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Examiner reviewed content

PAPER F4

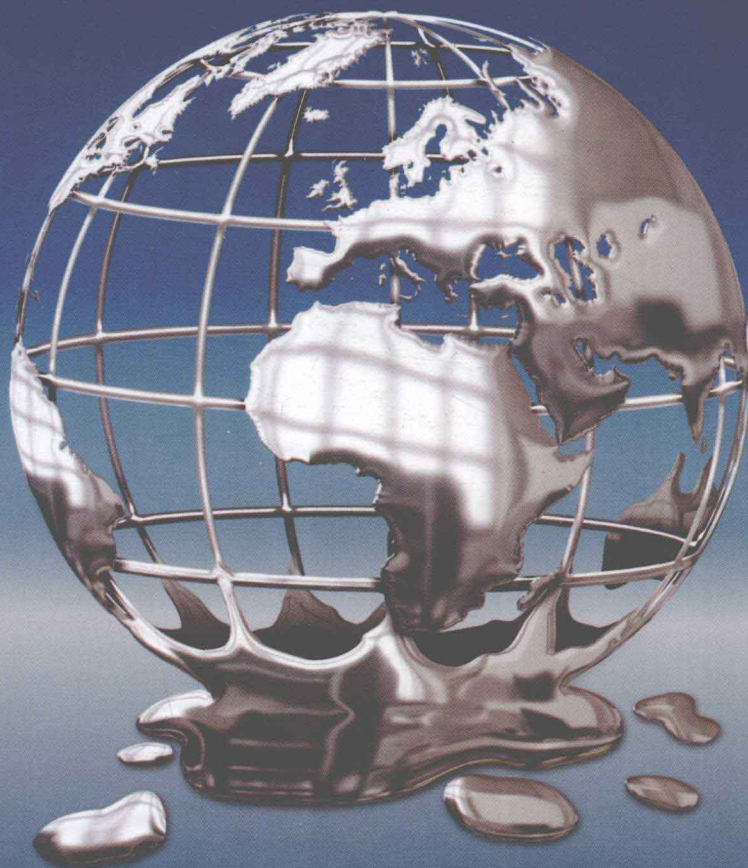
公司法与商法（英国版）

CORPORATE AND BUSINESS LAW (ENGLISH)

BPP Learning Media 著

课 本
STUDY TEXT

FOR EXAMS IN 2012



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PAPER F4

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BPP Learning Media is the **sole ACCA Platinum Approved Learning Partner** – content for the ACCA qualification. In this, **the only Paper P4 study text to be reviewed by the examiner:**

- 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 **fast forward summaries**
- We **test your knowledge** of what you should know in our **quizzes**
- We **examine your understanding** in our **exam question bank**
- We **reference all the important topics** in our **index**

BPP's **i-Pass** product also supports this paper.

FOR EXAMS IN 2012



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F4 ENG（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 ENG 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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FMA/F2 管理会计

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F4 公司法与商法 (英国版)

F4 Corporate and Business Law (CHN)

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F5 业绩管理

F6 Taxation (UK)

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F6 Taxation (CHN)

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F9 Financial Management

F9 财务管理

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P3 商务分析

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P5 高级业绩管理

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As ACCA's **sole Platinum Approved Learning Partner – content**, BPP Learning Media gives you the **unique opportunity** to use **examiner-reviewed** study materials for the 2012 exams. By incorporating the examiner's comments and suggestions regarding the depth and breadth of syllabus coverage, the BPP Learning Media Study Text provides excellent, **ACCA-approved** support for your studies.

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 and Study Guide on pages xli – xvii of this Study Text

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

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

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.



Gives you a useful indication of syllabus areas that closely relate to performance objectives in your Practical Experience Requirement (PER).



Question

Gives you essential practice of techniques covered in the chapter.



Case Study

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

This paper examines a basic understanding of legal principles and their application. You may find the material a little different from what you are used to because there are virtually no numbers involved. Therefore it is important to develop a concise style of writing in order to get your points across quickly and clearly.

The F4 examiner

The examiner for this paper is **David Kelly** and he has been in the role for some time. Therefore there should be no surprises when it comes to your exam – each of his papers is similar in style and content.

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.

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 the 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 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 voluntary codes of practice which apply to some but not all companies. The UK Corporate Governance Code 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.

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 should quote case names 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 – 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.

Syllabus and Study Guide

The F4 syllabus and study guide can be found below.

RATIONALE

Corporate and Business Law is divided into eight areas. The syllabus starts with an introduction to the overall English legal system such as the court system and sources of law – including – human rights legislation. It then leads into the area of the law of obligations including contract and tort, which 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 law relating to employment and the law relating to companies. These laws include 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 and legal aspects of companies facing difficulty or in crisis.

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

DETAILED SYLLABUS

A Essential elements of the legal system

1. Court structure
2. Sources of law
3. Human rights

B The law of obligations

1. Formation of contract
2. Content of contracts
3. Breach of contract and remedies
4. The law of torts

5. Professional negligence

C Employment law

1. Contract of employment
2. Dismissal and redundancy

D The formation and constitution of business organisations

1. Agency law
2. Partnerships
3. Corporations and legal personality
4. Company formations

E Capital and the financing of companies

1. Share capital
2. Loan capital
3. Capital maintenance and dividend law

F Management, administration and regulation of companies

1. Company directors
2. Other company officers
3. Company meetings and resolutions

G Legal implications relating to companies in difficulty or in crisis

1. Insolvency
2. Administration

H Governance and ethical issues relating to business

1. Corporate governance
2. Fraudulent and criminal behaviour

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) Define law and distinguish types of law.^[1]
- b) Explain the structure and operation of the courts and tribunals systems.^[1]

2. Sources of law

- a) Explain what is meant by case law and precedent within the context of the hierarchy of the courts.^[2]
- b) Explain legislation and evaluate delegated legislation.^[2]
- c) Illustrate the rules and presumptions used by the courts in interpreting statutes.^[1]

3. Human rights

- a) Identify the concept of human rights as expressed in the Human Rights Act 1998.^[2]
- b) Explain the impact of human rights law on statutory interpretation.^[2]
- c) Explain the impact of human rights law on the common law.^[2]

B THE LAW OF OBLIGATIONS

1. Formation of contract

- a) Analyse the nature of a simple contract.^[2]
- b) Explain the meaning of offer and distinguish it from invitations to treat.^[2]
- c) Explain the meaning and consequence of acceptance.^[2]
- d) Explain the need for consideration.^[2]
- e) Analyse the doctrine of privity.^[2]
- f) Distinguish the presumptions relating to intention to create legal relations.^[2]

2. Content of contracts

- a) Distinguish terms from mere representations.^[2]
- b) Define the various contractual terms.^[1]
- c) Explain the effect of exclusion clauses and evaluate their control.^[2]

3. Breach of contract and remedies

- a) Explain the meaning and effect of breach of contract.^[2]
- b) Explain the rules relating to the award of damages.^[2]
- c) Analyse the equitable remedies for breach of contract.^[2]

4. The law of torts

- a) Explain the meaning of tort.^[2]
- b) Identify examples of torts including 'passing off' and negligence.^[2]
- c) Explain the duty of care and its breach.^[2]
- d) Explain the meaning of causality and remoteness of damage.^[2]
- e) Discuss defences to actions in negligence.^[2]

5. Professional negligence

- a) Explain and analyse the duty of care of accountants and auditors.^[2]

C EMPLOYMENT LAW

1. Contract of employment

- a) Distinguish between employees and the self-employed.^[2]
- b) Explain the nature of the contract of employment and give examples of the main duties placed on the parties to such a contract.^[2]

2. Dismissal and redundancy

- a) Distinguish between wrongful and unfair dismissal including constructive dismissal.^[2]
- b) Explain what is meant by redundancy.^[2]
- c) Discuss the remedies available to those who have been subject to unfair dismissal or redundancy.^[2]

D THE FORMATION AND CONSTITUTION OF BUSINESS ORGANISATIONS

1. Agency law

- a) Define the role of the agent and give examples of such relationships paying particular regard to partners and company directors.^[2]
- b) Explain how the agency relationship is established.^[2]
- c) Define the authority of the agent.^[2]
- d) Explain the potential liability of both principal and agent.^[2]

2. Partnerships

- a) Demonstrate a knowledge of the legislation governing the partnership, both unlimited and limited.^[1]
- b) Discuss how partnerships are established.^[2]
- c) Explain the authority of partners in relation to partnership activity.^[2]
- d) Analyse the liability of various partners for partnership debts.^[2]
- e) Explain the way in which partnerships can be brought to an end and partners' subsequent rights and liabilities.^[2]

3. Corporations and legal personality

- a) Distinguish between sole traders, partnerships and companies.^[2]
- b) Explain the meaning and effect of limited liability.^[2]

- c) Analyse different types of companies, especially private and public companies.^[2]
- d) Illustrate the effect of separate personality.^[2]
- e) Recognise instances where separate personality will be ignored.^[2]

4. Company formations

- a) Explain the role and duties of company promoters.^[2]
- b) Explain the meaning of, and the rules relating to, pre-incorporation contracts.^[2]
- c) Describe the procedure for registering companies, both public and private.^[2]
- d) Describe the statutory books, records and returns that companies must keep or make.^[1]
- e) Analyse the effect of a company's constitutional documents.^[2]
- f) Describe the contents of model articles of association.^[1]
- g) Explain how articles of association can be changed.^[2]
- h) Explain the controls over the names that companies may or may not use.^[2]

E CAPITAL AND THE FINANCING OF COMPANIES

1. Share capital

- a) Examine the different meanings of capital.^[2]
- b) Explain allotment of shares and distinguish between rights issue and bonus issue of shares.^[2]
- c) Illustrate the difference between various classes of shares.^[2]
- d) Explain the procedure for altering class rights.^[2]

2. Loan capital

- a) Define companies' borrowing powers.^[1]