
Answers

- 1** The Constitution of Cyprus outlines the principles and framework for the operation of the Republic of Cyprus. The Constitution provides, *inter alia*, for the establishment of a Presidential Republic and for the strict separation of state powers. The legislative power is exercised mainly by Parliament, the executive power is exercised by the organs of government (e.g. the Council of Ministers) and the judicial power is exercised by the courts. Separation of powers is not absolute and there may be overlap in the distribution of powers in certain cases. For example, the Supreme Court has the power to issue rules for the purposes of regulating a number of issues such as the civil procedure rules.

The Constitution constitutes till today, the basis for all other laws in Cyprus, which cannot contradict or conflict with the provisions of the Constitution. The Constitution is the supreme law of the country provided it complies with EU law. Therefore no law or action of the executive or administrative organs may contradict the provisions of the Constitution, although if there is a conflict between the Constitution and EU law, then EU law will prevail.

Moreover, the Constitution provides for the protection of fundamental human rights in Part II, Articles 6–35. Some of the rights and liberties protected thereunder are the following: right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, prohibition of discrimination. Apart from guaranteeing the protection of certain rights and liberties, the Constitution also provides for circumstances under which the rights and liberties may be lawfully restricted.

- 2 (a)** Representations are statements which are made before or during the negotiations which may lead to a contract. A mere representation does not give rise to any action for breach of contract. A person who reasonably relies on a false representation may have remedies for innocent, negligent or fraudulent representation accordingly. However, if a statement becomes a term of the contract, then the falsity of the statement gives rise to a right to sue for breach of contract. A number of factors may be taken into account when distinguishing between terms and mere representations, such as, the relative position of the parties to know or at least to find out the true facts (*Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd* (1965)); or whether the statement was made for the purpose of inducing the other party to enter into a contract; whether the other party actually relied on the statement; and the time elapsing between the making of the statement and the final determination of the intention to create legal relations between the parties.
- (b)** Conditions are terms of the contract which are fundamental to the main purpose of the contract. Every breach of a condition deprives the party not in default of substantially the whole benefit intended in contract to be obtained. Every breach of a condition gives rise to a right to terminate the contract by the innocent party, as well as a right to damages.

Warranties are terms of the contract which are only incidental to the main purpose of the contract, and breach of such terms never gives rise to a right to terminate the contract, but only gives rise to a right to damages.

A number of factors are taken into account in deciding whether a term is a condition or a warranty, such as, whether it has been explicitly agreed as such in the contract, whether it results from the nature of the contract, whether it has been set by the law, or decided by previous case law.

- 3 (a)** The rule is that if an agent acts in excess of the authority given to him by the principal, then the principal is not bound by the acts of the agent.

In case the agent exceeds his authority, or tries to act on behalf of the principal without authority, then the principal has two options: either to ratify the action, or to reject it.

If the principal rejects the action then there is no contract (either between the principal and the third party, or between the agent and the third party) and the agent is liable to the principal for breach of authority and to the third party for breach of warranty of authority.

If the principal ratifies the action, then the action so ratified has the same consequences as if it were initially properly authorised. In other words, ratification has retrospective effect so that the principal is bound by the contract from the date on which it was originally made. Therefore the principal becomes liable and entitled under the contract and the agent is relieved from any liability to the principal for acting beyond his authority and from any liability to the third party for breach of warranty of authority.

- (b)** An agency may be terminated in any of the following ways:
- (i) By agreement – the principal and agent may agree to terminate the agency, or the agency agreement may provide for the ways in which the agency may be terminated.
 - (ii) By completion of the work by the agent.
 - (iii) Serious breach of duty on behalf of the agent may give the right to the principal to terminate the agency agreement.
 - (iv) If the period for which the agency was created has expired.
 - (v) By death or bankruptcy or insanity of the agent or the principal.

- 4 (a)** When a company issues its shares at a premium, that is at a value above nominal value, a sum equal to the aggregate amount or value of the premiums is transferred to a 'share premium account'. The share premium account may be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, or in writing off the company's preliminary expenses, or the expenses of or the commissions paid or discount allowed on any issue of the company's shares or debentures, or in providing for premium payable on redemption of debentures of the company. The share premium account may also be used for other purposes, e.g. it may be returned to the shareholders, provided the capital reduction procedure is followed.
- (b)** The loan capital is a term of corporate finance that is mainly governed by contract law and comprises long-term loans to the company. Such loans (typically debentures) are usually over a stated period of time and pay interest to the person making the loan. This contrasts with share capital where shareholders are entitled to a proportion of the company's profits, usually by way of dividends. The loan capital comprises indebtedness of the company and those granting the loans are creditors of the company.
- 5 (a)** According to Table A of the Companies Law, Cap. 113, the following rules apply to the distribution of dividends in private companies:
- (i) The company in a general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.
 - (ii) The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.
 - (iii) No dividend shall be paid otherwise than out of profits.
 - (iv) Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.
 - (v) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for a dividend as from a particular date such share shall rank for a dividend accordingly.
 - (vi) 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.
 - (vii) No dividend shall bear interest against the company.
- (b)** A company may, if so authorised by its articles of association, cancel part of its authorised share capital, by cancellation of shares, which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person (s.60(1)(e) of Cap. 113). As a result of such cancellation, the company's nominal capital is reduced by the nominal value of the shares cancelled. The type of resolution required depends on the provisions of the articles of association; in a company regulated by Table A, an ordinary resolution suffices (regulation 45(c)). Notice of the diminution must be sent to the Registrar of Companies within one month (s.61(1)(f) of Cap. 113).

A company may, if so authorised by its articles of association, reduce its (issued) share capital by special resolution. The authorisation for the reduction must be provided by the articles of association, and if not, the company may proceed with the reduction after amending its articles of association to provide for it.

A company may reduce its share capital, *inter alia*, by:

- extinguishing or reducing the liability on shares in respect of uncalled or unpaid capital (s.64(1)(a) of Cap. 113);
- with or without extinguishing or reducing liability on shares, canceling any paid-up share capital which is lost, or is unrepresented by available assets (s.64(1)(b) of Cap. 113);
- with or without extinguishing or reducing liability on shares, paying off any paid-up share capital which is in excess of the needs of the company (s.64(1)(c) of Cap. 113).

The company must apply to the court for an order of confirmation of the reduction. On the making of the order the court approves a minute stating the capital structure of the company as changed by the order. The minute, together with a copy of the order, is delivered to the Registrar of Companies who gives a certificate under his hand which is conclusive evidence that all the requirements of Cap. 113 have been complied with in relation to the reduction. The reduction takes effect from the grant of the Registrar's certificate (s.67(2) of Cap. 113).

- 6 (a)** The distinction between a contract for services (independent contractor) and a contract of service (employee) is important for various reasons.

An employee enjoys the benefits of the Termination of Employment Law of 1967 (as amended), which provides for the circumstances under which dismissal of an employee is unlawful, for the employee's rights for compensation, notice, etc. Besides the protection of the law which governs the relations between employer–employee, the distinction is important for other reasons such as:

- (i) state benefits e.g. unemployment benefit
- (ii) taxation
- (iii) social insurance – employers contribute a part of their employees' social insurance
- (iv) vicarious liability – the Civil Wrongs Law Cap. 148 provides that the employer is liable for every act of his employees which causes harm or damage to a third person during the course of his duties
- (v) the employer is under a duty to indemnify the employee against all the expenses and losses incurred in the course of employment
- (vi) the employer has a duty to his employees to provide a safe system of work and a safe working environment.

- (b)** In case that termination of employment is lawful, the employee being dismissed is not entitled to compensation from his employer, although where the employee is lawfully dismissed for redundancy he is entitled to payment from the Redundancy Fund. Moreover, in case of lawful termination, the employee does not have a right to receive notice, except in case that the employee is dismissed for redundancy or for failing to exercise his duties in a reasonably satisfactory manner.

On the other hand, an employee who has been dismissed unlawfully is entitled to receive compensation from his employer provided:

- (i) termination was not based on a valid reason;
- (ii) the employee was continuously employed by the employer for at least 26 weeks; and
- (iii) the employee has not reached retirement age by the time of termination.

Moreover, an employee who has been unlawfully dismissed may also be entitled to reinstatement provided:

- (i) the employer employs more than 19 employees;
- (ii) the termination was profoundly unlawful; and
- (iii) the employee requests it as a remedy and reinstatement is justified under the circumstances.

An employee being dismissed is entitled to receive written notice (or payment in lieu of notice) prior to termination of his employment (unless dismissed lawfully for reasons other than redundancy or failure to exercise his duties in a reasonably satisfactory manner). The length of the notice depends on the length of service of the employee with his employer.

- 7** The basis of what is referred to as 'insider dealing' is the dealing in financial instruments on the basis of access to unpublished information of a precise nature relating, directly or indirectly, to one or more issuers of financial instruments. For example, those who buy or sell shares on the basis of confidential information as to a company's prospects to which they have access prior to that information being issued by the company to the public, and are thus in a position to better predict the way in which such shares are likely to move, are involved in what is called 'insider dealing'.

The Insider Dealing and Market Manipulation (Market Abuse) Law 116(I)/2005 (the 'Law') prohibits any person who possesses inside information, which has not been published, from using that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates – where financial instruments include transferable securities, derivatives on commodities, interest-rate, currency and equity swaps, etc.

The Law further prohibits any person from disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties, and from recommending or inducing another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates. The prohibitions stated above apply to individuals who possess inside information while they know or ought to have known that it is inside information or individuals who possess inside information by virtue of their membership of the administrative, management or supervisory bodies of the issuer, or their holding in the capital of the issuer, or their having access to the information through the exercise of their employment, profession or duties, or by virtue of their criminal activities.

The Law provides the following general defences to an individual who possesses inside information and uses it in a manner prohibited by the Law:

- (i) if he reasonably believed that the information was published to the extent that there would be no possibility that he would be in a better position as a result of using that information than someone who did not possess it;
- (ii) if he would have done the same even if he had not had the information;
- (iii) if he did not expect that, as a result of using that information, any person would deal with financial instruments relating to it.

- 8** The first issue to consider is whether there is a legally binding agreement between Melanie and Brian. Given that Brian is Melanie's brother, the presumption that there is no intention to create legal relations is triggered. However, given the business context of the agreement, i.e. the fact that Melanie engaged Brian to expand the premises of her hotel in exchange for money is sufficient objective evidence to rebut the presumption.

The initial agreement between Melanie and Brian was for Brian to finish the work (four rooms) by 1 June 2011. On 1 May 2011, Brian asked for additional payment in exchange for the promise to deliver the rooms by 1 June 2011. In other words, the additional EUR5,000 was provided to Brian in exchange for the promise to complete the pre-existing obligation, which he owed to Melanie on the basis of the initial agreement.

It is questionable whether the promise to complete a pre-existing contractual duty owed to the other contracting party is sufficient consideration. Brian was already under a legal obligation to complete the work by 1 June 2011. The fact that he had perhaps miscalculated the time required to complete the task or that he found himself in a position where he could not perform as promised does not of itself entitle him to additional payment. On the other hand, by agreeing to pay an additional sum, Melanie may be held to have obtained the 'practical benefit' of having the work completed on time (*Williams v Roffey Bros*), or even spared the time and trouble of engaging other people to complete work, and avoided incurring damages for not providing the rooms on time. Therefore, if Melanie and Brian entered into the bargain freely and agreed to replace or modify the initial agreement, then the subsequent modification will be upheld as a valid contract (s.62 Contract Law Cap. 149).

Brian delivered the work with 15 days' delay. This is clearly a breach of contract and Melanie will be entitled to receive damages to place her, so far as can be done with money, in the same position she would have been in had the contract been performed. As a result of the delay, Melanie faced complaints from frustrated clients. It may reasonably be supposed that at the time of making the contract, it was in the contemplation of both parties that Melanie would rent the rooms for the summer period. Therefore, Brian may be held liable to compensate Melanie for any losses suffered as a result of the delay in delivering the rooms (s.73 Contract Law Cap. 149).

- 9** The way in which CyCo Ltd may declare dividends will depend on the contents of its articles of association. According to Table A of the Companies Law Cap. 113, the company in a general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors. If the board of directors of CyCo Ltd does not recommend any amounts to be declared as dividends, then John may consider proposing the removal of certain members of the board of directors.

John can deposit a requisition requesting the convening of an extraordinary general meeting with a view to removing all or certain of the directors and appointing new directors, a course of action which will succeed, having regard to George's intention to support John's action.

Under s.126 Companies Law Cap. 113, if the directors do not, within 21 days from the date of the deposit of the requisition, proceed to convene a meeting, John, who holds more than 10% of the issued share capital of CyCo Ltd, may himself convene a meeting. Any such meeting so convened shall not be held after the expiration of three months from the date of the deposit of the requisition.

Under s.178 Companies Law Cap. 113, a company may, by ordinary resolution, remove a director before expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him. If John wishes to propose removal of any members of the board of directors then he needs to provide the company with notice of his intention to propose such resolution at least 28 days before the meeting at which it will be proposed (special notice). A copy of the notice of the intended resolution to replace the director must be given to the relevant director, who will be entitled to be heard on the resolution at the meeting. The said director will also be entitled to have his written representations sent to every member of the company to whom notice of the meeting will be sent.

- 10** Given that the objects of DKR Ltd, as defined in its memorandum of association, are limited to the holding of investments in Russia, the contract for purchase of immoveable property in Ukraine is *ultra vires* since it falls outside the company's powers. However, according to s.33A Companies Law Cap. 113, DKR Ltd will be bound by the agreement for the purchase of immoveable property in Ukraine, entered on its behalf by its director Dan, even though the transaction is beyond the scope of the objects stated in the company's memorandum of association, unless Dan has acted beyond the powers conferred or permitted to be conferred to him by the law, or if DKR Ltd proves that the third person knew, or could not have ignored, that such act fell outside the objects of the company. It is clarified that publication of the company's memorandum and articles of association does not by itself constitute sufficient proof of knowledge on the part of a third person.

Given that Dan contemplates entering into additional investments on behalf of DKR Ltd in other European countries, DKR Ltd should have its objects altered so as to permit such investments. Section 7 Companies Law Cap. 113 provides the ways in which the objects of a company may be amended by passing a special resolution. One of the permissible amendments to the objects of the company is the expansion of the place of its operations. Therefore Dan may convene a general meeting of the members of DKR Ltd by sending a 21 days' notice in which the intention to propose a special resolution for the alteration of the company's objects clauses as aforesaid will be proposed. Once the special resolution is passed, an application must be made in court in order to sanction the alteration.

- 1** 6–10 A thorough answer showing good understanding of the main functions of the Constitution.
0–5 A less complete treatment of the question.
- 2** 8–10 Thorough explanation of the distinctions between both terms and representations, and conditions and warranties.
5–7 A sound understanding of the area, although perhaps lacking in detail.
0–4 Little, or no, understanding of the area.
- 3** 8–10 A good treatment of the legal consequences of an agent exceeding his authority, as well as providing three ways in which an agency may be terminated.
5–7 A sound understanding of the area, although perhaps lacking in detail.
0–4 An unbalanced answer, showing little understanding of agency law.
- 4** 8–10 Detailed explanation of both share premium account and loan capital.
5–7 A sound understanding of the area, although lacking in detail.
0–4 Very unbalanced answer, or one which shows little understanding of the subject matter of the question.
- 5** 8–10 Thorough explanation of the rules relating to distribution of dividends and reduction of share capital in private companies.
5–7 A less complete answer, lacking in detail.
0–4 Little understanding of the area.
- 6** 8–10 A good explanation of the distinctions between both contracts of service and contracts for services, and lawful and unlawful dismissal.
5–7 A reasonable treatment of the question, although perhaps lacking in detail.
0–4 Little understanding of the area.
- 7** 7–10 A complete answer, demonstrating a good understanding of the rules and regulations of insider dealing.
4–6 An accurate recognition of the issues relating to insider dealing and its legal framework, but perhaps lacking in detail.
0–3 A weak answer, showing little understanding of the concepts of insider dealing.
- 8** 8–10 A complete answer, highlighting and dealing with all of the issues presented in the problem scenario.
5–7 An accurate recognition of the problems inherent in the question, together with an attempt to apply the appropriate legal rules to the situation.
2–4 An ability to recognise some, although not all, of the key issues and suggest appropriate legal responses to them. A recognition of the area of law but no attempt to apply that law.
0–1 Very weak answer showing no, or very little, understanding of the question.
- 9** 8–10 A complete answer, highlighting and dealing with all of the issues presented in the problem scenario.
5–7 An accurate recognition of the problems inherent in the question, together with an attempt to apply the appropriate legal rules to the situation.
2–4 An ability to recognise some, although not all, of the key issues and suggest appropriate legal responses to them. A recognition of the area of law but no attempt to apply that law.
0–1 Very weak answer showing no, or very little, understanding of the question.

- 10** 8–10 A good analysis of the scenario, with a clear explanation of the rules relating to reduction of share capital.
5–7 Some understanding of the situation, but perhaps lacking in detail.
0–4 Weak answer, lacking in knowledge or application.