Examiner's report

F4 Corporate & Business Law (GLO)
June 2009

General Comments

As usual, this paper was made up of ten compulsory questions, each of ten marks, although many of them were subdivided into distinct parts. This format seems to have settled down and to meet with candidates' approval from the way they tackle it. However, it is a matter of some concern that a significant number of candidates are not completing, or even attempting, all ten questions. This does not appear to be an issue of time-management but lack of knowledge, which might reflect a failed effort of candidates to question spot. This point has been made in the past, but it clearly has to be repeated for every session: if you do not do all the questions you greatly reduce your chances of passing the exam. The syllabus is wide, but you have to cover it all; question/area spotting is a dangerous game to play. All questions were done very well by a number of candidates across the board; although the reverse of that is equally true in that all questions were done very inadequately by a number of candidates across the board.

One particular point that occurs in most exams, and one that I have commented on previously, is the way in which candidates tend to use issues raised in particular questions to answer completely different questions. This was particularly the case in this paper with regard to questions 6 & 9, candidates merely repeating in their answers to the latter questions they had already written in the former. As can be appreciated, that is not a likely structure for an examination to take.

What follows is an analysis of the way in which question were attempted by candidates, although as usual, the emphasis tends to be on the negative aspects rather than focussing on the sound work that many candidates produced.

Specific Comments

Question One

This question required candidates to explain the way in which the doctrine of precedent operates within two of three legal systems, although it is fully recognised that the doctrine is essentially an aspect of common law systems.

On the whole it was done fairly well. However the greatest shortcoming was in relation to the lack of information about the hierarchy of the courts within the English legal system and the implications this has for the doctrine of precedent. However, there were only six marks available for this.

As precedent does not really apply in the other two aspects of the topic, candidates were able to score marks by pointing this out and explaining the basis on which judges in those systems reached their decisions.

Question Two

This question focussed on the process of arbitration, as an alternative to the courts as a means of resolving disputes between individuals, especially in the context of international business transactions.

Part (a) of the question required candidates to assess the relative advantages and disadvantages of court proceedings and arbitration. The main focus was placed on arbitration, but the court system also had to be considered. On the whole this part of the question was dealt with particularly well. Indeed if any criticism could be levelled at the way this question was approached, it was that some candidates spend more time on it than was justified by the maximum five marks that was available for it.

Part (b) of the question requires candidates to explain certain key terms in relation to the UNCITRAL Model Law on International Commercial Arbitration; i.e. statements of claim and statements of defence. This part tended not to be done as well as the first part, but that being said many candidates did score reasonable marks once again. Even those who had little idea of the details of the question were usually able to work out at least one mark of content from the question itself.

Question Three

This question required candidates to explain the obligations relating to price placed on the purchaser under the UN Convention on Contracts for the International Sale of Goods. (CISG).

As usual, performance of candidates tended to be directly related to whether or not the candidate had sufficiently studied the CISG. Those who had, scored well and a number gained the full ten marks. Those who hadn't did much less well, but the vast majority of candidates had at least some knowledge of the Convention and so were able to score some marks.

Question Four
This question, divided into three parts, required candidates to explain the limitations on the use of company names, the tort of 'passing off' and finally the role of the company names adjudicators under the Companies Act 2006.

It has to be said that this question, and in particular part (a) was extremely well done. As regards part (a) the great majority of candidates were well able to cite most of the rules governing what names can and can't be used by companies. Part (b) was also done fairly well with many candidates able to cite cases in support of their explanation of the law. Part (c), which introduced the new concept of the company names adjudicator was also done fairly well. It is pleasing to see that candidates are now coming to terms with the 'new' companies legislation.

Question Five
Part (a) required candidates to comment on their understanding of the doctrine of capital maintenance. A majority of candidates correctly identified that the capital should be maintained as a buffer for creditors and should not be used to pay dividends to shareholders. A number of candidates went on to explain that shares should not be issued below nominal value, the rules relating to the payment of dividends and that public companies are required to have £50,000 minimum share capital. A minority of candidates struggled to clearly explain the doctrine and as a result spent a lot of time discussing the different types of shares and debt (fixed and floating charges) for which no marks were awarded.

Part (b) required candidates to discuss when a company may want to reduce its capital and the procedure to be adopted by both public and private companies. A vast majority of candidates correctly identified when a reduction in capital would be appropriate, a few also mentioned share buyback for which credit was given.
With regard to the procedural aspects their appeared to be some confusion. A number correctly distinguished the procedure differences, however, many candidates went off tangent by either writing a substantial amount of text regarding share buyback or a combination of company law points, which were not directly related to the question.

Overall, this was very well attempted question. As in the previous question, it appears that candidates are gradually becoming more familiar with the technical aspects of the Companies Act 2006.

Question Six
This question required candidates to explain the operation of the Company Directors Disqualification Act 1986. Performance in relation to the question was patchy, with some candidates providing very thorough, answers, but a large number mistaking the whole import of the question and delivering an answer, either on directors' duties, or the removal of directors, or a mixture of both. Unfortunately these issues overlapped and even then marks had to be awarded generously. Not only did this confusion not allow candidates to do well in this particular question but it indicated an overall confusion about the nature of directors' duties and their control. In the final analysis, if the candidate cannot refer to the appropriate legislation they are not going to get many marks.

Question Seven

This question was divided into two parts and required candidates to explain some essential terms in relation to the United Nations Convention on International Bills of Exchange and International Promissory Notes.

Part (a) requires a definition of what is actually meant by an international bill of exchange. This question was done well on the whole with many candidates explaining the provisions of the convention fully. However, a significant number of candidates treated the question as one about bills of exchange generally and did not make specific reference to the Convention. The particular shortcoming which flowed from this was the fact that such candidates tended not to consider the 'international' aspect of the bill of exchange. Many candidates also incorrectly described the bill of exchange as a cheque.

Part (b) required an explanation of the meaning and effect of endorsement and was once again well done on the whole.

Question Eight

This question required candidates to explain the circumstances under which a party can avoid a contract under the UN Convention on Contracts for the International Sale of Goods (CISG) on the grounds of anticipatory breach of contract. It required candidates to analyse a problem scenario and explain and apply the law appropriately.
On the whole the question was dealt with fairly well, with the majority of candidates recognising that the issue involved anticipatory breach and providing appropriate analysis of the CISG.

Once again, as in question 3, the level of performance and the marks gained was directly proportional to the candidate's knowledge on the Convention. For those who had studied it well, there were many marks to be picked up, but it was almost impossible for those candidates who had no detailed knowledge of the convention to score many marks.

Question Nine

This question required an analysis of the doctrine of corporate opportunity and the rules relating to directors' duties. It has to be said it was the least popular question on the paper and was not attempted by a considerable minority of candidates, and those who did tackle it, did not do particularly well in it.

There were essentially two core issues in the question, relating to conflict of interest, corporate opportunities and the much less essential corporate personality issue.

The majority of candidates recognised that the question related to directors' duties in some way, but apart from citing those generally, could get no further than that. Very few candidates even considered the corporate opportunities issue, preferring to go down the road of patent law, which is not even part of the syllabus of this paper.

As for the corporate personality issue, although not central to the question a number of candidates saw it as the key issue and spent all their time dealing with that –perhaps it would not be too cynical to suggest that this was in response to their lack of knowledge relating to any other aspect of the question.

Question Ten

This question required candidates to explain the meaning and regulation of the two criminal offences of insider dealing and money laundering and apply that law to a problem scenario.
This question tended to be sufficiently well done.

The money laundering aspect of the problem was particularly well done, with candidates explaining in very full terms what was involved in the process and the details of its legal regulation. However, there was some concern as to the insider dealing part of the problem, which raised some concerns and which suggest that a full question on that area would have met with much less success. The essential problem was that candidates seemed to

think that insider dealing was just using or revealing information gained from inside a company. That, of course, is completely incorrect and it is not insider dealing unless the purchase or sale of securities is involved. This concern, as to the general understanding of insider dealing, is confirmed by the number of candidates who claimed that Des, in question 9, was liable to be charged with that particular offence.