

Examiner's report

F4 Corporate and Business Law (CYP)

June 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 operation and jurisdiction of the Supreme Court. This question was generally answered in a satisfactory manner and most candidates managed to obtain a satisfactory mark.

In relation to the jurisdiction of the Supreme Court, candidates were expected to make reference to the following: (i) the Supreme Court's appellate jurisdiction in relation to civil and criminal matters; (ii) its revisional jurisdiction in connection with administrative or executive decisions, acts or omissions; (iii) its exclusive jurisdiction to issue the prerogative writs of Habeas Corpus, Mandamus, Certiorari, Quo Warranto and Prohibition; (iv) its original and appellate jurisdiction in admiralty cases; (v) its exclusive jurisdiction to hear and determine petitions concerning the interpretation and application of electoral laws; and finally (vi) its jurisdiction to examine the constitutionality of any law or any conflict of power or competence which arises between any organs or authorities of the Republic, and to hear and determine any recourse by the President of the Republic regarding the compatibility of any law enacted by the House of Representatives with the Constitution.

Question Two

This was a question on the law of torts, which required candidates to explain the meaning and characteristics of (a) the tort of passing off, and (b) the rule of remoteness of damage.

Part (a) was overall inadequately answered by most candidates, who appeared to be generally unaware of the tort of passing off. Passing off is defined in the Civil Actions Law Cap. 148 (s.35), which provides that any person who by imitating the name, description, sign, label of goods or otherwise causes or attempts to cause any goods to be mistaken for the goods of another person, so as to be likely to lead an ordinary purchaser to believe that he is purchasing the goods of such other person, commits a civil wrong against such other person. It is clarified that no person commits a civil wrong by reason only that he uses his own name in connection with the sale of any goods.

In relation to part (b), candidates appeared to be generally familiar with the rule of remoteness of damage, although a common error was to make reference to damages for breach of contract, rather than damages for loss suffered by a person as a result of another committing a tort of negligence. In relation to the law of torts, the innocent party's loss will be considered to be a remote consequence of the tortfeasor's actions if it was not reasonably foreseeable at the time that the tortfeasor committed their actions that their doing those actions would cause that person to suffer that particular loss or, at least, a loss similar in kind to the loss actually suffered.

Most candidates also appeared to be unfamiliar with the "think skull" rule, which is an exception to the foreseeability test and which provides that where a person has committed the tort of negligence in relation to



another and it was reasonably foreseeable that the other would suffer some kind of injury as a result of the actions of the first, but because the innocent party suffered from a pre-existing condition they in fact suffered a much more serious injury as a result of the negligence, then that more serious injury will not be deemed to be a remote consequence of the tortfeasor's actions.

Question Three

This question related to the duties owed by an employee and an employer to one another, and it was overall answered in a satisfactory manner.

An employee owes various duties to their employer, which include the following: (i) a duty to exercise their work with reasonable care, skill and competence; (ii) a duty to obey the lawful and reasonable orders of the employer; (iii) a duty of fidelity and good faith; (iv) a duty to account for all property entrusted to them by the employer and for any bribe, secret profit or commission received in connection with the employer's affairs; and (v) a duty to perform their duties in person.

Some of the duties owed by an employer to his/her employees include the following: (i) a duty to remunerate the employees as agreed, or if no agreement exists, to pay reasonable remuneration; (ii) a duty to indemnify the employee against any expenses and losses incurred in the course of employment; (iii) a duty of mutual trust and confidence; (iv) a duty to provide a safe system of work for the employees; and (v) statutory duties, which include the duty to provide annual holiday leave, social insurance contributions and appropriate notice in case of dismissal.

Question Four

This question required candidates to explain the legal relationships that may be created between the principal, agent and third party in relation to agency law.

A common error was for candidates to reiterate their general knowledge on the subject matter of the question without attempting to provide specific answers. For example, many candidates provided a general outline of the different ways of forming an agency relationship without analysing the legal relationships that arise between the various parties.

Question Five

This was a question on the Companies Law Cap. 113, which required candidates to explain the contents of the memorandum and articles of association (part (a)) and the statutory registers that must be maintained by a company (part (b)).

Answers to part (a) were generally satisfactory with candidates exhibiting familiarity with the contents of both the memorandum and articles of association. However, answers to part (b) of the question were in general inadequate. A common error was to confuse the statutory registers that must be maintained by a company with the documents required to be submitted to the Cyprus Registrar of Companies for the purpose of registering a company.

Question Six

This question was on the doctrine of capital maintenance and its manifestation pursuant to the Companies Law Cap. 113. This was apparently not a popular question with many candidates failing to obtain satisfactory marks.

The doctrine of capital maintenance is based on the need to safeguard the capital of the company and arises as a result of the limitation of liability of the members of a company. This doctrine is manifested in various ways in the Companies Law Cap. 113. For example, the return of funds (such as share capital, share premium account, capital redemption reserve fund) to shareholders is prohibited, unless in accordance with and subject to the conditions and procedures provided for in the Companies Law Cap 113. Moreover, a company is prohibited from



purchasing its own shares and from providing financial assistance for the acquisition of its own shares, unless the requirements/exceptions specifically provided for in the Companies Law apply.

Question Seven

This question was generally well answered. Most candidates were familiar both with the appointment procedure relating to company auditors as well as the duties placed upon company auditors.

A common error was to mention that auditors had to be reappointed by resolution of the company passed at its annual general meeting. However, pursuant to s. 153 Companies Law Cap. 113, a retiring auditor is reappointed at any annual general meeting without any resolution being passed unless (i) they are not qualified for reappointment; or (ii) a resolution has been passed at that meeting appointing somebody else instead of them or providing expressly that they shall not be reappointed; or (iii) they have given the company notice in writing of their unwillingness to be reappointed.

Question Eight

This was perhaps the least well-answered question out of the three problem-based questions. However it was satisfactory to note that most candidates were generally familiar with the characteristics of a public company and the fact that it does not need to have any restriction on transfers of shares.

Although the issue of transfer of shares and any conditions that may exist in relation thereto would depend on the company's articles of association, Anna could simply not cancel or return her shares. The company could, if authorised by its articles of association, reduce its issued share capital by special resolution by, for example, extinguishing or reducing the liability on shares in respect of uncalled or unpaid capital. Any proposed reduction would require approval by the Cyprus courts and the relevant members' resolutions together with copy of the court order would need to be delivered to the Registrar of Companies for the purpose of issuing the relevant certificate.

Question Nine

This was another problem-based question, which involved application of the principles relating to voluntary and compulsory liquidation as well as amendment of a company's objects as stated in its memorandum of association.

Even though Dona and Sarah together hold 65% of the issued share capital of the company and thus a special resolution for voluntary winding up could not be passed, and apparently no other condition for voluntary winding up appears to be satisfied, Sarah may consider applying to the court for compulsory liquidation in view of the fact that the company has not commenced its business within a year of its incorporation.

Although most candidates exhibited a general understanding of both these areas of the law, most answers lacked in detail. For example, most candidates failed to note the fact that, even though the shares held by Sarah had not been registered in her name for at least six months, as required by s.213 Companies Law Cap. 113, Sarah could still apply to the court for compulsory liquidation, since the shares devolved on her after the death of the previous shareholder (s. 213 of Cap. 113).

In relation to the proposed suggestion to turn Dias Ltd into a restaurant business, most candidates noted that this was currently beyond the company's objects as specified in its memorandum of association and required an alteration of the memorandum of association with respect to the objects of the company.

Question Ten



This problem-based question which required candidates to apply the principles governing money laundering and insider dealing offences to the facts of the case.

The first issue related to the acceptance of Bin as a client. The question stated specifically that Bin had contacted Maya through her website, and enquired about the incorporation of Cyprus companies. Maya, as an accountant, is subject to an obligation under the Prevention and Suppression of Money Laundering Activities Laws of 2007, to establish and maintain specific policies and procedures to guard against money laundering, such as client identification and record-keeping procedures in relation to clients' identity and their transactions. Bin had contacted Maya through her website, and it was not evident that Maya had enquired as to the identity of Bin or details of his business activities, or whether she had completed the appropriate know-your-client procedures.

Moreover, given that Maya had, in the course of her business, acquired knowledge or reasonable suspicion that Bin was engaged in money laundering, Maya had an obligation to report her knowledge or suspicion to a police officer or to the Unit for Combating Money Laundering or otherwise she would be committing an offence.

In relation to Maya's potential liability for insider dealing, candidates were expected to note that Maya possessed inside information by virtue of her acting as sole director of Bin (Cyprus) Ltd, or at least her having access to the information through the exercise of her profession or duties, and disclosed inside information to her husband, which disclosure was apparently not made in the normal course of the exercise of her profession or duties. Therefore Maya could be liable for an offence under the Insider Dealing and Market Manipulation (Market Abuse) Law 116(I)/2005 unless she could raise one of the defences provided in the aforesaid law.