

Examiner's report

F4 Corporate and Business Law (MLA)
December 2011



General Comments

The examination paper consisted of ten compulsory questions, all of which had 10 marks each. There were a small number of candidates who did not attempt all the questions. In some cases candidates left one or a part of one question out while there were some others who left more than one question out. This does not appear to have been due to time pressure but due to lack of knowledge of the subject-matter posed in the relative questions. From the answers given the majority of candidates allocated the same amount of time to answering each question as in the majority of cases appropriate detail was given and the length of the answers given were commensurate to the mark allocation of each part of the question.

While with respect to most questions, one concludes from the answers given that candidates did read the questions and identify the requirements of each part of the question given, with respect to particular questions, namely questions 3 and 9(b), candidates could have given more direct answers.

The report will begin with some general brief comments on the overall performance of candidates in this session before going on to look at the questions in the paper in detail. One notes that both positive and negative aspects of performance are given so as to enable candidates to learn from past performers and performance.

In this session there were some high performers while in the majority candidates obtained average marks close to the pass mark. As stated in previous sessions, this is evidence that with a little more effort better marks can be achieved. The principal reason for the under performance of candidates is lack of adequate preparation for the examination with many answers not having sufficient detail to be afforded higher marks.

Some general indications of good practice to follow:

- candidates must be well prepared for the exam - on all topics and not on what they consider the 'most important';
- candidates need to manage their time effectively;
- candidates must read carefully and understand the requirements of each question;
- keep in mind that the marks that the examiner allocates to each part of the question is indicative of the detail which candidates are required to go into;
- provide concise and complete answers;
- candidates should indicate the question number in the paper on each page of the respective reply;
- start each question on a new page;
- general essay answer format should not be used for problem questions as these will contain little information relating to the specific issues raised in the problem question.



Specific Comments

Question One

The question dealt with fundamental human rights and freedoms, with the first part referring to the European Convention Act adopted by Malta and the other part requested candidates to list four human rights and freedoms. Only one or two candidates did not attempt one of the parts of the question. The great majority of candidates gave satisfactory answers. More marks could have been earned had more attention been given to the word 'impact' in the first part of the question whereby candidates were invited to demonstrate the effect which the Act had on the current human right protection afforded locally under Maltese law.

Question Two

This question dealt with the doctrine of privity. Third parties, that are all those persons who are not parties to a contract, either personally or indirectly through an authorised representative, are not bound by it. The principle described above does however suffer certain limitations both with regards to promises of the performance of an obligation by a third party and to stipulations for the benefit of a third party and these exceptions are provided for in the law.

Most candidates attempted this question and gave satisfactory answers. Some candidates made particular reference to the specific legal provisions which explain the concept of the privity of contract and the exceptions made thereto and scored more marks.

Question Three

The question dealt with contract law and in particular the distinction between contracts and quasi-contracts, torts and quasi-torts. A quasi-contract is defined under article 1012 of the Civil Code which provides that a quasi-contract is a lawful and voluntary act which creates an obligation towards a third party or a reciprocal obligation between the parties. There are two types of quasi-contracts, namely negotiorum gestio and indebiti solutio. A tort and quasi-tort is an unlawful and unjust act, whether positive or negative, whether due to dolus or culpa, which causes damage to the person or to the property of another person.

This question was answered to in a satisfactory manner by the majority of candidates who made reference and gave adequate explanation of the different types of contracts, quasi-contracts, torts and quasi-torts.

Question Four

This question dealt with company law where candidates had to explain and distinguish between private limited liability companies and private exempt limited liability companies. Within the body of the Companies Act, it is provided that a private company is one which, besides fulfilling the requirements of the said law for it to hold the status of a private company, the company must also, by its memorandum or articles restrict the right to transfer shares; limit the number of its members to 50; and prohibit any invitation to the public to subscribe for any shares or debentures in the company. For a company to have a private exempt status, besides complying with the three restrictions mentioned above, it must also include within its memorandum or articles other conditions which can be split into 4, namely, that the number of persons holding its debentures is not more than 50; that no body corporate is the holder of or has any interest in any shares or debentures of the company; that no body corporate is a director of the company; and that neither the company nor any of its directors is party or privy to



an arrangement whereby the policy of the company is capable of being determined by persons, other than the directors, members or debenture holders thereof.

While all candidates attempted this question, many candidates did not make specific reference to the conditions laid down in the Companies Act, 1995 which allow a company to be private exempt companies as opposed to private companies.

Question Five

This question was a one part question dealing with the civil law institute of mandate. The relationship between principal and agent are mainly regulated under Maltese law in virtue of the provisions found in the Civil Code on mandate. Mandate is a contract whereby a person gives to another the power to do something for him. This question seeks to test the candidates' understanding of the institute of mandate by requesting candidates to explain the rights and duties of the parties to a mandate relationship.

Most answers given in respect of the question were satisfactory with the majority of candidates explaining and discussing the various rights and obligations of the parties to a contract of mandate.

Question Six

The question referred to provisions of the Companies Act and was divided into two parts. The first part of the question referred to the role of the shadow director. This part was answered by nearly all candidates and most were able to explain this figurehead in a company and under local law. It is to be noted that the law does not provide for a definition of a shadow director but only extends liability for certain offences to such persons in accordance with whose directions or instructions the directors are accustomed to act.

The second part of the question referred to the auditor and the manner in which an auditor may be removed in terms of local law. An auditor may be removed from office at any time by means of a resolution taken at the general meeting consented to by more than fifty per cent of the issued shares having voting rights. Once again, this part of the question was attempted by most candidates and answers were satisfactory.

Question Seven

This question dealt with the pledging of shares in a company and the procedure which must be followed in order for one to pledge their shares. A form of security which a shareholder may give to a creditor is a pledge over shares which they are a subscriber of. Shares may, unless otherwise provided in the memorandum or articles of the company or under the conditions of issue of those shares, be pledged by their holder in favour of any person as security for any obligation. The pledge of shares must be done by means of an instrument in writing entered into between the pledgor and the pledgee.

All candidates answered this question and the vast majority gave detailed answers.

Question Eight

This question was divided into two parts, both dealing with employment law and the termination of employment due to redundancy. Contracts of employment for an indefinite period may be terminated on grounds of redundancy provided that the notice stipulated at law is given by the employer to the employees whose employment is being so terminated. The first part of the question dealt specifically with whether the



management of the company in question could terminate the employment of employees on the ground of redundancy. Therefore candidates were expected to explain what constitutes redundancy under local law. Answers to this part of the question were reasonable.

The second part of the question dealt with the notion of collective redundancies. Here candidates had to make reference to the provisions of the Collective Redundancies (Protection of Employment) Regulations, 2002 (L.N. 428 of 2002). The purpose of these regulations is to regulate the protection of the employment of employees in the case of collective redundancies. “Collective redundancy” means the termination of the employment by an employer on grounds of redundancy, over a period of 30 days, of: (a) 10 or more employees in establishments normally employing between 20 and 100 employees; (b) 10% or more of the number of employees in establishments between 100 and 300 employees; or (c) 30 employees or more in establishments employing more than 300 employees.

Answers to this part of the question were not as detailed as the answers to the first part of the question.

Question Nine

This question dealt with a company facing financial difficulties. It is divided into two parts with the first part referring to the liquidation of a company. In the same way in which a company is registered and can commence to trade and undertake the activities for which it was registered, a company shall continue to exist until struck off the Register of Companies. Liquidation proceedings normally lead to such striking off, which proceedings can be brought into motion by various modes.

In terms of article 214 Companies Act, a company shall be dissolved and consequently wound up either if (a) the company has by extraordinary resolution resolved that the company be dissolved and consequently wound up by the court; or if (b) the company has by extraordinary resolution resolved that the company be dissolved and consequently wound up voluntarily.

The second part of the question referred to the responsibility of directors of such a company. Many candidates however did not make specific reference to such responsibility and to the liability which the directors may be shouldered with. In the event that the shareholders choose not to place the company into liquidation and the company continues to trade despite its precarious financial situation, creditors may commence action to place the company into involuntary liquidation. Furthermore, action may be taken by the creditors against the management for continuing to operate and incur further losses despite the fact that the company is unable to pay its debts. Offences under the Companies Act, such as fraudulent and wrongful trading, also give rise to situations where the offenders are held personally and unlimitedly responsible for their acts.

Question Ten

This last question was a one part question which dealt with contract law and the vitiation of a valid contract. One of the internal requisites which must be present for a contract to be deemed valid, is consent. The consent of the parties entering into a contract is of essence, without which a contract cannot be said to be concluded validly. Consent is said to be manifested in four modes, namely by an internal and an external act, by the identity of the acts of volition of the parties and in the concurrence of these acts of volition. The defects of an act of volition, whether with reference to a contract or to any other voluntary act, are error, fraud and violence.



Candidates were expected to discuss these defects in order to determine whether the contract suffered any such defects. The question was attempted by all candidates and most answers given were detailed and satisfactory.