Examiner's report

F4 Corporate and Business Law (GLO)
December 2013

General Comments

As with the English paper, performance in this paper was better than in the last diet of exams, but it still has to be admitted that it was not a as was hoped for. Overall the performance was slightly better than in the English paper. Much of what follows repeats comments made in regard to the English paper as not only were some of the questions shared but the overall approach is similar in both papers.

The structure of the examination paper, as usual, consisted of ten compulsory questions, each carrying 10 marks. 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. As in the recent past, the questions tended to be subdivided into smaller subsections in the belief that such subdivision would help candidates to structure their answers. In the report on the immediately previous paper I commented that perhaps the sub-division in that paper actually made it more difficult for candidates, as it required more detailed knowledge than candidates actually had. The performance in this paper would suggest the accuracy of that suggestion, in that the sub-divided question in this paper did not require more specific information, but rather allowed candidates to apply a general level of knowledge to specific topic areas with an overall topic. Whereas the previous exam required increasingly detailed knowledge to gain the marks available, in this exam there were always more points to be made than there were marks available

Also, to repeat a comment that has been made for a number of years, there was a distinct and wide division in the level of performance between well prepared candidates who did extremely well and the inadequate performance of many candidates who appear simply not to have prepared sufficiently for this examination

The point has been made previously, and it continues as an unfortunate fact that there have been an increased number of candidates engaging in question spotting. However, whereas in previous sessions this had led to candidates producing totally inappropriate prepared answers, the questions asked in this examination were so clearly set out that candidates did not so much misunderstand the topic examined but simply had failed to prepare the 'right' aspect of the topic in hand. As will be seen this was particularly evident in questions 5 and 9. As has been emphasised previously and repeated almost ad nauseam, question spotting does not work and indeed cannot work on a long-term basis.

What follows will consider the individual questions in and candidates' responses to the individual questions in the paper.

Specific Comments

Question One

As usual, this was a legal system question, this time focusing on the separation of powers and in particular the different institutions within such a structure. It was divided into three parts.

It was one of the stronger questions with most candidates managing to get a pass mark and some gaining full marks. Most candidates did well on (a) and (c), which dealt with the legislature and the judiciary. However, marks for (b), on the executive, tended to be lower. Marks allocated to (b) were often the general 2 marks available for an explanation of the separation of powers rather than points that specifically related to the

executive. A tiny minority struggled with the question. For example, some assumed that the legislative and executive were part of corporate governance. Some candidates spend too long on the question for the number of marks available and, unfortunately, it was not uncommon for struggling candidates to produce 'prepared' essays on the doctrine of precedent.

Question Two

This question essentially asked candidates to explain the meaning and grounds for taking recourse against an arbitration award. Given that the term 'recourse ' is a crucial legal term of central importance to arbitration, it was unsatisfactory that, at least going by the answers to part (a), that many of the candidates attempting the question did not appear to understand what "recourse" meant.

Somewhat surprisingly given the previous comment part (b) was generally done well, which would indicate that candidates tend to engage in rote learning. As a result, although they might not be able to explain the actual meaning of recourse they could nonetheless provide the grounds for that possibility as set out under Article 34 of the UNICTRAL model law. Unfortunately, however, a number of candidates failed to recognise the correct aspect of the model law and provided a list of the grounds for challenging an arbitrator under Article 12. There were also some candidates who produced the usual standard prepared answer on the nature arbitration generally.

Question Three

This question required candidates to explain the obligations relating to price placed on a buyer under the UN Convention on Contracts for the International Sale of Goods (UNCISG). The question was deliberately narrow in an attempt to focus candidates' attention, but many candidates simply ignored what was actually asked in their determination to provide a general essay on the operation of various aspects of the convention. This would seem to indicate that such candidates were not expecting, and certainly had not prepared, this area of the syllabus.
As a result this question was either done very well or inadequately. Candidates who knew it, knew it well and were often able to gain full marks, but a significant minority either missed it out completely, or used it as an opportunity to set out their prepared answer.

Question Four

This question related to limited liability generally and distinct forms of liability within companies. It was done unsatisfactorily on the whole. Once again the general aspect of the question part (a), requiring some thought rather than mere memory was not well done. For example, quite a large number did not know the difference between the various forms of partnerships. The general view seemed to be that there had to be one unlimited partner in all types of partnerships. Also a significant number of candidates repeated their answer in part b(iii).However, that being said, due to the low overall mark allocation it was still fairly easy to pick up a couple of marks. One cause of low marks was the reference to the company having limited liability and some candidates referred to the 'directors' as having limited liability rather than the members.
There was no difference in performance between the Global and the English paper.

Question Five

This question asked candidates to explain the operation of the Company Directors Disqualification Act (CDDA) 1986. This was, perhaps, the worst answered question on the whole paper and once again the major suspect for the deficiency in performance is the prepared answer linked with the failure to read the question. There certainly were a number of satisfactory answers which dealt thoroughly and in detail with the provisions of the CDDA 1986. However, far too many candidates spotted the word director and saw that as an opportunity to discuss

directors' duties and breach of duty and how the members can remove a director (topics for recent exams): death, insanity and bankruptcy were popular grounds, although none, per se, a ground for disqualification.

Again, there was no appreciable difference in performance between the Global and English papers.

Question Six

This question required an explanation of two compulsory documents required for the formation of a limited company, whether private or public. These were (a) the statement of capital and initial shareholdings and (b) the articles of association.

As regards part (a) which carried four marks, very few candidates mentioned the fact provision related to the subscribers of the companies memorandum.

Part (b) relating to articles of association was well done, which is only to be expected given the fact that it is now the core company constitutional document and has been examined on a number of occasions in the fairly recent past.

Once again, there was no appreciable difference in performance between the Global and English papers.

Question Seven

This question required candidates to have a knowledge of the UNCITRAL model law on international credit transfers. It was divided into two parts with part (a) covering a more general aspect than the detailed requirement in part (b) which referred to responsibility for unauthorised payments. Part (a) was done reasonably well, although the majority seemed to think that the sender had to be a bank. Very few identified the point that originators were also senders. Nonetheless, the majority of candidates managed to pick up at least two marks, perhaps on the basis that they could work out the answer from first principles, which was fair enough.

Part (b), however, was answered less well. A fairly common error was to confuse credit transfers with letters of credit and answers often took the form of a detailed explanation of how the latter operated with no reference to the question. Once again this would seem to indicate either question spotting, or the use of prepared answers, or indeed both.

For those who did identify the right area, there was confusion about what an unauthorised payment order actually involved. Candidates who used expressions such as "the purported sender" had grasped what the issue was, but most had not.

This was the worst answered question on the paper.

Question Eight

This UNCISG question focused on failure to comply with contractual obligations due to impediments beyond the control of the individual in breach. It should have been, and indeed in reality it was, fairly straightforward. However candidates seemed to struggle to take advantage of this fact.

Those who did well on this question approached it sensibly: they stated the law and then applied it to each of the parties in the scenario. Unfortunately, too many candidates did not adopt this approach and suffered as a result.

Common errors included:

- assuming that the question was about anticipatory breach and giving a general summary of the law about this. It is not without significance that anticipatory breach has been examined fairly regularly and in the

recent past, so this would tend to confirm the use of prepared answers to be deployed no matter the question asked.

- not reading the question with sufficient care, so assuming that Lou was a grower of tomatoes instead of a manufacturer of tomato paste. Only a minority picked up the point that he could easily have obtained tomatoes elsewhere, with even those who had correctly stated that the seller should try to find a way round the impediment missing the application of this point.
- assuming that 100,000 tonnes of scrap metal could be transported by air. This latter point would appear to be the result of the fact that candidates assumed that as there were two contracts involved the outcome would be different in each. To that extent they were correct, but the majority seemed to pick the wrong consequence for each of the two situations. They decided the first one way and as a result the second had to be different. It was certainly, but on too many occasions the first case had been decided wrongly.

Question Nine

This question referred to the implied authority of a company secretary within a general explanation of agency law and the limits of an agent's authority. It was not about the appointment, qualification and functions of a company secretary. Unfortunately too many candidates saw the words company secretary and took it as an invitation to write all they knew about such company office bearers.

A significant number of candidates discussed the qualifications and duties of company secretaries. Quite a few did not even mention agency. Some took the view that the company was liable for all the contracts because they were in the company name , others took the view that the company was not liable for any of the contracts as a company secretary had no right to make contracts at all and on top of that they were for Chu's personal benefit.
A few did very well, explaining agency generally, types of authority and the Panorama case in particular.
Once again, there was no appreciable difference in performance between the Global and English papers.

Question Ten

In essence this question asked candidates to explain the relative security of loans charged by fixed or floating charges. It did not require an explanation of winding up procedures, either voluntary or compulsory, nor did it need a detailed explanation of the order of payments upon the liquidation of a company. However, a number of candidates insisted that the question could not be answered without such irrelevant detail and in providing it forgot the essence of the question. Others thought it was enough to explain the order of payment without providing any explanation of that order. Some candidates missed marks by not explaining the nature of fixed and floating charges.

An additional and surprising downfall for many candidates was ranking payments with the date of registration of the charges rather than the date of creation; although it has to be said that such candidates tended often to be the candidates who did not give any descriptions/characteristics of fixed and floating charges.

Once again, there was no appreciable difference in performance between the Global and English papers.