Examiner's report

F4 Corporate and Business law (GLO)
June 2014

General Comments

The structure of the examination paper consisted of ten compulsory questions, each carrying 10 marks. As previously the paper shared 5 questions, essentially the company law aspect of the syllabus, with the F4 ENG paper, the remaining 5 questions being specifically tailored to the F4 GLO syllabus. However, where possible questions in both papers covered the same general areas of the different syllabuses. Also as in the recent past, the questions tended to be subdivided into smaller subsections. This was aimed at helping candidates to structure their answers, although it has to be recognised that, as with the F4 ENG paper, it led to particular problems for markers where candidates ignored the subdivisions and answered questions globally. 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 enhanced 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 relatively low, but the impact of not attempting all of the questions remains damaging. 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.

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 with part (a) being on the differences between criminal and civil law and part (b) requiring an explanation of the criminal and civil court structure.

Part (a) was well-done, probably one of the best answered questions. However, a significant number confused the two senses of 'civil law', but as these tended to cover both aspects this made little difference in the eventual outcome of most papers. There remained a small minority who wrote prepared answers explaining the difference between common law and civil law without bothering to address the actual content of the question.

Performance in part (b) was less strong, with some candidates merely repeating aspects of part a). A significant number wrote in purely general terms without specifying the courts involved and this was credited as long as appropriate appeal structures were included. There was an obvious disadvantage for markers when candidates referred to their own court structure without stating where they came from. However, as anticipated, most defaulted to the English system, where a large number made reference to the House of Lords as the highest court in England. Others set out the names of courts without any apparent structure.

Question Two

A question on specific aspects of arbitration.

As regards part (a), on the need for arbitration agreements to be in writing, candidates' performance polarised, tending to score full marks or none at all. As usual some candidates saw it as an invitation to provide a write all they know about arbitration, with lots of 'quicker, cheaper, more private' standard responses.
. However, the majority were able to make some relevant points on this, though some concentrated on the question of why it might be a good idea for the agreement to be in writing.

Part (b), covering statements of claim and defence, was answered better than in previous sittings. Some candidates were side-tracked into explaining the procedure for challenge as this had appeared in the exam fairly recently, but most candidates recognised the topic area and gained some reasonable marks. However, a common mistake was to lump the parties together in terms of non-submission of documents, e.g. "If either party fails to submit their statement, the process with still continue/the process will come to an end."

Question Three

Contract question, referring to acceptance of offers. It was divided into 2 parts. The first, more general, part (a) carried 6 marks and the more specific part (b) carried 4 marks. Although most candidates did well in this question it was not without problems.

In part (a) candidates either did really well and answered the question set, or described all they knew about offers under the UN Convention on Contracts for the International Sale of Goods, rather than focussing on the topic of the question: acceptance. Some answers stopped at offers, but fortunately most simply wasted time then went on to explain the rules relating to acceptance. A fair amount of part b) material appeared in part a), perhaps indicating a lack of deep understanding but nonetheless it was credited.

In part (b) concerning when acceptance becomes effective many candidates confused the postal rules for determining the time- limit for which an offer was open with the point at which the acceptance became effective, so effectively applying the English postal rule. The reaching rules seemed reasonably well-understood as a whole, though.

Question Four

This question asked candidates to explain aspects of capital maintenance.

Candidates struggled with part (a) and just tended to mention that capital maintenance was all about "maintaining capital". This may have been an example of an attempt to assist candidates being counterproductive, as it revealed a lack of knowledge.
In relation to parts (b) and (c) some candidates mixed up the difference between shares at a discount and shares at a premium but generally these parts were well done. Candidates displayed a sound knowledge on the fact that the share premium is an undistributable reserve and the fact that shares cannot be issued at a discount on nominal value.

Question Five

Partnership law question relating specifically to the various available types of partnership, but as the question made clear the core issue related to liability of the members of the various types of partnership.
However, given that the question required candidates to discuss partnerships in the context of liability, a lot of irrelevant points were provided.

Where candidates failed to pick up marks was in confusing parts (b) and (c). Many would say that limited partnerships afforded partners limited liability, and would then describe the limited partnership under (c), thereby getting no marks at all. Even those that did know the difference between (b) and (c) would often write very little under (c) and focus only on the limited liability of the members, thereby missing most of the 5 available marks. Many candidates produced essentially the same answer for both different types of structure. However, that being said overall the answers to limited liability partnerships were done quite well, with candidates comparing the business structure to that of a company.

Question Six

This company law question concerned the two distinct types of voluntary liquidation.
Candidates treated the question as just one single entity

As a result presentation was generally inadequate, with answers relevant to part a being contained in part b) and vice versa. The most common mistake was to equate members' voluntary liquidation with voluntary liquidation as a whole and creditors' voluntary liquidation with compulsory liquidation, so stating that voluntary liquidation could only take place when the company was solvent. This was often combined with a statement that the creditors passed the resolution to liquidate in a creditors' voluntary liquidation. Another common error was frequent references to the role of the court in liquidation and in the appointment of the Official Receiver.

That being said, candidates who knew the material scored well on this question. Those that didn't scored unsatisfactorily. There was lots of confusion between the features of a voluntary and compulsory liquidation, with many candidates failing to realise that a member's voluntary liquidation is when the company is solvent. They then also described the features of a creditor's compulsory liquidation in b (ii).

Question Seven

This required an explanation of international bills of exchange and how such documents can be endorsed.

As regards part (a) generally, candidates knew this or they didn't, with nothing in between. There was some confusion with letters of credit and bills of lading, but this didn't appear too often and most candidates were able to make at least a couple of relevant points about the meaning of an international bill of exchange.

In part (b) there were a couple of marks available for explaining what endorsement meant and most candidates achieved these. However, only some candidates mentioned fraud, but the question didn't specifically relate to it and it was possible to get full marks without it. Beyond the basic marks, the next most common points to gain credit were the explanation of endorsement in blank and special endorsement.
A small number of candidates did not understand the concept of endorsement at all and either confused it with acceptance or, in a handful of cases, with celebrity endorsement of products.

Question Eight

Contract UN Convention on Contracts for the International Sale of Goods question relating to anticipatory breach.
Although the best answered of the three problem questions. The most common error was to deal with this as the write-all-I-know-about-UNCISG question and in particular there seemed to be a general-purpose approach in the discussion of remedies, e.g. the buyer may ask the seller to reduce the price, rather than the specific focus on the actual remedies available in the facts of the scenario.
Very high marks were unusual, but the most common points for a mark of 5-7 seemed to be the following:

- define anticipatory breach
- examples (creditworthiness, etc)
- notification, assurance, suspension
- damages as remedy - mitigation of loss.

Comparatively few candidates were able to make more specific application points, though, such as the fact that Ben need not ask Ang for assurance of performance since Ang has already confirmed that he would not perform.

Question Nine

A question focussed on specific directors' duties.

Whilst most candidates did acknowledge that this question was about breach of director's duties, others misinterpreted the question and thought that it was about insider dealing and money laundering (inappropriate question spotting).

The question generated a lot of very generic answers on the statutory duties and candidates produced long lists and discussions of each of the duties. Many candidates went through each and every one of the seven statutory duties before correctly identifying the two relevant duties (and sometimes wrongly justifying the relevance of others). Some answers however identified the correct duties, applied them to the facts, and then gave an accurate description of the remedies. The analysis/application questions are written to test a candidate's skill to apply what they have learned and select the appropriate area of law. Those that just discussed the directors' duties in detail without recognising that conflict of interest and declaring an interest in a proposed transaction were relevant, did not score well.

Question Ten

problem scenario on fraudulent and /or wrongful trading.

This was answered with either candidates coming to the incorrect conclusion and stating that Gim and Hom were guilty of fraudulent trading or by candidates producing long calculations comparing assets and liabilities and how much the company would need to pay back. Some candidates even concluded that there was no case to be answered as Gim and Hom were sole traders and they could do what they wanted or because they were a company they had limited liability. The ones who recognised what the scenario was about and the difference between wrongful and fraudulent trading scored well.

A particular failing in many answers was that they tended to conflate fraudulent and wrongful trading thus reaching the conclusion that the parties concerned were liable for both.

A few correctly came up with limited liability, lifting the veil and the directors being personally liable (plus disqualification). A lot made an unnecessary reference to the criminal consequences of fraudulent trading under the Companies Act 2006 and many extended that criminal liability to wrongful trading.