



Examiner's report

F4 (LSO) Corporate & Business Law

For Paper Variant exams December 2015

General Comments

This report discusses the F4 LSO December 2015 examination paper. It gives an overview of the performance of candidates in the examination, highlights common areas of strength and weaknesses and provides guidance on how future candidates may improve their performance in this paper.

The paper was divided into two sections: Section A and Section B. Section A contained 45 multiple choice questions (MCQs) while Section B contained 5 multi-task questions (MTQs).

Questions in Section A had either three or four options from which to choose the correct answer. The questions with three available options were worth 1 mark and those with four options to choose from were worth 2 marks. The total marks for Section A was 70.

Section B contained 5 questions. Each question presented a fact pattern and required candidates to answer a number of sub-questions emanating from the facts. The maximum that could be awarded for a correct answer to each question was 6 marks. Therefore, the total for Section B was 30 marks. The examination, as a whole, was graded out of a total of 100 marks. Every question in the examination was compulsory and candidates had two hours to answer all questions.

Overall the performance of candidates in this session was inadequate. and most candidates struggled to understand what the questions required. In addition to this, it was apparent that there are syllabus areas that pose particular challenges to candidates. These areas are:

1. E Capital and the Financing of Companies
2. F Management, Administration and the Regulation of Companies
3. G Liquidation
4. H Corporate Fraudulent and Criminal Behaviour
- 5.

6. On the positive side, candidates displayed reasonable time management skills because the majority of them managed to make time to attempt every question in the paper.

Section Performance

Section A performance was mixed but generally inadequate. Candidates performed better when attempting to answer 1-mark questions. Candidates may have found these types of questions easier because they require the mere recollection of very basic legal principles and have fewer options to choose from (three options rather than four options in 2-mark questions). Candidates tended to have more mixed results when it came to answering the 2-mark questions. This was particularly so with those questions that presented a legal problem and required candidates to select the correct legal solution to the problem out of four possible answers. The reason for the mixed results could be that candidates had not sufficiently understood the legal principles going into the exam, or it may be down to inadequate examination preparation, or it may be an issue of not reading the question and the options slowly and carefully enough to be able to correctly pick out the correct answer.

Advice that may be given in this regard may be divided into (1) pre-examination techniques and (2) techniques for during the examination. Before even sitting for the examination candidates are encouraged to internalise the legal principles which they are taught and to ensure that they understand when and how they become



applicable. They must pay attention to decided cases that they are taught because cases provide actual examples of the application of legal principles to a problem.

During the examination candidates are advised to read questions slowly and carefully. It is important to ensure that one understands the question and all the options available for selection. Pay particular attention to questions which are phrased in the negative (e.g. which of the following is **NOT** an example of”) because these might not be as straightforward as those posed in a positive manner (“which of the following is true of”). For the 2 mark questions in particular, candidates must carefully read any facts to ensure that they understand the fact pattern that is presented.

Three additional pieces of advice may be added to the above. First, candidates are advised to attempt to answer all questions. It is better to select an answer which you feel may be correct even if you may be uncertain that it is truly correct. It is not sound examination technique to completely avoid attempting a question. An un-attempted answer will result in no mark being awarded, yet an attempt may end up being the correct one and may gain you one or two marks, which could make a difference to overall performance. Second, candidates must avoid selecting multiple responses to a question. This will result in no marks being awarded for that response because the response will be deemed to be unclear. Finally, candidates must ensure that they select a response which is a valid option for the question posed. There are a few instances where candidates would, for example, select response D when the options were A, B and C only. This can be achieved by candidates slowing down and being extra careful in selecting the answer that they really mean to select.

The syllabus topics in which candidates performed particularly well in Section A were: law and the legal system, sources of law, the formation of contracts, agency law, partnerships, employment law (the contract of employment) and breach of contract.

Syllabus topics in which candidates performed well were: contents of contracts, employment (dismissal and redundancy), and corporations and legal personality.

Syllabus topics in which candidates did not perform well were: the law of delict and professional negligence, share capital, company directors, liquidation and administration as well as corporate fraudulent and criminal behaviour. These five areas are the ones which future candidates are advised to pay more attention to, with particular focus on the following areas:

1. the voluntary dissolution of companies;
2. the variation of class rights;
3. defences to delictual liability;
4. the rights of employees upon the termination of employment;
5. the rights of shareholders upon the liquidation of a company; and
6. the effect of liquidation on a company (e.g. on company assets, on proceedings against the company before the courts etc).

Sample Question for Discussion

Following from the above elaboration we can now take a closer look at a question which presents an opportunity for learning. Question 13 was on the topic of the contents of a contract. The law of obligations, especially contract law, is a very important syllabus area. Understanding contract law also helps us to understand how business relations are formed (such as employment, agency and partnerships) in subsequent syllabus areas. A



further reason to explore this question is because the vast majority of candidates did not select the correct response to the question. It was a 2 mark question and candidates typically struggle with these types of questions. We can use it to examine how a candidate should eliminate wrong distracters and remain with the correct response to a question.

The question read as follows:

Kerry takes her black dress to a dry cleaning company. When she collects the dress she finds that it has become faded after the cleaning. The receipt from the company contains the clause 'the company is not responsible for damage or loss of any nature.'

Which of the following describes the nature of the clause?

- (1) Implied term
- (2) Representation
- (3) Express term
- (4) Exemption clause

- A** 1 and 4
- B** 2 and 3
- C** 3 and 4
- D** 4 only

The process for answering these types of questions is to concentrate on the definitions of the terms and to apply the definitions to the facts to see whether or not they fit the given fact pattern. Understanding the definitions of key legal terms is very important. In fact, we would suggest that for every syllabus area candidates should create a list of all the key terms and commit them to memory as part of their examination revision.

Implied term: This is an obligation that is not directly stated in words in the contract but which is read into the contract by the courts either because it is implied by law or by custom or by trade usage.

Representation: This is not a term of a contract but is a statement which is made during the negotiation stage, which statement induces a contract.

Express term: This is an obligation which the parties have directly articulated as forming part and parcel of their contract.

Exemption clause: This is a contract term which limits or excludes one party's liability under the contract. Applying these definitions to the given facts we notice that the facts stipulate that "the receipt contains a clause". This helps us to eliminate the possibility of the clause being an "implied term" because something which is clearly stated in the contract cannot be an implied term. This, therefore, eliminates the possibility of **A** being the correct answer to the question.

Because we have noted that the clause is expressly stated (thus, is an express term) this leads us to either **B** or **C** potentially being the correct answer. So, besides being an express term, is it also a representation, or is it also an exemption? We see that it did not merely induce the contract, it was made an actual provision of the contract and it limits the liability of the dry cleaning company. Therefore, it is an express term and an exemption clause.



Therefore the correct answer is **C**. The majority of candidates selected **D**, that the term is only an exemption clause. However, had they taken the time to remember the definition of an express term they could have realised that it was also an express term.

Section B Performance

Candidates performed comparably better in Section B.

The best performance was in the questions that dealt with the law of contract and with agency. For the question on contracts, candidates generally displayed sound understanding of the principles relevant to the formation of contracts. Candidates were required to understand the capacity of parties to contract and the requirements for the valid acceptance of an offer. Candidates showed some understanding of the general capacity of an unrehabilitated insolvent to contract, but not the exceptions of when such a person can contract. Further, for one of the questions the issue of when the acceptance was communicated was a critical issue yet some candidates ignored this detail and ultimately gave the wrong answer to the question. Candidates are advised that it is important to note all the details that are provided in a question: who did what, how and when, because these finer details are important in the determination of the final answer.

Candidates displayed a reasonable understanding of agency law. The question required the correct identification of the type of agency relationship, as well as the respective rights and obligations of the principal and the agent. The majority of the candidates did not correctly identify the type of the agency relationship, but most correctly answered the parts on the liability of the principal and the rights of the agent.

Candidates did not perform as well in questions that dealt with any aspect of company law. It is advisable for future candidates to familiarise themselves with the provisions of the Companies Act 2011 so that they understand what companies can and cannot do. There seemed to be insufficient understanding of the law. When it came to writing responses, the biggest mistake that candidates made was in relation to the language that they adopted. If a question asks whether something is “legal” or “lawful” then this is clearly a “yes” or “no” question. Candidates are expected to very clearly answer either “yes it is legal”, or “no it is not legal” and then to give reasons for their conclusion. Marks are allocated for the correct answer as well as for the correct reasoning. What candidates did instead was to either:

1. Not state either “yes” or “no”.
2. Provide a one-word answer of “yes” or “no” without any supporting reasons for the conclusion.
3. Write in an ambivalent manner such as “it could be legal”, or “it should be legal” or “it is not advisable” etc. These types of responses are not sufficiently explicit and should be avoided.

The most worrying trend was that the majority of candidates struggled with the question on corporate fraudulent and criminal behaviour. This is a very important syllabus area and one that candidates are encouraged to pay more attention to. The most important advice which can be offered here is that candidates must familiarise themselves with the detail of all the relevant offences. They should pay particular attention to the following, all of which can be obtained either from the study materials or from the legislation itself:

1. The elements of the crime. By this we mean: what factors must be present for one to be found guilty of the commission of the particular crime. For example, for the crime of money laundering a person must, generally, illicitly acquire or convert property with the aim of concealing its illicit true nature or origins. Therefore, should you be asked whether a person has committed this crime, you should be able to look at



the facts and see whether these elements are present in order to fulfil the commission of the crime of money laundering.

2. Defences to the crime. For example, a person may be guilty of the crime of insider trading if they use confidential information obtained in their position as an employee, agent, or professional adviser in order to secure an improper commercial advantage for themselves or for another person. However, it is a defence to the charge if, at the time the confidential information was used, its confidential nature had disappeared or the user was no longer an employee, agent or professional adviser of the complainant. Knowing this defence will be helpful in answering a question on liability for this offence.

3. The roles and functions of important office bearers in the legislation. For example the Directorate on Corruption and Economic Offences in the Prevention of Corruption and Economic Offences Act 1999.

It is important to note that it will never be a requirement for candidates to know very specific details about the punishment for these offences, such as the monetary value of fines or imprisonment terms etc so there is no need to memorise such details.

Next it is important to address examination technique, presentation and timing with respect to Section B. Examination technique was generally sound. One noticeable practice was that many candidates attempted questions in the order in which they felt more confident about the prospects of answering correctly. This is quite acceptable and candidates must remember that questions do not necessarily have to be attempted in the order that they appear in the paper. It is permissible to start with the questions that you feel more confident about answering. However, candidates must make sure that it is always clearly evident which question is being attempted at any particular point. Sometimes candidates did not number their answers clearly.

Also on examination technique: it is important to answer the question being asked. At times candidates would answer a question in the wrong part of their answer. For example, giving a response that is relevant to part (b) of a question when they are answering part (a) of the question. Always match the response to the correct question because the examiner cannot take answers given in one part of a question and apply them to a different question. Also on the issue of answering what is asked, sometimes candidates would completely fail to answer a question that is posed and instead write irrelevant responses. Language and comprehension seemed to be the cause of this mistake.

As was said of Section A: it is sound exam technique to attempt to answer every question. In fact, the examination instructions clearly require candidates to “attempt all questions”. But besides this stipulation, it is always advisable to attempt all questions so that one can maximise the chances of being awarded more marks. Even if you have an idea but are not 100% confident of its accuracy, it is better to write what you believe might be correct than to leave the answer blank because you never know: it may just be correct. In this regard it may be best to leave questions that you are unsure of as the last ones that you attempt to answer so that you don’t waste time that you could have used more profitably in answering those questions that you felt more confident about.

Finally on examination technique, candidates need to ensure that they give a comprehensive response to a question but also remain relevant and concise. At times candidates would give needlessly longwinded responses that went beyond the confines of the question that they were responding to. It gave the sense that the candidate had read the topic thoroughly and, understandably, wanted to showcase their knowledge. However, unfortunately, if you give additional and non-essential information this just wastes time because no marks can be awarded for information that was not required to answer the question.



Moving on to presentation, this was generally satisfactory in that the majority of candidates wrote very clearly in legible handwriting. The majority clearly labelled their answers and spaced out their work so that it was not cramped and difficult to read. However, a few presentation errors that should be avoided are where candidates did not begin a new answer on a fresh page or that, when they deleted sections of their answer, they did not clearly show which parts have been deleted and which parts remain.

Timing did not seem to be an issue at all for candidates as far as Section B was concerned. For most of the candidates who did not complete the section, it seemed to be a deliberate act of not attempting a particular question in a subject area that they found challenging, rather than an issue of poor time management.

Conclusion

The performance of candidates in the December 2015 session of the Paper F4 LSO examination was unsatisfactory. However, there were several areas in which candidates performed well in the paper. Candidates have displayed sound time management and the majority attempted all questions. Examination technique is admirable; candidates must just match that with adequate examination preparation.