Examiner's Report

F4 LSO Corporate & Business Law
June 2015

Introduction

This report provides feedback on the June 2015 Paper F4 (LSO) examination. It discusses areas of strength and areas of weakness which will advise candidates in their preparation for future F4 (LSO) examinations.

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). All questions in the paper were compulsory.

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. In Section B, each question begins with a scenario and thereafter there follows three sub-questions flowing from that scenario. Each sub-question was worth 2 marks for a total of 6 marks per question. The first sub-question typically tested general knowledge of the subject area, while the second and third sub-questions tested the application of legal principles to the scenario in the question. The total marks for Section B was 30.

Generally the performance in the examination was satisfactory. There is strong evidence that students understood the contents of the syllabus and prepared adequately for the examination.

Section A

Performance

Performance in Section A was fair. What can be noted is that candidates performed better when answering questions with three options rather than those with four options. Most of the questions that were inadequately performed in were those with four options. Those questions which were well done also tended to be questions with only three options rather than four.

Candidates performed very well in the following syllabus areas:

a. The two introductory topics (A1 and 2): Law and the legal system and sources of law. Almost all students tended to answer questions in these areas correctly, save for only two areas: the passage of legislation and the concept of *res judicata*.
b. The law of partnerships was generally very well understood.
c. The law of contract in general was very well done, and, in particular, the topics of contract formation, and breach of contract, including remedies for breach of contract.
d. Company officers, in particular, the roles and responsibilities of company directors and auditors was also a topic in which candidates tended to answer questions correctly.

e. In employment law candidates performed well in questions dealing with issues surrounding dismissal.

The syllabus areas in which candidates performed inadequately included:

a. Fraudulent and criminal behaviour. For example, candidates struggled to correctly identify accountable institutions in relation to the offence of money laundering.
b. Employment Law in general appears to be an area where candidates experience difficulty identifying the correct answer.
c. In the topic of delict, candidates performed inadequately when it came to the aspect of professional negligence. In this case it was on the requirements for liability for professional negligence.
d. Although candidates tended to perform well in questions on the law of contract, some areas of the law of contract seemed to present candidates with difficulty. These areas were: the effect of mistakes on contract enforceability, and the contractual capacity of minors.

Candidates are advised to attempt to answer all questions in section A. It is always better to make an attempt rather than to leave any question unanswered because your initial thought may be correct. There were not many instances of candidates selecting more than one option, but it is worth mentioning that candidates should consider the correct answer carefully and ensure that they only select one option as the answer and not make multiple selections.

Generally, for all subject areas, candidates should pay attention to processes. Where there is any process involved (e.g. in law-making, company formation, corporate liquidation, etc) pay attention to what the steps are in the process and the requirements associated with each procedural step because questions can revolve around procedural requirements.

The knowledge of rights and duties can also prove to be important in questions in Section A, for example knowing the rights and duties of employers and employees, or of partners in a partnership, or of company officers, etc. It is a good idea to focus on such issues because you may be asked to identify whether someone's rights have been infringed.

Further, it is important to always know the requirements for legally establishing a thing. For example: what are the requirements for a fair dismissal under employment law? Or for establishing when a company may be compulsorily wound up by the court?

In terms of advice on specific syllabus areas, candidates are advised to work to strengthen their understanding of the syllabus area corporate fraudulent and criminal behaviour. In particular, candidates should learn to appreciate the nature of the offences thereunder (money laundering,

bribery, corruption and insider trading) and to differentiate these offences from each other. In the Law of Contract candidates should pay attention to conditions that render contracts void or voidable.

Sample Question

This section of the report discusses one question with which candidates experienced difficulties.

Question 35

Question 35 was on the law of contract. It is important to highlight this question for three reasons. First, most of the candidates answered this question incorrectly. Second, the law of contract is fundamental in Paper F4 and many of the questions in section A revolve around this syllabus area. Third, candidates have been found to struggle with 2 mark MCQs and this was one such question. In highlighting it the hope is that future candidates will have a better idea of the thought process behind answering such questions.

The question read as follows:

Which of the following types of mistakes will render a contract void?

(1) Mutual mistake
(2) Common mistake
(3) Mistake of law
(4) Mistake of motive

A (1), (2), (3) and (4)
B (3) only
C (1) and (2) only
D (4) only

(2 marks)

The majority of candidates believed that the correct answer was B- i.e. that it is only a mistake of law that renders a contract void. This is perhaps because candidates remembered the saying that "ignorance of the law is no excuse." It is correct that a mistake of law renders a contract void but that is not the only type of mistake that will render a contract void. This is a typical mistake that candidates make: the first answer that may immediately capture their attention is selected as the correct answer without enough consideration of the other options. Candidates must consider each option and conscientiously discard incorrect options until they are left with the correct answer. To answer this question, candidates ought to have engaged a three-step thought process:

a. Recall the definition of "void" as opposed to "voidable" contracts.

b. Recall the definition of the types of each mistake in the question.
c. Recall the effect of each type of mistake on a contract.

a. A contract that is void is one which is unenforceable. It cannot create any rights or obligations for the parties. This can be distinguished from a voidable contract which, although it may suffer from some flaw, can, nevertheless, be enforced by the parties should they choose to. For example, where there has been a misrepresentation, the party to whom the misrepresentation was made, can elect to reject the contract or to enforce it. It is voidable. A contract that is void can never be valid regardless of the intentions or the desires of the parties to it. Therefore, candidates should have begun their answer by remembering this distinction between a contract that is void and one that is merely voidable so that they understand the critical concept involved in the question.

b. The next step was to recall the definitions of the different types of mistakes in the question.

A **mutual mistake** is one where the acceptance does not correspond with the offer thus rendering the parties to be at cross-purposes.
A **common mistake** is where parties are *ad idem* but they are both commonly mistaken about something material on which the contract depends, thus rendering the contract impossible to perform.
A **mistake of law** is a mistake of the parties regarding the application of the law to the obligations that they are undertaking.
A **mistake of motive** is when parties are mistaken about the motivation of the other for entering into the contract.

c. Last, candidates should have recalled that the effect of a mutual mistake is that, since the parties are not *ad idem*, there can be no contract. Such a mistake, in other words, renders the contract void. The effect of a common mistake is that, because parties are mistaken about something on which the contract materially depends, performance is impossible and thus the contract is also void in this instance. Ignorance of the law is not an excuse, therefore a mistake of law will not render a contract void. Neither will a mistake of motive render a contract void because we cannot ascertain what was in the minds of parties nor what their subjective motivations were for entering into the contract. Therefore, it follows that the correct answer is C- a mutual mistake and a common mistake will render a question void.

Comments about Section B

Generally candidates performed well in their answers to Section B. In most instances candidates reflected sound knowledge of the syllabus area, good writing skills, and even a sound grasp of relevant case law which they used to illustrate their application of the law.

There are a few errors that candidates made which may be flagged for future candidates to beware of. First, in a few instances candidates did not plan adequately before attempting questions and therefore ended up cancelling parts of their answer and this caused time-management issues for some and affected their ability to complete all answers in time. It is important to always carefully plan the answer that you will give before you begin writing.

Second, some candidates did not attempt to answer all questions. It is a good idea to attempt all questions because you never know whether your attempt will be correct or not. Although it is a good idea to begin with those questions where you feel most confident, but, should you have time, try to go back to all the other questions and at least attempt to give what you believe is a reasonable answer as best as you can.

Third, be careful to confine yourself to the question that is posed. It is often tempting for candidates, in an area where they have studied thoroughly, to want to display how well they understand the topic and then they end up giving information which is not strictly necessary for answering the question. Make sure to thoroughly answer the question, but give no more information than that which is required.

Last, although it may sound obvious, but candidates must answer the question. This is especially important for parts (b) and (c) which are application questions. The answer that a candidate gives must apply the law to the facts in the question. There were instances of where candidates merely set out the general legal principles but without applying them to resolve the issues in dispute in the question. Candidates must appreciate the difference between knowledge questions and application questions.

Candidates struggled with the first question in Section B. It related to the topic of the alteration of capital. In this instance candidates needed to know the procedure for the alteration of capital and to judge whether the strategies employed by two different companies (company A and company B) were legal methods to alter capital. There are two incorrect approaches that candidates used in answering this question. The first was that some candidates grouped the two companies together in giving their answer. If company A did something and company Y did something different and you are required to comment on the legality of each company's strategy then you must separate your discussion so that you discuss company A's strategy separately and why it is/is not compliant with regulatory requirements, and then company B's strategy and why it is/is not compliant. It is not correct to attempt to discuss the two together since they have adopted different strategies. Second, some candidates merely stated that a particular company's strategy for capital alteration was illegal or legal, but did not justify their conclusion. Not only is the correct answer required, but justification of that answer is particularly important in answering questions in Section B

Candidates had an inadequate understanding of a partnership under the common law and a partnership registered in terms of the Partnership Proclamation 1957. It may be recommended that emphasis should be made on the distinction between the common law partnership and a statutory partnership and the consequences that flow from each form of partnership.

It is important for candidates to read questions carefully so that they understand all the words and the meaning of the question. For example, there was a question on company directors which required candidates to discuss the "function" of a managing director. Some candidates misunderstood the concept of a "function" and, instead, listed the duties of a managing director. A function means "purpose" or "role", and not duties. This misunderstanding led some candidates to discuss irrelevant content.

Candidates displayed inadequate knowledge/understanding of corruption and bribery as offences under the Prevention of Corruption and Economic Offences Act 1999. It is recommended that offences created by different statutes be studied thoroughly and the elements of each offence be studied as tabulated by the Act concerned. Candidates should be assisted to draw a distinction between these offences and their respective elements.