

Examiner's report

F4 (CYP) Corporate & Business Law

June 2015

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the June 2015 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 June 2015 examination followed the new format which was introduced in December 2014 through which candidates were asked to answer 45 questions, worth 1 or 2 marks each (Section A), and 5 further questions worth 6 marks each (Section B) in 2 hours. 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 explain their answers in writing. The overall standard of scripts was reasonable, suggesting that the vast majority of candidates had prepared well for the examination.

Candidates should attempt all questions. While it is recognised that few individuals will be fully prepared to deal with every question, it should be possible to make a reasonable attempt at every requirement. As mentioned in Section A below, distractors can often be eliminated by a process of deduction.

Syllabus topics on which candidates performed very well included court structure, formation of contract, breach of contract, formation of a company, capital maintenance and dividend law and insolvency law.

Syllabus topics on which candidates performed inadequately included sources of law, contents of contracts and fraudulent behaviour.

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.

There was no evidence that there were any questions which had been so worded that candidates failed to understand what they were required to do.

Section A

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.

Question 14

Which of the following elements are important in determining whether a relationship of agency may be implied?

- (1) Usual business practice

- (2) Pre-existing relationship between the parties
- (3) Written or oral evidence

- A (1) only
- B (1) and (2) only
- C (2) and (3) only
- D (1), (2) and (3)

The correct answer is D.

The usual business practice is an element which is important in determining whether a relationship of agency may be implied. Section 147 Contract Law Cap. 149 provides that “*the ordinary course of dealing*” may be part of the accounted circumstances of a case from which implied authority may be inferred. Therefore, given that statement (1) above is true, option C cannot be the right answer.

The pre-existing relationship between the parties is another element which is important in determining whether a relationship of agency may be implied, given that the particular pre-existing relationship between the parties might imply that the principal has given authority to the agent to enter into contracts with third parties. The type and extent of this authority will depend on the type of relationship. For example, whether an employee has the authority to enter into contracts on behalf of their employer may depend upon the position that the employee holds. The managing director could for example be expected to have such authority on behalf of their employer. Therefore, given that statement (2) above is also true, option A cannot be the right answer.

Written or oral evidence is another important element in determining whether a relationship of agency may be implied, given that such evidence may provide proof of the understanding between principal and agent. In fact, s. 147 Contract Law Cap. 149 expressly provides that “*things spoken or written*” may also be accounted circumstances from which implied authority may be inferred. Therefore, given that statement (3) above is also true, options A and B cannot be the right answer.

Hence, option D is the right answer.

In fact, reference to the relevant provisions of the Contract Law Cap. 149 could automatically lead a candidate to choosing option D as the right answer.

This question was answered unsatisfactorily by candidates.

Section B

Section B comprised five questions worth six marks each. It is vitally important that candidates read the questions carefully. Too 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 asked candidates to explain whether Ben was in breach of a duty of care in relation to Amy and to explain whether Amy’s pre-existing medical condition would affect any liability

on Ben's part. Candidates should consider the importance of all facts presented in the problem-scenarios. For example, the fact that Ben was a novice driver was rarely commented upon by candidates although this was intended to trigger a brief explanation as to whether this could affect his duty or reduce the standard of care. Similarly, part (b) of the question aimed at the application of the "thin skull" or "egg-shell skull" rule which provides that as long as the initial injury which triggers off Amy's pre-existing physical condition was reasonably foreseeable, then Ben's liability would not be affected.

Another example is question 5, which expressly focused on insider dealing. Therefore any attempt to discuss other potential criminal or culpable behaviour on behalf of George was irrelevant. Part (b) required candidates to state one defence that may be available to George. Hence any incomplete reference to more than one defence would be insufficient to gain full marks.

Conclusion

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

The performance of candidates at the June 2015 session was reasonable in that the majority of those who attempted the paper were able to make creditable attempts at most of the questions.

Candidates should attempt all the questions. While it is recognised that few individuals will be fully prepared to deal with every question, it should be possible to make a reasonable attempt at every requirement. As mentioned above, distractors can often be eliminated by a process of deduction.

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