

Fundamentals Level – Skills Module

Corporate and Business Law (Global)

Specimen Exam applicable from
December 2014



Time allowed: 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and **MUST** be attempted

Section B – ALL FIVE questions are compulsory and **MUST** be attempted

Do NOT open this paper until instructed by the supervisor.

You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (GLO)

The ACCA logo, consisting of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black square.

Section A – ALL 45 questions are compulsory and MUST be attempted

Please use the space provided on the inside cover of the Candidate Answer Booklet to indicate your chosen answer to each multiple choice question.

1 In the context of the English legal system, which of the following defines the *ratio decidendi* of a judgement?

- A The decision in a previous case
- B The facts of the case
- C The legal reason for deciding the case
- D The future application of the case

(2 marks)

2 Chad has entered into a contract to supply Das with particular goods. They have agreed that the contract be on the basis of ICC Incoterms and in particular the FOB term.

In a FOB contract the SELLER is responsible for which of the following?

- A Shipping of the merchandise
- B Arranging insurance after loading to the carrier
- C Arranging for an export licence if required
- D Arranging for an import licence if required

(2 marks)

3 Which of the following statements in relation to the issuing of bills of lading is true?

- A Risk remains with the seller
- B Risk passes to the shipper
- C Risk passes to the carrier
- D Risk passes to the buyer

(2 marks)

4 Which of the following business forms does the use of the abbreviation 'Ltd' after the name of a business indicate?

- A A limited partnership
- B A limited liability partnership
- C A private limited company

(1 mark)

5 When must an international bill of exchange payable on demand be presented for payment?

- A Within one year of its date of issue
- B Within three years of issue
- C At any time after issue

(1 mark)

6 A written ordinary resolution requires the approval of which of the following?

- A** More than 50% of those actually voting
- B** More than 50% of those entitled to vote
- C** Unanimous approval of those entitled to vote

(1 mark)

7 Which of the following is NOT a form of alternative dispute resolution?

- A** Conciliation
- B** Harmonisation
- C** Mediation

(1 mark)

8 Which TWO of the following are recognised mechanisms for international payment?

- (1) A bill of lading
- (2) A bill of exchange
- (3) A letter of credit
- (4) A letter of comfort

- A** 1 and 2
- B** 1 and 4
- C** 2 and 3
- D** 3 and 4

(2 marks)

9 Which of the following does NOT necessarily lead to the termination of an offer under the UN Convention on Contracts for the International Sale of Goods?

- A** Withdrawal
- B** Revocation
- C** Rejection
- D** Modification

(2 marks)

10 It is not unusual for some company investments to carry cumulative dividend rights.

Which of the following statements about the declaration of cumulative dividends is correct?

- A** They are not paid until profits reach a certain percentage
- B** They are paid in the form of a bonus issue
- C** They are paid out of capital
- D** They are paid when profits are available for that purpose

(2 marks)

11 Under the UN Convention on Contracts for the International Sale of Goods, a written ACCEPTANCE of an offer takes place under which of the following circumstances?

- A When it is properly posted
- B When it reaches the offeror within a reasonable time
- C When the offeror acknowledges receipt of the written acceptance

(1 mark)

12 Which of the following is the primary source of law in a civil law system?

- A Courts
- B Codes
- C Customs

(1 mark)

13 In the context of Sharia law, which of the following is the fundamental source of law?

- A Quran
- B Fiqh
- C Court judgements
- D Hadith

(2 marks)

14 Ari was successful in an international arbitration against Bo. The action was heard in Bo's country but Ari is concerned that he will not be able to enforce the award in his domestic courts.

Which of the following does NOT provide a ground for a court to refuse to enforce an arbitration agreement under Article 36 of the UNCITRAL Model Law on Arbitration?

- A The arbitration agreement expressly provided that no appeal could be made to a court
- B The arbitration agreement was not valid under the law of the country under which it was decided
- C The dispute cannot be decided under the law of country required to enforce the award
- D Enforcement would be contrary to public policy of the country required to enforce the award

(2 marks)

15 ICC Incoterms establish risk and responsibilities in relation to international contracts.

Which of the following is the BUYER responsible for in a CIF contract?

- A Arranging insurance after loading to the carrier
- B Arranging for an export licence if required
- C Arranging for an import licence if required

(1 mark)

16 The term insider dealing relates to a number of potential criminal offences.

Which TWO of the following are crimes in relation to insider dealing?

- (1) Encouraging someone to engage in insider dealing
- (2) Failing to report insider dealing
- (3) Concealing insider dealing
- (4) Passing on inside information

- A** 1 and 2
- B** 1 and 4
- C** 2 and 3
- D** 2 and 4

(2 marks)

17 Which TWO statements are correct in relation to designated members in limited liability partnerships (LLPs)?

- (1) They must not take part in the day-to-day operation of the business
- (2) They are responsible for filing the LLP's accounts
- (3) They are fully liable for partnership debts
- (4) They have limited liability

- A** 1 and 4
- B** 2 and 4
- C** 2 and 3
- D** 1 and 3

(2 marks)

18 Mo has a significant holding in the shares of Nova Co. He wishes to use his shareholding to remove Owen from the board of directors but is not sure how to do so.

Which of the following must be used to remove a director from office?

- A** An ordinary resolution
- B** An ordinary resolution with special notice
- C** A special resolution
- D** A written resolution

(2 marks)

19 Which of the following can be accepted so as to form a binding contract?

- A** A statement of intent
- B** A quotation of price
- C** An agreement to enter into a future contract

(1 mark)

20 Under the UN Convention on Contracts for the International Sale of Goods, some offers are held to be irrevocable.

Which TWO of the following statements apply to an irrevocable offer?

- (1) They may be revoked as long as this is done at the same time as the offer reaches the offeree
- (2) They may never be revoked
- (3) They may be withdrawn as long as this is done at the same time as the offer reaches the offeree
- (4) They may never be withdrawn

- A** 1 and 4
- B** 1 and 3
- C** 2 and 3
- D** 2 and 4

(2 marks)

21 Which of the following is indicated by the abbreviation 'Ltd' at the end of a company's name?

- A** The shares are not transferable
- B** The shares may not be offered to the public
- C** The shares are freely transferable on the stock exchange

(1 mark)

22 Money laundering involves a number of phases in the overall procedure.

Which TWO of the following are recognised phases in money laundering?

- (1) Relocation
- (2) Layering
- (3) Integration
- (4) Distribution

- A** 1 and 2
- B** 1 and 4
- C** 2 and 3
- D** 3 and 4

(2 marks)

23 Under the UN Convention on Contracts for the International Sale of Goods, in relation to a contract involving the carriage of specific goods, risk normally passes from the seller to the buyer at which of the following times?

- A** When the goods leave the seller's premises
- B** When the goods are transferred to the first carrier
- C** When the goods arrive at their designated destination

(1 mark)

24 Which of the following functions is NOT performed by the World Trade Organisation?

- A It settles disputes between individuals
- B It settles disputes between member states
- C It administers trade agreements
- D It reviews national trade policies

(2 marks)

25 Which of the following statements in relation to offers under the UN Convention on Contracts for the International Sale of Goods is true?

- A They may be made to the world at large
- B They must be evidenced in writing
- C They are effective when they reach the offeree

(1 mark)

26 There are a number of ways in which investors can take an interest in a company and such different interests have different rights attached to them.

Which of the following NORMALLY participate in surplus capital?

- A Preference shares
- B Ordinary shares
- C Debentures secured by a fixed charge
- D Debentures secured by a floating charge

(2 marks)

27 Which of the following is NOT an actual type of letter of credit?

- A Endorsed letter of credit
- B Revocable letter of credit
- C Standby letter of credit
- D Revolving letter of credit

(2 marks)

28 Which TWO of the following statements in relation to a written acceptance of an offer are true under the UN Convention on Contracts for the International Sale of Goods?

- (1) It may not normally be withdrawn once it is posted
- (2) It may not normally be withdrawn after the offer reaches the offeree
- (3) It may be withdrawn before the offer reaches the offeree
- (4) It may be withdrawn at the same time as the offer reaches the offeree

- A 1 and 4
- B 2 and 3
- C 2 and 4
- D 3 and 4

(2 marks)

29 Letters of credit are ways of transferring payment internationally through the banking system.

In this context of international payments, which of the following statements is correct?

- A The issuing bank represents the seller
- B The advising bank represents the seller
- C The issuing bank represents the buyer

(1 mark)

30 Section 122 UK Insolvency Act 1986 provides a number of distinct grounds for applying to have a company wound up on a compulsory basis.

Which of the following is NOT a ground for the compulsory winding up of a company under that provision?

- A The company has not received a trading certificate within its first 12 months
- B The company has not started trading within the first 12 months
- C The company has suspended its business for 12 months
- D The company has altered its primary business within the first 12 months

(2 marks)

31 **Which of the following ensures that credit is always open between a buyer and a seller?**

- A Confirmed letter of credit
- B Standby letter of credit
- C Revolving letter of credit

(1 mark)

32 **Which of the following attributes is NOT central to a civil law system?**

- A Codification
- B Creativity
- C Certainty
- D Comprehensibility

(2 marks)

33 Under Article 35 of the UN Convention on Contracts for the International Sale of Goods the seller must supply goods of a quality that is fit for purpose.

Which of the following is NOT included in Article 35 requirements as to quality?

- A Fit for the purpose for which such goods are normally used
- B Fit for unusual use not known by the seller
- C Fit for unusual use as suggested by a sample of the product
- D Packaged adequately so as to protect the goods

(2 marks)

34 Ho subscribed for some partly paid-up shares in Io Co. The company has not been successful and Ho has been told that when Io Co is liquidated, he will have to pay the amount remaining unpaid on his shares. However, he is not sure to whom such payment should be made.

In limited liability companies, shareholders are liable to which party for any unpaid capital?

- A** Creditors
- B** The directors
- C** The company
- D** The liquidator

(2 marks)

35 Which of the following parties normally issues a letter of comfort?

- A** A company in financial difficulty
- B** The parent company of company in financial difficulty
- C** The bank of a company in financial difficulty

(1 mark)

36 Dan has been accused of a criminal offence and is due to be tried soon. He denies responsibility, claiming that the prosecution has no evidence that he committed the offence in question.

In the context of the English legal system, which of the following describes the standard of proof in a criminal case?

- A** On the balance of probability
- B** On the balance of certainty
- C** Beyond reasonable doubt
- D** Beyond evident doubt

(2 marks)

37 Which of the following statements relating to limited liability partnerships is correct?

- A** They are limited to a maximum of 20 members
- B** They must have a minimum of two members
- C** They must have at least one unlimited member

(1 mark)

38 In the context of the law of agency, an agent will NOT be liable for a contract in which of the following instances?

- A** Where the agent fails to disclose that they are acting as such
- B** Where the agent intends to take the benefit of the contract and does not disclose they are acting as an agent
- C** Where the agent acts on their own behalf although claiming to be an agent

(1 mark)

39 Mark has received the agenda for the annual general meeting of Nova Co, a company he has shares in. The agenda contains a number of resolutions to be proposed at the meeting but being a new member Mark is not certain as to what exactly is involved.

In the context of company meetings, which of the following requires a 75% majority to be passed?

- A** An ordinary resolution with special notice
- B** A special resolution
- C** A written resolution

(1 mark)

40 Which of the following describes the result for any agreement subject to a fundamental breach of contract under the UN Convention on Contracts for the International Sale of Goods?

- A** The agreement is void
- B** The agreement is avoidable
- C** The agreement is unenforceable

(1 mark)

41 Section 122 UK Insolvency Act 1986 specifically provides a distinct ground for applying to have a company wound up on the ground that it is just and equitable to do so.

Which of the following parties may petition to have a company compulsorily wound up on the basis that it is just and equitable to do?

- A** Shareholders of the company
- B** Creditors of the company
- C** Debentureholders of the company
- D** The Secretary of State

(2 marks)

42 In the context of Sharia law, Riba refers to which of the following?

- A** The prohibition of charging interest
- B** The name of a particular form of partnership
- C** The interpretation of the Koran

(1 mark)

43 The UN Convention on Contracts for International Sale of Goods applies to contracts relating to which of the following?

- A** Company shares
- B** Ships
- C** Aircraft
- D** Raw materials to be used in subsequent production

(2 marks)

44 Which of the following refers to an arbitral institution?

- A** ICC
- B** ICI
- C** ICA

(1 mark)

45 Which of the following CANNOT petition for the compulsory winding up of a company on the grounds of INSOLVENCY under s.122 UK Insolvency Act 1986?

- A** The board of directors
- B** The members of the company
- C** The company's creditors
- D** The Secretary of State

(2 marks)

(70 marks)

Section B – ALL FIVE questions are compulsory and MUST be attempted

1 Axel Co, a German company, operates a business making specialist machinery for the international car manufacturing industry. In 2011, Axel Co entered into an agreement with Bold Co, a Danish manufacturer, to build a specific piece of machinery to Bold Co's specification. The total contract price was \$7 million. However, just before the completion of the machinery, Bold Co informed Axel plc that, due to the downturn in the world economy, it no longer needed the machinery. Axel Co, which had already expended \$5 million in producing the machinery, immediately started an action against Bold Co for breach of contract.

However, in the week before the case was to be decided in court, Axel sold the machinery to a new client for exactly the same amount of money that they would have received from Bold Co.

It may be assumed that the UN Convention on Contracts for the International Sale of Goods applies.

Required:

(a) State the purposes of awarding damages for breach of contract. (2 marks)

(b) State the duty to mitigate losses. (2 marks)

(c) State the level of damages Axel Co can claim for breach of contract. (2 marks)

(6 marks)

2 Clare, Dan and Eve formed a partnership 10 years ago, although Clare was a sleeping partner and never had anything to do with running the business. Last year Dan retired from the partnership. Eve has subsequently entered into two large contracts. The first one was with a longstanding customer, Greg, who had dealt with the partnership for some five years. The second contract was with a new customer, Hugh. Both believed that Dan was still a partner in the business. Both contracts have gone badly wrong, leaving the partnership owing \$50,000 to both Greg and Hugh. Unfortunately the business assets will only cover the first \$50,000 of the debt.

Required:

(a) State the liability of Clare as a sleeping partner. (2 marks)

(b) Identify the liabilities of Dan as a retiring partner. (2 marks)

(c) State from whom Greg can claim the outstanding debt. (2 marks)

(6 marks)

- 3** Jon, who is 65 years of age, has just retired from his employment with a pension and a lump sum payment of \$100,000. He is keen to invest his money but has absolutely no knowledge of business or investment. He does not wish to take any great risk with his investment but he would like to have a steady flow of income from it.

He has been advised that he can invest in the following range of securities:

- (1) Preference shares
- (2) Ordinary shares
- (3) Debentures secured by a fixed charge
- (4) Debentures secured by a floating charge.

Required:

In relation to the above investment forms:

- (a) **Identify which is the most secure.** (2 marks)
- (b) **State which may have a cumulative right to dividends.** (2 marks)
- (c) **State which NORMALLY participates in surplus capital.** (2 marks)

(6 marks)

- 4** In 2008 Ger was disqualified from acting as a company director in the UK for a period of 10 years under the UK Company Directors Disqualification Act 1986 for engaging in fraudulent trading.

However, he decided to continue to pursue his fraudulent business and, in order to avoid the consequences of the disqualification order, he arranged for his accountant Kim to run the business on his instructions. Although Kim took no shares in the company, and was never officially appointed as a director, he nonetheless assumed the title of managing director.

Required:

(a) Identify which of the following categories of directors apply to Ger and Kim:

- (i) *De facto*
- (ii) *De jure*
- (iii) Non-executive
- (iv) Shadow.

(4 marks)

(b) State the working relationship and duties of non-executive directors.

(2 marks)

(6 marks)

- 5** Fran and Gram registered a private limited company, Ire Co, in the UK in January 2009, with each of them becoming a director of the company.

Although the company did manage to make a small profit in its first year of trading, it was never a great success and in its second year of trading it made a loss of \$10,000.

At that time Fran said he thought the company should cease trading and be wound up. Gram, however, was insistent that the company would be profitable in the long-term, so they agreed to carry on the business, with Fran taking less of a part in the day-to-day management of the company, although retaining his position as a company director.

In the course of the next three years Gram falsified Ire Co's accounts to disguise the fact that the company had continued to suffer losses, until it became obvious that he could no longer hide the company's debts and that it would have to go into insolvent liquidation, with debts of \$100,000.

Required:

- (a) State whether criminal or civil action, or both, can be taken in relation to fraudulent trading and wrongful trading.** (2 marks)

- (b) Explain whether Fran or Gram will be liable for either of the following:**

- (i) Fraudulent trading under s.213 UK Insolvency Act 1986;**
(ii) Wrongful trading under s.214 UK Insolvency Act 1986. (4 marks)

(6 marks)

End of Question Paper

Answers

Section A

- 1 C
- 2 C
- 3 D
- 4 C
- 5 A
- 6 A
- 7 B
- 8 C
- 9 D
- 10 D
- 11 B
- 12 B
- 13 A
- 14 A
- 15 C
- 16 B
- 17 B
- 18 B
- 19 B
- 20 C
- 21 B
- 22 C
- 23 B
- 24 A
- 25 C
- 26 B
- 27 A
- 28 D
- 29 A
- 30 D
- 31 C
- 32 B
- 33 B
- 34 C
- 35 B
- 36 C
- 37 B
- 38 A
- 39 B
- 40 B
- 41 A
- 42 A
- 43 D
- 44 C
- 45 B

Section B

- 1 (a) The award of damages is the monetary compensation that a party in breach of contract has to pay to compensate the innocent party for any loss suffered by them, including loss of profit. The issue of damages is dealt with in s.II of the UN Convention on Contracts for the International Sale of Goods (CISG Article 74). The object is not to punish the party in breach but rather to put the injured party in the same position they would have been in had the contract been properly performed.

As damages are intended to compensate an injured party for any financial loss sustained, the amount of damages awarded can never be greater than the actual loss suffered.
- (b) The duty to mitigate losses ensures that the injured party is under a duty to take all reasonable steps to minimise their loss (CISG Article 77). If they fail to take such measures, the party in breach may claim a reduction in the damages to the amount by which the loss should have been mitigated.

As a result, the seller of goods which are not accepted has not only to try to sell the goods to someone else but is also required to get as good a price as they can when they sell them. If goods are not delivered under a contract, the buyer is entitled to go into the market and buy similar goods, paying the market price prevailing at the time. They can then claim the difference in price between what they paid and the original contract price as damages (CISG Article 75).

- (c) Applying the foregoing to the contract between Axel Co and Bold Co, it can be seen that Axel Co managed to recoup all of the costs and potential profit it would have made on the contract with Bold Co, so is not in a position to claim any further damages from Bold Co.
- 2
- (a) Her status as a sleeping partner gives Clare no additional protection from the unlimited liability that applies to all ordinary partners in an ordinary partnership. It simply means she has left her personal wealth open to claims over which she has no practical control through her own inaction.
 - (b) He remains liable to existing customers until those customers are informed that he has left the partnership. He also remains liable to new customers who knew he was a member of the partnership, unless he has made public his withdrawal.
 - (c) Greg can claim from all three parties; Clare, Dan and Eve.
- 3
- (a) As loans, debentures are more secure than shares. Debentures secured by fixed charges are more secure than those secured by floating charges. Consequently, debentures secured by fixed charges are the most secure form of investment of those listed. They do however receive the least in terms of return.
 - (b) Of the four investment forms only shares receive dividends, as debentures receive interest due to the fact that they are forms of loan. Of the share forms only the preference share can carry a right to a cumulative dividend, as ordinary shares only get a return on the profits generated by the company in any particular year.
 - (c) Only shares have any claim against surplus capital, as debentures are only secured against the amount loaned. Of the two types of shares, preference shares MAY have rights to enjoy access to surplus capital but ONLY ordinary shares have such facility as a right.
- 4
- (a) Ger acts behind the scenes and is clearly operating as a shadow director. Kim has not been appointed as such but acts as a director, which makes him a *de facto* director.
 - (b) As with all directors, non-executives owe fiduciary duties (now stated in statute) to their company. They are also subject to all legal regulation applying to ordinary directors. They may attend company meetings and have full voting rights.
- 5
- (a) Criminal liability is only applicable to fraudulent trading under the Companies Act 2006. However, civil action is open under s.213 and s.214 UK Insolvency Act 1986 in relation to both fraudulent and wrongful trading.
 - (b) As a consequence of his falsification of the accounts Gram is potentially liable under s.213 UK Insolvency Act 1986 fraudulent trading provisions. Fran, on the other hand, may not have been liable for fraud, but is certainly liable for wrongful trading for not taking the appropriate action to prevent the subsequent losses sustained by the company.

Section A

1–45 One or two marks per question; total marks 70

Section B

- 1** (a) 1 mark for each relevant point made relating to damages up to the maximum 2 marks.
(b) 1 mark for each relevant point made relating to the duty to mitigate losses, up to the maximum 2 marks.
(c) 1 mark for correct application and 1 mark for explanation.
- 2** (a) 1 mark for each relevant point made relating to the potential liability of Clare as a sleeping partner, up to the maximum 2 marks.
(b) 1 mark for each relevant point made relating to the potential liability of Dan as a retired partner, up to the maximum 2 marks.
(c) Full 2 marks only to be given to a fully correct answer.
Partial answers to be limited to 1 mark.
- 3** (a) 1 mark for correct statement and 1 mark for explanation.
(b) 1 mark for correct statement and 1 mark for explanation of cumulative rights.
(c) 1 mark for correct statement and 1 mark for explanation of surplus capital.
- 4** (a) 3–4 marks for a complete explanation of the different types of director and a correct application of Ger and Kim.
1–2 marks for some understanding but lacking either application or explanation.
0 marks for no understanding of the substance of the question.
(b) 1 mark for each relevant point made relating to the role/function of non-executive directors, up to the maximum 2 marks.
- 5** (a) A full answer distinguishing between fraudulent and wrongful trading is required for both marks to be given.
1 mark for any relevant point made relating to either action.
(b) 4 marks for a full answer clearly distinguishing the two types of activity and correctly applying them.
1 mark for any relevant point made relating to either party's action.
1 mark each for correctly stating how each provision will be applied to the parties.