
Answers

- 1 (a) The common law, which constitutes the basis of the legal system of the United Kingdom, forms part of the legal system of Cyprus. Section 29 of the Courts of Justice Law, L.14/60, provides that the common law applies in Cyprus provided (i) that there is no statutory provision governing the matter, and (ii) that it is consistent with the Constitution of Cyprus. Therefore the common law acts as the 'reserve law' of Cyprus.
- (b) Statute laws are those laws that are made by Parliament. Statute laws can be made either directly, through the passing of acts of Parliament, or indirectly, through the creation of statutory instruments that contain rules and regulations. Sometimes Parliament will pass a general law and leave the relevant minister to fill in the details; such legislation is called delegated legislation.
- (c) As a result of the application of the doctrine of precedent, 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.

- 2 The main constituent elements of a simple contract are the following: offer, acceptance, consideration and intention to create legal relations.

An offer is an unequivocal statement by one party of his or her willingness to enter into a contract on stated terms, provided these terms are, in turn, accepted by the party to whom the offer is addressed. In other words, an offer is an expression of willingness to be bound by the terms of the statement. An offer is distinguished from an invitation to treat, which is an expression of willingness to enter into negotiations which, it is hoped, will lead to the conclusion of a contract later.

An acceptance is an expression of assent to the terms of an offer. The acceptance must be unqualified and must be communicated to the other party and can be by words or conduct.

According to the Contract Law, Cap. 149, consideration is an act or abstinence or promise which the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing at the desire of the promisor. The commonest form of consideration is the payment or the promise to pay money in exchange of the supply of goods. However, consideration may be non-monetary.

The intention to create legal relations is another constituent element of a simple contract. In domestic and social agreements there is a presumption that parties do not intend to create legal relations (e.g. *Balfour v Balfour*) and objective evidence to the contrary is required to rebut the presumption (e.g. *Evriddipou v Demosthenous*). On the contrary, in commercial agreements there is a heavy presumption of an intention to create legal relations.

- 3 An agent may have actual authority, ostensible authority or authority by ratification.

Actual authority can be either express or implied. Actual authority is the authority which a principal intentionally confers upon the agent. The actual authority of the agent is that which can be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade or course of the business between the parties. Express authority is given in a written contract that defines positions, duties and expectations of parties. Implied authority is the agent's right to act where it is customary or the norm in the specific business context.

Ostensible authority refers to that type of authority which the principal causes or allows third parties to believe the agent to possess. Ostensible authority is the apparent authority that an agent seems to have. Apparent authority is determined by looking to the acts of the principal and ascertaining whether that conduct would lead a reasonably prudent person using diligence and discretion to suppose the agent had the authority the agent purported to exercise.

Agency by ratification occurs when the unauthorised action of the agent is accepted by the principal after the fact. In other words, agency by ratification occurs when the principal affirms a prior act, which did not bind him but which was done or professedly done on his account, whereby the act is given effect as if originally authorised by him. The principal can affirm by words or by deeds. This includes the failure to repudiate the subject matter when presented, suing to enforce the obligation, or retaining the benefits of the transaction.

- 4 Once registered, both private and public companies obtain a legal personality, distinct from that of their members. Liability of shareholders in private and public companies is limited in the way provided for in the memorandum of association.

However, a private company by its articles of association:

- (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 not required to have the above three restrictions in its articles of association. However, a public company must have at least seven members whereas a private company may only have one; a public company requires a minimum capital of CY£15,000 (equivalent to approximately EUR 25,629) and also requires a trading certificate before commencing business. In addition, a public company needs at least two directors whereas a private company can have only one director, in which case the director cannot also act as the secretary, unless the company has a single member.

- 5 (a)** Section 53 of the Companies Law Cap. 113 prohibits a company from providing financial assistance, whether by means of a loan, guarantee or otherwise, for the purchase of or subscription for its own or its holding company's shares. However, the law provides for a number of exceptions to this general prohibition:
- (i) a company may lend money in the ordinary course of its business, where the lending of money is part of the ordinary business of a company;
 - (ii) a company may provide money for the purchase of, or subscription for, fully paid shares in the company or its holding company, where the purchase or subscription is for the benefit of employees of the company, including directors;
 - (iii) a company may make loans to persons, other than directors, *bona fide* in the employment of the company with a view to enabling those persons to purchase or subscribe for fully paid shares in the company, or its holding company, for their benefit.
- (b)** Section 182 of the Companies Law Cap. 113 prohibits a company from making loans to persons who are its directors or directors of its holding company.

However, the law provides that this prohibition does not apply:

- (i) to any act done by a company which at the time was a private company;
 - (ii) to a subsidiary company, where the director is its holding company;
 - (iii) to anything done by a company to provide directors with funds to meet expenditure incurred or to be incurred by them for the purposes of the company or to enable them to perform their duties in the company properly;
 - (iv) to anything done by a company, whose ordinary business includes the lending of money or the giving of guarantees, in the ordinary course of that business.
- 6 (a)** Under s.90 of the Companies Law Cap. 113, details of the charges prescribed thereunder must be delivered to or received by the Registrar of Companies for registration within 21 days after the date of their creation; but as a rule of thumb the Registrar will register such charges created outside Cyprus comprising property situated outside Cyprus within 42 days of their creation. Failure to register the charge within the time limit prescribed by s.90 of the Companies Law will render the security conferred by the charge void as against the liquidator and any creditor of the company. However, the secured creditor of the company may apply to the court for an extension of time to register the charge and if the extension is granted, the charge may be registered and thereby the default is cured. Examples of charges that must be registered in accordance with s.90 of the Companies Law include charges for the purpose of securing any issue of debentures; charges on uncalled share capital of the company; charges on book debts of the company; floating charges on the undertaking or property of the company; charges on calls made but not paid; charges on ships or any share in a ship; charges on goodwill or patent or trade mark or copyright or a licence under a patent or a copyright; charges on other moveable property where the company retains possession of such property; charges on immoveable property or any interest therein.
- (b)** Issuing shares at a discount is in principle prohibited by the law, unless the conditions set out in s.56 of the Companies Law are met. A public company is not allowed to issue shares at a discount. 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;
 - (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** Fraudulent trading constitutes a departure from the rule in *Salomon v Salomon* (1897) and is an exception to the general rule that no-one is liable for the debts of the company except the company itself. Section 311 of the Companies Law provides that if a company is in the course of winding up and it appears that any of its business has been carried on with intent to defraud, then the court may declare that the persons involved in the carrying on of the company's business as aforesaid are to be personally responsible, without limitation of liability, for all or any of the debts or other liabilities of the company to the extent that the court might direct.

Section 311 applies only if the company is in liquidation (although not necessarily insolvent liquidation) and applications for the declaration can be made by the official receiver, the liquidator, any creditor or any contributory of the company. The class of persons

against whom the declaration can be made is wider than members or directors, although an active role in running the company with fraudulent intent must be proven. In order to establish that intent, actual dishonesty and moral blame must be shown. This may be inferred if, for example, a company continues to carry on business and to incur debts at a time when there is, to the knowledge of the directors, no reasonable prospect of the creditors ever receiving payment of those debts. However, this cannot be inferred merely because the directors ought to have realised it.

The concept of 'wrongful trading' was introduced in England in order to provide a remedy for 'reckless trading' empowering the court to make a declaration similar to that under s.311 against a person who, at some time before commencement of winding up, was a director of the company and knew or ought to have concluded at the time that there was no reasonable prospect that the company would avoid going into insolvent liquidation and did not take reasonable steps to minimise losses. Cyprus law does not contain any wrongful trading provisions requiring directors to commence insolvency proceedings as soon as they knew or ought to have known that the company would be unable to pay its debts. Therefore under Cyprus law, the principal way in which directors and officers may be made liable for the company's debts is under a claim for fraudulent trading as set out in s.311 of the Companies Law. However, because of the high standard of proof required, successful claims for fraudulent trading are extremely rare.

- 8** Since Michael has a part-time job in LegaServe & Co he is presumably an employee and not an independent contractor, being paid wages or a salary on a regular basis and not a fee for particular work done.

As an employee of LegaServe & Co, Michael can utilise the statutory rights provided for in the Termination of Employment Law. Since Michael's fixed term contract of employment has not yet come to an end, and there does not appear to be other factors rendering dismissal lawful (such as failure to execute his work in a reasonably satisfactory manner), his dismissal without notice will be considered unlawful.

In order to be able to claim compensation for unlawful dismissal, Michael needs to have been employed continuously by LegaServe & Co for 26 weeks or more. According to the Termination of Employment Law, continuous employment is counted in weeks where the employee worked for at least 18 hours per week. Therefore Michael will be able to claim compensation for unlawful dismissal provided he worked for LegaServe & Co at least 18 hours per week for six months.

In addition, according to the Termination of Employment Law, Michael has the right to receive one week's warning notice in writing, provided, as before, that he was employed continuously for at least 26 weeks. Since no such notice has been given by LegaServe & Co, Michael has the right to receive one week's remuneration in its place, and this is additional to any compensation received for unlawful dismissal.

- 9** (a) The company may distribute to the shareholders its profit as a dividend. The EUR 100,000 profit may be paid off to Dona by way of interim dividend before the end of the financial year. The directors are entitled, under Table A, to declare an interim dividend. They may do so if they satisfy themselves that the financial position of the company warrants the payment of a dividend out of profits.
- (b) There is further an amount of EUR 500,000 which is in excess of the wants of the company. Capital in excess of a company's needs is one of the reasons for which the law permits reduction of capital. Therefore, Dona may initiate proceedings for the reduction of the share capital of Duffy Limited to EUR 500,000. For this to be achieved, the conditions prescribed by the Companies Law must be satisfied, i.e.:
- (i) authorisation for the reduction under the Articles;
 - (ii) special resolution; and
 - (iii) confirmation by the court.

The amount of EUR 500,000 will then be paid off to Dona.

- 10** ABC Limited has adopted Table A as its articles of association. 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. Mary holds 80% of the issued shares of each of Classes 'A' and 'B', and therefore the resolution for removing the preferential rights attached to Class 'A' may be passed. However, Tim and John together hold 20% of the issued shares of Class 'A'.

According to s.70 of the Companies Law, Cap. 113, where the holders of not less in the aggregate than 15% of the issued shares of that class, who did not consent to or vote in favour of the resolution for the variation, apply to the court to have the variation cancelled, the variation will not have effect unless and until confirmed by the court. Therefore, provided that John does not consent to or vote in favour of the resolution for the variation, Tim and John may apply to the court to have the variation cancelled.

- 1** 6–10 A thorough answer showing good understanding of all three types of law.
0–5 A less complete answer, lacking in detail or dealing with only parts of the question.
- 2** 8–10 Thorough explanation of all constituent elements of a simple contract.
5–7 A less complete treatment of the question.
0–4 Very unbalanced answer, focusing on only one or two constituent elements, or one which shows little understanding of the relevant ideas.
- 3** 8–10 A good treatment of the various types of authority that an agent may have.
5–7 A sound understanding of the area, although perhaps lacking in detail.
2–4 Some understanding of the area but lacking in detail.
0–1 Little or no knowledge of the area.
- 4** 8–10 Detailed explanation of the meaning and distinctions between private and public companies.
5–7 A reasonable treatment of private and public companies, 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 Answers will show a thorough understanding of the provisions of the Companies Law relating to financial assistance to directors and also in respect of acquisition of a company's own shares.
5–7 A sound understanding of the area, although perhaps lacking in detail.
0–4 Little understanding of the area.
- 6** 8–10 A good explanation of both parts of the question.
5–7 A sound understanding of the rules relating to registration of charges and issuing shares at a discount, 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 regulation of fraudulent and wrongful trading.
4–6 An accurate recognition of the issues relating to fraudulent trading and its legal framework, but perhaps lacking in detail.
0–3 A weak answer showing little understanding of the concepts of fraudulent and wrongful trading.
- 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 altering class rights.
5–7 Some understanding of the situation but perhaps lacking in detail.
0–4 Weak answer lacking in knowledge or application.