



Think Ahead

Corporate and Business Law English (LW ENG) September 2021- August 2022 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 exam 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.

As in previous examinations, the extension of the field of material to be covered did not prove a major difficulty. However, it has to be recognised that candidates showed problems in dealing with the more difficult question in areas of the syllabus in which they have traditionally struggled.

It remains the case that some candidates may have chosen simply to ignore certain, more difficult areas 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.

It is useful to highlight some approaches to dealing with particular question structures requiring true or false answers. 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

Company Ltd, a company operating a cleaning business, bought a second-hand van from a van dealership, Second Company Ltd. The van turned out to be in poor condition.

What is Company Ltd's legal position in relation to the Consumer Rights Act 2015 (CRA)?

- 1. The CRA does not apply as this is a contract between two companies**
- 2. Company Ltd can only claim compensation if it can show that Second Company Ltd acted negligently**
- 3. As Company Ltd is not in the business of buying vans the CRA will apply to the transaction**
- 4. The CRA does not apply as this transaction related to a second-hand and not a new van**

(2 marks)

Candidates still focus on the Unfair Contract Terms Act 1977 rather than the current main legislative provisions set out in the Consumer Rights Act (CRA) 2015. This problem brings the issue to the fore, as the CRA 2015 clearly distinguishes between consumers and businesses and allows for the possibility of businesses acting merely as consumers, as distinct from their normal business operations; for example buying a kettle for their work's canteen.

The question makes it clear that Company Ltd is 'not in the business of buying vans' and consequently, as it is acting as a consumer, the correct answer is 3.

Example 2

X prepared the accounts for Y plc and made numerous mistakes. Z relied on these accounts and bought shares in Y plc. Z relied on these accounts and bought shares in Y plc. When the mistakes were published there was no impact on the value of the shares or the success of the company as a whole.

Which of the following can sue X for negligence?

- 1. Z only**
- 2. Y plc only**
- 3. Neither Z, nor Y plc**
- 4. Both Z and Y plc**

(2 marks)

This question might be seen as confusing in the way it appears to confuse legal concepts. However, the core element is that 'there was no impact on the value of the shares or the success of the company as a whole'. Consequently, the negligence led to no losses for Y plc and X owed no duty of care to Z, as the latter was an outsider. Therefore, there could be no grounds for legal action against them.

The following two questions ask whether statements are true or false. To the unprepared candidate it would be a reasonable guess that one of the options is correct and the other is false. However, the point to be emphasised is both elements may require the same answer.

Example 3

Are each of the following statements about limited liability true or false?

- 1. A private company limited by shares is fully liable for its debts**
- 2. The liability of a member of a private company limited by shares is limited to any amounts unpaid on their shares**

(2 marks)

Less well prepared candidates will likely be aware of the accuracy of one of the statements but if they do not actually know both answers they might well be tempted to reject the second answer as negative. However, as suggested above, both answers are in fact correct.

Example 4

Are the following statements regarding the powers of directors true or false?

- 1. All properly appointed directors have apparent authority as agents of the company to make general business contracts**
- 2. If a director behaves like a chief executive officer/managing director but has not been properly appointed to the position, the company may be bound by their actions**

(2 marks)

In this question, one of the answers is correct and the other is false. The difficulty lies in selecting which is which. In relation to part 1, some individual directors do have apparent authority to bind their company in specific contracts and properly appointed managing directors/chief executives have the authority to enter into general contracts on the company's behalf. It should be noted, however, that the question refers to all properly appointed directors, not just managing directors/chief executives, so consequently part 1 is false.

Part 2 immediately appears false, in that the person has not been properly appointed but the law is clear that even in such a situation the company will be liable where the other directors have acquiesced in the unauthorised behaviour

The next question considers an extension of the true or false format to four possibilities.

Example 5

In the context of the Bribery Act 2010, is each of the following statements true?

- 1. Receiving money to perform a relevant function improperly is an offence**
- 2. Adequate procedures to prevent bribery can be used by a company as a defence against the actions of an employee**
- 3. Relevant functions must be performed in the UK to be subject to the Act**
- 4. If an agent bribes someone to retain business for a company, the company commits no offence under the Act.**

(2 marks)

It follows that candidates require knowledge of the specifics of the Bribery Act 2010 to attempt to answer this question and that uniformed guesses are very unlikely to get the four elements correct. Parts 1 and 2 are correct and parts 3 and 4 are false.

Example 6

Which TWO of the following pieces of information are included on a limited company's certificate of incorporation?

- 1. A statement that the company is private**
- 2. The names of the company's directors**
- 3. The company's date of incorporation**
- 4. A statement detailing the company's initial share capital**

(2 marks)

This question was selected to highlight the degree of detail and subtlety that might be subject to examination. The correct answers are 1 and 3 but any of the options appear plausible and indeed why would a public company register as a private company? The answer, of course, is that it doesn't, but a private company must declare as such in its document certificate of incorporation.

Comments on Section B performance

This element of the exam 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. Consequently, answers are shorter than discursive answers, but they cannot be provided without the same underlying knowledge.

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.