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# Answers

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- 1 (a) As stated by Triantafyllides J. in *The Attorney-General of the Republic v Mustafa Ibrahim and others* (1964), 'the legal doctrine of necessity is in reality the acceptance of necessity as a source of authority for acting in a manner not regulated by law but required, in prevailing circumstances, by supreme public interest, for the salvation of the State and its people'.

The Supreme Court of Cyprus in *Ibrahim* was called to decide on the constitutionality of the Administration of Justice (Miscellaneous Provisions) Law of 1964, which provided for the establishment of a new Supreme Court in Cyprus. As a result of the warlike situation and the disturbances between the Greek and Turkish communities in 1963, the Supreme Court, which had been set up by the Constitution, had become inoperative due to the vacancy in the offices of its President, who had resigned, and the abandonment by the Turkish judges of their duties.

The decision in *Ibrahim* has since constituted the basis of the foundation for the functioning of the State until the re-establishment of normality. Unfortunately, constitutional order has not yet been re-established until this day. The necessity which was created by the coup and the following Turkish invasion in 1974 has led to supra-constitutional regulations to coffer the State. The Republic of Cyprus continues to function within the constitutional principles. As repeatedly stated by the Supreme Court in later cases, the rule of law does not deteriorate in case of emergency, in the sense that the necessity forms a justifiable basis for the taking of legal measures. Due to the continued Turkish occupation and the exceptional circumstances which subsist in Cyprus as a result of that, the Turkish Cypriots do not participate in the election and functioning of the House of Representatives. The doctrine of necessity justifies the maintenance of the powers of the House of Representatives to make laws, according to the provisions of the Constitution.

- (b) Delegated or secondary legislation refers to the acts of state organs, other than the House of Representatives, to which legislation making power was delegated through a law in its enabling section. Such power is often given to the Council of Ministers although delegation can be made to other organs as well, e.g. to Municipalities and Communities.

There are two types of delegated or secondary legislation:

- (i) Statutory instruments, which contain regulations for the implementation of a law in the Republic, e.g. statutory instruments for the implementation of several provisions of the Companies Law Cap. 113, relating to the forms to be submitted to the Registrar of Companies in order to register a company.
- (ii) Bye Laws, which are of a limited application and refer only to the persons who are, for example, members of a professional body, like rules of ethics, disciplinary procedures, etc.

Delegated legislation must not contradict any provision of the Constitution or the enabling statute, and must also not exceed the powers delegated by the enabling statute, or the purpose of the said Law and it must follow the procedure described for its enactment.

- 2 (a) The equitable remedies available for breach of contract are specific performance and injunction.

Specific performance requires the party in breach to perform its primary obligations under the contract. Traditionally, specific performance was available only where damages would be an inadequate redress. Now the scope of specific performance is wider so that specific performance may be ordered if that remedy will do more perfect and complete justice than an award of damages.

The effect of an injunction can either be mandatory or prohibitory. A prohibitory injunction requires a party not to do something, whereas a mandatory injunction requires a party to do something. The use of an injunction is more frequently used in respect of tort claims; however, it is also available to prevent breaches of certain types of contract. For example, in the case of an employee's breach of an employment agreement, a prohibitory injunction restricting the employee from working elsewhere may be available in situations where the employee has exceptional and unique knowledge and skill.

As specific performance and injunction are equitable in nature, the courts can award or deny such remedies at their equitable discretion. Thus specific performance is generally unavailable where it would cause severe hardship to the defendant, or where the conduct of the claimant demonstrates that he does not deserve the remedy, or where the contract is too vague, or where the contract is over a period of time where there would be no way of supervising performance. Similarly, a plaintiff who engages in 'bad' behaviour (such as unclean hands, or laches) may be denied injunctive relief.

- (b) 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 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*).

- 3** The Contract Law Cap. 149 provides that an agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

As a consequence of the above provision an agent cannot, as a rule, delegate his authority, or appoint a sub-agent to do any act on behalf of his principal, except with the express or implied authority of the principal. This rule is founded on the confidential nature of the contract of agency. Whenever authority is coupled with a discretion or confidence it must, as a rule, be exercised by the agent in person.

The exigencies of business do from time to time render necessary the carrying out of the instructions of a principal by a person other than the agent originally instructed for the purpose.

Thus an authority to the agent for appointing a sub-agent may and should be implied where, in accordance with usage of trade, or having regard to the nature of the particular business which is the subject of the agency, it may reasonably be presumed that the parties to the contract of agency originally intended that such authority should exist; also where in the course of the employment unforeseen emergencies arise, which impose upon the agent the necessity of employing a sub-agent. In addition the performance of purely administrative acts may also be delegated.

When authority for appointing a sub-agent exists, and is duly exercised, privity of contract arises between the principal and the sub-agent, and the latter becomes as responsible to the former for the due discharge of the duties which his employment casts upon him as if he has been appointed agent by the principal himself.

- 4 (a)** The Companies Law Cap. 113 provides that if a company has not submitted any articles of association for registration at the registrar of companies then the articles contained in Table A of the First Schedule to Cap. 113 will be applicable. To the same effect Cap. 113 gives an automatic effect to the regulations contained in Table A to any registered company except in so far as it has not excluded them (s.10(2) Cap. 113).

Table A is divided into three parts: The first part is applicable for public companies and the second part for private; the third part is applicable for single member private companies.

- (b)** Limited liability refers to the liability of the members of a company. Once a company has been incorporated, its members, i.e. shareholders, will have limited liability for the debts and liabilities of the company. Such liability will be limited to the amount, if any, which remains unpaid for the shares they each hold. The liability of the company, however, is not limited in any sense, which remains fully liable for its debts and obligations.
- (c)** Perpetual succession is another consequence of the doctrine of incorporation, or of the accord of separate legal personality to companies. Perpetual succession means that the company's existence is not affected by the death, incapacity or existence of its members, or by any transfer of shares to any other persons by existing members.

- 5 (a)** According to s.212 Companies Law Cap. 113, a company is deemed to be unable to pay its debts if a creditor to whom the company is indebted a sum exceeding approximately EUR855 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; or if execution issued on a judgment in favour of a creditor of the company is returned unsatisfied in whole or in part; or if it is proved to the satisfaction of the court that the company is unable to pay its debts.

- (b)** According to s.211 Companies Law Cap. 113, a company may be wound up by the court in the following instances:

- (i) the company has by special resolution resolved that the company be wound up by the court;
- (ii) default is made in delivering the statutory report to the registrar, or in holding the statutory meeting;
- (iii) the company does not commence its business within a year from its incorporation or suspends its business for a whole year;
- (iv) the number of members is reduced to below seven in the case of a public company;
- (v) the company is unable to pay its debts;
- (vi) the court is of the opinion that it is just and equitable that the company should be wound up.

- 6 (a)** Constructive dismissal is where an employee resigns due to his employer's behaviour. The employee must prove that the behaviour was unfair, that is, that the employer's actions amounted to a fundamental breach of contract or the law. Constructive dismissal occurs where, for example, an employer fundamentally alters the term of the employment relationship. Whether a change in the term of employment gives rise to constructive dismissal depends on the nature and degree of the breach, the intention of the parties and the prevailing circumstances.

- (b) Misconduct is a permissible reason for dismissal. The Termination of Employment Law of 1967, as amended, permits dismissal in the case when the employee:
- (i) behaves in such a manner as to make it obvious that the relationship of employer–employee cannot reasonably be expected to continue; or
  - (ii) commits a criminal offence in the course of his work, without the express or implied consent of his employer; or
  - (iii) demonstrates improper behaviour during the course of his work; or
  - (iv) seriously or repeatedly breaches or ignores the regulations of his work or other regulations in relation to his employment.
- (c) According to the Termination of Employment Law of 1967, as amended, an employee is considered redundant when their services are no longer needed by their employer and their employment is terminated either:
- (i) because the employer ceased or intends to cease carrying out the business in which the employee was occupied, or carrying out the business at the place where the employee was occupied; or
  - (ii) because of certain specified reasons which relate to the operation of the business, such as (1) reduction in the number of employees required as a result of modernisation or other change in the method of production or organisation; (2) a change in the products or production methods or the required expertise of the employees; (3) the abolition of departments; (4) difficulties in the placement of products in the market or credit difficulties; (5) lack of orders or raw materials; (6) means of production becoming rare; (7) limitation of the amount of work or business.

7 (a) Corporate governance is a system of structuring, operating and controlling a company with a view to achieving long-term strategic goals to satisfy shareholders, creditors, employees, customers and suppliers. Corporate governance aims to protect investors, enhance the supervisory role of the board of directors and ensure its independence and to ensure transparency. In other words, corporate governance is a set of processes, customs, policies, laws and institutions, which affect the way a company is directed and administered.

(b) The Cyprus Corporate Governance Code was issued in Cyprus in September 2000 and the second edition was issued in March 2006.

The application of the Code has not yet been rendered totally compulsory, although public companies listed in the Cyprus Stock Exchange are obligated to include in their annual report, a directors' report in relation to corporate governance. In particular, the company has to explicitly state whether it incorporates the Code and to which extent. The company must also assure that it has complied with the provisions of the code, and otherwise it has to explain why not.

The Code proposes the creation of three committees for the appointment, remuneration and control of the board of directors. For example, the Code provides for the empowerment of the role of non-executive directors, the achievement of balance between executive and non-executive directors, and the board's independence. In addition, the Code states that there has to be transparency with regard to the directors' remuneration and the relevant criteria must be published in the company's report. Finally, the company's directors must, at least once a year, supervise and evaluate the efficiency of the internal controls of the company.

8 This question turns on whether Andrew can bring an action against Carla alleging for example, that the accounts were inaccurate and misleading so that ABC Ltd was overvalued and that he had purchased further shares in ABC Ltd after relying on the accuracy of the accounts and had suffered a substantial loss as a result. Andrew could also argue that Carla owed a duty of care to shareholders and/or potential investors in respect of her audit.

In *Caparo Industries Plc v Dickman* (1990) the House of Lords held that a public company's auditors owed no duty of care to the public at large, or to potential investors, or existing shareholders wishing to increase their stakes, who relied on their audit report in deciding to invest. It was held that the auditor's duty was a duty owed to the body of shareholders as a whole for the purpose of enabling them to exercise informed control over the company in general, and it was not to enable individual shareholders to buy shares with a view to profit.

In the scenario of question 8 there is no evidence of a 'special relationship' between Carla and Andrew. In particular, there is no evidence that Carla, whilst preparing the accounts, had knowledge that Andrew was contemplating to buy further shares and would rely on the accounts in deciding whether or not to proceed with purchase, or of any other facts which indicate a sufficiently close relationship, which could give rise to a duty of care.

Therefore under the circumstances it appears that if Carla was negligent, only ABC Plc could sue her, but Andrew as an individual shareholder could not.

- 9** KNN Ltd may remove Louis as auditor of the company by passing an ordinary resolution at an annual general meeting appointing somebody instead of him, or providing expressly that he shall not be reappointed. Kevin only holds 25% of the issued share capital of KNN Ltd and therefore he will need to secure another 25% plus 1 vote to be cast in favour of such a resolution.

According to s.154 Companies Law Cap. 113:

- (i) special notice of the resolution to appoint as auditor a person other than a retiring auditor or providing expressly that a retiring auditor shall not be reappointed is required (i.e. notice to the company not less than 28 days before the meeting at which it is moved);
- (ii) a copy of the notice of such an intended resolution is sent to the retiring auditor, and the retiring auditor is entitled to be heard on the resolution at the meeting;
- (iii) the retiring auditor concerned is entitled to have their written representations sent to every member of the company to whom notice of the meeting is sent.

In relation to Kevin's proposal to have his wife appointed as auditor to KNN Ltd, this contravenes s.155 of the Companies Law Cap. 113, which provides that the husband or wife of a company officer cannot be appointed as auditor of the company. Therefore Mary will not qualify for appointment even if Kevin manages to obtain 50% plus 1 vote in favour of the resolution for the removal of Louis.

- 10** According to s.12 Companies Law Cap. 113, SP Ltd may alter its articles of association by passing a special resolution. Given that both ordinary and preference shares carry one voting right each, Panos (who holds 700 ordinary shares and 850 preference shares) has 1,550 out of 2,000 voting rights. Hence the special resolution (which requires approval by 75% of the shareholders) may be passed.

In relation to the alteration of rights attached to any class of shares, the procedure is set out in the memorandum or articles of association, where such variation may be authorised, subject to the consent of a specified proportion of the holders of the issued shares of that class, or the sanction of a resolution passed at a separate meeting of the holders of those shares. Table A provides that, unless otherwise provided by the terms of issue of the shares of a particular class, class shares may be varied with the consent in writing of the holders of 75% of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class.

Panos holds 850 out of 1,000 preference shares and therefore the consent of the specified proportion of the holders of the issue preference shares may also be obtained.

However, according to s.70 Companies Law Cap. 113, Simos, who holds 15% of the issued preference shares and who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled. In such event, the variation will not have effect unless and until confirmed by the court.

- 1** 6–10 A thorough answer showing good understanding of both the doctrine of necessity and delegated legislation.  
0–5 A less complete treatment of the question.
- 2** 8–10 Thorough explanation of both the equitable remedies available for breach of contract and the doctrine of privity.  
5–7 A sound understanding of the area, although perhaps lacking in detail.  
0–4 Little or no understanding of the area.
- 3** 7–10 A good treatment of the law relating to delegation of an agent’s authority.  
4–6 An accurate recognition of the issue of delegation of an agent’s authority, but perhaps lacking in detail.  
0–3 An unbalanced answer, showing little or no understanding of the question.
- 4** 8–10 Detailed explanation of all three parts of the question relating to Table A as well as the concepts of limited liability and perpetual succession.  
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 relevant winding up provisions.  
5–7 A less complete answer, lacking in detail.  
0–4 Little understanding of the area.
- 6** 8–10 A good explanation of the relevant types of dismissal of employees.  
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 meaning and legal regulation of corporate governance.  
4–6 An accurate recognition of the issues relating to corporate governance and its legal framework, but perhaps lacking in detail.  
0–3 A weak answer showing little understanding of the concepts of corporate governance.
- 8** 8–10 A complete answer, highlighting and dealing with all of the issues presented in the problem scenario and particularly the duty of care of company auditors.  
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 amendment of the articles of association and rights attached to particular classes of shares.
- 5–7 Some understanding of the situation but perhaps lacking in detail.
- 0–4 Weak answer lacking in knowledge or application.