This was the first open book exam in this subject for some time, and as such was a little disappointing. Too many students appeared to rely on their notes of cases without really thinking through some of the significant issues, and be able to comment on these under exam conditions.

Question One was very poorly done, and if students are unhappy with their overall mark, probably lost marks here. Of the four parts, Part 2 which raised issues around precedent and statutory interpretation was generally well done. The discussion (in Part 1) of whether approaches to interpretation of statutes and contracts converge or depart was less well handled. Parts 3 and 4 were very poorly done. Part 3 required recognition that the legislation needs to be interpreted consistently with the Vienna Convention – not NSW law – and thus the cases, sources and approach are quite different. Part 4 required recognition that this application scheme is interpreted according to Commonwealth law, not State law.

In Question Two better answers addressed all the issues raised by the question – especially the issues which arise between consideration of context and extrinsic material. This is an issue which was discussed at length in class, but this was not always addressed by students when answering this question. It was not enough to simply cite the sections – a thoughtful discussion of the relevant issues was required. This is where the effect of the open book exam was most obvious – with too many students writing out notes of cases rather than thinking about the question and building an argument. This is sufficient for a pass, but not much more.

Question Three was well done on the whole, although there appeared to be some time management issues. The biggest issue with this question was the discussion of extrinsic material. About a third of the question provided information about extrinsic material – however scant attention was paid to it in most answers. It was not uncommon for students to simply note that ‘access to extrinsic material is permissible’ without a detailed discussion of the relevant tests and how they were satisfied, and then continue to treat all of the extrinsic material as one bloc and simply provide a conclusion without further discussion. Better students considered why extrinsic materials could be accessed and then considered each piece of extrinsic material in turn to determine if it could be referred to, and how much weight it should be accorded. The weight to be given to the photo spread in Gentleman’s Quarterly definitely required this consideration.