

Examiner's report

F4 (LSO) Corporate & Business Law

For Paper Variant exams June 2017

General Comments

This report gives feedback on the June 2017 F4 LSO examination. It discusses the general performance of candidates, identifies common areas of weakness and offers advice to candidates on how they can best approach future examinations in this paper.

The paper was divided into two sections: Section A and Section B. Section A contained 45 multiple choice questions. The maximum marks for the section was 70. Some questions were worth 1 mark (where there were three options to select from), and other questions were worth 2 marks (where there were four options to choose from). Section B of the paper contained 5 multi-task questions. For these, a fact pattern was outlined for each question and candidates were required to answer a number of questions related to the facts. One question typically tested knowledge of the legal principles that were relevant to the facts, while the other two tested a candidate's ability to apply the law to the given fact scenario. The section was marked out of a total of 30 marks. All questions were compulsory and candidates had two hours to complete the examination.

Candidates generally performed well in both sections of the paper. Candidates appeared to have been adequately prepared for the examination and widely knowledgeable about topics in the syllabus. General advice that can be given that cuts across both sections of the paper is that candidates must give themselves enough time to answer the paper. There were incidences of no responses in both sections. Another issue that is common to both sections is the giving of multiple responses to a question. For Section A this takes the form of selecting multiple options. For Section B it takes the form of a candidate writing that "X is the answer, but B could also be the answer" and thereby giving two contradictory answers that cancel each other out. There will only ever be one correct answer for all questions, whether Section A or Section B so candidates must avoid giving multiple responses.

Comments about Section A performance

Generally, candidates' performance in Section A was fair. They performed poorly in questions on agency and partnerships in general, and, to a lesser extent, on questions on the nature of the contract of employment and on sources of law. However, they generally performed well on questions related to the law of contract and on the management, administration and the regulation of companies. The areas where there was excellent performance were the law of contract, in general (in particular: the nature of agreement, contract terms, and the discharge of contracts) as well as the formation and constitution of business organisations.

With the questions where performance was generally poor, these tended to be questions where there were four options to select from, rather than three options. Candidates are advised to practise their examination technique with respect to those types of questions.

There was a fairly high incidence of non-responses to questions. Candidates are advised that there is never any advantage to leaving a question unanswered. If unsure of the correct answer, it is best to re-read the question to check their understanding of the facts and the various options and to eliminate any which are clearly incorrect. The combination of careful reading, application of knowledge and the process of elimination should identify the correct answer, but it is worth guessing if they are still unsure.

At the other extreme, candidates are also encouraged to avoid giving multiple answers because this will disqualify the question from assessment. This was not a major problem with the June 2017 paper but it still bears noting.

Sample Question for Discussion

Question 3 has been selected for greater focus to illustrate the technique for attempting questions in Section A. The question has been selected because it is one where almost the same number of candidates got it wrong as those who got it right. Also, it involves the law of contract, which is a topic that is central to the F4 syllabus. Questions on the law of contract can be found in both sections of the examination paper. The law of contract is also foundational knowledge for other syllabus areas, such as employment law and company law. Therefore, it is imperative for candidate to have a good grasp of this topic. Question 3 required candidates be able to carefully follow the facts and not get confused at the different stages of events. That skill is necessary on both sections of the paper. Lastly, this was a question where there were four options. Candidates typically do not perform as well when there are more options for them to select from.

Question 3

On 1 January, Craig and Elroy entered into a contract where Craig sold his car to Elroy for M135, 000. On 20 January, Elroy paid Craig an instalment of M35, 000 for the car. However, on 2 April the contract was delegated and Timothy became a party to it. The contract was subsequently assigned on 3 June and Anne became a party to it.

Which of the following is responsible for the remaining balance on the car?

- A Elroy
- B Craig
- C Anne
- D Timothy

2 marks

The correct answer was Timothy- D.

How should one approach such a question? Firstly, identify the syllabus area being tested. It appears to be the law of contract because we are dealing with an agreement between individuals. In this instance it is an agreement on the sale of a car.

Next: identify which particular element of the topic is being tested. The question is testing whether candidates appreciate the meaning and consequence of the concepts of delegation and assignment. That falls under B3a - Discharge of Contracts, which involves the key concepts of delegation and assignment. Delegation happens when an obligation is being transferred to another party; whereas assignment is where rights are transferred to another party. So, delegation and assignment have to do with rights and obligations under a contract. To apply the legal principles to the facts, it is then necessary to determine which rights and obligations are at issue in the question. There is an obligation to make payment of outstanding instalments and there is a right to receive the said instalments. Having identified the relevant area and the legal principles, these can be applied to the scenario to determine who is responsible for the remaining balance on the car.

Initially the contract was between Craig and Elroy. Craig was therefore the creditor (owner of rights) and Elroy was the debtor (owner of obligations). When the contract was delegated to Timothy (on April 2) it means that the

obligations in the contract were transferred to Timothy and Timothy stepped into the shoes of Elroy and became liable to Craig for the outstanding balance. When the contract was assigned on June 3 it means that the rights in the contract were transferred. It is Craig who had rights in the contract (the right to receive the outstanding balance) and so Anne must have stepped into Craig's shoes to be the creditor in the contract when an assignment took place. This would leave Anne as the new creditor and Timothy as the debtor. Therefore, D was the correct answer.

Candidates are encouraged to apply this methodical approach in arriving at the correct key. It may seem cumbersome but with practice the technique will come easily to candidates.

Comments about Section B performance:

General performance:

Candidates generally performed well in this section although they performed poorly when asked about corporate criminal and fraudulent behaviour. This is a study guide area that candidates typically find challenging. They are therefore advised to pay particular attention to it in their revision. They should also ensure that they know the elements of the crimes so that they can be able to identify and differentiate them from a given fact pattern.

Candidates also did not perform very well when questioned on the law of agency. The question tested whether candidates understood the authority of an agent to bind the principal. They had to identify whether, given the circumstances, it was the principal or the agent who was liable for the acts of the agent. Many failed to state the law correctly, and therefore their application of the law was also incorrect. This is another area that candidates are encouraged to pay greater attention to in their revision, especially because agency was not well answered in either Section A or Section B.

Candidates performed excellently on study guide area E. They showed a very good understanding of the differences between classes of shareholders, as well as the law regarding the declaration of dividends and the entitlement of shareholders to dividends. They were able to give detailed answers that were sufficient to satisfy the requirements of the question. Some used tables to illustrate the differences between classes of shareholders, which was an acceptable way of presenting the answer

Candidates also performed quite well when questioned on the law of contract. However, although their knowledge of concepts was sound, their application of the concepts to the given facts was not as good. They could recall the essentials of a valid contract, but could not ascertain whether those essentials were present in the given facts. Some candidates referred to caselaw in their response. Although it is not essential to remember caselaw, it is permissible to refer to it in an explanation of the legal position to illustrate how the law is applied to the facts. When candidates do not remember the name of a case, it is still helpful to refer briefly to the facts if this will help to clarify and illustrate their response.

General advice for Section B:

It may be useful, when approaching questions in this section, to begin by identifying the relevant study guide area. By doing this, candidates can immediately identify the broad topic of the question, such as contract or partnerships, and can then, start to recall the legal principles that are applicable to that area. Next, it is essential to pay careful attention to the given facts, taking care to understand who did what and when. At times candidates gave incorrect responses because they confused the facts.

Another important thing to note is whether the question is testing knowledge or whether it is testing application of the law. To make this determination, candidates should look at the instructions used in the question so that they know whether they are required to merely explain a legal concept, or whether they are required to apply a concept to the facts in the scenario. Words such as “define” mean that they must describe the legal principle, whereas words such as “explain” mean that they need to apply legal principles to the facts in order to derive the correct legal position and justify this application. When it is an application question, the response must be very precise and not general, because it is in relation to the very specific facts that have been presented. So, it is not enough to say “X must sue for damages” and then end there; it is necessary to specify all the details, for example, who should be sued for those damages and why.

Questions in Section B typically require the identification of whether something that was done was legal or not, and why or why not. Note that there are two parts to the question: the issue of the legality of the action and the reason for the conclusion. It is important to answer both parts of the question. At times candidates have proceeded to discussing the reasons without stating the answer first, thereby leaving markers to deduce the answer from the reason. Where there are two parts to a question, there will be marks allocated for each part of the response. Therefore, giving the reason, and leaving the answer to be deciphered by the marker is not good examination practice.

It is important not to assume any facts that are not included in a question. Sufficient facts will be provided to enable the correct identification of the issue and of the legal principle being tested. If you find yourself writing “if X is the case” in your response, then you are speculating and not sticking to the given facts.

Lastly, it is important to note that the allocated marks indicate how detailed the expected response should be. Some questions are graded out of 2 marks, others 3 marks and others 4 marks. A question that is worth 4 marks will require a more detailed explanation than one that is worth 2 marks. A “lengthy answer” does not refer to the wordiness of the response, but refers to the degree of the analysis that is given.

Conclusion

The performance in the F4 LSO June 2017 examination is generally encouraging. Candidates exhibited preparedness for the examination and good time management. The quality of the scripts was good and candidates displayed a generally sound knowledge of a variety of areas in the syllabus.