

Examiner's report

F4 Corporate and Business Law (GLO)

December 2010



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. I have previously stated that this format seems to have settled down and to meet with candidates' approval from way they tackle it. That seems still to be the case and some learning providers commented positively on the format. However, it should be said that a number of candidates did not follow the structure and provided general and **obviously prepared** answers to specific topics. This is a point I will return to on a number of occasions in what follows.

It has to be recognised that the performance of candidates was unsatisfactory. This paper and should have been tackled much better than it was by the generality of candidates.

As I have said many times the syllabus is wide and it has to be fully examined over time. While it is recognised that some aspects of the syllabus are less central than others and hence are examined less frequently, they nonetheless have to be examined at some time. However when these areas are examined they are generally presented in the context of a paper that provides more than ample opportunity to reach a pass standard through an adequate treatment of more obvious, not to say easier topics. I strongly suggest that such is the case in the paper under consideration. I hope to demonstrate this when I consider the individual questions. Consider question 5 on registers and accounting records. When this question was asked before, some time ago, I had assumed it would be an easy question for people doing an accountancy question. In the event I was wrong and it was done inadequately as it has been again. However, it is on the syllabus and has to be examined over time. Moreover I still maintain it is not only relevant, but important for students to be aware of the interface between law and other more **obviously** accountancy based modules.

Even if question 5 was not expected, it should equally be noted that both questions 3 and 6 were extremely generous in the breadth of approach they allowed candidates. These questions could have been much narrower, but were deliberately written to afford candidates as much scope as possible to answer them.

This paper was far more accountancy focussed than previous papers and gave candidates the opportunity to use their core basic accountancy knowledge. Questions 4, 5 and 9 should have been answered extremely well but answers varied considerably. Candidates seemed to completely forget anything else and did not have the ability to draw on brought forward knowledge to answer the questions. Candidates do not seem able to recognise how the various different topics from their studies fit together.

It would appear that in preparing answers rather topics, candidates fail to come to terms with the underlying law and struggle when a topic is examined in a way that they have not prepared for. I will return to this aspect in the detailed consideration below.

The foregoing also relates to the issue of question spotting and the structure of the paper. For some time now the paper has adopted a fairly standard structure. Thus, question 1 will always be on the legal systems, question 3 on the UN Convention on Contracts for the International Sale of Goods (CISG) with questions 4-6 usually being on company law. The problem questions, always start with a contract question, although the actual topic covered changes. Question 9 is usually a company question. While it is good that learning providers can give candidates an indication of the likely structure of the paper, it is becoming apparent that some candidates are no longer actually engaging with the question set, but are simply adopting the approach that says 'This is question 8, it must be about contract...here is everything I know about contract law, from offer to remedies. Question 10 is where insider dealing has turned up, so here is an answer on insider dealing.'

Some candidates clearly prepare answers to topics and deliver them, even if they are not relevant. Such action merely indicates that the candidates do not actually understand the underlying legal concepts or principles. It is



apparent that some candidates prepare answers based on questions from the previous paper and submit them as answers to completely different questions.

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 answer a question on the separation of powers. It is pleasing to report that the question was dealt with well by the vast majority of candidates.

Part a) was generally done well with most candidates being able to explain the meaning and purpose of the doctrine. It was especially pleasing to see some candidates taking advantage of the possibility of considering their own political systems in their analysis of the concept.

Part (b) was done fairly well, with some answers even considering the impact of the UK's membership of the European Union.

Question Two

This question referred to the possibility of setting aside arbitration decisions under the UN Convention. Given the fact that it has been examined on a number of times, it has to be said that it was not done as well as expected. This question was the first example of the prepared answer. Arbitration has been examined as question 2 in many recent papers and candidates appeared to have prepared the generic 'arbitration' answer. As such these generic answers considered everything relating to arbitration and some fortunately gained some marks by eventually stumbling onto the actual topic of the question. However, the relevant content tended to be too little too late, and time would have been much better spent focussing on the actual issue. In relation to the actual topic, although many candidates were able to deal with it very well indeed, a significant number confused 'setting aside' with the right to appeal against an arbitral decision.

Question Three

This was a wide-ranging question on the remedies available for breach of contract, so it did not require answers about the formation of contracts, consideration or terms. However, those candidates who had prepared general answers provided such details, but got no marks for them.

The standard of answers produced on this question varied in standard quite considerably. Often full marks were awarded to candidates who explained the definition of a breach of contract, addressed different types of breach and in particular fundamental breach, and fully explained the remedies available to the buyer with reference to the convention. However a substantial number of candidates produced answers that were unstructured and lacking in focus, which was disappointing given the centrality of remedies in the syllabus.

Question Four

This question related to share issue and the rights of shareholders. Although it had never been examined before, it was deliberately worded in a way to afford candidates the possibility to use their wider business/accountancy knowledge within the context of specific legal provisions. On the whole it was done at least fairly well.

Part (a) This should have been done very well. The types of share and the rights of shareholders are a basic concept for any candidate studying accountancy. However, answers to this were extremely confused. Pre-emption rights were confused with promoters of companies and company's first issue of shares, which was simply incorrect. Only a small number of candidates were able to describe pre-emption rights and where this was the case, full marks were often awarded.



Part b This was generally well done with most candidates being able to define what a rights issue was. Answers scored full marks where candidates described that rights issues could be made at less than market value, rights did not have to be taken, and that the purpose was to raise more capital for the company.

Part c Again, this was generally well done but some candidates thought that a bonus issue was a payment to employees for good work.

Question Five

This question related to company registers and charges and has already been referred to in the introduction to this report.

Part (a) referred to registers. Answers to it were mixed. A high number of candidates approached the question from a company constitution angle and described the memorandum of association and articles. Some candidates misinterpreted the question and described the role of the company secretary and the documents needed to form a company in the first place. No marks were awarded for these types of answers.

The suspicion is that as these topics have been examined in the recent past candidates expected that they would not be examined again. Some were fortunate that registration documents and registers both refer to members and directors.

Part b related to company accounts. Surprisingly, not many candidates scored full marks in this part. Sometimes candidates took an extremely complex view of the question and explained corporate governance procedure. Again, corporate governance must be examined somewhere so prepare and provide a general answer on that topic). But once again the generic prepared answer was not appropriate. Some answers focussed on the actual records and documents which need to be kept. Answers were succinct and to the point and mentioned receipts and purchase invoices, records of cash, assets and liabilities. Credit was also awarded for discussion of the income statement, statement of financial position and cashflows.

Question Six

This question related to company directors' duties. There can be no more central concept in company law and one that has been examined on many occasions and in many different ways. As has been said in the introduction, this formulation was deliberately chosen as the widest way of examining the topic. Candidates were either extremely knowledgeable in this area and were awarded full marks or answers were inadequate. Where candidates did not know the statutory duties, credit was given for relevant points which demonstrated a basic understanding. For example, promoting the success of the company was interpreted by some as "making the company perform to the best of its ability and ensuring success". The benefit of the doubt was given to candidates and marks were awarded accordingly.

Some candidates explained in great detail the different types of directors, and the process of appointment and removal and the concept of corporate governance. This type of answers received no marks.

Directors' duties are a common topic, so it was surprising to note that some candidates did so poorly, but once again it is symptomatic of the prepared answer syndrome, built on no real underpinning of understanding. Corporate governance is an important part of the syllabus, it has been examined in a particular way in the past, so any question on directors must relate to corporate governance and of course the Directors Disqualification Act 1986, which must always be mentioned together with fraudulent and wrongful trading, because there is a really good chance that they will turn up...except when they don't.

Question Seven

This question related the UNCITRAL Model law on credit transfers, and. it was inadequately answered. This was clearly a topic for which candidates had not prepared any standard answers and such lack of preparation clearly



caused confusion amongst those attempting the question, and many did not even attempt to do this question. As a result the best that some candidates could do was to repeat the question in their answer. Part (b) was done even less well.

Question Eight

This first scenario question, as usual referred to contractual issues under the UN CISG, specifically the requirement as to quality under Article 35. As a topic that is central to the syllabus and one that has been examined on a number of times previously in different forms, it might have been thought that this was a question that could have been answered fairly well. However, although some candidates were well prepared on the specifics, a significant number of candidates prepared **generic** answers on CISG, starting from offer and ending with remedies, which is not the same thing at all, and merely evidences a lack legal knowledge and analytical skill.

Question Nine

This question related to the rules governing the payment of company dividends, particularly in relation to a plc. The topic has been examined on numerous occasions previously, but this was the first time that it had appeared in the form of a problem scenario. The way in which candidates dealt with this question perfectly encapsulates the main point of this report, that those who understand the underlying legal principles can deal with the questions no matter how they are presented, but that those who are simply learning rote answers get lost quickly and too easily.

Part (a) Answers varied in standard quite dramatically. Some candidates were able to discuss that a dividend can only be paid out of accumulated realised profits less accumulated realised losses. They also recognised that a public company may only make a distribution if, following the distribution, the amount of its net assets is not less than the aggregate of its called-up share capital and undistributable reserves. This was extremely encouraging and showed a good understanding of the subject. Answers concluded that the dividend was illegal as the revaluation reserve is undistributable.

At the other end of the scale, other candidates thought that the revaluation was distributable and that the dividend was legal. Others did not even approach the legality of the dividend at all and instead went down the route of resolutions and procedures needed for the declaration of dividends. Furthermore, some candidates concluded that all shareholders were entitled to a dividend and if one had been declared, and then one should be paid.

Part (b) Some sound answers in relation to the liability of directors, shareholders and auditors also were produced. Some candidates ignored this part of the question altogether or concluded that Dee and Eff had done nothing wrong and as the shareholders had approved the dividend, it should be paid. This conveyed a complete lack of understanding of the principles and indeed of the question as a whole.

Question Ten

This question required candidates to compute the amounts for distribution between the partners. Answers were mixed. Some answers understood that partners had unlimited liability, that the partnership could be wound up at the wish of the partners, that external creditors needed to be paid before partners and that, as the partnership agreement outweighs the Partnership Act 1890, the remainder was to be spilt in accordance with the CSR. A lot of marks were available for merely calculating the final distributions, so this question gave the opportunity for lots of marks to be awarded. Where the approach to the question was correct as outlined above, 7 marks were often awarded. The point of the question was once again to place accountancy practice in a legal context and vice versa.

Some candidates believed that the question related to voluntary winding of a company and wrote at length about preferential creditors. Whilst some similarities can be drawn, this was an incorrect approach and demonstrated a



fundamental lack of basic understanding between how a company operates compared to a partnership. Others wrote everything they knew about partnerships and the different ways in which a partnership could be dissolved including death of a partner, etc. This was not relevant and further displayed a general lack of application skills.