FORM OF REPORT ON EXAMINATIONS 2022/23

[In compiling their reports, examiners are asked to have regard to the Examinations and Assessment Framework and any applicable divisional/subject guidance. All parts of this report, with the exception of Section E of Part II, should be shared as a matter of course with joint consultative committees (or equivalents) and made available to students.]

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 (%)		
	2022/23	2021/22	2020/21	2022/23	2021/22	2020/21
Distinction	**36**	(62)	(79)	29	(48)	(52)
Merit	**29**	(49)	(48)	24	(38)	(32)
Pass	**11**	(10)	(14)	9	(8)	(9.3)
Fail	**3**	(8)	(1)	3	(6)	(0.6)

MJUR:

Category	Number			Percentage (%)		
	2022/23	2021/22	2020/21	2022/23	2021/22	2020/21
Distinction	**7**	(12)	(19)	21	(26)	(32)
Merit	**11**	(20)	(33)	33	(44)	(55)
Pass	**1**	(13)	(8)	3	(28)	(13)
Fail	**0**	(1)	(0)	0	(2)	(0)

DDM:

Category	Number	Percentage (%)
	2022/23	2022/23
BCL	42	34
MJur	14	42

(2) If vivas are used:

Please include numerical detail of any vivas which were held, with an indication of the effect of any vivas on classes or results.

Vivas are not used.

(3) Marking of scripts

Please give details of scripts which are not double-marked.

The Law Faculty does not operate a marking regime involving the blind double-marking of all scripts. However, extensive double-marking according to a system approved by the supervisory body does take place, and the Faculty takes a great deal of care to ensure the objectivity of marking procedures.

For each paper[1] there will be a team of at least two markers. For each paper, a minimum sample of 6 scripts, or 20% of the scripts, whichever is the greater number, will always be double-marked, as will:

- any other script/essay which the first marker found difficult to assess, and
- any script or essay for which the first mark is 63, 64, 68 or 69, and
- any script/essay which might be in line for a prize, and
- any script or essay for which the first mark is below 60, and
- any script which has an 'absent answer'.

For each double-marked script, the markers must meet to compare their marks and to come to an agreement as to the correct mark overall and for each question. If a discrepancy in marks exists, then markers must complete a reconciliation sheet. The team operates under the aegis of the Board of Examiners, and the whole board meets to discuss/finalise marks, providing an extra layer of assurance in terms of the objectivity of the process, and a means of resolving any situation where two markers are unable to reach agreement.

In exceptional circumstances (e.g. medical), third readings may take place.

The examiners meet and agree a final result for each candidate, having taken account of medical and other special case evidence and having made appropriate adjustments for such matters as absent answers and breach of rubric. The examiners also agree on the award of prizes at this stage. The decisions of the examiners are then passed to Examination Schools. Candidates will be able to view their results (both overall classification and individual paper marks) within the Student Self Service webpage in eVision (http://www.admin.ox.ac.uk/studentsystems/).

Where a mark given for a particular element of a course converts into a decimal mark for the overall mark, decimals ending in .5 or above are rounded up, and those ending in .4 or below are rounded down.

[1] In this context, 'paper' refers to each BCL/MJur option or half-option, including essay papers.

NEW EXAMINING METHODS AND PROCEDURES

B.

There were no new methods and procedures operated in 2022/23 save for measures undertaken to address the Marking and Assessment Boycott, which are described in Part II below.

C.

The Board asks that more information is provided to candidates about self-plagiarism – in terms of describing what this constitutes and stressing to students that using their own work on more than one occasion either within the same assessment or across two or more assessments is something which will be penalised.

D.

The conventions are posted on the central BCL/MJur Canvas site, and an email is sent to all candidates reporting this. Examination information for individual options (e.g.Notices to Candidates) is posted on the option Canvas site, and a message to students taking that option is posted via a Canas announcement.

PART II

A. GENERAL COMMENTS ON THE EXAMINATION

The Board of Examiners and related administrators faced two principal challenges in processing results and confirming classifications: first, the Faculty was without a dedicated BCL/MJur administrator for most of the exam period, after the previous incumbent left to take up another position in April; second, the Board had to deal with the effects of the Marking and Assessment Boycott.

While disruptive, the first of these challenges did not significantly impede the processing of results: the administrative work was undertaken by the Academic Administrator, the new BCL/MJur Administrator (who only started shortly before the final Board meeting), and a temporary worker, Esther Getzler. In practice, Esther did the bulk of the work and the Board is grateful to her for the industry and care she brought to the task.

The Marking and Assessment Boycott (MAB) was a very different story. While only three markers participated, and thus did not return marks, the result was that 57 candidates were left with one or more marks missing from their marks profiles. The University agreed that candidates with one mark missing could be awarded Declared to Deserve Masters (DDM) degrees (provided they had passing marks in all other subjects), but the Board initially chose not to apply this measure in the face of concerns that the students might ultimately fail in the missing subjects. In response, the Faculty organised an indicative marking[2]of the scripts in question, and on the basis of the results of this exercise, the Board agreed to award provisional DDM degrees to the candidates in question, on the understanding that the DDM would be replaced with a standard classification – Pass, Merit, or Distinction – once the MAB had concluded and marking of the missing scripts had been undertaken.

[2] Postholders other than the appointed examiners, but with some expertise in the relevant field (including the Chair of the Board of Examiners), were tasked with assessing each script to determine whether the candidate would at least attain the minimum pass mark.

Of the 57, there were six candidates to whom, initially, the DDM could not be applied as they had two or more marks missing. To address this situation, the Faculty engaged additional markers who undertook a formal marking of certain of the affected scripts (rather than a more generalised indicative assessment) so that each candidate was left with only one mark missing, enabling the Board to confirm additional DDM degrees. This still left one unfortunate candidate unaccounted for as the Faculty was not able to find alternative markers for the two papers in which marks were missing.

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

	2022-23						
	Total	Male	% of Male	% Cohort	Female	% of Female	% Cohort
All grades	160	88	100	55	72	100	45
Distinction	43	27	31	17	16	22	10
Merit	40	11	13	7	29	40	18
Pass	12	6	7	4	6	8	4
Fail	3	1	1	1	2	3	1
DDM	56	38	43	24	18	25	11
Incomplete	6	5	6	3	1	1	1
	2021-22						
	Total	Male	% of Male	% Cohort	Female	% of Female	% Cohort
All grades	175	100	100	58	75	100	42
Distinction	74	41	41	23	33	44	19
Merit	69	35	35	20	34	45	19
Pass	23	18	18	10	5	7	3
Fail	9	6	6	3	3	4	2
Incomplete							
	2020-21						
	Total	Male	% of Male	% Cohort	Female	% of Female	% Cohort
All grades	182	117	100	54	84	100	46
Distinction	98	61	52	30	37	44	18
Merit	81	46	39	23	35	42	17
Pass	22	11	9	5	11	13	5
Fail	1	0	0	0	1	1	0
Incomplete							

A breakdown of the results by gender for both the current year, and the previous 3 years, is provided above. The figures are as yet incomplete, with no classifications available for 57 candidates as a consequence of the Marking and Assessment Boycott (as reported in greater detail above), so no comments can be made about comparative performance by gender/programme at this stage.

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

Option	Average mark	Number sitting	49 or below	50-54	55-59	60-64	65-69	70-74	75 and over
Advanced Administrative Law	67	20	5	0	0	10	45	35	5
Advanced and Comparative Criminal Law	60	7	14	0	0	0	29	57	0
Advanced Property and Trusts	69	12	0	0	0	0	64	36	0
Business Taxation in a Global Economy	69	9	0	0	0	0	38	50	12
Children Family and the State: Children and the Law	69	10	0	0	0	0	50	50	0
Commercial Negotiation and Mediation	68	22	5	0	0	18	18	64	0
Commercial Remedies	63	55	5	2	15	15	38	25	0
Comparative Constitutional Law	69	8	0	0	0	0	63	38	0
Comparative Copyright Half Option (Hilary)	66	4	0	0	0	0	100	0	0
Comparative Corporate Governance	68	7	0	0	0	14	57	29	0
Comparative Equality Law	68	11	0	0	0	18	36	46	0
Comparative Human Rights	68	20	0	0	0	25	40	35	0
Competition Law	65	22	0	0	0	33	52	14	0
Conflict of Laws	64	34	3	0	9	9	44	35	0
Constitutional Principles of the EU	66	10	0	0	0	20	60	20	0
Constitutional Theory	66	22	5	0	0	0	59	36	0
Constitutionalism in Asia	62	10	10	0	0	0	60	30	0
Contract	63	14	0	7	14	29	50	0	0
Corporate Finance Law	67	23	0	0	0	36	27	36	0

Corporate Insolvency Law	66	22	0	0	9	9	59	23	0
Criminology and Criminal Justice	67	1	0	0	0	0	100	0	0
Dissertation (BCL)	70	5	0	0	0	0	60	40	0
Dissertation (MJUR)*	65	1	0	0	0	0	100	0	0
Families and the State: Adult Relationships*	70	17	0	0	0	0	35	65	0
Human Rights at Work	69	9	0	0	0	11	33	56	0
Incentivising Innovation	68	6	0	0	0	0	67	33	0
International Dispute Settlement*									
International Economic Law	70	19	0	0	0	0	39	61	0
International Environmental Law	68	14	0	0	0	7	57	36	0
International Human Rights Law	68	13	0	0	0	8	62	31	0
International Law of Armed Conflict	66	21	0	0	5	14	48	33	0
International Law of the Sea*									
Jurisprudence and Political Theory	65	11	0	0	0	36	46	18	0
Law and Computer Science	69	14	0	0	0	7	29	64	0
Law and Society in Medieval England	69	7	0	0	0	14	57	29	0
Law in Society	62	12	8	0	0	8	58	25	0
Legal Concepts in Financial Law	34	1	100	0	0	0	0	0	0
Medical Law and Ethics	67	15	0	0	0	7	73	20	0
Philosophical Foundations of the Common Law	67	20	0	0	0	15	45	40	0
Principles of Civil Procedure*									
Principles of Financial Regulation	66	25	0	0	0	28	56	16	0

Principles of Intellectual Property Law	69	4	0	0	0	0	50	50	0
Private Law and Fundamental Rights	65	12	8	0	0	0	67	25	0
Regulation	69	4	0	0	0	0	50	50	0
Restitution of Unjust Enrichment	60	45	7	9	9	27	31	18	0
Roman Law (Delict)	65	5	0	0	0	40	60	0	0
Taxation of Trusts and Global Wealth	69	5	0	0	0	0	40	60	0
Trade Marks and Brands	61	8	13	0	13	13	25	38	0
Transnational Commercial Law	68	10	0	0	0	10	50	40	0

*Marks awaited as consequence of Marking and Assessment Boycott

D. COMMENTS ON PAPERS AND INDIVIDUAL QUESTIONS

Individual option reports are attached to this report as **Annex 1**. Regrettably, no individual option reports were received for the following options:

Advanced Property and Trusts
Children Family and the State: Children and the Law (half-option
Children Family and the State: Adult Relations (half-option)
Commercial Remedies
Comparative Copyright (half-option)
Comparative Equality Law
Comparative Human Rights
Corporate Insolvency
Incentivising Innovation (half-option)
International Dispute Settlement
International Environmental Law
International Law of the Sea
Law and Computer Science
Medical Law and Ethics
Principles of Civil Procedure
Principles of Intellectual Property Law (half-option)

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

The overall MCE number dropped in comparison with 2022 (from 48 to 32), and there were only a very few instances of last-minute MCEs, whereas numbers had been high enough in 2022 to warrant a comment in the Chair's report. At the time of writing, there are five candidates who gained in respect of results and/or classifications through MCEs; this number may rise when marks missing as a consequence of the Marking and Assessment Boycott have been finalised and considered by the Board.

Plagiarism referrals to the Proctors dropped from five in 2022 to four, but penalties for poor academic practice rose from two to four. As noted above, the Board askes for more information to be made available about self-plagiarism. There were also four penalties imposed for rubric breaches.

F. NAMES OF MEMBERS OF THE BOARD OF EXAMINERS

Name (Chair of Examiners) Professor Horst Eidenmüller

Name (Internal Examiner) Professor Angus Johnston

Name (Internal Examiner)Professor Anne Davies

Name (Internal Examiner) Professor Dan Sarooshi

Name (External Examiner) Professor T.T. Arvind

Annex 1

Subject reports

Name of Paper	Advanced Administrative Law
No. of students taking paper	20

Summary reflections on the paper as a whole

This new subject for the BCL and MJur was examined by means of a three-hour examination with eight questions, of which candidates answered three. They 20 candidates generally did impressive work, showing very good familiarity with the material. The markers rewarded candidates who put that familiarity to work in support of a focused answer to the question. All questions were attempted; there were very few answers to Question 3 on ombudsmen and tribunals; there were many on questions 2 (interpretation of policy), 4 (the rule of law and international law), 5 (principle of legality), 6(b) ('functions of a public nature'), and 7 (compensation for loss caused by carelessness). The seminars for the subject addressed historical, comparative, empirical, and theoretical issues, but always with a focus on the understanding and critique of legal doctrine in English administrative law; it was good to see the students keep that focus.

This year candidates generally performed well. All answers had depth and quality, and the top two answers were clearly and consistently in the first class range. The stronger answers had appropriate structure, clearly addressed the question, brought in doctrinal clarity with a clear argument and an appropriate use of authority.

Name of Paper	Advanced and Comparative Criminal Law
No. of students taking paper	7

Summary reflections on the paper as a whole

This was the third year of the ACCL paper, and seven candidates were to sit the exam. Candidates had to answer two out of six questions in a take-home exam format. It was the first year that the central university insisted on setting a five-day exam over seven days, therefore including a weekend, but that change was introduced without any chance for challenge.

Candidates were able to engage with a range of substantive topics across the six possible questions. Candidates were able to get higher marks where they engaged in both doctrinal and theoretical discussion. Candidates who brought in comparative perspectives were also able to demonstrate greater engagement with the issues in some questions. The reason is simple, where a question requires a comparison between different states of affairs and their value, being able to engage with more than one legal system strengthens your argument.

Where a question asks for how the law could be improved, or related questions, it is important that candidates are able to describe their view of the values that should be maximised within the law, as well as in practical terms how the law could achieve that.

This year candidates generally performed well. All answers had depth and quality, and the top two answers were clearly and consistently in the first class range. The stronger answers had appropriate structure, clearly addressed the question, brought in doctrinal clarity with a clear argument and an appropriate use of authority.

Name of Paper	Business Taxation in the Global Economy
No. of students taking paper	9

Summary reflections on the paper as a whole

The examiners were overall very pleased with the answers submitted for the course BTGE. The vast majority of the students have engaged with the questions and the materials in a serious, critical and thoughtful manner. Most of the students wrote very good papers, and a few wrote superb ones which demonstrated a particularly high quality of academic writing.

Students were asked to answer three questions from eight different essay questions.

Three of the questions were answered by most of the students:

Q. 5A (answered by 7 out of 9) dealt with the UK GAAR

Q, 6 (answered by 8 out of 9 students) dealt with the necessity and the desirability of multilateral agreement under Pillar 2.

Q. 7 (answered by 5 out of 9 students) dealt with the justifications for Pillar 1.

The rest of the questions answered were: 1(on income and deductions),2 (on the alignment between tax and accounting), 4 (on the corporate tax base), and 8 (on cooperation and multilateralism in international corporate tax matters). Questions 3 (on group taxation) was not attempted.

Students' essays demonstrated very good understanding of the materials discussed in class and in the reading. The best papers were insightful, creative, critical, well argued, and demonstrated mastery of the materials covered and serious engagement with them while making a coherent and well supported independent argument. Essays with lower marks were often too general and did not make an effort to address the question asked.

Name of Paper	Commercial Negotiation and Mediation
No. of students taking paper	22 (exam paper at the end of TT)

Summary reflections on the paper as a whole

General Comments:

The 2022-23 exam format was an exam paper at the end of TT for all candidates. We had experimented in previous years with a choice between two essays during the academic year and an exam paper at the end of the year. The essay option was much more popular, probably because it allowed students to complete their exam in CNM by the start of TT, gaining time to prepare for the exam papers in other subjects. On the other hand, only the exam paper format guarantees that students try to master the subject as a whole—and not just bits of it—and stay attentive until the end of the academic year. Hence, for 2022-23, we returned to the "exam paper only" exam format.

Candidates performed very well in this year's exam. The average mark was 68.64, the lowest mark was 60 and the highest 74. Topics and questions related to the full academic scope of the course, ranging from psychology and game/decision theory to doctrinal analysis and policy issues in the field of commercial negotiation and mediation. Students had to choose three out of eight exam questions. All exam questions were attempted by at least three candidates. The most popular questions were question six on caucus mediation (17 attempts), question two on reciprocity and creating/claiming value in negotiations (14 attempts), question one on escalation clauses (11 attempts), and question eight on automated dispute resolution (10 attempts).

Most candidates displayed an impressive knowledge of the subject matters raised, demonstrating their ability to integrate the insights from the different materials studied. Their answers to the questions also evidenced the usefulness of the practical negotiation/mediation training they had received as part of the course. Generally, most candidates were able to precisely identify the problems raised by the exam questions and specifically addressed these problems in their answers. Only few candidates failed to deal with all problems raised by a certain question or did so only in an unstructured manner. The weakest scripts simply used a question to display more general knowledge only loosely related to the problems raised by a certain question. The best scripts demonstrated the candidates' ability of clear independent thinking.

All exam paper questions were "essay questions" in the sense that candidates were asked to develop a conceptual argument to answer the question. Going forward, we will consider adding one or two "case questions" to the mix, requiring candidates to come up with a doctrinal analysis of a specific legal problem/case. Such differentiation would allow candidates to pick questions which best reflect their individual knowledge *and* methodological inclinations and skills.

Name of Paper	Comparative Constitutional Law
No. of students taking paper	8

Summary reflections on the paper as a whole

This half-option was examined by take-home essay. The candidates' performance was strong overall, with 38% of candidates receiving a mark of 70 or more. All except one candidate chose an essay question on the structure of judicial review—either **3a** (on Kelsenian courts) or **3b** (on weak-form review), with one candidate choosing question **1** on presidential and parliamentary systems and none choosing question **2** on electoral systems. The stronger essays combined a good command of the theoretical literature with thorough knowledge of the different constitutional systems discussed, and set out a coherent argument that made clear how particular points about comparative differences supported the conclusion. The use of fresh or original examples from different jurisidictions improved several essays.

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 23 candidates. On the whole, the scripts showed excellent command of the subject and very good analytical skills, with 3 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.

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

Summary reflections on the paper as a whole

The seven students who sat the exam had to answer three questions out of the eight provided. No one tried question 1 (on "vote-through" arrangements by asset managers). The two most popular options proved to be question 5 (on the advantages and disadvantages of the presence of a controlling shareholder for the different stakeholders), which was chosen by 5 students, and question 8 (on linking executive remuneration to ESG indicators), chosen by 4 students. Three questions were chosen by three students, one question by two and another one by one student. The average mark was 68, which is high but somehow deceptive, in that the range was very low (between 63 and 71). While the numbers are too low to draw any meaningful inference from this sample, the outcome is consistent with the suspicion that students may have used prepared answers and adapted them to the specific exam question asked. The suspicion that they resorted to

generative artificial intelligence for the purpose of having a sketch for those prepared drafts cannot be ruled out. In any event, there was no outstanding script and the best exam was only one mark above the threshold.

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

Summary reflections on the paper as a whole

The paper followed the usual rubric of eight questions (four essays, four problems), with no mandatory requirement to answer questions from either format. Two of the four essay questions were set on an either/or basis. Candidates were required to answer three questions.

There were 34 scripts, one of which was returned blank. Of the other 33 scripts, 12 (36.4%) were awarded a mark of 70 or higher, and only three (9.1%) were awarded a mark of 59 or lower. This is indicative of a generally high standard across the board.

As is often the case, problem questions proved to be more popular than essay questions, but there was a significantly larger number of the latter, compared to previous years; several candidates submitted only answers to the essay questions, which has been relatively unusual.

Among the essays, question 1(a) (on comity) proved to be the most popular, followed by question 2 (renvoi) and question 4 (recognition and enforcement of foreign judgments). There were only a handful of answers to question 1(b) (Rule 20 in *Dicey, Morris & Collins*) and question 3(a) (place of damage as the basis of jurisdiction and choice of law in tort). No candidate attempted question 3(b) (law applicable to a disputed contract). As ever, the higher marks were awarded to answers which paid close attention to the question and engaged in analytical argument, rather than a general narrative. The best of the answers to question 1(a) imposed a structure on a potentially wide ranging question. The best of those on question 2 engaged with the theory of renvoi and made good use of commentary; and the best of those on question 4 made good use of comparative material, particularly developments in Canadian law. In the essay answers in general, the highest marks were awarded to candidates who offered their own analysis, provided it was grounded in the evidence derived from case law and commentary.

When it came to the problems, question 5 (contract and tort, with an emphasis on jurisdiction and choice of law) and question 8 (contract and tort, but with an emphasis on pre-contractual liability and anti-suit injunctions) proved to be most popular. It was a little surprising how many answers to question 5, including some otherwise strong answers, failed to see the potential application of the Hague Convention on Choice of Court Agreements. This appears to have stemmed from not realising that the choice of the English courts in a commercial contract brought the Convention into play, provided the other requirements were met. Question 7 (assignment of intangible movable property) was next most popular and was impressively answered by some, particularly candidates who realised the need to, and did, analyse the law applicable to the underlying contracts assigned. Question 6 (recognition and enforcement of foreign judgments, and jurisdiction (in particular *forum non*

conveniens)) was least popular; and one or two answers suffered from too broad or simplistic an application of the reasoning in cases like *Connelly, Lubbe v Cape* and *Vedanta*. All of the problems were wide-ranging in terms of content and the best answers struck the right balance between the coverage of the issues raised and the depth of analysis applied to them, whereas some of the weaker answers betrayed a tendency to find an issue and then discuss it at some length, to the neglect of other, sometimes more significant, issues

Name of Paper	Constitutionalism in Asia
No. of students taking paper	11

Summary reflections on the paper as a whole

General Comments:

Overall, the scripts were strong. 7 out of 8 questions were answered, and some questions were more popular. Students engaged with materials discussed in the course very well. Several students integrated knowledge from different seminars. The best scripts were well structured, used knowledge from multiple jurisdictions, and had original ideas.

Comments On Individual Questions:

Question 1 on the object of Asian constitutionalism. This was a popular question. Stronger scripts identified and explained factors of the diversity of constitutional systems in Asia.

Question 2 on liberal constitutionalism. This question was popular. Strong scripts identified the manifestations of liberal constitutionalism in Asia and compared with this model outside Asia.

Question 3 on socialist constitutions. Some students chose this question. Strong scripts explained the compatibility or in compatibility of socialist constitutions with separation of power and the rule of law. Weak scripts mainly described features of socialist constitutions.

Question 4 on Confucian, Buddhist, and Islamic constitutionalism. This is a common question chosen. Strong scripts identified and discussed comparatively two differences of these models. Weaker scripts mainly describe the differences.

Question 5 on constitution-making. Some students chose this question. Strong scripts discussed comparatively the legitimacy of elite and popular models of constitution-making, and justified a refereed model.

Question 6 on the basic structure doctrine. This question was common. Strong scripts integrated literatures in two seminars (basic structure doctrine and constitutional amendments) to provide comprehensive justifications of the doctrine beyond judicial features.

Question 7 on social movements. This was a common question. Strong scripts explained the social and political impacts of social movements on constitutional development outside the courtroom.

Question 8 on the power of a constitutional court. This question was not answered.

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

Summary reflections on the paper as a whole

Given the smaller number of students taking this option, it is appropriate to make only general comments about the way in which candidates dealt with the exam questions. Candidates' scripts demonstrated that the paper offered a good choice of questions, with students being generally able to address the questions as posed and produce high-quality answers. Question 6 proved most popular. Candidates who selected this question explored the specific constitutional benefits which the principle of national procedural autonomy offers to EU law and considered what the consequences would be of subsuming it under primacy of EU law. The second most popular question was Question 4, which invited candidates to consider the heterogeneous character of the principle of proportionality and consider if it would be appropriate to harmonise the EU Courts' approach to proportionality across different contexts of EU law. Candidates tended to defend the more deferential attitude of EU Courts in judicial review cases other than those involving fundamental rights violations. Slightly less popular but still attracting a good number of answers was Question 5, concerning horizontal application of the Charter of Fundamental Rights, inviting candidates to consider what case could be made for using EU fundamental rights directly to impose obligations on private parties. Answers to this question were more varied. The other questions attracted only one or two answers, with Question 8, which provided candidates with an alternative choice between an energy policy question and an Eurozone financial crises question, attracting no answers.

Name of Paper	Constitutional Theory
No. of students taking paper	21

Summary reflections on the paper as a whole

The standard of answers to the questions set was generally very high. The most popular questions were those on sovereignty, interpretation, and federalism, but all of the questions received some answers. The best candidates responded to the questions creatively, showing a knowledge of the relevant material but also engaging with that material in a critical fashion, and avoided simply describing the work of others on the issues.

Name of Paper	Corporate Finance
No. of students taking paper	23

Summary reflections on the paper as a whole

23 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. The most popular questions were questions 1, 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. Stronger candidates focused closely on the question set and were able to use this material to provide thoughtful and nuanced responses to the questions.

Name of Paper	Human Rights at Work
No. of students taking paper	9

Summary reflections on the paper as a whole

Candidates for this paper were asked to write two essays totalling 8000 words from a choice of eight questions, over a period of four weeks in Trinity Term. This form of assessment is designed to enable candidates to demonstrate their knowledge of this complex, multi-jurisdictional course in a longer written format, and to build links between different elements of the course. The overall standard of essays was very high. Candidates tackled a good spread of questions, showing excellent insight into

the relevant legal materials and policy issues. When writing longer answers, candidates should continue to ensure that each paragraph is contributing something towards the argument and is not just ‘padding out’ the essay, in the same way that they would for shorter tutorial essays. Although candidates are expected to use the possibilities offered by the longer word limit, it is not essential to get within a few words of the total permitted.

Name of Paper	International Economic Law
No. of students taking paper	19

Summary reflections on the paper as a whole

There was a significant increase in the performance of students in the 2023 International Economic Law examination paper with the percentage of students obtaining a Distinction increasing this year to 58% compared to performance in 2022 of 47% of students obtaining distinctions. This excellent performance of students in the course this year continued on in the Merit category (a mark in the range 65-69%) with all remaining students on the course (42%) obtaining a Merit. Thus 100% students on the course obtained either a Distinction or Merit class mark. The excellent examination performance of the majority who obtained a Distinction reflected their extensive use of analytical approaches to answer the questions asked rather than a more descriptive approach to the questions/material than was deployed by those obtaining a Merit mark, as well as providing an answer that both focused only on the question being asked and yet was comprehensive in addressing key cases and materials.

Name of Paper	International Human Rights Law
No. of students taking paper	13

Summary reflections on the paper as a whole

International Human Rights Law course was assessed across two summatives – two extended essays at the end of each of the terms (Michaelmas and Hilary). The performance of candidates improved from Michaelmas to Hilary terms with a majority of the class achieving a better / higher grade in the second summative and hence an overall higher grade. The possibility of writing two assessed pieces

of work in a take-home extended format rather than a timed exam-room format, allowed for lengthier and better referenced and polished essays. The quality of the essays across the two summatives was high, with the best performing essays capable of blending a range of methods in their essays (theoretical/doctrinal/critical). Some essays reflected excellent independent research which fed into the central argument, and were duly rewarded. About a third of the class achieved distinction and a high number a merit mark.

Name of Paper	International Law and Armed Conflict
No. of students taking paper	21

Summary reflections on the paper as a whole

It was a strong set of scripts in International Law and Armed Conflict this year. The cohort was 21 students. In the end there were 7 distinctions, with the majority of the rest falling in the 65-69 range.

As to the questions, all were answered, though with some strong preferences for: Question 2 on necessity and proportionality, Question 3 on the use of force threshold, and Question 6 on classification of conflicts and attribution. Only one candidate wrote on the consequences of non-fulfillment of lawful combatancy.

The answers prompted two reflections. First, candidates were rewarded for their close attention to each part of the question. For instance, question 4 on intervention referred to 'nationals or non-nationals' – and thus the stronger answers dealt with both in equal measure. Similarly, the classification question also asked about attribution of conduct. Second, the first question – on drawing a legal distinction between Iraq in 2003 and Ukraine in 2022 – was quite tricky, but did prompt some original and interesting responses. The examiners would encourage candidates to attempt harder questions where they have an original view.

As with last year, it was gratifying to see candidates draw out sophisticated responses to new questions under exam conditions. The best scripts paid close attention to doctrinal complexities and wider critical/theoretical views.

Name of Paper	Jurisprudence and Political Theory

No. of students taking paper	11

Summary reflections on the paper as a whole

Eleven candidates offered Jurisprudence and Political Theory this year. Two candidates attempted Q2b, on whether there can be progress in legal philosophy. Four attempted each of Q1, on whether the enactment of a law is a speech act, Q2a, on the normative force of customs, and Q4, on the claim that the primary subject of justice is the basic structure of society. Five candidates attempted Q5, on the claim that a legal obligation is a moral obligation that traces to the action of institutions. Six attempted Q6, on whether some injustices are none of the law's business. The most popular was Q3, on the claim that in coordination settings equilibrium can be secured without authority, which was attempted by seven candidates. Most candidates achieved a 2.1 mark, with two achieving a first.

Name of Paper	Law and Society in Medieval England
No. of students taking paper	7

Summary reflections on the paper as a whole

Seven candidates took the papers, comprising two extended essays of total 8000 words.

Regrettably two of our seven candidates flouted the word limit. Each had prepared careful, scholarly and imaginative papers, and it was a shame that we had to recommend marks reductions commensurate with the breach of rubric. The instructions for essay preparation were clear and we do not have an explanation for these two instances of lapse. In future years we will stress the perils of exceeding word limits which are not arbitrary but are set to encourage lucid writing style and also to ensure a level playing field.

Turning now to more positive reactions – the quality of work submitted was uniformly high. The most popular question concerned medieval accounting theory and practice. Most answers focussed on the feudal relations of guardian and ward, but the better answers showed how statute extended the reach of account to merchant relations, with surprising adjectival results. The more adventurous essays drew lines to modern fiduciary and contract theory, without overbalancing their historical analysis. The question on Quia Emptores and feudal relations also attracted a fair few essays. Some interesting conceptual work was offered; some candidates showed very wide reading going beyond the prescribed lists; others fell short of covering a good range of the readings covered in class. Essays on the legally and socially intricate institutions of wardship and inheritance were well realized, though again a paucity of direct primary material held some students back. The inheritance questions invited a more broad-ranging social analysis and some powerful reflections on the control of female heirs and family members were offered using the technical materials as a springboard. The core problems of the rise of the royal real and possessory actions and the assertion of royal control over tenures only attracted a few essays, and these could have delved more deeply into the secondary literatures where debate over the centralizing tendencies of the common law have been

particularly fierce. Excellent work was also offered on early contract forms, with the rise of covenant and the problem of form and formality being shrewdly picked apart.

This was an exceptionally committed and hardworking class, and the levels of scholarship and understanding on display were strong; this showed through in a very good set of grades, though the matter of overlong essays put a slight dip into the picture.

Name of Paper	Law in Society
No. of students taking paper	12

Summary reflections on the paper as a whole

This course was divided into two parts. Dr Grisel taught 8 seminars in MT and Professor Pirie taught 8 seminars in HT. The exam paper was, accordingly, divided into two parts, with four questions on each, relating to the two different parts of the course. The candidates had to pick one question from each part and write a 4,000-word essay for each.

The best candidates not only demonstrated good knowledge of the themes and debates relating to the chosen question, but referred to a wider range of literature and cases. This often originated in a different part of the course or other reading the student had done. Their essays were analytically sharp, with clear and logical arguments, illustrated by a good selection of relevant case studies. The less highly-marked papers either lacked a clear and convincing argument, or else made use of a somewhat limited range of empirical case studies.

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

Summary reflections on the paper as a whole

General Comments:

The standard of responses was generally very good. The best answers demonstrated an awareness of nuances in different positions in the philosophical literature and were able to engage carefully with particular claims made, while cogently developing a thesis or theses in relation to the question.

Comments On Individual Questions:

(1) Questions concerned with moral luck and the nature of justificatory defences in the criminal law. The first question on moral outcome luck was relatively popular and generally well done. The best answers distinguished different lines of argument for the relevance of outcomes to the criminal liability, and different kinds of 'sensitivity to' outcomes (e.g. in offence definition v level of punishment).

(2) Questions concerned with general theories of tort law and the role of the tort/defence distinction in tort, the latter of which was not at all popular. Better answers to the first question addressed what exactly is meant by tort law's 'bipolar structure' and considered precisely how this is thought to problematize consequentialist/economic theories.

(3) Questions concerned with contractual obligation and freedom of contract, the first of which was the more popular.

(4) A question on causation, attempted by at most a few candidates. Essentially the question was an invitation to consider (a) whether the but-for test does indeed fail to give necessary and sufficient conditions for causation (can the but-for test be tweaked, for instance, to arrive at the correct results in relation to overdetermination/pre-emption cases?) (b) whether this would render the test indefensible for use in the law.

(5) A fairly open-ended question, but inviting an analysis of the normative role of wrongdoing in both crime and tort. A better answer usefully would consider different reasons why wrongdoing could be thought normatively necessary to crime or tort.

(6) Not particularly popular, but well done when attempted.

(7) As with virtually all of the questions, this could have been taken in various directions, but it was usefully taken as an occasion by some to address whether 'continuity thesis' justifications of remedial duties/liabilities have application to both tort and contract.

(8) Again, a very open-ended question relating tort, contract, and crime, requiring assessment of whether the law's response is the factor which conceptually/normatively diffentiates the areas.

Name of Paper	Principles of Financial Regulation
No. of students taking paper	25

Summary reflections on the paper as a whole

A total of 28 candidates (22 MLF and 6 BCL/MJur) sat this exam. The standard of the scripts was slightly below the trend of the last few years. 5 candidates (17%) obtained marks of 70 or above (with the highest mark of 73 hinting at an absence of outstanding scripts) but no scripts were marked below 60. The average mark was 65.4, slightly lower than in previous years and reflective of our overall view of the quality of the scripts. The lower average was driven by the lower average mark for MLFs (64.7) rather than for BCL/MJur (68) candidates.

As in previous years, most candidates were able to synthesise effectively a wide range of materials but this became a liability for some. In fact, the questions invited candidates to focus on specific aspects of the issues they had studied. A common weakness in several 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 to engage directly with the 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.

Questions 2, 3, 4, 6, and 9 were attempted by significant numbers (≥ 11) of candidates and further comments on these are set out below. Questions 1, 5 and 7 each produced only a modest number of answers, while 10 of them chose question 8.

14 students attempted Question 2, which drew upon one commentary about the regional banks crisis in the US, focusing on how difficult it is ex ante to draw a line between systemically relevant and non-systemically relevant banks and what can be done about it.

Question 3 was also attempted by the largest number of candidates (16). Better answers focused specifically on the FCA's proposals and their likely impact, including the challenges for the FCA in ensuring enforcement.

Question 4, chosen by 15 students, focusing on bank executives' remuneration, requiring students both to discuss the European cap on bankers' bonuses and the strategic choices to be made by the UK in the post-Brexit political and international environment.

Many students (14) chose a specific question on insider trading but relatively few went beyond a mere summary of the various rationales for insider trading violations and consider the specificities of the case referred to in the question.

Finally, 12 students chose the last question on the challenges of measuring and therefore managing climate risks. In addition to describing climate risks, students were required to specifically discuss how to deal with the uncertainty relating to climate scenarios and the shape the transition pathway will take and precisely whether prescriptive, detailed climate scenarios should be defined by regulators for banks to use.

Name of Paper	Private Law and Fundamental Rights (2023)
No. of students taking paper	12

Summary reflections on the paper as a whole

The overall standard of the scripts was slightly below that achieved by candidates in the most recent previous years, with a lower proportion of candidates awarded a distinction mark for the paper. The highest marks were earned by those who addressed all aspects of the questions asked, incorporating insights from the case law and employing a range of theoretical perspectives. Some answers that scored good – but not top – marks were judged to have addressed only *some* aspects of the question; perhaps, we would speculate, they were excellent pre-prepared essays, but weren't a perfect fit for the question on the exam paper. The most popular questions were q. 3 (answered by two-thirds of the candidates: independent development of the tort of negligence and human rights liability), q. 4 (answered by half of the candidates: usefulness of fundamental rights where employers seek to regulate employees' speech) and q. 7 (answered by 5 out of 12 candidates: copyright and fundamental rights). The only question to attract no answers asked about the interpretation of statutes to secure their compatibility with Convention Rights, and whether this was similar to the process of judicial development of common law causes of action.

Name of Paper	Regulation
No. of students taking paper	4

Summary reflections on the paper as a whole

This academic year provided again a strong performance of students in the 3 hour written on-line examination for the 'Regulation' course.

Performance in the scripts ranged from mid 2,1 to high 2,1 to some first class scripts.

Students chose questions fairly equally distributed across the various topics discussed during the course. Answers showed good knowledge of the readings for the theoretical perspectives discussed mainly during Michaelmas Term as well as the intersection of human rights and regulation discussed during Hilary Term.

Some of the answers could have been more closely focused on the specific question asked and better structured. First class marks were awarded in particular for those answers that showed the students' own critical analysis and wide ranging reading, including from the further readings.

Overall, answers to the exam questions showed good short essay writing skills developed also during the tutorial essay writing practice and the collection.

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

The answers to this year's Restitution of Unjust Enrichment paper were generally mediocre, with few clear Distinction papers. Most candidates opted to answer three problem questions, though often exhibiting poor problem question technique. Formulaic answers using the Birksian four-stage test were trotted out, even though that formula has been disapproved by the Supreme Court (though held on to by the Privy Council in some cases). Moreover, time was wasted on non-contentious issues. If, for instance, the examiner says that A has paid B money, there is no need for long disquisitions on 'enrichment' or 'at the expense of'. Candidates should instead focus on what is problematic: these are, after all, 'problem' questions. Another difficulty was a failure to assess competing arguments. All too often, answers simply advised A to 'argue X', with no indication given whether such an argument would succeed. Indeed, when A is asking for advice, they are not asking what they might argue (after all, it will not be them doing the arguing) but what the court will decide should the issue come before it. Problem questions, in other words, require candidates to predict the judgment of the court.

So far as the essays were concerned, there was a tendency on the part of some to smuggle in prepared essays without focusing on the precise question asked. Such answers were rewarded accordingly.

More generally, knowledge displayed by candidates too often seemed to stop with Burrows' textbook. So, for example, many still tried to explain *Moule v Garrett* type cases in terms of legal compulsion, yet, as discussed in the seminars, this is clearly a poor explanation. Further, many candidates were not writing like lawyers. There was far too much use of phrases such as 'I am not convinced', without any attempt to explain why. Finally, the examiners were surprised at the brevity of some answers. The word limit was 2000 words per question, yet some candidates were turning in answers of less than 1000 words. The examiners had serious doubts whether such answers were worthy of the BCL or MJur.

Question 1

This was the most popular essay. Good answers discussed free acceptance and cases such as *Wigan Athletic*, *Greenwood v Bennett*, and *Blue Haven*. They sometimes ranged much wider, discussing topics such as subjective devaluation and cases such as *Owen v Tate* and *Menelaou*.

Question 2

This was a fairly popular question. Good answers showed close engagement with the question, taking issue with five things. First is it correct to see transfers in unjust enrichment as being 'normatively defective'? Can that phrase be used, for instance, to describe a failure of basis case or a *Woolwich*-type case? Even in the case of mistaken payments, is there really a defect in the transfer itself? Second, is it correct to use the word 'transfer'? Where is the 'transfer' when A instructs their bank to credit B's account? Third, is it correct to focus on 'value'? Do we (or can we) really transfer value? Fourth, is 'corrective justice' a normatively sufficient explanation of the reversal of unjust enrichments. Fifth, do the courts always put the parties back to their pre-transfer positions?

Unfortunately, few candidates addressed all these issues, with many focusing only on the last, though with some good points made in this respect, such as the fact that there is no defence of passing on and there is a defence of change of position. Proprietary restitution was also touched on by some, with *Foskett* given as an example where no 'balance' was restored; another 'no balance' example was *Planche v Coburn*.

Question 3

A good answer to this question would focus on the reasoning of both the majority and minority in *Times Travel v Pakistan International Airlines*, as well as addressing the normative arguments for and against a doctrine of lawful act duress. There were few takers, with most providing description rather than analysis.

Question 4

This question had only three takers, with one asserting that both species of undue influence were civil wrongs. The examiners could only wonder where that candidate had been all year.

Question 5

This question was generally well done, with good answers considering salvage, the burial cases, and the bailment cases.

Question 6

Good answers interrogated 'conferral', 'taking' and 'incidental benefit'. Though relatively popular, few engaged well with quote, often using it as a pretext to smuggle in prepared essays on Lord Reed's requirement of a direct transfer in *ITC*, with some not even bothering to mention the quote at all. Of those who did engage, few explained why Burrows moved from 'transfer' to 'conferral' and 'taking', though there were some good discussions of 'incidental benefit', pointing out that though the discharge of debt cases involve incidental benefits, even Burrows would not deny relief there.

Question 7

This question had surprisingly few takers, though it did produce some good answers, which considered the views of Birks and Burrows as to whether *Holiday v Sigil* and *Re Montagu's ST* could be analysed as claims in unjust enrichment, focusing on questions of 'enrichment' and whether that enrichment was 'at the expense of' the claimants. Good answers also looked at the alternative explanation of cases such as *re Montagu* given in *Byers v Samba*, explaining also how, as *Re Diplock* demonstrates, *re Montagu* cannot simply be rationalised in terms of 'conscience'.

Question 8

This question, which was concerned with justificatory arguments for 'proprietary restitution', had surprisingly few takers.

Question 9

This was the most popular question on the paper, answered by almost all candidates. Good answers distinguished claims in respect of the downstairs and upstairs. As to the possible downstairs claim, there were three issues: first, did C need to terminate the contract in order to bring a restitutionary claim; second, is a failure of basis claim barred by any accrued right to contractual payment; third, if not, is such claim capped by the contract price? Most rightly saw the second issue as raising the applicability of *Mann v Paterson* in English law. Although some questioned this, most simply assumed that it did, often saying that *Barton v Gwyn-Jones* put the matter beyond doubt. Better

answers questioned the reasoning in *Mann*, asking whether it was consistent with either *Fibrosa* or *Pavey & Mathews v Paul*. On the quantum issue, many assumed *Mann* would apply, though better answers discussed *Boomer v Muir* and *Lodder v Slowey* and arguments why the contract-ceiling should not apply. Good answers also discussed the possibility of subjective devaluation as an alternative argument for a contract ceiling. In all these respects, it was essential to realise there are arguments either way, and English law has yet to make its mind up on these points. Arguments either way were therefore necessary. As to the upstairs, the issue was only one of quantum. Some candidates got themselves tied up in knots, saying that C had no claim because C's part-performance meant there was no total failure of basis. What they did not seem to realise was that C had not been paid a penny by B, so from C's perspective, there clearly was a total failure of consideration.

As to alternative (a), most simply assumed that B had a failure of consideration claim, not noticing that it would not be for a total failure, so necessitating a discussion of that rule. Nor did many see that C was possibly ready and willing to perform (*Thomas v Brown* (1876)) and ask whether that would bar any claim by B. Most did, at least, mention *Dies*. On alternative (b), few got the point, which was to ask whether realisation of the 'benefit' in money precluded any appeal to subjective devaluation. Most, however, saw that alternative (c) raised issues as to the application of the Law Reform (Frustrated Contracts) Act 1943.

Question 10

There were three potential defendants: Nigel, Jayden, and the Oxbridge Bank. The first question was whether Nigel's debt was discharged, though almost no-one addressed this issue. As to the claim against Nigel, many failed even to mention *Owen v Tate*. Those that did, simply applied it, with no attempt to distinguish it, or just said it could be 'ignored' because wrongly decided. A disturbing number of candidates also asserted that Nigel authorised/ratified the payment because he went on holiday! Few discussed a possible claim against Oxbridge Bank. Many got tangled up in knots over the 'unjust factor'. They wanted to say it was legal compulsion, but then ran into the problem of the unenforceability of the guarantee entered into by Tim because of the lack of writing. They were then forced to analyse claims against both Nigel and Jayden in terms of mistake! Few seemed to appreciate that the issue was instead concerned with the correct person bearing the burden of the obligation. This was crucial when it came to the applicability of change of position to such claims, a point only appreciated by a few. As to its applicability on the facts, some went as far to say that Jayden's act of getting married was in bad faith. Other errors included saying that the bank had a defence of ministerial receipt because it was the agent of Nigel, that the unenforceability of the contract of guarantee made it void, and that Nigel was a wrongdoer for going on holiday.

Question 11

This was the second most popular question on the paper. As to part (a), the first issue was whether there was a prima facie claim. However, most candidates simply when straight to the potential defence of limitation, though with some good analysis. As to part (b) on the murder contract, few saw the point that the other party must accept repudiation, simply saying there was a total failure of consideration because Olivia had not been killed, if they said anything at all. Few noticed the *locus poenitentiae* discussion in *Patel v Mirza*. As to the effect of illegality, good answers said that *Patel* was ultimately about stultification and discussed the operation of the 'defence' in that light. Better answers also considered Lord Sumption's and Lord Neuberger's approaches in *Patel*. On the bribe, many were content to say that *Parkinson* was still 'authoritative' (despite it being only a first instance decision), with little reference to its treatment in *Patel*.

Name of Paper	Roman Law (Delict)
No. of students taking paper	5

Summary reflections on the paper as a whole

The BCL/MJur cohort on this course made up around a third of the overall number of participants. Some but not all had previous knowledge of Roman law, or were acquainted with its scholarship and specific research methods. Uptake was spread evenly across the questions bar Q5–Q7, which attracted noticeably fewer takers. Most candidates showed good to very good understanding of the substantive Roman law of delict and of the procedural law accompanying it. The better answers embedded each quote in its immediate context within the Digest, and cross-referred to related passages further afield. Ideally, this would set the framework for a discussion of controversial questions. The best answers enriched this discussion with opinions gleaned from modern scholarship, and even commented on the question of interpolations.

In view of the small numbers of candidates, it appears inopportune to try to draw any general lessons from their answers to individual questions.

Name of Paper	Taxation of Trusts and Global Wealth
No. of students taking paper	5

Summary reflections on the paper as a whole

General Comments:

As in previous years, the assessment for this option consisted of a 4,000-word extended essay, and a written examination in which two questions were to be answered from a choice of four essay questions and two problems. Although the problems were optional, they were (as usual) popular with students. The two aspects of assessment were weighted equally. The examination focused on the UK aspects of the course, and the extended essay on the international elements.

Overall, students did very well, with no marks below 60 and 3 out of 5 students attaining a Distinction overall.

Comments On Individual Questions:

Essay

The extended essay asked students to agree or disagree with the proposition that “[t]he UK’s system for taxing the mobile wealthy is a failure”, particularly with regard to three different metrics: incentivising investment, raising revenue, and the clarity of the policy. The best answers adopted a clear and concise structure, which made their arguments much easier to follow. In turn, these answers were able to address all three issues with regards to a number of taxes and demonstrated

an excellent understanding of the relevant provisions as they apply to individuals, trusts and comparable instruments in other jurisdictions. By contrast, the weaker answers were less coherent and fell into the trap of merely describing everything they know about the taxation of the wealthy, without developing it into an overall argument.

Exam

Question 1 – this question asked whether and to what extent the capital tax system discouraged the use of trusts. This enabled students to draw on a wide range of examples from both CGT and IHT, demonstrating both a breadth and depth of knowledge.

Question 2 – the second question was a more technical question about the CGT consequences of a beneficiary becoming absolutely entitled to settled property. It required precise knowledge of key cases and particularly close attention to the wording of the question, but was well handled by those who answered it.

Question 3 – this question was not attempted by any students. It was seemingly straightforward, asking whether IHT is subject to too many exemptions (ignoring the taxation of trusts). It would have required a good understanding and evaluation of the provisions of Part II of the Inheritance Tax Act 1984 (Exempt Transfers) as well as a discussion of potentially exempt transfers under section 3A.

Question 4 – this question asked students whether the courts and Parliament have blurred the distinction between tax avoidance and tax evasion. The best answers covered a wide range of materials, including the most recent judicial decisions on avoidance, although there was a tendency among answers to veer away from the question into more general discussions of the avoidance jurisprudence.

Question 5 – this was a problem question about CGT, which tested a range of knowledge about the relevant legislation. Issues included wasting assets under section 44, the disposal of potential rights of action, deductibility of expenditure, apportionment of PPR relief and conditional contracts.

Question 6 –this was a problem question concerning the taxation of trusts. It was a relatively complicated set of facts that involved both pre- and post-2006 IIP trusts, a potential reservation of benefit issue and non-arms-length transactions. The best answers were those that were able to deal with the issues concisely, enabling them to engage in depth with the most complex issues in the question.

Name of Paper Trade Marks and Brands
No. of students taking paper 9

Summary reflections on the paper as a whole

General Comments: The exam this year assessed both evergreen controversies and issues of contemporary relevance, such as the impact of AI or the need to accommodate sustainability concerns within trade mark rules. It was encouraging to see that each question was attempted, although some proved more popular than others.

Comments On Individual Questions:

Q1 invited candidates to consider whether a broad claim against any use of a brand which 'free rides' off it ought to be prohibited. Four candidates attempted this question, with more thoughtful essays commencing with whether there was any room to manoeuvre post-Brexit. While all candidates described problems with the current approach, two thoughtful answers went further by exploring what shape any reform should take and whether existing elements of the test could be given added content through judicial interpretation (e.g. replacing default presumptions about consumer behaviour with the need for empirical evidence of a benefit). The strongest answer meticulously supported its analysis through precise case law references.

Q2. required candidates to be creative and comparative, since there is no direct case law on whether trade mark rules ought to be relaxed to facilitate unauthorised repair or refurbishment. Two candidates attempted this question, with one of the answers being exceptional. The more thoughtful essay considered whether existing doctrines could be adapted; for instance, revisiting the relative ease with which harms to trade mark functions are established and whether we might adapt existing rules facilitating parallel importation. It was encouraging to see such a creative, yet rigorous answer.

Q3. on celebrity image was deliberately provocative and three candidates accepted the provocation. In general, candidates validly questioned the presumption underlying the question (should image rights protection be solely directed at incentivising the production of celebrity image). One of the best answers in the entire paper offered richer, alternative normative accounts of image protection; considered the implications of new technology (e.g. AI-generated deepfakes) in foregrounded additional protected interests; and explored the extent to which UK law might go further, without embracing a strong, proprietary model. This was a question where candidates who adopted a comparative perspective were rewarded.

The liability of online platforms for trade mark infringement formed the basis for Q4. Two candidates attempted this question. While both candidates competently outlined the limitations of the current 'safe harbours' model, one of them very appropriately considered how the content of a new duty might be fashioned, by looking to tort law and by avoiding some of the mistakes that policy-makers have introduced in the copyright context. This more thoughtful approach obtained a first class mark.

Q5. was relatively popular and attempted by four candidates. In fashioning a rule to exclude problematic aspects of trade mark applications, the challenge lies in crafting it to be broad enough to be flexible (excluding technical and aesthetic features as well as those valued by consumers beyond these two silos) and yet practically workable (not calling for competition law-style, fact-intensive assessments). Candidates aptly reviewed the CJEU's doctrinal experiments with broadening out the 'substantial value' policy exclusion in cases such as Hauck and Gomboc. They also perceptively engaged with the crux of the question: how to establish 'competitive necessity' as a workable test? Better answers moved beyond the existing case law and scholarship on the existing silos, including useful comparative references to US law and the most recent scholarship exploring this.

Q6. was attempted by three candidates and offered them the choice of analysing the subject of trade mark law – the average consumer – through the lens of either subsistence or infringement. Candidates tended to focus on the likelihood of confusion aspect, exploring the extent to which this consumer is a normative vantage point, helping to draw the line between protected rights and competitive freedoms, or else empirically determined through surveys and other forms of evidence.

Thoughtful answers drew on recent interdisciplinary research at the intersection of law and consumer psychology, while exploring various facets of infringement doctrine (specialized relevant publics; initial interest confusion; the stages of the global appreciation test). One candidate obtained the highest individual essay mark across the entire paper when answering this question, producing an articulate, critically-infused analysis.

Name of Paper	Transnational Commercial Law
No. of students taking paper	10

Summary reflections on the paper as a whole

This was the first time in many years that we were able to run this course. We greatly enjoyed teaching the self-selected small group of excellent students. The exam results were pleasing, with almost half of candidates achieving a Distinction.

The best candidates followed the good practice of engaging with the questions asked, dissecting them, and answering them drawing on the material covered during the course. This produced some outstanding answers.

Quite a few candidates attempted the (non-compulsory) problem question. The best answers did not simply give unequivocal advice but considered different possibly interpretations of the facts and law while speculating about what sort of tribunal might prefer what sort of solutions, while highlighting some of the themes covered during the course.