two bodies combining in different ways. By contrast, the law of contract, and most notably consensual contracts, were curiously neglected. The strongest answers paid attention to the different ways in which the praetors and jurists were able to shape the law, and to the jurists' influence upon the *ius honorarium* through their advisory roles and written commentaries on the Edict. Weaker answers addressed the influence of praetors and jurists separately, contained few or no illustrations and lacked any historical perspective.

Question 4 (development of Roman law)
This was not a popular question and, on the whole, was not well answered. The worst answers ignored the question's focus on the work of Gaius and on his influence on the law of the Romans

and gave a pre-prepared account of the second life of Roman law. Others, more advantageously, explored the reasons why Gaius' Institutional scheme proved attractive to Justinian and to later scholars and law makers. A few explored other possible reasons for Gaius' transformation from classical non-entity to pre-eminent jurist, or were prepared to address possible weaknesses or flaws in Gaius' legacy. Such accounts were well rewarded.

Question 5 (property)

This was the most popular question on the paper, and produced some exceptional and some truly terrible answers alike. Some, acting at their own peril, sought to twist the question to enable them to trespass on other topics, most commonly the Actio Publiciana. The strongest candidates were careful to define ownership in Roman law and to identify different ways in which it might be considered as "absolute" or "indivisible" before proceeding to deploy their (impressive) knowledge of the legal characteristics of the institutions referred to in the question (praedial servitudes and usufruct) in order to express a carefully reasoned answer to the question.

Question 6 (contractual obligations)

This was a popular question, which revealed weaknesses in many candidates' examination technique. Many treated the quotation in the first paragraph to be surplus to requirements, and an alarming number chose to interpret the words "How important were formal requirements in the Roman law concerning contractual obligations?" as a gateway to an essay limited to considering the development of *stipulatio*. The best answers used acquired knowledge of all four categories of contractual obligation in Roman law, and of innominate contracts, to give insightful accounts of the functional significance of formality in the Birksian sense throughout the course of Roman legal history.

Question 7 (theft)

This was the second most popular question on the paper, and prompted some impressive answers. Stronger responses noted the question's focus on definition of the "classical conception of *furtum*" and recognised that this required a critical account not only of the controversial physical element of the delict (Gaius' and Paul's *contrectatio*) but also of other elements highlighted in Gaius' institutional account and in other juristic works. These candidates used their acquired knowledge of primary and secondary sources to adopt a position in support or opposition to Schulz, with some adopting a *via media* (for example, acknowledging definitional uncertainty but contending that this was an intelligible and appropriate position for the classical jurists to adopt). They were also able to distinguish the classical law from the evolving law of the Republic, and to suggest reasons why the law developed as it did. Weaker answers gave a general account of the Roman (and sometimes English) law of theft, and failed to support assertions with references to primary and secondary source materials.

Question 8 (delictual obligations)

This question proved to be quite popular. It required the candidates to use their acquired knowledge of the Roman law of delicts to assess the relevance of the quoted proposition, taken from a modern comparative account. This led to a wide variety of approaches, some more successful than others. The examiners allowed candidates the freedom to choose whether to consider individual delicts separately, before reaching a conclusion, or to adopt a more integrated analysis. The very best answers sought to identify features of the law which signalled that a particular interest was seen as more or less important (for example, conditions for liability, form of remedy, measure of monetary remedy, transmissibility of action). At the other

end of the quality spectrum, the limited knowledge on display suggested that the question had been chosen *faute de mieux.*

Question 9 (problem answer)
The general comments above regarding problem questions apply here. There were some alarming errors. Most commonly, several candidates fell into the well worn "*usucapio* trap", of thinking that one who possesses a thing in good faith for the relevant period invariably becomes *dominus*. For the avoidance of doubt, Atticus had not abandoned ownership of his horses (he may well have lost possession, but that is a different matter) and Cassius could not acquire them by *occupatio* or *usucapio* even if he was acting in good faith. The circumstances of Cassius' acquisition did not constitute a *iusta causa*. Moreover, there was a case for argument that the slave, Bolus, had stolen the horses, preventing their acquisition through *usucapio* by any person (even the *bona fide* purchaser, Domitius). Those who suggested that Bolus was liable to an action in theft by his master took this line of argument too far. Others attributed a breadth to the Lex Aquilia and the delict of *iniuria* that even the most expansive accounts of the law could not accommodate.

Question 10 (problem answer)
Again, the general comments above apply. There were some excellent answers, but they were few and far between. A majority missed or ignored the instruction to advise Gaius on "all aspects of the transaction" and focussed on contractual issues only, to the exclusion of property and delictual issues. Others failed to notice the stated date of the problem facts in the classical period (200AD), leading to prolonged discussion of Justinian's law. Of greater concern to the examiners was the limited knowledge of Roman contract law demonstrated in a significant proportion of answers. Few were able to give a convincing account of the rules governing protection against eviction and defects in quality, or to link those rules to the good faith clause in the formula. Even fewer recognised the possibility for Gaius to seek the protection of the Aedilitian Edict by proposing that the transaction take place on the marketplace, or through an argument extending that Edict to off market sales. In the examiners' view, the extensions in parts (b), (c) and (d) were relatively straightforward and could, in large part, be answered with material from the Institutes with which all candidates should be familiar. Even so, they were handled unevenly.

CONSTITUTIONAL LAW

The standard this year was generally high, with a few outstanding scripts. Most candidates demonstrated a very good level of knowledge and understanding of the subject. There was a tendency for candidates to focus on questions concerning parliamentary sovereignty or the Human Rights Act and candidates should be encouraged to focus on a wider range of subjects. There was generally a good ability shown by candidates to use information to provide clear arguments in response to questions and a pleasing critical engagement with the literature. However, there were also many scripts which seemed content to provide broad accounts of knowledge without using this effectively to answer the question.

Question 1: 'Would the UK parliament regain sovereignty if the European Communities Act 1972 were repealed?

This was an extremely popular question, with most candidates focusing on evaluating the topic more broadly. In particular, there was a tendency to focus on whether EU law, human rights

law or the devolution settlements posed more of a threat to sovereignty. Better answers were able to provide a more specific evaluation of the impact of the repeal of the European Communities Act 1972, assessing whether any limit to sovereignty came from the provisions of the Act, or from membership of the EU itself, focusing on whether a repeal of the Act would alter the nature of the relationship between UK law and directly effective provisions of EU law. In addition, better candidates focused on evaluating the different meanings of sovereignty, looking at political and legal sovereignty in addition to assessments of continuing and self-embracing accounts and Diceyan and manner and form accounts of sovereignty. As ever with questions about parliamentary sovereignty, there were too many hackneyed answers arguing that it has disappeared, or that it never existed, without explaining it. Even the best answers could have been improved if the candidate had explained the point of parliamentary sovereignty, rather than quoting a definition from Dicey and announcing that it has been terminated or changed.

Question 2: Do parliamentary privileges undermine the rule of law?

This question was fairly popular. Better candidates explained how parliamentary privileges may harm the rule of law given that privileges immunise some activities of Parliament from legal consequences, focusing in particular on the parliamentary privilege of freedom of expression and defamation. Better answers also recognised the parliamentary privilege of Parliament to regulate its own internal affairs, with many candidates providing a very good analysis of the *Chaytor* decision. Weaker candidates gave an account of 'formal' and 'substantive' theories of the rule of law, and then struggled helplessly to explain how that controversy bears on this question. There is no rule that a question on the rule of law has to be answered with a discussion of 'formal' and 'substantive' conceptions. Some weaker candidates, alternatively, provided an account of the privileges of parliament without evaluating the relationship between parliamentary privilege and the rule of law.

Question 3: Does the relationship between the executive and the legislature demonstrate that the separation of powers plays no meaningful role in the United Kingdom constitution?

This question was also fairly popular, with candidates demonstrating a good knowledge of the arguments concerning the possible fusion between the legislature and the executive. Most candidates provided an overview of the relationship between the legislature and the executive, asserting that the meaningful role of the separation of powers was provided through the position of the judiciary as an independent body able to check the actions of the executive. Better answers provided a more sophisticated account of the relationship between the legislature and the executive, providing a detailed account of the scrutiny of government in Parliament, of the way that primary and secondary legislation is enacted and of the role of the House of Lords. Weaker candidates focused too greatly on an apparent controversy between 'pure' and 'partial' accounts of the separation of powers, arguing that the UK constitution was an exemplar of the 'partial' model. This is hardly surprising given that there is no constitution which adheres completely to the ideal of a 'pure' model of the separation of powers. Better candidates were able to explain this fallacy. Weaker candidates also demonstrated a tendency to overstate the power of the executive over the legislature. It would have been good if even one student had stopped to imagine how deeply different the constitution would be, if the legislature and the executive really were fused- if, e.g., the Cabinet could rule by proclamation.

Question 4: 'The rule of law is of the first importance. But it is an integral part of the rule of law that courts give effect to parliamentary intention. The rule of law is not the same as the rule that courts must always prevail, no matter what the statute says'. (LORD HUGHES, *R (Evans) v Attorney General* **(2015)). Discuss.**

This was not a popular question, despite an entire lecture being devoted to an analysis of the *Evans* case. Weaker candidates used the question as an opportunity to give an account of the rule of law, providing an account of formal and substantive versions of the rule of law. If this was related to the question, it was to argue that ensuring that courts interpreted legislation according to the will of Parliament furthered formal accounts of the rule of law, but may undermine substantive accounts of the rule of law. Better candidates were able to provide a detailed analysis of *Evans*, in addition to providing a detailed evaluation of the relationship between the rule of law and the relative role of the legislature and the courts when interpreting legislation.

Question 5: 'Prerogative: A sovereign's right to do wrong' (BIERCE). Is this a valid definition?

This was not as popular as other questions, but did elicit some excellent answers. Strong candidates were able to provide a detailed evaluation of the extent of prerogative powers, in addition to evaluating the extent to which the courts control prerogative powers and how conventions arise to regulate how prerogatives are exercised. Weaker candidates tended to focus predominantly on legal controls of the prerogative, often providing a narrative concerning the development of the case law post *CCSU*, without explaining political controls over the exercise of prerogative powers or evaluating the extent to which these controls limit the powers of the sovereign.

Question 6: Does the House of Commons' 2015 standing order on English Votes for English Laws adequately answer the West Lothian question?

Although not as popular as other questions, those who focused on this question were mostly able to provide a detailed account of the new Standing Order on English Votes for English laws, in addition to providing a detailed evaluation of its answer to the West Lothian issues. Weaker answers either focused more generally on English Votes for English laws, without providing a detailed account of the new measures, or failed to evaluate the extent to which this provided an adequate answer to the West Lothian issue.

Question 7
7(a): Is the Monarch's constitutional role purely symbolic?. This question was only answered by a handful of candidates. Strong answers focused on providing a detailed account of the role of the Monarch and evaluating the extent to which conventions and statutes governing the exercise of her prerogative powers rendered her role symbolic.

7(b): What is the relation between constitutional conventions and general principles of the constitution? This question was more popular than 7(a), but again only answered by a few candidates. Strong candidates were able to explain the differences between convention and general principles of the constitution more generally, in addition to evaluating the connection between specific conventions and specific constitutional principles. Weaker candidates provided detailed accounts of convention, but were less able to evaluate the connections between convention and constitutional principles.

Question 8: 'It is by reference to the Human Rights Act's structure that I must register my respectful disagreement with [the view] that Parliament did not intend to confer on the courts of this country the power to give a more generous scope to Convention rights than that found in the jurisprudence of the Strasbourg court. (LORD KERR).

This was a very popular question. Most candidates demonstrated a detailed knowledge of the case law surrounding section 2(1) of the Human Rights Act 1998, particularly as concerns *Ullah* and later cases setting out, and refining/contradicting, the 'mirror principle'. Better candidates focused more specifically on the question, recognising that Lord Kerr's quote argued for the ability of the UK courts to provide a more generous scope to Convention rights than found in the ECtHR. There were some excellent answers which focused on the structure of the Human Rights Act 1998, recognising that this Act may require Parliament as opposed to the courts to provide a broader scope of rights, drawing in particular on the arguments found in *Nicklinson*. Moreover, other excellent answers were able to draw on the relationship between the Human Rights Act 1998 and common law rights, arguing that the UK courts should develop the common law rather than providing a more generous account of Convention rights than found under the ECtHR, drawing on *Kennedy*.

Question 9: In a 2014 policy document the Conservative Party stated that 'Labour's Human Rights Act undermines the sovereignty of Parliament, and democratic accountability to the public.' Is this a valid criticism of the Act?

This was another popular question. Candidates were well-versed in providing an account of the extent to which the Human Rights Act 1998 does or does not undermine the sovereignty of Parliament. Better candidates also provided a detailed evaluation of the extent to which the Act undermines democratic accountability to the public, focusing on the extent to which the courts have taken decisions on issues of policy, removing these issues from democratic accountability, in addition to assessing the role played by Parliament following section 19 Ministerial statements and the impact of the reports of the Joint Committee on Human Rights. Weaker answers often repeated information from their answers to question 8 or question 1, failing to use this information more specifically to evaluate criticisms of the Human Rights Act 1998.

Question 10: 'There has been no fundamental change in the basic relationship of Parliament to the executive. It remains what has been termed a reactive or policy-influencing legislature, rather than a policy-making legislature, but as a policy-influencing legislature it has been strengthened in recent years. The bottle of parliamentary scrutiny is far from full, but it may at least be half-full or better.' (NORTON). Discuss.

This question was not popular. Stronger candidates were able to provide a detailed account of the extent to which parliamentary scrutiny has increased, noting the change in the composition of committees, the role of Westminster Hall debates and e-petitions, in addition to the role of the House of Lords. Weaker candidates provided an account of the role of Parliament in scrutinising legislation, but were less able to explain how the powers of Parliament may have been strengthened recently. They also failed to explain how Parliament was able to influence policy, or to evaluate whether this meant that Parliament provided an effective scrutiny over legislative policies.

CRIMINAL LAW

The overall standard was good, with relatively few papers below the 2.1 borderline. The top script was in a league of its own. Many students opted to write two essays, Questions 1 and 3 being the overwhelming favourites. The style and content of the exam was affected by the decision (in response to the inconveniently timed decision of the Supreme Court in *R* v. *Jogee*) that in 2015-16, candidates would not be expected to know about joint enterprise or the Accessories and Abettors Act 1861. The loss of complicity, a major topic in its own right, had further implications for the setting of the problem questions and the paper contained several fairly long and demanding problems which encompassed a range of disparate topics. The examiners did not expect candidates to be able to tackle every issue in the allotted time, but were impressed by the way they rose to the challenge, and the coverage and depth displayed in the better answers. On the other hand, some strange claims were made in the heat of the moment including: the crime of murder is to be found in the Homicide Act 1957; that trespass is a crime; and that male circumcision is invariably unlawful.

Question 1
A few seized the opportunity to trot out their tutorial essays on *Woollin* (frequently misspelt), but there were outstanding answers to this question which carefully analysed the quotation, and drew imaginatively on a wide range writing and of case law from the core reading list.

Question 2
There were a fair number of takers for the causation question and the writers generally had a good knowledge of the law and made a genuine attempt to address the question.

Question 3
This was the most frequently answered question on the paper and the content and structure of many answers were remarkably similar and derived from Ashworth's writings on omissions. In reciting his arguments about a duty to rescue, some responses wandered off point. The best answers, as with Q.1, made good use of the case law found in the core reading list.

Question 4
Remarkably, some answers did not even mention *Majewski* although most sought to identify and discuss the various fictions and illogical devices alluded to in the quotation. No one spelt out the premise against which this might be the case. If they had, and had come up with, 'there needs to be subjective awareness at the time of the actus reus', they might have considered the possibility that the problem lay at that end rather than with the intoxication rules themselves.

Question 5
There were a small number of answers to this question but they were generally thoughtful. Some candidates were prepared to reject the sentiments expressed in the quotation, advocated of late by the Law Commission, and defended the mens rea principle as the source of culpability.

Question 6
This problem was very popular and raised the Fraud Act 2006, especially fraud by abuse of position. Naturally, post-*Hinks,* many of the scenarios also amounted to theft.   Many candidates, however, failed to discuss abuse of position at all, or referred to it in relation to some clients but not others. They also evinced a poor problem technique, dealing with straightforward thefts in excruciating detail. The better candidates left themselves time to

examine more interesting questions such as whether Jack's relationship with any or all of his clients was such that he was expected not to act dishonestly against their financial interests, and whether this duty was breached by, for instance, accepting a large cheque. It was surprising that candidates often opted for fraud by false representation in relation to Lotte when this required the invention of extra facts. Those intent on looking for misrepresentations might have considered the sob story told to Nora, or even Jack's interactions with the cash machine and Kenny. The involuntary manslaughter and burglary points were well-handled (as indeed they were in Q.7). While the behaviour of Ian was intended to raise necessity or duress of circumstances, and generated intelligent discussion of cases such as *Conway* and *Martin*, some candidates made a reasonable case for blackmail.

Question 7
This unusual problem was not expected to be popular, although it attracted some excellent answers. The wide range of property offences was generally well handled, although the smashing of the pumpkin caused some difficulty. The causation issues, as in Q.3, touched on the defendant's bad luck in bring about a result. Many were unable to explain why they felt that the chain of causation had been broken almost immediately; a few tried to apply the *Roberts* test of 'daftness' to the pig.

Question 8
This was one of the most popular problem questions. The fact that Gloria's actions amounted to at least actual bodily harm prompted some to proceed directly to homicide without discussing the relevance of Ethan's consent, but there were interesting discussions about 'reasonable surgical intervention' and ritual circumcision etc., which are mentioned in *Attorney-General's reference (No. 6 of 1980)* and *Brown*. The analysis of consent and submission in relation to Hester and Franco ranged from excellent to the disappointingly basic and cursory. Some concluded that neither party had consented to the intercourse but few then considered whether Hester had sexually assaulted Franco. More importantly, although most candidates were aware of *Dica* and *Konzani*, few noticed, or cared, that Franco merely suspected that he had a disease.

Question 9
The combination of internal and external factors which contributed to Ralph's sleepwalking provided an opportunity to explore in depth both sane- and insane-automatism. This was a better approach than unquestioningly relying upon the authority of *Burgess*. The facts also prompted some candidates to consider whether, as a matter of policy, Ralph should be treated as insane, rather than allowed to walk free and perhaps repeat his violent behaviour. Tony's actions raised the issue of self-defence, and in particular the householder defence. Too many candidates simply asserted that the force was grossly disproportionate without going through the many elements of the statutory defence and applying them to the facts.

Question 10
This was probably the most popular problem question. In contrast to Q.9, it was predominantly concerned with partial defences to murder, plus (mistaken) self-defence. It was liberally sprinkled with assault and battery issues and most candidates found the time to address some of these. Good answers carefully considered and applied to the facts both triggers associated with the loss of control defence and compared this defence with diminished responsibility. The main weakness was the omission of one of the triggers, or a general lack of attention to the detail of the statutory provisions.