

# Examiner's report

## F4 Corporate and Business Law (CYP)

### June 2010



#### General Comments

The examination contained 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.

Most candidates attempted to answer all questions.

The overall performance of candidates was satisfactory.

Candidates are advised to pay more attention to the wording of each question and to focus their answers on the particular issues involved, rather than attempting to reiterate everything they know on the general subject-matter of the question.

Candidates should note that each question should be started on a new page.

#### Specific Comments

##### Question One

This was a question on the main sources of law in the Cyprus legal system.

Answers to this question were generally satisfactory, although not many candidates managed to identify all main sources of law.

A common error was to confuse the case law of the Supreme Court (which constitutes a source of law in Cyprus as a result of the application of the doctrine of precedent, pursuant to which the decisions of the Supreme Court are binding upon the lower courts and the Supreme Court itself, subject to the right of the Supreme Court to deviate from its own decisions in exceptional circumstances) and the common law. The common law, as well as the principles of equity, applies in Cyprus as a "reserve law", provided there is no provision governing the matter and there is no conflict with the Constitution (s. 29(1) (c) Court of Justice Law of 1960).

##### Question Two

This question was generally well answered.

Marks were awarded for remedies correctly identified and explained which did not form part of the model answers.

A common error was the failure to note that the matter of recoverable damages is in fact regulated by the Contract Law Cap. 149. Section 73 Contract Law essentially codifies the rule in *Hadley v. Baxendale*. However, almost all candidates based their answers on the common law principles, without reference to the relevant statutory provisions.

##### Question Three

This question was well answered. Candidates were required to analyse various parts of the law on partnerships, including conditions of existence, ways of winding up, and liabilities of general and limited partners.

A common error in the overall approach to answering the various parts of this question was for candidates to simply recite their knowledge on the general topic, without focusing on the particular question asked. This is not a recommended approach and no points are awarded for irrelevant, albeit correct, statements.



#### **Question Four**

Candidates were generally familiar with ordinary shares and debentures, although most answers to parts (b) and (c) of the question (which related to preference shares and redeemable preference shares respectively) were not well answered.

A common error for candidates was to note that preference shares are shares which, by definition, never carry voting rights and which always have a fixed dividend amount. However, even though these may be characteristics which often found in relation to preference shares, they are not mandatory. Preference shares are shares which carry some preferential rights in relation to ordinary shares, which normally relate to dividends or repayment of capital or both. The particular rights of preference shares will depend upon their terms of issue or any relevant provisions in the articles of association.

#### **Question Five**

This question required candidates to discuss the procedures for appointment and removal of auditors. This question was generally well-answered.

#### **Question Six**

This question required candidates to list the circumstances under which a company may be wound up compulsorily or voluntarily.

A common error in answers to part (b) of the question was to discuss the procedures for members' and creditors' voluntary liquidation and the differences between them. However this was clearly beyond the scope of the question. Part (b) of the question expressly requested an explanation of the circumstances under which a company may enter voluntary liquidation, and such circumstances are described in detail in section 261 Companies Law Cap. 113.

#### **Question Seven**

This question on the law of redundancy was not very well answered by most candidates.

A common error was to discuss lawful and unlawful termination in general terms, rather than focus on the particular question asked. It has repeatedly been noted that such an approach should be avoided, and often evidences lack of particular knowledge on behalf of the candidates adopting it.

#### **Question Eight**

Article I. This was a problem-based question which involved application of the basic principles of contract law, and in particular the rules relating to offer and acceptance.

Answers to this question were generally interesting, with most candidates spotting all the legal points in issue.

The first issue was to assess whether Alex's poster constituted an offer to the public at large, or merely an invitation to treat. Most candidates were able to make a connection between, and compare the facts of this question, with those of the famous case of *Carlill v. Carbolic Smoke Ball*.

Another issue was whether acceptance in ignorance of the offer constitutes acceptance for the purposes of contract formation. This matter related to Catherine who had not read the advertisement prior to returning the dog.

Finally, the fact that Beatrice had read the advertisement but returned one of the dogs to Alex begged the question whether Alex's offer was confined to the return of both dogs, or whether Beatrice was entitled to receive the whole, or perhaps half of the reward.

**Question Nine**

This was a problem-based question which involved application of the principles relating to the fiduciary duties of directors.

The most common error in this question was to conclude that EFK Ltd was entitled to receive EUR100.000, which was equal to the profit made by Best Construction Ltd. However, Best Construction Ltd, being a distinct legal entity which did not apparently owe any fiduciary duties to EFK Ltd itself, did not have to account to EFK Ltd for the profit made, unless it was aware that the deal had been negotiated by Eric whilst director of EFK Ltd in the context of his capacity as such.

**Question Ten**

This question 10 was two-fold and involved application of section 56 Companies Law Cap. 113 on the issue of shares at a discount, and section 29 thereof on the restrictions imposed on private companies.

Most candidates were familiar with the rules relating to the issue of shares at a discount, although the second part of the question was not that well answered.

A common error was for candidates to state that transfer of shares in private companies is generally prohibited, rather than restricted in such manner as may be defined in its articles of association.