

## **Bachelor of Civil Law and Magister Juris 2002**

### **Report of the Examiners**

#### *1. Changes since last year*

In response to recommendations contained in Examiners' Reports in previous years, several changes were introduced this year. Candidates were required to complete between 12 and 14 credits worth of subjects, leading to an increase in the number of candidates taking four subjects rather than three. Dissertations are now rated as three credits rather than two.

#### *2. Timetable*

As was remarked last year, the timetable is a tight one, for some candidates and for almost all examiners and assessors. Leaving aside those FHS subjects taken by MJur candidates, this year examinations ran from Monday, July 1st until Monday, July 8th, but no paper was set for Saturday. The first marks had to be, and were in most cases, returned by Wednesday, July 10<sup>th</sup>, for collating for the First Marks Meeting on Monday, July 15<sup>th</sup>. Those scripts designated for re-reading were identified at that meeting and had to be re-read by Wednesday, July 17<sup>th</sup>, after which the new marks were collated for the Second Marks meeting on Friday, July 19<sup>th</sup>.

It is worth repeating two points from last year's Examiners' Report regarding this timetable. First, to meet the deadlines, a considerable amount of co-operation is required from colleagues; without this co-operation, the process would grind to a halt. The Chairman of Examiners is sincerely grateful to colleagues for their co-operation. Second, there is very little slack in the system. Any problem in the processing of the FHS marks, as occurred this year has potentially severe knock-on effects on the processing of BCL/MJur marks. The moral for the future is the same as we pointed to last year: that any changes to be introduced in examining procedures (in particular double marking, which we consider further later in this report) must be devised in the knowledge that, if they complicate the process of marking, there will be a requirement that more time be set aside for marking, necessitating an earlier start to the examinations, or a later completion. A later completion date (say in early August) is unlikely to be feasible, not least because obtaining the services of a suitable external examiner who is willing to be involved during August will be difficult, if not impossible. We recommend that if a lengthening of the examining process is contemplated, the examinations should begin earlier.

In the past, no candidate faced more than one date on which he or she had two papers. Given the increase in the number of credits, with the consequently increased difficulties of timetabling, it was not possible to have such a policy this year. Some candidates complained, and sought medical certificates to the effect that they would suffer undue stress if they were required to sit, for example, three papers in two days. Unfortunately, if the examination is to be kept within a reasonable period of time, it seems unlikely that any modification is likely to be possible in the future. It may be, however, that scheduling examinations on Saturday might make some difference.

#### *3. Numerical marking*

Numerical marking was introduced two years ago in the BCL/MJur. There do not appear to any remaining problems arising from numerical marking that have been brought to the attention of Examiners.

#### *4. Entries*

At the beginning of the written examinations in July, 67 candidates were entered for the BCL, and 61 for the MJur making a total of 128, a slight increase on last year. It is worth bearing in mind that this makes the BCL/MJur one of the biggest taught graduate degrees in the University with a very significant faculty involvement. At least 35 members of the faculty were involved in the examining process in one way or another.

#### *5. Jurisprudence and Political Theory essays*

There were complaints this year that the essays that are posted in Examination Schools at the end of Hilary term should also be available on a separate sheet that could be taken away from Schools by candidates. This appears a sensible suggestion and we recommend that the practice be instituted for next year.

#### *6. Magister Juris candidates and preparation for examinations*

We were delighted to note that the candidate with the highest marks overall was an MJur candidate. However, on the assumption that students admitted to read for the MJur are not generally weaker than those admitted to read for the BCL, there is a continuing issue over why the MJur candidates perform, on average, less well in the examinations. One reason may have to do with facility in the English language, which appears to be more of a problem for MJur candidates. We hope that procedures might be established to ensure that any problems are revealed in Michaelmas Term, to allow remedial action to be taken sufficiently early to be beneficial to the candidate. It is also evident that MJur students are not so well equipped to do well in the examination - probably because many of them are writing in a second language and have little or no experience of British law examinations. The 1 fail was an MJur candidate; MJur candidates are more likely to be awarded marks below 60 in individual papers; MJur candidates are less likely to secure a distinction. We recommend that serious consideration be given by the Law Board to appropriate ways of addressing this problem. We are concerned, in particular, that the tutorials that candidates receive do not normally occur until Trinity term. Until that time, few appear to have been given any preparation concerning examination technique.

#### *7. Appointment of assessors*

We have highlighted in previous years that there is now a changed system for the appointment of assessors to examine dissertations: those offering a dissertation need to designate two assessors who have agreed to mark the dissertation before approval is given that a dissertation may be offered. This system appears to have significantly broken down this year, with several of those assessors who had apparently accepted an invitation to examine dissertations denying all knowledge of their supposed agreement. Mechanisms need now to be set in place that enables the examination of dissertations to work smoothly in future years, perhaps by ensuring that some form of written confirmation by assessors of their willingness to serve is obtained before candidates are permitted to register for a dissertation.

#### *8. Credit-worthiness of subjects*

We understand a more formal system for assessing the appropriate credit weight to be given to subjects is now in place in the Faculty Board, although we remain somewhat uncertain what this process consists of. We reiterate the importance of this issue, given the importance a decision on credit weighting has proven to be both this year and in previous years on the results achieved by

candidates; whether a candidate achieves a distinction often depends on the credit weighting of the subjects they do.

### *9. Examination questions*

Those setting questions this year seem, in the main, to have taken to heart the observation in last year's report that there was tendency for there to be a proliferation of questions. We had to intervene in fewer cases this year, and no doubt examiners next year will be equally vigilant on this issue.

### *10. Materials in the Examination Room*

As in the previous two years, the materials to be made available to candidates are listed on the front of the examination paper, and this system appears to work well.

However, it is apparent that those teaching particular subjects are sometimes rather tardy in deciding which materials should be made available to candidates. It seems to us good practice for candidates to be made aware as early as possible in their course regarding which materials will be available to them in the examination room, and we recommend that subjects decide finally what materials will be made available by the end of Michaelmas Term at the latest.

More generally, however, Examiners are becoming increasingly uneasy at the sheer volume of material that is being supplied in some subjects. In Transnational Commercial Law, for example, hundreds of pages of materials are supplied in a looseleaf binder. As we noted last year, ensuring that all the material listed is actually included is, quite frankly, a nightmare. This year, there was an additional problem brought to our attention that involved the difficulty of even finding the materials in the binder given that there was no page number index provided, although page numbers were included. Last year, we were unclear whether the hassle factor is actually outweighed by the benefits to the candidate. We recommended that subject groups reconsider whether their materials were necessary. Those subject groups that did so decided that in all cases the materials were, indeed, necessary.

### *11. Examination numbers and names*

The anonymity of candidates is a highly important safeguard against mal-practice in examinations, and significant efforts are made to safeguard that anonymity, in particular by attempting to ensure that as few people as possible have access to materials from which the names of particular candidates could be matched with their examination numbers. It was, therefore, disturbing when, during the course of the year, this security was breached accidentally, leading to significant difficulties, and the need to issue new candidate numbers to some candidates. Procedures have now been changed to ensure that this breach of security should not occur again.

A further, unrelated point concerning examination numbers arose this year that should be re-considered next year. In previous years, the examination numbers allocated to BCL candidates clearly distinguished them from MJur candidates. This was useful not only to individual markers, in enabling them to check whether each candidate had complied with (sometimes differing) rubrics for BCL/MJur candidates, but also to the Examination Board itself in the first and second marks meetings. This year, random numbers were allocated so that there was no clear distinction between the two groups of candidates. The previous practice was preferable, in our view.

## *12. Invigilation arrangements in Examination Schools*

An invigilator provided by Schools was largely responsible for invigilation, with the consequential benefit that examiners spent much less time at Schools than hitherto. The chairman of examiners or his "deputy" was present at the beginning and end of all examinations, and in all but two examinations paper setters were also present for the first thirty minutes of the examination (an increase of 15 minutes from last year) to answer any queries that candidates wished to raise. In several examinations the presence of the paper-setter was vital at this time.

## *13. Dissertations*

The proportion of candidates writing dissertations increased significantly this year, in part because of the increased credits that candidates were required to complete; in part, because of the increased credit weighting accorded these dissertations. In general, dissertations were handled well, with students putting much work and thought into them. It is worth noting that, in general, dissertations were awarded lower marks than written examination papers.

## *14. External examiner*

We were fortunate to have the services of Professor Christine Chinkin of the London School of Economics as our external examiner this year for the first time, and we are most grateful to her. The external examiner has the opportunity to be fully involved in the scrutiny and approval of the examination papers, and overseeing the integrity of the examination as a whole. The external examiner was given the opportunity, prior to the first marks meeting to see all scripts to enable her to assess the overall marks actually given by the first marker in these papers. Professor Chinkin took the opportunity following the first marks meeting to consider all scripts in two subjects for this purpose. In addition, the external was actively involved in both marks meetings. The external examiner will be commenting separately to the Vice-Chancellor about her views of the examination process.

## *15. Examiners' Edict*

The Examiners' Edict is the method by which the Examination Board communicates with both faculty members and students regarding those matters of examination protocol that are not in the Examination Decrees. It is an important document as it includes, for example, changes to the style of the examination for particular papers from previous years, marking conventions, etc. This year, for the first time so far as we are aware, there were complaints from some candidates that they had not received the Examiners' Edict. This complaint was investigated and the Chairman was satisfied that the Edict had in fact been sent to the candidates concerned. What is important, however, is that in the future, candidates should be warned, perhaps as early as the initial introductory talks that they are given on induction, of the significance of this document, and the need to read and retain it when they receive it. It is clear that many candidates have either not read it, or, if they have, have not taken its significance to heart. Consideration might also be given to mounting the Examiners' Edict on the Faculty web page in a form accessible to students.

## *16. Marking conventions*

We set out in Appendix 1 the marking conventions we adopted this year, as approved by the Law Board. It will be seen that we abolished the second "averaging" (D2) route to a distinction this year. We have not noted any adverse effects on our ability to determine distinctions.

As with previous years, we have operated a system of asking for individual marks per question from the BCL and MJur markers. We have found this frequently useful in gaining an enriched view of the candidate, for the purpose of classification. As with many other burdensome requests, colleagues have reacted co-operatively in the main. In only one case did a marker (in this case a second marker) refuse to provide a breakdown of the marks per question, despite our understanding that this is now required by the Law Board. We would suggest that the Board consider how best to address this issue as it does give rise to the possibility that, in the event of complaints being made about the conduct of the examination by a candidate, the Faculty's position may be weakened.

#### *17. Handling of examination scripts*

Examiners were somewhat concerned this year at a certain sloppiness creeping in to the handling of examination scripts. Despite clear instructions to the contrary, assessors sometimes put scripts into the University internal mail system. The potential for loss of scripts in transporting them in this way should be clear to all. So too, those handling information about examinations need to be reminded that sending information by e-mail involves considerable risks.

#### *18. First marking*

As with last year, we set out in Appendix 2 the breakdown of marks given on first reading in all but the smallest BCL/MJur papers. We repeat the cautionary remarks of previous chairmen about these statistics. Even on large papers the statistical sample is small.

#### *19. Second marking*

The examiners had every script that failed on first reading re-read, as well as every script that, if raised, could be regarded as reasonably leading to an upgrading of the overall classification of the candidate. In several cases, the availability of medical certificates was taken into account in determining whether or not to re-read a candidate's scripts. In the end, over 40 scripts were re-read. In addition, prior to the First Marks meeting, the Chairman of Examiners had all scripts in one subject re-read by a second marker, given the apparent differences between the marks in that subject on first reading, the marks in the same subject last year, and the marks in other subjects this year.

In the light of this year's experience, we considered whether we should recommend the introduction of double-marking on a much wider basis as we did last year. Where scripts were re-read, there was often substantial agreement in the marks. In only a small proportion of cases were there significant disagreements. However, as was the case last year, we consider these disagreements to be worrying and to merit further action. We understand that the Law Board has instigated its own investigation into this matter and that proposals will be put to the Division in the near future. No doubt next year's examiners will keep this matter under close review. One possible means of approaching the problem of second (and indeed first) marking in the BCL and MJur might be to treat each paper as being jointly examined by two examiners (we already have a first marker and checker for writing the paper), each of whom could mark half the paper, and exchange mid-way through the process. This might (a) achieve more accurate first marking and (b) alleviate discrepancies and difficulties on second marking.

## *20. Responsibility for the conduct of examinations in the University*

We remain unclear who exactly in the University is responsible for what aspects of examination process and procedure. In particular, the growing role of the Education Policy Standards Committee of Council (EPSC), and its relationship to the Proctors is particularly problematic. Chairmen are now supplied with guidance from the Proctors *and* from the EPSC, with no clear guidance as to which is authoritative over what matters. More specifically, it was particularly irritating to have to spend many hours sorting out problems over the methods by which marks were to be received by Schools for ultimate publication due to the apparent absence of any consultation before instructions were issued by Schools on foot of a policy decision by the EPSC, also without consultation, in May.

Leaving aside the EPSC/Proctors question, there is a further question of allocation of responsibility between Examination Schools and the Law Faculty that needs to be considered again next year. The Law Faculty Office effectively took over all the processing of marks and the preparation of published examination lists from Schools the year before last for the BCL/MJur examinations. It is generally thought within the Faculty that this transfer was successful in reducing the time and effort that went into the examinations process, and ensured greater accuracy. This year, however, as a result of the instructions mentioned in the previous paragraph, various tasks were taken by Schools, ostensibly to ensure a more efficient and more accurate process. This transfer of functions back to Schools undoubtedly resulted in practice in more time having to be spent, less efficient management of Faculty and University resources, and more risk of inaccuracy in the results than in the system that had operated effectively in the past.

## *21. Statistics*

In Appendix 3, we set out the statistics relating to this year's results.

In the BCL, the examiners awarded 24 (36%) distinctions, 43 (64%) passes, and 0 (0%) fails. Last year, the examiners awarded 41% distinctions in the BCL. The year before, the examiners placed 32% in the first class.

In the MJur, 11 (18%) were awarded distinctions 49 (80%) passes, and 1 (2%) failed. Last year 18% were awarded distinctions, 79% passes, and 3% failed. The year before, 16% of MJur candidates were awarded distinctions, 83% passes, and none failed.

## *22. Awards and prizes*

We set out in Appendix 4 the list of awards and prizes for this year.

## *23. Degree classification*

In Appendix 5 we enclose the class list for the BCL and the MJur degrees. These may be incomplete since some candidates may have exercised their right to be excluded from the published list

## *24. Viva voce examinations*

Vivas were formally abolished for the BCL/MJur this year.

## *25 "Transcripts"*

Individual transcripts have been sent to colleges.

*26. Support for the chairman of examiners*

Particular thanks are due to Julie Bass and Peter Humphrey, without whose calm efficiency and good humour the process would have ground to a halt on frequent occasions. Paul Blaikley and Ray Morris provided the necessary resources and support at crucial times. Their contribution to the smooth running of the process, whilst hidden from view on most occasions, is essential.

*27. Reports on individual papers*

We enclose in Appendix 6 the reports on individual papers.

P. B. H. Birks  
C. M. Chinkin (External)  
J. C. McCrudden (Chairman)  
C.F.H. Tapper  
R. P. Young

Appendix 1: Notices to Candidates  
Appendix 2: Marks proportions on first reading  
Appendix 3: Statistics  
Appendix 4: Awards and prizes  
Appendix 5: Degree classification  
Appendix 6: Reports on individual papers

**UNIVERSITY OF OXFORD**

**FACULTY OF LAW**

**BCL EXAMINATION 2002**

**NOTICE TO CANDIDATES**

*This document is traditionally known as the Examiners' Edict. It is the means by which the Examiners communicate to the candidates information about the examination. It is very important that you should read it carefully. Do not suppose from the fact that you may have seen Edicts published in previous years that you already know everything that is in this year's edition; and if you believe that it may contain an error, please notify your tutor without delay.*

**1. Timetable of BCL Examinations**

All examinations will be taken at the Examination Schools in the High Street. You are advised to reach the Schools no less than ten minutes before the stated time of the examination. The timetable is attached as the first schedule to this notice. If you think that it is wrong, you must inform the Chairman of Examiners without delay. In the past, efforts have been made to keep to a minimum the occasions on which a candidate has more than three papers consecutively; this has not been possible this year and many candidates will have more than three papers in a row.

**This year the BCL/M.Jur written examinations (except the essays in *Jurisprudence and Political Theory*) are due to begin on Monday July 1, and are expected to end by Monday July 8.**

**2. Examination Numbers and Anonymity**

You will be informed of your examination number. You must not write your name or the name of your college on any answer book, essay, dissertation, or thesis. Use only your examination number.

**3. Viva Arrangements**

Vivas have been abolished for the BCL examination and will not, therefore, be held this year. If you are offering essays in *Jurisprudence and Political Theory* you must read the next paragraph very carefully. It deals with the arrangements which are made as a safeguard against plagiarism.

**4. Jurisprudence and Political Theory Interviews**

There will be no "essay vivas" at the end of the examining process. Instead some candidates will be summoned to discuss their essays with two members of the faculty. It is likely that about four candidates will be so summoned. The summons will come in the first fortnight of Trinity Term, to a meeting in fourth week or thereabouts. The purpose of these meetings is to provide a check against the danger of plagiarism. The interviewees will be chosen by lot. The interviews, which will generally last about fifteen minutes, will be informal. Academic dress need not be worn. The faculty members who will conduct them will be drawn from those who are not Examiners. They will not report on the quality of the work. Using the examination number of the candidate, they

will report to the Chairman of the Examiners only that they are, or are not, satisfied that the essays were the candidate's own work.

## **5. Submission of Dissertations, Essays and Theses**

If you are offering essays or a thesis or a dissertation, you must read these instructions very carefully. Your attention is particularly drawn to the requirements as to the number of copies to be submitted and to any requirements that submissions be typed.

### ***Jurisprudence and Political Theory Essays***

Jurisprudence and Political Theory will be examined through three essays. Topics for essays will be prescribed by the Examiners and published on the notice board of the Examination Schools, by noon on the Friday of the eighth week of Hilary Term 8 March 2002. You will be required to select three topics from a list of six. The three essays, which you submit, must be, in aggregate, not shorter than 5,000 words and not longer than 8,000 words. (The Examination Decrees state that "The total length of the three essays submitted shall be not less than 5,000 words nor more than 8,000 words".) Disregard of these limits may be penalised; see further, below. *Each essay must state on its first page the number of words that it contains.* The essays should be typed.

Two copies of each essay must be delivered to the Clerk of the Examination Schools, addressed to the Chairman of the BCL Examiners, Examination Schools, High Street, Oxford, OX1 4BG, by noon on Friday 19 April 2002. With your essays you must include a separate sealed envelope containing a certificate, signed by yourself, to the effect that the essays are your own work, and that you have received no help, even bibliographical, with the preparation of them. Your tutor in Jurisprudence and Political Theory or if that tutor is not available, a law tutor at your college, must countersign the certificate confirming that, to the best of the tutor's knowledge and belief, these statements are true. In the same sealed envelope, you must also include a list of the titles of the essays which you have submitted, the total number of words used in the essays, and add both your examination number and your name and college. Unless in exceptional circumstances, this sealed envelope will not be opened until the marks for the essays have been finally determined.

You must not put your name or the name of your college on your essays, but only your examination number. The examination number must be written both on the essays themselves (each essay must be separately stapled) and on the envelope in which they are submitted. The only place in which you should write your name and college is on the papers inside the sealed envelope referred to in the previous paragraph.

### ***Dissertations***

If you are offering a dissertation you must read very carefully the requirements set out on page 893 of the Examination Decrees for 2001 (for the academic year 2001-2002). The requirements set out there are not repeated here. The Examiners draw particular attention to the word limit and to the requirement that every dissertation must include a table of cases with page references. Disregard of these matters will be penalised; see further, below.

Dissertations must be typed, *and the number of words must be stated on their first page.* You must ensure that your examination number, but neither your name nor the name of your college, appears on the dissertation. If bound copies that you submit do bear your name on the spine, or on the title page, or elsewhere, you must mask the name with tape or in some other effective manner. You must hand in the copies of your dissertation to the Clerk of the Examination Schools in a sealed envelope. Your examination number and the words "BCL Dissertation" must be written on the envelope. Dissertations must be delivered by noon on Friday 24 May 2002 (Friday of fifth week of Trinity Term).

### ***Exceeding the word limits***

The Proctors caused to be published in the Gazette for 29 October 1998 the following rule:

#### ‘Submission of Theses or other Exercises

10. Where a candidate for any written examination (other than the D.Phil., M.Litt., or M.Sc. by Research) in which a thesis (or other Exercise) may be, or is required to be, submitted as part of that Examination presents a thesis (or other exercise) which exceeds the word limit prescribed by the relevant statute, decree, or regulation, the examiners, if they agree to proceed with the examination of the work, may reduce the mark by up to one class (or its equivalent). Where a candidate submits such a thesis (or other exercise), the title or subject matter of which differs from that which was approved by the faculty board concerned, the examiners may similarly reduce the mark by up to one class (or its equivalent).’

The examiners are naturally bound by this, whilst recognising that the extent of any reduction will normally be proportionate to the extent to which the word limit has been breached. It is necessary, however, to give guidance on the meaning of a “word” in this context. Because of the manner in which word count software operates, items are treated as words in circumstances where this should not be the case. For example, ‘All ER.’ may be counted as three words. To deal with this, the examiners have determined that an allowance of an extra 3% should be permitted to candidates (should they wish to use it) above the figure stipulated in the Examination Decrees. The word count that appears on the essay, thesis or dissertation must be the actual word count produced by the software. The word count must include all footnotes and endnotes, but not any bibliography. You must ensure that any automatic word-count on the word-processing program you use is set to count footnotes and endnotes.

### ***Basis of assessment***

The examiners draw attention to the provision in the Examination Decrees for 2001 (page 893) that they judge the extent to which a dissertation affords evidence of significant analytical ability on the part of the candidate.

### **6. Form and scope of papers, etc.**

The form and scope of papers will be generally similar to that of those set last year. Several new (or revived) subjects will be examined this year and the details of the form of the papers in these subjects is as follows:

The examination in *Corporate and Business Taxation* will consist of a three-hour paper. Ten questions will be set. Candidates must answer three questions. The paper will not be divided into parts. Although a mixture of problem questions and essay questions will be set, there will be no requirement to answer a problem question.

The examination in *Principles of Civil Procedure* will consist of a three-hour paper. Nine questions will be set. Candidates must answer three questions. There will be no mandatory questions. There will be no problem questions. The paper will not be divided into parts.

The examination in *European Employment and Equality Law* will be similar to that set in European Employment Law last year. It will consist of a three-hour paper. Eight questions will be

set. Candidates must answer three questions. There will be no mandatory questions. There will be no problem questions. The paper will not be divided into parts.

The following changes will also be made to subjects examined last year:

In the examination in *International Dispute Settlement* none of the questions asked this year will consist of problem questions.

In the examination in *International Law: Law of the Sea* all candidates will be expected to answer three questions; last year BCL candidates were expected to answer four questions.

In the examination in *Regulation* there will be ten questions set, four in Part A and 6 in Part B. In another change from last year, candidates will be expected to answer three questions, one from Part A and two from Part B.

In the examination in *Conflict of Laws* eight questions will be set and not ten as hitherto.

## **7. Examination Protocol**

Guidance on conduct of the examination is included as the second schedule to this notice. You must not bring this into the Examination room with you.

## **8. Materials in the Examination Room**

In some examinations statutes or other materials will be placed on the desks in the examination room. The list is prescribed by the Law Board and cannot be altered or updated other than by the Law Board. The list is attached as the third schedule to this notice.

### ***Dictionaries***

If your native language is not English and you want to use in the examination room a dictionary giving translations between English and your native language, you must get permission from the Junior Proctor. Proctorial permission must be sought via the Senior Tutor of a candidate's college and application must be made by such time as may be specified by the Proctors. Electronic dictionaries are not permitted.

### ***Other materials***

No other books or papers whatever may be taken into the examination room.

### ***Paper in Examinations***

If you wish to write plans or rough drafts, you may do this either in the same booklet as your answers (but cross out the rough work) or in a separate booklet (indicating that this is rough work) which must be handed in along with your answer booklets.

## **9. Marking Conventions**

It is important to appreciate that the conventions set out here are not inflexible rules. The examiners retain discretion in dealing with unusual cases and circumstances. Subject to that caveat, the conventions that will normally be applied are as follows.

(a) For the award of the degree of BCL or MJur there must be no mark lower than 50. A mark lower than 50 but greater than 40 may be compensated by very good performance elsewhere, but a mark below 40 is not susceptible of any compensation.

(b) For the award of a Distinction in BCL or MJur a candidate must secure marks of 70 or above on 50% or more of the credit value of the subjects taken, and there must be no other mark lower than 60.

In applying these conventions the examiners will treat a mark for a dissertation in the same way as a mark for an examination paper.

Candidates who write note-form answers in any examination or submit a script which is incomplete (in the sense that the required number of questions, or parts of questions, are not answered) will be penalised. The precise degree of the penalty which is incurred will depend upon the extent to which the script is short-weight. For example, in a system of numerical marking the examiner will award some marks to an answer which is incomplete in the sense that a part of the question has not been answered. However, where a question has been left out entirely then candidates must realise that a mark of zero will be registered for that question and that this will then be fed into the final mark given for that subject. It is therefore of the utmost importance that candidates do answer the number of questions stipulated for each subject. Where a candidate complete the correct number of questions, but fails to answer a question which is compulsory (e.g. where the candidate does not answer a problem question as required by the rubric of that subject), then 50% of the marks will be deducted from the last of the questions which was answered.

#### **10. Publications of Class List**

The Examiners hope to sign and publish the list on Friday 19 July 2002. The list will be posted in the Examination Schools and in colleges and departments. Please note that results will not be available over the telephone from the Examination Schools. Individual subject results will only be available through your college; your college office will advise on how you may obtain these.

**Christopher McCrudden**  
**Chairman of Examiners for the Degree of BCL**  
**March 2002**

**Attachments:**  
**BCL Examination Timetable**  
**Examination Protocol**  
**Materials in Examination Room**

UNIVERSITY OF OXFORD

FACULTY OF LAW

MJUR EXAMINATION 2002

NOTICE TO CANDIDATES

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**1. Timetable of MJur Examinations**

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**This year the BCL/M.Jur written examinations (except those derived from the syllabus of the BA in Jurisprudence, and the essays in *Jurisprudence and Political Theory*) are due to begin on Monday July 1, and expected to end by Monday July 8.**

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**3. Viva Arrangements**

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**4. Jurisprudence and Political Theory Interviews**

There will be no "essay vivas" at the end of the examining process. Instead some candidates will be summoned to discuss their essays with two members of the faculty. It is likely that about four candidates will be summoned. The summons will come in the first fortnight of Trinity Term, to a meeting in fourth week or thereabouts. The purpose of these meetings is to provide a check against the danger of plagiarism. The interviewees will be chosen by lot. The interviews, which will generally last about fifteen minutes, will be informal. Academic dress need not be worn. The faculty members who will conduct them will be drawn from those who are not Examiners. They will not report on the quality of the work. Using the examination number of the candidate, they will report to the Chairman of the Examiners only that they are, or are not, satisfied that the essays were the candidate's own work.

## **5. Submission of Essays and Dissertations**

If you are offering essays or a dissertation, you must read these instructions very carefully. Your attention is particularly drawn to the requirements as to the number of copies to be submitted and to any requirement whether submissions be typed.

### ***Jurisprudence and Political Theory Essays***

Jurisprudence and Political Theory will be examined through three essays. Topics for essays will be prescribed by the Examiners and published on the notice board of the Examination Schools, by noon on the Friday of the eighth week of Hilary Term 8 March 2002. You will be required to select three topics from a list of six. The three essays that you submit, must be, in aggregate, not shorter than 5,000 words and not longer than 8,000 words. (The Examination Decrees state that "The total length of the three essays submitted shall not be less than 5,000 words nor more than 8,000 words".) Disregard of these limits may be penalised; see further below. *Each essay must state on its first page the number of words that it contains.* The essays should be typed.

Two copies of each essay must be delivered to the Clerk of the Examination Schools, addressed to the Chairman of the MJur Examiners, Examination Schools, High Street, Oxford, OX1 4BG, by noon on Friday 19 April 2002. With your essays you must include a separate sealed envelope containing a certificate, signed by yourself, to the effect that the essays are your own work, and that you have received no help, even bibliographical, with the preparation of them. Your tutor in *Jurisprudence and Political Theory*, or if that tutor is not available, a law tutor at your college, must countersign the certificate confirming that, to the best of the tutor's knowledge and belief, these statements are true. In the same sealed envelope you must also include a list of the titles of the essays which you have submitted, the total number of words used in the essays, and add both your examination number and your name and college. Unless in exceptional circumstances, this sealed envelope will not be opened until the marks for the essays have been finally determined.

You must not put your name or the name of your college on your essays, but only your examination number. The examination number must be written both on the essays themselves (each essay must be separately stapled) and on the envelope in which they are submitted. The only place in which you should write your name and college is on the papers inside the sealed envelope referred to in the previous paragraph.

### ***Dissertations***

If you are offering a dissertation you must read very carefully the requirements set out on page 893 of the *Examination Decrees* for 2001 (for the academic year 2001-2002). The requirements set out there are not repeated here. The Examiners draw particular attention to the word limit and to the requirement that every dissertation must include a table of cases with page references. Disregard of these matters will be penalised; see further below.

Dissertations must be typed, *and the number of words must be stated on their first page.* You must ensure that your examination number, but neither your name nor the name of your college, appears on the dissertation. If bound copies that you submit do bear your name on the spine, or on the title page, or elsewhere, you must mask the name with tape or in some other effective manner. You must hand in the copies of your dissertation to the Clerk of the Examination Schools in a sealed envelope. Your examination number and the words 'MJur Dissertation' must be written on the envelope which must be delivered by noon on Friday 24 May 2002 (Friday of fifth week of Trinity Term).

### ***Exceeding the word limits***

The Proctors caused to be published in the Gazette for 29 October 1998 the following rule:

## ‘Submission of Theses or other Exercises

10. Where a candidate for any written examination (other than for the D.Phil., M.Litt., or MSc. By Research) in which a thesis (or other exercise) may be, or is required to be, submitted as part of that examination presents a thesis (or other exercise) which exceeds the word limit prescribed by the relevant statute, decree, or regulation, the examiners, if they agree to proceed with the examination of the work, may reduce the mark by up to one class (or its equivalent). Where a candidate submits such a thesis (or other exercise), the title or subject matter of which differs from that which was approved by the faculty board concerned, the examiners may similarly reduce the mark by up to one class (or its equivalent).’

The examiners are naturally bound by this, whilst recognising that the extent of any reduction will normally be proportionate to the extent to which the word limit has been breached. It is necessary, however, to give guidance on the meaning of a “word” in this context. Because of the manner in which word count software operates, items are treated as words in circumstances where this should not be the case. For example, ‘All ER’ may be counted as three words. To deal with this, the examiners have determined that an allowance of an extra 3% should be permitted to candidates (should they wish to use it) above the figure of 12,500 words stipulated in the Examination Decrees. The word count that appears on the essay or dissertation must be the actual word count produced by the software. The word count must include all footnotes and endnotes, but not any bibliography. You must ensure that any automatic word-count on the word-processing program you use is set to count footnotes and endnotes.

### ***Basis of assessment***

The examiners draw attention to the provision in the Examination Decrees for 2001 (page 893) that they judge the extent to which a dissertation affords evidence of significance analytical ability on the part of the candidate.

### **6. Form and scope of papers, etc.**

The form and scope of papers will be generally similar to that of those set last year. Several new (or revived) subjects will be examined this year and the details of the form of the papers in these subjects is as follows:

The examination in *Corporate and Business Taxation* will consist of a three-hour paper. Ten questions will be set. Candidates must answer three questions. The paper will not be divided into parts. Although a mixture of problem questions and essay questions will be set, there will be no requirement to answer a problem question.

The examination in *Principles of Civil Procedure* will consist of a three-hour paper. Nine questions will be set. Candidates must answer three questions. There will be no mandatory questions. There will be no problem questions. The paper will not be divided into parts.

The examination in *European Employment and Equality Law* will be similar to that set in European Employment Law last year. It will consist of a three-hour paper. Eight questions will be set. Candidates must answer three questions. There will be no mandatory questions. There will be no problem questions. The paper will not be divided into parts.

The following changes will also be made to subjects examined last year:

In the examination in *International Dispute Settlement* none of the questions asked this year will consist of problem questions.

In the examination in *International Law: Law of the Sea* all candidates will be expected to answer three questions; last year BCL candidates were expected to answer four questions.

In the examination in *Regulation* there will be ten questions set, four in Part A and 6 in Part B. In another change from last year, candidates will be expected to answer three questions, one from Part A and two from Part B.

In the examination in *Conflict of Laws* eight questions will be set and not ten as hitherto.

## **7. Examination Protocol**

Guidance on conduct of the examination is included as the second schedule to this notice. You must not bring this into the Examination room with you.

## **8. Materials in the Examination Room**

In some examinations statutes or other materials will be placed on the desks in the examination room. The list is prescribed by the Law Board and cannot be altered or updated other than by the Law Board. The list is attached as the third schedule to this notice.

### ***Dictionaries***

If your native language is not English and you want to use in the examination room a dictionary giving translations between English and your native language, you must get permission from the Junior Proctor. Proctorial permission must be sought via the Senior Tutor of a candidate's college and application must be made by such time as may be specified by the Proctors. Electronic dictionaries are not permitted.

### ***Other materials***

No other books or papers whatever may be taken into the examination room.

### ***Paper in Examinations***

If you wish to write plans or rough drafts, you may do this either in the same booklet as your answers (but cross out the rough work) or in a separate booklet (indicating that this is rough work) which must be handed in along with your answer booklets.

## **9. Examination Technique**

You are strongly advised to discuss the nature of Oxford law examinations with your College tutors and your peers. The underlying assumptions as to what constitutes a satisfactory, let alone an excellent, answer may differ substantially from those in your home jurisdiction. In particular, it is necessary to understand that the typical answer runs to three or four pages and that those marking the examination place great importance on the nature of the discussion that leads you to your final conclusion. If a question seems at first sight to admit of a satisfactory answer in one or two sentences, you must nevertheless take it as an invitation to engage in a critical discussion of the pros and cons. Even problem questions that ask you to advise one party must not be read as excluding discussion and critical comment of a kind no real party would wish to hear. These few suggestions do not in themselves give sufficient guidance. You must take advice on this matter and you must contemplate the papers set in earlier years in the light of the advice that you are given.

## **10. Marking Conventions**

It is important to appreciate that the conventions set out here are not inflexible rules. The examiners retain discretion in dealing with unusual cases and circumstances. Subject to that caveat, the conventions that will normally be applied are as follows:

(a) For the award of the degree of BCL or MJur there must be no mark lower than 50. A mark lower than 50 but greater than 40 may be compensated by very good performance elsewhere, but a mark below 40 is not susceptible of any compensation.

(b) For the award of a Distinction in BCL or MJur a candidate must secure marks of 70 or above on 50% or more of the credit value of the subjects taken, and there must be no other mark lower than 60.

In applying these conventions the examiners will treat a mark for a dissertation in the same way as a mark for an examination paper.

Candidates who write note-form answers in any examination or submit a script which is incomplete (in the sense that the required number of questions, or parts of questions, are not answered) will be penalised. The precise degree of the penalty which is incurred will depend upon the extent to which the script is short-weight. For example, in a system of numerical marking the examiner will award some marks to an answer which is incomplete in the sense that a part of the question has not been answered. However, where a question has been left out entirely then candidates must realise that a mark of zero will be registered for that question and that this will then be fed into the final mark given for that subject. It is therefore of the utmost importance that candidates do answer the number of questions stipulated for each subject. Where a candidate complete the correct number of questions, but fails to answer a question which is compulsory (e.g. where the candidate does not answer a problem question as required by the rubric of that subject), then 50% of the marks will be deducted from the last of the questions which was answered.

Candidates will not lose marks on account of linguistic and stylistic infelicities which do not affect the substantive merits of the answers.

## **11. Publication of Class List**

The Examiners hope to sign and publish the list on Friday 19 July 2002. The list will be posted in the Examination Schools and in colleges and departments. Please note that results will not be available over the telephone from the Examination Schools. Individual subject results will only be available through your college; your college office will advise on how you may obtain these.

**Christopher McCrudden**  
**Chairman of Examiners for the Degree of MJur**  
**March 2002**

**Attachments:**  
**MJur Examination Timetable**  
**Examination Protocol**  
**Materials in the Examination Room**

**UNIVERSITY OF OXFORD**  
**FACULTY OF LAW**  
**BCL/MJUR EXAMINATIONS**  
**NOTICE TO CANDIDATES**  
**SUPPLEMENTARY EDICT**

**BCL/MJur International Environmental Law**

In the examination in International Environmental Law all candidates will be expected to answer 3 questions. Last year BCL candidates were expected to answer 4 questions.

**Christopher McCrudden**  
**Chair of Examiners for the Degrees of BCL and MJur**

**UNIVERSITY OF OXFORD**  
**FACULTY OF LAW**  
**BCL/MJUR EXAMINATIONS**  
**NOTICE TO CANDIDATES**  
**SUPPLEMENTARY EDICT**

**BCL/M.Jur Principles of Civil Procedure**

The Examiners' Edict circulated previously stated that nine questions will be set. This is incorrect. There will be ten questions set.

**Christopher McCrudden**  
**Chair of Examiners for the Degrees of BCL and M.Jur**

**UNIVERSITY OF OXFORD**  
**FACULTY OF LAW**  
**BCL/MJUR EXAMINATIONS**  
**NOTICE TO CANDIDATES**  
**SUPPLEMENTARY EDICT**

**BCL/MJur Transnational Commercial Law - Materials in the Examination Room**

The reference in the list of materials in the examination room to:

“Draft UNIDROIT Convention on International Interests in Mobile Equipment” and  
“Draft Protocol to the Convention on International Interests in Mobile Equipment on Matters  
Specific to Aircraft Equipment”

should be deleted and replaced by

“Convention on International Interests in Mobile Equipment” and  
“Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to  
Aircraft Equipment”

The reason for the substitution is in order to ensure that students are examined on the basis of the  
version of the Convention which was distributed to students in the seminar in Hilary term 2002.

**Christopher McCrudden**  
**Chair of Examiners' for the Degrees of BCL and MJur**

10 May 2002

## Marks distributions on first reading, as percentages

| Paper Name                                       | Av.<br>Mark | Number<br>sitting | <----- Mark ranges (%) -----> |       |       |       |       |           |
|--|-------------|-------------------|-------------------------------|-------|-------|-------|-------|-----------|
|  |             |                   | 49 / less                     | 50/54 | 55/59 | 60/64 | 65/69 | 70 / over |
| BCL Dissertation                                 | 65.22       | 18                |                               |       | 11    | 28    | 50    | 11        |
| Comparative Human Rights                         | 65.72       | 33                |                               |       | 12    | 15    | 52    | 21        |
| Comparative Public law                           | 65.71       | 14                |                               | 7     | 7     | 29    | 29    | 29        |
| Conflict of Laws                                 | 66          | 25                |                               |       | 12    | 28    | 20    | 40        |
| Corporate and Business Taxation                  | 68.16       | 6                 |                               |       |       | 17    | 33    | 50        |
| Corporate Insolvency Law                         | 64.08       | 23                |                               | 9     | 13    | 30    | 26    | 22        |
| Crime, Justice and the Penal System              | 65.83       | 12                |                               | 8     | 8     | 17    | 42    | 25        |
| European Business Regulation                     | 65.29       | 24                | 4                             | 4     | 4     | 17    | 42    | 29        |
| European Community Law                           | 67.05       | 20                |                               |       | 5     | 25    | 30    | 40        |
| European Employment & Equality<br>Law            | 64.53       | 13                | 8                             |       | 8     | 15    | 38    | 31        |
| Evidence   | 67.87       | 8                 |                               |       |       | 25    | 38    | 38        |
| Intellectual Property Rights                     | 59.87       | 32                | 16                            | 6     | 16    | 25    | 28    | 9         |
| International Dispute Settlement                 | 65.51       | 31                | 3                             |       |       | 39    | 32    | 26        |
| International Economic Law and<br>Labour Rights  | 67.75       | 8                 |                               |       |       | 13    | 50    | 38        |
| International Environmental Law                  | 66          | 4                 |                               |       |       | 25    | 50    | 25        |
| International Human Rights and the<br>Law of War | 67.61       | 18                |                               |       |       | 28    | 33    | 39        |
| Jurisprudence and Political Theory<br>Essays     | 65.05       | 17                |                               | 6     | 6     | 18    | 53    | 18        |
| M.Jur Dissertation                               | 65.88       | 18                |                               |       | 6     | 33    | 39    | 22        |
| Personal Tax                                     | 68.25       | 4                 |                               |       |       |       | 75    | 25        |
| Phil. Found. Common Law                          | 65.62       | 8                 |                               |       | 13    | 25    | 38    | 25        |
| Philosophical Foundations of<br>Property Rights  | 66.88       | 9                 |                               |       |       | 11    | 67    | 22        |
| Principles of Civil Procedure                    | 64.5        | 12                |                               | 8     | 8     | 25    | 33    | 25        |
| Problem Areas in the Law of<br>Contract and Tort | 66.2        | 10                |                               |       | 10    | 10    | 70    | 10        |

Marks distributions on first reading, as percentages

| Paper Name                               | Av. Mark | Number sitting | <----- Mark ranges (%) -----> |       |       |       |       |           |
|--|----------|----------------|-------------------------------|-------|-------|-------|-------|-----------|
|  |          |                | 49 / less                     | 50/54 | 55/59 | 60/64 | 65/69 | 70 / over |
| Public International Law: Law of the Sea | 69       | 6              |                               |       |       | 17    | 33    | 50        |
| Regulation                               | 66.14    | 14             |                               |       |       | 29    | 57    | 14        |
| Restitution                              | 67.92    | 26             |                               |       | 4     | 19    | 38    | 38        |
| Roman Law (Delict)                       | 59.5     | 4              |                               |       | 75    | 25    |       |           |
| Topics in Trusts                         | 68       | 3              |                               |       |       |       | 67    | 33        |
| Transnational Commercial Law             | 60.41    | 34             | 9                             | 9     | 24    | 24    | 24    | 12        |

Final Phase Results Statistics, BCL / MJur 2002

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**BCL Statistics**

| Result              | Number | Percentage |
|---------------------|--------|------------|
| All                 | 67     | 100        |
| Pass                | 43     | 64         |
| Route 1 Distinction | 24     | 36         |

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**MJur Statistics**

| Result              | Number | Percentage |
|---------------------|--------|------------|
| All                 | 61     | 100        |
| Fail                | 1      | 2          |
| Pass                | 49     | 80         |
| Route 1 Distinction | 11     | 18         |

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**UNIVERSITY OF OXFORD  
DISPLAY LIST**

**Candidates who have agreed to the publication of their names**

Names of Candidates who in Trinity Term 2002  
have satisfied the Examiners for the Degree of Bachelor of Civil Law

- |   |  |
|---|--|
| <i>D</i> Arakelian, Levon (ECL) (Exeter)  | Mba, Osita V. (ECL) (S.Anne)                     |
| Bedi, Gayatri (Exeter)                    | McBride, Mark (Univ.)                            |
| Bridge, Benjamin M. (S.Pet.)              | <i>D</i> McCleery, Katherine L. (Somer.)         |
| Chong, Brenda C.H. (ECL) (Keble)          | <i>D</i> Mendez, Mario (ECL) (S.Cat.)            |
| Collins, Emma J. (ECL) (Keble)            | Moller, Carl T. (BNC)                            |
| Cowie, Jared S. (Corpus)                  | <i>D</i> Morrison, Matthew J. (ECL) (S.John)     |
| Daruwala, Aimee-Shirin S. (ECL) (Worc.)   | Munden, Richard A.J. (S.Pet.)                    |
| <i>D</i> Davies, David M. (Jesus)         | <i>D</i> Murray, David J. (Ch.Ch.)               |
| Dehon, Estelle A.M. (Exeter)              | Newell, Jamie P. (ECL) (S.John)                  |
| Desbiens, Dominic (Pemb.)                 | <i>D</i> Newman, Dwight G. (S.John)              |
| <i>D</i> Drummond, Elizabeth H. (Worc.)   | Ofoegbu, Kelechi O. (Ch.Ch.)                     |
| Elias, Alicia N. (LMH)                    | <i>D</i> Oppenheimer, Tamara H.P. (ECL) (Ch.Ch.) |
| <i>D</i> Elkeslassy, Izabel (ECL) (Worc.) | Pandey, Divyanshu (ECL) (S.Cat.)                 |
| Fisher, Lucinda A. (Magd.)                | <i>D</i> Pickard, Kathryn M. (BNC)               |
| Gupta, Amit (ECL) (S.Pet.)                | Priel, Dan (Magd.)                               |
| Hamerton, Christopher T. (BNC)            | Rush, Michael D. (Magd.)                         |
| Hjipanayi, Christiana (Somer.)            | Sabharwal, Dipen (Magd.)                         |
| <i>D</i> Holmes, Elisa M. (Magd.)         | <i>D</i> Said, Sebastian S.St.J. (Pemb)          |
| Jolly, Aurelian (Pemb.)                   | Saprai, Prince (Mans.)                           |
| Kansi, Mukhtar A. (Hert.)                 | Shipman, Shirley A. (S.Anne)                     |
| Kempton, Amanda J. (ECL) (Magd.)          | Sinha, Pooja (ECL) (LMH)                         |
| Lascelles, Richard J.D. (ECL) (BNC)       | Soh, Andy Y.L. (LMH)                             |
| <i>D</i> Lee, Kee Y. (S.Cat.)             | <i>D</i> Strong, Kenneth R. (Hert.)              |
| Lee, Wing C. (Univ.)                      | Thornley, Hannah E. (BNC)                        |
| <i>D</i> Lewans, Matthew R. (BNC)         | <i>D</i> Toms, Paul J. (ECL) (BNC)               |
| <i>D</i> Lewis, Gwion R. (ECL) (Jesus)    | Wesson, Murray R. (ECL) (Exeter)                 |
| Linley, Robin D. (ECL) (S.Cat.)           | <i>D</i> White, Shelly (S.Pet.)                  |
| <i>D</i> Loizou, George (ECL) (Trin.)     | Wong, Sue W. (SEH)                               |
| Low, Fatt K. (BNC)                        | Wotherspoon, Richard S. (LMH)                    |
| Lung, Siu W.M. (ECL) (Mert.)              | Wu, Lai F. (SEH)                                 |
| <i>D</i> MacMahon, Paul H.T. (Univ.)      | Yadav, Laksh V.S. (ECL) (Keble)                  |
| <i>D</i> Maher, Felicity J. (ECL) (Magd.) | Yankah, Ekow N. (Linc.)                          |
| Maton, Neil F. (LMH)                      |  |

*D* indicates the names of candidates adjudged  
worthy of Distinction by the Examiners

(ECL) indicates the names of candidates who have been awarded  
the Degree of Bachelor of Civil Law in European and Comparative Law

The Vinerian Scholarship was awarded to David Murray

Examiners

**UNIVERSITY OF OXFORD  
DISPLAY LIST**

**Candidates who have agreed to the publication of their names**

Names of Candidates who in Trinity Term 2002  
have satisfied the Examiners for the Degree of Magister Juris

- |  |   |
|--|---|
| Anguelovska-Todorova, Sylvana (S.Cat.)   | <i>D</i> Maier, Stafanie (ECL) (Hert.)    |
| Arps, Frederieke S.E. (New)              | <i>D</i> Mak, Vanessa (ECL) (S.Pet.)      |
| Azzarelli, Sylvain (ECL) (Ch.Ch.)        | Martin, Maik (Linc.)                      |
| Bazzani, Nicola (ECL) (Ch.Ch.)           | Martius, Henri P.A. (ECL) (Keble)         |
| Bergman, Gaspar (Pemb.)                  | Naoumovitch, Nikolai O. (ECL) (Keble)     |
| Brasoveanu, Alina (S.Pet.)               | Omoi, Sachiko (ECL) (SEH)                 |
| Carapito, Yannick (ECL) (SEH)            | Ossa, Felipe (SEH)                        |
| Cariello, Leandro F. (S.Cat.)            | Pansch, Rudiger (ECL) (Linc.)             |
| Cosi, Anna R.L. (ECL) (Ball.)            | Reyes Reyes, Pablo E. (ECL) (Exeter)      |
| <i>D</i> de Bree, Robbert (Ch.Ch.)       | <i>D</i> Sanna, Fabrizio (ECL) (S.Hugh)   |
| De Cecco, Francesco A.J. (ECL) (Somer.)  | Sato, Katsunori (Mans.)                   |
| Dupoizat, Clarisse M. (ECL) (Jesus)      | <i>D</i> Schindler, Thomas K. (Linc.)     |
| Ebtedaei, Alexandre A. (ECL) (S.John)    | <i>D</i> Schraeyen, Jochen (ECL) (S.Anne) |
| Faya Rodriguez, Alejandro (ECL) (Somer.) | Schulte, Michael (ECL) (New)              |
| <i>D</i> Frische, Tobias (Oriel)         | Sobocki, Rickard A. (ECL) (SEH)           |
| Garai, Borbala (ECL) (S.John)            | Solano, Julieta (S.Cat.)                  |
| Garufalias, Jorge J.A. (ECL) (Exeter)    | Song, Xiaojun (ECL) (H.Man.)              |
| Hansen, Ulf K.M. (ECL) (SEH)             | Tang, Xiaojuan (ECL) (Queens)             |
| Hofmier, Felix G. (ECL) (Keble)          | <i>D</i> Tauser, Kian J.P. (ECL) (Exeter) |
| Jasarevic, Amra (Mert.)                  | Tepperwien, Joachim A. (ECL) (Corpus)     |
| Jiang, Jiang (ECL) (LMH)                 | Tihhonova, Marki (ECL) (SEH)              |
| Knuth, Adam C. (ECL) (SEH)               | Vasilopoulou, Christina (ECL) (LMH)       |
| Konighaus, Jan (ECL) (LMH)               | Vassilev, Ivan Z. (ECL) (LMH)             |
| <i>D</i> Kurth, Sonja (ECL) (Pemb.)      | Wagner, Stephan (S.Hugh)                  |
| Lakenberg, Thomas (ECL) (Wadh.)          | Westphal, Dietrich (ECL) (Jesus)          |
| Lemahieu, Kristof J.M. (LMH)             | Wiedmann, Ariane M.I. (ECL) (LMH)         |
| <i>D</i> Liu, Qiao (S.Anne)              | Yamada, Kaori (ECL) (Queens)              |

*D* indicates the names of candidates adjudged  
worthy of Distinction by the Examiners

(ECL) indicates the names of candidates who were awarded  
the Degree of Magister Juris in European and Comparative Law

The Clifford Chance Prize for the Best Performance in M.Jur  
was awarded to Tobias Frische

### CORPORATE AND BUSINESS TAXATION

This was the first year of this course and the results were pleasing, with a high proportion of distinctions and no mark below 64%. The course was available to BCL and MJur students, but all six candidates were from the BCL. Answers to the essay questions reached a high standard. Candidates engaged with both the case law and the more theoretical and policy based literature and the best answers were analytical and critical as well as displaying detailed knowledge of the material. The essay on choice of business form required a tax planning approach, which was evident in the answers. Most of the papers showed a range of skills and approaches. Those students who achieved slightly lower marks mostly showed a good or reasonable range of knowledge. They did not, however, tailor this as well as the more successful candidates had done to answering the specific question asked or possibly did not set the answer into its wider context, for example in the case of the question on European Court of Justice developments.

There was some bunching of answers, with three of the ten questions not attempted at all. It was particularly disappointing that two of the three problems were not attempted and the one that was done was not answered as well as it might have been. It was not compulsory to attempt a problem and candidates were not penalised for not doing so, but the opportunity given by problem questions to demonstrate detailed understanding of the topic effectively was missed. Problem tutorials had been given and sample problems supplied, but the fact that there was not a large store of past examples may have contributed to the reluctance to attempt problem questions. In future this will be addressed by the existence of past papers. In addition, it may be desirable to reduce the number of questions set from 10 to 9: indeed it was the original intention to set 9 questions and the distribution of answers suggests this could be done without prejudice to the students and with some benefits.

### CONFLICT OF LAWS

The reduction of the number of questions to eight, and the deliberate attempt draft the problems so that they involved issues from several weeks' work, seems to have been a success. The number of distinction level performances was noticeably higher than in recent years, perhaps showing that hard questions make good answers. In principle it is true that the capacity to spot the issues which enjoy a complicated inter-relationship, which distinguishes the really able from the merely good. So the crossover or overlap between tort and contract claims for the purpose of jurisdiction and choice of law, and the realisation that the answers may not be wholly congruent, was sometimes well analysed. The relationships (i) between consumer contracts in the Regulation and Rome Convention; (ii) between jurisdiction and choice of law in defamation (and the extent to which selective pleading to increase the chance of establishing jurisdiction may impact on choice of law); and (iii) between issues of title and choice of law for tortious interference with goods, were also often exposed to detailed and thoughtful examination. The essay which took a quotation from *Turner v Grovit*, on the other hand, was occasionally done badly. It placed its focus not on the compatibility of the anti-suit injunction with the Council Regulation, but on the extent to which injunctions are granted on grounds which mirror the law on stays of proceedings: not everyone paused for long enough to see why this mattered. Those who offered a critique which did not focus on the actual quotation will have been disappointed by the effect this had on the overall mark. The question on Art 6 ECHR and the conflict of laws was surprisingly popular and well done; the question on retention of title clauses was not

## EVIDENCE

The paper took the same form as in recent years, consisting of three general essay questions and five complex problems, with candidates required to attempt at least two of the problems. Four of the problems dealt with criminal evidence, and one with civil. For the second in succession no candidate attempted the problem on civil evidence. There were more attempts than usual at answering the essays, although no one attempted the question on merits of the codification of the law of evidence. The standard of answers to the essays was high, but not scintillating.

The problems were complex, and it would have been unreasonable to have expected any candidate to see all the points. In a few cases however major areas constituting as much as a third of the problematic areas were totally ignored. On the whole the problems were well-answered, and the candidates displayed a very ready grasp of authority. The structure of the problem answers was particularly pleasing, and reflected the effort expended in the seminar to improve this aspect of the students' work

One paper was clearly superior to the others, and well-justified the award of the Sir Rupert Cross Prize.

## THE LAW OF RESTITUTION

The standard was extremely high. It was quite difficult to see which candidates did not deserve first class marks. In previous years people have shied away from proprietary restitution but this time Question 11, based on a provocative quotation from a recent article by Professor Burrows, attracted many takers and was spectacularly well answered. Question 10, based on a long extract from the American *Restatement of Restitution*, was also extraordinarily well handled. Not quite so impressive was the treatment of Question 7 which asked whether it was right to say that mistaken payments were always recoverable provided only that the mistake caused the payment. Many candidates contented themselves with a detailed account of the escape from 'liability mistake' and the elimination of the bar to restitution for mistakes of law. Few explored the mysteries of 'caused the payment' and, more surprisingly, many failed to notice the *Bell v Lever Bros* problem, where the mistake certainly caused the payment but not without having first caused the making of a valid contract. This omission was the more surprising in the light of the recent prominence of the problem of restitution within a valid contractual relationship. There were few takers for Question 2, which asked after the rights of the Good Samaritan, nor for Question 3, which very straightforwardly asked for which wrongs gain-based awards could be recovered. These have in the past been popular topics. The latter has been the subject of a recent book. No safe inferences can be drawn, for there are bound to be more and less popular questions in a paper which offers candidates a very wide choice (4 from 11), as is only proper in a subject with a broad syllabus and heavy case-load.

## PROBLEMS IN CONTRACT AND TORT (GERMAN AND ENGLISH LAW COMPARED)

This year's results were much in line with last years, which were better than previous results. This consolidation is likely due to fact that within the last two years more time was devoted in the tutorials to essay writing skills in general and comparative law essay techniques in particular. It is

also noticeable that for the second year running there was practically no difference between the average grades achieved by BCL students on the one hand, and by MJur students on the other. As last year, there is a rather even distribution of the grades achieved over the questions asked, and again for the reason that fewer students attempted to squeeze their rehearsed essays into questions which address different issues.

### **CRIME, JUSTICE AND THE PENAL SYSTEM**

Twelve candidates took this paper. The standard of answers this year was encouragingly good, with a higher proportion of thoughtful, well-informed and insightful answers than has been the case in recent year. The best candidates responded in a critical fashion to the questions set, while nonetheless maintaining a tight focus in order to ensure relevance. Amongst the weaker scripts were found answers that appeared pre-prepared and which, not surprisingly, paid insufficient attention to the terms of the questions set. They also tended to contain weak arguments and inaccuracies. One candidate offered the cinematic advice that the reader should “see Jane Fonda in *New Labour, Old Hat*”.

As usual, the question on victims proved popular (7 takers), with prosecution and youth justice close behind (5 takers). Sentencing, penal philosophy and parole were next most popular. There were only one or two candidates who attempted the questions on stop-search, privatisation of prisons, overcrowding in prisons and dangerous offenders, and no-one attempted the questions on defence lawyers or the evidential basis for ‘what-works’ in reducing offending.

### **PUBLIC INTERNATIONAL LAW: LAW OF THE SEA**

The papers submitted this year were of a particularly high standard. Practically all answers demonstrated a familiarity not only with the basic principles of the Law of the Sea, but also with the detailed applications of those principles in State practice. The six candidates offered between them answers to each of questions 1-10 – a gratifying wide range, which suggests that the course addressed a broad range of interests.

The answers generally struck a good balance between attention to detail, and to the specific question posed, and on the other hand the setting of the answer in a broader context of the development of the Law of the Sea. It was evident that candidates had done a good deal of reading around, both into the primary sources and into the secondary literature.

Few points call for specific comment. In question 2, candidates concentrated on treaty rights of access to internal waters, and to rights of access to ports. They might in addition have explored further the consequences of maritime delimitations that do not conform to international law. In dealing with rights of innocent passage and transit passage, and also exercises of fishing or research rights (which arose, in different forms, in a number of questions), candidates might have addressed not merely the scope of the right, but also the consequences of violating the right, and the consequent entitlement of coastal States to take remedial measures – as well as the converse right of the ship to assert its right in the face of coastal State interference. Candidates might generally also have considered the relationship between international law and national regulations a little more fully than they did: the translation of, for example, international restrictions on fishing or on military activities into enforceable national laws is by no means straightforward. But these are minor points. The papers were a distinguished set, with most very near or above the first class line. The class can take pride in its achievement.

## **PRINCIPLES OF CIVIL PROCEDURE**

The number of candidates taking the examination was 12. Of these 3 candidates obtained marks of 70 and above, 7 candidates obtained marks between 60 and 69 (of which one obtained 69 and another 68), and 2 candidates obtained a mark between 50 and 59.

The general standard was high. Most of the candidates were well informed and showed a truly impressive command of the subject. For instance, almost all the candidates that dealt with conditional fees, were familiar with an important House of Lords decision that came out only a few days before the examination.

Candidates were attracted both to theoretical questions and to questions of a more technical nature. Question 1, which deals with theory of procedure, was attempted by 6 candidates and exactly the same number tackled the more practical question 9 on conditional fees.

There was a good spread of answers so that every one of the 10 questions in the paper attracted response. Though questions 6 and 10 (on the effect of impecuniosity and on group actions) elicited 1 answer each. The most popular subjects were theory of procedure, conditional fees and the protection of human rights in interim proceedings.

## **THE LAW OF PERSONAL TAXATION**

Four BCL candidates took this paper. There were no MJur candidates. This was a very competent set of papers with a reasonable spread over questions given the small number of candidates, although three of the questions were not attempted at all and this may raise questions for the future about the number of questions set on the paper. It is difficult to generalise from such a small number of papers, but some of the essays were too descriptive and insufficiently analytical to be worthy of distinctions, despite showing some learning. The problem answers generally showed good tax knowledge and the ability to apply this, but in one question there were some failures to apply trust law correctly, making it impossible to reach the correct tax answer. This trust point was correctly analysed by one candidate. One candidate obtained a distinction and well deserved the KPMG prize, which she was awarded. The other three marks were all between 65 and 70, so this was a pleasing set of results.

## **TOPICS IN TRUSTS**

There were three candidates in this paper. The standard was generally good. Candidates underperformed for two reasons. First, there was an over-emphasis on a small selection of the authorities reflecting recent developments at the expense of prior authority with which it needed reconciling. Second, and more shocking, an unwillingness to address the question set, rather than the topic in which it was thought to sit.

## **COMPARATIVE HUMAN RIGHTS**

Thirty three candidates took this paper. The standard was high: seven scripts were awarded 70% or over, and a further 18 gained 65% or more. No candidate scored less than 58% and only three fell

below 60%. Almost all the questions received a good number of responses, the most popular being questions 1 (capital punishment) 2 (obscenity), and 7 (euthanasia), with questions on abortion, sexual orientation, racist speech and concepts of discrimination a close second. Only the question on socio-economic rights received no responses, and there were relatively few on minority rights, subversive speech and the use of lethal force.

All the scripts showed a markedly high level of case analysis, making good use of the comparative technique. The main difficulty noted this year was in structuring essays: candidates clearly had a detailed and extensive knowledge of the material, but some found it difficult to organise this. The best candidates were able to answer the question in a focussed analytic way, drawing on detailed knowledge of case-law and constitutional materials as well as utilising thematic and principled arguments. There were some truly excellent answers in this group. Candidates who lost the thread of analysis in the detail of cases scored lower. But the enthusiasm and interest which all the papers evinced was striking, and these, together with the high standards achieved, were very pleasing to note.

### **CORPORATE INSOLVENCY LAW**

This paper was taken by 23 candidates. There were no fails and five of the candidates obtained a First (21%). The scripts gave rise to no serious cause for concern. The candidates had obviously worked hard and had come to terms with the subject. All questions were attempted. There was only one taker for question 1 (Wrongful Trading) which was the least popular of the questions (although the recoveries issue was picked up in the answers to Question 2). Question 2, which dealt with Recoveries and which is much discussed in the course was very well done. Some of the candidates treated section 395 of the Companies Act 1985 (registration of charges) and section 245 of the Insolvency Act 1986 (defective floating charges) as being part of the recoveries machinery whereas in actual fact they defeat claims. It may be that the question was not sufficiently focussed to deal with this issue. Question 5, section 127 of the Insolvency Act 1986, was very well answered indeed, it had been very extensively covered in seminars. The decision in Coutts v Stock received very short shrift indeed, which at least provided the students' solution to a dispute between those teaching the course. The Mokal quotation (Question 7) dealing with the pari passu principle was considered exaggerated and the answers in this were extremely good indeed. Of the problems, Question 8 (Administrative Receivership) was the most popular and was splendidly answered particularly with respect to the duties of the Administrative Receiver. It is a pity that the Enterprise Bill will require considerable restructuring to this part of the course and remove a lot of its interest. The answers were extremely strong on policy issues. Sometimes the students could have gone into more analytical detail with respect to the issue being dealt with. But this balance may have been a result of the way in which the course and exam paper were structured.

### **TRANSNATIONAL COMMERCIAL LAW**

The general standard this year was rather mediocre. There were very few papers of consistently high standard and three candidates failed the examination. A number of candidates either did not answer the question that had been set or their knowledge of the subject tended towards the superficial. Some candidates did produce good quality answers to individual questions but were unable to sustain the quality across the paper as a whole. On question 7 a number of candidates wrote only about the good faith requirement and failed to discuss or analyse the opening section of Article 7(1). Yet the question asked candidates to evaluate the provision as a whole and only to focus "in particular" on the good faith provision and its possible replacement. Similarly, question

10 asked candidates to consider whether the Unidroit Principles and the Principles of European Contract Law meet the needs of the business world and lawyers engaged in international trade and it also asked them to consider whether the Principles can be adopted as the applicable law. Candidates should have answered both questions and not one to the virtual exclusion of the other. A similar point can be made in relation to question 3 where a number of candidates wrote generally about *lex mercatoria* and did not give sufficient consideration to the 4 possible instances of the *lex mercatoria* specifically identified in the question.

The picture was not all bad. Question 6 produced some very good answers and many candidates produced work good, solid (but not first class) standard. But approximately a quarter of the class produced work that struggled to rise above the mediocre. A disappointing year.

### **INTELLECTUAL PROPERTY RIGHTS**

32 candidates wrote this paper, 15 for the BCL and 17 for the MJur. The standard overall was quite high. Three papers all BCL obtained Firsts, although there was a good proportion of high 2:1 papers in both BCL and MJur cohort. Only one paper came close to failing; the student appeared to have a problem with both understanding English and writing responsive answers. Other candidates shared the latter failing to some extent: the prepared answer was too often trotted out, whatever the question actually asked. There was one problem style question, dealing with confidential information and copyright: this was not as well done overall as the questions that involved writing essay type answers. As usual, questions involving patents and designs proved less popular than those involving intellectual property theory, copyrights and trade marks; but the questions were structured so as to assure that candidates demonstrated a sufficiently broad coverage of the field

### **COMPARATIVE PUBLIC LAW**

There were 14 papers submitted this year, 8 of which were BCL, the other 6 being MJur. The standard of the papers varied quite widely. There were a number of papers which were worthy of a distinction. Four papers fell into this category, and they were all extremely good. Two were awarded 75, and the other two were awarded 72. They all exhibited a good knowledge of the primary and secondary material, combined with the ability to make sophisticated comparisons between the legal systems that were studied. There was a significant gap between these papers and the next group, which comprised those who scored in the range of 62-66. Candidates in this category performed less well on all counts: there was less coverage of the primary and secondary material and the comparative analysis tended to be briefer. Two of the scripts scored lower marks, 59 and 53, respectively. Language problems were evident in both cases, particularly the latter.

The most popular questions were proportionality, substantive legitimate expectations, damages liability and fundamental rights. There were however also interesting answers on jurisdictional review and on procedure.

### **EUROPEAN BUSINESS REGULATION**

This was a paper which was on the whole rather confidently addressed by candidates. There was some preference for essay questions over problem questions, and some preference for certain

questions over others. In particular, questions on topics which had not been covered in tutorials in Trinity Term attracted few, or in the case of the environmental law questions, no takers. Candidates nevertheless appeared to choose questions which suited them, and there were few if any signs of candidates being constrained to answer questions for which they were relatively less well prepared. Candidates scored best who tailored their answers to the questions put, and offered critical analysis in addition to exposition of relevant issues.

## **EUROPEAN EMPLOYMENT AND EQUALITY LAW**

This was the first year that the subject in its extended form was examined. Thirteen candidates took the paper and the standard was very good indeed. Four candidates were awarded 70% or more, and a further five scored 65% or more. One candidate unfortunately did not complete the paper and was awarded only 40%.

Responses to questions were largely clustered around three or four issues. Almost all candidates answered questions 3 (the new directives), and 5 (affirmative action). There were also a good number of responses to questions 2 (social dialogue) and 6 (part-time work/family friendly); and a smattering of responses to question 4 (EU Charter) There was very little by way of response to remaining questions, with no candidates answering the questions on the employment strategy (Q.1) or the lacuna in legal powers (Q. 8(b)) and only one or two attempting equal pay (Q.7) or workers participation (Q. 8(a)).

In general, candidates showed an excellent knowledge of the legal materials, particularly the European legislation; and there was a good understanding and use of critical literature. The case-law was perhaps less well used; more focus on judicial developments is to be encouraged. The most notable weakness concerned the way in which candidates dealt with the question asked. The best candidates wrote essays were well-structured and focussed well on the question asked. Weaker candidates, however, tended to put down all they knew about a topic without responding specifically to the challenge posed in the question asked. This was particularly evident in respect of question five, in which the candidates were asked to discuss whether an appropriate balance had been achieved between social justice and economic efficiency. Several candidates wrote all they knew about the measures on part-time work or family friendly policies without addressing the question itself.

In all, however, the standard achieved was very pleasing, particularly in respect of the many students writing this paper for whom English is not their first language and the system of teaching and examining quite foreign.

## **INTERNATIONAL ECONOMIC LAW AND LABOUR RIGHTS**

The standard of answers this year was, on the whole, of a high standard, reflecting also the quality of participation in seminars and tutorials during the year. Of the eight questions set in the examination, all were answered by at least one candidate, demonstrating a pleasingly wide range of issues having been thought about by candidates. Not surprisingly, however, some questions were more popular than others. Question 1 (on the ILO) was answered by most candidates. Question 2 (on globalization and labour standards) and question 7 (on labelling and the WTO) was tackled by only one candidate each. In the case of question 7, this was no doubt due to the rather narrow technical knowledge needed to answer the question. Questions 5 and 6 (on the social clause in the WTO, and NAFTA respectively) were also answered by only two candidates each. A pattern

seems to emerge that the more trade-related questions tend to attract fewer answers. It would be disappointing if the economic law aspects of the course came to be neglected by students in the future, and some consideration needs to be given as to how to ensure the integration of issues that the course aims to get students to consider. Questions 3 (codes of conduct), 4 (OECD/World Bank), and 8 (universalism) attracted four answers each. There was no discernible difference between MJur and BCL candidates in the quality of the answers produced.

## **INTERNATIONAL ENVIRONMENTAL LAW**

Four candidates sat the examination, 1 MJur candidate and 3 BCL candidates. *[Results overall were strong with two high 2.i marks, a good 2.i mark and one first class paper on first reading.]* Given the small sample it is difficult to generalise, and not all questions were attempted (questions 3, 4 and 10 were avoided). Overall it may be said that the scripts demonstrated a solid grasp of international environmental law principles, and of the operation of key treaty regimes such as CITES and the Climate Change, Biodiversity and Ramsar Conventions. There was widespread reliance on academic authority (a definite improvement over last year's scripts) although, disappointingly, a tendency to compartmentalise treaties was evident especially in questions 1 and 2 (CITES and Ramsar). For example, in respect of question 1 on CITES when discussing what other mechanisms might be employed for the protection of endangered species, there was a marked tendency to draw on other treaty mechanisms without attribution, and to stress the need for in situ conservation measures without reference to the relationship with the CBD. Likewise in response to question 8 there was little effort to indicate in what fashion concepts and techniques employed in the FCCC and KP are novel; without this dimension the responses to question 8 tended towards the overly descriptive. In contrast, answers to questions 5 and 6 in particular were on the whole very well done indeed, demonstrating in the first instance a sound grasp of general principles of state responsibility and in the latter solid acquaintance with the environmental jurisprudence of the ECHR. Treaty law principles might have been further relied upon in response to question 7, but on the whole this too was well-done.

## **INTERNATIONAL HUMAN RIGHTS AND THE LAW OF WAR**

Eighteen students sat the exam. As in the past, both BCL and MJur candidates were required to answer 3 questions. Each question attracted at least one answer, but otherwise there were clear favourites. By far the most popular question was 8(b), which invited consideration of the 'principles of humanitarian intervention' and was answered by 17 students. The answers were generally of a high quality (including the overall best mark for any question), which is not surprising, given the topicality of the subject. The better responses showed a good grasp of the political background as well as the required and recommended reading. The four next most popular questions were Q1 (7 answers), Q3 (7 answers), Q5 (8 answers) and Q7 (9 answers), dealing respectively with human rights protection and international humanitarian law, protection of civilians, the World Trade Center attacks, and Security Council practice. Of these, Q7 attracted the best answers (including the second best overall mark for any question), from students who displayed a thorough knowledge of the relevant resolutions and a good understanding of the problems inherent or likely in an expanding role. The answers to Q1 (human rights protection and international humanitarian law) and Q3 (protection of civilians) were generally weaker. Overall, the better students tended to be more familiar with the case law, to which they made frequent and illuminating reference. The availability of *Blackstone's Law Documents* does not appear to have had a significant impact – there were a number of surprising misquotations.

## PHILOSOPHICAL FOUNDATIONS OF PROPERTY RIGHTS

There were nine candidates for the examination. The standard of answers was generally high, and two were awarded marks of 70 and above. The paper set questions in which theoretical competence was a premium. No detailed knowledge of any legal system is required by the course, although answers may be illustrated (as many were) with examples drawn from particular legal provisions. Most candidates demonstrated that they had read widely among a range of literature on property theory. The best were able to absorb ideas and present their own arguments in a clearly constructed fashion. Some would have presented even better answers had they not devoted so much space to repeating what authors had written, rather than concentrating specifically on the terms of the particular set question.

Candidates were required to answer three out of ten questions. The most popular were 5(a) (fruits of labour) and 7 (property in bodies and body parts). In answers to both, the concept of self-ownership was frequently dissected, which shows what a malleable conception it is. Also popular was 1 (Epstein quotation). Some candidates dealt with it as an abstract assertion, not placing it in the context of Epstein's own views which meant that they were unable to speculate as to what he might have meant by speaking of a set of right being of 'infinite duration'. Question 6 (information) was tackled by several candidates, the best of whom addressed squarely the issue of what might be intended by speaking of rights as 'amounting to property rights'. Question 10 (private property's suggested indispensability to personal autonomy) was generally well handled, with varying conceptions of autonomy being brought into the picture. Question 5(b) (inheritance) and 8 (historical entitlement versus equal distribution) were attempted by two candidates, and questions 2 (consequentialist accounts of property) and 3 (aboriginal property) were attempted each by one candidate. There were no takers for 4 (property for new colonists) or 9 (welfare rights as property).

The standard attained by candidates for this course continues, as in the last two years, to be most encouraging for those who are responsible for organising it. They achieve a commendable level of theoretical sophistication.

## INTERNATIONAL DISPUTE SETTLEMENT

This year scripts were of a high standard, every candidate gaining a least upper second class marks. Answers were spread fairly evenly over all questions. The main strengths were the range of candidates' knowledge, and the evident extent to which they had read around particular topics. The main weaknesses, (where there were any) were the usual tendency to write generally on a given topic without directly addressing the specific question set on that topic, and the tendency to be content with a description of the main legal principles without analysing them in sufficient depth. Over all, however, the scripts were far from weak.

There are few specific points that can helpfully be made, shortcomings being for the most part particular to individual scripts. There were, however, a few recurrent shortcomings.

### Question 1

Some candidates did not consider arbitrability under the *lex arbitri* and the law of the place of enforcement, in the context of international commercial arbitration.

### Question 2

There was a tendency to focus heavily on ICSID (in 2a) or the ICJ (in 2b), and to give relatively little attention to the comparison with *ad hoc* tribunals.

Question 3

Was well answered.

Question 4

Candidates wrote well on public policy in international commercial arbitration but made little of the opportunity to discuss the possibility that public policy might play a role in inter-State disputes.

Question 5

Was the least commonly answered, most candidates foregoing this opportunity to discuss questions of State immunity, and of the problems of enforcing international awards and judgements, though national courts and other mechanisms.

Question 6

Attracted rather narrow answers, focussing on the prevention of problems of principle, rather than their resolution once the problems have arisen.

Question 7

Most answers concentrated heavily on the UN system; but there were some good answers on the OAU and OSCE mechanisms, too.

Question 8

Drew a good deal of generalised description, with little attempt to identify exactly why particular innovations were significant. One or two candidates made impressive attempts to consider whether there may have been non-economic developments of comparable significance.

Question 9 and 10

Were well answered, and there were impressive displays of detailed knowledge of the case law.

Question 11

Was answered thoughtfully by most candidates, the better scripts exploring both the criteria for setting desirable goals in international dispute settlement and alternatives to the ICJ as a forum for settlement.

Questions 12 and 13

Were also well answered, with robust accounts of the principle of non-frustration and of the *Monetary Gold* and allied principles in inter-State and mixed arbitrations.

## **ROMAN LAW DELICT**

There were only four candidates. The number being so small it is impossible to draw conclusions from the disappointingly lack-lustre answers. The unenterprising performance in the examination did not reflect the spirit of the class. It may partly reflect the fact that illness heavily reduced the opportunity for revision sessions. Quite apart from that, a little more time ought perhaps to have been spent on examination expectations and technique.

## **PHILOSOPHICAL FOUNDATIONS OF THE COMMON LAW**

The standard of answers in this paper was impressively high. It was also interestingly diverse. Some candidates set out to synthesise a range of different perspectives that had been studied during the year. Others concentrated on analysis of issues and problem-solving, with only limited use of the existing literature. Some thought like lawyers looking for philosophical support. Others thought like philosophers looking for legal examples. Some worked at a high level of abstraction, hoping to tackle many legal issues using one big philosophical idea. Others made only small philosophical moves, in such a way that the legal issues became ever more fine-grained in their hands. The examiners did not have a predilection for any particular combination of approaches. But as it happens, the best candidates this year erred on the side of breaking the problem up into small pieces. The distribution of interest across the questions and across the three areas of the course (tort, contract, crime) was reassuringly even, although no single candidate displayed an even-handed interest in all three areas.

## **EUROPEAN COMMUNITY LAW**

Answer papers indicated a generally high degree of proficiency on the part of candidates. On the whole candidates preferred to write essays rather than answer problems, and there was a tendency on the part of one or two candidates to treat problems as an opportunity to write essays around topics raised by the problem, rather than focussing analysis on the issues raised by the facts, even when this meant not leaving enough time to address all the issues raised. Question 4 raised issues of state liability, and of the compatibility of national judicial procedures, and national time limits, with the requirements of Community law. Those who answered this question addressed only the first point, on state liability.

## **REGULATION**

### **General Comments**

All questions were answered. A very good spread of answers obtained, with only one question (Question 5) being answered by slightly more than 50% of the candidates.

The standard was generally pleasing, with the papers ranging from sound to very good. Although there were a few really excellent papers, there were many very good ones and no really poor one. The absence of poor papers was in large measures due to very well-structured answers, and a general tendency to use supporting evidence from case studies and hypothetical examples to good effect. It was pleasing to see careful attention given, in most cases, to the precise terms in which the question was framed, and it was especially gratifying that almost all papers did an excellent job of introducing in a succinct way the argument that was to follow. With one exception, all the papers were well-timed and gave adequate attention to each of the three questions.

In general, weaker performances rested on inadequacies or lack of especial merit in the depth or originality of the conceptual arguments adduced. There was also, in the weaker papers, quite a marked tendency to repeat points already made in similar terms earlier in the question. In Part B, weaker papers often suffered from providing no theoretical context for their discussion of the two case studies in question, though sometimes (less often) the problem was that they adduced very general and sometimes vague evidence from the case studies. Nor was there in general, even in the stronger papers, much evidence in Part B of conscious efforts to draw contrasts and comparisons between the two case sectors discussed, though the better answer did this implicitly.

#### Question 1

Three candidates answered this question. The better answers paid conscious attention to the question's focus on *the emergence* of regulation – some candidates gave significant attention to the role of interest groups in enforcement which was not the focus of the question. On the whole this question elicited answers which went for breadth of coverage across many theories rather than in-depth treatment, though this did not necessarily prevent the answer being of a high standard.

#### Question 2

Six candidates answered this question, making it the most popular question in the analytical section. The better answers dealt with limitations that arose not only in the design of regulation, but also in the enforcement and even in the legitimacy. Not a few candidates failed to pay much attention to voluntarist techniques, though this was on occasion clearly a question of running out of time. Not one candidate referred to the highly salient article by Robert Cooter which was high on the reading list priority for this, but there were still some very good answers.

#### Question 3

Three candidates answered this question. It was particularly well done, all answers incorporating reference to a wide range of theoretical and empirical materials and giving thoughtful attention to the analytical and normative dimensions of the question. It was particularly pleasing to see answers that drew lessons for the normative question of what role punishment *should* play from the empirical research showing what role punishment typically *does* play.

#### Question 4

Two candidates answered this question. Both gave strong discussions of the use of market-based techniques; there was more variation in the success of tying this concrete dimension of the question to the more elusive question of legitimacy.

#### Question 5

Eight candidates answered this question, making I the most popular question in the applied section. There were no poor answers, but on the other hand, it attracted on the whole sound or solid responses. The better answers interrogated the extent to which the notion of 'market failure' can be reasonably stretched to encompass broad swathes of social objectives.

#### Question 6

Three candidates answered this question. It was generally competently done, though no-one discussed broader cultural or sociological dimensions of risk regulation. Like Question 5, it was somewhat more on the pedestrian side.

#### Question 7

Seven candidates answered this question. It was on the whole well done. The weaker answers gave no theoretical context for their exploration of third party monitoring – while most candidates who did do so relied on Ayres and Braithwaite, there was also reliance on Majone, and in some imaginative cases, on the use of liability and litigation. The better answers engaged critically with the theoretical dimensions by reference to evidence from the case studies. Few people explicitly discussed the appropriate scope of 'third parties' or indeed the analytical basis on which one would classify a group as a 'third party' vis-à-vis a regulatory regime.

#### Question 8

Six candidates answered this question. The better ones classified independence in a careful analytical way from a number of angles and pointed out the tensions to varying notions of what a

regulator should be insulated from, linking those tensions to varying facets of legitimacy. There was an interesting variety of opinions on the substantive extent of regulator independence. It would have been pleasing to have more discussion of various ways in which independence can be institutionalised at a concrete level in the specific contexts of the case studies.

#### Question 9

Three candidates answered this question. On the whole it would have benefited from rather more detailed use of specific evidence from the case sectors, and also from stronger links to theoretical material, particularly the accountability and legitimacy issues raised in some 'network' theories of regulation. There was some imaginative and productive use of broader private law knowledge from beyond the course in this question.

#### Question 10

Only one candidate answered this question, which was well done – it would be invidious to comment further.

### **JURISPRUDENCE AND POLITICAL THEORY**

Seventeen candidates took this paper. The general standard was high. Three of the candidates received marks of 70 or slightly higher, the others ranging from 60 to 69, with one exception, who received a mark of 50.

The distribution of answers was as follows. Of the 6 essay topics 3 were in legal philosophy and 3 in political philosophy. There were 37 answers on the legal philosophy side, and 14 on the political philosophy one. The distribution of essay topics: (1) 14; (2) 10; (3) 13; (4) 7; (5) 4; (6) 3. Out of the 17 candidates, 6 wrote exclusively on legal philosophy topics; 8 wrote on 2 legal philosophy topics and 1 political philosophy topic; and 3 wrote on 1 legal philosophy topic and 2 political philosophy topics. This distribution may reflect the fact that the seminars this year concentrated mostly on legal philosophy.

Topics 1 and 3 were the most popular. Most candidates writing on topic 1, which consisted of a quote by Ronald Dworkin, tended to discuss exclusively Dworkin—some restricting themselves to the essay from which the quote was taken, one explicitly embarking upon a scholarly exegesis of the essay—and Timothy Endicott's discussion of Dworkin's essay. Many candidates writing on topic 3 (Hart and normativity) seemed intent to reproduce Joseph Raz's discussion of the topic in seminar. Topic 2 (on conceptual analysis) made for some essays based exclusively on the material discussed in seminars, but also attracted a great deal of non-derivative analysis; moreover, even those who restricted themselves to the presentation of the material taught in the seminars tended to discuss a much wider range of literature compared to the other two topics.

The material discussed in respect of topics 4, 5, and 6 was more varied, but the essays in that area tended to lack sophistication and depth.