

Corporate and Business Law (CHN) (F4) December 2009

This syllabus and study guide is designed to help with planning study and to provide detailed information on what could be assessed in any examination session.

THE STRUCTURE OF THE SYLLABUS AND STUDY GUIDE

Relational diagram of paper with other papers

This diagram shows direct and indirect links between this paper and other papers preceding or following it. Some papers are directly underpinned by other papers such as Advanced Performance Management by Performance Management. These links are shown as solid line arrows. Other papers only have indirect relationships with each other such as links existing between the accounting and auditing papers. The links between these are shown as dotted line arrows. This diagram indicates where you are expected to have underpinning knowledge and where it would be useful to review previous learning before undertaking study.

Overall aim of the syllabus

This explains briefly the overall objective of the paper and indicates in the broadest sense the capabilities to be developed within the paper.

Main capabilities

This paper's aim is broken down into several main capabilities which divide the syllabus and study guide into discrete sections.

Relational diagram of the main capabilities

This diagram illustrates the flows and links between the main capabilities (sections) of the syllabus and should be used as an aid to planning teaching and learning in a structured way.

Syllabus rationale

This is a narrative explaining how the syllabus is structured and how the main capabilities are linked.

The rationale also explains in further detail what the examination intends to assess and why.

Detailed syllabus

This shows the breakdown of the main capabilities (sections) of the syllabus into subject areas. This is the blueprint for the detailed study guide.

Approach to examining the syllabus

This section briefly explains the structure of the examination and how it is assessed.

Study Guide

This is the main document that students, tuition providers and publishers should use as the basis of their studies, instruction and materials. Examinations will be based on the detail of the study guide which comprehensively identifies what could be assessed in any examination session. The study guide is a precise reflection and breakdown of the syllabus. It is divided into sections based on the main capabilities identified in the syllabus. These sections are divided into subject areas which relate to the sub-capabilities included in the detailed syllabus. Subject areas are broken down into sub-headings which describe the detailed outcomes that could be assessed in examinations. These outcomes are described using verbs indicating what exams may require students to demonstrate, and the broad intellectual level at which these may need to be demonstrated (*see intellectual levels below).

Reading lists

ACCA examiners will recommend study texts and text books where these are available, which students may read as part of their preparation for the exam. Relevant articles will also be published in *student accountant*.

INTELLECTUAL LEVELS

The syllabus is designed to progressively broaden and deepen the knowledge, skills and professional values demonstrated by the student on their way through the qualification.

The specific capabilities within the detailed syllabuses and study guides are assessed at one of three intellectual or cognitive levels:

Level 1: Knowledge and comprehension

Level 2: Application and analysis

Level 3: Synthesis and evaluation

Very broadly, these intellectual levels relate to the three cognitive levels at which the Knowledge module, the Skills module and the Professional level are assessed.

Each subject area in the detailed study guide included in this document is given a 1, 2, or 3 superscript, denoting intellectual level, marked at the end of each relevant line. This gives an indication of the intellectual depth at which an area could be assessed within the examination. However, while level 1 broadly equates with the Knowledge module, level 2 equates to the Skills module and level 3 to the Professional level, some lower level skills can continue to be assessed as the student progresses through each module and level. This reflects that at each stage of study there will be a requirement to broaden, as well as deepen capabilities. It is also possible that occasionally some higher level capabilities may be assessed at lower levels.

LEARNING HOURS

The ACCA qualification does not prescribe or recommend any particular number of learning hours for examinations because study and learning patterns and styles vary greatly between people and organisations. This also recognises the wide diversity of personal, professional and educational circumstances in which ACCA students find themselves.

Each syllabus contains between 23 and 35 main subject area headings depending on the nature of the subject and how these areas have been broken down.

GUIDE TO EXAM STRUCTURE

The structure of examinations varies within and between modules and levels.

The Fundamentals level examinations contain 100% compulsory questions to encourage candidates to study across the breadth of each syllabus.

The Knowledge module is assessed by equivalent two-hour paper based and computer based examinations.

The Skills module examinations are all paper based three-hour papers. The structure of papers varies from ten questions in the *Corporate and Business Law* (F4) paper to four 25 mark questions in *Financial Management* (F9). Individual questions within all Skills module papers will attract between 10 and 30 marks.

The Professional level papers are all three-hour paper based examinations, all containing two sections. Section A is compulsory, but there will be some choice offered in Section B.

For all three hour examination papers, ACCA has introduced 15 minutes reading and planning time.

This additional time is allowed at the beginning of each three-hour examination to allow candidates to read the questions and to begin planning their answers before they start writing in their answer books. This time should be used to ensure that all the information and exam requirements are properly read and understood.

During reading and planning time candidates may only annotate their question paper. They may not write anything in their answer booklets until told to do so by the invigilator.

The Essentials module papers all have a Section A containing a major case study question with all requirements totalling 50 marks relating to this case. Section B gives students a choice of two from three 25 mark questions.

Section A of each of the Options papers contains 50-70 compulsory marks from two questions, each attracting between 25 and 40 marks. Section B will offer a choice of two from three questions totalling 30-50 marks, with each question attracting between 15 and 25 marks.

The pass mark for all ACCA Qualification examination papers is 50%.

GUIDE TO EXAMINATION ASSESSMENT

ACCA reserves the right to examine anything contained within the study guide at any examination session. This includes knowledge, techniques, principles, theories, and concepts as specified.

For the financial accounting, audit and assurance, law and tax papers except where indicated otherwise, ACCA will publish *examinable documents* once a year to indicate exactly what regulations and legislation could potentially be assessed within identified examination sessions..

For paper based examinations regulation **issued** or legislation **passed** on or before 30th September annually, will be assessed from June 1st of the following year to May 31st of the year after. Therefore, paper based examinations in June 2009, December 2009 (and March 2010 where applicable) will be assessed on regulations issued and legislation passed on or before 30 September 2008.

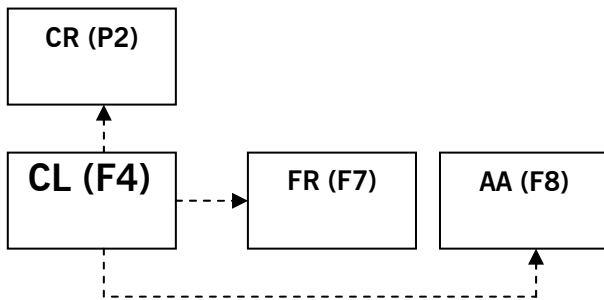
Regulation issued or legislation passed in accordance with the above dates may be examinable even if the **effective** date is in the future.

The term issued or passed relates to when regulation or legislation has been formally approved.

The term effective relates to when regulation or legislation must be applied to an entity transactions and business practices.

The study guide offers more detailed guidance on the depth and level at which the examinable documents will be examined. The study guide should therefore be read in conjunction with the examinable documents list.

Syllabus



AIM

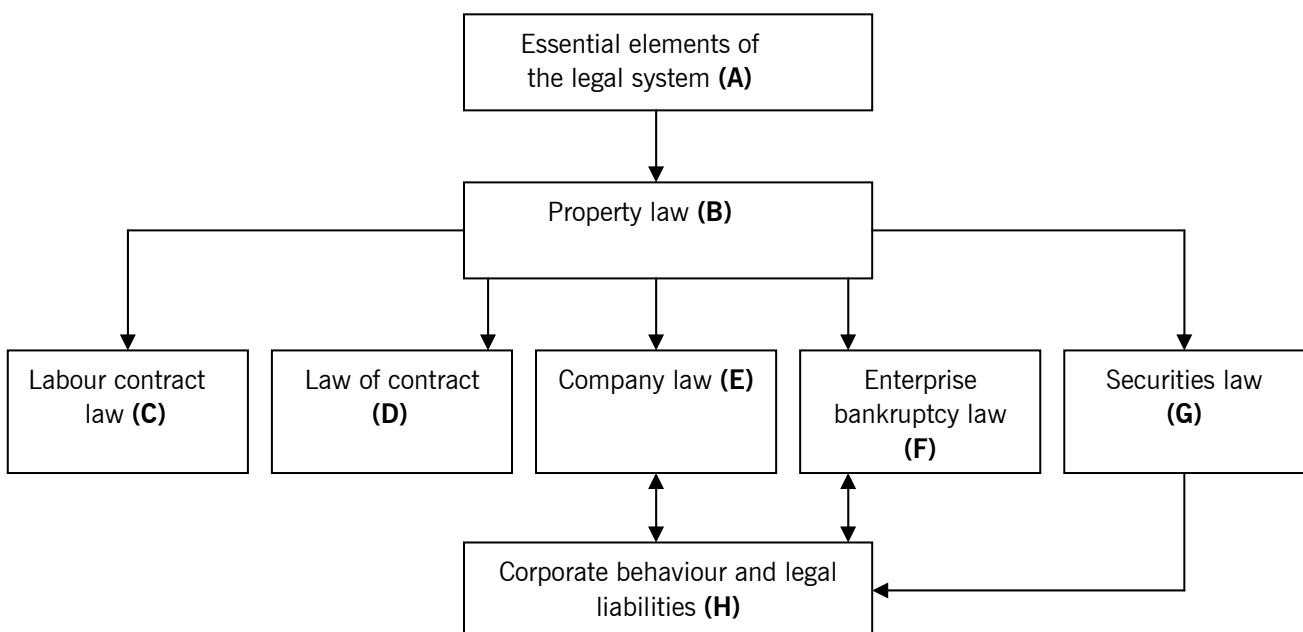
To develop knowledge and skills in the understanding of the general legal framework, and of specific legal areas relating to business, recognising the need to seek further specialist legal advice where necessary.

MAIN CAPABILITIES

On successful completion of this paper students should be able to:

- A** Identify the essential elements of the legal system, including the main sources of law
- B** Recognise and apply the appropriate legal principles relating to the property law
- C** Describe and explain legal rules relating to the employment relationship by labour contract
- D** Explain and apply the law relating to contract
- E** Explain and apply the major rules relating to business organisations in the various forms of company
- F** Explain and apply the major rules relating to the enterprise bankruptcy
- G** Explain and apply the major rules relating to corporate finance through stocks and corporate bonds
- H** Demonstrate an understanding of corporate governance and issues relating to business.

RELATIONAL DIAGRAM OF MAIN SYLLABUS CAPABILITIES



RATIONALE

Corporate and Business Law is essentially divided into eight areas.

The syllabus starts with an introduction to the overall legal system of China such as the court system, sources of law and judicial interpretations by the Supreme People's Court of China.

It then leads into the area of the property law, including the creation, modification, assignment and termination of property rights; ownership; usufructuary right; security interests and possession. These fields of legal knowledge underpin business transactions generally.

The syllabus then covers a range of specific legal areas relating to various aspects of business of most concern to finance professionals. These are the laws relating to labour contract, contracts, companies, securities and bankruptcy.

These laws include the following five parts: Part 1 covers the formation of labour contract, various forms of labour contract, dissolution and termination of labour contract, special labour contract and legal liabilities. Part 2 covers the formation of contracts, effect of contracts, various demur rights, legal remedies for breach of contracts. Part 3 covers the formation and constitution of companies, the financing of companies and types of capital, and the day-to-day management, the administration and regulation of companies, merger and division of companies. Part 4 covers the application and acceptance of enterprise bankruptcy, bankruptcy administrator, declaration of credit, creditors' meeting and distribution of insolvent assets. Part 5 covering the stocks and corporate bonds, trading of securities, obligation of disclosure and legal liabilities caused by illegal activities.

The final section links back to all the previous areas. This section deals with corporate behaviour relating to business including criminal law.

DETAILED SYLLABUS

A Essential elements of the legal system

1. Court structure

2. Sources of law and the differences between civil and criminal law
3. Judicial interpretations by the Supreme People's Court, especially those interpretations relevant to Contract Law and Company Law

B Property law

1. General principles of property law
2. Ownership
3. Usufructuary Right
4. Security Interests
5. Possession

C Labour contract law

1. Formation of labour contract and effect of labour contract
2. Various forms of labour contract and compulsory provisions of labour contract
3. Dissolution and termination of a labour contract
4. Collective labour contract and despatch of labour service
5. Legal liabilities

D Law of contract

1. Formation of contract
2. Validity of contract
3. Transfer of contract
4. Various demur rights
5. Subrogate right
6. Dissolution of contract and termination of contract
7. Legal remedies for breach of contract

8. Specific contracts of sales of goods, agency and financial leasing

E Company law

1. Formation of companies
2. Registered capital and contributions of capital
3. Administration and regulation of companies
4. Merger and division of companies
5. Accounting and dividends

F Enterprise bankruptcy law

1. Acceptance of the application for bankruptcy
2. Bankruptcy administrator and functions of administrators
3. Debtor's assets
4. Bankruptcy expenses and community liabilities
5. Declaration of the creditor's right
6. Creditors' meeting and creditors' committee
7. Rectification and compromise
8. Bankruptcy liquidations

G Securities law

1. Corporate bonds and stocks
2. Trading of securities
3. Obligations of disclosure
4. Legal liabilities caused by illegal activities

H Corporate behaviour and legal liabilities

1. Fraudulent behaviour in corporate management and securities transactions
2. Civil, administrative and criminal liabilities

APPROACH TO EXAMINING THE SYLLABUS

The syllabus is assessed by a three hour paper-based examination.

The examination consists of seven 10 mark questions, assessing knowledge of the law, and three 10 mark application questions.

NOTE ON CASE LAW

Candidates should support their answers with analysis referring to cases or examples. There is no need to detail the facts of the case. Remember, it is the point of law that the case establishes that is important, although knowing the facts of cases can be helpful as sometimes questions include scenarios based on well-known cases. Further it is not necessary to quote section numbers of Acts

Study Guide

A ESSENTIAL ELEMENTS OF THE LEGAL SYSTEM

1. Court structure

- a) Explain the structure and operation of the courts and tribunals systems.^[1]
- b) Explain the jurisdiction of the courts in dealing with civil and commercial cases.^[1]

2. Sources of law and the differences between civil and criminal law

- a) Explain the different levels of legislative power.^[1]
- b) Understand the functions of the administrative regulations in business operation of China.^[1]
- c) Explain the provisions of criminal law applicable to the illegal behaviour in terms of corporate governance and securities transaction.^[1]

3. Judicial interpretations by the Supreme People's Court especially those interpretations relevant to contract law and company law

- a) Recognise the role of judicial interpretation.^[2]
- b) Explain the importance of judicial interpretation in relation to business law.^[2]

B PROPERTY LAW

1. General principles of property law

- a) Understand the registration of immovables and its legal effect.^[1]
- b) Understand the rule of property right on delivery of movables.^[2]

2. Ownership

- a) Understand the protection of property rights.^[1]
- b) Understand the various rights of the property owner.^[1]

- c) Understand state ownership, collective ownership and private ownership.^[1]
- d) Understand the divided co-ownership interest in buildings.^[1]
- e) Understand the neighbouring relations.^[1]
- f) Understand co-ownership.^[1]
- g) Understand the special rule as to acquisition of ownership.^[1]

3. Usufructuary right

- a) Explain the definition of usufruct rights.^[2]
- b) Explain the right to land construction management.^[2]
- c) Explain the right to the use of construction land.^[2]
- d) Explain the right to use for homestead.^[2]
- e) Understand the definition of easement and the exercise of easement.^[2]

4. Security interests

- a) Understand the general rules as to security interests.^[1]
- b) Explain the general mortgage and the properties allowed to be mortgaged and the registration of mortgage.^[2]
- c) Explain the effect of mortgage and the exercise of mortgage rights.^[2]
- d) Explain the maximum amount mortgage.^[2]
- e) Explain the rules on pledge of movables and pledge of rights.^[2]
- f) Explain the rules on lien and understand its legal effect in relation to other forms of security interests.^[2]

5. Possession

- a) Understand the rules on possession.^[1]

C LABOUR CONTRACT LAW

1. Formation of labour contract and effect of labour contract

- a) Explain the rules on formation of labour contract.^[2]
- b) Explain the compulsory provisions for labour contract.^[2]
- c) Explain the rules on the effect of labour contract.^[2]

2. Various forms of labour contract and compulsory provisions of labour contract

- a) Explain the fixed term labour contract, non-fixed term labour contract and fixed term contract for the completion of certain work assignments.^[2]
- b) Explain the rules on a non-competition clause in a labour contract.^[2]

3. Dissolution and termination of a labour contract

- a) Explain the rules on the dissolution of a labour contract by employees.^[2]
- b) Explain the rules on the dissolution of a labour contract by employers.^[2]
- c) Explain the conditions and procedures for employers to lay off employees.^[2]
- d) Explain the rules of compensations to employees.^[2]

4. Collective labour contract and despatch of labour service

- a) Understand the collective labour contract.^[2]
- b) Understand the rules on despatch of labour service (labour secondment).^[2]

5. Legal liabilities

- a) Explain the various administrative liability of employers for violation of Labour Contract Law.^[2]
- b) Explain the circumstances resulting to criminal liability for an employer.^[2]

D LAW OF CONTRACT

1. Formation of contract

- a) Define the legal status of types of contract term.^[1]
- b) Explain the formation of contract and the legal requirements for one to come into effect.^[2]

2. Validity of contract

- a) Explain the effect of standard contract and standard clauses.^[2]
- b) Discuss void and voidable contract and their legal consequences.^[2]

3. Transfer of contract

- a) Explain the conditions for transfer of contractual rights and obligations.^[2]
- b) Explain the legal consequences of transfer of contract.^[2]

4. Various demur rights

- a) Define various demur rights.^[1]
- b) Explain the conditions to claim the demur right of advance performance.^[2]

5. Subrogate right

- a) Define subrogate right and explain the condition necessary to claim this right.^[2]

6. Dissolution of contract and termination of contract

- a) Explain the various conditions to dissolve a contract.^[2]

- b) Explain the various conditions under which a contract is to be terminated.^[2]
- c) Distinguish the differences between dissolution and termination.^[2]
- d) Explain the rules relating to the deposit of the subject matter by an obligor.^[2]

7. Legal remedies for breach of contract

- a) Explain the conditions for specific performance as a legal remedy.^[2]
- b) Explain the rules relating to the award of damages.^[2]
- c) Explain the rules relating to the award of liquidated damages.^[2]
- d) Explain the rules relating to the dissolution of a contract.^[2]
- e) Understand the rules relating to *force majeure*.^[2]

8. Specific contracts of sales of goods, agency and financial leasing

- a) Explain the major obligations of seller and buyer and the instalment contract.^[1]
- b) Analyse the legal relations among the parties under a financial leasing contract.^[2]

E COMPANY LAW

1. Formation of companies

- a) Define various forms of companies: limited liability company; sole person limited liability company and joint stock company.^[1]
- b) Describe the conditions and procedures to incorporate a company.^[1]
- c) Explain the role and duties of company promoters.^[2]
- d) Describe the contents of articles of association and their modification.^[1]
- e) Explain the rules relating to the registration of incorporation and registration change.^[2]

2. Registered capital and contributions of capital

- a) Explain the different meaning of the registered capital under a limited liability company and a joint stock company.^[2]
- b) Describe various forms of capital contribution.^[1]
- c) Explain the duty of company promoters to make capital contributions.^[2]
- d) Explain the doctrine of capital maintenance and capital reduction.^[2]
- e) Explain the conditions to transfer the shares for various forms of companies.^[2]

3. Administration and regulation of companies

- a) Explain the role of directors in the operation of a company.^[2]
- b) Discuss the ways in which directors are appointed, and can lose their office.^[2]
- c) Explain the duties that directors owe to their companies.^[2]
- d) Explain the power of the supervisory board and the appointment of a supervisor.^[2]
- e) Distinguish between types of meetings: ordinary and extraordinary general meetings.^[1]
- f) Explain the procedures for calling such meetings.^[2]
- g) Explain the rules relating to the transfer of shares of a limited liability company and the transfer of stocks of a joint stock company.^[2]

4. Merger and division of companies

- a) Describe different forms of company merger.^[1]
- b) Explain the procedural conditions for company merger or division.^[2]

5. Accounting and dividends

- a) Explain the rules governing the distribution of dividends.^[2]

- b) Explain the rules governing the use of corporate funds.^[2]

F ENTERPRISE BANKRUPTCY LAW

1. Acceptance of the application for bankruptcy

- a) Understand the circumstances under which a party shall apply for bankruptcy.^[1]
- b) Describe the time limit and relevant procedures for court having accepted the bankruptcy application.^[2]

2. Bankruptcy administrator and functions of administrators

- a) Explain the qualification of bankruptcy administrators and their designation.^[2]
- b) Explain the function of bankruptcy administrators.^[2]

3. Debtor's assets

- a) Describe the conditions on the revocation of debtor's acts.^[2]
- b) Explain the rules on the treatment of debtor's assets and debts.^[2]

4. Bankruptcy expenses and community liabilities

- a) Explain the coverage of bankruptcy expenses.^[2]
- b) Explain the coverage of community liabilities.^[2]
- c) Explain the settlement of bankruptcy expenses and community liabilities.^[2]

5. Declaration of the creditor's right

- a) Describe the time limit for declaration of the creditor's right.^[1]
- b) Explain the rules on the various special circumstances to declare the creditor's right.^[2]

6. Creditors' meeting and creditors' committee

- a) Explain the functions of creditors' meeting and its holding.^[2]
- b) Explain the duty of bankruptcy administrator to report to the creditors' committee.^[2]

7. Rectification and compromise

- a) Understand the meaning of rectification.^[1]
- b) Explain the rules on the period of rectification, formulation of rectification, approval of rectification plan and implementation of rectification plan.^[2]
- c) Understand the meaning of compromise in the process of enterprise bankruptcy, explain the rules on compromise.^[2]

8. Bankruptcy liquidation

- a) Explain the conditions and time limit for announcement of bankruptcy.^[2]
- b) Understand the rule on conversion.^[1]
- c) Explain the rules on the distribution of insolvent assets.^[2]
- d) Explain the conditions and procedures for the conclusion of bankruptcy liquidation.^[2]

G SECURITIES LAW

1. Corporate bonds and stocks

- a) Define the terms of stock and corporate bonds.^[1]
- b) Explain the conditions to be met and the procedures for a company to issue stocks and corporate bonds.^[2]
- c) Explain the rules relating to the various forms of underwriting securities.^[2]

2. Trading of securities

- a) Explain the conditions to be met for the trading of stocks of a joint stock company.^[2]
- b) Describe the different ways of taking over a company through the securities market.^[1]
- c) Explain the disclosure and report requirements for taking over a company through the securities market.^[2]
- d) Describe various illegal trading acts forbidden by law and regulations in the securities market.^[1]

3. Obligations of disclosure

- a) Explain the requirement for continuous disclosure of information for a listed stock company.^[2]
- b) Describe the various information regarded as the important information affecting the price of stocks in the market.^[1]

4. Legal liabilities caused by illegal activities

- a) Explain the monetary punishment to the persons or institutions in providing professional services relevant to issuing and trading of securities that violate the securities law.^[2]
- b) Explain the administrative punishment of “banning access to the securities market”.^[2]
- c) Explain the criminal liability to the persons or institutions relation to issuing and trading of securities.^[2]

H CORPORATE BEHAVIOUR AND LEGAL LIABILITIES

1. Fraudulent behaviour in corporate management and securities transactions

- a) Recognise the nature of fraudulent behaviour in corporate management and securities transactions.^[2]
- b) Discuss potential criminal activity in the operation and management of companies.^[2]

2. Civil, administrative and criminal liabilities

- a) Explain the civil and criminal liabilities of the controlling shareholder for abusing the doctrine of independent legal entity of company and the limited liability of shareholders.^[2]
- b) Explain the civil and criminal liabilities of the controlling shareholder, directors, supervisors and senior executives for the damage of the company through affiliate trading.^[2]

RECOMMENDED TEXT

ACCA's official publishers:

BPP Learning Media

Contact number: +44(0)20 8740 2222

Website: www.bpp.com

Recommended reading:

Law Press China-China's leading law publisher

Contact number: (010) 6393-9796

Email: info@lawpress.com.cn

Website: <http://www.lawpress.com.cn>

Legal Press of China

Contact number: (010) 6603-3288; (010) 6602-6596

Website: <http://www.zgfzs.com>

The Laws of the People's Republic of China (since 1994-), Compiled by the Legislative Affairs Commission of the Standing Committee of the National People's Congress of the PRC, Science Press, covering all Chinese laws in English version.

SUMMARY OF CHANGES TO PREVIOUS STUDY GUIDE

June 2009

B4 f) New topic added

D6 b) Terminology amended

D6 d) New topic added

D7 d) Amended

D7 e) New topic added

D8 b) Deleted

E1 e) New topic added

E3 g) New topic added

G1 c) New topic added