Answers

In relation to aspects of business law the default law and cases relate to the United Kingdom, however, relevant law and cases from other jurisdictions will be credited where appropriate.

1 (a) Under the English common law system the main sources of law are:

(i) Legislation
This is law produced through the Parliamentary system. This is the most important source of law today for two reasons. Firstly, in terms of quantity, Parliament produces far more legal rules than any other source. Secondly, and perhaps even more importantly, the doctrine of parliamentary sovereignty within the United Kingdom means that Parliament is the ultimate source of law and, at least in theory, it can make whatever laws it wishes.

(ii) Case Law
This is law created by judges in the course of deciding cases. The doctrine of *stare decisis* or binding precedent refers to the fact that courts are bound by previous decisions of courts equal or above them in the court hierarchy. It is the reason for a decision, the *ratio decidendi*, that binds. Everything else is *obiter dictum* and need not to be followed.

The House of Lords can now overrule its own previous rules, but the Court of Appeal cannot. Judges, however, do have the ability to avoid precedents they do not wish to follow through the procedure of distinguishing the cases on their facts, and, of course, they have a very large number of cases and precedents to choose from.

(iii) The European Union
Since joining the European Community, now the European Union, the United Kingdom and its citizens have become subject to European Community law. In areas where it is applicable, European law supersedes any existing United Kingdom law to the contrary (see *Factortame Ltd* v *Secretary of State for Transport* (1989)).

(iv) Custom
Although there is always the possibility of a specific local custom, which has been in existence since 'time immemorial', acting as a source of law, in practice the limitations which operate in relation to custom render it an extremely unlikely source of contemporary law.

(b) A European civil law system

As regards civil law systems, the main source of law is the various codes which provide the law relating to particular areas of activity. Such codes differ from United Kingdom legislation in that they are written in broad terms in the pursuit of general principles and the implicit power of the courts to make, or change, the law is reduced.

Such systems also tend to operate with written constitutions, which provide a fundamental basis for legal activity and allows the courts to challenge any legislation that they decide is contrary to the constitution.

As with the United Kingdom, European Community civil law systems are also governed by European Community law.

(c) A Sharia law system

The major distinction in relation to Sharia law is that the general law has to be interpreted from essential religious sources. Thus the main source of Sharia law is the *Quran*, which is accepted as the revealed dictate of Allah as revealed to his prophet Muhammad. In addition the *Sunnah*, which is derived from the sayings of the prophet (the *Ahadith*) is also a primary source of law in Sharia systems.

As secondary sources of law Sharia systems refer to the *Madhab*, which are the opinions of leading early jurists on the meaning and effect of Sharia law.

Such systems also have written constitutions and these specifically subordinate law to the religious rules.

2 Article 34 of the UNCITRAL Model Law on International Commercial Arbitration allows for a party to an international arbitration to apply to a court to set aside an arbitration order. It should be noted at the outset that 'recourse' means resort to a court, i.e. an organ of the judicial system of a State. This is distinct from any procedure agreed upon by the parties to allow an appeal to an arbitral tribunal of second. The reason for Article 34 is that national laws on arbitration allow a large variety of means of recourse against arbitration awards with a consequential delay in finalising the dispute. In an endeavour to forestall such delaying tactics Article 34 allows only one type of recourse, to the exclusion of any other means of recourse regulated in another procedural law of the State in question and establishes a list of limited grounds on which any award may be set aside. An application for setting aside under Article 34 must be made within three months of receipt of the award.

Paragraph 1 of Article 34 establishes categorically that recourse to a court against an arbitral award may only be made in line with the conditions set out in the subsequent paragraphs of the Article.
Paragraph (2) goes on to provide that an arbitration award may be set aside by the court only if the party making the application furnishes proof that:

(i) a party to the arbitration agreement was under some incapacity; or the agreement is not valid under the laws to which the parties have subjected it. If there is no indication of applicable law then the law of the State hearing the application will be the referent;

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present their case;

(iii) the award dealt with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contained decisions on matters beyond the scope of the submission to arbitration. However, if the decisions on the matters submitted to arbitration can be separated from those not submitted, then only that part of the award relating to the issues not submitted to arbitration may be set aside;

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties.

(v) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the State required to enforce the award;

(vi) the award is in conflict with the public policy of that State.

The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

The grounds for setting aside a decision are almost identical to those for refusing recognition or enforcement, but there are significant practical differences between the two procedures. Firstly, the grounds relating to public policy (no.(vi) above), including non-arbitrability, may differ depending on the State in question. Secondly the grounds for refusal of recognition or enforcement are valid and effective only in the State where the successful party seeks enforcement, whilst the setting aside of an award at the place of origin prevents enforcement of that award in all other under Article 36(1)(a)(v) of the Model Law.

3 Anticipatory breach occurs where, prior to the date on which performance is due, it becomes apparent that one of the parties will not perform a substantial part of their obligations under the contract or will commit a fundamental breach of contract. The Convention distinguishes between those cases in which the other party may suspend his own performance of the contract but the contract remains in existence awaiting future events and those cases in which he may declare the contract avoided.

Thus as regards the first situation, Article 71 provides that a party may suspend performance of his obligations if, after the conclusion of the contract, but before it is due to be performed, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

(a) a serious deficiency in his ability to perform or in his creditworthiness; or

(b) his conduct in preparing to perform or in performing the contract.

If the circumstances only become apparent after the seller has despatched the goods they may prevent them from being handed over to the buyer, even if the buyer holds a document, such as a Bill of Lading, which entitles the buyer to collect the goods. The party suspending the performance of the contact must immediately give notice of the suspension to the other party and, if that party gives adequate assurance of their future performance, then the contract must continue.

Alternatively, under Article 72, if prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract *avoided*. For a breach of contract to be fundamental, it must result in such detriment to the other party as substantially to deprive them of what they were entitled to expect under the contract. However liability may be avoided where the result was neither foreseen by the party in breach nor foreseeable by a reasonable person of the same kind in the same circumstances.

If time allows, the party intending to avoid the contract must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance. However, that requirement does not apply where the other party has expressly stated that that they will not perform their obligations under the contract.

4 The word 'capital' is used in a number of different ways in relation to shares.

(a) Under the provisions of the Companies Act (CA) 1985 the memorandum of a limited company with a share capital was required to state the amount of the share capital with which the company proposed to be registered and the nominal amount of each of its shares. This was known as the 'authorised share capital' and set a limit on the amount of capital which the company could issue, subject to increase by ordinary resolution. Section 9 of the CA 2006 removes the concept of 'authorised capital' and replaces it with the requirement to submit a 'statement of capital and initial shareholdings' to the registrar in the application to register the company.

The statement of capital and initial shareholdings is essentially a 'snapshot' of a company's share capital at the point of registration.

Section 10 CA 2006 requires the statement of capital and initial shareholdings to contain the following information:

– the total number of shares of the company to be taken on formation by the subscribers to the memorandum;
– the aggregate nominal value of those shares;

- for each class of shares: prescribed particulars of the rights attached to those shares, the total number of shares of that class and the aggregate nominal value of shares of that class; and
- the amount to be paid up and the amount (if any) to be unpaid on each share (whether on account of the nominal value of the shares or by way of premium).

The statement must contain such information as may be required to identify the subscribers to the memorandum of association. And with regard to such subscribers it must state:

- the number, nominal value (of each share) and class of shares to be taken by them on formation, and
- the amount to be paid up and the amount (if any) to be unpaid on each share.

Where a subscriber takes shares of more than one class of share, the above information is required for each class.

(b) Issued capital represents the nominal value of the shares actually issued by the company and public companies must have a minimum issued capital of $50,000 or the prescribed euro equivalent (s.763 CA 2006).

(c) Paid-up capital. This is the proportion of the nominal value of the issued capital actually paid by the shareholder (s.547 CA 2006). It may be the full nominal value, in which case it fulfils the shareholder's responsibility to outsiders; or it can be a mere part payment, in which case the company has an outstanding claim against the shareholder. Shares in public companies must be paid up to the extent of at least a quarter of their nominal value (s.586 CA 2006).

(d) Once established, the nominal value of the share remains fixed and does not normally change. However, the value of the shares in the stock market may be subject to daily fluctuation depending on a number of interrelated factors, such as the profitability of the company, the prevailing rate of interest or prospective takeover bids. Thus the market value of a share of $1 nominal value may as much as $5 or higher, or as low as 1 cent.

5 Under the provisions of the Companies Act (CA) 2006 there are three types of resolutions: ordinary resolutions, special resolutions and written resolutions.

(a) Section 282 CA 2006 defines an ordinary resolution of the members generally, or a class of members, of a company, as a resolution that is passed by a simple majority.

If the resolution is to be voted on a show of hands the majority is determined on the basis of those who vote in person or as duly appointed proxies. Where a poll vote is called the majority is determined in relation to the total voting rights of members who vote in person or by proxy.

A special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75% determined in the same way as for an ordinary resolution (s.283). If a resolution is proposed as a special resolution, it must be indicated as such, either in the written resolution text or in the meeting notice. Where a resolution is proposed as a special resolution, it can only be passed as such although anything that may be done as an ordinary resolution may be passed as a special resolution (s.282(5)). There is no longer a requirement for 21 days' notice where a special resolution is to be passed at a meeting.

Where a provision of the Companies Act requires a resolution, but does not specify what kind of resolution is required, the default provision is for an ordinary resolution. However the company's articles may require a higher majority, or indeed may require a unanimous vote to pass the resolution. The articles cannot alter the requisite majority where the Companies Act actually state the required majority, so if the Act provides for an ordinary resolution the articles cannot require a higher majority.

(b) Written resolutions

Private limited companies are no longer required to hold meetings and can take decisions by way of written resolutions (s.281 CA 2006). The Companies Act 2006 no longer requires unanimity to pass a written resolution. It merely requires the appropriate majority of total voting rights, a simple majority for an ordinary resolution (s.282(2)) and a 75% majority of the total voting rights for a special resolution (s.283(2)).

By virtue of s.288 (5) CA 2006 anything which in the case of a private company might be done by resolution in a general meeting, or by a meeting of a class of members of the company, may be done by written resolution with only two exceptions:

- the removal of a director and
- the removal of an auditor

both of which still require the calling of a general meeting of shareholders.

A written resolution may be proposed by the directors or the members of the private company (s.288 (3)). Under s.291 in the case of a written resolution proposed by the directors, the company must send or submit a copy of the resolution to every eligible member. This may be done as follows:

- either by sending copies to all eligible members in hard copy form, in electronic form or by means of a website;
- by submitting the same copy to each eligible member in turn or different copies to each of a number of eligible members in turn;
- by a mixture of the above processes.

The copy of the resolution must be accompanied by a statement informing the members both how to signify agreement to the resolution and the date by which the resolution must be passed if it is not to lapse (s.291(4)). It is a criminal offence not to comply with the above procedure, although the validity of any resolution passed is not affected.

The members of a private company may require the company to circulate a resolution if they control 5% of the voting rights (or a lower percentage if specified in the company's articles). They can also require a statement of not more than 1,000 words to be circulated with the resolution (s.292). However, the members requiring the circulation of the resolution will be required to pay any expenses involved, unless the company resolves otherwise.

Agreement to a proposed written resolution occurs when the company receives an authenticated document, in either hard copy form or in electronic form, identifying the resolution and indicating agreement to it. Once submitted, agreement cannot be revoked.

The resolution and accompanying documents must be sent to all members who would be entitled to vote on the circulation date of the resolution. The company's auditor should also receive such documentation (s.502 CA 2006).

6 By virtue of s.172 Companies Act 2006 a director of a company must act in the way he considers would be most likely to promote the success of the company for the benefit of its members as a whole.

Specifically the director must consider the following:

- the likely consequences of any decision in the long-term;
- the interests of the company's employees;
- the need to foster the company's business relationships with suppliers, customers and others;
- the impact of the company's operations on the community and the environment;
- the desirability of the company maintaining a reputation for high standards of business conduct; and
- the need to act fairly as between members of the company.

The above list is not exhaustive, and merely highlights areas of particular importance for the directors to focus on. The actual decision as to what will promote the success of the company has to be taken in good faith by the directors. This ensures that business decisions on, for example, strategy and tactics are for the directors, and not subject to decision by the courts.

Subsection 172(2) provides that where, or to the extent that, the purposes of the company consist of, or include, purposes other than the benefit of its members, then the reference to promoting the success of the company for the benefit of its members in subsection (1) is to be read as referring to achieving those other purposes. This subsection is aimed at, essentially, but not exclusively, charitable companies and community interest companies. Consequently where the purpose of the company is other than the benefit of its members, the directors must act in the way they consider, in good faith, would be most likely to achieve that purpose. Where the company is partially for the benefit of its members and partly for other purposes, the extent to which those other purposes apply in place of the benefit of the members is a matter for directors to determine, once again, in good faith.

Subsection 172(3) provides that the general duty is subject to any specific enactment or rule of law requiring directors to consider or act in the interests of creditors of the company. This formally recognises that the duty to the shareholders is displaced when the company is insolvent or is heading towards insolvency. For example, s.214 of the Insolvency Act 1986 provides a mechanism under which the liquidator can require the directors to contribute towards the funds available to creditors in an insolvent winding up, where they ought to have recognised that the company had no reasonable prospect of avoiding insolvent liquidation and then failed to take all reasonable steps to minimise the loss to creditors.

As directors owe their duties to the company (see *Percival* v *Wright* (1902)) it is apparent that many of the duties set out in s.172(1) are not capable of being enforced if the company itself, or members of the company, does not wish to enforce those duties.

7 **(a)** Letters of comfort are generally used by parent companies to encourage potential lenders or clients to extend credit to their subsidiary companies by stating their intention to provided financial backing for those subsidiary companies. As such letters of comfort do not normally amount to actual promises, remaining mere statements of intention, they cannot be accepted so as to constitute a binding contractual agreement. As a consequence the holders of letters of comfort have no legal recourse if the parent company subsequently fails to recognise and give effect to them (see Re *Augustus Barnett & Son Ltd* (1986)). As a result it is sometimes claimed that such instruments are not worth the paper they are written on.

However, in *Kleinwort Benson Ltd* v *Malaysia Mining Corporation* (1989) the Court of Appeal opened up the possibility that in some circumstances, letters of comfort could be treated as contractual offers capable of being accepted and constituting a binding contractual promise. In that case the Court of Appeal held that the specific letter of comfort in the case, issued by the Malaysia Mining Corporation covering a loan of £5 million to one of its subsidiary companies, was not binding, apparently for the reason that the plaintiff was aware of the risky nature of letters of comfort and charged additional interest on the loan. Nonetheless the court held that in different circumstances a letter of comfort could form the basis for an action in breach of contract.

(b) In essence a letter of credit is an undertaking by a bank to make a payment to a named beneficiary within a specified time, against the presentation of documents which comply strictly with the terms of the letter of credit.

The parties to a letter of credit are:
(i) the buyer (*the applicant*)
(ii) the buyer's bank (*the issuer*)
(iii) the beneficiary (*the seller/payee*)
(iv) the beneficiary's bank.

A letter of credit is opened by an importer (applicant). To ensure that the documentation requested reflects and proves that the seller has performed under the requirements of the underlying sales contract, the exporter may make them conditions of the letter of credit. It should be noted, however, that the actual sales contract itself is not an inherent part of the letter of credit, although the letter of credit may contain a reference to the substantive contract.

The issuing bank has two main roles. Firstly it provides security for the seller. Thus it promises the seller that if compliant documents are presented, the bank will pay the seller the amount due. However, it also provides a measure of security for the buyer as it undertakes to examine the documents, and only pay if they comply with the terms and conditions set out in the letter of credit.

The main advantage of letters of credit in international trade is that they provide security to both the exporter and the importer. When an exporter asks for payment by letter of credit, he is transferring the risk of non-payment by the buyer to the issuing bank as long as the exporter presents the required documents in strict compliance with the credit.

As far as the exporter is concerned the letter of credit, apart from cash in advance, is the most secure method of payment in international trade as long as the terms of the credit are met. Most letters of credit are subject to the terms of the International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits (UCP 500), which are the universally recognised set of rules governing the use of the documentary credits in international trade.

8 Offer

Article 14(1) of the Convention provides that:

'A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.'

Thus in order for a proposal for concluding a contract to constitute an offer,

(a) it must be addressed to one or more specific persons. Consequently the offer cannot be made to 'the world at large' as it can in common law jurisdictions.

(b) it must be sufficiently definite. This requires that the offer must indicate the goods to be transferred and either expressly or implicitly fix or make provision for determining the quantity of the goods to be transferred and the price to be paid.

(c) it must indicate that the offeror intends to be bound on those terms in case of acceptance.

Acceptance and Counter-offer

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of the Convention (*Article 23*). Such a pronouncement, however, requires an explanation of what is to be taken as amounting to acceptance under the provisions of the Convention.

By virtue of *Article 18* acceptance of an offer may be made by means of a *statement* or other *conduct* of the offeree. The essential feature is that the action indicates agreement to the offer *originally made by the offeror*.

As regards the time of acceptance, it becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror.

Under *Article 19* an acceptance which contains additions, limitations or other modifications constitutes a counter-offer and acts as a rejection of the original offer.

However, if the additional terms do not 'materially alter the terms of the offer' then the acceptance is valid unless the offeror, without undue delay, objects to the alterations to the original offer.

What will be considered as material alterations are such additional or different terms as relate to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or settlement of disputes.

Invitation to treat/invitation to make offers

Any communication that does not comply with the stated requirements for an offer are to be treated as merely an invitation to make offers, or an invitation to treat in English law. As a consequence, it is for the recipient of the invitation to make the actual offer to the first party, who then is in the position to either accept or reject the proposal from them.

Applying the above law to the problem scenario leads to the following conclusions:

Ari and Bas

Ari certainly made an offer to Bas on specific terms, but Bas did not accept those terms. Instead he altered one of the fundamentals terms of the offer that it was only to be applicable to orders of 100 tonnes or more. Consequently this amounted to a counter-offer which Ari was at liberty to accept or reject. It is apparent from the facts, that the specially low price was set in relation to the size of order and so Ari need not worry about Bas suing him for breach, as no contract was entered into between them.

Ari and Cas

Once again Ari can be seen to have made an offer to Cas, but once again, by altering one of the fundamental terms of the offer, the recipient of the offer has actually made a counter-offer rather than an acceptance. Where Bas reduced the quantity in the original offer, Cas has increased it, but the effect is the same and it is for Ari to accept or reject the new offer. Once again there is no contractual relationship between the two parties.

Ari and Das

Ari's original letter to Das did not amount to an offer as it lacked any reference to quantity thus was not sufficiently definite as required under Article 14. As a result Das's letter is actually an offer which Ari can choose to accept or reject. Once again as there is no contract Ari does not have to worry about his inability to supply the copper.

9 Section 21 of the Companies Act 2006 provides for the alteration of articles of association on the passing of a special resolution. However, at common law any such alteration has to be made 'bona fide in the interest of the company as a whole'. This test involves a subjective element in that those deciding the alteration must actually believe they are acting in the interest of the company. There is additionally, however, an objective element requiring that any alteration has to be in the interest of the 'individual hypothetical member' (*Greenhalgh* v *Arderne Cinemas Ltd* (1951)). Whether any alteration meets this requirement depends on the facts of the particular case, but in *Brown* v *British Abrasive Wheel Co Ltd* (1919) an alteration to a company's articles to allow the 98% majority to buy out the 2% minority shareholders was held to be invalid as not being in the interest of the company as a whole. This was in spite of the fact that the company needed additional capital and the majority shareholder was willing to provide that capital if they could gain total control of the company.

In *Dafen Tinplate Co Ltd* v *Llanelly Steel Co* (1907) a minority shareholder was acting to the detriment of the company. Nonetheless, an alteration to the articles, to allow for the compulsory purchase of any member's shares on request so to do, was also held to be too wide to be in the interest of the company as a whole.

However, in *Sidebottom* v *Kershaw Leese & Co* (1920) an alteration to the articles to give the directors the power to require any shareholder, who entered into competition with the company, to sell their shares to nominees of the directors at a fair price was held to be valid.

Applying the law to the facts in the problem scenario, it might seem that, as Fred is in direct competition with Glad Ltd, the alteration would be valid in line with the *Sidebottom* v *Kershaw Leese & Co* case, but it should be noted that the actual alteration to the articles goes much wider than is necessary to cover Fred's situation as it extends to all members, whether or not they are in competition with the company. Consequently it is unlikely that the alteration would be validated by the court as being in the interest of the company as a whole on the basis of *Dafen Tinplate Co Ltd* v *Llanelly Steel Co* (1907).

10 Sam has clearly used his powers for an unauthorised purpose. Unfortunately for the other partners they cannot repudiate his transaction with the bank, even although it was outside his actual authority. The reason being that it is within his implied authority as a partner to enter into such a transaction. As a trading partnership, all the members have the implied authority to borrow money on the credit of the firm and the bank would be under no duty to investigate the purpose to which the loan was to be put. As a result the partnership cannot repudiate the debt to the bank and each of the partners will be liable for its payment. It has to be stated, however, that Sam will be personally liable to the other partners for the £10,000 and as a further consequence of his breach of his duty not to act in any way prejudicial to the partnership business, the partnership could be wound up.

Tam's purchase of the used cars was also clearly outside the express provision of the partnership agreement. Nonetheless the partnership would be liable as the transaction would be likely to be held to be within the implied authority of a partner in a garage business (*Mercantile Credit* v *Garrod* (1962)). Once again Tam, the partner in default of the agreement, would be liable to the other members for any loss sustained in the transaction.

As regards the payment for the petrol, that is clearly within the ambit of the partnership and the members are all liable for non-payment.

If the partnership cannot pay the outstanding debts then the individual partners will become personally liable for any outstanding debt. Although under s.9 of the Partnership Act 1890 partnership debts are said to be joint, the Civil Liability Act 1978 provides that a judgement against one partner does not bar a subsequent action against the other partners. Once the debts owed to outsiders have been dealt with, then the internal financial relationships of the partners amongst themselves will be dealt with according to the partnership agreement

1 This question requires candidates to explain the main sources of law in two out of three systems of law.

8–10 marks Good to complete answer which shows thorough knowledge of the sources of law in the three systems.
5–7 marks Fair explanation of the systems, but perhaps lacking in detail, or only dealing well with one system.
0–4 marks Some basic knowledge of what is involved but no real depth of understanding. Perhaps an unbalanced answer that only deals with one part of the question.

2 This question requires candidates to consider Article 34 of the UNCITRAL Model Law on International Commercial Arbitration relating to the circumstances under which a party may have recourse against an arbitration award.

8–10 marks Good to complete answer which shows thorough knowledge of the Model Law.
5–7 marks Fair explanation of the Model Law, but perhaps lacking in detail.
0–4 marks Some basic knowledge of the Model Law but no real depth of understanding.

3 This question requires candidates to explain the circumstances under which a party can avoid a contract under the UN Convention on the International Sale of Goods on the grounds of anticipatory breach of contract.

8–10 marks Good to complete answer which shows thorough knowledge of the appropriate provisions of the convention.
5–7 marks Fair explanation of the convention as it applies to anticipatory breach of contract, but perhaps lacking in detail, or only dealing well with one aspect.
0–4 marks Some basic knowledge of what is involved in anticipatory breach under the convention, but no real depth of understanding. Perhaps an unbalanced answer that only deals with one part of the question.

4 This question seeks an explanation of the different types of share capital listed together with an explanation of the difference between the nominal value of shares and their market value.

8–10 marks Thorough explanation of all of the elements in the question.
5–7 marks Thorough treatment of some of the elements, or a less complete treatment of all of them.
0–4 marks Unbalanced to very unbalanced answer, focusing on only one element and ignoring the others, or one which shows little understanding of the subject matter of the question.

5 This question requires candidates to consider the way in which resolutions are voted on in companies.

(a) Requires candidates to explain the rules relating to ordinary and special resolutions.

3–5 marks A good explanation of the difference between the two types of resolution.
0–2 marks Some awareness of the area but lacking in detailed knowledge.

(b) 3–5 marks Candidates must not only show an understanding of what is meant by a written resolution and the rules relating to them.
0–2 marks Unbalanced, or may not deal with all of the required aspects of the topic. Alternatively the answer will demonstrate very little understanding of what is actually meant by a written resolution.

6 This question requires candidates to explain the duty of directors to promote the success of the company and to whom such a duty is owed.

8–10 marks A very good answer revealing a thorough to complete understanding of both elements of the question.
4–7 marks A good answer but perhaps unfocused or lacking in detail as to the specific duties applied under section 172.
0–3 marks Weak answer, not fully explaining the law or issues involved.

7 This question requires candidates to consider and explain the meaning of two terms in international business transactions.

(a) 4–5 marks Good to complete answer which shows knowledge of letters of comfort.
2–3 marks Fair explanation, but perhaps lacking in detail, or not dealing with all the essential aspect of question.
0–1 marks Some basic knowledge, but no real depth of understanding.

(b) This part of the question requires candidates to consider and explain the meaning and function of 'letter of credits' in international business transactions.

4–5 marks Good to complete answer which shows knowledge of letters of credit.
2–3 marks Fair explanation, but perhaps lacking in detail, or not dealing with all the essential aspect of question.
0–1 marks Some basic knowledge, but no real depth of understanding.

8 This question requires candidates to analyse and apply the appropriate law to a scenario involving issues relating to the formation of contracts under the UN Convention on Contracts for the International Sale of Goods.

8–10 marks Candidates will exhibit a thorough knowledge of the relevant law together with the ability to analyse the problems contained in the question.
5–7 marks Candidates will exhibit a sound knowledge of the relevant law together with the ability to recognise the issues contained in the question. Knowledge may be less detailed or analysis less focused.
3–4 marks Identification of some of the central issues in the question and an attempt to apply the appropriate law. Towards the bottom of this range of marks there will be major shortcomings in analysis or application of law.
0–2 marks Very weak answers which might recognise what the question is about but show no ability to analyse or answer the problem as set out.

9 This question requires candidates to examine the law relating to the power of companies to change their articles of association.

8–10 marks Candidates will exhibit a thorough knowledge of the relevant law together with the ability to analyse the problems contained in the question.
5–7 marks Candidates will exhibit a sound knowledge of the relevant law together with the ability to recognise the issues contained in the question. Knowledge may be less detailed or analysis less focused.
3–4 marks Identification of some of the central issues in the question and an attempt to apply the appropriate law. Towards the bottom of this range of marks there will be major shortcomings in analysis or application of law.
0–2 marks Very weak answers which might recognise what the question is about but show no ability to analyse or answer the problem as set out.

10 This question refers to key issues relating to the powers, authority and liability of partners.

8–10 marks Candidates will exhibit a thorough knowledge of partnership law together with the ability to analyse the problems contained in the question.
5–7 marks Candidates will exhibit a sound knowledge of partnership law together with the ability to recognise the issues contained in the question. Knowledge may be less detailed or analysis less focused.
3–4 marks Identification of some of the central issues in the question and an attempt to apply the appropriate law. Towards the bottom of this range of marks there will be major shortcomings in analysis or application of law.
0–2 marks Very weak answers which might recognise what the question is about but show no ability to analyse or answer the problem as set out.