

---

# Answers

---

- 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 in public law 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 the case of *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 Supreme Court in *Ibrahim* held that the Administration of the Justice (Miscellaneous Provisions) Law had been validly enacted on grounds of application of the doctrine of necessity.

The decision in the case of *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. As a result 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 Parliament of Representatives. The doctrine of necessity justifies the maintenance of the powers of the Parliament of Representatives to make laws, according to the provisions of the Constitution.

- (b) The doctrine of precedent is at the heart of the common law system. The courts are bound (within prescribed limits) by prior decisions of superior courts. So the District Courts, for example, are bound by decisions of the Supreme Court, provided the material facts are the same. However, decisions of the Supreme Court bind not only lower courts but also the Supreme Court itself, which can deviate from its prior decisions only in exceptional circumstances, e.g. when a prior decision leads to manifestly unjust results or when it is based on an indisputably wrong legal principle or when there has been a substantial change in the conditions on which the legal principle is based. Adherence to precedent helps achieve stability, which in turn gives predictability to the law and affords a degree of security for individual rights, while at the same time allows the system to be adaptable to changing circumstances.
- 2 (a) Representations are statements which are made before or during the negotiations which may lead to a contract. A mere representation does not give rise to any action for breach of contract. A person who reasonably relies on a false representation may have remedies for innocent, negligent or fraudulent misrepresentation accordingly. However, if a statement becomes a term of the contract, then the falsity of the statement gives rise to a right to sue for breach of contract. A number of factors may be taken into account when distinguishing between terms and mere representations, such as, the relative position of the parties to know or at least to find out the true facts (*Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd* (1965)); whether the statement was made for the purpose of inducing the other party to enter into a contract; whether the other party actually relied on the statement; and the time elapsing between the making of the statement and the final determination of the intention to create legal relations between the parties.
- (b) Conditions are terms of the contract which are fundamental to the main purpose of the contract. Every breach of a condition deprives the party not in default of substantially the whole benefit intended in contract to be obtained. Every breach of a condition gives rise to a right to terminate the contract by the innocent party, as well as a right to damages.
- Warranties are terms of the contract which are only incidental to the main purpose of the contract, and breach of such terms never gives rise to a right to terminate the contract, but only gives rise to a right to damages.
- Innominate/Intermediate terms are terms of the contract which cannot be classified either as conditions or warranties. On these terms, the right to terminate depends on the seriousness of the breach. Some breaches will and some will not give rise to an event depriving the innocent party of substantially the whole benefit of the contract (*Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* (1962)).
- A number of factors are taken into account in deciding whether a term is a condition, warranty or innominate term, such as, whether it has been explicitly agreed as such in the contract; whether it results from the nature of the contract (*Bettini v Gye* (1876); *Poussard v Spiers & Bond* (1876)); or whether it has been set by the law, or decided by previous caselaw.

**3** The parties to an agency agreement are the agent and the principal, who owe various duties to each other.

Agents owe a number of duties towards their principal, such as:

- (a) To execute the work they have undertaken in accordance with the principal's instructions or, in case there are no such instructions, in accordance with the customs of the trade.
- (b) To execute the work with reasonable skill and due care.
- (c) Fiduciary duties, which include being faithful to their principal and always acting in the principal's best interests; not letting their personal interests conflict with the interests of the principal; not making secret profits or accepting bribes; and accounting to their principal for any profit they make as a result of the work they do for the principal.
- (d) To execute their duties personally – delegation to a sub-agent is permitted only with the consent of the principal or in other exceptional circumstances.

Principals also owe a number of duties towards their agents, such as:

- (a) To pay the agent the agreed commission or salary, or to pay reasonable remuneration in case of no agreement.
- (b) To make full disclosure of information relevant to the transactions which the agent has authority to execute.

**4** According to Table A of the Companies Law, Cap. 113, the following rules apply to the distribution of dividends in private companies:

- (a) The company in a general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.
- (b) The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.
- (c) No dividend shall be paid otherwise than out of profits.
- (d) Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.
- (e) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for a dividend as from a particular date such share shall rank for a dividend accordingly.
- (f) The directors may deduct from any dividend payable to any member all sums presently payable by them to the company in relation to the company's shares.
- (g) No dividend shall bear interest against the company.

**5** Company directors have to act within the powers conferred to them by the company's memorandum of association, the resolutions of the general meetings of the company's members and the decisions of the board of directors, and always in accordance with the Companies Law. The duties of company directors follow from the nature of their relationship with the company as general agents and trustees of the company's property. The company directors have, *inter alia*, the following duties:

- (a) A duty to exercise their powers in good faith, that is, in a manner which in their view would best pursue the interests of the company.
- (b) A duty not to allow their personal interests to conflict with those of the company.
- (c) The directors should not act in a way which takes advantage of the company by obtaining personal benefits (*Cook v Deeks* (1916)). Even if the directors act with honesty and transparency they are still not entitled to retain personal benefit from the company's dealings, unless the company consents in general meeting (*Regal (Hastings) v Gulliver and Ors* (1967)).
- (d) A duty of care, that is a duty to use the skill and care reasonably expected from persons of their position and experience.
- (e) It is the duty of company directors, who are in any way, whether directly or indirectly, interested in a contract or proposed contract with the company to declare the nature of their interest at a meeting of the directors of the company (s.191, Cap.113).
- (f) A duty to notify the company about all information necessary for the preparation of the necessary reports e.g. the register of directors and secretary, the register of shareholders, summary of their remuneration, loans, etc.

The duties of company directors can continue to exist even after they lose the office of director (e.g. *Industrial Development Consultants Ltd v Cooley* (1972)).

Company directors may have unlimited liability, if so provided by the company's memorandum (s.194, Cap.113). Otherwise company directors bear no personal liability for the acts of the company, unless they are also shareholders in which case their liability will be limited to the amount, if any, which has not been paid for the shares respectively held by them. However, if a company director has acted with a view to defraud creditors of the company or has been involved with insider dealing then such director shall be guilty of an offence and shall be liable to a fine and/or imprisonment according to the relevant provisions of the Companies Law, Cap.113 and the Insider Dealing and Market Manipulation (Market Abuse) Law 116(I)/2005 respectively.

**6** Liquidation, or winding up, is the process whereby the life of a company is brought to an end and its assets are realised and distributed to its members and/or creditors. Voluntary liquidation is when the members of the company decide that the company should be brought to an end, whereas compulsory liquidation is when the company is forced into liquidation by a court order.

**(a)** A company enters voluntary liquidation when (s.261 Cap.113):

- (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; or
- (ii) the company resolves by special resolution that the company be wound up voluntarily; or
- (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)** A company enters compulsory liquidation/winding up by the court when (s.211 Cap.113):

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

**7** The Prevention and Suppression of Money Laundering Activities Laws require all persons carrying on the activities and services prescribed by s.60 of the Laws (which include consultancy services, and professional activities by auditors, external accountants, tax advisors and lawyers) to establish and maintain specific policies and procedures to guard against money laundering, such as:

- (a)** client identification procedures;
- (b)** record-keeping procedures in relation to clients' identity and their transactions;
- (c)** procedures of internal reporting to a competent person appointed to receive and consider information that gives rise to knowledge or suspicion that a client is engaged in money laundering activities;
- (d)** other internal control and communication procedures for forestalling and preventing money laundering;
- (e)** measures for making employees aware of the above procedures and relevant legislation;
- (f)** training employees in the recognition and handling of transactions suspected to be associated with money laundering.

Accountants or auditors who allegedly fail to comply with the above requirements are referred to the competent disciplinary board which decides accordingly.

Furthermore, it is an offence for any person, including an accountant or auditor, who in the course of his trade or business acquires knowledge or reasonable suspicion that another person is engaged in money laundering not to report his knowledge or suspicion to a police officer or to the Unit for Combating Money Laundering ('MOKAS'). MOKAS has been established by law to investigate money laundering processes and it may apply to the court and obtain freezing, confiscation and disclosure orders.

In addition, courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person, including a firm, who appears to the court to be in possession of the information relevant to the application.

- 8 (a)** Bob works for Jim under a contract of service, and therefore Bob is an employee. As an employer, Jim has, *inter alia*, a duty to provide his employees with a safe system of work. The stability and safety of the scaffolding is undoubtedly the responsibility of the employer. However, even though there is no information as to whether Bob would have suffered serious head injury had he worn his helmet, we can reasonably presume that the damage would have been less serious. Therefore, even though Jim is responsible for ensuring that the scaffolding will be safe so that it will not collapse while the builders are standing on it to work, it is arguable that there is a break in the chain of causation because Bob was not wearing the protective helmet, which Jim had properly provided to his employees. So even though Bob would not have suffered head injury had the scaffolding not collapsed, Jim may be able to evade liability if he can show that Bob failed to wear the helmet through fault of his own and if he had worn the helmet he would not have suffered the damage.
- (b)** Dave has contracted to provide services to Jim in relation to this particular construction work. Dave is responsible for providing his own equipment and his own assistants. Jim does not control or supervise the mode or method of Dave's work other than defining what work needs to be done. Therefore Dave is apparently an independent contractor, working under a contract for services, and not an employee. Therefore Jim cannot bear liability for any tort committed by Dave, even if his tort was committed during the course of the work provided to Jim. It is only in the case of employees that the employer is vicariously liable for any tort committed by them in the course of their employment provided that the employees were acting within the sphere of their employment.
- 9** A company may remove an auditor by passing an ordinary resolution at an annual general meeting appointing somebody instead of them or providing expressly that they shall not be reappointed. Fred and Eric together hold 50% of the issued share capital of DTP Ltd, and George holds 25% of the issued share capital of DTP Ltd. An ordinary resolution may be passed for the removal of DC & Co if one more vote is cast in favour of such a resolution by a member who, being entitled so to do, votes in person or by proxy. According to s.154 of the Companies Law, Cap.113:
- (a)** 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);
- (b)** 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;
- (c)** the retiring auditor concerned is entitled to have his written representations sent to every member of the company to whom notice of the meeting is sent.

However, even if no member of DTP Ltd other than Fred and Eric votes in favour of the resolution for the removal of DC & Co, DC & Co will not qualify for re-appointment at the next annual general meeting. According to s.155, Cap.113, the husband or wife of a company officer cannot be appointed as auditor of the company.

- 10** Since the issued share capital of ABC WIRELESS Ltd is less than its authorised share capital, ABC WIRELESS Ltd can proceed to issue shares (so that its issued share capital is less than or equal to its authorised share capital) without requiring to effect an increase in the authorised share capital first.
- Issuing shares at a discount is in principle prohibited by the law, unless the conditions set out in s.56 of the Companies Law, Cap.113 are met. Thus ABC WIRELESS Ltd may issue at a discount shares in the company of a class already issued provided that:
- (a)** 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;
- (b)** the resolution specifies the maximum rate of discount at which the shares are to be issued;
- (c)** 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.

With regard to Mary's suggestion, the loan from A&B CABLE Ltd to ABC WIRELESS Ltd is permissible. Since ABC WIRELESS Ltd, which is the director of A&B CABLE Ltd, is also holding company to A&B CABLE Ltd, the loan from A&B CABLE Ltd falls within one of the exemptions to the general prohibition imposed on companies from providing loans to their directors (s.182 Cap.113). If a fixed charge is created on the book debts of ABC WIRELESS then that needs to be delivered to the registrar of companies for registration within 21 days after the date of its creation or else it shall be void against the liquidator and any creditor of the company (s.90 Cap.113).

This marking scheme is given as only a guide to markers in the context of suggested answers. Scope is given to markers to award marks for alternative approaches to a question, including relevant comment, and where well reasoned answers are provided. This is particularly the case for essay type questions where there may often be more than one way to write an answer.

- 1** 6–10 A thorough answer which explains the meaning and application of both the doctrine of necessity and the doctrine of precedent. For full marks reference should be made to the *Ibrahim* case.  
0–5 A less complete answer, perhaps lacking in detail or unbalanced in that it does not deal with both aspects of the question.
- 2** 8–10 Thorough explanation of the distinction between terms and representations, and conditions, warranties and innominate terms with reference to appropriate cases or examples.  
5–7 Reasonable treatment of all elements but perhaps lacking in detail or authority.  
0–4 Very unbalanced answer, focusing on only one aspect of the question and ignoring the others, or one which shows little understanding of the subject matter of the question.
- 3** 8–10 Thorough explanation of the duties the agent owes to his principal and the principal to his agent.  
5–7 A less complete treatment of both the agent's and the principal's duties.  
0–4 Very unbalanced answer, lacking in detailed understanding.
- 4** 8–10 Answers will show a thorough understanding of the rules governing the distribution of dividends in private companies.  
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 a number of the rules governing the distribution of dividends in private companies.  
0–1 Little or no knowledge of the area.
- 5** 8–10 A good explanation of both duties and liabilities of company directors, making reference to relevant case law and/or statute law.  
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 either the duties or the liabilities of company directors.  
0–1 Little or no knowledge of the area.
- 6** 8–10 A good treatment of both types of liquidation, probably, although not necessarily, with reference to statutory provisions.  
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 types of liquidation.  
0–1 Little or no knowledge of the area.
- 7** 8–10 A complete answer, demonstrating an understanding of the procedures prescribed by the Prevention and Suppression of Money Laundering Activities Laws.  
5–7 An accurate recognition of the issues relating to money laundering and its prevention, 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 issuing shares at a discount, providing loans to company directors, and registration of charges.
- 5-7 Some understanding of the situation but perhaps lacking in detail.
- 0-4 Weak answer lacking in knowledge or application.