

---

# Answers

---

- 1 (a) The Supreme Court adjudicates on all matters of constitutionality of legislation referred to it by the President of the Republic or arising in any judicial proceedings; on matters of conflict or contrast of power or competence between state organs; and on questions of interpretation of the Constitution in cases of ambiguity. The Supreme Court is the final Appellate Court in the Republic and has jurisdiction to hear and determine appeals in civil and criminal cases from the Assize Court, District Courts as well as appeals from decisions of its own judges when sitting alone in the exercise of original and revisional jurisdiction of the Supreme Court. The Supreme Court is also vested exclusively with revisional jurisdiction in connection with administrative or executive acts, decisions or omissions; the relevant remedy is by way of a recourse for annulment. The Supreme Court, moreover, exercises original jurisdiction as a Court of Admiralty. In its original jurisdiction the Supreme Court deals also exclusively with proceedings for the issue of orders of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*.

- (b) The Constitution of Cyprus provides for the protection of fundamental human rights in Part II, articles 6–35. Some of the rights and liberties protected by the Constitution are the following: right to life, prohibition of torture, prohibition of slavery and forced labour, right to liberty and security, right to a fair trial, no punishment without law, right to respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association, right to marry, prohibition of discrimination.

Apart from guaranteeing the protection of certain rights and liberties, these constitutional provisions also provide for circumstances under which the rights and liberties may be lawfully restricted.

The Constitution prevails over all other laws or administrative actions. Thus any law or administrative action which violates the constitutionally guaranteed individual rights is void.

- 2 The general principle for awarding damages in case of breach of contract is to place the innocent party, so far as can be done by money, in the same position as they would have been in had the contract been performed. In other words, the intention of the courts awarding damages for breach of contract is to compensate the innocent party for their 'expectation loss', i.e. the loss he or she has suffered as a result of the contract not being performed. An alternative basis for awarding damages for breach of contract is to compensate the innocent party for their 'reliance loss', i.e. for the loss he or she has suffered as a result of relying upon the contract. This basis of awarding damages is not common and may, for example, be used in circumstances where it is not possible to calculate the profit that the innocent party would have made if the contract had been performed.

The Contract Law Cap. 149 contains provisions governing the matter of recoverable damages. Section 73 provides that in case a contract has been broken, the party who suffers by such breach 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. This is in fact the common law rule established in *Hadley v Baxendale* (1854) which has been embodied in the Contract Law. The general principle is that a person can only be held responsible for such consequences as may reasonably be supposed to be in the contemplation of the parties at the time of making the contract.

The rules relating to penalty/damages clauses and the duty to mitigate losses are also relevant.

- 3 The principal and agent have a contractual relationship in which the principal appoints or authorises the agent to act on their behalf either for a specific purpose or generally. A contract entered into by an agent on behalf of their principal and a third party is a contract between the third party and the principal. Therefore where the agent acts within the authority provided to him or her by the principal, then the acts of the agent will bind the principal so that the principal will be liable to the third party with whom the agent contracted.

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. Moreover, where 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.

In cases 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.

- 4 (a) Corporate governance is a system of structuring, operating and controlling a company with a view to achieve 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 first issued in Cyprus in September 2002 and subsequent editions followed.

The application of the Code has not yet been rendered totally compulsory, although public companies listed on 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 what 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.

- 5 (a) According to s.261 Companies Law Cap. 113, a company enters into voluntary liquidation when:
    - (i) 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;
    - (ii) the company resolves by special resolution that the company be wound up voluntarily;
    - (iii) 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.
  - (b) According to s.211 Companies Law Cap. 113, a company enters compulsory liquidation/winding up by the court when:
    - (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 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) When a company issues its shares at a premium, that is at a value above nominal value, a sum equal to the aggregate amount or value of the premiums is transferred to a 'share premium account'. The share premium account may be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, or in writing off the company's preliminary expenses, or the expenses of or the commissions paid or discount allowed on any issue of the company's shares or debentures, or in providing for premium payable on redemption of debentures of the company. The share premium account may also be used for other purposes, e.g. it may be returned to the shareholders, provided the capital reduction procedure is followed.
  - (b) When a company issues shares which are, or which at the option of the company are to be liable, to be redeemed, and where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, a sum equal to the nominal amount of the shares redeemed is transferred out of profits which would otherwise have been available for dividend to a reserve fund called the 'capital redemption reserve fund'. The capital redemption reserve fund may be applied 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, as in the case of the share premium account, the capital reduction procedure applies.
- 7 (a) According to the Termination of Employment Law of 1967, 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.

- (b) An employee whose employment has been terminated as a result of redundancy is entitled to recover compensation from the Redundancy Fund, provided that the employee has been employed continuously at the business where their employment was terminated for redundancy for at least 26 weeks. The amount of compensation to be paid to the employee will depend upon the number of years of service, on the basis of a scale set forth in the Termination of Employment Law of 1967.

The employee is also entitled, on termination of their employment, to a notice or payment in lieu of notice from the employer. The length of notice, or payment in lieu, varies in accordance with the length of their services with the employer concerned. The minimum is one week and the maximum is eight weeks.

- 8 The first issue to consider is whether the statements in the brochure of Best Holidays Ltd are mere representations or whether they should be considered to be terms of the contract between Anna and Best Holidays Ltd. In view of the importance of the said statements, and the fact that they were intended to induce people like Anna to book their summer holidays with Best Holidays Ltd, it is likely that such statements will be deemed to form part of the contract between Anna and Best Holidays Ltd. As a result, once Best Holidays Ltd is in breach of the contract with Anna, by failing to provide the facilities promised, Anna may sue for damages for the loss she suffered as a result of the breach.

A number of issues arise as to the type of damages that Anna is entitled to claim. First, since the main object of the contract between Anna and Best Holidays Ltd was to obtain mental satisfaction, damages for mental distress can be awarded for breach of contract. Thus Anna may be able to recover damages for her disappointment in not receiving the holidays she expected.

Under the doctrine of privity, Anna can only sue for her personal loss and not for the loss suffered by Ben. Further, Ben cannot sue Best Holidays Ltd for the loss he suffered, because he has not entered into any contract with Best Holidays Ltd.

However, since Anna has entered into a contract with Best Holidays Ltd partly for the benefit of her son, Ben, Anna will be entitled to substantial damages for mental distress, because the party she wished to benefit suffered loss.

- 9 Section 182 Companies Law Cap. 113, imposes a general prohibition on companies from making loans to their directors, subject to certain exceptions. One such exception relates to anything done by a private company. Therefore the loan to Delta Ltd is valid.

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

The pledge of 100,000 shares in ELA Ltd is effected by, *inter alia*, depositing the relevant share certificates with Car Repair Ltd. A memorandum of pledge must be entered in the register of members and a relevant certificate issued.

Under s.90 Companies Law Cap. 113, the fixed charge on the warehouse offered by Delta Ltd must be delivered to or received by the Registrar of Companies for registration within 21 days after the date of its creation. Failure to register the charge within the time limit prescribed by s.90 Companies Law Cap. 113 will render the security conferred by the charge void as against the liquidator and any creditor of the company. Car Repair Ltd 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 will be cured.

The pledge of the 100,000 shares in ELA Ltd is not required to be registered with the Registrar of Companies, given that pledges of shares in Cypriot companies are expressly excluded from the obligation to be registered under s.90 Companies Law.

Fiona's personal guarantee creates a personal liability to Fiona, and no registration is required to make it valid.

- 10 While John was director of Glory Ltd, a fiduciary relationship existed between him and Glory Ltd. Upon general rules of equity, a person holding a fiduciary position as director cannot obtain for themselves 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 they are acting for the company, they must account to the company.

It is apparent from the question that John got the contract with Hugo Ltd for himself and got it as a result of work which he did whilst still Glory Ltd's director. It is true that the contract for the work with Hugo Ltd was not concluded until after John had left Glory Ltd. However, that work was work which Glory Ltd would very much have liked to have had and from the time John had embarked on his course of dealing with the Hugo Ltd, he had embarked on a deliberate policy and course of conduct, which had put his personal interest as a potential contracting party with Hugo Ltd in direct conflict with his pre-existing and continuing duty as director of Glory Ltd.

Therefore, there is disclosed the plainest conflict of interest between John and Glory Ltd as potential IT consultant of Hugo Ltd and as director of Glory Ltd.

Moreover, a release was obtained by John from a binding contractual obligation by the dishonest and untrue representations concerning family problems. Glory Ltd would most probably not have agreed to release John if they had known the full facts about the project with Hugo Ltd.

John made and 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 which Glory Ltd could not have obtained, since Hugo Ltd was only interested in employing IT consultants privately; the question is not whether the company could have acquired the benefit, but whether the director acquired the benefit while acting for the company.

Therefore, Glory Ltd can claim against John an account for breach of fiduciary duty.

- 1** 6–10 Thorough explanation of both parts to the question.  
0–5 A less complete treatment of the question.
- 2** 8–10 A good treatment of the rules relating to the award of damages for breach of contract.  
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 various duties placed on each of the parties to an agency agreement.  
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 corporate governance and the relevant legal framework.  
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 the circumstances when a company enters voluntary and compulsory liquidation.  
5–7 A less complete answer, 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 reasonable treatment of the question, although perhaps lacking in detail.  
0–4 Little understanding of the area.
- 7** 7–10 A complete answer, demonstrating a good understanding of the legal framework relating to redundancy.  
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.