Examiner's report

F4 Corporate and Business Law (GLO)
December 2011

General Comments
The performance in this paper was satisfactory.

While many candidates performed well, it still has to be recognised that a significant number of candidates were less well prepared and unfortunately did not meet the required standard to pass the examination. As has been stated repeatedly, it is an unfortunate fact that *post hoc* reports such as this one tend to focus on what went wrong, it should be remembered that overall performance was satisfactory and a substantial number of candidates performed exceptionally well.

The structure of the examination paper, as usual, consisted of ten compulsory questions, each carrying 10 marks. Again, the questions tended to be subdivided into smaller subsections and it is thought that this may have helped candidates to structure their answers. Although this structure may have had the consequence that candidates wrote more than necessary to gain the marks available it is felt, nonetheless, that the structure was advantageous on the whole. The first seven questions were essentially knowledge based, while the latter three were problem-based scenarios requiring both legal analysis and application of the appropriate law.

The number of candidates who did not attempt all of the questions remains lower than when the current syllabus and structure were initially introduced. This would appear to support the conclusion that candidates and teaching providers are coming to terms with the width of the syllabus. Regretfully, however, it has to be sated that the topic of tort remains a major weakness for candidates, especially given the readiness with which they approach contract questions.

Where candidates failed to attempt all of the questions, this appeared to be as a result of a general lack of knowledge in relation to particular questions, rather than based on any time pressure or structural difficulties in the questions. That being said it is still a fact that the last three problem scenario based questions continue to provide grounds for concern. Too many candidates were let down by their performance in those questions, which continues to suggest a general lack of analysis and application skills if not general knowledge.

It also still remains the case that that some candidates are engaging in question spotting and as a result produce prepared, but inappropriate, answers to some questions. This was particularly the case in response to questions; seven, nine and ten, as will be considered further below in the detailed question analysis.

Specific Comments

Question One
This question was on arbitration
It has to be admitted that the potential linguistic ambiguity in this question required a wider approach to answering it than was intended. Nonetheless it was recognised that candidates could not be penalised for adopting an approach that was not specifically prohibited.

On that basis the question was well done. , There were plenty of marks available and more achieved full marks on this question than any other. Common mistakes, though, were saying that arbitration was cheap and that the award was not binding.

Question Two
A United Nations Convention for the International Sale of Goods (UNCISG) question, relating to the issue of how offers can be brought to an end. It was divided in to three parts, which helped some, but revealed weaknesses in other answers.

By and large, the various parts were well done. The most common mistake, though, was to write an answer about "withdrawal of a contract" "revocation of a contract" and "rejection of a contract.

Not understandably, there was some confusion between withdrawal and revocation, which is the conceptually difficult part of the question.

Question Three

A question focussing on one specific aspect of the UNCISG, the need to preserve goods in possession.
Those who identified the subject area correctly did well on it. Too many answers, though, used it as an opportunity to write all they knew about the convention. Some picked up a couple of incidental marks this way when they addressed the relevant part, but seemingly more by luck than judgment.

Question Four

An agency question divided into 3 parts.

Part a) didn't pose too many problems for candidates and at the very least, even the poorer candidates managed to write something relevant, usually relating to contract and authority being extended in writing or orally. However, the tautological repetition of the word 'express' did little to elucidate what was inherent in such a concept. Candidates should always be advised not to use the word they are to define in the core of their definition of that term.

In part b) implied authority caused a few more problems and whilst most were able to focus on the fact that this arose from the position, others left the question blank. It was noted however that candidates did not answer in the context of company law. This was something that the question specifically asked for. Instead, candidates used the estate agent relationship as an example of implied authority, without considering how it could be demonstrated by directors as an example.

Part c) - Ostensible / apparent authority caused a few problems. Candidates either repeated what had been written in part b), or stated that apparent authority was where a person was authorised to deal with a third party and everyone had knowledge that this was the case. Some candidates were well prepared and some sound answers were written which focussed on holding out to have authority and the consequences for the principal which flowed from this. Others left this part out altogether.

Question Five

A company law question relating specifically to issue relating to share capital. Part ai) only carried 1 mark, as a signal test to see if candidates had assimilated the terminology of the Companies Act 2006.

Part ai) Whilst most candidates were able to state that for the purposes of registration a company needed to state value, number, type and class of share, other answers described in great detail all of the documents which had to be sent to the registrar, without focussing on the statement of capital. Only a, few focused on the application to subscribers.

Part aii) most candidates were able to cite that the minimum amount of capital was £50,000. Other answers were quite confused and mentioned that a ¼ had to be paid up and offered £25,000 as the answer.
Part b) t was done very well with sound comparisons between dividends, voting rights and treatment on winding up of each type of share. Most candidates managed to pick up some marks on this part.

Question Six

A corporate governance question relating to the roles of directors.

ai) Answers to this mentioned that the chairman was the figurehead of the company and that the chairman and chief executive should not be the same person However only a small number of candidates commented on what corporate governance was and how it operated.

Part aii) Definitions for this part were generally well done with candidates being able to bring out the main points around chief executives being involved in the day- to- day running of the business. A lot of candidates mentioned that chief execs could "hire and fire", but overall this caused no problems for candidates.

Part b) -There was quite a bit of confusion particularly in relation to shadow directors. Some candidates thought that to have a shadow director was illegal and that they did not have the same liability as other director. In relation to this there was a lot of general misunderstanding.

The definition of non-executive directors was done quite well with the majority of candidates writing that they were not involved in day to day running, but tended to bring independence and expertise – all of which gained marks.

Question Seven

This question referred to the endorsement of International Bills of Exchange (IBEs). Unfortunately it was very rarely answered as such.

This was one of the weaker questions. There were plenty of marks available and many candidates scored very highly, where they recognised what the question was about. The main mistake seemed to be not reading the question. A small - but significant – number wrote about bills of lading. Probably about a third wrote all they knew about IBEs without mentioning endorsement - or thought that endorsement was the mechanism by which the payee presented the IBE to obtain payment. A significant number also wrote about promissory notes, even though the question did not ask this.

Question Eight

A question involving the relationship of Incoterms and UNCISG, with of course the latter prevailing.

Common weaknesses:

- using it as an excuse to write the pre-prepared INCOTERMs answer;
- ONLY considering ex works (EXW), so concluding that Bod must pay because the risk has passed to him;
- writing in detail about how Bod should have inspected the consignment at Aldo's factory. (Some basic understanding needed about international trade - seemed to think that carrier should open the box and check that they were properly packed - or that Bod's agent in Italy should do this ...)
- correctly setting out the position on non-conformity and then concluding the answer as if EXW trumped this so that Bod became liable.

There were some sound answers, though, which specifically addressed the relationship between EXW and non-conformity.

Question Nine

A company law scenario question divided into two parts but essentially both questions depended on an understanding and the application of the rules relating to the doctrine of separate personality.

It has to be said that candidates struggled to identify the issue in part a).

Whereas those who recognised the issue were well able to secure full marks, a significant number of candidates totally misunderstood this question. Answers ranged from being satisfactory, identifying the key points, or inadequate with a total misunderstanding of the question posed.

Candidates often described the process of liquidation and wrote at great length of the difference between voluntary and compulsory liquidation.

Others focussed on contract law and the elements of a contract to conclude that there was actually a contract with Ed Ltd – something they had already been told in the question.

Others went down the route of discussing commercial contracts compared to social and domestic agreements and concluded that as Ed and Doc were friends, there was no contract in place at all.

Whilst all of these issues were apparent in the question, none of them was core to the question, which emphasised that the scenario had to be analysed from the perspective of company law.

It should be noted that, although not part of the answer as originally envisaged, candidates were rewarded for canvassing the possibilities of fraudulent/wrongful trading where the doctrine of corporate personality can be ignored.

In part b), only a minority of candidates identified that the issue in point was whether the veil of incorporation could be lifted. Others focussed on the employee and employer relationship and how Fitt owed a duty of loyalty to Doc and Doc would have an action. This question posed real problems for candidates and displayed that there is an inability to apply their knowledge in company law questions. It is particularly unsatisfactory in that the scenario is based on one of the most central cases relating to separate personality.

Question Ten

A problem scenario on money laundering.

This is a situation where clearly question spotting worked for the majority of candidates. Some reasonable marks were awarded and candidates were able to clearly define money laundering and the different phases involved, together with the various punishments.

Some answers thought that this was a question which related to insider dealing and produced answers which centred around that. Others picked up on the fact that Ian was an accountant and answered the question from an ACCA ethics point of view describing how an accountant should act with integrity, independence and should avoid a conflict of interest. Others seemed to think they had been asked what action Lol could take against Ian and/or Jet. They said he should sue.

These approaches resulted in low marks.