
Answers

- 1 (a) Common law constitutes the basis of the legal system of the United Kingdom. Common law is the product of long-evolved social values, which are judicially articulated and interpreted. Common law derives its authority from the consent of the people, without any legislative enactment. It is a form of custom, which is generally adopted by the people, and has gradually gained the force of law. The principles of the common law are expressed in court judgements, which have been rendered as the primary source of the determination of such principles. Equity law was developed by chancery courts into the direction of setting up new institutions, e.g. trusts, and in developing rules and doctrines in an attempt to remedy the injustice that common law resulted in.
- (b) Common law and the doctrines of equity form part of the legal system of Cyprus, acting as a form of 'reserve law' of Cyprus. Pursuant to s.29 Courts of Justice Law, L.14/60, common law and the doctrines of equity are applicable by the courts in Cyprus, provided (i) that there is no statutory provision governing the matter, and (ii) that they are consistent with the Constitution of Cyprus.
- (c) In common law legal systems, like the Cyprus legal system, if a decision is delivered by a higher court, its *ratio decidendi* (i.e. the legal principles that the court applied to the merits of the case in order to deliver its judgement) may form the basis of a binding judicial precedent, which inferior courts and that court itself is bound to apply (within prescribed limits). Adherence to precedent helps achieve stability, which in turn gives predictability to the law and affords a degree of security for individual rights, while at the same time allows the system to be adaptable to changing circumstances.
- 2 (a) The general doctrine of privity is that a contract can only be enforced by, and is only enforceable against, the parties to that contract. Thus the doctrine of privity consists of two distinct general rules. The first rule is that a third party cannot be subjected to a burden by a contract to which he or she is not a party. The second rule is that a person who is not a party to a contract cannot sue upon the contract in order to obtain the promised performance, even in the case where the contract was entered into with the object of benefiting him (*Beswick v Beswick* (1967)).
- (b) In commercial agreements there is a heavy presumption of an intention to create legal relations. This presumption is not easily discharged. It may be rebutted by an express term of the contract, which states that the parties do not intend to create legal relations. The parties must, however, make their intentions clear.
- In domestic and social agreements there is a presumption that parties do not intend to create legal relations. For example, an agreement between a husband and a wife is presumed not to be legally enforceable (*Balfour v Balfour* (1919)). Similarly, agreements between parents and children are presumed not to be legally binding. A mere subjective intention to create legal relations does not suffice to rebut this presumption. In domestic agreements, 'clear', objective evidence is required of an intention to create legal relations. For example, if an agreement is entered into by family members in what the courts perceive to be a 'business context', then the court will be readier to infer that the presumption has been rebutted. Alternatively, the presumption can be rebutted in cases where there has been detrimental reliance on the faith of the agreement. Finally, the courts will consider the certainty of the agreement, which has been entered into between the parties.
- 3 (a) The relevant Cyprus legislation (namely the Protection of Motherhood Law) provides that a pregnant woman cannot be dismissed from employment during her pregnancy provided that the woman has informed the employer of her pregnancy by providing a certificate from a registered doctor.
- Exceptionally, the Law permits dismissal of a pregnant woman where:
- (i) the pregnant woman is guilty of a serious misdemeanour or conduct which justifies the breach of the employment relationship; or
 - (ii) the relevant business has ceased to function; or
 - (iii) the duration of the employment contract has expired.
- In such a case, where a pregnant woman is dismissed from employment, the employer must duly justify the dismissal in writing.
- (b) The Termination of Employment Law permits dismissal in case of misconduct by the employee, which includes circumstances when the employee demonstrates improper behaviour during the course of his or her work, or seriously or repeatedly breaches or ignores the regulations of his or her work or other regulations in relation to his or her employment. The onus of proof that a dismissal was lawful lies with the employer, who will have to prove that the employee 'seriously or repeatedly breached or ignored the regulations of his or her work'. Therefore, the circumstances under which an employee who has breached the regulations of his or her work will justify dismissal will depend on the degree and frequency of such breaches.

- 4 (a)** A company registered under the Companies Law Cap. 113 has a legal personality, distinct from that of its members, whereas a partnership is not accorded legal personality. Instead, the acts of the partnership are nothing more and nothing less than acts of each of the partners in their personal capacity.

A limited company is a company where the liability of the members for the company's debts and obligations is limited in the way provided for in the memorandum of association of the company; whereas a limited partnership is a partnership which consists of at least a 'general partner' who is liable for all debts and obligations of the firm, and one or more limited partners who are not responsible for the firm's debts and obligations beyond the amount they have contributed to the partnership.

- (b)** Pursuant to s.29 Companies Law Cap. 113, a private company is a company which by its articles of association (s.29 Cap.113):

- (i) restricts the right to transfer its shares;
- (ii) limits the number of members to 50, not including employees or former employees who have continued after the termination of employment to be members of the company; and
- (iii) prohibits an invitation to the public to subscribe for any shares or debentures of the company.

A public company is a company which is not private. Further, there must be at least two directors and at least seven members in a public company whereas a private company may have a single director and a single member.

A public company requires a minimum capital of approximately €25.630 whereas there is no minimum capital requirement for a private company.

- 5 (a)** The company's objects may be amended to a certain degree, as provided in s.7 Companies Law Cap. 113, which provides that the company may, by special resolution and subject to confirmation on petition by the courts, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it:

- (i) to carry on its business more economically or more efficiently; or
- (ii) to attain its main purpose by new or improved means; or
- (iii) to enlarge or change the local area of its operations; or
- (iv) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or
- (v) to restrict or abandon any of the objects specified in the memorandum; or
- (vi) to sell or dispose of the whole or any part of the undertaking of the company; or
- (vii) to amalgamate with any other company or body of persons.

An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, must be delivered to the Registrar of Companies who shall register the copy so delivered and shall certify the registration under his hand.

- (b)** The corporate veil may be lifted pursuant to relevant provisions of the Companies Law Cap. 113.

For example, according to s.32 Companies Law, if the number of members of a public company is reduced to below seven and the company carries on business for more than six months while the number is so reduced, then every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than seven members is severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

In addition, according to s.194 Companies Law, the liability of the directors of a company may be unlimited if so provided by the memorandum. A company may also alter its memorandum, if so permitted by its articles, so as to render unlimited the liability of its directors.

According to s.104 Companies Law, where a public company trades or exercises borrowing powers before it has been issued with a trading certificate, the directors are subject to a daily fine.

Moreover, where the directors are found liable for fraudulent trading, the courts will readily lift the veil under statute. In particular, s.311 Companies Law provides that 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.

Finally, according to s.103 Companies Law, when any officer of the company or any other person acting on its behalf signs or authorises the signature on behalf of the company of any bill of exchange, promissory note, cheque or order for goods or money and the name of the company is not mentioned in legible characters shall be personally liable to the holder of bill of exchange, promissory note, cheque or order for goods or money, unless it is duly paid by the company.

- 6 (a)** The provisions of the Companies Law Cap. 113 relating to the reduction of the share capital of a company apply to the share premium account as if the latter were paid-up share capital of the company.

The Companies Law sets three conditions which must be satisfied for reducing the share capital:

- (i) authorisation for the reduction under the articles of association;
- (ii) special resolution; and
- (iii) confirmation by the court.

- (b)** Issuing shares at a discount is, in principle, prohibited by the law, unless the conditions set out in s.56 Companies Law are met.

A private company may issue at a discount shares in the company of a class already issued provided that:

- (i) the issue of the shares at a discount is authorised by a resolution passed in a general meeting of the company, and is sanctioned by the court;
- (ii) the resolution specifies the maximum rate of discount at which the shares are to be issued; and
- (iii) the shares to be issued at a discount are issued within one month after the date on which the issue is sanctioned by the court or within such extended time as the court may allow.

- 7** The Prevention and Suppression of Money Laundering Activities Laws of 2007 require all persons carrying on the activities and services prescribed by s.60 of the Laws (which include consultancy services, and professional activities by auditors, external accountants, tax advisors and lawyers) to establish and maintain specific policies and procedures to guard against money laundering, such as:

- (i) client identification procedures;
- (ii) record-keeping procedures in relation to clients' identity and their transactions;
- (iii) procedures of internal reporting to a competent person appointed to receive and consider information that gives rise to knowledge or suspicion that a client is engaged in money laundering activities;
- (iv) other internal control and communication procedures for forestalling and preventing money laundering;
- (v) measures for making employees aware of the above procedures and relevant legislation;
- (vi) training employees in the recognition and handling of transactions suspected to be associated with money laundering.

Lawyers or auditors who allegedly fail to comply with the above requirements are referred to the competent disciplinary board which decides accordingly.

Furthermore, it is an offence for any person, including an accountant or auditor, who in the course of his or her trade or business acquires knowledge or reasonable suspicion that another person is engaged in money laundering not to report his or her knowledge or suspicion to a police officer or to the Unit for Combating Money Laundering (MOKAS). MOKAS has been established by law to investigate money laundering processes and it may apply to the court and obtain freezing, confiscation and disclosure orders.

In addition, courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person, including a firm, who appears to the court to be in possession of the information relevant to the application.

- 8** The facts of this problem scenario resemble the facts of the landmark case of *Donoghue v Stevenson* (1932) where the House of Lords ruled that a person might owe a duty of care to another with whom he had no contractual relationship at all.

In *Donoghue v Stevenson*, the House of Lords laid down the general principle that every person owes a duty of care to his 'neighbour', to persons so closely and directly affected by one's act that he ought reasonably to have them in contemplation as being affected. Thus, in that case, the House of Lords held that there was a duty on behalf of the manufacturer to take reasonable care in the manufacture of their products.

The neighbour principle, as enunciated in *Donoghue v Stevenson*, has been refined in subsequent rulings. The three-stage test for establishing a duty of care was developed in the case of *Caparo Industries Plc v Dickman* (1990), which is as follows:

- (i) Was the harm reasonably foreseeable?
- (ii) Was there a relationship of proximity between the parties?
- (iii) Considering the circumstances, is it fair, just and reasonable to impose a duty of care?

Similarly in this case, Andrew has no contractual relationship with the manufacturer or with the restaurant. However, if the answers to the above three questions are in the affirmative, then both the manufacturer and the restaurant may be held to be subject to a duty to Andrew, as consumer, to take reasonable care to prevent injury. Given that the bottle in which the orange juice was contained was not transparent, it may be held that it is not fair, just and reasonable to impose a duty of care on the restaurant to check the contents of the bottle prior to serving it to the customers. However, if Andrew can prove that the contamination was the result of poor storage at the restaurant, the latter may not be able to escape liability on that ground.

9 A number of issues pertaining to the law on partnerships arise in this problem scenario.

First, given that a partnership is said to exist when there is a relationship between two or more persons carrying on business with a view to profit, it may be concluded that in September 2012, Constantine and Dona formed a partnership. As a result, their partnership had to be registered with the office of the Registrar and Official Receiver within 30 days as from its establishment. Although such 'registration' is not a prerequisite for the existence of a partnership, it is a statutory obligation and the law provides for criminal and other sanctions if it is not met. Such sanctions will apply to Eve as well, even though she joined the partnership in January 2013.

However, given that Eve was not a partner in October 2012, she will not be held liable for the partnership's liabilities which were incurred prior to the date of her admission, unless, of course, she has agreed otherwise. Therefore, subject to such agreement, Eve will have no liability in relation to the claim for damages by the former client as a result of services rendered to him prior to January 2013, irrespective of the date of submission of such claim.

Finally, a partner who acquires a personal benefit from the use of the property, name or business of the partnership, without approval of the remaining partners, has an obligation to account to the partnership for such benefit. Therefore, unless Eve has obtained the consent of Constantine and Dona, she will need to account to the partnership for the commission received from the owner of the new office space rented by the partnership for the purpose of carrying on its business.

10 Harry is a creditor of Flower Services Ltd, to whom the company owes the amount of €2.000. According to s.212 Companies Law Cap. 113, Flower Services Ltd will be deemed to be unable to pay its debts if Harry, as a creditor to whom the company is indebted a sum exceeding €855, has served on the company a demand for the payment of the sum due, and the company has for three weeks thereafter neglected to pay the sum. Harry may thereafter apply to the court for compulsory winding up of Flower Services Ltd on the grounds that the company is unable to pay its debts (s.211 Companies Law Cap. 113).

It is evident from the problem scenario that Harry has been dealing with Flower Services Ltd and he will therefore have no right to claim the due amount from the company's shareholder or director. This is a result of the doctrine of separate legal personality and the corporate veil which protects Georgia from liabilities of the company itself.

However, if, in the winding up of Flower Services Ltd, 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 Companies Law Cap. 113). Therefore, if the above conditions are satisfied, Georgia, as sole director and shareholder of Flower Services Ltd, may be held personally liable for the amount of €2.000 due to Harry.

- 1** 6–10 Thorough explanation of all three parts to the question.
 0–5 A less complete treatment of the question.
- 2** 8–10 A good treatment of both the doctrine of privity and presumptions relating to the intention to create legal relations.
 5–7 A sound understanding of the area, although perhaps lacking in detail.
 0–4 An unbalanced answer, showing little understanding of the concepts at issue.
- 3** 8–10 A thorough answer showing good understanding of the given circumstances of dismissal from employment.
 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 analysis of the differences between limited companies and limited partnerships, as well as private and public companies.
 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 differences.
- 5** 8–10 Thorough description of the procedures for altering a company's memorandum of association and lifting the corporate veil.
 5–7 A less complete answer, lacking in detail.
 0–4 Little understanding of the area.
- 6** 8–10 A good explanation of the procedures for reducing a company's share premium account and issuing shares at a discount.
 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 legal procedures available for the prevention of money laundering.
 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 to the facts.
- 5–7 Some understanding of the situation but perhaps lacking in detail.
- 0–4 Weak answer lacking in knowledge or application.