

# Examiner's report

F4 Corporate and Business Law (CYP)

June 2014



## 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. Part (a) related to the jurisdiction of the Supreme Court and part (b) related to the protection of human rights under the Constitution.

Candidates were overall well conversant with these matters and answers were generally satisfactory.

In part (a), one mark was awarded for each correct answer, therefore candidates were able to obtain full marks even if they missed one or two points.

A common error in part (a) was to note that the Supreme Court has jurisdiction to hear and determine at first instance any criminal case provided the sentence provided by law for the offence in question exceeds 5 years imprisonment. This is however erroneous; such cases are brought before the Assize Court and the Supreme Court will only hear relevant appeals (on all criminal cases, irrespective of length of sentences involved).

### Question Two

This was a question on the law of contracts, which required candidates to describe the rules relating to the award of damages for breach of contract.

Answers were generally satisfactory, although a common mistake was to reiterate the general rules on formation and breach of contract, and to analyse equitable remedies which may be available for breach of contract. The question, however, was specific and candidates were asked to focus on the rules relating to the award of damages.

It was satisfactory to note that most candidates were familiar with the rule on remoteness of damages, although most candidates based their answers on the common law principle, ignoring the fact that the rule on remoteness has been codified in our Contract Law Cap. 149.

According to section 73(1) Contract Law Cap. 149 *"When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such*

*compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach...”*

### **Question Three**

Question 3 was a question on agency law, and required candidates to describe potential liability of both principal and agent.

Answers were unsatisfactory, with most candidates describing the general principles of the law of agency, without focusing on the actual question asked.

The basic principle of agency law is that the principal and agent have a contractual relationship in which the principal appoints or authorises the agent to act on their behalf either for a specific purpose or generally. Therefore a contract entered into by an agent on behalf of their principal and a third party is a contract between the third party and the principal, so that the agent has no liability under the contract. However, factors such as disclosure of the principal and acting within the agent’s authority, are also relevant in determining whether the principal and/or the agent will have liability under the relevant contract.

### **Question Four**

Question 4 was a question that required candidates to explain the idea of corporate governance and to describe the relevant legal framework.

Answers were overall satisfactory, with candidates having a general understanding of both the concept and importance of corporate governance, as well as the existence, content, and application of the relevant Corporate Governance Code, including the “comply or explain” principle which applies to public companies listed on the Cyprus Stock Exchange.

### **Question Five**

This was another knowledge-based question, which required candidates to explain when a company may enter (a) voluntary and (b) compulsory liquidation.

Section 211 Companies Law Cap. 113 lists six circumstances under which a company may enter compulsory liquidation. Similarly s. 261 Companies Law Cap. 113 lists three circumstances under which a company may be voluntarily liquidated. An answer to this question which clearly described all such circumstances would gain full marks.

Candidates should note that no court approval is required for a company to enter into voluntary liquidation.

### **Question Six**

This was another question on the Companies Law Cap. 113 which in particular required candidates to describe and explain the use of (a) the share premium account and (b) the capital redemption reserve fund.

Answers to part (a) were generally satisfactory although most candidates appeared unfamiliar with the capital redemption reserve fund and its use.

### **Question Seven**

Question 7 was generally well answered. Most candidates were familiar with the circumstances under which a person may be made redundant and the remedies available in such eventuality.

A common error was to state that an employee could not be made redundant unless he had worked for at least 104 weeks. However the requirement for continuous work for at least 104 weeks applies to the right to receive compensation from the Redundancy Fund, and not to the prospect of being dismissed for redundancy.

Another common error was to state that an employee who had been dismissed for redundancy, had the right to receive compensation provided they had not found a new job. However the right to redundancy payment arises on dismissal by reason of redundancy, and the amount depends on the length of service (in terms of monthly salaries). It is immaterial whether the employee finds a new job or not.

#### **Question Eight**

This was a problem-based question which was generally well answered, although most answers lacked in detail.

The first issue which needed to be addressed was whether the statements made in the brochure were mere representations or whether they should be considered to be terms of the contract. Another issue which arose related to the application of the doctrine of privity, and whether Ben has any claims against the company given that the relevant agreement was entered into partly for his own benefit. An issue as to the type of loss suffered by Anna arose, and whether damages for mental distress are also appropriate under the circumstances.

#### **Question Nine**

This was another problem-based question which involved the application of s. 182 Companies Law Cap. 113, which provides for a general prohibition on companies from making loans to their directors subject to certain specified exemptions, the personal liability assumed by guarantors, as well as the rules relating to the validity and perfection of charges on companies' assets.

A common error was for candidates to omit the fact that the company was a private company and therefore the relevant prohibition from making loans to its directors did not apply.

Another common error was to mention that failure to register particulars of the charges within the time frame prescribed by law renders the relevant charges void. This is erroneous on two grounds: (i) failure to register does not invalidate the charge as between the relevant parties, but renders the security conferred by the charge void as against the liquidator and any creditor of the company; and (ii) an extension of time may be obtained by application to relevant courts which enables registration of the charge even after expiration of the statutory period.

#### **Question Ten**

This was another problem-based question which mainly required candidates to apply the principles relating to directors' fiduciary duties and the consequences in case of breach.

The following facts were important in analysing the scenario and applying the relevant principles: (i) John obtained the contract with Hugo Ltd as a result of work he did whilst still a director of Glory Ltd; (ii) the contract with Hugo Ltd was not concluded until after John had left Glory Ltd; (iii) a release was obtained by



John from a binding contractual obligation by dishonest and untrue representations; and (iv) Glory Ltd could not have itself obtained the contract with Hugo Ltd.