



# Examiner's report

## F4 (CYP) Corporate & Business Law

### For Paper Variant exams June 2017

#### General Comments

The purpose of this report is to provide feedback on the performance of candidates in the June 2017 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 2017 examination was as follows: 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 provide short written explanations. The overall standard of scripts was good, 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 partnerships, share capital, loan capital, 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.

#### 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.

Which of the following statements is FALSE in relation to intention to create legal relations?

- A The person who alleges that there is an intention to create legal relations must prove that on the balance of probabilities.
- B In domestic arrangements, there is a rebuttable presumption that there is no intention to create legal relations.
- C The person who alleges that a presumption has been rebutted must prove this beyond reasonable doubt.
- D In commercial agreements, there is a rebuttable presumption that there is an intention to create legal relations.

Intention to create legal relations is one of the elements of a valid contract and therefore the party claiming that there is a legally binding contract must prove that all its essential elements exist. The applicable standard of proof is the civil standard of proof i.e. proof on the balance of probabilities. Therefore A is TRUE. Some agreements are not intended to be legally enforceable contracts, because their nature is such that a reasonable person viewing the words and conduct of the parties objectively would not conclude that the parties intended to create legal relations. In domestic arrangements (i.e. between members of a family) there is a rebuttable presumption that there is no intention that the agreement is to be legally binding upon the parties. Therefore B is TRUE. The opposite presumption exists in ordinary commercial dealings, where there is a strong presumption that the parties intended it to be legally binding. Although the courts are generally reluctant to rebut this presumption, this is still only a presumption and may be rebutted where for example a contrary intention is clearly expressed in the agreement itself. Therefore D is also TRUE. As already explained, all presumptions may be rebutted. For example, where a person alleges that an agreement is a binding contract despite its domestic or social context, they must prove that there was an intention to create legal relations and so must rebut the presumption of the court that there was no intention that the agreement was to be legally binding upon the parties. The standard of proof is that generally applicable in civil cases i.e. on the balance of probabilities and not the one generally applicable in criminal cases i.e. beyond reasonable doubt. Therefore C is FALSE and is thus the correct answer to the question.

### **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. This particularly applied to Question 5 which required candidates to apply the principles relating to insider dealing.

One of the questions in Section B that candidates surprisingly experienced difficulty with was Question 1, which required candidates to apply the rules relating to the “neighbour principle” as originally enunciated in the landmark case of *Donoghue v. Stevenson* (HL, 1932). The facts clearly resembled those of the aforesaid case, involving the purchase of beer by one party for consumption by another. Even though the consumer of the beer clearly had no contractual relationship with the restaurant, she could still have a right to claim against the restaurant as a consumer, on the basis of breach of its duty to take reasonable care to prevent injury by storing the beer so that it remained in a drinkable condition. In part (b) of the question, candidates were asked to assess the importance of the consumer’s pre-existing condition which was aggravated by consumption of the faulty beer. Such pre-existing condition relates to the foreseeability of the damage suffered by the consumer as a result of the restaurant’s acts (or omissions). Therefore if the consumer suffered a more serious injury as a result of the restaurant’s actions or omissions because she in fact suffered from a pre-existing condition, then that more serious injury will not be too remote a consequence of the restaurant’s actions or omissions, provided that it was some kind of injury was a reasonably foreseeable result of the restaurant’s actions or omissions. Many candidates correctly recognised this as the thin skull or eggshell skull rule.

### **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 2017 session was overall 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 includes longer requirements, with five questions worth six marks each, it is vitally important that candidates read the questions carefully.