Examiner's report

F4 Corporate and Business Law (GLO)
June 2012

General Comments

The overall performance in this exam session continued the recently established pattern of improvement. 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, but 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. .As in the recent past, 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 fact that the scenario questions potentially covered a lot of material, emphasised the need for candidates to analyse the situation presented, rather than merely to regurgitate all they knew about general legal topics.

The number of candidates who did not attempt all of the questions remains lower than when the current syllabus and structure were initially introduced. 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. This would appear to support the conclusion that candidates and teaching providers are coming to terms with the width of the syllabus. Unfortunately 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, although a reduced number of, candidates are still engaging in question spotting and as a result produce prepared, but inappropriate, answers to some questions. It has to be said that this recurring failure was less of a problem in this exam, perhaps as a result of the structure of the paper, in that it was more apparent what questions were about, or rather what questions could not possibly be about. However, it has t be said that question spotting does seem to be more of a problem in the Global paper than in other F4 papers.

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

Specific Comments

Question One

Legal system question on the doctrine of judicial precedent. The question was divided into two parts. The first part required a consideration of the importance the doctrine in common law jurisdictions and was worth 6 marks; the second part required a similar consideration in relation to either a civil law or a Sharia law jurisdiction. In part (b), puting "ONE" and "OR" in bold seems to have worked, as very few candidates attempted both elements. The most common mistake was to confuse civil/common with civil/criminal. The worst type of answer dealt with (a) as if it referred to criminal law and then (b) as civil.

Part (a) - A significant number of candidates scored high marks in this part as it was generally answered well with most candidates describing providing a detailed description of the court structure and hierarchy together with an explanation of the effect of that structure in relation to precedent. Weaker answers tended to simply

describe the structure and made little in any reference to essential context, the doctrine of precedent. There was some diversion into legislation and statutory interpretation.
Part (b) -Again, some reasonable answers were produced which demonstrated a sound knowledge of the alternative jurisdictions.

Question Two
UN Convention on the International Sale of Goods (UNCISG) question, referring to acceptance and counter offer . It was divided into 2 parts, each carrying 5 marks. Answers tended to be proficient enough on both parts, but few maximum scores on either part, especially in relation to part (a).

Part (a) was on the topic of acceptance was, on the whole, rather disappointing. A lot of time was wasted in this question however by candidates providing a detailed explanation of the concept of offer. This was not required and candidates merely wasted their time. Candidates need to answer the question set.

Part (b) related to a counter- offer, a continuation of acceptance, and was answered much better than part (a).

Question Three
A question relating to 'letters of credit' in the context of international business transactions. This was the best answered question on the paper.. Many candidates answered this well and gained full marks, though it an apparent contradiction, it was also the most common question to leave out. A handful of candidates wrote about bills of lading or bills of exchange.

Question Four
This question asked candidates to explain the three terms that might be found at the end of the names of different business forms. It was done well generally, with the majority of candidates gaining at least some marks, with a large majority gaining maximum marks.

Part (a) - This required an explanation of the term LLP. The great majority of candidates were able to provide a detailed answer and although some were not as detailed they nonetheless knew sufficient information about LLPs to gain satisfactory marks. However, a minority of candidate confused the Limited Liability Partnership with the Limited Partnership.

Part (b) required an explanation of the term Ltd. Once again the majority had very little difficulty in dealing with the question and gained reasonable marks. That being said, some candidates did confuse the private limited company form with, either the limited partnership or the public limited company.

Part (c) required an explanation of the term plc and again the majority of candidates had very little difficulty in explaining the meaning of the abbreviation and detailing the legal rules appropriate to such forms. Unfortunately little could be done for those candidates who confused the private and public forms of the company.

Question Five
Company law question relating specifically to the various investment mechanisms available to investors in companies. Again it was done well and it would appear that the breakdown of the question into three distinct sub-questions was advantageous to candidates generally.

Part (a) - Ordinary shares were very well explained and many candidates cited the definition in *Borland's Trustees v Steel* before going on to consider the distinct element of that definition in some detail. Certainly the great majority referred to voting and dividend rights.
Some candidates went into too much detail about nominal value of shares, share premium accounts and the use of the share premium account for dividends. Whilst this is relevant to accounting, the question specifically stated

the context was in relation to company law, so candidate's answers should have followed that requirement more closely.

Part (b) - Preference shares tended not to be explained as well as ordinary shares, as there was an almost general assumption that they hold no voting rights under any circumstances. However, sufficient other points could be made to gain full marks, even if this point was not fully explained.
Also, similar to the approach in part (a), some candidates answered this in the context of accounting and there were lots of examples of how much interest would be attributable based on the percentage and value of the share.

Part (c) - Debentures tended to be answered very thoroughly. There were many points that could be made so the majority of well-prepared candidates had little difficulty in picking up the full 4 marks available.

Question Six
This question concerned voting procedure and once again it would appear that the sub-divided structure of the question benefited candidates.

Part (a) related to ordinary resolutions and most candidates were able to pick up the 2 marks available, by explaining the required majority and an instance of when such a resolution was required.

Part (b) referred to special resolutions and again proved to be of little difficulty to the well prepared candidate, who could gain the full 3 marks available by citing the appropriate majority and instancing when such a vote would be required.
However there was some confusion relating to the length of notice required for such resolutions, as indeed there was in relation to ordinary resolutions.

Part (c) referred to written resolutions. While once again the well-prepared candidates scored highly, it has to be said that this part of the question was less well done than the other two parts A number of candidates started their answer by stating that they only applied to private companies, but went on to claim that they were passed at a meeting of the company. A significant number of candidates also claimed that the written resolution *could* be used to remove directors and/or auditors, thus reversing the actual legislative provision. Finally, a significant number of answers interpreted a written resolution as being either an agenda or minutes of the meeting.

Question Seven
This question in two parts, each carrying 5 marks dealt with the issue of the compulsory winding up of companies. Once again the overall single topic is divided into the two distinct parts in an endeavour to structure the answers provided by candidates. There was a tendency for candidates to write everything they knew about winding up and administration, rather than focus on the actual question asked.

Part (a) focuses on, and requires an explanation of, the grounds under which compulsory liquidation may be instituted. This was answered well and many candidates could cite the full grounds for the granting of an award of compulsory winding up. Even where, candidates did not provide a consideration of all the grounds they were usually capable of citing the main grounds for compulsory winding up, namely, insolvency and the just and equitable ground.

Part (b) is itself internally divided into two discrete aspects relating to the procedures and the consequences following court order for the compulsory winding up of a company. Some candidates managed to deal with both aspects of the question, others tended to focus on one aspect and that tended to be the procedure rather than the consequences.

Although a number of candidates endeavoured to shoehorn administration in to their answers, it has to be said that the performance in this question satisfactorily.

Question Eight

UNCISG contract scenario question. The question was dived into two parts. Part (a) was worth 6 marks and required an explanation on damages and the duty to mitigate losses in relation to breach of contract. Part (b) was further subdivided and the correct answer depended on the scope of the application of the UNCISG to the two categories of contract presented. It was intended that each of these elements of the question should stand alone and be answered independently. Unfortunately, many candidates mixed parts (a) and (b) together, which led to confusion, if not inaccuracy in the answers provided.

Part (a) was very thinly answered. Some candidates included everything they knew about CISG. Some candidates were awarded little, if anything, on (a).

. Only a small number of candidates picked up the application points about both ships and services, but got marks by applying the Convention on the basis of their interpretation of part (a).

Question Nine

A problem scenario requiring the application of the UNCITRAL Model Law on International Arbitration. It was divided into two parts each was worth 5 marks. Part (a) referred to rights to enforce an arbitration agreement and part (b) to the right to challenge the membership of any such panel.

The fact that arbitration appeared as a problem question did have the benefit of structuring answers, thus far fewer candidates dealt with arbitration generally, although quite a few answered part (a) by listing all the advantages that Du could explain to Ez to persuade him to honour the agreement. Most candidates got the basics right but few scored high marks. More focus on this part of the question was needed, as a lot of what was written was superfluous.

Part (b) was better answered. Perhaps the narrower structure of the question required candidates to produce more focused answers. In any event a good number of candidates were very familiar with the procedure for challenge and made sound use of such knowledge to gain high, if not full, marks.

Question Ten

Problem scenario on directors.

This by far and away the least well answered question on the exam paper. Candidates appear to have been confused by what was in effect a relatively simple question, especially as regards part (a).

Many candidates dealt with (b) in (a) and vice versa.

Part (a) - Candidates described directors' duties in a lot of detail, without identifying which of the people in the question were actually directors.

Quite a few were thrown by the fact that Ham and Ive were inexperienced and consequently invented a new category of director - the sleeping director. There seemed a lot of uncertainty with Ham and Ive - sometimes candidates would say that they weren't directors in (a), and then would go and make them liable in (b) by virtue of the fact that they *were* directors.

Relatively few candidates dealt well with (a) by identifying that Ger was a shadow director and Kim was a de facto director by virtue of apparent authority.

Answers in part (b) were quite varied and very few gained satisfactory marks.. A number of candidates applied the law relating to money laundering and directors' duties to no purpose.

Given that the question scenario stated that the company was set up to continue Ger's previous fraudulent activity, almost all answers made reference to fraudulent trading, whether with good effect or content is another matter.