



Think Ahead

# Corporate & Business Law (LW) (ENG) September 2023 – August 2024 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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## Introduction

The 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 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 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.

As in previous examinations, 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 paper.

## Question 1

**Indicate whether each of the following statements regarding the impact of human rights law is true or false?**

1. If the courts make a declaration of incompatibility with the European Convention on Human Rights, the primary legislation concerned becomes invalid
2. Bills which are incompatible with the European Convention on Human Rights cannot proceed to a second reading

**(2 marks)**

This is an interesting question in that even if the candidate has not dealt with the topic as thoroughly as required it would appear a simple matter of choice as to which option is correct and 1 is more likely to be selected as false by anyone who has studied the area at all as it is one of the fundamental matters in relation to human rights law. As a result it might appear to follow that 2 is most likely to be correct. However that is not the case and this proposition is also false. The point to take from this is to be aware that even where there are only two options there are four possible answers: it is not just a matter of true/false but both options might well be true, or as in this case both might be false.

## Question 2

**Indicate whether each of the following statements apply to employees, independent contractors, or neither of them?**

1. Treated as a preferential creditor
2. Pays Secondary Class 1 National Insurance contributions

**(2 marks)**

In this instance the two option question is complicated by the introduction of 3 possible answers so requires detailed knowledge of the area. Once again the point of considering this question is to show candidates the potential complexity of what could appear quite a simple question structure and the need for detailed knowledge of the area covered. The answer is 1; employees are preferential creditors and that neither group pays Class 1 NI contributions.

## Question 3

**Which of the following is a STATUTORY ground for lifting the veil of incorporation?**

1. The company is established as a facade, concealing its true purpose
2. The company's officers have been found liable for wrongful trading
3. The company was established for an illegal purpose

**(1 mark)**

This question is only worth 1 mark but it is much more complicated than it looks. However the fact is that only option 2 is specifically covered under the legislation and even then, the answer requires an understanding not just of the meaning of wrongful trading but also its consequences in relation to the lifting of the corporate veil with regard to the liability of company officers.

## Question 4

**Which of the following statements regarding a reduction of a limited company's issued share capital is correct?**

1. On receiving an application, the first concern of the court is creditor protection
2. The company must pass an ordinary resolution in a general meeting
3. An application must always be made to the court to confirm the reduction
4. A solvency statement must always be prepared by the directors

**(2 marks)**

In this question the temptation for candidates is to focus on the specifics and to dismiss the general option as merely a distractor. However, close scrutiny of all the options reveals that in fact each of the 3 detailed ones are not always applicable to all companies, either private or public companies. So the correct answer is 1 and it requires detailed knowledge to dismiss the specifics in favour of the general.

### Question 5

**If a court order is made for compulsory liquidation, when is the liquidation deemed to have commenced?**

1. When the petition was first presented
2. When the court order is made
3. When the official receiver is appointed as liquidator
4. When a statement of affairs is delivered

**(2 marks)**

This question requires specific detailed knowledge, as all of the options look convincing. The correct answer is the first option.

### Question 6

**In which of the following situations would an agent have apparent authority?**

1. A principal revokes their agent's authority but does not notify this to a third party
2. A person tells third parties that they are acting as an agent for a principal but the principal is unaware of this
3. The agent's activities on behalf of the principal are usual for the circumstances but are not covered by their express authority

**(1 mark)**

The correct answer is 1. Reasonable performance relies on thorough knowledge.

### Comments about Section B performance

This element of the examination requires both analysis and application, which skills traditionally have not been to the forefront of candidates' abilities. 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. Consequently answers are shorter than discursive answers but they cannot be provided without the same underlying knowledge.

This report had chosen to focus on questions contained in Section A of the exam as it might be 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.

The purpose of the selection is to continue the assertion that simply guessing answers in MCQs, although theoretically possible of success is extremely unlikely to be successful. For that reason shorter 1 mark, 2/3 option questions have been selected as they would appear the most likely to be open to being worked out logically without any substantive knowledge.