Examiner's report

F4 Corporate and Business Law (ENG)
June 2012

General Comments
The overall performance in this exam session continued the recently established pattern of improvement.. While many candidates performed well, it still has to be recognised that a significant number of candidates were less well prepared and unfortunately did not meet the required standard to pass the examination. As has been stated repeatedly, it is an unfortunate fact that *post hoc* reports such as this one tend to focus on what went wrong, but a substantial number of candidates performed exceptionally well.

The structure of the examination paper, as usual, consisted of ten compulsory questions, each carrying 10 marks. .As in the recent past, the questions tended to be subdivided into smaller subsections and it is thought that this may have helped candidates to structure their answers. Although this structure may have had the consequence that candidates wrote more than necessary to gain the marks available it is felt, nonetheless, that the structure was advantageous on the whole. The first seven questions were essentially knowledge based, while the latter three were problem-based scenarios requiring both legal analysis and application of the appropriate law. The fact that the scenario questions potentially covered a lot of material, enhanced the need for candidates to analyse the situation presented, rather than merely to regurgitate all they knew about general legal topics.

The number of candidates who did not attempt all of the questions remains lower than when the current syllabus and structure were initially introduced. Where candidates failed to attempt all of the questions, this appeared to be as a result of a general lack of knowledge in relation to particular questions, rather than based on any time pressure or structural difficulties in the questions. This would appear to support the conclusion that candidates and teaching providers are coming to terms with the width of the syllabus. The tort question in this paper was easily the best answered question in this area since the topic was introduced. That being said it is still a fact that the last three problem scenario based questions continue to provide grounds for concern. Too many candidates were let down by their performance in those questions, which continues to suggest a general lack of analysis and application skills if not general knowledge.

It also still remains the case that that some, although a greatly reduced number of, candidates are still engaging in question spotting and as a result produce prepared, but inappropriate, answers to some questions. However, it has to be said that this recurring failure was less of a problem in this exam, perhaps as a result of the structure of the paper, in that it was more apparent what questions were about, or rather what questions could not possibly be about.

What follows will consider the individual questions in and candidates' responses to the individual questions in the paper.

Specific Comments

Question One
English legal system question on the doctrine of judicial precedent. The question was divided into two parts, essentially to provide a structure for candidates' answers. The first part required a consideration of the importance the court structure in relation to the doctrine and was worth 7 marks; the second part required an explanation of two keys aspects of the doctrine and was worth 3 marks. On the whole this was very well done with many candidates gaining reasonable marks.

Part a) - A significant number of candidates scored high marks in this part as it was generally answered well with most candidates describing providing a detailed description of the court structure and hierarchy together with an explanation of the effect of that structure in relation to precedent. Weaker answers tended to simply describe the structure and made little in any reference to essential context, the doctrine of precedent.

Part b) - Again, some reasonable answers were produced which demonstrated a sound knowledge of meaning, effect and difference between 'binding' and 'persuasive' precedent. However, some candidates, who had clearly prepared a standard answer on 'precedent' included had already included this material in part (a) of the question and as a result ended up repeating themselves.

Question Two

Contract question, referring to invitations to treat. It was divided into two parts. The first, more general, part (a) carried 7 marks and the more specific part (b) carried 3 marks.

Part (a) - This part on the topic of invitation to treat was done very well with many candidates earning full marks., However, given the centrality of this topic to the contract element of the syllabus, any failure to gain satisfactory marks in this part did not augur well for the rest of the paper.
A lot of time was wasted in this question by candidates citing the four essential elements to a contract formation and a detailed discuss of each. This was not required and candidates merely need to answer the question set.

Part (b) - This part related to 'tenders' and was not done nearly as well as part (a).
Whilst the majority of candidates did have, at least, an inkling of what tenders were, and could make a stab at answering the question, a number seemed to have no knowledge whatsoever about this important method of entering into business relationships.

Question Three

Tort question in relation to defences in relation to the tort of negligence.
The report on the last exam session indicated the fact that the standard of answer produced has improved over the years since tort became part of the syllabus. This improvement has continued. level than before. It may be that the topic of the question, defences in actions for negligence, was more open to candidates with a number of interesting cases in support, but in any event both parts of the question tended to be done well, if part (a) was done better.

Part (a) related to the defence of 'contributory negligence' and on the whole it was done very well, with many candidates gaining full marks. Very few candidates did not reference the unfortunate claimant in *Sayers v Harlow*. What was missing however in some answers was that this is not a full defence and the onus is on the defendant to prove that the plaintiff contributed towards the injury.

Part (b) related to the 'defence' of volenti, and it has to be stated that it was not nearly as well done as part (a). Reference to *ICI v Shatwell* enabled a number of uncertain answers to gain satisfactory marks, but, on the whole, answers tended to be too general, with too many candidates suggesting that the defence arose where potential claimants actually consented to their being treated in a negligent manner; medical cases were cited in support of this erroneous claim.
Also many candidates did not pick up the point that volenti is a total defence and can eliminate the right to sue for damages.
A few candidates cites in the Unfair Contracts Terms Act 1977 in support of their explanation of the operation of this principle.

Question Four

This question asked candidates to explain the three terms that might be found at the end of the names of different business forms. It was done well generally, with the majority of candidates gaining at least some marks, with a large majority gaining maximum marks.

Part (a) required an explanation of the term LLP. The great majority of candidates were able to provide a detailed answer and although some were not as detailed they nonetheless knew sufficient information about LLPs to gain satisfactory marks. However, a minority of candidates confused the Limited Liability Partnership with the Limited Partnership.

Part (b) required an explanation of the term Ltd. Once again the majority had very little difficulty in dealing with the question and gained reasonable marks. Some candidates did confuse the private limited company form with, either the limited partnership or the public limited company.

Part (c) required an explanation of the term plc and again the majority of candidates had very little difficulty in explaining the meaning of the abbreviation and detailing the legal rules appropriate to such forms. Unfortunately little could be done for those candidates who confused the private and public forms of the company.

Question Five

Company law question relating specifically to the various investment mechanisms available to investors in companies. Again it was done well and it would appear that the breakdown of the question into three distinct sub-questions was advantageous to candidates generally.

Part (a) Ordinary shares were very well explained and many candidates cited the definition in *Borland's Trustees v Steel* before going on to consider the distinct element of that definition in some detail. Certainly the great majority referred to voting and dividend rights.
Some candidates went into too much detail about nominal value of shares, share premium accounts and the use of the share premium account for dividends. Whilst this is relevant to accounting, the question specifically stated the context was in relation to company law, so candidates' answers should have followed that requirement more closely.

Part (b) Preference shares tended not to be explained as well as ordinary shares, as there was an almost general assumption that they hold no voting rights under any circumstances. However, sufficient other points could be made to gain full marks, even if this point was not fully explained.
Also, similar to the approach in part (a), some candidates answered this in the context of accounting and there were lots of examples of how much interest would be attributable based on the percentage and value of the share.

Part (c) Debentures tended to be answered very thoroughly. There were many points that could be made so the majority of well-prepared candidates had little difficulty in picking up the full 4 marks available.

Question Six

This question concerned voting procedure and once again it would appear that the sub-divided structure of the question benefited candidates.

Part (a) related to ordinary resolutions and most candidates were able to pick up the 2 marks available, by explaining the required majority and an instance of when such a resolution was required.

Part (b) referred to special resolutions and again proved to be of little difficulty to the well prepared candidate, who could gain the full 3 marks available by citing the appropriate majority and instancing when such a vote would be required.

However there was some confusion relating to the length of notice required for such resolutions, as indeed there was in relation to ordinary resolutions.

Part (c) referred to written resolutions. While once again the well-prepared candidates scored highly, it has to be said that this part of the question was less well done than the other two parts. A number of candidates started their answer by stating that written resolutions only applied to private companies, but went on to claim that they were passed at a meeting of the company. A significant number of candidates also claimed that the written resolution *could* be used to remove directors and/or auditors, thus reversing the actual legislative provision. Finally, a significant number of answers interpreted a written resolution as being either an agenda or minutes of the meeting.

Question Seven

This question in two parts, each carrying 5 marks dealt with the issue of the compulsory winding up of companies. Once again the overall single topic is divided into the two distinct parts in an endeavour to structure the answers provided by candidates.

Part (a) focuses on, and requires an explanation of, the grounds under which compulsory liquidation may be instituted. This was answered well and many candidates could cite the full grounds for the granting of an award of compulsory winding up. Even where, candidates did not provide a consideration of all the grounds they were usually capable of citing the main grounds for compulsory winding up, namely, insolvency and the just and equitable ground.

Part (b) is itself internally divided into two discrete aspects relating to the procedures and the consequences following court order for the compulsory winding up of a company. Some candidates managed to deal with both aspects of the question, others tended to focus on one aspect and that tended to be the procedure rather than the consequences.

Although a number of candidates endeavoured to shoehorn administration in to their answers, it has to be said that the performance in this question was unsatisfactory.

Question Eight

Contract scenario on breach of contract, damages.

Yet again this question was divided into two distinct parts in an attempt to structure answers. Each part was worth 5 marks, so candidates were being tested on their ability to analyse the scenario and deliver a coherent and concise answer to the issues raised in the scenarios.

Unfortunately, too few candidates identified all the issues in (a) and (b), and all too often candidates would generally discuss contract law and then reach a correct but non-law-justified conclusion. Generally (a) was done better than (b) as there were many different contract law issues to be identified.

Part (a) - A significant amount of time was wasted in this section discussing whether a contract existed or not. Some candidates concluded that a contract did not exist – in which case very few marks were awarded. Also, too many candidates missed the duty to mitigate loss

Part (b) was not done very well overall - either candidates understood it, or they didn't. Many candidates missed the fact that the question invited a discussion about liquidated damages and penalty clauses and instead almost reiterated the facts given in the question. They may have arrived at a correct conclusion - but on the basis that the contract said so rather than following a discussion of whether they felt the charges were excessive or not, thus demonstrating a lack of understanding of the law relating to the scenario.

Others completely went off in the wrong direction and discussed consideration in detail, unfair contract terms, promissory estoppel, conditions and warranties and a range of other principles of contract. This demonstrated an inability to analyse the scenario, to identify the issue and apply the relevant knowledge.

Question Nine

Employment law scenario question raising issues about the test to determine the employment ratio, and the consequences of dismissing people.

Some candidates who achieved the maximum marks went through the three main tests, and followed the question through logically, including a mention consequences, such as Eve's right to redundancy, with an explanation of qualifying criteria/and payment calculations.

Those candidates who did follow this procedure did not really state the law at all. These mostly failed to mention the integration test or the economic reality test, and often did not mention the control test by name. What they would often do would be to jump straight into saying Eve is an employee because she is controlled by Dan. Almost all candidates came to the correct conclusion regarding Eve's and Fred's status.

However, some candidates interpreted the question to be one of unfair dismissal and wasted time describing the situations in which dismissal was fair, those that were unfair and the resulting remedies. This was not relevant. It is clear that employment law is well understood by most candidates and that all were well prepared for some form of question on it. The problem arose in identifying the issue in the question but that was due to lack of analysis skills in candidates rather than any flaws in the question.

Question Ten

Problem scenario on directors.
This by far and away the least well answered question on the exam paper. Candidates appear to have been confused by what was in effect a relatively simple question, especially as regards part (a).
Many candidates dealt with (b) in (a) and vice versa.

Part (a) - Candidates described directors' duties in a lot of detail, without identifying which of the people in the question were actually directors.
Quite a few were thrown by the fact that Ham and Ive were inexperienced and consequently invented a new category of director - the sleeping director. There seemed a lot of uncertainty with Ham and Ive - sometimes candidates would say that they weren't directors in (a), and then would go and make them liable in (b) by virtue of the fact that they *were* directors.
Relatively few candidates dealt well with (a) by identifying that Ger was a shadow director and Kim was a de facto director by virtue of apparent authority.

Answers in part (b) were quite varied and very few gained satisfactory marks.. A number of candidates applied the law relating to money laundering and directors' duties to no purpose.
Given that the question scenario stated that the company was set up to continue Ger's previous fraudulent activity almost all answers made reference to fraudulent trading, whether with good effect or content is another matter.