

# Examiner's report

## F4 Corporate and Business law (LSO)

### December 2014



#### General Comments

This report provides feedback on the December 2014 Paper F4 (LSO). It aims to highlight the new format of the paper and to comment on the performance of candidates in the examination. It contains a discussion of strengths and weaknesses and provides advice to assist future candidates.

The paper was divided into two sections: Section A and Section B. Section A contained 45 multiple choice questions (MCQs). The questions with three available options were worth 1-mark, while those with four available options were worth 2-marks. The total marks for the section was 70. Section B contained 5 multi task questions (MTQs). Each had three sub-questions each worth two marks. The first sub-question was typically one that 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. All questions in the paper were compulsory.

#### Section A performance

Performance in section A was varied. However, candidates generally, performed well in questions on partnerships (Section D2) as well as contract (Section B1-3), and essential elements of the legal system (section A). In all of these areas it didn't seem to matter whether the question was worth 1 mark or 2; candidates did well regardless. Candidates did not perform as well in questions testing knowledge of employment law (Section C 1 and 2), company management (Section F), liquidation (Section G) as well as corporate criminal behaviour (Section H).

We can look at the two questions that were posed on the subject of money laundering. In both of these questions more candidates got the answer wrong than those who answered correctly.

Question 39 asked:

With respect to the crime of money laundering, which of the following is NOT a duty of an accountable institution?

- A** To verify the customer's identity
- B** To investigate unusual transactions
- C** To establish and maintain customer records
- D** To report suspicious transactions

(2 marks)

Question 42 asked:

Which of the following bodies is responsible for issuing guidelines to banks on how to combat money laundering?

- A** Anti Money Laundering Authority
- B** Ministry of Finance
- C** Financial Intelligence Unit
- D** Central Bank

(2 marks)

These are typical questions for this study guide area. Candidates must familiarise themselves with the relevant legislation- The Money Laundering and Proceeds of Crime Act 2008. In reading the Act candidates should concentrate on the following:

- The definition/key elements of the crime
- The different institutions that are created to combat money laundering and their respective functions
- The entities termed "accountable institutions" and their duties under the Act.

For question 39 the correct answer was B. It is worth remembering that the duties of an accountable institution are primarily internal rather than external, and relate to their own systems and procedures. This is why accountable institutions must verify the identities of their own customers and have systems in place to alert them of unusual transactions. However, if anything suspicious comes to their attention, they do not have the resources



(financial, human, skills, etc) to investigate such occurrences and so their legal role is limited to only reporting such suspicious transactions and not to actually investigating it themselves.

The answer to question 42 was C. To arrive at this answer it should be easy to eliminate the Ministry of Finance and the Central Bank. The Ministry is an umbrella institution so it would not be likely that it could be tasked with such a specific function. Candidates would also remember that the Central Bank's primary responsibility is to broadly regulate and supervise financial institutions. The choice, then, should have been between the Anti-Money Laundering Authority and the Financial Intelligence Unit. The Authority is tasked with investigatory and prosecutorial functions. The Financial Intelligence Unit has a go-between function of receiving information and relaying information. Therefore, it is the Unit that would issue guidelines to accountable institutions rather than the Authority.

By and large candidates attempted to answer most answers. This is an encouraging trend. It is important to attempt all questions. However, the question that stands out as one which a few candidates did not answer is question 5 on liquidation. Since this is also an area where candidates also did not perform very well, we can highlight this question for further discussion.

Question 5 read:

In the context of companies in financial difficulty, which of the following rights are rights of a liquidator but NOT of a judicial manager?

- (1) To disclaim any onerous property
- (2) To administer an oath for the giving of information under oath
- (3) To apply to court to have any person examined under oath
- (4) To apply for search warrants

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

(2 marks)

The correct answer was A. To arrive at the correct answer, candidates ought to have begun by remembering the differences between liquidation and judicial management. Liquidation is a final stage where a company is being dissolved. Its assets are sold, creditors paid, and any remaining assets distributed. Judicial management is concerned with saving a company from mismanagement. It involves divesting the company directors of their powers and giving them to the judicial manager who is tasked with restoring the company's viability. To "disclaim onerous property", in (1), means to renounce unsellable property. This should direct candidates to the functions of a liquidator who would be the likely individual who is trying to sell company property, not a judicial manager. Further, a liquidator must gain access to all of the company's assets, including books, records and electronic documentation detailing the company's business affairs. This is why a liquidator will be empowered to apply to court for the administering of oaths and for search warrants so that they can gain access to such assets and information. This directs candidates to (3) and (4) as being functions of a liquidator and not of a judicial manager.

### Section B performance

Performance in Section B was mixed. However, the following advice may be given to help candidates improve their future performance.

First, candidates must learn to differentiate between questions that require the *discussion* of a legal principle, and those that require the *application* of the principle to the given problem. One easy way of identifying this

distinction is by paying attention to the wording used in a question. Does the question refer to “a” person or does it refer to “the” person in the scenario. For example, one question, in sub-question (a), asked about the obligations of directors of companies. In sub-question (b) it asked about how the director in question had breached his obligations. Some candidates started referring to the specific director when responding to (a) yet the question required only a general statement of principles. The principles were to be applied in (b) to the specific director.

In those sub-questions that require application, and not just the recital of a legal principle, it is important for candidates to not only write the legal principle involved in the scenario, but to also apply the principle to the problem. For example, one question involved an advertisement for tenders by a company. Two people responded to the advertisement. The questions required identifying which of the two (if any) the company could be said to have contracted with and why. Many candidates discussed the distinction between invitations to treat, offers and acceptance, but failed to apply those concepts in order to answer the question. Candidates did not use the legal principles to reach a conclusion on who the company had contracted with. Other candidates simply wrote that the company had contracted with X and not Y but failed to apply the legal principles in order to justify the distinction they were drawing between the two individuals. It is important to always substantiate your answer; to show the “why” and not just “what”.

It may sound obvious but it is important to answer the question that was asked and to not make up a different question. This also occurred a number of times in answers. One way to determine whether you are answering your own question is to see if you are using “IF” in your response. For example, one question required candidates to discuss the liability of different classes of shareholders upon the dissolution of a company. An example of a candidate answer is “if X had fully paid up the shares then he would not be liable but if he had not fully paid up the shares then he would be liable to this extent”, yet the position of X was clear from the facts and did not need further speculations. Candidates are advised to stick to the facts given in the scenario, not to them and not to take away from them, and to avoid unnecessarily long responses that are speculative.

There are certain words that candidates struggled with. Two words may be clarified: liability and elements. If a question requests a candidate to discuss a person’s “liability” for certain actions/omissions, this refers to the legal principles underpinning that person’s blameworthiness. Candidates mistook “liability” as requiring them to determine the punishment that would be meted out on the individual. Candidates will never be required to remember very specific details of penalties in legislation (e.g. fines of M50, 000 or 5 years imprisonment, etc). Some questions required candidates to list the “elements” of something. Some candidates misunderstood what was required and interpreted “elements” to mean “examples.” “Elements” refers to “the components” of something; what are the individual building blocks that create a particular thing. In order to answer such questions, it is important to pay attention to definitions in your study notes. For example, the principle of estoppel. The elements of estoppels are that

- There must be a representation by one party.
- It must be relied on by the counter- party.
- The counter-party must, in reliance of the representation, act to their detriment.
- Then the representer will be prohibited from denying the representation.

Those are the elements. When candidates are requested to discuss elements it is best to try list as many as you can remember to maximise the points that may be awarded.

Candidates performed best in the subject area of the law of contract (study guide section B). They showed a good grasp of the legal principles and were able to apply them to the problem, and the topic of partnership, specifically the issue of the liability of partners for partnership debts (study guide section D). The topics that candidates did not perform as well in were study guide sections F and H. Candidates could pay closer attention to these areas and ensure a better understanding of them before sitting for the examination.



### **Conclusion**

Some final advice for future candidates:

It is important to read questions carefully to make sure that you understand the scenario that is presented as well as what the question is testing. Some mistakes that appeared in the examination were the result of candidates simply misunderstanding a question, and not that the candidates did not know the principles.

Candidates would also be advised to be as precise and as specific as possible in their responses and avoid generalised answers. Keep sentences short and use simplified language so that your response can be as clear as possible.

Last, candidates are encouraged to avoid leaving blank responses. It is important to attempt all questions.