# Examiners' report



# F4 Corporate & Business Law (ENG) June 2009

#### **General Comments**

As usual, this paper was made up of ten compulsory questions, each of ten marks, although many of them were subdivided into distinct parts. This format seems to have settled down and to meet with candidates' approval from the way they tackle it. However, it is a matter of some concern that a significant number of candidates are not completing, or even attempting, all ten questions. This does not appear to be an issue of time-management but lack of knowledge, which might reflect a failed effort of candidates to question spot. This point has been made in the past, but it clearly has to be repeated for every session: if you do not do all the questions you greatly reduce your chances of passing the exam. The syllabus is wide, but you have to cover it all; question/area spotting is a dangerous game to play. All questions were done very well by a number of candidates across the board; although the reverse of that is equally true in that all questions were done inadequately by a number of candidates across the board.

One particular point that occurs in most exams, and one that I have commented on previously, is the way in which candidates tend to use issues raised in particular questions to answer completely different questions. This was particularly the case in this paper with regard to questions 3 & 8, and question 6 & 9, candidates merely repeating in their answers to the latter questions they had already written in the former. As can be appreciated, that is not a likely structure for an examination to take.

What follows is an analysis of the way in which question were attempted by candidates, although as usual, the emphasis tends to be on the negative aspects rather than focussing on the sound work that many candidates produced.

### **Specific Comments**

#### **Question One**

This question required candidates to consider the doctrine of precedent and in particular to explain particular terms operative within that doctrine. On the whole it was done fairly well. However the greatest shortcoming was in relation to the lack of information about the hierarchy of the courts within the English legal system and the implications this has for the doctrine of precedent.

#### **Question Two**

This question required candidates to examine some of the essential principles relating to the doctrine of consideration in relation to the law of contract.

Part (a) required an explanation consideration and on the whole it was done very well, with the majority of candidates either giving quotations from appropriate case or providing examples of consideration.

Part (b) was divided into two separate elements. Part (i) focuses on the meaning of and difference between sufficiency and adequacy. By and large candidates were much clearer as regards the issue of adequacy and only a relative few were able to give a clear or detailed explanation of the requirement relating to sufficiency. Part (ii), on past consideration was done fairly well and most candidates were able to cite *McArdle*. However, only a few went further to consider the exceptions to the general rule as set out in such cases as *Lampleigh*.

#### **Question Three**

This question required candidates to consider the law relating to terms in contracts. Part (a) specifically required the candidate to distinguish between terms and mere representations while part (b) required them to explain the difference between express and implied terms in contracts.

Part (a) tended to be answered fairly well and most candidates were able to distinguish between terms and misrepresentation, although some candidates spent too much time in developing extended answers on the various types of terms.



Part (b) was also fairly well answered and most candidates were aware of the various sources of implied terms and their effects. Perhaps not surprisingly less detail was provided about express terms.

#### **Question Four**

This question, divided into three parts, required candidates to explain the limitations on the use of company names, the tort of 'passing off' and finally the role of the company names adjudicators under the Companies Act 2006

It has to be said that this question, and in particular part (a) was extremely well done. The great majority of candidates were well able to cite most of the rules governing what names can and can't be used by companies. Part (b) was also done fairly well with many candidates able to cite cases in support of their explanation of the law. Part (c), which introduced the new concept of the company names adjudicator was also done fairly well. It is pleasing to see that candidates are now coming to terms with the 'new' companies legislation.

#### **Question Five**

Part (a) required candidates to comment on their understanding of the doctrine of capital maintenance. A majority of candidates correctly identified that the capital should be maintained as a buffer for creditors and should not be used to pay dividends to shareholders. A number of candidates went on to explain that shares should not be issued below nominal value, the rules relating to the payment of dividends and that public companies are required to have £50,000 minimum share capital. A minority of candidates struggled to clearly explain the doctrine and as a result spent a lot of time discussing the different types of shares and debt (fixed and floating charges) for which no marks were awarded.

Part (b) required candidates to discuss when a company may want to reduce its capital and the procedure to be adopted by both public and private companies. A vast majority of candidates correctly identified when a reduction in capital would be appropriate, a few also mentioned share buyback for which credit was given.

With regard to the procedural aspects their appeared to be some confusion. A number correctly distinguished the procedure differences, however, many candidates went off tangent by either writing a substantial amount of text regarding share buyback or a combination of company law points, which were not directly related to the question.

Overall, this was very well attempted question. As in the previous question, it appears that candidates are gradually becoming more familiar with the technical aspects of the Companies Act 2006.

#### Question Six

This question required candidates to explain the operation of the Company Directors Disqualification Act 1986. Performance in relation to the question was patchy, with some candidates providing thorough, answers, but a large number mistaking the whole import of the question and delivering an answer, either on directors' duties, or the removal of directors, or a mixture of both. Unfortunately these issues overlapped and even then marks had to be awarded generously. Not only did this confusion not allow candidates to do well in this particular question but it indicated an overall confusion about the nature of directors' duties and their control. In the final analysis, if the candidate cannot refer to the appropriate legislation they are not going to get many marks.

#### **Question Seven**

This question required candidates to explain the meaning of the term redundancy and the legal rules relating to it.

The question enabled candidates who knew the law on redundancy to perform well since there are marks available for a large number of legal points/range of relevant legal information e.g. the definition of redundancy; the meaning of 'dismissal'; qualification; the effect of offers of alternative employment and trial periods; remedies and so on. Candidates who could clearly and accurately state these points with reference to some case-law examples scored well.



Candidates also were able to score by referring to the collective provisions on trade union consultation and particularly if they were able to identify the relationship of the individual redundancy payment with individual claims for unfair dismissal arising out of unfair selection.

Many candidates were able to accurately state the basic rules and some to describe the relationship with other rules such as dismissal and trade union consultation.

However, there were common basic errors in that candidates were unable to correctly state e.g. the length of the qualifying periods or time limits for claims. Others seemed unable to comprehend the distinction between a claim for a redundancy payment and other claims (e.g. common law for wrongful dismissal) or statutory (notice entitlement and unfair dismissal).

Thus some scripts made no distinction between the statutory rules on notice and those or redundancy. A significant number seemed to have no awareness that unfair dismissal and redundancy provide separate remedies e.g. some stated that an employee would only be redundant if the selection was unfair, or that an employee would be redundant if they e.g. lacked qualification or competence for the job. The remedy, it seems to some, for redundancy is re-instatement, re-engagement or an award of £60,000. Others thought that the employee could claim 'damages' for loss or earnings. In other cases redundancy was described as a wrongful dismissal.

## **Question Eight**

This question required candidates to analyse a problem scenario from the perspective of contract law and apply the appropriate legal rules, specifically relating to anticipatory breach of contract and the remedies subsequent to any such action.

On the whole the question was dealt with fairly well, with the majority of candidates recognising that the issue involved anticipatory breach and providing appropriate case authority to support their analysis. A number, however, spent a largely wasted time considering the distinction between conditions and warranties and citing the cases in that area. This would appear to be the follow on from question 3, which raised the issue of terms. A smaller group suggested that there was no real problem in any case as Arti might still produce the material, so they didn't write anything about the law relating to the problem scenario.

The remedies issue was done less well, with the majority failing to pursue it with the necessary detail and a surprising minority suggesting that specific performance could be awarded.

# **Question Nine**

This question required an analysis of the doctrine of corporate opportunity and the rules relating to directors' duties. It has to be said it was the least popular question on the paper and was not attempted by a considerable minority of candidates, and those who did tackle it, did not do particularly well in it.

There were essentially two core issues in the question, relating to conflict of interest, corporate opportunities and the much less essential corporate personality issue.

The majority of candidates recognised that the question related to directors' duties in some way, but apart from citing those generally, could get no further than that. Very few candidates even considered the corporate opportunities issue, preferring to go down the road of patent law, which is not even part of the syllabus of this paper.

As for the corporate personality issue, although not central to the question a number of candidates saw it as the key issue and spent all their time dealing with that –perhaps it would not be too cynical to suggest that this was in response to their lack of knowledge relating to any other aspect of the question.

# **Question Ten**

This question required candidates to explain the meaning and regulation of the two criminal offences of insider dealing and money laundering and apply that law to a problem scenario.

This guestion tended to be sufficiently well done.



The money laundering aspect of the problem was particularly well done, with candidates explaining in very full terms what was involved in the process and the details of its legal regulation. However, there was some concern as to the insider dealing part of the problem, which raised some concerns and which suggest that a full question on that area would have met with much less success. The essential problem was that candidates seemed to think that insider dealing was just using or revealing information gained from inside a company. That, of course, is completely incorrect and it is not insider dealing unless the purchase or sale of securities is involved. This concern, as to the general understanding of insider dealing, is confirmed by the number of candidates who claimed that Des, in question 9, was liable to be charged with that particular offence