

EXAMINATION FOR THE DEGREES OF B.C.L. AND M. JUR
REPORT OF THE BOARD OF EXAMINERS FOR 2014

1 Introduction

This report notes various aspects of this year's examinations, and raises a small 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 Friday of week 10. No candidate had two papers on the same day. The papers on the first Saturday were set in the morning; papers in the first full week were set in the afternoon; those in the second full week in the morning.

3 Statistics

Attached at Appendix 1 are the numbers of entrants, distinctions and passes. One MJur candidate failed.

The percentage of candidates gaining distinctions in the BCL was 47%, mid-way between the comparable figures from the last two years.

As with previous years, the number of candidates obtaining a distinction in the MJur was significantly lower, at 27%, again however lying between the equivalent figures for the last two years.

Two years ago 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. Last year the Examiners noted that there had 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. The disparity last year was even greater in the MJur (although the numbers taking that examination are smaller). This year an even greater disparity was evident in the BCL (55% of men obtained distinctions; 37% of women); but the pattern was reversed in the MJur (38% of women obtained distinctions; 14% of men).

The Examiners make two other observations on the statistics from this year's examination. First, that they were disappointed that only 13% of BCL dissertations and no MJur dissertations were awarded a mark of 70 or above - particularly if this fact might discourage candidates in future years from choosing to write a dissertation. Secondly, they draw attention to the fact that candidates in some papers achieve a considerably higher proportion of distinction marks than in others (for example, this year 69% of Criminal Justice and Human Rights papers were awarded a mark of 70 or above).

4 Computer software

The computer software performed without breakdown but in a sub-par manner. It is 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, as last year. No matters of concern were revealed by the process.

One dissertation was not submitted by the noon deadline on the submission day but was received, without permission for the late submission having been sought from the Proctors in advance, during that afternoon. In such circumstances the Examiners are authorised by the Proctors to mark the work, and have discretion to apply a penalty in accordance with their established conventions. As in a similar case last year, the Examiners did not impose a penalty in this case, because they did not think that any advantage had been obtained by the late submission. It remains unusual for dissertations to be submitted late. If it were to become more common, future examiners (or the Faculty’s Examinations Committee) might wish to revise the benign policy followed in each of the last two years.

The Proctors granted one candidate an extension of the deadline for submission of the Jurisprudence and Political Theory Essays, without academic penalty.

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. No errors of any significance came to light during the examination.

7 Information given to candidates

The Edict is attached as Appendix 2.

8 The written examinations

The Chair of Examiners attended for the first half hour of each examination, in full regalia, as did the setter or an alternate whose attendance had been agreed with the Chair of Examiners. No questions of any significance were raised by candidates during these periods.

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, for the second time, the Proctors agreed to a limited experiment whereby the materials in the two tax examinations were provided by the candidates themselves. The experiment again worked smoothly, and the Examiners record their thanks to Judith Freedman, Glen Loutzenhiser and Ann Kennedy for their assistance in organising the scheme and 'inspecting' the materials (in various locations) at the start of the two relevant examinations. The Examiners, as last year, are perfectly content that candidates should continue to provide their own materials for the tax examinations in future years, and that the procedure should be extended to other courses, as appropriate.

10 Marking and remarking

In accordance with established practice, the Board held one meeting rather than two. Routine double-marking of scripts prior to the meeting included all those scripts which might, however remote the chance, be thought to have the potential to affect a candidate's classification. 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 (there were four such scripts), and presumed to fail, were also seen by the External Examiner.

11 Medical Certificates, dyslexia/dyspraxia and special cases

A total of 13 candidates had medical certificates taken into account. 6 candidates wrote some or all of their papers in their respective colleges. A further candidate wrote in a special room in the Examination Schools. The Examiners took specific and individual account all of the medical certificates. In one case the certification made a difference to a candidate's final result.

The following additional specific details are included at the request of the Proctors. In the BCL, medical certificates on behalf of 5 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 2013*, page 32). In the MJur, medical certificates on behalf of 3 candidates, or 6% of MJur candidates, were forwarded to the Examiners under the same regulations.

12 Thanks

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

experience are invaluable. Her hard work and meticulous preparation were once more appreciated not only by the Examiners but by the invigilators and other staff at the Schools, where her guiding hand enables the Chair of the BCL/MJur Examiners to command respect he does not deserve.

Edwin Simpson (Chair)
John Cartwright
Anne Davies
Robert Stevens
Karen Yeung (External)

Appendices to this Report: (1) Statistics; (2) Notices to Candidates; (3) Prizes and Awards; (4) Mark distribution on first reading; (5) Reports on individual papers; (6) Report of Karen Yeung, external examiner

APPENDIX 1

Statistics for the 2014 Examinations

BCL

	2014						2013						2012						2011						2010					
	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	28	55	14	37	42	47	40	47	26	39	66	44	38	57	28	55	66	56	39	46	19	37	58	44	30	33	21	23	51	57
Pass	23	45	24	63	47	53	44	52	40	61	84	55	29	43	23	45	52	44	43	52	32	63	75	56	20	22	19	21	39	43
Fail	0		0		0		1	1	0		1	1	0		0		0		0		0		0		0		0		0	
Total	51		38		89		85		66		151		67		51		118		82		51		133		50		40		90	

MJur

	2014						2013						2012						2011						2010					
	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	3	14	9	38	12	27	5	23	1	8	6	17	6	32	6	30	12	31	6	29	2	9	8	18	3	9	3	9	6	18
Pass	17	81	15	62	32	71	17	77	12	92	29	83	13	68	14	70	27	69	15	71	21	91	36	82	12	35	16	47	28	82
Fail	1	5	0		1	2	0		0		0		0		0		0		0		0		0		0		0		0	
Total	21		24		45		22		13		35		19		20		39		21		23		44		15		19		34	

APPENDIX 4

Raw Marks Statistics, BCL/MJur 2014 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	67.9	15				13	53	33
BCL Dissertation	66.0	8				13	75	13
Commercial Remedies	66.3	46		4		22	39	35
Comparative and Global Environmental Law	69.30	3					33	67
Comparative and European Corporate Law	68.0	6				17	50	33
Comparative Human Rights	68.7	16				6	38	56
Comparative Public Law	68.7	15				7	47	47
Competition Law	65.1	32			3	41	44	13
Conflict of Laws	65.2	34	3	6	6	15	38	32
Constitutional Principles of the European Union	69.1	15					47	53
Constitutional Theory	66.3	20			5	35	25	30
Corporate and Business Taxation	67.1	13		8	8	15	23	46
Corporate Finance Law	63.8	10	10			50	20	20
Corporate Insolvency Law	66.3	16			19		50	31
Criminal Justice and Human Rights	69.4	13				15	15	69
European Business Regulation	66.6	14				29	43	29
Evidence	64.5	8			13	38	38	13
Intellectual Property Law	66.1	18			6	17	50	28
International and European Employment Law	69.0	7				14	43	43
International Commercial Arbitration	68.4	14					57	43
International Dispute Settlement	65.7	23				35	39	22
International Economic Law	67.3	19				16	53	26
International Law and Armed Conflict	67.2	13				46	23	31
International Law of the Sea	64.3	4		25			50	25
Jurisprudence and Political Theory Essays	67.7	14				36	36	29
Law and Society in Medieval England	65.3	3			33		33	33
Law in Society	66.3	4				25	75	
MJur Dissertation	64.9	7				43	57	
Philosophical Foundations of the Common Law	66.5	19				32	42	26

Raw Marks Statistics, BCL/MJur 2014
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 Civil Procedure	67.8	30				17	43	40
Principles of Financial Regulation	65.7	9			11	22	33	33
Punishment, Security and the State Regulation	68.2	5				20	20	60
Restitution of Unjust Enrichment	69.5	4					50	50
Roman Law (Delict)	63.9	35	3	6	3	40	29	20
The Law of Personal Taxation	70.0	1						100
The Roman and Civilian Law of Contracts	67.1	7			14		43	43
	62.4	5		20		40	20	20

APPENDIX 5

INDIVIDUAL REPORTS

ADVANCED PROPERTY AND TRUSTS

Fifteen candidates sat the examination. Five took first class results, the rest upper seconds, mostly in the mid to high range. The nine questions, some sub-divided, attracted roughly equal attention across the group. This was a strong year with many candidates offering inventive and learned discussions, notably of the contours of *numerus clausus* doctrine; the nature of possession and title; the justifications for property in appropriation and personality; and the nature of trusts and fiduciary obligations. Ideas from the property theory parts of the course were used in interesting ways to illuminate problems in trusts and equitable obligations. The very best candidates used a wide knowledge of positive law to test and illustrate theoretical positions, and avoided the twin dangers of blankly restating leading theorists in a series of nutshell encapsulations, or attempting to recycle extant doctrinal knowledge without engaging in fresh analysis. The maelstrom of modern fiduciary law attracted many interesting analyses, and candidates seemed attracted to the new contractarian analysis, though some noted that the new theory was possibly circular and added little to existing models. The question on the bundle of rights model attracted many answers, but only a few could clearly state the implications of Hohfeld on correlativity and multital claims and Honore on incidents of liberal property. The human rights question attracted some highly original answers, which might on occasion duck engagement with the key jurisprudence of Article 1 Protocol 1, suggesting that human rights analysis of property is as much an attitude as a resort to strict legal principle. Another area where answers could be thin and over-generalized concerned relative and absolute titles, where Roman and common law doctrines taught early in the course were not always exhibited with precision. But weak answers were rare, and on the whole candidates showed that they had been stimulated to seek new perspectives on property and trusts by the year's study and were able to present their ideas and arguments with energy and panache.

COMMERCIAL REMEDIES

The standard of the scripts was generally very high. Answers were spread fairly evenly over all 8 questions with the exception of Question 1 (on limitation periods), which nobody answered. Perhaps this was because the topic was covered late in the course, but it was nevertheless disappointing: the question was both relatively predictable and straightforward.

In answers to the problem questions, candidates were able to display a good level of knowledge and understanding. It was a shame more candidates did not offer their own views on the stated law. Critical analysis, even in problem questions, was highly rewarded. Too many answers wasted valuable time and space on irrelevant discussion of issues which were not raised by the question set. The best candidates had the confidence to deal with the simple, straightforward points quickly, and concentrated on the difficult and most interesting areas.

The most impressive answers to the essay questions sustained a cogent argument throughout and drew upon a wide range of material. But some answers were either too narrow or did not engage with the particular question set. For example, answering Question 3 entirely on penalty clauses, or entirely on punitive damages, was not a good tactic since the question demanded consideration of both. It was similarly disappointing to find that some candidates considered only contract (and not tort) in Question 4, or only *when* damages in lieu of an injunction should be awarded in Question 2, to the exclusion of *how* such damages should be quantified. The best answers displayed a sound understanding of the whole course.

COMPARATIVE AND EUROPEAN CORPORATE LAW

Fourteen candidates (eight MLF, five MJur and one BCL) attempted this paper. The overall standard of the scripts was very high. Six candidates obtained first class marks, and the average mark was 68%. There was a pleasing absence of any really weak scripts. All questions were attempted, with questions 2, 4, 6, and 7 proving the most popular.

Those candidates who attempted question 1 did so very well. It produced several extremely insightful answers, with candidates exploring the relationships between shareholder rights, block disclosure obligations, and measures designed to foster engagement, such as the Stewardship Code. The best answers demonstrated clear originality.

The better answers to Question 2 addressed not just Hansmann and Kraakman's 'End of History' claim, but also the functionality of state ownership in China. Weaker answers simply considered the first of these.

Question 3 was attempted by one candidate.

Question 4 was popular, being attempted by almost all candidates. All who answered it saw the relevance of ownership structure; the better candidates also discussed the role of co-determination.

Two candidates attempted question 5.

Many candidates answering question 6 were drawn to the idea that Delaware has effected a de facto harmonization of US corporate law, which has obviated the need for Federal corporate entities. The best candidates noted that the SE has not in fact achieved anything like a harmonization of European corporate law.

Most answers to question 7 were well-informed and accurate. The best also situated their answers in the context of other features of takeover laws which have a bearing on outcomes.

Question 8 was done by three candidates, generally very well.

Question 9 was attempted by four candidates. The best answers not only explained why the state of affairs described in the question might have come to pass, but also evaluated it.

COMPARATIVE AND GLOBAL ENVIRONMENTAL LAW

Overall the responses from candidates were impressive and displayed a good understanding of the law and its surrounding context in a range of different jurisdictions. Weaker answers did not address the question as well as could be expected, particularly in providing an answer that integrated legal detail into the analysis. Outstanding answers were those that showed a deft command of material across the entire subject so as to provide a carefully reasoned and legally detailed response to the question.

COMPARATIVE PUBLIC LAW

The paper in Comparative Public Law was done well this year, with a significant number of high-quality papers that secured Distinction marks. There was no poor examination script. It was also encouraging that the good papers were spread between BCL and MJur candidates. Those taking the exam demonstrated a good understanding of the positive law, combined with appreciation of the normative arguments. They were also sensitive to the differences flowing from background culture. The most popular questions were those concerning legitimate expectations, proportionality and the effect of fundamental rights on judicial review.

COMPARATIVE HUMAN RIGHTS

There were sixteen candidates in this subject, and the examiners were impressed with the generally high quality and individual strength of the examination scripts. Most candidates achieved marks which were at least in the high sixties, and roughly half gained marks of seventy or higher.

Candidates generally tried hard to engage in comparative analysis, rather than being distracted by one jurisdiction at the expense of others studied. It was also pleasing to see that efforts were consistently made to link answers to individual questions with broader themes running throughout the course, such as the nature of human rights and the roles of different institutions in protecting them. Question 1, concerning dignity as an underpinning theory of human rights, thus attracted answers which generally made good use of comparative case law to illustrate relevant conceptual issues, as did question 2, which was an either/or question focusing on the nature and content of human rights. The focus of questions 3 and 4, dealing respectively with the rights to health and freedom of thought, conscience and religion, was narrower, but again good comparative and conceptual analysis appeared in response. Answers to question 5, dealing with clashes between human rights, tended to focus on proportionality and other review standards. For this year only, given that the Comparative Equality Law course was not running, the paper included a question (question 6) dealing with the right to non-discrimination, answers to which tended to focus on theories of equality and dignity. Question 7 attracted answers comparing the merits of judicial scrutiny, legislative action and ‘dialogue’ theories, while question 8 – concerning freedom of expression – generated some good responses dealing with theoretical justifications for the right concerned.

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 questions.

The first essay question focused on the definition of ‘undertaking’ and the relationship between subsidiary and parent company. The second question addressed the standard of proof required in order to establish violation of competition law. The third question considered the application of Article 102 TFEU to pricing abuse. The fourth essay question considered the dividing line between ‘object’ and ‘effect’ violations.

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 this year were of reasonably high standard. The examination was taken by 32 candidates, 4 of whom achieved a first class mark. The overall average mark was 65.1.

CONFLICT OF LAWS

The rubric for the paper was unchanged from previous years: eight questions of which four were set as essays and four as problems. As ever, the standard as a whole was high and 12 of the 34 candidates were awarded a mark of 70 or higher. Lower marks at the other end of the scale were more often the result of poor time management leading to weak or weaker final answers rather than fundamental misunderstanding (though there was a little of that in one or two cases)

Once again, the problem questions proved to be much more popular than the essays and no one problem proved to be any more popular than the others. When it came to the essays, there were very few attempts at the essay on Article 14 of the Rome I Regulation, or the essay on cumulative causes of action but they were of a very high standard.

This is the last year in which candidates will be examined on the current form of the Brussels Regulations. Where appropriate, the stronger candidates made good use of the proposed reforms in the Recast which will apply as from January 2015 and which will be presumed to be in force as from the start of the course in the next academic year.

CONSTITUTIONAL PRINCIPLES OF THE EUROPEAN UNION

Once again, this was a good year for this subject, with at least one third of the candidates performing to distinction level. There was a good spread of answers across all of the questions and all of the answers demonstrated a very high level of learning, revealing a very strong knowledge base and interest in the subject. The only criticism would be that, while all papers demonstrated a very high and impressive level of knowledge in the subject, and also provided well structured and relevant answers, a much smaller number of them

actually produced really thoughtful and original answers. Those that did were richly rewarded.

CONSTITUTIONAL THEORY

Overall the standard of answers was very high. All questions had some takers, but the most popular were Q7 (on judicial review and democracy), Q6 (on bicameralism), Q2 (on constitutional interpretation) and Q4 (on representation and the separation of powers). The better answers, while often very different in content, were closely attentive to the precise question set and developed careful, theoretically sophisticated arguments.

CORPORATE AND BUSINESS TAXATION

There were some excellent CBT papers this year, with 6 of the 13 BCL/MJur candidates obtaining a Distinction mark and a further 3 being awarded marks of over 65. There was a good spread of answers across all questions although once again the problem questions were less popular than the essays. The problem answers that were submitted were of a very high standard, showing that the problems were perfectly manageable if attempted. The best papers integrated technical knowledge and policy discussion effectively, with answers properly reflecting the current widespread interest in reforming domestic and international tax systems. There were some pleasing signs that the new policy of permitting students to take their own legislation into the exam room had enabled them to use that legislation sensibly in their answers where appropriate.

Papers which were purely descriptive and which did not apply the knowledge to the precise question asked were less successful, as were those which lacked good organisation. As can be seen from the marks, however, the majority of the papers showed a good grasp of the issues, the current law, and of proposals for reform.

CORPORATE FINANCE LAW

The innovation in this year's paper was to divide it into separate debt and equity sections and to require candidates to answer at least one question from each section. Since the reform had been signalled extensively in advance of the examination, there were no cases of candidates failing to observe the new requirement. The aim and effect of the change was to prevent candidates from opting solely for equity questions, as a small number had done in the past.

Overall, the paper was answered with a high level of competence, though with rather few outstanding papers. In relation to the debt questions, Question 1 was the most popular by a long chalk and candidates dealt with the issues well. The remaining questions were more technical in nature and attracted few takers, although the few candidates who did tackle the remaining (more challenging) debt questions were suitably rewarded. As far as the equity questions were concerned, they all attracted a reasonable number of takers, except for the last (and cross-over) question. Question 7 (Takeover Code and public-to-private transactions) was answered in the least satisfactory way, because few candidates seem to have thought about the situation where target management incentives were to promote, rather than to oppose, the bid. Question 8 (goals of public offering rules) was usually

answered on the basis that all three goals were aims of the legislation, without serious effort to think through the implications of each of the three suggested rationales

CORPORATE INSOLVENCY LAW

The overall standard of the 21 scripts was good. 6 distinctions were awarded (28.57%).

Question 1

This question invited candidates to evaluate the scope of corporate insolvency law's 'investigative function', and to evaluate the extent to which English law currently enables the performance of this function. The latter task was best performed by a detailed treatment of one or more of the office-holder tasks described in the question, considering factors that affected enforcement (e.g. expenses and assignability of office-holder actions; destination of recoveries).

Question 2

This was a reasonably popular question. All answers demonstrated good knowledge of the treatment of proprietary interests and of retention of title devices in English corporate insolvency law. Stronger answers spent more time interrogating the normative aspect of the question, drawing on theoretical and empirical literature.

Question 3

This question was popular. It invited discussion of the application of the ADP to the termination of contracts, and the adjustment of their terms, on a party's entry into formal insolvency proceedings. Better answers distinguished between executory and executed contracts, and in relation to the former between the exercise of termination rights and the adjustment of their terms. Better answers also engaged with the normative component of the question, again with specific reference to the termination / adjustment of contracts.

Question 4

This was a very popular question. Weaker answers gave an overview of the sources of personal liability for directors in English law, without providing the comparative and critical analysis invited by the question. Stronger answers drew on the theory underpinning the imposition of liability in the 'zone' of insolvency to critically analyse the current English position.

Question 5

This question was also popular. It again required integration of corporate insolvency law theory (with reference to the quote) and positive analysis of English corporate insolvency law. As such, mere description of the scope and effects of sections 238 and 239 was inadequate.

Question 6

This question was focused specifically on the moratorium in administration. Stronger answers distinguished between the grant of leave to escape the moratorium, and the treatment of liabilities arising under pre-commencement contracts with those barred by the moratorium from enforcing. Close treatment of the case law on both, and critical analysis of it having regard to the overall purpose of administration, was expected.

Question 7

This question was focused specifically on restructuring, and invited candidates to consider the role of law in facilitating it. As such, better answers grappled directly with the question of when / why restructuring was desirable, and why formal procedures were necessary to facilitate it, before proceeding to analyse and evaluate English restructuring law.

Question 8

This question was specifically focused on the COMI concept in the European Insolvency Regulation. Stronger answers offered a thorough treatment of the significance of the concept in the Regulation, and drew on analysis of both the substantive rules and secondary literature to evaluate the claims in the quote.

Question 9

This question allowed candidates to demonstrate their understanding of cross-border corporate insolvency law theory, and in particular to grapple with the merits of the universalism model. Although description of the extent to which English corporate insolvency law embraced this model was useful (and allowed candidates to demonstrate their understanding of the substantive law), stronger answers sought to evaluate this position with reference to underlying theory.

CRIMINAL JUSTICE AND HUMAN RIGHTS

Candidates performed exceptionally well in this paper, with 9 out of 13 candidates achieving a distinction. The lowest mark achieved was 63% and the highest mark achieved was 74%.

None of the questions answered stood out from others in terms of levels of performance. Candidates were clearly well prepared in the areas they chose to focus on, and the paper was broadly set to allow candidate's time to develop their ideas.

The high level of performance overall was due to the candidate's close attention to clear argumentation based on a careful reading of the case law, other primary materials and academic literature. Candidates who answered the question directly were also well rewarded, as were those who embraced ambiguity and complexity in their answers.

Examiners also welcomed candidates drawing on discussion from seminars and tutorials.

EUROPEAN BUSINESS REGULATION

This year's scripts were an impressive bunch. No mark below 60 was recorded; several candidates reached Distinction standard. The knowledge of internal market law that was on show was thorough and thoughtful, and ranged across the whole sweep of the course. Every question had at least a couple of takers. The candidates' technique was good too: all of the questions set were a good deal more nuanced than a simple invitation to "write all you know" about a particular topic and the answers rose to the challenges by providing nuanced appreciation of the issues at hand.

INTELLECTUAL PROPERTY LAW

The standard of answers on the papers was generally very high across the board. Candidates were required to answer at least one problem question, but most candidates answered two problem questions and one essay question. In Part A (Trade Marks) just over half the candidates opted for the problem question. The average standard was good, since answers were systematic and the coverage of issues was satisfactory. However the depth of coverage varied, which allowed the better answers to stand out. Issues which merited more detailed consideration included the specific distinctiveness test for shapes; ‘technical result’ and ‘substantial value’ exclusions; specific case law on slogans; the likelihood of confusion test for composite marks; and – for the better candidates – potential dilution arguments. Of the essay questions, property in brands proved more popular. It required engagement with the normative aspects of how to define brands, identify potential ‘authors’ and then justify proprietary entitlements. There were also some thoughtful essays on the colour marks question, although the focus was restricted to European developments. Here comparative analysis would have been rewarded. No candidate attempted the lookalikes question.

In Part B (Patent), almost all candidates attempted the problem question. Most answers addressed the crucial issues in a systematic way. Better answers recognised the priority issue and discussed, whether both applications related to the same invention. With regard to novelty, some very good answers set out the relevant standards very clearly and analysed all possible anticipations, whereas average answers were less precise. Inventive step was generally analysed well, but only the best answers pointed out clearly that a person skilled in the art might not combine prior knowledge on household devices with an article in a chemistry journal. With regard to the infringement issue, most students noted that claims are to be given a purposive construction, but some analysed the issues of equivalence and the Catnic questions more clearly than others.

In Part C (Copyright), the majority of candidates (13/19) attempted the essay question in relation to originality. There were some extremely strong essays that engaged directly with the quote from Lord Justice Jacob, which highlighted questions regarding the content of the originality standard and the relationship between common law and European approaches. Less successful papers typically lost credit for lack of responsiveness to the question, their content being insufficiently connected back to the quote. Of the remaining papers, the problem question was the next most popular question (5/19). There were some very good answers amongst this group, with the main weakness being the inclusion of too much background or peripheral information for which students gained little credit. Better answers moved on quickly to the contentious matters raised by the fact pattern.

EVIDENCE

Eight candidates sat the paper. Only one of them achieved a first class mark overall, while, at the other end, one candidate managed only a lower second class result. As in previous years, the problem questions were overwhelmingly more popular than the essay ones. In fact, but one candidate answered an essay question. As might be apparent from the mark profile, candidates tended to answer the problem questions no better than competently.

INTERNATIONAL COMMERCIAL ARBITRATION

There were 15 candidates who attempted this paper, one of which was an M.L.F. student. All questions were answered, with a clear preference for the questions on separability and competence-competence, effects and enforcement of an arbitration agreement, and different approaches to the enforcement of annulled awards.

The quality of answers was overall very good, with several outstanding scripts. The best two scripts had clear first class answers on all three chosen questions, with impressive analytical depth, detailed illustrations by case law, and very well-structured arguments in which they convincingly explained their own views. While the general knowledge and understanding of the material was overall very good, the candidates who did relatively better were the ones who clearly engaged with the question and expressed their own views. For example, only the two overall best candidates engaged in sufficient detail with the specific quote that served as a basis for question 1 (competence-competence). All scripts were second-marked.

INTERNATIONAL AND EUROPEAN EMPLOYMENT LAW

Seven candidates sat this paper. At least one candidate attempted each of the questions, with the exception of question 3(b), on the regulation of 'standard' working, and the most popular question was question 6, on the right to strike. The overall standard was very high. Candidates showed a good knowledge of the legal materials and literature and the best candidates presented original and well-argued responses to the questions.

INTERNATIONAL DISPUTE SETTLEMENT

The scripts this year were good, the great majority of them being focused, informed, and clearly written. Every question in the paper was attempted by at least one candidate. The distribution of answers however was uneven, even more so than last year. This was because certain questions in the paper were similar to those discussed during tutorials. This is to some extent natural, as only four tutorials are given, and candidates tend to congregate around more familiar topics in the exam.

As in the previous year, problem questions were included in the paper (2 out of 8), at least one of which a significant number of candidates chose to answer despite some hesitation in approaching them evidenced during the academic year. Many answered them very well – and without the incidence of pre-prepared answers tacked on to broadly relevant questions found in some essay answers – suggesting that candidates should not be afraid to test their ability to apply their knowledge to the simulated real-life situations presented in problem questions. The best scripts overall were those where candidates were able to discern differences in the fact pattern or phrasing of the essay question and tailor their analysis accordingly.

INTERNATIONAL ECONOMIC LAW

The level of performance of the students who wrote the International Economic Law examination paper was outstanding. In terms of a detailed breakdown, there were 7 out of 20 students who obtained a Distinction₁₆ class mark, 10 out of 20 students who

obtained a mark between 65-68%, and only 3 students who obtained a mark between 60-64%. This correlates to 33% of students in the exam obtaining a Distinction class mark, 50% of students obtaining a mark between 65-68%, and 15% of students obtaining 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. Three candidates misinterpreted slightly some of the questions being asked and so their answers were not as specifically focused as they should have been. This illustrates the importance of reading with great care the questions being asked. 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)

This year's essays were of a good standard, with most candidates showing solid knowledge of the field, wide reading, and facility in argument. The single commonest weakness—a bit surprising in take-home work that allows time for research and reflection—was a failure to consider the most pertinent objections (and, in some cases, to consider *any* objections) to the line being argued. Answers showing this weakness did not receive marks in the distinction range.

Five candidates out of 16 (including 2 MPhil politics candidates) received distinction marks over the paper as a whole. The most impressive essays displayed work of a professional standard, and the very best set contained answers that, with a little expansion, would be publishable. This was work of a most impressive standard.

Three sets of essays were marred by weak writing and errors in diction: the examiners remind candidates that when work is not written under the pressure of examination conditions, expectations in the quality of writing is commensurately greater. No candidate at this level should be turning in work with errors in spelling or grammar, or deficiencies in citation practice.

Two MPhil candidates in Politics took this paper. It did not seem to the examiners that they were at any disadvantage as compared with the BCL students, and they were able to put their own institutional knowledge to good use in the essays.

INTERNATIONAL LAW AND ARMED CONFLICT

Overall, the standard of the answers in this exam was very good indeed. Of the 13 candidates, 4 scored distinction marks and no candidate obtained a mark lower than 60. Candidates' answers were usually directed at the specific question asked, well structured and demonstrated a good knowledge of relevant legal authority and the literature. The answers that scored lower than average marks were those that did not possess the characteristics just mentioned. Although candidates were not required to answer questions arising out of the different aspects of the₁₇ course (use of force, international

humanitarian law, human rights law) almost all candidates did in fact pick questions from a range of topics.

INTERNATIONAL LAW OF THE SEA

This course did not run in 2012/13. This year 4 candidates sat the examination. The quality of answers was very good overall, demonstrating clear evidence of a detailed knowledge of the key legal instruments, case law, and academic authority. Stronger answers were those in which candidates applied that knowledge carefully in addressing the questions asked. Questions 1 (contemporary relevance of UNCLOS), 4 (marine environment) and 6 (high seas freedoms) were particularly popular.

LAW AND SOCIETY IN MEDIEVAL ENGLAND

Three intellectually adventurous candidates took this paper, none with any prior knowledge of English legal history. The scripts were all competent and one reached Distinction level. The best answers all made a clear argument and showed a good understanding of the relevant legislation, its wider legal and social context and a mastery of the relevant secondary literature.

LAW IN SOCIETY

Four students took the examination. All achieved sound upper-second marks; no one quite made the level of distinction. It is a matter of concern that so few took the course this year, after much healthier numbers in previous years.

PHILOSOPHICAL FOUNDATIONS OF THE COMMON LAW

This year's paper adopted the standard format of providing an opportunity to write on each of the four major areas of study and to write on themes in pairs of areas. The overall standard was very high. A range of questions were addressed, and none either dominated or were neglected. The best answers displayed a good familiarity with the literature, and a willingness to pursue a selected number of themes in depth, with the candidates engaged in philosophical debate about the merits of their selected themes. These answers avoided the twin perils of a wide but shallow coverage of theoretical perspectives on the one hand, and a too narrow focus on the candidate's favoured approach on the other. The best answers also involved candidates having given thought to the general nature of contract, tort and crime, and bringing this wider perspective to bear on the particular issue under discussion.

PRINCIPLES OF CIVIL PROCEDURE

30 candidates sat the paper in total, of which 12 obtained a distinction. The examiners were pleased to see that all nine questions were attempted by more than one candidate. As in previous years a number of candidates demonstrated a significant amount of research beyond the reading list including comparative research and discussion of very recent case law. Although this was not necessary to obtain a distinction, candidates who did demonstrate such research were rewarded.¹⁸ A disappointing feature of the scripts this

year were the number of students who produced answers that were perfectly sound but failed to directly address the question. While it is a reasonable strategy for candidates to take their essays in a different or unusual direction, the candidate needs to convince the examiners that their approach is relevant to the question asked. Too often pre-prepared essays were regurgitated with only a cursory acknowledgement of the question. There were some exceptional answers on closed material procedures, legal professional privilege, the right to an independent and impartial tribunal and the role of the abuse of process doctrine in achieving finality in litigation.

PRINCIPLES OF FINANCIAL REGULATION

A total of 46 candidates (37 MLF, five BCL and four MJur) took this paper. The overall standard was high: the average mark was 66, and 14 candidates (30%) obtained marks of 70 or above.

Question 1 proved very popular, being attempted by 28 candidates. Whilst almost all were able to articulate the changes introduced by the Basel reforms, and to offer their views on the debate about the appropriate level of capital, the better candidates linked this to a discussion about complementary techniques for constraining bank risk-taking, which determine how much work capital has to do.

Question 2 was attempted by 16 candidates. It was generally done well, although some of the weaker answers seemed unable to distinguish between group-level and entity-level 'ring-fencing'. Stronger answers were able to draw on comparative insights to address the question of international competitiveness.

Three candidates attempted question 3.

Thirteen candidates attempted question 4. The better answers engaged directly with the question's assertion that 'high quality' financial products were more expensive. Weaker answers recited tutorial essay answers about payday lending.

Question 5 attracted 18 answers. Most were able to outline the general rationale for, and mechanisms of, bail-in. However, disappointingly few were able to write in any detail about the EU's Bank Recovery and Resolution Directive.

Twenty candidates attempted question 6. Most were able to describe in some detail various aspects of 'shadow banking'. Many candidates were less successful, however, in articulating 'defining features' that linked these various case studies.

Question 7 was popular, attracting 22 answers, just under half of all those sitting the paper. Almost all those who attempted it were able to give a good account of the content of the EU's Short Selling Regulation and a critical account of its rationale. However few candidates succeeded in distinguishing themselves by demonstrating original thought going beyond the materials covered in lectures.

Eighteen candidates wrote answers to question 8. All were able to identify the conflicts of interest affecting analysts, but disappointingly few were able to supplement this by a consideration of applicable regulatory initiatives.

Three candidates attempted question 9.

PUNISHMENT, SECURITY AND THE STATE

There were five candidates for this examination. The standard was very high and, most unusually, the examiners awarded 3 Distinctions. The other candidates achieved marks in the 60s. There was a good spread of answers to most questions: the most popular were questions 1 and 3.

The essays were mostly of a pleasingly high quality. Most candidates were writing in English as a foreign language but generally this resulted in only minor linguistic and grammatical errors. Most essays demonstrated a very good level of understanding, wide reading, and excellent engagement with the academic debates and research. The better essays engaged effectively with the question set, although a few largely reproduced tutorial essays. In general, the level of knowledge and engagement with the topic was very good indeed. The best scripts were sophisticated in their analysis, made a sustained effort to answer the question and, in some cases, provided really sophisticated, even original, responses to the question set. They were clearly structured, well written and engaging. The weakest essays were hampered by poor use of English, which occasionally made the meaning difficult to follow. Weaker essays would also have benefitted from closer attention to the question, better planning, a more developed argument and clear conclusions.

Generally, the level of attainment was unusually high this year and it is particularly pleasing to note the facility with which students used their learning from across the entire course to draw connections and to draw upon a wide range of substantive areas of study to address the questions set.

RESTITUTION OF UNJUST ENRICHMENT

As with previous years, too many candidates chose to answer the questions they had hoped to be asked, rather than the ones they actually were. So, question 1 (the law/equity divide) was treated by many as the opportunity to recycle a prepared essay on proprietary restitution, and the examiner was treated to too many unfocused discourses on a particular area (eg question 2, change of position) without even the usual top and tailing to give the impression of relevance.

All questions attracted some answers although question 3 proved unpopular. Those who attempted it treated the examiner to some vague discussion of the meaning of “at the expense of”. No candidate mentioned the House of Lords decision in *Sempra Metals v Inland Revenue Commissioners*, the case of most direct relevance. This was indicative of a more general problem of insufficient focus being paid to the caselaw that makes up the subject under examination. Extensive references to, say, Immanuel Kant may be thought to raise the tone of an answer, but the great man did not have a lot to say about some of the more technical aspects of the common law. More craft and less philosophising was required.

The problem questions (question 4 on mistake and rescission, question 6 on performance of another’s obligation) attracted many candidates, and were generally well done. The largest omission was that many candidates clearly knew very little about when, if ever, the common law will allow a claim for expenses incurred on another’s behalf in circumstances of necessity.

Question 5 (absence of basis) was the most₂₀ popular question, attracting many heartfelt

defences of the peculiarity of what some take to be the traditional common law approach. Few asked whether the model Goff & Jones support also requires more than one test to be applied.

Illegality (question 7) was often well tackled, with candidates showing knowledge of what the law is and a range of possible routes of reform. The weaker answers to question 8 (restitution following breach of contract) failed to systematically look at the differences between the different types of claim, and to see if such differences could be justified.

ROMAN LAW (DELICT)

One candidate took the exam. The choice of questions was evenly spread insofar as this can be said with one candidate. The result was excellent.

THE LAW OF PERSONAL TAXATION

There were seven candidates for the Personal Taxation paper. The standard of scripts was generally very impressive, with three papers marked in the high 60s and three first class papers. The best answers demonstrated not only a mastery of a significant amount of detail, but also a clear grasp of relevant underlying principles and a careful analysis of the question set.

THE ROMAN AND CIVILIAN LAW OF CONTRACTS

Five students took the exam. Candidates choose to answer a wide spread of questions, with three questions popular with a majority. The results varied from satisfactory to one excellent candidate.

Report of the External Examiner

External Examiners Report

BCL/MJur 2014

Dear Vice Chancellor

EXTERNAL EXAMINER'S REPORT:
**EXAMINATION FOR THE DEGREES OF B.C.L. AND M. JUR.
FACULTY OF LAW, 2013-14**

This is my first examiner's report following my appointment in January this year.

In order to discharge the duties of office, I was given ample notice of all scheduled meetings, provided with all the necessary papers in advance, and given every opportunity to comment. I did not attend meetings in February and April, but I was sent the necessary papers. I was in attendance at the Final Marks Meeting on 17th July to approve final marks and degree classifications, following due consideration of cases identified as requiring individual consideration by the Examiners.

You have asked me to comment specifically on a number of issues, and I adopt the headings suggested in the *Guidelines for Writing Reports TT 2013-14*.

(i) *whether the academic standards set for its awards, or part thereof, are appropriate*

The BCL and MJur degrees have an outstanding reputation amongst postgraduate law degrees. The degrees attract postgraduate students of a very high calibre from across the globe, who are encouraged to pursue academic inquiry at the highest level. The assessment is by and large by final examination, although a minority of students exercise the option to submit a dissertation in lieu.

The assessment standards for the award of the degrees and the classification of degrees were clearly specified and expressed in an accessible manner and are appropriately demanding. In accordance with the Faculty's *Guidelines for External Examiners*, I was provided with a random sample of papers from candidates within each classification of degree in order to form a view as to the appropriateness of the standards and gradations, as well as being provided with all scripts of candidates judged to have failed the examination. Following my independent review of these scripts, I am satisfied that the standards adopted in the assessment of each candidate were appropriate and in accordance with those prescribed.

(ii) *the extent to which its assessment processes are rigorous, ensure equity of treatment for students and have been fairly conducted within institutional regulations and guidance*

The assessment processes that I witnessed were exemplary in their rigor and fairness, demonstrating due compliance with all institutional regulations and guidance. Appropriate measures were taken to ensure that all candidates were made aware of the relevant rules and procedures of examination in a readily accessible form, as well as being provided with the official guidelines governing the examination process.

Where individual cases called for careful application of the University's regulations and guidance, the Examiners maintained a keen awareness of the need to ensure that the rules were applied fairly and consistently whilst ensuring that any relevant and exceptional circumstances of specific candidates were duly considered.

As far as I could discern, each and every individual case warranting specific consideration was properly considered whilst the Examiners kept firmly in mind the need to ensure equality of treatment across all candidates. The Examiners were also careful in seeking to identify systematic discrepancies between different papers within the degree, and within the degree across time. In cases where potential concerns were identified, these were duly noted and referred to the appropriate Faculty committee for further consideration.

Care was also given to compiling data to identify similarities and differences in performance across gender. The Examiners had noted that in the previous year, there had 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'. This year, the Examiners noted with concern that the pattern had become more pronounced in relation to performance on the BCL, but it had been reversed in relation to the M Jur with women obtaining a significantly higher percentage of distinctions than their male counterparts. While I am satisfied that the Faculty is appropriately concerned with, and seeks to act upon, any such systematic disparities, the issue is one which may well have broader resonance across the University and which I suggest may justify more systematic consideration at that level.

(iii) the standards of student performance in the programmes or parts of programmes which they have been appointed to examine

I have complete confidence that the students assessed as meriting the award of the degree of BCL or MJur in 2013-14 properly deserved to be awarded the degree, and performed at standards that maintain the justifiably high reputation of these degrees.

(iv) where appropriate, the comparability of the standards and student achievements with those in some other higher education institutions

The academic standards and achievements of students on the BCL and MJur are clearly comparable with those in other UK higher education institutions concerning the expected standards of performance and achievement for a postgraduate degree in law with which I have had experience.

(v) issues which should be brought to the attention of supervising committees in the faculty/department, division or wider University;

I was particularly impressed with the extent to which the Examiners were conscious of the need to ensure that decisions on individual cases were firmly grounded in authority and

precedent. Moreover, in the process of deciding such cases, the Examiners were vigilant to identify any concerns that might warrant broader, systematic consideration at the policy level and to ensure that such concerns were communicated to the relevant institutional body in an appropriate and timely manner.

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

My involvement with the examination process did not bring me into direct contact with the processes of teaching and learning associated with the degrees to which my duties pertained. In relation to assessment practices, however, I was provided with an excellent vantage point for evaluation. In this regard, the entire assessment process was not only satisfactory, but a refreshing example 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., and to ensuring that any typographical or transcription errors were identified and corrected was all by and large exemplary.

I was treated with courtesy and professionalism throughout. At all times throughout the examination process I remained entirely confident that I could approach the Chair of Examiners or the Examinations Officer with any concerns or queries that I had concerning the entire process, and that any of my concerns, however small, would be dealt with and acted upon appropriately.

I am indebted to the Chair of Examiners and the Examinations Officer in particular for their helpfulness, responsiveness and professionalism throughout. The experience as a whole was, for me, a reassuring indicator of the University's uncompromising commitment to academic integrity and in upholding the pursuit of academic standards of the highest order.

Please let me know if you require any further information. Yours sincerely

Karen Yeung
Professor Karen Yeung
The Dickson Poon School of Law
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