Examiner's report

F4 Corporate & Business Law (GLO)
December 2009

General Comments
The paper resulted in a mixed outcome. Many candidates performed well but unfortunately a significant number of candidates were less well prepared and unfortunately did not meet the satisfactory standard. It is hoped that what follows will help those in the latter category.

The structure, as usual, consisted of ten compulsory questions. 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 far too many candidates did not complete all ten questions, the result of which was to make it increasingly difficult, depending on the number of questions not attempted, for the candidates in question to gain sufficient marks to pass overall. However, it would seem from an analysis of the papers that this particular problem was the result of a lack of knowledge in relation to particular questions, rather than based on any time pressure, a point emphasised by a number of markers. A second related point to mention is that the questions that tended to be missed out were the last three problem scenario based questions, which would suggest a lack of analysis and application skills if not general knowledge.

It would appear that some candidates engaged in question spotting and as a result supplied prepared but inappropriate answers to some questions. As will be mentioned further in relation particularly to questions 2, 5 and 8 many candidates did not read the question sufficiently closely and as a result either spent time providing unnecessary material or even worse, completely irrelevant material.
What follows will consider the individual questions in and candidates' responses to the individual questions in the paper, but it has to prefaced by the clear conclusion that those who study and understand the underlying texts that from the foundation upon which this subject is based will do well in the exam. Those who do not engage with those texts will not.

Specific Comments

Question One
This question required candidates to consider the role of judges in two of three distinct legal systems; the common law, civil law and sharia law.

This was answered fairly well with most candidates passing the question. Given the nature of the candidate base, it is perhaps not peculiar that the second part of the question tended to gain more marks in proportion, although it has to be said that as regards the civil law system a significant number of people confused the level and produced a piece on the operation of the criminal law as opposed to civil law rather than a consideration of a civil law system. That being said the majority of candidates knew enough about the common law system, such as the doctrine of precedent and the role of the judges in creating law.

Question Two
This question required candidates to explain the grounds and procedures for challenging the appointment of arbitrators under the UNCITRAL Model Law on International Commercial Arbitration. It was divided into two parts each worth 5 marks each, but could be done as whole. Those who have studied the model law and could refer to its provisions, made easy work of the question and performed well. Those who performed unsatisfactorily were the ones who merely treated the question as on about

arbitration generally and as a consequence did not engage with the detailed provisions that were required to answer the question.

Question Three
This question required candidates to explain the obligations placed on the buyer under the UN Convention on Contracts for the International Sale of Goods. As with the previous question, those who had studied, and retained knowledge of, the convention had very little difficulty in answering the questions by reference to its Articles. Such candidates performed well. Those who did not do so well were those who did not have a detailed knowledge of the basic law, the convention, and consequently tried to work out the answer from first principles.

Question Four
This question required an explanation of two aspects of the law relating to damages for breach of contract. It was split into two parts, the first part, relating to damages worth 6 marks, and the second part relating to the duty to mitigate losses carrying 4 marks.

Once again those who had studied and understood the underlying text of the convention had little difficulty in producing a relatively short answer that explained the meaning, purpose and circumstances under which damages will be awarded for breach of contract, in addition to any other remedy that might be available to the innocent party.

Part (b) referred to the duty to mitigate losses and some candidates picked up full marks by explaining the general concept and the operation of the market rule, with supporting authority. As with the English variant the main weakness in relation to this part of the question was that a number of candidates simply offered a tautological explanation of the duty to mitigate losses, i.e. it means that parties have to mitigate losses. This gained no credit.

Question Five
This question required candidates to explain the concept of limited liability and to consider three alternative categories of companies; the first unlimited in nature, whilst the second and third are limited in different ways. Many candidates performed well in this question, but given the centrality of the topic to the syllabus a disappointing number did not score as highly as might have been expected.
Once again it should be noted that the question was clearly couched in the terms of company law and company formation. However, a significant number of candidates approached the question from the perspective of partnership law. Some candidates thought that the underlying unifying aspect of the question was separate personality, which led them to conclude that only limited companies had such separate personality.
A final point to mention is that, although there are many points that could have been made about the nature of companies limited by shares, many candidates simply settle for repeating in part (b)(iii), what they had already stated in part (a).

Question Six
This two-part question required candidates to explain the meaning of the terms 'compulsory winding up' and 'administration'. Part (a) on winding up, which counted for 4 marks, had been examined before, but part (b), worth 6 marks, had not been examined previously. This question was answered

well, with most candidates showing awareness, if not a detailed knowledge, of the administration procedure, and it has to be said that some showed both.

Some of the less well-prepared candidates, at least as regards administration, spent far too much time on compulsory winding up –far more than the allocated 4 marks could ever justify. This raises two related points: the first goes back to the point already made that such candidates had prepared a full winding up answer and were going to deliver, no matter what the question might ask and consequently reward; the second point is that candidates must use the mark breakdown as an indication of how much time they should spend on a question, that is why the have been broken down that way in the first place. As a final point in this regard, and again one that reflects/repeats what has been said previously, those who had prepared the general winding up question tended to explain 'voluntary' winding up, which was specifically excluded from the question. Candidates must read the actual words not what they want to see.

Question Seven

This was a two-part question with each part carrying 5 marks. The first part required candidates to explain the meaning of the term bill of lading. The second part the question involved a consideration of the term bill of exchange. Although most of the candidates who did this question performed well, it must also be said that given the fact that both of these topics have been examined on a number of occasions, some of the answers provided were simply not of an acceptable standard. In this latter group of candidates there appeared to be a simple lack of sufficient knowledge to gain the marks required to pass the question.

In relation to part (a) a number of candidates confused the names/roles of the parties involved in the issuing and use of a bill of lading. Yet others simply did not offer any explanation of how such instruments operate.

As regards part (b) once again the majority of candidates offered a very full and detailed answer and many of them answered the question well, but again concern has to be raised about those candidates who had no real appreciation of what a bill of exchange was. Of particular concern were those candidates who reversed the two instruments.

Question Eight

This was answered unsatisfactorily. Many candidates introduced irrelevant issues, such as INCOTERMS that were in no way raised by the question. Others focused on possible side issues in the question scenario, such as the fact that the material in question was travelling by ship, or the fact that a storm led to the destruction of the material. Nonetheless, the key issue, passage of risk, was highlighted in the question and some candidates simply did not pick up on it as was required. Once again those who spotted the issue actually raised in the question and marshalled the provisions of the convention to deal with it performed satisfactorily.

Question Nine

This question required candidates to analyse a problem scenario and explain and apply the law relating to directors' duties generally and in particular directors' contracts with their companies.

Unfortunately, it has become repetitive to say that candidates provided the right answer to the wrong question, but in this instance too, some candidates seemed to recognise this as a question about

insider dealing rather than what it was actually about. Perhaps, in this instance, the rubric did not mention directors' duties specifically, but to see the question as being about insider dealing is not only to misunderstand the question, but also to completely misunderstand insider dealing.

Some answers recognised that the question was about directors' duties in relation to their companies, but once again many candidates wasted time and effort by dealing with the full amount of directors' duties, rather than focusing on the key duties involved in the question. Such a response indicates a lack of analytical skill in relation to the scenario questions.

Some candidates honed in on the key aspects of the scenario and were able to cite statute and cases in support of their analysis and importantly to suggest the likely outcome of Caz' conduct, other than the general claim, true though it may be, that they might be dismissed from the board and disqualified.

Question Ten

This two-part problem question required candidates to consider fraudulent trading both under s.993 of the Companies Act 2006 and s.213 of the Insolvency Act 1986, and wrongful trading under s.214 of the Insolvency Act 1986. equal marks were given to both elements.

Again this was not answered well by a significant minority of candidates. The problem stemmed from a general lack of knowledge. Many candidates tended to rewrite the problem scenario as an answer without being able to refer to the detailed law relating to fraudulent trading, only a tiny minority made any reference to s.993 and few were able to explain s.214. That being said the small minority produced some very thorough answers, using the historical problems with fraudulent trading, as expressed through the case law, to explain the development of wrongful trading in s.214.

Although, in general, part (b) on wrongful was better done than part (a), once again only a minority of candidates were able to provide the detail necessary to fully answer the question.