Examiner's report
F4 Corporate & Business Law (GLO)
June 2013

General Comments
As with the F4 ENG paper the level of performance in this session has suffered a significant drop and for much the same reasons: lack of knowledge and an inappropriate approach to studying for the exam.

As with the F4 ENG exam, candidates found it more challenging than previous ones.

What follows will consider the individual questions in and candidates' responses to the individual questions in the paper. The comments on the questions that are common to both F4 GLO and F4 ENG are the same as produced for the F4 ENG paper, as the approaches adopted, mistakes made and sound practice shown are remarkably consistent across the two papers.

Specific Comments

Question One
Part (a) required an explanation of the role of UNCITRAL and part (b) that of UNIDROIT. Many candidates chose to simply ignore this question, revealing a lack of any understanding of the bodies.

Part 1(a) was reasonably well answered by those who knew something about UNCITRAL and a large number of those gained full marks. Unfortunately, a significant number of candidates did not appear to know much about it and resorted to guesswork for the bulk of their answer. A popular approach was to explain the role of the United Nations and many answers assumed that UNCITRAL had an adjudication role to play in relation to trade disputes.
Many answers confused UNCITRAL and the ICC or WTO. Given the role that UNCITRAL documents play in the syllabus, such lack of awareness is unsatisfactory. This is made worse by the fact that question 2 actually starts with a reference to the UNCITRAL model law on International Arbitration, yet many answers failed to reference any of the model laws.

Part 1(b) was less well done. The majority thought that UNIDROIT was an arm of the UN, which may be understandable given the first two initials in its name. Perhaps the very similarity of the two institutions led candidates to assume that UNIDROIT had to be different and consequently they used the WTO as their source.

Question Two
This question was split in two with the second part carrying the bulk of the marks. The question was focused on the specific aspect of enforcement, but many candidates looked upon it as an opportunity to write all they knew about arbitration generally.

Part (a) Candidates tended to find this difficult. It is clear that quite a sizeable minority did not understand the meaning of the word "enforce"; some stated that the agreement could only be enforced if both parties were satisfied with the result and others thought that enforcement equated to challenge, so stated that the agreement could be enforced if the arbiters lacked qualifications. This part of the question only carried three marks, but many candidates wasted pages on inappropriate and irrelevant material.

Part (b) was done better, with those who identified the correct issue normally giving at least three correct points. Few gained full marks, but 4 or 5 marks were not uncommon once the right area had been indentified. However, it has to be said that quite a few answered a totally different question, and dealt with the Article 13 procedure for challenging an arbitrer.

Question Three

This question related to the UN Convention on Contracts for the International Sale of Goods (UNCISG) Article 35 in relation to the quality of goods supplied. This question tended to be done well and was probably the best answered full question on the paper. This question was straightforward and required no more than that the candidate go through the actual provisions of Article 35 and explain what they mean.

However, the question was done well by those who recognised and kept their focus on the topic. Unfortunately too many wrote all that they knew about the general obligations of the seller or other equally irrelevant material.

Question Four

This was on bribery, a topic only recently introduced to the syllabus.

Once again it was divided into three parts and once again this subdivision appears to have confused some candidates, who had prepared a general answer on bribery, but were unable to disentangle the specificities of the question from their general information.

Part (a) On the whole candidates were well prepared for this question and had no problems discussing the definition of bribery and giving sound examples of behaviour which would constitute bribery. Indeed, only occasions the examples made sense of the purported explanation. A number of answers explained bribery as giving someone money to do something, which could be a perfectly legal contractual agreement.

Part (b) For those candidates who were familiar with the Bribery Act 2010, this part posed no problems, although the sanctions for bribery were rather confused ranging from fines to 20 year imprisonment. The well prepared candidates often scored full marks. However, a significant number of candidates discussed the offences as being insider dealing, and money laundering, which showed either a lack of understanding or a lack of knowledge, or the fact that they had prepared those topics.

Part (c) Although it followed on from the final element in part (b), candidates seemed to struggle with this part and merely repeated that a company needs to have adequate procedures in place to prevent bribery, without elaborating. At the other end of the spectrum there were some sound answers which discussed educating staff, introducing gift and hospitality registers and training.

Question Five

This question related to the law relating to company distributions and in particular the difference in the rules relating to private and public companies and the consequences of breaching those rules. One again the question was divided into the three specific elements that would be expected in a sound answer. Unfortunately this did not benefit those candidates who had prepared general answers. On the whole the performance was unsatisfactory, given the centrality of the topic to company law generally and accountancy in particular.

Part (a) This element generated a range of answers. The well prepared candidates correctly identified that distributable profit was calculated by taking accumulated realised profits less accumulated realised losses and went on to define how those were calculated and included a sound discussion of undistributable reserves. However, a fairly common approach was to discuss the priority of dividends in terms of preference and ordinary shareholders, in other words not where the dividend came from but where it went. This indicated a lack of sufficiently detailed knowledge in this area.

Part (b) A significant number of candidates just repeated the conditions for setting up a plc in terms of amount of issued and paid up share capital and the capability of a plc to issue shares and thus pay dividends to members of the public.

Others, merely repeated or added more general information to what they had written in part (a). Only a minority of candidates displayed knowledge of the balance sheet test and overall, answers to this part were inadequate.

Part (c)
This element was done quite well with directors, shareholders and the liability of auditors being discussed. Some even considered the power of shareholders to injuct directors.

Question Six

This was a question on directors' duties, but only three of them. Once again the specificity of the question caused problems to those candidates who had prepared general answers on directors' duties. It seemed that candidates expected to have to list the directors' duties but many were unprepared to explain what they actually involved. A common approach to the whole of question 6 was merely to repeat the statements from the question, without showing any knowledge of the statutory duties.

Part (a) was unsatisfactorily answered and many, if not the majority, of candidates produced answers that owed more to managerialism than to law. Some answers did identify that directors need to focus on relationships, the environment and long term future of the company, but answers of that standard were few and far between.

Part (b) The approach to this element was similar to that in part (a). Consequently, answers were mixed. Some answers identified that there is both an objective and subjective test and went into detail about higher levels of skill if a director held a qualification. However some answers stated "directors need to exercise reasonable skill and care" and then went on to discuss particular personal skills that they considered a director should have to make a success of their company.

Part (c) This part was done better than the other two parts, but even then not as well as was expected. Most candidates were able to score 1 mark by stating that directors must put the interests of the company before their own personal interest. Some were able to cite cases to support their answers with examples or cases.
Weaker answers suggested the issue was keeping interest payments on schedule so that they did not conflict and preventing fights between employees.

Question Seven

This question in two parts dealt with two types of documents to be found in international business transaction; the bill of lading and the bill of exchange.

Part (a) bill of lading. As an individual element this was without doubt the best done question in the paper. It shared many of the characteristics with question 3, in that it was self-contained, recognisable and could be answered simply by setting out various characteristics of the bill of lading: easy to prepare, easy to remember and easy to set out.

Part (b) on bills of exchange, candidates found much more difficult, as there was an element of uncertainty with the possibility of confusion between the bill of exchange and other forms of payment. Indeed the most common shortcoming was confusion with a letter of credit. That being said the majority of candidates did answer the question well, with a good number, quite properly, extending the take in 'international' bills of exchange.

Question Eight

Contract scenario in two parts, both relating to anticipatory breach.
This question did relate to one of the more obscure provisions of UNCISG and on that had not been examined before in this form.

Part (a) The format of this question disconcerted many candidates, as they seem to assume that they will never be asked to advise the party who is at fault. Several, nevertheless, gained sound marks by writing correct and

relevant material about anticipatory breach but lost the application marks by stating that Anton was in anticipatory breach. Had they known the definition of anticipatory breach and been able to apply it, they would not have made this mistake. Still others insisted that the two contracts involved had to be treated separately, which also shows a clear misunderstanding, or lack of knowledge about Article 71.

Part (b) was a much more straight forward proposition and was better done.

Question Nine

This was a question, essentially on the nature of articles of association. Unfortunately, it proved to be of a level of subtlety that was beyond the scope of the majority of candidates. A number of candidates thought that the question related to insider dealing and the operation of the Company Directors' Disqualification Act.

Part (a) the majority of candidates did not know how to remove a director from their position. A significant number of answers stated that the other directors could just dismiss Dee, others opted for a special resolution and yet others contended that the director could not be removed at all.

Part (b) Answers to this part were inadequate. The majority of candidates interpreted the question to be one on directors' duties and discussed the breach of duty and in so doing essential repeated answers produced in relation to question 6. Other candidates thought that the question referred to the duties of a company secretary and discussed how in a plc, the appointment of a secretary is compulsory, whereas in a private company, it is not. However, the majority of candidates treated the question as relating to employment law and simply ignored the essential issue as to whether the articles of association could establish a contract of employment in the first place. Most candidates asserted that the work would have to be paid for, but that assertion was very rarely backed up by reference to the appropriate legal sources.
Answers tended to be extremely confusing and only a small number were able to identify that the question referred to the articles of association and the rules in relation to third parties. For the candidates who knew the principles established in *Eley v Positive Life*, some sound answers were produced. However, on the whole, candidates found this element very difficult.

Part (c) relating to how the articles of association can be altered was done better than the other two parts, but was still not done particularly well.
A large number of candidates concluded that the articles could not be changed and any change would constitute fraud on the minority. Not many candidates were aware of the fact that a change was effected by special resolution, nor the rule in Greenhalgh, nor indeed the role of the court in being the ultimate arbiter in relation to the change. This is fundamental core knowledge, so the approach to the question overall was unsatisfactory.

Question Ten

This question related to members' liability in standard unlimited partnerships and once again it has to be stated that the level of performance was inadequate.

Some candidates, despite the question being very clear, thought that the business was a limited company and that none of the partners had any liability. Others simply asserted that the partnership was a limited liability partnership in spite of the fact that the question stated that it was formed under the Partnership Act 1890.
Most candidates, however, were able to identify that the partnership in question was an unlimited partnership, that there was joint and several liability and that external debts needed to be paid off first. They also stated the proportions in which the external debt had to be paid: 6, 3, 1. However, after stating that a significant number then went on to contradict themselves by accepted that Jo had limited liability and calculated the actual amounts owed on that basis. Such reasoning can only support the conclusion that these candidates did not actually understand what they had written.