Examiner's report

F4 (ENG) Corporate and Business Law

For CBE and Paper exams covering January to June 2016

General Comments

The June 2016 paper followed the structure introduced in the December 2014 examination. The paper is divided into two parts: Section A comprises 45 multiple choice questions (MCQs) of either 1 or 2 marks to a total of 70 marks, while Section B contains 5 multiple task questions (MTQs) each worth a total of 6 marks giving the normal overall total of 100 marks. All questions are compulsory and the exam time period is 2 hours.

In the computer-based examination format, all questions are structured so as to be capable of objective marking, while in the paper based format, although section A is marked objectively by computer, section B is still marked by subject experts.

The present structure replicates division in the previous examination structure between essentially knowledge based questions and questions requiring, not merely knowledge, but analysis and application in addition.

Performance in Section A, the purely knowledge based section of the paper, continues to be better than in, the more analytically challenging, Section B; that however is to be expected and reflects the general skill set of most candidates. In relation to this specific point, it is worth mentioning that the better performance in Section A generally compensated for any weakness in relation to Section B. Candidates do perform more inadequately in section B cannot be ignored and will be considered further in some detail below.

Although the time period for the exam is only two hours, there is no evidence of candidates' performance suffering under time pressure to complete it. Indeed it would appear that some candidates still had sufficient time to copy their answers for the Section A computer marked MCQ questions on their exam papers, while others provided unnecessarily extended answers to questions in the written part of the paper exam . One final comment in relation to section A, and one that supports the above point about time management, is that very, very, few candidates did not answer all of the questions.

Section A

As was hoped, this knowledge part of the exam appears to have benefited the majority of candidates, who traditionally have been stronger in fact based questions than in legal analysis. In examining the overall performance it can still be seen that candidates fared better in this section than in the analysis/application and there is certainly no evidence that any candidates suffered as a result of their performance in Section A as opposed to Section B.

As might be expected, the simpler 1 mark questions tended to be answered better than the more complex 2 mark questions. It has to be said, however, that there was a wide range of performance over the whole range of questions in either mark category, so it cannot be concluded that either the 1 mark question were too easy or the 2 mark questions too difficult, although the best performances were in relation to 1 mark questions and the worst in relation to the 2 mark ones.

As in previous examinations under the new structure, the extension of the field of material to be covered did not prove a major difficulty. However, it has to be admitted that candidates did show some problems in dealing with the more difficult question in areas of the syllabus in which they have traditionally struggled. As with the previous examination, it would appear that candidates have benefited from the recognition that they will be examined over a wider spectrum of the curriculum. Whereas previously candidates engaged in topic, and even worse question, spotting to, now it would appear that they realise that there is nothing to be gained in such an exercise as all aspects of the syllabus can be examined in one exam.

Some questions proved particularly problematic for the simple reason that they were not the most straightforward and required careful thought in order to come up with the correct answer. Some of these will now be considered. But many of the least well done questions were in the areas that always have proved problematic for candidates, namely English legal system and tort.

Question 8 was on the legal system issue of binding precedent, but it was made slightly trickier by requiring knowledge of the court structure. The question asked:

Which of the following is a judge in the High Court required to follow?

(1) A *ratio* of a previous High Court decision
(2) A *ratio* of a previous High Court Divisional Court decision
(3) An *obiter* statement in a previous Court of Appeal decision

A 2 only
B 3 only
C 1 and 2 only
D 1, 2 and 3
(2 marks)

The correct answer was A, but that was the least popular answer, with most electing for C. The explanation for this result is that the candidates reacted to the trigger words 'ratio' and 'obiter' in the answers. As the majority were aware that a binding precedent was based on the 'ratio' of a previous case and that 'obiter' statements were not binding they selected the two options that contained the word 'ratio'.. However, the question also raised the issue of the hierarchy of the courts, in that a High Court judge is NOT bound to follow even the ratio of another High Court judge sitting alone, although they are bound to follow the ration of the Divisional Court, in which more than one judge determines the case. Somewhat ironically, those who elected for D could only have done so on the basis of court hierarchy, but failed to deal with the 'obiter' point.

As has been stated previously, the performance in relation to this aspect of the syllabus historically has been lacking in detail and this question merely shows that the lack of detailed knowledge in this area continues.

Question 15 was on the topic of tort law, another aspect of the syllabus that historically has proven to be problematic. The question was as follows:

In relation to the tort of negligence, the concept of 'neighbour' applies which of the following standards of care?

A Universal
B Subjective
C Objective
(1 mark)

This question only carried 1 mark, but surprisingly, most candidates went for answer A with the other answers being fairly evenly split between B and C. The correct answer was C. While it is possible to understand why a random non subject-expert might pick A, it is less understandable where those asked to make the selection have been studying the topic. The way the question was answered reflects the continued lack of knowledge about tort.

While the questions considered so far have not been particularly difficult or obscure, as in all exam papers there are some more difficult questions that are designed to provide sterner tests of candidates' knowledge.

Question 18 about the doctrine of revocation in contract law was one of those questions. It was as follows:

Which of the following statements about revocation of an offer is ALWAYS correct?

A It can be revoked at any time before acceptance unless the offeror has agreed to keep the offer open for a certain period of time
B It may be revoked only when it is communicated to the offeree by the offeror
C It can be revoked by post but this is effective only when it is received by the offeree
D It cannot be revoked once the offeree has started to take steps which would amount to acceptance
(2 marks)

This is tricky and requires careful thought but the strongly emphasised ALWAYS should have put candidates on their guard that care was needed and that what maybe be correct under some circumstances are not applicable under all circumstances. Most candidates went for A then D with C, the correct answer, was the least popular choice. Examining the possible alternatives A does look right and indeed it would be correct were the offeree to provide consideration, but the bare promise itself is not sufficient to establish an option contract: so A is NOT always correct. B is not correct because a third party may informer the offeree that the offer has been revoked. Most candidates were able to recognise this rule and declined to select it as an option. Option D is sometimes correct but is not always so. It only applies in relation to unilateral contracts and is not effective as regards ordinary bilateral contracts.

That only leaves option C, which is in fact the only option that is true under all circumstances.

The suspicion continues that candidates may be tempted to skim read questions and answers and simply do not spent sufficient time on thinking about them. Questions are sometimes more subtle than candidates allow for and the alternatives to the correct answers are called 'distractors' for the simple reason that they are there to undermine candidates' certainty as to the correct answer. Question 18 is a good example of this and also emphasises that candidates should take careful note of the emphasis applied in the questions.

Section B

This element of the examination requires both analysis and application, which skills traditionally have not been to the forefront of candidates' abilities. Unfortunately, it has to be recognised that such weaknesses remain, even if the new structure has gone some way to mitigate the consequences. Now, scenarios are shorter, and questions are subdivided and more focussed. What the questions under the new structure seek to do is to encourage candidates to demonstrate their understanding of and ability to apply particular legal principles and concepts. However, as with Section A, this apparent reduction in what is required, introduces a compensating difficulty, that candidates must focus on and succinctly address the issue raised by the question: irrelevant information simply will not be rewarded and it is a matter of fact that the shorter, more detailed, questions have a tendency to starkly expose any lack of knowledge or application on the part of candidates.

One unfortunate continuation is the prepared general answer to a highly specific question. Thus contract questions may begin with an exposition of offer and acceptance when the question is actually about part payment of debts.

This also supports the previous suggestion that candidates were not under any time-pressure, in the written exam papers as they had sufficient time to reproduce of extensively prepared, but mainly irrelevant, answers.

It would be unfair and inaccurate not to recognise that there has been an overall improvement in the way in which the analysis/application questions are dealt with by some candidates, but there are still grounds for major improvement, especially, if not specifically, in relation to the written paper.

Another unfortunate practice from the previous structure, which continues to appear in the written paper, is the prepared answer relating to a particular area of the syllabus. For example a candidate may be tempted to prepare a general answer on directors' duties where the question only asks about one specific duty. Alternatively, they may have studied the law relating to insider dealing and are determined to marshal that knowledge, even if that particular topic area has not been asked about.