



Think Ahead

Corporate and Business Law Russia (LW RUS) December 2020 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

This report should be used in conjunction with the published sample exam which can be found [here](#). The exam was divided into two sections, and candidates were asked to attempt all questions in both sections in 2 hours.

Section A comprised 45 multiple choice questions (MCQs) with 25 questions worth 2 marks each and 20 questions worth 1 mark each. Section A of the exam therefore carried a total of 70 marks. For all of these questions, candidates had to select the correct answer from 3 or 4 choices.

Section B consisted of 5 scenario-based questions worth 6 marks each. All of these questions were sub-divided into 2 or 3 parts worth 2, 3 or 4 marks. These questions tested candidates' ability to identify and apply the relevant law to the given scenarios. Candidates were expected to identify the legal issues relevant to each scenario, explain the applicable law and derive appropriate conclusions.

On the whole, the performance of the candidates was fair. The majority of candidates achieved reasonable marks in both Section A and Section B.

A number of common issues arose in candidate's answers:

- Some candidates offered rehearsed answers to questions that they had anticipated rather than addressing the precise questions that had been set.
- In some cases, candidates produced long answers to some questions but chose not to answer other questions at all. This may have been a consequence of inadequate time management.
- For many answers, candidates presented a conclusion without justifying it. For example, some answers simply stated that 'a contract was formed' or a contract was not formed' without stating why this was the case.

Comments on Section A performance

The questions on which candidates performed best were on the following topics:

- The courts.
- Employment law.
- Company formation.
- Capital and financing.
- Money laundering.

The questions on which candidates performed inadequately were on the following topics:

- Some questions on contract law.
- Some questions on non-contractual obligations.
- Voting at general meetings of shareholders.
- Internal audit commission.

It is important to note that performance on individual questions should not necessarily imply that candidates found generic syllabus areas easy or difficult. For example, some questions on contract law and non-contractual obligations had high pass rates while others had low pass rates.

This section of the report now considers three questions from Section A of the exam, for which a considerable number of candidates provided incorrect answers.

Question 1

Rosa wrote to Marina stating that she was prepared to purchase Marina's car for a specified sum of money. Rosa posted the letter on 12 October, and Marina received the letter on 14 October. Marina's reply agreeing to the sale was posted on 16 October and received by Rosa on 18 October.

When did a legally binding contract come into effect?

- A 12 October
- B 14 October
- C 16 October
- D 18 October

(2 marks)

The answer is D, 18 October.

Under the provisions of the Civil Code, two essential actions in forming a legally binding contract are offer and acceptance. An acceptance is considered to be full and irrevocable once it has been received by the offeror. Therefore, when Rosa received Marina's acceptance on 18 October, a contract came into effect.

Question 2

In relation to a limited company, the financial liability of which of the following is limited?

- A The directors only
- B The shareholders only
- C The shareholders and the directors
- D The company

(2 marks)

The correct answer is B, the shareholders.

The question relates to the meaning of the term 'limited liability'. This concept forms the basis of corporate personality. When a company is formed, it takes on a personality separate from those who own it (the shareholders) and those who manage it on their behalf. The shareholders are those who benefit from limited liability as the maximum that they can lose is their share capital.

Although the company is said to be limited (public or private), its financial liability is actually unlimited, as the legal entity remains fully liable for its obligations to creditors.

The directors may or may not be shareholders, but in the event of gross negligence on their part they do not enjoy limited liability in the conventional sense.

Question 12

Which of the following is an example of public law?

- A A claim for negligence by a citizen who has been injured while on the premises of a company
 - B An appeal by a company against a decision to refuse registration of a mass media body
 - C A boundary dispute involving the occupants of neighbouring plots of land
 - D A claim by an individual against their former spouse for alimony
- (2 marks)

The correct answer is B. an appeal by a company against a decision to refuse registration of a mass media body.

Public law is concerned with relationships between the State (or agencies acting on behalf of the State) and citizens. The other three matters fall within private law, which is concerned with legal relationships between citizens and other citizens, citizens and legal entities and between legal entities.

Comments on Section B performance

Section B contained 5 scenario-based questions and each question carried 6 marks. Each question was further divided into two or three parts. As mentioned above, the questions in this Section were designed to test the candidates' ability to identify the legal issue(s), explain the law on that issue, apply the law to the given scenario and arrive at a sound legal conclusion. Comments on candidates' performance in these questions are provided below.

Question 46

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This scenario relates to two requirements.

Art Company had three limited edition prints for sale, each signed by the original author. On 2 October, Katerina, the manager of the company, wrote to two customers of the company, offering each of them the opportunity to purchase one print for the price of 500,000 roubles, payable in full by 31 October.

Andrei, the first customer, replied stating that he would be prepared to purchase one print. However, he added that he would not be able to pay until 10 November and assumed that this would be acceptable.

Irina, the second customer, also stated that she would buy a print and sent Art Company a remittance of 450,000 roubles as she assumed that her usual 10% discount would be applied, as it did for her previous two purchases.

(a) Explain whether Art Company's letter to the customers was an offer, capable of acceptance to form a binding contract. (2 marks)

(b) Explain whether contracts have been formed between Art Company and the two customers. (4 marks)

Paragraph

Help Previous Navigator Next

The question tested the candidates' knowledge of contract law and their ability to apply it to a scenario.

The first part of the question asked candidates to assess whether or not a letter sent by a seller to prospective customers was an offer that would be capable of acceptance. Most candidates knew the essential attributes of an offer and wrote a correct answer. A minority incorrectly believed that the letter described in the scenario was an invitation to treat.

The second part of the question required an understanding of the implications of a counter-offer. A counter-offer is a response that modified the conditions set down in the offer and has the effect of cancelling the initial offer and creating a new offer. Most candidates recognised this and wrote correct answer

Question 47

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This scenario relates to two requirements.

Natasha and Stanislav are experienced theatrical directors and have decided to form a business together to develop and promote new stage productions. Natasha has some capital, but this is insufficient to meet their requirements. Stanislav has very little capital. Both are prepared to take risks, so if their proposed business fails they feel they can secure salaried employment reasonably easily.

Boris is a friend of Natasha and Stanislav and is prepared to offer funding of up to 4 million roubles, but would not be prepared to risk any more than this. Although Boris is willing to help his friends, he has no interest in managing any entity that they choose to form.

None of the individuals have any experience of business management and wish to keep administrative formalities and costs to a minimum.

(a) Explain the extent to which a limited partnership would meet the needs of Natasha, Stanislav and Boris. (3 marks)

(b) Explain the extent to which an unlimited partnership would meet the needs of Natasha, Stanislav and Boris. (3 marks)

(6 marks)

Paragraph

Help Previous Navigator Next

The question tested the candidates' understanding of partnership law and their ability to apply the principles to a scenario. The narrative described three individuals who intended to form either a limited partnership or unlimited partnership, and candidates were asked to assess the suitability of each form for their needs.

Most answers demonstrated good understanding of the nature of limited and unlimited partnerships, and nearly all recognised that the unlimited partnership exposes participants to financial risks. Better answers related the characteristics of the two partnership forms to the needs of the individuals as described in the narrative.

Some candidates offered incomplete answers, attempting only one part of the question. Some wrote at length about partnerships without relating their answers to the question set.

Question 48

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This scenario relates to two requirements.

Kilobyte Company is a public company that provides highly specialised IT consultancy services to corporate clients. It is a member of the stock exchange. The company has been growing rapidly, but to fund further expansion it needs to raise more capital.

Tania is a wealthy entrepreneur who has expressed a willingness to invest a substantial sum in Kilobyte Company. However, she is only prepared to do so if the company can guarantee her a 10% annual return on her investment, a place on the board of directors for five years and an ability to recover her investment if she decides to withdraw her funding.

(a) Explain the extent to which Tania's needs could be met by investing in ordinary shares of Kilobyte Company. (3 marks)

(b) Explain the extent to which Tania's needs could be met by investing in bonds issued by Kilobyte Company. (3 marks)

(6 marks)

Paragraph

Help Previous Navigator Next

The question asked candidates to consider the demands of a potential investor in a company and the extent to which ordinary shares and company bonds would meet their needs.

Most candidates answered this question confidently and correctly. However, some answers were very detailed, going beyond the scope of the question. For example, some wrote about the attributes of preference shares, which were not relevant to either part of the question.

Question 49

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This scenario relates to two requirements.

Dee Company has been experiencing falling profits and occasional liquidity crises in the recent past. Although it now has a recovery plan, the directors feel that they need to raise funds urgently.

The directors have decided to sell a large warehouse to property developers. This will raise a sum equivalent to 34% of the value of Dee Company's assets.

The shareholders of Dee Company are divided on this issue. While some regard the sale of the warehouse as a necessary platform upon which a company turnaround can be launched, others feel that the sale is ill-advised and will result in the company paying excessive costs for alternative storage facilities. One shareholder has pointed out that the property development company to which the warehouse will be sold is partly owned by relatives of the Chairman of Dee Company.

(a) In relation to the proposed sale of the warehouse, explain the legal safeguards upon which the shareholders can defend the company's interests. (3 marks)

(b) Explain how the Chairman's conflict of interest should have been addressed, and actions that the shareholders can take if they are dissatisfied with how the company has dealt with the conflict of interest. (3 marks)

(6 marks)

Paragraph

Help Previous Navigator Next

The question tested the candidates' knowledge of the legal safeguards applicable to the interests of shareholders when a major transaction is proposed. It also asked candidates to explain how a conflict of interest of a director should be dealt with.

Many candidates knew the law applicable to the approval of major transactions and wrote correct answers, though some were uncertain about the respective jurisdictions of the board of directors and the general meeting of shareholders.

Some answers demonstrated good knowledge of directors' duties to disclose conflicts of interest and how these should be mitigated.

Less confident candidates only wrote partial answers to this question.

Question 50

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This scenario relates to three requirements.

Maksim works in the Finance Department of Zed Company, a large public company that is quoted on the stock exchange. While working at his desk, he was given confidential papers intended for the Finance Director. Maksim read the papers and discovered that the company's profits would be much higher than anticipated by the markets. Based on this information, Maksim bought shares in Zed Company in anticipation of making a profit once their price had increased following the publication of the financial statements in a month's time.

Maksim discussed the information with Tatiana, his cousin, and encouraged her to purchase shares in Zed Company. As a professional investment adviser, Tatiana agreed that the purchase of the shares would be a good investment and purchased some for herself. In turn, Tatiana shared the information on a personal blog, encouraging readers to purchase shares, some of whom acted on her advice.

(a) Explain the offences committed by Maksim. (2 marks)

(b) Explain whether Tatiana has committed any offences. (2 marks)

(c) Explain whether readers of Tatiana's blog have committed any offences. (2 marks) (6 marks)

Paragraph

Help Previous Navigator Next

The question tested the candidates' knowledge of insider trading. Most answers offered correct conclusions but in some cases were vague in respect of offences committed, merely stating that a criminal offence had been committed. Better quality answers stated that it was an offence to deal, and also to disclose price sensitive information and encourage another person to deal.

Some answers confused insider dealing offences with those applicable to money laundering.

Conclusion

The syllabus covers general principles of law across many topics, many of which will be examined across the 50 questions in the exam. Candidates are not expected to be equally proficient in all areas covered by the syllabus, but the exam is prepared on the basis that a well-prepared candidate will pass. Candidates are encouraged to study all areas of the syllabus so that they are familiar with at least the basic concepts underpinning each.

Candidates should be aware that the quality of answers is more important than the amount of information presented. For some answers, candidates wrote long, general responses which either went beyond the requirement or offered irrelevant detail. This may have reduced the time available to spend on other questions.

Time management may be an issue for some candidates. For the majority of candidates, the examination is not time pressured, but some may be spending too long on the multiple choice questions, leaving too little time to make an attempt at all of the Section B questions. A logical approach is to spend at least 30% of the available time on Section B questions. Candidates are advised to attempt all questions even if they have little to offer on their weaker topics. This is especially important for the Section B questions, on which it is possible to score 2-3 marks just by stating the relevant laws and principles applicable.