

MODERATION PROCEDURES GUIDELINES FOR NZCLE MODERATORS AND UNIVERSITY EXAMINERS 2024

1. INTRODUCTION

1.1 Regulation 6(3) of the Professional Examinations in Law Regulations 2008 (the Regulations) sets up the procedure for moderation of the examination papers in five of the six New Zealand Council of Legal Education (the Council) core law subjects which the Council requires for the LLB and LLB (Hons) degrees.

1.2 The five subjects are —

Law of Contracts
Law of Torts
Criminal Law
Public Law
Property Law *

**Please note: Some Universities teach Property Law in separate courses as Land Law and Equity and Succession, and one University teaches the requirement in separate courses as Property Law, and Equity and Succession. Some Universities also teach Public Law as separate courses.*

1.3 In respect of those subjects regulation 6(3) requires that the examination papers are prepared by a University teacher and settled by that teacher and a moderator appointed by the Council.

1.4 The moderation requirement also applies for core law subjects taught in any summer school programme, and to the course in Legal Ethics which is required for admission.

1.5 The moderation requirement does not apply to the remaining core law subject, ie Legal System, because of the variations between Legal System courses, and the introductory nature of the course. However the content of the course is prescribed (see Appendix 1).

2. OBLIGATIONS ON MODERATORS

2.1 Moderators should —

- (i) ensure that the examination paper is of a satisfactory standard;
- (ii) satisfy themselves that there has been adequate coverage of the prescription of the course as taught by each Faculty in the particular year (see Appendices 1 and 2);
- (iii) satisfy themselves that the standard of examination paper is comparable between Faculties;
- (iv) return the paper to the examiner within the time frame fixed by the Dean of each Law Faculty. (See paragraph 4.1(ii).)

- 2.2 Moderators should also ensure that they —
- (i) prepare a report on the moderation exercise for their courses by the date notified by the Chief Executive for presentation to the Council, and send it to the Chief Executive of the Council by the due date; and
 - (ii) confirm whether they are available to serve for the following year by the date notified by the Chief Executive.
- 2.3 The reports referred to in paragraph 2.2(i) need not be lengthy, but if moderators have particular concerns these should be specified in enough detail to enable the Council to take any necessary action.

3. OBLIGATIONS ON EXAMINERS

- 3.1 Examiners must provide the moderator in the course with a copy of the draft examination paper(s), and should do so within the time frame fixed by the Dean of each Law Faculty. (See paragraph 4.1(i).)
- 3.2 Examiners should also provide the following background information —

	Data	Time to be provided
(i)	a course outline (and, if available, copies of contents pages of course materials)	at the start of the course (see also paragraph 6)
(ii)	a statement of the issues the examiner expects the student to address in answering the problem question(s)	when submitting draft examination paper
(iii)	authorities the examiner expects the student to cite in answering the question(s)	when submitting draft examination paper
(iv)	copies of any terms tests and/or assignments which contributed to the final assessment	when submitting draft examination paper

4. OBLIGATIONS ON LAW DEANS

- 4.1 As soon as the university's printing schedule is known, the Dean of each Law Faculty is responsible for reporting to each moderator —
- (i) the date when the examiners' question papers will be with the moderator;
 - (ii) the date by which the return of papers is required.
- 4.2 Ideally the examination papers should be returned to the examiner within 14 days after receipt of the paper by the moderator.

5. DISPUTE RESOLUTION

- 5.1 Ideally the moderator and examiner should consult fully, and discuss with one another any matters that may arise in respect of a particular paper. In this way, queries and disputes will usually be resolved by discussion, and will rarely involve the Council.

5.2 Where a matter cannot be resolved, before having recourse to regulation 6.5, the moderator will refer the matter to the relevant Dean.

5.3 Thereafter, the Regulations provide that —

Any disagreement between teacher and moderator as to the content of any examination paper shall have been referred for final decision to a person appointed by the Chairperson of the Council of Legal Education after consultation with the Vice-Chancellor of the University holding the examination (regulation 6(5)).

5.4 This procedure is rarely invoked and is regarded as one of last resort.

6. COURSE OUTLINES

6.1 The following course outline guidelines have been prepared by the Deans of the six Law Faculties. The Council's expectation is that course outlines for the compulsory subjects will conform to these basic guidelines.

6.2 Course Outlines Guidelines

1 **Timing**

The course outline should be sent to moderators by the end of March each year.¹

2 **Headings**

The course outline should address the following headings:

- *Course objectives*

This will set out the basic learning objectives for the course

- *Course assessment*

This will set out the percentage and type of assessment

- *Topics covered in the course*

This will set out the areas of law the course will cover in summary form.

7. SPECIFIC COUNCIL RESOLUTIONS

Final Examination/Internal Assessment Ratio: The Sixty/Forty Rule

7.1 (i) In NZCLE core law subjects and Legal Ethics the Council requires that the final examination² must count for at least 50% of the final grade, and internal assessment for no more than 50%.

(ii) A moderator must moderate at least 50% of the course. In-term work such as tests and opinions should be sent to the moderator, not for moderation purposes, but to ensure that the moderator receives an overview of the course.³

(iii) Although the Legal System courses are not moderated, the processes in paragraph 7.1 (i) and (ii) should be followed.

¹ Or by the end of two weeks into the course for a second semester, or a summer school course.

² Final examination refers to a final, end of course examination.

³ See Council Minutes, April 1995, April 2001, October 2001, November 2020.

Legal Ethics

Content of examination

- 7.2 In respect of the content of the Legal Ethics course the Council has resolved that the course involves teaching —
- (a) an introduction to ethical analysis including an examination of various theories of ethics; and
 - (b) the practical application of legal professional ethics,
- and that the examination should appropriately test both components.
- 7.3 The Council would expect that at least one problem question focussing on the practical application of legal professional ethics would be the most effective way to test the second component.⁴

Stage at which Legal Ethics is taught in the degree

- 7.4 The Council has resolved that the Legal Ethics course be taught at all Universities at 300 or 400 level.⁵

Take Home Examinations in Core Law Subjects and Legal Ethics

- 7.5 The Council has resolved not to approve a policy allowing a take home final examination in a core law subject or a Legal Ethics course.⁶

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⁴ See Council Minutes, October 2001.

⁵ See Council Minutes, October 2001.

⁶ See Council Minutes, April 2007.

APPENDIX 1

PRESCRIPTIONS FOR COMPULSORY SUBJECTS

(Regulation 3(2)(a) and Schedule 2 of the Professional Examinations in Law Regulations 2008)

THE LEGAL SYSTEM (One Paper)

An introduction to the New Zealand legal system. Legal reasoning and the judicial process, including selected problems in statutory interpretation. Selected legal institutions in England and New Zealand. Selected legal concepts. This subject may include studies in the history of law and legal institutions in England and New Zealand.

OR

An historical introduction to, and a descriptive outline of, the legal systems in England and New Zealand, including the structure of government, civil and criminal proceedings, the sources of law and the main divisions of substantive law. Legal reasoning and the judicial process, including an introduction to statutory interpretation. An elementary treatment of legal concepts.

THE LAW OF CONTRACTS (One paper)

The general principles of the law of contract and agency.

THE LAW OF TORTS (One paper)

General principles of civil liability. The law as to the various kinds of torts. The law relating to compensation for personal injury by accident in New Zealand.

CRIMINAL LAW (One paper)

The general principles of criminal liability.
[Amended 2017]

PUBLIC LAW (One paper)

The principles and working of the constitution, the institutions of government, the exercise of public power and relations between the citizen and the state. Controls on the exercise of public power, including an introduction to judicial review.

PROPERTY LAW (One paper)

An introduction to the law relating to property, both legal and equitable.

[The subjects of Land Law and Equity and the Law of Succession are treated as the equivalent of Property Law. The prescriptions for these courses are:]

LAND LAW (One paper)

The history and principles of Land Law.

EQUITY AND THE LAW OF SUCCESSION (One paper)

The principles of equity with particular reference to the law of trusts. The principles of the law of succession and of the administration of estates. Choses in action and the assignment thereof.

APPENDIX 2

PRESCRIPTION FOR LEGAL ETHICS

(Regulation 3(2)(c) and Schedule 3 of the Professional Examinations in Law Regulations 2008

- 1 An introduction to ethical analysis including an examination of various theories of ethics.
- 2 The applicability of ethical analysis to legal practice.
- 3 The concept of a profession and the ethical and professional duties of practitioners (which will include, among other topics, conflicts of interest, confidentiality, duties to the Court, duties of loyalty and fidelity).
- 4 The wider responsibilities of lawyers in the community.