

## 59. Overruled

For those of you who have not experienced the delights, dalliances and unfortunate disappointments of university life, I apologize in advance. But before I tell you of this case, I must take the time to ensure that all my good readers—and I am flattered that you have chosen to read me—are well informed of the circumstances in which this particular case arose. And at the risk of repeating myself once again (now there’s a silly double something or other) this case is not at all special, one that is repeated every day in every university, maybe even high schools.

The case itself concerns a student who appealed his grade (it was a ‘he’, as far as I know from Colmes, though he would not bother to specify because in Victorian manners everyone is a “he” until proven otherwise). This was an undergraduate student who had queried the correct answer to a particular multiple choice question. It had been automatically marked as wrong (sorry, incorrect, one must avoid the bullying connotation of the word ‘wrong’). In these multiple choice tests (for those who took a test so long ago you may have forgotten or maybe never took a multiple choice test) one is provided with a question, then a range of usually three or four possible answers. One must choose the correct answer. There is only one designated answer that is correct. And it is the professor who has set the exam and who has decided what is the correct answer.

Now, as you may have experienced yourself, it is quite common for there to be some ambiguity as to which is the correct answer. In fact, a smart student may argue or think too much about the meaning of the question, and decide that it could be one or more of the possible choices. For the professor, making up these questions is a challenge because one does not want to provide incorrect choices that look obviously incorrect. That messes up everything, because the student can easily choose the one answer that stands out. The choices therefore have to be kind of similar. The trouble is that a smart student (well, not exactly smart, let’s just say argumentative) can easily show that his answer was “as correct” as the designated correct answer. This

embarrassing situation is generally solved by pointing to the “fact” that the majority of students in the class chose the designated correct answer, therefore the student’s incorrect answer is incorrect. This is a weak argument against the protesting student because, as we know, majorities are not always right.

The solution to this weakness of such multiple choice tests is to distance the creator of the exam as far away as possible from the examinee, so that the examinee has no one in particular to argue with. Thus, these types of exams have flourished since the growth of computers, and now with the facility to take them online. “One cannot argue with a computer.” As an aside, if you have ever been a student in recent or past years, you would know of some people who say that they are good or otherwise at taking those kinds of tests. It is likely that there is a skill that one can learn in order to get high grades in such tests that may not have all that much to do with one’s understanding or knowledge that the test is supposed to measure.

But enough. As you can see, I have taken up too much time with this topic that I obviously feel deeply about. This case is not about me, so I know I must get on with it.

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Because there is much at stake when examinations are administered and graded, there are many rules in place that anticipate that some students will complain or appeal their grade. When I say rules, they are expressed in practice as procedures, just as criminal law is administered according to criminal procedures. They are interdependent. The procedures to be taken when a grade is appealed vary somewhat across disciplines and schools or departments. But the general procedures are as follows and in this order:

1. First appeal to the professor who set the exam.
2. If not resolved, appeal to the Chair of the Department, who may take the case to the department or college faculty’s “student performance committee” or something similar.
3. If not resolved appeal to the Dean of the school.
4. If not resolved appeal to the Faculty Senate, which usually has a subcommittee that deals with “student performance.”
5. If not resolved, give up. Or in special circumstances...
6. Appeal to the President, bringing a lawyer along.

## 7. Give up.

These are the rules of procedure for appealing a grade. But they do not tell the whole story, or should I say that the story is buried within the procedures. The ambiguity, or mystery more like, lies with the meaning of the word “rules” which hopefully will become clearer as I recount the case.

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Francis Shoham suffered from a high anxiety complex. The class was Philosophy 101, all about Plato and Aristotle and the various dialecticians. One might argue that, if ever there was a subject that would not lend itself to a multiple choice exam it would be philosophy where every idea and concept was subject to minute dissection and where words were open to many different interpretations and meanings. But one can understand a professor, in this case a junior teaching assistant called Simon Jefferson, would lose a great deal of time grading over a hundred essays on such topics as justice, shadows in a cave, and the like. Besides, the young professor had not himself made up the test. Rather it had been handed down to him from his supervisor, Distinguished Professor Alice Armstrong who had constructed it decades ago. So it was a well tried and used test that had survived the “test of time,” as one might say. Over the years it had been queried, and in response the wording adjusted, sometimes to account for changing times, though of course, the subject matter has remained the same for a few thousand years. And over the last few decades as computers became more accessible and user friendly, and the software improved, Professor Armstrong had adapted her test to the cyber world and had administered it online for some twenty years. Indeed, the university’s computing center established an entire wing that dealt only with computer test analysis. It was a wonderful labor saving device, and what’s more it put a lot of distance between the professor and the student. There was little argument over any of the questions, and Professor Armstrong was proud of the fact that over those decades no student who appealed their grade had taken it beyond her. She had been able to discuss the student’s incorrect answer and convince them why it was not the correct choice. And especially over the past decade, she had been able to resolve queries and complaints completely online, without having to

meet with the student at all.

But right from the start, the case of Francis Shoham did not fit that pattern. And although the online test did not offer a section for a student to add any explanation or query about any of the test questions, the teaching assistant's email address was easily found. Thus it was that the high anxiety of Francis took over almost as soon as he had answered fewer than a half dozen questions. One might think that a student would make a complaint after the test results were received, and if the grade were lower than expected, to then complain about the ambiguity or inconsistency of the questions. But Francis shot off an email right away, pointing out the ambiguity of various questions, not just one particular question, but several of them. He had made notes as he went through the test, listed them in an email then after he had finished the test, though one could hardly call it finished, rather that he was timed out, even though in principle the test was not timed and in fact the student was even given the option of saving their test and completing it at a later time. But not Francis. He was so energized and upset with the total and obvious unfairness of many of the test questions to which there were no clear answers or certainly no single answer it seemed to him, that he just could not sit long enough at the computer. He jumped up, stormed around his bedroom, even screamed at the computer, then sat down and shot off his email full of complaints, all very, very detailed.

Of course, the email went directly not to the Distinguished Professor, who was most likely away at her weekend house in the Berkshires, but to her teaching assistant who was the named teacher of that course, Simon Jefferson. Upon opening the email, Simon stared at the long, carefully organized list of queries to some sixteen questions, which was about half of the questions of the test. It seemed endless as he scrolled down to the end, where Francis had accused the teacher of incompetence, and demanded that he be allowed to meet with him and discuss why he had been unable to finish the test properly. It was the fault of the test, not him.

Simon stared at the email and decided to put it aside for a day or two, while he thought about what to do. However, next day he received another email from Francis asking why he had not responded to his email, pointing out that the lack of response

had heightened his officially diagnosed high anxiety state, and that it was essential that he be allowed to speak with his teacher.

This caused Simon a little concern, so he decided to forward the emails from his student to his supervisor, Distinguished Professor Alice Armstrong asking for advice.

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Professor Armstrong sighed when she opened the email from Simon. He had been an excellent teaching assistant and she could see no reason to question his actions to date. The student emails, however, were another matter. She of course dismissed all of the student's criticisms as those of a raving lunatic, and shot off an email to Francis advising him not to respond to the student, but simply allow the grade that the computer would give him, most likely an "I" (for incomplete). Though, and she did not know this at the time, technically, Francis had completed the test, because in a fit of rage, he had answered all the remaining questions checking off answers randomly.

Thus, when Simon collected the graded tests from the computer test analysis department, he looked through the grades and saw that Francis had received not an 'I' but an 'E'. This meant that Francis had failed the test. The university's grading system did not have an 'F' in its system because, during the days of student protests in the 1970s, students had complained that an 'F' was hurtful and degrading to a student. So it was expunged from the registrar's list of grades, and replaced with an 'E'.

However, this grade would already have been automatically sent to Francis, who, when he received it would no doubt raise hell that his professor had not responded to his query about the test. Mindful that Teaching Assistants were fair game among students, Simon immediately shot off an email to Francis informing him that there had been a computer glitch and that he was welcome to take the test again, providing him with a password to log into the test and take it over. Simon was a little nervous that he had acted without first getting Dr. Armstrong's approval, but had worried that she would be annoyed at being disturbed at her beloved retreat in the Berkshires.

Surprisingly, Francis in fact did log into the test and took it over. This time, he went through the test and answered all questions by checking off the second choice in every question. He would demonstrate to his examiners that the test was

nonsense. And to some extent he was right. The next day, the computer returned a grade of 'D' which, technically in the university's grading system was a passing grade, since 'E' was a failing grade.

Of course, Francis was not going to give up any time soon. He was, after all, officially and medically disabled by his high anxiety state. The professors could not brush him aside so easily.

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Francis persisted. He lodged an appeal with the philosophy department's chair, who quickly referred it to the appropriate faculty committee on student performance. This committee only met once a month, so time passed, and Francis became more anxious. His appeal was, of course, rejected, and it was automatic that the Dean of the college of arts and sciences would also reject it. The thought that an administrator would overrule a decision made by faculty was indeed horrendous. The Dean did however, take the time to see the student, so Francis found himself in a very nervous and anxious state standing in the Dean's spacious office unable to stand still, jiggling around as though he needed to go to the bathroom. He listened to the Dean's lecture on having to accept the faculty's decision as final, and the usual advice that he should study the course materials more diligently, and so on. And when the Dean finally stopped, Francis jiggled over to the Dean's desk and said, taking from his pocket a crumpled piece of paper, "I have a medical disability. I can't do these multiple choice tests. They discriminate against high anxiety students," and threw the crumpled letter on to the Dean's desk.

For one brief moment, the Dean considered accepting the appeal and overturning the grade. The kid had a small point. No allowance had been made for his so-called disability. But in point of fact, the Dean did not want to be the one who overruled a grade given by a professor. And there, in a nutshell was the problem.

"If you wish," replied the Dean, "I will send on your appeal to the senate committee on student performance. It is they who have the final say. But my advice to you is to accept the grade. It is a passing grade after all. And in my experience I have never known a faculty committee to overturn a professor's grade."

Francis jiggled back and forth, picked up the crumpled letter from the Dean's desk, and, prancing like a nervous horse waiting to start a race, backed away from the desk and cried, "send the

appeal. I may be disabled, but I will not give up!“

And he departed, slamming the door behind him.

The Dean immediately called in his secretary and dictated a memo, referring the appeal to the senate committee on student performance. He was so pleased that it would not be him who had to decide this case. Thank goodness for committees, he no doubt thought.

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The senate committee on student performance was composed of four or five people, depending on whether all members showed up to the meeting. The chair of the committee was Assistant Professor Alex Turret, an eager young professor who was coming up for tenure so was doing everything to establish an outstanding record of service, and chairing a senate committee was an excellent way to demonstrate his devotion to the university. He was a bright young fellow from the mathematics department. The other members were from random departments, but of course, none from the philosophy department. Had there been one such member, they would have to recuse themselves from this case because it was from their own department. The committee must do everything to protect justice and impartiality.

But more importantly, the committee, composed entirely of faculty old and young, must above all things protect academic freedom, to which every professor had an inalienable right. This was (and is) an absolute. This right, automatically applied to every case and circumstance throughout the university and every other university in America for that matter, trumped every other claim to justice. So we can see that the committee, before it even meets, has its hands tied. It cannot overturn a grade applied by a professor, if that professor will not agree to it. It would be a grave infringement on academic freedom. And Professor Armstrong was adamant, when called at her Berkshires retreat, that she would not support any grade change request that came from any student, she didn't care what disability he claimed to have. She had academic freedom to preserve. And that was that.

Where this sacred principle came from is a mystery, given that universities in America and elsewhere in the Western world, have their ancient origins in the opposite absolute: that they must put forth the teaching of Christianity (and before that, the bible,

and before that the Greek philosophers) which depicts an academic history without academic freedom at all, but rather a strict recipe of what can be taught and what cannot. Teachers throughout history have been castigated, burned at the stake and whatever else if they deviated from the set biblical premises of academic thought.

I could go on and on about the condition (disease) of academic freedom on today's campuses. But that is for another day. For now, we must understand that the cards were stacked very much against Francis. The chances of getting his grade overturned by the senate committee were nil to none. In fact, he had only one chance, and that was with my mentor, Thomas Colmes, who—though I would deny it if anyone asked—looked upon academic freedom as a joke, like worshipping a totem pole (excuse my cultural appropriation here, but it is the most accurate way to describe the shibboleth of academic freedom).

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While Francis's highly anxious state in his confrontation with the Dean could have been interpreted as his not listening to the Dean's advice to give up on his case, in fact, Francis left even more determined. He returned to his counselor and described to her the rigid and immovable positions that the various faculty and administrators had taken. Was there no other avenue?

"Well, Francis, you have got yourself into quite a mess," said his counsellor with a kind smile.

"Cecilia," pleaded Francis in a quiet voice, "is there nothing I can do?"

"As a matter of fact there is. I know of a colleague, actually I consider him to be a very good friend not just of me but the university. He's a kind of ombudsman..." said Cecilia.

"Please, tell me where I can find him. Can I send him an email or something?" asked Francis.

"I think it is better that you just pop in and see him. His office is hidden away in the tunnels underneath the lecture centers. Do you know your way around the tunnels?"

"Tunnels? I didn't know there were any," answered Francis, a little doubtful. Surely an important person should be in a big office above ground, he wondered.

Cecilia stood up from her desk and grabbed a light jacket. "Come on, I will take you to see him. He's a bit, shall we say,



odd, no, intense is the better word. But don't be scared. If he's on your side, and I know he will be, you are sure to win out in the end. Come along now!"

Rather rattled, Francis hurried along like a little puppy trying to keep up.

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Three loud bangs on my wall called me to Colmes's office, which I was pleased to do, having sat for some time staring at my one page outline for my dissertation. I entered and saw that my wicker chair was vacant, though moved a little to the side of Colmes's desk. Cecilia sat on the overstuffed chair in the corner, and a young man walked nervously to and fro in front of the desk.

"Ah, Hobson! Thank you for joining us. You know Cecilia, I believe," he smiled a little looking across to her, "and this is Francis a student who is having trouble with the philosophy department, a department that you know quite well."

"Pleased to meet you all," I said as I took up my chair, and added, "and would be pleased to help in any way I can."

"The problem, it seems is a disagreement over a grade, and a professor, a professor Armstrong, I believe?" Colmes hesitated and looked to Francis who was too busy jiggling around to answer. But the question was directed to me.

"Oh yes, I remember her. Always out of town at her Berkshires retreat," I said with a slight disapproving smirk.

"Exactly!" cried Francis. "That's what I'm talking about. They won't listen to logic!"

Cecilia got up from her chair. "Looks like things are getting under way. I have another client to see. So I will leave you to it."

"Indeed, Cecilia. And my best wishes to Chioma."

"Of course," she said with a very big smile, and left.

Colmes turned to Francis. "Now young man, let us see if we can fix this mess. What would be your idea of a final solution?"

The choice of words was perhaps not quite appropriate. But Francis did not seem to mind.

"They should let me take the test over, but a proper test without multiple choice. Just short answers," said Francis as he pranced about the office.

"Well now. That may be the ideal solution, but it will not guarantee you a better grade, will it? Converting multiple choice questions into short answer questions would be time consuming.

Professor Armstrong would resist, and her teaching assistant would not be happy with this extra work. More difficult, other students who did well on the test may complain that you are getting special treatment.”

“But I *am* disabled. I should receive special treatment;” complained Francis.

“Indeed,” answered Colmes, a small twitch at the corner of his mouth, “indeed you are.”

It was not altogether clear to me what Colmes meant by that unnecessary comment. I took it as slightly sarcastic, though Francis did not seem to notice.

“However,” Colmes continued, “your handicap is not specific to the particular type of test, it seems to me, but applies to all types of tests, multiple choice, true or false, short answer and so on. Do you not agree?”

Colmes sat back in his chair, his finger tips of each hand touching. Francis stopped his jiggling for a moment then faced the desk. “Then what do you recommend?” he asked, evading Colmes’s original question.

I could see that my mentor was enjoying this back and forth, leading Francis in a particular direction, though I could not for the life of me imagine where. I got up from my wicker chair and moved to the overstuffed one in the corner. It was my way of informing Colmes to leave me out of the conversation. I preferred, as always, to be the observer, or recorder, not a participant.

Colmes leaned forward. He had an answer, though I could not yet see that it would be a solution.

“The only solution I can see, and it is a seemingly impossible solution, is for your grade to be changed. Taking any other test or taking it over will not solve the problem. You will still end up with a D, or worse,” said Colmes with a serious frown.

“But Professor Colmes, I can’t have the D on my record. What am I to do? Cecilia said you would find a solution.”

“What grade would you ideally like to have?” asked Colmes, an amused look of anticipation on his long face.

Francis was taken aback. “But, but, I told you, I can’t take that test over again. Besides they will not let me.”

“Would you be happy with a B?” asked Colmes, ignoring the protestations of his client.

“Well, yes, of course. I would,” replied Francis now all of a sudden still. His anxiety had magically fallen from him, as though a big cloak had dropped to the floor.

And now came the most incredible and shocking solution. Colmes looked across to me, sitting comfortably in the chair.

“Do you think you could get a B on such a philosophy 101 test?” he asked me.

“Who? Me?” I asked with a stammer. “You mean I could take the test in his place?” My face went red and I was unable to say anything else, I was so flabbergasted.

Francis started prancing around again, almost dancing, first up to me, then up to Colmes, indeed, right up to his chair behind the desk. Colmes recoiled and pushed himself back out of the way.

“More or less,” answered Colmes. He turned to Francis. “Mr. Shoham,” he said sternly, “sit down on that chair and listen carefully to me.”

Francis automatically did as he was told, though his legs continued to jiggle while he sat.

“I am going to inform Cecilia that you have agreed to retake the test under my supervision. I will request that Armstrong or her TA will provide you with a new password so you can access the test online. When you receive that password you will come to my assistant Hobson’s office and take the test under his supervision and of course with the appropriate assistance given your disability. Is the test timed or not?”

“It is not timed,” answered Francis.

“Excellent!” said Colmes. “Then go next door with Hobson and give him your contact details. And Hobson, you had better bone up on philosophy 101. Knowing you, I am sure you still have your notes from, how many years ago? About twelve?”

I did not answer. It was twelve. And yes, I still had my notes. It’s possible that I had even taken that very same multiple choice test all those years ago.

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I must say that I found his so-called solution most upsetting, and quite frankly immoral, unethical, and a scurrilous attack on the very foundation of academia. No, not an attack on academic freedom, but an attack on the backbone of any organization whose mission is to teach, impart knowledge, and most important

maintain standards of excellence (I hate that word, but here I am forced to use it). If people may cheat their way through any organization, but especially a university, then what is it all for? Who can believe what the university says it does? Am I a better person for having graduated from the university, or a poorer person for not having done so?

Let's not go down that path. The cynics would say that universities are an unnecessary luxury of "advanced civilizations." Some would say that the entire system of universities is a con-game. Its inhabitants talk amongst themselves and what do they produce of value? Nothing except talk. And people learn to talk without going to university.

But enough of this bitterness. My mentor certainly challenged me this time. He appeared, and maybe it is in fact really him, not to care about the values of honesty and excellence in education. He was focused on a small slice of the present: solve this kid's problem without upsetting the slow grinding machinery of the university.

Was he asking me to actually take the test on the part of this unimpressive student? He did not come right out and say it, but how could I do otherwise if I am sitting with him going through each question, advising him on what the question was asking, and how could I do that without hinting or even telling him what the right choice was?

Why don't you ask Colmes, or even refuse, if you are so concerned? You may reasonably ask. To which I have no answer except that I have some kind of faith in the intellect or genius of my mentor that he would not do anything that would harm me. At least not intentionally. Though he certainly was capable, with his Victorian mentality, to make me do something "for my own good."

I keep describing Colmes as Victorian. But I suppose that is not accurate because, as we all know, the supposed stern morality of Victorians, especially the men, was all a smoke screen. They easily justified the indescribable horrors of war, colonialism, criminal (and I mean *criminal*) justice, not to mention slavery white and black, and the preposterous idea that it was they, the men of Victoria who abolished slavery. Their "morals" were indeed, very demanding, but most men were up to overcoming them. And here I preach, sitting in the same cesspool of Victorian

morality. If only morals were black and white. On the surface they are. But prick them a little and they turn into many shades of gray, blue and whatever else.

I give up. I will just help save this one kid fix his grade. It's an act of kindness, is it not?

Besides, my mentor sees a bigger picture. I am helping maintain a great institution of learning, my university.

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After a couple of days I received my beckoning knock on the wall and I quickly appeared in Colmes's office.

"This is the test password," he said handing me a small slip of paper, looking at me with some slight amusement. "You do not have to do this," he said slowly, "but I assure you that it is the most reasonable and least damaging of all solutions available."

"Basically, you are having me take the test for him," I answered, my voice clearly conveying my lack of enthusiasm.

"I do not think that is quite what it is, though there is the danger that Francis will lean on you too much. That will depend on his state of mind and attitude. But you can surely, with your obvious social skills, groom him for the test, encourage him to make his own choices. If you can do that, then I do not see that any harm has been done."

"But what of the TA and professor Armstrong? How did you get them to agree to this?" I asked with a frown.

"I first spoke with Simon the TA, and he was more than agreeable. In fact a little too eager. He just wanted the case over and behind him. And he did admit that there were probably some questions in the test that had ambiguous answers. Though he pointed out again, that of the whole class Francis was the only student to complain, at least this semester. There had been only an occasional complaint in recent years."

"And professor Armstrong?" I persisted.

"Well, that was a slightly different matter. I suggested to Simon that maybe we did not need to raise the issue with her. After all, Simon had her complete confidence, and she enjoyed her Berkshires retreat largely because Simon took care of all the teaching demands."

I sat down on my wicker chair. "You're kidding! You did that to the poor guy?" I asked showing my concern.

"You know the old saying. What you don't know can't hurt

you,” quipped Colmes dragging out one of his Victorian pieces of wisdom.

I sat quietly and looked down. Perhaps he was right. Certainly, my impression of Dr. Armstrong was that she couldn’t care less about the day to day workings of the university. She just wanted to spend her time at her Berkshires retreat, writing her books, a well-known expert on Aristotle. I took a deep breath and stood up before Colmes.

“I see you haven’t started your crossword this morning,” I said.

And then I turned and went straight to my office, where I found Francis in his usual high anxiety state, standing at my door.

“Come right in,” I said with a bright smile. “Here is the password for the test. Let’s hope this time it will seem a little easier.”

“I hope so,” Francis mumbled, trying not to smile.

“Now if you just sit here,” I had to clear some books off the spare chair, “in front of the computer and log into the test we will get started.”

“Okay. But I’m not sure I can go through with this...” mumbled Francis, “it’s my fourth attempt.”

“Not really,” I said cheerfully, “only your first attempt was serious. The others were acts of protest.”

Francis appreciated that remark and I think he took it as a kind of compliment. In any case, it had the effect of calming him down somewhat, and he was able to log into the test. The first question popped up, and he sat there staring at it. The instructions at the beginning however, were still visible. I read them through quickly. It said that returning to earlier questions was allowed. That was important.

“Okay, now Francis. Here’s a trick I learned a long time ago with these tests. It looks like it will let you return to an earlier question should you want to. So what you should do is to quickly go through and answer whatever questions you think you can answer and skip those you need to think about. That way you at least can be sure that you have answered all those you know you are right on.”

“Oh. I didn’t know that. I can do that. Thanks. Makes it a lot easier.”

I sat with him and when he paused too long at a question, I

urged him to leave it and go to the next. So far he did not waste time asking me what this or that question meant. So far, so good.

It was not long until he had answered most of the questions. Now it was time to return to the difficult ones of which there were only five left out of what I roughly estimated to be about forty questions.

“I don’t think I can do the others I left,” he said, standing and fidgeting, wringing his hands.

“Come, sit,” I urged, still smiling more generously than I ever do. “I’d guess that you have already easily passed the test. But just to make sure, why not give the remaining five questions a go?”

I quickly looked back at the test instructions to see what the grading rules were. Some tests subtracted a point or more for wrong answers, a technique used to stop students from guessing. This test did not do that, so he was free to guess wherever he wanted.

“This question about Plato,” said Francis as he sat down in front of the computer again. “I don’t understand it. I mean forms could be correct and so could shadows, don’t you think? I mean, the question is ambiguous.”

“It certainly is,” I agreed. “They need to update the test and fix these matters. But for now, let’s just get it done. Choose one and move on to the next question you skipped. That’s what everyone else most likely did.”

“Really, they should be ashamed of themselves,” mumbled Francis, as he checked off ‘forms’ and moved on.

And so, the test got done.

We heard nothing more from either Francis or Simon. And certainly nothing from Professor Armstrong

