
Answers

- 1 (a) The Constitution of Cyprus is the supreme law of the country, subject to Community law, which after the recent amendment to the Constitution, enjoys supremacy over the Constitution in case of conflict. The Constitution outlines the powers of the organs of government within the state (house of representatives, government, and courts), it sets out fundamental rights, and it also imposes constraints on the exercise of political power.
- (b) The Supreme Court is at the top of the hierarchy of the courts in Cyprus. As a result of the application of the doctrine of precedent, the case law of the Supreme Court constitutes a main source of law in the legal system of Cyprus and decisions of the Supreme Court of Cyprus act as binding authority on the lower courts, as well as the Supreme Court itself – subject to the right of the Supreme Court to overturn its own decisions in exceptional circumstances. Thus any court must, when making a decision, follow the decisions of the Supreme Court, provided their material facts are the same. Obviously the doctrine of precedent does not require that all the facts should be the same. In the flux of life all the facts of a case will never recur, but the legally material facts may recur and it is with these facts that the doctrine of precedent is concerned.
- (c) Equity forms part of the legal system of Cyprus and this is provided for in the Courts of Justice Law, L. 14/60. Section 29 of the Courts of Justice Law provides that the rules of equity apply in Cyprus, provided (i) that there is no statutory provision governing the matter, and (ii) that it is consistent with the Constitution of Cyprus.

- 2 (a) The extended principle established in *Hedley Byrne v Heller* (1964) generally states that where A has indicated to B that B can safely rely on him to perform a particular task with a certain degree of care and skill and B has so relied on A, then A will owe a duty to perform that task with that degree of care and skill. Applying this principle to accountants and auditors, we can state the principle that an accountant will normally owe a client, who has commissioned him to draw up a set of accounts or provide professional advice, a duty to draw up those accounts or give that advice with the care and skill that a reasonably competent accountant would exercise in drawing up a set of accounts or giving that advice.

In *Caparo Industries v Dickman* (1990) the House of Lords established that A owes a duty of care to B if (i) the harm to B is a reasonably foreseeable result of A's conduct; (ii) there is proximity between A and B; and (iii) it is fair, just and reasonable to impose liability. In *Caparo* it was further decided that the auditors preparing accounts for a company owed a duty to the shareholders, as a body, to take care not to mislead them as to whether the company's accounts were 'true and fair'. This was because the auditors took on the job of advising the shareholders as to whether or not the company's accounts were 'true and fair' and indicated to the shareholders that they could safely rely on that advice in deciding on issues such as whether or not the company's board of directors should be disciplined or rewarded for their performance. However, the audited accounts were not prepared to provide potential investors information on which to make investment decisions, nor were they for the assistance of existing shareholders, as individuals, in making decisions about levels of shareholding in the company.

Section 51 of the Civil Wrongs Act, Cap. 148 incorporates the general principle stated above. Section 51 provides that any person, whether for reward or otherwise, exercising any profession, trade or occupation or rendering any service to any other person shall owe a duty not to be negligent to any person to whom such person is exercising his profession, trade or occupation or rendering any service. Section 51 also provides that negligence consists of failing to use such skill or take such care in the exercise of a profession, trade or occupation as a reasonably prudent person qualified to exercise such profession, trade or occupation would in the circumstances use or take.

- (b) Where B has suffered loss as a result of A committing the tort of negligence in relation to B, then B's loss will be a remote consequence of A's actions if it was not reasonably foreseeable at the time that A committed his actions that his doing those actions would cause B to suffer that particular loss or, at least, a loss similar in kind to the loss B suffered.

The rule was first established in *Hadley v Baxendale* (1854) where it was decided that in case of breach of contract, the innocent party is entitled to receive from the party who has broken the contract compensation for losses that may fairly and reasonably be considered either arising 'naturally', i.e. according to the usual course of things, from the breach, or for losses that may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract as the probable result of the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

However, the 'eggshell skull' rule is an exception to the foreseeability test, which says that where A has committed the tort of negligence in relation to B and it was reasonably foreseeable that B would suffer some kind of injury as a result of A's actions, but because B suffered from a pre-existing condition he in fact suffered a much more serious injury as a result of A's actions, then that more serious injury will not be a remote consequence of A's actions even if it was not reasonably foreseeable at the time A did his actions that those actions would cause B to suffer that kind of injury.

- 3 (a)** Dismissal will be wrongful where the employee is dismissed:
- (i) for some reason other than those making dismissal lawful i.e. where the employee is dismissed because the employee fails to execute his work in a reasonably satisfactory manner; or the employee has been made redundant; or when dismissal is a result of an act of God, force majeure, war, riot, destruction of premises by fire not caused intentionally or by negligence of employer; or when a fixed-term contract of employment has come to an end; or the employee has reached retirement age; or the employee is dismissed for misconduct; or
 - (ii) as a result of his membership or participation in trade union activities, or for holding office as representative of the employees, or due to submitting complaints against the employer in good faith; or
 - (iii) due to race, colour, gender, national origin, social class; or
 - (iv) due to family situation, religion, or political aspirations; or
 - (v) due to pregnancy, motherhood, or maternity leave; or
 - (vi) due to temporary inability to work as a result of sickness, damage or disease.
- (b)** According to the Termination of Employment Law, an employee is considered redundant when his services are no longer needed for his employer and his 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.

4 (a) A sole trader is personally fully liable for his own acts.

(b) A private limited company, once registered, is a distinct legal entity, and is therefore accorded legal personality distinct from that of its members (*Salomon v Salomon* (1897)). Therefore the liability for the acts of the company is borne by the company itself. A member of a private limited company bears no responsibility towards third parties who have contracted or otherwise dealt with the company. However, such member will be liable to contribute to the assets of the company to the amount, if any, unpaid on the nominal value of his shares.

(c) A partnership is not accorded legal personality. Instead, the acts of the partnership will be nothing more and nothing less than acts of each of the partners in their personal capacity. In a general partnership all partners are general partners and thus liable for all debts and obligations of the partnership. However, depending on the partnership agreement, the partners may be liable to each other to contribute different proportions to any amount paid with regard to the firm's liability.

5 (a) The memorandum defines the essential components of the structure of the company, and it states the name of the company, the location of its registered office, the objects, that the liability of the members is limited, the authorised share capital divided into a specific number of shares of specific value and the number of shares held by each of the subscribers. The ambit of the objects as defined in the company's memorandum is important as these define the capacity of the company to undertake business activities.

The articles constitute the code of internal regulations applicable to the company and its members in their dealings with each other. The articles 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 and the proceedings of the board of directors.

(b) According to the Companies Law Cap. 113, the articles may be amended by a special resolution. A special resolution needs to be passed by a majority of not less than three-quarters of members voting at a general meeting, of which not less than 21 days' notice specifying the intention to propose the resolution as a special resolution has been duly given.

6 (a) There is no precise legal definition of the term 'debenture'. A debenture denotes, in commercial usage, an instrument evidencing an indebtedness which is normally, but not necessarily, secured by a charge over property. The Companies Law provides that the term 'debentures' includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not.

A share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place, and of interest in the second. As regards liability, the maximum liability of a shareholder in a limited liability company is the nominal value of the shares held, although his actual liability is the amount, if any, unpaid on any shares held. In addition, shareholders may receive dividend payments if the company is profitable, in which case the market value of their shares will also go up.

On the other hand, debenture holders are creditors of the company, and as such receive interest on their loans and are entitled to receive payment whether the company is profitable or not.

- (b) A fixed charge is a charge which, when it is made, immediately attaches or fixes on to the assets. The right and ability of the chargor to continue to dispose and deal with the assets is immediately affected pursuant to the terms of the charge.

A floating charge is a charge which 'hovers' or 'floats' over designated assets. The charge does not prevent the chargor from dealing with or disposing of these assets in the usual course of business, until certain events set forth in the document evidencing the charge occur, which cause the charge to become crystallised or fixed. When the charge crystallises, it is converted into a normal fixed charge on the existing assets of the designated type.

- 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 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 prohibits any person who possesses inside information 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 (a) The issue here is whether Anna's advertisement constitutes an offer to the public at large, or an invitation to treat. If the advertisement is simply an invitation to treat, then Ben's expressed intention to purchase a signed Andy Warhol poster constitutes an offer in itself, which has not been accepted by Anna and thus no contract has been formed. Ben will only have a remedy for breach of contract if the advertisement is considered to be an offer. In *Partridge v Crittenden* (1968), the advertisement for selling hens at a stated price was held to be an invitation to treat, because otherwise the advertiser may find himself contractually obliged to sell more goods than owned. However, in *Carlill v Carbolic Smoke Ball* (1893) the advertisement offering to pay £100 to anyone who caught influenza after having used the smoke ball was held to be an offer to the whole world, and a contract was made with any one who performed the condition on the faith of the advertisement. However, in *Carlill* the advertisement stated that £1,000 had been deposited in a bank and this was considered to be objective evidence of the intention of the company to be bound by their promise. As stated in *Smith v Hughes* (1871) 'If, whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party, and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.' In this case, Anna published the advertisement in order to induce people to come to her gallery, and Ben reasonably acted on the faith of the advertisement. Therefore Ben has an arguable case that as soon as he walked in and expressed his intention to Anna to pay EUR200 for an Andy Warhol poster, a contract was formed. In that case, Ben will have a claim for damages for breach of contract, which would amount to the loss of his profit i.e. the value of the poster less EUR200.

- (b) There is an agreement between Celine and Daniel for the purchase of a particular apartment at a particular price. This is a commercial transaction, which clearly shows intention to create legal relations and thus the agreement is presumably legally binding. Therefore Daniel's refusal to sell the apartment to Celine constitutes a breach of that contract, and Celine is entitled to receive damages for the loss she suffered from the breach. Apart from her loss of profits, if any, Celine is entitled to be compensated for any other losses that may fairly and reasonably be considered arising 'naturally' i.e. according to the 'usual course of things' from the breach, as the probable result of the breach, or losses that may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract. Since no information is provided as to whether Daniel knew, at the time he entered into the contract, about Celine's intentions to enrol her son in the particular nursery school, it is arguable that such loss will not be recoverable on the basis of the remoteness of damage rule in *Hadley v Baxendale* (1854). Also, such fees will not be recoverable if the son can still attend or if the fees can be refunded. However, since this is a contract for the sale of immovable property, the court may order specific performance, which is an equitable remedy available where damages are not an adequate remedy. In such a case, no question of damages as an additional remedy will arise.

- 9 (a)** Felix is the sole director of F & G Ltd and therefore owes the company a number of fiduciary duties similar to those owed by an agent to his principal. Upon the general rules of equity, a person holding a fiduciary position as director cannot obtain for himself a benefit derived from the employment of the company's funds, unless the company knows and assents. Therefore if a director makes any profit when he is acting for the company, he must account to the company. In this case, Felix has shown the plainest conflict of interest since he has made a profit, as member of Felix & Co from employment of the company's funds by entering into a contract with Felix & Co on behalf of the company. In other words, Felix has made a profit while acting for F & G Ltd for which he must account to the company, irrespective of whether the contract was for the benefit of the company (*Regal (Hastings) v Gulliver and Ors* (1967)). Therefore, F & G Ltd can claim against Felix for breach of fiduciary duty.
- (b)** It is apparent from the question that Felix has got the contract for himself as a result of work which he did whilst being the sole director of F & G Ltd. Even though Felix resigns from his position as director before taking the contract personally, Felix has allowed his personal interest as potential contracting party in direct conflict with his pre-existing and continuing duty as director of F & G Ltd. Therefore, as in part (a) above, Felix will make a profit as a result of having allowed his interests and his duty to conflict. It makes no difference that the profit is one that F & G Ltd may not have obtained, since the other party to the contract would not have awarded the contract to the company. The question is not whether the company could have acquired the benefit, but whether the director acquired the benefit while acting for the company (*Industrial Development Consultants Ltd v Cooley* (1972)). Therefore F & G Ltd can claim against Felix an account for breach of fiduciary duty.
- 10** According to s.211 of the 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 Kate and Mia together hold 70% of the share capital, 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, Mia may consider applying to the court for compulsory liquidation (under s.211 of Cap. 113). Even though the shares held by Mia have not been registered in her name for at least six months, as required by s.213 of Cap. 113, Mia may still apply to the court for compulsory liquidation, since the shares devolved to her after the death of the previous shareholder (s.213 of Cap. 113).

Mia's suggestion with regard to turning Hull Ltd into a restaurant business is currently beyond the company's objects as specified in its memorandum of association. Therefore, if Hull 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. However, Mia's suggestion does not seem to fall under any of the permissible amendments to the objects of a company under s.7, and therefore this suggestion will not be feasible.

- 1** 6–10 A thorough answer which deals with all three parts of the question. For full marks reference should be made to the Courts of Justice Law, L. 14/60.
0–5 A less complete answer, perhaps lacking in detail or unbalanced in that it does not deal with all three parts of the question.
- 2** 8–10 Thorough explanation of both the duty of care and remoteness of damage. For full marks reference should be made to s.51 of the Civil Wrongs Law, Cap. 148.
5–7 A less complete treatment of both elements, perhaps lacking in detail or authority.
0–4 Very unbalanced answer, focusing on only one aspect of the question, or one which shows little understanding of the subject matter of the question.
- 3** 8–10 Detailed explanation of both wrongful dismissal and redundancy, including most of the circumstances where either may occur.
5–7 A reasonable treatment of both parts, although lacking in detail.
0–4 Very unbalanced answer, focusing on only one aspect of the question, or one which shows little understanding of the subject matter of the question.
- 4** 8–10 Answers will show a thorough understanding of the distinctions between sole traders, shareholders of private limited companies, and partners in general partnerships.
5–7 A sound understanding of the area, although perhaps lacking in detail.
0–4 Little understanding of the area.
- 5** 8–10 A good explanation of both parts of the question, making reference to all main topics covered by the memorandum and articles of association.
5–7 A sound understanding of the effect and contents of the memorandum and articles, as well as the procedure for amending the articles, although perhaps lacking in detail.
0–4 Little understanding of the area.
- 6** 8–10 A good treatment of both parts, and sound understanding of the concepts of debentures, shares, fixed and floating charges.
5–7 A sound understanding of the area, although perhaps lacking in detail.
2–4 Some understanding of the area but lacking in detail, perhaps failing to deal with one of the two parts.
0–1 Little or no knowledge of the area.
- 7** 8–10 A complete answer, demonstrating an understanding of the general legal regulations prescribed by Law 116(I)/2005.
5–7 An accurate recognition of the issues relating to insider dealing and its regulation by the law, but perhaps lacking in detail.
2–4 An ability to recognise some, although not all, of the key issues, or perhaps a general recognition of the area of law.
0–1 Very weak answer showing no, or very little, understanding of the question.
- 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 law relating to liquidation of a company, and alteration of a company's objects.
- 5–7 Some understanding of the situation but perhaps lacking in detail.
- 0–4 Weak answer lacking in knowledge or application.