Examiner's report

F4 (ENG) Corporate & Business Law

For Paper Variant exams December 2015

General Comments

This report is the third session of examinations carried out under the new structure. The December 2105 paper followed the structure introduced in the December 2014 examination. The paper is divided into two parts: Section A comprised of 45 multiple choice questions (MCQs) of either 1 or 2 marks to a total of 70 marks, while Section B contains 5 multiple task questions (MTQs) each worth a total of 6 marks giving the normal overall total of 100 marks. All questions are compulsory and the exam time period is 2 hours.

In the computer-based examination format, all questions are structured so as to be capable of objective marking, while in the paper based format, although section A is marked objectively by computer, section B is still marked by subject experts.

The present structure replicates division in the previous examination structure between essentially knowledge based questions and questions requiring, not merely knowledge, but analysis and application in addition.

Although the time period for the exam is only two hours, there is no evidence of candidates' performance suffering under time pressure to complete it. Indeed it would appear that some candidates had sufficient time to copy their answers for the Section A computer marked MCQ questions on their exam papers, while others provided unnecessarily extended answers to questions in the written part of the paper exam.

Section A

As was hoped, this knowledge part of the exam appears to have benefited the majority of candidates, who traditionally have been stronger in fact based questions than in legal analysis. In examining the overall performance it can still be seen that candidates fared better in this section than in the analysis/application and there is certainly no evidence that any candidates suffered as a result of their performance in Section A as opposed to Section B.

As might be expected, the simpler 1 mark questions tended to be answered better than the more complex 2 mark questions. It has to be said, however, that there was a wide range of performance over the whole range of questions in either mark category, so it cannot be concluded that either the 1 mark question were too easy or the 2 mark questions too difficult, although the best performances were in relation to 1 mark questions and the worst in relation to the 2 mark ones.

As in previous examinations under the new structure, the extension of the field of material to be covered did not prove a major difficulty. However, it has to be admitted that candidates did show some problems in dealing with the more difficult questions in areas of the syllabus in which they have traditionally struggled. As with the previous examination, it would appear that candidates have benefited from the recognition that they will be examined over a wider spectrum of the curriculum. Whereas previously candidates engaged in topic, and even worse question, spotting now it would appear that they realise that there is nothing to be gained in such an exercise as all aspects of the syllabus can be examined in one exam.

However, it has to be recognised that the new structure requires candidates to be aware of more detailed information than perhaps was required previously. Question 12 in the current exam can be used to demonstrate this. The question was:

Which of the following may be found liable for fraudulent trading under s.213 Insolvency Act 1986?
(1) Creditors
(2) Employees
(3) Shareholders

A (3) only
B (1) and (2) only
C (1), (2) and (3)
D (2) and (3) only
(2 marks)

It has to be recognised immediately that this question is at the difficult end of the spectrum of difficulty in that it requires detailed knowledge of the law relating to fraudulent trading and is very unlikely to be amenable to guessing, or working out on the basis of an application of common sense principles. Unfortunately, on the basis of the detailed statistical analysis of candidates answers, it would appear that the majority did not possess the level of knowledge required and were forced to rely on their understanding and application of broad general principles. Following that line of reasoning may give an insight to how the question was answered by those who really did not know the answer.

At the outset it is tempting to suggest that any answer including creditors is wrong, as they are the ones most likely to suffer as a result of wrongful trading. Equally any answer including shareholders is more likely to be right as they have some, if limited, responsibility for their company. Employees would appear to be somewhere between these two possibilities, as they are actually involved in the company's business and may even be the directors of the company. Examining the options individually:

Answer A appears distinctly plausible as the company is operated in the name of shareholders and they carry some, if limited, liability for company debts. As a distractor from the correct answer, this option worked well as it was the second most popular choice of candidates.

Answer B is the least likely as it involves both of the unlikely possibilities, unless one misapplies the doctrine of separate personality and recalls that shareholders do have limited liability. If the shareholders are not liable then the other two categories might very well be. Again the distractor worked as although it was the least often selected, a significant number of candidates elected to go for this option.

Answer C just looks wrong but is actually the correct answer. It appears that the examiner has just put everything together to make up an answer with no real discrimination, especially as it includes the clear outsider, creditors. A slightly greater number of candidates elected for this option than picked option B.

Answer D was by far the most popular choice of answer. It excluded creditors, who were outside the company, but did not just focus on shareholders but included employees, some of whom might even have been directors. Only those who were confident in their knowledge would have picked option C.

Question 20 in the current paper raises a related difficulty. Here, the question was:

In the context of the tort of negligence, the requirement of foreseeability requires which of the following?
A The type of injury to be reasonably foreseeable
B The extent of injury to be reasonably foreseeable

C The particular injury to be reasonably foreseeable
D Both the extent and type of injury to be reasonably foreseeable

(2 marks)

While the structure of this question is perhaps more simple than the previous example, it does relate to the topic area of tort law, which has a history of being inadequately answered. In addition it raises a conceptually difficult aspect within that general topic: foreseeability. Nonetheless, just as tort is an essential aspect of the syllabus, so foreseeability is an essential aspect of tort law and one that has to be examined. Once again, those who did not actually know the answer were thrown back upon their own intuition, but this time the consequence would seem to be that the 'obvious' but wrong answer was option D, which brought together two for the previous options. If one doesn't know the correct answer, and all the first three options appear reasonably plausible, with option C being perhaps the least plausible then the answer that combines the two most plausible options must be the correct answer. That, at least would appear to be the reasoning based the statistical analysis of the question. The correct answer was option A, although only a minority of candidates elected for that option.

The suspicion continues that candidates may be tempted to skim read questions and answers and simply do not spend sufficient time on thinking about them. Questions are sometimes more subtle than candidates allow for.
One final comment in relation to Section A, and one that supports the above point about time management, is that very few candidates did not answer all of the questions.

Section B

This element of the examination requires both analysis and application, which skills traditionally have not been to the forefront of candidates' abilities. Unfortunately, it has to be recognised that such weaknesses remain, even if the new structure has gone some way to mitigate the consequences. Now, scenarios are shorter, and questions are subdivided and more focussed. What the questions under the new structure seek to do is to encourage candidates to demonstrate their understanding of and ability to apply particular legal principles and concepts. However, as with Section A, this apparent reduction in what is required, introduces a compensating difficulty, that candidates must focus on and succinctly address the issue raised by the question: irrelevant information simply will not be rewarded and it is a matter of fact that the shorter, more detailed, questions have a tendency to starkly expose any lack of knowledge or application on the part of candidates.

One unfortunate continuation is the prepared general answer to a highly specific question. Thus contract questions may begin with an exposition of offer and acceptance when the question is actually about part payment of debts.

This also supports the previous suggestion that candidates were not under any time-pressure, in the written exam papers as they had sufficient time to reproduce of extensively prepared, but mainly irrelevant, answers.
It would be unfair and inaccurate not to recognise that there has been an overall improvement in the way in which the analysis/application questions are dealt with by candidates, but there are still grounds for major improvement, especially, if not specifically, in relation to the written paper.

Another unfortunate practice from the previous structure, which continues to appear in the written paper, is the prepared answer relating to a particular area of the syllabus. For example, a candidate may be tempted to prepare a general answer on directors' duties where the question only asks about one specific duty.