



# Examiners' report

## F4 Corporate and Business Law (CYP)

### December 2007

The examination consisted of ten questions in total: seven short 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 all questions. Candidates are strongly advised to tackle all questions.

The overall performance of candidates was satisfactory, bearing in mind that this was the first sitting of the F4 (CYP) examination, after the syllabus had been updated, and the new style of examination had been introduced.

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

In addition, candidates must realise that answers must be written clearly.

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

Finally, candidates should not use red pen. This causes confusion to the markers and script-checkers.

#### **Question 1**

This question tested candidates' knowledge on the doctrine of necessity and the doctrine of precedent in relation to the legal system of Cyprus.

Even though the question clearly stated that answers should be given "with respect to the legal system of Cyprus", it was surprising to observe quite a few candidates answering part (a) in relation to "agency by necessity".

Candidates should note that the doctrine of necessity is not simply the power of the courts to decide on matters which are not regulated by law. The doctrine of necessity enables action to be taken in a manner not regulated by law only in exceptional circumstances where such action is required by supreme public interest. In other words, the doctrine of necessity only comes into play in prevailing circumstances, which call for the salvation of the State and its people (*The Attorney-General of the Republic v. Mustafa Ibrahim and others* (1964)).

This question required candidates to explain the meaning and application of the two doctrines in Cyprus. Therefore in part (b) it was important to state that the District and other lower courts in Cyprus are bound by decisions of the Supreme court, and the Supreme court is also bound by its own prior decisions – subject to the power of the Supreme court to deviate from its past decisions in exceptional circumstances. In addition, it is incorrect to state that prior decisions of the Supreme court are used only for guidance by the lower courts – such decisions are binding upon lower courts, provided the material facts are the same.

Quite a few candidates failed to attempt question 1. Many candidates did not appear to know about the doctrine of necessity and its relation to the legal system of Cyprus. Although part (a) was a new topic in the F4(CYP) syllabus, part (b) should have been familiar to all candidates.

#### **Question 2**

This question was on contract law, and the answers were generally satisfactory. Candidates' failure to achieve higher marks in question 2 was clearly exacerbated by their failure to answer part of the question. Many candidates simply stated the meaning of terms, representations, conditions, warranties and innominate terms without mentioning the distinguishing factors between them.

In particular most candidates failed to distinguish between conditions, warranties and innominate terms. A number of factors are taken into account in deciding whether a term is a condition, warranty or innominate term, such as whether it has been explicitly agreed as such in the contract, whether it results from the nature of the contract, or whether it has been set by the law, or decided by previous case law.

### **Question 3**

Question 3 tested candidates' knowledge on agency law.

The model answers were used as a guidance, so that marks were awarded for correctly mentioning duties placed on either of the parties to an agency agreement even if these were not included in the model answers, e.g. the duty of the principal to indemnify the agent for any liability reasonably incurred in the course of the activities delegated to him by the principal.

A common error in answers to question 3 was to analyse the relationship between principal or agent and the third party. However the only parties to an "agency agreement" are the principal and the agent. In addition, many candidates listed the different types of authority that an agent may have. This was clearly not the question.

Many candidates performed well in this question. It was encouraging to observe that candidates were in general comfortable with the various duties placed on each of the principal and agent.

### **Question 4**

Question 4 required candidates to explain the rules governing the distribution of dividends in private companies in terms of Table A of the Companies Law, Cap. 113.

Even though more detailed answers were required to achieve higher marks, answers to question 4 were generally satisfactory. Most candidates missed the rule stating that the directors may deduct from any dividend payable to any member all sums presently payable by them to the company in relation to the company's shares, and the rule that that no dividend shall bear interest against the company.

Marks were awarded for candidates correctly mentioning that preference shares are generally issued as cumulative and exhaustive and usually enjoy priority over ordinary shares in dividend distribution.

### **Question 5**

Question 5 examined the duties and extent of liability of company directors. There was apparently some confusion among candidates as to the meaning of "liability" of directors. Many candidates considered this to be a reference to the circumstances under which a director may be removed from office.

Answers with regard to the duties of company directors were generally satisfactory, although most candidates failed to tackle the second aspect of the question which dealt with the extent of liability of company directors. In particular, most candidates failed to note that directors may have unlimited liability if this is provided by the company's memorandum of association (section 194 of the Companies Law, Cap. 113).

### **Question 6**

Question 6 required candidates to explain and distinguish the circumstances under which a company may enter voluntary and compulsory liquidation.

Answers were in general inadequate. Many candidates appeared not to be well-prepared while others focused on describing the procedures of voluntary and compulsory liquidation, including the appointment, powers and duties of liquidators. However the question clearly required candidates to describe the circumstances under which a company may enter either type of liquidation, thus referring to sections 261 and 211 of the Companies Law.

Candidates should note that no court approval is required in case of voluntary liquidation. Candidates should further note that a public company may enter compulsory liquidation if the number of its members – not its directors – falls below seven.

### **Question 7**

Question 7 required candidates to deal with those aspects of the money laundering legislation introduced in Cyprus which were intended to prevent money laundering in relation to consultancy or accounting services. Money laundering and its prevention was a new topic to the syllabus, and it was encouraging to observe that most candidates were in general familiar with this topic.

In particular, most candidates were familiar with the “know your client” principle and the existence, powers and duties of the Unit for Combating Money Laundering (MOKAS).

### **Question 8**

Questions 8-10 were problem-based questions. It was encouraging to observe that candidates were generally able to apply legal principles to the facts of the questions, although more in-depth analyses were required in order to achieve higher marks.

Question 8 tested candidates’ ability to apply the principles of employment law to the given problem-scenario.

It was evident that some candidates confused the principles involved in parts (a) and (b) of question 8. Part (a) involved the duty of employers to provide a safe system of work for their employees, whereas part (b) involved employers’ vicarious liability in respect of torts committed by their employees during the course of their employment.

In part (a), some candidates incorrectly believed that Jim would be liable if Bob negligently failed to wear his protective helmet. Jim cannot be held “vicariously liable” for Bob’s negligence in failing to wear his own helmet. Jim would be vicariously liable if Bob committed a tort during the course of his employment. Bob’s failure to wear his protective helmet neither amounts to a failure to mitigate his loss, as many candidates thought, but may instead constitute a break in the chain of causation so that Bob may not be able to claim damages from Jim for the head injury he had suffered.

In part (a), most candidates failed to deal with the scaffolding i.e. whether the collapse of the scaffolding amounted to a failure by Jim to provide a safe system of work, and focused only on the protective helmet. The issue in part (a) was firstly whether the failure to wear the protective helmet was the fault of the employee (e.g. because of no supervision or guidance provided by the employer) and if so, whether Bob’s failure to wear his helmet amounted to a break in the chain of causation thus relieving Jim of his liability to compensate for the damage suffered from the collapse of the scaffolding. This is an important point, since although there might have been a breach of duty by Jim in failing to provide a safe system of work for his employees, such breach may not have been the cause of Bob’s injury.

In part (b) a lot of candidates discussed Dave’s liability to Alice, although the question was clearly about the extent of Jim’s liability to Alice. Therefore the issue in part (b) was whether Jim was vicariously liable for any torts committed by Dave during the course of the services rendered to Jim.

### **Question 9**

Question 9 was another problem-based question. A common error in answers to question 9 was the failure to mention that auditors may be removed at an annual general meeting of the company. There was therefore no point in analysing how an extraordinary general meeting may be convened by a shareholder holding at least 10% of the share capital of DTP Ltd.

Surprisingly, a lot of candidates thought that an ordinary resolution requires a majority of 50% - rather than 50% plus 1 votes – and therefore considered Fred’s and Eric’s shareholding to be sufficient to replace DC & Co as auditors of the company.

In addition, most candidates failed to deal with section 155 of the Companies Law, which prohibits a husband or wife of a company officer from being appointed as auditor of the company. In other words, Cindy’s marriage to the managing director of DTP Ltd does not just create an ethical problem, as many candidates thought, but is a factor disqualifying Cindy from being reappointed as auditor of the company.

### **Question 10**

This question combined a number of topics in company law: issuing shares at a discount, providing loans to a company’s directors and registration of charges.

In the first part of the question, marks were also awarded for mentioning that a company may issue shares at a discount only after 12 months of the date when the company was entitled to commence business. However, candidates should note that no authorisation by the company’s articles is required; instead, the company’s approval in a general meeting and the court’s sanction are both required.

Another common error was to state that ABC WIRELESS Ltd should be converted to a public company so as to be able to invite the public to subscribe for its shares. However the question clearly stated that Paul’s idea was aimed at attracting existing shareholders to invest more money in the company and so there was no issue of converting the company from private to public.

Other candidates suggested different ways of how ABC WIRELESS Ltd could raise money (e.g. by issuing shares at a premium), although this was beyond the point of the question. Candidates were asked to comment on the feasibility and procedure of the suggestions made by Paul and Mary.

Finally, candidates should note that according to section 90 of the Companies Law, failure to register a charge that falls under section 90(1) does not render the charge void as against the company, but void as against any creditor or liquidator of the company.