Examiner's report

F4 Corporate and Business Law (ENG)
December 2010

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. I have previously stated that this format seems to have settled down and to meet with candidates' approval from way they tackle it. That seems still to be the case and some learning providers commented positively on the format. However, it should be said that a number of candidates did not follow the structure and provided general and obviously prepared answers to specific topics. This is a point I will return to on a number of occasions in what follows.

- It has to be recognised that the performance of candidates was unsatisfactory. This paper should have been tackled much better than it was by the generality of candidates

As I have said many times the syllabus is wide and it has to be fully examined over time. While it is recognised that some aspects of the syllabus are less central than others and hence are examined less frequently, they nonetheless have to be examined at some time. However when these areas are examined they are generally presented in the context of a paper that provides more than ample opportunity to reach a pass standard through an adequate treatment of more obvious, not to say easier topics. I strongly suggest that such is the case in the paper under consideration. I hope to demonstrate this when I consider the individual questions. Consider question 5 on registers and accounting records. When this question was asked before, some time ago, I had assumed it would be an easy question for people doing an accountancy question. In the event I was wrong and it was done inadequately as it has been again. However, it is on the syllabus and has to be examined over time. Moreover I still maintain it is not only relevant, but important for students to be aware of the interface between law and other more **obviously** accountancy based modules.

Even if question 5 was not expected, it should equally be noted that both questions 2 and 6 were extremely generous in the breadth of approach they allowed candidates. These questions could have been much narrower, but were deliberately written to afford candidates as much scope as possible to answer them.
This paper was far more accountancy focussed than previous papers and gave candidates the opportunity to use their core basic accountancy knowledge. Questions 4, 5 and 9 should have been done extremely well but answers varied considerably. Candidates seemed to completely forget anything else and did not have the ability to draw on brought forward knowledge to answer the questions. Candidates do not seem able to recognise how the various different topics from their studies fit together.

As learning providers are aware, questions should never be repeated. Whilst that general rule is relaxed in the law paper, given the need to cover essential elements fairly frequently, nonetheless every effort is made to distinguish and differentiate questions relating to particular legal topics. Thus the wording of question may change, the question may focus on a different aspect or a narrower or wider aspect of the topic, or the topic may be examined as either a knowledge based question, or in a problem based scenario. In any event, the subject of the examination is still the same legal topic, no matter how the question is worded or structured. However, it would appear that in preparing answers rather topics, candidates fail to come to terms with the underlying law and struggle when the topic is examined in a way that they have not prepared for. I will return to this aspect in the detailed consideration below.

The foregoing also relates to the issue of question spotting and the structure of the paper. For some time now the paper has adopted a fairly standard structure. Thus, question 1 will always be on the English legal system, questions 2 &3 and maybe 4 will be on the law of obligations – contract & tort, with questions 4-6 usually being on company law. The problem questions, always start with a contract question, although the actual topic covered changes. Question 9 is usually a company question. While it is good that learning providers can give candidates an indication of the likely structure of the paper, it is becoming apparent that some candidates are no longer actually engaging with the question set, but are simply adopting the approach that says 'This is question 8, it

must be about contract…here is everything \i know about contract law, from offer to remedies. Question 10 is where insider dealing has turned up, so here is an answer on insider dealing.'

Some candidates clearly prepare answers to topics and deliver them even if they are not relevant. Such action merely indicates that the candidates do not actually understand the underlying legal concepts or principles. It is apparent that some candidates prepare answers based on questions from the previous paper and submit them as answers to completely different questions.

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 answer a question on one particular source of law, namely legislation. In effect, it was a slight reworking of a question that had been asked on previous occasions. The rewording had no great effect on the overall performance of candidates, indeed if anything the structure allowed them to perform better than in the past. Both elements of the question would have supported longer answers so candidates had to structure their answers within the time constraints imposed by the marking breakdown
Part a) was generally done well with most candidates being able to distinguish between Acts of Parliament and types of delegated legislation. Quite often full marks were awarded to those candidates who were able to explain the process by which a bill becomes an act, explain the concept of parliamentary sovereignty and discuss the advantages and disadvantages of delegated legislation. Common mistakes were that candidates tended to discuss the concept of binding precedent and went into lots of detail about common law and equity and the court structure within the UK. This demonstrated a lack of understanding on the candidate's part and an inability to show their knowledge of the different facets within the English legal system. It also indicated that they had prepared precedent and were delivering it no matter what was asked for.

Part b) For those candidates who approached the question properly and understood it, some really sound answers which mentioned ultra vires and incompatibility with Human Rights Act were produced. However once againsome candidates, on seeing reference to the courts assumed that an answer on precedent, statutory interpretation or the hierarchy of the courts was required.

Question Two
This was a wide-ranging question on the remedies available for breach of contract, so it did not require answers about the formation of contracts, consideration or terms. However, those candidates who had prepared general answers provided such details, but got no marks for them.

The standard of answers produced on this question varied in standard quite considerably. Often full marks were awarded to candidates who explained the definition of a breach of contract, addressed different types of breach, and explained the remoteness and measurement of damages and the various equitable remedies available. Some candidates wrote at length about breach of warranty, condition and innominate terms. Whilst some points were relevant (such as the remedies available in terms of damages or specific performance), discussions of *Bettini v Gye* and *Poussard v Spiers* did not warrant high marks. Moreover, some candidates completely misinterpreted the question and explained instead the ways in which a contract could be terminated. Whilst breach is one factor which could lead to termination, the other ways such as frustration and counter offer were not awarded marks. Some candidates approached this as if it were an employment law question. Quite often, re instatement and re engagement were described as remedies.

Tort once again appears to be candidates' worst subject.

Question Three
Part (a)related to the central issue of the 'neighbour principle' in the tort of negligence. Surprisingly, inadequate answers were produced for part a. Candidates interpreted the word "neighbour" very literally and explained the torts of trespass and nuisance. Given that *Donoghue v Stevenson* is the key case when studying the law of tort and founded the "neighbour principle" it was expected that candidates would have done far better.

Part b related to the remoteness test in tort**.** It was very encouraging to note that the majority of candidates appeared to be comfortable with the concept of remoteness. The Wagon Mound and *Victoria v Newman* were often cited, which demonstrated a sound understanding in this area. Some answers confused remoteness with measure of damages. However, it also has to be noted than a considerable number of candidates answered the question in relation to the law of contract.

Part c referred to economic/financial loss. On the whole, this was done inadequately, with only a small number of candidates appreciating that Hedley Byrne and Caparo were relevant. Candidates seemed to interpret the financial loss as being a monetary amount associated with the measure of damages. Defences such as contributory negligence and *volenti* were also discussed. The special relationship cases and physical injury v financial loss are a core part of the syllabus and form the fundamental basis for the law of tort. Perhaps candidates and/or their learning providers assumed that because it hadn't been examined before, it never would be examined. It might be noted that this topic is of importance. However it was not lack of knowledge of part (c)that let candidates down, but rather a lack of knowledge in relation to the two core concepts contained in parts b & c.

Question Four
This question related to share issue and the rights of shareholders. Although it had never been examined before, it was deliberately worded in a way to afford candidates the possibility to use their wider business/accountancy knowledge within the context of specific legal provisions. ON the whole it was done at least fairly well.
Part (a) should have been done very well. The types of share and the rights of shareholders are a basic concept for any candidate studying accountancy. However, answers to this were extremely confused. Pre-emption rights were confused with promoters of companies and company's first issue of shares, which was simply incorrect. Only a small number of candidates were able to describe pre-emption rights and where this was the case, full marks were often awarded.

Part b This was generally well done with most candidates being able to define what a rights issue was. Answers scored full marks where candidates described that rights issues could be made at less than market value, rights did not have to be taken, and that the purpose was to raise more capital for the company.

Part c Again, this was generally well done but some candidates thought that a bonus issue was a payment to employees for good work.

Question Five
This question related to company registers and charges and has already been referred ot in the introduction to this report.

Part (a)referred to registers. Answers to it were mixed. A high number of candidates approached the question from a company constitution angle and described the memorandum of association and articles. Some candidates misinterpreted the question and described the role of the company secretary and the documents needed to form a company in the first place. No marks were awarded for these types of answers.

The suspicion is that as these topics have been examined in the recent past candidates expected that they would not be examined again. Some were fortunate that registration documents and registers both refer to members and directors

Part b related to company accounts. Surprisingly, not many candidates scored full marks in this part. Sometimes candidates took an extremely complex view of the question and explained corporate governance procedures. Once again another prepared answer that was not appropriate. Some answers focussed on the actual records and documents which need to be kept. Answers were succinct and to the point and mentioned receipts and purchase invoices, records of cash, assets and liabilities. Credit was also awarded for discussion of the income statement, statement of financial position and cashflows.

Question Six

This question related to company directors' duties. There can be no more central concept in company law and one that has been examined on many occasions and in many different ways. As has been said in the introduction, this formulation was deliberately chosen as the widest way of examining the topic. Candidates were either extremely knowledgeable in this area and were awarded full marks or answers were inadequate. Where candidates did not know the statutory duties, credit was given for relevant points which demonstrated a basic understanding. For example, promoting the success of the company was interpreted by some as "making the company perform to the best of its ability and ensuring success". The benefit of the doubt was given to candidates and marks were awarded accordingly.

Some candidates explained in great detail the different types of directors, and the process of appointment and removal and the concept of corporate governance. This type of answers received no marks. Director's duties are a common topic, so it was surprising to note that some candidates did so inadequately, but once again it is symptomatic of the prepared answer syndrome, built on no real underpinning of understanding. Corporate governance is an important part of the syllabus, it has been examined in a particular way in the past, so any question on directors must relate to corporate governance and of course the Directors Disqualification Act 1986, which must always be mentioned together with fraudulent and wrongful trading, because there is a really good chance that they will turn up…except when they don't.

Question Seven

This question related to **unfair** dismissal. There was some confusion between wrongful and unfair dismissal. That said, where candidates did understand the difference, some sound answers were produced. Candidates were clearly comfortable with the automatically unfair and fair reasons and answers were of high quality. Answers scored full marks where the candidates went one step further and described the eligibility criteria of one year's continuous employment and bringing a case to tribunal within three months.
Part b related to remedies for unfair dismissal

Again this was generally very well done, with candidates demonstrating a sound understanding of the remedies available. Quite often full marks were awarded and awarded even where candidates did not deal very well with part (a).

Question Eight

This question required candidates to discuss whether there was an intention to create legal relations and whether Amy could recover payment from Ben and Che. Some sound answers were produced, which discussed the existence of domestic agreements and contrasted this to commercial agreements. Lots of relevant case law examples were given and a sound understanding of the subject was shown. However, the inadequate answers did not address the point of the question at all and wrote at length about formation of contract. There was some confusion as candidates believed this was a question on promissory estoppel and consideration. This demonstrated a lack of analytical and application skills. Candidates do not seem able to think about a situation and apply their knowledge correctly. Instead they wrote everything they know on a particular subject area which is a waste of time and does not warrant decent marks in most circumstances. Carlill was a common feature in answers, as was the High Trees case.

Once again it is suggested that this relatively inadequate performance is a consequence of candidates preparing a generic contract answer for what they know will be a contract question, rather than actually reading and analysing the problem scenario. Contrary to what some might suggest, it is not necessarily the fault of the question that the candidates do not get the central issue.

Ideally, candidates should analyse the scenario from first principles but they do not have to write from first principles. Candidate should go through possibilities to dismiss the inappropriate in order to focus on the essentials of the question. One again, and at the cost of appearing repetitive, standard generic answers do not gain marks, they simply cost time and indicate a lack of specific understanding. Family/friendship relationships in a contract question will often indicate that it is a question about the intention to create legal relations.

Question Nine

This question related to the rules governing the payment of company dividends, particularly in relation to a plc. The topic has been examined on numerous occasions previously, but this was the first time that it had appeared in the form of a problem scenario. The way in which candidates dealt with this question perfectly encapsulates the main point of this report, that those who understand the underlying legal principles can deal with the questions no matter how they are presented, but that those who are simply learning rote answers get lost quickly and too easily

Part (a) Answers varied in standard quite dramatically. Some candidates were able to discuss that a dividend can only be paid out of accumulated realised profits less accumulated realised losses. They also recognised that a public company may only make a distribution if, following the distribution, the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves. This was extremely encouraging and showed a good understanding of the subject. Answers concluded that the dividend was illegal as the revaluation reserve is undistributable.

At the other end of the scale, other candidates thought that the revaluation was distributable and that the dividend was legal. Others did not even approach the legality of the dividend at all and instead went down the route of resolutions and procedures needed for the declaration of dividends. Furthermore, some candidates concluded that all shareholders were entitled to a dividend and if one had been declared, and then one should be paid.

Part (b) Some sound answers in relation to the liability of directors, shareholders and auditors also were produced. Some candidates ignored this part of the question altogether or concluded that Dee and Eff had done nothing wrong and as the shareholders had approved the dividend, it should be paid. This conveyed a complete lack of understanding of the principles and indeed of the question as a whole.

Question Ten

This question required candidates to compute the amounts for distribution between the partners.
Answers were mixed. Some answers understood that partners had unlimited liability, that the partnership could be wound up at the wish of the partners, that external creditors needed to be paid before partners and that, as the partnership agreement outweighs the Partnership Act 1890, the remainder was to be spilt in accordance with the CSR. A lot of marks were available for merely calculating the final distributions, so this question gave the opportunity for lots of marks to be awarded. Where the approach to the question was correct as outlined above, 7 marks were often awarded. The point of the question was once again to place accountancy practice in a legal context and vice versa.

Some candidates believed that the question related to voluntary winding of a company and wrote at length about preferential creditors. Whilst some similarities can be drawn, this was an incorrect approach and demonstrated a fundamental lack of basic understanding between how a company operates compared to a partnership. Others

wrote everything they knew about partnerships and the different ways in which a partnership could be dissolved including death of a partner, etc. This was not relevant and further displayed a general lack of application skills.