Examiner's report

F4 Corporate and Business Law (ENG)
December 2013

General Comments

Performance in this paper was better than in the last diet of exams, but it still has to be admitted that it was not as was hoped for.

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. In the report on the immediately previous paper I commented that perhaps the sub-division in that paper actually made it more difficult for candidates, as it required more detailed knowledge than candidates actually had. The performance in this paper would suggest the accuracy of that suggestion, in that the sub-divided question in this paper did not require more specific information, but rather allowed candidates to apply a general level of knowledge to specific topic areas with an overall topic. Whereas the previous exam required increasingly detailed knowledge to gain the marks available, in this exam there were always more points to be made than there were marks available.

Also, to repeat a comment that has been made for a number of years, there was a distinct and wide division in the level of performance between well prepared candidates who did extremely well and the inadequate performance of many candidates who appear simply not to have prepared sufficiently for this examination.

The point has been made previously, and it continues as an unfortunate fact that there have been an increased number of candidates engaging in question spotting. However, whereas in previous sessions this had led to candidates producing totally inappropriate prepared answers, the questions asked in this examination were so clearly set out that candidates did not so much misunderstand the topic examined but simply had failed to prepare the 'right' aspect of the topic in hand. As will be seen this was particularly evident in questions 5 and 9. As has been emphasised previously and repeated, question spotting does not work and indeed cannot work on a long-term basis. What follows will consider the individual questions in and candidates' responses to the individual questions in the paper.

Specific Comments

Question One

As usual, this was an English legal system question, this time focusing on statutory interpretation. It was divided into three parts and asked candidates to consider the powers of judges to interpret legislation and the rules they apply in exercising such interpretative powers. Although the question required answers to focus on the two main general approaches to statutory interpretation employed by the courts, part (a) required an explanation of the meaning of statutory interpretation.

The question was generally well done and the majority of candidates managed to get satisfactory marks. However, somewhat surprisingly part (a), the general part, was done less well that the two more specific parts of the question. This once again may be a sign that what the examiner sees as a helpful subdivision of the question does not in fact appear in the same light to candidates.

In part (a) a few candidates quite well, but inappropriately, the creation of legislation rather than its interpretation, providing a good explanation of the stages of a Bill through parliament. It did not seem to occur to such candidates that a topic of that detail would be awarded more than two marks.

In parts (b) and (c) there was a satisfactory application of relevant cases but it should be noted that some merely mentioned the names of cases but no more – failing to illustrate the point they were making. It is perhaps worth re-emphasising for the benefit of learning-providers as well as candidates that a case name without the principle behind the case does not merit any marks.
A small number discussed ratio/obiter and a very small number discussed the difference between civil and criminal law. This clearly indicated a total lack of understanding a total commitment to preparing answers.
A very few did not attempt the question.

Question Two

This question asked candidates to explain aspects of consideration in contract law and it dealt with one for the most central parts of contract law but was inadequately answered.

That being said there was still a gradation in performance in relation to the various parts of the question.
Part (a) the general definition was done well this time. However parts b (i) and (ii) were less well done with a number of candidates only giving one sentence answers. Part b (iii) almost guaranteed two marks for any candidate who had done adequate preparation and the award of three marks was certainly not uncommon in some answers.

Question Three

This was the tort/negligence question. However on this occasion, perhaps, if not certainly, due to the structure of the question it proved to be a source of positive marks. There were 5 marks available for explaining duty of care. Standard of care was again dealt with very well on the whole - a lot of candidates cited lots of practical case law to illustrate the varying standards of care.

On the whole therefore question 3was well answered. Quite a number of candidates discussed standard of care in part (a) and in part (b) discussed the neighbourhood principle and Caparo.

Question Four

This question related to limited liability generally and distinct forms of liability within companies. It was done unsatisfactorily on the whole. Once again the general aspect of the question part (a), requiring some thought rather than mere memory was not well done. For example, quite a large number did not know the difference between the various forms of partnerships. The general view seemed to be that there had to be one unlimited partner in all types of partnerships. Also a significant number of candidates repeated their answer in part b(iii). However, that being said, due to the low overall mark allocation it was still fairly easy to pick up a couple of marks. One cause of low marks was the reference to the company having limited liability and some candidates referred to the 'directors' as having limited liability rather than the members.

Question Five

This question asked candidates to explain the operation of the Company Directors Disqualification Act (CDDA)1986. This was, perhaps, the worst answered question on the whole paper and once again the major suspect for the deficiency in performance is the prepared answer linked with the failure to read the question. There certainly were a number of satisfactory answers which dealt thoroughly and in detail with the provision of

the CDDA 1986. However, far too many candidates spotted the word director and saw that as an opportunity to discuss directors' duties and breach of duty and how the members can remove a director (topics for recent exams): death, insanity and bankruptcy were popular grounds, although none, per se, a ground for disqualification.

Question Six

This question required an explanation of two compulsory documents required for the formation of a limited company, whether private or public. These were (a) the statement of capital and initial shareholdings and (b) the articles of association.

As regards part (a) which carried four marks, very few candidates mentioned the fact provision related to the subscribers of the companies memorandum.

Part (b) relating to articles of association was well done, which is only to be expected given the fact that it is now the core company constitutional document and has been examined on a number of occasions in the fairly recent past.

Question Seven

The ever-popular and consistently well done employment law question, this time dealing with constructive dismissal and the remedies for unfair dismissal. As previously, this question was well done and perhaps the best answered on the whole paper.

By far and away the majority of candidates were able to explain the concepts, provide supporting cases and reach the appropriate legal conclusions.

Once again the division of the question into two parts benefitted candidates who might not have had sufficient knowledge to sustain ten marks worth of work on either of the individual topics.

Question Eight

This contract law question related to the control of exclusion clauses and the operation and effect of the Unfair Contract Terms Act (UCTA) 1977. Previously this topic has proven very challenging for candidates, but on this occasion it seems to have been dealt with better although it could still be improved.

In relation to part (a) which specifically referred to the way in which exclusion clauses can be incorporated into contracts, too many did not explain the various ways of incorporation, often going straight into the application of the law.

A number of candidates saw the word negligence and assumed that that was what the question was about, ending up in the conclusion that Abid was an example of contributory negligent.

Part (b) required an explanation of the operation of the UCTA 1997. It was fortunate that it only carried three marks as not many candidates were aware of its provisions. A number of candidates mentioned the appropriate provision for answering part (b) in their answer to part (a).

Question Nine

This question referred to the implied authority of a company secretary within a general explanation of agency law and the limits of an agent's authority. It was not about the appointment, qualification and functions of a company secretary. Unfortunately too many candidates saw the words company secretary and took it as an invitation to write all they knew about such company office bearers.

A significant number of candidates discussed the qualifications and duties of company secretaries. Quite a few did not even mention agency. Some took the view that the company was liable for all the contracts because they

were in the company name , others took the view that the company was not liable for any of the contracts as a company secretary had no right to make contracts at all and on top of that they were for Chu's personal benefit. A few did very well, explaining agency generally, types of authority and the Panorama case in particular.

Question Ten

In essence this question asked candidates to explain the relative security of loans charged by fixed or floating charges. It did not require an explanation of winding up procedures, either voluntary or compulsory, nor did it need a detailed explanation of the order of payments upon the liquidation of a company. However, a number of candidates insisted that the question could not be answered without such irrelevant detail and in providing it forgot the essence of the question. Others thought it was enough to explain the order of payment without providing any explanation of that order. Some candidates missed marks by not explaining the nature of fixed and floating charges.

An additional, and surprising downfall for many candidates was ranking payments with the date of registration of the charges rather than the date of creation; although it has to be said that such candidates tended often to be the candidates who did not give any descriptions/characteristics of fixed and floating charges.