

Examiner's report

F4 (CYP) Corporate and Business Law

For Paper Variant exams June 2016

General Comments

The purpose of this report is to provide feedback on the performance of candidates in the June 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 June 2016 examination was the following: 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 satisfactory 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 in Section A below, distractors can often be eliminated by a process of deduction.

Syllabus topics on which candidates performed very well included formation of contract, law of torts and company directors.

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.

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.

Which of the following is a consequence of the doctrine of privity to non-parties to the contract?

- (1) They cannot obtain a benefit from the contract
 - (2) They cannot enforce the contract
 - (3) They cannot be forced to abide by the contract
- A (3) only
B (1) and (2) only
C (2) and (3) only
D (1), (2) and (3) only

(2 marks)

The correct answer is C.

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. Thus (3) is true, and this rules out B.

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. Thus (2) is true, and this rules out A.

However, the doctrine of privity does not forbid a third party from obtaining a benefit under the contract, even if he or she cannot enforce the contract in order to obtain such benefit. Therefore (1) is false, and this rules out B and D.

Therefore the correct answer is C.

Only a minority of candidates selected the correct answer.

Section B

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 2 required candidates to apply the rules relating to formation of a contract before incorporation of a company (part (a)), as well as the principle relating to the creation of a separate legal personality upon incorporation of a company (part (b)). Given that (i) Clay was one of the founders of the company, and thus one of the persons who signed its memorandum of association, and (ii) that the agreement was signed on behalf of the company to be registered, pursuant to section 15A of the Companies Law Cap. 113 the said agreement is temporary and not binding on the company until the date of its incorporation. However, after its incorporation, the agreement becomes binding on the company. As far as personal liability of Clay is concerned, it is noted that Clay has no liability for the debts or obligations of the company, which becomes a distinct legal entity upon its incorporation, and there is no question of lifting of the veil of incorporation by virtue of reduction of the private company's members to six.

Question 4 required candidates to apply the rules relating to the removal of directors. Section 178 Companies Law Cap. 113 provides that the company may, by ordinary resolution, remove a director from office, irrespective of any provision to the contrary in the company's articles of association or any agreement with the director. Therefore neither the special provision in the articles, nor the fixed term contract with Mary creates an obstacle to her removal, so that a simple majority vote (ordinary resolution) at general meeting would suffice. Most candidates were not able to respond correctly to this question. As far as part (b) is concerned, it is noted that Mary's rights include (i) right to receive special notice, (ii) right to be heard at the meeting, (iii) right to make representations to the company, (iv) right to claim compensation or damages in case of early termination / breach of contract.

Summary

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 2016 session was unsatisfactory particularly in relation to Section 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.