Examiner's report

F4 Corporate and Business Law (ENG)
December 2011

General Comments
The performance in this paper was satisfactory overall. 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 it should be remembered that overall performance was satisfactory and 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. Again, 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 number of candidates who did not attempt all of the questions remains lower than when the current syllabus and structure were initially introduced. This would appear to support the conclusion that candidates and teaching providers are coming to terms with the width of the syllabus. Regretfully, however, it has to be sated that the topic of tort remains a major weakness for candidates, especially given the readiness with which they approach contract questions.

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. 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 candidates are engaging in question spotting and as a result produce prepared, but inappropriate, answers to some questions. This was particularly the case in response to questions; seven, nine and ten, as will be considered further below in the detailed question analysis.

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

Specific Comments

Question One
This question on the English Legal System was divided into two parts: the first referred to precedent and carried 6 marks; the second related to legislation and carried 4 marks. On the whole this was very well done with many candidates gaining full marks.

Part a) was generally answered very well with most candidates describing the history of judicial precedent and contrasting common law and equity. Detailed descriptions of the court structure and hierarchy together with comments on binding and persuasive precedent were noted. A significant number of candidates scored high marks in this part. Some answers focussed on statutory interpretation or described the difference between civil and criminal law, which indicated that some were unprepared for this question.
In part b) some answers demonstrated a sound knowledge of the process of how legislation is made and the advantages and disadvantages and types of delegated legislation.

Question Two
A contract question, referring to terms of contracts. It was divided into 4 parts, which helped well prepared candidates but revealed the weaknesses of the ill-prepared. For example, a few thought breach meant

termination e.g. remedies – right to *breach* and/or damages - in the case of warranties they said there could be no *breach* just damages.

Part a) clearly distinguished between the very well prepared and knowledgeable candidates and the unprepared candidates who clearly struggled with the description. Full marks were given in a large number of cases where candidates described the difference between terms and representations and stated the difference between express and implied terms. No marks were awarded for those answers which stated that terms were offer, acceptance and consideration and there were terms on which parties were bound within retail contracts. This point was mentioned a lot and did not get rewarded. It was surprisingly apparent that many candidates had been taught the difference between terms, but not what terms were *per se*.
Candidates were very well prepared for part b) and a significant number of full marks were awarded. There was some confusion and candidates did get mixed up between *Poussard v Spiers* and *Bettini v Gye*, but nevertheless there was a clear understanding that breach of a condition was so important that the contract could be brought to an end. For the inadequately prepared there was again a focus on retail contracts and the actual physical condition of the goods bought.
Satisfactory answers were noted again in part c) but inadequately prepared candidates mentioned extended warranty contracts which could be taken out on electrical goods, particularly mobile phones.
Part d caused a divergence of answers. Either candidates tended to score full marks or scored zero. Innominate terms do often cause confusion and candidates should revise the concept fully for future sittings.

Question Three
A Tort question in relation to auditors' liability. This question was not subdivided in order to keep the focus on the key issue of auditors' responsibility in tort.

Although the standard of answer produced has improved over the years since tort became part of the syllabus, these answers are still not of the same standard of some of the other more familiar topics such as contract and company law. Whilst many candidates started off on the right track and described how and when a duty of care arose, the specific application of the law to auditor's duty was inadequate. The candidates who scored well obviously were prepared and had revised the relevant cases such as *Hedley Byrne v Heller*, Caparo and ADT. A high number of candidates did not have this knowledge and instead wrote very generally about the differences between internal audit and external auditors and the types of tasks undertaken such as checks of books and records, bank reconciliations, signing off of auditors reports and how auditors are appointed and removed. This was irrelevant. Others focussed on the law of tort generally and wrote everything they knew including the concept of trespass, *Rylands v Fletcher* and defamation, slander and battery. Again this was an example of candidates preparing for a certain subject and writing down all they knew, despite it not being relevant to the question posed.
Candidates do not seem to study/learn holistically, but see the law paper as about law and consequently fail to apply general knowledge across to specific papers, even when such knowledge might be important.

Question Four
An agency question divided into 3 parts.

Part a) didn't pose too many problems for candidates and at the very least, most candidates managed to write something relevant, usually relating to contract and authority being extended in writing or orally. However, the tautological repetition of the word 'express' did little to elucidate what was inherent in such a concept. Candidates should always be advised not to use the word they are to define in the core of their definition of that term.
In part b) implied authority caused a few more problems and whilst most were able to focus on the fact that this arose from the position, others left the question blank. It was noted however that candidates did not answer in the context of company law. This was something that the question specifically asked for. Instead, candidates

used the estate agent relationship as an example of implied authority, without considering how it could be demonstrated by directors as an example.

Part c) - Ostensible / apparent authority caused a few problems. Candidates either repeated what had been written in part b), or stated that apparent authority was where a person was authorised to deal with a third party and everyone had knowledge that this was the case. Some candidates were well prepared and some sound answers were written which focussed on holding out to have authority and the consequences for the principal which flowed from this. Others left this part out altogether.

Question Five

A company law question relating specifically to issue relating to share capital. Part aii) only carried 1 mark, as a signal test to see if candidates had assimilated the terminology of the Companies Act 2006.

Part ai)- Whilst most candidates were able to state that for the purposes of registration a company needed to state value, number, type and class of share, other answers described in great detail all of the documents which had to be sent to the registrar, without focussing on the statement of capital. Only a, few focused on the application to subscribers.
Partaii) -Most candidates were able to cite that the minimum amount of capital was £50,000. Other answers were quite confused and mentioned that a ¼ had to be paid up and offered £25,000 as the answer.
Part b) was done very well with sound comparisons between dividends, voting rights and treatment on winding up of each type of share. Most candidates managed to pick up some marks on this part.

Question Six

A corporate governance question relating to the roles of directors.

Part ai) - Answers to this mentioned that the chairman was the figurehead of the company and that the chairman and chief executive should not be the same person. However, only a small number of candidates commented on what corporate governance was and how it operated.

Part aii) -Definitions for this part were generally well done with candidates being able to bring out the main points around chief executives being involved in the day- to -day running of the business. A lot of candidates mentioned that chief executives could "hire and fire", but overall this caused no problems for candidates.

Part b) - There was quite a bit of confusion particularly in relation to shadow directors. Some candidates thought that to have a shadow director was illegal and that they did not have the same liability as other director. In relation to this there was a lot of general misunderstanding.

The definition of non -executive directors was done quite well with the majority of candidates writing that they were not involved in day to day running, but tended to bring independence and expertise – all of which gained marks.

Question Seven

An employment law question on redundancy.

A lot of candidates had prepared for a question based on the difference between being classed as an employee or being self-employed. The various tests and relevant case law were described in detail which did not address the question. A further group had prepared for unfair dismissal and once again their marks were low.
Where candidates had actually answered the question posed, satisfactory marks were given and the key points of when a dismissal is classed as redundancy, the conditions, the process and compensation were all addressed, with high scores being awarded.

Question Eight

A contract scenario on the creation of contracts.

This question was done very well. Candidates were comfortable describing the difference between an offer and an invitation to treat, the definition and effect of a counter- offer and whether any claim could be made. High marks were often awarded on this question and it was promising to note that candidates were knowledgeable in this area and had sound application skills. However, there were quite a few candidates who concluded that Ade had a claim against Chip, even though the scenario made it clear that the counter -offer had not been accepted, nor had any consideration been provided to keep the offer open. This would appear to be an instance of the belief that the examiner would never have the same outcome twice in the same question.

Question Nine

A company law scenario question divided into two parts but essentially both questions depended on an understanding and the application of the rules relating to the doctrine of separate personality.

It has to be said that candidates struggled to identify the issue in part a).

Whereas those who recognised the issue were well able to secure full marks, a significant number of candidates totally misunderstood this question. Answers ranged from being satisfactory, identifying the key points, or inadequate with a total misunderstanding of the question posed.
Candidates often described the process of liquidation and wrote at great length of the difference between voluntary and compulsory liquidation.
Others focussed on contract law and the elements of a contract to conclude that there was actually a contract with Ed Ltd – something they had already been told in the question.
Others went down the route of discussing commercial contracts compared to social and domestic agreements and concluded that as Ed and Doc were friends, there was no contract in place at all.
Whilst all of these issues were apparent in the question, none of them was core to the question, which emphasised that the scenario had to be analysed from the perspective of company law.
It should be noted that, although not part of the answer as originally envisaged, candidates were rewarded for canvassing the possibilities of fraudulent/wrongful trading where the doctrine of corporate personality can be ignored.

In part b), only a minority of candidates identified that the issue in point was whether the veil of incorporation could be lifted. Others focussed on the employee and employer relationship and how Fitt owed a duty of loyalty to Doc and Doc would have an action. This question posed real problems for candidates and displayed that there is an inability to apply their knowledge in company law questions. It is particularly unsatisfactory in that the scenario is based on one of the most central cases relating to separate personality.

Question Ten

A problem scenario on money laundering.
This is a situation where clearly question spotting worked for the majority of candidates. Some reasonable marks were awarded and candidates were able to clearly define money laundering and the different phases involved, together with the various punishments.
Some answers thought that this was a question which related to insider dealing and produced answers which centred around that. Others picked up on the fact that Ian was an accountant and answered the question from an ACCA ethics point of view describing how an accountant should act with integrity, independence and should avoid a conflict of interest. Others seemed to think they had been asked what action Lol could take against Ian and/or Jet. They said he should sue.
These approaches resulted in low marks.