Examiner's report

F4 Corporate and Business Law (CYP)
June 2011

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.

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 is not rewarded.

Specific Comments

Question One

This was a question on the legal system of Cyprus, and particularly the doctrine of necessity and delegated legislation.

It was satisfactory to see that most candidates were familiar with the doctrine of necessity, although the same does not apply to delegated legislation. In fact most candidates either failed to answer this part of the question or gave irrelevant answers.

Although there were few candidates who achieved full marks, overall, the answers to this question were not satisfactory.

Common errors included: (i) referring to delegated legislation as decisions of lower courts; (ii) confusing delegated legislation with the doctrine of precedent; (iii) noting that delegated legislation is subject to approval by the House of Representatives.

Delegated or secondary legislation refers to the acts of state organs, other than the House of Representatives, to which legislation making power was delegated through a law in its enabling section. Such power is often given to the Council of Ministers although delegation of can be made to other organs as well, e.g. Municipalities and Communities.

Question Two

This was a question on contract law and particularly equitable remedies and the doctrine of privity.

Candidates who listed *all* remedies for breach of contract, including the equitable remedies, were not penalised, although it was obvious that they failed to indentify the equitable remedies as requested. However, it cannot be stressed enough, that candidates should focus their answers on the specific question asked. An attempt to reiterate one's general knowledge on the relevant topic, in the hope that a long answer may contain the correct answer, is not effective.

Although a few candidates achieved full marks, it was generally unsatisfactory to note that many candidates were not familiar with the doctrine of privity.

Marks were also awarded for correct responses, even if these diverted from the model answers.

It should be clarified that the doctrine of privity governs the relations of third parties i.e. persons who are not party to an agreement, with the benefit conferred under or burden imposed pursuant to the said agreement. References to tripartite agreements were inappropriate.

Question Three

This was a specific question on delegation of an agent's authority, which was not well answered by most candidates.

The most common error was to list the general types of authority that an agent may have (such as express authority, authority by ratification, ostensible authority, etc).

However, the question was obviously referring to the appointment of a sub-agent or delegation of an agent's authority. The general rule is that an agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

Question Four

There were three parts to this question. Parts (a) and (b) were generally well-handled by candidates, although the same is not true for part (c). Most candidates were apparently not familiar with the concept of perpetual succession.

Perpetual succession is another consequence of the doctrine of incorporation or of the accord of separate legal personality to companies. Perpetual succession means that the company's existence is not affected by the death, incapacity or existence of its members or by any transfer of shares to any other persons by existing members.

Question Five

This was a question on compulsory liquidation of a company, and particularly sections 211 and 212 Companies Law Cap. 113.

It is noted that although reference to sections of the Companies Law Cap. 113 is not a requirement for achieving full marks, correct reference to appropriate sections is rewarded accordingly.

A common error in part (a) was to state that a company is unable to pay its debts when its liabilities exceed its assets. Although this may be a correct statement from an accounting perspective, the question was looking for the legal definition of a company being unable to pay its debts, as provided in section 212 Companies Law Cap. 113. According to section 21 Companies Law, Cap. 113, a company is deemed to be unable to pay its debts in three cases: (i) if a creditor to whom the company is indebted a sum exceeding approximately EUR855 has served on the company a demand for the payment of the sum due, and the company has for three weeks thereafter neglected to pay the sum; (ii) if execution issued on a judgment in favour of a creditor of the company is returned unsatisfied in whole or in part; or (iii) if it is proved to the satisfaction of the court that the company is unable to pay its debts

Finally, it should be noted that delay to submit audited accounts is not of itself a ground for compulsory liquidation. Section 211 Companies Law provides for six instances, in which a company may be wound up by the court. These are listed in the model answers.

Question Six

This was an employment question, which was generally well answered by most candidates.

Constructive dismissal is where an employee resigns due to his employer's behaviour. A brief analysis of when this may occur was required in part (a).

Misconduct is a reason for dismissal which is permitted pursuant to the Termination of Employment Law in cases where for example the employee demonstrates improper behaviour or behaves in such a manner as to make it obvious that the relationship of employer-employee cannot reasonably be expected to continue. Other instances are listed in the model answers.

It should be noted that part (b) of the question required candidates to list the circumstances in which dismissal for misconduct may occur, and not to analyse whether such dismissal is fair or not and the consequences thereof.

Part (c) on redundancy was generally well-answered, although it should be clarified that redundancy does not apply when an employee reaches retirement age.

Question Seven

This was a question on corporate governance, which was overall answered well by most candidates.

Question Eight

This was the first problem-based question which was modelled on the well-known case of *Caparo Industries Plc* v. *Dickman* (1990).

The main point was o whether Carla owed a duty of care to the particular shareholder as opposed to a duty of care to the shareholders as a whole or to the company. Some candidates simply analysed whether the error was sufficient to render Carla negligent, without paying any attention as to *whom* the duty of care was owed.

It should be noted that pursuant to the decision in *Caparo Industries Plc* v. *Dickman* (1990), a duty of care is owed by the company's auditor to the company itself and to the body of shareholders as a whole for the purpose of enabling them to exercise informed control over the company, and not to enable individual shareholders to buy shares with a view to profit.

Question Nine

This was another problem-based question which related to the appointment and removal of auditors.

It should be noted that the Companies Law, Cap. 113 contains specific provision prohibiting spouses of directors from acting as auditors of the company (namely, section 155). Therefore the question whether Mary can act as the company's auditor does not merely reflect on whether Kevin, as director, has a direct interest which should be disclosed pursuant to the company's articles of association, but is rather a proposal which clearly contravenes the law.

Question Ten

This was the final question on the paper which was again a problem-based question, relating to the alteration of the articles of association and the rights attaching to a particular class of shares.
It should be clarified that Simos' right to petition the court applies only in the case of possible amendments to the rights attaching to the class of shares which he holds – Simos does not have the same right in relation to a proposed special resolution amending the articles of association (other than those provisions affecting the rights attached to the class of shares in which he is a holder).

Many candidates missed the fact that both ordinary and preference shares were stated to be voting shares and therefore the 75% majority required to pass a proposed special resolution for the amendment of the articles of association meant 75% of *all* issued shares.

A common error was to state that amendment of articles requires the court's consent. This is not the case, and the confusion probably arises given that amendments to the objects of the company as stated in its memorandum of association require sanction of the court. However, pursuant to section 12 Companies Law Cap. 113, a company may, subject to the provisions of the Law and the provisions of its memorandum of association, alter its articles of association by passing a special resolution.