

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

REPORT OF THE BOARD OF EXAMINERS FOR 2008

1 Introduction

The following paragraphs contain a brief commentary on various central aspects of this year's examinations, and raise a number of points which the Examiners believe may be important for those who have oversight of the examination of BCL and MJur candidates in future years.

2 Timetable

The setting of the timetable for this year's examinations went smoothly. As in 2007, papers were sat on two Saturdays and the problem of candidates having two papers on the same day was almost wholly avoided.

3 Statistics

Attached at Appendix 2 are the numbers of entrants, distinctions, passes, and fails. As in 2007, the percentage of candidates gaining distinctions in the BCL was very high – 40% – but only 15% (rounded up) in the MJur.

As in 2007, there were also notable differences in the performance of male and female candidates. Thirty-five per cent of the male candidates (BCL and MJur) gained distinctions; 21% of the female candidates (BCL and MJur) did so (61% of the total cohort of BCL and MJur candidates was male; 39% was female).

When the figures for the BCL and MJur and for male and female candidates are disaggregated, it is clear that 46% of male BCL candidates gained a distinction whereas 31% of female BCL candidates did so, and that 22% (rounded up) of male MJur candidates gained a distinction while 5% (rounded up) of female candidates did so. The winner of the Vinerian Scholarship (for best performance in the BCL) was female, the winner of the Clifford Chance Prize (for best performance in the MJur) male.

The Examiners wish to express their particular concern not only about this year's figures, but about the fact that they appear to form part of a year-on-year pattern. They strongly hope that the Law faculty will investigate the situation as a matter of urgency and take appropriate action.

The abolition of the credit system did not appear to the Examiners to have made a noticeable difference, when viewed in the light of earlier years' statistics, to the percentage of candidates who obtained Distinctions.

4 Computer software

The computer software worked satisfactorily.

As in 2007, 'Turnitin' software was used to check for plagiarism in Jurisprudence and Political Theory essays. There were no significant problems with the application of this software.

5 Setting of papers

All draft papers were delivered in sufficient time for the Examiners to consider them, and the Examiners went through the draft papers line by line. Although the standard of presentation of the draft papers was good, the Examiners had to make some effort to ensure that questions conformed to the 'Oxford style' (for example, by avoiding loose phrases such as 'in your view' and 'do you think that', ensuring that no superfluous word was used in essay questions, and avoiding superfluous detail in problem questions).

The Examiners would hope that in future, it might be possible for the setters of papers in subjects with adjoining subject-matters to anticipate queries from the Examiners about the possibility of overlap by talking with one another to a greater extent before submitting their drafts.

6 Information given to candidates

The Edicts are attached as Appendix 3.

7 The written examinations

The examinations went smoothly. The Chair of Examiners attended for the first half hour of each examination, as did the setter or an alternate. The Chair also attended at the conclusion of each paper. As in previous years, the Examiners wish to emphasise the importance of the Proctors' requirement that the setter or an alternate be present. The invigilators are competent and experienced individuals, but the presence of a person familiar with the content of the paper is sometimes vital.

Some candidates appeared to take a little while to 'settle' into their early examinations (in particular, failing to be as orderly as might have been desirable when entering and leaving the examination room). Given that most candidates have not taken a first degree at Oxford and have no experience of the Examination Schools, the Examiners would emphasise the need for College tutors to inform candidates of the need to familiarise themselves with the rules governing examinations and the importance of listening to and obeying the instructions given by invigilators.

Because there were examinations on two Saturdays, as last year, Colleges with candidates taking papers on those days were asked to provide contacts available to deal with any problems, including emergencies. This turned out to be a wise precaution.

8 Materials provided in the examination room

The Examiners wish to note, in line with previous Examiners' reports, the considerable expense involved in the provision of statutory materials by the University (as well as the waste of paper involved when relevant primary and secondary legislation changes on a year-on-year basis). The possibility that candidates be able to use their own materials should be urgently reconsidered.

9 Marking and remarking

The routine marking of scripts prior to the first marks meeting of Examiners included the second marking (blind) of borderline scripts, and of a sample of others. Where a script had been double marked, the markers submitted an agreed mark before the first meeting.

Since first markers were asked to send all papers with a final mark ending in 8 or 9 (if not already in the sample batch) to second markers before the first marks meeting of Examiners, the amount of double-marking between the two marks meetings was relatively tightly controlled.

In line with the Examinations Committee's instructions, the Examiners applied the following approach to borderline scripts and candidates: when the Examiners considered in the first marks meeting whether to call for a further marking in a borderline case, they confined such requests to near-borderline or borderline scripts which had not been twice marked initially and where the adjustment of a mark would make a difference to the candidate's overall classification. This approach rested on the premise, adopted by the Examinations Committee, 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 blind 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 more favourably than other candidates.

If such an approach is to be retained in future years, the Examiners would wish to emphasise the importance of ensuring that all borderline scripts are double marked before the first marks meeting, and of appreciating that an agreement between two markers to leave the final mark for a script at a figure ending in 8 or 9 will not be taken by the Examiners as an invitation to send the script back for a third reading.

The Examiners also 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 between the Examiners' first and second marks meetings.

10 Medical Certificates, dyslexia/dyspraxia and special cases

Thirteen medical certificates were forwarded to the Examiners. In addition, two candidates (one of whom also had a medical certificate) were certified as dyslexic.

Seven candidates wrote some or all of their papers in their respective colleges. A further four candidates wrote some or all of their papers in a special room in the Examination Schools.

The following additional specific details are included at the request of the Proctors. In the BCL, four medical certificates (from 4.71% of BCL candidates) and in the MJur, two medical certificates (from 3.39% of MJur candidates) (4.17% of BCL and MJur candidates combined) were forwarded to the Examiners under sections 11.8 – 11.10 of EPSC's General Regulations for the Conduct of University Examinations (see *Examination Regulations 2007*, page 34). In one of these cases the candidate's final result was materially affected.

11 Thanks

We would like to conclude by expressing our warm thanks to our External Examiner, Professor Colin Warbrick, and by thanking and paying tribute to the dedication, hard work, skill and good judgment of those who ensure that the examinations process is conducted as

smoothly as it is, in particular, the Faculty's Director of Examinations (Ann Kennedy), and Examinations Officer (Julie Bass).

N.C. Bamforth (Chair)

S.D. Fredman

J.A. Freedman

W.J. Swadling

Appendices to this Report: (2) Statistics; (3) Notices to Candidates; (4) Prizes and Awards; (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 2008

Marks distribution 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 | 67.3 | 19 | | | | 16 | 53 | 32 |
| Comparative Human Rights | 66.5 | 40 | | | 3 | 20 | 58 | 20 |
| Comparative Public Law | 66.3 | 15 | | 7 | 7 | 13 | 33 | 40 |
| Competition Law | 66.7 | 23 | | | | 30 | 48 | 22 |
| Conflict of Laws | 63.5 | 31 | 6 | | 3 | 42 | 23 | 26 |
| Constitutional Theory | 66.5 | 17 | | | 6 | 24 | 53 | 18 |
| Corporate and Business Taxation | 66.9 | 16 | | 6 | | 13 | 50 | 31 |
| Corporate Finance Law | 65.2 | 40 | | 3 | | 38 | 38 | 23 |
| Corporate Insolvency Law | 66.9 | 23 | | | | 22 | 48 | 30 |
| Crime, Justice and the Penal System | 65.5 | 6 | | 17 | | | 50 | 33 |
| Criminal Justice and Human Rights | 68.7 | 14 | | | | 7 | 50 | 43 |
| European Business Regulation | 65.8 | 23 | | | 4 | 30 | 39 | 26 |
| European Community Environmental Law | 67.3 | 3 | | | | 33 | 33 | 33 |
| European Employment and Equality Law | 68 | 6 | | | | 17 | 50 | 33 |
| Evidence | 67.4 | 10 | | | | 20 | 40 | 40 |
| Global Comparative Financial Law | 63.8 | 47 | 2 | 6 | 4 | 36 | 28 | 23 |
| Intellectual Property Rights | 67.9 | 13 | | | | 15 | 38 | 46 |
| International Dispute Settlement | 64.9 | 43 | | 5 | | 33 | 47 | 16 |
| International Law and Armed Conflict | 66 | 29 | | 3 | | 24 | 48 | 24 |
| International Law of the Sea | 67.2 | 6 | | | | 17 | 50 | 33 |
| Jurisprudence and Political Theory Essays | 67.1 | 27 | | | 4 | 22 | 41 | 33 |
| Law and Society in Medieval England | 67 | 2 | | | | 50 | | 50 |
| Law in Society | 69.2 | 5 | | | | 20 | 20 | 60 |
| MJur Dissertation | 62.4 | 12 | | | 25 | 58 | 17 | |
| Phil. Found. Common Law | 65.6 | 13 | | 8 | | 31 | 23 | 38 |
| Principles of Civil Procedure | 66.6 | 16 | | | | 25 | 44 | 31 |
| Restitution | 66.5 | 27 | | | 7 | 15 | 48 | 30 |
| Roman Law (Delict) | 68 | 4 | | | | | 75 | 25 |
| Socio-Economic Rights & Substantive Equality | 67.8 | 10 | | | | 10 | 50 | 40 |
| The Law of Personal Taxation | 67.5 | 2 | | | | | 100 | |

APPENDIX 6

INDIVIDUAL REPORTS

CORPORATE AND BUSINESS TAXATION

This was a good set of scripts overall. Every question was attempted by at least three students. The problems were less popular than the essay questions but some of those who did problems did them very well indeed.

The first question required a good knowledge of some of the more theoretical literature and well as an understanding of the mechanics of a corporation tax. Almost all those who attempted it had the requisite knowledge and several showed sufficient depth of understanding to obtain distinction marks. Question 2, on the relationship between taxable and accounting profits, was also popular and mainly quite well done, but some of the answers did not discuss specific issues sufficiently. Question 3, which had a good take-up, was on the Common Consolidated Corporate Tax Base being considered by the European Commission. Candidates showed some sophisticated knowledge of the proposals in places and there were a couple of very good answers, but some did not tie that knowledge in well enough with the underlying issues. As last year, only a small number attempted the question on recent ECJ decisions on direct taxation (Q4), despite more focus than ever on this in seminars and its very great importance to the development of corporate tax in Europe and elsewhere. The case law and issues raised are very difficult (as the UK government is finding!) and students were wary, but those who did attempt the question showed that it could be answered well.

Question 5, on corporate groups, attracted the best individual mark given in the examination and was mostly well done by others, with good discussions of the problems encountered by those drafting the tax statutes and the issues thrown up by the case law. The candidates who did less well on this question answered it too generally and did not address the detailed definitional problems as they were asked to do. The few who answered question 6, on the topical issue of the exemption versus credit system of double taxation relief for corporations, answered it very well indeed. Question 7, on the subject of corporate residence for tax purposes and its implications was also a minority taste but was tackled competently by those who did it. Question 8 was a problem question on income tax and corporation tax. Question 9 was a tax planning problem on issues surrounding small business taxation. A few students attempted each of these and some of the answers were impressively comprehensive and business like. Where the answers were less good it was because some issues were not dealt with. The problem questions both required knowledge of more than one topic. Students had been warned of this and it was clear from previous exam papers. The best of the candidates dealt with this expertly and were duly rewarded.

CRIMINAL JUSTICE AND HUMAN RIGHTS

This was a pleasingly strong group of scripts. The candidates had successfully mastered the technique of discussing Strasbourg judgments and English appellate decisions in relation to broader critical material on human rights and criminal justice policy. All the questions except

Question 1 attracted an answer, and the most frequently answered questions were Q.2 on the principle of legality, Q.4 on the use of the concept of ‘autonomous meaning’, and Q.6 on the privilege against self-incrimination. The best candidates showed that they had ranged beyond the prescribed reading, and there were some interesting answers, particularly in response to Q.8 on proportionality and Q.11 on balancing security and liberty.

CONFLICT OF LAWS

The candidates who offered this paper tended (as was intended) to write more problem than essay questions. Sensible organization was therefore the key to success. There were few general difficulties, but two should be mentioned. First, the fact that Article 23 of the Brussels I Regulation may still apply if the defendant lacks a domicile in a Member State was missed, surprisingly frequently. Second, the broader consequences and non-consequences of *Owusu v Jackson*, where a claim involves a dispute as to title to land in a non-Member State were not always well handled. Indeed, though the orientation of the problems was in the direction of non-Member States; the legal issues nevertheless required the application of EU material rather more than the corresponding rules of the common law. As to the essay questions the only real difficulty lay in the accurate mapping of the case-law under and occasioned by Dicey’s Rule 3. It may not always have been appreciated that the Court of Appeal, hemmed in by rules of *stare decisis* may have decided as it did because it had no freedom to do otherwise.

EVIDENCE

Candidates displayed a high level of competence, the ability to apply complex statutory material in a logical and comprehensive fashion and up to date knowledge of the case law.

The vast majority of candidates answered the same three problem questions – 4 (hearsay), 6 and 7 (bad character of the accused and others). The best answers to Q 4 displayed a comprehensive understanding of the hearsay legislation while finding time to address peripheral issues such as *res gestae*, lies and the nature of confessions. Candidates applied the law on bad character with greater skill than some judges and showed a good understanding of interpretative issues. It was disappointing that there were virtually no takers for the other problems, even though they raised topics covered by lectures and seminars – expert witnesses, legal professional privilege & improperly obtained evidence in civil proceedings (Q 5); identification evidence, confessions and s.78 of PACE (Q 7). Nobody chose to write on child witnesses (Q 2), another topic covered comprehensively in lectures, or confidentiality (Q 3), but the essay on judicial discretion attracted competent answers.

THE LAW OF RESTITUTION

The examination comprised nine essay questions and two problems. The standard of answers was generally high, and all questions got some takers. Question 1, which asked whether it made sense to talk of a law of restitution, was unpopular. Question 2 had many more takers, though some students, rather surprisingly, baldly suggested that Lord Goff had adopted the declaratory theory of law. Moreover, few questioned whether Lord Hoffmann’s assertion that the result in a case such as *Kleinwort Benson v Lincoln* was based on ‘practical considerations of fairness’ was an adequate justification for results reached at our highest level of appeal, or why it might be

'fair' to unwind a void contract fully performed on both sides. Question 3 had a few takers, though the answers given were quite narrowly focused, with many candidates being seemingly unaware that the notion of risk raises its head throughout the syllabus. Question 4 had some good answers, probing whether there really is an unjust factor called 'encouragement of the renunciation of an illegal design'. Questions 5, 6, 7, and 8 produced good, though unremarkable answers, though question 8 had almost no takers. By contrast, question 9 was extremely popular, though many answers limited themselves to trawling through the case-law to prove that Birks was wrong to say that English law had now committed itself to an 'absence of basis' approach. Shooting fish in a barrel is not something the examiners give many marks for, and the better answers spoke of how such a system might (or might not) work in a common law system, drawing on the experience of the mixed jurisdiction of Canada, and whether 'absence of basis' carried any normative force. Question 10 was a problem question on defences (change of position and estoppel). This was generally well done, though some candidates rather bizarrely spent time discussing whether the defendant's bank held the money received on constructive trust for the claimant. More importantly, many failed to address the question whether reliance is a constituent element of the change of position defence. The final question, Question 11, was also a problem question, this time on enrichment. This too was generally well done.

LAW IN SOCIETY

The students were an exceptionally able group, and their marks are true to our expectations of them.

Examinees had to choose 3 questions from 10. Although the paper did not distinguish between the two parts of the course, the first in law and society, the second in the anthropology of law, the students showed a definite preference for the second.

CONSTITUTIONAL THEORY

The paper was similar in format to those of previous years. On the whole, the results were very good.

Although the questions covered the full range of topics treated in the course, answers tended to cluster around questions which, for whatever reason, seemed to have particular salience for the candidates. In particular, answers to questions 4(b), 6, and 9 accounted for half of all the answers written.

Those papers achieving Distinction were notable in their fluency, range, originality and ability to draw fruitful connections among different themes in the course. Several candidates fell just below the borderline of Distinction, and did so after second-marking and reconsideration by the examiners. In comparison with the papers that attained a Distinction, these tended to be less original and somewhat narrow in their approach to the questions. Among the papers nearer the class average, the commonest weaknesses were: an excessive reliance on material drawn solely from the seminars, errors in representing the views of some writers, and a failure to address familiar objections to the answer that they favoured.

A few answers offered in place of theoretical arguments a smorgasbord of doctrinal points drawn from the constitutional law of one jurisdiction or another. The markers remind candidates

that Constitutional Theory is not a paper in constitutional law, nor in comparative constitutional law. While such material is useful in exemplifying and testing the theoretical arguments that form the core of the course, it cannot substitute for them.

CRIME, JUSTICE AND THE PENAL SYSTEM

All questions were answered bar questions 1, 3, and 9 despite the fact that students had prepared tutorial essays on some of these topics.

In general the scripts were well written, perceptive, and demonstrated wide-reading and a sound knowledge of the subject. The best scripts had an excellent command of the academic literature and drew effectively on the available research evidence to answer the questions set directly. The other scripts were generally very good but some common weaknesses included insufficient engagement with the question, failure to provide substantiating evidence, and a tendency to describe rather than to analyze the issues. That said, the general standard was very high and provided evidence of a strong command of the subject and real engagement with the issues raised by the course.

INTERNATIONAL LAW OF THE SEA

With the exception of question 2 (b) on the effect of climate change on the Law of the Sea, and question 3 on Security Council resolution 1803 and the interception of vessels transporting goods prohibited by Security Council resolutions, all questions were answered by at least one candidate.

The general standard of exposition was very high with only one candidate scoring less than 65 (scoring 63). While all candidates had a good knowledge of the law, not all were able to apply the law creatively to the questions asked. The performance of some candidates would have been even more enhanced if they had framed the issues and organized the material in a way not slavishly following the zonal approach to law of the sea questions.

LAW AND SOCIETY IN MEDIEVAL ENGLAND

There were two candidates. With such a small number no specific comment on the handling of the questions is possible.

PRINCIPLES OF CIVIL PROCEDURE

The standard of scripts was high. The most popular questions were 1(b) and 6. The former dealt with the enforcement or process requirements and the latter with aggregate litigation. Candidates showed considerable flair and imagination in answering these, as well as familiarity with the scholarship and case law. Otherwise, answers were spread fairly evenly between the remaining questions. Interesting answers were given to question 2 concerning the protection against judicial bias, to question 3(a) concerning the grounds for granting interim injunctions and to question 9 concerning litigation funding in England and in the US.

Only 2 questions failed to attract takers: question 5(a) on finality of litigation, and question 8 on the difference between private and public litigation. Both these topics were covered in lectures for the first time this year.

COMPETITION LAW

Papers submitted by candidates this year were of a high standard. A noticeable change from recent years was that more candidates tackled problem questions. Just over half of candidates answered three problem questions and no essay, and three quarters of the answers overall were to problem questions.

Essay answers were of a very high standard indeed. Of the four essay questions, rule of reason attracted twice as many answers as each of others, those being EU and UK competition litigation procedure, a comparison of theories of exploitative and exclusionary abuse and reform of EU and UK merger law.

The four problem questions covered in broad terms mergers, cartels (including a state action element), distribution and pricing abuses. The first two attracted some very good answers. It was particularly pleasing to see that candidates were prepared to tackle the difficult state action aspects of the cartel question. Distribution and pricing abuse were generally handled competently, although the candidate who asserted that the UK excluded vertical agreements from the scope of its domestic prohibition some four years ago after this exclusion was repealed – a point covered on a number of occasions in seminars and tutorials – ought to be considering an immediate application for leniency.

THE LAW OF PERSONAL TAXATION

There were two candidates, both of whom demonstrated a good understanding of the principles and detail of personal taxation.

EUROPEAN COMMUNITY ENVIRONMENTAL LAW

Three candidates sat this paper and overall the quality was good. Very good responses to the questions were those in which candidates addressed the question asked in subtle and appropriate detail using material from right across the course. Weaker answers were those that tended to engage in a more formulaic and general discussion of legal issues.

COMPARATIVE HUMAN RIGHTS

The general standard of the answers was good. As in previous years, the paper was quite specific in terms of what was asked for in each question. Candidates in future years should take seriously the often-repeated advice to answer the question asked. This year, as in previous years, those who responded appropriately to the specifics were rewarded; those who did not were penalized. In general, there was a good spread of questions answered, both across those taking the examination as a whole and also individually, with all questions except question 7 (on civil law vs common law approaches to human rights) being answered by at least one candidate. It

was disappointing that question 7 elicited no answers as it would have provided an interesting opportunity for candidates to apply a well-known comparative law distinction to human rights adjudication. On average, and recognising that there were several exceptions, M.Jur. candidates, despite extensive tutoring, appeared less able to address the questions asked with the degree of analytical rigour and detail required.

This year, more questions than last year were set which required consideration of cross cutting themes, usually in the context of one or more specific substantive issues. Question 1 (quotation from Casey on ‘dignity’ in context of abortion) was quite well done. There was, however, a tendency not to discuss the (rather different) use of dignity in the Gonzales case, and a general ignorance of the use of dignity in the Hungarian Constitutional Court’s abortion jurisprudence. Question 2 (procedural adaptations of courts) was relatively unpopular. Few that attempted it answered the question asked, which was intended to generate a discussion of how far courts in different jurisdictions have introduced changes in the processes they use to adjudicate human rights claims, such as issues of proof, what types of evidence are allowable, issues of remedies, etc. A general tendency was identifiable this year, and the answers to this question illustrate this well, for candidates not to risk straying off the safer path of answering variations on questions that have a familiar ring to them rather than attempting something more novel. Question 3 (torture) was well answered, although relatively few candidates picked up the distinction in the International Convention against Torture between the prohibition on torture on the one hand (no exceptions) and the prohibition on inhuman and degrading treatment (possible exceptions). Question 4 (quotation from Scalia) was relatively poorly answered, with weaker candidates apparently seeing the open ended drafting of the question as an opportunity to speak only in (rather bland) generalities. Question 5 (religious beliefs as an escape from general legal obligations) was competently answered, with most candidates being familiar with the basic US case law, but usually less familiar with the non-US cases. Question 6 (‘right to life’) was well answered, with some interesting answers on the different interpretations of the principle in the context of the death penalty and the use of lethal force by the security forces. Those who answered question 8 (margin of appreciation) without discussing the role of the European Court of Human Rights as an international court were penalised. Question 9 required comparison between the use of comparative and the use of international legal materials. Many candidates ignored the reference to “international legal materials” in the question and were content to discuss only “comparative legal materials”, sometimes assuming that the two were treated the same across jurisdictions. Question 10 (affirmative action) was generally well answered, Several candidates drew on the idea of “substantive equality” in addressing the relationship between equality and non-discrimination in this context, although (as with last year) too few really got to grips with what this concept meant.

SOCIO-ECONOMIC RIGHTS AND SUBSTANTIVE EQUALITY

The standard was generally high. There was generally an even spread of questions attempted, with questions 2 (progressive realisation) and 3 (positive action and liberty) being the most popular and only one candidate attempting question 6 (judicial and non-judicial methods of enforcement).

Responses were marked according to the following criteria: (i) structure, line of argument and focus on the question; (ii) use of primary materials, particularly in respect of comparative methodology; (iii) use of secondary materials and critiques; (iv) standard of critical analysis and innovative thinking. The use of primary and secondary materials was uniformly good, with

more variation in the standards achieved on the first and fourth criteria. Some candidates were tempted to give a general discussion of a topic rather than focus on the essay question, and some gave too little attention to the quotation given. This also had the effect of making it more difficult to include focussed critical analysis. This was particularly the case with question 3, where some candidates tended to ignore the quotation from Sunstein drawing attention to an idea of liberty as State action rather than inaction. The best candidates were able to integrate the challenge represented in the quotations into their responses.

CORPORATE FINANCE LAW

The standard of answers was high, with some outstanding scripts. All of the questions were answered, the most popular being questions 2, 4, 5, 6, 7 and 8. There was a fairly even distribution between equity and debt answers, and a significant number of candidates tackled question 10 which required a comparison of debt and equity as a corporate governance tool. These answers were generally very good. On the whole the answers were extremely strong on policy and overarching principle, though some scripts could have demonstrated a greater grasp of the analytical detail. The principal weakness in the answers was that some candidates did not focus sufficiently on the particular question asked, and instead produced a general answer to the topic under discussion. This was particularly obvious in relation to answers to question 9 which prompted some candidates to discuss capital maintenance generally, rather than to address the particular issue raised in the quotation. In addition, some of the weaker answers to question 5 discussed market abuse generally without much reference to the issue of enforcement, and weaker answers to question 6 failed to discuss the methods by which ordinary company law principles might govern the "other issues" referred to in the question, principally the relationship between the directors and shareholders in the target company. However, on the whole candidates displayed a good knowledge of the legal issues and the literature in this subject, with some candidates prepared to develop original and interesting arguments, for which they were well rewarded.

CORPORATE INSOLVENCY LAW

The overall standard was very good. The Examiners were particularly pleased at the absence of any really weak scripts at the bottom end. All questions were attempted, although the essay questions proved more popular than problems. Questions 1, 2, 4, 7 and 8 were particularly popular.

Two general observations, both positive, are worth making. First, candidates were generally very successful in structuring their answers to essay questions so as to engage directly with the particular question set. One exception to this was question 2, for which a number of candidates chose to write solely about the destination of recoveries from office-holder actions, without mentioning the other ways in which different groups of creditors benefit (or not) from liquidation proceedings. Secondly, the better scripts in particular demonstrated careful independent thought on the part of the candidates. This was reflected in the fact that candidates sought to defend a range of positions on contentious issues, with no clear consensus emerging from the scripts.

INTELLECTUAL PROPERTY RIGHTS

The standard of answers on the IPR papers was high overall. Of 39 answers, 19 were on copyright, 14 were on trade marks, and 6 were on patents. All students except two answered questions relating to copyright and trade marks; with the two exceptions each answering three questions on patents. The standard was higher in copyright and patents than trade marks. Students' answers demonstrated a good grasp of the law and its theoretical underpinnings.

COMPARATIVE PUBLIC LAW

This was the first year in which BCL candidates as well as those taking the MJur only had to answer three questions. The paper was done well by both BCL and MJur candidates. The candidates who secured distinctions were able to combine a good understanding of the positive law of the legal systems studied, with a subtle appreciation of the normative issues that were relevant to the questions set. The most popular questions were those on misuse of power, proportionality, review for error of law and the impact of human rights on judicial review. Candidates on the whole showed a good understanding of the primary sources, although some were less good in integrating the secondary literature. Relatively few candidates attempted the questions on damages liability, but those who did so handled the topic well.

EUROPEAN BUSINESS REGULATION

The scripts were generally impressive. No candidate even flirted with disaster, many wrote well-informed and thoughtful answers and several scripts were truly splendid. Questions 2, 3, 9, 10 and 11 were the most popular. Question 2 was generally well handled. Most candidates fully understood the limits to judicial review of legislative acts in the light of subsidiarity but it would have been possible in some cases to consider more fully other methods for monitoring compliance with subsidiarity. Question 3 attracted some very insightful comment on mutual recognition as a device for securing respect for diversity in the EU. Both the problem questions (10,11) were well handled: candidates seemed more comfortable dealing with this type of question than has been the norm in the past and there were in particular some very thoughtful discussions of the ambiguous case law which had to be tackled in addressing Q.11 on state aids.

EUROPEAN EMPLOYMENT AND EQUALITY LAW

The quality of all scripts was very strong. All candidates attempted question 7 on the right to strike, unsurprising in view of the recent decisions in *Viking* and *Laval*. Weaker answers simply analysed the two cases, while the better candidates offered a more comprehensive assessment of the right to strike, putting the two cases into the context of other legal developments. All candidates attempted question 1 on equal pay; here the better answers identified and assessed the goals (whether social or economic) reflected in the case law, rather than simply reciting the cases and offering a general critique. The rest of the questions attracted only one or two answers. In general the weaker answers tended simply to consider generally the relevant law; the stronger answers went further to link this analysis to the main concern raised by the question.

INTERNATIONAL DISPUTE SETTLEMENT

Every question on the paper was attempted by some candidates; and there was no topic on which answers were significantly better or worse than any other. The quality of the answers was good, with considerable evidence of candidates having read around the subject, well beyond the coverage of the standard textbooks. Such wider reading was rewarded in the marking of the scripts, as was (as ever) attention to the precise focus of the questions posed. Similarly, those who showed imagination and creativity in drawing analogies and distinctions between different bodies of law scored highly.

The most evident strength of this year's scripts was the way in which candidates had taken the trouble to keep abreast of current developments in the field – itself no doubt a reflection of the intelligent use of the considerable range of on-line resources available for this subject. There were no real weaknesses evident in the scripts taken as a whole though there was, as usual, a marked tendency for the weaker scripts to cling too tightly to the content and structure of the basic texts and of lecture handouts, and to adopt a somewhat abstract approach to questions, detached from political and commercial realities.

Overall, a sound set of papers from a talented group of students.

ROMAN LAW: DELICT

The results of the BCL/MJur exam were in all respects very satisfying and left no questions.

PHILOSOPHICAL FOUNDATIONS OF THE COMMON LAW

The quality of the papers this year was very pleasing, with virtually all candidates demonstrating the ability to engage with the questions on their precise terms, and by way of offering genuine theses, enriched by a serious and critical engagement with the literature. The high proportion of Distinctions attested to that, although for the most part, even those papers which did not quite merit a Distinction were impressive in this regard. The best papers were distinguished primarily in terms of originality, and the candidates' ability to offer the final degree of insight and precision of analysis.

The one critical comment the examiners can offer pertains to the choice of questions to answer. Whereas all eight questions were attempted, some (particularly questions 1 and 2) proved far more popular than others (particularly 3, 4 and 8). Whereas those who achieved a Distinction are entitled to consider their choice of questions a success, the examiners suspect that some of those who missed out on a Distinction would have done better if they had chosen those questions which allowed them greater scope for originality, rather than seemingly 'safe' choices which appealed as opportunities to display brute knowledge but less originality. The (inconclusive) proof for this somewhat speculative observation is that those who did attempt the less popular questions tended to do extremely well in their treatment of them.

GLOBAL COMPARATIVE FINANCIAL LAW

A high percentage of candidates gained a distinction and nearly 50% were over the 65% mark – an extraordinarily creditable achievement by the students.

The essays – the questions were mostly essay-type questions – showed an impressive depth of understanding and a zest and excitement for the subject. They were brimful of ideas and fresh approaches to this wide-ranging subject.

This is the last in the present series of the Global Comparative Financial law course at Oxford. The course has run for six years. Over the years the course has been populated by remarkable students and all have been a delight to teach. It seems right that this series should end with such an excellent group of students as the class of 2008, *primus inter pares* with all the other classes.

INTERNATIONAL LAW AND ARMED CONFLICT

The quality of the answers were very good. Candidates appeared, in general, to have heeded the warning to ensure that their answers were well structured and directed at the precise question asked of them rather than writing general essays on the topic. There was very good use made of legal authority and the examiners got a sense that there had been wide reading of the literature.

Every question was attempted though Questions 4 & 7 on international criminal law were not as popular as the questions dealing with other aspects of the course. Surprisingly, many candidates answering Q. 1 failed to discuss the problems that arise in applying the principle of distinction between combatants and civilians to non-international armed conflicts. Even more surprising was that some answers to Q. 3 failed to discuss the competence of the UN Security Council to authorise the use of force for humanitarian reasons.

JURISPRUDENCE AND POLITICAL THEORY

Almost everyone in the relatively large group of candidates showed high competence in argument and scholarly presentation, though there were only a handful of sets of essays clearly above 70%. The main weakness was a certain inflexibility and conventionality in interpreting the question(s) posed. This was perhaps particularly evident in relation to the question whether there is an intrinsic relation between law and justice, which can hardly be answered altogether satisfactorily without considering the possibility that justice, at least ordinarily, calls for the rule of law; and in relation to the question whether it can be right to discriminate on grounds of nationality, which again can not be answered altogether satisfactorily without considering discrimination at the national (state) border.

APPENDIX 7

External Examiner's Report

The entire examination process was conducted smoothly and effectively. I was given all the information I required in good time. The papers were properly presented and set to appropriate standards. The meetings were conducted efficiently. Any difficulties were dealt after the fullest consideration and fair outcomes arrived at. The results were an accurate application of clear and simple conventions. I was impressed by the proportion of candidates who obtained three or four distinction marks. The Faculty Board should be grateful to the Chairman and the members of the examination board for the very considerable commitment to the examining process and the Board should recognize, as I am pleased to do, the central role of the examinations secretary, Mrs Julie Bass, in the administration of the whole enterprise.

I am pleased to say that the draft examinations papers as a whole were of quite different quality to those I had seen the year before. I had practically no comments to make on any of them, and then, only matters of detail.

The examinations meetings were conducted smoothly because, in the main, examiners had assessed accurately which papers would need double marking and then swiftly dealt with those between the two meetings which the exam board required them to look at. There were still a few papers which ought to have been given a second look before the first meeting but were not. This was unfortunate and it may be a source of unfairness at the edges if papers which should have been dealt with as a matter of routine are looked at only on the say so of the Exam Board.

Given the nature of the Conventions which apply to the BCL/MJur, I think that there is no need to include any further element of discretion in the Board. If there were general support for the change, I should endorse the suggestion that marks of 49, 59, 69 be eliminated – examiners having made up their mind that the paper belongs in the lower class, they should make that clear and they can be assured that a mark ending in “9” would have no more influence on the classification of a candidate's papers than one ending in “8”.

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