Examiner's report

F4 Corporate and Business law (ENG)
June 2014

General Comments

The structure of the examination paper, as usual, consisted of ten compulsory questions, each carrying 10 marks. As in the recent past, the questions tended to be subdivided into smaller subsections. This was aimed at helping candidates to structure their answers, although it has to be recognised that it led to particular problems for markers where candidates ignored the subdivisions and answered questions globally. 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 fact that the scenario questions potentially covered a lot of material enhanced the need for candidates to analyse the situation presented, rather than merely to regurgitate all they knew about general legal topics.

The number of candidates who did not attempt all of the questions remains relatively low, but the impact of not attempting all of the questions remains damaging. 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. A number of candidates thought it was sufficient just to study the company law element of the syllabus.

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

Specific Comments

Question One

Part (a) was answered remarkably well. Some candidates did however mix up the characteristics of civil and criminal law.

Part (b) produced a varying standard of answers. It was clear that some candidates had prepared an answer on the general court structure in the context of binding precedent and described ratio and obiter at great length. Other candidates who understood the question wrote much shorter answers and tended to get full marks.

Question Two

Part (a) carried 6 marks and the more specific part (b) carried 4 marks. Although most candidates did well in this question it was not without problems.

In part (a) candidates either did really well and answered the question set or did not answer the question at a tangent and described the difference between offer and invitation to treat, rather than focussing on the topic of the question: acceptance. This can only be a result of rote learning without understanding. A notable proportion of candidates wasted time going through the basics of contract formation, and many put everything they know about offers down, leaving very little time for a discussion on the rules of acceptance. Some candidates wrote down relevant material but then failed to relate their answer to the rules of acceptance. For example, some would write a whole page about invitation to treat, and supply of information, cases but very few went on to say that these were not offers and therefore could not be accepted. Similarly, some would describe the facts of Carlill in detail, but then relate it more to intention to create legal relations than acceptance by conduct or waiving need for communication.

In part (b) concerning revocation, it was quite common for candidates to focus on the various ways in which an offer could be terminated and so long lists, which included irrelevant material on counter- offer, death, lapse of time were produced.

Question Three

Tort question in relation to part (a) the 'standard of care' for 6 marks and part (b) remoteness of damage for the remaining 4 marks. This was either done inadequately or very well with very little in the middle ground.
In part (a) the common error was for candidates to focus on the duty of care rather than the standard of care and they listed the tests in Donoghue v Stevenson and Hedley Byrne v Heller. This evidenced the fact that candidates had prepared a general tort answer, however a good number of candidates, not only recognised what the question was about, but could provide sound answers with supporting cases.

Part (b) was also equally divided between reasonable and irrelevant answers. Too many candidates focussed on contract law cases such as Hadley v Baxendale and Victoria Laundry v Newman.
However, a number were able to explain the reasoning in the Wagon Mound case.

Question Four

This question asked candidates to explain aspects of capital maintenance.
Candidates struggled with part (a) and just tended to mention that capital maintenance was all about "maintaining capital". This may have been an example of an attempt to assist candidates being counterproductive, as it revealed a lack of knowledge.

In relation to parts (b) and (c) some candidates mixed up the difference between shares at a discount and shares at a premium but generally these parts were well done. Candidates displayed a sound knowledge on the fact that the share premium is an undistributable reserve and the fact that shares cannot be issued at a discount on nominal value.

Question Five

Partnership law question relating specifically to the various available types of partnership, but as the question made clear the core issue related to liability of the members of the various types of partnership.
However, given that the question required candidates to discuss partnerships in the context of liability, a lot of irrelevant points were provided.
Where candidates failed to pick up marks was in confusing parts (b) and (c). Many would say that limited partnerships afforded partners limited liability, and would then describe the limited partnership under (c), thereby getting no marks at all. Even those that did know the difference between (b) and (c) would often write very little under (c) and focus only on the limited liability of the members, thereby missing most of the 5 available marks. Many candidates produced essentially the same answer for both different types of structure. However, that being said overall the answers to limited liability partneships were done quite well, with candidates comparing the business structure to that of a company.

Question Six

This company law question concerned the two distinct types of voluntary liquidation. Many candidates treated the question as just one single entity.

As a result presentation was generally inadequate, with answers relevant to part a being contained in part b) and vice versa.

The most common mistake was to equate members' voluntary liquidation with voluntary liquidation as a whole and creditors' voluntary liquidation with compulsory liquidation, so stating that voluntary liquidation could only

take place when the company was solvent. This was often combined with a statement that the creditors passed the resolution to liquidate in a creditors' voluntary liquidation. Another common error was frequent references to the role of the court in liquidation and in the appointment of the Official Receiver.

That being said, candidates who knew the material scored well on this question. Those that didn't scored unsatisfactorily. There was lots of confusion between the features of a voluntary and compulsory liquidation, with many candidates failing to realise that a member's voluntary liquidation is when the company is solvent. They then also described the features of a creditor's compulsory liquidation in b(ii).

Question Seven

This question on employment law was the only unsubdivided question on the paper and related to redundancy.

This question on the whole was answered very well. Candidates showed a really sound knowledge of the circumstances, procedures and implications of redundancy. There were a few candidates who has misinterpreted the question and wrote at great length about unfair and wrongful dismissal and also about the difference between a contract of service and contract for services, again displaying the fact that they has prepared for the wrong question.

A significant number of candidates failed to describe the redundancy payments properly – they would state the correct age brackets but then just say that those falling in these brackets would get 0.5, 1 or 1.5 weeks' redundancy pay (without saying per year of service or showing that there was a cap of 20 years). Some credit was nevertheless given for recognising that age was one of the factors, but they were unable to gain the full 3 marks available for a discussion of redundancy pay.

Question Eight

Contract scenario on anticipatory breach of contract, damages.

Whilst some candidates produced sound answers, other candidates could not seem to grasp what the question was about. They discussed whether a contract had in fact been established and considered the four essential elements. Others simply wrote very brief answers, which concluded that a breach had been committed and that damages would be payable of £300,000 which included the expenses and the lost profit. Some answers discussed the options for suing now, or waiting for the breach to occur, and about the fact that only the expenses could be recovered. Others discussed every possible remedy when remedies such as specific performance and quantum meruit were not relevant to the scenario.

Question Nine

A question focussed on specific directors' duties.

Whilst most candidates did acknowledge that this question was about breach of director's duties, others misinterpreted the question and thought that it was about insider dealing and money laundering (inappropriate question spotting).

The question generated a lot of very generic answers on the statutory duties and candidates produced long lists and discussions of each of the duties. Many candidates went through each and every one of the seven statutory duties before correctly identifying the two relevant duties (and sometimes incorrectly justifying the relevance of others). Some answers however identified the correct duties, applied them to the facts, and then gave an accurate description of the remedies. The analysis/application questions are written to test a candidate's skill to apply what they have learned and select the appropriate area of law. Those that just discussed the directors'

duties in detail without recognising that conflict of interest and declaring an interest in a proposed transaction were relevant, did not score well.

Question Ten

Problem scenario on fraudulent and /or wrongful trading.

This was answered inadequately with either candidates coming to the incorrect conclusion and stating that Gim and Hom were guilty of fraudulent trading or by candidates producing long calculations comparing assets and liabilities and how much the company would need to pay back. Some candidates even concluded that there was no case to be answered as Gim and Hom were sole traders and they could do what they wanted or because they were a company they had limited liability. The ones who recognised what the scenario was about and the difference between wrongful and fraudulent trading scored well.

A particular failing in many answers was that they tended to conflate fraudulent and wrongful trading thus reaching the conclusion that the parties concerned were liable for both.

A few correctly came up with limited liability, lifting the veil and the directors being personally liable (plus disqualification). A lot made an unnecessary reference to the criminal consequences of fraudulent trading under the Companies Act 2006 and many extended that criminal liability to wrongful trading.