



Think Ahead

Corporate and Business Law English (LW ENG) September 2020- August 2021 Examiner's report

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

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General Comments

The online 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 questions 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 on 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 questions 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. However, it still remains the case that some candidates may have chosen simply to ignore certain, more abstruse corners, of the syllabus in order to focus attention on the, perhaps, less challenging aspects of the syllabus. It can only be counselled that such tactics are risky in the extreme, especially when such topics appear in Section B of the 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 knowledge based, still required careful thought in order to come up with the correct answer. Some of these issues will now be considered.

Example 1

Which of the following is NOT an advantage of judicial precedent? (1 mark)

1. The law is generally decided predictably
2. It allows the law to keep pace with changes in society
3. The law is always clear and easy to follow

This question demonstrates that even 1 mark questions require candidates to stop and think before selecting their answers. In option 1, the key word is 'generally' and judicial precedent does generally permit prediction but not in all cases. In some very few, the courts may elect to avoid or change precedent. Option 2 actually follows on from option 1 and provides the reason why the courts might look to avoid a former binding precedent. The correct answer has to be option 3 and as current students of law, candidates will be only too aware that the law is only rarely 'clear and easy to follow': simply trying to read a case report makes that point immediately.

Example 2

Indicate (yes or no) whether the following parties are bound to protect an individual's human rights under English human rights law. (2 marks)

Bound by	Not bound by
Human rights law	Human rights law

1. Public authorities
2. Private profit-making organisations

The grid form of the question requires candidates to select the correct answer to each element, either yes or no, and of course both elements could be either positive or negative. The correct answer is that only the former, public authorities are covered by the legislation, and is bound by human rights law.

Example 3

Are each of the following statements about winding up true or false? (2 marks)

1. Directors would initiate a creditors' voluntary winding up when they are unable to declare that the company is solvent and will be able to pay its debts within the next twelve months but before a creditor petitions for a winding up order
2. Shareholders can only initiate a members' voluntary winding up if the company is solvent

This question was presented in a grid format requiring correct answers to both elements operating to intensify the difficulty of the language used in part 1. If the

candidate can't understand the text then how can they answer the question? However, being able to read and understand legal text is an important part of the syllabus. The option of guessing either way is foreclosed by the fact that both answers are in fact correct.

Example 4

Which TWO of the following statements regarding a company's name are correct? (2 marks)

- 1. A company may decide to change its name by passing a special resolution**
- 2. The name of a company limited by guarantee must end with the word 'limited' or the abbreviation Ltd**
- 3. A company's name must appear legibly and conspicuously on its website**
- 4. The change in name is effective from when the Registrar is notified**

Company names tend not to be a focus of much attention, but they are important nonetheless, hence the need for a special resolution to change it (option 1). However of the other potential options most companies have to have Ltd in their names, but unfortunately not guarantee companies. Also time of registration is important in a number of areas, again unfortunately not in this instance, so the other correct element is option 3.

Example 5

What percentage of a private limited company's members must vote in favour to re-register the company as a private unlimited company? (1 mark)

- 1. 51%**
- 2. 75%**
- 3. 100%**

Again, we have an apparently simple 1 mark question but could the uninformed candidate guess the answer? The key is in the word 'unlimited'. Members of the company in question are being asked to give up their limited liability for potential unlimited debts in the future. Once when that hazard is recognised it becomes apparent that the only correct answer must be option 3, but its selection requires an understanding of both limited liability and voting procedures within private companies.

Example 6

Which TWO of the following are reasons why a company may decide to reduce its share capital? (2 marks)

1. To reflect the loss in the value of its assets
2. To replace the loan capital with share capital
3. To increase the capital redemption reserve
4. To reduce the interest of some shareholders

The correct answers to this question are options 1 and 4.

Option 1 is a straightforward restatement of the applicable provision of the Companies Act 2006 but option 4 requires some close analysis and understanding of the general operation and interplay of the rules of company law. It is a fundamental rule that shareholders cannot normally be the recipients of the company's capital, *except where the capital is being reduced*, as it is in this instance.

It should also be noted that the distractors would appear appropriate and potentially convincing to candidates who did not actually know the specific provisions examined in the question.

Comments on 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 new 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 still 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.