# Examiners' report



# F4 Corporate and Business Law (ENG) June 2008

### Question 1

This question dealt with a central aspect of the English legal system. It was divided into two parts with part (a) referring to the common law and part (b) referring to legislation. As has been the case for a number of years candidates did not do particularly well in this question which is surprising given that the first question is always on aspects of the legal system. Of concern was the fact that a number of candidates simply did not do this question.

In relation to part (a) many candidates produced a general history of the emergence and development of the common law and whilst that gained some credit it was clearly not sufficient without reference to the actual operation of the common law as a source of law. This latter required an explanation of the doctrine of precedent within the English court structure and in particular required some explanation of the hierarchical structure of that structure and the effect of previous judgements on later cases within that hierarchy. The best answers provided a clear explanation of how the common law works and provided case examples to support that explanation. Part (b) was fairly well done with a number of candidates explaining the role of Parliament in the creation of legislation and explaining the relationship of legislation to the common law. Some candidates were able to explain the actual process required for the passing of Acts of Parliament whilst others made reference to delegated legislation. The very best answers made reference to all of these aspects of the question.

### Question 2

This question in two parts required candidates to explain the meaning of two basic concepts in English contract law, namely offer, in part (a) and invitation to treat in part (b). Part (a) carried 4 marks and part (b) 6 marks. The question was answered by the vast majority of candidates and on the whole it was answered very well.

There are lessons to be learned by quite a number of candidates. For example, it is not appropriate to define an offer in part (a) in negative terms, i.e. to the effect that is not an invitation to treat and then go on to detail what constitutes an invitation to treat, which was actually the topic of part (b). This error was compounded by such candidates then either repeating the information in part (b) or producing a very short answer to that part. This approach had two consequences. Firstly it relied on the markers giving credit for part (b) answers that were inappropriately included in part (a). Whilst this was done, it had the consequence that by focusing on invitations to treat candidates tended to ignore the other aspect that should have been considered in relation to offers. This meant that such candidates provided a weak answer to part (a).

From the foregoing it can be deduced that the best answers defined offer in positive terms and went on to consider several of the many issues that could have been properly raised in relation to it. They then went on to deal with invitation to treat as a distinct issue in part (b). These best answers invariably provided case authorities or examples in support of their explanations.

# Question 3

This question required candidates to explain the standard of care owed by one person to another in relation to the tort of negligence. This was the least poplar question in the paper and also the one with the poorest performance. The majority of candidates did not answer the question asked and produced general explanation of the law of tort or the duty of care, rather than the specific issue of standard of care. It is clear that many candidates have not yet come to terms with this relatively new aspect of the F4 syllabus and much work remains to be done. The repeated refrain of this report is that candidates must study the whole syllabus and be properly prepared to deal with any issue that might arise. As in question 1, candidates must be warned against not studying particular aspects of the syllabus in sufficient detail to deal with questions in those areas. It is apparent, however, that this is not the case in relation to tort law, where knowledge is clearly extremely limited. This may be the result of the newness of the subject area and the fact that there is not a background of previous questions and answers in the area; however the study manuals all deal thoroughly with the topic.



### Question 4

The question required an analysis of one of the main concepts of company law, the doctrine of separate personality. There was a 60/40 split on the 10 mark total available and this indicated the weight that should have been given to each section. As a whole candidates performed well on this question. However, once again it has to be stated that a significant number of candidates did not even attempt this question on one of the most fundamental principles of company law. As with question 2 a failure to do this question or a failure to answer adequately was an indication that such candidates were not sufficiently prepared to take the exam.

Part (a) required an explanation of the doctrine and its consequences and the majority of candidates were able to demonstrate understanding by reference to the seminal case of *Saloman v Saloman & Co (1897)*. Others illustrated this distinction further using *Macaura v Northern Assurance Co Ltd (1925) and Lee v Lee's Air Farming Ltd (1961)*. The consequences of this separation of the company and its members included limited liability whereby the members are limited only to the nominal amount of their shares, perpetual existence of the company separate from its members, ownership of property by the company in its own right and the capacity to contract and sue in its own name. Most candidates were able to explain these or other examples to gain a reasonable amount of marks.

Having discussed the veil that separates the members from the company part (b) required an analysis of the circumstances under which the veil will be lifted to make the members liable. This falls into statutory and common law situations with most students recognising this distinction. Under statute S399 of the Companies Act 2006 requires groups of related companies to recognise the link between them when preparing accounts, whilst s213 & 214 of the *Insolvency Act* 1986 impose liability where there is evidence of either fraudulent or wrongful trading. These were the common examples given but others used were given credit. From a common law position, examples such as *Gilford Motor Co Ltd v Horne* (1933) to illustrate the evasion of a legal duty, Daimler *Co Ltd v Continental Tyre* & *Rubber Co* (*GB*) *Ltd* (1917) possible trading with enemy aliens at time of war and an examination of the courts treatment of groups of companies as a single entity where they are considered to be trying to evade a liability, reference was made here to cases such as *DHN Food Distributors Ltd v Borough of Tower Hamlets* (1976) and the later case *of Adams v Cape industries plc* (1990). Again candidates were able to relate these or other circumstances to gain reasonable marks.

# Question 5

This question required candidates to consider the various investment mechanisms available to investors, namely ordinary shares, preference shares and debentures, with marks being divided 3, 3 for parts (a) and (b) and 4 for part (c) on debentures.

The majority of candidates dealt with the question well, indeed it was the best answered question in the paper, but some answers shared the error already mentioned in relation to question 2, that as regards ordinary and preference shares there was a tendency to define them in terms of each other and hence effectively to repeat information. Surprisingly candidates were less successful at defining the ordinary share, although those who made use of the definition in *Borland's Trustees* v *Steel* (1901) invariably produced reasonable answers. Part (b) relating to preference share almost always gave rise to answers relating to priority rights although there was some confusion as to whether they provided membership and specifically voting rights.

Part (c) on debentures tended to produce thorough answers and many candidates were able, not just to explain debentures but to also consider fixed and floating charges.

# **Question 6**

The question required candidates to demonstrate an understanding of the difference in role between executive and non-executive directors (NED) and an awareness of the legal responsibility placed on those who the law considers to be shadow directors.



Most candidates made a reasonable attempt at explaining the role of the executive directors and gave comprehensive explanations about the role they play in the day-to-day management of the company. There was also a reasonable effort shown in tackling part (b) of the question about the role of the NED. Many made good reference to the importance of corporate governance and the need for some sort of "check" on the powers of the executive directors.

Part (c) of the question on shadow directors was however inadequately answered. Most candidates obviously had little idea what the term meant. Many guessed that such directors were advisers to the other directors; some did say that they were in the background, but most did not explain correctly what this meant. Overall because of the amount of marks candidates were able to earn in the first two parts of the questions there was generally reasonable marks gained for this question.

### **Question 7**

This question asked candidates to explain the common law rules used to distinguish contracts of service from contracts for services and why it is important to distinguish between them. Part (a) relating to the distinction carried 4 marks and part (b) relating to the tests carried 6 marks.

Unlike question 1 and 3, this was clearly a topic that many candidates had prepared for well. On the whole this question was well done and in some instances done very well indeed, with the well prepared candidates provided good case authority to support their explanations. Of those who did not do well in their answers, the major shortcoming was a tendency to focus just on one of the test and not to consider the others.

# **Question 8**

This question required candidates to discuss the various remedies for breach of contract available to Astride. The question divided into two parts, each carrying 5 marks, was fairly straightforward and once again the well prepared candidates scored reasonable marks.

Overall, candidates acknowledged that there had been a breach of contract and displayed a good understanding of the various remedies available and the better answers recognised that the estimation of damages in relation to construction contracts was difficult. A sound understanding of relevant case law was displayed with many candidates referring to *Ruxley Electronics and Construction Ltd v Forsyth (1995)* and acknowledging that the cost of remedying defects has to be proportionate to the difference between the services ordered and those supplied.

There were also a range of alternative answers produced. Most noticeably, candidates discussed the difference between warranties and conditions within contracts and the various remedies. These answers were awarded reasonable marks if candidates developed the points considered. Where, blocking out the view of the rubbish tip was at the heart of the contract, candidates concluded that the remedy of specific performance was most appropriate. Whereas, if the blocking out of the rubbish tip was ancillary to the main purpose of the contract, i.e. the building of the wall, was the main focus of the contract, then damages were more appropriate. The majority of candidates concluded in part (a) that an order of specific performance was perhaps not viable and opted for damages to compensate Astride.

Answers to part (b) tended to be a repeat of discussions in part (a). Only a small number of candidates acknowledged that there was an anticipatory breach of contract and therefore, Astride would be entitled to damages. The majority of candidates, did however recognise that the contract between Astride and Chris was one for personal service and therefore, Astride would be entitled to claim damages of £500, being the difference in cost between Chris's contract and the cost of an alternative supplier.



### **Question 9**

This question required candidates to analyse a problem scenario that raised issues relating mainly to partnerships but which also involves agency law.

On the whole the majority of candidates recognised the specific underlying issues within the general context of partnership law, although the manner in which they applied the law to the issues differed significantly depending on their knowledge of partnership law. The question concerned three distinct characters; Clare, Dan and Eve and most candidates dealt with in turn although not always appropriately.

In relation to Clare, the majority of candidates explained what is meant by a sleeping partner and correctly recognised that she could not avoid liability even if she took no part in the operation of the partnership business. Some explained that she might have been able to limit her liability if the partnership was registered under the Limited Partnerships Act 1907 or the Limited Liability Partnerships Act 2000. However, some candidates wrongly assumed that she had limited liability or that the partnership was a limited liability partnership. In relation to Dan, most candidates recognised the issue involved and recognised the general law, but fewer succeeded in distinguishing the situations of the two customers Greg and Hugh and dealing with them appropriately.

Once again, in relation to Eve's situation, the majority were able to explain her unlimited liability for the partnership debts, but only a minority raised the issue of her authority to bind the other partners to the contract.

# Question 10

This question required candidates to consider the criminal offence of insider dealing and to apply the appropriate law to the facts contained in the problem. Considering the number of times this topic has been examined in the past it is not a little surprising that it was attempted by a significant number of candidates, and not done well by most of those who did attempt it.

There seemed to be a general lack of detailed knowledge about the meaning of insider dealing and contents of the Criminal Justice Act 1993 and those who did have such knowledge tended not to apply it properly. There was a general misunderstanding that insider dealing was simply having 'secret' information without explaining the specific, price-sensitive, nature of that information and the need to deal in shares on the basis of that information.

There was also some confusion as to Vic, in part (b) of the question with a number of candidates clearly not reading the question with sufficient care and incorrectly assuming that Vic was in fact Sid's brother.

# Conclusion

The main reason for any inadequate performance in the paper was a complete lack of knowledge on the part of the candidates. The questions provided ample opportunity for candidates to demonstrate both knowledge and understanding. Some candidates clearly find 10 compulsory questions challenging and try to question spot, which, as a general rule, has disastrous consequences. However, the format of the paper suits the stronger candidate.