



# Examiner's report

LW ENG Corporate and Business Law

September 2019 – August 2020

The examining team share their observations from the marking process to highlight strengths and weaknesses in candidates' performance, and to offer constructive advice for future candidates.

## General comments

The examination 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 scenario-based analysis 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.

As a fully computer-based examination format, all questions are structured so as to be capable of objective marking. The current structure shows a division in the structure between essentially knowledge-based questions and questions requiring, not merely knowledge, but analysis and application in addition. On the whole the candidates' performance is consistently reasonable. Nonetheless all questions are rigorously assessed in the light of candidates performance and remedial measures may be taken to improve questions.

## Comments about Section A performance

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. 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 questions 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, the field of material to be covered did not prove a major difficulty. However, 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 syllabus. There is nothing to be gained in question or topic spotting as all aspects of the syllabus can be examined in one exam.

There are still some issues in Section A that are far from unproblematic, although at least superficially more straightforward than the questions in Section B.

Some questions proved particularly problematic for the simple reason that they required a very detailed level of knowledge. Others, although they were knowledge-based they still required careful thought in order to come up with the correct answer. Some of these will now be considered.

## Question 1 In relation to statutory interpretation, which TWO of the following statements are true? (2 marks)

1. Judges have the power to ignore statutes that are now out-of-date
2. Judges must decide cases in accordance with statutes, however old they might be

3. The modern approach is for judges to ignore the words of the statute and instead look at the reason for the statute being enacted
4. Judges may presume that a statute does not alter existing law unless it expressly states that it does

This question demonstrates the need to read question very closely and not to work on the basis of an assumed understanding. The correct answers are 2 and 4 but the other, wrong, distractors are certainly plausible and would be likely to confuse unprepared candidates.

1 is incorrect for the simple reason that judges have no such authority and the correct situation is that provided in option 2, that judges are bound by statutes no matter how out of date they may be. Option 3 is particularly subtle as initially it does appear to be an accurate statement of the modern 'purposive' approach to statutory interpretation, however, to is wrong for the reason that judges are not empowered simply to ignore the words of statutes, even if they think they are inaccurate or inappropriate. That only leaves option 4, which correctly states one of the presumptions of statutory interpretation.

**Question 2 In relation to types of legislation, which of the following describes the effect of codifying legislation? (1 mark)**

1. It puts case law into statutory form
2. It puts legislation from a number of sources into a single piece of legislation
3. It gives authority to a particular body to make new law

Once again the correct answer is not immediately apparent as both options 1 and 2 may well be true but only option 1 is always true in relation to the English Legal System. To gain the 1 mark available, that subtle difference must be appreciated and applied. Option 3 should be obviously wrong to the well prepared candidate, but raises issues round the role of the Law Commission, for a less well prepared candidate.

**Question 3 Steve needs planning permission to extend his business premises. His friend, David, is a local councillor. Steve wants David to use his influence to obtain the planning permission. Steve offers David a weekend at a luxury hotel if he gets the planning permission. (2 marks)**

**What is the legal position in terms of the Bribery Act 2010?**

1. Steve is committing the offence of bribing a public official
2. Steve is not committing any offence because he is not trading through a company
3. Steve is committing the offence of bribing another person
4. Steve is not committing an offence unless David accepts his offer

In this case even the reasonably well prepared candidate might struggle to provide the correct answer. They will know that options 2 and 3 are unlikely to apply, but that still leaves options 1 and 4. The friend, David, is a local councillor, a public official, and there is certainly an offence of bribing

a public official in the Bribery Act 2010, but the Act specifies that such an official must be 'foreign', which is not the case in this situation. So option 3 is the correct answer.

**Question 4 Which of the following must be sent to the companies' registry when registering a charge? (2 marks)**

1. The instrument by which it is evidenced
2. The rate of interest on the debt it secures
3. Current value of the property to which it applies
4. Name of the person responsible for its creation

Much of the syllabus of the Corporate and Business Law exam is knowledge-based and candidates must expect to be tested on the extent of their knowledge. This particular question may be difficult but it is nonetheless fair and serves to differentiate between candidates. The correct answer, which cannot be worked out but must be known, is option 1.

**Question 5 Which TWO of the following statements apply to streamlined company registration? (2 marks)**

1. The streamlined company registration rules apply only to small companies
2. Information required to register a company and information required by HMRC will be submitted to the relevant authorities at the same time
3. The registration information will be provided to the relevant authorities in digital form only
4. A company applying for registration is permitted to lodge the required information in paper form to both Companies House and to HMRC

Here knowledge of detailed procedure is required. However this question does provide a useful reminder that all aspects of the syllabus are examinable and that the full syllabus will be covered over time.

The correct options are 2 and 3.

**Question 6 In accordance with the Money Laundering Regulations 2017, which of the following statements concerning the requirement to perform client due diligence is NOT correct?**

1. Client due diligence must be performed before a business relationship comes to an end
2. Any person acting on behalf of a client must also be identified and their identity verified
3. Client due diligence must be conducted for a one off company formation
4. Enhanced due diligence must be performed where there is a high risk of money laundering

The correct answer here is option 1, but the inherent difficulty of dealing with the detail of the question, as commented on previously, is compounded in this instance by the negative structure of the question.

### **Comments about Section B performance**

This element of the examination requires both analysis and application, which skills traditionally candidates have found difficult. The scenarios are short, and questions are subdivided and focussed. What the questions under the structure seek to do is to encourage candidates to demonstrate their understanding of, and ability to apply, particular legal principles and concepts. Answers cannot be provided without underlying knowledge. Candidates should focus on the specific issues raised in the question.

### **Conclusion**

Overall performance has improved, which is greatly to be welcomed, but it is pleasing to note how the level of complexity and subtlety in some of the questions stills allows for the very best candidates to distinguish themselves and to be recognised and rewarded. This report has picked out some extremely challenging questions to consider and that level of difficulty should be recognised. All aspects of the syllabus can be examined in one exam and therefore it remains imperative that candidates study all topics in the syllabus in order to be successful in the exam.