

Examiner's report

F4 Corporate and Business Law (CYP) December 2012

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General Comments

The examination consisted of ten questions in total: seven questions testing candidates' knowledge of the law, and three problem-based questions which aimed to test candidates' ability to apply the law. All ten questions were compulsory.

Candidates are advised (i) to attempt all questions on the paper; (ii) to start each question on a new page; and (iii) to pay more attention to the exact wording of each question, focusing each answer to the particular issues involved. A general recitation of legal theory on the relevant topic without reference to the question asked should be avoided.

Specific Comments

Question One

This question was on the legal system of Cyprus. Parts (a) and (b) were generally answered in a satisfactory manner and most candidates managed to obtain a satisfactory mark on this question.

In relation to part (c) of the question, a common error was for candidates to confuse the European Court of Human Rights, which was established by the European Convention of Human Rights, with the Court of Justice of the European Union and hence note that decisions of the European Court of Human Rights were binding upon the Cypriot courts only after Cyprus' accession to the European Union.

In relation to part (a) of the question, many candidates described the jurisdiction of the Supreme Court of Cyprus. This was clearly beyond the scope of the question and accordingly no marks were awarded.

Moreover, in relation to part (a) of the question, it should be clarified that District Courts cannot *choose* whether to rely on Supreme Court decisions, but are rather bound to follow them, provided all material facts are the same.

Question Two

This was a question on the law on contracts, which required candidates to analyse the meaning, effect and application of (a) unilateral contracts, and (b) exclusion clauses.

It was satisfactory to see that most candidates were well aware of the existence and legal regulation of exclusion clauses, although they were generally less familiar with the concept of unilateral contracts. The famous case of *Carlill v. Carbolic Smoke Ball Company* (1893) is a typical example of the existence of a unilateral contract.

In relation to part (b) of the question, candidates were expected to provide a brief analysis of the various tests that an exclusion clause must pass in order to be valid, including the common law incorporation and interpretation tests, as well as the limitations provided for in the Unfair Contract Terms Law of 1996.

Question Three

This question related to the tort of negligence. Answers were generally not satisfactory although a few candidates managed to obtain high marks.

In order to establish an action in negligence, the claimant has to prove that (i) the defendant owed a duty of care to the claimant, (ii) the defendant was in breach of that duty, (iii) the defendant's breach caused the claimant's damage or loss, and (iv) such damage or loss was not too remote a consequence of the breach.

A number of defences are available in an action in negligence, including without limitation *novus actus interveniens*, act in accordance with the law, and voluntary assumption of risk. Details of the said defences are provided for in the model answers.

A common error was for candidates to note that a defence to an action in negligence would be for the defendant to show that no duty of care was owed to the claimant. However, the question of the existence of a duty of care is in fact an essential element in establishing an action in negligence. In other words, in case that the courts determine that no duty of care was owed to the claimant by the defendant, then the defendant would not need to rely on any defences as no cause of action would have been established.

Question Four

This question was on partnership law, which was generally well answered by most candidates.

In relation to part (a), it was satisfactory to note that most candidates were familiar with the distinction in liability between general and limited partners although they generally failed to consider new or retiring partners.

It is clarified that marking was generally lenient – for example full marks were awarded in part (b) for mentioning any five correct ways in which a partnership may be brought to an end, including expiration of a partnership as provided in the relevant partnership agreement or completion of its purpose.

Question Five

This question required candidates to describe and explain the procedure for registering a private limited liability company in Cyprus. This question was also generally well-answered by most candidates.

A common error was for candidates to note that the register of members and register of directors were documents required to be submitted to the Registrar of Companies for the purpose of incorporation of a new company. This is not correct. The corporate registers (including the register of members and register of directors and secretaries) must be kept at the company's registered office but these are not required to be submitted to the Registrar of Companies either upon incorporation of a company or at any other time.

Question Six

This was a question on the role and duties of company directors. Most candidates were able to give a thorough explanation of directors' duties towards the company (including their fiduciary duties, duty of care and statutory duties) although they generally paid less attention to the role of the board in the operation of a company.

A few candidates noted the distinction between executive and non-executive directors and their different roles in the operation of a company. Although such distinction was beyond the scope of the question, marks were awarded appropriately.

Question Seven

Question 7 was inadequately answered in general. Most candidates failed to take into account that the question had to be answered with reference to the Companies Law Cap. 113. Instead most candidates answered with reference to the specialised legislation on insider dealing and money laundering.

Another common error was for candidates to list various circumstances under which the courts may lift the corporate veil irrespective of whether such circumstances related to potential criminal activity in the operation, management or winding up of companies. For example, a few candidates mentioned that if at any time the number of members of a public company was reduced below seven and the company carried on business for more than six months while the number was so reduced, then every member of the company after those six months during which it so carried on business would be severally liable for the payment of the company's debts contracted during that time. Although this is a correct recitation of the relevant provisions of the Companies

Law, it is clearly not criminal activity in the operation, management or winding up of a company and hence irrelevant to the question asked.

Question Eight

This was the most well-answered question out of the three problem-based questions with most candidates exhibiting a thorough understanding of the basic elements of contract law, including the distinctions between an offer and an invitation to treat, an acceptance and a counter-offer.

Candidates should note that no issue of awarding specific performance arises in relation to the breach of the contract between Cleo and Mary since the breach is effected by Cleo who no longer wishes to buy Mary's car for the agreed price. Mary's remedy, if any, will therefore lie in an award of damages for any loss suffered as a result of Cleo's breach. However given Mary's duty to mitigate her loss, and the opportunity to accept Dennis' offer by which Mary will make a bigger profit, thus fully mitigating her loss, Mary will not have a claim for substantial damages against Cleo although she may have a claim for nominal damages for breach of contract.

Question Nine

This question related to the opportunities available to increase the company's share and/or loan capital, which raised interesting answers from candidates. For example, a few candidates suggested that the company should be converted from a private to a public company so as to enable the issue of an invitation to the public for the purpose of subscription of its shares or debentures. Other candidates suggested that even if the memorandum of association of Mandarin Ltd did not contain an express power to borrow money, such power could generally be implied in trading companies and hence Mandarin Ltd would be able to make a loan or otherwise raise its loan capital for the purpose of injecting capital into the company. These were fair points and were appropriately rewarded.

Question Ten

This problem-based question related to reduction of share capital and voluntary winding up. Capital unrepresented by available assets and amounts in excess of the wants of a company can be cancelled pursuant to the provisions of the Companies Law relating to the reduction of share capital. Moreover, given that the company's purpose has ceased to exist, the company may consider entering into a voluntary winding up.