

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

## **REPORT OF THE BOARD OF EXAMINERS FOR 2013**

### **1 Introduction**

This report makes a brief note on various 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 exams started on Saturday of week 8, and finished on Saturday of 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.

### **3 Statistics**

Attached at Appendix 2 are the numbers of entrants, distinctions and passes. One BCL candidate failed, though for one candidate the process remained, by order of the Proctors, incomplete at the date on which the List was signed.

The percentage of candidates gaining distinctions in the BCL was, at 44%, a high figure, though some ten percentage points lower than last year.

As with previous years, the number of candidates obtaining a distinction in the MJur was significantly lower, at about 17%.

Last year there was no appreciable difference in the percentages of men and women gaining Distinctions: this parity of distinction was shown equally in BCL and MJur. This year there has been an unwelcome return to the more traditional pattern of distinctions obtained by women being some 10 percentage points lower than the percentage obtained by men (no matter what the actual percentage figure for men might happen to be). The disparity was even greater with the MJur but the numbers are much smaller and so the percentages may not be significant.

### **4 Computer software**

The computer software performed without breakdown but in a sub-par manner. It may be time for a wholesale upgrade.

### **5 Plagiarism and late submission of essays**

'Turnitin' software was used to check for plagiarism in all dissertations and all Jurisprudence and Political Theory essays. This was a change from earlier years – when only a sample of essays and dissertations was submitted to the Turnitin – but it is one the

examiners intend to follow in the future. As a result of all this process, one case was referred to the Proctors who determined, after interviewing the candidate, that the essay did not evidence intentional plagiarism. That candidate's work, accordingly, was marked on its merits. One later submission to the Proctors was awaiting determination when the list was published.

Two dissertations were not submitted by the noon deadline on the submission day but only shortly before 5 pm. In such circumstances, the Proctors' permission is needed for the examiners to proceed with the assessment of the late dissertations. The Proctors found there was no good reason for the delay but nevertheless gave the examiners leave to proceed with the assessment process. The examiners have discretion to impose a mark penalty for late submission, but did not exercise it in this case, because they did not think any advantage had been obtained from the late submission. It is unusual for dissertations to be submitted late. If it were to become more common, future examiners might wish to revise the benign policy followed this year.

## **6 Setting of papers**

The Examiners checked all draft papers line by line; the papers were also sent to the External Examiner. The process yielded a substantial number of further queries on a significant number of papers, though only one or two truly substantive points. No errors came to light during the examination.

## **7 Information given to candidates**

The Edict is attached as Appendix 3.

## **8 The written examinations**

One glitch occurred with the Jurisprudence essay titles, which were put up by the Schools authorities at the beginning rather than at the end of eighth week. When this was discovered (not until mid-week) the questions were removed. In these circumstances the Chair of Examiners decided to have the questions relating the topics still subject to tutorial teaching in eighth week re-drafted, and the Jurisprudence examiners nobly agreed to implement this scheme.

The Chair of Examiners attended at the start of each examination, in full fig, as did the setter or an alternate whose attendance had been agreed with the Chair of Examiners. No difficulties were experienced with the provision of the expected material, except in European Private Law: Contract, where only two of the three sets of materials were on the candidates' desk when the Chair arrived half an hour before the examination. However, the Invigilator had already noticed the problem and a search was under way which, fortunately, bore fruit before the candidates arrived in the School.

## **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, however, the Proctors had agreed to a limited experiment whereby the materials in the two tax examinations were provided by the candidates themselves. This experiment seemed to work smoothly, even if in a somewhat over-elaborate way. An 'inspector' from the faculty (Ann Kennedy) examined the materials in the School and the Faculty, though the good offices of the tax teachers, especially Professor Freedman, provided strong transparent bags in which the candidates could transport the volumes to the Schools. The examiners are perfectly content that candidates should continue to provide the materials in the tax examinations in future years and that this procedure should be extended to other courses, as appropriate.

## **10 Marking and remarking**

As last year the Board held one examiners' meeting rather than two. The same prior steps were taken as last year. The routine double-marking of scripts prior to the meeting needed to be extended to include all those scripts which might, however remote the chance, be thought to have the potential to affect a candidate's classification, as there would be no real prospect of re-marking after the meeting. In addition to the prescribed swapping and sampling of marks, this meant that there was blind double marking of all papers for which a mark had been given ending in 7, 8, or 9. Where a script had been double marked, the markers submitted an agreed mark before the meeting. So also every paper given a mark below 60; and papers given a mark below 50, and presumed to fail, were also seen by the External Examiner.

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

A total of 8 candidates had medical certificates (one had more than one) forwarded from the Proctors' Office. The figures for 'other special cases' are very low. 3 candidates wrote some or all of their papers in their respective colleges. A further 8 candidates wrote some or all of their papers in a special room in the Examination Schools. The Examiners took specific and individual account all of these medical certificates. In one case the certification made a difference to a student's final result.

The following additional specific details are included at the request of the Proctors. In the BCL, medical certificates on behalf of 2 candidates, or 1.3% 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 2012*, page 34). In the MJur, no medical certificates were forwarded under the same regulations.

## **13 Thanks**

The internal Examiners would like to conclude by expressing their thanks to the External Examiner, Professor Sarah Worthington, for sage advice. Particular thanks are also due to the Examinations Officer, Julie Bass, whose professionalism, judgment and experience are

invaluable. Perhaps the Chair can report that when he announced himself at the first examination as being the chair of the BCL/MJur examiners, a wide and satisfied smile appeared on the Invigilator's face and he said words to the effect: 'I won't have any trouble with you because Julie Bass will have made sure you get it right.'

Paul Davies (Chair)

John Cartwright

Judith Freedman

Dori Kimel

Sarah Worthington (External)

**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 Sarah Worthington, external examiner

## APPENDIX 2

### Statistics for the 2013 Examinations

#### BCL

	2013						2012						2011						2010						2009					
	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	40	47	26	39	66	44	38	57	28	55	66	56	39	46	19	37	58	44	30	33	21	23	51	57	26	27	17	18	43	45
Pass	44	52	40	61	84	55	29	43	23	45	52	44	43	52	32	63	75	56	20	22	19	21	39	43	35	37	17	18	52	55
Fail	1	1	0		1	1	0		0		0		0		0		0		0		0		0		0		0		0	
Total	85		66		151		67		51		118		82		51		133		50		40		90		61		34		95	

#### MJur

	2013						2012						2011						2010						2009					
	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	5	23	1	8	6	17	6	32	6	30	12	31	6	29	2	9	8	18	3	9	3	9	6	18	12	34	0		12	34
Pass	17	77	12	92	29	83	13	68	14	70	27	69	15	71	21	91	36	82	12	35	16	47	28	82	12	34	11	31	23	66
Fail	0		0		0		0		0		0		0		0		0		0		0		0		0		0		0	
Total	22		13		35		19		20		39		21		23		44		15		19		34		24		11		35	

## APPENDIX 5

### Raw Marks Statistics, BCL/MJur 2013 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
Advanced Property and Trusts	68.2	15					73	27
BCL Dissertation	67.6	13			8	15	31	38
Commercial Remedies	65.1	37	3		5	24	43	24
Comparative and Global Environmental Law	67.7	6				33	33	33
Comparative Equality Law	67.4	21				10	76	14
Comparative Human Rights	67.3	30				23	47	30
Comparative Public Law	67.7	24				8	58	33
Competition Law	65.1	40			8	33	33	20
Conflict of Laws	64.0	56		4	11	45	16	21
Constitutional Principles of the European Union	67.9	9				11	44	44
Constitutional Theory	65.9	21				19	67	14
Corporate and Business Taxation	66.4	15				40	20	33
Corporate Finance Law	66.7	26			8	15	38	35
Corporate Insolvency Law	68.0	21			5	14	33	48
Criminal Justice and Human Rights	68.5	28			7	11	25	57
European Business Regulation	67.4	19				16	42	37
European Intellectual Property Law	65.9	15				33	53	13
European Private Law: Contract	64.5	13		8	8	23	38	23
Evidence	66.1	8				38	50	13
International and European Employment Law	66.6	11				18	55	18
International Dispute Settlement	66.4	33		3		21	48	27
International Economic Law	66.7	23				26	39	30
International Law and Armed Conflict	67.0	29				31	31	38
Jurisprudence and Political Theory Essays	65.1	20			5	45	10	30
Law and Society in Medieval England	63.8	6			17	33	33	17
Law in Society	61.7	7		14		71	14	
Medical Law and Ethics	68.1	30				3	60	33
MJur Dissertation	66.2	5					100	
Philosophical Foundations of the Common Law	65.4	19			16	26	26	32
Principles of Civil Procedure	68.5	39					56	44

## Raw Marks Statistics, BCL/MJur 2013

### 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
Principles of Financial Regulation	65.5	21			10	29	29	33
Punishment, Security and the State	64.9	7				43	57	
Restitution of Unjust Enrichment	65.0	45	2	4		33	27	31
Roman Law (Delict)	68.3	3					67	33
The Law of Personal Taxation	67.6	6					67	17
The Roman and Civilian Law of Contracts	63.4	5			20	40	20	20
Transnational Commercial Law	66.8	14				29	29	36

## APPENDIX 6

### INDIVIDUAL REPORTS

#### ADVANCED PROPERTY AND TRUSTS

15 candidates attempted this paper. The overall quality of the scripts was of very good standard with only one or two weaker scripts. Four candidates were awarded marks of 70 or above. Candidates were overall well prepared and successful in addressing the set question and in identifying the principal issues. However, only few scripts showed reading that went beyond the required material. The best answers demonstrated in-depth knowledge of the legal sources as well as imagination and creative flair.

Most answers clustered around Questions 2 (property analysis), 3 (*numerus clausus*) and 9a) (trusts and the split ownership/obligational models). The answers to all three questions were overall quite pleasing, though examiners noticed little attention to relevant case law. Most of the answers to Question 9a) were competent, but some exhibited lack of analysis of the quote and its implications. Also quite popular was Question 5b), but some answers simply reproduced trite knowledge without demonstrating in a convincing manner what could be gained from applying Coase's economic utility analysis to property law. Questions 5a) (property and personality) and 9b) (core elements of trusts) had no takers.

Examiners noted that quite a few candidates listed a number of opinions without fully developing single aspects in sufficient depth. This was particularly true of the answers to Question 6 (fiduciary law), where only few answers soared above the obvious and engaged fully with new theoretical debates and the burst of recent case law. That said, some scripts demonstrated careful independent thinking.

#### COMMERCIAL REMEDIES

All questions had some takers, with overall no significant reluctance to tackle problems or essays. Question 1 ("What is a remedy in private law?") proved the least popular, reflecting perhaps its theoretical nature, something that the hard headed realists taking the course were reluctant to attempt. Question 2 ("limitation of actions") was treated by two candidates as an invitation to discuss all of the limits on the availability of remedies that there are. As a question of that form would take considerably longer to address than the three hours allotted to the exam, this reading of the question was not a plausible one. Question 5 ("reconstitution of a trust") was disappointingly unpopular, which perhaps may require a greater emphasis on equitable claims in future years. All three problems were generally well done, although some candidates contented themselves with issue spotting, rather than seeking to answer what the law actually is.

#### COMPARATIVE EQUALITY LAW

This was the second year in which this course has run. A total of 21 candidates took the course.

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. Although there were some very good responses, the scripts did not fully reflect the high quality of work done during the year in seminars and tutorial essays. Candidates were very well informed, and the level of knowledge of cases and secondary material was high. However, while there was comprehensive knowledge, in many cases this was not applied to answer the question in a focussed and incisive way. Some candidates tended to be rhetorical or journalistic in their approach, and several did not answer the whole question. For example, although there were many good answers to question 5(a) on religious discrimination, very few were able to discuss both the right to freedom of religion and the issues on religious discrimination. The rubric asked candidates to refer to legal materials in at least two of the jurisdictions studied and include references to international law where relevant. Some candidates, unfortunately, did not pay sufficient attention to this instruction. In question 8 (comparative law), there was not enough attention to the problems of comparative law; and in question 2 (grounds) several candidates misunderstood the question.

Nevertheless, all the candidates had an impressive level of knowledge. There was an impressive grasp of secondary materials and the best candidates showed a good ability to use the theoretical material to provide a critical analysis of the primary materials. 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. Overall, candidates displayed a very high level of knowledge, an ability to apply theory to substantive materials and an interest and enthusiasm in the subject. It was indeed a pleasure to mark.

## **COMPARATIVE AND GLOBAL ENVIRONMENTAL LAW**

Overall, the quality of answers was very good and there was clear evidence of a good detailed knowledge of the legal material from different jurisdictions. Stronger answers were those in which candidates applied that knowledge carefully in addressing the questions asked, particularly by drawing on material from a range of different subject areas. Questions 1 (environmental principles), 5 (interdisciplinarity) and 8 (markets) were particularly popular.

## **COMPARATIVE PUBLIC LAW**

The paper was done well, there were a significant number of distinctions and no weak papers. The candidates who secured distinctions combined a good understanding of the positive law, with analysis of the normative issues relevant to the questions set. The most popular questions were those on legitimate expectations, proportionality, review for error of law and the extent to which deference/respect informs EU and French law, as well as UK case law on human rights. There were, however, also some good answers on review of fact. The question on damages liability attracted few answers, both those who attempted the question did so well. The candidates on the whole showed a good mastery of the materials covered in the course.

## **COMPARATIVE HUMAN RIGHTS**

This was the second year in which we ran the new syllabus for Comparative Human Rights, which combines civil and political rights with socio-economic rights and includes a more express theoretical component. A total of 30 candidates took the course. The examiners were very impressed at the quality of answers in this examination. All the questions received a good range of responses, with the most popular being question 1 (capital punishment).

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. There were a few common mistakes. The rubric asked candidates to refer to legal materials in at least two of the jurisdictions studied and include references to international law where relevant. Some candidates, unfortunately, did not pay sufficient attention to this instruction. A few candidates were tempted to use the general questions, such as minimum core and the role of courts, to answer the questions they had hoped to see on the paper but did not, particularly in relation to the right to housing. In some cases, they repeated information in two different questions. Nevertheless, all the candidates had an impressive level of knowledge. There was an impressive grasp of secondary materials and a good ability to use the theoretical material to provide a critical analysis of the primary materials. 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. Overall, candidates displayed a very high level of knowledge, an ability to apply theory to substantive materials and an interest and enthusiasm in the subject. It was indeed a pleasure to mark.

## **COMPETITION LAW**

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

The first essay question focused on the treatment of hard core restraints under EU and UK competition laws. The second question considered cartel enforcement in the UK and the possible reforms which may affect detection and deterrence. The third question addressed the role played by competition law in support of a united Europe. The fourth essay question focused on merger review and considered coordinated and non-coordinated effects.

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, to the substantive provisions and to enforcement considerations.

Overall, exam papers were of a high standard. As in more recent years, the majority of candidates tackled only problem questions. The examination was taken by 38 candidates, 6 of whom achieved a first class mark.

## **CONFLICT OF LAWS**

The examiners were struck by how few candidates offered answers to the essay questions, though when these were attempted, the results were pleasing. So far as the problem answers were concerned, there was a generally high level of competence shown, but rather fewer answers of the kind which informed the examiner that the following three points would form the structure to the answer and would account for the advice sought: it still seems that the distinction between a point and a good point is easier to describe than to observe. The interlocking issues within the broad question of submission to the jurisdiction of a foreign court, asked for by Question 6, were not always disentangled with the care which they needed; and it was a pity that a number of candidates misread the last sentence of Question 8 which did not ask them to suppose that all references to Ruritania had been references to Ireland, with the consequence that the invitation to consider the direct and indirect effects of *Owusu* went unaccepted. It was always good when a candidate who had accurately sorted out and applied the law took a little time to say what he or she thought of the state of it, but this was not, perhaps, as widely done as one might have hoped for.

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

The standard of the answers was generally very good indeed, with no marks under 60 and over half the class obtaining a distinction. Every question was attempted by at least one candidate, with questions 2(a), 3 and 8 proving particularly popular. Overall, candidates had a strong understanding of the principles underlying this subject, though on occasion greater detail on specific points would have been helpful. Most questions required candidates to demonstrate awareness of the current state of the law, as well as an ability to assess the law critically, and the best answers were those which addressed in a perceptive and penetrating way the specific challenges raised in the question, rather than being overly descriptive of the whole area. On the other hand, some answers were too bland, attempting to cover too much ground in a particular question, with the resulting loss of depth of analysis.

## **CONSTITUTIONAL THEORY**

There was an impressive range of answers from candidates this year, with a number of first class grades awarded. The very best candidates both responded to the question set and, also, showed evidence of original thinking. As ever, the questions centring on the judicial role and the interpretation of constitutional texts proved especially popular, and many of the answers were enriched with examples drawn from a range of different jurisdictions.

## **CORPORATE AND BUSINESS TAXATION**

The papers in this subject showed enthusiasm for the subject and a wide range of knowledge. Five of the thirteen BCL and MJur papers were awarded distinction marks.

The rest of the candidates received marks ranging across the 60s. Eight of the nine questions were attempted by at least one person. Both problems were attempted, although not by large numbers. Those who did them mostly did them well; some very well. The most popular essays were on corporate residence for tax purposes and corporate tax theory, but there was better take up of the question on EU tax law than in some recent years, and some strong answers in this area. Where students were less successful, it was usually because of failure to engage properly with the question or a failure to structure the answer in an analytical way, rather than due to lack of knowledge.

## **CORPORATE FINANCE LAW**

The standard of answers was very good, with a high proportion of marks above 65 and 31% at 70 or above. The most popular questions were Qs 1, 2, 5, 7 and 9, but every question on the paper was tackled. We noted that a high proportion of candidates chose to answer three equity or three debt questions (generally the former). As we want candidates to engage with the course as a whole we plan to change the rubric next year to require candidates to answer at least one equity and one debt question.

On the whole the scripts showed a good command of the principles at work in this subject, and at the top end there were some very thoughtful and interesting answers. Those who were prepared to tackle the intricacies of the particular question set were rewarded accordingly.

Question 1 was handled competently, although weaker candidates tended to be rather descriptive. Question 2 also produced some rather descriptive answers. Stronger candidates focused on the question rather than just writing about how covenants worked and listing them. Question 3 produced some very good analysis of the post-Spectrum position. The best answers did not just set out the law, and the drawbacks of a floating charge, but considered how the decision in Spectrum actually affected the tools used by lenders and borrowers in corporate finance. Question 4 was generally done very well. There were a number of different approaches taken to the question, but all focused well on the basic point, namely whether the difference between bonds and syndicated loans can be explained by the nature of those providing the funds.

Question 5 was generally very well handled and produced some very thoughtful answers on the issue of disclosure in private equity, with stronger candidates differentiating disclosure to different groups (investors, employees, the public generally) and the provision of information to the regulator, and drawing comparisons with disclosure in the public markets. Question 6 produced some very good criticism of minimum capital requirements, and defences of constraints on dividends, the best looking at the difficulties with the balance sheet test. The treatment of the priority rules on insolvency was more mixed. Question 7 was handled well, although weaker candidates had a tendency to be rather descriptive in their analysis. Answers to question 8 displayed a good knowledge on both guarantees/indemnities and CDS/insurance. The best answers actually compared the two and looked at issues of recharacterisation. Question 9 produced some descriptive answers but stronger candidates provided some thoughtful analysis of the role of enforcement, analysing the differences in the primary and secondary markets and contrasting the law on the books with the enforcement of those laws.

## CORPORATE INSOLVENCY LAW

The standard of scripts this year was generally very pleasing, with some extremely interesting and sophisticated discussion by the very best candidates. 28 candidates sat this paper, and there were 10 distinction marks.

Question 1. Overall, the answers to this question were rather disappointing as many answers consisted largely of description of the balance sheet and cash flow tests, and of the facts and decisions of the various courts in *Eurosail*. The best answers analysed the reasons and policies behind the two tests, and the various uses to which they are put in statute and contract, and then assessed the interpretations of the balance sheet test in the light of that analysis.

Question 2. Very few candidates attempted this question. Of those who did, the best focused very specifically on the differences between the UK and US approach to insolvency, and commented on the ADP and *ipso facto* clause provisions in the light of that analysis.

Question 3. There were some very good answers to this question, many considering the purpose of the preference provisions, and how the 'desire to prefer' requirement interacted with the various policy justifications. The best answers considered both *ex ante* and *ex post* perspectives, and analysed the incentives created by various possible formulations of the provision.

Question 4. There were many very good answers here. The best approached the proposed reforms critically, and compared them with approaches taken in other jurisdictions. Weaker answers just gave an account of the proposed reforms without focusing on the position of corporate groups.

Question 5. Few candidate attempted this question. Those who did gave a balanced account of the relevant arguments.

Question 6. There were varying interpretations of the question: few people considered what was meant by 'schizophrenic' and most just thought it meant 'uncertain' or 'undesirable'. Most facets of the topic were considered, and there was particularly good discussion of the limitation of statutory actions to liquidators and the incentives that this potentially gives directors.

Question 7. Few candidates attempted this question, but the best of those who did focussed on the rather difficult issues raised in defining the factors governing the enforceability of trusts in insolvency.

Question 8. There were some very good and detailed answers, displaying excellent knowledge of the issues and cases, and appreciation of the policy implications of the Supreme Court decision.

Question 9. There were some interesting answers here. Some of the best challenged the received wisdom that controls over administrators are not sufficient. Many only considered unsecured creditors as a group, without thinking about specific categories eg employees.

## **CRIMINAL JUSTICE AND HUMAN RIGHTS**

28 candidates took the paper this year. There were 16 distinctions, 10 2:1s, and 2 passes. The highest mark on the paper was 76% and the lowest mark was 58%.

The answers were well spread across the eight questions on the paper. Most frequently answered was Q. 7 on the admissibility of evidence obtained by violation of a Convention right (20 candidates), followed by Q. 5 on proportionality in relation to Article 6 ECHR (14 candidates), Q.1 on the prohibition of retrospective increases in sentences (12 candidates) and then Q. 4 on the two prison-related topics of prisoner voting and life imprisonment without parole (11 candidates). As usual, the best answers demonstrated an ability not only to understand and critique the judgments but also to marshal normative arguments both internal to the Convention and external to it. Most of the candidates in the 2:1 range focussed on case analysis without taking the normative issues sufficiently far. Two candidates were unable to put together a satisfactory answer to a third question, and thereby lost considerable ground.

## **EUROPEAN BUSINESS REGULATION**

The scripts made a very good overall impression, with a good crop of marks at Distinction level and no mark dipping below 60. The stronger scripts tended to be characterised not only by a secure grasp of detail but also by an ability to reflect on the thematic issues that hold together the course - perhaps most of all selecting the appropriate intensity of regulation of the internal market, the associated questions of constitutional design and scope, and the relationship between the Court of Justice and the legislative process. Several questions openly pushed the inquiry in these directions - most notably perhaps questions 1, 2, 6 and 8 - but all, perhaps excepting the problem question (9 - a tricky one, impressively handled), were helpfully tackled with reference to both detail and policy. And the candidates rose to the challenge. There was also a refreshing readiness to take a pugnacious approach to what was being asked - so, for example, good answers to Q.4 made play of how one might measure usefulness and from whose perspective, while for Q.5 there was ample scope to question the meaning of "distortion".

## **EUROPEAN INTELLECTUAL PROPERTY RIGHTS**

The standard of answers on the papers was generally very high across the board (whether tackling the trade mark, patent or copyright questions), with slightly better performance on the trade mark aspects. Students were required to answer at least one problem question, but almost all students answered two problem questions and one essay question. Most students decided to answer the problem question in trade mark and copyright law; only a few attempted the problem question in patent. In Part A (Trade Marks), the problem question was largely answered well, with the lower marked papers failing to consider the double-identity claim raised by the keyword purchase. Those students attempting the essay question answered Question 1 (on competition values) rather than Question 2 (on unitary trade mark rights). The better essays addressed both the extent to which trade mark law

already takes concerns for competition into account as well as recent decisions that appear to grant broader, potentially anti-competitive protection. In Part B (Patent), only four candidates attempted the problem question, but these included two very good papers. Many answers to essay question 5 (European patent system) focussed over much on the problems of the present regime, and gave insufficient attention to the details and the pros and cons of pending reforms. In Part C (Copyright), the majority of candidates attempted the problem question, and the remainder tackled the essay question on harmonisation. Better problem questions engaged with the impact of European law on the subsistence of copyright in the UK, and considered possible interpretations of the fair dealing defence, including some comparative analysis with non-European jurisdictions. Those who did well on the essay engaged critically with the question, rather than merely listing ways in which European copyright law has been further harmonised by the Court of Justice.

## **EVIDENCE**

With the notable exception of one outstanding candidate, who achieved a strong first class mark, the quality of the eight Evidence scripts was not as high as usual. No other candidate achieved a mark above 68, whilst the average mark was 66.

For the first time that can be recalled, no candidate attempted an essay question, so the teaching group will need to think about the format of the paper. Nor did anyone attempt Question 7. Therefore, only four questions were attempted. All candidates answered Question 5, seven answered Question 7, six answered Question 4 and three answered Question 6. There was very little difference in the average quality of the answers to those various questions.

There were no errors that stood out as common. The most prevalent fault was failure to deal with all the points arising.

## **INTERNATIONAL AND EUROPEAN EMPLOYMENT LAW**

There were 10 candidates, all of whom performed well and some of whom performed excellently.

The questions required knowledge of three distinct bodies of law, namely international labour law (in particular ILO standards), EU employment law, and pertinent human rights norms and jurisprudence from both the UN and Council of Europe systems. The candidates in general showed ability to work with the diverse systems and to interrelate them. As with previous years, a significant variant between the best scripts and the weaker ones was the degree to which policy arguments were supported by detailed and precise reference to legislation and case law. It was also crucial to distinguish between legally binding measures and soft law, particularly in the ILO context.

Two other features distinguished weaker and stronger answers. Firstly, some weak answers failed to answer the question posed, for example treating Question 6 on collective labour law as if it referred to all of EU labour law, or assuming Question 8(a) on reconciliation of paid work and unpaid care only related to caring for children. Secondly, stronger answers tended to have sharper argumentation, with more than one line of argument pursued, and candidates anticipating and refuting objections to their claims as they went. Weaker answers tended to be one-sided in their

argumentation, sometimes making glib assumptions about the benefits of human rights approaches, without recognising the shortcomings of human rights protections for workers in many fields.

Questions 3, 4 and 5 were particularly popular, and were attempted by most candidates. Question 3 on flexicurity was popular, in contrast to the previous year. Good answers identified the tensions and ambiguities inherent in the concept of 'flexicurity' and used them to examine the pertinent legal instruments. Question 4 on a 'rights-based' approach to labour migration was very popular, which was pleasing as this is a relatively new topic on the course. Answers were generally wide-ranging and well-informed, but tended to gloss over the difficulty in defining just what a 'rights-based' approach might be, in a world where states control the entry, duration of residence and often the terms of employment of migrant workers. There tended to be an assumption that human rights law was 'rights-based' vis-à-vis migrants (which is by no means self-evident) and so protected migrant workers adequately. This assumption warranted deeper scrutiny. Question 5 on the 'integrated approach' was also popular. Candidates tended to explain the concept well. Better answers identified various advantages and disadvantages, including the legitimacy concerns about this approach.

The equality questions (Questions 7, 8(a) and 8(b)) were fairly popular. Some answers to Question 7 failed to engage with the historical development of EU equality law, and treated political explanations as 'justification.' Better answers scrutinised the differentiation across grounds more critically. Question 8(b) on the gender pay gap was more popular than 8(a) on unpaid care, but both produced some outstanding answers, engaging deeply with the law and surrounding scholarly debates, appraising an impressive range of legal and policy measures.

A few candidates also attempted Question 1 on the current economic crisis, producing both weak and very strong answers. The weak cobbled together various inchoate concerns about economic neo-liberalism, the stronger answers identified discrete phenomena that posed challenges for employment law. Question 2 similarly resulted in some very thoughtful, critical answers on labour rights *qua* human rights. Weaker answers glibly assumed that *all* labour rights were amenable to being treated as traditional human rights, and that that would be a good thing.

## **INTERNATIONAL DISPUTE SETTLEMENT**

The scripts this year were very good, the great majority of them being well-focused, well-informed, and clearly written. Every question in the paper was attempted by at least one candidate. The distribution of answers however was relatively uneven. This may be because certain questions in the paper were roughly similar to those discussed during tutorials, and it suggests that next year there should be a more even distribution of subjects discussed in tutorials over the whole extent of the paper.

This year, problem questions were introduced (two of the eight questions in the paper). Despite some hesitation on the part of candidates during the academic year, the overwhelming majority of them attempted either one or both of the problem questions. There was some incidence of pre-prepared answers tacked on to broadly relevant questions, especially in the case of the problem questions and some essay questions that were similar to those discussed in tutorials. The best scripts were those where candidates were able to discern differences in the fact pattern or phrasing of the essay question and tailor their analysis accordingly.

Anecdotal evidence suggests that candidates thought this year's paper difficult but fair. The results suggest that candidates should not be afraid to test their ability to apply their

knowledge to real-life situations as these are presented in problem questions. Most of them did a very good job.

It was apparent that candidates had engaged not only in much reading around the subject but also in a great deal of thinking about the subject and the main controversies that are canvassed in current scholarship. Both the reading and the thinking paid dividends: the scripts were a pleasure to read.

### **INTERNATIONAL ECONOMIC LAW**

The level of performance of the students who wrote the International Economic Law examination paper was, in overall terms, excellent. In terms of a detailed breakdown, there were 29% of students who obtained a Distinction class mark, 46% of students who obtained a mark between 65-68%, and 25% of students who obtained a mark between 60-64%.

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. Several candidates (one candidate in particular) were more generally let down by their final exam answer which may well have been an issue of timing. Moreover, several answers read as being formulaic, general essays on the topic of the question rather than being a specific answer to the question being asked, and as such were marked down. These exceptions do not however detract from the overall excellent performance of students in this subject.

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

Candidates were asked to write essays on three out of six questions. Three of these concerned central issues in jurisprudence, the rest some classic topics in wider political philosophy. The overall standard of the essays was good, with only a handful being outstanding.

Q1 (Does a law that prohibits murder tell us to refrain from murder for the reason that the law says so?) was particularly popular. The better essays sought to explain what it is for the law to tell us to refrain from murder for one or another reason, considered arguments for and against thinking that the law tells us to refrain for the reason that it says so, and drew broader implications regarding the nature of law. Many of these considered the 'paradox of just law', the distinction between conformity and compliance, and the question of the practical difference that law might be supposed to make. Weaker essays answered a generic question about whether law claims authority and summarized the orthodox response, ignoring the specifics of laws that prohibit mala in se and the paradoxes to which the orthodox view leads in these cases. Some essays took the question as an even more general invitation to reflect on the aims of law and the means through which it pursues them.

Q2, which approached the problem of the nature of legal obligation by asking whether we can readily extend the familiar philosophical explanations of domestic legal obligation to

the international domain, was the least popular, attempted by few candidates who wrote competent but not outstanding essays.

The remaining questions were roughly equally popular.

Q3 explored the relation between law and language. The overall standard was fair. Many candidates showed familiarity with distinctions drawn by philosophers of language among different aspects of linguistic content and among different kinds of linguistic intention that might be imputed to speakers and writers. The better essays noticed that the quote that forms the question concerns two kinds of determination relation (one between the content of linguistic texts and their determinants, the other between the content of the law and its determinants) and the relation between the two.

Q4 (Is the point of authority to help people conform to reason better than they could on their own?) elicited many unimpressive essays that summarized the old debate about the rationality of submitting to authority and Raz's service conception of authority. Several writers were aware of recent debates that concern the importance of procedure or a conception of authority as a relation between persons to whom certain roles attach. The better essays noticed the relation between these debates and the question what it is, precisely, to have authority.

Responses to Q5 and Q6 (about the grounds and scope of justice, and about the bearing of the distinction between ambition and endowment on distribution) were mostly competent but unimpressive, with one or two exceptions.

All essays were submitted to *Turnitin*. Five of those, by three candidates, scored above 25%. All of these included passages copied verbatim or nearly verbatim from other sources. Extensive copying of others' work, whether or not correctly credited, is a robust predictor of weak performance.

## **INTERNATIONAL LAW AND ARMED CONFLICT**

The overall performance of candidates in this paper was again very good. 11 out of the 29 candidates scored distinction marks and no candidate obtained a mark lower than 60. The best answers were those that displayed wide reading of the literature and good command of relevant debates, theories, cases and other authorities. The very best answers considered different approaches to the issues identified and, most importantly, provided evidence of personal reflection on those issues by setting out an argument which indicated the candidate's own views. Every question on the paper was attempted by at least one candidate but questions 5 (on cyber- attacks) and question 8 (on proportionality) were not very popular.

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

Six candidates took this paper. Only one was of Distinction standard. Candidates attempted all except two of the questions (one on the reasons for the popularity of the action of replevin and one on the 1290 Statute of Quo Waranto). Four candidates

answered the question on the threats posed by devices for the avoidance of wardship and four a question on the real purpose of the Statute of Mortmain. Overall the standard was good but not quite outstanding.

### **LAW IN SOCIETY**

Seven students sat the examination. The marks ranged across the 60's except for one in the 50's. There were no distinctions. The results were in line with the examiners' expectations. All questions were attempted, although some were more popular than others. The answers generally displayed a solid knowledge of the reading materials and reflected the class discussion. The best answers showed a pleasing ability cross-reference materials. It is just that none did it at a first class level.

### **MEDICAL LAW AND ETHICS**

Candidates performed well on this paper this year. There were eight questions and it was pleasing to see a wide candidates selecting a wide range of topics to write upon. All candidates showed a reasonable understanding of the law and ethical principles. The best candidates were able to demonstrate a detailed knowledge of the literature in answering their question asked. In particular they analysed why it was that commentators disagreed over the over the controversial issues. Weaker candidates made a series of points, but did not use these to develop an argument which answered the question. Another feature of a good answer was that it discussed how debates in one area of medical law reflected debates in another

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

The overall quality of the scripts was good, with virtually all candidates demonstrating the ability to engage with the questions on their precise terms, and by way of offering genuine theses. All questions were attempted, although the relatively less popular – question 2 is a case in point – tended to be answered very well by those who chose them – a reminder that sometimes, the relatively less straightforward questions are those that give candidates the best opportunity to offer an original analysis.

The small number of relatively weak scripts appeared to be the product of a gamble the students were repeatedly urged not to take – namely, 'dropping' altogether one of the three main components of the course (either criminal liability, or tort liability, or contract). Since every such component features directly in three different questions, as well as requires consideration for the purposes of answering the general question (number 8), those who were only prepared to answer questions involving two of main components appear to have left themselves with insufficient choice, and, in the worst scenario, had the same one or two lines of argument offered repeatedly throughout the script.

## PRINCIPLES OF CIVIL PROCEDURE

The standard of scripts this year was very strong overall. There was a higher percentage of distinctions than in previous years and the lowest mark was 65. There have been a lot of significant developments in civil procedure in the last 12 months including the Jackson reforms to costs finally coming into effect, the passage of the Justice and Security Act 2013 making closed material procedures potentially available in ordinary civil proceedings, Government proposals to introduce opt out class actions in competition cases, and important decisions by the UK Supreme Court on fraudulent litigants and legal professional privilege. These topics featured prominently on the exam and proved to be popular questions. Few candidates chose to answer the questions on interim remedies and e-disclosure. There was no particular pattern to the scripts that received distinctions, although particularly strong answers demonstrated a high degree of original thinking across different answers and covered a broad spectrum of the syllabus.

## PRINCIPLES OF FINANCIAL REGULATION

Forty-eight candidates sat this paper. Of these, 27 were reading for the MLF, 12 for the BCL and 9 for the MJur. The overall standard of the scripts was very high. The average mark was 66%, and 14 candidates (30% of those attempting the paper) obtained first class marks. The average marks were indistinguishable for BCL and MLF students, and slightly lower for MJur students.

Q1: Surprisingly, only three candidates attempted this question. Some had difficulty distinguishing regulatory competition (competition *between* regulators) from competition as a *goal* of regulation.

Q2: Fourteen candidates attempted this question. Answers were generally successful in describing the problems faced by consumers of financial products. However, many had difficulties in moving from a statement of the problem to consideration of the regulatory implications, and in particular how the “minimum standards” prescribed by Bar-Gill and Warren should be understood. The better answers explored the extent to which current regulation of consumer financial products successfully implements these.

Q3: Seven candidates attempted this question. The better candidates accepted the invitation to compare the function of price transparency requirements with that of rules requiring disclosure of price-sensitive performance information. The weaker candidates neglected to do so, and wrote only about prospectus and continuing disclosure rules.

Q4: This was a very popular question, attempted by 40 candidates. Answers were on the whole very competently done, with most candidates pointing out the limitations of Manne’s claim based on difficulties in decoding insider trading, and also the argument put by Goshen and Parchomovsky. The better scripts also considered whether continuous disclosure provided a preferable approach.

Q5: This question also proved very popular, attracting 34 answers. Good answers explained the changes introduced by Basel III and also assessed the merits of the claim by Admati et al that significantly more should be done.

Q6: Twenty-seven candidates attempted this question. Many seemed to ignore the fact that the quotation was from the Liikanen report and chose to write exclusively about the proposals of the Independent Commission on Banking for structural separation and the 'Volcker rule'. Whilst it was of course possible to address the general merits of structural separation in this way, the very best answers focused specifically on the merits of *within-group* 'ring-fencing' and in so doing compared the Vickers and Liikanen proposals.

Q7: This question was only answered by six candidates; however the answers were generally of a very high standard. A wide range of positions were defended, giving candidates ample opportunity to demonstrate their own analysis of the issue.

Q8: Nine candidates attempted this question. The answers displayed a very good understanding of the rules about to be imposed on European hedge fund managers by the Alternative Investment Fund Managers Directive, and how these compare to the regime applicable to UCITS. However, most candidates did not consider how the position in the US might be relevant to the question.

Q9: This question was attempted by two candidates.

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

7 Students were examined for this option. All questions on the paper were answered by at least one candidate. All candidates achieved final marks in the sixties, the highest overall mark awarded being 68.

## **RESTITUTION OF UNJUST ENRICHMENT**

Overall the standard demonstrated this year was slightly below that in previous years. The most significant cause of this decline was the failure to answer the question set, with instead the routine trotting out of answers to related, but different, questions. For example, question 3 ("Nullity etc") was treated by many as an opportunity to regurgitate a pre-prepared answer on absence of basis, with only a notional attempt to steer it towards the contractual setting the question aimed at. By contrast, those few brave souls who tackled question 5 ("Frustration and breach") usually produced superb answers, as they were forced to marshal their knowledge in a new way. The impression created was that candidates would have done better if they had been prepared to trust their own knowledge and abilities rather more. All questions had some takers, with question 1 ("Fault") and the problems (questions 7 and 8) proving especially popular, although few tackled the knotty question of how any claim to the benefit in question 8 should be quantified.

## **ROMAN LAW (DELICT)**

There were three candidates for the BCL. One candidate got a Distinction, one a 2.1. No question chosen showed problems in the answering, the distribution was reasonable in as far as can be said with this number of participants. All in all a gratifying result.

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

There were six candidates, one of whom withdrew from the examination before taking this paper.

The general standard displayed was high, with four papers marked in the high 60s and one first class paper. Answers demonstrated a mastery of a significant amount of detail as well as a grasp of the relevant underlying principles. The best were not only descriptive of the law but also provided the critical analysis required by the relevant question.

### **TRANSNATIONAL COMMERCIAL LAW**

Overall, this year's results were very pleasing, with a high number of distinctions. Most candidates had clearly understood the main tenets of the course and were able to put this across on paper. Weaker candidates fell into the common trap of reproducing prepared work without focusing properly on the question asked. A number of candidates did well in the two essay questions but failed to achieve a distinction because they did not answer the problem question very well.

#### **Question 1**

This was a popular question which was tackled in a variety of ways. The best answers attempted to define both 'Transnational Commercial Law' and 'Lex Mercatoria', answers failing to do this were generally poor as it was not at all clear what was being compared.

#### **Question 2**

A question with few takers – most of those who tackled it produced standard, prepared CISG essays.

#### **Question 3**

Some good answers, but a number of candidates displayed a surprising lack of knowledge of what the *ius commune* in continental Europe was (or indeed of the early development of the common law).

#### **Question 4**

Again, few takers, but those who did tackle this question generally did a good job.

#### **Question 5**

The better answers did not confine themselves to discussing the merits of the Cape Town Convention but focused on the Convention's unique approach to make transactions registrable without re-characterising them. Some candidates also added some useful thoughts on the nature and purpose of security.

#### Question 6

A popular question – many candidates simply reproduced a standard delocalisation essay, while better candidates looked at the nature of arbitral awards, asking themselves whether an enforceable agreement can ever exist without the backing of a system of domestic law.

#### Question 7

Of the two problem questions, this was the more popular. Most candidates did well on (a), while answers of (b) were more varied, with some candidates launching into a discussion of fundamental breach and force majeure without thinking about the underlying factual matrix. Better candidates realised that B, having initially sought to avoid the contract, is in the end trying to enforce it (raising questions of affirmation and estoppel, both of which might necessitate reference to the PICC).

#### Question 8

Some very good answers, with the best answers focusing on the question of applicability of the UCP given that they are not expressly incorporated.

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

There were five candidates. The distribution over the questions was reasonable, taking into account the number of examinandi and questions; all candidates took question 4. There was no question which showed to pose a problem. One candidate got a Distinction, three 2.1, one, however, a 2.2, be it just under a 2.1.

## Report of the External Examiner

### External Examiners Report

BCL/MJur 2013

22 August 2013

Dear Vice Chancellor

**EXTERNAL EXAMINER'S REPORT:  
EXAMINATION FOR THE DEGREES OF B.C.L. AND  
M. JUR, FACULTY OF LAW, 2012-13**

This is my second examiner's report. As indicated in my report last year, I was appointed as External Examiner in February 2012, rather later in the day than is normal, in order to take the place of Professor Robert Stevens (then at UCL), who had at that stage been appointed to a Chair in Oxford and hence had a conflict of interest.

Once again, I did not attend meetings in February and April, but was sent the necessary papers in good time and given every opportunity to comment. I had no concerns. I attended the Marks Meeting on 10<sup>th</sup> July.

You have asked me to comment specifically on a number of issues, and I adopt the headings suggested in your earlier communications to me. Where my comments have not changed since last year, I simply repeat what I said then.

- (i) *whether or not the institution is maintaining the threshold academic standards set for its awards in accordance with the frameworks for higher education qualifications and applicable subject benchmark statements*

The BCL and MJur degrees have an enviable reputation, and justifiably so. The degrees attract high calibre students who are clearly taught well, and challenged appropriately. The assessment is by and large by final examination, although a minority of students exercise the option to submit a dissertation in lieu. The academic standards set for the

award of the degree are appropriately demanding.

(ii) *whether or not the assessment process measures student achievement rigorously and fairly against the intended outcomes of the programme(s) and is conducted in line with the institution's policies and regulations*

The assessment processes are rigorous, and – certainly from all that I could detect – were very fairly conducted in line with institutional regulations and guidance. Indeed, in any difficult cases which called for careful application of the University's regulations and guidance, I was impressed by the care and attention to detail given to each case, and the evident concern to ensure students were treated equitably as individuals and fairly within their cohort.

(iii) *whether or not the academic standards and the achievements of students are comparable with those in other UK higher education institutions of which the external examiners have experience*

The students on the BCL and MJur are clearly the match of any students on comparable degrees nationally. All students assessed as meriting the award of the degree of BCL or MJur amply deserved it, and performed at standards that maintain the high reputation of these degrees.

(iv) *good practice and innovation relating to learning, teaching, and assessment observed by the external examiners*

The entire process was, for me, an illustration of good practice. The care and attention to setting papers, to marking and to double marking and confirming borderline marks, to considering exceptional circumstances, etc, was all by and large exemplary. And the whole process from my end was conducted with warm and friendly efficiency – I was given all the attention and assistance I could possibly have wanted.

In addition, the few practical matters raised in my report last year have all been dealt with or are, it seems, under active consideration. That too illustrates good practice.

My thanks to everyone concerned for being so reassuringly professional and ensuring the whole experience was rather enjoyable. I hope the brevity of my report will be taken as due indication of my satisfaction with what I saw.

Yours sincerely



Sarah Worthington