

Examiner's report

F4 (LSO) Corporate & Business Law

For Paper Variant exams December 2016

General Comments

This report gives feedback on the December 2016 F4 (LSO) examination paper. It discusses the performance of candidates in the examination and gives advice on how candidates can improve their performance in future examinations in this paper.

The paper was divided into two sections: Section A and Section B. Section A contained forty-five multiple choice questions (MCQs) which were marked out of a total of 70 marks. Some questions had three options and were worth one mark, while other questions had four options and were worth two marks.

Section B contained five multi-task questions (MTQs). Each question had a fact pattern and candidates were asked a number of questions which required the application of legal principles to the facts. Each question was marked out of a total of six marks and the total marks for Section B was thirty. All questions in this paper were compulsory. Therefore, the examination was marked out of 100.

Overall, the performance in this examination was satisfactory. Candidates generally had a sound grasp of the course contents.

Comments on Section A performance

Overall performance in Section A was fair. Candidates exhibited excellent performance in questions testing knowledge of study guide areas A (law and the legal system) and D3 (corporations and legal personality). Very good performance was seen in questions on employment law and the law of obligations, in particular contract. For those questions where candidates performed less well, the areas appear to be very diverse. What is common though is that most of the questions are two-mark questions where candidates were required to select the correct key out of four options, rather than three options. These questions seemed to be challenging for candidates, regardless of the study guide area that they tested.

In terms of general advice regarding preparing for examinations in this paper, candidates are advised to study all syllabus areas thoroughly to ensure that they have a broad knowledge of the course content and can answer questions from all the study guide areas. Candidates should note that they will not need to recall precise sections of the relevant legislation, but they can expect to be asked issues covered in legislation such as the elements of certain offences (e.g. in the Penal Code), or the procedure for voting during company board meetings (Companies Act) etc. Attention must also be paid to defences, where relevant. However, candidates should not that they are not required to remember specific details about penalties, such as the relevant periods of imprisonment or the amounts of fines.

Candidates are advised to pay particular attention to the following:

1. Definitions of key terms. Every topic has critical terminology. A useful revision strategy for candidates might be to write a list of terms that appear under each syllabus area along with the definitions of the terms so as to make terminology one component of their study. This would help them to understand questions that are posed using these terms and to use such terminology appropriately themselves.
2. Steps in procedures. Law is not only about substantive issues; procedural regularity is also important to understand. Candidates will come across several procedures, such as those for law-making and for partnership or company dissolution etc. They should note the steps that are taken in these processes so that they will be able to

answer questions requiring knowledge of these steps and will be able to identify instances where they are not correctly followed.

3. Mutual Rights and Obligations. Most topics examine legal relationships between different entities: whether between citizens and the state (Study Guide A); contractual creditors and contractual debtors (Study Guide B); employers and employees (Study Guide C); agents and principals or between partners (Study Guide D); and between companies and directors or shareholders (Study Guide F). For all of these relationships, candidates should note the mutual rights and obligations of the parties because they may be required to identify whether someone's rights have been infringed or whether an obligation is owed by one party to another, for example, whether or not an employee is entitled to a certain benefit, or in which instances an agent is entitled to reimbursement by the principal.

4. All concepts explored in the syllabus. Every study guide area involves unique concepts. For example, breach of contract, unfair dismissal etc. When preparing for examinations, candidates should ensure that they understand all such concepts thoroughly because they may be required to apply a concept to given facts, for example to determine which actions, out of a list, constitute breach of contract. Alternatively, they may be required to identify a particular type of breach of contract involved in given facts, e.g. whether it is mora or repudiation, or to identify actions which qualify as examples of unfair dismissal. In order to answer these questions, candidates must understand the concepts and be able to apply them to the given facts in the question.

In terms of answering the examination paper itself, candidates are urged to attempt all questions. Even when they are unsure about the answer, it is better to select the response that seems most reasonable and most likely to be correct, rather than to leave the question unanswered. It is good exam practice to do so.

Finally, candidates should questions carefully to ensure that they understand what is required. It is a good idea to first identify the subject area being tested so that they can recall the knowledge that is appropriate to that area. In reading the questions, they should pay particular attention where questions are in a negative format, e.g. "Which of the following is NOT an example of." When they have understood the question, they should read all of the options carefully. A useful strategy here is to begin by eliminating the most obviously incorrect one, followed by the next and the next until they find the correct key. It is essential only to select one answer. (Candidates who select more than one answer will receive no marks for that question, even if the correct answer is one of those selected.)

Sample question

As an example of how to approach section A questions we can examine one question in the paper which read as follows:

Which of the following do NOT qualify for appointment as a company director?

A Arlene, who was convicted of driving while under the influence of alcohol in 2014 and sentenced to six months in prison

B Edison, whose estate was once sequestrated in 2012 but who applied for rehabilitation in 2013

C Stacey, who has been charged with fraud

D Anthony, who is 19 years old

2 Marks)

All candidates attempted this question, and the vast majority selected C as the key. However, the correct answer was A.

The first thing to do is to identify the study guide area so that we can begin to recall the relevant legal principles. The question can be identified as belonging to study guide area F1 (Company Directors) because it tests qualification and disqualification for appointment to company directorship.

Next we identify the issue. The issue is which of the described individuals do NOT qualify for appointment as a company director. When we have identified the subject area and the issue we then need to recall the law on the qualifications of company directors. This is found in section 57 (3) of the 2011 Companies Act which provides a list of those who are disqualified from appointment, being:

- (a) bodies corporate;
- (b) persons under the age of 18;
- (c) (i) except with leave of Court, an unrehabilitated insolvent;
- (ii) persons who have been convicted, in the immediate preceding 5 years, of offences under the current or past Companies Act or any law relating to insolvency and sentenced to serve a term of imprisonment without the option of a fine; an offence involving dishonesty; or a criminal offence and was sentenced to a term of imprisonment without the option of a fine;
- (d) Persons who have been removed from an office of trust by a Court on account of misconduct;
- (e) Person who are of unsound mind; or
- (f) Persons who do not comply with any qualification for directors contained in the articles of incorporation of a particular company in which they are seeking directorship.

After recalling the law we then carefully read the options. Arlene was convicted of driving while under the influence of alcohol. That is a criminal offence. She was sentenced to imprisonment. Therefore, she is disqualified from directorship by virtue of Section 57 (3) (ii) because she was convicted of a criminal offence less than five years before the purported appointment and she was sentenced to imprisonment without the option of a fine.

When it comes to Edison we note that he was an insolvent up until 2013 but is now rehabilitated and therefore he does not fall under the exclusion of Section 57(3) (c). He qualifies for appointment. The position of Stacey requires careful understanding of legal terminology. As has been noted above, candidates are advised to pay careful attention to terminology. The section excludes persons who have been “convicted” of offences involving dishonesty. However, Stacey has only been “charged” with such an offence (fraud), and not “convicted.” Therefore she is not disqualified from appointment. Lastly, Anthony meets the minimum age of appointment, and therefore he too will qualify. After applying the law to the facts, candidates should have concluded that Edison, Stacey and Anthony qualify for appointment and it is only Abigail who does not qualify and therefore the correct key is A.

This question is a useful example because company directorship is an important and regularly tested topic in the paper. Secondly, as has been noted, candidates find questions with four options more challenging than those with three options. Therefore, it is important that they be advised on the thought processes behind attempting such questions.

Comments on Section B performance

Section B contains short answer questions which test candidates' knowledge of concepts, as well as their ability to apply those concepts to the given factual scenarios. Candidates performed well on the question on the law of obligations. They were able to explain the relevant concepts and, in most cases, to correctly apply them to the facts.

Candidates performed fairly on questions on partnerships and company management, although with the latter there was some evidence of insufficient understanding of the role of the various actors in the administration of companies, e.g. the role of shareholders, the board of directors, the chief executive officer. However, most seemed to appreciate the role of directors in binding companies by the contracts that they enter into on behalf of the company.

Candidates performed less well when they were tested on rules regarding capital maintenance and on corporate fraudulent and criminal behaviour. With capital maintenance, candidates could not identify actions which were against the principle of capital maintenance. They understood what the question required of them, but lacked adequate knowledge of the subject area. With respect to corporate fraudulent and criminal behaviour, this is an area where candidates regularly struggle to perform well. The main problem is identifying the question as falling under this study guide area. Some candidates erroneously identified the question as falling under employment law or corporate management, and this led to the application of irrelevant legal principles. Candidates are advised to be very careful in making their deductions about the study guide area being tested. A further difficulty was that candidates did not read the question carefully enough to understand what information was being sought. The question firstly required candidates to identify the offence that was committed by one individual. Then, in a follow-up question, candidates were asked to determine whether another individual was also guilty of the same offence as the first individual. Candidates went on to explore offences that the second individual could potentially be guilty of, instead of addressing whether they were guilty of the same one that was committed by the first individual. This illustrates how important it is to read questions carefully.

On a positive note, many candidates displayed sound understanding of case law, and used cases to illustrate their answers to questions. Although it is not a requirement for candidates to cite specific cases, doing so is an appropriate way of illustrating the application of particular legal principles. What is fundamental is understanding legal principles and applying them correctly. Some candidates used relevant examples to try to further explain and justify their answers. This too is acceptable practice.

The first piece of advice relating to Section B is, as with section A, that candidates should prepare adequately for the examination. Candidates should read broadly and ensure that they understand all the terms and concepts referred to throughout the syllabus. Candidates sometimes struggle with concepts such as: rights versus obligations; breach versus remedy, and offence versus defence. This leads them to give incorrect answers because they fail to decipher what the question requires of them.

Secondly, candidates should aim to answer all questions. Candidates should remember that they can attempt questions in any order, not necessarily in the order in which they appear. Therefore, they may elect to begin with those questions which they feel most confident about. However, it is important to begin each question on a fresh sheet and to clearly label the question being answered. It is better to try than to leave an answer blank. Some candidates fail to answer all questions because of time pressure. It is important not to spend too much time on any one question (by giving concise yet thorough answers) so that there is enough time to attempt all questions.

As illustrated above, it is essential that candidates read questions carefully to make sure that they understand the facts and the issues which they are required to address. If there are separate issues involving different people then they should separate their discussion so that it is clear which principle applies to which person in particular.

Candidates should avoid giving two conflicting answers to a question. For example, in the question on contract, candidates had to determine whether a certain action constituted breach of contract. Some said that in some ways the action constituted breach of contract, but on the other hand it didn't. Answers which cancel each other out should be avoided.

Questions in section B require fuller explanation than those in Section A which only involve the selection of the correct key. In Section B, candidates should pay attention to the verb used in the question. For example, the use of "explain" requires candidates to give reasons for their answers, whereas the use of "identify" does not require this. Some candidates gave cursory answers which were not detailed enough to satisfy the instructions.

Finally, candidates are advised to pay attention to the mark allocation of questions. Some questions are marked out of 2 and others out of 4. The more marks are available; the more is expected in terms of the quantity of the discussion.