

Examiner's report

F4 (LSO) Corporate and Business Law

For Paper Variant exams June 2016

General Comments

This report provides feedback on the June 2016 F4 (LSO) examination paper. It aims to highlight the areas of strengths and weaknesses in the answers given by candidates in the examination and to provide advice which may be useful for future candidates as they prepare for examinations in this paper.

As with recent papers, this 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 emanating from the presented scenario. Each question was marked out of a total of six marks and the total marks for Section B was thirty. Questions in Section B tested both general knowledge of the subject areas, as well as the application of legal principles to the facts presented in the scenarios. All questions in this paper were compulsory.

Overall, the performance in this examination was satisfactory. Candidates appeared to have a sound grasp of the contents of most of the syllabus areas, although there are a few areas which future candidates would be encouraged to pay closer attention to which are discussed below.

Section A

Performance in Section A was generally satisfactory. Candidates performed particularly strongly in questions dealing with the law of contract, delict, employment law, the legal personality of corporations as well as company directors. This was the case whether the question had three options or four options. Candidates performed satisfactorily in questions on law and the legal system, sources of law, capital financing and corporate fraudulent and criminal behaviour. However, performance in the areas of agency and liquidation was generally inadequate.

Candidates are advised to attempt all questions. It is always better to make an attempt rather than to leave any question unanswered because your instinct about the answer may be correct.

As candidates prepare for the examination they should pay attention to the definition of terms and concepts because in some instances it appeared that candidates did not fully understand some of the words and concepts used in the questions, hence their inability to provide correct answers. It might be helpful to learn a list of definitions of the key terms that are used in every syllabus area. For example: harm, fault, wrongfulness and causation in delict.

Related to the above, candidates should also pay attention to the elements that go towards making a thing what it is. For example what are the elements of a fair dismissal, such that, if one of them is missing, then the dismissal is rendered "unfair?"

Candidates are further advised to pay close attention to processes because some questions in the examination may require the recollection of how things are done, for example: the steps in

company registration, or the steps that an employer must go through before retrenching employees, or the steps followed in company liquidation, etc.

The knowledge of mutual rights and duties across the syllabus areas is very important and candidates are urged to learn these. For example, the mutual rights and obligations of employers and employees; agents and principals, partners inter se, 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 or whether an obligation is owed by one party to another.

Related to the above is the need to concentrate on remedies and defences. Candidates must be able to know what remedies are available to an individual whose rights have been infringed. For example, one question required the identification of an appropriate remedy for a particular breach of contract and another question required candidates to identify the correct defence to delictual liability.

Candidates are advised to pay attention to the differences between things. For example, a question may require a candidate to be able to identify whether an individual is an employee or an independent contractor. An understanding of the distinction between these two will be critical. An illustrative example is that this examination required candidates to identify which characteristics were true of a partnership but not of a company.

In this section of the report we will take an example of a question from the examination. The selected question is one which was not answered correctly by the majority of the candidates in this examination session. Further, candidates seem to struggle with questions from this area of the syllabus, particularly those with four options. The question read as follows:

Phyllis manages Abigail's shop. Her contract does not say anything about purchasing goods on credit but she has purchased goods for the shop on the company's credit. When her contract formally ends, she continues purchasing goods on company credit for six months.

Which of the following regarding Abigail's liability for Phyllis's purchases is correct, and for what reason?

- A She is not liable because Phyllis lacked actual authority
- B She is not liable because Phyllis acted fraudulently
- C She is liable because Phyllis had actual authority
- D She is liable because Phyllis had apparent authority

(2 marks)

All candidates attempted this question, and there was a fairly even spread of answers that were given. The correct answer was D.

The first important thing to do for such questions is to identify the syllabus area being tested. It falls under the law of agency because one individual (Phyllis) is performing acts on behalf of another individual (Abigail). The possible responses also indicate that the syllabus area is agency law. Second, identify what is the issue in the question. Here the issue is whether or not Abigail is liable for the purchases made by Phyllis under the circumstances presented in the facts.

Third, recall what is the law on the issue: under what circumstances will a principal be bound by the acts of their agent? Remember that a principal will be liable where the agent had actual authority or apparent authority.

Look to see whether there is one answer which is easily eliminated. B is obviously incorrect because there was nothing fraudulent in what Phyllis did. There is no element of dishonesty in her conduct nor intention to deceive others for her own personal gain.

D states that Abigail is liable because Phyllis had apparent authority. Candidates will recall that “apparent” or “ostensible” authority arises where a representation was made that the agent had authority to act on behalf of the principal. The conduct of the principal must contribute to the representation. If third parties rely on the representation and contract with the agent then the principal will be estopped from denying the authority of the agent. In this instance Abigail took no action while Phyllis purchased goods on credit on behalf of the store. This inaction created a representation that Phyllis had authority so to contract. This was believed by the store’s creditors who extended credit to the store. This went on for months, even after Phyllis’ contract had expired. Abigail will be estopped from denying that Phyllis had authority and she will be bound on the ground of apparent authority.

Comments about Section B

The strongest performances were in response to the question on law of contract. Candidates were able to easily identify the issues in the question and to apply the relevant principles, with some candidates illustrating their points with appropriate case law. Another area in which candidates performed soundly was on corporate legal personality, as well as on the duties of directors.

However, candidates did not perform as well on the question dealing with the financing of companies as well as corporate fraudulent and criminal behaviour. Candidates seemed to not understand the difference between bribery and corruption. Generally also candidates struggled to understand the differences between criminal liability and civil liability. For example, they would refer to convictions, imprisonment terms and amounts of fines in a question asking about remedies that one individual may pursue against another individual. Other common misunderstandings relate to the meaning of “remedies” as well as what is meant by “defences.”

Apart from these errors, some sound practice was observed in responses to questions in this part of the paper. First, some candidates used sub-headings to divide up their answers in order to address different parts of a question. This made it clearer to the marker and it also helps the candidate to check whether they have answered all parts of a question.

Second, some candidates referred to cases to show the application of a legal principle that they had just referred to. That was often very useful in backing up their answers. The only caution when doing so is that candidates must try to be as concise as possible in their case discussions so that they manage their time well. State the case name, brief facts, the issue and the holding and then tie up by stating how the case is authoritative in the question being answered or how does it help you to resolve the question posed. Candidates are urged to not use a case as an answer to a question. When you start your answer don't go directly to a case and end there. A case in itself doesn't answer the question, but can only back up the answer that you have given to a question by illustrating how the law has been applied in practice. You answer a question and then you refer

to a case to show that the same answer was arrived at previously in a certain case, using a case authoritatively. It's not enough to just discuss a case without saying how it is relevant to the question.

Last, some candidates used examples to try to explain their answers. This is acceptable but it must be noted that examples on their own, like cases, are not an answer to a question. They can be used to highlight or amplify an answer but they don't replace an answer because they are not an explanation of a concept. They only illustrate a given explanation.

Ensure that you understand all the terms and concepts used in this paper as they are being taught. It was evident that candidates were using words and referring to concepts which they did not clearly understand because they were not using them correctly in attempting to answer questions. For example, candidates were required to determine whether a contract existed between two parties. This required knowledge of the elements of a binding contract. Instead of saying: "there is no contract between A and B" they would say "there is an invalid contract between A and B." Either there is a contract or there is no contract; there cannot be an invalid contract. Candidates also clearly failed to grasp the definition of the "corporate veil" as used in the area of corporations and legal personality.

The importance of being prepared for the examination cannot be overstated. Make sure that you read every topic in the syllabus because you never know where a question will come from. Instead of trying to predict or spot, read widely so that you can at least attempt every question.

Aim to answer all questions in the examination. The top two reasons why candidates fail to attempt all questions is:

1. Inadequate time management.
2. Not making any attempt at some of the questions, possibly because they think that they do not know the answer.

For 1: manage your time wisely. Perhaps consider starting to answer the questions that you feel most confident about. That will boost your confidence and ensure that you've at least answered the questions that you can potentially perform very well in. Don't spend too much time on any one question. Remember that you don't have to answer the questions in the order in which they appear. You can start with any question that you want to answer and work your way through the paper in which ever order you feel most comfortable. The only thing is to clearly label your answers.

Read questions carefully and make sure that you fully understand the facts: who did what, when, where and how. And make sure also that you understand what the issue in the question is. Be particularly careful where there are multiple people in the facts of the question. Make sure that you understand who did what and don't confuse them/mix them up in your answers.

Answer the question. This seems pretty obvious but it needs to be said because sometimes candidates simply don't answer the question. To make sure that you are really answering the question that has been posed, take time to carefully read the question and then make sure that everything that you write corresponds with what was required by the question and write no more than necessary because you won't get additional marks for writing irrelevant content, no matter how good it is.

Related to the above: you need to be able to discern whether a question requires you to discuss a general principle or whether it requires you to apply a legal principle to the given facts so as to

resolve the issue. When a question asks for the general discussion of a concept then don't apply the concept to the facts. When a question asks for application, then don't just state what the general principle is.

Make sure that you correctly identify the subject area of a question. For example, there was a question involving the acceptance, by a public officer, of a financial benefit during tender processes and the question asked whether bribery had been committed. Some candidates attempted to answer the question by applying general contract law when subject area of the question was fraudulent and criminal activities

Candidates must ensure that they avoid giving two conflicting answers. Sometimes a candidate will say "it is correct that X happened but it is also incorrect that it happened. "The two conflicting answers cancel each other out, producing the same effect as having not answered the question at all.

There are questions that require candidates to determine whether something is legal or correct, etc. The words used are normally "explain" whether particular conduct is legal. The word "explain" shows that you need to provide an answer and a reason for that answer, and there are separate marks for these two components of the answer. Therefore it is important to not just give an answer with no explanation or rush to explain without starting with "yes this is legal" or "no this is illegal." Separately give the answer as well as the reason in order to get the full marks for the question.

Answer questions individually even though they may have related issues. For example, if Question 1 has part (a) that asks you whether Ted is liable and part (b) asks you whether Anne is also liable, then don't discuss Anne in part (a) when you're discussing Ted. And when you get to part (b) don't say "like with Ted, Anne is also liable."). Answer Anne afresh even though there may be similarities with what you said about Ted in part (a) of the question.

Candidates are advised to pay close attention to mark allocation because it reflects how involved the answer should be. Whether a question is worth two, three or four marks indicates the level of detail that you should provide. Don't write a whole page to define a concept for two marks. The converse would therefore be true. Don't write very few lines for a question worth four marks.

Don't use words that make it appear as though you are speculating when you are answering, and you are not really sure of the answer. If you are asked whether X is legal, don't say "it would be legal if", or it would be legal "unless". Such words show speculation beyond the scope of the given facts. If you stick to the facts there should be no reason to not give a clear and specific answer. Avoid the use of language such as "could", "should", "might," etc.

Stick to the subject matter of the question. If you are asked whether someone is guilty of insider trading, don't discuss whether they are guilty of money laundering.

Pay attention to the wording of instructions. Don't give one answer or example when it is clear that you are supposed to write more than one. For example, if a question asks for "remedies" or requires you to explain the "duties" of a particular person, etc. Clearly those are plural, meaning that you need to state more than one remedy and explain more than one duty.

Pay attention to whether you are being asked about a substantive issue or a procedural one. If asked whether “the procedure was correct” then don’t get into the merits or otherwise of the action; stick to discussing the correctness of the manner in which it was carried out rather than considering whether it was a right or a wrong thing to do.

To conclude, here is some advice on the general appearance of the answers:

- Always show which part of a question you are answering. Each question is clearly divided into parts. Don’t write one long paragraph answering all the parts in one chunk without showing where the answer to part (a) of the question begins and part (b) and part (c) and so on.
- Start a new answer on a fresh page.
- Don’t repeat the facts in your answer. Some candidates reproduce the entire fact pattern before moving on to give an answer. This is not necessary and it wastes time because it doesn’t answer the question.
- The answer should correspond to the question. Don’t indicate that you are answering question 5 and then give an answer to question 2. That can happen when you are in a rush. Slow down and be careful as you respond.