

# **EXAMINATION FOR THE DEGREES OF B.C.L. AND M. JUR**

## **REPORT OF THE BOARD OF EXAMINERS FOR 2011**

### **1 Introduction**

This report contains a brief commentary on various central aspects of this year's examinations, and raises 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. The exams started a week earlier than last year on Monday of week 9, rather than week 10. No candidate had two papers on the same day but papers in the first week were sat in the afternoon and in the second week in the morning. This did not seem to cause any problems.

### **3 Statistics**

Attached at Appendix 2 are the numbers of entrants, distinctions, passes, and fails. The Examiners were pleased to note the high standard of achievement across the board. There were no failures.

The percentage of candidates gaining distinctions in the BCL (44%) was not as high as last year and was consistent with the average in previous years. As with previous years, the number of candidates obtaining a distinction in the MJur was much lower, at 18% (although this was similar to previous years). Again, as with previous years, the Examiners noted the disparity in the number of BCL and MJur candidates obtaining distinctions and suggest that this is something that needs to be considered further by Examinations Committee.

The Committee also note the differences in percentages between men and women gaining distinctions on both the BCL and MJur. Again this is something which should be noted and considered by Examinations Committee.

This year was the first year that prizes were awarded in all subjects for the top mark. The process of awarding these prizes went smoothly. The awarding of these prizes is a welcome development.

### **4 Computer software**

The computer software worked satisfactorily but as in previous year, we would encourage the introduction of new software as soon as possible.

## **5 Turnitin**

As in previous years, 'Turnitin' software was used to check for plagiarism in both the dissertations and in the Jurisprudence and Political Theory essays. In relation to the Jurisprudence and Political Theory essays, it was decided to submit one essay from each of 12 randomly selected candidates. In relation to the dissertations, it was decided to submit six randomly chosen dissertations. This followed the practice in 2009.

All candidates were required to submit both electronic and hard copies of their work. Turnitin reports were checked by one examiner in each subject. The process worked smoothly and no plagiarism was detected.

## **6 Setting of papers**

The Examiners (including the External Examiner) checked all draft papers line by line. This process yielded a substantial number of further queries on the vast majority of papers, which the Chair of Examiners subsequently discussed and resolved with individual setters of papers. This systematic process, although time consuming, is of great value in achieving consistency of style and standard across papers, as well as obviating queries during the exams themselves. During the exams, there was only one very minor proof reading error and no substantive queries. Much credit is due to Julie Bass for her care in formatting the papers.

## **7 Information given to candidates**

The Edict is attached as Appendix 3.

## **8 The written examinations**

The Chair of Examiners attended at the start of each examination, as did the setter or an alternate. As in previous years, the Examiners wish to emphasise the importance of the Proctors' requirement that the setter or an alternate be present.

Because there were examinations on one Saturday, Colleges with candidates taking papers on those days were asked to provide contacts available to deal with any problems, including emergencies. This presented no organisational problems.

Generally speaking, the exams sat in the Examinations School went smoothly. However, there was a problem with two candidates who sat the Conflict of Laws paper in College on the 27<sup>th</sup> June 2011. One student was sent the materials but not the paper, and the other student was sent the paper but not the materials. This resulted in the start of their exams being delayed and unnecessary stress. The delivery of these papers was the responsibility of the Examinations School and out of the control of the Law Faculty. Such an administrative mistake should not have occurred and the Board hopes that Schools does all in its power to ensure it does not occur again.

## **9 Materials provided in the examination room**

The Examiners wish to note, in line with previous Examiners' reports, the expense and time involved in the provision of statutory materials by the Faculty. This year, Julie Bass spent considerable time before the exams ensuring the correct materials were available. In some cases the Faculty needed to borrow copies from Faculty members or buy copies on Amazon. It was also the case that the material (particularly in the first week) was not always laid out properly by the Examinations School (although it was usually quickly available). As with previous years we would stress that the possibility that candidates be able to use their own materials should be urgently reconsidered.

## **10 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. Markers were asked to ensure that all marks ending in 8 or 9 should be double marked. Where a script had been double marked, the markers submitted an agreed mark before the first meeting. Assessors were reminded that the Law Board had decided that a mark ending in 9 would not be an invitation to Examiners to reconsider the grade, but would be the final grade received by the candidate. This year, the vast majority of markers followed this formula, making the Examiners' task more transparent, consistent and considerably quicker. At the first marks meeting, the following principles were followed:

- a) No paper which had already been second marked would be read a third time. This meant that no papers ending in 8 or 9 were re-marked. This is in line with the instructions of the Examinations Committee;
- b) Marks ending in 7 would be remarked if they had not already been re-marked and a higher mark would make a difference to the overall class of degree. There was only one candidate at risk of failing, and in that case the failing mark did not end on a 7. In practice therefore the Examiners applied this principle to candidates who had the possibility of a distinction. A second reading was requested if a candidate had one mark of 70 or over, no marks under 60, and one or two marks of 67 which had not already been second marked;

A total of 25 papers were re-marked between the first and second marks meetings.

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 between the Examiners' first and second marks meetings. This year, the markers were indeed available in the vast majority of cases, greatly facilitating the task of the Examiners.

## **12 Medical Certificates, dyslexia/dyspraxia and special cases**

A total of 23 medical certificates (including two carried over from 2010) were forwarded to the Examiners, and 2 candidates were certified as dyslexic. 6 candidates wrote some or all of their papers in their respective colleges. A further 5 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, medical certificates on behalf of 7 candidates, or 5% of BCL candidates, 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 2010*, page 34). In the MJur, 4 medical certificates (from 9% of MJur candidates) were forwarded under the same regulations, making a total of 11 of BCL and MJur candidates combined.

The Examiners took account all of these medical certificates and in one case the certificate made a difference to a student's final result.

## **13 Thanks**

The Examiners would like to conclude by expressing their thanks to the External Examiner, Rob Stevens, for his help and advice throughout this process. Particular thanks are also due to the Examinations Officer, Julie Bass, whose professionalism, judgment and experience are invaluable. Without her, the smooth operation of the examinations process would not be possible.

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**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 Rob Stevens, external examiner

## Statistics for the 2011 Examinations

## APPENDIX 2

### BCL

	2011						2010						2009						2008						2007					
	Male		Female		Total		Male		Female		Total		Male		Female		Total		Male		Female		Total		Male		Female		Total	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Dist	39	46	19	37	58	44	30	33	21	23	51	57	26	27	17	18	43	45	23	27	11	13	34	40	29	31	12	13	41	44
Pass	43	52	32	63	75	56	20	22	19	21	39	43	35	37	17	18	52	55	27	32	24	28	51	60	25	27	28	29	53	56
Fail	0		0		0		0		0		0		0		0		0		0		0		0		0		0		0	
Total	82		51		133		50		40		90		61		34		95		50		35		85		54		40		94	

### MJur

	2011						2010						2009						2008						2007					
	Male		Female		Total		Male		Female		Total		Male		Female		Total		Male		Female		Total		Male		Female		Total	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Dist	6	29	2	9	8	18	3	9	3	9	6	18	12	34	0		12	34	8	13	1	2	9	15	7	11	5	7	12	18
Pass	15	71	21	91	36	82	12	35	16	47	28	82	12	34	11	31	23	66	29	49	20	34	49	83	34	51	20	30	54	81
Fail	0		0		0		0		0		0		0		0		0		1	2	0		1	2	1		0		1	1
Total	21		23		44		15		19		34		24		11		35		38		21		59		42		25		67	

## APPENDIX 5

### Raw Marks Statistics, BCL/MJur 2011 Marks distributions on first reading, as percentages

Paper name	Av. Mark	Number sitting	----- Mark rangers (%) -----					
			49/less	50/54	55/59	60/64	65/69	70/over
BCL Dissertation	64.8	25		4	8	32	36	20
Comparative and European Corporate Law	65.7	15			7	13	67	13
Comparative and Global Environmental Law	68.8	9				11	33	56
Comparative Human Rights	67.0	1					100	
Comparative Public Law	65.7	32		3		38	34	25
Competition Law	66.3	35				26	54	17
Conflict of Laws	62.6	47	2	9	9	47	19	15
Constitutional Principles of the European Union	68.5	15				7	53	40
Constitutional Theory	65.0	20		5	5	20	55	15
Corporate Finance Law	64.3	28		4	11	39	18	25
Corporate Insolvency Law	66.0	22			9	23	36	32
Criminal Justice and Human Rights	68.7	19				11	32	58
European Business Regulation	65.8	6				50	17	33
European Private Law: Contract	64.4	16		6	6	44	25	19
Evidence	65.2	15				53	27	20
International and European Employment Law	68.5	6					50	50
International Dispute Settlement	66.9	38				26	42	29
International Economic Law	67.6	26				12	50	35
International Intellectual Property Rights	66.5	17			6	29	29	35
International Law and Armed Conflict	67.8	25				16	48	36
International Law of the Sea	66.6	16			6	19	50	25
Jurisprudence and Political Theory Essays	66.4	30		3		30	37	30
Law and Society in Medieval England	62.8	5			20	60	20	
Law in Society	67.7	6				17	33	50
Medical Law and Ethics	68.9	22					50	45
MJur Dissertation	69.4	8				13	38	50
Philosophical Foundations of the Common Law	64.8	22		5	18	18	32	27
Principles of Civil Procedure	67.5	28				11	64	25
Principles of Financial Regulation	66.5	15				7	80	13

**Raw Marks Statistics, BCL/MJur 2011**  
**Marks distributions on first reading, as percentages**

<b>Paper name</b>	<b>Av. Mark</b>	<b>Number sitting</b>	<b>----- Mark rangers (%) -----</b>					
			<b>49/less</b>	<b>50/54</b>	<b>55/59</b>	<b>60/64</b>	<b>65/69</b>	<b>70/over</b>
Punishment, Security and the State	67.1	10				20	60	20
Restitution of Unjust Enrichment	66.7	46			2	24	39	35
Roman Law (Delict)	66.0	2				50	50	
Socio-Economic Rights & Substantive Equality	69.2	21					48	52
The Law of Personal Taxation	65.8	10				40	40	20
The Roman and Civilian Law of Contracts	63.7	7			14	43	14	29
Transnational Commercial Law	63.5	29	3	7	10	28	21	28

## **APPENDIX 6**

### **INDIVIDUAL REPORTS**

#### **COMPARATIVE AND EUROPEAN CORPORATE LAW**

Twenty candidates (five BCL, ten MJur and five MLF) attempted this paper. The overall standard of the scripts was very good. Four of the candidates were awarded marks of 70 or above, and the average mark was 66.5 %. The examiners were particularly pleased by the absence of any really weak scripts at the bottom end; there was only one script which was marked below 60. All questions were attempted, with questions 4, 5, 6 and 7 proving the most popular.

Three general observations are worth making. First, candidates were on the whole successful in structuring their answers so as to engage directly with the particular question set. One exception to this was question 2, for which some candidates chose to write solely about the key features of the corporation, ignoring the many other types of business organisation which may be available to entrepreneurs. Secondly, the better scripts explained theoretical positions in the candidates' own words, rather than simply name-dropping authors, and successfully integrated these with discussion of a range of primary sources. Thirdly, many of the scripts demonstrated careful independent thought on the part of 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.

#### **COMPARATIVE AND GLOBAL ENVIRONMENTAL LAW**

This was the first year this subject ran. The paper contained eight questions and it required candidates to integrate knowledge from the different topics studied in the course. There was considerable variation among the questions that students chose to answer and all questions were attempted. The general quality of the scripts was exceptionally high. Particular strengths of the best scripts were that they addressed the question head on displaying both an understanding of the legal detail and the bigger conceptual picture. Robust connections between different topics on the course and legal complexity was treated seriously and with sophistication.

#### **COMPARATIVE PUBLIC LAW**

The scripts in the Comparative Public Law paper were generally of a high standard. There were very few weak candidates and a significant number secured marks of 70 or above. The most popular questions were proportionality, legitimate expectations and misuse of power, although there were also a significant number of responses to the questions on error of law and procedural protection. The candidates showed a good grasp of the positive law and were able to combine this with analysis of the underlying policy issues.

## **COMPETITION LAW**

The paper comprised eight questions, four of which 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 the exchange of information between competitors and its analysis under Article 101 TFEU. The second question addressed the role of multinational cooperation networks and their effectiveness in fostering an effective system of dealing with competition issues that transcend national boundaries. The third question considered the limitations of private enforcement and whether in some instances, a specialist body would be better equipped with appropriate expertise and flexible powers than courts. The fourth essay question considered the desirability of a reform to the UK merger control regime.

The four problem questions covered the enforcement of Article 101 TFEU, Article 102 TFEU, the European Merger Regulation and UK Competition Law. The majority of answers to problem questions were of very high standard and included references to market definition and structure, substantive provisions and enforcement considerations.

Overall, papers submitted by candidates this year were of a high standard. As in the previous year, the majority of candidates tackled problem questions. The examination was taken by 34 candidates, 7 of whom achieved a first class mark.

## **CONFLICT OF LAWS**

This year's paper was decently done, and most answers were offered in response to the problem questions, which was just as it should be, for this subject, in its commercial aspect, is intensely practical. The single factor which tended to separate the excellent answer from the rest was an ability to construct the analysis in a way which left plenty of room to discuss the core issues raised by the facts of the problem (the overlap with the core issues raised by the year's reading was not precise, which plainly caught some people out), and dealt with marginal or secondary points in accordance with their marginal or secondary status in the problem. It was probably ever thus.

## **CONSTITUTIONAL PRINCIPLES OF THE EUROPEAN UNION**

There were 15 candidates for this exam and overall the standard for the scripts was very high – with 6 candidates securing overall marks of 70 or above. All questions with the exception of q 5 on national procedural autonomy were attempted. All candidates demonstrated a good knowledge of both the theoretical and legal sources and were able to analyze the issues clearly and coherently. The best answers were both more sharply focused on the question and able to analyze questions in interesting and imaginative ways demonstrating both creative flair and insight.

## CONSTITUTIONAL THEORY

Twenty candidates sat the examination in Constitutional Theory which operated this year under a rubric of eight questions. Each question was attempted by someone, but a majority of candidates answered three out of the four most popular questions (i.e. those on devolution, on written constitutions, on citizenship, or on sovereignty). Overall, the performance was very good indeed. Nearly all candidates had a solid grasp of key theoretical issues and resisted the temptation to lapse into comparative constitutionalism. The scripts that received distinctions stood out from the others on at least three dimensions: attention to the precise question set as opposed to a general 'topic'; careful argument in defence of a position together with consideration of objections to that argument; and demonstrated knowledge of the relevant literature beyond what one might glean from a single seminar. While no one was marked down on this ground alone, the examiners noted with disappointment that a few scripts showed very poor writing style.

## CORPORATE FINANCE LAW

This year there were 47 candidates, with 28 from the BCL/MJur cohort and 19 from the MLF cohort. There was some variety in quality, with some excellent scripts at the top end. There were 9 questions, many of which demanded consideration of both the debt and equity parts of the course. In general, the main fault of many candidates was failure to pay very close attention to the question, so that the answer became a general discussion of issues related to topic rather than considering the particular issue raised. There was also a tendency to include a very long and rather general introduction to each answer, which limited the discussion of the specific issues.

### Question 1 (legal capital/insolvency)

This was a very popular question, which gave the opportunity to discuss both the legal capital rules and the protection of non-adjusting creditors on insolvency. The best answers assessed the extent to which non-adjusting creditors were really a problem and then critically examined whether a response was necessary, as well as looking at the detail of the current law. The very best compared the protection provided by insolvency law with that of the legal capital regime. There was some trenchant criticism of the legal capital rules, with the best answers considering possible alternatives.

### Question 2 (disclosure in IPOs)

This question was less popular, and the quality of answers was mixed. The weaker answers only considered the position in relation to equity securities, and hardly mentioned the position in relation to debt securities. The best discussed in detail whether the arguments for disclosure applied in relation to debt securities, and focused on the intrinsic difference between the claim being bought by investor in shares and that being bought by an investor in bonds. There was quite a lot of discussion about the means and efficacy of enforcement, which was not relevant to the question.

### Question 3 (reform of the law of secured transactions)

The relatively few answers to this question were generally good with some excellent overviews, and interesting insights. The best engaged with what an ideal system should look like, and compared UK system to that in other jurisdictions, before reviewing possible

reforms. There were also good answers which looked at a narrower sphere of problems, with more focused solutions.

#### Question 4 (schemes of arrangement and takeovers)

Some of the answers were too descriptive either of the procedure of schemes or of the Takeover Regulation. The best thought hard about the advantages of schemes, and discussed them without too much description, and also the reasons for the Takeover Panel's regulation, so that they could discuss intelligently how far these applied to schemes, given the court's supervisory role.

#### Question 5 (market abuse)

This was a very popular question. Unfortunately, many candidates did not really engage with the question posed, and just wrote a generalised answer about market abuse. In particular, there was very little discussion of the difficulties of defining market abuse: many assumed that because it was defined in the UK statutes it was possible to do so in a satisfactory way. The best scripts discussed the definitional problem in detail, including a critical examination of the attempts to define market abuse in the current legislation, and linked this into the discussion as to whether the conduct should be penalised.

#### Question 6 (contractual protection by rights against third parties)

There were not many answers to this question, but some were very good. Most candidates considered guarantees, credit default swaps, subordination, and some also discussed sub-participation and insurance. The very best assessed the advantages and drawbacks of each, with reference to the legal problems and how they are overcome.

#### Question 7 (s90/s90A)

This was quite a popular question, which could have been answered in a very literal way, with the descriptions of the sections and the comparison being taken straight from the statute (provided in the examination room). The best answers took a more holistic view, and discussed the underlying reasons for private as well as public liability, as well as whether those reasons justified the different approach in the two sections.

#### Question 8 (private equity)

This was by far the most popular question, so unsurprisingly the answers varied in quality. The very best considered the question closely, discussing not only use of leverage but whether private equity could be said to be a success. In considering what contributed to success, there was good discussion of the other characteristics of private equity (for example, the close linkages between ownership and control and absence of the constraints of the public market). There was some excellent use of examples. The weaker answers did not focus on question, and talked at length about whether private equity should be regulated, or addressed the question why it involved higher levels of debt rather than its advantages. There was also some unfortunate confusion between the funding of the private equity fund itself and the funding of the target company. The question, of course, related to the latter. Some candidates seemed to think that the private equity fund borrows the money it raises, or that investors in a private equity fund are creditors, which again was unfortunate.

#### Question 9 (corporate governance and transfer of debt)

There were very few answers to this question, but all were good, some very good indeed. There was some sophisticated discussion of the corporate governance role of various types of lenders, and consideration of the effect of different types of transfer including transfer of risk.

There was good discussion of current developments and practices. The best answers also considered arguments that the transfer of debt did not lessen corporate governance and could, in some circumstances, even enhance it.

## **CORPORATE INSOLVENCY LAW**

There were 26 candidates for this paper, including 4 MLF students. The general standard was good, with some very impressive papers indeed. The answers to the essay questions were mainly well structured and clear, although some were characterised by lengthy introductions promising much, which sometimes did not deliver.

### Question 1 (prepacks and unsecured creditors)

This was a popular question, with most answers giving a good overview of the problems unsecured creditors face from pre-packs. The best focused on this issue, rather than discussing prepacks more generally, and considered the dangers to unsecured creditors, what their possible (but inadequate) remedies are and discussed options for reform critically.

### Question 2 (choice of jurisdiction and restructuring)

There was only one answer to this question.

### Question 3 (anti-deprivation principle/pari passu)

This was a popular question, which generated many very good answers, with divergent views. The best focused on whether Goode was right to make the distinction he did, and on whether this had any consequences for deciding what contractual provisions should be unenforceable in insolvency proceedings.

### Question 4 (reform of law relating to avoidance of transactions)

This question gave plenty of scope for different approaches. Some scripts attempted a discussion of the whole law, and others focused on one or two aspects, such as the desire to prefer, mutuality in relation to transactions at an undervalue or funding of actions. The best answers considered the theoretical underpinnings of insolvency law, and assessed the present law relating to transaction avoidance in the light of these.

### Question 5 (proprietary interests)

Most candidates discussed uncertainty surrounding proprietary interests created by companies, mainly trusts. However, there was little focus on one important aspect of the quotation, that the evil came from the fact that the asset 'appeared' to be A's property. The best answers discussed the requirements for creating trusts, and many considered that these should be more strictly applied.

### Question 6 (wrongful trading/directors' duties)

This question was generally very well done. The best answers considered and compared wrongful trading and directors' fiduciary duties, and discussed whether the combination of the two provided sufficient protection for creditors. There was good consideration of the effects that both the substantive law and the likelihood of enforcement would have on the incentives of directors in the run-up to liquidation.

### Question 7 (schemes and CVAs in relation to corporate rescue)

The answers exhibited some interesting arguments, but somewhat disappointingly did not demonstrate much familiarity with schemes or CVAs. Many answers simply dealt with the question of corporate rescue very generally.

Question 8 (problem)

Only two candidates attempted this question.

Question 9 (problem)

Only one candidate attempted this question.

## **CRIMINAL JUSTICE AND HUMAN RIGHTS**

19 candidates took this paper. There were 11 distinctions (57%) and 8 2:1s. The highest mark on the paper was 74% and the lowest mark was 63%.

The full range of answers were present, and the choice of questions was not decisive of performance. There were no patterns regarding problems with particular questions. Overall performance was decisive of the result. Candidates who showed a consistent and integrated use of the materials, both cases and theoretical literature, as well as seminar discussion, performed the best. Candidates who demonstrated a critical approach to the materials (especially those written by Ashworth and Lazarus) were well rewarded. Candidates in the 2:1 range tended towards a descriptive overview of the cases and materials rather than marshalling the materials towards a critical argument.

## **EUROPEAN BUSINESS REGULATION**

There were only 6 candidates this year but all wrote good scripts and there was ample gratifying evidence of thoughtful work and sensitivity to the nuances of the questions asked, and marking the scripts proved an unusual pleasure.

## **EUROPEAN PRIVATE LAW: CONTRACT**

There were 16 papers, twelve of which were written by MJur candidates. Eight questions were offered, and all of these were attempted. Those most frequently chosen concerned the doctrine of consideration and its 'functional equivalents', pre-contractual liability, remedies and supervening circumstances. The standard of the answers was generally high. The best candidates showed a firm grip of the topics covered with sound knowledge of the sources and a good ability to engage in detailed comparison where needed.

## **EVIDENCE**

Generally the scripts were very satisfactory. Whilst in recent years the essay questions have been less popular than the problems as options for third questions (candidates are obliged to answer at least two problem questions) the markers were surprised that so few candidates chose to write an essay this year. With regard to the problems the principal general concern

was that some candidates tended to provide accounts of the law which seemed pre-prepared, and did not apply them precisely to the facts of the questions.

Q. 1 (Essay) No candidate attempted this question.

Q. 2 (Essay) No candidate attempted this question.

Q. 3 (Essay: hearsay) A small number of candidates (three) attempted to answer this question. The answers that were less successful tended to devote too much space to describing elements within the statutory scheme.

Q. 4 (Problem: legal professional privilege, public interest immunity, hearsay) Only two candidates selected this problem. No general observations can be made about their answers.

Q. 5 (Problem: confessions and improperly-obtained evidence) This was a very popular question: all but two of the candidates chose to answer it. Most answers deal with the central issues in a satisfactory way, though some candidates failed to notice that one of the accused was charged with an offence other than the one that she had (falsely) confessed to. Very few candidates dealt well with some of the peripheral issues raised; for example, the admissibility of a suspect in a bank robbery being in possession of a large amount of cash that cannot be linked to the robbery.

Q. 6 (Problem: character of accused) This was the most popular question: every candidate chose to answer it. Generally the law concerning use by the prosecution of bad character evidence was explained far more convincingly than the law concerning its use by one co-accused against another. Indeed, some candidates did not seem to consider whether any of the bad character evidence could be used by the co-accused.

Q. 7 (Problem: sexual behaviour and character of non-accused) This was a popular question: two-thirds of the candidates chose to answer it. There was some wholly understandable uncertainty amongst candidates as to whether the rules limiting the use of evidence of sexual behaviour applied to offences with which the accused was charged, and the markers made allowance for this, but looked less kindly on answers which acted as if the rules did not apply without any form of explanation. Generally, candidates – perhaps justifiably - found it difficult to explain the law governing the use of evidence of misconduct against police witnesses.

Q. 8 (Problem: competence, special measures, expert and statistical evidence) Only two candidates selected this problem. No general observations can be made about their answers. Some of the most difficult of the topics covered by the problem had not been emphasized in either tutorials or seminars.

## **INTERNATIONAL AND EUROPEAN EMPLOYMENT LAW**

Questions 2, 3 and 4 were popular and attempted by most candidates; questions 6, 7 and 8 also had a number of takers. No candidate attempted questions 1 or 5. Overall the standard was pleasingly high, and in some cases exceptionally high.

The questions required knowledge of *both* the European Union as well as the international legal framework of the ILO or CEDAW. The best candidates highlighted similarities and differences of approach between these legal systems, and offered an opinion on which system was the more effective with illustrations to support their view. This was particularly apposite because all the questions explicitly asked for a comparative analysis. Weaker scripts focused too heavily on only one system (generally the EU).

Another characteristic of the best scripts was the use of detailed illustrations from the cases or legislation; weaker scripts relied heavily on a policy analysis with little or no recourse to specific legal rules (such as referring generally to directives without specifying particular provisions).

### **INTERNATIONAL DISPUTE SETTLEMENT**

The level of performance of the students who wrote the International Dispute Settlement examination paper was, in overall terms, very good with the average mark being 66.9%. Of the 38 students who sat the examination, there were 29% of students who obtained a Distinction class mark.

A number of candidates would have scored higher if they had paid attention to answering more specifically the question being asked rather than providing a formulaic, general essay on the topic of the question.

### **INTERNATIONAL ECONOMIC LAW**

The level of performance of the students who wrote the International Economic Law examination paper was, in overall terms, excellent. The average mark was 68%. In terms of a more detailed breakdown, there were 38% of students who obtained a Distinction class mark, and 62% of students who obtained a mark between 62-69%.

Among those who obtained a high 2:1 class mark (above 65%), there were a number of students who were just under the Distinction level. These students may likely have achieved a higher, possibly Distinction class, mark if they had been more consistent in employing an analytical, as opposed to a descriptive, approach to the material being considered in their answers. One or two of these candidates were let down by their final exam answer which may well have been an issue of timing.

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

### **INTERNATIONAL INTELLECTUAL PROPERTY RIGHTS**

The standard of answers on the papers was generally very high, whether tackling questions on trade mark, patent or copyright. (The only question where performance was more patchy was Question 9, which required students to consider questions of private international law principles). Unlike prior years, students were required to answer at least one problem

question. Answers to the problem questions were particularly good. Most students decided to answer the problem question in trade mark or patent law; only a few attempted the problem question in copyright. To the extent answers to problem questions were deficient, this resulted from a failure to move beyond issue spotting and suggest answers (one way or the other) to identified questions. Answers to essay questions were also generally good. The better papers went beyond a description of prevailing principles and offered critical insights into the subject of the question; this was especially well-done by those students in the copyright part of the paper. A few answers were somewhat narrow in focus. For example, some answers to Question 1 (regarding well-known marks) almost exclusively discussed protection of marks with a reputation (as understood in EU law) without fully engaging with the international treaty provisions on well-known marks. Overall, however, students' answers demonstrated a good grasp of the law and its theoretical underpinnings, and revealed a very broad knowledge of secondary literature (especially in answering the copyright questions).

### **INTERNATIONAL LAW AND ARMED CONFLICT**

The overall performance of candidates in this paper was very good with 9 out of the 25 candidates achieving distinction marks, the vast majority of the other candidates scoring between 65 and 69 and no candidate getting a mark below 60. All the questions set were attempted. There was a tendency for candidates to concentrate on work done in only one half of the course and some thought will be given to structuring the exam so as to require candidates to answer questions from different parts of the course.

Questions 1, 4 and 6 were the most popular questions with every candidate answering at least one of these questions. Good answers to question 1 considered the range of arguments regarding the classification of transnational conflicts with non-State groups under international humanitarian law (IHL), the implications of this classification for the application of IHL, as well as advancing arguments about the adequacy of the law in this area. The best answers to question 4 were careful to distinguish between the different forms of 'self-defence' before an attack occurs, and to explain their use of terminology ('pre-emptive', 'anticipatory', 'preventive'). These answers considered not only the law as developed through practice, but also policy arguments regarding the legality of these types of self defence. As was to be expected, the answers to first part of question 6 considered not only the question of the applicability of human rights obligations in time of armed conflict but also the extraterritorial scope of the application of human rights obligations. On that last point, it was impressive to see so many candidates integrate into their answers the *Al Skeini* decision of the European Court of Human Rights which was handed down only a few days before the exam, though no candidate was penalised for not taking into account a decision that came so late in the academic year. Many of the best candidates were also able to discuss issues by reference to decisions under different human rights treaties. In considering the relationship between human rights law and IHL, many of the best answers considered not only the means by which it is argued that potential conflicts should be resolved but also whether international law requires that decision makers should choose one norm over another in case of conflict.

### **INTERNATIONAL LAW OF THE SEA**

With 16 candidates the International Law of the Sea attracted more candidates than in previous years. This reflected a change in the course structure and content which combined questions of the law of the sea with questions of general international law.

The standard of exposition was generally quite high. There were 4 distinctions and 11 candidates scored between 63 and 69, with the majority being at the upper end. Only one candidate scored less than 60. All eight exam questions attracted at least two candidates. The questions on the jurisdiction of States to try pirates and armed robbers captured off the coast of Somalia (no 6) and on the adequacy of the legal framework to protect asylum seekers rescued at sea (no 5) proved to be most popular, attracting 10 answers each. This was followed by the questions on the compulsory dispute settlement procedures in article 287(1) UNCLOS and the requirements for the establishment of a marine protected area.

### **JURISPRUDENCE AND POLITICAL THEORY (ESSAYS)**

Twenty-nine candidates wrote the essays in Jurisprudence and Political Theory this year. The answers were distributed widely among the various questions. General performance on the essays was good, and showed effort to grapple with the philosophical problems raised. The examiners noted, however, narrowness in candidates' reading: some displayed no awareness of any works published before 1961 and a few seemed familiar with only three or four authors. Candidates whose answers remained within the confines of points made in classes and seminars usually achieved middling results. Take-home essays afford time for deeper reflection on the issues raised by the questions—special bibliographic research is not expected—and those who made use of this tended to do well. Marks of distinction were achieved by essays that were lucid in argument, that demonstrated some philosophical insight, and that were informed by broad background reading in the subject. The standard set by the best answers was excellent.

### **LAW AND SOCIETY IN MEDIEVAL ENGLAND**

Only five candidates took this paper this year. None were quite of Distinction standard, though one candidate came close. The average mark was 65%. No candidates answered questions 4, 8, or 9. Four out of five candidates answered questions 5 (on the statute of Mortmain) and 10 (on the statutes of Acton Burnell and Merchants). The chief disappointment of the papers was that the candidates did not engage more closely with the primary sources in translation on which this option is focused.

### **LAW IN SOCIETY**

There were six candidates for the examination, which is fewer than normal. The standard was very good, with three distinctions and three other respectable marks. The spread of answers was rather narrow, with a clear preference for more mainstream and predictable questions. This may suggest further thought in setting the examination paper next year.

### **MEDICAL LAW AND ETHICS**

The standard of answers for this paper were exceptionally high this year. The best candidates were able to combine a good knowledge of the law with a careful analysis of the ethical literature. It was pleasing that all candidates were able to combine the ethical and legal aspects of the course. The very best candidates provided outstanding papers.

It was encouraging to see candidates selecting a broad range of questions. All of the questions were answered by at least one candidate. It was also encouraging to see candidates expressing a broad range of views. Quite rightly, there was no consensus on the correct approach to the controversial issues raised.

One error that was common among weaker answers was a failure to focus on the specific question asked. For example on the question on abortion some candidates wrote all they knew on the topic, rather than focusing on the issues raised. The very best answers focused on the specific issue raised and used their knowledge to provide a detailed consideration of that question.

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

The overall quality of the papers was pleasing, with the great majority of candidates demonstrating both the willingness and the ability to engage with the questions on their precise terms, and by way of offering genuine theses, enriched by serious and critical engagement with the literature. All the questions were attempted, and the examiners were pleased to encounter numerous instances where candidates seemingly chose to answer those questions which provided them with the greatest scope for original insight, rather than those with which they would perhaps feel most comfortable or 'safe' – the rewards in those instances tended to be rich. The small number of relatively disappointing papers were those in which candidates failed to engage with the questions, instead offering what appeared to be prepared-in-advance answers to somewhat different questions.

### **PRINCIPLES OF CIVIL PROCEDURE**

The examination was taken by 28 candidates, of which 9 scored 70 or above. Three candidates obtained a mark lower than 65. The standard was high. Questions that raised issues that have been in the public eye were particularly popular. These include question 3 on closed material procedure, and question 8 on super injunctions. Also popular was question on legal professional privilege, which was the subject of special lectures. These questions produced some of the more original and impressive answers. Question 10, on mediation, was one of the minority questions, but it nevertheless received very good treatment. Question 9, on the ECtHR decision in *MGN*, failed to elicit high quality answers, though none was entirely inadequate.

### **PRINCIPLES OF FINANCIAL REGULATION**

This was a new course, running for the first time in 2010-11. The examination was attempted by 40 candidates: 25 MLF, 10 BCL and 5 MJur. The general standard was very pleasing. The average overall mark was 67%, and there was no meaningful difference in the average marks

awarded to candidates from each of the three degree programmes. 10 candidates (25%) obtained distinction marks, and no candidate failed the paper.

All questions were attempted, although questions 2, 4, and 6 proved particularly popular.

Questions 1, 5, and 7 proved significantly less popular than the others.

The better candidates demonstrated a very thorough understanding of the subject matter, and were successful in tailoring their answers to the questions set. A number of the weaker scripts failed directly to address parts of the question. The very best scripts demonstrated clear evidence of independent thought on the part of the candidates concerned.

Question one offered candidates the opportunity to reflect broadly on the material covered in the syllabus and draw it together in terms of overarching goals. Whilst the best answers succeeded in doing so impressively, a number of the weaker scripts simply recited material from various points in the course without demonstrating its relevance to the question.

Question two, which was very popular, was on the whole done exceedingly well. Most candidates were able to produce good accounts of the role of prudential regulation. The better candidates distinguished themselves by the quality of their responses to the second part of the quotation, namely why it was that banks had not been made safer already. There were a number of good discussions of the difference between the private and social costs of bank regulation; the best answers also drew on theories about regulatory capture as part of their explanation.

Question three was on the whole done well. Most candidates were able to write effectively about the role of disclosure, conduct of business regulation and product regulation, amongst other things. The better answers sought to articulate an account of when an investor can be understood to be acting as a “consumer”, and compared the contexts of direct and intermediated investment in financial markets with financial products. The weaker candidates wrote simply about disclosure regulation in financial markets.

Question four was also popular. All candidates were able to articulate the basis of the trade-off implied by the question. The better candidates distinguished themselves by the range of solutions explored, including the desirable extent (both in terms of claims and quantum) of deposit guarantee schemes, and the different ways of funding them.

Most answers to question five selected specific examples on which to focus in addressing the issue, including mandatory disclosure by issuers, credit rating agencies, and prudential regulation. The better answers included examples dealing with both financial markets *and* institutions, in keeping with the wording of the question.

Question six produced a number of quite formulaic accounts of the literature concerning the justification for mandatory disclosure by issuers. The better answers distinguished themselves by the extent to which they also effectively addressed the second part of the question, regarding the scope of the parties subject to such obligations.

Question seven proved least popular, being attempted by only three candidates.

Question eight produced a number of solid surveys of the literature on the “public versus private” debate in regulation, but only a few answers focused specifically on the second part of the question concerning their relative merits in mitigating regulatory arbitrage.

Question nine was on the whole done exceedingly well. Candidates were able to link the quotation to the theory of efficient capital markets and the literature on behavioural finance. The best answers explored reasons why supposedly sophisticated investment managers might nevertheless engage in herding, focusing on the incentives effects of remuneration agreements.

### **PUNISHMENT, SECURITY AND THE STATE**

There were ten candidates for this examination. There were two Distinctions and the other candidates all achieved marks in the 60s. The answers were spread quite evenly among the questions set and all questions were answered by at least one candidate.

In general the standard attained was pleasingly high. The scripts were well written, and demonstrated wide reading and a very good knowledge both of the subject and the academic debates around it. The best scripts provided sophisticated answers to the question set, backed up by close engagement with the relevant academic literature, research evidence, and reference to relevant legal developments. They were clearly structured, persuasively argued, and demonstrated an impressive command of the issues in play. And the candidates showed themselves able and willing to range between the weeks' reading in order to answer the question. The other scripts were generally engaging, well substantiated, and well argued. Some common weaknesses included insufficient engagement with the question, failure to provide sufficient evidence, and a tendency simply to report rather than to engage in academic debates. General surveys of the field, in some cases conducted at considerable length, were less successful than more focused answers that directly addressed the question set.

### **RESTITUTION OF UNJUST ENRICHMENT**

The exam this year was a different format from previous years. Following the standard BCL exam format the exam was comprised of 8 questions, of which two were problem questions. Students had an unrestricted choice of 3 questions from the 8. The narrower number of questions meant that students could choose to be more selective. Many did. By far the most popular questions were questions 1 (enrichment) and 4 (change of position), with more than half of the students attempting both of these questions. Many students saw a close link between enrichment issues and change of position (which, on one approach, is concerned with disenrichment) which meant that many examination papers were focused upon a small amount of the course. The two problem questions, which raised a number of issues from across the course, were attempted by very few candidates. The final problem question (which raised issues of enrichment, the scope of a *Woolwich* claim, duress, mistake, failure of consideration, and defences) was attempted by only two of approximately 50 students. The selectivity of students was also seen in some essay questions. No student wrote anything on liens (question 5(d)) and only one student wrote on subrogation (question 5(c)- albeit an outstanding answer). If it is thought desirable for students to cover more of the course in their exam answers, there is a good case for making one problem question compulsory or, alternatively, requiring students to answer more than three questions.

### **ROMAN LAW (DELICT)**

Two candidates took the exam. The choice of questions was evenly spread, three questions not having been taken. The results were more than satisfying to very satisfying.

### **SOCIO-ECONOMIC RIGHTS AND SUBSTANTIVE EQUALITY**

This is the fourth year that this course has run, and the examiners were particularly impressed at the high quality of candidates' work in this subject. There were 21 candidates who took the course this year, two of whom were M Jur and the remainder BCL candidates. Twelve candidates gained first class grades. All the remainder achieved grades between 65% and 69%.

There was a good spread of responses to examination questions: all questions received a reasonable number of responses. As in previous years, examiners paid particular attention to the extent to which candidates were able to answer the question, structure their argument, make use of a wide range of material, appropriately use comparative law methodology and provide a critique of their own. The best answers were those which were able to synthesise the material into an argument which addressed in a critical and even innovative way the specific challenges raised in the question, rather than simply providing a discussion of the whole area. There was generally a good grasp of comparative methodology, and an impressive and in-depth understanding of the materials. Some candidates, however, were tempted to cover the whole subject rather than focussing on the precise question asked. Overall, however, the level of knowledge, the ability to apply theory to substantive materials and the interest and enthusiasm displayed by candidates were all of a very high standard, making it, once again, a pleasure to mark this subject.

### **THE LAW OF PERSONAL TAXATION**

There were ten candidates for this paper, who answered a wide spread of questions. The standard of answers was generally strong, including two scripts of 70 or above and none below 60.

### **THE ROMAN AND CIVILIAN LAW OF CONTRACTS**

Seven students took the exam. The choice of questions was evenly spread over the candidates. The results were varying from satisfying to excellent, with one result, however, rather low, presumably due to insufficient preparation.

### **TRANSNATIONAL COMMERCIAL LAW**

The standard was high this year, and although there were fewer outstanding scripts than in previous years, a fair proportion of candidates were awarded a Distinction.

This was the first year in which candidates were required to complete at least one of two problem questions. This did not cause any serious difficulties.

Questions 1, 2 and 5 were the most popular essay questions, while Question 7 was slightly more popular than Question 8 when it came to problem questions.

Question 1 was a general question on the *lex mercatoria* which was answered competently by a good number of candidates. Only a few made the mistake to reproduce a prepared *lex mercatoria* essay without paying attention to the question asked (which focused on the usefulness of the concept in the modern law).

Question 2 gave candidates a choice between a discussion of the merits and demerits of the UN Convention on International Sales and the UNIDROIT Principles of International Commercial Contracts 2004. Although there were some very good answers, some candidates answered the question in the abstract, without referring to particular examples in the relevant text. The same problem occurred in some answers of Question 3.

A common (and serious) mistake of candidates attempting Question 4 was that they confused the UCP and URDG with the instruments they regulate – thus, the answer might point out the great advantages of issuing a letter of credit or a demand guarantee and describe how they were employed in international commerce without even mentioning the UCP or URDG themselves. Some answers betrayed a startling unfamiliarity with how abstract payment mechanisms are used. On the other hand, there were a number of pleasing answers showing a good knowledge of both instruments.

In answering Question 5, a number of candidates made the mistake simply to reproduce a prepared essay on good faith in the CISG without realising that the question was primarily about the Cape Town Convention. Those who discussed both Conventions did well, however.

Question 6 had few takers – those who did attempt to answer the question did, on the whole, do a good job, although there were still some who simply wrote about the advantages of arbitration without discussing the impact of arbitration on national legal systems and in particular common law systems.

Question 7, the slightly more popular problem question, produced a number of excellent answers. A few candidates were a little confused by the first part of the question, probably because they failed to consider that the parties were involved in an arbitration rather than litigation. Those who did not look for positive answers but instead raised issues and arguments did better on this part of the question. There were a large number of commendable answers of the second (substantive) part of the question.

Question 8 was also answered well by most who attempted it. There were just a few who ignored the CISG aspects of the question, and very few disastrous answers showing that their authors had understood very little about abstract payment undertakings in general.

**Report of the External Examiner****External Examiners Report****BCL/MJur 2011****The BCL/MJur**

The BCL and the MJur are prestigious degrees. The skill and care with which the examiners, in particular the Chair and the Stakhanovite support staff, conducted the entire process was exemplary. All decisions on borderline cases were dealt with sympathetically and with due regard for previous practice. The following suggestions should be read in the light of the fact that the process of examination is in virtually all respects superb. The Law Faculty's procedures, in particular, befit a world leading University.

**Scripts**

At my institution moves are taking place to have all examinations conducted using laptop computers. Already paper scripts are frequently scanned and sent by secure email to examiners who may be elsewhere in the world. This has the advantage that the examiners are not necessarily required to be physically present to take scripts.

That in 2011 scripts in Oxford are carried by bicycle from College to College, and that the Chair finds herself cycling around town to drop material off in pigeon holes is farcical. It is, today, far more secure to send things by electronic means. The resistance of the centre to conducting examinations in a way appropriate for the century we find ourselves in must be overcome.

My poor impression of some aspects of the conduct of examinations by the centre, for which the Law Faculty bears no responsibility, was reinforced by a number of annoying mistakes (usually concerning the sitting of examinations in Colleges) which although they did not in fact prejudice any actual candidate did have the potential to do so.

**Finalising Exam Papers**

The most valuable input that I felt I was able to give this year was in relation to the finalising of the setting of exams. Some of the initial drafts of exam papers were submitted in a form which still required considerable work to be of the appropriate standard. In future it should be made clear to the external examiner that their attendance at this early meeting is necessary.

### **External Examiner's Role**

As the practice in Oxford is to have one external examiner covering the entire BCL/MJur, it is obviously impractical to have scripts from all subjects looked at for purposes of external scrutiny. This has the disadvantage, however, that the external is unable to personally testify to the students' (very high) standards of achievement. It would be appropriate in future if the external examiner was at least shown scripts across a range of marks from subjects within his range of competence so that he can testify to the quality of attainment.

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