Examiner's report
F4 Corporate & Business Law (ENG)
June 2013

General Comments
The inadequate level of performance noted in relation to the December 2012 exam continued in this one, with a further decline. As in that session there were a number of extremely well prepared and knowledgeable candidates who did extremely well but there was an increase in the number of candidates who continue to appear simply not to have prepared sufficiently for this examination. Law is not a subject that can be answered intuitively, but, unfortunately, there appears to have been an increase in the number of candidates who attempt to answer question from first principles without apparently having any knowledge of the underlying legal principles. This general lack of knowledge is compounded by the continued practice of question spotting and the rote learning of specific aspects/topics of study, with the consequence that what has actually been learned is used to answer questions sometimes wholly inappropriately. A further weakness is the tendency for candidates to write everything they know about a topic whether it is relevant or not. They have prepared an answer, rather than learned a topic; consequently they appear to lack the understanding to discriminate as to what is actually required to fully answer the question

The structure of the examination paper, as usual, consisted of ten compulsory questions, each carrying 10 marks. 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. As in the recent past, the questions tended to be subdivided into smaller subsections in the belief that such subdivision would help candidates to structure their answers. However on this occasion, it has been suggested that the subdivision, although designed to help candidates by triggering specific knowledge, had the opposite effect of revealing gaps in their detailed knowledge. Consequently although candidates may have had some general knowledge about a topic, they lacked the detailed knowledge to deal with the several parts. This possibility, again the result of inadequate preparation rather than any inherent weakness in the structure of the paper will be returned to when the individual questions are considered below.

Candidates found the paper more challenging than previous ones.
What follows will consider the individual questions in and candidates' responses to the individual questions in the paper.

Specific Comments

Question One
Part (a) required a description of the civil court structure, while part (b) required an explanation of the tracking system for allocating cases, essentially to the first instance courts of the county court and the High Court.

1(a) On the whole this was very well done with many candidates gaining sound marks, if not full marks. However, even here there was evidence of the rote learning suggested above, as many candidates simply produced a list of all the courts in the English system, both civil and criminal, thus the Crown Court was not uncommon. A further indication of this was the fact that although some candidates got reasonable marks they actually produced a prepared answer on precedent, which fortunately for them more than covered the actual topic under consideration.

Perhaps of less concern was the common view that claimants have an automatic right to appeal if they are not happy with a decision at any given level.

1b. This part of the question was done better than might have been expected with the majority of candidates referring to the three tracks and the financial limits relating to them. Some candidates, however, those who had prepared a different aspect of the English legal system, approached the question by discussing the doctrine of

binding precedent or statutory interpretation. Those who knew the Woolf Reforms and the introduction of the tracking system scored well.

Question Two

This was a contract question. It was divided into two parts, each of which carried 5 marks. Part (a) referred to intention to create legal relations and part (b) to the doctrine of privity.

Part (a): Again, this question on the whole, was answered well. Some candidates could state the principles – but without cases –others discussed the cases but did not explain the principles. Most, however, provided both principles and cases, including *Balfour v Balfour*, *Merritt v Merritt* and *Edwards v Skyways* and others and gained sound marks.
Once again it has to be noted that some candidates confused intention to create legal relations with invitation to treat, a not uncommon topic in the exam cycle.

Question Three

While the knowledge in the area of tort seems to have improved sitting on sitting, there is still an inability of candidates to interpret questions correctly. Causation, or causality, is a crucial element in determining liability in tort. The fact is that if an action does not cause any harm, then it is not actionable in tort. The concept may be simple, it appears clearly in section B4(d) of the F4 ENG study guide but it has not previously appeared in an F4 ENG exam. Consequently, it was not done at all well. However, the fact that part of a syllabus has not been examined, rather than reducing the likelihood of its being examined, makes it all the more likely that it will eventually be examined.

Problems with this question were added to further by the use of the very word 'causation' in the question as a number of candidates appeared not to recognise it as being the same as 'causality'. In practice, the words causality/causation are used interchangeably but causality is never used in relation to referring to 'the chain of causation'; the third part of the question and the reason causation was preferred on this occasion.
Difficulties with this question may be inferred from the fact that many candidates did not even attempt the question, while others produced prepared generic answers which discussed *Donoghue v Stevenson*, *Caparo v Dickman* and *Hedley Byrne v Heller*.

Part 3(a) This part was done better than the other two parts. Many of the candidates, who attempted the question, were able to make a fair attempt at this part by stating causation is the cause of the injury or damage. Others, however, thought causation was the cause of the breach.

Part 3(b) This part was, on the whole, answered inadequately. Again, candidates tended to opt for the approach of writing everything they know on a particular topic and did not really discuss the relevant law in this area. Many struggled trying to describe the 'but for' test and although many knew the Barnet case, too often it was said that the test showed that the doctor was not negligent.

Part 3(c) Although, this part was done better than part (b) still too many candidates discussed contributory negligence, consent and the various defences in this part of the question. Although contributory negligence could be cited, the overall analysis tended to be far too general and displayed a lack of understanding.

The structure of the question was supposed to assist candidates, as the three elements would be expected in any sound answer on the topic of causation. However, it appears likely that the very specificity of the leading questions, confused a significant number of candidates.

Question Four

This was on bribery, a topic only recently introduced to the syllabus.
Once again it was divided into three parts and once again this subdivision appears to have confused some candidates, who had prepared a general answer on bribery, but were unable to disentangle the specificities of the question from their general information.

Part (a) On the whole candidates were well prepared for this question and had no problems discussing the definition of bribery and giving sound examples of behaviour which would constitute bribery. Indeed, only occasions the examples made sense of the purported explanation. A number of answers explained bribery as giving someone money to do something, which could be a perfectly legal contractual agreement.

Part (b) For those candidates who were familiar with the Bribery Act 2010, this part posed no problems, although the sanctions for bribery were rather confused ranging from fines to 20 year imprisonment. The well prepared candidates often scored full marks. However, a significant number of candidates discussed the offences as being insider dealing, and money laundering, which showed either a lack of understanding or a lack of knowledge, or the fact that they had prepared those topics.

Part (c) Although it followed on from the final element in part (b), candidates seemed to struggle with this part and merely repeated that a company needs to have adequate procedures in place to prevent bribery, without elaborating. At the other end of the spectrum there were some sound answers which discussed educating staff, introducing gift and hospitality registers and training.

Question Five

This question related to the law relating to company distributions and in particular the difference in the rules relating to private and public companies and the consequences of breaching those rules. One again the question was divided into the three specific elements that would be expected in a sound answer. Unfortunately this did not benefit those candidates who had prepared general answers. On the whole the performance was unsatisfactory, given the centrality of the topic to company law generally and accountancy in particular.

Part (a) This element generated a range of answers. The well prepared candidates correctly identified that distributable profit was calculated by taking accumulated realised profits less accumulated realised losses and went on to define how those were calculated and included a sound discussion of undistributable reserves. However, a fairly common approach was to discuss the priority of dividends in terms of preference and ordinary shareholders, in other words not where the dividend came from but where it went. This indicated a lack of sufficiently detailed knowledge in this area.

Part (b) A significant number of candidates just repeated the conditions for setting up a plc in terms of amount of issued and paid- up share capital and the capability of a plc to issue shares and thus pay dividends to members of the public.
Others, merely repeated or added more general information to what they had written in part (a). Only a minority of candidates displayed knowledge of the balance sheet test and overall, answers to this part were inadequate.

Part (c)
This element was done quite well with directors, shareholders and the liability of auditors being discussed. Some even considered the power of shareholders to injuct directors.

Question Six

This was a question on directors' duties, but only three of them. Once again the specificity of the question caused problems to those candidates who had prepared general answers on directors' duties. It seemed that candidates expected to have to list the directors' duties but many were unprepared to explain what they actually involved. A

common approach to the whole of question 6 was merely to repeat the statements from the question, without showing any knowledge of the statutory duties.

Part (a) was unsatisfactorily answered and many, if not the majority, of candidates produced answers that owed more to managerialism than to law. Some answers did identify that directors need to focus on relationships, the environment and long term future of the company, but answers of that standard were few and far between.

Part (b) The approach to this element was similar to that in part (a). Consequently, answers were mixed. Some answers identified that there is both an objective and subjective test and went into detail about higher levels of skill if a director held a qualification. However some answers stated "directors need to exercise reasonable skill and care" and then went on to discuss particular personal skills that they considered a director should have to make a success of their company.

Part (c) This part was done better than the other two parts, but even then not as well as was expected. Most candidates were able to score 1 mark by stating that directors must put the interests of the company before their own personal interest. Some were able to cite cases to support their answers with examples or cases.

Question Seven

This question in two parts dealt with the common law duties owed by employers and employees. As has been the case in the past, this question tended to be well done.
Part (a) While a number of candidates provided very full answers and scored very well on this part, other candidates either stated the statutory duties or discussed the difference between self-employed and employee rights.
Part (b) Although not as well done as part (a), most candidates still scored well in this element. However, a number of candidates did not really know the common law duties of the employee so instead made suggestions such as "turn up for work" and "be honest", as they had done in relation to the elements in question 6.

Question Eight

Contract scenario on the rules relating to (a) the performance of an existing contractual duty as consideration, (b) anticipatory breach of contract. It proved to be one of the better answered questions in the paper and the best answered of the three analysis questions.

Part (a) Where candidates identified that the issue was consideration and performance of existing contractual duties, answers were sound and often scored full marks. A number of candidates however, actually discussed the essential elements of a contract and analysed whether a contract actually existed or not. They concluded that there was a valid contract and that Box could sue Ano Ltd for damages, which showed a lack of identification and application skills.
A few thought it was about promissory estoppel, which,, has not been examined for a while.

Part (b) This element was also done well by the majority of candidates. Most candidates identified that Cox could take action for breach. Some answers analysed why an action would be successful and discussed actual and anticipatory breach and the various remedies, including specific performance if only to reject it, which would be available.

Question Nine

This was a question, essentially on the nature of articles of association. Unfortunately, it proved to be of a level of subtlety that was beyond the scope of the majority of candidates. A number of candidates thought that the question related to insider dealing and the operation of the Company Directors' Disqualification Act.

Part (a) The majority of candidates did not know how to remove a director from their position. A significant number of answers stated that the other directors could just dismiss Dee, others opted for a special resolution and yet others contended that the director could not be removed at all.

Part (b) Answers to this part were inadequate. The majority of candidates interpreted the question to be one on directors' duties and discussed the breach of duty and in so doing essential repeated answers produced in relation to question 6. Other candidates thought that the question referred to the duties of a company secretary and discussed how in a plc, the appointment of a secretary is compulsory, whereas in a private company, it is not. However, the majority of candidates treated the question as relating to employment law and simply ignored the essential issue as to whether the articles of association could establish a contract of employment in the first place. Most candidates asserted that the work would have to be paid for, but that assertion was very rarely backed up by reference to the appropriate legal sources.

Answers tended to be extremely confusing and only a small number were able to identify that the question referred to the articles of association and the rules in relation to third parties. For the candidates who knew the principles established in *Eley v Positive Life*, some sound answers were produced. However, on the whole, candidates found this element very difficult.

Part (c) relating to how the articles of association can be altered was done better than the other two parts, but was still not done particularly well.

A large number of candidates concluded that the articles could not be changed and any change would constitute fraud on the minority. Not many candidates were aware of the fact that a change was effected by special resolution, nor the rule in Greenhalgh, nor indeed the role of the court in being the ultimate arbiter in relation to the change. This is fundamental core knowledge, so the approach to the question overall was unsatisfactory.

Question Ten

This question related to members' liability in standard unlimited partnerships and once again it has to be stated that the level of performance was inadequate.

Some candidates, despite the question being very clear, thought that the business was a limited company and that none of the partners had any liability. Others simply asserted that the partnership was a limited liability partnership in spite of the fact that the question stated that it was formed under the Partnership Act 1890.
Most candidates, however, were able to identify that the partnership in question was an unlimited partnership, that there was joint and several liability and that external debts needed to be paid off first. They also stated the proportions in which the external debt had to be paid: 6, 3, 1. However, after stating that a significant number then went on to contradict themselves by accepted that Jo had limited liability and calculated the actual amounts owed on that basis. Such reasoning can only support the conclusion that these candidates did not actually understand what they had written.