



EXPRESS Notes

ACCA Paper F4 (GLO)

Corporate and Business Law

For exams in 2012



theexpgroup.com

Contents

	<i>About Express Notes</i>	3
1.	Different Legal Systems	7
2.	International Organisations	11
3.	International Commercial Arbitration	16
4.	Contracts for International Sale of Goods	18
5.	Agency	24
6.	Partnerships	27
7.	Company Formation and Financing	30
8.	Company Administration	39
9.	Company Liquidation	47
10.	Fraudulent Behaviour	52

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START About Express Notes

We are very pleased that you have downloaded a copy of our Express notes for this paper. We expect that you are keen to get on with the job in hand, so we will keep the introduction brief.

First, we would like to draw your attention to the terms and conditions of usage. It's a condition of printing these notes that you agree to the terms and conditions of usage. These are available to view at www.theexpgroup.com. Essentially, we want to help people get through their exams. If you are a student for the ACCA exams and you are using these notes for yourself only, you will have no problems complying with our fair use policy.

You will however need to get our written permission in advance if you want to use these notes as part of a training programme that you are delivering.

WARNING! These notes are not designed to cover everything in the syllabus!

They are designed to help you assimilate and understand the most important areas for the exam as quickly as possible. If you study from these notes only, you will not have covered everything that is in the ACCA syllabus and study guide for this paper.

Components of an effective study system

On Exp classroom courses, we provide people with the following learning materials:

- The Express notes for that paper
 - The Exp recommended course notes / essential text or the Expedito classroom course notes where we have published our own course notes for that paper
 - The Exp recommended exam kit for that paper.
- In addition, we will recommend a study text / complete text from one of the ACCA official publishers, but we do not necessarily give this as part of a classroom course, as we think that it can sometimes slow people down and reduce the time that they are able to spend practising past questions.

Exp classroom course students will also have access to various online support materials, including:

- The unique Exp & Me e-portal, which amongst other things allows "view again" of the classroom course that was actually attended.
- Expand, our online learning tool and questions and answers database

Everybody in the World has free access to ACCA's own database of past exam questions, answers, syllabus, study guide and examiner's commentaries on past sittings. This can be an invaluable resource. You can find links to the most useful pages of the ACCA database that are relevant to your study on ExPand at www.theexpgroup.com.

How to get the most from these Express notes

For people on a classroom course, this is how we recommend that you use the suite of learning materials that we provide. This depends where you are in terms of your exam preparation for each paper.

Your stage in study for each paper	These Express notes	EXP recommended course notes, or EXPedite notes	EXP recommended exam kit	ACCA online past exams
Prior to study, e.g. deciding which optional papers to take	Skim through the Express notes to get a feel for what's in the syllabus, the "size" of the paper and how much it appeals to you.	Don't use yet	Don't use yet	Have a quick look at the two most recent real ACCA exam papers to get a feel for examiner's style.
At the start of the learning phase	Work through each chapter of the Express notes in detail before you then work through your course notes. Don't try to feel that you have to understand everything – just get an idea for what you are about to study. Don't make any annotations on the Express notes at this stage.	Work through in detail. Review each chapter after class at least once. Make sure that you understand each area reasonably well, but also make sure that you can recall key definitions, concepts, approaches to exam questions, mnemonics, etc.	Nobody passes an exam by what they have studied – we pass exams by being efficient in being able to prove what we know. In other words, you need to have effectively input the knowledge and be effective in the output of what you know. Exam practice is key to this. Try to do at least one past exam question on the learning phase for each major chapter.	Don't use at this stage.

Your stage in study for each paper	These Express notes	ExP recommended course notes, or ExPeditate notes	ExP recommended exam kit	ACCA online past exams
Practice phase	Work through the Express notes again, this time annotating to explain bits that you think are easy and be brave enough to cross out the bits that you are confident you'll remember without reviewing them.	Avoid reading through your notes again. Try to focus on doing past exam questions first and then go back to your course notes/ Express notes if there's something in an answer that you don't understand.	This is your most important tool at this stage. You should aim to have worked through and understood at least two or three questions on each major area of the syllabus. You pass real exams by passing mock exams. Don't be tempted to fall into "passive" revision at this stage (e.g. reading notes or listening to CDs). Passive revision tends to be a waste of time.	Download the two most recent real exam questions and answers. Read through the technical articles written by the examiner. Read through the two most recent examiner's reports in detail. Read through some other older ones. Try to see if there are any recurring criticisms he or she makes. You must avoid these!
The night before the real exam	Read through the Express notes in full. Highlight the bits that you think are important but you think you are most likely to forget.	Unless there are specific bits that you feel you must revise, avoid looking at your course notes. Give up on any areas that you still don't understand. It's too late now.	Don't touch it!	Do a final review of the two most recent examiner's reports for the paper you will be taking tomorrow.
At the door of the exam room before you go in.	Read quickly through the full set of Express notes, focusing on areas you've highlighted, key workings, approaches to exam questions, etc.	Avoid looking at them in detail, especially if the notes are very big. It will scare you.	Leave at home.	Leave at home.

Our Express notes fit into our portfolio of materials as follows:

Express Notes

Provide a base understanding of the most important areas of the syllabus only.



Expedite Notes

Provide a comprehensive coverage of the syllabus and accompany our face to face professional exam courses



Expert Notes

Provide detailed coverage of particular technical areas and are used on our Professional Development and Executive Programmes.

To maximise your chances of success in the exam we recommend you visit www.theexpgroup.com where you will be able to access additional free resources to help you in your studies.



START
About The EXP Group

Born with a desire to be the leading supplier of business training services, the ExP Group delivers courses through either one of its permanent centres or onsite at a variety of locations around the world. Our clients range from multinational household corporate names, through local companies to individuals furthering themselves through studying for one of the various professional exams or professional development courses.

As well as courses for ACCA and other professional qualifications, our portfolio of expertise covers all areas of financial training ranging from introductory financial awareness courses for non financial staff to high level corporate finance and banking courses for senior executives.

Our expert team has worked with many different audiences around the world ranging from graduate recruits through to senior board level positions.

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Questions have also appeared occasionally requiring you to contrast legal proceedings under **criminal law** as opposed to **civil law**, where UK is taken as the example.



KEY KNOWLEDGE
CRIMINAL LAW V CIVIL LAW

Under UK law the key differences are summarised in the table below.

	CRIMINAL	CIVIL
Action brought by	Crown Prosecution Service	Claimant
Action brought against	Accused	Defendant
Burden of proof required	Beyond reasonable doubt	Balance of probabilities
Determination of guilt/liability	Minor offences = Magistrates Serious offences = Jury	Judge (in rare instances Jury)
Sentence/award determined by	Minor offences = Magistrates Serious offences = Judge	Judge
Case described as	Regina v Jones	Smith v Jones



KEY KNOWLEDGE
JUDICIAL PRECEDENCE

This is **primarily associated** with **common law** systems and explains why in such systems judges are said to *create law*, as well as applying and interpreting the laws created by the legislative body.

Judicial precedent brings a highly desirable **consistency** to the hearing of cases, in that provided the circumstances of a later case are essentially the same as an earlier one, the decision will be the same.

Before applying an earlier case as a precedent, it will be necessary to have a positive response to the following questions:

- Was it based on a **proposition of law**?
- Was it part of the **ratio decidendi**?

- Were the **material facts** of the case the **same**?
- Was the decision made in a **court of equal or (more commonly) superior status**?



KEY KNOWLEDGE COMMON LAW

Primarily associated with UK, but because of England's historical influence also to be found in many other countries, most notably perhaps in USA.

Significant **sources of law** currently in UK are:

- **Common law and equity** which stem from the records of case law over many hundreds of years
- **Statutory law** which results from the passing of Acts of Parliament
- **EU law** applicable to UK as a member state

In countries such as USA there are procedures for **judicial review** to ensure that no laws are passed which would be in breach of that country's **written constitution** (not applicable in UK as no written constitution).

In UK there are various **presumptions** in relation to **statutory law** and **guides and rules** as to its **interpretation** that you should be familiar with.



KEY KNOWLEDGE CIVIL LAW

Main contrast with UK system is that **civil law** systems tend to use **codification** by means of **legislation** in order to try to bring **understanding** and **certainty** to the law. Countries adopting a civil law approach most normally have a written constitution.

Significant **sources of law** currently in France are:

- **Constitution**
- **Statutory law**
- **Administrative Regulations**
- **EU law**

In civil law systems, the **role of judges** is to **apply the law** and so there is much **less guidance** on **interpretation** of statutes and there is **no** formalised system of **judicial precedent**.



KEY KNOWLEDGE SHARIA LAW

Major contrast with common and civil law systems, which are essentially secular, is the fact that Sharia law is specifically related to and founded upon the Islamic religion.

The main sources of law are:

1. The **Quran** which is a record of the divine **revelations** of **Allah** to his **Prophet Muhammad**
2. The **Sunnah** which is derived from the **sayings** of the **Prophet**

Under the traditions of Sharia law, **judges** are usually clerics (**Imam**).

Secondary sources of law, known as **Madhab**, are based on the **works** of **major Jurists** in the years immediately after the death of the Prophet.

Like many Muslim countries, **Iran** has a written **constitution** which **upholds** the traditions of **Sharia law**.

The **role of judges** is **apply the law** and where **interpretation** is required this must be in **accordance** with strict and fairly complex **Islamic traditions**.

Currently the EU is an economic and political union with a **membership of 27 sovereign states**.

EU has **aimed** to develop a **single market** by means of a **standardised system of laws** which apply to all member states and which are designed to provide **freedom of movement** of goods, services, people and capital.

Important institutions of the EU include:

- European Commission
- European Court of Justice
- European Parliament



KEY KNOWLEDGE

World Trade Organisation (WTO)

Replacing the General Agreement on Tariffs and Trade set up in 1947, WTO was **established** by the **Marrakesh Agreement** in 1995.

With its headquarters in Geneva, WTO currently has **153 members** representing in excess of **95%** of world trade.

The WTO is **designed to supervise and liberalise international trade** between participating countries by providing a framework for both the negotiation and formalisation of international trade agreements, as well as a dispute resolution process designed to enforce adherence to WTO agreements.

Co-operating closely with the IMF and the World Bank, the WTO also does much important work in providing technical assistance to developing countries.



KEY KNOWLEDGE

International Chamber of Commerce (ICC)

Based in Paris, the ICC was **established in 1919** to “serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital.”

With representation in **130 countries** worldwide, the ICC has interests covering the vast majority of private sector enterprises and frequently **provides expert views** to organisations such as the UN and WTO as well as individual national governments.

Amongst its most significant work has been the establishment of the ICC **International Court of Arbitration** in 1923 and the development of 'incoterms'.

Incoterms (international contract terms) are standard terms widely used in contracts for international sale of goods and have often been the source of knowledge based **questions in their own right**.



KEY KNOWLEDGE The United Nations (UN)

Begun in 1945 after the Second World War, currently **almost every independent country** in the world **is a member** of the UN. Under its charter the **main objectives** of the UN are facilitating co-operation in:

- International law
- International security
- Economic and social development
- Promotion of human rights and the maintenance of world peace

In relation to legal matters, important bodies of the UN should be seen as:

1. International Court of Justice
2. International Law Commission
3. UN Commission on International Trade Law (UNCITRAL)



KEY KNOWLEDGE UN Commission on International Trade Law (UNCITRAL)

Formed in 1966 in order to "to promote the progressive harmonisation and unification of international trade law".

Representatives of 60 member states are elected to the Commission for a period of 6 years. Elections are made by the UN General Assembly with the intention that the Commission should be representative of the world's different regions and economic and legal systems.

Important outcomes of the Commission's work so far as our studies are concerned have been the production of various Conventions and Model Laws.

Conventions include:

- Convention on Contracts for the International Sale of Goods
- Convention on the Carriage of Goods by Sea
- Convention on International Bills of Exchange and International Promissory Notes

Model Laws include:

- Model Law on International Commercial Arbitration
- Model Law on International Credit Transfers
- Model Law on Cross-border Insolvency



KEY KNOWLEDGE The Council of Europe (CoE)

Perhaps one of the most important things to note from an exam point of view, is that the CoE should **NOT** be confused with the EU.

Based in **Strasbourg** CoE was founded in **1949** and now covers most of the European continent, with **47 member states**.

The stated **objectives** of the CoE are "... to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values, human rights, democracy and the rule of law".

The CoE issues **Conventions** which are **legally binding** once adopted by member states and also publishes **recommendations** which act as **guidelines** for use by member states in the development of their own national laws.



KEY KNOWLEDGE International Institute for the Unification of Private Law (UNIDROIT)

Based in **Rome**, UNIDROIT was established in **1926** and currently has **63 member states** drawn from all parts of the world and representing a variety of political, economic and legal systems.

UNIDROIT is an **independent intergovernmental organisation** whose stated purpose is "to study needs and methods for modernising, harmonising and co-ordinating private and in particular commercial law as between States and groups of States".

Traditionally, UNIDROIT has tended to concentrate on production of conventions, but more recently has shown a preference for production of:

- General principles
- Legal guidance
- Model Laws



KEY KNOWLEDGE

Others

In your studies some consideration should also be given to the following:

- **ICJ** – International Court of Justice
- **OECD** – Organisation for Economic Co-operation and Development
- **ICA** – International Court of Arbitration

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- Less formalised
- Greater variety of outcomes possible



KEY KNOWLEDGE

UNCITRAL Model Law on International Commercial Arbitration

As you have probably realised only too well by now, F4 is a paper which requires you to do a great deal of **hard slog learning**. After all the law is the law and you either know what it says or you don't. Spending **time** with your more **detailed study materials** is therefore **essential** if you are **to be successful** in this subject.

Key points to note in your studies are:

- Parties may basically agree whatever they wish in relation to an arbitration agreement, but in the **absence of agreement** the **Model Law will apply**
- Whether **arbitration** is **international** is related to where parties **places of business** are **located** or **where obligations** of contract are carried out
- **Arbitration** is **commercial** in effect if it relates to any normal legal trading activity
- Generally speaking Model Law says that **courts** should **not be involved** in arbitration proceedings
- Arbitration **agreement** is required to be **in writing** (3 possibilities)
- Under Model Law will be **3 arbitrators** (1 appointed by each party with these 2 then appointing 3rd)
- Model law lays down grounds and procedure for **challenging an arbitrator** basically on grounds of **lack of independence and/or qualification**
- Model Law provides various **general rules** in relation to the **conduct of arbitral proceedings** specifically in relation to location, timing, language and use of experts and court assistance
- Finally the Model Law gives direction on **award enforcement** and grounds for seeking **recourse against** such **award** eg. incorrect composition of tribunal

You should note carefully that the Convention on CISG only applies to the sale of goods (subject to certain exemptions) and **does not apply to:**

1. Supply of services
2. Contracts where **buyer provides majority of materials** so that in essence the **main obligation of the seller** is the **provision of labour**

A CISG is **formed** when there is **proper acceptance** of a **valid offer**. An offer should **not be confused with** an **invitation to treat**, which is any other proposal which does not meet the requirements of a valid offer as indicated below.



KEY KNOWLEDGE

Offer

“An offer is a proposal for concluding a contract addressed to one or more **specific persons** that is **sufficiently definite** and that indicates the intention of the offeror to be bound by acceptance.”

In this context, **sufficiently definite means** that it covers the following:

- Goods
- Quantity
- Price

Offer, which does **not need to be in writing** becomes **effective** when it **reaches** the **offeree** and may be **ended** in the following ways

- Withdrawal
- Revocation
- Rejection



KEY KNOWLEDGE

Acceptance

Acceptance may be **indicated** by **word or action** and becomes effective once the offeror becomes aware of it. **Acceptance** may be **withdrawn** but **only** if it **reaches** the **offeror before** or **at the same time** as the **acceptance** would **otherwise** have been **effective**.

If **offeree** makes any **amendments** to offer then this is a **counter-offer**.

Minor amendments can be effectively acceptance subject to the offeror's right to reject within a reasonable time.

Major amendments constitute a counter-offer which is effectively rejection of the original offer.



KEY KNOWLEDGE

Incoterms

As referred to in an earlier section, incoterms are standard contract terms developed by the ICC. The examiner has frequently set questions where you have simply been asked to briefly explain the significance of 2 or 3 incoterms.

The examiner has simply given an acronym, so you start the mark earning process by simply indicating correctly what the letters stand for. It is vital therefore that you learn the following and are able to briefly describe the meaning of each of them.

- **EXW** = ex works
- **FCA** = free carrier (named place)
- **FAS** = free alongside ship
- **FOB** = free on board
- **CFR** = cost and freight
- **CIF** = cost, insurance and freight
- **CPT** = carriage paid to
- **CIP** = carriage and insurance paid to
- **DAF** = delivered at frontier
- **DES** = delivered ex ship (named port of destination)
- **DEQ** = delivered ex quay (duty paid)
- **DDU** = delivery duty unpaid
- **DDP** = delivered duty paid