

Examiner's report

F4 Corporate and Business Law (BWA)

June 2010



General Comments

Most candidates attempted 10 questions in total, and there was in general evidence of inadequate time management as some students failed to answer some of the questions posed. This is also evidenced by the fact that a number of students seemed to have time to write lengthy passages reciting legal principles, even when that was not necessary. In general most students were casting the net as opposed to focusing on a particular issue warranting attention. Question 6 was the least popular question as evidenced by the candidate's dismal performance.

There were a substantial number of candidates who appeared to be unprepared for the examination, and who performed inadequately. The performance of candidates overall was unsatisfactory. This inadequate performance can be attributed to the fact that the candidates failed to be relevant when answering the question and thus failed to deal with the actual question asked. Instead, many candidates tended to write generally about the area of law in issue.

Further to the above, the candidates should be shown how to properly tackle and/or answer a problem type question as many candidates failed to put forward their answers in a more coherent manner. Adding to that was the apparent lack of appreciation of the importance of cases and/or authorities by the candidates when answering questions.

Specific Comments

Question One

This question tested the candidate's knowledge and/or understanding of the rules of statutory interpretation and the manner in which the judges apply or interpret legislation. It further sought to test the candidate's knowledge of the subordinate rules of interpretation and presumptions. The candidates were able to state the rules and presumptions but the majority was unable to refer and apply the relevant case law. In general the candidates satisfactorily answered the question and exhibited a general appreciation of the rules resulting in the question being the one with the best performance.

Question Two

The question required that the candidates discuss some of the basic rules relating to offer and acceptance in the law of contract.

Part (a) dealing with acceptance received extensive attention from the candidates and most of them exhibited an appreciation of the legal principles applicable. Most candidates however exhibited a clear lack of appreciation of the rules relating to the revocation of an offer in part (b).

Overall the question was answered satisfactorily.

Question Three

The question required that candidates to examine the various remedies that may be available to innocent parties when they suffer as a consequence of breach of contract.

The performance in relation to this question was adequate. A few candidates were well versed with the various remedies and managed to articulate them properly. There was however limited use of authorities by the candidates. Candidates were overall familiar with the existence and application of the law of contract in relation to breach of contract.

Question Four

Candidates were familiar with the concept of constructive dismissal under Employment Law. A few however were confused by the term 'constructive' and interpreted it to mean that the dismissal would have been fair. Most candidates however failed to indicate that the conduct of the employer must go to the root of the contract of employment and that it must be a breach of some significance. The use of authorities was limited. The part of the question dealing with remedies available in relation to a successful claim for unfair dismissal was also satisfactorily done even though some candidates were not aware of such remedies that may be available to a successful litigant.

Question Five

This question tested candidates' knowledge of partnership law in particular the liability of partners towards third parties. A few candidates managed to get the general principle right and managed to sufficiently elaborate on the liability of partners towards third parties. Most candidates here tend to use general knowledge or common sense and failed to articulate the legal principles applicable thereto. Also there was general lack of use of authorities. Over and above, the performance was adequate.

Question Six

The question asked the candidates to discuss passing off and the elements of passing off. The candidates had limited knowledge of the principles applicable to passing off. There was lack of appreciation of the true position of the law. Some candidates failed to attempt this question and those who attempted to answer the question performed inadequately.

Question Seven

The question required the candidates to discuss the various ways in which the relationship of principal and agent can be established. The candidates were expected to analyse each of those ways in which the relationship can come about. The candidates appeared prepared for this question and it was answered satisfactorily save that some candidates did not address satisfactorily the part dealing with agency being established by way of estoppel.

Question Eight

The question required that candidates discuss the legal duties of promoters. It then asked that candidates discuss whether the promoters made a full, frank and clear disclosure of their profits, whether the promoters disclosed to an independent board of directors, whether the company has any remedies against the promoters and whether Richard has *locus standi*. Even though the candidates understood the question, they failed to isolate the issues and address them properly. For example, most candidates failed to address the issue as to whether the disclosure was made to an independent board of directors. Only a few managed to address the issue. There was limited use of authorities and the candidates failed to apply them sufficiently to the facts. There was no clear conclusion by most of the candidates.

Question Nine

This question was in general answered more satisfactorily.

It was encouraging to see that candidates were generally comfortable with the concepts of shares, debentures, floating and fixed charges, and were in a position to distinguish between them satisfactorily.

Nevertheless, part (b) was not well-answered, and candidates failed to perform satisfactorily in this question as most failed to address the element of the question relating to Liyanda's wish to have ready access to cash should he need it.

Question Ten

The question sought to test the candidates' understanding of directors' fiduciary duties, and in particular, the duty not to make a profit at the expense of the company. The general principle of law is that where one person stands to another in a position of confidence involving a duty of trust, they are not allowed to place themselves in a position where their interests conflict with their duty. Accordingly, a director may not, for personal gain, make

use of information that he has acquired in his capacity as a director. One of the central issues in this area is whether a director could still be in breach of his fiduciary duty owed by him to his company even after he has resigned. In this question further attention was required to the issue of whether a director of a company can take over a contract that was bona fide considered and rejected by the company.

The majority of the candidates' answers were inadequate. The candidates were on the whole unable to identify the relevant legal issues in the scenario and consequently they were unable to resolve those issues by applying the relevant case law. Even though marks were awarded for cases where there was some appreciation of the issues highlighted above, candidates who did so answered the question in a rather unfocused manner. Few used authorities to support the arguments put forward in their answers.