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100 Supreme Court Building  
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Mr Catalano:

Though I understand the deadline for public consultation to have passed, I have just learned of the proposed changes to Rule 7, § 7.01 of the Rules of the Supreme Court. I am sending you these comments nonetheless, both because of the importance of this issue to me and in the hope that the Court retains for itself the discretion to take into account perspectives which come to its attention even outside the published window for public feedback.

I must object in the strongest possible terms to the amendments as proposed. They serve to put Tennessee at a disadvantage both in the increasingly internationalized legal profession and in terms of regulatory competition, and they are, as worded, of grave unfairness to Tennesseans such as I who have undertaken legal education abroad with the expectation of and in reliance on Tennessee's present rules on the admission of foreign law-school graduates.

In examining the merit or demerit of this change, the court will no doubt take account of the position on admission of foreign law-school graduates in other states, helpfully summarized<sup>1</sup> by the American Bar Association in 2005. Alongside other states, the position in Tennessee appears quite reasonable: open to the possibility at all (some twenty-two states are not), less restrictive than some<sup>2</sup>, yet more cautious than others (the quintessential example being New York).

Preparation for the Bar exam in any state is a months-long endeavour requiring a massive investment of time and money. The exam is rigorous, wide-ranging, and calculated to test whether a candidate has the sufficient knowledge to competently act for clients at Tennessee law. In my view, and in the view of the Rules of the Supreme Court as they stand at the moment, the exam is both necessary and sufficient. It would be unwise to extend admission on motion to English barristers, but it would also do Tennessee a deep disservice to require them to undertake twenty-eight semester credit hours at a law school in the U.S. Without altering the ultimate standard of knowledge required—candidates for Bar admission would still have to take the Bar exam, and grades from the classes taken in the law school do

<sup>1</sup> <http://www.abanet.org/legaled/publications/compguide2005/chart10.pdf>

<sup>2</sup> D.C. requires five years' good standing in another U.S. jurisdiction, a rule that would lead to an impossible situation for foreign law graduates if it were universally adopted.



not, as the proposed rule is written, factor into the Supreme Court's decision to admit them as attorneys—the proposed change adds twelve months and tens of thousands of dollars in hurdles between international lawyers and Tennessee practice. Tennessee cannot afford to close itself off from the academic and comparative expertise that foreign-educated lawyers bring back to it; it is no coincidence that the jurisdiction in the U.S. with the most liberal rules on admission of foreign law graduates (New York) also has the most flourishing global legal practice.

The second objection to the proposed changes is less fundamental but no less serious on my part. It was in specific awareness of the rules on admission of foreign law graduates that I, in October of 2004, left Nashville to pursue a first degree in law<sup>3</sup> at the University of Oxford, graduating in 2008 in the second-highest honours division. I am currently teaching and writing a doctoral dissertation on the protection of equitable property interests in European human-rights law at the University of Osnabrück, Germany, partially with a view toward establishing the substantive equivalence required for admission to the Tennessee bar exam as set out in the current rules. Though one undertakes any long-term project at the risk of parameters changing over the course of several years, I have worked rapidly and in two very high-quality legal academic environments toward qualifying for the Tennessee bar exam, and it would be of regrettable unfairness to candidates who find themselves in the 'pipeline' at the moment to yank the regulatory rug out from under them.

To that end, and though my objections to the change in principle are not in any way mitigated by this suggestion, I would hope that even if the Court were inclined to adopt the proposed rule change, it would do so in such a way as to only apply it to those potential Bar candidates who began their legal education in the foreign country after the date of the adoption of the rule.

I have attached a letter sent by my law school, Oxford, to the New York Board of Law Examiners in the hope that it explains the content and scope of the English undergraduate legal education that I have undertaken, and in the hope that it adds persuasive force to a position I take very strongly: that the status quo in Tennessee is a prudent position: fair, safe, and open, one which acknowledges the present and future challenges of the legal profession and which sends the message that Tennessee, ahead of almost every other state, values international perspective and dialogue in its law and legal profession. That our state and our state Bar, in other words, are the leaders among their peers. I hope the Court will decide not to turn from this position.

Respectfully submitted,



Christopher Schuller.

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<sup>3</sup> the B.A. in Jurisprudence. A complete description is attached as an appendix.



# University of Oxford

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09 March 2009

To whom it may concern,

This letter serves to provide information about the courses taken by Mr Christopher Schuller in the course of his BA in Jurisprudence. Mr Schuller took the following courses (a course description is provided for each in Appendix A) Constitutional Law, Criminal Law, Roman Law, Administrative Law, Contract, Jurisprudence, Land Law, Tort, Trusts, EU Competition Law, Family Law, and Criminal Justice and Penology.

## Teaching arrangements

Each subject's syllabus is broken down into eight units (with the exception of courses taken in your final year – in Mr Schuller's case Family Law and Criminal Justice and Penology – which are broken down into seven units). The student's tutor issues a reading list in respect of each of these units, culminating in a question to which students are expected to write an answer. For each unit, students undertake reading over three to four days, before writing an answer. They then attend a tutorial or small class at which they discuss what they have learnt with the tutor. In addition students may attend lectures, but these could well be on subjects other than the unit or indeed the subject which the student is currently studying for tutorials. The faculty maintains that the load for each standard subject (covering reading, thinking, writing, attendance at a tutorial, and attendance at lectures) should be 8 (units) x 30 hours work (with the exception of final year subjects – in Mr Schuller's case Family Law and Criminal Justice and Penology where the load should be 7 (units) x 30 hours work). Beyond that general prescription, the faculty does not specify a particular number of classroom hours per course option though it should be noted that a tutorial is a much more intensive pedagogical tool than a class as it typically involves a ratio of one tutor to two students.

## Examining criteria

In common with most British universities, Oxford divides its degrees into four categories: first; upper second or 2:1; lower second or 2:2; third; pass;. Criteria for the award of each are as follows:

### First class (70% and above)

First class answers represent a level of attainment which, for an undergraduate, can be regarded as exceptionally good. They show 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;

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- 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.

#### 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.

Professional Recognition

The degree of BA in Jurisprudence (Course 1 and Course 2) of the University of Oxford is recognised by the Solicitors Regulation Authority and Bar Standards Board as satisfying the requirements of the academic stage of training specified by those bodies for entry into the legal profession.

I hope that provides the information required about Mr Schuller's degree; if not please contact me.

Yours faithfully

Paul Burns  
Academic Administrator  
Law Faculty



## Appendix A

### **A Roman Introduction to Private Law**

This subject is an introduction to legal concepts and legal thought, which for centuries have been directly influenced by Roman Law. The course is based on primary materials, the set texts from Gaius (second century AD) and Justinian (sixth century AD). The texts are studied in translation. The course has five sections: I. Sources of Law and the Scheme of the Institutes; II. Property; III. Obligations (A) Contract, (B) Delict (Tort); IV. Influence of Roman Law.

### **Constitutional Law**

This course covers the law of the constitution, including the structure and basic principles of the British constitution, and the impact of European Community law on the constitution. It also provides an introduction to the protection of human rights in English law. Constitutional Law covers material in the "foundations of legal knowledge" and so must be taken by those seeking a profession qualification in England and Wales.

### **Criminal Law**

The course deals with the following: (i) General principles of criminal liability: actus reus and mens rea, omissions, causation, negligence, strict liability, complicity and inchoate offences. (ii) General defences. (iii) The law relating to offences against the person (including sexual offences) and offences against property and other economic interests.

The subject requires attention to cases and statutes, and is an important bridge to subjects studied for the Final Honour School. Criminal Law covers material in the "foundations of legal knowledge" and so must be taken by those seeking a professional qualification in England and Wales.

### **Administrative Law**

Administrative Law is concerned primarily with judicial control of the activities of the executive branch of government. The main topics covered are: (1) the grounds on which decisions and rules made by the executive can be challenged in the court - some of these relate to the substance of the decision or rule and others to the procedure by which it was made; (2) the remedies which can be obtained by applicants challenging administrative decisions; (3) the liability of public authorities in contract and tort.

Some tutors also deal with tribunals, public local inquiries, next steps agencies, contracting out and public sector ombudsmen. Some of these topics are the subject of lectures, which also occasionally deal with more theoretical aspects of the subject. Administrative Law is now one of the compulsory standard subjects within the Final Honours School syllabus. It also covers material in the "foundations of legal knowledge" and so must be taken by those seeking a professional qualification in England and Wales.

### **Contract**

The syllabus comprises the general principles of the law governing enforceable agreements. It is not concerned with special rules governing specific types of contracts, such as sale, carriage or employment. The principal topics normally discussed are: (a) the rules relating to the formation of agreements and to certain further requirements which must be satisfied to make agreements legally enforceable; (b) the contents of a contract and the rules governing the validity of terms which exclude or restrict liability; (c) the nature and effects in a contractual context of mistake, misrepresentation, duress and undue influence; (d) the general principle that right and duties arising under a contract can only be enforced by and against the parties to it; (e) performance and breach, including the right to terminate for failure in performance and the effects of wrongful



repudiation; (f) supervening events as a ground of discharge under the doctrine of frustration; (g) remedies for breach of contract by way of damages, action for the agreed sum, specific performance and injunction. (h) the basis of contractual liability.

Contract is one of the compulsory standard subjects within the Final Honour School syllabus. It also covers material in the "foundations of legal knowledge" and so must be taken by those seeking a professional qualification in England and Wales.

### **Jurisprudence**

Jurisprudence is one of the compulsory standard subjects within the Final Honour School syllabus. The subject affords an opportunity to reflect in a disciplined and critical way on the structure and functions of law and legal institutions and systems, on the nature of legal reasoning and discourse, and/or on the connections between law and morality and/or between law and other human relationships and characteristics. In some places it would be called theory of law or philosophy of law.

The content of the course is therefore deliberately broad and flexible. College tutors offer widely differing ranges of topics and reading lists, and the examination therefore makes full allowance for the diversity of approaches and materials. (Knowing that the examiners change only incrementally the range of issues from which questions are drawn, and the kinds of questions posed, tutors have an eye to former examination papers in designing their reading lists).

### **Land Law**

The focus of attention within the course is on interests in land: interests which have effect not merely between the parties to a transaction but also affect people who later purchase the land. Examples of such interests are the fee simple (virtually equivalent to ownership of the land), leases, easements and mortgages. The course concerns itself with questions such as: What interests count as interests in land? How are they created? Exactly when will they affect purchasers of the land?

Land Law has a well established set of principles, often regulated by statute, to govern it. In part this is because people dealing with land need to know with certainty what the result of a particular transaction will be. Even so, there are many areas of the subject which are currently being developed by case law.

The course is not about conveyancing, the buying and selling of land. It is true, however, that in Land Law we are conscious of the needs of purchasers. Thus, for example, the circumstances in which purchasers will be bound by interests are inextricably tied in with the way land is bought and sold. Land Law covers material in the "foundations of legal knowledge" and so must be taken by those seeking a professional qualification in England and Wales. Candidates in the FHS

### **Tort**

Tort is one of the compulsory standard subjects within the Final Honour School syllabus. It also covers material in the "foundations of legal knowledge" and so must be taken by those seeking a professional qualification in England and Wales. The law of tort is mainly concerned with providing compensation for personal injury and damage to property, but also protects other interests, such as reputation, personal freedom, title to property, enjoyment of property, commercial interests.

The subject is taught in tutorials arranged by your college tutor. Lectures in Michaelmas and Trinity terms cover most, but not all, of the topics on the agreed reading list. Revision lectures on contract and tort take place in Hilary term.



## Trusts

The institution of the Trust is one of the most important ideas in English law. Its very definition is heavily contested, but most would agree that a trust arises where someone (a trustee) nominally owns property, and may wield many of the powers of ownership, but is generally unable to take advantage of that ownership. Instead the trustee-owner holds the property to the benefit of some other person (known as a beneficiary), a class of persons, or an object such as a charitable purpose bringing benefit to the public. Trusts can arise in two main ways – by intention; or because the law has other reasons to make an owner into a trustee. The purpose of the intentional trust is to transfer wealth in a more complex way than would be easy or possible to achieve by straight-out conveyance, such as to have the property distributed on particular terms and conditions, or to disperse ownership to win tax advantages, or to allow ongoing management of the asset. There are myriad situations in which the law has other reasons to make an owner of property into a trustee; one very important one is where a couple's home is nominally owned by only one partner, but the other partner deserves a share in it. The course looks at the scenarios in which the different kinds of trusts arise, and at how they behave.

In one respect, the course also looks outside trusts. A trustee is a fiduciary, being someone having a duty to act for another's benefit through the control of property. But outside property-holding there are other examples of fiduciaries too, such as solicitors, who must act for their clients' benefit; or agents who can contract on behalf of their principals. The course looks at the law's control of fiduciaries in general, whether they are trustees holding assets or persons otherwise charged with promoting the interests of others. Trusts is one of the compulsory standard subjects within the Final Honours School syllabus. It also covers material in the "foundations of legal knowledge" and so must be taken by those seeking a professional qualification in England and Wales.

## European Union Law

The law of the European Union raises issues of intrinsic theoretical interest, and considerable practical importance. No linguistic expertise is necessary, since legislation and case law are published in all official languages, including English.

EU Law is one of the compulsory standard subjects within the Final Honours School syllabus. It also covers material in the "foundations of legal knowledge" required by those seeking a professional qualification in England and Wales.

The Oxford course deals with (i) the institutions of the EU, including the jurisdiction of the Court of Justice and Tribunal of first instance; (ii) the essential features of the law, and its incorporation into national law; (iii) the principle of free movement of persons and services within the EU; and (iv) the rules governing the free movement of goods within the EU.

Study of the institutions entails consideration of the majority voting rules used by the Council in making legislation, and examination of the roles of the Commission and European Parliament in decision making. Emphasis is placed on the scope of the law making competence of the institutions, in particular as regards the internal market, and on the principle of subsidiarity. Most of the course, however, is concerned with the nature and operation of the rules rather than with institutional matters.

The course covers such matters as the aims and policies pursued by the European Union, the sources and supremacy of EU law, its direct effect before national courts and its impact on domestic legal rules, procedures and remedies, including the principle of State Liability for breach of the Law. The court of final recourse in matters of EU law is the European Court of Justice. It has jurisdiction e.g., to give preliminary rulings on references from national courts, and to review the legality of legislation. Such matters receive detailed treatment in the course.



The free movement of persons aspect of the course presents a combination of social and commercial law. The rights of employed and self-employed persons to free movement and non-discrimination graphically illustrates the significance of the EU legal system for such persons, while at the same time being of considerable significance to commercial undertakings and their advisors. All nationals of Member States are also "EU Citizens" and this status is of increasing importance as regards rights of free movement, residence and equality.

The syllabus includes study of the rules on the free movement of goods. These have been given wide ranging effect by the European Court.

### **Family Law**

The emphasis of this course is on current law as it relates to family matters, but this is placed within the historical, social and economic context in which it operates and the policy issues under debate.

Since marriage is an important institution affecting the legal provisions relating to the family, the law relevant to entering marriage is covered, and, by implication, the law of nullity, which illustrates many of the policy concerns of marriage law itself. The law of divorce remains a central part of the course, although it should be pointed out that legal complexity has now shifted away from issues pertaining to the dissolution of the marriage to those surrounding the financial and property consequences of this. However, attention now has to be paid to the basic institutional structure of the system by which divorces are granted, which requires some consideration of matters which are not usually considered 'technical law', but which are of great importance to the legal process, such as the place which mediation or conciliation has within the system. The social effects of the divorce system are also considered.

The examination of the way in which financial and property consequences of divorce are legally handled involves a relatively extensive examination of recent case law. Property law is also relevant outside the divorce context when the special position of husband and wife who have interests in items of property is considered. However, the legal consequences of relationships outside marriage are also dealt with, a part of the course which brings particular focus to areas of law covered elsewhere, especially trusts, property and contract.

The legal position of parents and children has been significantly re-structured by the Children Act 1989 which is now the major controlling statute covering arrangements regarding children after parental divorce and the powers and duties of local authorities concerning children. But the law relating to children also covers assisted reproductive techniques.

Although the syllabus does not extend to the law of succession generally, the protection of family members on the death of one of their number is within its scope.

### **Criminal Justice and Penology**

This course offers an opportunity to study the phenomenon of crime and the ways it is dealt with by the criminal justice and penal systems. The subject is approached from the socio-legal, philosophical, historical and empirical perspectives. The aim of the course is to provide students with a sound analytical understanding of some central developments and debates relating to this subject.

An essential requirement is an understanding of: the value and limitations of official statistics and research relating to the dimensions of crime; the exercise of discretion by the police and the courts; the characteristics of offenders and of persons convicted; the punishments imposed and the effects of these punishments on the conduct of offenders and other citizens. Naturally, this entails a willingness, and some ability, to discuss the merits of research and to use statistical evidence in analysing a problem. But it should be noted that students are not expected to acquire a sophisticated knowledge of research methods, nor are advanced mathematical skills called for. There is no single textbook, but clear guidance is provided to students on core reading



materials, which include research reports, scholarly journal articles and chapters from books, as well as proposals for reform from pressure groups and government.

The course includes an assessment of the scope and different manifestations of criminal behaviour, and goes on to examine the processes of the criminal justice system prior to conviction - police practices in relation to the recording of crime, arrest and charging of suspects; prosecution; and plea negotiations. Sentencing is approached from a consideration of the role of the Court of Appeal, Criminal Division, particularly in the extent to which it has established principles to guide the courts in the exercise of their discretion. Proposals for reforming the sentencing structure and process are evaluated, as are empirical studies of judicial decision-making and sentencing disparities. Some philosophical issues connected with the justifications of punishment implicit in sentencing, parole, preventive detention, and other penal practices affecting an offender's liberty, are discussed.

Questions of penal policy for adult offenders are explored in some depth. Among the topics usually covered are: the organisation, control and inspection of prisons; the nature of prison conditions and regimes and the changing justifications for them; the role of prison staff; security, control and justice in penal institutions; the effects of attempts to rehabilitate prisoners; the problems of dealing with habitual and dangerous criminals and with young adult offenders; the status and rights of prisoners; the early release of offenders through parole; the spread of noncustodial penalties and their impact on the prison population and recidivism; and the assessment of the incapacitative and general deterrent functions of punishment.

Special consideration is given to evaluating the development of juvenile justice and the measures which have evolved to deal specifically with children and young persons. Attention is also paid to the role of the victim and to restorative justice. The extent to which the operation of the criminal justice system involves unfair discrimination against citizens on the grounds of race or gender is also explored, with some tutors incorporating this question into all of the other issues studied. Indeed, while the teaching is organised into discrete topics, it should be emphasised that much of the material covered in one topic has implications for issues highlighted in other parts of the course.

Although the course is intended to be of general interest it should prove to be particularly useful to those who are contemplating work in a criminal practice or in any branch of the criminal justice system. It will also be good preparation for those who may wish to proceed to postgraduate study in criminology or criminal justice.

Students need to attend the lecture courses in both Michaelmas and Hilary Terms as there are no satisfactory textbooks which cover this subject as a whole. Tutorials will be arranged by your college tutor. The Centre for Criminological Research organizes seminars during the academic year at which invited, distinguished speakers discuss current research or major issues of policy. This programme is advertised on the Centre's website at [www.crim.ox.ac.uk](http://www.crim.ox.ac.uk) and students are encouraged to attend.

**Syllabus:** Criminal Justice and Penology comprises (a) The dimensions and patterns of crime and criminal behaviour, the interpretation of official and other statistics. (b) The exercise of discretion in the criminal process by police, prosecutors, and courts prior to sentencing. (c) The law and practice of sentencing. (d) The development of English penal policy and practices. (e) The contemporary forms of penal and other sanctions and the assessment of their efficacy. Notes: (1) Theories of punishment are included in the syllabus in so far as they are relevant to any of the above headings. (2) The above headings include children and young persons and offences committed by them. (3) Headings (d) and (e) will comprise about half the course.

**Teaching Conventions:** In 2007-8, in addition to lectures throughout both terms, students in this course will also receive a mixture of class and tutorial-based teaching. Each class will last for 90 minutes and be delivered three times (with approximately 20 to 25 students per class) in the allotted week. Four tutorials will then be held in Hilary term, with students being allocated to one of the three available tutors (Dr Goold, Dr Lazarus, and Prof Zedner) and, if



necessary, the graduate teaching assistant. All classes and tutorials will be organised centrally by the course convenor Dr Liora Lazarus. Topics to be covered in classes and tutorials (and which will be examinable) are as follows: Class One: Aims of the criminal justice system (Week 6, MT) Dr. Mary Bosworth. Class Two: Policing and prosecution (Week 7, MT) Professor Ian Loader. Class Three: Aims of punishment and sentencing (Week 8, MT) Prof. Lucia Zedner. Tutorial One: Prisons: Policy, Practice and Privatisation. Tutorial Two: Non-custodial penalties. Tutorial Three: Youth Justice. Tutorial Four: Victims or Race and Gender.

The course reading lists indicates the material with which students are expected to be familiar in the examination and also indicates some further reading. Tutors are at liberty to organise the course reading material, and the order of topics, according to their own preferences. The lectures provided in this subject do not necessarily cover all of this material. No statutory or other material is provided to students in the examination.