

Examiner's report

F4 Corporate and Business Law (CYP)

June 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 was a question on the human rights protection granted in Cyprus under the Constitution of Cyprus and the European Convention of Human Rights.

Answers were generally satisfactory with most candidates obtaining satisfactory marks. It was satisfactory to observe that candidates were generally familiar with the human rights protection granted by the Constitution although perhaps less familiar with the functions of the European Convention of Human Rights.

Answers generally lacked in detail.

Question Two

This was a question on contract law which particularly required candidates to explain the meaning of "exclusion clauses" and to explain the legal treatment of such clauses.

This was perhaps the most inadequately answered out of the knowledge-based questions on this paper.

Exclusion clauses are generally clauses in contracts or terms in notices which aim to exclude or restrict liability or a legal duty which would, but for such clause or term, normally arise.

Candidates should realise that, although exclusion clauses may be useful tools for defining the obligations of the parties in arm's length transactions, they are sometimes used in standard form contracts which are imposed on the weaker party to the transaction and have the effect of taking away its rights.

As a result various types of controls have been developed, which are used to regulate the effect and application of exclusion clauses. Such controls include rules of incorporation, rules of construction, special rules of interpretation for negligence liability, and statutory controls.

Candidates were expected to briefly analyse the existence and content of all relevant controls, as briefly outlined above.

Question Three

This was a question on partnership and in particular the identification of the two types of partnership recognised by law and the requirements necessary for the existence and registration of a partnership.



Answers were generally satisfactory.

A common mistake in part (b) was to provide that the existence and filing of a partnership agreement was a prerequisite for the existence of a partnership. However, no partnership agreement is required to be submitted nor is it accepted by the office of the Registrar and Official Receiver. Moreover, although registration of a partnership does not result in the creation of a separate legal entity (akin to the registration of a limited liability company) and is not a prerequisite for the existence of a partnership, such registration with the office of the Registrar and Official Receiver within 30 days as from the establishment of a partnership is nevertheless a statutory obligation and relevant sanctions may be imposed in case of non-compliance.

Question Four

This question dealt with the distinctions between private and public companies.

It was satisfactory to note that most candidates were well conversant with the relevant distinctions and were able to provide clear responses.

A common mistake was for candidates to note that transfers of shares are prohibited in private companies. However, although a private company by its articles of association needs to restrict the right to transfer its shares (the method of which restriction is not imposed by law but may be determined by the company's articles of association), the transfer of shares is not prohibited.

Question Five

This question required candidates to explain the duties imposed on company directors.

Although candidates were generally familiar with the duties imposed on company directors, answers often lacked in detail.

Even though a number of relevant duties of company directors are listed in the model answers, such list is not exhaustive.

Although reference to case law was not a pre-requisite for obtaining full marks to this question, a thorough explanation of the main duties imposed on company directors was expected for achieving high or full marks to this question.

Question Six

This was an interesting question which was divided into three parts, and which required candidates to identify circumstances under which various types of resolutions would need to be passed.

Although candidates were generally familiar with ordinary and special resolutions which may be taken by the company in general meetings (or in writing signed by all shareholders), candidates often omitted to identify circumstances under which a decision of the board of directors is normally required under the model articles of association contained in Table A of the Companies Law Cap. 113. Such circumstances include the issue and allotment of shares, appointment of a new director in case of a reduction in the number of members of the board of directors and general day-to-day operations of the company.

Question Seven

This question related to the objectives and effect of corporate governance regulation in Cyprus.



A noteworthy clarification is that application of the Cyprus Corporate Governance Code has not been rendered compulsory, although public companies listed in the Cyprus Stock Exchange must abide by the “comply or explain” principle. In other words, public listed companies need to state explicitly in their annual reports whether they have incorporated the Code and to what extent. In case of non-compliance with certain provisions of the Code, an explanation has to be provided for such non-compliance.

Question Eight

This was the first problem-based question which raised interesting points pertaining to employment law.

Candidates were expected to firstly address the issue of whether Ben and Catherine were employees of Prime Software Ltd or whether they were engaged to provide their services as independent contractors. Such determination would then impact their respective rights as a result of their dismissal by Andy.

Given that Ben had fixed working hours and received a fixed annual remuneration, it was reasonable to assume on these facts that Ben was engaged as an employee, albeit on a part-time basis. On the contrary, Catherine’s flexible hours and provision for remuneration on the basis of time-spent in providing services to the relevant projects, reasonably suggested that Catherine’s engagement was based on a fixed-term contract for services, rather than a contract of service.

As a result, Ben would enjoy protection under the Termination of Employment Law 1967 as amended, which, inter alia, provides for a minimum notice period prior to termination as well as circumstances under which dismissal may be deemed unlawful. On the other hand, Catherine’s remedies for dismissal would be dependent on the contents of her relevant agreement with the company and she may be able to claim damages for breach of contract.

Question Nine

This was another problem-based question, which related to the distribution of certain amounts as interim dividends, as well as the possibility for reduction of share capital.

It was generally satisfactory to note that candidates were generally well familiar with both concepts of declaration of dividends, as well as the method prescribed by the Companies Law Cap. 113 for achieving reduction of share capital.

It is noted that capital in excess of a company’s needs is one of the reasons for which the Companies Law Cap. 113 permits reduction of capital, subject to satisfaction of the relevant conditions prescribed by law, including authorisation for the reduction in the company’s articles of association, special resolution passed by the company, and confirmation of the reduction by the relevant courts.

Question Ten

This was the final problem-based question which combined the effect and application of sections 15A and 33A of the Companies Law Cap. 113 in an interesting manner.

Pursuant to s. 15A Companies Law Cap. 113, any contract entered into before the incorporation of a company by persons who have signed its memorandum of association, on behalf of the company to be registered, is



temporary and does not bind the company until the date of its incorporation, after which the contract becomes binding on the company.

Pursuant to s. 33A Companies Law Cap. 113, the company is bound vis-a-vis third parties with respect to the acts or transactions of its officers, even though the said acts or transactions do not fall within the purposes of the company, unless either such acts or transactions were carried out in excess of the powers provided or permitted to be provided to the officers by law, or the third party knew (or could not under the circumstances have ignored) that such acts or transactions fell outside the company's objects.

Applying the above principles to the question, it appears that George Ideal Apartments Ltd will probably be bound by the contract entered into on its behalf by George, who appears to be its sole subscriber, even though such contract was entered into prior to its incorporation, unless it may be proved that the seller of the relevant plot of land knew, or could not have ignored, that the relevant transaction fell outside the company's articles of association. It is clarified that the publishing of the memorandum and articles of association does not, of itself, provide sufficient proof of such knowledge on behalf of the seller.