

# Examiner's report

F4 Corporate and Business law (ENG)

December 2014



## General Comments

This is the first report on a session of examinations carried out under the new structure and the change in format, although not without some problems, appears to have been a success.

The December 2014 examination saw the introduction of the new and significantly changed structure. The F4 paper is now divided into two parts. Section A comprises 45 multiple choice questions (MCQs) of either 1 or 2 marks to a total of 70 marks. Section B contains 5 multiple task questions (MTQs) each worth a total of 6 marks giving the normal overall total of 100 marks. All questions are compulsory and the exam time period is 2 hours.

In the computer-based examination format, all questions are structured so as to be capable of objective marking, while in the paper based format, although section A is marked objectively by computer, section B is still marked by subject experts.

For those with experience of the previous structure it will immediately be apparent that the new structure replicates the previous division between essentially knowledge based questions and questions requiring, not merely knowledge, but, in addition, analysis and application.

Although the time period for the exam has been reduced from three to two hours, there is no evidence of candidates suffering under time pressure to complete it. Indeed it would appear that many candidates had sufficient time to provide unnecessarily extended answers to questions in the written part of the paper exam.

## Section A

As was hoped, this knowledge part of the exam appears to have benefited the majority of candidates, who traditionally have been stronger in fact based questions than in legal analysis. It was feared that the extension of the field of material to be covered might prove a difficulty but that has not been supported by the evidence of candidates' performance. It would appear that candidates have benefited from the recognition that they will be examined over a wider spectrum of the curriculum rather than on, as previously, a specific and quite narrowly circumscribed aspect of the syllabus. Whereas previously candidates engaged in topic, and even worse question, spotting to no little damage to their results when they got it wrong, now it would appear that they realise that there is nothing to be gained in such an exercise as all aspects of the syllabus can be examined in one exam.

However, it has to be recognised that the new structure requires candidates to be aware of more detailed information than perhaps was required previously. Thus for example, whereas previously it was rare for agency law to be examined other than as an aspect of the law relating to company officers, now, as a topic in its own right the details of that topic will be required to be covered. Similarly, as regards the topic of directors' duties, whereas previously it might have been possible for candidates to have dealt with a 10 mark question rather superficially but still gain sufficient marks to pass, now the structure of questions requires a precise command and understanding of the fine detail of the topic. Question 14 in the current exam can be used to demonstrate this. The question was:

**In relation to wrongful trading, the standard against which the conduct of directors will be assessed is which of the following?**

- A Purely subjective, depending on the actual skill of the director
- B Purely objective, depending on what is expected of a director in that position
- C A mixture of subjective and objective but only to increase potential liability
- D A mixture of subjective and objective but only to reduce potential liability

**(2 marks)**

Under the previous exam structure candidates would have been faced with a 10 mark question on the topic of wrongful trading with a specific element of the question referring to the precise nature of the director's duty of care. Consequently, marks would have been available for a general explanation of wrongful trading and the

difference between objective and subjective standards of conduct. Depending on the quality of the answer, it is fair to say that candidates might well have been able to gain at least 7 marks without actually specifying with a high level of precision what the actual standard to be applied was. In this exam, there is simply no scope for general information: that is taken as a given and the question only looks for and rewards specific information about the required standard. The answer to the question posed is in fact **C** and a surprisingly low percentage of candidates got this correct. Indeed C was the third most popular choice of answer with options B and D proving more popular and only A being less so. It might be argued that such a level of correct response indicates that the question was too difficult for candidates, but in response to that can be raised the points that the issue tested is of such importance that it should be known and the fact that the majority of candidates were unable to discriminate accurately, reveals a significant weakness in their study. Some aspects of legal regulation only exist in their detail and it is imperative that candidates in future are taught to be comfortable with such detail.

Other less well done questions in section A tended to share the attributes of question 14 in that they related to the details of topics that have previously been examined in general terms. However, one question, the one dealt with least success, requires mention: that is question 44 which asks:

**Which of the following correctly applies to the burden of proof in a criminal case?**

- A** It must be proved beyond reasonable doubt
- B** It must be proved on the balance of probabilities
- C** It lies with the prosecution
- D** It lies with the defence

**(2 marks)**

The answer to the question is **C**, but by far and away the most popular choice was A. Such a response is not in any way the fault of the question but lies in either candidates' failure to read the question properly or their failure to understand the distinction between the concepts of 'burden' and 'standard' of proof. In any event it led to an unsatisfactory outcome.

One final comment in relation to section A was that very few candidates did not answer all of the questions.

## **Section B**

This element of the examination requires both analysis and application, which skills traditionally have not been to the forefront of candidates' abilities. At least to a degree, it has to be recognised that such weaknesses remain, but the new structure has gone some way to mitigate the consequences. Previously candidates were faced with an extended problem scenario, involving many issues. Now scenarios are shorter, and questions are subdivided and more focussed. What the questions under the new structure seek to do is to encourage candidates to demonstrate their understanding of, and ability to, apply particular legal principles and concepts. There is a continued appearance in the written exam papers of the extensive and extensively prepared, but mainly irrelevant, answers. It would be unfair and inaccurate not to recognise that there was an overall improvement in the way in which the analysis/application questions were dealt with by candidates, but there are still grounds for improvement, especially, if not specifically, in relation to the written paper.

One unfortunate continuation is the prepared general answer to a highly specific question.

Question 1 in section B of the December paper may be taken as an example. The question required the candidate to focus solely on the key issues, which required them to go through the whole process of mentally analysing the scenario, considering alternatives and rejecting some in order to reach the correct conclusion. However, some candidates preferred the old approach and wrote everything they knew about the formation of a contract, from invitation to treat to intention to create legal relations. While the latter candidates may have covered the appropriate ground, they did so by traversing the whole area of contract law and the key fact is that they did not actually have the confidence in their ability to focus solely on the essential issue. It is surely



unarguable that the candidate who can cut to the core issue in a few sentences is the better prepared and equipped.

Another unfortunate practice from the previous structure, which continues to appear in the written paper, is the prepared answer relating to a particular area of the syllabus. For example a candidate may be tempted to prepare an answer on directors' duties and deliver that answer where they consider it most appropriate, irrespective of the actual question.

Question 5 in section B may be taken as an example of this. The question related to money laundering, but some candidates provided answers variously relating to insider dealing, bribery, wrongful and fraudulent trading. Others, who recognised the topic under examination, knew that there were three possible offences in relation to money laundering and as there were three characters in the scenario, they must each be guilty of one of the potential offences.