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PAPER F4

公司法与商法

**CORPORATE AND
BUSINESS LAW
(ENGLISH)**

BPP Learning Media 著

FOR EXAMS IN JUNE AND DECEMBER 2010



华中科技大学出版社

<http://www.hustp.com>

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PAPER F4

公司法与商法（英国） CORPORATE AND BUSINESS LAW (ENGLISH)

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In this edition approved by ACCA

- We discuss the best strategies for studying for ACCA exams.
- We highlight the most important elements in the syllabus and the key skills you will need.
- We signpost how each chapter links to the syllabus and the study guide.
- We provide lots of exam focus points demonstrating what the examiner will want you to do.
- We emphasise key points in regular features.
- We test your knowledge of what you've learned.
- We examine your understanding in our exam question bank.
- We reference all the important topics in our full index.

BPP's i-Learn and i-Pass products also support this paper.

FOR EXAMS IN JUNE AND DECEMBER 2010



华中科技大学出版社

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中国·武汉

图书在版编目 (CIP) 数据

ACCA 考试用书. F4 公司法与商法 F4 Corporate and Business Law. 英国: 英文 / BPP Learning Media 著. —武汉: 华中科技大学出版社, 2010.1

ISBN 978-7-5609-5969-6

I. A... II. B... III. ①公司法—会计师—资格考核—教材—英文②商法—会计师—资格考核—教材—英文 IV. F23

中国版本图书馆 CIP 数据核字 (2010) 第 011786 号

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F4 公司法与商法 (英国) F4 Corporate and Business Law(UK)

BPP Learning Media 著

策划编辑: 周小方

责任编辑: 周小方

责任印制: 周治超

出版发行: 华中科技大学出版社 (中国·武汉)

地 址: 武汉洪山路珞瑜区 1037 号

邮政编码: 430074

电 话: 027-87557437

网 址: [http:// www.hustp.com](http://www.hustp.com)

印 刷: 江苏省句容市排印厂

开 本: 880mm×1230mm 1/16

印 张: 30

字 数: 714 千字

版 次: 2010 年 1 月第 1 版

印 次: 2010 年 1 月第 1 次印刷

ISBN : 978-7-5609-5969-6 / F · 561

定 价: 220.00 元

(本书若有印刷质量问题, 请向出版社发行部调换)

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- 银行业 IT
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F4 UK（课本）简介

本课本向学员传授与商业有关的一般法律框架。我们的课本设计注重大纲中最重要的方面，包括：

- 法律体系的基本要素
- 债务法
- 劳动法
- 商业组织的形成和章程
- 资本和公司融资
- 公司的管理、行政和规章制度
- 陷入困境或危机的公司涉及的法律问题
- 企业的治理和职业道德问题

F4 UK 课本经由考官审核，让读者从一无所知的新手成长为深谙企业相关的法律问题的会计师。课本全面涵盖通过 ACCA 法律考试所必需的所有细节，考官对其评价是“它让你的学习乐在其中”。

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- F1 会计师与企业
- F2 Management Accounting
- F2 管理会计
- F3 Financial Accounting (INT)
- F3 财务会计 (INT)

Skills Module

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- F4 Corporate and Business Law (UK)
- F4 公司法与商法 (UK)
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- F6 Taxation (China)
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- F7 Financial Reporting (INT)
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- F8 Audit and Assurance (INT)
- F8 审计与认证业务 (INT)
- F9 Financial Management
- F9 财务管理

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- P6 高级税务 (UK)
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- P6 高级税务 (中国版)
- P7 Advanced Audit and Assurance (INT)
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How the BPP ACCA-approved Study Text can help you pass your exams – AND help you with your Practical Experience Requirement!

NEW FEATURE – the PER alert!

Before you can qualify as an ACCA member, you do not only have to pass all your exams but also fulfil a three year **practical experience requirement** (PER). To help you to recognise areas of the syllabus that you might be able to apply in the workplace to achieve different performance objectives, we have introduced the '**PER alert**' feature. You will find this feature throughout the Study Text to remind you that what you are **learning to pass** your ACCA exams is **equally useful to the fulfilment of the PER requirement**.

Tackling studying

Studying can be a daunting prospect, particularly when you have lots of other commitments. The **different features** of the text, the **purposes** of which are explained fully on the **Chapter features** page, will help you whilst studying and improve your chances of **exam success**.

Developing exam awareness

Our Texts are completely **focused** on helping you pass your exam.

Our advice on **Studying F4** outlines the **content** of the paper, the **necessary skills** the examiner expects you to demonstrate and any **brought forward knowledge** you are expected to have.

Exam focus points are included within the chapters to highlight when and how specific topics were examined, or how they might be examined in the future.

Using the Syllabus and Study Guide

You can find the syllabus, Study Guide and other useful resources for F4 on the ACCA web site: www.accaglobal.com/students/study_exams/qualifications/acca_choose/acca/fundamentals/cl/syllabus

The Study Text covers **all aspects** of the syllabus to ensure you are as fully prepared for the exam as possible.

Testing what you can do

Testing yourself helps you develop the skills you need to pass the exam and also confirms that you can recall what you have learnt.

We include **Questions** – lots of them - both within chapters and in the **Exam Question Bank**, as well as **Quick Quizzes** at the end of each chapter to test your knowledge of the chapter content.

Chapter features

Each chapter contains a number of helpful features to guide you through each topic.

Topic list

Topic list	Syllabus reference

Tells you what you will be studying in this chapter and the relevant section numbers, together the ACCA syllabus references.

Introduction

Puts the chapter content in the context of the syllabus as a whole.

Study Guide

Links the chapter content with ACCA guidance.

Exam Guide

Highlights how examinable the chapter content is likely to be and the ways in which it could be examined.

Knowledge brought forward from earlier studies

What you are assumed to know from previous studies/exams.

FAST FORWARD

Summarises the content of main chapter headings, allowing you to preview and review each section easily.

Examples

Demonstrate how to apply key knowledge and techniques.

Key terms

Definitions of important concepts that can often earn you easy marks in exams.

Exam focus points

Tell you when and how specific topics were examined, or how they may be examined in the future.

Formula to learn

Formulae that are not given in the exam but which have to be learnt.



This is a new feature that gives you a useful indication of syllabus areas that closely relate to performance objectives in your Practical Experience Requirement (PER).



Question

Give you essential practice of techniques covered in the chapter.



Case Study

Provide real world examples of theories and techniques.

Chapter Roundup

A full list of the Fast Forwards included in the chapter, providing an easy source of review.

Quick Quiz

A quick test of your knowledge of the main topics in the chapter.

Exam Question Bank

Found at the back of the Study Text with more comprehensive chapter questions. Cross referenced for easy navigation.

Studying F4

In approaching the F4 exam you should bear in mind what the paper is about, the skills you are expected to demonstrate in the exam and how you can improve your chances of passing the exam. We shall look at each of these points in turn.

1 What F4 is about

The main aims of the F4 exam are:

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

The exam is not designed to turn you into a legal expert. Instead you will be a well-informed professional accountant who appreciates the legal issues of doing business but who recognises the boundaries of their legal knowledge and therefore the point at which professional legal expertise must be sought.

The sequence of the syllabus and study guide takes you through the main areas of what you need to know.

Essential elements of the legal system

In this part of the syllabus you are covering areas that underlie all the other areas, namely: what is law and how the UK legal system creates and administers it. The distinctions between criminal law and civil law, between common law and civil law and between public law and private law, are very important. Most of the paper is concerned with civil law, namely the law that sets out the rights and duties of persons in relation to each other. There are elements of criminal law in relation to companies, insolvency, insider dealing and money laundering, in addition to the topical area of human rights legislation.

Law of obligations

The syllabus clearly distinguishes two important types of obligation that individuals and businesses have.

Contract

When individuals or businesses make agreements, a legally binding contract may be formed. This paper focuses on the requirements that must be met for a contract to be binding on the parties, what valid contracts must contain, under which circumstances the contractual terms are breached and what remedies are available for the affected party.

Tort

All members of society have a duty not to harm others and this principle forms the basis of tort. The tort of negligence is highly topical and has an impact on individuals, businesses and professionals (such as accountants). It is important for you to understand how such a duty is formed, the circumstances that will cause a breach of that duty and if there are any defences to a breach that the perpetrator can call on. The syllabus also covers a range of other torts such as assault, battery, false imprisonment, libel and defamation.

Employment law

Employees and employers are bound to each other by an employment contract. It is important that you have a good understanding of the contents of such a contract. Both employers and their employees owe duties to each other and breach of these duties can result in legal action being taken.

Termination of employment can be fraught with danger for employers if it is not handled correctly. The terms of 'wrongful' and 'unfair' dismissal are used commonly in the media, but the causes and remedies are distinct and it is important for you to understand the difference.

Formation and constitution of business organisations

The syllabus is very concerned with the various legal forms through which business transactions may be conducted. It is important to distinguish initially between natural persons (human beings) and legal

persons (including natural persons, but extending to some forms of partnership and, most significantly, companies). The law of agency underlies a substantial part of our study of business forms, since partners and directors can and sometimes do act as agents.

Capital and financing of companies

Most trading companies are financed by a mix of share capital (provided by their owners) and loan capital (provided by third party lenders). Share capital in turn may take a variety of forms, with each class of share having different rights within the company. However, the primary responsibility of the shareholder is to contribute funds to the company in accordance with the terms of the company's constitution and the shares which they own. The return of these funds to shareholders is restricted since they are seen as the 'creditors' buffer', that is the funds which are available to settle creditors' outstanding debts in preference to amounts due to shareholders. Hence there are detailed laws on 'capital maintenance'. These extend to how far companies may distribute accumulated retained earnings to their shareholders in the form of dividends or buyback of shares.

Loan capital is usually provided by lenders only if they can be assured of its repayment to them. If lenders supply funds in return for debentures in the company, they usually require security for their loan: the debenture is secured by means of a registered charge on particular or general assets of the company, which can (within limitations) be realised so that the loan is repaid.

Management, administration and regulation of companies

As an artificial legal person a company cannot manage itself. This is the role primarily of the company's directors, who owe duties to the company to manage it for the benefit of the company and thereby for the benefit of its owners, the shareholders. There are a great many legal rules which regulate the appointment, remuneration, disqualification, powers and duties of directors. These have grown up largely because of problems that frequently occur. Most of these can be said to arise from conflicts between directors' personal interests and their duties to act in the company's interest. Directors are termed officers of the company along with the company secretary. Many companies also have to have an auditor.

Directors come into immediate contact with shareholders via company meetings, and the resolutions that are passed at these meetings. There are therefore a plethora of legal rules on meetings and resolutions, designed to ensure that the company is taking decisions properly and in accordance with the legitimate interests of shareholders as a body.

Legal implications of companies in difficulty or in crisis

Not everything goes according to plan and frequently companies will encounter financial or other difficulties, or will even reach crisis point and find themselves insolvent. At this point all parties – shareholders, directors, lenders, customers, suppliers and employees – are in danger of losing out. There are procedures designed to protect struggling companies to give them a 'breathing space' while they resolve their issues. There are also rules for how a company which cannot be saved should be 'wound up', depending on whether or not the company has any funds left.

Corporate governance

Corporate governance means trying to ensure that companies are well-managed and controlled. While there are plenty of legal rules designed to ensure good corporate governance, there are also (semi-)voluntary codes of practice which apply to some but not all companies. The Combined Code on Corporate Governance applies to all companies listed on the London Stock Exchange, but is also recommended to other companies. It seeks to protect shareholders and addresses the problems of conflicts of interest in part by implementing the principle of separation of duties between executive and non-executive directors. It also covers directors' remuneration, external audit, nominations to the board of directors and other issues.

Fraudulent behaviour

Finally the syllabus covers the situations where activities of directors and others have strayed into criminal behaviour. This often arises in the context of companies running out of money, but the law is also concerned with company insiders with superior knowledge benefiting from insider dealing, and crime in the form of money laundering.

2 What skills are required?

To pass the F4 exam you will need to bring a number of different professional attributes to bear.

First you need **technical knowledge**. There is a huge amount of technical content in the syllabus: case law, conventions, codes of practice, and legislation. You need to learn this and be able to identify which parts of the knowledge you have are being called for in a particular question.

Secondly you need to be able to **apply knowledge** to the scenarios that are presented in the last three questions on the paper. You are aiming to solve practical problems here. Generally in scenario questions there will be marks available for stating the law, identifying the issues in the scenario in relation to the law, applying the law and reaching a conclusion.

Thirdly you need **written skills** in order to be able to explain, and advise on the basis of, your technical knowledge. Explaining means providing simple definitions and covering why and how these approaches have been developed. You'll gain higher marks if your explanations are clearly focused on the question and you can supplement your explanations with examples.

3 How to improve your chances of passing

To pass the exam you need to **cover the syllabus thoroughly**. The exam requires you to answer all TEN questions on the paper. Each topic that you fail to cover represents 10% fewer marks in the exam.

You should **practise answering questions** as much as possible, making sure that your answers are focused, specific and completely relevant to the question.

Ten questions is a lot to answer in three hours so your **exam technique** is very important, especially:

- **Strict time management:** only 18 minutes per answer
- **Deciding on the order in which you attempt questions** carefully: use your 15 minutes reading and planning time carefully to make sure that you attempt your best topics first when you start to write. This will bolster your confidence and help to ensure that you manage your time properly, so long as you don't overrun your time allocation on the early, 'better' questions
- **Reading the question** carefully: make sure you identify precisely the key issues requiring your attention

Only **answering the question set**: do not stray into irrelevant areas of, say, contract law. You will gain no marks and you will lose time.

4 Examinable documents

Legislation passed by 30th September 2008 will be examinable in December 2009. Legislation passed after this date will be examinable in June 2010. Unless otherwise stated, material in this text is valid in both sittings.

5 Practical Experience Requirement (PER)

The laws and regulations that you are about to study underpin many of the performance objectives that you need to complete. Where appropriate these links are identified, however you should bear in mind that others may be equally valid and you should look to integrate the law into these objectives where possible.

The exam paper

Format of the paper

The examination is a three hour paper consisting of seven, ten-mark questions testing knowledge and three, ten-mark application (scenario) questions.

Guidance

As all questions are compulsory it is vital to attempt all of them. Even if you are not confident about an area of law, it is often easier to earn marks by starting a question and putting something down, than by adding material to an already developed answer.

When answering scenario questions follow the **ISAC** approach

Identify the legal issues

State the relevant law

Apply the law

Conclude

This structure will maximise your marks as you identify what the problem is, state what the law says about the problem, apply the law and come to a reasonable conclusion – exactly what the examiner wants.

You are expected to quote case names and section numbers in your answers. Do your best to learn as many as you can (at least a handful in each topic area), but don't worry if in the exam you forget the case name or section number – as long as you correctly state the principle of law you will earn most of the marks.

Negligence

The December 2007 exam saw the first **tort** question under the new syllabus. It required candidates to explain the concept of '**remoteness of damage**'. According to examiner's report on the sitting, the vast majority of candidates ignored the reference to tort and answered the question on the basis of **contract law**. They consequently scored very low marks. When studying please remember that 'remoteness of damage' under tort and contract are completely unrelated concepts. **Do not mix them up in an exam question.**

Company law

Many students have failed this exam because they refer to out-of-date company law. This text is based on the latest (Companies Act 2006) so you are assured the material you are about to study is up-to-date.

Analysis of past papers

The table below provides details of when each element of the syllabus has been examined and the question number and section in which each element appeared. Further details can be found in the Exam Focus Points in the relevant chapters.

Covered in Text chapter		Dec 2008	June 2008	Dec 2007	Pilot Paper
	ESSENTIAL ELEMENTS OF THE LEGAL SYSTEM				
1	The English legal system			1	
2	Sources of English law	1	1		1
3	Human rights				
	THE LAW OF OBLIGATIONS				
4, 5	Formation of contracts	8	2	2, 8	8
6	Terms of contract				2
7	Breach of contract	2	8		
8	Torts	3	3	3	3
9	Professional negligence				
	EMPLOYMENT LAW				
10	Employment contract		7		
11	Dismissal and redundancy	7		6	7
	THE FORMATION AND CONSTITUTION OF BUSINESS ORGANISATIONS				
12	Agency law	10			
13	Organisations and legal personality		4, 9		
14	Company formation				4
15	Constitution of a company	9		4	
	CAPITAL AND THE FINANCING OF COMPANIES				
16	Share capital	4	5		9
17	Borrowing and loan capital		5		
18	Capital maintenance and dividend law			5	
	MANAGEMENT, ADMINISTRATION AND REGULATION OF COMPANIES				
19	Company directors and other company officers	6	6	7, 10	
20	Company meetings and resolutions	5			5
	LEGAL IMPLICATIONS OF COMPANIES IN DIFFICULTY OR IN CRISIS				
21	Insolvency and administration			9	
	GOVERNANCE AND ETHICAL ISSUES RELATING TO BUSINESS				
22	Corporate governance				6
23	Fraudulent behaviour		10		10

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