

Examiner's report

F4 Corporate and Business Law (GLO)

June 2010



General Comments

The performance in this paper was better than in the recent past. As usual, results were mixed but a higher percentage managed to reach the required standard. While many candidates performed well, it still has to be recognised that a significant number of candidates were less well prepared and unfortunately did not meet the satisfactory standard to pass the examination.

The structure of the examination paper, as usual, consisted of ten compulsory questions, each carrying 10 marks, although some were subdivided into smaller subsections. 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 firsts point to make about the general structure of answers is that it is pleasing to note that the number of candidates who failed to do all or even the majority of questions was considerably down on previous sessions. Although there were a sizeable proportion of candidates who did not do the entire question, the vast majority managed to make an attempt at answering all of the questions. Even where they got the answer wrong they at least recognised what the questions were about, which is itself an improvement on past performance. 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 (the issue of time pressure will be considered in relation to question ten below). That being said it is still a fact that the last three problem scenario based questions provide the greatest ground 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. That being said, it has also to be mentioned that question 8 on the UN Convention on Contracts for the Sale of Goods was, by and large, done fairly well.

However the way question ten was dealt with did give rise to particular concern. Candidates clearly are aware of the syllabus content and the structure of the paper, which has been maintained over a number of years. However the fact that question ten has on a number of occasions been the slot for questions relating to criminal aspects of company regulation meant that a significant number of produced answers relating to various aspects of the criminal law, rather than on directors' duties, which was the actual subject of the question.

Many candidates still fail to read the question asked and provide general prepared answers on a topic area encapsulating the specific question topic. As a result they still spend time providing unnecessary material or even worse, completely irrelevant material.

The sources of law examined in the Global paper are not particularly extensive, but candidates are expected to have a detailed knowledge and understanding of those sources. Where candidates fail it tends to be because they lack such detailed knowledge.

What follows will consider the individual questions in and candidates' responses to the individual questions in the paper.

Specific Comments

Question One

This question required an explanation of two important organisations operating within the context of international trade law. Those organisations are the International Chamber of Commerce (ICC) and the World Trade Organisation. (WTO).

Most candidates recognised what the initials stood for and were able to supply sufficient information about both bodies to gain at least pass marks, with many candidates scoring highly, especially in relation to the ICC, which tended to be done well. Less was known about the WTO.



A small number of candidates referred to the International Criminal Court rather than the expected International Chamber of Commerce and their answers were accepted and marked accordingly.

Question Two

This question requires candidates to consider two aspects of the Model law on International Commercial Arbitration. Firstly, the requirement that arbitration agreements should be in writing and secondly, how arbitration awards may be enforced. Given that the model law is not an extensive document to study and come to terms with, the performance in this question was inadequate. Many candidates still respond to specific questions on the model law by providing general explanations of arbitration, with its advantages and disadvantages, or alternatively provide a complete explanation of the whole procedure involved in going to arbitration together with explanation of the appointment and powers of arbitrators.

Part (a) was a specific and even fairly narrow aspect of the model law, but it was nonetheless an essential one that merited study and examination. It is surely fundamental that arbitration cannot be insisted on if there is no written agreement to that end. Too few candidates were able to deal with the topic in any detail, with a number merely asserting that such agreements had to be in writing, a fact they worked out from the question itself before going off on irrelevant material.

Part (b) was better done, but even there too many candidates mistook the question and provided answers about 'appeal' rather than enforcement, a fundamental error to make.

Question Three

This question requires candidates to refer to the rules relating to acceptance under the United Nations Convention for the International Sale of Goods. (UNCISG) The first part related to 'how' acceptance could be made and the second part related to 'when' such acceptance was effective.

This question tended to be done fairly well as candidates clearly know that questions on UNCISG will be asked and have studied the convention in detail. However even here problems arose from the fact that some candidates spent too much time explaining 'offers' rather than the 'acceptance' of such offers. There was also a tendency for candidates to present prepared answers on acceptance in relation to part (a). As a result, they tended to include information that should really have been placed in part (b), which they then recognised when they came to part (b) and as a result tended to repeat their previous answer.

Nonetheless those who focused on the central issue were able to perform well in this part.

Question Four

This question required candidates to explain the meaning of three specific ICC Incoterms. It was by far and away the best-done question on the paper, with a significant number of candidates gaining full marks. Indeed many candidates gave extremely full answers explaining the whole system of Incoterms, and not just the three examples that they were presented with. Clearly this is a very popular area and one that candidates are extremely comfortable with. Some candidates did not pick up the full marks available as they produced insufficiently detailed answers: they knew what the terms were but they simply didn't provide a full explanation of how they operated and what their consequences were, in terms of passage of risk for example.

Question Five

This question required candidates to list and explain the documents required to be submitted to the companies' registry in order to register a company.

This question was answered well by all candidates. It was encouraging to see that candidates understood the documents needed and the procedures, which need to be followed to set up a PLC. Full marks were frequently awarded. However, one point that has to be made is that a number of candidates still made use of the old, pre



2006 law, especially in relation to the memorandum of association. As a result they tended to overemphasise the importance of the memorandum and correspondingly to play down the importance of the application, which of course is now the most important document.

A small minority of candidates did misinterpret the question and described separate legal personality and the advantages of setting up a company compared to a sole trader.

Question Six

This question, split into three separate parts, required candidates to consider how companies may raise loan capital and how they secure such loans against their assets.

Answers to part a) were mixed. Some candidates thought that debentures were actually shares and or a share of profit granted by the company. The majority of answers were of a high standard, recognising that a debenture was a written acknowledgement of indebtedness, that the debenture holder was a creditor and that there were no voting rights attached, just an entitlement to interest. Full marks were quite often awarded.

In part b) candidates again could either readily describe the features of both fixed and floating charges, or made the mistake of assume that a fixed charge merely meant that a fixed rate of interest would be charged on the loan and that a floating charge related to a variable rate of interest. Unfortunately this is always a common mistake by candidates.

Question Seven

This question required candidates to consider the company secretary in the context of the idea of corporate governance.

This was not answered particularly well. Whilst most candidates stated that a company secretary was an administrative officer of a company, there was then a tendency to describe directors' duties. Some candidates recognised the qualifications needed, to be appointed as a company secretary and duties described tended to be in relation to maintenance and submission of records and registers and were comfortable describing the ostensible authority in pursuance of administrative contracts on behalf of the company. A small number of candidates actually took the context of the question seriously in explaining corporate governance and considering the role of the company secretary in that context as required.

Given that many candidates were able to cite the high level of qualifications required for a company secretary, it was somewhat contradictory that their duties tended to be explained in the most mundane list of tasks. Some of the less well-prepared candidates even suggested that the role of the company secretary was equivalent to that of a PA to the managing director, although alternatively some suggested that they were superior to the directors.

Question Eight

This question required candidates to explain and apply Article 79 of the UN Convention on Contracts for the International Sale of Goods, which allows a person to avoid liability for breach of contract where they can rely on an impediment beyond their control. It was on the whole done well with most candidates being able to explain Article 79 and to apply in to the circumstances of the case. Only a minority of candidates were unaware of the effect of Article 79, in which cases they simply treated the scenario as a breach of contract case, and still managed to gain some credit. However some candidates explained the effect of Article 79 clearly but then failed to apply it to the scenario, incorrectly assuming that it must apply.

Question Nine

This question required candidates to analyse a given scenario and accurately apply the law of partnership to it. The question specifically raised the issues of partners' liability, both generally and on specific contracts and their authority to enter into such contacts in the first place. Whilst there were many sound answers, it has to be said



that on the whole it was not done as well as might have been expected. There was a lot of repetition of the facts from the scenario. Whilst this is sometimes relevant to demonstrate application skills, there was not often a link between the scenario and the law identified. Most candidates were good at dealing with the general law of partnership and, as in question eight, they set it out, sometimes in great detail before going on to apply it to the three parties in the scenario. However, it was in the application that a significant number of candidates let themselves down by not applying the law they had actually stated and in many instances actually contradicting what they had written previously.

This was particularly the case with the first character Fi. Whilst some candidates had explained that ordinary partners did not enjoy the benefit of limited liability, and that such benefit could only be achieved through specific registered partnership forms, they nonetheless concluded that the partnership was a limited one and that Fi had limited liability.

Nor were the situations of the other two characters particularly well dealt with, again, by and large, in contradiction of the previous accurate explanation of the general law set out in the first part of answers. However, all that being said, many candidates performed well in this question.

Question Ten

This question essentially was divided into two distinct parts, one requiring candidates to consider the issue of directors' duties with an element raising the issue of share allotment. It has to be stated at the outset that it was by far and away the worst done question on the paper.. A surprising number of candidates simply did not recognise the issues raised in the problem scenario and attempted to apply various aspects of company law such as insider dealing, money laundering, fraudulent trading and wrongful trading, and some sometimes all of these together.

A number of explanations may be put forward for this failure to deal adequately with the question. Time pressure may have been an issue, as it did appear that candidates might have rushed this question, often leaving it until last and not really understanding the main principles in the scenario. Such time pressure, however, would appear to be the outcome of candidates wasting time in earlier questions by including lots of irrelevant material in their answers.

However it might be that on the basis of past papers, where the final question has indeed dealt with those topics, candidates simply assumed that the question must be the same.. The flaw in such logic is of course obvious.. Even where candidates recognised that the fundamental issue was directors duties, answers tended simply to list all such duties and as a result not to deal with the specific issues raised in the question.

Once again, that being said, it also has to be recognised that a number of candidates, although unfortunately a minority, produce excellent answers dealing with the issues of directors' duties and recognising and applying appropriate case authorities in support of their answers.