

# Examiner's report

F4 Corporate and Business Law (ENG)

June 2010



## General Comments

The performance in this paper was better than in the recent past. As usual, results were mixed but a higher percentage managed to reach the required standard. While many candidates performed well, it still has to be recognised that a significant number of candidates were less well prepared and unfortunately did not meet the satisfactory standard.

The structure of the examination paper, as usual, consisted of ten compulsory questions, each carrying 10 marks, although some were subdivided into smaller subsections. 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. The firsts point to make about the general structure of answers is that it is pleasing to note that the number of candidates who failed to do all or even the majority of questions was considerably down on previous sessions. Although there were a sizeable proportion of candidates who did not do the entire question, the vast majority managed to make an attempt at answering all of the questions. Even where they got the answer wrong they at least recognised what the questions were about, which is itself an improvement on past performance. Where candidates failed to attempt all of the questions this appeared to be as a result of a general lack of knowledge in relation to particular questions, rather than based on any time pressure or structural difficulties in the questions (the issue of time pressure will be considered in relation to question ten below). That being said it is still a fact that the last three problem scenario based questions provide the greatest ground 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.

However it would appear that some candidates still engaged in question spotting and as a result supplied prepared, but inappropriate, answers to some questions. This was particularly the case in response to questions one and ten, as will be considered further below in the detailed question analysis. However the way question ten was dealt with did give rise to particular concern. Candidates clearly are aware of the syllabus content and the structure of the paper, which has been maintained over a number of years. However the fact that question ten has on a number of occasions been the slot for questions relating to criminal aspects of company regulation meant that a significant number of produced answers relating to various aspects of the criminal law, rather than on directors' duties, which was the actual subject of the question.

Many candidates still fail to read the question asked and provide general prepared answers on a topic area encapsulating the specific question topic. As a result they still spend time providing unnecessary material or even worse, completely irrelevant material.

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

## Specific Comments

### Question One

This question required candidates to describe the structure and functions of the main civil courts in the English legal system.

Candidates generally did well on this question and proved that they understood the structure and functions of the courts. However, relatively few candidates offered any explanation of the nature of civil law as opposed to criminal law and many just described the structure of the court system without examining the functions carried out by the various courts. Also a number of candidates produced answers about the doctrine of precedent and although their answers did refer to the hierarchical structure of the courts, there was much that was not necessary in their answers.

Other common errors were that candidates sometimes got mixed up with the hierarchical structure and thought that the divisions of the High Court were actually part of the magistrates' court. There was also frequent reference to the House of Lords, which demonstrated a lack of knowledge on the reform of the UK judicial system. In some instances candidates completely misinterpreted the question and wrote all they knew on Acts of Parliament and what stages a bill had to be passed through before becoming an act, or they described at great length the literal rule and golden.

The English legal system is an essential part of the syllabus and has to be studied and understood in the necessary depth.

### Question Two

This question was divided into three parts and required candidates to explain the meaning of three elements in contract law:

- offer,
- counter-offer and
- unilateral offer.

Part (a) was well done. Most candidates were comfortable describing an offer and drew distinctions between an invitation to treat, with excellent examples and a good grasp of the statements in *Carlill v Carbolic Smoke Ball*. Candidates were clearly well prepared for this aspect of the question.

Part b (i), again, answers to this question were sound with the majority of candidates being able to describe the characteristics of a counter offer, its effect, reference to *Hyde v Wrench* and contrast with a request for information. In a high number of instances, candidates were awarded full marks on this section.

Part b (ii). This part was not well answered and demonstrated that candidates did not really understand the terminology. Answers given ranged from *Dunlop v Selfridge* and privity of contract, to Sale of Goods Act and exclusion clauses. Only a small number of candidates were able to describe the characteristics of a unilateral offer and where they did, answers were sound and made reference to relevant cases such as *Errington v Errington* and *Carlill*.

### Question Three

This question required candidates to explain the meaning of the concept duty of care in the tort of negligence.

As in past sittings, this question was answered inadequately. Candidates seem to have a habit of writing everything they know about the law of tort. Answers were unstructured and described defences, cases about people being locked in toilets, injuries of people sunbathing on car parks and damages which would be available. Some candidates even went as far as attempting to compute the damages available and described the Statute of Limitations.

Candidates seem unable to be able to distinguish between the different areas within the law of tort and are not comfortable in answering questions in this area very well. However, a number of candidates did produce good answers which focussed on the correct area and were able to describe the tort of negligence, the relevance of the duty of care, the fact that there did not have to be a contractual duty to demonstrate liability, and a good description of *Donoghue v Stevenson* and the neighbour principle. Some answers described the extent of the duty of care and what the claimant had to prove and quoted relevant principles from *Caparo v Dickman*, *Hedley Byrne v Heller* and *Nicholas H*.



#### **Question Four**

This question requires candidates to list and explain the documents required to be submitted to the companies' registry in order to register a company.

This question was answered well by all candidates. It was encouraging to see that candidates understood the documents needed and the procedures, which need to be followed to set up a PLC. Full marks were frequently awarded. However, one point that has to be made is that a number of candidates still made use of the old, pre 2006 law, especially in relation to the memorandum of association. As a result they tended to overemphasise the importance of the memorandum and correspondingly to play down the importance of the application, which of course is now the most important document.

A small minority of candidates did misinterpret the question and described separate legal personality and the advantages of setting up a company compared to a sole trader.

#### **Question Five**

This question, split into three separate parts, required candidates to consider how companies may raise loan capital and how they secure such loans against their assets. Marks will be allocated as indicated in the paper.

Answers to part a) were mixed. Some candidates thought that debentures were actually shares and or a share of profit granted by the company. The majority of answers were of a high standard, recognising that a debenture was a written acknowledgement of indebtedness, that the debenture holder was a creditor and that there were no voting rights attached, just an entitlement to interest. Full marks were quite often awarded.

In part (b) candidates again could either readily describe the features of both fixed and floating charges, or made the mistake of assume that a fixed charge merely meant that a fixed rate of interest would be charged on the loan and that a floating charge related to a variable rate of interest. Unfortunately this is always a common mistake by candidates.

#### **Question six**

This question required candidates to consider the company secretary in the context of the idea of corporate governance.

This was not answered particularly well. Whilst most candidates stated that a company secretary was an administrative officer of a company, there was then a tendency to describe directors' duties. The better-prepared candidates recognised the qualifications needed, to be appointed as a company secretary and duties described tended to be in relation to maintenance and submission of records and registers and were comfortable describing the ostensible authority in pursuance of administrative contracts on behalf of the company. A small number of candidates actually took the context of the question seriously in explaining corporate governance and considering the role of the company secretary in that context as required.

Given that many candidates were able to cite the high level of qualifications required for a company secretary, it was somewhat contradictory that their duties tended to be explained in the most mundane list of tasks. Some of the less well-prepared candidates even suggested that the role of the company secretary was equivalent to that of a PA to the managing director, although alternatively some suggested that they were superior to the directors.

#### **Question Seven**

This question required candidates to explain the common law rules used to distinguish contracts of service from contracts for services.

Again, there was a stark contrast in answers to this question. Some answers described in detail, with examples and the reference to the relevant case law, the tests which are applied in determining the employment status of an individual. Some were extremely thorough and even went on to consider the particular position of part-time



workers. However, as has the case in past sittings, candidates often overlooked the key tests and instead described the various taxation implications of being employed as against being self employed, including reference to sole trader as against limited company liability, Class 1 as against Class 2 NICs and due dates for payment of income tax. Clearly answers to these sorts of questions need to be more tailored to law rather than accounting/tax to gain good marks.

Even where candidates were able to cite the three tests there tended to be some confusion about the integration test in particular, with a number of candidates confusing the actual outcome and relevance of *Cassidy v Ministry of Health*.

### **Question Eight**

This was the first of the three analysis/application questions and it has to be said that it was not done as well as the previous knowledge questions.

It required an understanding of, and an ability to apply, the rules relating to consideration and it prompted a variety of answers, which varied greatly in standard. Candidates often described the various elements needed to form a contract and interpreted the scenario as one similar to *Hyde v Wrench*, where a counter offer was involved. Given that offer and counter-offer were specifically examined in question 2 it would have been extremely unusual for those topics to have been examined again in the same paper. There was also discussion at length, of the various remedies for breach of contract, which did not warrant a lot of marks. In addition, candidates often misinterpreted the question as one, which related to promissory estoppel and privity. Reference was also made to Sale of Goods, exclusion clauses and fraud. While the question did revolve round the issue of consideration, and in particular the question of whether the fulfilment of an existing contractual duty can amount to sufficient consideration, some candidates saw that as an opportunity to write everything they knew about consideration, including much about past consideration.

However some candidates did interpret the question correctly and described potential anticipatory breach, the difference between sufficient and adequate consideration and drew similarities between the scenario and the facts in *Stilk v Myrick*, *Hartley v Ponsonby* and *Williams v Roffey Brothers*. This was extremely refreshing to see, especially the awareness of *Roffey Bros*. Answers were also well structured and it was refreshing to see that candidates had adopted a sensible approach in stating the relevant law, applying it to the scenario and then drawing reasonable conclusions, linked to their interpretation and analysis. As will be seen in relation to question 9 below that link was not always made.

### **Question Nine**

This question required candidates to analyse a given scenario and accurately apply the law of partnership to it. The question specifically raised the issues of partners' liability, both generally and on specific contracts and their authority to enter into such contacts in the first place. Whilst there were many sound answers, it has to be said that on the whole it was not done as well as might have been expected. There was a lot of repetition of the facts from the scenario. Whilst this is sometimes relevant to demonstrate application skills, there was not often a link between the scenario and the law identified. Most candidates were good at dealing with the general law of partnership and, as in question eight, they set it out, sometimes in great detail before going on to apply it to the three parties in the scenario. However, it was in the application that a significant number of candidates let themselves down by not applying the law they had actually stated and in many instances actually contradicting what they had written previously.

This was particularly the case with the first character Fi. Whilst some candidates had explained that ordinary partners did not enjoy the benefit of limited liability, and that such benefit could only be achieved through specific registered partnership forms, they nonetheless concluded that the partnership was a limited one and that Fi had limited liability.



Nor were the situations of the other two characters particularly well dealt with, again, by and large, in contradiction of the previous accurate explanation of the general law set out in the first part of answers. However, all that being said, many candidates performed well in this question.

### **Question Ten**

This question essentially was divided into two distinct parts, one requiring candidates to consider the issue of directors' duties with an element raising the issue of share allotment. It has to be stated at the outset that it was by far and away the worst done question on the paper. A surprising number of candidates simply did not recognise the issues raised in the problem scenario and attempted to apply various aspects of company law such as insider dealing, money laundering, fraudulent trading and wrongful trading, and some sometimes all of these together.

A number of explanations may be put forward for this failure to deal adequately with the question. Time pressure may have been an issue, as it did appear that candidates might have rushed this question, often leaving it until last and not really understanding the main principles in the scenario. Such time pressure, however, would appear to be the outcome of candidates wasting time in earlier questions by including lots of irrelevant material in their answers.

However it might be that on the basis of past papers, where the final question has indeed dealt with those topics, candidates simply assumed that the question must be the same. The flaw in such logic is of course obvious.

Even where candidates recognised that the fundamental issue was directors' duties, answers tended simply to list all such duties and as a result not to deal with the specific issues raised in the question.

Once again, that being said, it also has to be recognised that a number of candidates, although unfortunately a minority, produce excellent answers dealing with the issues of directors' duties and recognising and applying appropriate case authorities in support of their answers.