Examiner's report

F4 Corporate and Business Law (GLO)
December 2012

General Comments

There was a drop in the number of candidates passing this exam. This fact has to be considered in the context of an apparently wide divide in the level of performance between well prepared candidates who scored well and indeed very highly in many cases and the inadequate performance of many candidates who appear simply not to have prepared sufficiently for this examination.

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. There was a significant reduction in the preparedness of those talking the exam.

However the 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 appears that there has been an increase in the number of candidates engaging in question spotting with the result that many of the prepared were simply inappropriate answers to the questions actually asked.
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. Part (a) required an explanation of the sources of English law and part (b) gave a choice of an explanation of sources in either Sharia law or civil law.

On the whole this was very well done with many candidates gaining marks, if not full marks. Part (b) tended to be done better than part (a) but even there the some candidates were confident discussing common law, equity, the doctrine of precedent and legislation.

However, there was some evidence of candidates relying on prepared answers thus some gave answers on the distinction between common law and equity or the difference between civil law and criminal law.
As previously, where an option has been given in relation to part (b), a number of candidates provided answers to both elements.

Question Two
This was an essentially contract question requiring knowledge of the provisions in the UN Convention on Contracts for the International Sale of Goods (UNCISG). It specifically focused on the remedy of damages. It has to be said that the performance in this question was inadequate. As UNCISG is core to the Global syllabus and damages are core within UNCISG, it was expected that candidates would be well prepared in this area. Unfortunately this was not the case and amongst the errors perpetrated by candidates the following were well represented:

- treating "damages" as relating to physical damage to goods;

- general discussion of UNCISG – or even of the UN as a whole;
- general discussion of formation of contract;
- general discussion of obligations of buyer and seller;
- general discussion of remedies;
- for those in the right area, some were of the view that damages can only be claimed in the event of fundamental breach.

Very few were the candidates who understood the need for damages to be foreseeable.

The foregoing are weaknesses in relation to specifics of the law relating to UNCISG, but of perhaps even more concern was the number of candidates who took the question as an invitation to provide an answer on arbitration. Maybe e candidates were misled by the mention of award in the question. However, it is more likely that these candidates had studied pervious exams where arbitration had been set as the topic for question and simply regurgitated a prepared answer in that topic.

Question Three

Related to company names and their protection. I was divided into three parts carrying 4, 4 and 2 marks respectively.

Part (a) on limitations on company names was on the whole well done with the large majority of candidates gaining satisfactory marks.

Part (b) (i) was on the tort of passing off and for those candidates who understood its meaning, this was a question with some sound answers produced. A significant number of candidates hazarded a guess at this and quite often got passing off mixed up with unrelated criminal activity.

Question Four

This was a three part question requiring candidates to explain the content of the various documents required upon registering a company.

Part (a) this question was designed to test that candidates were actually aware of the changes introduced by the Companies Act 2006. There was no reason why a well prepared candidate should not have received full marks. However, a number of candidates still thought that the memorandum was part of a company's constitution and contained the objects clause.

In relation to part (b) the question allowed a large diversity of answers. Surprisingly, even candidates who did unsatisfactorily in part (a) usually managed to pick up some marks in this part.

In part (c) some candidates thought that the articles of association were an external document, whilst others thought they were a specific contract in relation to the directors. However, a significant number of candidates scored full marks on this part. However, only a small number developed the discussion and considered the position of third parties, using case law such as Eley v Positive life to support their answer. Once again the fact that there were lots of potential points that could be made served candidates well.

Question Five

This question was divided into two parts. Part (a), carrying 4 marks, referred to the topic of capital maintenance generally and part (b) (6 marks) required a consideration of the means for by which both private and public companies could reduce their capital.

Part (a) the answers to this part of the question, again varied quite dramatically. A significant number of candidates thought that the whole question centred on the general differences between private and public companies, so discussed in great detail the share capital, directors and company secretary requirements. Others stated that share capital had to be maintained to pay suppliers. Overall, this question demonstrated a lack of understanding of the subject matter. Candidates tended exclusively to apply knowledge that had no relevance to the syllabus whatsoever.
Some answers however acknowledged that capital maintenance is designed to protect shareholders and creditors and that "buffers" should be kept and provided some explanation of the nature of those buffers and the legal rules put in place to ensure their operation.

(b) Again as in question 2, how well candidates did in this part tended to be dictated by how they answered part (a). There were some sound answers which displayed a solid grasp of the subject area and an understanding of the various ways in which companies may reduce capital and how this could be done. Other answers were very brief and focussed on there being no requirement in private companies for a minimum amount of share capital, but in public company's £50,000 is the minimum. Yet other answers attempted to answer the question from first principles without any apparent knowledge of the appropriate legal provisions.
The structure of the question implied that there was some distinction between private and public companies, but some candidates assumed that the difference lay in the nature of the resolution required to approve the capital reduction.

Question Six

This question concerned companies in financial difficulty generally and specifically required an explanation of the procedure of administration.
Overall, it was done quite well. There was a little confusion and some candidates believed the process of administration was concerned with compulsory liquidation. There was also lots of discussion about floating and fixed charge holders also. However, in general, candidates recognised that administration is a process by which there is an attempt for the company to be rescued and for creditors to achieve a better outcome.

Question Seven

This question required an explanation of the meaning and effect of three specific ICC Incoterms. On the whole, and ignoring the myriad of strange explanation of the actual meaning of the terms, this was done very well and was easily the highest scoring question on the paper: many candidates gaining full marks.

Question Eight

Contract scenario on the rules relating to the formation of contracts under UNCISG. The question was subdivided into four distinct elements in an attempt to guide candidates into focusing on what was being examined.

Part (a) the discussion in this part on the difference between offers and invitations to treat (ITT) was well done overall. The problem was however, that the many candidates concluded that the advert was an ITT, too many candidates not reading the question properly.

- e.g. not an offer because quantity not specified. (The possibility of a language issue has been raised in this regard – were candidates looking for a number and not picking up that indefinite article equals one?)
- too many stating that it cannot be an offer if made to more than one person
- too many wasted lots of time, unnecessarily discussing the main elements required to form a contract.

Parts (b) – (d) related to counter -offers and their effects.
While all three were examples of counter- offers, only some candidates followed the logic of their legal analysis, with a number deciding on spurious distinctions to separate the three elements.

Question Nine

This question related to directors' duties and the breach thereof
On the whole, the question was inadequately answered was by far the worst answered question on the paper.
The first point to make is that despite the fact that the question explicitly stated that the UK Bribery Act 2010 could be ignored, a number of candidates focussed their whole answer on the fact that Fay had been bribed, which clearly was the incorrect approach to take.

A lot of candidates thought that this question related to insider dealing, so spent a significant amount of time discussing that. As question 10 specifically referred to insider dealing, it is simply not possible that two questions on insider dealing would be asked in the same paper.

Others candidates thought that the business agreement was a partnership and discussed the role of agency and the fact that Fay could be removed from the partnership. There was also a lot of discussion in relation to private companies, lifting the veil and fraudulent and wrongful trading. All of which was irrelevant.

Where candidates did understand what the question was about, there were varying degrees of answers produced. Some candidates referred to the fiduciary duties of directors, without acknowledging that the Companies Act 2006 had codified the duties. Others did discuss the correct duties but then concluded that Fay was in breach of the Company Directors Disqualification Act 1986– this appeared very frequently. There were also lengthy discussions on the different types of directors, which was further evidence of candidates attempting to make the question fit the answers they had prepared.

Director's duties are a fundamental company law topic and it was unsatisfactory that answers were not of a higher standard.

Question Ten

Problem scenario on insider dealing.

This question was answered very well, with candidates producing answers on primary and secondary insiders and considering the defences available. Not a lot of candidates however, were aware of the penalties and sanctions and it was very rare that the correct term of a maximum of seven years imprisonment was seen.
Given how inadequately this topic has been answered in the past, there was an improvement in performance.
Nonetheless it still has to be stated that some weaker candidates attempted to answer the question using employment law and/or fiduciary duties.