FORM OF REPORT ON EXAMINATIONS 2020/21

EXAMINATION FOR THE DEGREES OF BACHELOR OF CIVIL LAW (BCL) AND MAGISTER JURIS (MJUR)

Part I

STATISTICS

A.

(1) Numbers and percentages in each class/category

BCL:

Category	Number			Percentage (%)		
	2020/21	2019/20	2018/19	**2020/21**	2019/20	2018/19
Distinction	**79**	52	64	**52**	58	57
Merit	**48**	34	32	**32**	38	28
Pass	**14**	4	16	**9.3**	4	15
Fail	**1**	0	0	**0.6**	0	0

MJUR:

Category	Number			Percentage (%)		
	2020/21	2019/20	2018/19	**2020/21**	2019/20	2018/19
Distinction	**19**	12	9	**32**	41	24
Merit	**33**	13	23	**55**	45	60
Pass	**8**	4	6	**13**	14	16
Fail	**0**	0	0	**0**	0	0

(2) If vivas are used:

Vivas are not used.

(3) Marking of scripts

All first marks which end with 3, 4, 8 or 9, and any paper with a mark below 60, were second marked. The second marker would also mark any paper in line for a prize, any fail paper, and any paper with a first mark below 60. Second markers must also make sure they mark a sample of 6 scripts, or 20% of the scripts, whichever is the greater number. Many second markers choose to mark all scripts.

NEW EXAMINING METHODS AND PROCEDURES

B. *Please state here any new methods and procedures that operated for the first time in the 2020/21 academic year with any comment on their operation in the examination and on their effectiveness in measuring the achievement of the stated course objectives.*

(i) Changes in the format of assessment

In 2020-21, for the first time, the course in Commercial Negotiation and Mediation was examined by a choice of either two extended essays or examination. This innovation caused no particular difficulties for the Board.

All other papers ("open-book papers").

In the case of all other papers, the traditional examination room 3-hour assessment was replaced with a 4-hour online assessment undertaken on an open-book basis using the new online system Inspera.

This platform enabled students to write answers directly into the system and thus avoided the need for any files to be uploaded (in contrast with the WebLearn platform, which had been used previously). Candidates were allowed four hours per exam save for Modern Legal History and Taxation of Trusts and Global Wealth which candidates were required to answer in eight and three hours respectively. In order to accommodate time zone differences and candidates who were permitted additional time, each paper had to be completed within 25 hours with the four-hour (or three/eight hour) period commencing when the candidate opened the paper via the Inspera system. Because of the open-book nature of the exams, no material was made available to candidates beyond case lists (which were made available via Canvas). Candidates were forewarned in the Notice to Candidates that they themselves would be expected to ensure that they had access to relevant materials. Students were given guidance as to the likely length of answer which could be expected of them (depending on whether the paper required 3 or 4 answers). They were also told that that there would be a maximum number of words per question which they should write, but that there would be no penalty for exceeding this maximum other than that the markers would be asked not to read the excess.

(ii) Final Outcome Rules

In 2021, the University introduced an Assessment Support Package that offered means of mitigating the impact of the difficulties that students faced as a consequence of the pandemic.

Marks safeguard: The University required all examination boards to consider the median mark for each paper against the median result for marks for the period 2017-2019 and to scale marks if the two figures were more than two marks apart. The Board chose to implement scaling by +1

mark for the BCL dissertation. However, it chose not to scale down for Commercial Negotiation and Mediation due to the changes made in the assessment of that paper.

Outcomes safeguard: The University gave examination boards permission to scale classifications if they were significantly out of line with the averages from the 2017-2019 period. An undertaking had been given by the Law Faculty that the proportion of Merits and Distinction would not fall below that average for those years. In the event, the application of our ordinary rubric for the award of Merits and Distinctions did indeed lead to a lower average than over those years: hardly surprising given the unprecedented disruption candidates had faced. The Board therefore re-classified a small number of candidates based upon how close they had come to meeting the rubric for Dissertations and Merits, in order to meet the undertaking that their proportions met the average of the immediate pre-pandemic period. No individual marks were altered in this process.

(iii) Mitigating Circumstances Notices submitted by individual candidates

There were, as may have been expected in the era of Covid-19, a very large number of mitigating circumstances submissions to consider, ranging from minor noise disruption to life changing illness. Their assessment involved considerable time and, unavoidably, questions of judgement in borderline cases.

The Board considered such applications at (at least) three points in the process. First, in accordance with the procedure laid down by the Education Committee an initial banding exercise of all mitigating circumstance applications was undertaken by the Chair, and then reviewed for consistency by *all* Members of the Board (rather than a sub-group) before the marks meeting. It was felt that all members of the Board needed to have a feel for the range and relative seriousness of the submissions. The banding was into three broad categories: 1 indicating minor impact, 2 indicating moderate impact, and 3 indicating very serious impact. Within these rough bands, there was considerable variation, requiring careful consideration of individual cases at various points in the process. A record was kept of these decisions and the reasons for them. This banding information was then used in the marks meeting to assist the Board. The second step, in accordance with the practice of previous years, was that in the marks meeting, mitigating circumstances submissions were used to determine whether a candidate's classification should be adjusted. Borderline candidates had their submissions reviewed again individually by the Board to determine whether they should be re-classified. Explanations of disruption impacting particular papers that were borderline were given especial weight. Third, the mitigating circumstances submissions were reviewed again as part of the process of uplifting borderline candidates. Fourth a small number of candidates sought to appeal the Board's decision, and their submissions were reviewed again.

The Board was not empowered to change the individual marks awarded by markers in deciding how to take account of individual mitigating circumstances (it could not sensibly have done so, lacking the information to make a counterfactual assessment of what mark would have been obtained).

For statistics on Mitigating Circumstances Notices see Appendix 4.

C. *Please summarise any **future or further** changes in examining methods, procedures and examination conventions which the examiners would wish the faculty/department and the divisional board to consider. Recommendations may be discussed in further detail under Part II.*

The Board of Examiners task this year was more difficult than usual. The need to uplift the proportion of Distinctions and Merits awarded, whilst simultaneously taking into account a very large number of mitigating circumstances submissions, meant that the process took longer than in previous years. Unavoidably, in borderline cases this involved discussion and collective judgement. The outcome of the uplifting resulted in the following:

13 BCL students raised to Distinctions
3 MJur students raised to a Distinction
3 MJur students raised to a Merit

Outside of the disruption of a global pandemic or equivalent, undertakings to disapply classification rules, in order to ensure that a cohort obtains the same overall proportion of Merits and Distinctions as in previous years, should be avoided.

D. *Please describe how candidates are made aware of the examination conventions to be followed by the examiners and any other relevant examination information.*

Candidates are made aware of the Examination Conventions by email correspondence. The Examination Conventions are placed on the student virtual learning environment (WebLearn and Canvas).

Part II

A. GENERAL COMMENTS ON THE EXAMINATION

The general standard of performance on the BCL and MJur was good. However, candidates are human beings and the grim circumstances of the year of Covid-19 impacted upon many. This was reflected in the often heart-rending mitigating circumstances submissions. Almost all teaching took place online, with some candidates never having been present in the United Kingdom, let alone Oxford. In the circumstances, this worked remarkably well but could not be in all respects a satisfactory alternative to face-to-face interaction in a subject such as law. Many never met those who taught them personally. Large numbers spent very long periods indeed in isolation, with almost their only human contact being via a computer screen. Those from overseas who were alone in Oxford and cut-off from loved ones were often badly impacted. Given these hurdles, that the standard was so high was remarkable.

On the BCL, just over half (52%) obtained a Distinction and just under a third (32%) a Merit. On the MJur the figures were 32% Distinction and 55% Merit. These differences in performance between BCL and MJur are consistent with those seen in previous years. However, this year those studying for the MJur, particularly the large majority for whom English was not their first language, faced the additional barrier of studying remotely. Inevitably, without the benefit of immersing oneself by living in the county of the language used for purposes of instruction, their task was harder than in previous years. Given that, the performance by those on the MJur was extremely good.

One heartening aspect of the process was the almost complete lack of any evidence of plagiarism or poor academic practice both absolutely and in comparison with the previous year. The guidance provided as to the nature of plagiarism has clearly had an impact, and we saw virtually no scripts with text copied and pasted from elsewhere. Such guidance, and warnings

as to the serious career consequences of plagiarism in all its forms, should clearly continue, but the Board had no concerns as to the integrity of the open-book format.

B. EQUALITY AND DIVERSITY ISSUES AND BREAKDOWN OF THE RESULTS BY GENDER

[Chairs of examiners should include in the reports of their boards a commentary on any general issues relating to questions of equality and diversity, and of special educational needs (comments which might identify individual candidates should be confined to section E).

A breakdown of the results by gender for both the current year, and the previous 3 years is provided in appendix 1.

This section of the report should also include comments on the effect of different methods of assessment (e.g. problem questions, extended essays, essay papers) on any observed differences.]

Gender

On the BCL, 60% of men obtained a distinction and 49% of women, 32% of men obtained a merit and 47% of women. On the MJur by contrast, there was no noticeable divergence, 30% of men obtained a distinction compared with 33% of women, 58% of men obtained a merit compared with 52% of women. This is the opposite of the pattern found in the previous year, where it was on the MJur that the greater disparity between the proportion of men and women obtaining a distinction was to be found. Last year the difference in attainment between men and women on the MJur was thought by the Board to be a “matter of concern.” This year, with a larger cohort from which it is easier to draw statistically reliable conclusions, that disparity has disappeared. The difference in performance between men and women on the BCL although clearly present is not as large as in some previous years (eg 2019). If we aggregate the BCL and MJur cohorts together, the difference is relatively small. However, it still requires careful monitoring overtime.

Drawing firm conclusions, or steps for action, is difficult, especially from a year as peculiar and disrupted as this one. Further steps that could be taken would be to breakdown the individual papers chosen by gender, to see whether there were patterns of different subjects being chosen by men and women, with different mark profiles between those subjects.

Form of Assessment

In assessing dissertations markers were, as in previous years, reminded that the dissertation is a writing project that reflects one quarter of a one-year degree. Unfortunately, as noted above, the marks obtained by those submitting dissertations were marginally out of line with those obtained in previous years and required a one-mark adjustment. Markers should continue to be reminded of the constraints on candidates in writing dissertations, and not to provide a mark as if reviewing an article for a journal.

The introduction of (more) essays as a form of assessment in some subjects created additional work for the Board (questions had to be reviewed across the year instead of as a single group

at the end as in previous years) but seemed to work well. There seemed to be no significant divergence between the use of essay assessment and open book exam.

C. DETAILED NUMBERS ON CANDIDATES' PERFORMANCE IN EACH PART OF THE EXAMINATION

A statistical summary of the mark distributions for each paper is attached to this report as Appendix 2.

D. COMMENTS ON PAPERS AND INDIVIDUAL QUESTIONS

Comments on papers and individual questions are provided in appendix 3.

E. COMMENTS ON THE PERFORMANCE OF IDENTIFIABLE INDIVIDUALS AND OTHER MATERIAL WHICH WOULD USUALLY BE TREATED AS RESERVED BUSINESS

None

F. NAMES OF MEMBERS OF THE BOARD OF EXAMINERS

Robert Stevens (Chair)
Merris Amos (External)
Horst Eidenmueller
Tsilly Dagan
Dan Sarooshi

Appendix 1 – Result statistics by Gender 2021

Results Statistics by Gender 2021

BCL	2021						2020						2019						2018					
	Male		Female		Total		Male		Female		Total		Male		Female		Total		Male		Female		Total	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Dist.	51	60	28	49	79	56	29	57	23	59	52	58	41	66	22	45	63	57	30	54	23	50	53	52
Merit	27	32	21	37	48	34	20	39	14	36	34	38	13	21	19	39	32	29						
Pass	7	8	7	12	14	9	2	4	2	5	4	4	7	11	7	14	14	12	24	44	23	50	47	47
Fail	0	0	1	2	1	1	0	0	0	0	0	0	1	2	1	2	2	2	1	2	0	0	1	1
Total	85		57		142		51		39		90		62		49		111		55		46		101	

MJur	2021						2020						2019						2018					
	Male		Female		Total		Male		Female		Total		Male		Female		Total		Male		Female		Total	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Dist.	10	30	9	33	19	32	10	53	2	20	12	41	6	31	3	16	9	24	10	35	4	21	14	29
Merit	19	58	14	52	33	55	8	42	5	50	13	45	10	53	13	68	23	60						
Pass	4	12	4	15	8	13	1	5	3	10	4	14	3	16	2	11	5	13	18	62	15	79	33	69
Fail	0	0	0	0	0	0	0	0	0	0	0	0	0		1	5	1	3	1	3	0		1	2
Total	33		27		60		19		10		29		19		19		38		29		19		48	

Appendix 2

			Mark ranges (%)						
Option	**Average mark**	**Number sitting**	**49 or less**	**50-54**	**55-59**	**60-64**	**65-69**	**70-74**	**75 and over**
Advanced and Comparative Criminal Law	69	5	0	0	0	0	40	60	0
Advanced Criminal Law	70	1	0	0	0	0	0	100	0
Advanced Property and Trusts	69	29	0	0	0	10	45	45	0
BCL Dissertation	65	13	0	0	0	39	46	15	0
Business Taxation in a Global Economy	69	13	0	0	0	0	46	54	0
Children, Families and the State	70	1	0	0	0	0	0	100	0
Civilian Foundations of Contract Law	66	7	0	0	14	14	43	29	0
Commercial Negotiation and Mediation	69	20	0	0	5	10	20	60	5
Commercial Remedies	65	73	3	1	11	23	30	32	0
Company Law	66	3	0	0	0	67	0	33	0
Comparative Constitutional Law	67	8	0	0	0	12	63	25	0
Comparative Copyright	68	9	0	0	0	0	67	33	0
Comparative Corporate Governance	69	15	0	0	0	7	33	60	0
Comparative Equality Law	67	26	0	0	4	11	50	35	0
Comparative Human Rights	68	41	0	0	0	17	46	37	0
Competition Law	66	30	0	0	3	13	64	20	0
Conflict of Laws	65	54	0	2	4	25	39	30	0
Constitutional Principles of the EU	67	7	0	0	0	14	57	29	0
Constitutional Theory	66	27	0	0	7	15	52	26	0

Contract	65	14	0	7	0	21	57	15	0
Corporate Control – Law and Finance	67	17	0	0	6	6	59	29	0
Corporate Finance Law	67	11	0	0	0	27	46	27	0
Corporate Insolvency Law	67	22	0	0	4	9	55	32	0
Criminology and Criminal Justice	66	2	0	0	0	0	100	0	0
Families and the State - Children	70	4	0	0	0	0	25	75	0
Human Rights at Work	68	11	0	0	0	10	45	45	0
Incentivising Innovation	67	10	0	0	0	40	30	30	0
International Dispute Settlement	67	29	3	3	0	3	69	21	0
International Economic Law	67	16	0	0	12	12	38	38	0
International Environmental Law	70	15	0	0	0	0	47	47	6
International Law and Armed Conflict	66	28	0	4	0	14	57	25	0
International Law of the Sea	68	18	6	0	0	22	33	39	0
Jurisprudence and Political Theory	65	26	0	4	4	38	19	31	4
Law and Computer Science	70	13	0	0	0	0	46	54	0
Law and Society in Medieval England	70	3	0	0	0	0	33	67	0
Law in Society	68	18	0	0	0	17	61	22	0
Legal Concepts in Environmental Law	68	19	0	0	0	10	58	32	0
Legal Concepts in Financial Law	66	24	4	0	4	17	42	33	0
Medical Law and Ethics	71	1	0	0	0	0	0	100	0
MJur Dissertation	66	7	0	0	14	14	29	43	0
Modern Legal History	69	14	0	0	0	0	50	50	0

Philosophical Foundations of the Common Law	68	20	0	0	0	15	35	50	0
Philosophy, Law and Politics	68	9	0	0	0	22	45	33	0
Principles of Civil Procedure	68	22	0	0	0	9	41	50	0
Principles of Financial Regulation	68	19	0	0	0	11	42	47	0
Principles of Intellectual Property Law	66	16	0	0	12	19	31	38	0
Private Law and Fundamental Rights	65	1	0	0	0	0	100	0	0
Public International Law	58	1	0	0	100	0	0	0	0
Regulation	69	12	0	0	0	0	67	33	0
Restitution of Unjust Enrichment	66	42	5	0	2	17	48	26	2
Roman Law (Delict)(BCL/M Jur version)	72	1	0	0	0	0	0	100	0
Taxation of Trusts and Global Wealth	69	11	0	0	0	9	36	46	9
Trade Marks and Brands	66	17	0	6	6	18	23	47	0
Trusts	55	1	0	0	100	0	0	0	0

Appendix 3

D COMMENTS ON PAPERS AND INDIVIDUAL QUESTIONS

1

Name of Paper	Advanced and Comparative Criminal Law
No. of students taking paper	5

Summary reflections on the paper as a whole

This was the first year of Advanced and Comparative Criminal Law as a half-paper on the BCL/MJur and we had five students. The paper was a take-home exam with six questions, of which candidates had to answer two. Five candidates took the paper, and all produced strong answers (2 merit; 3 distinctions. The best papers drew on the theoretical and comparative literature to probe the question, as well as provide an answer.

With such a small pool of candidates, there were few questions which received a lot more attention, but question 6, on consent, received quite a few answers, with stronger answers engaging with how criminal offences capture responsibility and culpability, and the role of consent in that. By comparison, question 1, on structure in the criminal law, was less popular, and called for an understanding of legal reasoning in criminal law, as expressed in the structure of the law and offences and contrasting that with what norms might be said to underpin the criminal law. Above all, candidates needed to have a strong grounding in the doctrinal law and offer both descriptive and normative analysis when the question asked for it.

2

Name of Paper	Advanced Property and Trusts
No. of students taking paper	30

Summary reflections on the paper as a whole

Thirty students sat the paper, which comprised nine questions of which three were to be answered. One of those students sat a paper set under the old syllabus from 2020-21. The standard offered this year was very high, with a high proportion of consistent first-class work or very close. It was very pleasing to see how the students had applied themselves to the topics, assimilated the material, and devised their own interpretations and judgements. Despite the difficulties of delivery in a locked down year, the students have risen to the challenge and performed at top level.

Good answers managed to go beyond a repetition or repackaging of the core arguments of the topic and grappled with the sense and purpose of the ideas informing property and trust theory. The very best answers uncovered analytical contradictions in case law and juristic models and

debated the values and trade-offs informing various positions. No candidates offered anything less than a competent and well-judged statement of the major themes of the topics chosen.

Turning to individual questions:

Q 1 on ownership and possession addressed basic themes and was attempted by around one third of candidates. The question used a quote from Honore pointing out that a system of property law that only protected present physical holdings would be radically different to any existing legal systems. Some candidates took this quote a bit too literally and spent a lot of space comparing common-law and civilian systems to Honoré's postulated primitivism. However, all candidates got to the meat of the question which was the relationship of possession to ownership, and the extent of protection of possession as a complex and context-dependent juridified fact divorced from simple physical control. Some pungent analyses of a body of contested case law were offered, and the better candidates handled these materials with consummate skill. Candidates who had mastered the recent outburst of common-law theorizing over possession, relativity of title, and ownership of movables and immovables in English law, were rewarded with high grades.

Q 2 on Hohfeld's concept of multital claims and its utility in understanding property rights also attracted one third of all answers. Hohfeldianism has become something of a cult in the modern legal academy, but the candidates kept a level head and were keen to point out the limits of this mode of analysis in capturing both property and trust phenomena. Many candidates explained property in terms of user that was in fact legally unregulated, a liberty correlating to a no-right in third parties but protected by claim rights imposing a duty on others to respect the perimeters within which liberties could be enjoyed. Some went on to offer drop-in essays on the rest of Hohfeld's concepts of jural correlates; this was not irrelevant as some recent theorists, notably Penner and Katz, conceptualize property in terms of powers of assignment and purposeful direction rather than claim rights to exclude. The very best answers harnessed case law to illustrate and explore the benefits and limits of analysis.

Q 3 concerned the *numerus clausus* principle, though the question was posed positively in terms of the extent of freedom of parties to design the content of legal and equitable obligations to reflect their present intentions. Most candidates understood that they needed to focus on both freedom of property owners to invent new forms of rights, and also need to distinguish the effect of legal and equitable rights on trespassers and successors. A very few candidates offered a drop in numerus clausus essay, or a general discussion of the role of intention in constituting and assigning rights, which was not entirely on point. The best answers dealt with the classic cases adeptly, though there were many surprising gaps where key 19th and early 20th cases were omitted even though they would have helped in articulating the issues in this field. A few brave souls defended the impulses of Lord Briggs and the majority in the *Regency Villas* case, going into forensic detail on the conveyance upheld in that notorious recent case. Other candidates made good use of the Tate Gallery case on privacy – though practically no-one saw the link to the classic split decision of *Victoria Park Racing.* Surprisingly, only a handful of candidates found space to discuss equitable recognition of restrictive covenants running with land (and even binding adverse possessors with tortious titles). More generally, many candidates did not fully explore how equities as rights and powers over other specific rights that only bind a partial class of successors might be subject to different *numerus clausus* considerations than more universally binding legal claims (but this was a big part of the question posed). Interestingly, only a handful of candidates made the imaginative leap from a closed list of equities to the problems of a trust and fiduciary irreducible core with implications for contract, tort and insolvency. The very best answers levered legal analytics, economics and history to show why there were good theoretical reasons to resist expansion of the numerus clausus, despite the liberalizing advocacy of Rudden, Epstein, and more recently, the Law Commission. One puzzling trope in many answers was to warn against 'modern day feudalism', but without pinning down the problem of attaching positive labour services or rents to freeholds. The problem is not simply that fresh incidents can cloud titles, raise information costs, and impose

dead hand control, but can also be conceptualised as raids on the value of future generations by present-day rent-seeking owners – a type of proprietary "tunnelling". Nearly two third of the class tackled this question.

Q 4 invited comment on a famous Aristotle quote concerning household property and welfare. This was correctly understood by candidates as an invitation to discuss philosophical justifications of property and the relation of individual property claims to joint and common forms of resource control. There was a direct bridge from Aristotle not only to Locke / Nozick and Hobbes / Bentham / Demsetz / Coase, but also to Hegel / Waldron and personality or expressive theories of private property. Some excellent answers were offered, but perhaps preoccupied with Aristotle's civic virtue arguments, only a few candidates reached to the Hegel and Waldron arguments; those who did write on this part showed particular insight. The majority of answers spent a good deal of time experimenting with the Lockean tradition of argument, and the best treatments showed how the open and protean dimensions of Locke's thought. Slightly more than a quarter of the class took this question, and overall it was done very well.

Q 5 offered a choice of discussing economic theories of property or the modularity thesis championed by Henry Smith. Only the former strand was attempted and attracted only a handful of candidates. Some were hostile to economic reasoning, arguing that it was a poor positive model of the law and also of dubious normative appeal, with the distributive agnosticism and amoral causality of the Coasean tradition attracting some levels of disdain. It would have been good to investigate why modern economic analysis has chosen its particular set of modelling tools encompassing incentives, externalities and transactions costs, and asked if the perceived normative bent of economic reasoning can be valuable in puncturing the unexamined assumptions of legal culture, e.g., a favouring of vested claims and a privileging of consensual transactions as presumptively just. Many candidates fruitfully investigated some of the leading cases that have informed the economic tradition, and noted the critiques levelled against economic analysis from within common-law tradition by scholars such as Brian Simpson. Other candidates were rewarded for close and attentive readings of Coase, Demsetz, Heller, and Ellickson.

Q 6 was popular, and focussed candidates' attention on the why the law imposes liabilities on third parties who receive or interfere with trust property. The weakest candidates interpreted the references to 'conscience' and 'property' as an invitation to open-endedly discuss whether a beneficiary's right was better understood as personal or proprietary. Better answers focussed on the relationship between property and conscience-based rationales for third party liability, particularly by reference to the High Court's decision in *Byers v Samba*, and also properly distinguished cases involving tortious interference with trust assets, from cases of dishonest assistance, and receipt of assets disposed of in breach of trust.

Q 7 attracted a number of answers, generally of very good quality. Weaker answers suffered from an exclusive focus on the rights of trust creditors only. Stronger answers examined the position of beneficiary creditors and the trustee's private creditors too—and supported discussion throughout with close use of the reasoning int the cases themselves.

Q 8 attracted relatively few answers and had two branches, the first on when the law should permit the interference with property rights, the second on whether property was 'value neutral' given its application in post-colonial contexts. The first was the more popular of the two. Better candidates formulated an argument about exactly *when* the law should permit an interference with property rights on the grounds of necessity or conflicting human rights, whereas weaker answers more timidly set out considerations relevant to the issue. There was also a tendency in some weaker answers to conflate the capacity to hold property (a human right) and a right to a particular piece of property (a property right). The second branch of the question attracted very few answers.

Q 9 a question that attracted few answers, but of a very high quality indeed. Strong answers engaged with the function of the *nemo dat rule* and looked at the different treatment of the rule at law and in equity.

3

Name of Paper	Business Taxation in a Global Economy
No. of students taking paper	13 (+4 MLF)

Summary reflections on the paper as a whole

The overall quality of the scripts this year was very high. 7 scripts obtained a mark of 70 and over – one script being clearly the strongest of the seven. The remaining 5 scripts obtained a mark of 65 and over. (Of the 4 MLF scripts 1 obtained 70, 2 obtained 65 and one 62). Students were asked to answer three out of eight questions. All questions but 1 (Q 8 on groups of corporations) were attempted. The following number of candidates answered each question: Q1 (4), Q2 (11), Q3 (1), Q4 (5), Q5(2) Q6 (10), Q7 (3). The most common weakness in the scripts was a failure to answer the specific question being asked and some lack of focus in the line of argument. The lowest marks were in fact awarded to answers which failed to address all parts of the question asked in a direct and satisfactory manner and answered that were not sufficiently coherent. Also, at times, candidates accepted, and repeated views found in the literature uncritically. On the other hand, the strongest answers were characterized by an ability to impose one's stamp on the arguments made in a coherent and creative manner. Some of the scripts, however, may have made some use of pre-prepared material. The question on the tax avoidance was the most popular on this exam with ten out of twelve candidates attempting it. The best answers combined an understanding of the case law and legislative attempts to curtail tax avoidance with insightful discussion of the issue of uncertainty presented in the question. The question on international tax cooperation was the second most popular question on this exam. The best answers demonstrated a clear understanding of global cooperative efforts and a nuanced and critical view of the winners and losers of these efforts, particularly among developing countries.

4

Name of Paper	Civilian Foundations of Contract Law
No. of students taking paper	7

Summary reflections on the paper as a whole

The quality of the scripts was pleasing, and we were relieved that the online-only format has not visibly hampered the students' progress. There was some clustering of attempts on Qs 3, 4 and 6, and no attempts on Q 1. Answers to Qs 3 and 6 were mostly strong; answers to Q4 were more variable, with some candidates not getting fully to grips with the question set. Further comment is impossible without identifying individual candidates.

5

Name of Paper	Commercial Negotiation and Mediation
No. of students taking paper	26 in total (4 MLF) 19 students opted for the 'essay exam' (2 essays) 7 students took the 'paper exam' (8 questions, pick 3)

Summary reflections on the paper as a whole

This was the first year in which students were able to choose between two forms of assessment: the 'essay exam' (2 essays during the academic year) and the 'paper exam' at the end of the academic year (students needed to answer 3 questions out of 8). The 'essay exam' proved more popular (19 students [17 BCL/MJur, 2 MLF], compared to 7 students for the 'paper exam' [3 BCL/MJur, 4 MLF]).

Overall, the students did very well in the exam. The law faculty prize script received a mark of 75 points, and the student who received the prize for the best performance in the MJur also took the CNM option.

The average mark in the first essay was 69 points. 3 students achieved 75 points in that essay. The essay questions on artificial intelligence/litigation risk analysis and on the decoy, effect was more popular than the one on the quote from Ch. Voss's book ('Never Split the Difference'). The average mark in the second essay was 67 points. 2 students achieved 73 points in this essay. The essay questions on confidentiality protection and on mediators' management of distributive bargaining were more popular than the one on mediation and mass consumer complaints. The (somewhat surprising) fact that students did a little less well in the second essay may be explained by the consequences of the COVID-19 lockdown during the winter. The less popular questions also turned out to be those which students found more difficult to answer: the variance of the results is greater, and the average result a little lower than for the other questions.

The average mark in the 'paper option' was 69 points, i.e. pretty much the same as in the 'essay option' (see above: 69 and 67 points). One student received a mark of 75 points—the highest grade in this course. All questions were attempted in the 'paper exam' except question 7 on the UN Convention on International Settlements Resulting from Mediation.

As already mentioned, we are very pleased with the overall performance of the students in this course. The overwhelming majority of students demonstrated that they followed the lectures/seminars closely and had read and understood the relevant materials. Students also benefitted from active participation in the negotiation workshops and the mediation training. No 'systemic deficiencies' could be detected. The main mistake of students who did not so well was, as in previous years, a lack of detailed engagement with the essay/paper question. The best essays/scripts were of a quality that the examiners found truly impressive: novel arguments and insights were woven in a detailed and comprehensive analysis of the set problem based on a profound understanding of the subject matter in question.

6

Name of Paper	Commercial Remedies
No. of students taking paper	73

Summary reflections on the paper as a whole

All questions attracted some answers, as would be expected with such a large group, with those questions attempted more evenly spread than in some previous years. As last year, problem questions proved especially popular, with some candidates confining their answers to attempting them. There is nothing necessarily wrong with such an approach, and many first-class answers were given, however candidates should ensure that they do not limit their options.

Question 1 (choice between remedies) proved somewhat unpopular compared to the "general" questions of previous years. The topic is however an important one, which ties together many of the themes of the course.

Question 2 (court orders) proved especially popular, with some excellent answers arguing, perhaps counter-intuitively, that there is no difference between the range of reasons in play in determining substantive rights and court orders.

Question 3 (performance interest) was perhaps too standard to draw out the very best answers.

Question 4 (is termination necessary?) required candidates to be familiar with the arguments as to why it is not. Unfortunately, some confined themselves to a standard textbook account of the rules, with resultant poor grade.

Question 5 (relation of penalties rule and equitable relief against forfeiture) proved unpopular, with the penalties rule being better understood than equitable relief against forfeiture, perhaps because in England the former is now found primarily in a single case. Candidates would be well advised to broaden their horizon beyond *Makdessi.*

Question 6 (damages for late return of vessel) As with all problem questions, candidates proved adept at spotting what the issues were. As a result, very few obtained the lowest grades. Differentiation at the top end was therefore done according to care and level of detail.

Question 7 (breach of patent, gain-based and loss-based award interaction) The best answers to this question started with the statutory framework and considered how the overlap between different measures of recovery should be dealt with. The message that "negotiation damages" are not determined by the counterfactual question of what would have been paid as a release fee seems to (at last) be getting home.

Question 8 (breach of trust, account) the difficulty with giving an answer to this question is primarily caused by the confusion in the positive law itself. The question was therefore difficult to tackle because of how hard it is to state accurately what the law in England currently is. The best answers not only took each individual breach in isolation, but also reviewed what the overall award when we aggregate such breaches should be.

7

Name of Paper	Comparative Copyright
No. of students taking paper	9

Summary reflections on the paper as a whole

Candidates performed well in this subject overall. The most popular questions were Q1 (copyright families), Q5 (subsistence), Q3 (moral rights), and Q6 (exceptions). These were handled well, with students generally finding a good balance between doctrinal and theoretical discussion. For the higher marks, students needed to demonstrate an understanding of the technical aspects of copyright in different jurisdictions and to reflect on their comparative significance, whether by considering their philosophical and historical bases, connecting them to particular legal mindsets and the factors that shape them, or something else.

8

Name of Paper	Comparative Corporate Governance
No. of students taking paper	15

Summary reflections on the paper as a whole

Students had to write an essay choosing from three questions. The three options proved almost equally popular (10 students chose Question 1, while 8 chose question 2 and 7 question 3).

The average mark was a high 69. This reflected the strength of the cohort, which had already been evident from the exceptional quality of the seminar discussions.

Question 1 asked students to reflect upon the suggestion that companies should give shareholders an annual vote on their efforts to tackle climate change ("say on climate"). As the question noticed, this would be similar to existing regulations requiring a shareholder vote on executive compensation policies. The challenge for students was to reason on whether the policy would be instrumental to the purpose of increasing corporate awareness to the issue of greenhouse gas emissions and climate change risks in the light of shareholders' varied incentives and characteristics.

Question 2 prompted students to discuss one of the most quoted statements on corporate governance ever, namely Milton Friedman's creed on managers' exclusive accountability to the shareholders and also to analyse whether this idea is the law in the United States, the United Kingdom, and one other jurisdiction of their choosing and whether it should be. Here, they were prompted to delve into the very lively debate on shareholder primacy versus a multistakeholder model of corporate governance, which has been getting ever greater traction in the last few years.

Question 3 asked students to reflect upon the proposal by two prominent US senators that employees be allowed to elect 40 to 45 percent of the directors of large corporations. Students were referred to two papers by Jens Dammann and Horst Eidenmüller, according to which, while codetermination would be a poor fit for United States corporations, it would also contribute to reducing 'the risk that corporations will use their resources to undermine democratic institutions' and therefore strengthen the resilience of the United States political system. Students were asked to evaluate this policy proposal and therefore to reflect upon a classical comparative theme, which is whether a legal transplant of a typically continental European solution could work in a completely different setting such as the US.

9

Name of Paper	Comparative Constitutional Law

No. of students taking paper	3

Summary reflections on the paper as a whole

Due to the size of the cohort, no additional comments can be made.

10

Name of Paper	Comparative Equality Law
No. of students taking paper	26

Summary reflections on the paper as a whole

The standard was good in this subject this year, with some outstanding papers. Twenty-six candidates took this paper, of which nine were awarded 70% or over and a further nine obtained 67- 69%. Given the extremely challenging conditions of this year's BCL, when all the teaching was done online, the performance of all candidates was impressive. The standard over all the questions answered was high, with candidates displaying a good, in-depth understanding of the legal materials in a comparative context. The best candidates were able to use their analysis to develop a strong and often innovative and interesting line of argument. Candidates made a good attempt to structure their essays clearly, and to use the comparative materials well. The strongest scripts were able to focus their attention on the specific question asked, especially where a quote was provided, and to use comparative materials in a thematic way, rather than jurisdiction by jurisdiction. Candidates were rewarded for good comparative methodology, accuracy in their use of legal materials, a proper focus on answering the question, and clearly structured and well supported arguments, as well as independent and critical thinking. Specific attention was paid to candidates' ability to showing an in-depth understanding of the judgements to support their own line of argument, rather than simply stating the case-name. A careful assessment of different legislative and constitutional texts was also key to achieving good grades. The most popular question was question 7 (affirmative action), which attracted by far the most responses, followed by questions 4 (disability), and 2 (indirect discrimination) There were also a good number of responses to question 3 on framing, which was interesting given that this was the first year in which this material was covered in the course. No candidates answered question 6 (justification). Candidates did best where they responded specifically to the question, showing their understanding of the challenges raised by the quotation if one was provided; followed a clearly structured line of argument; and demonstrated a detailed understanding of the comparative jurisprudence to support their arguments. Candidates did less well when they simply reflected existing texts, concentrated too much on one jurisdiction, or produced an essay which canvassed the whole field rather than the specific challenge raised by the question. Overall, the scripts were a pleasing demonstration of the ability of the candidates to achieve a good understanding of equality law in different jurisdictions from a comparative perspective, and to develop their own critical approach.

11

Name of Paper	Comparative Human Rights
No. of students taking paper	41

Summary reflections on the paper as a whole

The overall standard of this year's examination was very good. We had an unusually high number of candidates this year (44), leading us to teach the course in two streams. Given the extremely challenging conditions of this year's BCL, when all the teaching was done online, the performance of all candidates was impressive.

Fifteen were awarded Distinction grades and all the candidates achieved 60% or above. The best scripts focussed their responses on the challenges raised by the question, especially if a quotation was included, and used a thematic approach to the comparative jurisprudence rather than dealing with one jurisdiction at a time. Candidates were rewarded for demonstrating an in-depth understanding and analysis of the judgements, and secondary literature, rather than simply mentioning cases or other materials. A fluent knowledge of the textual mandates and constraints in the constitutions and statutes of different jurisdictions was crucial to achieving a good grade.

All questions received a good number of responses by candidates, the most popular questions being Q1 (capital punishment), Q3 (right to health) and Q4 (positive duties). The best answers demonstrated the ability to marshal the candidate's knowledge to respond to the specific question asked, using a clearly structured line of argument with detailed support from the relevant texts and comparative case-law. Candidates were not highly rewarded for essays which simply canvassed the field in general, or who did not produce a critical analysis of the materials in the light of the question asked. Overall, the scripts were very pleasing and showed a good understanding of the legal materials, the comparative methodology and the underlying challenges.

Name of Paper	Competition Law
No. of students taking paper	28

Summary reflections on the paper as a whole

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 examination was taken by 28 candidates (2 MLF students, and 26 BCL/MJUR students). On the whole, the scripts showed excellent command of the subject and very good analytical skills, with 6 candidates being awarded an overall mark of 70% or above.

First class answers generally displayed a strong grasp of the underlying material, underscored by significant and sustained references to case law and commentary, balanced with robust analytical engagement. Weaker answers tended to miss substantial issues, neglect critical analysis, fail to

engage in detail with case law and misconceive the relevant law, or how that law ought to be applied to the facts.

13

Name of Paper	Conflict of Laws
No. of students taking paper	54

Summary reflections on the paper as a whole

By comparison with recent years, there were significantly more answers offered in response to the essay questions of the paper. Many of these showed a spirited (and sceptical) attitude to views attributed to those writing in the subject, which was very refreshing (though the essay on comity naturally required more careful attention to structuring and coverage). The problem questions were still popular. If there was a shortcoming it was that, on occasion, the law would be described with accuracy, but then applied to the facts, and to the issues raised by those facts, a little less assuredly. One specific point, though: it was surprising to read an elaborate analysis of whether a claim was one for which the consumer contract provisions of the Lugano Convention permitted English jurisdiction, only afterwards to be told that as the defendant was domiciled in England, he could be sued there on the basis of Article 2 in any event.

14

Name of Paper	Constitutional Principles of the EU
No. of students taking paper	7

Summary reflections on the paper as a whole

Missing Report

15

Name of Paper	Constitutional Theory
No. of students taking paper	27

Summary reflections on the paper as a whole

The Constitutional Theory scripts were of a high standard this year, with a great many thoughtful answers to the questions set. Just about all of the scripts showed a strong grasp of key elements of the literature, and many showed a capacity to engage that literature at a

sophisticated level. As ever, the examiners rewarded those scripts that engaged tightly with the questions set especially highly and showed both erudition and creativity in their answers.

16

Name of Paper	Corporate Control: Law and Finance
No. of students taking paper	17

Summary reflections on the paper as a whole

Students had to write an essay choosing from three questions. Two of them proved almost equally popular (12 students chose Question 1 while 11 chose question 2) while the third was chosen by only two of them. The average mark was a high 67. This reflected the strength of the cohort, which had already been evident from the exceptional quality of the seminar discussions. Question 1 asked students to reflect upon two distinct but related phenomena that are key for corporate control: hostile takeovers and hedge fund activism. Answers to these questions properly highlighted that the two can substitute for one another or complement each other, depending mainly on the reasons why the relevant players launch hostile bids or activist campaigns. Question 2 prompted students to evaluate whether the European mandatory bid rule is a better way of addressing minority expropriation concerns in the event of a control transfer than the US "market rule" coupled with enforcement of fiduciary duties. Interestingly, students' opinions were quite evenly split between the two alternative views. This question was on the whole done extremely well However, a few students interpreted the paper excessively broadly, as asking about target shareholder protection in takeovers without focusing exclusively on situations in which a controlling shareholder transfers their block to an acquirer. Finally, many students (rightly) added a layer of complexity to their analysis by going beyond the perspective of minority shareholder protection, to also consider the effects of the two approaches for social welfare more broadly. Question 3 asked students to reflect upon the position of employees in takeover contexts: whether and how they should be protected, and whether and how they are so protected within the EU, in the UK and in the US. Both students attempting this question did extremely well on the positive part of the question while only one excelled when it came to the normative question.

17

Name of Paper	Corporate Finance Law
No. of students taking paper	34

Summary reflections on the paper as a whole

34 (11 BCL/MJur and 23 MLF) candidates took this paper. The quality of the answers was overall very high. All students answered a Part A and Part B question as required and it was pleasing to see that a good proportion of students chose to answer their third question from the debt side of the course. The most popular questions were questions 1, 3, 7, 8 and 9 but all questions on the paper were answered by at least one candidate. Most candidates had a good grasp of the underlying policy concerns and were generally able to provide a good level of primary and secondary material to support their arguments, although some weaker candidates relied heavily on textbook references. Stronger candidates were able to use this material to provide thoughtful and nuanced responses to the questions. The strongest candidates focused closely on the specific questions set, while weaker candidates focused only on part of the question, for example in question 5 discussing IPO regulation with little or no reference to crowdfunding, or in question 8 discussing the contractual and proprietary protections that creditors can provide for themselves or the protection provided to creditors by the law but without fully considering both.

18

Name of Paper	Corporate Insolvency Law
No. of students taking paper	22

Summary reflections on the paper as a whole

Missing Report

19

Name of Paper	Human Rights at Work
No. of students taking paper	11

Summary reflections on the paper as a whole

This year was the first in which Human Rights at Work was assessed through the submission of essays rather than a three-hour examination. Students were required to complete two essays (with a word limit of 8000 for the two) during weeks 4-8 of Trinity Term and were given a choice of eight questions. Our main objective in moving to this method of assessment was to give students more space and time to develop their own ideas on the material studied. On the whole, the change was successful. The overall standard was high and candidates produced some thought-provoking writing, particularly in relation to the questions on the philosophical underpinnings of labour rights and on the privacy issues relevant to working from home. There were, however, some weaker answers and these tended to stick quite closely to a limited range of sources and to offer more description than analysis.

20

Name of Paper	Incentivising Innovation
No. of students taking paper	10 (+2 MLF)

Summary reflections on the paper as a whole

The standard was generally very high. Most candidates showed both a good grasp of legal doctrine and a solid understanding of the deeper policy issues. It was, however, notable that the majority of candidates performed better on their second essay (that covered an element of patent doctrine) than on the first (covering an element of innovation theory / economics). One of the reasons why the 2 MLF students performed better on the course was that the difference in their performance was less marked between the two essays, perhaps reflecting a greater degree of comfort / familiarity in engaging with political economy and law & economics material).

21

Name of Paper	International Dispute Settlement
No. of students taking paper	29

Summary reflections on the paper as a whole

All questions in the paper were attempted at least once. As usual, questions which were based on tutorial teaching were attempted more than others, with almost all students attempting at least one of the two problem questions. The quality of scripts was very good overall, with 6 of the 28 students achieving a distinction, another 19 achieving a merit (high 2.1) and only 1 student scoring below 65, and 1 below 60.

Question 1

No. of students who answered this question	11
Range of marks	50-70

Comments

Many answers to this question were generic and showed no particular insights, beyond listing methods of dispute settlement and making some comments related to the essay question. The best answers focused on the grounds upon which the distinction can be drawn, and showcased different rationales based on examples from practice.

Question 2

No. of students who answered this question	5
Range of marks	48-70

Comments

This is an open question which required students to adopt a particular angle/analytical perspective and put forward an argument on the basis of the question. The best answers did just that.

Question 3

No. of students who answered this question 1

Comments

This was a question meant to lead students to set out a particular set of processes of dispute settlement based on an actual dispute settlement provision taken from a real treaty.

Question 4

No. of students who answered this question 9

Range of marks 64-70

Comments

This was a question regarding independence/impartiality and recusal of judges and arbitrators and asked students to comment on an actual argument put forward by a state in a recent ICJ case. The best answers, as usual, diverged from the structure of essays submitted in response to a relevant (but different) tutorial question and focused on commenting on the argument, placing the issue also in a broader perspective and referring to all relevant case-law.

Question 5

No. of students who answered this question 20

Range of marks 64-72

Comments

This was a question on MFN. It was similar (as usual) to an essay question used for tutorial teaching, but this time students were asked to comment on an actual MFN clause in an investment agreement. Mediocre answers stayed too close to the essay submitted for the tutorial, without properly analysing the question asked and using the material critically to answer it. This resulted in poor structure of the answers and lack of focus. Conversely, excellent answers focused specifically on what was being asked, and presented a coherent argument in response to the question. It is notable that unfocused answers rehashing the tutorial essay were significantly less than in previous years.

Question 6

No. of students who answered this question 16

Range of marks 64-71

Comments

This problem question on preliminary objections in the ICJ was a type of problem question we had worked on during tutorials. Most answers ranged from good to absolutely excellent. The best answers were those where students were able to analyse the fact pattern carefully, spot the issues, and use the material to solve the issues. Poorer answers were less successful in spotting all the issues, assuming these would be broadly the same as in the tutorial problem question and would require the same material to be resolved.

Question 7

No. of students who answered this question	5
Range of marks	62-72

Comments

This was an admittedly difficult problem question on competing jurisdictions. It required careful reading and analysis of the pattern and questions, and careful structuring. It was (expectedly) attempted by only 5 students, i.e., mostly by those best prepared for such type of questions. This is why three of the five answers scored distinctions, some indeed high distinctions. These included a detailed and careful analysis of the pattern, with excellent use of material to support the arguments made. Two other answers were not as good, with one giving the impression that the question was attempted in desperation.

Question 8

No. of students who answered this question	16
Range of marks	63-72

Comments

Again, a question similar to the ones we had worked on during tutorials: attempted widely but not altogether successfully by many. The question was actually a (made-up) quote on which students were meant to comment, regarding recognition and enforcement of arbitral awards against states. Many rehashed parts of their tutorial essay, whereas the best answers focused on critiquing the quote as asked, employing material effectively to that end.

22

Name of Paper	International Economic Law
No. of students taking paper	16

Summary reflections on the paper as a whole

The dip in performance in the 2021 International Economic Law examination paper was very noticeable with the percentage of students obtaining a distinction being 32% (compared to the 2019-2020 percentage of 62% distinctions) possibly due to the ongoing disruption caused by the Coronavirus and all teaching having been virtual (thus with less possibility for the Socratic method of teaching that is normally employed in face-to-face teaching). In terms of the examinations, the lower marks were largely as a consequence of the mainly descriptive, rather than analytical, approaches to the material, such analytical approaches are normally considered and explored with frequent teacher-student interaction in the seminars that was not possible to anywhere the same degree with virtual teaching. What was noticeable was that the increase in time did not necessarily improve results, but it did ensure that the vast majority of questions answered were indeed answers to the specific questions asked rather than providing pre-prepared answers on a specific topic. It is hoped that this latter feature of the IEL exam will continue into the coming year when face to face teaching resumes.

23

Name of Paper	International Environmental Law
No. of students taking paper	15

Summary reflections on the paper as a whole

The overall performance by students in the International Environmental Law option was excellent. All sixteen candidates sitting the examination achieved grades in the mid-60s or higher, with eight candidates achieving distinction grades overall. The top two scripts, in the mid-70s, were superb, and contained insights that built on and extended what the course had covered. No script was marked below 66. All questions were attempted by at least three candidates.

The most popular question by far was 6 (environmental litigation, 12 chose this) followed by questions 1 (sources, 8 chose this) and 4 (compliance and effectiveness, 8 chose this). The question on climate litigation elicited strong responses that offered nuanced analysis on the potential and limits of litigation, distinguished between national and international litigation in relation to potential/limits, and in one case even offered insights on the potential for and substantive remit of an ICJ Advisory Opinion.

The least popular questions related to principles (question 2, 3 chose this), legal character of the mitigation and progression provisions in the Paris Agreement (question 7, 3 chose this), and the review of adequacy of the nationally determined contributions (NDCs) under the Paris Agreement (question 8, 3 chose this). Q7 was particularly challenging but presented candidates an opportunity to showcase original and thoughtful analysis. The best script responded to this question and wove in fine-grained analysis of the relevant treaty provision, with the application of custom and even considered the salience of unilateral declarations in relation to NDCs. More generally, the best answers engaged directly with the question, were well-structured and demonstrated detailed knowledge of the key legal instruments, case law and academic authority. This was pleasingly evident in many of the truly outstanding answers in this year's scripts.

24

Name of Paper	International Law and Armed Conflict

No. of students taking paper	28

Summary reflections on the paper as a whole

All questions in the paper were attempted at least twice. There was a roughly equal spread between parts 1 and 2 (students are required to answer at least one question from each part, one on the jus ad bellum (part 1) and one on the jus in bello (part 2)).

The quality of scripts ranged from good to excellent, with seven of 28 of the students achieving a distinction overall. 16 scripts scored a merit (high 2:1), and only four scripts scored a low 2:1 (i.e., a mark between 60 and 64). There was only one script that scored below 60 (but over 50). This was due to one of the three questions not really being answered except in outline—the quality of the proper answers was around 60 or just above.

The best scripts were those that focused on the questions asked rather than merely rehashing material from tutorial essays. The main reason for marks below distinction was precisely lack of focus on the question asked and poor use of material in order to construct an argument in response to the questions.

25

Name of Paper	International Law of the Sea
No. of students taking paper	18

Summary reflections on the paper as a whole

Performance in the law of the sea examination this year was once again excellent. The paper comprised a combination of essay (6) and problem (2) questions and permitted free choice between them as the paper is not divided into parts. All of the questions were attempted by at least some candidates, with essay questions 4 (attribution of rights and competences in the exclusive economic zone) and 5 (common heritage concept) proving the least popular. Of the problem questions, question 7 (navigation and pollution prevention measures) was preferred while the most popular question overall was essay question 5 (maritime boundary delimitation). The best answers both to essay and problem questions demonstrated detailed knowledge of the key legal instruments, case law and academic authority (and avoided excessive reliance on the recommended text alone). The best responses to essay questions were well structured and coherently argued and displayed the ability directly to engage with the question posed. The importance of familiarity with both academic authority and case law was demonstrated in the range of marks awarded to candidates attempting popular question 5, with the best answers demonstrating familiarity with, and critiquing, the key cases. Overall, the standard of performance was extremely good with over half the candidates achieving a distinction mark overall.

26

Name of Paper	Jurisprudence and Political Theory

No. of students taking paper	26

Summary reflections on the paper as a whole

Twenty-six candidates wrote essays for the subject this year. Sixteen wrote on Q1, on what is textualism and whether it is sound. Thirteen wrote on Q2, on whether and if so, how legal institutions aim to change our normative situation. One wrote on Q3(a), on what if anything should not be ruled by law. Nineteen wrote on Q3(b) on whether the rule of law is primarily a virtue of laws or a constraint on government's power. Six wrote on Q4, on whether human rights are concrete expressions of dignity. Seven wrote on Q5, on whether we derive our principles of justice from the need to justify the type of interaction that occurs via the basic structure of society. Nine wrote on Q6, on what religious freedom is and whether it's worth protecting. Most essays were sharply focused on the relevant question and defended a thesis. The best essays were particularly clear and precise and illustrated claims with effective original examples, with some attaining subtlety and insight. Nine candidates achieved a first, including a particularly high first. Fourteen candidates achieved a 2.1, of whom five achieved 65 or better. Two candidates achieved a 2.2.

27

Name of Paper	Law and Computer Science
No. of students taking paper	13

Summary reflections on the paper as a whole

This is the second year that we have run this course jointly between the Faculties of Law and Computer Science, where it is open to students on the BCL/MJur/MLF and 4th year/MSc courses respectively. As last year, the course contains two summative components; the written paper which is the subject of this report and a practical project which required students to work in interdisciplinary groups of 6 (three from each discipline) to produce a legal product based either on blockchain technology or NLP. The practical project is marked simply on a three-mark scale: satisfactory, satisfactory – or satisfactory+. Such was the quality of this year's projects that all students received an S+ mark. In law this does not have any implications for the candidates' overall degree classification, though such a mark can have that effect in Computer Science.

Like last year, the best scripts in the theoretical paper were those where the candidates had engaged in detailed analysis of particular, specific examples considered from both a law and a computer science perspective in order to analyse how both disciplines can contribute to the solution of particular problems. This is the key goal of the course and one that was emphasised to students in all sessions. Weaker scripts tended to focus on their own discipline without engaging fully with the other, thereby failing to achieve this central goal.

As last year, all papers were marked by both examiners in order to ensure that they had been marked from a similarly interdisciplinary perspective. Notably, and reassuringly, like last year there was not usually a significant difference between the marks awarded by each examiner when these were compared at the end of the marking process. Where there were minor discrepancies, these were discussed and a final mark was agreed upon.

The questions in Part A were based on the first half of the course, covered in Michaelmas Term, and examined the interrelationship between the two disciplines and the ways in which technology might affect the process of law and/or legal practice. We were pleased to see that this year answers were more evenly distributed across the questions, though questions 5 and 7 were the most popular. Our detailed comments on each question are as follows:

Part A

1. This question required consideration of both the theoretical differences between the two disciplines, in particular the need for vagueness in law and why this arises. Strong answers were able to include consideration of the specific circumstances in which code and law interact, such as the DAO experience in smart contracts, machine readable legislation, and some of the examples discussed in Lessig's work.

2. This question asked candidates to consider the advantages and disadvantages of automation and augmentation in both technical and ethical/sociological terms, examining materials from across the first term of the course. As before, strong candidates were able to give specific examples of both automation and augmentation and advanced a normative approach to weighing the pros and cons and making a policy decision in each case.
3. Successful answers to this question were able to give specifics on issues such as risk assessment and treatment, vagueness, and professional duties and to explain how those factors might carry through into interactions between the two disciplines. Again, stronger candidates were able to present a normative thesis about their interaction.

4. The first half of this question required an examination of what it is that a lawyer does, both in terms of Susskind's own work and that of others such as Hildebrandt and Howarth, and whether or not it is only the outcome of a case or legal process that is important, drawing on the work of Mulcahy, Tidball and others. The second half required an examination of what legal technology can replace or alter, and what it should not, in the light of the initial discussion.

5. This question required a good analysis and understanding of the technical techniques for achieving explainability, both in terms of the differences in inherent explainability between different kinds of systems, and the techniques for achieving explainability ex post in less transparent systems. It also required a normative thesis of what level of explainability is necessary for deployment of technology in different circumstances. As before, strong candidates were able to refer to specific examples.

Part B

6. This question required an understanding of the specific challenges arising from algorithmic decision making (ADM) including, but not limited to, bias in data or algorithms themselves, transparency, population but not individual level accuracy, correlation as opposed to causation, scaling, rigidity etc. It then required candidates to demonstrate an understanding of areas of law such as public law and the law against discrimination and in particular the extent to which those areas already contain tools capable of addressing these challenges and the extent to which further development is necessary before they can do so.

7. This question required an understanding of different ‘metrics’ for assessing the performance of a system. Stronger candidates were able to address the question of ‘success’ in a nuanced way, outlining both technical metrics such as sensitivity, specificity, precision etc and ‘softer’ metrics such as efficiency, equality and fairness in relation to different populations. The question also required attention to the legal rules which might require the application of such metrics before a system is considered ‘reasonable’, within public law for example, or unlikely to attract a claim in tort law.

8. This question asked candidates to examine the areas of law dealing with harms, including particularly tort and criminal law, but potentially also competition and public law, and the extent to which those areas of law, designed for application to human beings, are capable of applying to digital technology. In the contexts where further modifications are needed, stronger candidates were able to outline where these modifications should be technical (in terms of gathering evidence or increasing transparency and auditability) or legal (such as the alteration of the definitions of particular offences).
9. This question asked candidates to consider the law relating to property as we had studied it in relation to cryptocurrencies, intellectual property and data, and the extent to which those areas are in need of adaptation before they can apply successfully in the digital context. In class we had spent time examining and discussing the *Oracle v Google* litigation concerning APIs, and stronger candidates were able to draw on this successfully in their answers, though it was not a strict requirement that they do so.

10. This question was a slightly broader question which could be answered successfully using material from across the second half of the course. Stronger candidates were able to give specific examples of technology-led solutions (such as automated compliance) and legal ones (in terms of the incentive structures of particular areas of law such as tort law).

28

Name of Paper	Law and Society in Medieval England
No. of students taking paper	3

Summary reflections on the paper as a whole

This course was assessed by submitted essays. Three candidates submitted; the overall standard of their work was strong. Given the small numbers, no further comment can be given without identifying individual candidates.

29

Name of Paper	Law in Society
No. of students taking paper	18

Summary reflections on the paper as a whole

Students were required to write two 4,000-word essays, one chosen from each half of the paper, representing the topics taught in the two different teaching terms.

Within each set of questions, some were inevitably more popular than others, but each question was chosen by at least one student.

On the whole, the essays were a pleasure to read and the best answers incorporated material and ideas from a range of different seminar topics. They had almost always read widely, beyond the required reading lists. We have decided to continue with this exam format and to provide students with additional readings on each topic.

It was interesting that there was some disparity in the marks that some of the students received in their two essays, which meant that a number received a distinction mark in one paper, but not overall. But we checked and double-marked these cases carefully.

30

Name of Paper	Legal Concepts in Environmental Law
No. of students taking paper	19

Summary reflections on the paper as a whole

This was the first year that assessment was via extended essays. It was a significant success in that the assessment was more accurately able to assess student's deep knowledge of the subject and allow candidates to exercise and show their legal reasoning skills in deploying that knowledge. The overall quality of answers was impressive and some of the developed legal expertise on display, was outstanding. This was particularly in regard to the legal hypotheticals. A major factor in answers being awarded higher marks was that they addressed the question asked with acuity. Likewise, careful engagement with a range of materials also improved marks. All questions were answered, but 2 questions only had 1 answer to them.

Question 1

No. of students who answered this question	9
Range of marks	62-70

Comments

Quite hard question to answer as it need acute attention to the complexities raised by the quote.

Question 2

No. of students who answered this question	5
Range of marks	65-72

Comments

A problem question which there were strong answers to. Weaker (but still solid) answers tended to be more descriptive of the issues.

Question 3

No. of students who answered this question	8
Range of marks	64-71

What really distinguished the stronger answers here was the engagement with what the question was asking about courts and polycentric issues.

Question 4

No. of students who answered this question	4
Range of marks	62-74

A two-part question which asked students to think both about a specific issue and more broadly across the material of the course. Stronger answers did both well, particularly the last part.

Question 7

No. of students who answered this question	10
Range of marks	64-72

A very popular problem question. The stronger answers really engaged with the legal text in the problem and explored it in detail in light of the material in the course.

31

Name of Paper	Legal Concepts in Financial Law
No. of students taking paper	33 (Including MLF)

Summary reflections on the paper as a whole

Thirty-three students sat the paper, which comprised eight questions of which three were to be answered. The standard of papers was generally very good, with around two-thirds of the cohort receiving distinctions or merits. Most candidates answered two essay questions and a single problem question (although more students than we perhaps anticipated answered two problem questions).

The examiners noted that some weaker candidates tended to set out legal rules without applying them—sometimes by apparently reproducing their lecture notes. Others sought to avoid discussing *legal* concepts by unsubstantiated allusions to market solutions to legal doctrinal

problems. Stronger candidates critically engaged with legal debates—and tailored their discussion of the law and its ambiguities to the question asked.

Question 1

No. of students who answered this question	17
Range of marks	20 (short weight) – 70

Comments

There were a number of good answers to this question but very few of distinction quality. The question focused on the relationship between the debate about the nature of money and the question of what constitutes payment. Too many candidates wrote about one or other of these issues without considering the relationship between the two issues. It is vital to focus attention on the question asked and not use the question as a vehicle to write generally on the subject-matter of the question or to reproduce lecture notes on the two topics (as was done in a very small number of cases).

Question 2

No. of students who answered this question	29
Range of marks	58-75

Comments

An exceptionally popular question which produced some excellent responses, and a high number of answers were of distinction and merit quality.

Question 3

No. of students who answered this question	1

Comments

The question was a broad ranging one on a topic that was covered in the final seminar but it attracted very few

Question 4

No. of students who answered this question	11
Range of marks	54-74

Comments

A reasonably popular question. Weaker candidates were content to say that netting is important because it is used to manage risk or, in other cases, to survey academic literature on point without developing an argument—or indeed addressing the question. Stronger candidates critically engaged with the question of whether the law is justified in allowing the creation of de facto security by contract alone, and integrated that within arguments about whether some ways of managing risk are better than others.

Question 5

No. of students who answered this question	7

Range of marks 57-75

Comments

This question asked students to respond to a quote about charges and attracted relatively few answers. A number of candidates simply used the essay to describe the difference between fixed and floating charges—without engaging with the quote. Stronger scripts focused on the significance of 'free use' not only in determining whether a charge was fixed or floating, but in the different treatment of fixed and qualifying floating charges upon insolvency.

Question 6

No. of students who answered this question 2

Range of marks 60-74

Comments

Not a popular question perhaps because it required candidates to consider recharacterization in two different contexts, namely derivative contracts and title transfer financial collateral arrangements (which are covered in different seminars). The question required engagement with both areas of law in roughly equal measure and not focus on one to the virtual exclusion of the other.

Question 7

No. of students who answered this question 17

Range of marks 46-72

Comments

A popular question. There were a number of very good answers showing excellent knowledge of the relevant case law and applying that knowledge to the clauses that were set out in the question. Some candidates were clearly very familiar with the case law but did not take the time to look carefully at the wording of the particular clauses set out in the question. If a problem question sets out a clause from a contract, it is likely that the wording of the clause will raise some issues and so it is important to consider the wording of the clause carefully and apply the law to the construction of the particular clause in the question. It is also important to answer all parts of the question. Some answers were very thin on the issues raised in the final paragraph of the question.

Question 8

No. of students who answered this question 15

Range of marks 54-73

Comments

A popular problem question, testing students' understanding of the relationship between charges, FCAR, and set-off. In part (a), which concerned the difference between a fixed and floating charge, all candidates set-out the distinction with reference to *Spectrum*. Good answers carefully examined the different considerations in respect of each bank account, and also suggested possible solutions to the problem of taking a charge over receivables. In part (b) all students set out the requirements for Financial Collateral, and the overwhelming majority recognised that the issue was the 'possession' or 'control' requirement. Better answers discussed this specifically in

relation to floating charges, and also discussed the advantage of the security coming within FCAR. Part (c) concerned the effect of granting a charge over a bank account on a banker's right to combine accounts. The point was recognised by stronger candidates who were rewarded accordingly.

32

Name of Paper	Modern Legal History
No. of students taking paper	14

Summary reflections on the paper as a whole

Candidates could choose between two modes of assessment: (1) a 4000-word essay submitted at start of Trinity Term plus two examination questions on a topic different to the essay taken at end of that term, chosen from a list of nine topics; or (2) or a three-question examination paper taken likewise at end of Trinity Term, using the same paper and taken at the same time. Whichever mode was chosen, the candidates offered a pleasingly high standard of scholarship, invention, and expression. The very best candidates offered work of great insight and understanding; all candidates clearly applied themselves seriously and took a lot out of the course.

Turning to performance in particular topics (and for reasons of brevity we will here discuss essay and examination performances together):

1 (a) Legal historiographical method and explanations of legal change. Only a few answers were offered. All were proficient but most tended to spend too much time expatiating on the quote from FW Maitland and then affirming the importance of hermeneutic sensitivity and historical authenticity when studying the legal past, but without much attention given to the role of implicit and explicit models and also of normative and political instincts that can drive the enterprise of legal history writing. Creative engagement with materials – particularly secondary sources – from across the course was a feature of the strongest answers.

(b) Explaining codification. This question elicited some very impressive answers. There were interesting and well supported views about codification in France, Germany and England (giving more weight to one system or two systems depending on the particular arguments being advanced) in all scripts. The strongest ones went beyond the particular by drawing out similarities and differences in their analyses of two, or sometimes, three systems. The comparative dimension yielded some very insightful observations about reasons for the adoption or rejection of codification in particular societies at particular moments in time. As Maitland taught us, some element of comparison is a necessary condition for adequate historical knowledge of even one system.

2 Role of fault standards in tort. This was a popular question and attracted some excellent answers. Only a few candidates managed to range across the entire corpus of early modern to 20th century tort doctrine; many were selective and stuck to one century, e.g., looking at 18th C running down cases but not 19th C vicarious liability for employers to employees which was possibly a bit limiting. All candidates were aware of the need to unpack normative language lurking in the forms of action. Fewer were able to grapple with issues of judge v jury discretion, or the entwining of casual issues with responsibility, or the problem of privity of contract or of estate, or the precise reaches of the volenti principle. Very few candidates were prepared to look hard at extrinsic issues on business and moral life, or in wider intellectual currents favouring a

fault-based model. Those who could encompass these manifold issues received due acknowledgment with high grades. No submitted work was less than proficient.

3 Land use and law of nuisance. This was a popular question. Higher grades were given to candidates who went into some analytical detail over the cases, and who showed something of the richness of litigation during the 19th century. Stronger candidates showed how the problems of nuisance and externalities stretched back to the 16th C if not earlier. Other candidates were keen to apply or criticize modern model building such as Coaseian transaction cost economics or numerus clausus principles, but this could come at the expense of neglecting the historical materials. Some candidates were keen to explore the business and environmental history and the rich class politics lurking in this subject, and there were shrewd observations about the operation of Chancery injunctions to effect settlement between warring factions in the onslaught of industrialism. Perhaps the deeper question presented by this legal history was left unanswered: how can a system of bilateral dispute resolution solve network or 'polycentric' problems such as human-induced environmental change?

4 Contract and voluntary obligations. Most candidates addressing this question focused on contract law. A few looked instead, or also, at trusts, debt and insolvency laws. In addition to precision and accuracy on the myriad technical points (eg relating to particular remedies, legal devices and particular courts), the best scripts paid ample attention to the question of 'justification', finding useful evidence on doctrinal, procedural, political, philosophical, social and economic factors in the case reports and secondary sources. Effective engagement with the significant debate in secondary sources on fairness in contract law also enriched answers which provided treatments of that area of law. Some answers were clearly based on close reading of the materials and deep reflection on the interconnected issues over the course of the year and were very impressive indeed.

5 Laws and policies of asset partitioning. Some truly excellent answers were provided, disentangling some difficult doctrine and showing how to draw out a narrative thread from complex phenomena. It was important to work through the rules for obligations and assignments pertaining to trustees, partners, agents and beneficiaries and creditors as both separate and recombinant categories, and not stick to say the jingle rule for partnership or the immunity of trust funds to trustee personal credit deals. The best answers looked at both internal legal development and external business function and ethics; some candidates stuck to one or the other and so did not fully address the clearly bifurcated question as posed.

6 The rise of the business corporation. This question intersected with the preceding topic, but candidates managed to isolate the special issues of artificial legal personality from limited liability and defensive asset partitioning. The Televantos and Hilton hypotheses on changing business ethics attracted some attention and were generally preferred to Harris' organizational and financial account. Issues of the timing of legislation and the uptake of corporate form in different business sectors might have been explored more thoroughly.

The next three topics moved from private- to public-law history, where literatures and debates are newly emerging and there are fewer guide rails. The results were highly encouraging.

7 (a) Judicial control of public sphere; or/ (b) Law, politics, and literature. The first public law question (a) was popular; the second literature/ideology question (b) attracted no takers, which might be expected since it was the last taught topic of the annual cycle. The best answers ranged superbly across legal and political time, showing how the courts were both internal actors in the constitution and counterweights from without against legislative and executive power. Some candidates nervously expatiated on a handful of leading cases and were not able to connect these to a wider narrative of the role of the courts in constraining and defining public powers. The intersections of public and private power eg in the bankers' Case clearly held a grip on students' imaginations and evoked some interesting analyses betraying devoted reading. Issues of imperial and military violence and judicial reactions were strangely absent from the answers offered; and not much was given on the birth of judicial review of quasi-judicial decision-

makers. In our pedagogy we tried to escape from the straitjacket of Dicey's models of the constitution to provide a richer view of the history. Most but not all students managed to surpass the stale Diceyan orthodoxies and give creative answers to the question posed.

8 Criminal doctrine. This topic attracted a fair few answers and was done well. Candidates were most comfortable discussing doctrinal change with the organization of court appellate and review jurisdictions and litigation procedures taking centre stage. Fewer candidates were happy to address external factors such as policing and prosecution and shifting balances of power between local and central organs of state, as well as changes in class, gender, and family politics. Capacity as opposed to culpability issues were not really present in answers offered. This is a difficult field only now being cultivated by scholars, and the issues clearly fascinated many of our candidates.

9 Native title. This was perhaps the most popular topic and attracted a wide range of different approaches, and some excellent answers. Some candidates hugged the shoreline and expatiated on the Marshallian jurisprudence of the early 19th century case by case, then offering some comparisons to some other colonial jurisdiction and then stopping. Better answers showed how colonial/imperial jurisprudence has troubled the common law since the conquest of Ireland and remains a deep vein of jurisprudence in the common law tradition. It was interesting how a snappy hypothesis such as Kades 'monopsony' model of pre-emption seemed to convince candidates as a key to the story of native land transfer to settlers. Issues of multi-jural systems and shared sovereignty came out not only in treatments of US law, but also of New Zealand, Canada, and even Australia. Perhaps we need to bring India and Africa into the story to make best sense of some exceedingly complex an important legal history.

General comments:

There was an occasional tendency for candidates to offer rather cultivated summaries of course materials, often supplemented by angles and interests personal to the candidate, which was impressive, but which sometimes did not address the question posed head on. We do not ask essay and examination questions in the form "Tell us what you know about the history of [legal doctrine *XYZ*]", and candidates must be careful to think hard about the problems and issues evoked by the wording of questions and not write at large.

The high proportion of Merit and Distinction grades reflects the talents and hard work of this 2020/21 class, who made the year a great success despite the challenges of remote learning.

33

Name of Paper	Philosophical Foundations of the Common Law
No. of students taking paper	20

Summary reflections on the paper as a whole

The overall quality of the scripts was pleasing, with virtually all candidates demonstrating the ability to engage with the questions on their precise terms and by way of offering genuine theses, while showing both knowledge of and the capacity to engage critically with existing positions in the literature. Close to half of the scripts were of a First-Class quality, adding the final degree of polish, precision and originality required for classification within this range of marks. The rest, with very few exceptions, were sound throughout, revealing a robust grasp of the philosophical debates at issue and good technique, and were of a good Upper Second quality.

All questions were attempted, and no question appeared to present particular difficulties (or resistance to First-Class treatment) for those who chose them. The questions focusing on private law (contract, tort, and the overlap between them) were somewhat more popular than other questions.

As befitting a philosophical subject, answers to the same questions frequently had little in common – in terms of the overall thesis, agreement or disagreement with particular stances in the literature or with the question's proposition, examples used or literature discussed, etc. – while still resulting in first class marks (or, at any rate, in similar marks). The candidates appeared to relish the freedom and the particular scope for creativity offered by a philosophical investigation of the law and appeared to understand well that the emphasis in this subject is not on arriving at hard-and-fast 'right answers' to foundational philosophical questions, but rather on the nuance and quality of argumentation with which to engage in philosophical debates.

The open book format practised this year did not make a noticeable difference in terms of the style or the quality of the scripts compared to previous years. The best scripts tended to be around 500 words shorter than the generous word limit; answers which ran right up to the word limit in length tended to be somewhat repetitive or less focused on the precise question.

34

Name of Paper	Principles of Civil Procedure
No. of students taking paper	22

Summary reflections on the paper as a whole

There was a high number of first-class scripts this year, possibly reflecting the lack of extra-curricular distractions for students. All questions were attempted and there were some very thoughtful and original answers given to the questions on bias, finality of litigation and collective redress. The newest topic, Technology and the Civil Justice System, also produced some impressive answers. As always, the very best answers provided thought provoking, well-argued essays that directly addressed the question/question quote. Some scripts included excellent answers that only briefly or tangentially addressed the question and were marked down accordingly. The students should be proud of the quality of the work they produced in this subject.

35

Name of Paper	Principles of Financial Regulation
No. of students taking paper	19

Summary reflections on the paper as a whole

A total of 38 candidates (19 MLF and 19 BCL/MJur) took this paper. The overall standard of the scripts was very strong. Thirteen candidates (34%) obtained marks of 70 or above and only two candidates (5%) obtained a mark lower than 60. The average mark was 67, similar to previous years. While there was little difference in the average mark for MLF (66%) and BCL/MJur (68%) candidates, noticeably more BCL/MJur candidates obtained marks of 70 or above (9 BCL/MJur vs 4 MLF).

Most candidates were able to synthesise effectively a wide range of materials. However, the questions invited candidates to focus on specific aspects of the issues they had studied. A common weakness in a number of the scripts was insufficient attention to this particular focus – that is, not fully answering the specific question set – resulting in answers that simply gave a general overview of the topic in question. Those candidates who were successful in structuring their answers so as to engage directly with the particular question set were rewarded accordingly. The most impressive scripts were characterised by candidates taking carefully reasoned positions of their own, demonstrating clear evidence of independent thought.

Question 1 invited candidates to engage with the controversy surrounding the coordinated trading by retail investors in stocks such as GameStop. Better answers explored the impact of this on market efficiency, and potential regulatory implications, including in particular, market manipulation. Weaker answers focused solely on the regulation of short selling, which was only a part of the question's potential scope.

On question 2, better answers engaged both with the utility of cost-benefit analysis of financial regulation in the abstract, and with the specific example of its application to mandatory disclosure.

Questions 3 and 4 each produced a small number of answers, most of which were extremely thoughtful.

Question 5 was very popular. Better answers focused specifically on the extent to which Bagehot's dictum has been followed, and the normative implications of this. Weaker answers engaged in a general overview of the content and scope of banking regulation.

Similarly, on Question 6, better answers not only described the reforms to executive compensation in banks since the financial crisis but explored the interaction of these measures with the FCA's Senior Managers Regime.

Most answers to Question 7 were able to describe the operation of short-term funding markets and the structural vulnerabilities to which they are prone. Better answers engaged with the question's invitation to use the pandemic circumstances as a case study for exploring the extent to which post-financial crisis reforms have succeeded in managing these vulnerabilities.

Question 8 was one of the more popular, and many candidates answering it produced good summaries of the nature of macro-prudential regulatory interventions and associated regulatory architecture. The best answers, however, engaged specifically with the question's concern about the desirable scope of macro-prudential intervention.

Question 9 raised issues relating to the use of disclosure in consumer finance. Better answers went beyond a generic critique of the use of disclosure in this context to engage analytically with the CFPB's proposal set out in the question.

36

Name of Paper	Principles of Intellectual Property Law

No. of students taking paper	16

Summary reflections on the paper as a whole

The standard was not as high as would generally be expected for the BCL/MJUR, with 6 students securing a passing mark and only 4 students securing a distinction. The problem seems to have been (and this was an issue that became apparent during teaching) that, despite repeated flags in both course materials and during teaching, a number of students thought that this was an introductory course rather than a course built around theory most suitable for those with some prior understanding of IP rights. In light of this problem, we have decided to move Principles of IP to HT.

37

Name of Paper	Private Law and Fundamental Rights
No. of students taking paper	1

Summary reflections on the paper as a whole

Due to the size of the cohort, no additional comments can be made.

38

Name of Paper	Regulation
No. of students taking paper	12

Summary reflections on the paper as a whole

Distribution of answers for [Regulation]*:

Q. No	No. of answers
1	16
2	16
3	16

Students had to answer three questions across Sections A and B of the examination paper, with one question to be answered from Part A, one question from Part B, and one question from

either Part A or B.

Students answered a range of the total of 10 questions on the exam paper, with some questions being particularly frequently answered, in particular Q1, Q2, Q 5 and Q.8.

The overall quality of the scripts was good. Scripts marked in the higher range of marks included the student's own critical analysis of e.g., regulatory theories, specific regulatory regimes, with a fairly detailed discussion of legal provisions, and critical analysis of academic readings as well as good writing skills. Scripts marked with lower grades tended to be more descriptive or contained short answers.

The quality of scripts ranged across the marking scale, with one script in the pass bracket, 10 scripts in the merit bracket, and 5 scripts in the distinction bracket, including one outstanding script in the mid first-class bracket at 74, winning the prize.

Most answers to question 1 provided a good to very good analysis of various ways of conceptualizing differences between 'law' and 'regulation'. Particularly good answers did engage in detail with the literature source from which the quote was taken

The question 2 about nudging was of considerable interest, perhaps also because it provided an opportunity to discuss examples of nudges being used in different jurisdictions. In order to attract a high mark for answers to this question it was necessary to also discuss sufficiently the second half of the question, i.e. a critique of nudging that recognizes its potential lack of transparency, and examines how nudges become refracted by the bureaucratic rules and organizational cultures they may interact with.

Answers to question 3 that were marked in the lower range of marks contained errors in summarizing reading materials, lacked clarity in the writing, and could have further developed the scope of their answer.

A range of very good answers were also provided to questions 8 and 10. Scripts that attracted high marks combined particularly well an analysis of the regulatory theories discussed during MT and the case studies examined during HT.

39

Name of Paper	Restitution of Unjust Enrichment
No. of students taking paper	12

Summary reflections on the paper as a whole

Due to the ongoing pandemic, this year's paper was again sat online, open book. Nevertheless, the style of questions and assessment criteria were unchanged from before the pandemic. Pithy responses which engaged closely with the words of the question still excelled. The limit of 2000 words per question was best viewed as an absolute maximum and not a target. It was entirely possible (and easier) to earn a distinction writing just 1200 words per question.

By contrast, candidates struggled if they ignored the specific words of the question and offered a prepared essay on the general topic. So, Q1 prompted thoughtful evaluation of the unity of the course, but only the best candidates considered whether 'at a practical level' Birks' scheme has 'enabled lawyers to address the crucial questions efficiently'. (Compare *Menelaou* and *ITC*, *Sempra Metals* and *Prudential*, *DMG* and *FII*.) Again, Q3 produced good discussion of *Times*

Travel, but disappointingly few candidates engaged with the quote's focus on 'the nature of the demand'.

Similarly, in problem questions, most candidates identified the contentious issues but unnecessarily padded their answer with uncontroversial matters. For instance, in Q9 candidates spotted that any *Woolwich* claim would be time-barred yet wasted hundreds of words on the ingredients for such a claim. In Q11, the controversial issues were whether a recoupment/subrogation claim is susceptible to a change of position defence, and whether reliance is needed for a change of position defence. Both issues needed consideration as a matter of authority (unsettled) and principle (disputed). Instead, the examiners were treated to *Owen v Tate* and wild speculation about the events which led Hilary to become Jackie's guarantor.

In previous years, the examiners have exhorted candidates to pay more attention to the cases rather than the commentary. That lesson was obviously heeded by this year's cohort, but sometimes to the exclusion of academic views. Although candidates should start with the case-law in answering any essay or problem question, the commentary should not be ignored.

40

Name of Paper	Roman Law (Delict)
No. of students taking paper	1

Summary reflections on the paper as a whole

Only one candidate completed this year's examination. The standard of their answers was excellent, and the Examiners decided to award the subject prize despite the absence of competition. Given the sole entry, comments on specific answers cannot be made.

41

Name of Paper	Taxation of Trusts and Global Wealth
No. of students taking paper	11

Summary reflections on the paper as a whole

The assessment for this option consisted of a 4,000-word extended essay, and a three-hour written examination in which two questions were to be answered chosen freely from four essay questions and two problems. The two aspects of the examination were weighted equally. The examination focused on the UK aspects of the course, and the extended essay on the international elements.

Both aspects of the assessment were tackled very effectively by all candidates. Six of the eleven candidates attained a Distinction overall, and there were no marks in either element below 60.

The extended essay required candidates to consider how the UK might best impose capital taxes on the ownership and transfer of wealth held in UK resident and foreign trusts, and similar

entities such as Foundations and usufructs, including consideration of relevant connecting factors, and with particular emphasis on the taxation of UK real estate. It was a challenging question, requiring an understanding of the existing position, and a flair for reform, but it was answered effectively by all candidates, with the strongest essays showing enormous attention to detail and a sophisticated knowledge of the policy and technical matters in issue.

Question 1

No. of students who answered this question 8

Comments

This question, concerning the so-called *Ramsay* principle and its interrelation with the UK GAAR, was the most popular question. Strong answers engaged precisely with the quotation candidates were invited to discuss and analyzed elements of the substantial body of case law and academic commentary in considerable detail. Weaker answers appeared pre-prepared and so insufficiently focused on the quotation.

Question 2

No. of students who answered this question 2

Comments

This question, concerning how an accessions tax might best apply to trusts, prompted careful and sophisticated analysis of the difficulties in doing so, as well as suggestions for possible ways of overcoming them.

Question 3

No. of students who answered this question 0

Comments

This question, concerning discrepancies in the CGT and IHT treatment of lifetime and death gifts, was not attempted by any candidate.

Question 4

No. of students who answered this question 5

Comments

This question, concerning necessary detailed reforms to CGT and IHT either (a) in relation to individuals, or (b) in relation to trusts was attempted by 5 candidates, four of whom answered in relation to (a). Some very sophisticated and detailed reform proposals were suggested, as well as some less convincing or likely ones.

Question 5

No. of students who answered this question 3

Comments

This problem question, concerning the CGT and IHT treatment of certain trusts was answered effectively by all the candidates who attempted it, sticking precisely to the facts as set, and applying the relevant provisions with precision.

Question 6

No. of students who answered this question 4

Comments

This problem question, concerning the meaning of 'asset' and 'disposal' and certain related concepts in CGT was generally answered well, with careful attention to the detailed and complex case law that has developed around this difficult area. Strong answers were able to offer convincing explanations of the fine distinctions that need to be made in order to make sense of that case law.

Name of Paper	Trade Marks and Brands
No. of students taking paper	17

Summary reflections on the paper as a whole

1. The question on the impact of artificial intelligence (AI) on trade mark law was designed as an open-ended provocation, in an emerging field where not much has been written. It was therefore enormously satisfying to see the creativity and rigour of the responses to this question. Candidates generally did an excellent job of unpacking the question and speculating intelligently, drawing widely across trade mark law when teasing out the implications of marks/goods conflict identification technology. These included the implications for the normative basis for trade mark law (including the diminishing consumer protection rationale, possibly offset by greater importance being given to regulating competition between producers); whether a new hypothetical legal construct of the average consumer is required for AI-assisted purchases; whether AI algorithms (or their operators) can be 'liable' for product recommendations; and the implications of AI marketing for brand value.

2. The essay on the 'substantial value' exclusion was relatively less popular, being attempted by only three candidates. All candidates outlined the policy rationale(s) for the exclusion and its scope, as developed by case law. Better answers moved beyond a descriptive synopsis and assessed the expansion of the provision beyond shapes to incorporate other 'characteristics'; its expansion beyond aesthetic value to capture other forms of value addition; the extent to which the new version of the rule overlapped with other IP rights; and whether the sub-factors and stages of the new version of the test adequately reflected the evolving rationales for this rule. The best answer argued that the

recent expansion helps the provision to live up to its inherent potential, as a broad US-style rule against any anti-competitive registration gambits.

3. The question on a more empirically grounded version of the confusion test drew forth a disparate range of responses. Weaker answers largely reproduced the content in the slides and seminars, or merely described the status quo, where hypothetical infringement is sufficient to establish infringement. Better answers actively defended, or else challenged, the status quo by connecting the infringement test to the normative underpinnings of trade mark law, or else argued that a compromise (a formalistic approach to the risk of confusion, with the selective capacity to accommodate empirical evidence of actual confusion) worked best.

4. Responses to the question on image rights explored alternatives to a passing off based approach to image protection. Those who argued for the propertisation of one's own image were expected to develop a normative basis for property claims. Weaker answers didn't make relevant use of comparative law, merely describing the approaches in other jurisdictions. More thoughtful answers anchored an expanded right on new types of harm or injury, while also considering whether an image protection right had new significance beyond just celebrities, in an age of surveillance and social media.

5. The unfair advantage (UA) question was relatively popular. Conventional critiques of an overbroad UA claim were not overly rewarded. More imaginative answers approached the question through the expansion of trade mark functions over time; or analysed whether UA implicitly alluded to a harm-based claim and not just an advantage by the defendant; or else questioned the basis of image transfer or image 'theft'. Those who supported thematic or normative arguments with doctrinal detail did particularly well.

6. The intermediary liability essay was attempted by six candidates. Weaker answers tended to descriptively survey the options offered by comparative law, while inadequately distinguishing between trade mark and tort law solutions. Better candidates were aware of the difference between primary and secondary liability for platforms. They also considered whether the 'safe harbours' approach was no longer relevant and whether legislative reforms along the lines of imposing algorithmic enforcement obligations on online platforms would lead to a monitoring obligation

Appendix 4

Report of factors mitigating circumstances applications.

Name of examination: BCL / MJur 2020	
Number of mitigating circumstances applications received before final meeting of examiners:	**82**
Number of mitigating circumstances received after final meeting of examiners:	**5**
Total number of mitigating circumstances applications received:	**87**
Percentage of mitigating circumstances applications received (as a percentage of all candidates in the examination):	**61%**
Number of mitigating circumstances which resulted in a change to the classification/final degree result:	**8**
Percentage of mitigating circumstances applications which resulted in a change to classification/final degree result (as a percentage of all mitigating circumstances applications):	**9%**
Number of mitigating circumstances applications which resulted in changes to marks on an individual paper(s)/submission(s) (but not to the final classification/degree result):	**0**
Percentage of mitigating circumstances applications which resulted in changes to marks on an individual paper(s)/submission(s) (but not to the final classification/degree result) (as a percentage of all mitigating circumstances applications):	**0**
Number of mitigating circumstances applications which did not result in any changes to marks or degree result:	**79**
Percentage of mitigating circumstances applications which did not result in any changes to marks or degree result (as a percentage of all mitigating circumstances applications):	**91%**