
Answers

- 1 (a) Decisions of the Supreme Court of Cyprus act as binding authority on the District Courts of Cyprus. This is due to the operation of the doctrine of precedent, which is at the heart of the common law system. Thus a District Court must, when making a decision, follow the decisions of the Supreme Court, provided the legally material facts are the same.
- (b) Pursuant to s.29 of the Courts of Justice Law, L. 14/60, the common law and principles of equity apply in Cyprus, provided that there is no statutory provision governing the matter and that it is consistent with the Constitution of Cyprus. Therefore, the common law is used as a sort of 'reserve' law in Cyprus.
- (c) The European Court of Human Rights was established by the European Convention of Human Rights, which has been ratified and adopted in Cyprus (Law 39/62). The European Convention of Human Rights has been incorporated into the national legal system of Cyprus and the decisions of the European Court of Human Rights are binding upon Cyprus. Moreover, to the extent that the European Court of Human Rights has decided on the interpretation of the European Convention of Human Rights, the Cyprus national courts are bound by such judicial precedents.
- 2 (a) A unilateral contract is a type of contract which arises when one party promises to do something in return for an act or forbearance by another. In this type of contract, only one party to the agreement undertakes obligations, and the other party is not bound to do anything at all and is free to perform or not. If, however, the other party to whom the promise is made performs the act requested, then a binding contract comes into existence. For example, in the famous case of *Carlill v Carbolic Smoke Ball Company* (1893), the Carbolic Smoke Ball Company published an advertisement in which they promised to pay £100 to anyone who bought their smoke ball, used it as instructed and nevertheless caught influenza. The courts decided that a person who relied on the advertisement and performed the requested act could sue the company for the promised amount.
- (b) An exclusion clause is a term in a contract that seeks to restrict the rights of the parties, by excusing liability for a potential breach of contract. In order to be valid so as to exclude liability for the relevant breach, the exclusion clause must pass certain tests. The common law tests provide that: (i) the clause must be incorporated into the contract and not added after the contract has been completed (the 'incorporation' test); and (ii) the clause must be clear and precise, so that any vagueness will be construed as against the party seeking to rely on it (the 'construction' test). Moreover, the Unfair Contract Terms Law 1996, which relates to contracts made in the course of business, provides important limitations on the validity of exclusion clauses. For example, any clause purporting to restrict liability for death or personal injury resulting from negligence is void. However, liability for negligence causing loss other than death or personal injury may be excluded, provided that the clause is reasonable.
- 3 (a) An action in negligence may be established in the courts of Cyprus by proving the following:
- (i) that the defendant had a duty of care towards the plaintiff;
 - (ii) that the defendant was in breach of that duty;
 - (iii) that the breach caused the plaintiff's injury, damage or loss;
 - (iv) that the plaintiff's injury, damage or loss was not too remote a consequence of the breach (i.e. it was foreseeable that it would happen as a direct consequence of the defendant's act or omission);
- It is noted that if the defendant can rely on any of the available defences to the plaintiff's claim in negligence, then the plaintiff's action will not succeed.
- (b) The available defences in an action in negligence are the following:
- (i) *Novus actus interveniens*
Even if a defendant was negligent, it is a defence in an action for negligence to prove that either a third person was negligent and that such third person's negligence was the decisive cause of the damage; or that the damage was due to the happening of some extraordinary natural occurrence which a reasonable person would not have anticipated and the consequences of which could not have been avoided by the exercise of reasonable care (s.56 Civil Wrongs Law Cap. 148).
 - (ii) *Volenti non fit injuria* or voluntary assumption of risk:
If the claimant knew and appreciated or must be taken to have known and appreciated the state of affairs causing the damage and voluntarily exposed himself or his property thereto, then this will be an available defence to the defendant. There are certain exceptions to the application of this defence (s.59 Civil Wrongs Law Cap. 148).
 - (iii) Act in accordance with the law:
It is a defence to any action brought in respect of a civil wrong that the act complained of was done by virtue and in accordance with any law (s.60 Civil Wrongs Law Cap. 148).

(iv) Contributory Negligence

Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, even though a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage (s.57 Civil Wrongs Law Cap. 148).

- 4 (a) Every partner is liable jointly with the other partners for all debts of the partnership incurred while he is a partner, provided that these debts relate to matters for which the partner, through the acts of whom the debts have arisen, is authorised to act for the partnership as he did.

The general partners are liable for all debts and obligations of the firm, while the limited partners are responsible for the firm's debts and obligations only up to the amount they have contributed to the partnership.

A new partner in an existing partnership is not liable for the partnership's liabilities which were incurred prior to the date of his admission, unless, of course, he has agreed otherwise. A partner who retires from a partnership is liable for the partnership's debts and obligations incurred prior to the date on which he ceased to be a partner.

- (b) The duration of a partnership depends on the express or implied agreement between the partners. A partnership is liable to be dissolved pursuant to the provisions of the partnership agreement.

A partnership entered into for an indefinite period may be dissolved (subject to any other provisions of the partnership agreement) at any time by any partner giving notice to the other partner/s, or by the death or bankruptcy of any partner.

A partnership may also be dissolved by the court on the application of any partner. The court has, *inter alia*, jurisdiction to dissolve a partnership whenever it deems it just and equitable.

- 5 In order to incorporate a private limited liability company in Cyprus, the first step is to obtain approval of the company's proposed name. A relevant petition is filed with the Registrar of Companies which grants approval of the proposed name, provided that it is not undesirable and that there is no other company registered under the same or similar name.

After obtaining approval of the company's proposed name, the following documents must be submitted to the Registrar of Companies for the purpose of registering the company, and the relevant registration fee must be paid depending on the amount of the authorised share capital of the company:

- (i) a sworn declaration of compliance in the prescribed form HE1 made by a practising advocate to the effect that all requirements relating to the incorporation of the company are in compliance with the Companies Law Cap 113;
- (ii) a notice of location of the company's registered office (form HE2) signed by a director or the company secretary. This form may be filed along with the rest of the particulars or within 14 days as from incorporation;
- (iii) a form (HE3) containing particulars about the first directors and secretary (i.e. names, addresses, identity card numbers, professions and whether they are directors in other companies) signed by a director or by the company secretary;
- (iv) memorandum of association: this states the company's name, that the company's location is in Cyprus, the company's objects' clauses, that the liability of its members is limited and its authorised share capital, and must be signed by the subscribers and their signatures be witnessed by at least one witness;
- (v) articles of association: this document contains the internal regulations of the company and provides for procedures on company meetings, powers of directors, declaration of dividends, etc, and must also be signed by every subscriber of the memorandum of association in the presence of at least one witness.

The certificate of incorporation issued by the Registrar of Companies is conclusive evidence that all the requirements of the Companies Law have been complied with. The company is deemed to be incorporated on the date so stipulated on the certificate of incorporation.

- 6 The board of directors constitutes the elected representatives of the shareholders, acting collectively in the management of the company's affairs. The directors exercise their powers collectively, as a body, unless relevant powers have been validly passed on or delegated to individual directors.

The board of directors is responsible for the overall direction of the company's affairs. Its powers are defined in the company's articles of association and derive from the company being a separate legal person from its members.

The directors owe their duties to the company as a whole, i.e. to the shareholders as a collective body. Every director has a duty to act within the company's powers set out in its memorandum of association, in accordance with the decisions of the board of directors and the general meeting, and always in compliance with the provisions of the Companies Law Cap. 113 and any other applicable law. Moreover, some of the directors' duties include the following:

- (i) fiduciary duty to act in good faith and for the benefit of the company including a duty to use their powers for proper purposes and to avoid conflicts of interest. In particular, directors should not compete with the company and should not obtain profit from their position of directors; where they do so, they will be liable to account for any profit obtained. Exceptionally, the directors may be entitled to retain such profit if they make full disclosure to the shareholders and the shareholders consent. Moreover, the fiduciary duties of directors may sometimes survive even after the directors have left the company.

- (ii) duty of care and skill in managing the affairs of the company. This duty is imposed in addition to the fiduciary duties, so that a director may incur liability for negligence in accordance with the general principles of the law of tort and a negligent director will be liable to the company for any damage resulting from his lack of care. The standard of care applicable is the degree of skill that may reasonably be expected from a person of the director's knowledge and experience;
- (iii) a statutory duty to declare the nature of any direct or indirect interest in a contract or proposed contract with the company at a meeting of the directors of the company (s.191 Companies Law Cap. 113);
- (iv) a duty to supply the company with any information that may be necessary for the preparation of the relevant reports, e.g. the register of directors and secretary, the register of shareholders, summary of their remuneration, loans etc for inclusion in the company's financial statements etc.

7 The Companies Law Cap. 113 protects against a number of potential criminal activities which may be conducted during the operation and management of companies. For example:

- (i) Failure to prepare and deliver accounts or annual returns on time is a criminal offence. Any directors convicted of this offence could end up with a criminal record and a fine.
- (ii) Moreover, it is a criminal offence for an officer of the company to provide misleading, false or deceptive information or explanations to a company's auditors or fail to provide information or explanations required by the auditor.
- (iii) If a director of a company fails to take all reasonable steps to ensure that proper books of account are kept (i.e. books which give a true and fair view of the state of the company's affairs), they are guilty of a criminal offence and are liable on conviction to imprisonment for a period up to one year, or to a fine, or to both such penalties.

Moreover the Companies Law Cap. 113 provides for protection in relation to a number of criminal offences during the winding up of companies. For example:

- (i) If, in the winding up of a company, it appears that any of the company's business has been carried on with the intention to defraud the creditors of the company or for any fraudulent purpose, the court may declare that any persons who were knowingly parties to the fraudulent trading will be personally liable for all or any of the debts or other liabilities of the company as the court thinks proper (s.311).
- (ii) It is a criminal offence for a director to make a declaration of solvency when there is a proposal for a voluntary winding up, without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the time specified in the declaration, and this is punishable with maximum of two years imprisonment or a fine or both penalties (s.266).

8 The first question is whether Mary's advertisement constitutes an offer or an invitation to treat. Pursuant to relevant case law, the advertisement will be deemed to be an invitation to treat and not a binding offer. This conclusion is reinforced by the fact that the advertisement does not even indicate the purchase price. Thus no valid contract may be established by simply accepting the statement on the advertisement.

On the basis of the above, Cleo's call on Monday constitutes an offer to buy Mary's car for €9,000. On Tuesday, without having accepted Cleo's offer, Mary makes an offer to Denis to sell her car to him for €9,500. Denis makes a counter-offer to Mary, thus Mary's previous offer elapses. Mary does not accept Denis' counter-offer and therefore no contract has been established between Mary and Denis. On Wednesday, Mary accepts Cleo's offer for €9,000. Therefore, it appears that an oral contract has been formed between Mary and Cleo for the sale of the car in exchange for €9,000. On Thursday, it is too late for Cleo to withdraw her offer, as this has already been accepted. Therefore, if Cleo refuses to proceed with the purchase of Mary's car, then this will constitute breach of contract. On Friday, Denis makes a new offer to Mary for €9,500.

Mary, who has a duty to mitigate her loss, now has the opportunity to sell her car for €9,500. That is, Mary can make a higher profit than she would have made under the contract with Cleo. Therefore, Mary has the opportunity to fully mitigate her loss. As a result, Mary will not have a claim for substantial damages against Cleo, although she may have a claim for nominal damages for breach of contract.

9 The board of directors of Mandarin Ltd may consider whether to increase the loan capital of the company by, for example, obtaining a loan from a credit institution. As security for the said loan, the directors may offer to provide a fixed or a floating charge over the factory and machinery, or even personal guarantees from the directors. Where a fixed or floating charge is granted, then relevant particulars will need to be registered with the Registrar of Companies pursuant to s.90 Companies Law Cap. 113, otherwise the security conferred by the charge will be rendered void as against the liquidator and any creditor of Mandarin Ltd.

In addition, the board of directors of Mandarin Ltd may consider whether to increase the company's share capital, either by issuing shares at a discount, which may be more attractive to existing shareholders, or even by approaching individual third-party investors. However, it should be noted that Mandarin Ltd is a private company, and therefore cannot issue an invitation to the public for the subscription of its shares or debentures. Moreover, any pre-emption rights of existing shareholders in relation to the issue of additional shares should be appropriately exercised or waived prior to the registration of any third party as additional shareholder in the company.

- 10** The share capital of ABC Ltd is €1,000,000, while its available assets are worth only €900,000. Therefore, an amount equal to €100,000 is unrepresented by available assets and can thus be cancelled pursuant to the provisions of the Companies Law, thus reducing the share capital to €900,000. The share capital can be further reduced to €600,000, because there is now an amount of €300,000 which is in excess of the wants of the company. That is, the company can fully meet the demands of its creditors by having a share capital of €600,000, though perhaps it should also allow for a margin.

Therefore the directors may initiate proceedings under the Companies Law Cap. 113 for the reduction of the share capital of Enterprise Ltd to €600,000. The Companies Law sets three conditions which must be satisfied for reducing the share capital:

- (a) authorisation for the reduction under the company's articles of association;
- (b) special resolution; and
- (c) confirmation by the court.

Alternatively, the company may consider entering into a voluntary winding up, since its purpose has ceased to exist. Voluntary winding up may be initiated by passing an ordinary resolution in a general meeting. The appointed liquidator will pay off the company's creditors and any surplus will be distributed to the shareholders.

- 1** 6–10 Thorough explanation of the effect of decisions of the Supreme Court of Cyprus, common law and decisions of the European Court of Human Rights.
0–5 A less complete treatment of the question.
- 2** 8–10 A good treatment of the effect and application of both unilateral contracts and exclusion clauses.
5–7 A sound understanding of the area, although perhaps lacking in detail.
0–4 An unbalanced answer, showing little understanding of the relevant aspects of the law on contracts
- 3** 8–10 A thorough answer showing good understanding of the tort of negligence (in both establishing and defending an action in negligence).
5–7 A sound understanding of the area, although perhaps lacking in detail.
0–4 Little or no understanding of the area.
- 4** 8–10 Detailed explanation of both the liability of partners and the possible ways of ending a partnership.
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 description and explanation of the procedure for registering a private limited liability company in Cyprus.
5–7 A less complete answer, lacking in detail.
0–4 Little understanding of the area.
- 6** 8–10 A good explanation of the role and duties of the board of directors.
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 area.
4–6 An accurate recognition of the relevant issues, but perhaps lacking in detail.
0–3 A weak answer, showing little or no understanding.
- 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 the 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.