Examiner's report

F4 Corporate and Business Law (CYP)
December 2013

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 and particularly the meaning and application of the common law and equity in Cyprus as well as the meaning of the doctrine of precedent within the context of the hierarchy of the courts of Cyprus.

Candidates were in general well familiar with these concepts and answers were overall satisfactory.

In part (c), a common error among candidates was to consider that the doctrine of precedent provides that the ratio decidendi of a decision delivered by the Supreme Court of Cyprus (i.e. the legal principle being applied by the court to the merits of the case in order to deliver its judgment) only has persuasive power and is up to the inferior courts whether to apply or follow such principles. This is not correct. The doctrine of precedent provides that inferior courts and the Supreme Court itself are bound to follow precedents of the Supreme Court (within prescribed limits).

Question Two

This was a question on the law of contracts, which required candidates (a) to define the doctrine of privity of contract; and (b) to explain and distinguish the presumptions relating to the intention to create legal relations and the ways such presumptions may be rebutted.

Part (a) was overall well answered by most candidates, who appeared to be generally aware of both limbs of the doctrine of privity. The doctrine of privity of contract provides that no person can sue or be sued under a contract unless they are a party to that contract, subject to certain exceptions. Some candidates were able to distinguish between the corresponding English law principles and in particular the relevant statutory provision, which enables third parties benefiting under a contract to which they are not party to sue under such contract – the aforesaid statutory provision does not apply in Cyprus.

Moreover, it is worth clarifying that the Cyprus Contract Law Cap. 149 provides expressly that "when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise". Therefore, there is apparently no requirement that "consideration has to move from the promisee".

As far as part (b) of the question is concerned, it was satisfactory to note that most candidates were well familiar with the presumption of no intention to create legal relations, which exists in domestic and social agreements, although a lot of candidates omitted reference to the presumption of an intention to create legal relations, which exists in commercial transactions. This is a heavy presumption which is not easily rebutted unless, for example, by an express term of the contract which clearly states that the parties do not intend to create legal relations.

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Question Three

This was a question in relation to employment law which required candidates to discuss dismissal of (a) a pregnant woman during her pregnancy; and (b) an employee who has breached the regulations of his or her work.

In relation to part (a), candidates were expected to note that a pregnant woman cannot be dismissed from employment during her pregnancy, provided however that she has properly informed the employer of her pregnancy. Despite the above general rule, the law exceptionally permits dismissal of a pregnant woman where (i) she was either guilty of a serious misdemeanour or conduct which justifies the breach of the employment relationship; or (ii) the relevant business has ceased to function; or (iii) the duration of her employment contract has expired.

In relation to part (b), a common error was to consider that an employee who has breached the regulations of his or her work may, automatically, be dismissed lawfully from employment. However, pursuant to the Termination of Employment Law of 1967, as amended, dismissal of an employee is permitted where, inter alia, the employee demonstrates improper behaviour during the course of his or her work, or seriously or repeatedly breaches the regulations of his or her work. Therefore, the circumstances under which an employee who has breached the regulations of his or her work will justify dismissal will depend on the degree and frequency of such breach. For example, even if a ten-minute late arrival on a single occasion may, strictly speaking, constitute a breach of the working regulations, presumably this will not, by itself, justify dismissal from employment.

Question Four

Question 4 required candidates to explain and distinguish between (i) limited companies and limited partnerships and (ii) private and public companies.

This question was generally answered in a satisfactory manner, with candidates demonstrating a clear understanding of this area of the law. Many candidates were able to spot various differences between the above business organisations and correct explanations or distinctions were awarded relevant marks, even if major differences were omitted.

Question Five

This was a question on the Companies Law Cap. 113, which required candidates to describe (a) the procedure for altering the objects clauses in a company's memorandum of association; and (b) the circumstances when separate legal personality may be ignored.

Answers were generally satisfactory with most candidates exhibiting sound understanding of the relevant legal principles involved in both parts of the question.

It should be noted that part (b) of this question required candidates to describe circumstances of lifting the veil of incorporation with reference to the Companies Law. Any correct reference was awarded one mark. It is clarified that reference to relevant sections of the Law is not a requirement for obtaining full marks.

Question Six

This was another question on the Companies Law Cap. 113, which in particular required candidates to describe when a company may proceed with (a) reduction of its share premium account and (b) issuing shares at a discount.

In relation to part (a), candidates should note that the provisions of the Law which relate to reduction of the share capital of a company also apply to the share premium account, and thus the three conditions prescribed by Law (i.e. (i) authorisation for the reduction in the company's articles of association; (ii) special resolution; and (iii) confirmation by the court) must be satisfied before the share premium account may be reduced.

It would be noted however that, having regard to the possibility of disposal of the share premium account for specific purposes without following the capital reduction procedure, relevant marks were credited to candidates who demonstrated awareness of the relevant principles.

Part (b) required candidates to list the relevant conditions set out in section 56 Companies Law Cap. 113, which relates to the issuing of shares at a discount.

Question Seven

Question 7 was generally well answered. Most candidates were familiar with the legal procedures existing under Cyprus legislation designed to prevent money laundering.

Such procedures include relevant client-identification, record-keeping in relation to clients' identity and transactions, internal reporting and internal control and communication procedures, as well as training and other measures for making employees aware of the relevant procedures and legislation and other policies and procedures that must be established to guard against money laundering.

Candidates were also expected to mention the establishment and investigative powers of the Unit for Combating Money Laundering (MOKAS), as the special unit for combating money laundering, as well as the relevant powers of the Cyprus courts to issue orders for disclosure of information.

Question Eight

This was a problem-based question which was generally inadequately answered, although the facts of the case closely resembled the facts of the well-known case of *Donoghue v. Stevenson* (1932).

A common error was for candidates to state that Andrew had no cause of action against the restaurant, whether in contract or in tort, on the basis that Andrew was not party to the contract for the purchase of the relevant beverage, which was concluded between the restaurant and Barbara. It should be clarified, however, that although the principle of privity of contract may be relevant as far as a claim against the restaurant for breach of contract is concerned, the said principle will not affect the restaurant's or the manufacturer's potential liability to Andrew in negligence or any other tortious liability.

This question aimed at testing candidates' knowledge and ability to apply the relevant principles governing the tort of negligence and in particular the existence/breach of a duty of care. A few candidates were able to state and apply the "neighbour principle" and/or the Caparo three-stage test, although other candidates based their answers on the "but for" test. However, the "but for" test is not particularly helpful in this case, as there appears to be no question about the causal link. In other words, the question whether Andrew would have gotten ill had he not consumed the contaminated orange juice does not appear to be in issue. The "but for" test is not appropriate for determining whether Andrew has any rights against the manufacturer and/or the restaurant, since the key issue in this case is whether there is a duty of care imposed on the manufacturer and/or the restaurant towards Andrew, as a consumer, and whether such duty was breached.

Finally, the non-transparency of the bottle may be seen as a more subtle point, as this related to the third limb of the three-stage test i.e. whether, under the circumstances, it would be fair, just and reasonable to impose a duty of care on the restaurant, for example, to "check" the contents of the bottle prior to serving; although the non-transparency of the bottle should not affect any duty for proper storage.

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Question Nine

This was another problem-based question, which involved application of the rules relating to the establishment of partnerships and relevant duties and liabilities of partners.

There were three issues that had to be addressed and in particular the potential liabilities of Eve for: (i) non-registration of the partnership with the Registrar and Official Receiver; (ii) the work done before she joined the partnership; and (iii) acquiring a personal benefit from the use of the property or business of the partnership without having obtained the remaining partners' approval.

Although most candidates exhibited a general understanding of this area of the law, and managed to identify the above three issues, answers generally lacked in detail.

A common mistake was to refer to s.191 Companies Law Cap. 113 and in particular to the directors' duties to disclose the nature of their interest in a proposed contract with the company at a meeting of the directors of the company. The relevant legislation applying to this question, however, is the Partnership Law Cap. 116, which provides that every partner has to account to the partnership for any benefit acquired, without the approval of the remaining partners, from any transaction which relates to the partnership, or from any use by them of the assets, name or business relations of the partnership.

Another common mistake was to mention that Eve had a personal liability for the partnership's debts incurred prior to her joining the partnership on the ground that the partnership was never registered. This statement is false on numerous grounds. First, Eve's personal liability for the partnership's debts follows from the nature of the partnership, the acts of which are nothing more and nothing less than acts of the partners themselves, who are liable for all debts and obligations of the partnership, provided these were incurred during the time they have been partners (unless otherwise agreed). Second, Eve will not be held liable for the partnership's liabilities which were incurred prior to the date of her admission, irrespective of the date of submission of the relevant claim, unless of course, she has agreed otherwise. Third, the failure to register the partnership, which is a statutory obligation, may give rise to criminal and other sanctions pursuant to the relevant provision of the Partnership Law Cap. 116, but does not affect the existence of the partnership, which in any event does not become a separate legal personality either before or after its registration.

Question Ten

This was another problem-based question, which mainly required candidates to apply the relevant winding up principles enunciated in the Companies Law Cap. 113.

There were again three issues that had to be addressed: (i) the possibility for Harry to apply for compulsory winding up of Flower Services Ltd on grounds of the latter's inability to pay its debts, in accordance with s.212 Companies Law. Cap. 113; (ii) the separate personality of Flower Services Ltd protecting Georgia from personal liability for the company's debts; and (iii) the possibility of carrying out the company's business with the intention to defraud its creditors, which is one of the grounds justifying lifting of the corporate veil and giving rise to potential personal liability of Georgia.

Most candidates noted the possibility for applying for compulsory winding up of Flower Services Ltd, after having been served with a relevant demand for payment of the due amounts and having neglected to pay such amounts for three weeks thereafter, and demonstrated sufficient knowledge of the relevant principles. However, the issues relating to Georgia's personal liability were not so well addressed.