
Answers

- 1** The Constitution of Cyprus establishes two higher courts, the Supreme Constitutional Court and the High Court, which were later amalgamated into one, the contemporary Supreme Court of the Republic of Cyprus consisting of 13 judges. The Supreme Court is the highest court in the Republic and is vested with various types of jurisdictions as follows:

The Supreme Court is the final Appellate Court in the Republic and has jurisdiction to hear and determine all appeals from lower courts in civil and criminal matters. Appeals are heard by a panel of three judges. The hearing of the appeal is based on the record of the proceedings kept in the lower court and no evidence is heard except in exceptional and very rare circumstances. In the exercise of its appellate jurisdiction the Supreme Court may uphold, vary or set aside the decision appealed from, or it may order a re-trial.

The Supreme Court is also vested exclusively with revisional jurisdiction in connection with administrative or executive decisions, acts or omissions. A decision, act or omission may be annulled on the ground that it is in excess or abuse of any power vested in the administrative organ, or contrary to the provisions of the Constitution.

In addition, the Supreme Court has exclusive jurisdiction to issue the prerogative writs of *habeas corpus*, *mandamus*, *certiorari*, *quo warranto* and *prohibition*.

The Supreme Court has original and appellate jurisdiction in admiralty cases. At first instance the case is heard by a single judge of the Supreme Court and on appeal the case is heard by the full bench.

Moreover, the Supreme Court, as an electoral court, has exclusive jurisdiction to hear and determine petitions concerning the interpretation and application of the electoral laws.

Finally, the Supreme Court has jurisdiction to examine the constitutionality of any law or any conflict of power or competence, which arises between any organs or authorities of the Republic, and to hear and determine any recourse by the President of the Republic regarding the compatibility with the Constitution of any law enacted by the House of Representatives.

- 2 (a)** The tort of passing off is based on injury caused to the reputation and goodwill of another's business, by the use of a name, mark or description of one business that misleads a consumer to believe that such business is that of another.

Passing off is defined in s.35 Civil Wrongs Law Cap. 148, which provides that any person who by imitating the name, description, sign, label of goods or otherwise causes or attempts to cause any goods to be mistaken for the goods of another person, so as to be likely to lead an ordinary purchaser to believe that he is purchasing the goods of such other person, commits a civil wrong against such other person. It is clarified that no person commits a civil wrong by reason only that he uses his own name in connection with the sale of any goods.

A cause of action for passing off arises when a misrepresentation is made by a person in the course of trade to prospective customers or ultimate consumers of goods or services supplied by him, which is calculated to injure the business or goodwill of another, and which causes actual damage to the business or goodwill of the other or will probably do so.

- (b)** The rule of remoteness of damage relates to the recoverability of damages for loss suffered by a person as a result of another committing the tort of negligence. The innocent party's loss will be a remote consequence of the tortfeasor's actions, if it was not reasonably foreseeable at the time that the tortfeasor committed his actions that his doing those actions would cause that person to suffer that particular loss or, at least, a loss similar in kind to the loss the innocent party suffered.

The 'thin skull' rule is an exception to the foreseeability test. This provides that where a person has committed the tort of negligence in relation to another and it was reasonably foreseeable that the other would suffer some kind of injury as a result of the actions of the first, but because the innocent party suffered from a pre-existing condition he, in fact, suffered a much more serious injury as a result of the negligence, then that more serious injury will not be a remote consequence of the tortfeasor's actions, even if it was not reasonably foreseeable at the time the tortfeasor did his actions that those actions would cause the innocent party to suffer that kind of injury. It is, however, clarified that the injury that triggers off the innocent party's pre-existing physical or psychological predisposition must be foreseeable.

- 3 (a)** An employee owes a number of duties towards his employer, which may be summarised as follows:
- (i) An employee is under a duty to his employer to exercise his work with reasonable care, skill and competence.
 - (ii) An employee is under an implied duty to obey the lawful and reasonable orders of his employer.
 - (iii) There is an implied term in a contract of employment that the employee will serve the employer with fidelity and in good faith. This duty encompasses the duty not to solicit customers during his period of employment, not to disclose confidential information or trade secrets and a general duty of confidence.
 - (iv) The employee is under a duty to account to his employer for all property entrusted to him by his employer and for all the money or property received by him for or on account of his employer. The employee is under a duty to account to his employer for any bribe, secret profit or commission received in connection with the employer's affairs.
 - (v) The employee has a duty to perform his duties in person and is not allowed to delegate the performance of his duties unless with the express or implied consent of the employer.

- (b) The main duties of the employer towards his employees may be summarised as follows:
- (i) The employer is under a duty to remunerate his employees with such remuneration as may be specified in the employment contract or under a collective bargaining agreement. In the absence of any such determination, the employer is under a duty to pay reasonable remuneration.
 - (ii) The employer is under a duty to indemnify the employee against any expenses and losses incurred in the course of employment.
 - (iii) There is an implied duty of mutual trust and confidence which applies to both employer and employees.
 - (iv) The employer is under a duty to provide a safe system of work for his employees, which involves employing enough staff to perform the work, providing safe machinery, constant and adequate supervision, guidance, directions and safe premises.
 - (v) The employer owes certain statutory duties towards his employees, which include the duty to provide annual holiday leave, social insurance contributions and appropriate notice in case of dismissal (subject to certain exceptions as provided by the Termination of Employment Law, L24/67 as amended).

- 4 (a) The principal and agent have a contractual relationship in which the principal appoints or authorises the agent to act on his behalf, either for a specific purpose or generally. Inherent in the principal-agent relationship is the understanding that the agent will act for, and on behalf of, the principal. The agent assumes an obligation of loyalty to the principal that he will follow the principal's instructions and will neither intentionally nor negligently act improperly in the performance of the act.

An agent cannot take personal advantage of the business opportunities that the agency position uncovers. Thus, the agent has fiduciary duties towards the principal.

A principal, in turn, must make full disclosure of all information relevant to the transactions that the agent is authorised to negotiate and pay the agent either the commission or fee as agreed, or a reasonable fee if none was agreed.

If the agent has acted without actual authority, but the principal is nevertheless bound because the agent had apparent authority, the agent is liable to indemnify the principal for any resulting loss or damage.

- (b) If the agent has actual or apparent authority, the agent will not have liability on any transactions agreed with third parties within the scope of that authority, so long as the principal was disclosed.

However, where the agency is undisclosed, then both the agent and principal are bound.

Where the principal is not bound because the agent had no actual or apparent authority, the purported agent is liable to the third party for breach of the implied warranty of authority.

- (c) A contract entered into by an agent on behalf of his principal and a third party is a contract between the third party and the principal. Thus, the third party will be liable to the principal on the terms of the agreement made with the agent unless the principal was undisclosed and, either there is clear evidence that the third party would not have entered into the agreement if he had known of the principal's involvement, or the terms of the agreement are incompatible with the existence of an agency relationship.

- 5 (a) The memorandum of association contains the objects of the company. The objects of a company generally define the purpose for which the company was formed and what it is empowered to do in the way of its business. Every company has to act within its powers, as defined in its memorandum of association.

Moreover, the memorandum also states the company's name, that the company's location is in Cyprus, that the liability of its members is limited, and its authorised share capital.

The articles of association are the code of internal regulations applicable to the company and its members in their dealings with each other. The articles of association form a contract between the company and members, and members between themselves.

The main topics covered by the articles include the issue and transfer of shares and the rights attached to them, the procedure of company meetings, the appointment and powers of directors, the proceedings of the board of directors, declaration of dividends, etc.

- (b) Every company must maintain the following statutory registers at its registered office.

- (i) The register of members, which contains the names and addresses of the members; a statement of the shares held by each member; distinction of each share by its number, if any, and of the amount paid or agreed to be considered as paid on the shares of each member; the date of entering of each person in the register as a member; and, where applicable, the date of ceasing of any person to be a member.
- (ii) The register of directors and secretary, which contains the names and residential/registered address of the directors and secretary, as well as the nationality, business occupation of directors and details of other directorships held by them.

- (iii) The register of directors' shareholdings, which contains the number, description and amount of any shares in or debentures of the company or other subsidiary or holding company or subsidiary of the company's holding company held by or in trust for every director of the company, not being its holding company.
- (iv) The register of debenture holders, which contains particulars of each holder of the company's debentures including their name/address and the debentures held by each holder.
- (v) The register of charges, which records all charges on the company's assets.

6 The doctrine of capital maintenance is based on the need to safeguard the capital of the company for the sake of its creditors and to ensure that the capital will only apply for the company's purposes and will not be returned to shareholders. The need to safeguard the capital of the company arises as a result of the limitation of liability of the members of a company.

Accordingly the rule of capital maintenance prohibits the return of funds, i.e. share capital, share premium account, capital redemption reserve fund, contributed by the shareholders to the company, unless in the cases provided and by complying with the procedures of the Companies Law Cap. 113.

The doctrine of capital maintenance is manifested in various provisions of the Companies Law Cap. 113, such as the following:

- (a) Reduction of the issued share capital is permitted only if authorised by the company's articles of association, for specific purposes as provided in the Companies Law, and is subject to confirmation by the Cypriot courts.
- (b) The capital redemption reserve fund, which is created by transferring sums equal to the nominal amount of shares redeemed otherwise than out of the proceeds of a fresh issue out of profits which would otherwise have been available for dividends, may be used by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares. For any other use of the capital redemption reserve fund, the capital reduction procedure applies.
- (c) In the case of issue of shares at a premium, such premium must be credited to the share premium account, which is safeguarded as capital and may be also used for specific purposes. For any other use of the share premium account, as in the case of the capital redemption reserve fund, the capital reduction procedure applies.
- (d) A company is prohibited from purchasing its own shares, unless the requirements of the Companies Law Cap. 113 are fulfilled.
- (e) A company is prohibited from providing financial assistance for the acquisition of its own shares, subject to certain exceptions relating to private companies.
- (f) Other provisions designed to prevent capital from going out of the company, which apply particularly to public companies, such as the provisions on distribution of dividends (s.169A) and the requirement to act in case of substantial loss of the company's issued share capital (s.169F).

7 (a) According to s.153 Companies Law Cap. 113, the auditors of a company are appointed at each annual general meeting and they hold office from the conclusion of that, until the conclusion of the next, annual general meeting. At any annual general meeting, a retiring auditor, however appointed, is reappointed without any resolution being passed unless (i) he is not qualified for reappointment; or (ii) a resolution has been passed at that meeting appointing somebody else instead of him or providing expressly that he shall not be reappointed; or (iii) he has given the company notice in writing of his unwillingness to be reappointed. The first auditors of a company may be appointed by the directors at any time before the first annual general meeting and auditors so appointed hold office until the conclusion of that meeting. Otherwise, the first auditors are appointed by the company in a general meeting.

(b) Company auditors owe a number of duties to the company, which may be summarised as follows:

- (i) company auditors have a duty to report to the shareholders of the company on all the accounts examined by them, and to report whether in their opinion the annual accounts have been properly prepared in accordance with Companies Law Cap. 113 and whether they give a true and fair view;
- (ii) in order to fulfil their duty as explained above, company auditors must carry out such investigations as are necessary to enable them to form an opinion as to whether proper books of accounting records have been kept; proper returns adequate for their audit have been received from branches not visited by them; the accounts are in agreement with the books of account and returns; and the information given in the directors' report is consistent with the company's accounts for the financial year;
- (iii) if the auditors are of the opinion that any of the above has not been satisfied or if they fail to obtain adequate information and explanations in order to form their opinion, they must state that in their report on the accounts;
- (iv) the auditors must give particulars of directors' emoluments, loans to directors and transactions with directors, if these are not adequately or correctly disclosed in the accounts, so far as they are reasonably able to do so.

- 8 A public company does not need to have any restrictions on transfers of its shares; however, this will depend on the articles of association. Therefore, Anna is free to transfer her shares by selling to a third party subject to any restrictions in relation thereto contained in the articles.

Cancellation of shares and reduction of share capital is regulated by the Companies Law Cap. 113 and Anna may not simply cancel or return her shares. However, ABC Plc 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 for 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.

Given that the shares held by Anna are partly-paid, ABC Plc may reduce its share capital by, for example, extinguishing or reducing the liability on shares in respect of uncalled or unpaid capital. Alternatively, ABC Plc may cancel any paid-up share capital which is lost, or is unrepresented by available assets, or pay off any paid-up share capital which is in excess of the company's needs.

The company must apply to the court for an order of confirmation of the reduction. On the making of the order, the court will approve 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 and the reduction takes effect from the grant of the Registrar's certificate.

- 9 According to s.261 Companies Law Cap. 113, a company enters voluntary liquidation if the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company passes an ordinary resolution requiring the voluntary winding up of the company, or if the company resolves by special resolution that the company be wound up voluntarily, or if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up. Since Dona and Sarah together hold 65%, a special resolution for voluntary winding up cannot be passed, and no other condition for voluntary winding up is satisfied.

However, since the company has not commenced its business within a year from its incorporation, Sarah may consider applying to the court for compulsory liquidation (according to s.211 of Cap. 113). Even though the shares held by Sarah have not been registered in her name for at least six months, as required by s.213 of Cap. 113, Sarah may still apply to the court for compulsory liquidation, since the shares devolved on her after the death of the previous shareholder (s.213 of Cap. 113).

Sarah's suggestion with regard to turning Dias Ltd into a restaurant business is currently beyond the company's objects, as specified in its memorandum of association. Therefore, if Dias Ltd is to be able to run a restaurant business, an alteration of the memorandum of association with respect to the objects of the company will have to be effected. Section 7 of the Companies Law Cap. 113 provides the ways in which the objects of a company may be amended by passing a special resolution and subject to sanction by the court. However, Sarah's suggestion does not fall under any of the permissible amendments to the objects of a company under s.7, and therefore this suggestion is not feasible.

- 10 There are two issues that arise in connection with Maya's potential liability in the problem scenario, the first of which relates to money laundering and its regulation pursuant to the relevant applicable laws, and the second relating to insider dealing.

Firstly the Prevention and Suppression of Money Laundering Activities Laws of 2007 require all persons carrying on prescribed activities and services, which include consultancy services and professional activities by accountants, to establish and maintain specific policies and procedures to guard against money laundering, such as client identification and record-keeping procedures in relation to clients' identity and their transactions.

Bin contacted Maya through her website, and it is not evident that Maya has enquired as to the identity of Bin or details of his business activities, or whether she has completed the appropriate know-your-client procedures.

If Maya has failed to comply with the above requirements, then she may be liable to be referred to the competent disciplinary board which will decide accordingly.

Moreover, if Maya has, in the course of her business, acquired knowledge or reasonable suspicion that Bin is engaged in money laundering activities, Maya has an obligation to report her knowledge or suspicion to a police officer or to the Unit for Combating Money Laundering ('MOKAS'), otherwise she will be committing an offence.

In relation to Maya's potential liability for insider dealing, it is noted as follows:

In accordance with the Insider Dealing and Market Manipulation (Market Abuse) Law 116(I)/2005, a person who possesses inside information which has not been published is prohibited from, *inter alia*, disclosing such information to any other person unless such disclosure is made in the normal course of the exercise of her 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 above prohibition applies to Maya as she possesses inside information by virtue of her acting as sole director of Bin (Cyprus) Ltd, or at least her having access to the information through the exercise of her profession or duties.

Although Maya has apparently not induced her husband to acquire shares in Cloud Plc, she has disclosed inside information to him and such disclosure was not made in the normal course of the exercise of her profession or duties.

However, Maya may be able to raise one of the general defences which are provided by the Law, e.g. if she did not expect that as a result of using that information her husband would deal with financial instruments relating to it.

- 1** 6–10 Thorough explanation of the operation and jurisdiction of the Supreme Court.
0–5 A less complete treatment of the question.
- 2** 8–10 A good treatment of the meaning and characteristics of both the tort of passing off and the rule of remoteness of damage.
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 duties between employers and employees.
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 legal relationships arising under agency law.
5–7 A sound understanding of the area, although lacking in detail.
0–4 Very unbalanced answer, or one which shows little understanding of agency law.
- 5** 8–10 Thorough description of both the content of memorandum and articles of association as well as the statutory registers maintained by a Cypriot company.
5–7 A less complete answer, lacking in detail.
0–4 Little understanding of the area.
- 6** 8–10 A good explanation of the doctrine of capital maintenance and its manifestation under the Companies Law.
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 both the appointment and duties of company auditors.
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.