

EXAMINATION FOR THE DEGREES OF B.C.L. AND M. JURIS

REPORT OF THE BOARD OF EXAMINERS FOR 2007

1 General Remarks

This report begins by paying tribute to the dedication, good-humour and sheer hard graft of those who ensure that the examinations process is conducted quite as successfully as it is; in particular the Director of Examinations (Ann Kennedy) and the Examinations Officer (Julie Bass).

As last year, the observations below are a collection of points which may need to be borne in mind by those who have oversight of the examination of candidates on the BCL and MJur.

2 Timetable

The setting of the timetable for this year's examinations went smoothly. By using two Saturdays, the incidence of candidates having two papers on the same day was minimised, almost to vanishing point.

3 Statistics

Attached as Appendix 2 are the numbers of entrants, distinctions, passes, and fails. The percentage of distinctions was very high in the BCL, 44%, but only 18% in the MJur.

In terms of the gender of those achieving distinctions, there was a very marked difference between the BCL and the MJur. While males were more than twice as likely as females to achieve a distinction in the BCL, females were a little more likely than males to achieve one in the MJur.

4 The Computer

The computer software worked satisfactorily.

The 2007 examinations saw the first trial of the 'Turnitin' software, designed to check for plagiarism for those candidates taking Jurisprudence and Political Theory. There were no significant problems with the application of this software.

5 The setting of papers

Although one or two setters had to be given a little extra encouragement, everyone delivered the papers in draft form and electronic format in sufficient time for the meeting to consider them. It may have been a function of hurry at the last minute that the Examiners needed to pay more attention than they might have hoped to the grammar and syntax of a few of the papers. It is important that setters take note of the conventions for the setting of problem questions,

since this saves time in the Examiners' meeting. They also wish to emphasize the role of checkers, in ensuring that the paper meets these criteria. The Examiners were taken through the papers, line by line.

6 Information given to candidates

The Edicts are attached as Appendix 3. As will be noted, the documents continue to increase in complexity.

7 The written examinations

The examinations went smoothly. The Chairman of Examiners attended for the first half hour of every examination, as did the setter or an alternate. The Chairman of Examiners also attended at the conclusion of each paper. The Examiners wish to emphasise the importance of the conventions that demand that these persons be present. Though the invigilators are invariably competent or better, the authority of an Examiner may be required to help sort out difficulties experienced by particular candidates. The presence of the person who set the paper is also essential, in order to deal with any queries concerning the paper.

Because there were examinations on two Saturdays, colleges with candidates taking papers on these days were asked to provide contacts available to deal with any problems, such as emergencies. This was clearly a wise precaution, which the Examiners firmly believe should continue to be taken.

8 Materials provided in the examination room

The Examiners wish to note, in line with previous Examiners' reports, the enormous expense involved in the provision of statutory materials by the University. The possibility that students should be able to use their own materials should be reconsidered.

9 Marking and remarking

The routine marking of scripts prior to the first meeting of Examiners included the second marking (blind) of borderline scripts, and of a sample of others. The Examiners wish to emphasize the importance of ensuring that all borderline scripts are double marked before the first marks meeting. The Examiners were given two marks on a significant number of papers. In all cases these marks had been agreed between the markers. When the Examiners in their first meeting came to consider whether to call for a further marking of borderline cases, they confined these requests to borderline scripts which had not been twice marked to begin with.

This approach was premised on the footing that the Examiners were satisfied that if a paper had been read, twice blind, and marked at 68, it was a 68, the same being true if it was marked twice at 69. It was also justified on the basis

that to give some candidates a third bite at the cherry would be to treat them unequally. Since first markers were asked in advance to send all papers on 8 or 9 to second markers (if not already in the sample batch), the amount of double-marking between the two marks meetings was significantly reduced, even after the decision had been taken, as it was last year, also to have papers with marks ending in 7 re-marked if an improvement of three marks would make a difference to the final classification

The Examiners wish to stress the importance of availability of both the first and second markers, at least for consultation (if necessary, by email) throughout the marking period, and no less so between the Examiners' first and second meetings. In one or two cases, borderline scripts had not been marked by both markers before the Examiners' first meeting, so availability to mark was necessary after that meeting.

The Examiners also wish it to be recalled that the published conventions that they apply entitle the candidate to the relevant classification, but do not rule out their exercise of discretion in favour of a candidate, even where there is no medical evidence to justify such a course.

10 Medical Certificates, dyslexia/dyspraxia and special cases

5 medical certificates were forwarded to the Examiners. In addition, 1 candidate was certified as dyslexic.

2 candidates wrote some or all of their papers in college. A further 4 candidates wrote some or all of their papers in a special room in the Examination Schools.

The following additional specific details have been requested by the Proctors. In the BCL 1 medical certificate (from 1.06% of BCL candidates; 0.62% of BCL and MJur candidates combined) was forwarded to the Examiners under sections 11.8 – 11.9 of the EPSC's General Regulations for the Conduct of University Examinations (see *Examination Regulations 2006*, page 34), and the candidate's final result was materially affected.

11 Concluding Remark

We would like to conclude by expressing our warm thanks to our External Examiner, Professor Colin Warbrick.

P. P. Craig (Chairman)
D. Vaver
J. Freedman
N. C. Bamforth

Appendices to this Report: (2) Statistics; (3) Notices to Candidates; (4) Awards and Prizes; (5) Mark distribution on first reading; (6) Reports on individual papers; (7) Report of Professor C. Warbrick, external examiner

APPENDIX 5

Raw Marks Statistics, BCL / MJur 2007

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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 |
| BCL Dissertation | 66.22 | 9 | | | 11 | 22 | 22 | 44 |
| Comparative Human Rights | 66.96 | 33 | | | 9 | 6 | 58 | 27 |
| Comparative Public Law | 66.44 | 18 | | 6 | 6 | 11 | 39 | 39 |
| Competition Law | 64.26 | 26 | | | 19 | 31 | 31 | 19 |
| Conflict of Laws | 66.94 | 34 | | 3 | 6 | 12 | 47 | 32 |
| Constitutional Theory | 65.66 | 18 | | | 6 | 28 | 44 | 22 |
| Corporate and Business Taxation | 67 | 10 | | | | 30 | 30 | 40 |
| Corporate Finance Law | 64.70 | 31 | | 6 | 10 | 23 | 42 | 19 |
| Corporate Insolvency Law | 65.68 | 22 | 5 | | 9 | 18 | 45 | 23 |
| Crime, Justice and the Penal System | 66.75 | 8 | | | | 25 | 50 | 25 |
| Criminal Justice & Human Rights | 65.5 | 6 | | | 17 | 17 | 33 | 33 |
| European Business Regulation | 66.35 | 21 | | | 5 | 24 | 33 | 33 |
| European Employment & Equality Law | 63 | 8 | | 13 | 13 | 25 | 13 | 38 |
| European Private Law: Contract | 63.5 | 12 | | | 8 | 67 | 17 | 8 |
| European Union as Actor in International Law | 67.42 | 14 | | | 7 | 7 | 50 | 36 |
| Evidence | 66.28 | 14 | | | | 29 | 50 | 21 |
| Global Comparative Financial Law | 62.94 | 74 | 1 | 4 | 11 | 38 | 22 | 23 |
| Globalisation and Labour Rights | 62.38 | 13 | 8 | | | | 69 | 23 |
| Intellectual Property Rights | 67.42 | 7 | | | | 29 | 14 | 57 |
| International Dispute Settlement | 63.84 | 40 | 3 | | 8 | 33 | 25 | 30 |
| International Economic Law | 64 | 34 | 3 | 3 | | 29 | 41 | 24 |
| International Law & Armed Conflict | 64.91 | 24 | | 4 | 4 | 46 | 21 | 25 |
| Jurisprudence and Political Theory Essays | 67.14 | 28 | | | | 18 | 46 | 36 |
| Law and Society | 65.25 | 8 | | | | 50 | 38 | 13 |

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 |
| MJur Dissertation | 66.5 | 8 | | | | 25 | 50 | 25 |
| Phil. Found. Common Law | 66.46 | 15 | | | 7 | 20 | 40 | 33 |
| Principles of Civil Procedure | 67.31 | 16 | | | 6 | 19 | 25 | 50 |
| Restitution | 67.08 | 34 | | | 3 | 18 | 44 | 35 |
| Roman Law (Delict) | 68.4 | 5 | | | | | 60 | 40 |
| The Law of Personal Taxation | 65.2 | 5 | | | 20 | 20 | 20 | 40 |

APPENDIX 6

INDIVIDUAL REPORTS

CORPORATE AND BUSINESS TAXATION

This was a strong set of scripts, with four distinctions and the other six marks falling between 61 and 69. The spread of marks was similar for BCL and MJur students, with two of the four distinctions being awarded to each group.

Every question was attempted by at least one student and there was a reasonably even spread between the questions, except that more than average attempted the question on trading losses and corporate groups. This required the interweaving of technical and policy material and it was impressive that it was popular and generally well done. Fewer students than usual did the problem questions. It is hard to draw conclusions on this from a relatively small group, especially as the very best mark given for any question was awarded to a problem answer. There was a lower than average take up for the questions which explicitly referred to developments arising from the European Commission and the ECJ. These issues had been the focus of a number of seminars, but the pace of change in these areas over recent months may have accounted for some students feeling less secure about answering these questions, though those that did so showed a comprehensive understanding of the case law and the context. There were some especially good answers to the difficult question on the discrepancies in tax treatment between corporate debt and equity and on the problems surrounding reform of the capital allowances system, in each case showing good knowledge of the literature beyond the text books. The question on the relevance of the place of management of a corporation to its tax liability was also well done by most of those attempting it, showing a good understanding of the relationship between UK domestic law and double taxation treaties.

CRIMINAL JUSTICE AND HUMAN RIGHTS

There were six candidates for this examination. Two candidates reached Distinction standard, a heartening outcome for the first year of this subject. The remainder passed with marks over 60. Questions 2, 3, 4, 5, 6 and 11 were the most popular, whereas the other questions attracted only one answer or no answer at all.

In general the scripts showed a good knowledge of the relevant portions of European human rights law, and of relevant U.K. decisions. The best scripts included discussions of arguments in the academic literature, whereas others kept closer to the decided cases. There was some evidence of the typical failings, such as paying insufficient attention to the question set, and not developing a persuasive argument. Overall, however, the examination scripts provided evidence of hard work in mastering the detailed issues discussed in the seminars, and some thoughtful reflections on contentious questions.

CONFLICT OF LAWS

There were 34 candidates and the overall standard was very high: 10 marks of 70 or more were awarded and a further 7 were marked (and double-marked) at 68 or 69; only three fell below 60.

Three papers were considered for the prize, including one of only four MJur scripts, but in the final assessment it was awarded to a BCL candidate.

There was both a more even spread of answers and more answers to essay questions than of late, though answers to problems were still in the majority. The most popular essay was question 2, perhaps because of the heightened awareness of this area following the recent *Mbasogo* decision. The most popular problem (but only just) was question 5, though the range of answers to this was the widest on view, due in part to a slightly odd interpretation placed by some candidates on the idea that the party to be advised wished to achieve a negotiated settlement without recourse to proceedings. It was closely followed by question 6 which was done very well indeed; perhaps because recognition of judgments is a little more manageable in the amount of material involved.

EVIDENCE

14 candidates took the Evidence paper this year. Three candidates achieved first-class marks, i.e. 21.4%. The average mark was 66.3. Nobody's mark was below 60.

Those statistics fit in with the impression of those who marked the papers. The overall sense of the array was one of competence, rather than of outstanding ability in the subject.

The problem questions were much more popular than the essay questions, there being only four answers in total to the latter. Of the problem questions, question 6 was not attempted by only one candidate, while questions 4, 5 and 7 were also popular.

It was pleasing to note a very good level of understanding of the important changes made, both to hearsay evidence and to bad character evidence, by the Criminal Justice Act 2003. However, in the case of hearsay, this was sometimes at the expense of deficient understanding of the hearsay rule itself.

As was pointed out last year, the problem-solving format of the Evidence seminars does seem to be something that encourages candidates to attempt these questions, as well as equipping them to give, at worst, sound and solid answers.

RESTITUTION

In the same manner as last year, the format of the exam was again 11 questions of which two were problem questions and nine were essay questions. The essay questions again proved popular and more than half the students attempted at least one of the problem questions. The standard of the essay questions was good and there were some excellent answers. Every question had some takers. Many students attempted question 1 which asked about the new Birks scheme of unjust enrichment, treating alike nullity, termination, terminability and voidability. A lot of answers compared common law 'unjust factors' models with Civilian models without noticing that Birks' model differed in major respects from the Civilian model. Better answers considered the difficult issues of terminability and termination and the puzzle of why restitution is allowed on the absence of basis model despite the existence of accrued rights. The very best answers also considered voidability; one answer noticed that Birks' model can be defended by separating two types of enrichment- rights to things and rights against a person, and that a

voidable gift of an asset is concerned with the first but a voidable contract or deed is concerned with the latter. The least popular question was question 8, which asked which, if any, of the causes of action which were historically the province of Chancery should be treated as part of the law of unjust enrichment. Almost every answer to this question considered that it was only asking about 'knowing receipt'. Only one answer considered undue influence and none considered the old Chancery jurisdiction in relation to mistakes and Chancery cases (particularly resulting trusts) of failure of consideration.

The answers to the problem questions were much more variable. There were several outstanding answers and a number that were weaker than the essays. Most students noticed that the first problem raised concurrent issues of *ultra vires* demand and mistake of law. Unfortunately, only a few noticed that there was a limitation issue problem and the split in *Kleinwort Benson v Lincoln* among the Law Lords about whether retrospective legislation would allow a claim for mistake of law. Only two exceptional answers considered the possibility of the 'wide' view of s32(1)(c) (that it is not confined to cases where a mistake is the element of the cause of action) to extend the limitation period. The answers to the second problem were generally excellently done in relation to the possible unjust enrichment claim and there was some very good discussion of the 'at the expense of' issues as well as tracing and proprietary claims. Most students noticed the change of position debate about whether reliance is required. Only a handful of answers recognised that there was an alternative claim for conversion and no student considered whether profits might be disgorged from a deliberate tortfeasor (despite the fact that several students noted this possibility in relation to the essay question concerning profits from wrongdoing).

Overall though, there were many excellent efforts and an extremely high standard this year.

LAW AND SOCIETY

Eight students took the examination, three BCL, five MJur. One received a Distinction, three obtained marks of 65 or above, while the rest managed marks between 60 and 65. The results are fairly much in line with what the examiners expected, on the basis of the classes and the tutorials. The course is offered for the first time this year and the examiners are pleased to note the very satisfactory performance.

Apart from two questions which attracted no attempts, and one which was especially popular, candidates ranged widely and fairly evenly across the paper. Although no formal division was made in the paper, the course consists of two parts, the first law and society generally, the second the anthropology of law. Each part attracted roughly the same interest from candidates.

CONSTITUTIONAL THEORY

Candidates produced scripts of a high quality, with a significant number of first class marks being awarded. Many of the weaker candidates relied rather heavily on particular texts, or the seminar discussions, but the better students provided interesting and powerful answers to the questions set.

CRIME, JUSTICE AND THE PENAL SYSTEM

There were eight candidates for this examination. There were two distinctions and the remainder passed with marks falling in the relatively narrow range between 62 and 67. Questions 2, 3, 4, 5, 7, 9 and 10 were the most popular; questions 1, 6, 8, 11, and 12 were not answered at all despite the fact that students had prepared tutorial essays on some of these topics.

In general the scripts were well written, thoughtful, and displayed a good knowledge of the subject. The best scripts had an excellent command both of the relevant academic literature and the available research evidence. They presented focused, highly analytical essays that answered the questions set directly. Weaknesses in other scripts included limited engagement with the question set, lack of substantiating evidence, and a failure to sustain a persuasive argument (rather than providing a general survey of the field). However, in general the standard was high and evidenced good preparation and a pleasing engagement with the issues raised by the course.

PRINCIPLES OF CIVIL PROCEDURE

The number of candidates taking the paper was 16 (7 MJur, 9 BCL). The level was very high, with 8 Distinctions awarded, and only one mark below 60 (at 58). The candidate proposed for the Prize, although with a mere 73, displayed a wealth of knowledge and maturity that put him or her well above the rest of the class, despite the apparently close mark.

The course consisted in a very detailed and thorough overview, with in-depth analysis of most areas of the field of law examined. It is clear that the students are given the scope to pursue their own research on the various topics that make up the course, which leads them to take at times imaginative approaches to the questions set and not remain too tied to a black-letter law approach, or indeed to the set reading list or materials. A strong comparative element is also present and evident from the breadth of the answers given.

The paper gave the students a very wide choice of topics (ten topics with 16 possible questions to choose from), and while there seemed to be some obvious favourites such as question number 4 on injunctions, all but one were attempted across the cohort.

COMPETITION LAW

The paper comprised eight questions of which four were essay questions and four problem questions. Candidates were asked to answer three questions including at least one problem question. The first essay question focused on Article 82(c) EC and price discrimination. The second essay question dealt with Article 10 EC and its impact on national legislation. Question three addressed the underdevelopment of private enforcement in Europe. The fourth essay question focused on resale price maintenance. The majority of the candidates chose to answer two essay questions, the most popular being the first and third essay questions. The four problem questions focused on Article 81 EC, Article 82 EC, the European Merger Regulation and the public enforcement of European competition law. Out of the problem questions, most popular were question 6 and 7. Question 6 focused on vertical distribution systems and tying. Question 7 focused on information exchange and horizontal cooperation. The examination was taken by 26 candidates. On the whole, the scripts showed a good command of the subject and

good analytical skills for both BCL and MJUR students. The examiners awarded 5 marks of 70 or above, 17 marks between 60 and 69, and 4 marks below 60.

PERSONAL TAXATION

There were five candidates. Some of the scripts displayed an impressive knowledge and understanding of the sometimes complex material in the syllabus.

Questions 3 (retention of interest in tax avoidance provisions) and 8 (problem centred on inheritance tax) attracted few answers. Questions 1 (capital gains tax), 2 (taxation of trust income) and 5 (inheritance tax and capital gains tax interplay) attracted nobody.

Question 4 (inheritance tax changes) was popular. The better answers combined a good understanding of the changes introduced in 2006 with a perceptive analysis of how ideas of tax neutrality should work.

Question 6 (tax avoidance) was answered by all the candidates and was generally well done. The best answers concentrated on *Mawson* and the other centrally important cases, rather than being content to describe the development of the law over the past three decades.

Question 8 (capital gains tax problem with some inheritance tax) was popular and generally well handled. The better answers showed an impressive grasp both of the foreign elements in the question and the meaning of 'asset' for the purposes of capital gains tax, coupled with the application of the statutory concession.

COMPARATIVE HUMAN RIGHTS

The general standard of the answers was good, with a high proportion of marks above 65, and few below 60. The paper was quite specific in terms of what was asked for in each question, and those who responded appropriately to the specifics were rewarded; those who did not were penalized. In general, there was a pleasing spread of questions answered, both across those taking the examination as a whole and also individually, with all questions being answered by at least one candidate. Last year's examiner's report for this subject noted a 'slightly worrying tendency to ignore issues that cut across specific topics'. This year, many questions were set which required explicit consideration of cross-cutting themes, usually in the context of one or more specific substantive issue. The ability to attempt such questions that require a knowledge across the course as a whole appears to have improved over previous years, and candidates in future years would be well advised to take such issues seriously and not confine their revision only to a limited range of subject areas. Question 1 (quotation from *Casey*) was quite well done, showing close attention to debates in the US Supreme Court, although the better answers also attempted to contrast approaches taken to sodomy and abortion, and did not confine discussion to the US). Question 2 (Breyer quotation) was popular, but answers seldom moved beyond the predictable. Whilst recognizing that question 3 (equality in socio-economic rights) was difficult, the question was relatively poorly answered, with an absence of the type of sharp and focused analysis that the question required. Question 4 (religious hatred) was quite specific in asking for discussion about *religious* hatred; several answers ignored this as an issue that may be distinguishable from the treatment of *racial* hatred and were penalised accordingly. Question 5 (importance of text in death penalty adjudication) was competently answered, although some

failed to recognize the importance of treating the question as one about the importance of text and took it as an opportunity to range widely on the death penalty instead. Question 7 (judicial techniques) was rightly seen as requiring a discussion of the role of proportionality, but the better answers located that discussion in a wider comparative discussion of other techniques. Question 7 (dignity) was one of the less popular questions, perhaps because it required quite a discussion of the concept in two quite specific contexts. Question 8 (affirmative action) was generally well answered, although too few really got to grips with what the idea of 'substantive equality' really involved. Question 9 (Muslim dress) tended to give rise to answers that were more descriptive than analytical and were relatively thin in discussing the second part of the question. Question 10 (theoretical analyses of freedom of speech) gave the opportunity for a thorough discussion of the differing theoretical bases, but the range of free speech jurisprudence drawn on to test the utility of differing approaches was often limited.

CORPORATE FINANCE LAW

The exam was taken by 31 candidates, 23% of whom obtained a First. The most popular questions were questions 2, 3, 4, 6, 7 and 9. Question 8 had only one taker, but all questions were attempted. The question on take-overs (Question 3) reflected a good grasp of the American literature but answers would have benefited from an analysis of the Take Over Directive (particularly "Breakthrough"), and of pre-bid poison pills. The answers to question 6 (Market Abuse) would have been improved by a more detailed analysis of the provisions of FSMA. The answers to question 4 (sixteen candidates) while often referring to solvency tests failed, on the whole, to appreciate the regulatory difficulties with this type of approach. Overall, the standard of answers was very competent.

INTELLECTUAL PROPERTY RIGHTS

While IPR this year was divided into copyright and patents, the exam paper was not similarly divided with students able to answer any three questions. The result was that most students confined themselves to copyright; only two essays on patents were written. The standard however was very high, with all students demonstrating a reflective engagement with the materials and issues.

COMPARATIVE PUBLIC LAW

The paper in Comparative Public Law was done well this year. There were some very good distinction marks and no weak scripts. There was some difference in the marks as between BCL and MJur, but there were also some very good MJur papers that secured distinctions.

The most popular questions were those on proportionality, legitimate expectations and the impact of fundamental rights on judicial review.

All candidates managed to combine case law analysis, and more normative analysis of the issues raised by the questions. The best of the candidates who secured distinctions were particularly skilful in this regard. This was especially commendable, given that candidates were commonly required to deal with material from two or three legal systems in each of the questions on the paper.

EUROPEAN BUSINESS REGULATION

The overall standard was high. Some candidates achieved lower marks than they might because their answers did not address sufficiently directly issues raised by the questions they chose to answer. Fairly detailed knowledge of the case law of the Court of Justice was particularly important in answering certain questions, e.g., those concerning removal of barriers to trade (such as Question 3), State aids (Questions 9 and 10), and public procurement (Question 11), and candidates who demonstrated such knowledge, coupled where appropriate with reference to critical comment on the relevant case-law in the academic literature, achieved high scores. More generally, some candidates particularly impressed the examiners with their ability to answer questions by reference to a combination of theoretical analysis, case-law, illustrative examples from European legislation, and academic literature.

EUROPEAN EMPLOYMENT AND EQUALITY LAW

8 candidates sat the exam this year. This was a set of scripts of widely varying standard. 3 students got distinctions, 3 marks between 60 and 65, and 2 marks below 60. Disappointingly, some students failed to develop clear lines of argument in their answers, and did not demonstrate a willingness to develop their own critical perspectives in light of the scholarly debates.

Not all questions were attempted and there was considerable variation in popularity. No student attempted Question 1 on the European social model. Question 2(a), on grounds of discrimination, had 3 responses of varying quality. Students were expected not only to compare and contrast the various prohibitions in terms of their scope, nature and exceptions thereto, but also consider whether these variations amounted to a hierarchy. Stronger answers outlined both possible rationales for this hierarchy, and considered the advantages as well as more obvious disadvantages of this situation. Question 3(b) on the gender pay gap was also answered by 3 students, and again answers varied in quality. Students were required to examine the law and cases critically and identify further action required, if any. Weaker answers failed to identify alternative policy tools with sufficient specificity. 3 students answered Question 4 on the EU Charter of Fundamental Rights. Weaker answers lacked the requisite degree of depth and detail. Question 5, on job security, was popular, and again prompted answers of varying strengths. Stronger answers dealt with the various interpretations of 'job security' and examined a wide range of legal instruments. Only 2 students answered Question 6 on participation, consultation and information rights. Question 7 on the Working Time Directive was the most popular question. Stronger answers combined a thoughtful examination of the notion of 'flexibility' with close attention to the various obligations in the Directive and caselaw thereon. Weak answers gave a narrow, selective account of the Directive. Question 8(a) prompted 3 very good answers. A challenging question, it provided stronger students with the opportunity to draw together insights from across the course in their evaluation of various regulatory tools. Only one student attempted Question 8(b).

INTERNATIONAL ECONOMIC LAW

There were 34 students who wrote the International Economic Law examination paper. The level of performance of these students was, in overall terms, very good. More specifically, 8

students (24% of the total number of students) achieved a distinction (first class) mark; 24 students achieved a mark in the 60's range.

Among those who obtained marks in the 60's, there were 3 students who obtained a mark of 68%. These students may likely have achieved a higher, possibly distinction class, mark if they had integrated a greater degree of analysis of the material being considered into their answers instead of employing a more descriptive approach.

More generally, a number of papers would have scored higher if they had answered the specific question being asked rather than providing a formulaic, general essay on the topic of the question.

INTERNATIONAL DISPUTE SETTLEMENT

The scripts contained few surprises. The very best showed a keen awareness of how topics treated at different stages of the course related to one another, and had plainly read and understood not only the meaning but also the significance of many of the key items among the primary materials discussed in the course. The weakest scripts offered imperfectly-remembered summaries of textbooks and handouts relating to whatever topic was thought to be closest to the question asked. Every year it is emphasized that the most important advice that can be offered to examinees is to read the question and to consider precisely what question is being asked.

The clearest examples of the perennial deficiency were found in the answers to question 1. For no obvious reason several of those who answered this question decided to treat it as a question asking how States might become bound to submit cases to the ICJ. Those who saw that the ICJ is only one among many tribunals (some of which have a jurisdiction which, if not precisely compulsory, is at least an essential condition of access to wider international regimes – eg. the WTO dispute settlement panels, and the ITLOS), that States choose to accept the jurisdiction of other tribunals (eg. tribunals under BITs), and that tribunals are by no means the only process available for the settlement of disputes, were well rewarded. So, too, were those who grappled seriously with the questions of (a) how the “effectiveness” of international law should be judged, and (b) whether and to what extent that effectiveness depends upon a ‘compulsory’ system for the settlement of disputes.

Answers to other questions suffered, in varying degrees, from similar shortcomings.

That said, the scripts demonstrated a good overall grasp of the principles in this area of the law and an awareness of current developments and areas of controversy.

ROMAN LAW DELICT

There were four candidates for the BCL and one for the MJur. All candidates scored high 2.1-s, with one candidate in the BCL who scored a First. No question chosen showed problems in the answering, the distribution was reasonable in as far as can be said with this number of participants. All in all a highly gratifying result.

PHILOSOPHICAL FOUNDATIONS OF THE COMMON LAW

There were 15 candidates for this paper. Five scored 70 or above, six scored between 65 and 69, and four scored below 65. The top mark was 72 and the bottom mark was 59.

The best few papers were rich with ideas, and presented new and sometimes surprising connections among those ideas. However the bulk of candidates aspire to write mainly secondary literature, surveying and (up to a point) adjudicating the familiar debates. As in previous years the question paper allowed candidates to write more law or more philosophy according to their tastes and aptitudes. Few candidates achieve a perfect integration. In particular, those who write more philosophically tend to shy away from doctrinal detail, and to avoid questions which require attention to doctrinal detail, such as the question on this year's paper about causation. In fairness, a three-hour three-question examination paper does not give candidates the opportunity to display all of their legal and philosophical abilities together. With this in mind, the achievement of candidates taking Philosophical Foundations continues to be admirable and all show, in their examination papers, that they have taken valuable skills and insights away from the course.

GLOBAL COMPARATIVE FINANCIAL LAW

Altogether 74 students wrote a paper in the examination. There were 23% distinctions and only 15% of the students fell below 60%.

In general the results were impressive and showed a commendable and enthusiastic grasp of the issues the course was aiming to cover. The students showed an equal facility in handling both transactional questions and those with an ideological or doctrinal ambit, as well as a sound comprehension of the comparative dimension and an ability to cite examples from many jurisdictions round the world where this was appropriate. Comparative data, doctrine, and deals.

Syndicated credits and securitizations remained transactional favourites closely followed by some perceptive essays on capital adequacy regulation and some argumentative sallies on the justice of the bankruptcy ladder. The nuances of loan transfers were the next most popular subject and were well handled. Trustees for creditor groups, security interests, netting and a question on governing law, jurisdiction and sovereign immunity drew equal interest with some thoughtful and well-informed answers. Pleasingly, the traditional general question – this time on the role of the doctrine of false wealth in financial law – attracted a much higher proportion of takers than has been the case with the general question in previous papers; the analysis of this highly doctrinal but crucial issue was forceful and delivered with conviction.

GLOBALIZATION AND LABOUR RIGHTS

All the candidates had an excellent detailed knowledge of the material, but, as the examiner's report also noted last year, there was a disappointing lack of analysis and argument in many of the answers. Question 1 (relationship between labour rights and human rights) was a difficult question but, even taking that into account, answers seldom went beyond the obvious and frequently lacked specificity. Question 2 (Sen's capability approach) was not answered by any candidate. Question 3 (on the WTO Singapore Ministerial Declaration) proved one of the most popular questions, and was generally well handled, eliciting several very sophisticated analyses

of the concept of comparative advantage. Question 4 (ILO Declaration) was also highly popular and generally well answered. Question 5 (IFIs and labour rights) was relatively poorly answered, with relatively set piece answers on the OECD and the World Bank not being integrated into a more coherent overall assessment of the role of IFIs more generally. Answers to question 6 (US Alien Tort Claims Act) tended to focus more on the first part of the question than the second, which was intended to provide an opportunity for discussion of judicial unilateralism. Answers to question 7 were too frequently marred by concentrating only on discussions of contrasting approaches on GSP. Question 8 (on Corporate Social Responsibility) was generally well answered, with several interesting contributions on the potential tensions with legal protection. Answers to question 9 too often suffered too limited an understanding of the potential breadth of plurilateral trade and investment agreements outside the WTO. Question 10 (Appellate Body's approach to WTO agreements) was very popular and often well answered. Questions 11 and 12 elicited few answers.

EUROPEAN PRIVATE LAW: CONTRACT

There were twelve scripts altogether, seven of them MJur. Ten questions were offered. Apart from the one on the 2006 Resolution of the European Parliament on a European Contract Law, all of the questions were attempted. The most popular were on pre-contractual negotiations (answered by all candidates) and on 'indicia of seriousness' (nine answers). Most candidates had heeded the warning not to rehash pre-rehearsed essays and paid sufficient attention to the questions. The examiners were able to award only one distinction mark, but with only one exception all the other papers sat comfortably in the 2:1 range. The best answers showed a remarkable ability to reflect and critically assess solutions in more than two legal systems, to look for the underlying reasons for differences or similarities and to make skilful use of original sources from different jurisdictions.

EUROPEAN UNION AS AN ACTOR IN INTERNATIONAL LAW

The course ran for the third time this year. The examination was taken by fourteen candidates. The examination performance by students was extremely pleasing this year. There were five distinction class marks; seven marks between 65-69% and only one mark below 60%. With the exception of questions 3, 11 and 12 every question was answered by one or more candidates. There was a clear preference for questions 2 and 7 which attracted eight and seven answers, respectively.

The general standard of exposition in the answers was very high with an in depth treatment of the substantive issues. The performance of students could have been further enhanced if they had engaged more fully with the case law of the ECJ and had put forward their own position on the question more distinctly.

INTERNATIONAL LAW AND ARMED CONFLICT

24 candidates sat this paper, 10 more than in the previous year. Although there was a good proportion of distinction marks (25%), there was a greater proportion of weak papers than in the previous year with 2 marks below 60 and a few between 60 and 62. The best answers were those which were directed at the specific question asked, clearly written, well structured, made good

arguments that displayed a depth of thinking about the subject and made good use of legal authority and literature. The main faults in the weaker answers tended to be the generality of the answers and the failure to consider precisely what the question requires of them.

Q.1: A very popular question which was answered very well by most who attempted it. Answers focussed on the failure to utilise the agreements provided for in Art. 43 of the UN Charter, the relationship between Arts. 42 & 43, the development of UN peacekeeping and the role of the General Assembly in peace and security issues.

Q. 2: Another very popular question which generated some very good answers. There was excellent discussion of the text of the Charter, of the Nicaragua and Wall cases, as well as of the post 9/11 practice regarding use of force in response to attacks by non-State entities. Some of the best candidates were able to weave discussions of the Caroline incident and pre-Charter practice into their arguments.

Q.3: Only one candidate attempted 3(a). However 3(b) was attempted by many candidates with a variable quality of answers. Some answers discussed both universal jurisdiction and immunity, while some focussed on just the latter. Weaker candidates concentrated on the former without seeming to realise that since the question related to prosecution of officials of foreign States the question of immunity ought to be central.

Q. 4: Surprisingly question 4(a) was not popular. However, most of those candidates that answered it, did very well with some very good discussions of the significance of the distinction between international and non-international armed conflict and the current status of this distinction .

Most candidates who answered Question 4(b) did well. The best answers discussed the nature of the conflict (international or non-international), the relevant criteria for POW status but then moved on to considering protections accorded by Common Article 3 of the Geneva Conventions, the 4th Geneva Convention as well as human rights law.

Q 5: Although answers to this question were good, few excelled. Most considered the extraterritorial application of human rights law but were unable to make arguments which took into account the differing jurisprudence of the various international human rights tribunals. There was also limited attempt to explain what it might mean to say that international humanitarian law is *lex specialis* when both IHL and human rights law apply.

Q6: Another question in response to which there were few excellent answers. Some candidates did not address both of the points made in the quote, focussing only one aspect. In discussing the limits on the ICC's jurisdiction some candidates chose to focus only on immunity missing the opportunity to discuss complementarity and even Art. 98(2) agreements.

Q: 7: Very few takers. No answer was excellent. While candidates had a good enough understanding of the meaning of the concepts in the *jus ad bellum*, there was insufficient focus on the *jus in bello*.

Q: 8 Only one candidate attempted this question.

JURISPRUDENCE AND POLITICAL THEORY

Of the 28 candidates for Jurisprudence and Political Theory, none scored lower than 62 overall, while ten scored 70 or above. Eight of these scored 70 or 71, while the winner of the Herbert Hart prize scored 74. The most popular question, attracting 18 answers, was question 1 (on historical entitlement principles of justice), closely followed by question 6 (on a possible tension in John Finnis's work) which attracted 16 answers. The rest of the answers were more or less evenly spread across questions 2, 3, 4, and 5.

These days, the quality of research, organisation, and presentation in the Jurisprudence and Political Theory essays is uniformly (or almost uniformly) professional. The main axes of differentiation between candidates are rigour of argumentation, relevance to the question asked, and originality. This year there were problems of relevance in many answers to question 3, which (using a quotation from Hart) asked about the very possibility of 'the creation, imposition, modification, and extinction of obligations'. A majority of the ten candidates who attempted this question read it, without explanation, as a question about the possibility of positivistic (or source-based) criteria for the validity of legal rules. No doubt the question did raise this issue but some explanation was needed of how, and some consideration was also needed of the other situations in which obligations are created, imposed, modified and extinguished (e.g. by promising). The absence of such discussion was notable even in some of the (otherwise) best answers, and the assessors needed to make a policy decision about how to register it in the marks. In the end the penalty applied was modest (in the order of 2 to 4 marks) but the episode did raise some anxieties about the way that candidates approach their assignment, perhaps gravitating too quickly towards interpretations that make the questions seem more familiar and less in need of fresh thought. This connects relevance with originality: a candidate who treats a question as an old chestnut (when it isn't) has less scope to write something interestingly new.

Some of the more original ideas, as well as some of the closest argument, featured in answers to question 1 (on historical entitlement principles of justice) and question 5 (on the overridingness of justice). More predictable, by and large, were answers to question 2 (on the need for every legal system to contain at least one social rule) and question 4 (on the idea of public reason), although question 4 also elicited a couple of quirky answers, to mixed effect. Question 6 (on a possible tension in John Finnis's work) elicited a pleasing variety of different responses, revealing a wide diversity of philosophical influences and dispositions in this year's class.

Yet the overall quality of work submitted by this year's class was perhaps less diverse than has sometimes been the case in the past, and in particular was in contrast with last year's rather dramatic polarisation. The bulk of candidates scored in the range 65 to 70. At the top of this range were candidates who already showed themselves ready to write an MPhil thesis in the field. Even towards the bottom of this range, however, quality was commendable. There was a very satisfying amount of philosophical rigour and evidence of careful reading on display. The disappointment was that this year there were relatively few candidates who displayed such exceptional originality (in their ideas or their approach) as to break away from the pack at the top end. Perhaps even the most talented candidates are increasingly disposed to play it safe by staying quite close to chartered territory, thereby reducing the chance of a prized 75 while increasing the certainty of something in the crucial 68 to 70 range. They would do better to push the boat out.

APPENDIX 7

External Examiner's Report

BCL/MJur 2006-2007

I was asked to review all the examination papers and I attended the two meetings of the exam board in July to classify the degrees.

I received all the information that I needed in good time. The meetings were conducted expertly and efficiently. I have every confidence in the procedures adopted by the Faculty and the fairness and accuracy with which they were administered. I should like to add my appreciation to that of the Board to the skilful and helpful way in which the secretary, Ms Julie Bass, discharged her responsibilities.

In the main, the exam papers were substantively and formally appropriate. There were one or two cases where the quite detailed instructions as to form given to the examiners were not complied with and one case, where the presentation of the paper was quite unacceptable. The paper was littered with errors and inconsistencies and I was concerned that the cavalier approach to the formalities would be reflected in the substantive aspects of the paper. I was assured that this was not the case and that special consideration had been given to the paper. I should not deal with a paper in such a state again. I say this not out of a sense of self-regard but in consideration of the interests of the Exam Board, whose members should not be expected to put right the carelessness of their colleagues. I understand that the meeting on the papers was very long. Individual examiners must take seriously their obligation to comply with their instructions and address themselves carefully to the construction their papers so that the burden on the Board does not become excessive.

The classification meetings were relatively uncomplicated occasions because of the simplicity of the conventions. Every care was exercised by the Board and all results were studiously checked. There were one or two matters of principle which were resolved by the Board, to my entire satisfaction. I agree that the precise nature of the classification conventions and the very limited discretions available to the Board should be emphasised to all examiners, included those who mark undergraduate papers taken by postgraduate degree candidates, and to the candidates. It would be helpful if information as to how the discretions have been exercised were available to subsequent Examining Boards, subject always to its persuasive rather than its mandatory character.

The results were very good, as is to be expected of high quality candidates taught intensively by subject experts. In the fields in which I have some knowledge, I was impressed by the range of the questions, which expected a good deal of the students.

Colin Warbrick
30.vii.2007