REPORT ON EXAMINATIONS 2021/22

EXAMINATION FOR THE DEGREES OF BACHELOR OF CIVIL LAW (BCL) AND MAGISTER JURIS (MJUR)

PART I

STATISTICS

A.

(1) Numbers and percentages in each class/category

(a) Classified examinations

BCL:

Class	Number			Percentage (%)		
	2021/22	2020/21	2019/20	2021/22	2020/21	2019/20
Distinction	**62**	(79)	(52)	**48**	(52)	(58)
Merit	**49**	(48)	(34)	**38**	(32)	(38)
Pass	**10**	(14)	(4)	**8**	(9.3)	(4)
Fail	**8**	(1)	(0)	**6**	(0.6)	(0)

MJUR:

Class	Number			Percentage (%)		
	2021/22	2020/21	2019/20	2021/22	2020/21	2019/20
Distinction	**12**	(19)	(12)	**26**	(32)	(41)
Merit	**20**	(33)	(13)	**44**	(55)	(45)
Pass	**13**	(8)	(4)	**28**	(13)	(14)
Fail	**1**	(0)	(0)	**2**	(0)	(0)

(2) If vivas are used:

Vivas are not used.

(3) Marking of scripts

All first marks which end with 3, 4, 8 or 9, and any paper with a mark below 60, were second marked. The second marker would also mark any paper in line for a prize, any fail paper, and any paper with a first mark below 60. Second markers must also make sure they mark a sample of 6 scripts, or 20% of the scripts, whichever is the greater number. Many second markers choose to mark all scripts.

NEW EXAMINING METHODS AND PROCEDURES

B. In 2021-22, for the first time, the course Modern Legal History was examined by a two-hour exam paper and one 4,000-word essay. This innovation caused no particular difficulties for the Board.

All full option examination papers, apart from Advanced Property and Trusts, reverted from four hours to a three-hour timeframe for the online exam paper assessment. The period allowed for half option papers was two hours.

Candidates were given a new word limit for each exam question answered of 2,000 words.

These changes caused no particular difficulties for the Board.

C. A few options that had switched to an essay submission format have indicated that they will be reverting back to a pre-pandemic exam paper format.

The Board is concerned about the rising number of plagiarism cases and suggests that more guidance (to students) is given on plagiarism/best academic practice (see Part II).

The Board is also concerned about the management of MCEs applications. More specifically, the Board wonders what can be done to (i) accelerate the process and (ii) encourage meritorious and discourage strategic applications. Students can submit multiple applications, and we had a significant number of very late applications – which is problematic for the Board and the administrator. Some MCEs came in after the final marks meeting. The Board will approach the Faculty and the Division for further guidance on this matter.

Finally, the Board plans to implement a more rigorous method of requiring exam/essay question papers to be submitted on time by convenors. A number of papers were submitted very late this year despite multiple reminders which had been sent. Convenors should be reminded of their obligation to meet these important deadlines and not cause unnecessary administrative issues for the Exam Board. Late submissions will be notified to the BCL/MJur course committee.

D. Candidates are made aware of the Examination Conventions by email correspondence. The Examination Conventions are placed on the student virtual learning environment (Canvas).

PART II

A. GENERAL COMMENTS ON THE EXAMINATION

The general standard of performance on the BCL and MJur was good. At the same time, this general standard has been declining somewhat over the last three years, and especially so on the MJur. One of the reasons for this trend is that fewer candidates achieve a "Distinction" classification. The pandemic likely has had a significant impact: 2019-20 brought disruptions in TT, in 2020-21, teaching was delivered online, and 2021-22 was characterised by novel hybrid teaching formats. We will have to wait and see whether the trend continues in future examination periods.

The introduction of further essays as a form of assessment in some subjects created additional work for the Board, with further questions to be reviewed across the year instead of as a single group at the end as in previous years, but this seemed to work well. There is no significant difference in results between the use of essay assessment and open book exam.

The Board is concerned by an increase in the occurrence of plagiarism, with five candidates referred to the Proctors, four of which were severe and resulted in a "Fail" classification. Further guidance on the nature of plagiarism, particular self-plagiarism, should be provided to this year's cohort.

In assessing dissertations markers were, as in previous years, reminded that the dissertation is a writing project that reflects one quarter of a one-year degree. The Board was pleased to see a stronger spread of marks than in previous years and a high number of distinctions awarded to both BCL and MJur dissertation candidates.

B. EQUALITY AND DIVERSITY ISSUES AND BREAKDOWN OF THE RESULTS BY GENDER

A breakdown of the results by gender for both the current year, and the previous 3 years, is provided in Appendix 1. It has been observed that the general standard of performance on the BCL and MJur has been declining somewhat over the last three years, and especially so on the MJur (see Section A *supra*). Fewer candidates achieve a "Distinction" classification (see Section A *supra*).

At the same time, the breakdown of the results by gender shows that it is primarily male students whose performance is declining. 49% of female students received a "Distinction" on the BCL in 2022, the same percentage as in 2021. The figures for male students are 51% and 60%, respectively. For the MJur, both male and female students achieved slightly less "Distinction" classifications in 2022, but the numbers are low in absolute terms and, therefore, need to be interpreted carefully. If one averages the percentages of candidates who achieve a "Distinction" classification over the BCL and the MJur, in 2022, the number for female students, for the first time, exceeds the number for male students (39% and 38.5%, respectively).

The number of "Fail" classifications has increased with respect to both male and female students on the BCL, but only with respect to male students on the MJur. Four of the "Fail" classifications are a consequence of plagiarism (see Section A *supra*).

Looking at the different assessment methods, there are no obvious differences between the performance of male and female students.

C. DETAILED NUMBERS ON CANDIDATES' PERFORMANCE IN EACH PART OF THE EXAMINATION

A statistical summary of the mark distributions for each paper is attached to this report as Appendix 2.

D. COMMENTS ON PAPERS AND INDIVIDUAL QUESTIONS

Comments on papers and individual questions are provided in Appendix 3. The following options have not submitted a report: Commercial Remedies, Comparative Constitutional Law, Comparative Copyright, Constitutional Theory, International Economic Law, Philosophical Foundations of the Common Law, Principles of Intellectual Property.

E. COMMENTS ON THE PERFORMANCE OF IDENTIFIABLE INDIVIDUALS AND OTHER MATERIAL WHICH WOULD USUALLY BE TREATED AS RESERVED BUSINESS

For statistics on Mitigating Circumstances Notices see Appendix 4.

F. NAMES OF MEMBERS OF THE BOARD OF EXAMINERS

Horst Eidenmueller (Chair)
Sandy Steel
Dan Sarooshi
Angus Johnston
TT Arvind (External)

Annexe 1

Results Statistics by Gender 2022

BCL	2022						2021						2020						2019					
	Male		Female		Total		Male		Female		Total		Male		Female		Total		Male		Female		Total	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Dist.	33	49	29	48	62	48	51	60	28	49	79	56	29	57	23	59	52	58	41	66	22	45	63	57
Merit	24	35	25	41	49	38	27	32	21	37	48	34	20	39	14	36	34	38	13	21	19	39	32	29
Pass	6	9	4	7	10	8	7	8	7	12	14	9	2	4	2	5	4	4	7	11	7	14	14	12
Fail	5	7	3	5	8	6	0	0	1	2	1	1	0	0	0	0	0	0	1	2	1	2	2	2
Total	68		61		129		85		57		142		51		39		90		62		49		111	

MJur	2022						2021						2020						2019					
	Male		Female		Total		Male		Female		Total		Male		Female		Total		Male		Female		Total	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Dist.	8	26	4	29	12	26	10	30	9	33	19	32	10	53	2	20	12	41	6	31	3	16	9	24
Merit	11	35	9	64	20	44	19	58	14	52	33	55	8	42	5	50	13	45	10	53	13	68	23	60
Pass	12	36	1	7	13	28	4	12	4	15	8	13	1	5	3	10	4	14	3	16	2	11	5	13
Fail	1	3	0	0	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0		1	5	1	3
Total	32		14		46		33		27		60		19		10		29		19		19		38	

Appendix 2			Mark ranges (%)						
Option	**Average mark**	**Number sitting**	**49 or less**	**50-54**	**55-59**	**60-64**	**65-69**	**70-74**	**75 and over**
Advanced and Comparative Criminal Law	69	3					33	67	
Advanced Property and Trusts	69	17					41	59	
Asian Consitutional Law	68	5				20	40	40	
Business Taxation in a Global Economy	67	10	10				30	60	
Children Family and the State: Children and the Law	69	7					43	57	
Civilian Foundations of Contract Law	62	5	20				60	20	
Commercial Negotiation and Mediation	68	25				28	36	36	
Commercial Remedies	64	55	4	7	13	20	27	29	
Comparative Constitutional Law	68	3					33	67	
Comparative Copyright	68	9				11	33	56	
Comparative Corporate Governance	67	19				10	53	37	
Comparative Equality Law	68	24				8	54	38	
Comparative Human Rights	67	26			11	19	35	35	
Competition Law	65	33	3			24	55	18	
Conflict of Laws	64	41		2	2	44	24	27	
Constitutional Principles of the EU	66	7			14	14	43	29	
Constitutional Theory	66	16	6		6	19	19	50	
Contract	58	6	17			66	17		
Corporate Control	68	18				11	39	50	
Dissertations	69	12				8	25	58	8
Family and the State: Adult Relations	69	10					50	50	
Human Rights at Work	69	10					50	40	10
Incentivising Innovation	69	6					50	50	
International Dispute Settlement	67	24		4			67	29	
International Economic Law	69	17				6	47	47	
International Environmental Law	70	13				8	38	46	8
International Human Rights Law	69	15					60	40	
International Law of Armed Conflict	67	19				32	26	42	
International Law of the Sea	69	20				10	30	60	
Jurisprudence and Political Theory	67	18	6		6	6	50	28	6
Land	65	1					100		
Law and Computer Science	70	15					40	60	
Law and Society in Medieval England	70	5					20	80	
Law in Society	68	10				10	50	40	
Legal Concepts in Environmental Law	69	23				9	52	39	
Legal Concepts in Financial Law	67	17				24	47	29	
Medical Law and Ethics	70	12					42	58	
Modern Legal History	68	9					78	22	
Philosophical Foundations of the Common Law	68	16		6			38	56	
Philosophy, Law and Politics	67	8				13	63	25	
Principles of Civil Procedure	69	9				22	22	56	
Principles of Financial Regulation	68	16				19	44	38	
Principles of Intellectual Property Law	67	6				17	50	33	
Private Law and Fundamental Rights	68	11					64	36	
Regulation	67	13				23	31	46	
Restitution of Unjust Enrichment	62	26	8	11		23	50	8	
Roman Law (Delict)	68	3				33	33	33	
Taxation of Trusts and Global Wealth	70	8					25	75	
Tort	65	1					100		
Trade Marks and Brands	67	9			11	11	44	33	

Subject Reports 2022

Advanced and Comparative Criminal Law

This was the second year of the ACCL paper, and four candidates were to sit the exam. Candidates had to answer two out of six questions in a take-home exam format. Candidates did best when they brought both doctrinal and theoretical perspectives to the law. Candidates who brought in comparative perspectives to aid their answers where the question was open to that were also advantaged. Describing English law's "best" position on a particular point of law can benefit from showing what other legal systems have done, and why. Where a question asks for how the law could be improved, or related questions, it is important that candidates are able to describe their view of the values that should be maximised within the law, as well as in practical terms how the law could achieve that. This year there were a decent range of answers, generally candidates performed well, with some stronger answers able to show clear and robust reasoning, as well as sufficient appropriate authority.

Advanced Property and Trusts

Twenty candidates sat the paper, which comprised nine questions. Two of the candidates sat a paper under the old syllabus from 2020–21, and one sat a paper under the old syllabus from 2019–20. Candidates were required to answer three questions.

The standard offered this year was, on the whole, very high indeed, with a large proportion of consistent first-class work or work that was close thereto. The very best answers provided penetrating and analytically rigorous arguments, possessed excellent clarity of argument, and made a genuine individual contribution to the literature.

Question 1

This attracted several very strong answers. Most candidates were able to examine different conceptions of ownership and various interpretations of the principle of relativity of title, and to consider the relations among these. The best answers also gave appropriate attention to the second sentence of the quotation and, thus, to whether in English law, unlike in Civilian systems, no distinction is made between ownership and possession.

Question 2

This was not a popular question, but those who did answer it were able to expound and critically examine both the strengths and possible limitations of Hohfeldian analyses of property rights.

Question 3

This was an extremely popular question. Most candidates recognised that it was necessary to consider how the *numerus clausus* principle may enhance or impede the freedom of owners as well as others (eg successors in title, potential trespassers). The best answers focused closely on the precise wording of the question, integrated discussion of the theoretical literature with an examination of the classic and more recent case law (eg *Regency Villas*), and considered both the scope of the *numerus clausus* principle (including whether and how it applies to equitable property rights) and the extent to which individuals, where they are required to choose from the law's menu

of property rights, are free to mould the incidents of a particular type of property to suit their specific ends.

Question 4

This was also a popular question. Most candidates were able to analyse what it may mean for a thing to 'become, morally, A's property' and to explore a range of labour-based justifications for the acquisition of property. The best answers perspicuously traced the key moves in the pertinent arguments and then located their weak points and exposed the missteps.

Question 5(a)

This question attracted only a couple of answers; these were outstanding.

Question 5(b)

This question attracted only a couple of answers; these were very good indeed.

Question 6

This was generally well done. Better answers focussed on the quote itself, in particular focussing on what might be meant by 'shared ownership', and a 'split of rights in the trust res', rather than talking with less focus about whether a beneficiary's right is proprietary or not. While most candidates discussed the problems with the assertion in the quote, the very best engaged with what was meant by it and tried to give it a sensible interpretation—in some cases differentiating between the different levels of abstraction at which it is possible to talk about the nature of equitable interests.

Question 7

A difficult question that nevertheless attracted a number of answers. The quote demanded engagement with the question of whether the construction of trust's terms in a way akin to contract was problematic given the third-party effects of trusts. This relates to broader questions of whether trusts should be essentially construed like contracts, the irreducible core of the trust, and the relationship between trusts and *numerus clausus*. Most answers engaged with aspects of this issue, but the best answers touched on all these points. A particular weakness involved candidates failing to consider the effects of trusts on creditors, and not only purchasers or tortfeasors who interfere with trust assets.

Question 8

This was a popular question that was generally very well answered. The best answers provided an illuminating examination of Lord Denning's reasoning in *Southwark LBC v Williams*, analysed the proper scope and true effect of the plea of necessity, and considered the relevance of the public/private distinction (or set of distinctions) to the issues raised.

Question 9(a)

The best answers not only explained how the priorities rules can be linked to the nature and content of rights, but asked whether the precise differences between different kinds of rights itself justifies the differences in the priorities rules. Weaker answers rested on assertions that priorities rules are too complicated, or took for granted that different rights should be subject to different priorities rules.

Question 9(b)

This question attracted very few answers.

Asian Constitutional Law

No. of students taking paper 5

General Comments:

Overall, the scripts were strong. All questions were answered, although some questions were more popular. Students engaged with materials discussed in the course very well. The best scripts were well structured, used knowledge from multiple jurisdictions, had original ideas, and offered novel classifications of relevant phenomena.

Comments On Individual Questions:

Question 1 on constitutional functions. This was a popular question. Stronger scripts identified functions Asian constitutions have in common with all constitutions, as well as their distinctive functions.

Question 2 on rule of law and constitutionalism. This question was less popular. A strong approach adopted a thin definition of constitutionalism, therefore avoiding establishing an incompatibility between constitutionalism and the rule of law by definitional fiat.

Question 3 on Buddhist, Islamic, and Confucian constitutionalism. This question was not popular. The best answer explored and classified common features of these models of constitutionalism and carefully discussed their divergence.

Question 4 on international involvement in Asian constitution-making. Several students answered this question. Stronger scripts systematically discuss internal and external legitimacy of the institutional involvement in Asian constitution-making.

Question 5 on Asia as appropriate category for studying constitutionalism was not popular, but well-answered when attempted. Strong approaches would include exploring the distinctions and similarities not only between culturally and geographically distinct Asian jurisdictions but also those that are similar in these respects, and yet diverge in constitutional form and structures.

Question 6 on courts and political parties. Several students answered this question. A really excellent answer would explore how courts could show sensitivity to the nature of the party system in their jurisdiction which still ostensibly enforcing the same legal doctrines.

Question 7 on comparative borrowing by Asian constitutional courts. This was a relatively straightforward question and was answered well.

Question 8 on constitutional accommodation and was popular. The best scripts noticed the two—descriptive and normative—parts of the question, and focussed on *normative* (as opposed to other, say institutional or pragmatic) limits on constitutional accommodation.

Business Taxation in a Global Economy

No report

Children Family and the State: Children and the Law

No report

Children Family and the State: Adult Relations

This was the first year extended writing was used as a form of assessment as opposed to a more traditional examination. The examiners were very pleased with the outcome. The standard of answers was very high indeed and the new format allowed candidates to show a real depth of analysis.

It was pleasing to see candidates drawing links between the theoretical issues raised in the literature with the kinds of cases which come before the courts. In doing so, as we had encouraged candidates, it was pleasing to see a wide range of jurisdictions being used for examples to illustrate how theoretical debates can play out on the ground. The most successful candidates were able to explore how different concepts (such as vulnerability or autonomy) could work well in the regulation of certain kinds of family forms and in certain contexts, but not well in others. Candidates were rewarded for showing a knowledge of topics across the syllabus, even though the question was focussing on themes in one particular week's work.

Civilian Foundations of Contract Law

Of the five scripts, one had only answered two instead of three questions. Brief comments required for any script given a mark of 49 or below were duly submitted.

Leaving this script aside, the four remaining script showed pleasing quality. The marks ranged from mid 60s to mid 70s, with an average of 69.25. No dramatic changes if compared with previous years.

Out of the eight questions, no particular favourite(s) could be identified.

Commercial Negotiation and Mediation

Name of Paper	Commercial Negotiation and Mediation
No. of students taking paper	26 students took the "essay option" (two essays after MT and HT, respectively) 3 students took the "paper option" (exam paper at the end of TT)

Summary reflections on the paper as a whole

General Comments:

26 candidates (23 BCL / MJur and 3 MLF) took the essay option, and 3 candidates (2 BCL / MJur and 1 MLF) the paper option. The much greater popularity of the essay option probably can be explained by the fact that it allowed students to complete their exam in CNM by the start of TT, gaining time to prepare for the exam papers in other subjects. The average mark in the first essay was 68.12, the lowest mark was 59 and the highest 75. The average mark in the second essay was 66.31, the lowest mark was 56 and the highest 72. The higher average for the first essay probably can be explained by the fact that students had more time to write the first essay during the winter break. The second essay had to be written over the Easter break which was already closer to the exam period in TT. The average mark in the exam paper was 65.33, the lowest mark was 63 and the highest 68.

As can be derived from the figures given in the previous paragraph, the overall standard of the scripts (both essays and papers) was very high. Within the essay option, students had to choose one out of three essay topics for each essay, within the paper option three out of eight exam questions. All essay topics were attempted by the candidates.

Topics and questions related to the full academic scope of the course, ranging from psychology and game / decision theory to doctrinal analysis and policy issues in the field of commercial negotiation and mediation. Most candidates displayed an impressive knowledge of the subject matters raised, demonstrating their ability to integrate the insights from the different materials studied. Their answers to the questions also evidenced the usefulness of the practical negotiation / mediation training they had done as part of the course.

Unsurprisingly, the submitted essays were of a slightly higher quality than the answers submitted by students who sat the exam paper at the end of TT: students had much more time (a couple of weeks) for research and writing and were expected to engage systematically with the existing literature on a particular topic. Generally, most candidates were able to precisely identify the problems raised by the essay topics / exam questions and specifically addressed these problems in their answers. Only few candidates failed to deal with all problems raised by a certain topic / question or did so only in an unstructured manner. The weakest scripts simply used a topic / question to display more general knowledge only loosely related to the problems raised by a certain topic / question. The best scripts demonstrated the candidates' ability of clear independent thinking. Some essays had an almost scholarly quality, i.e., they are publishable.

Commercial Remedies

No report

Comparative Constitutional Law

No report

Comparative Copyright

No report

Comparative Corporate Governance

Students had to write an essay choosing from three questions. The three options proved almost equally popular: 11 students chose Question 3, while 1 and 2 were chosen in equal numbers (8).

The average mark was 67. This reflected the strength of the cohort, which had already been evident from the high quality of the seminar discussions.

Question 1 asked students to reflect upon diversity within boards of directors, distinguishing between diversity itself as an outcome of choices made at the individual company level and policies imposing quotas. The exam question took a specific stance (pro-diversity and anti-quotas) and students had to either support it or criticise it, with three possible outcomes (pro-diversity and pro-quotas, anti-diversity and anti-quotas and pro-diversity and anti-quotas). The diversity in students' responses were a sign of their having critically assimilated the readings.

Question 2 prompted students to express their views on the topical subject of corporate purpose. More specifically, the question required them to reflect on the practical relevance of corporate purpose, namely whether a change in corporate purpose can be expected to induce a change in corporate conduct. Most of the scripts rightly noticed that, without broader changes in firms' governance, directly tackling agents' incentives, a change in corporate purpose alone is unlikely to bring meaningful change in corporate strategies and priorities.

Question 3 asked students to reflect upon whether universal owners (holders of widely diversified portfolios representing entire, if not multiple, economies can be expected to have a role in tackling climate change and social inequality. Many were too inclined to underestimate the collective action problems for passive managers to coordinate in order to exert pressure on companies. Most of them distinguished rightly between climate change (over which they are likely to become active) and social inequality (over which they are unlikely to become active).

Comparative Equality Law

There were 25 candidates who took this paper. The standard was very good: nine scripts were awarded first class grades, and all other grades were 60% or over. Candidates were rewarded for proper focus on answering the question, good comparative methodology, accuracy in their use of legal materials, clearly structured and well supported arguments, as well as independent and critical thinking.

The most popular questions were questions 2(a) (the difference between direct and indirect discrimination) and 7(b) (affirmative action). These questions most closely copied essay questions asked in tutorials. This did not always work to the candidates' advantage, especially if they did not focus sufficiently on the quote and/or the specific focus these questions invited.

Overall, because of the open book format, candidates occasionally included irrelevant and extraneous material, to gain length. This tended to detract from their grade. Similarly, merely putting in material, without making clear why it helps answer the question asked, was marked down. Generally, however, the standard was good and the results were pleasing.

Comparative Human Rights

Name of Paper	Comparative Human Rights (BCL/MJur)

No. of students taking paper	26

Summary reflections on the paper as a whole

General Comments:

In contrast with 2020–21, only one seminar stream was necessary during the current academic year, with 26 candidates overall. The standard of examination performance was generally high, as always, with [add figure] candidates securing Distinction level marks in this paper.

As in previous years, the strongest answers were those which engaged clearly and directly with the essay question (including responding to any ambiguities in the essay title), while exploring the subject-matter from a visibly comparative perspective and engaging with relevant theory alongside case law. What was slightly surprising, however, was that at least 3 candidates appeared to run short of time, receiving – in accordance with the marking conventions – a rather lower mark for their final answer than might have been the case had a balance between each answer been more visible.

Comments On Individual Questions:

Questions were designed to enable analyses with reference both to the substance of the human right(s) in issue and to the appropriate role(s) of the institution(s) in play. Answers generally paid helpful attention to both dimensions, as well as engaging arguments drawn from legal philosophy, constitutional theory, and (so far as distinct) theories relating either to human rights generally or to the specific right(s) in issue in the question concerned.

Answers to qu.1, concerning a woman's right to receive an abortion, were inevitably affected by the U.S. Supreme Court's hearing, in the run-up to the examination, of widely-reported arguments in *Dobbs v. Jackson Women's Health Organization*: in which the decision was handed down (by curious irony) on the day, 24th June 2022, that examination essays were due for submission, and which – as widely anticipated – reversed *Roe v. Wade* (1973) 410 U.S. 113. As the litigation was on-going during the academic year, the examiners did not expect predictive (or indeed any) analyses from candidates, and instead evaluated arguments which were advanced about the litigation as being useful 'extra aspects'.

Competition Law

The paper comprised eight questions, of which four were essay questions and four problem questions. Candidates were asked to answer three questions including at least one problem question.

The examination was taken by 34 candidates (1 MLF student, and 33 BCL/MJUR students). On the whole, the scripts showed excellent command of the subject and very good analytical skills, with 6 candidates being awarded an overall mark of 70% or above.

First class answers generally displayed a strong grasp of the underlying material, underscored by significant and sustained references to case law and commentary, balanced with robust analytical engagement. Weaker answers tended to miss substantial issues, neglect critical analysis, fail to engage in detail with case law and misconceive the relevant law, or how that law ought to be applied to the facts.

Conflict of Laws

Overall, candidates performed well in the paper, with some impressive scripts at the top end and very few scripts receiving a mark below 60. Problem questions were answered more frequently than essays. Q1, Q3 and Q4 were more popular among the essays; Q5 and 6 among the problem questions.

Constitutional Principles of the EU

Given the small number of students taking this option, it is appropriate to make only general comments about the way in which candidates dealt with the exam questions. Candidates' scripts demonstrated that the paper offered a good choice of questions, with students being generally able to address the questions as posed and produce high-quality answers. Question 6 proved most popular. Candidates who selected this question explored the specific constitutional benefits which the principle of national procedural autonomy offers to EU law and considered what would the consequences of subsuming it under primacy of EU law. The second most popular question was Question 4, which invited candidates to consider the heterogeneous character of the principle of proportionality and consider if it would be appropriate to harmonise the EU Courts' approach to proportionality across different contexts of EU law. Candidates tended to defend the more deferential attitude of EU Courts in judicial review cases other than those involving fundamental rights violations. Slightly less popular but still attracting a good number of answers was Question 5, concerning horizontal application of the Charter of Fundamental Rights, inviting candidates to consider what case could be made for using EU fundamental rights directly to impose obligations on private parties. Answers to this question were more varied. The other questions attracted only one or two answers, with Question 8, which provided candidates with an alternative choice between an energy policy question and an Eurozone financial crises question, attracting no answers.

Constitutional Theory

No report

Corporate Control

Students had to write an essay choosing from three questions. One of them (question 3) proved extremely popular (19 students chose it). Question 1 and question 2 proved similarly (un)popular, with five choosing the former and 3 choosing the latter, most likely as these questions were, in one case, more specific and, in the other, more open-ended and, therefore, potentially dangerous.

The average mark was a high 68.5. This reflected the strength of the cohort, which had already been evident from the exceptional quality of the seminar discussions.

Question 1 prompted students to reflect upon whether some kind of constraint over corporate decisions to pursue an acquisition, with the risk it entails of managerial self-serving behaviour, and namely ex post court scrutiny, would be justified in the US.

Question 2 asked students to reflect upon whether the reconcentration of ownership in the hands of institutional investors should prompt policymakers to review their takeover rules, for instance because rules that are premised on a collective action problem among target shareholders may have become obsolete.

Question 3 was a classical comparative law question, asking students to reflect upon whether the US model of allowing corporate defences against hostile bidders in the form of a "poison pill", subject to courts' "enhanced scrutiny" could be transplanted in the UK and Germany. The best essays looked

not only at specific law provisions making poison pills illegal in those two jurisdictions, but also to institutional elements other than positive law ones that may hinder the functioning of such a system in those countries.

Human Rights at Work

Candidates in this paper were asked to write two essays of no more than 8000 words in total in weeks 4-8 of Trinity Term. This assessment strategy gave candidates ample scope to explore topics in greater depth, to make connections between different topics on the syllabus, and to consider both theoretical and practical approaches to problems. All eight questions attracted at least one answer. There were one or two instances in which candidates had not quite answered the precise question set, but on the whole the essays were interesting and well-presented.

International Human Rights Law

This was the inaugural year for the course on International Huma Rights Law. Fifteen students took this course. It was examined by extended essays in Week 10 of MT and HT. The assessment involved two answers of no more than 3,000 words length (excluding footnotes). The scripts were consistently very high in quality across two terms, with answers in HT having improved from MT. The result was that the marks profile did not contain any low 2:1s and is a testament to the commitment to essay writing in the extended essay format. While there were a good number of high 2:1s there were also a good number of distinctions (about 30-40%) and reflects the excellence of students in the cohort. Some topics such as feminist and TWAIL approaches to IHRL in the first term; and remedies and indigenous peoples in the second term proved to be more popular than other topics in the MT and HT assessments respectively. There was also considerable variance in students' choice to focus on theory versus doctrine but both choices were equally welcomed and rewarded. Students who were able to blend the two fared furthest.

Incentivising Innovation

No. of students taking paper	6

Summary reflections on the paper as a whole

The overall quality of answers was very high, even by the standards of the BCL. The 'take home' essay format seems to work extremely well and allows students from a range of backgrounds to flourish. 5 out of the 6 questions on the exam were attempted. Given the low number of candidates this means that there only a small number of answers to any given question, making it impossible to draw conclusions about relative performance.

The exam consisted of 6 essay questions, divided into 2 parts. Candidates had to answer one question from each part. The questions in Part A were concerned with what might loosely be described as innovation policy. The questions in Part B were concerned with different elements of patent doctrine. The marks across both parts were very good and there is no evidence to suggest that students found one element of the course or the exam easier than the other.

Q1 required candidates to engage with debates in the corporate governance field around investment in innovation and short-termism. In order to tackle this question, candidates needed to

demonstrate that they were across a sizeable body of literature. Only one candidate attempted this question and did so very successfully

Q2 asked candidates to consider whether "Intellectual property rights are irrelevant for developing countries." The question was designed to allow candidates to focus on how IP rights might be important (or otherwise) for some of the different models of innovation that we find in developing countries and / or the impact of provisions dealing with intellectual property rights in international trade agreements. Three candidates chose to answer this question and it was encouraging to note that they all, albeit to varying degrees, chose to problematise the idea that one can analyse the impact of IPRs on 'developing countries' as if they were homogenous.

Q3 was the broadest question on the paper and was designed to allow candidates to engage with the intellectual thread that runs through the course, namely, the relative roles of the state and the market in fostering innovation. Two candidates answered this question, and it was encouraging to note that they had clearly engaged in a considered and careful way with the themes of the course.

Q4 was about the emergence of a doctrine of equivalents in English law. Candidates needed to understand and engage with the decision of the Supreme Court in Actavis v Eli Lilly, the way in which this decision might or might not be said to follow from the provisions of the European Patent Convention (EPC), and the direction taken in subsequent cases. This was the most popular question on the exam, with 5 candidates choosing to answer this question. The best answer was careful to dissect the question and to look at the issues raised from a number of different angles. The worse answer, although still solid, made too many untested assumptions about how the EPC should be read.

Q4 asked candidate to think about whether the goals of patent law are properly reflected in our law of patentable subject matter. One student attempted this question and demonstrated a good awareness of the competing considerations that might need to be given weight and, as such, did a reasonably good job of problematising the essay's starting assumption.

Q6: asked students to engage with the starting point from which patent offices should assess patent validity. This question was not attempted by any of the candidates.

International Dispute Settlement

No. of students taking paper 24

We had a strong set of scripts in International Dispute Settlement, with the cohort ending up with seven distinctions, and all other scripts bar one in the 65-69 category. There were no scripts in the 60-64 category, and only one particularly weak script was placed in the 50-54 category. Candidates attempted six of the eight questions multiple times, with no one attempting the questions on the general obligation to settle disputes and on the obligation to negotiate as a matter of jurisdiction or admissibility. This is the first time that one or two questions were not attempted by any candidates, despite these having been discussed in seminars. Of the questions attempted, Question 5 – on most favoured nation treatment in dispute settlement – and Question 6 – the ICJ problem question – were the most popular, having been attempted by 18 and 20 candidates respectively. All other questions were attempted by between 5 and 11 candidates.

These choices were no surprise given the focus in tutorials. However, candidates were particularly rewarded when the answers responded to the specific exam essay set, rather than to the similar tutorial question. More widely, we saw a number of first-class answers on exam questions that we hadn't discussed specifically in tutorials. It was gratifying to see candidates draw out sophisticated responses to new questions in the time allotted. The best scripts paid close attention to doctrinal complexities and wider critical views.

International Economic Law

No report

International Environmental Law

No. of students taking paper 14 (including an MLF candidate)

The overall performance by students in the International Environmental Law option was excellent. All candidates sitting the examination achieved grades in the mid-60s or higher, with eight candidates achieving distinction grades overall. The top four scripts, in the mid-70s, were superb, and contained insights that built on and extended what the course had covered. No script was marked below 64. All questions were attempted by at least two candidates.

The most popular question by far was question 3 (principles) followed by questions 2 (custom), 5 (dispute settlement) and 8(b) (architecture/Paris Agreement). The question on principles elicited largely descriptive responses, with the better scripts distinguishing between different functions that principles perform, and underscoring the salience of legal status for dispute settlement. The question on custom elicited some strong responses, with the best among them addressing the scope for custom, given the gaps in treaty coverage, effectiveness and limitations of custom. The Paris Agreement questions (question 8(a) and (b)) were well answered, with students demonstrating a solid understanding of the nuances and interpretational ambiguities. The more challenging and less popular questions, question 4 (multilateral treaties/works in progress) and question 5 (dispute settlement), presented candidates an opportunity to showcase original and thoughtful analysis. The best scripts responded to these questions, and wove in fine-grained analysis with extensive reference to case law and treaty provisions. More generally, the best answers engaged directly with the question, were well-structured and demonstrated detailed knowledge of the key legal instruments, case law and academic authority. This was evident in many of the outstanding answers in this year's scripts.

International Law of Armed Conflict

No. of students taking paper 19

It was a strong set of scripts in International Law of Armed Conflict, with the cohort ending up with eight distinctions, five scripts in the 65-69 category, and six scripts in the 60-64 category. Candidates attempted seven of the eight questions, with no one attempting the question on the rules of combatancy under Additional Protocol I. Of the questions attempted, Question 2 – on the use of force in response to terrorist attacks – and Question 6 – on the classification of conflicts – were the

most popular. We also saw a number of answers on jurisdiction (Question 5) and interaction between international humanitarian law and international human rights law (Question 8).

These choices were no surprise given the focus in tutorials. However, candidates were particularly rewarded when the answers responded to the specific exam essay set, rather than to the similar tutorial question. More widely, we saw a number of first-class answers on exam questions that we hadn't discussed at all in tutorials. It was gratifying to see candidates draw out sophisticated responses to new questions in the time allotted. The best scripts paid close attention to doctrinal complexities and wider critical views.

International Law of the Sea

This paper produced some exceptional scripts, with 60% of candidates achieving distinction, 30% merit, and 10% a good pass grade (i.e. above 60%) overall. Unusually, all questions on the paper were attempted by at least one candidate, with essay questions 3, 4 and 7 (especially 7(b)) proving the most popular. The best answers demonstrated an excellent grasp of the material, with wide reliance on case law, academic authority, and of course the relevant treaty provisions and customary international law. For the essay questions, the best answers were meticulous in unpicking the relevant components of the question and addressing each in turn, drawing on illustrative examples. For some questions, demonstrating awareness of legal developments beyond LOSC was essential (eg questions 7 and 8) including the case law of international courts and tribunals (eg question 2). By and large this was appreciated in the excellent answers to these questions. For problem questions, the best answers identified the key issues, drawing inferences from the facts where necessary, and in proffering advice on how these issues could be resolved included the various dispute settlement options.

Jurisprudence and Political Theory

No. of students taking paper	18

Eighteen candidates wrote essays for the subject this year. Twelve wrote on Q1, about the role of authority in establishing and sustaining conventions. Five wrote on Q2, about whether a court ought to interpret a legal instrument in the way in which it would have been reasonable for its author to interpret it. Ten wrote on Q3, about whether certain claims in a given quote about the way in which promises may give rise to obligations can serve as a model for explaining how the actions of legal institutions can give rise to obligations. Eight wrote on question 4, about whether treating people as equals requires that we treat them equally. Ten wrote on question 5, about whether certain demands on the will of the members of a political community bring with them exceptional obligations of justice. Eight wrote on question 6, about what moral standing is. One candidate submitted only two essays. Six candidates achieved a first, including a particularly high first. Ten candidates achieved a 2.1, of whom nine achieved 65 or better. One candidate achieved a 2.2. One candidate (who offered only two essays) achieved a third.

Law and Computer Science

This is the third year that we have run this course jointly between the Faculties of Law and Computer Science, where it is open to students on the BCL/MJur/MLF and 4th year/MSc courses respectively. As in previous years, the course contains two summative components: the written paper, which is the subject of this report; and a practical project, which required students to work in interdisciplinary groups of 6 (three from each discipline) to produce a legal product based either on blockchain technology or NLP. The practical project is marked

simply on a three-mark scale: unsatisfactory, satisfactory – or satisfactory+. Such was the quality of this year's projects that all students received an S+ mark. In Law this does not have any implications for the candidates' overall degree classification, though such a mark can – at the margins – have that effect in Computer Science.

As in previous years, the best scripts in the theoretical paper were those where the candidates had engaged in detail with both disciplines, considering the specific technical aspects of law and computer science that might create and solve the problems they were asked to consider. This is always the key goal of the course and one that is emphasised to students throughout the sessions they attend. Weaker scripts, as is usual, tended to engage with their own discipline without fully considering the other, or to approach the relevant issues in a broader, more journalistic manner, when what is required is a detailed, technical understanding and analysis that evidences a genuine academic understanding of the subject. In line with our practice in previous years, the Computer Science marks were scaled to accommodate the fact that Computer Science makes full use of the range of marks between 70 and 80 while law does not. As always, all scripts from both Faculties/Departments were marked independently by both Convenors, ensuring that they had been considered from both a Law and a CS perspective, and as in previous years there continued to be minimal or no difference between the marks awarded by each examiner. Where there were minor discrepancies, these were discussed and a final mark agreed upon.

There was one fewer question in Part A this year to account for the fact that in previous years only one or two questions from the list tend to be the focus of almost all Part A answers. The same was true even this year, where only one candidate answered question 4 from Part A. Candidates of course knew in advance that the number of questions would be four rather than five.

Part A

Question 1

This question required candidates to engage with what each discipline means when it refers to the idea of a 'code' and why the meaning might be different in each. In particular, candidates were expected to engage with the necessity of uncertainty in law as compared with computer code and to consider the advantages and disadvantages of the presence of this uncertainty as well as the ways in which this difference between the disciplines might be overcome in contexts such as smart contracts and other forms of legal automation. Candidates were expected to engage with the work of legal philosophers and those who have written on the idea that 'code is law' as well as with practical examples of automation and the challenges this has raised.

Question 2

This question was the most popular of the Part A questions. It required candidates to engage with the extent to which full automation of legal work is possible or desirable and the benefits and disadvantages of augmentation as an alternative to full automation. Good answers were able to consider both technical and social advantages and disadvantages and to consider a range of different forms of automation and augmentation in different specific practical contexts, though high marks could be achieved by either deeper consideration of a

few exemplar areas or by a more extensive, though inevitably shallower taxonomy of different experiments in this regard.

Question 3

This question required candidates to examine the specific context of automated, as opposed to simply online dispute resolution. Good answers considered the social functions fulfilled by dispute resolution as well as the technical ones, whether technical from a legal or a computer science point of view.

Question 4

This was, surprisingly, an unpopular question, only answered by one candidate. Good answers would have focused on issues such as the metrics used to assess a particular system's 'success', whether technical or socio-legal metrics, as well as engaging with the different kinds of technology that might be used to create an automated system in legal practice.

Part B

Question 5

This was the most popular question in Part B and required candidates to engage with at least two areas of law that might have to respond to legal issues arising from automated decision making. Candidates were not, however, limited to two examples and as with other questions, excellent answers could choose to focus in depth on two or to give a broader but shallower taxonomy or map of more areas. Obvious areas of law to consider include public law, employment law, tort law or to some extent competition law, but the focus of the question was on algorithmic decision-making systems more than on, for example, smart contracts, which were more the focus of question 6. From a technical perspective, issues to be covered included the metrics used to assess performance of a system, its transparency and the ability to see and then control the factors it used to produce an output. As with the paper as a whole, the best answers were able to use more technical as opposed to anthropomorphic language to describe the operation of such systems.

Question 6

This question was also popular and required candidates to examine the extent to which it is possible or desirable to adopt a law-free, self-executing approach to smart contracts and cryptoassets. Knowledge of the law and technology relating to both contexts was vital for a good answer, as was a detailed discussion of practical instances where such questions have arisen. The question also required students to engage with the normative question of how such technology should be regulated and the respective roles of law and technology in this process.

Question 7

This required candidates to consider in detail the case of *Oracle America Inc v Google*, but to situate it in a broader consideration of the extent to which our existing law can be readily adapted from the human to the digital context and what moves should be made by each of the two disciplines in order for this adaptation to take place.

Question 8

No candidate attempted this question, which would have required consideration of the incentives created by public law, tort law, competition law, criminal law, employment law and others and their likely effects in the digital context. In particular, in the tort and criminal contexts a good answer would have considered the advantages of strict as opposed to fault-based liability, and indeed the question of the extent to which it is possible to make individuals liable for the actions of relatively autonomous systems and if so, how. From the point of view of competition law, the question again raised the issue of the extent to which rules based on human behaviour will transfer to a digital context.

Question 9

This was another unpopular question, attempted by only two candidates. It focused on the specific questions discussed in one of the seminars in Part B of the course and is relatively self-explanatory, requiring candidates to examine the technical challenges and operation of third party tracking and how law and technology might respond to this. As always and throughout the paper, good answers would give specific examples from practice and address them from a detailed and technical perspective, both in terms of the law and the computer science.

Law and Society in Medieval England

Five candidates submitted the two required essays for this subject. Four candidates chose to write one of their essays on the same question but provided quite different and equally competent answers to it. None of the other questions attracted more than two answers. The overall quality was high and demonstrated the candidates' mastery of both the original sources and the secondary literature.

Law in Society

This course was divided into two parts, with 8 seminars taught by Dr Grisel in MT and 8 by Professor Pirie in HT. The exam paper was, accordingly, divided into two parts, with four questions on each, relating to the two different parts of the course. The candidates had to pick one question from each part and write a 4,000-word essay for each.

The best candidates not only demonstrated good knowledge of the themes and debates relating to the chosen question, but referred to a wider range of literature and cases. This often originated in a different part of the course or other reading the student had done. Their essays were analytically sharp, with clear and logical arguments, illustrated by a good selection of relevant case studies. The less highly-marked papers either lacked a clear and convincing argument, or else made use of a somewhat limited range of empirical case studies.

The examiners appreciate that this option requires students to write essays in a different style from many of their other options, but they felt that the most capable students were able to do this and that their essays demonstrated a good social scientific approach to the exam questions. The number of distinctions was roughly as might have been expected from this group of students.

In an ideal world, however, the examiners would prefer to be able to set a wider range of questions, reflecting the range of topics covered on the course.

Legal Concepts in Environmental Law

All questions were answered with at least three answers and some questions were particularly popular (2, 5 and 7).

As with last year, the overall quality of the essays submitted was very impressive. There was some excellent engagement with the legal issues raises by the questions, some outstanding analysis of legal material, some superb structuring of arguments, and some exceptional independent thinking. What was particularly striking were answers in which students were very hands on with the legal material. Stronger answers to the problem questions (qus 1 and 2) engaged with legal detail more, including proposing specific legislative provisions in light of existing legal regimes.

Weaker answers tended to be more general in analysis and did more 'telling' and less 'showing' in making arguments. They also tended to take time to get into the legal material (pithier introductions that addressed the question directly were more successful in setting up an essay). There was also a tendency in some answers to move away from the question being asked or to provide detail, that while interesting, did little to substantiate the argument being made.

Overall, these essays showed much hard work, careful thought, and legal expertise on display.

Legal Concepts in Financial Law

Number of students: 19

Overall, the examiners were pleased with the quality of the scripts, and those at the upper end were very strong indeed. The best scripts showed a sophisticated understanding of the interrelation between doctrinal law, private law theory, and finance—as regards the former, really digging into the cases and the reasoning. Weaker answers tended not to integrate these different strands, sometimes theorizing from only thin caricatures of the cases, and in places regurgitated material from the lectures with little attention to the question asked.

Question 1.

This question was moderately popular. Stronger answers addressed the proper role of concepts in English legal thinking about financial law with reference to a range of examples from throughout the course. Weaker answers suffered from simplistic arguments, and in many cases a restrictive range of examples. Not many candidates recognized the source of the quote.

Question 2.

A question that attracted few answers. Weaker answers tended to recite material from the lectures without properly thinking about the question—in particular what does it mean say that money is a kind of 'property'?

Question 3.

A question that did attract some answers. Stronger answers focused on whether the secondary nature of a guarantor's liability justified the rules applicable to guarantees, and distinguished between those different rules. A number of weaker answers asserted the functional similarity of different kinds of simple financial positions meant that guarantees should not be subject to bespoke rules, without any reflection as to whether such functional similarity justifies assimilation.

Question 4.

A popular question, but one that was not always well done. Strong answers properly considered how the ISDA master agreement and FCAR separately dealt with close out netting, and engaged with the relationship to traditional security interests. Weaker answers tended to ignore the question of

whether the *common law* (as opposed to statute) allows close out netting, such that statutory safe harbours are needed, and to over rely on debates between academic commentators at the expense of case law.

Question 5.

The most popular question. Candidates were richly rewarded for showing how the theoretical difficulties in intermediation resulted in the practical problems. Weaker candidates completely separated the practical from the theoretical problems, and tended to discuss only a few issues in each from a narrow range of perspectives.

Question 6.

A moderately popular question. Weaker answers tended to, in an undigested form, regurgitate material from the lectures about the creation of charges and missed entirely the context of the quote. Strong answers engaged with the theoretical uncertainties at the heart of the law governing charges and its implications in the case law.

Question 7

This question did not attract many answers.

Question 8

Another moderately popular question that was generally well done. Most candidates identified the relevant issues in each part, but the stronger answers properly supported reasoning and conclusions with reference to the actual reasoning in the cases. Weaker answers, even where the right material was cited, tended not to engage with the reasoning in the cases and so to miss key points—and to take a particularly shallow approach to the priorities issues.

Medical Law and Ethics

This standard of answers for this paper was generally very high. All candidates demonstrated a good understanding of the philosophical and legal literature. Candidates were generally well able to explain how the more theoretical issues played out in the kind of cases that come to court.

What marked out the distinction level answers from the others was an ability to explore the deeper issues behind disputes over the different topics. So, rather than simply setting out what the arguments were on either side of a disputed issue, the candidates sought to understand the root cause of these disagreements. Candidates were also given credit for showing how some themes emerged in a range of different topics within the syllabus, sometimes in different ways and with different emphasis.

Modern Legal History

Nine candidates were examined. Candidates each submitted two forms of assessment: an essay at start of Trinity Term of no more than 4000 words (40% of overall assessment), and two examination answers of no more than 2000 words each (60% overall) on a topic different to the essay, taken at end of term, and chosen from a list of nine questions. The candidates offered a good standard of scholarship, invention, and expression, especially in the long essay. All students had clearly applied themselves, worked hard at the materials, and brought curiosity and imagination to the course.

Turning to performance in particular topics (and for reasons of brevity we will here discuss mainly the set examination performances):

1 Codification. The exam question led with a quote from Savigny expressing hostility to codification. The essay question asked about the choice between universal and partial codification. Candidates used both primary and secondary materials from the Western European systems and referred to imperial offshoots to illustrate the deeper themes revolving around codification, both the internal juridical springs and the external political pressures. The best answers demonstrated close engagement with and reflection on the materials.

2 Role of fault standards in tort or/ nuisance in relation to technological and economic change. The better answers managed to show how judges (and jurists writing textbooks and commentaries) reframed pre-industrial trespass standards and procedures to match a new era of mass transport and production, posing new and previously unimagined hazards to persons, property and environment. The best answers ranged across wider time frames of evolving law, looking at how doctrinal expression moved and how procedures eg jury proof and juridical control of fault or causal issues, led to doctrinal innovation. More analysis of leading cases, looking at the manifold defences developed to choke off liability, would have been valuable. Some students introduced extensive economic analysis, without always tying this closely to the law as taught in the course.

3 Contract and justice. The best responses looked not just at macro ideas of justice in bargaining, but managed to look at the distinct procedures and remedies of particular courts, noting in particular admiralty and chancery alongside the common law courts. Again, a closer attention to the leading cases taught in the course would have given some answers an added power. Candidates demonstrated a good grasp of the many scholarly contributions but there could have been more critical analysis of these sources in light of the cases.

4 Equity and trusts. It was important to isolate well-developed problems in the chancery jurisdiction as studied in the course, and not just to write generically about the historical nature of equity as a conscience based jurisdiction. It was also important not to spend too much time reviewing modern secondary sources at the expense of historical cases, treatises and statutes. Good answers did focus in on major issues such as strict settlements and how chancery developed asset partitioning ideas via partnership and trust. More on charities and more use of and engagement with the cases might have been expected.

5 Credit economy. Not a very popular subject; the examiners were looking for a close discussion of the interaction of statutory and curial policies, and answers might have given more detail on the positive law. Some exceptional answers did just that, showing a wide awareness of relevant case law.

6 Corporate economy. Similar comments pertain – the better answers showed a strong awareness of the phases of statutory authorisation of corporations, the pace of uptake, and the debates both contemporaneously and in modern times of the functionality of the corporate form for securing and locking in credit, creating durable asset partitions, aligning and disciplining labour and capital, and permitting separation of executive, investment and labour functions.

7 Judicial control of executive. The better answers showed the development of public law controls through major staging posts such as the Bankers' Case, and indeed the examination and essay questions invited such case-based answers. More could have been written on imperial dimensions, as with the Eyre case, and also tax issues.

8 Criminal doctrine. Perhaps because teaching in this topic came late in the year, this was not a popular topic. The question asked for close analysis of the leading cases and some account of how changing procedures including statutory reform yielded new ideas about criminal responsibility.

9 Imperial law and native title. Some excellent answers were offered here. Candidates sometimes wrote too much on the Marshallian jurisprudence of the early USA, and did not provide enough of the common-law backdrop in seminal earlier cases such as Tanistry and Calvin. The 18th and early 19th doctrines of pre-emption could have been discussed more. Some candidates were focussed on showing how leading modern cases such as Mabo No 2 rested on a complex earlier jurisprudence. Overall this topic was attacked with gusto.

General comments:

Many of the questions expressly asked for candidates to scrutinize the common-law emphasis on the hermetic reasoning of curial law, and to contrast this with various "externalist" approaches to legal history. Most candidates tried to mould their material through this set of lenses, but sometimes a body of already formed work was presented with light attention to the question form. The best candidates showed how rethinking their learning in light of the questions posed could animate their writing and give an added originality, going beyond reporting what had been read and discussed in class.

The 2021/22 class were devoted and committed, and made this second year of the Modern legal History course a great success, helped no end by the return of in person teaching. The challenges of the pandemic were by no means over this year, and students deserve commendation for their good spirits and energy in the face of all difficulties.

Philosophical Foundations of the Common Law

No report

Philosophy, Law and Politics

No. of students taking paper	7

This course started out with a larger number who then dropped out of fear that they were being taught something new and couldn't afford the risk to their overall mark. The remaining 7 were keen and dedicated. Several of the 7 told me that this was one of the best courses they have ever taken in their careers, which is a common remark I receive every year (though who knows whether that's just politeness or angling for a letter of recommendation!) I have also been told that the students really value this very small size class which in conjunction with new material gives them a special learning experience. When we next run this course, we may well go back to the old format, which is to allow postgrads from philosophy and politics to join in because I have already been receiving requests from nonlawyers to join the course this Fall (which in fact will be on hiatus b/c of leave). I strongly believe that this paper offers the BCLers/MJurs something different – a broader exposure to work from other disciplines. But it does not fit well with the main purposes of the BCL/MJur, which is to get a feather in one's cap before going to practice. It is I think instead aimed at BCL/MJurs who are contemplating a career in legal academia, of which there were I believe 5 from this year's class, at least 3 of whom were admitted into the DPhil. The paper is still working out some kinks, but I think

the small size is a sine qua non of its working, otherwise we will be inundated with too many tutorials given that there are only two of us from the law faculty teaching on the course. My hope is that the new statutory professor in the philosophy of law will become a central figure in this course when they are in situ.

The students are pretty much lost at the beginning of the course but they learn quickly and learn a great deal. I think the course continues to get better but that it is overall pretty successful. The PLP Colloquium is critical to the course as it gives the students the opportunity to meet very distinguished visitors across the PLP fields.

Principles of Civil Procedure

There were a smaller number of students sitting the PCP exam this year than on average. The standard varied considerably. All questions were attempted, except for the question on costs, with some excellent answers on expert evidence, judicial impartiality, interim remedies and closed material proceedings. As always, but especially with the open book format, the weakest scripts were only tangentially related to the question asked. The best scripts thoughtfully engaged with the subject *and* specific issues raised by the question prompt. There were a number of strong answers that engaged with the subject of the question only. These answers were still capable, and in some cases did receive high marks, but were not awarded the highest marks available.

Principles of Financial Regulation

A total of 48 candidates (32 MLF and 16 BCL/MJur) took this paper. The overall standard of the scripts was very strong. 13 candidates (27%) obtained marks of 70 or above and only two candidates (4%) obtained a mark lower than 60. The average mark was 67, similar to previous years. There was little difference in the average mark for MLF (66) and BCL/MJur (68) candidates.

Most candidates were able to synthesise effectively a wide range of materials. However, the questions invited candidates to focus on specific aspects of the issues they had studied. A common weakness in a number of the scripts was insufficient attention to this particular focus – that is, not fully answering the specific question set – resulting in answers that simply gave a general overview of the topic in question. Those candidates who were successful in structuring their answers so as to engage directly with the particular question set were rewarded accordingly. The most impressive scripts were characterised by candidates taking carefully reasoned positions of their own, demonstrating clear evidence of independent thought.

Questions 1, 2, 4, 6 and 7 were attempted by significant numbers of candidates, and further comments on these are set out below. Questions 3, 5, 8 and 9 each produced only a modest number of answers.

Question 1 invited candidates to consider the extent to which climate risk disclosures seek to do more than simply protect investors, and how easily this can be accommodated within the present framework. While the better answers did engage fully with this, many candidates simply introduced the concept of climate disclosure. Weaker answers simply discussed the rationale for mandatory disclosure in general.

Question 2 was very popular. The better answers presented evidence of candidates' independent thought about the question of bank governance, as opposed simply to rehearsing material discussed in lectures.

Question 4 was also attempted by a large number of candidates. Better answers focused specifically on the FCA's proposals and their likely impact, which necessitated a discussion of the pre-existing position to set the scene. Weaker answers simply rehearsed the justifications for regulation of consumer finance.

Question 6 invited candidates to reflect on how cost-benefit analysis should best be used by financial regulators (if at all). Better answers derived proposals that took into account the strengths and limitations of the exercise.

Question 7 attracted a number of answers that simply reviewed the tools and institutions of macroprudential policy. The better answers, however, engaged with the question's specific focus on how successfully these had fared in response to the COVID-19 crisis.

Principles of Intellectual Property Law

No report

Private Law and Fundamental Rights

No. of students taking paper 11

The standard of the scripts was high, with just over a third of candidates awarded a distinction mark for the paper. The highest marks were awarded to those who were most successful in maintaining focus on the questions addressed, and who best drew on insights derived from both the case law and theoretical perspectives. The most popular questions were q. 2 (use of fundamental rights to prevent employers exerting inappropriate power over employees' lives) and q. 8 (balancing fundamental rights), each of which appealed to more than half of the candidates, whilst the least popular questions were q. 4 (misuse of private information) and q. 6 (fundamental rights and equality legislation).

Regulation

This academic year provided again a strong performance of students in the 3 hour written on-line examination for the 'Regulation' course.

The examination scripts showed a good understanding of the range of theoretical perspectives for conceptualizing regulation discussed during Michaelmas Term, and skills in applying these to the specific case studies on technology regulation that form part of the Hilary term section of the course. Questions chosen by students covered the full range of questions from both Parts A and B of the exam paper.

6 scripts were awarded first class marks, with 72% for the prize winning script.

First class marks were awarded in particular to scripts that showed significant levels of the student's own critical analysis, as well as analytical comment on a wide range of academic readings and relevant legal provisions.

Reasons for scripts being awarded lower marks were insufficient engagement with the specific exam question asked, insufficient detail in the discussion, or misunderstandings in the points being made.

Overall, most scripts provided well-structured and clearly written answers which showed students' progress, gained also through the tutorial essay writing practice and the collection.

Restitution of Unjust Enrichment

No. of students taking paper	27

This year's standard was unquestionably lower than expected: whereas around 35% of candidates (and sometimes as many as 50%) would usually obtain Distinctions in this subject, this year only two scripts received first-class marks overall. Conversely, there were two fails (scripts awarded marks below 50) and a relatively high proportion of scripts (about 20%) were awarded overall marks below 60. In terms of poor scripts, there was a relatively high number in which candidates provided only very skimpy answers to the questions posed, with little or inadequate reference to cases, and/or omitted major aspects of the question. Moreover, some candidates referred to no cases at all, failing to heed the annual warning of their examiners to start with the judges, not the academic commentators.

Regarding question 1, while there were some strong, original answers to this question, many candidates failed to explain their understanding of 'fault' and/or used overly broad definitions, which tended to depress the quality of their answers.

Regarding question 2, this was a very popular question which was competently answered on the whole. Stronger answers addressed in depth whether the 'at the expense of' requirement lacks 'independent content'; weaker answers simply provided an overview of the meaning given to 'at the expense of' by courts and in secondary literature.

Regarding question 3, this relatively popular question was generally well handled, with several candidates providing detailed and perceptive readings of *Pitt v Holt* and several situating these readings within the wider theoretical framework of the subject.

Regarding question 4, this was another relatively popular question which attracted some strong answers. Weaker candidates failed to give accurate accounts of the contemporary scope of duress and undue influence, omitted reference to recent important decisions of the Supreme Court, and/or gave inaccurate accounts of key cases, e.g., *Allcard v Skinner* and *Thorne v Kennedy*.

Regarding question 5, while stronger answers focused on failure of basis/consideration as instructed, some candidates treated this question as an invitation to discuss the analysis of mistake claims. There was a tendency towards over-reliance on arguments in the secondary literature (esp. Stevens') as opposed to analysis of leading cases.

Regarding question 6, this was another relatively popular question, with answers fairly evenly divided between (a) and (b). Stronger candidates addressed themselves specifically to the idea of policy-motivated restitution; weaker ones treated the question as the occasion for a general account of state unlawfulness or discharge of another's obligation, often (once again) with too much reliance on arguments in the secondary sources.

Regarding question 7, this question attracted few takers. Those who did offer answers tended to do well.

Regarding question 8, this relatively popular question attracted some strong answers. Some candidates failed to explain what they understood by 'defence' and 'denial', and/or failed to use those terms consistently, which tended to depress the quality of their answers.

Regarding question 9, this was the most popular of the three problem questions. The cause of action (failure of basis/consideration) was generally well-handled, though some failed to notice that the failure was only partial. As for defences, while some candidates offered detailed and perceptive accounts of the operation of the illegality defence, few addressed the facts (and especially the alternative fact scenario) in sufficient detail.

Regarding question 10, this question was also relatively popular. Once again, many candidates failed to addressed the facts of the problem in sufficient detail: for example, few considered the implications of the pre-existing decision in *W v XCC* for the operation of the limitation defence following the decision in *FII* [2020].

Regarding question 11, relatively few candidates attempted this question; those who did generally offered good, detailed answers.

Roman Law (Delict)

These were in fact two papers, a regular one for the (2) students of the regular 2021/22 course, and a take home exam for a re-entering student who had taken the course in a past academic year. A comparison across both papers is not really possible.

The two candidates came out at an average of 68. The markers were pleased. Both candidates had chosen the same set of questions (1,2,4 and 8).

The single candidate submitted an excellent script which was marked according to the regular standard.

Taxation of Trusts and Global Wealth

No. of students taking paper	8

Summary reflections on the paper as a whole

As in previous years, the assessment for this option consisted of a 4,000-word extended essay, and a written examination in which two questions were to be answered from a choice of four essay questions and two problems. The two aspects of assessment were weighted equally. The examination focused on the UK aspects of the course, and the extended essay on the international elements.

Overall, candidates answered both parts very well, with 6 out of 8 candidates receiving a Distinction overall and no marks below 60.

Essay

The extended essay was a hard question and asked candidates to assess the strengths and weaknesses of the taxation of UK property and discuss what reforms could be made to improve it. The best answers combined a focused evaluation of these complex provisions with both sensible and

creative reforms, demonstrating technical knowledge and awareness of the different policy arguments. Although all answers were good, the weaker ones tended to neglect one or more of these different aspects and showed less depth of knowledge in their answer.

Exam

It was pleasing to see that all questions on the exam were attempted and, overall, the standard was very high.

Question 1 asked candidates to consider whether it would be better to abolish inheritance tax and instead impose capital gains tax on death. This question required a good understanding of different policy arguments for doing so and the alternative options for reform.

Question 2, on avoidance, deviated somewhat from the standard question on this material and considered the relationship between the Ramsay principle and provisions of the Inheritance Tax Act. Despite being a difficult question, it was answered very well by those who attempted it, with responses paying close attention to the somewhat unusual question asked rather than merely reciting pre-pared answers.

Question 3, on the 2006 reforms to the taxation of trusts, was a popular question. The best answers focused on the claim made by the quote - that the reforms were 'incoherent and unnecessary - and considered what was meant by this statement. Conversely, the weaker answers tended to provide a general discussion of the taxation of trusts without attention to the question being asked or did not support their argument by reference to the technical provisions.

Question 4 asked whether legislative reform was desirable in the context of capital gains tax. This required candidates to blend analysis of the difficult case-law in this area, the statutory provisions and the policy rationale of CGT. The best answers combined all three aspects in their discussion.

Question 5, the problem question on trusts, was answered well. Candidates needed to demonstrate knowledge of the technical position both before and after 2006 and apply the legislation to a complicated set of facts.

Question 6, the problem question on capital gains issues, raised a number of different issues that tested the breadth as well as the depth of candidates' knowledge of the legislation. It was also answered very well, with answers able to address a number of issues quickly and concisely.

Trade Marks and Brands

No. of students taking paper	9

The overall quality of answers was of a reassuringly high standard, with some especially thoughtful responses to new topics (Q4, Q5). Every question was attempted, although some proved more popular than others.

Question 1 invited candidates to consider the extent to which UK trade mark law is equipped to reconcile conflicting interests in relation to non-traditional marks. As an open-ended question, the challenge was for candidates to select a line of analysis from within the options. Several areas present themselves as suitable for discussing the balance struck in legislation between recognising such signs as valid marks and managing the effects of the ensuing legal monopoly on competitors:

distinctiveness (both inherent and acquired); the extent to which precise representation on the register is required; policy exclusions such as substantial value; refining the scope of infringement; supplementing defences and so on. Those arguing that trade mark law is too strict presumed that brands deserved broader protection, without justifying this presumption. Those defending the status quo tended towards descriptive accounts. Answers tended to be safely conventional and were marked accordingly.

Candidates generally answered Question 2 satisfactorily. Answers explored the question of whether blurring is real both conceptually (has the right harm been identified by courts) and empirically (how this harm is measured). Those who strayed into free riding without explaining the connection with blurring tended to lose marks. Candidates who obtained first class marks showed familiarity with the detail of arguments and nuance when it came to comparative law analysis (e.g. should an empirical criticism drawing on US trade mark law bite in the same way for UK or EU trade mark law).

Question 3 also invited several good answers to the question of how to address the problem of registered but unused marks, i.e. clutter. Thoughtful responses identified the inadequacies of the current approach, which includes the unsystematic and expensive nature of bad faith invalidations and ensuing commercial delays. These candidates also closely engaged with the UKCA's interpretation of the CJEU's SkyKick decision and whether additional reform mechanisms besides bad faith could supplement the current approach to clutter. Unrealistic responses advocated entirely abandoning a registration based system in favour of a use-based one, or proposed unworkably expensive or examination-intensive 'cures'.

Question 4 required candidates to critically evaluate the role of trade marks – and brands more generally – in the context of signalling the environmental sustainability of products. The best answers engaged at a level of depth with specific themes, such as the growing privatisation of sustainability certification and the extent to which certification marks provide sufficiently rigorous guarantees, or else – drawing on consumer culture theories – how brands enable dialogic feedback loops between producers and consumers, such that producers are held accountable when they fall short of their promises to consumers. The best answers considered tools within trade mark law (e.g. revoking a mark for becoming deceptive) for preventing greenwashing and holding brand owners responsible for untruthful signalling.

Responses to Question 5 tended to aptly engage with trade mark theory and its underlying normative foundations, when analysing the extent to which artificial intelligence applications, and machine learning in particular, will change trade mark law. However not many candidates unpacked the equally 'artificial' legal presumption operating in this space; namely, the hypothetical average consumer who does not correspond to an empirical aggregate of real-world consumers.

Finally, Question 6 focused on the extent to which the potentially broad referential use defence could adequately protect expressive interests. Only one candidate attempted this and performed well, outlining the situations in which the defence might prove valuable and recommending changes to the interpretation of the 'honest practices' proviso such that the defence might truly flourish.

Appendix 4

Report of factors mitigating circumstances applications.

Name of examination: BCL / MJur 2022	
Number of mitigating circumstances applications received before final meeting of examiners:	**39**
Number of mitigating circumstances received after final meeting of examiners:	**6**
Total number of mitigating circumstances applications received:	**45**
Percentage of mitigating circumstances applications received (as a percentage of all candidates in the examination):	**26**
Number of mitigating circumstances which resulted in a change to the classification/final degree result:	**9**
Percentage of mitigating circumstances applications which resulted in a change to classification/final degree result (as a percentage of all mitigating circumstances applications):	**20**
Number of mitigating circumstances applications which resulted in changes to marks on an individual paper(s)/submission(s) (but not to the final classification/degree result):	**0**
Percentage of mitigating circumstances applications which resulted in changes to marks on an individual paper(s)/submission(s) (but not to the final classification/degree result) (as a percentage of all mitigating circumstances applications):	**0**
Number of mitigating circumstances applications which did not result in any changes to marks or degree result:	**37**
Percentage of mitigating circumstances applications which did not result in any changes to marks or degree result (as a percentage of all mitigating circumstances applications):	**82**