



# Examiner's report

## F4 Corporate & Business Law (CYP)

### December 2009

#### 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 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 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 legal system of Cyprus and in particular the role and main functions of the Constitution.

It was satisfactory to observe that most candidates were familiar with the main provisions and role of the Constitution and were particularly comfortable with the concept of separation of state powers. However, many candidates dwelled on the doctrine of necessity, its origins and application in the legal system of Cyprus, which was obviously not relevant to this particular question.

##### Question Two

This was clearly a question on the law of contracts, which explicitly required candidates to explain the rules relating to the award of damages for breach of contract. It was surprising to note that many candidates approached the question from a tort-law perspective and focused on the *Caparo*-test and other principles relating to the establishment of a duty of care, which were obviously unrelated to this question. It was also surprising to see that many candidates focused on the differences that exist between the various types of terms, i.e. conditions, warranties and innominate terms, even though these distinctions were irrelevant to the subject matter of the question.

What the examiner was looking for in candidates' answers to this question was a general outline of the main principles pertaining to the award of damages, such as compensation for "expectation loss" or "reliance loss". Damages for mental distress may also be awarded for breach of contract, as many candidates correctly noted, although these will only be available in exceptional circumstances and in the case of particular types of contract.

Candidates were generally familiar with the rules on remoteness of damage as enunciated in *Hadley v. Baxendale* (1854). However a common error was to ignore that the remoteness rule has in essence been incorporated in the relevant provisions of our Contract Law Cap. 149. It is evident that many candidates tackled the question from an English law perspective, which although very similar to the approach of the Cyprus courts and the provisions of the Cyprus legislation, should not be taken for granted as an accurate representation of the laws of Cyprus.

**Question Three**

This question was on agency law, which was generally well answered with no particular problems or misunderstandings arising.

**Question Four**

This question was on the various types of shareholders' meetings and it was encouraging to see that the relevant concepts were generally well-known to candidates.

**Question Five**

This question was two-fold as it required candidates to analyse both the duties and the liabilities imposed on company directors. Although most candidates were able to list numerous duties that company directors have, a common error was to ignore the "liability" aspect of the question.

As a general rule company directors have no personal liability for the acts of the company, unless either they are also shareholders (in which case their liability will be limited to any amount not yet paid for the shares they hold) or the memorandum specifies that directors will have unlimited liability, or where a director is involved with fraudulent trading or insider dealing offences in accordance with the provisions of the relevant applicable laws.

**Question Six**

This was a question on employment law.

Many candidates thought that an employee owes fiduciary duties to his employer. However such duties are not relevant to an employer-employee relationship but they rather relate to a trustee or a company director. The duties that an employee owes to his employer include, inter alia, a duty to use reasonable care and skill, a duty to obey lawful and reasonable orders, a duty to act in good faith and a duty to provide personal services.

It was surprising to see that quite a few candidates answered this question by simply noting the differences between contracts of service and contracts for services. It cannot be stressed enough that candidates should read the questions carefully and limit their answers to the particular questions asked.

**Question Seven**

This was a question on the legal regulation of insider dealing which, although a relatively new area of the syllabus, was a matter which was generally familiar to candidates who were thus able to answer it well.

**Question Eight**

As mentioned in the comments relating to Question 2 above, it was evident from answers to this question as well that many candidates approached their answers from an English law perspective. Despite the numerous similarities of the two legal systems particularly in the area of contract law,

candidates should not underestimate the fact that the legal system of Cyprus presents its own particularities. In the context of this question, and unlike the general common law principle, as a matter of Cyprus law consideration does not have to move from the promisee. According to the relevant provisions of the Contract Law Cap. 149, which contains an express definition of “consideration”, it is possible that consideration moves from the promisee or a third party.

Another common error in answers to this question was the failure to note that B provided no consideration in return of A’s promise to pay for a car of B’s choice. In other words, the promise made by A to B should be considered to be legally unenforceable not only because there was no intention to be legally bound (a presumption which arises due to the family context in which the promise was made and which we have no evidence to rebut) but also for lack of consideration.

On another note, it appears from the question that A’s promise to pay for a car of B’s choice was a promise made to B alone. There is no evidence provided in the question that A authorised B to enter into a contract on A’s behalf for the purchase of a car and there are no grounds to conclude that A did something to allow a reasonable person to believe that B was A’s agent. Despite the above, candidates who considered that B had entered into a contract with C on A’s behalf were rewarded provided they followed through the answer correctly on the basis of their initial, albeit false, understanding.

Furthermore, many candidates failed to notice the importance of distinguishing whether the car’s age was a term of the contract or a mere representation made in the course of the negotiations and instead restricted their answers to analysing whether the clause was a condition or a warranty.

There is no issue of awarding damages for mental distress as this was a contract for the purchase of a car. Damages to compensate for disappointment are not relevant in these types of contracts.

### **Question Nine**

This was a problem-question which involved application of the principles relating to the conclusion of pre-incorporation contracts and the ultra vires principle.

It was evident from the answers to this question that candidates were not generally familiar with section 15A of the Companies Law Cap. 113. Many candidates believed that the fact that Dina had entered into a contract on behalf of a company, which had not yet been incorporated, automatically meant that there was no contract in place. However according to section 15A of the Companies Law, where any contract has been concluded prior to the company being incorporated by persons who have signed the memorandum, or by persons authorised by such persons, in the name of or on behalf of the company that is being incorporated, such contract shall be temporary and shall not bind the company until the date of the company being incorporated, after which the contract shall become binding on the company.

Candidates should note that section 15A of the Companies Law refers to the persons who have signed the memorandum of the company which is to be incorporated (i.e. the subscribers) and not the directors or promoters.



In addition to the above, many candidates failed to tackle the issue of whether the construction of works in Lefkosia was beyond the objects of the company and thus an ultra vires transaction.

**Question Ten**

This question was a problem-based question which required candidates to explain the procedure for reduction of capital and also propose a different alternative and in particular the possibility of entering into voluntary liquidation.

Candidates should note that voluntary liquidation, unlike compulsory liquidation, does not require the court's approval.