Examiner's report

F4 Corporate and Business Law (ENG)
December 2012

General Comments

There was a significant drop in the number of candidates passing this exam. This fact has to be considered in the context of an apparently wide divide in the level of performance between well prepared candidates who scored well and indeed very highly in many cases and the inadequate performance of many candidates who appear simply not to have prepared sufficiently for this examination.

The structure of the examination paper, as usual, consisted of ten compulsory questions, each carrying 10 marks. The first seven questions were essentially knowledge based, while the latter three were problem-based scenarios requiring both legal analysis and application of the appropriate law. As in the recent past, the questions tended to be subdivided into smaller subsections in the belief that such subdivision would help candidates to structure their answers. There was a significant reduction in the preparedness of those talking the exam.

As in recent examination reports it is worth noting the continued improvement in the response to the tort question in this paper. However, this was undermined by an inadequate performance in the contract question, many candidates treating it as a tort question. This clearly suggests that at least some candidates remain unsure as to the nature of the different aspects of the law of obligations.

However the three problem scenario based questions continue to provide grounds for concern. Too many candidates were let down by their performance in those questions, which continues to suggest a general lack of analysis and application skills if not general knowledge.

It also appears that there has been an increase in the number of candidates engaging in question spotting with the result that many of the prepared were simply inappropriate, answers to the questions actually asked.

What follows will consider the individual questions in and candidates' responses to the individual questions in the paper.

Specific Comments

Question One

English legal system question on the main sources of English law.

On the whole this was very well done with many candidates gaining good marks, if not full marks. Some candidates were confident discussing common law, equity, the doctrine of precedent and legislation. Full marks could be gained even if answers did not mention all sources of law but tended to focus on either precedent or legislation.

However, a high number of candidates clearly were unsure of what exactly was meant by the word 'sources' and elected to discuss the difference between civil and criminal law and the remedies available in each of these fields of law. Still others focused on statutory interpretation, which although it could have been an aspect of a good answer, was certainly not central to the question asked.

This relatively unsatisfactory performance in the question would seem to suggest that those candidates who answered incorrectly did not read the question properly and instead produced prepared answers on inappropriate topics.

Question Two

This was a contract question, referring to the specific remedy of damages. It was divided into 2 parts each of which referred to a key aspect of damages and each of which carried 5 marks.

Part (a) related to concept of remoteness of damage and part (b) to the measure of damages. (a) Once again answers here were mixed. Some candidates acknowledged that this was a question on breach of contract damages and showed an in depth understanding of the principles established in Hadley v Baxendale and Victoria Laundry. However, a significant number of candidates took the tort approach and there were lots of papers which discussed remoteness of damage, causation and the case of The Wagon Mound. Although similar, the tests are not the same and to use tort examples to explain contract law was simply wrong. This was particularly unsatisfactory as the question specifically stated that it was to be answered within the context of contract law.(b) How well candidates did on this part tended to follow from their performance in part (a). Those candidates who adopted the correct approach in part (a) also scored well in part (b) by outlining the main principles in computation of damages in terms of compensation, financial loss and duty to mitigate. Some candidates continued to refer to remoteness, and the remoteness test. Indeed a number of candidates considered remoteness under part (b) and even more considered measures in part (a), showing a lack of understanding of the distinction between the two elements of the question. A not inconsiderable number of answers even discussed the differences between breach of condition and breach of warranty. Once again not only was this not relevant, but showed a lack of understanding as to the precise scope of the question and a falling back on inappropriate prepared answers.

Question Three

Tort question in three parts.

3(a) most candidates were able to acknowledge that a tort was a civil wrong where no contractual relationship needed to be present. However, some candidates thought that tort was an actual breach of contract and in the extreme case – tort was a crime.

3b(i) this part was done relatively well, with lots of use of the Donoghue v Stevenson neighbour principle. The higher scoring answers discussed the defences and also negligence in relation to economic loss. There was frequent reference to the standard of care expected and the thin skull rules, which were irrelevant in this type of question.

3b(ii) for those candidates who understood the meaning of the tort of passing off, this question produced some sound answers. A significant number of candidates hazarded a guess at this and quite often got passing off mixed up with trespass, battery or even more unrelated ideas.

Question Four

This was a three part question requiring candidates to explain the content of the various documents required upon registering a company.

Part (a) this question was designed to test that candidates were actually aware of the changes introduced by the Companies Act 2006. There was no reason why a well prepared candidate should not have received full marks. However, a number of candidates still thought that the memorandum was part of a company's constitution and contained the objects clause..

In relation to part (b) the question allowed a large diversity of answers. , Even candidates who did unsatisfactorily in part (a) usually managed to pick up some marks in this part.

In part (c) some candidates thought that the articles of association were an external document, whilst others thought they were a specific contract in relation to the directors. However, a significant number of candidates scored full marks on this part. However, only a small number developed the discussion and considered the position of third parties, using case law such as Eley v Positive life to support their answer. Once again the fact that there were lots of potential points that could be made served candidates well.

Question Five

This question was divided into two parts. Part (a), carrying 4 marks, referred to the topic of capital maintenance generally and part (b) (6 marks) required a consideration of the means for by which both private and public companies could reduce their capital.

Part (a) the answers to this part of the question, again varied quite dramatically. A significant number of candidates thought that the whole question centred on the general differences between private and public companies, so discussed in great detail the share capital, directors and company secretary requirements. Others stated that share capital had to be maintained to pay suppliers. Candidates tended exclusively to apply knowledge that had no relevance to the syllabus whatsoever.

Some answers however acknowledged that capital maintenance is designed to protect shareholders and creditors and that "buffers" should be kept and provided some explanation of the nature of those buffers and the legal rules put in place to ensure their operation.

(b) Again as in question 2, how well candidates did in this part tended to be dictated by how they answered part (a). There were some sound answers which displayed a solid grasp of the subject area and an understanding of the various ways in which companies may reduce capital and how this could be done. Other answers were very brief and focussed on there being no requirement in private companies for a minimum amount of share capital, but in public company's £50,000 is the minimum. Yet other answers attempted to answer the question from first principles without any apparent knowledge of the appropriate legal provisions.

The structure of the question implied that there was some distinction between private and public companies, but some candidates assumed that the difference lay in the nature of the resolution required to approve the capital reduction.

Question Six

This question concerned companies in financial difficulty generally and specifically required an explanation of the procedure of administration.
Overall, it was done quite well. There was a little confusion and some candidates believed the process of administration was concerned with compulsory liquidation. There was also lots of discussion about floating and fixed charge holders also. However, in general, candidates recognised that administration is a process by which there is an attempt for the company to be rescued and for creditors to achieve a better outcome.

Question Seven

This question in two parts, each carrying 5 marks, dealt with the issue of the when dismissals may be fair (part (a)) and automatically unfair (part (b)). It has to be said that it was not done as well as recent employment law questions.

Part (a) quite often full marks were awarded in this section. Candidates appeared to be well prepared. There were some candidates who had clearly not revised and attempted to offer an extended list of reasons such as

negligence, non- attendance and prolonged sickness absence and any number of examples of misconduct as reasons for fair dismissal. It should be said that even some answers that did reasonably well wasted time in giving numerous examples of misconduct. There was also a habit of discussing redundancy payment entitlement, which in a question such as this, was not required.

Part (b) most candidates again, were able to get some marks on this question, but felt the need to discuss the remedies for unfair dismissal. This was not required and wasted time.

A number of candidates decided that, as constructive dismissal had not been examined for some time, it must be due a turn. Consequently they produced totally inappropriate answers on that topic rather than focusing on what was actually asked.

Question Eight

Contract scenario on the rules relating to the formation of contracts. The question was subdivided into four distinct elements in an attempt to guide candidates into focusing on what was being examined.

Part (a) the discussion in this part on the difference between offers and invitations to treat (ITT) was overall very well done. Relevant case law was discussed. The problem was however, that the many candidates concluded that the advert was an ITT, despite having discussed Carlill and after having wasted lots of time, unnecessarily discussing the main elements required to form a contract. This displayed an inability to apply only relevant knowledge to the various scenarios. There were pages and pages of case law on offer, acceptance, consideration and acceptance. Candidates need to tailor their approach to these types of questions in the future.

Part (b) Most candidates produced very detailed discussions on the postal rule, although, , a high number concluded that it was an appropriate mode of acceptance and a contract was therefore formed. This merely revealed that these candidates might know the rules in abstraction but lacked the ability to apply the law in practice.

(c) Only a small number of candidates acknowledged that this was a counter –offer.. However, the majority did correctly conclude that there was no contract in place as the mode of payment offered, varied from the one advertised.

(d) This part produced some very confused answers. The majority of candidates concluded that there was a valid contract between Al and Das, but did not know the reason why. Others correctly approached the question by considering that an offer can be revoked at any time and whether consideration had actually been provided. This part demonstrated confusion in applying the rules to certain situations.

Question Nine

This question related to directors' duties and the breach thereof
On the whole, the question was inadequately done and was by far the worst answered question on the paper.
The first point to make is that despite the fact that the question explicitly stated that the Bribery Act 2010 could be ignored, a number of candidates focussed their whole answer on the fact that Fay had been bribed, which clearly was the incorrect approach to take.

A lot of candidates thought that this question related to insider dealing, so spent a significant amount of time discussing that. As question 10 specifically referred to insider dealing, it is simply not possible that two questions on insider dealing would be asked in the same paper.

Others candidates thought that the business agreement was a partnership and discussed the role of agency and the fact that Fay could be removed from the partnership. There was also a lot of discussion in relation to private companies, lifting the veil and fraudulent and wrongful trading. All of which was irrelevant.

Where candidates did understand what the question was about, there were varying degrees of answers produced. Some candidates referred to the fiduciary duties of directors, without acknowledging that the Companies Act 2006 had codified the duties. Other did discuss the correct duties but then concluded that Fay was in breach of the Company Directors Disqualification Act 1986 – this appeared very frequently. There were also lengthy discussions on the different types of directors, which was further evidence of candidates attempting to make the question fit the answers they had prepared.

Director's duties are a fundamental company law topic and it was unsatisfactory that answers were not of a higher standard.

Question Ten

Problem scenario on insider dealing.

This question was answered very well, with candidates producing answers on primary and secondary insiders and considering the defences available. Not a lot of candidates however, were aware of the penalties and sanctions and it was very rare that the correct term of a maximum of seven years imprisonment was seen.
Given how inadequately this topic has been answered in the past, there was an improvement in performance.
Nonetheless it still has to be stated that some candidates attempted to answer the question using employment law and/or fiduciary duties.