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# ACCA LW | Express Notes

Corporate & Business Law (GLO)

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**Steve Crossman**  
CEO The ExP Group

# Hello

Thank you for downloading a copy of these ExPress notes and I hope you find them useful for your studies.

We provide these ExPress notes free of charge to individual students as part of our CSR initiatives. The notes are designed to help students assimilate and understand the most important areas for the exam as quickly as possible.

A word of warning though in that they have not been designed to cover everything in the syllabus so you should only use these notes for either an overview of the key areas before you start your main studies or as part of your final revision in the run up to your exams.

Importantly though, we want you to be successful in your exams so good luck with your studies and please do let us know how you get on.

All the best,

Steve

## About The ExP Group

We were born with one passion, with one aim, with one desire. To use technology the way it should be used. To use technology to open up education, and in particular financial education, to whoever needs it regardless of their income, wealth, race, sex, religion or location.

We wanted to use technology to empower individuals to develop themselves through financial expertise, organisations to improve their performance through enhanced human capital and ultimately communities and families to benefit as a result.

We're on target and since our birth we have had the privilege of working with and learning from inspirational individuals and organisations from all 4 corners of the world in countries as varied as the UK in the north, Singapore in the east, South Africa in the south and the Cayman Islands in the west.

We're only part way through our journey but we're doing better than we expected. The best is yet to come though,

Education + Technology = Ethical Empowerment.

Thank you for being part of our story.

## 01

# Different Legal Systems

## The Big Picture

The three main systems which you need to be aware of are:

1. **Common Law** e.g. UK
2. **Civil Law** e.g. France
3. **Sharia Law** e.g. Iran

## Key Knowledge - CRIMINAL LAW V CIVIL LAW

Using UK law as an illustration, 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 to apply the law and where interpretation is required this must be in accordance with strict and fairly complex Islamic traditions.

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# 02

## International Organisations

### The Big Picture

Questions in this area tend to be purely of the knowledge type. You are usually asked to explain the role and activities of two or three organisations which are usually just indicated by an acronym e.g. UN stands for United Nations.

### Key Knowledge - The European Union (EU)

The EU as we now know it was established by the Treaty of Maastricht in 1993, continuing on from the previous European Economic Community first established by the Treaty of Rome in 1957.

The EU is an economic and political union.

It 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 coordinating 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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## 03

# International Commercial Arbitration

## The Big Picture

Whilst not necessarily prompting a question in every examination sitting, as one of the areas where there is an UNCITRAL Model Law, it is a topic which has and can be expected to be examined on a regular basis.

What is arbitration?

Put simply, it is an alternative form of resolving disputes where an independent party provides a ruling which will be legally binding upon those parties who have agreed to submit to the arbitration process.

Why go to arbitration rather than the courts?

Amongst the advantages frequently claimed for the arbitration approach to dispute resolution are:

- May be cheaper
- May be faster
- Less adversarial
- 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, the LW GLO paper 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 3<sup>rd</sup>)
- 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 e.g. incorrect composition of tribunal

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## 04

# Contracts for International Sale of Goods

## The Big Picture

The UN Convention on Contracts for International Sale of Goods (CISG) and related topics such as transportation (including incoterms) and payment in relation to such contracts are an **absolutely vital part of your studies**.

There has always tended to be questions drawn from this part of the syllabus in the exams and you should anticipate this trend continuing.

You must learn and be prepared to give definitions of key terms. In relation to CISG you must also learn and be prepared to apply your knowledge of the rights and obligations of both buyers and sellers.

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.

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