Question One

This question had four parts, and these parts were inconsistently answered. Few students were able to answer all four parts competently.

Part (a) was not an invitation to provide a broad discussion of the doctrine of precedent, but asked specifically how this doctrine worked in relation to statutory interpretation. Given that the notes provided as an attachment to the exam included *Ogden v Lucas* it was surprising that this question was often answered poorly.

Part (b) provided students with the most difficulty – very few identifying the issues around interpreting domestic legislation which incorporates provisions of foreign treaties.

Part (c) was generally well done with most students showing a strong understanding of the principle of legality.

Part (d) was often answered with a lot of fluff rather than a crisp discussion of s15AA/s33 and s15AB/s34. This was disappointing given the amount of time devoted to a discussion of ambiguity throughout the course.

Question 2

Question 2 was generally answered well, the difficulties experienced by students here were:

- Failure to support the discussion by reference to case law and legislation, as required by the question (and as amply available in the supporting notes);
- Failure to discuss all the issues raised by the question itself.

While students may have passed, if answers exhibited these difficulties it made it difficult to receive high marks.

Question 3

There were a wide range of answers to Question 3. Common (but not universal) difficulties experienced by students can be broadly grouped under 3 headings: poor or no discussion of extrinsic material; poor structure; lack of attention to detail.

A surprising number of students built very strong arguments, but with no or little discussion of the extrinsic material. The extrinsic material constituted 50% of the bulk of the question and needed to be discussed. Questions of access to this material and the weight to be given to the material needed to be considered. Often they were simply ignored. Again, students could pass the question with a sufficiently good discussion but an inadequate discussion of the extrinsic material militated against the award of higher marks.

Many students struggled to provide a well structured answer and a logical discussion of the issues raised. This is understandable under exam conditions, and is the reason that our class discussions focussed on systematically working through the elements of the relevant section. Students who did this were, on the whole, able to build a better argument, and missed fewer issues. A problem
question requires a discussion of the issues – not a discussion of competing philosophies of statutory interpretation.

Attention to detail is an indicator of depth of understanding and often distinguishes stronger students from their peers. Confusion is understandable under exam conditions but it is important to get the interpretation legislation right (*Interpretation Act* NOT *Acts Interpretation Act*); the sections right (eg s33 NOT s32); and to support your argument by reference to appropriate case law, legislation or legal principles. One example: “We need to consider the context of the section”. Yes, but why? Because of what case, what section or what legal principle?