



Examiner's report

F4 (ENG) Corporate & Business Law For Paper Variant exams December 2016

General Comments

The December 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.

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

In analysing the overall performance it can still be seen that candidates fared better in this section than in the analysis/application section 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 less complicated 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. It would appear that candidates have benefited from the recognition that they will be examined over a wider spectrum of the curriculum. 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.

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. The two best performed questions were 21(a 2 mark question) and 45 (a one mark question), both relating to employment law, an area that is traditionally done well. However, the point to be emphasised is that both questions required knowledge of some very specific time periods. It is suggested that this supports the general conclusion that candidates are much happier with knowledge and substantive fact, rather than analysis and application.

This conclusion is further supported by looking at the two questions done least well: questions 2 and 37, both question carrying 2 marks.

Question 2 was on contract law, an area usually done well, and is a standard topic in most contract course but that does not mean that it was not without conceptual difficulties.

Which of the following categories of damages is a party in breach of contract liable for in relation to abnormal damage?

- A Those arising naturally from the breach
- B Those the possibility of which they were aware
- C Those which were within the contemplation of the reasonable person
- D Those they were specifically made aware of by the injured party

(2 marks)

The correct answer is option B, but that was the least popular answer with the most popular one being option C. It has to be said that the question of damages and specifically remoteness of damages lies at the difficult end of the spectrum and this particular formulation is not the simplest that could have been selected, with the issue of 'abnormal' damages clearly raises uncertainties in candidates' thoughts. However, an essential part of any examination is the process of differentiation between candidates' performances and this particular question rewards those who fully understand the rules governing contractual damages. It is suggested that more candidates went for option C for the simple reason that it looked more 'legal' than the correct answer.

Question 37 was a tort question; more specifically it referred to the essential topic of defences to action in tort, an area of the syllabus done fairly well in the past. Unfortunately it was not dealt with well on this occasion.

Through his negligence Den badly injured Eve's knee. Subsequently she broke her ankle when her knee gave way while she was coming down stairs on her own.

Eve will NOT be able to claim for damages on the basis of which of the following?

- A Contributory negligence
- B *Volenti not fit injuria*
- C The 'but for' test
- D *Novus actus interveniens*

(2 marks)

The correct answer is D, but it was only the third most picked answer, the majority of candidates electing for either A or B. It is difficult to say why candidates made those selections, other than they thought they were correct, but they certainly reveal a lack of underlying knowledge and understanding of the basic concepts.

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. The questions under the structure seek 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 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.