Answers

In relation to aspects of business law the default law and cases relate to the United Kingdom, however relevant law and cases from other jurisdictions will be credited where appropriate

1 (a) The idea of the separation of powers is posited on the existence of three distinct functions of government, the legislative, executive and judicial functions, and the conviction that these functions should be kept apart in order to prevent the centralisation of too much power. Establishing the appropriate relationship between the actions of the State and the legal control over those actions crucially involves a consideration of whether there is any absolute limit on the authority of the government of the day. In some states there is a strong model of the separation of powers with the three elements possessing equal power with a resultant system of checks and balances. Such is the situation in the United States of America for example, however, the situation in the United Kingdom is not of this nature due to the operation of the doctrine of parliamentary sovereignty as will be considered in detail below.

The three elements in the division of power are:

(i) *The legislature*
This is the body within the constitution in which the power of making law is located. Such law takes the form of legislation. Under democratic constitutions the body will normally be elected. In countries with a written constitution there are limits to the power of the legislature to make law, in that it is not permissible for laws to be made which conflict with the rights provided under the constitution. If any such law is passed, it is open to challenge in the courts, which may strike it down as being unconstitutional.

(ii) *The Executive*
This institution, as its name suggests is the one that executes the law, i.e. carriers it into effect. It is essentially the government operating through the instrument of the state, such as the civil service and other state functionaries. In theory the executive implements rather than creates the law and is subject to the scrutiny of the legislature and the judiciary.

(iii) *The Judiciary*
The role of the judiciary is to decide issues in relation to the law of the state in which they are located. A corollary of this description is the conclusion that it is not the function of the judges to make law. As has been mentioned previously, in states where there is a strong separation of powers the judiciary have the power to control the functioning of both the executive and the legislature to the extent that both of those institutions must act within the limits of the constitution, with the result that it is not open to the legislature to make any law that is contrary to the provisions of the constitution.

(b) As has been stated, although the United Kingdom does operate a version of the separation of powers, it is a weak, rather than a strong, version of the doctrine as outlined above and it has to be considered in line with the related doctrine of parliamentary sovereignty. This effectively means that Parliament is not just the ultimate source of law, but it can make such law as it determines, which cannot be challenged in the courts as to its content. Nor can one parliament introduce laws that bind, and cannot be changed by, a later parliament. Even the Human Rights Act 1998, which introduced the European Convention of Human Rights and Fundamental Freedoms into United Kingdom law, maintains the doctrine of parliamentary sovereignty, to the extent that the courts cannot declare primary legislation to be invalid on the grounds that it conflicts with the convention. Courts may issue a declaration of incompatibility, but such a declaration does not invalidate the legislation in question and any action to remedy the conflict must be undertaken by the legislature. Whilst the primacy of European Union law over domestic law means that any domestic law made in contravention of European law is subject to challenge and overturning in the courts, this, nonetheless, has been held to be compatible with, and itself the result of, parliamentary sovereignty.

2 Article 34 of the UNCITRAL Model Law on International Commercial Arbitration allows for a party to an international arbitration to apply to a court to set aside an arbitration order. It should be noted at the outset that 'recourse' means resort to a court, i.e. an organ of the judicial system of a State. This is distinct from any procedure agreed upon by the parties to allow an appeal to an arbitral tribunal of second instance. The reason for Article 34 is that national laws on arbitration allow a large variety of means of recourse against arbitration awards with a consequential delay in finalising the dispute. In an endeavour to forestall such delaying tactics Article 34 allows only one type of recourse, to the exclusion of any other means of recourse regulated in another procedural law of the State in question and establishes a list of limited grounds on which any award may be set aside. An application for setting aside under Article 34 must be made within three months of receipt of the award.

Paragraph 1 of Article 34 establishes categorically that recourse to a court against an arbitral award may only be made in line with the conditions set out in the subsequent paragraphs of the Article.

Paragraph (2) goes on to provide that an arbitration award may be set aside by the court only if the party making the application furnishes proof that:

(i) a party to the arbitration agreement was under some incapacity; or the agreement is not valid under the laws to which the parties have subjected it. If there is no indication of applicable law then the law of the State hearing the application will be the referent;

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present their case;

(iii) the award dealt with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contained decisions on matters beyond the scope of the submission to arbitration. However, if the decisions on the matters submitted to arbitration can be separated from those not submitted, then only that part of the award relating to the issues not submitted to arbitration may be set aside;

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties;

(v) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the State required to enforce the award;

(vi) the award is in conflict with the public policy of that State.

The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

The grounds for setting aside a decision are almost identical to those for refusing recognition or enforcement, but there are significant practical differences between the two procedures. Firstly, the grounds relating to public policy (no. (vi) above), including non-arbitrability, may differ depending on the State in question. Secondly the grounds for refusal of recognition or enforcement are valid and effective only in the State where the successful party seeks enforcement, whilst the setting aside of an award at the place of origin prevents enforcement of that award in all other under Article 36(1)(a)(v) of the Model Law.

3 Article 45 of the UN Convention provides that if the seller fails to perform any of his obligations under the contract or this Convention, the buyer may claim damages as provided in Articles 74 to 77. Article 74 defines damages for breach of contract as a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss that the party in breach foresaw, or ought to have foreseen, at the time of the conclusion of the contract.

In addition they may exercise the rights provided in Articles 46 to 52:

(i) *The right to require performance*
Article 46 provides that the buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy, which is inconsistent with this requirement. However, even if, for some reason, the goods do not conform to the contract, the buyer may only require delivery of substitute goods if the lack of conformity constitutes a fundamental breach of contract and an appropriate request for substitute goods is made. If the goods do not conform to the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances.

Article 47 allows the buyer to fix an additional period of time of reasonable length for performance by the seller of his obligations, and unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, such an election does not deprive the buyer of any right he may have to claim damages for delay in performance.

Article 48 allows the seller, at his own expense, to remedy any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience. Such action is permissible even after the date for delivery. If the seller requests the buyer to inform him whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(ii) *The right to avoid the contract*
Article 49 provides that the buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract amounts to a fundamental breach of contract; or
(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer or declares that he will not deliver within the period so fixed.

However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;
(b) in respect of any breach other than late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach;
(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of Article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or
(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of Article 48, or after the buyer has declared that he will not accept performances.

If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, Articles 46 to 50 apply in respect of the part which is missing or which does not conform. However, the buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract (Article 51).

If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery. If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate (Article 52).

(iii) *The right to reduce the price*
Article 50 provides that if the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price paid. Any such reduction must be in proportion to the value that the goods actually delivered had at to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with Article 37 or Article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

4 **(a)** Pre-emption rights refer to the rights of existing shareholders to be offered any new issue of shares before those shares can be offered to non-shareholders.

The purpose of pre-emption rights is to ensure that existing shareholders have an opportunity to maintain their interest in their company by preventing their percentage holding being watered down by the issue of shares to new members. There is, of course, no compulsion on the part of the shareholder to take the shares if they do not wish to.

In the UK there was no statutory requirement as to pre-emption rights before the European Community second company law directive (77/91) made it necessary for the law of the UK to be changed to introduce such rights.

Currently, by virtue of s.561 Companies Act (CA) 2006, a company cannot offer new shares for cash unless the existing shareholders have been offered the chance to buy the shares in proportion to their existing holding. Section 565 specifically exempts pre-emption rights where non-cash consideration is involved.

As it is not always cost effective to offer new shares to all existing members, pre-emption rights can be waived by provision in the articles of association or by a special resolution of shareholders.

Pre-emption rights may also be included in a company's articles of association and it is not unusual in the case of private companies to offer a form of pre-emption right to existing members when others wish to sell their shares.

(b) A rights issue is the procedure through which a company raises new capital by offering new shares to its existing members. As the shares are offered to the existing shareholders in proportion to their existing holding, it can be seen as respecting and giving effect to the shareholders' pre-emption rights, even in situations where those rights have been suspended, as indicated previously. As the purpose is to raise new capital for the company, either because it is in difficulty, or needs the additional capital to expand its business, the shareholders who are offered the new shares are required to pay for them. However, as an inducement to engage in the deal, it is usual for the new shares to be offered at a discount to the current *market* value of the existing shares. It is essential to note that the discount is not on the *nominal* value of the shares, which is required by the rules of company law to be fully-paid as companies cannot issue shares at a discount.

Once again there is no compulsion to participate in the rights issue and often the rights to participate in the allotment of new shares are usually tradeable securities in themselves. Consequently shareholders who do not want to buy the new shares themselves may sell the rights to a third party.

(c) A bonus issue of shares, sometimes referred to as a scrip issue or more accurately a capitalisation issue, is similar to a rights issue in that existing members receive new shares in proportion to their existing holdings, but it differs in one essential point: the individuals who receive the new shares usually do not have to pay anything for them; they are received free. However, as already pointed out in (b) above, it is a strict rule of company law that shares must be paid for and cannot be issued at a discount. This apparent anomaly is explained by the fact that the shares are paid for, but they are paid for by the company itself, rather than the members. It is perfectly possible for the company to issue partly paid-up bonus share, in which case the recipients may have to make some contribution in the future.

In effect what the issue of bonus shares amounts to is a capitalisation of the company's reserves, some of which could have been distributed to the members in some other way such as dividends. This is not the case with all reserves as some non-distributable ones, such as the share premium account and the capital redemption reserve, may be used to fund the bonus issue. Bonus issues must never be funded from a company's ordinary capital.

5 This question requires candidates to set out and explain the various registers and accounting records that companies are required to maintain.

(a) *Statutory Registers*

Companies are required to maintain a number of important registers, which are usually kept at the registered office and are open to public inspection. The registers are as follows:

Register of members. Under s.113 Companies Act (CA) 2006 every company is under the obligation to keep a register of its members and to include the following information in that register: the names and addresses of the members, the date on which each person was registered as a member and the date at which any person ceased to be a member. It must also indicate the number and class of shares held and the amount paid on those shares.

Registers of directors and secretaries. This requirement is set out in the CA 2006, ss.162–165 for directors and ss.275–278 for company secretaries. Sections 163 sets out the details that have to be included in relation to directors and includes their present and former names, date of birth, nationality, a service address which need not be the home address of the director, and occupation. Under s.165 the company must keep a separate register of directors' residential addresses, but this is not open to either ordinary members of the company or members of the public.

Register of charges. Section 876 CA 2006 requires all limited companies to keep a register of all fixed charges affecting the property of the company and all floating charges on the undertaking or property of the company. Such registers must contain a short description of the property, which has been charged, the amount of the charge and the names of the persons who hold it. Companies are not required to maintain a separate register of debenture holders but where they do maintain such a register it shall be open to inspection (CA s.743).

Register of interests in shares. This register is required under s.808 and relates to interests of a substantial nature in the voting shares of public limited companies. The level is currently set at 3%.

In addition to the registers, companies also keep records of directors' service contracts and indemnities, and records of resolutions and meetings of the company.

(b) *Accounting records*

Section 386 CA 2006 requires every company to keep accounting records and sets out what those records should be designed to achieve. They must be sufficient to:

- show and explain the company's transactions, disclosing with reasonable accuracy, at any time, the financial position of the company at intervals of not more than six months;
- enable the directors to ensure that any accounts required to be prepared comply with the CA and International Accounting Standards.

In particular the accounting records must contain:

- entries from day-to-day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- a record of the assets and liabilities of the company; and where the company deals in goods;
- statements of inventory held by the company and the end of each financial year of the company;
- all statements of inventory count from which any statement as is mentioned above has been prepared; and
- except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased showing the goods and the buyers and sellers in sufficient detail to enable them to be identified.

Under CA s.394 a company's directors must prepare accounts for each accounting reference period, usually 12 months. These accounts must include a statement of financial position and a profit and loss account (s.396) and must show a true and fair view of the company's state of affairs.

Accounting records must be kept for a period of three years for private companies and six years for public companies.

6 The Companies Act (CA) 2006 sets out a new statutory statement of seven general duties owed by directors to their companies as follows:

- *Duty to act within their powers*

  Section 171 CA replaces existing similar common law duties and requires directors to act in accordance with the company's constitution. Section 17 of the Act provides that a company's constitution includes not only the company's articles of association but the resolutions and agreements specified in s.29, which includes special resolutions passed by the company and any resolutions or agreements that have been agreed to, or which otherwise bind classes of shareholders.

  Directors are also required to use powers only for the purposes for which they were conferred. This is a restatement of the long-standing 'proper purposes doctrine'.

- *Duty to promote the success of the company for the benefit of members as a whole*

  Section 172 CA 2006 replaces the previous common law duty on directors to act in good faith in the best interests of the company. In the course of making their decisions under Part 1 of the section, then, directors are now required to have regard to each of the following list of matters:

  - the likely consequences of any decision in the long term,
  - the interests of the company's employees,
  - the need to foster the company's business relationships with suppliers, customers and others,
  - the impact of the company's operations on the community and the environment,
  - the desirability of the company maintaining a reputation for high standards of business conduct, and
  - the need to act fairly as between members of the company.

  The above list is non-exhaustive and directors must also have regard to other non-specific matters.

- *Duty to exercise independent judgement*
  This duty, stated in s.173 CA 2006, reflects the previous rule prohibiting directors from fettering their discretion unless acting in accordance with an agreement duly approved by the company.

- *Duty to exercise reasonable skill, care and diligence*
  Section 174 CA 2006 codifies and replaces the previous common law duty but in a way that reflects the recent tightening of control over directors in line with the standard set out in relation to wrongful trading in the Insolvency Act 1986, s.214.

- *Duty to avoid conflicts of interest*
  Section 175 CA 2006 reflects the long-standing common law rule that directors, as fiduciaries, must respect the trust and confidence placed in them and should do nothing to undermine or abuse their position as fiduciaries. The practical effect of the rule is that any conflict of interest must be authorised by the members of the company, unless some alternative procedure is properly provided. In the case of a private company, a conflict can be authorised by the other directors of the board unless the company's constitution provides to the contrary. The position is the same for public companies, except that the constitution must expressly permit authorisation by the board.

- *Duty not to accept benefits from third parties*
  Under s.176, a director must not accept a benefit from a third party, which is conferred by reason of (a) his being a director or (b) his doing (or not doing) anything as director. This duty is an aspect of the previous general duty to avoid conflicts of interest, but it has been stated separately in order to ensure that the obtaining of a benefit from a third party by a director can only be authorised by members of the company rather than by the board.

- *Duty to declare to the company's other directors any interest a director has in a proposed transaction or arrangement with the company*
  Under s.177 CA 2006 a director must declare to the other directors any situation in which they are in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company. Again this is a further emphasising of the duty to avoid a conflict of interests by ensuring that directors are transparent about personal interests which might affect their judgement or which could, even remotely, be seen as affecting their judgement.

7 **(a)** Article 2 of the UNCITRAL model law on international credit transfers defines the sender as the person who issues a payment order, including the originator and any sending bank.

The term originator refers to the issuer of the first payment order in a credit transfer and, in turn, payment order means an unconditional instruction, in any form, by a sender to a receiving bank to place at the disposal of a beneficiary a fixed or determinable amount of money if

(i) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and
(ii) the instruction does not provide that payment is to be made at the request of the beneficiary.

(b) Article 5 of the model law makes it clear that the sender is bound by a payment order if they, or some other person who had their authority to bind them, issued it. However, the issue arises as to what the law is where the person who issues the payment order is neither the sender, not has the sender's authority to do so, for example, where the payment order has been forged.

Where the payment order is subject to authentication, other than by means of comparing signatures, then the sender will be bound by the payment order, if

(i) the authentication is in the circumstances a commercially reasonable method of security against unauthorised payment orders; and
(ii) the receiving bank complied with the authentication.

It is important to emphasise that the form of authentication must be commercially reasonable in the circumstances. In effect what this provides is that if the bank accepts a transfer after carrying out reasonable authorisation procedures, then the sender will be required to honour the payment.

There are limitations to this protection provided to receiving banks, as it does not apply where the supposed sender can prove that the payment order did not originate from either:

(i) a present or former employee of theirs, or
(ii) a person whose relationship with them enabled that person to gain access to the authentication procedure.

However, if the receiving bank can show that the authentication procedure was revealed to the unauthorised sender/forger through the fault of the sender themselves then once again the purported sender will be liable to honour the payment.

8 The UN Convention on Contracts for the International Sale of Goods (CISG) provides a number of rules that implement the seller's obligations in respect of the quality of the goods. Article 35(1) states that, in general, the seller must deliver goods that are of the quantity, quality and description required by the contract and that are contained or packaged in the manner required by the contract. As regards quality specifically Article 35(2) provides that, except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

(i) are fit for the purposes for which goods of the same description would ordinarily be used. Goods are not fit under this case where they *lack specific ordinary characteristics* or when they *have defects* which impede their material use. Goods are also unfit for ordinary use when the defects, though not affecting the material use of the goods, *considerably lessen their trade value*;
(ii) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement. If the goods in question are to be used for some other, non-ordinary, purpose the buyer has no rights if he has not indicated the specific use;
(iii) possess the qualities of goods which the seller has held out to the buyer as a sample or model;
(iv) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

Subparagraphs (i) to (iv) apply whenever the parties have not agreed otherwise. If they are not to apply they must be expressly disclaimed in the contractual agreement.

Article 35(3) goes on, however, to state that the seller is not liable under subparagraphs (i) to (iv) above, if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

As regards liability, Article 36(1) provides that the seller remains liable for any lack of conformity which exists *at the time when the risk passes to the buyer*, even though the lack of conformity only comes to the attention of the purchaser after the risk has passed to them. Where the lack of conformity arises after the risk has passed to the buyer the seller remains liable if the lack of conformity arises as a result of a breach of any of the seller's obligations, which include any guarantee that the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics for a period of time (Article 36(2)).

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages (Article 37).

Ab Co & Ba Co
In relation to the first contract, Ab Co can claim against Ba Co on the grounds that the sensors are not of the required quality as required under Article 35. Although the sensors were fit for the purposes for which goods of the same description are ordinarily used, they are not fit for the particular purpose expressly made known to the seller. If the sensors subjected to the test were held out as models then they failed to meet that standard either. Ba Co are consequently liable to Ab Co in damages, including loss of profit.

Cy & Ba Co
At first, it might look as if Cy has no grounds for action against Ba Co, as the sensors were up to the usual expected standard, and he did not inform it of his specialist requirement. However, it has to be borne in mind, that Ba Co announced the results of their test in the trade journals and therefore held out to the world that their sensors were of a particular standard. On that basis Cy too could seek to claim against Ba Co, on the basis that it supplied him with goods of an inferior quality than was expected in the contract.

9 **(a)** Dividends are the return received by shareholders in respect of their investment in a company. Subject to any restriction in the articles of association, every company has the implied power to apply its profits in the distribution of dividend payments to its shareholders. The long-standing common law rule is that dividends must not be paid out of capital (*Flitcroft's case* 1882). The current rules relating to the payment of dividends are to be found in part 23 Companies Act (CA) 2006. The Act governs, and imposes restrictions on distributions made by all companies, both public and private. Section 829 defines distribution as **any** payment, cash or otherwise, of a company's assets to its members, except for the categories stated in the section, which include the issue of bonus shares, the redemption of shares, authorised reductions of share capital, and the distribution of assets on winding up.

Section 830 goes on to provide the basic condition for distribution, applying to **all** companies, which, in essence, is that they must have 'profits available for that purpose'. This term is defined in the section as accumulated realised profits less accumulated realised losses, with profit or loss being either revenue or capital in origin.

It is important to note that the use of the term accumulated means that any previous years' losses must be included in determining the distributable surplus, and that the requirement that profits be realised prevents payment from purely paper profit resulting from the mere revaluation of assets. Section 841 provides that all losses are to be treated as realised except where a general revaluation of all fixed assets has taken place.

The foregoing realised profits test applies to both private and public companies, but public companies face an additional test in relation to distributions, in that s.831 requires that any distribution must not reduce the value of the company's net assets below the aggregate of its total called up share capital plus any undistributable reserves. The effect of this rule is that public companies have to account for changes in the value of their non-current assets, and are required to apply an essentially balance-sheet approach to the determination of profits.

(b) Under the rule in *Flitcroft's case* any directors of a company who breached the distribution rules, and knowingly paid dividends out of capital, were held jointly and severally liable to the company to replace any such payments made. The fact that the shareholders might have approved the distribution did not validate the illegal payment (*Aveling Barford Ltd* v *Perion Ltd* (1989)). Also at common law, shareholders who knowingly received, or ought to have known that they had received an unlawful dividend payment were required to repay the money received, or to indemnify the directors for payments they might have already been required to have made (*Moxham* v *Grant* (1900)). Section 847 Companies Act 2006 restates the common law rule, providing that shareholders, who either know or have reasonable grounds for knowing that any dividend was paid from capital, shall be liable to repay any such money received to the company.

Applying the foregoing to the problem at hand it is apparent that the loss from 2008–2009 cannot be ignored, as the company is required to take accumulated losses into account. Nor can the paper profit of $5,000 generated by the asset revaluation be taken into account as it is unrealised. As a result the realised trading profit of $3,000 for the year 2009–10 has to be set against the loss of $2,000 from the previous year, which means that Fan plc only had $1,000 available for distribution to its members by way of dividend.

As dividends amounting to a total of $4,000 were paid, it is apparent that $3,000 too much was paid in dividends.

As a result any shareholder who either knew or had reasonable grounds for knowing that the dividends were improperly paid will have to recompense the company to the extent that their dividends were overpaid. In the final analysis Dee and Eff will be personally liable to make good the difference to the company for any payments made to shareholders who do not fit into that category.

10 As with companies, business assets must be used to pay the debts of a partnership. However, unlike most companies, members of partnerships do not benefit from the advantage of limited liability and consequently their personal wealth may be called upon to pay off business debts. Upon dissolution, the value of the partnership property is realised and the proceeds are applied in the following order:

(i) in paying debts to outsiders;
(ii) in paying to the partners any advance made to the firm beyond their capital contribution;
(iii) in paying the capital contribution of the individual partners.

Any residue is divided between the partners in the same proportion as they shared in profits (s.44 Partnership Act (PA) 1890).

If the assets are insufficient to meet debts, partners' advances and capital repayments, then the deficiency has to be made good out of any profits held back from previous years, or out of partners' capital, or by the partners individually in the proportion to which they were entitled to share in profits.

Applying these rules to the partnership in question, the first step is for the value of the partnership assets to be realised in order to pay off the debts owed to the various outside payables (creditors). As stated, the partnership assets are worth $20,000 and it has debts to outside payables (creditors) of $7,000. As the value of the assets is sufficient to cover all of these debts, the creditors will be paid their debts in full before any allocation between the partners.

The next stage in the problem is to consider Geo's advance of $3,000 to the partnership and as stated above he is entitled to receive repayment of that sum before any further distribution to the partners.

The effect of these payments is that the amount left for distribution between the partners is only $10,000 ($20,000 less $7,000 to the outside payables (creditors), less the $3,000 advance owed to Geo). This means that the partnership has actually suffered a loss of $30,000 on the original capital contributed by the members. That total loss will be allocated, according to the partnership agreement, in proportion to the capital contribution. As the total capital contribution was $40,000, Geo who provided $20,000 must suffer half of the loss (i.e. 20/40ths), Ho, who provided $12,000 must suffer 3/10ths of the loss (i.e. 12/40ths) and Io, who provided $8,000, will suffer 1/5th of the loss (i.e. 8/40ths). In terms of money, the losses will be; $15,000 for Geo, $9,000 for Ho and $6,000 for Io.

In practice these losses will merely reduce the amount of capital returned to the partners. Thus Geo will receive $5,000, Ho will receive $3,000 and Io will receive $2,000.

1 This question asks candidates to explain firstly, what is meant by the separation of powers and secondly to explain the doctrine of parliamentary sovereignty in the UK.

(a)

5–7 marks	A thorough answer, which explains fully the meaning of the separation of powers.
2–4 marks	A less complete answer, perhaps lacking in detail or unbalanced in that it does not deal with some aspects of the question.
0–1 mark	Little if any awareness of the topic.

(b)

2–3 marks	A thorough answer dealing fully with the topic. It is likely that reference will be made to the powers of the courts in relation to legislation. For full marks reference should be made to the Human Rights Act 1998.
0–1 mark	Some, but limited knowledge or no knowledge whatsoever.

2 This question requires candidates to consider Article 34 of the UNCITRAL Model Law on International Commercial Arbitration relating to the circumstances under which a party may have recourse against an arbitration award.

8–10 marks	Good to complete answer which shows thorough knowledge of the Model Law.
5–7 marks	Fair explanation of the Model Law, but perhaps lacking in detail.
2–4 marks	Some basic knowledge of the Model Law but no real depth of understanding.
0–1 mark	Very little, if any knowledge of the topic.

3 This question requires candidates to explain the remedies available where a seller has breached their contract.

8–10 marks	Clear explanation of all or at least most of the remedies.
5–7 marks	Fair knowledge of the remedies, but perhaps lacking in detail.
2–4 marks	Some knowledge of the remedies, perhaps merely dealing with one or two elements of the answer.
0–1 mark	Very little, if any knowledge of the topic.

4 This question requires candidates to consider the various procedures relating to the issuing of shares to existing members. It is in three parts, although it is likely to be answered globally. Credit will be awarded for worked accountancy examples.

8–10 marks	A very good answer revealing a thorough to complete understanding of all three elements of the question.
5–7 marks	A good answer but perhaps unbalanced or lacking in detail.
2–4 marks	Weak answer, unfocused or lacking in knowledge or detail.
0–1 mark	Very little, if any, knowledge of the topic.

5 This question requires candidates to explain the various registers and accounts that companies are required to maintain.

(a) Relates to registers.

4 marks	A very good answer, not only detailing the main registers, but explaining their purpose.
2–3 marks	A fair to good answer but perhaps unbalanced or lacking in detail.
0–1 mark	Very little, if any knowledge of the topic.

(b) Relates to accountancy records.

4–6 marks	A very good answer, explaining in some detail the various accounts required to be maintained by companies.
2–3 marks	A fair to good answer but perhaps unbalanced or lacking in detail.
0–1 mark	Very little, if any knowledge of the topic.

6 This question requires candidates to consider the duties owed by directors to their companies and requires some explanation of the duties rather than just listing them.

8–10 marks	Clear explanation of all or at least most of the duties.
5–7 marks	Fair knowledge of the duties, but perhaps lacking in detailed explanation.
2–4 marks	Some knowledge of the duties, perhaps merely dealing with one or two elements of the answer.
0–1 mark	Very little, if any knowledge of the topic.

7 This question requires a knowledge of the UNCITRAL model law on the International Credit Transfers.

(a) This part of the question requires some preliminary explanation of three core terms in the model law.

2–3 marks	A clear explanation of all three terms.
0–1 mark	Some, but limited knowledge, lacking any detail.

(b) This part of the question requires candidates to explain how the model law addresses the issue of unauthorised payment orders.

5–7 marks	A thorough answer, which explains fully the way in which the model law looks to deal with unauthorised transfers. The very best answers may provide examples to highlight their explanation.
2–4 marks	A less complete answer, perhaps lacking in detail or unbalanced in that it does not deal with some aspects of the question.
0–1 mark	Little if any awareness of the topic.

8 This question requires candidates to explain and apply the rules governing the seller's obligations in respect of the quality of the goods under the UN Convention.

8–10 marks	Thorough to complete answers, showing clear analysis of the problem scenario and correct application of the Convention rules.
5–7 marks	A fair understanding of the scenario but, perhaps lacking in application.
2–4 marks	Some analysis and/or application, although perhaps not clearly expressed, or very limited in application.
0–1 mark	Little or no analysis or application.

9 This question requires candidates to explain the rules relating to the lawful distribution of company dividends. The question is divided into two parts, but is likely to be answered globally.

8–10 marks	A thorough understanding of law relating to dividends as it applies specifically to public companies. Cases may well be cited and will be credited.
5–7 marks	A clear understanding of the general law but perhaps lacking in detail or application.
2–4 marks	Some, but limited, understanding of the law and poor application.
0–1 mark	Little or no knowledge of the topic.

10 This question requires candidates to explain and apply the rules governing liability for debts on the dissolution of a partnership.

8–10 marks	This should provide a clear understanding of the legal rules and apply them accurately to the facts of the situation.
5–7 marks	This may show some detailed knowledge of the legislation but unable to apply it accurately.
2–4 marks	Some, but limited, understanding of the law and poor application.
0–1 mark	The poorest candidates will provide nothing but the briefest reference to the legislation and fail to apply it to the problem scenario.