LAW MODERATIONS – HILARY TERM 2024

MODERATORS' REPORT

Part I

A. STATISTICS

Number of candidates in each class

	2024	2023	2022	2021	2020
Distinction	28	40	42	42	42
Pass	180	174	185	198	162
Incomplete	4	5			
Fail	0	1	1	2	-
Total	212	220	228	244	205

Percentage of candidates in each class

	2024	2023	2022	2021	2020
Distinction	13.21	18.18	18.42	17.21	20.49
Pass (without Distinction)	84.91	79.10	81.14	81.15	79.02
Fail	0	0.45	0.44	0.82	-

Number of vivas held

Vivas were not held in these examinations.

Number of scripts second marked

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

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

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

B. EXAMINATION METHODS AND PROCEDURES

Online examinations

Law Moderations took place in 9th week of Hilary Term. The examinations were closed book and held at the Examination Schools. Materials were provided in the examination room, and candidates were given 3 hours to complete their answers.

Word limits and rubrics

As the exams were sat in person, there was no word limit.

Mitigating circumstances

16 candidates submitted mitigating circumstances applications. At the Board's final meeting, the Moderators assessed the seriousness of each application and then used those assessments to determine whether to adjust the results of each candidate. No results were adjusted on the basis of the MCE applications.

Late penalties

The possibility of late submission was eliminated in 2021/22.

Examination conventions

The Notice to Candidates was uploaded to the BA Jurisprudence Mods Courses Canvas page on 29/01/2024 and the Examination Conventions were uploaded to Canvas on 18/11/2023.

Part II

A. GENERAL COMMENTS ON THE EXAMINATION

This was the first year since 2019 that Law Moderations took place in person, and the first year they have taken place in person on a computer.

Plagiarism

All of the exam scripts were run through plagiarism software. No plagiarism was identified.

B. EQUALITY AND DIVERSITY

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

	2024		2023		2022		2021		2020	
Result	**No**	**Gender**	**No**	**Gender**	**No**	**Gender**	**No**	**Gender**	**No**	**Gender**
Distinction	15	F	24	F	23	F	19	F	23	F
	13	M	16	M	19	M	23	M	19	M
Pass	114	F	101	F	114	F	126	F	114	F
	67	M	73	M	72	M	72	M	72	M
Fail	0	F	1	M			2	F		
	0	M			1	M			1	M
Partial Pass	1	F								
Incomplete	2	M								
	1	F								

The percentage of male students obtaining Distinctions was marginally lower than 2023 whereas the percentage of female students obtaining Distinctions decreased more significantly. 16% of male students obtained Distinctions in 2024, compared to 18% in 2023. 11% of female students obtained Distinctions in 2024, compared to 19% in 2023.

Appendix A of this report contains a gender breakdown by paper.

C. COMMENTS ON PAPERS AND INDIVIDUAL QUESTIONS

A Roman Introduction to Private Law

The overall standard in the Roman Introduction to Private Law paper was high, with several scripts that were especially impressive. On the whole, candidates sought to tackle the questions asked, rather than engaging with questions hoped for or encountered on a previous occasion. While the top end of the class was excellent, the overall number Distinctions was a little below the average of past years. There was a low number of thirds as well, making for a crowded middle field.

In the gobbet question (Part A), texts (b), (c) and (d) were the most popular, with few responses to text (a). For the first time, students could use the two Institutes booklets in the examination schools. The open access to the sources seems to have gone well. Answers to the gobbets were good, although frequently offered too much context and blank description. The longer answers may be due to the open access design.

Of two misnumbered gobbets only one would draw a blank if visited in the booklet, that is, gobbet (e). The markers were aware of this and paid extra attention, looking at performances and grades. Only very few students noted the mishap, and timely notice was given to the examiners, but all candidates effortlessly concentrated on the text as supplied without seemingly being distracted. Overall, no negative effect was observed.

In Part B (problem questions), all three questions had takers. Q2 was a little more popular than Q3 and Q4. Since all problem questions contained a balanced mix of issues arising in property, delict, and contract, no subject preference could be observed. There was a considerable number of candidates who picked two or even all three problem questions. Responses to all problem questions showed a wide variety of approaches and some original insights and suggestions.

In Part C (essays), there was a balanced uptake of questions focussing on contract (Q7), delict (Q8) and property (Q9). Few candidates answered Q10 (Roman law's second life), in line with the experience of previous years.

Criminal Law

The quality of the scripts this year was generally good, and the return to in-person examination conditions seemed to have a positive influence on the structure and content of the answers. As noted in previous years, common weaknesses in essay answers were twofold: a failure to address the question set, rather than provide a general discussion of the topic; and a lack of familiarity with the relevant theoretical literature. Common weaknesses in the answers to problem questions were a lack of citation of appropriate authority (both case law and statute), and a simplistic grasp of some significant cases.

1. This attracted some good answers, but often candidates did not discuss the recklessness limb of the question, nor think about the intent/recklessness distinction elsewhere than in the law of homicide.

2. The discussions of causation were generally sound, though few candidates asked whether the criminal law context was significant. There was also a general complacency about the rules on 'voluntary conduct' breaking the chain of causation.

3. This was a popular question. The answers often contented themselves with an overview of the current law, without providing any overall structure (e.g., the degree of harm, intentional versus reckless infliction of harm, the relevance of the defendant's motive). Many answers saw the relevance of personal autonomy, but neglected the problems of vulnerable victims, the question of the reality of the victim's consent, and balancing current decisions against long-term well-being.

4. There were some good answers to this question, but too many failed to see the theoretical significance of characterising (lack of) consent as an offence element or the presence of consent as a defence. The issue of whether the presence of consent should be treated in the same way in all sexual offences was also neglected.

5. There were some good discussions of the relevant merits of Ghosh vs Ivey/Barton, but a lack of detailed knowledge of the criticisms of Ghosh raised in Ivey. The only well-known argument was the risk that the more warped a D's beliefs about dishonesty, the more likely the D was to satisfy the Ghosh test. Some candidates were under the impression that Ghosh amounted to a 'Robin Hood' defence, rather than a question of D's awareness of general community standards on dishonesty.

6. This was not a very popular question, but did attract some strong answers from those who were well versed in the law, particularly in the wake of the decision in Jogee.

7. This question did not attract many answers. The law has a mixed approach in the case of both offence (e.g., sexual offences vs non-sexual offences) and defence (e.g., self-defence vs duress). The

question provided an opportunity to consider the significance of subjectivism in criminal law (e.g., the speeches in G).

8.(a). This question invited candidates to consider where duress should feature in criminal law, i.e., as a defence or (merely) as a mitigating factor in sentencing. This raised issues of fair labelling in the criminal law. It also provided an opportunity to consider the overlap between duress and the (presently) under-developed defence of (lesser evils) necessity in English law.

8.(b). This question did not attract many answers, but those who did attempt it displayed a good knowledge of the law and its limitations (e.g., the medical vs legal perspective on mental health, the restriction to cognitive failings, the application to all 'internal causes').

9. This was a popular question, and generally well answered. Common flaws were (a) a failure to ask if D's age mattered to the assessment of dishonesty, even on the Ivey/Barton test, (b) many candidates did not realise that fraud by false representation is committed when the representation is made, irrespective of its effect, (c) most candidates simply assumed that if E's representation was false it followed that it was dishonest, and (d) in the case of F, many saw the Parker point, but did not consider whether Parker was still applicable in the very different context of F.

10. This question attracted many answers. Most answers were sound, but often missed important issues. In the case of F and R having sex, most candidates appreciated that it could not be s.1 SOA, and instead must be either s.3 or s.4. On the question of consent, the relevance of s.76 on the purpose of the act was often overlooked, or poorly handled. Some candidates did not appreciate that if s.76 was not applicable, s.74 had to be applied. The relevance of Lawrance (generally misspelt) and its relationship with Assange was also poorly handled. The other two actions in the question called for a consideration of s.3, s.78, and (in the case where R was asleep) s.75(d). Candidates generally had little to say about whether F had a reasonable belief in consent in the circumstances.

11. There were many answers to this question, though few handled all of the issues equally well. In the case of E and J's liability, many thought it was a conspiracy to commit arson, without asking whether the property belonged to another, and many failed to raise the issue of E and J's status under s.2(2)(a) Criminal Law Act 1977. In the case of F, the key issue was whether his acts were more than merely preparatory for theft under the Criminal Attempts Act, or even amounted to appropriation under the current law of theft. V's potential liability under s.44 Serious Crime Act 2007 was often overlooked, and those who did see the possibility often invoked s.45 instead. Most candidates saw the possibility of O's liability for an (impossible) attempt under s.23 OAPA or murder.

12. This question had many takers. A central question was whether R was liable for murder for S's death. This required both causation and mens rea. It was arguable whether S intended GBH: if not, S could only be liable for constructive manslaughter (if the chain of causation was not broken). If S was liable for murder, loss of control under s.54 Coroners and Justice Act 2009 needed to be considered, including the relevance of s.55(6)(c). The analysis of whether A's treatment had broken the chain of causation were often too brief, and failed to ask if S's actions were still a substantial and operating cause of death. Some candidates overlooked A's potential liability for gross negligence manslaughter. Those who did consider it often showed no familiarity with Honey Rose, and some thought that A could only be liable for R's death if he had broken the chain of causation for S's action. Finally, many candidates appreciated T's potential complicity in S's actions, but overlooked the question of whether she only intended the pepper spray to be used in self-defence.

13. This was a difficult question and was not very popular. It raised questions about whether J could rely on self-defence for the killing of D, and (if not) whether Z and R were complicit in the murder. Many answers were unclear about the precise requirements for Z's mens rea in complicity in light of Jogee and Anwar. In the case of R, many thought that she could not be complicit as she acted under duress, overlooking Howe. Finally, in the case of D, s.76 Criminal Justice and Immigration Act 2008 (particularly in relation to 'householder' cases s.76(5A)) was often not cited.

Constitutional Law

The overall standard was generally good and there were a number of scripts that were very good indeed. For the most part, the examiners did not have concerns about candidates copying and pasting tutorial essays, although some candidates did offer overly general and descriptive answers, which failed to engage sufficiently with the particular question that had been posed.

Some questions were especially popular, including those touching on parliamentary sovereignty and human rights law, whereas other questions, such as those concerning devolution, were considered by relatively few candidates. Some questions clearly required candidates to relate some particular law or practice to the constitution as a whole – predictably, those who had a strong grasp of the wider constitutional context or scheme fared better than those who could discuss it only in part, without being aware of, or able to articulate, wider connections.

The best answers demonstrated an impressive grasp of the detail of constitutional law and practice, considering and deploying effectively a wide range of relevant case law, and engaged intelligently with questions of constitutional principle. Some scripts were held back by considering only a fraction of the material relevant to some question, developing answers that were partial and limited, or by repeating familiar tropes about the material rather than making out a sustained, thoughtful argument.

Q1. This question was not particularly popular. Some answers failed to engage adequately with the history and nature of the Ministerial Code, instead discussing constitutional convention in overly general terms. Better answers engaged intelligently with the idea of crystallisation, discussing relevant recent case law, explaining the Ministerial Code incisively, and situating the (changing) Code in relation to questions about the nature of constitutional conventions.

Q2. This was a popular question. Some candidates discussed parliamentary sovereignty in very general terms, without noting the particular focus of the question, which concerned the nature of the doctrine of parliamentary sovereignty and the prospect that the courts might revise it under certain circumstances. However, many answers explored the foundations of parliamentary sovereignty carefully, engaging well with the scholarship and case law that was directly relevant to the question.

Q3. This question was answered by relatively few candidates. It required an understanding of the relatively recent Dissolution and Calling of Parliament Act, which required in turn analysis of the Fixed-term Parliaments Act and the prerogative power of dissolution, including in light of the Supreme Court's prorogation decision. The best answers were in command of the main features of the 2022 Act and were able to explain its relative importance effectively.

Q4. This was a popular question but was wrongly treated by some candidates as a general invitation to discuss the relationship between government and Parliament, rather than to focus on how legislative power is, and has been historically, arranged. Different answers focused to different

extent on primary and delegated legislation, both of which were in principle relevant. Strong answers were able to explain the dynamics of the legislative process, especially in historical perspective, and avoided caricature or over simplification. Some candidates made good use of examples, helping to illustrate more general claims about constitutional practice and principle.

Q5. This question was fairly popular. It required reflection on the role that the House of Lords now performs in the constitution, as well as analysis of the merits of a particular reform proposal – replacing the existing House with "an elected assembly of the nations and regions". The best answers engaged with this question and addressed the merits of the status quo and the proposed alternative. However, many candidates instead discussed the House of Lords in general terms, touching on reform only in passing, or saying little or nothing about this reform proposal in particular.

Q6. This was a popular question and was in general fairly well answered. It attracted a wide range of answers, in terms of the range of cases that candidates considered. Not all answers managed to balance the two parts of the question effectively (asking whether courts have heeded Lord Reed's warning in Miller (No 1) and asking whether they should have heeded it). However, there were some excellent answers, which displayed a strong grasp of history, case law detail, and principle.

Q7. This question was not answered by very many candidates. Some answers went astray in taking the question to be an invitation to reflect on the nature of the rule of law in general terms, without engaging with the principle of legality and the case law deploying this principle in constitutional law. However, some answers did consider this case law with care, connecting it effectively to the idea or principle of the rule of law, understood in relation to the scholarly literature and judicial commentary.

Q8a. This was the first of two alternative questions about devolution. This particular question was answered by relatively few students, some of whom had difficulty in picking out the features of devolution that were relevant to an understanding of the nature of the UK constitution, often focusing on an overly narrow set of considerations that limited their overall argument. But some candidates did develop a powerful analysis of the history and detail of the devolutionary settlements and, especially, the implications of this analysis for our understanding of the UK constitution itself.

Q8b. This second alternative question was not popular. It required reflection on and evaluation of the existing devolutionary arrangements by reference to the relation between England and the UK in particular. Some answers did develop a thoughtful argument about devolution in light of the size of England, drawing out similarities and differences between devolution and federalism. While the possibility of devolution for/to England was not irrelevant, some candidates did focus overly much on these points, rather than addressing the question itself.

Q9. This question was answered by many candidates, some of whom wrongly took the quotation as an invitation to discuss section 3 and section 4 of the Human Rights Act in general terms. Better answers were focused sharply on the question that had been posed and were able to address the relevant case law in detail, situating it in relation to constitutional principle and academic commentary, and thus developing a compelling overall argument.

Q10a. This question, the first of two alternatives, was very popular. However, many candidates provided very general answers about the relationship between Strasbourg case law and the Human Rights Act. Candidates who were unaware of relevant Supreme Court precedent in recent years struggled to answer this question effectively. Better answers engaged with the full range of relevant

case law, reflecting on the point of the Human Rights Act and on its development over time – and answered the question directly.

Q10b. This was a less popular alternative question. Some candidates did not engage with the question's focus on common law rights, which of course limited the force of their answers. The best answers had a strong grasp of the relevant case law, and thus could speak confidently and clearly about the relative freedom of UK courts after 1998/2000 to create or develop common law rights. They also addressed the second part, which asked how much freedom they should have.

Board of Examiners

Thomas Adams (Chair)

Rebecca Williams

Joshua Getzler

Appendix A

Breakdown of results by individual paper and by gender

Criminal Law	Student Count	75 – 79	71 – 74	70	68 - 69	65 – 67	61 – 64	60	58 – 59	50 - 57	48 - 49	40 - 47	39 or less
	Number												
Criminal Law - All	210	0	9	30	11	65	49	22	10	13	0	1	0
Female		0	3	14	8	39	34	15	9	6		1	
Male		0	6	16	3	26	15	7	1	7			
	Percentages												
Criminal Law - All	100		4.29	14.29	5.24	30.95	23.33	10.48	4.76	6.19		0.48	
Female			1.43	6.67	3.81	18.57	16.19	7.14	4.29	2.86		0.48	
Male			2.86	7.62	1.43	12.38	7.14	3.33	0.48	3.33			

A Roman Introduction to Private Law	Student Count	75 – 79	71 – 74	70	68 - 69	65 – 67	61 – 64	60	58 – 59	50 - 57	48 - 49	40 - 47	39 or less
	Number												
Roman Law - All	210		10	24	27	74	48	8	10	7		1	1
Female			4	16	15	41	33	5	8	5		1	1
Male			6	8	12	33	15	3	2	2			
	Percentages												
Roman Law - All	100		4.76	11.43	12.86	35.24	22.86	3.81	4.76	3.33		0.48	0.48
Female			1.9	7.62	7.14	19.52	15.71	2.38	3.81	2.38		0.48	0.48
Male			2.86	3.81	5.71	15.71	7.14	1.43	0.95	0.95			

Constitutional Law	Student Count	75 – 79	71 – 74	70	68 - 69	65 – 67	61 – 64	60	58 – 59	50 - 57	48 - 49	40 - 47	39 or less
	Number												
Constitutional Law - All	209		9	31	11	61	75	9	8	5			
Female			3	16	6	36	50	8	6	4			
Male			6	15	5	25	25	1	2	1			
	Percentages												
Constitutional Law - All	100		4.31	14.83	5.26	29.19	35.89	4.31	3.83	2.39			
Female			1.44	7.66	2.87	17.23	23.92	3.83	2.87	1.91			
Male			2.87	7.18	2.39	11.96	11.96	0.48	0.96	0.48			