Examiners' report

F4 Corporate and Business Law (GLO)
June 2008

The standard of candidates' performance was better than in previous sessions, reflecting greater familiarity with the new syllabus and possibly a more straightforward paper. From the evidence of the scripts it would appear that at least some providers are teaching certain key areas in a more focused manner.

Question 1
It would appear that some candidates had prepared well for this question and were very familiar with the roles of UNCITRAL and UNIDROIT, even down to the dates, administration and infrastructure of the two institutions. However, the majority of answers were very general and in some cases it would have been difficult to know which of the two institutions the candidate was writing about if the sub-headings had been removed.

There also tended to be a lot of unnecessary introductory material about the United Nations.

Question 2
This question in three parts required candidates to explain the meaning of offer, invitation to treat and counter-offer in the context of the United Nations Convention for the International Sale of Goods.

On the whole the question was well done and many candidates provided standard and correct definitions of the three terms with reference to the appropriate sections of the Convention.

However it still has to be stated that a number of candidates still tried to answer the question using inappropriate English law.

Question 3
This question required candidates to explain the rules relating to the passing of risk under the United Nations Convention for the International Sale of Goods. Unfortunately a number of candidates thought the question was an invitation to explain everything they knew about INCOTERMS , rather than to focus on the question actually asked. This of course led to difficulties and repetition when they came to actually answer the question relating to such terms.

Many answers were padded out by unnecessary references to the difference between risk and uncertainty and the need to preserve goods.

Question 4
The question required an analysis of one of the main concepts of company law, the doctrine of separate personality. There was a 60/40 split on the 10 mark total available and this indicated the weight that should have been given to each section. As a whole candidates performed well on this question. However, once again it has to be stated that a significant number of candidates did not even attempt this question on one of the most fundamental principles of company law. As with question 2 a failure to do this question, or a failure to answer adequately was an indication that such candidates were not sufficiently prepared to take the exam.

Part (a) required an explanation of the doctrine and its consequences and the majority of candidates were able to demonstrate understanding by reference to the seminal case of *Saloman v Saloman & Co (1897.* Others illustrated this distinction further using *Macaura v Northern Assurance Co Ltd (1925) and Lee v Lee's Air Farming Ltd (1961).* The consequences of this separation of the company and its members included. limited liability whereby the members are limited only to the nominal amount of their shares, perpetual existence of the company separate from its members, ownership of property by the company in its own right and the capacity to contract and sue in its own name. Most candidates were able to explain these or other examples to gain a reasonable amount of marks from this section of the question.

Having discussed the veil that separates the members from the company part (b) required an analysis of the circumstances under which the veil will be lifted to make the members liable. This falls into statutory and common law situations with most students recognising this distinction. Under statute the *S399* of the Companies Act 2006 requires groups of related companies to recognise the link between them when preparing accounts, whilst *s213 & 214* of the *Insolvency Act 1986* impose liability where there is evidence of either fraudulent or wrongful trading. These were the common examples given but others used were given credit. From a common law position, examples such as *Gilford Motor Co Ltd v Horne (1933)* to illustrate the evasion of a legal duty, Daimler *Co Ltd v Continental Tyre & Rubber Co (GB) Ltd (1917*) possible trading with enemy aliens at time of war and an examination of the courts treatment of groups of companies as a single entity where they are considered to be trying to evade a liability , reference was made her to cases such as *DHN Food Distributors Ltd v Borough of Tower Hamlets (1976)* and the later case *of Adams v Cape Industries plc (1990).* Again candidates were able to relate these or other circumstances to again gain reasonable marks.

Question 5
This question required candidates to consider the various investment mechanisms available to investors, namely ordinary shares, preference shares and debentures, with marks being divided 3, 3 for parts (a) and (b) and 4 for part (c) on debentures.

The majority of candidates dealt with the question well and, indeed it was the best answered question in the paper, but some answers shared the error already mentioned in relation to question 2, that as regards ordinary and preference shares there was a tendency to define them in terms of each other and hence effectively to repeat information. Surprisingly candidates were less successful at defining the ordinary share, although those who made use of the definition in *Borland's Trustees* v *Steel* (1901) invariably produced reasonable answers.

Part (b) relating to preference share almost always gave rise to answers relating to priority rights although there was some confusion as to whether they provided membership and specifically voting rights.

Part (c) on debentures tended to produce thorough answers and many candidates were able, not just to explain debentures but to also consider fixed and floating charges.

Question 6
The question required candidates to demonstrate an understanding of the difference in role between executive and non-executive directors (NED) and an awareness of the legal responsibility placed on those who the law considers to be shadow directors.

Most candidates made a reasonable attempt at explaining the role of the executive directors and gave comprehensive explanations about the role they play in the day-to-day management of the company. There was also a reasonable effort shown in tackling part (b) of the question about the role of the NED. Many made reference to the importance of corporate governance and the need for some sort of "check" on the powers of the executive directors.

Part (c) of the question on shadow directors was however quite poorly answered. Most candidates obviously had little idea what the term meant. Many guessed that such directors were advisers to the other directors; some did say that they were in the background, but most did not explain correctly what this meant. Overall because of the amount of marks candidates were able to earn in the first two parts of the questions there was generally reasonable marks gained for this question.

Question 7
This question required candidates to explain the meaning of three specific ICC INCOTERMS and on the whole it was answered adequately if not very well as might have been expected.

Whilst the majority answered the question appropriately, some wrote about every Incoterm they knew, whether wanted to or not, whilst others confused the buyer's responsibility with that of the seller.

Few candidates knew that the three terms related specifically to water transport.

Question 8
This question required candidates to analyse a problem scenario that raised issues relating to the United Nations Convention for the International Sale of Goods. In particular it required candidates to consider the rights and liabilities that arise through an apparent breach of contract.

The problem scenario was relatively transparent and many candidates took the chance to construct answers based on common sense rather than relying on the Convention.

Whilst this approach could gain some credit, the real marks came from an understanding and application of thee rules of the convention and consequently marks were only allocated to those candidates who referred to the Convention.

The answer was relatively straightforward, as long as the candidate was aware of, and applied, the appropriate Articles of the Convention, consequently it did not require a very long answer; but many candidates felt the need to pad out their answers by either repeating themselves or introducing unnecessary material.

Question 9
This question required candidates to analyse a problem scenario that raised issues relating mainly to partnerships but which also involves agency law.

On the whole the majority of candidates recognised the specific underlying issues within the general context of partnership law, although the manner in which they applied the law to the issues differed significantly depending on their knowledge of partnership law. The question concerned three distinct characters; Clare, Dan and Eve and most candidates dealt with in turn although not always appropriately.

In relation to Clare, the majority of candidates explained what is meant by a sleeping partner and correctly recognised that she could not avoid liability even if she took no part in the operation of the partnership business. Some explained that she might have been able to limit her liability if the partnership was registered under the Limited Partnerships Act 1907 or the Limited Liability Partnerships Act 2000. However, some candidates wrongly assumed that she had limited liability or that the partnership was a limited liability partnership.

In relation to Dan, most candidates recognised the issue involved and recognised the general law, but fewer succeeded in distinguishing the situations of the two customers Greg and Hugh and dealing with them appropriately.

Once again, in relation to Eve's situation, the majority were able to explain her unlimited liability for the partnership debts, but only a minority raised the issue of her authority to bind the other partners to the contract.

Question 10
This question required candidates to consider the criminal offence of insider dealing and to apply the appropriate law to the facts contained in the problem. Considering the number of times this topic has been examined in the past it is not a little surprising that it was attempted by a significant number of candidates, and not done well by most of those who did attempt it.

There seemed to be a general lack of detailed knowledge about the meaning of insider dealing and contents of the Criminal Justice Act 1993 and those who did have such knowledge tended not to apply it properly. There

was a general misunderstanding that insider dealing was simply having 'secret' information without explaining the specific, price-sensitive, nature of that information and the need to deal in shares on the basis of that information.

There was also some confusion as to Vic, in part (b) of the question with a number of candidates clearly not reading the question with sufficient care and incorrectly assuming that Vic was in fact Sid's brother.

The main reason for any inadequate performance in the paper was a complete lack of knowledge on the part of the candidates. The questions provided ample opportunity for candidates to demonstrate both knowledge and understanding. Some candidates clearly find 10 compulsory questions challenging and try to question spot, which, as a general rule, has disastrous consequences. However, the format of the paper suits the stronger candidate.