



Examiner's report

F4 (CYP) Corporate & Business Law

For Paper Variant exams December 2016

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the December 2016 examination. It identifies strengths and weaknesses demonstrated by candidates, and also highlights best practices that those presenting themselves for the examination in the future should consider in order to maximise their prospects of success.

The format of the December 2016 examination was as follows: candidates were required to answer 45 questions, worth 1 or 2 marks each (Section A), and 5 further questions worth 6 marks each (Section B). The examination lasted for 2 hours and all questions were compulsory. Questions in Section A were objective in that the correct answers had to be selected in order to earn marks. Questions in Section B required candidates to provide short written explanations. The overall standard of scripts was sound, suggesting that the vast majority of candidates had prepared well for the examination.

Candidates should attempt all questions. While it is recognised that not all individuals may be fully prepared to deal with every question, it should be possible to make a reasonable attempt at every requirement. As mentioned below in the context of Section A, distractors can often be eliminated by a process of deduction.

Syllabus topics on which candidates performed very well included employment law and formation of contract.

There was no evidence to suggest that the examination was time pressured, given that the vast majority of candidates attempted all questions in both Section A and Section B.

Comments on Section A performance

Most candidates attempted all questions in Section A. It is emphasised that even if a candidate is not certain of the correct answer, by reading and considering the choices provided carefully it is often possible to eliminate some of them, enabling an informed decision to be made. There is no good reason for leaving questions unanswered in an examination of this type, as in some cases this may be the difference between success and failure.

One question with which candidates experienced difficulties is discussed below:

Mr A booked a holiday for himself and his family. When the tour operator failed to perform as contracted, Mr A was awarded damages for his mental distress in that he and his family did not receive what he had paid for.

What principle is this an application of?

- A Privity of contract
- B Adequacy of consideration
- C Recovery of the consumer surplus
- D Remoteness of damage

(2 marks)

The correct answer is C.

The scenario focuses on the rules relating to award of damages in case of breach of contract. There is no issue about formation of the contract between Mr A and the tour operator, thus B is ruled out.

Mr A was apparently awarded damages for his loss, and therefore there is also no issue of application of the rule on remoteness of damage, on the basis of which Mr A would not recover for such losses which were not reasonably foreseeable at the time of booking the holiday. Thus D is also ruled out.

The general rule of the doctrine of privity is that a contract can only be enforced by and is only enforceable against the parties to that contract. Thus the doctrine of privity consists of two distinct general rules. The first rule is that a third party cannot be subjected to a burden by a contract to which he or she is not a party. The second rule is that a person who is not a party to a contract cannot sue upon the contract in order to obtain the promised performance. Neither of these rules are applicable here, given that the contract was made between Mr A and the tour operator, and damages were awarded to Mr A after breach of contract by the tour operator. In other words, Mr A obtained damages for his own loss. Thus A is ruled out.

The correct answer is C. Mr A was awarded damages for his own loss, which was the mental distress he suffered because he and his family did not receive what he had paid for. In cases where the object of the contract is to provide an amenity or satisfaction, damages for breach of it may include compensation for disappointment or consumer surplus.

Only a few candidates selected the correct answer.

Comments on **Section B performance**

Section B comprised five questions worth six marks each. It is vitally important that candidates read the questions carefully. Many candidates answered questions by writing narrative answers that were of no benefit. For example, some candidates answered these questions by reiterating general information on the subject matter of the question, without attempting to respond to the specific question asked.

For example, Question 1 required candidates to apply the rules relating to the content of a contracts and in particular on the distinction between terms and representations. It involved a scenario in which the buyer of a car had asked the dealer for a “well vetted car”. The dealer sold him a car which had done 100,000 kilometres, but told him that it had only done 20,000 kilometres. Given that (i) the dealer was in a better position to know the truth of the mileage of the car, (ii) the statement was apparently made in order to induce the buyer to purchase the car, and (iii) the buyer apparently relied on the statement given that he was expressly looking for a “well vetted” car, candidates should have been able to apply their knowledge of the law of contract to conclude that the statement of the mileage would be deemed to be a term of the contract concluded between the dealer and the buyer and that the buyer could therefore sue the dealer for breach of contract, given that the statement was apparently false. In the second part of the question, candidates were expected to apply their knowledge of remedies for breach of contract and to conclude that the buyer would be entitled to recover damages. Better-prepared candidates here were able to explain that the amount of damages could be calculated either on the basis of expectation loss or reliance loss.

Conclusions

The F4 paper is broad-based, requiring a relatively fundamental knowledge of many theories, concepts and practical applications.

The performance of candidates at the December 2016 session was satisfactory in both Sections A and B.

Candidates should attempt all questions and a reasonable attempt at every requirement should be possible for all candidates. As mentioned above, distractors can often be eliminated by a process of deduction.



As the paper now includes longer requirements, with five questions worth six marks each, it is vitally important that candidates read the questions carefully.