



# Examiners' report

## F4 Corporate and Business Law (CYP)

### December 2008

#### 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.

As always, 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.

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

#### Specific Comments

##### Question 1

Question 1 focused on the operation and jurisdiction of the Supreme Court. Marks were awarded for candidates correctly explaining the operation of the Supreme Court pursuant to the Administration of Justice (Miscellaneous Provisions) Law of 1964 and the application of the doctrine of necessity. As a result of the warlike situation and the disturbances between the Greek and Turkish communities in 1963, the Supreme Constitutional Court and the High Court, which had been set up by the Constitution, had become inoperative due to the vacancy in the offices of the President of the Supreme Constitutional Court which had resigned and the abandonment by the Turkish judges of their duties. The Administration of Justice (Miscellaneous Provisions) Law of 1964 provided for the establishment of the Supreme Court in Cyprus, bestowed with the jurisdiction of both the Supreme Constitutional Court and the High Court and its constitutionality was upheld by the Supreme Court's decision in *The Attorney-General of the Republic v. Mustafa Ibrahim and others* (1964). The decision in *Ibrahim* has since constituted the basis of the foundation for the functioning of the State until the re-establishment of normality and the "acceptance of necessity as a source of authority for acting in a manner not regulated by law but required, in prevailing circumstances, by supreme public interest, for the salvation of the State and its people" (Triantafyllides J. *The Attorney-General of the Republic v. Mustafa Ibrahim and others*).

Candidates were also awarded marks for mentioning that the Supreme Court's jurisdiction includes the making of secondary legislation or regulations pertaining to the administration of justice such as the Civil Procedure Rules, and the appointment, promotion and removal of district court judges.

##### Question 2

Question 2 required candidates to describe the meaning and importance of consideration in contractual arrangements. Markers adopted a lenient approach in respect to the allocation of marks between parts (a) and (b) of the question.

A common error was to state that consideration has to move from the promisee. Although this is a general principle which applies under English law, the Cyprus Contract Law Cap. 149 provides that consideration may move from a third party. In other words, the common law rule that consideration has to move from the promisee does not apply in Cyprus.

Moreover it was evident that a lot of candidates confused the doctrine of privity with the rules relating to consideration. The doctrine of privity provides that a contract cannot impose any burden or obligation on, or provide any rights to any person who is not a party to the contract.

Candidates should note that under the Contract Law, an agreement made without consideration is void, subject to a number of exceptions. One such exception is an agreement expressed in writing and signed by the party to be charged therewith, which is made on account of natural love and affection between close relatives. However, lack of consideration does not affect the validity as between the donor and donee, of any gift actually made.

### **Question 3**

Question 3 was on the dissolution of partnerships. Results were generally satisfactory.

However a lot of candidates included information in their answers which was beside the point, such as the extent of liability of various partners. Obviously no points were awarded for answers which were unrelated to the actual question asked.

### **Question 4**

This was a question on separate legal personality and the circumstances under which the corporate veil may be lifted. Answers were generally satisfactory with many candidates achieving full marks.

In part (b) candidates were awarded marks for correctly describing any circumstance where separate personality is ignored even if this was not mentioned in the model answers e.g. when a group operates as a single economic unit or in cases of misdescription of a company as provided in section 103 of the Companies Law Cap. 113.

Candidates should note that the statutory provisions relating to insider dealing are not an example of lifting the corporate veil. The directors of a company may commit the offence of insider dealing in their personal capacity and not while acting or purporting to act on behalf of the company.

Moreover, illegal activity carried out by the company may lead to criminal liability of its directors as a result of the provisions of the Criminal Code, which provides that a person who aids or abets another person in committing an offence is deemed to have taken part in committing the offence and to be guilty of the offence and may be charged with actually committing it. Therefore, the directors' liability in criminal cases arises as a result of their status as accomplice to the company's acts rather than a case of lifting of the corporate veil.

In addition, when persons who have signed a company's memorandum of association are deemed personally liable in cases of contracts entered into on behalf of the company prior to its incorporation, in circumstances in which the company is not eventually incorporated, is not an example of lifting the corporate veil as the corporate veil has not in fact come into existence.

Finally, the case of directors providing personal guarantees to a company's creditor is also not an example of lifting the corporate veil. The directors in such a case assume a personal liability pursuant to their commitment under the guarantee given by them and do not act on behalf of the company.

### **Question 5**

Question 5 was about the ultra vires rule and its application in Cyprus. Answers to this question were generally not satisfactory.

Many candidates incorrectly considered this to be a question on agency law. However it is explicitly mentioned that the question refers to the Companies Law and it was obviously aimed at an exposition of section 33A thereof.

A common error was to consider that a company may in a general meeting ratify an act of its directors even if it is beyond its objects as these are described in its articles of association. However even though an unauthorised act of its directors may subsequently be ratified by the company in a general meeting, this presupposes that the act is intra vires. Otherwise the act cannot be ratified even if the shareholders wish to do so.

### **Question 6**

Question 6 was an interesting question focusing on (a) the companies' borrowing powers and (b) the companies' lending powers to its directors. A number of candidates confused part (a) with section 53 of the Companies Law and the general prohibition on the provision of financial assistance for the purchase of a company's own shares.

The model answer has omitted to include the exception to the general prohibition which applies in relation to acts of companies which were at the time private companies but marks were awarded appropriately.

### **Question 7**

This was a question on corporate governance and, similarly to question 4, allocation of marks between parts (a) and (b) was not applied strictly.

Results were generally encouraging. Even though this was a relatively new topic candidates appeared to be familiar with the general principles governing the matter.

### **Question 8**

This was one of the problem-based questions, answers to which were generally not as successful as answers to questions 1-7.

The issue in question 8 is whether Androulla is entitled to receive compensation for her damaged dress. Compensation will be in the form of a monetary award reflecting the value of the dress, and no issue of awarding damages for mental distress arises.

Candidates should note that it was irrelevant whether Androulla read the disclaimer or not. There was no evidence or suggestion that Androulla was misled into believing the disclaimer to contain different terms from what it actually contained or that she would not have signed had she known the contents of the agreement. In this way the scenario given differs from the well-known case of *Curtis v. Chemical Cleaning and Dyeing Co* [1951].

This case is also distinguished from the situation where a disclaimer is printed at the back of a receipt. In this case the disclaimer is incorporated into the contract by reason of its inclusion in the agreement being signed. In cases where there is no written agreement, the party wishing to rely on the disclaimer would be required to bring the terms of the disclaimer to the other party's attention prior to the time of creating the contract.

### **Question 9**

This question combined issues of employment law and in particular wrongful and unfair dismissal together with the company law issue of when a director may be removed from office.

A common error was to state that Best Toys Ltd requires more than one director by reason of it having more than one shareholder. This is not true. Unless otherwise provided in the company's articles of association, a company may have a sole director (irrespective of the number of its shareholders) although in cases where there is more than one shareholder the sole director cannot be the same person as the company's secretary.

### **Question 10**

A common error was to mention that the issue of shares at a premium is subject to approval by the company in a general meeting and particularly a special resolution. However provided there is available authorised capital, the articles will usually provide that the issue of shares at a premium is a matter to be decided by the board of directors. A special resolution may be required if it is so provided by the Articles; Table A does not contain such a requirement.

Another common error was to mention that the transfer to Tom must be approved in a general meeting. Approval by the general meeting, again may be required if it is provided by the articles. However, no such approval is required pursuant to Table A, according to which the directors may at their absolute discretion and without having to provide justification refuse to register any transfer of shares irrespective of whether such shares have been totally paid or not. Moreover candidates should note that Table A does not make specific mention of pre-emption rights, which may often be provided for in the articles of private companies.