

Module 2

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1.

The Cyprus Legal System

The legal system in Cyprus is rather unique; it could be described as a diverse legal system. The reason being is that its private law is based on common law, which has been codified in statutes. The public law in Cyprus is founded on a continental tradition. Legislation in Cyprus has a rather distinctive colonial flavour. This is due to the history of the colonial invasions of the country. Due to the Turkish occupation of a substantial part of the country, in addition to the decades of the long state political emergencies in Cyprus; there has been a traditional mentality which holds a sense of perpetual interim. These factors have collectively formed an amazingly individual composite picture of a unique legal system, that has rarely been studied with depth, both from the inside and the outside¹.

1. ¹THE CONTRIBUTION OF MIXED LEGAL SYSTEMS TO EUROPEAN PRIVATE LAW (Jan Smits ed., Intersentia 2001); JAN SMITS, THE MAKING OF EUROPEAN PRIVATE LAW: TOWARD A IUS COMMUNE EUROPAEUM AS A MIXED LEGAL SYSTEM (Intersentia 2002).

Ancient Times

During the ancient times of the history of Cyprus; a Cypriot named Demonassa was thought to be the legislator from a mythology perspective. At the time, it was believed that she had enacted 3 laws that were recognised widely by other Cypriots. These were:

1. A wife that commits adultery will have her hair shaved and will be officially registered as a married prostitute.
2. The second law she enacted said that any person who commits suicide would not be buried.
3. The third law that Demonassa endorsed was that anyone who slaughters a bull would be executed.

It is clear that times have changed and so has the Cypriot legal system. As time has emerged, and following different colonials that have occupied Cyprus; the full legal



system has been reconstructed. This has only led to the legal system to be influenced by the different cultures and laws of previous occupiers which we will explore in this chapter.

<https://www.pinterest.co.uk/harpwiki/harps-in-4th-century-bce/?lp=true>

Byzantine Era to Colonial Rule

Through the Byzantine era, the Byzantine law were the widely recognized laws in the country. They were part of the Assizes Codes of Law applied during the Franks reign (1192-1489) and the Venetian period (1489-1570). During the 16th century, the Venetians tried to introduce their own legal system but during the Ottoman period 1570-1878; the Ottoman laws were used by most residents of Cyprus.

The Venetians were eager to introduce their own legal system during the sixteenth to nineteenth centuries. From 1570 to 1878, the applicable and used laws were the Ottoman codes².

In 1869, a new code known as “Mejelle” or the Civil Code of 10 March 1869 started in force. The “Mejelle” was based on the decisions and obiter dicta of Imams. The text was believed to have significant similarities to the «Χεττάγια» a leading Indian regime.

2. ²Savvides D, 'Cyprus · The Current Legal And Policy Outlook Of Public Procurement And PPP In Cyprus' (2017) 12 European Procurement & Public Private Partnership Law Review

The Ottoman Commercial Code also bore resemblance to the Napoleonic Code that was used in France and at times wider sections of Europe. The Ottoman Criminal Law and Admiralty Code that were used at the time were also based on the French Felony and Maritime Laws respectively.

In Cyprus, up until 1878, other Ottoman statutes that applied were, inter alia, the Inheritance Law, the Law on Presses, the Immovable Property Law, and the Law on Mines. In 1878; however, Turkey ceded Cyprus to Great Britain as part of a Convention of Defensive Alliance signed by Turkey and Great Britain 4 June 1878. The Convention arose due to a concern of Turkey that Russia was increasingly occupying territories of geopolitical importance to Turkey. The assistance of Great Britain was requested by Turkey and as a result administration and possession of Cyprus was handed over to Great Britain in return for part of the surplus budget of the latter, which was estimated to be 22.936 «πουγγία» where «ἕκαστον πουγγίον = 500 γρόσια».

Cyprus's management by Great Britain was originally intended to be temporary. It was believed that once Russia had left areas in Armenia the possession and administration of Cyprus by Great Britain would terminate and that Cyprus would be returned again to the Ottomans.

Establishment of the Republic

Cyprus became a British colony by virtue of its initial occupation by Turkey and then Turkey's ceding of the island territory to Great Britain. The rule of the British in Cyprus lasted 82 years from 1878 until 1960, when the nation sought its independency. The major changes to the Cyprus legal system under British rule was the introduction of common law principles, namely, precedent, ratio decendi, and equity. Acts that were introduced the British included the Criminal Code. Laws that were introduced included the British criminal law and civil wrongs law.

Seminal British cases such as *Donoghue v Stevenson* on the law of negligence were also good law in Cyprus. After 1960, with Cyprus's independence there was a strong push to maintain the English legal system. In the Courts of Justice Law (14/60), section 29(1)(b) provides that in addition to applying the Constitution of the Republic of Cyprus, and the laws which Article 188 of the Constitution retains, the Courts of Cyprus also retain the common law and equity principles, and the Laws of England, which prior to 1960, were applicable in Cyprus. The upshot is the business and social legal norms in Cyprus are largely indistinguishable from the United Kingdom³.

Procedurally, the majority of Cyprus' court processes are inspired by those of the United Kingdom— to the extent that many of the laws are officially translated into English. Just like the UK, Cyprus provides the right to due process, and the right

3. ³The Mixed Legal System of the Republic of Cyprus, *supra* note 4, at 443-445.

to appeal. Due process is not just provided by the law, but is exercised throughout the entirety of the country—assuring that all citizens have the right to a fair and public trial before their peers. Likewise, defendants are guaranteed the right to be present at their trial, and to be represented by counsel. If one cannot afford to be represented by private counsel, then a counsel will be provided at public expense. Alternatively, defendants may present evidence and confront witnesses themselves, in lieu of formal counsel.

As in the UK, there are different court levels that deal with different sorts of cases. District courts deal most often with criminal and civil cases, but such cases may be passed to the Supreme Court if an appeal is made. The Supreme Court passes final judgment on administrative law and follows French Droit Principles. Political and security offenses are dealt with by these courts as well.

Unlike the English system, the Cypriot legal system has a written constitution that is based upon the European Convention of Human rights. The constitution is further inspired by the application of the Convention in the US and throughout Europe.

Sources of Cypriot Law

Cyprus is considered to be a modern republic; therefore, its laws and legal system are not so advanced and are mainly derived from English law. Under the Court of Justice Law 1960 Article 29(1), English laws are conserved into the Cypriot legal

system since it was established in 1960. This means that the laws in Cyprus are mainly based on the English legal system. The three main branches of law in Cyprus are⁴:

1) The Common Law

The English Common Law system is considered to be a rich accumulation of law principles that have been influenced by Roman law but have preserved their individuality. Common Law is also thought to be rather lax and due to its simplicity is easily digested.

2) The Principles of Equity

The Rules of Equity are basically the very essential principles of law in Cyprus and they were cemented into the legal system in order to fill some small gaps found in the Common Law. They are also known as the Maxims of Equity in which they strengthen the purpose of creating justice in society.

3) Statute Law

Statute Law is based on legislation enacted by Parliament. Due to the Cypriot legal system being extracted from the British system, it is the reason why it is considered to be a comprehensive and rich set of laws amongst Europe.

4. ⁴Krawietz W, *Political And Legal System Of The Republic Of Cyprus* (Duncker & Humblot GmbH 2003)

The Administration of the Cypriot Justice System

Upon first glance, the Cypriot Justice Administration would appear completely similar to English law. However, the present structure is much a legacy of the late colonial period and is heavily influenced by the merger of Cyprus' two old supreme courts, which was provided for in their constitution. The judiciary system of Cyprus often abides by common law tradition, using common law tools and reasoning (though this use is a point of disagreement between legal professionals)⁵. English common law and Cypriot common law are analogous in their use of procedural law—even in areas where the substantive law has been almost entirely copied from continental law⁶.

The Judicial Process

The Cypriot legal system consists of two types of courts:

- ❖ The Supreme Court
- ❖ The Subordinate Courts

5. ⁵THE CONTRIBUTION OF MIXED LEGAL SYSTEMS TO EUROPEAN PRIVATE LAW (Jan Smits ed., Intersentia 2001); JAN SMITS, THE MAKING OF EUROPEAN PRIVATE LAW: TOWARD A IUS COMMUNE EUROPAEUM AS A MIXED LEGAL SYSTEM (Intersentia 2002).

6. ⁶Savvides D, 'Cyprus · The Current Legal And Policy Outlook Of Public Procurement And PPP In Cyprus' (2017) 12 European Procurement & Public Private Partnership Law Review

The Cypriot Supreme Court

In 1964, the Cypriot Supreme Court was established under the Administration of Justice Law. The Supreme Court consists of 13 members which are appointed based on being a 'jurist of high professional and moral level'. This court has the right to exercise both the original and appellate criminal and civil jurisdiction. The Cypriot Supreme Court is conferred with the authority to act as an Administrative Court, Appellate Court, Admiralty Court and of course as the Supreme Constitutional Court.

The Subordinate Courts

Generally, the Subordinate Courts are lower courts. There are six types of subordinate courts in Cyprus⁷:

1. The District Court

District courts in Cyprus practice common and criminal laws. There are five District courts in Cyprus and in their common purview have the authority to make any action within the district of the location of that specific court. District Courts can likewise engage in any case that has not been particularly allocated to the jurisdiction of the Labour Courts, Family Courts, Rent Control Courts or the Supreme Court.

2. The Family Courts

7. ⁷Krawietz W, *Political And Legal System Of The Republic Of Cyprus* (Duncker & Humblot GmbH 2003)

Each region of Cyprus has its own Family Court. The court has jurisdiction concerning matters of property alteration of divorce, alimony, custody and child support payment disputes as well as other areas of Family Law such as the annulment of marriages.

3. The Labour Courts

The Labour Court situated in Nicosia is the only venue for disputes concerning the employment relationship. In the absence of a Labour Tribunal, employers and employees in Cyprus bring actions to the Labour Court

4. The Rent Control Courts

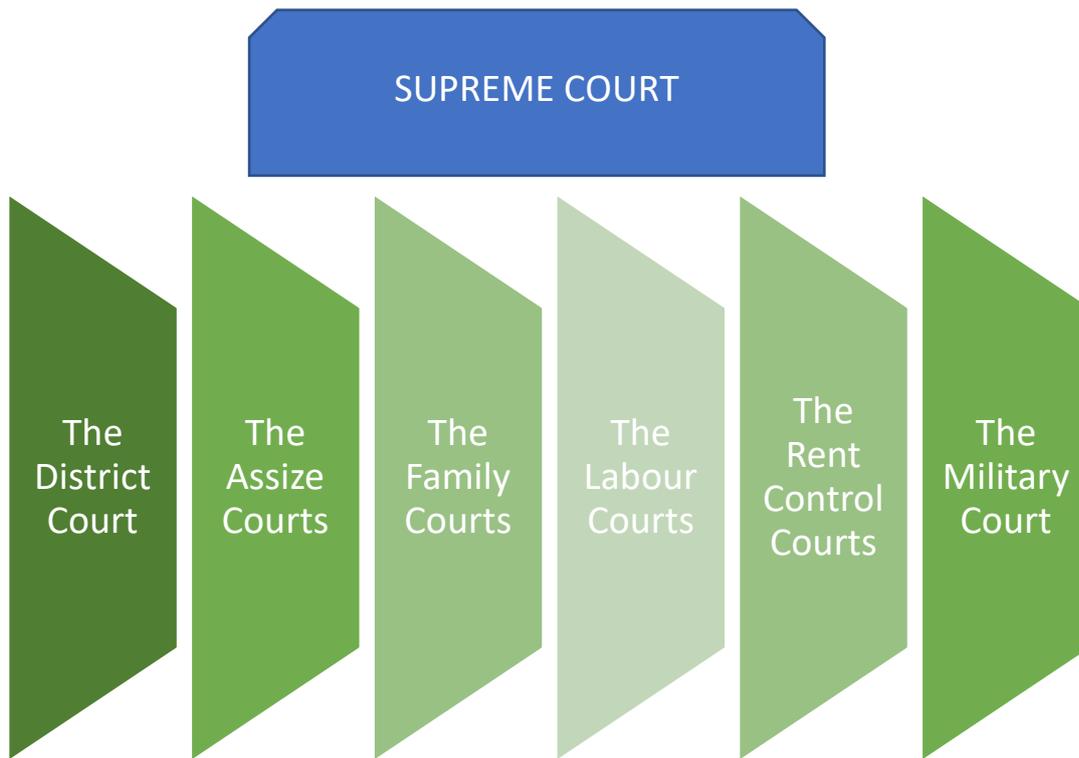
There are three Rent Control Courts located in Cyprus. The three courts handle matters from five regions with Nicosia having its own court, the regions of Limassol and Paphos sharing a court, as well as Larnaca and Famagusta regions sharing a court. Rent Control Courts handle a broad range of areas related to rented real property. Rent adjustments and evictions are common cases.

5. The Military Courts

Four years after independence, the Military Criminal Code of 1964 established the Cypriot Military Court. The Cypriot Military Court exercises criminal jurisdiction over members of the Armed Forces. It is a highly procedural court following the Military Criminal Code and related procedural regulations⁸.

⁸Krawietz W, *Political And Legal System Of The Republic Of Cyprus* (Duncker & Humblot GmbH 2003)

The Courts of the Republic of Cyprus are organised as shown below:



MAIN STAGES IN CIVIL PROCEEDINGS⁹

The law is based mainly in the Civil Procedure Law and in the Civil Procedures Rules. Both were founded in English Law and Practice applicable in the 1950s. The Civil Procedure Rules follow the English White Book of 1954 with minor amendments. The Civil Procedure rules deal with the following: 1. Commencement and Service of the proceedings

2. Pleadings

⁹ The text pertaining to the proceeding in Cyprus is copied by George Liasides LLC speech at the EURESEAU CONFERENCE, NICOSIA, 15 NOVEMBER 2015 available at <http://www.studiofinpro.it/wp-content/uploads/INTRODUCTION-TO-CYPRUS-LEGAL-SYSTEM.pdf>

3. Interlocutory Matters such as third-party proceedings, discovery, particulars, etc.

4. The Trial

5. The Appeal

6. Execution of Judgments

The main stages in civil proceedings are as follows:

1. Filing a writ of summons, generally indorsed or specially indorsed, for service of a writ of summons to the Defendants.
2. Filing of a Notice of Appearance by the Defendant within 10 days from the time of service. If the Defendant disputes the jurisdiction, he must apply for leave to file a conditional appearance. If the Defendant is outside the jurisdiction, the Plaintiff must first apply for leave to seal the writ and the for leave to serve it outside the jurisdiction. If a generally indorsed statement of claim is filed, then a statement of claim must be filed within 10 days of an appearance. The Defendant must file his statement of defence within 14 days after filing an appearance if a specially indorsed writ of summons is filed, or 14 days after the statement of claim if a generally indorsed writ of summons is filed. The Plaintiff may file a reply within 7 days after receiving the defence, but it is not compulsory. If the Defendant has counterclaim, the Plaintiff will file a reply to and defence against the counterclaim within 14 days of the counterclaim. Once the pleadings close, any party is entitled to apply to the court for a hearing date.

3. The Registrar fixes the matter for directions and the judge decides when to fix the matter for hearing. Before the trial both parties may file various interlocutory applications. During the trial, both parties produce evidence. The witnesses are examined in chief and they can be cross examined and re-examined. At the end both parties make their submissions so that a judgment may be issued.

The main stages in criminal proceedings are as follows:

The applicable law is the Criminal Procedure Law Cap 155. Section 3 of the Law provides that English practice is applicable in the absence of any Cyprus provision. Investigation of offences is usually carried out by police officers who have the power to request any person to attend the police station for purposes of examination, to take statements, documents and to carry out arrest and search. The usual way of commencing criminal proceedings is by a charge in a specified form. The charge is usually presented to a judge who directs that it be filed and subsequently a summons is issued to compel the attendance of the accused. The summons is served personally. In all criminal cases whether in the District or Assize Court a witness is first examined in chief then cross examined and re-examined in the same fashion as in the civil cases. In summary trials and trials on information i.e in Assize Court the accused answers to the charge or in Assize Court the information, pleading guilty or not guilty. The accused is always deemed innocent until proven guilty. After the plea, the Court proceeds with the hearing with the prosecution calling its evidence. The defence upon completion of the prosecution case may submit that a prima facie case

has not been made out. If the submission is successful then the case is dismissed and the accused acquitted. If not, the Court calls upon the accused for his defence, but a) has to advise the accused that he may make a statement without be sworn b) in such a case he will not be liable for cross examination or c) that he may give evidence after been sworn and d) in such a case he will be cross examined. The party who has last called the witness may address the Court first and the other party shall reply. At the conclusion judgment is delivered. The Court may find the accused guilty and pass sentence or acquit the accused. In summary cases, the court may if the accused fails to appear either issue a warrant of arrest or proceed in absentia. For offences exceeding 5 years imprisonment a preliminary inquiry by a judge must be held in order to establish where there are sufficient grounds on the basis of the evidence for the accused to stand trial. If the judge decides to commit the accused for trial the record is transmitted to the Assize Court.

Cyprus Accession in the EU

The Treaty of Accession of Cyprus to the European Union ('EU') signed by President Tassos Papadopoulos on 16 April 2003 forms the legal cornerstone of the path of Cyprus towards full membership to the EU. It also represents a strong indication of the future of Cyprus. The Treaty also is an achievement for Cyprus in relation to gaining European status notwithstanding that the nation is geographically and historically located in the continent.

Cyprus ratified the Treaty on 14 July 2003. Within a year, on 1 May 2004 the Republic become a full member state of the EU at the same time as Estonia,

Poland, Hungary, Lithuania, Latvia, Malta, Slovakia, Slovenia and The Czech Republic¹⁰.

Accession of Cyprus to the EU meant that the Republic's Constitution underwent amendment so that the law of the EU was supreme over national legislation including the Constitution.

Joining the European Union

There are numerous reasons that lead to small countries such as Cyprus to join the EU. The most dominant is for economic benefits that can help the countries growth. The European Union also offers wide benefits to member states such as loans and bail outs in recessions and other economic downturns. A second reason that can be submitted is that the political interests are attractive which allow member states to become involved in large political decisions. Finally, the security that the European Union can offer to member states is a very attractive benefit as although small, is a useful security protection that they have access to.

8. ¹⁰KOKUBO Y, 'The EU Membership Of Cyprus And The' (2004) 2004 EU Studies

Milestones in the Cyprus Path to the EU:

19 December 1972

- Signing of an Association Agreement between Cyprus and the European Economic Community which came into force on 1 June 1973.

4 July 1990

- Cyprus applies for membership to the European Communities.

31 March 1998

- Accession negotiations between Cyprus and the EU start.

13 December 2002

- The European Council decides in Copenhagen to admit Cyprus as a new member state of the European Union.

16 April 2003

- Cyprus signs the Treaty of Accession in Athens.

1 May 2004

- Cyprus becomes a member of the EU

EU Implications on the Cypriot Legal System

The implications following the island's turning point in history following Cyprus becoming a full Member state of the European Union are substantial. As a result of the accession, since 1st May 2004, Cyprus is bound by the European Union law and any domestic laws that are incompatible, therefore, cannot prevail as the European Union law over powers them. Furthermore, citizens of Cyprus are also able to bring legal action against the state before the European Court of Justice in circumstances where they have experiences damages or injustice due to the failure of the Cypriot government to implement EU law¹¹. Another point worth mentioning is that due to the two-tier judicial system in Cyprus; this means that there are no judicial remedies between the first instance courts and the Supreme Court. As a result, any subsequent appeals will automatically be referred to the European court. Furthermore, the European human right laws have had a detrimental impact on member states, including Cyprus. This can be demonstrated by the Human Rights Act which has several articles that all member states are bound by. An example of this is the Common European Asylum System, this system ensures that any asylum seekers that enter any member state must be welcomed if they are genuinely seeking safety or fleeing from persecution from their home countries. As can be seen, the accession to the European Union ensures that Cyprus is bound by the laws founded by the

9. ¹¹KOKUBO Y, 'The EU Membership Of Cyprus And The' (2004) 2004 EU Studies

European Court of Justice which it has signed upon applying to become a European Union state member.

Summary

Based on the findings presented in this previous discussion, it can be seen that the Cypriot legal system is indeed a unique system that is primarily based on the English common law. The history of Cyprus and its large culture that has been influenced by past colonies has without a doubt led to an impact on the country. This has resulted in the modern Cypriot law to be stemmed from a wide variety of roots that have constructed the law of Cyprus today. Moreover, the EU membership has also led to further implications on the laws of Cyprus. Accordingly, European laws over power own domestic laws and if any of the laws of Cyprus contradict with EU laws then the domestic law cannot prevail.

Sources

1. GEORGHALLIDES, CYPRUS AND THE GOVERNORSHIP OF SIR RONALD STORRS: THE CAUSES OF THE 1931 CRISIS (Cyprus Research Centre 1985).
2. KOKUBO Y, 'The EU Membership Of Cyprus And The' (2004) 2004 EU Studies

3. Krawietz W, *Political And Legal System Of The Republic Of Cyprus* (Duncker & Humblot GmbH 2003)
4. *Mediterranean Quarterly* 17.1 (2006) 73-101
5. Savvides D, 'Cyprus · The Current Legal And Policy Outlook Of Public Procurement And PPP In Cyprus' (2017) 12 *European Procurement & Public Private Partnership Law Review*
6. THE CONTRIBUTION OF MIXED LEGAL SYSTEMS TO EUROPEAN PRIVATE LAW (Jan Smits ed., Intersentia 2001); JAN SMITS, THE MAKING OF EUROPEAN PRIVATE LAW: TOWARD A IUS COMMUNE EUROPÆUM AS A MIXED LEGAL SYSTEM (Intersentia 2002).
7. The Mixed Legal System of the Republic of Cyprus, *supra* note 4, at 443-445.
8. WILLIAM MALLINSON, *CYPRUS: A MODERN HISTORY* 10 (IB Tauris 2009).

2.

Contract Law

Legislation that defines Cyprus Contract Law - Cap. 149 of the Laws of Cyprus – bears remarkable similarities with the Contract Law in India. This is because at the time that the legislation was enacted, in 1957, Cyprus was under the British colonial rule. Based on significant similarities, the Indian Contract Law is used as a tool in assisting in interpretation of the Cyprus Contract Law¹².

What is a Contract?

A contract is an agreement between parties that is legally binding. Though appearing simple at the surface, this definition encompasses legal concepts that took a long time to develop. For instance, the concept of an agreement underpinning a contract is evolving even to this day. Generally speaking, agreements can be classified as “bilateral” and “unilateral”. When two parties are agreeing to undertake certain contractual obligations, the agreement is said to be “bilateral” and the obligations

¹²Duxbury, Robert (2011) *Contract law*. 2nd ed. London: Sweet & Maxwell.

are enforceable by law. Bilateral agreements are the most common type of an agreement underpinning a contract¹³. An example of a bilateral agreement is if John agreed to sell his car to Sarah for £2000, then the contract is between both parties i.e John and Sarah.

Contract Elements

In order for an agreement to become a legally binding contract, it has to satisfy several requirements. These are¹⁴:

1. The agreement must be such that it intends to create legal relations and is capable to affect legal relations. In other words there must be a valid offer made by the promisor and a valid acceptance of the offer by the promisee.
2. All parties to the agreement must have full contractual capacity. For example, a child does not have the capacity nor is someone who is mentally ill.
3. In cases where special formalities are required by law to be part of agreement, these special formalities must be fully complied with.
4. Any agreement that is to become a binding contract must include a “consideration”.
5. The subject matter of the agreement must not be against the law.

¹³Chen-Wishart, M. (2015) *Contract law*. Fifth edition. Oxford, United Kingdom: Oxford University Press.

¹⁴Chen-Wishart, M. (2015) *Contract law*. Fifth edition. Oxford, United Kingdom: Oxford University Press.

Offer and Acceptance

An agreement implies that a mutual consensus of two (or more) parties over a specific matter exists – also known as a “consensus ad idem”. As such all agreement can be deduced down to an interaction of an “offer” and its expressed “acceptance” – either or both of which may be based on words or on conduct.

An “offer” can be made towards a person or persons, or it can be more general and be expressed to the world. However, a legally binding agreement can exist only if and when a particular person (or persons) “accept” the offer¹⁵. To illustrate this, Ian offered £50 to buy Ahmed’s old bike, the contract is created when Ahmed accepts Ian’s offer.

Furthermore, it is not sufficient to simply make an offer, but there also must be a communication of the offer to the acceptor. While there are not ironclad definitions of what constitutes proper communication, in order for an agreement to become legally binding, an offer must be clear and unequivocal. As such, a statement made during negotiations, for example, may not always be considered an “offer”. Finally, the concept of “acceptance” suggests that the accepting party knows of the offer at the time of “acceptance”. With these parameters in mind, it becomes critical at times to determine the precise moment of “acceptance”¹⁶.

¹⁵Chen-Wishart, M. (2015) *Contract law*. Fifth edition. Oxford, United Kingdom: Oxford University Press.

¹⁶ANSON W, *PRINCIPLES OF THE ENGLISH LAW OF CONTRACT* (FORGOTTEN BOOKS 2015)

The Intention to Contract

Though all contract are agreements, not all agreements are contracts. Some agreements never amount to legal contracts for a range of reasons. The subject of these agreements may be of a moral, as opposed to a legal obligation, or the parties may agree expressly not to treat their agreement as a legal obligation – that is, they do not intend to have a contract. An essential attribute to an enforceable contractual agreement is therefore that of the “Intention to Contract”¹⁷.

Capacity to Contract

Any “person” or “persons” can be a party to a contract. However, there are three special classes of “person” that require special treatment under the contractual law.

Minors

Under the Common Law, infants’ contracts could be voided at the infant’s option. In other words, any person under the age of 18 can elect to treat a contract as a nullity. This nullity exists to protect minors from the negative consequences of their actions. To this end, entering into a contract with a minor, is penalised under certain circumstances. The law provides for specific exceptions to the where contracts concluded with minors are valid, namely contracts for necessities and contracts for the minor's benefit. Necessities are deemed as goods required as per the minors’ life conditions at the time of sale and delivery. Necessities typically include: food, clothing, lodging, educational books, medical attention and legal advice. Contracts for the minor's benefit include contracts of employment, of apprenticeship, of

¹⁷Morgan, Jonathan (2012) *Great debates in contract law*. Basingstoke: Palgrave Macmillan.

service and for education.¹⁸ However, even in cases of such contracts, when their terms are unduly onerous to the minor, such terms would not be forced.

Corporations

Under the Common Law, corporations had a capacity to enter into contracts only if they were able to authenticate themselves by use of a corporate seal. Modern Contract Law allows agents of corporations to enter into contracts on behalf of the corporations, and in relation to any matter that is within the corporate powers. In these circumstances, contracts are entered into in the ways similar to those that may exist between individuals.

Persons of Unsound Mind

A party to a contract who is deemed mentally disordered may be subject to the control of the Court. In these cases, a guardian or receiver may enter into a contract on behalf of a Person(s) of Unsound Mind.

Consideration

A contract becomes legally enforceable only if a consideration has been furnished.

The courts defined consideration as “a valuable consideration in the sense of the law may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other”.

The Nature of Consideration

¹⁸ Achilleas C. Malliotis, *The Commercial Laws of Cyprus* Stephan Kinsella (ed), *Digest of Commercial Laws of the World* (Oxford University Press, Oxford, 2009)

Generally speaking, a valid consideration can result from any act or a promise to perform any act. However, it is critical that the consideration is “real”, meaning a valid consideration must have some value in the eyes of the Law. As such, a promise that is not specific or vague will not be viewed as a consideration in the context of the Contract Law.

Rules that govern Consideration

Several rules apply to contract consideration, including:

1. The law requires for consideration to be “real”, however the law does not require for consideration to be adequate. The courts are not concerned if the parties made a good bargain.
2. Consideration must move from the promisee – meaning that if a person other than the promisee is to provide the consideration, the promisee cannot enforce the agreement.
3. Consideration must not be “past”, in the sense that the exchange of promises should take place at the same time.

Illegality

An agreement to carry out an illegal act will be void and not legally enforceable.

For example, a contract made by two drug dealers selling Class A drugs is not enforceable.

Contract Terms

A completed agreement is governed by a set of contract terms, including conditions (terms of major importance) and warranties (terms of minor importance). Conditions form the basis of the contract. If a condition is breached, the aggrieved party will have a right to seek damages and/or repudiate the contract. In case of warranty breach, seeking damages is the only legal recourse. Determination of whether a term is a condition or a warranty stems from the intention of the parties, which is determined from the general tenor of the contract and through any statements that the parties make related to the comparative importance of the term in question¹⁹.

Discharge of a contract

The termination of a contractual obligation, known as discharge of a contract, can be by agreement, performance, frustration (supervening impossibility) or breach²⁰.

An example of this is when Aaron a company owner decides to terminate an employment contract of Mike due to reasons.

Discharge by Agreement

Parties may agree to terminate the agreement and release each other from their contractual obligations. This can take several forms:

1. Waiver. Where both parties agree to release one another from what was agreed upon, a waiver by one party constitutes consideration for the waiver

¹⁹Chen-Wishart, M. (2015) *Contract law*. Fifth edition. Oxford, United Kingdom: Oxford University Press.

²⁰Chen-Wishart, M. (2015) *Contract law*. Fifth edition. Oxford, United Kingdom: Oxford University Press.

by the other party, making this transaction binding. Where one party has already performed their obligations, that party cannot be bound by another party promising a waiver – this type of waiver is only valid if supported by an independent consideration.

2. Novation. Where parties mutually agree to discharge the contract and enter into a new one.
3. By failure to meet a condition precedent or condition subsequent.
4. Discharge by Accord and Satisfaction

Discharge by Performance

When the parties fulfil their obligations within the time and in the manner prescribed by the contract, the contract is discharged by performance. Discharge by performance can also occur when a party makes a valid offer (a “tender”) or performance, even if it is rejected by the other party.

Discharge by Frustration

Where a change in circumstances arises, after the contract was made, which makes the contract impossible to perform or voids the contract’s practical purpose, and which is not the fault of either of the parties, the contract is said to become frustrated and can be discharged. Examples include war, acts of God, sickness, accidents, changes in legislation among others.

Discharge by Breach

Where one party fails to meet a condition of their contract, the other party will be discharged of their obligations and has the right to repudiate the contract and seek damages. For example, Sarah offers to buy Jane's dress for £40. However, Sarah fails to pay the amount and therefore breaches the agreement that she had with Jane.

Remedies for contractual Breach

The party injured as a result of another party breaching a contract condition has various options of remedies, including damages, quantum meruit, injunctions, specific performance, rectification, and rescission²¹.

Damages

A common law remedy, damages can be claimed by the injured party as a compensation for the loss suffered as the result of contract breach. The goal is to restore the injured party into a position they would have been in, had the contract breach not occurred (*restitutio in integrum*). The amount of damages must always be commensurate to the "value" of the loss, which must be assessed objectively, as the value a reasonable person would place on it, as opposed to the value the injured party places on it. This could be demonstrated by someone who suffers a breach of contract and loses out on money and therefore he is awarded damages as a compensation.

Quantum Meruit

²¹McKendrick E, *Contract Law* (2015)

Quantum meruit, an “amount earned”, is defined as a reasonable sum of money to be paid for work done. A party to a contract who has performed all or some of their obligations, and where the other party breached or repudiated the contract, may sue for a quantum meruit to recover the amounts earned by performing the work²².

Injunctions

In the context of the Contract Law, injunctions –i.e. orders of the court – are generally “prohibitory”, meaning they serve to order a person to refrain from doing certain thing(s). As such, a person who is not doing a certain thing, may be forced by a court injunction to do it. In cases where other remedies are unobtainable, injunctions may be used to obtain a specific contract performance.

Specific Performance

Specific performance is an order of a court requiring a party to carry out specific action or act. Generally specific performance is not decreed if damages are deemed to provide adequate remedy, as equity “follows the law”.

Rectification

Rectification is remedy where a court orders a change to an existing contract, which due to a mutual mistake or other circumstances does not represent the

²²McKendrick E, *Contract Law* (2015)

agreement that was intended. Rectification is known as an “equitable remedy” and it seeks for a contract to reflect what it should have said in the first place.

Summary

Contract law is a very important field of law. Every one of us, already as a minor has entered into various contracts, possibly without realising it. For a valid contract to exist there is no requirement that the contract be in writing unless specific conditions apply. Instead the elements that are necessary for a contract to be valid is an offer, acceptance and valid consideration. If those three element exist and the parties had the legal capacity to enter into the contract and they do so in their own free will, then the contract is valid and legally binding on the parties. This means that any party to a contract can sue and claim damages or other restitution in case of breach. Importantly only contact parties can sue in case of breach and not third parties.

To give you a better understanding of the notions above we will from this chapter onwards introduce a small story with the below main characters.

Meet John and Vanessa.



By Freepic

John and Vanessa are originally from Greece but due to the high unemployment rates in Greece they have decided to relocate to Cyprus and start over there.

John is a physicist and Vanessa is a teacher. John and Vanessa are not yet married but they are considering to get married soon.

John and Vanessa want to sign a tenancy agreement for the house they want to rent. They are unsure how to make sure the agreement will be valid. In particular, they are want to know if the tenancy agreements needs to be in writing and whether it should be registered somewhere.

Based on this module they have learned that as a general rule, pursuant to the provisions of Cap. 149, formality is not a prerequisite for the conclusion of the contracts, which can, therefore, be validly concluded either in written, orally or following a certain behaviour of the parties. Overall, they know that for a contract to be valid there needs to be an offer (made by the tenant to rent the house for a

certain amount) which needs to be accepted, while both parties need to offer consideration (i.e. sustain mutual detriment, namely the tenant has to pay and the landlord has to provide use of the premises).

However, in the specific case of lease agreements, pursuant to the provision of art. 77 (1) Cap. 149, if the tenancy refers to an immovable and is concluded for a term exceeding one year, then it should be executed in writing with the presence of two witnesses, otherwise the contract is void (i.e. not valid).

Furthermore, John and Vanessa wonder what terms should be included in the contract. John and Vanessa have learned that there is no special regulation regarding the mandatory minimum requirements of what needs to be stated in a tenancy contract. However, from the nature of the tenancy agreement as a contract by virtue of which one contracting party (landlord) assigns the other (tenant) the absolute use of a property for a certain period of time, while the tenant undertakes to pay the rent agreed, the following essential elements stem:

- a. Leasehold: The object of a tenancy contract is to hand over the use of a property, defined as the “leasehold”.
- b. Rent: Rent is the fee owed by the tenant to the landlord for use of the leasehold.
- c. Agreement to hand over the exclusive use of the dwelling
- d. Certain time period.

QUESTION

Can John and Vanessa orally agree to rent the apartment?

- **Yes**
- No

Is an advertisement to rent an apartment a contract?

- Yes
- **No**

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7. Morgan, Jonathan (2012) *Great debates in contract law*. Basingstoke: Palgrave Macmillan.

3.

Employment Law

The Cypriot employment laws are more social in nature rather than official. They are based on a combination of principles from the English legal system and the Greek legal system. The institutions that are responsible for enforcing employment laws in Cyprus are the Ministry of Labour and Social Insurance and the Employment Courts.

In relation to the right to work in Cyprus, the terms and conditions for foreign nationals are exactly the same as those for Cypriot citizens. This is enhanced and supported by the employment contracts required by the Ministry of Labour. For a foreign national to gain permission to work in Cyprus, they must submit an application for a work permit, this is the case for those from non-EU countries.

This is taken care of by the Migration Department and is regulated by the District Aliens and Immigration Branch of the Police. For a foreigner to get a work permit, they must be able to prove that they have a work contract and then get this signed

and confirmed by the Ministry of Labour. Under Cypriot law, working without a valid permit is against the law and considered to be a serious criminal offence which can result in both or either a fine or imprisonment for both the employee or the employer. However, the case is different with EU citizens who can work without any restrictions in Cyprus²³.

Written employment contract

Under the Cypriot legal system, a written employment is not required by law. Despite this, by virtue of law 100(I) 2000, employers have a legal obligation to inform potential employees of specific information regarding their employment. These are and not limited to the following²⁴:

- All the payments (salary, bonuses and so on) which the employee may be entitled to and the time schedule for their payment.
- Annual leave entitlement.
- Notice periods.
- The application of any collective agreements.
- The commencement date of the contract and its duration if it is for a fixed period.
- The identity of the parties.

²³'Department Of Labour - Legislation' (*Mlsi.gov.cy*, 2017)
<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/dmllegislation_en/dmllegislation_en> accessed 22 July 2017.

²⁴Emilianides A and Iōannou C, *Labour Law In Cyprus*

- The place of work and the registered address of the business.
- The position or the specialisation of the employee.
- The usual duration of daily or weekly employment.

Contracts of employment can be in any languages as long as both parties i.e. the employer and the employee can understand. If the contract is written in a language that is not understood by the employee then the employer must explain the terms to the employee so they can understand them.

Implied terms

Implied terms are the words and visions that a court would see or assume that were intended to be in a contract of employment. Implied terms that are found in employment contracts are implied by both common law and statute. They include the rights and obligations that the employee and employer must adhere to.

Minimum Wage

Wages and salaries are not regulated by law and are generally negotiated by the employer and the employee through specific agreements. However, it is important to note that for certain occupations, there is a minimum wage that is set out every year on the 1st April by the Ministerial Council. The job occupations that minimum wage orders are applied to are²⁵:

²⁵Employment & Labour Law 2017 | Laws And Regulations | Cyprus | ICLG' (*Employment & Labour Law 2017 | Laws and Regulations | Cyprus | ICLG, 2017*) <<https://iclg.com/practice-areas/employment-and-labour-law/employment-and-labour-law-2017/cyprus>> accessed 22 July 2017.

- Assistant baby and child minders.
 - Clerks.
 - Employees with sanitation and caring duties in clinics, private hospitals and houses for the elderly.
 - Nursing assistants.
 - School assistants.
 - Security guards.
 - Shop assistants.
-

Basic Employee Rights:

Working hours

Different limitations apply with regards to the number of hours worked by an employee. Generally, 48 hours spread out across five working days a week should not be exceeded. This is not the case in other industries which different restriction can be applicable²⁶.

Shift workers

Shift workers that work at night should not exceed 8 working hours per night shift every calendar month. Those who work in specific fields that involve physically

²⁶Forster S (*Uk.practicallaw.thomsonreuters.com*, 2017) <[https://uk.practicallaw.thomsonreuters.com/2-508-1472?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/2-508-1472?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> accessed 22 July 2017

demanding work should be work more than 8 hours of night shifts within 24 hours.

Holiday Entitlement

Minimum holiday entitlement

Holiday entitlement for those who take time off each year must be at least 4 weeks of annual leave. Employees working 5 working days a week are entitled to 20 days leave or more while those who work 6 working days are entitled to at least 24 days of paid leave²⁷.

Public holidays

Public holidays are different depending on the business and organisation, but as a general rule, there are approximately 14 to 17 days of official holidays each year.

The number of official holidays when offices and organisations are closed varies from 14 to 17 annually. These are²⁸:

- Green Monday (beginning of Lent): a day in March (movable).
- Good Friday: a day in March/April (movable).
- Easter Saturday, Sunday and Monday: during March/April (movable).

²⁷Forster S (*Uk.practicallaw.thomsonreuters.com*, 2017) <[https://uk.practicallaw.thomsonreuters.com/2-508-1472?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/2-508-1472?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> accessed 22 July 2017

²⁸'Department Of Labour - Legislation' (*Mlsi.gov.cy*, 2017)

<http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/dmllegislation_en/dmllegislation_en> accessed 22 July 2017.

- Holy Spirit Day: a day in June (movable).
 - New Year's Day: 1 January.
 - Epiphany: 6 January.
 - National Day: 1 April.
 - Labour Day: 1 May.
 - Assumption Day: 15 August.
 - Cyprus Independence Day: 1 October.
 - Greek National Day: 28 October.
 - Christmas Day: 25 December.
 - Boxing Day: 26 December.
-

Entitlement to time off

Employees that fall sick do not require a sick note if absent from work for three working days or less. Under Cypriot law, for the first 3 days of sick absence, no payment is made. Following the 3 days of sick leave, a sick note must be obtained by a doctor whereby employees can receive sick leave payments by the Ministry of Labour, Welfare and Social Insurance. Furthermore, if an employee is absent for

over 26 weeks due to being ill, the employer has a legal right to terminate the employment on this basis²⁹.

Statutory Rights of Parents and Carers

Maternity rights

Pregnant female employees are entitled to a maternity leave of 18 weeks of which 11 of those weeks are compulsory. To be able to take up this entitlement, the employee must support her claim with evidence by submitting a medical certificate that certifies her pregnancy and provides an indication of her expected day of delivery. Under the Maternity Protection Law 1997, female employees are entitled to a maternity allowance which is paid by the Social Insurance Fund. However, this is subject to certain conditions.

Parental rights

Both male or female employees are entitled to unpaid parental leave of up to thirteen weeks due to birth or adoption of a child in order to take part in the care and raising of that child or children. Employees must give 5 weeks written notice to their employers advising them of this in order to make the necessary provisions.³⁰

²⁹Employment & Labour Law 2017 | Laws And Regulations | Cyprus | ICLG' (*Employment & Labour Law 2017 | Laws and Regulations | Cyprus | ICLG*, 2017) <<https://iclg.com/practice-areas/employment-and-labour-law/employment-and-labour-law-2017/cyprus>> accessed 22 July 2017.

³⁰Sarah Forster (*Uk.practicallaw.thomsonreuters.com*, 2017) <[https://uk.practicallaw.thomsonreuters.com/2-508-1472?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/2-508-1472?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> accessed 22 July 2017.

Fixed Term, Part-Time and Agency Workers:

Temporary workers

The law does not differentiate between the rights of temporary and agency workers. They all have the same rights and the same rate of protection under Cypriot law.

Part-time workers

Part time workers also have the same rights and level of protection as full-time workers. This is also enhanced by legislation whereby the Prohibition of Discriminatory Treatment Law 76(I)2002 states that part time workers should not be subject to discrimination or be treated less than those who work full time hours.

Discrimination:

The Cypriot Constitution provides anti-discrimination provisions that correspond with the European Convention on Human Rights (ECHR). These provisions stated under Article 28 of the Constitution prescribes that no person shall be discriminated against on the grounds of their³¹:

- Colour.
- Race.
- Language.
- National or social descent.

³¹L. Rodgers, 'Public Employment And Access To Justice In Employment Law' (2014) 43 Industrial Law Journal.

- Political or other convictions.
- Religion.
- Sex.
- Social class.

It is important note that unlike the English legal system, sexual orientation, disability and age are not covered by Article 28. Cyprus has endorsed numerous laws that prohibit the numerous forms of discrimination that could potentially be found in any working environment. These laws are:

- Law 59(I)/2004 on Equal Treatment of Persons (racial or ethnic origin).
- Law 58(I)/2004 on Equal Treatment in Employment and Occupation.
- Law 35(I)/2007 on Protection of Wages.
- Law 205(I)/2002 on Equal Treatment for Men and Women in Employment and Vocational Training.

Termination of Employment:

Notice periods

The notice period required to terminate a contract of employment is dependent on the length of service. Generally, the following notice periods must be given³²:

³²'Review Cases Involving Employment Termination' (2016) 16 Campus Legal Advisor

- More than 26 weeks but less than 52 weeks' service: one week's notice.
- More than 52 weeks but less than 104 weeks' service: two weeks' notice.

Procedural requirements for dismissal

Any employee dismissed and the reasons is not any of those mentioned below, then their dismissal is deemed unlawful and they are within their rights to claim damages³³.

- Conduct rendering the employee subject to summary dismissal.
- *Force majeure*, act of war, civil commotion or act of God.
- Redundancy.
- Termination at the end of a fixed period.
- Unsatisfactory performance (excluding temporary incapacitation due to illness, injury and childbirth).

A Q&A guide to employment and employee benefits law in Cyprus.

The Q&A gives a high level overview of the key practical issues including: employment status; background checks; permissions to work; contractual and implied terms of employment; minimum wages; restrictions on working time; illness and injury; rights of parents and carers; data protection; discrimination and harassment; dismissals; redundancies; taxation; employer and parent company liability; employee representation and consultation; consequence of business

³³Rodgers L, 'Public Employment And Access To Justice In Employment Law' (2014) 43 Industrial Law Journal

transfers; intellectual property; restraint of trade agreements and proposals for reform.

To compare answers across multiple jurisdictions, visit the [Employment and Employee Benefits: Country Q&A tool](#).

The Q&A is part of the global guide to employment and employee benefits law.

For a full list of jurisdictional Q&As visit www.practicallaw.com/employment-guide.

Scope of employment regulation

1. Do the main laws that regulate the employment relationship apply to:

- **Foreign nationals working in your jurisdiction?**
- **Nationals of your jurisdiction working abroad?**

Laws applicable to foreign nationals

The terms and conditions of employment of all foreign nationals must be the same as those for Cypriot nationals, and this is ensured by the model employment contracts required by the Ministry of Labour Welfare and Social Insurance. A valid work permit is required for a non-EU foreign national to legally work in Cyprus, and a serious criminal offence is committed if such permit is not obtained, which may result in a fine and/or imprisonment for both the employer and employee. However, EU nationals can work in Cyprus without any restrictions.

Laws applicable to nationals working abroad

Cypriots working abroad are subject to the law governing the employment contract, as well as the relevant host nation's laws.

Employment status

2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?

Categories of worker

Under Cyprus law an employee is any person who works for another person under a contract of employment or apprenticeship or under conditions where an employment relationship between employer and employee can be inferred.

Based on this any person who does not work for another person under a contract or employment or apprenticeship or under conditions where an employment relationship between employer and employee can be inferred is considered as self-employed.

The law does not specifically define the term independent contractor. However, an independent contractor can be distinguished from an employee on the basis of the following factors:

- The degree of integration into the business.
- The degree of control exercised by the employer.

- The economic realities of the relationship, such as whether or not emoluments depend on performance and responsibility, and whose responsibility it is to pay social insurance contributions and income tax.

There is also no specific legal definition of the term contingent worker. A contingent worker in Cyprus is usually a temporary employee who is employed for a fixed period of time for a specific project (for example, a maternity leave cover). However, in some instances, a contingent worker can also be an independent contractor.

Grants or incentives

The Human Resources Development Authority (HRDA) of Cyprus and the Cyprus Productivity Centre (CPC) provide a number of incentives and grants for employers to hire young graduates and long-term unemployed from various specialisations. These incentives and grants are offered through training packages and programmes, which take place in collaboration with employers. The primary aim is to provide adequate training to employees so that they can become valuable assets to their employers, leading to either the creation of new positions or the development of the company, encouraging growth and avoiding dismissals or collective redundancies. These incentives and grants are part of the measures taken in order to reduce unemployment.

In addition, and subject to certain criteria, the government offers employers wage subsidies for employing persons registered as unemployed.

If an employer wishes to enrol in any of the above-mentioned programmes and proceed with hiring people via these programmes, they must fill and submit specific documentation.

Background checks

Generally, in Cyprus no specific restrictions or prohibitions apply with regard to background checks concerning the prior work experience and qualifications of a candidate employee.

Employers can freely ask any relevant question about the educational background and professional training of the candidate. However, questions relating to the timing of the education and training may raise age discrimination claims.

An employer can carry out credit and financial background checks in relation to a candidate as long as this does not violate data protection laws and the right to privacy and personal life.

The criminal background of a candidate is considered as sensitive data. As such it is prohibited to gather and/or ask such information unless either:

- A legal exception applies.
- The employer obtains the candidate's explicit consent.

For criminal offences, the exceptions relate to information concerning convictions for dishonesty or fraud, so as to ensure that such candidates are not put in a

position of trust. For these positions the employer may ask the candidate to provide a previous criminal conviction record.

Regarding the candidate's health condition, employers cannot discriminate on the basis of physical and/or mental disabilities, unless specific requirements for the job cannot be met. Such information is considered as sensitive data under the data protection laws and can only be processed for certain purposes. However, an exception is provided for non-EU nationals as in order to receive a work permit the employer must prove that the candidate has completed a number of medical examinations including a chest x-ray and taken blood tests for infectious diseases. In general, health checks are allowed if they are a prerequisite for the execution of the specific duties.

Employee rights on insolvency

In the event of an employer's insolvency employees who have worked for at least 26 continuous weeks before the insolvency date are entitled to payment from both:

- The Redundancy Fund.
- The Insolvency Fund.

The Insolvency Fund was created under the Employers' Insolvency Law of 2001, Law 25(I)/2001 in order to protect the rights of employees. An employee whose employment was terminated due to insolvency of his employer and who had worked

for 26 continuous weeks prior to that insolvency is entitled to a payment out of the Insolvency Fund of 13 weeks' unpaid wages accrued within 78 weeks prior to the insolvency. An employee is also entitled to pro rata payment of 13th and 14th salary (where applicable) for the last 13 weeks of his employment.

Payment made by the Redundancy Fund is the same as in the event of a redundancy

State guarantee fund

The Insolvency Fund has been established to safeguard employees' rights on their employer's insolvency (*see above*).

Health and safety obligations

What are an employer's obligations regarding the health and safety of its employees?

Employers are obliged to do the following:

- To ensure the health and safety of workers in every aspect concerning their work, primarily on the basis of the general principles of prevention and without any financial cost to the employees.
- To evaluate the occupational risks, among other things, regarding the choice of work equipment and outfitting the workplace, and to make provision for adequate protective and preventive measures.
- To keep a list of, and prepare reports on, occupational accidents.

- To take the necessary measures for first aid, firefighting, the evacuation of workers and the action required in the event of serious and imminent danger.
- To inform and consult workers and allow them to take part in discussions on all questions relating to health and safety at work.
- To ensure that each worker receives adequate health and safety training throughout the period of employment.

Employees must do the following:

- Correctly use machinery, other means of production, personal protective equipment and safety devices.
- Give warning of any work situation presenting a serious and immediate danger and notify the employer of any shortcomings in the protective arrangements.
- Co-operate in fulfilling any requirements imposed for the protection of health and safety, enabling the employer to ensure that the working environment and working conditions are safe and impose no risks.

Summary

Employment law in Cyprus is not considered to be very strict, although it has implemented the necessary provisions that promote fairness and justice for both

employees and employers. European laws have also been incorporated into Cypriot employment law in terms of discrimination and workers' rights in the country. These provisions and guidelines that are endorsed by Cypriot legislation provide workers with the reassurance that their rights are inscribed in Cypriot laws.

Story

Vanessa is employed by a local University to teach English language. She wants to know if the legislation provides for a minimum wage. As Vanessa has learned from this Chapter, only a few occupations in Cyprus fall under the minimum wage act (shop assistants, clerks, child-care workers (assistant baby and child minders), personal care workers (nursing assistants, security guards, and cleaners of business/corporate premises). The minimum monthly wage for such professions was set in 2012 at €870 upon recruitment, while the minimum monthly wage for employees, who have completed a six month period of employment at the same employer, was revised to €924. The minimum wage for security guards was revised to an hourly rate of €4,90 and upon completion of a six month period of employment at the same employer is increased to €5,20. Although, the above minimum wage does not apply for Vanessa's employment, nonetheless Vanessa knows to start negotiations from this amount.

Finally, Vanessa and the University orally agree to Vanessa's employment. Vanessa wonders does she need to ask for a written contract?

John advises her that as per the Bright textbook, the employer is obliged to inform the employee in writing about the conditions of employment. Such written information should at least cover the following:

- The identification particulars of the employer and the employee;
- The place of work of the employee and the registered place of the business or the employer's home address;
- The title or specific job, grade and category of the work of the employee, as well as the object of his work;
- The date of commencement of the employment contract or relationship and its expected duration, in the case of fixed-term work;
- Reference to any collective agreement applicable to the terms and/or conditions of the employees' employment.

In addition, the following information, for which written reference may be made to the respective law or collective agreement, if any, should be given:

- The length of the period of paid annual leave to which the employee is entitled and the manner and time of granting such leave;
- The length of the period of notice to be observed by the employer and the employee in case of termination of the employment contract or relationship;
- All the components of the employee's remuneration and the frequency of its payment;
- The length of the employees' normal working day or week.

- None of the above-mentioned conditions of employment can be less favourable to the employee concerned than those provided for by the respective legislation.

A sample employment contract can be found herein.

<http://www.cypruslegalanswers.com/modules/modListDocuments/uploadFiles/miscFiles/1327478916-ENG%20General%20Employment%20Agreement.pdf>

QUESTION:

- 1) Does John's occupation have a minimum salary?
Yes
No
 - 2) Can John be employed by himself?
Yes
No
-

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4.

Business Law

Introduction

There are many bodies of law which help running any country. Company law is one such body of law. Just like in any other country, in Cyprus too Company law forms the legal basis of how businesses operate and deal with each other within the Cyprus economy. In an economy, not only the businesses deal with each other in one way or the other, they also deal with various organizations and with the government. Any disputes dealing with this type of issues are sorted out by referring to company law. Formation of companies in Cyprus, the transactions that take place between businesses and the legal exemptions offered to businesses are all included in the company law³⁴. While forming a new company, there are certain legal requirements which the business owners can take care of. If those requirements are not met, company cannot be formed. To operate as a company in Cyprus, there are certain specific laws which are to be followed.

³⁴Stoltenberg, Clyde D., "LAW, REGULATION AND INTERNATIONAL BUSINESS" (2008) 40 *American Business Law Journal*

Company Law

The law of corporations in Cyprus is primarily guided by the Cyprus Companies Law, Cap. 113. The Law bears many similarities with the Companies Act 1948 of England³⁵.

A private company in Cyprus is one which has a limit of 50 members, has restrictions on share transfers and restricts issuing of shares to the public. Any organization registered under the Law, whose Articles do not carry the limitations applicable to private companies is considered to be a public company.

Single member companies, that being, companies with a sole director/owner, were introduced by the Companies (Amendment) Law of 2000 (Law 2(I)/2000). These companies which have only one owner or partner has to follow additional regulations specified in the Companies Law³⁶.

Company Documents

In Cyprus, an organization's establishment documents and its yearly return must be filed in Greek; the same shall hold true to accounts when they are required for filing³⁷. Financial statements of the companies are to be prepared in accordance with the company law requirements in Cyprus.

To register a Company in Cyprus, an application has to be made to the Registrar of Companies for the approval of the Company's name. Any name that is identical or similar to an existing name on the Registry or that implies illegal activity or royal or government patronage will not be approved. After the name of the name is approved, a Cyprus lawyer has to file with the Registrar the following documents:

- 1) Memorandum and Articles of Association

³⁵Int'L Business Publications, Usa, *Cyprus Business Law Handbook* (Intl Business Pubns Usa, 2015)

³⁶Int'L Business Publications, Usa, *Northern Cyprus - Turkish Republic Of Northern Cyprus Business Law Handbook* (Intl Business Pubns Usa, 2015)

³⁷Int'L Business Publications, Usa, *Northern Cyprus - Turkish Republic Of Northern Cyprus Business Law Handbook* (Intl Business Pubns Usa, 2015)

- 2) Form HE1 signed by lawyer in the form of an affidavit confirming the Memorandum and Articles comply with Cyprus Law.
- 3) Form HE2 denoting the Company's address
- 4) Form HE3 denoting the Company's first Directors

Once the Company is registered, the Registrar may, upon request, issue copies of the Company's main documents:

1. Certificate of Incorporation
2. Memorandum of Association and Articles of Association, signed by the Subscribers of the Company
3. Certificate, issued by the Registrar of Companies in confirmation of the Registered Address of the Company.
4. Certificate, issued by the Registrar of Companies in confirmation of appointment of the Directors and Secretary of the Company.
5. Certificate, issued by the Registrar of Companies in confirmation of the shareholders of the Company.

Cyprus Company Limited by Guarantee

Similar to England, organizations restricted by guarantee are normally reserved only for charitable or non-profit-making purposes. Aside from their share structure, they are identical to other types of private organization and fall under the Cyprus Companies Law³⁸. These organizations are different from the others as their nature of work and requirements are basically different. The difference presented is that there is no share capital that is required to be paid upfront, but in fact the shareholders guarantee to pay the amount of their subscription at the time of liquidation. Despite that, the body of law covering any disputes in these companies is company law.

³⁸Int'l Business Publications, Usa, *Northern Cyprus - Turkish Republic Of Northern Cyprus Business Law Handbook* (Intl Business Pubns Usa, 2015)

Cyprus Branch of Overseas Company

It is possible to open a branch of a foreign company in Cyprus. Documentation requirements are as follows, within the first month of establishment, the entity must submit a Memorandum and Articles of Association (certified copy in Greek), an authorised list of directors including the secretary, and the communications representative of the company who must be residing in Cyprus. There are many foreign companies operating in Cyprus. As such, they need to follow certain rules and regulations. These regulations fall under the heads of company law.

Branches of foreign companies in Cyprus must submit annual financial statements (with certified copies in Greek). Although these companies might be only branches of companies originating from some other country, the transactions these companies do in Cyprus are to be recorded for taxation and other purposes. As a result, it is important that these companies submit their financial statement for the branches which are operating within Cyprus.

A notable one is that foreign companies must submit the financial statements that the companies presented at that corporations most recent annual general meeting. Other documentation that is required are the following³⁹:

1. A written report that includes the name of the overseas company with branch details. Additionally, the head office address and the regular place of business need to be included in this report.
2. The purpose and objectives of the overseas company are also to be included in the report.
3. The certificate of incorporation of the company with the memorandum and articles of the company.
4. Names of all directors and those with significant control.

³⁹'Establishment Of A Branch In Cyprus' (*Pirilides.com*, 2017) <<http://www.pirilides.com/en/publication-detail/126/establishment-of-a-branch-in-cyprus>> accessed 6 August 2017

5. The name and address of the person residing in Cyprus who has the authority to accept any documents on behalf of the company.

Moreover, the financial statements must be of a standard that is required by law in the nation where the company was incorporated⁴⁰. Where companies already submit an audited financial statement in their settings of incorporation within the EU, those entities are exempt from submitting financial statements at the branch level⁴¹.

Cyprus General Partnership

The Partnerships and Business Names Law Cap 116 provides the law for partnerships in Cyprus. Partnerships must undergo a registration process with the Registrar of Partnerships. And such must occur with the first calendar month of formation. Required details include name of partnership, registered office, particulars of partners. Other miscellaneous rules on partnerships are that there must be between 2 and 20 members who are individuals – a maximum of 10 for banking institutions⁴². There are various laws which any partnership in Cyprus has to follow. However, the rules differ from one partnership to another.

Cyprus Limited Partnership

Limited partnerships also exist under the law. The extent that liability is limited must be declared to the Registrar. Limited partnerships are often used together with Company structures to provide effective tax planning opportunities.

Local Trusts

The Cyprus Trustees Law Cap 1993 regulates the law on 'local trusts'. The Act is similar to the English Trustee Act 1925. A trust is a legal entity created by a party known as the settlor /trustor through which a second party known as the trustee

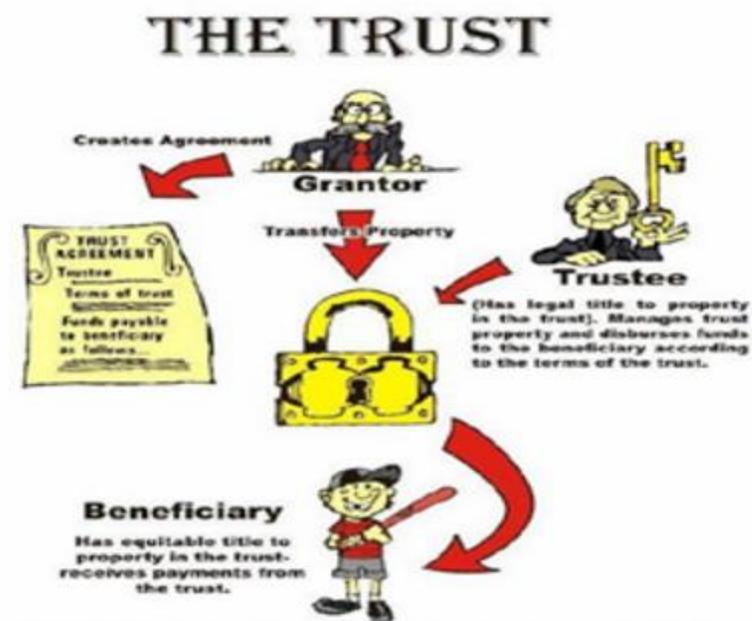
⁴⁰Bertram, Anton and Stanley Fisher, *The Cyprus Law Reports*

⁴¹Alexander, Natasha, Karl Cherepanya and Igor S Oleynik, *Cyprus Business Law Handbook* (International Business Publ., 2005)

⁴²Alexander, Natasha, Karl Cherepanya and Igor S Oleynik, *Cyprus Business Law Handbook* (International Business Publ., 2005)

holds the right to manage the trustors assets or property for the benefit of a third party known as the beneficiary. In most cases, the settlor and the beneficiaries are residents of Cyprus. The trust and trust property are subject to exchange controls. However, since accession to the EU, such has become vestigial. In this case too it can be seen that the law followed in Cyprus follows the English law very closely.

Source:<http://indianmoney.com/how/what-is-a-trust-why-create-a-trust-and-how->



does-it-work

International Trusts

Local trusts and international trusts are the same structure but they are governed by the International Trust Law. The difference is that with international trusts the beneficiaries must be non-residents of Cyprus and that they are registrable with no time duration⁴³.

Cyprus was brought into line with other major international trust settings by the International Trusts Law of 1992 as amended. Settlor and beneficiaries each must be non-residents of Cyprus, though one of the trustees can be a Cyprus citizen. Typically, international trusts have legal and tax-related advantages.

⁴³Establishment Of A Branch In Cyprus' (*Pirilides.com*, 2017) <<http://www.pirilides.com/en/publication-detail/126/establishment-of-a-branch-in-cyprus>> accessed 6 August 2017

European Public Limited Company or Societas Europaea (SE)

Cyprus enacted legislation in 2006 to allow the formation of European Public Limited Companies (SEs).

For a company to re-form as an SE in Cyprus, it must be permitted to do so under the law of its existing registration, and must provide the Cyprus Registrar of Companies with documents similar to those required for re-registration within Cyprus. The legal framework within which business must be carried on in the Community will be based on Cyprus law. Furthermore, an SE that markets its securities to the public and to the investment market must comply with national regulations.

Because of the greater degree of separation between their management and their membership, which may number many thousands, public companies are subject to stricter governance, capital maintenance and reporting requirements than private companies⁴⁴.

Registration formalities

After approval of the company's name, a Memorandum and Articles of Association must be submitted to the Registrar of Companies, with details of the share capital, directors, secretary and registered office. A certificate of incorporation is usually issued within a month, unless expedited.

Share capital

There is no minimum share capital for a private company, which can start from as little as one Euro or other currency denomination. For a public company the minimum is €25.630 payable prior to incorporations. The share capital is divided into shares which depicts the ownership percentage of its shareholder in the company.⁴⁵

⁴⁴Papadopoulos, Thomas, "Report From Cyprus: An Overview Of Cyprus Mou The Essential Business Law Reforms" [2016]

⁴⁵ Ibid

Capital duty

On incorporation of a Cyprus registered company, capital duty of €103 plus 0.6% of the authorised capital is payable to the Registrar of Companies. Any subsequent increase in authorised share capital is liable to capital duty at 0.6%. No capital duty is payable on share premium and capital duty can be minimised by issuing a reduced nominal value of shares at a premium⁴⁶.

Directors' liability

In the vast majority of Cyprus Companies, however, they follow the example set by Article 80 of the First Schedule of Table A of the Companies Act (Cap. 113), which grants the power to manage and conduct the business of the Company in the hands of the members of Board. Specifically, according to the above article:

“The business of the Company shall be managed by the Directors, whomay exercise all such powers of the Company as are not, by the Law or by these Regulations, required to be exercised by the Company in general meeting, subject, nevertheless to any of these Regulations, to the provisions of the Law”.

So one can easily understand that as the powers of the board increase, so do their responsibilities ...

Before, however, we proceed to analyse these responsibilities, we must first define who is considered as a Director of the Company.

First, we have to mention that the law does not offer a comprehensive definition of the Member of the Board of Directors, but more than just section 2 of the Companies Act to report that the term "director" includes any person occupying the position of director by whatever name called;

Consequently, in the above broad definition all the categories of directors are included, namely: de jure, de facto and shadow directors.

⁴⁶ N23

Furthermore, Article 2 of the Companies Law, Cap.113 provides that the term "officer", in relation to a body corporate, includes a director, manager or secretary;

(A) The Secretary

Every company must have a secretary. The role of the Secretary was established by Lord Denning in the case of *Panorama Developments (Guilford) Ltd v Fidelis Furnishing Fabrics Ltd* (1971) as follows:

"But times have changed. A company secretary is a much more important person nowadays than he was... He is an officer of the company with extensive duties and responsibilities. This appears not only in the modern Companies Acts, but also by the role which he plays in the day-to-day business of companies. He is no longer a mere clerk. He regularly... enters into contracts on [the company's] behalf which come within the day-to-day running of the company's business. So much so that he may be regarded as held out as having authority to do such things on behalf of the company. He is certainly entitled to sign contracts connected with the administrative side of a company's affairs, such as employing staff, and ordering cars, and so forth. All such matters now come within the ostensible authority of a company's secretary..."

The typical duties of the Secretary include, inter alia, the following:

- Maintenance of records and books of the company.
- Filing the annual financial statements with the Registrar of Companies.
- Preparation of agendas and taking minutes of meetings and assemblies.
- Informing the Registrar of Companies for any major changes in the Company's structure, e.g. at the structure of the board.
- Safe custody of company documents and files.

In addition, the below additional administrative tasks may be assigned to the Secretary:

- Purchase of insurance for the Company and its employees.
- Pension plan.
- VAT registration.
- Managing the company's facilities.
- Managing the office.
- Advise the directors and confirm that they comply with the Companies Law Cap.113 and the Company's Articles of Association.
- In public listed companies the secretary is responsible to be in compliance with the requirements of the Stock Exchange and the Code of Corporate Governance.

(B) The Chief Executive Officer (CEO)

According to Article 107 of Part 1 of Table A of the First Schedule to the Companies Act the directors may appoint one of them to the post of Managing Director/CEO. The directors may entrust to and grant to the Managing Director any of the powers they possess.

(C) Employees

Regarding the company's employees it seems that Cyprus as well as English case law adopt a more restrictive interpretation. In the English case Registrar of Restrictive Trade Agreements Act *The W Smith & Sons Ltd* (1969) two branch managers were not considered officials of the Company and Lord Denning held that the official within the meaning of the law must be a person who manages the affairs of the whole company. Unlike in the case *Re Vic Groves & Co Ltd* (1964) a department head (divisional manager) was held to be an Officer of the Company.

(D) Professionals

Even various professionals such as auditors, administrators, receivers and liquidators may be regarded as officers of the company, depending on the nature and extent of tasks and actions.

A director's duties are owed to the company. Such duties include:

A) The duty to act in good faith

A breach of the duty to act in good faith in the best interest of the company (fiduciary duty) and of the duty of due diligence and care renders a director personally liable towards the company, which can claim compensation or take other measures. Note that the above obligations are due towards the company and not to individual shareholders. Indeed, in the recent case of *Queens Moat Houses v. Bairstow and others* [2000] 1B.C.L.C. 549, the directors were found to have breached the duty of loyalty to the Company, when they proceed to the payment of interim dividends to the Shareholders without the Company having sufficient distributable reserves. The Court ordered the directors to pay themselves the amount of unlawfully paid dividends, an amount that surpassed 40 million.

B) Additionally, common law duties include fiduciary duties (to exercise powers for the benefit of the company, retain freedom of action and avoid conflicts of interest) and a duty of skill and care, not to act negligently in managing the company's affairs.

There are also statutory duties, some imposing criminal penalties, and duties owed to creditors⁴⁷. The violation of the provisions of law by the Company may result in criminal, civil or administrative liability or all of the above.

Other common legal actions against the Directors include:

- Mismanagement of the business affairs or assets of the company
- Own interests and conflicts of interest

⁴⁷Papadopoulos, Thomas, "Report From Cyprus: An Overview Of Cyprus Mou The Essential Business Law Reforms" [2016]

- Misleading conduct in the sale of the company's assets
- Misleading statements in a statement in lieu of prospectus or prospectus
- Because he engaged in actions / transactions outside his authority
- Violation of legislation (e.g labor laws)
- Violation of the fiduciary duties

Reporting requirements

Company directors are responsible for maintaining appropriate books and records to present a true and fair view of the company's affairs, to explain its transactions and to allow the preparation of financial statements. The directors must present a full set of financial statements to the annual general meeting of the company; if a company has subsidiaries, consolidated financial statements are required.

Notwithstanding this "small companies" exemption under the Companies Law, the Income Tax Law requires all companies to submit an annual tax return based on financial statements audited by authorised auditors. This effectively means that all companies are required to prepare audited financial statements⁴⁸.

An exemption from the obligation to prepare consolidated financial statements is available for "small sized groups" of companies, of which the companies that are being consolidated⁴⁹:

- are not public companies;
- are not required to prepare consolidated financial statements under any other legislation; and
- together fulfil at least two of the following criteria at the date of closure of the balance sheet of the holding company:

⁴⁸ Ibid

⁴⁹Alexander, Natasha, Karl Cherepanya and Igor S Oleynik, *Cyprus Business Law Handbook*(International Business Publ., 2005)

- total assets (without deducting liabilities) no greater than € 14.6 million;
- net turnover no greater than € 29.2 million;
- average number of employees no greater than 250.

Companies are also required to notify the Registrar of Companies within specified time limits of any charges over their assets, changes in their Memorandum and Articles, registered office, directors, secretary, members and share capital⁵⁰.

Annual levy on companies

The annual levy of €350 is imposed on all companies registered in Cyprus will be payable to the Registrar of Companies. For groups of companies there is a ceiling of €20,000.

The levy is payable by 30 June of each calendar year.

Penalties will be imposed in the event of late payment. If the levy is paid no later than two months after the due date a penalty of 10% will be charged. If the levy is paid between two and five months after the due date, a penalty of 30% will be charged. Companies which have not paid after five months from the due date may be struck off the register. They can be restored to the register only by paying an increased levy of €500 per year if they are restored within two years or €750 per year if they are restored to the register after more than two years⁵¹.

Summary

Company law deals with the legal requirements and regulations pertaining to business organizations. Businesses are run according to certain legalities in any country. Same is the case with Cyprus. The laws governing how a public or private company will be run are different. This is because the nature of these companies is different and thus different sets of laws are required to run the same. Under the

⁵⁰ Ibid

⁵¹ Alexander, Natasha, Karl Cherepanya and Igor S Oleynik, *Cyprus Business Law Handbook* (International Business Publ., 2015)

company law, company formation is done in Cyprus in various ways. Legalities in company law in Cyprus allow formation of various types of companies. The list includes limited partnership companies, general partnership companies and exempt private companies. Company laws that govern these different forms of companies are not same⁵².

Story

John has been unlucky finding employment as an employee and he is contemplating opening a Business in Cyprus. He wonders what business is most suitable for him. As he is willing to invest a limited amount of money at the beginning and limit his exposure to 3rd party liability he decides that the best formation for him would be a private limited liability company, where he would be the director and sole shareholder. Before he proceeds to incorporate a Limited Liability Company he wants to know what his obligation and liability would be:

STATUTORY AND FINANCIAL OBLIGATIONS

As per the Company Law, Cap.113 some of the Companies' obligation are described below.

Statutory Obligations

Annual General Meetings: All Cyprus incorporated companies must hold in each year a general meeting as their Annual General Meeting (hereinafter "AGM") in addition to any other meetings held during the year, which are called Extraordinary General Meeting.

The first AGM must be held within a period of 18 months from the date of incorporation and not more than 15 months should elapse between the date of one general meeting of the shareholders and that of the next. The articles of association normally contain certain provisions concerning notice and the place where the meeting may be held.

Annual Returns

Every Cyprus company is required to submit an Annual Return (Form HE32) accompanied by the Financial Statements of the previous year. The deadline for the submission of the Annual Return is within 28 days of the AGM. The Annual Return contains the company's statutory information as at the date of the AGM and should include among other information certified copies of the financial statements,

⁵²Alexander, Natasha, Karl Cherepanya and Igor S Oleynik, *Cyprus Business Law Handbook* (International Business Publ., 2005)

directors' report and auditors' report. A delay in the submission of the Annual Return may result in penalties.

Annual Levy

Every company must pay an annual levy amounting to €350, before 30 June of each calendar year. If late payment is effected, additional penalties are imposed. In addition, if payment of the levy is not effected within a period of 2 years from the due date, the company may be stricken off the Registry.

And of course tax obligations...

To form the Company, John visits a local lawyer that helps him incorporate the Company in a few days. From that day forward, John acts through his company whose liability is limited to its available funds and share capital.

How many company types are there in Cyprus?

- 1) 1
- 2) 2
- 3) 3**
- 4) Unlimited

Sources

1. Alexander, Natasha, Karl Cherepanya and Igor S Oleynik, *Cyprus Business Law Handbook*(International Business Publ., 2005)
2. Bertram, Anton and Stanley Fisher, *The Cyprus Law Reports*
3. Collins, Denise, *Business Law* (Oxford University Press, 2009)
4. Int'L Business Publications, Usa, *Northern Cyprus - Turkish Republic Of Northern Cyprus Business Law Handbook* (Intl Business Pubns Usa, 2015)
5. Papadopoulos, Thomas, "Report From Cyprus: An Overview Of Cyprus Mou The Essential Business Law Reforms" [2016]
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5.

Important Aspects of Public Law

Introduction

It is important to study various aspects of civil law and public law to understand the body of law that exists in any country. The same is true for Cyprus too.

Although all bodies of law are important in running a country, the importance of civil law and public law cannot be undermined.

Requirements for a Valid Marriage

To enter in marriage process, interested individuals need to have some sort of legal identification in the form of passports and birth certificates. In the first step individuals interested to marry are required to fill up a form, sign it and submit to the Marriage Office. The form is titled “Notice of Marriage” and the form requires particulars data of individuals interested to marry on the basis of their passport⁵³.

⁵³‘Union Of Cyprus Municipalities’ (*Ucm.org.cy*, 2017)
<http://www.ucm.org.cy/Webcontent.aspx?Code=EN.PROMO_MARRIAGES> accessed 7 August 2017

The form necessitates the two parties to make a declaration or pledge or affirmation in front of the Marriage Officer that they are not hiding any of their disability or any information which needs to be disclosed legally⁵⁴.

Other than this, individuals also need to inform if they ever married before or they have any other spouse. Additionally, individuals interested to marry also have to inform if they divorced ever before. In the case of a widow or widower, she or has to present “Death Certificate” of their previous partner. Moreover, they have to declare through an affidavit that they never got married again since then⁵⁵.

Upon the completion of the above-mentioned formalities, the individuals need to celebrate marriage within fifteen clear days or within three months at the latest starting from the date of notification. In the case of marriage does not take place because of any reason, notification released three months back and consequential proceedings are deliberated as void⁵⁶.

In case any of an individual interested in marriage, who is either a widow or widower, is less than eighteen, the consent of any of the parents or guardians is necessary. In case none of the parents are alive or are not in a position to not able to of give consenting, then any other guardian must be produced in front of the marriage officer.

The Marriage Officer or Registered Minister of Religion may celebrate civil marriage at his Office or Church respectively. In the case of civil marriage, a similar procedure has to be followed at the municipality; however, the religious ceremony can take place at a church. The Marriage Officer supplies a certificate of marriage to the couple, later on, however in case of the couple wants to secure one or

⁵⁴ Ibid

⁵⁵ Ibid

⁵⁶ 'Union Of Cyprus Municipalities' (*Ucm.org.cy*, 2017)

<http://www.ucm.org.cy/Webcontent.aspx?Code=EN.PROMO_MARRIAGES> accessed 7 August 2017

multiple of the marriage certificate, they can apply either to the Marriage Officer or the Interior Ministry⁵⁷.

Divorce Procedures

Cyprus divorce laws demand that the parties involved in divorce petition must be living in Cyprus for three months at least prior to filing for divorce. Religious marriages are dealt in a different way in comparison to the social weddings in Cyprus. Laws for both are thus a bit different from each other. By law, family courts cannot offer annulment of marriage or dissolution of marriage⁵⁸.

Law of Cyprus demands that there should be a clear proof of irretrievable breakdown of marriage. Marriages in Cyprus can only be ended with divorce if certain issues are found in a marriage. The issues that can serve this basis include infidelity, insanity, physical or mental abuse, change of religion by one party, or refusal of one party to have children. In absence of all these issues, divorce might not be awarded. Law in Cyprus focuses on ensuring that no divorce takes place without a valid reason⁵⁹. However, if the reason is valid, divorce can be taken by law. Although divorce cases are filed with family courts, in case property matters pertaining to the same are to be decided, a separate application is to be submitted in that case. Thus, basically it is an issue of family law, however in case of property issues involvement, procedures and processes are different. Appeal against any divorce petition decision in family court can be filed in Supreme Court of Cyprus⁶⁰.

Lease agreements and acquisition of real estate

A lease agreement is a legal agreement used by landlord to rent out their property for those who will be using the property. The lease agreement is in writing and is

⁵⁷ Ibid

⁵⁸ European E-Justice Portal - Family Matters' (*E-justice.europa.eu*, 2017) <https://e-justice.europa.eu/content_divorce-45-cy-en.do> accessed 7 August 2017

⁵⁹ European E-Justice Portal - Family Matters' (*E-justice.europa.eu*, 2017) <https://e-justice.europa.eu/content_divorce-45-cy-en.do> accessed 7 August 2017

⁶⁰ Ibid

signed by all parties involved. In relation to this, rent control is the price limit that controls how much a property owner can charge for renting out a property, it is used to prevent greedy landlords to charge over a certain amount. Rent control courts from the special jurisdiction courts have the authority to decide the fate of any disputes lease agreement. It is the jurisdiction of rent control courts to decide matters related to property and real estate issues. In Cyprus, rent control court is responsible to sort out disputes between tenants and landowners pertaining to the lease. In case anyone has to rent a place, or has to lease a property, the agreements are prepared by referring to this particular body of law. Rent control court is the supreme authority in such cases.

In case of acquisition of real estate in Cyprus, the buyer and the seller are bound once the sale contract becomes valid. Under the provisions of stamp law, once the contract of sale of immovable property is stamped and it is submitted to the department of lands and surveys, the contract becomes valid. According to the law, the buyer is bound to submit the contract within six months of the time it was signed. Title passes when title deeds are issued by the land registry⁶¹.

In case of any lease agreement or any acquisition of immovable property in Cyprus, there must not be any misrepresentation or any type of fraud involved in the process⁶². In case any misrepresentation is reported or there is any kind of fraud in dealing, the dispute can be referred to the rent control court. In case there is some fraud or misrepresentation, the contract can become void according to the law of Cyprus. Sellers offer some warranties to the buyers in case of acquisition of immovable property and lease agreements. Sometimes personal guarantees and bank guarantees are added to the deal between the seller and the buyer as per the rent control court of Cyprus.

⁶¹ Ibid

⁶² Nikitas Hatzimihail. and Antria Pantelidou., *Evidence In Civil Law - Cyprus* (Institute for Local Self-Government and Public Procurement Maribor, 2015)

Tax obligations

Residency for tax income purposes in Cyprus is determined by whether an individual has lived in the country for a minimum of 183 days in the annual year. On 14 July 2017 the Cyprus parliament voted for a Cyprus tax law amendment adding a second test –the “60 day rule” – for the purposes of determining Cyprus tax residency for individuals. As per the said amendment which is effective as from 1 January 2017 (i.e. as from tax year 2017 – the tax year in Cyprus being the calendar year) an individual will be considered as a tax resident of Cyprus if the individual satisfies either the current “183 day rule” or the new “60 day rule” for the tax year.

The “60 day rule” applies to individuals who in the relevant tax year:

- (i) do not reside in any other single state for a period exceeding 183 days in aggregate, and
- (ii) are not tax resident in any other state, and
- (iii) reside in Cyprus for at least 60 days, and
- (iv) have other defined Cyprus ties.

Individuals who are tax residents in Cyprus are taxed on their worldwide income (i.e. income derived both from Cyprus and abroad) but only need to pay tax if their annual income is more than 19500 Euros. Tax rate is progressive as follows (image from PwC):

Chargeable income for the tax year	Tax rate	Accumulated tax
€	%	€
First 19.500	Nil	Nil
From 19.501 - to 28.000	20	1.700
From 28.001 - to 36.300	25	3.775
From 36.301 - to 60.000	30	10.885
Over 60.000	35	

To calculate your tax you can use: <http://www.cyprustaxcalculator.com/>

According to the law of Cyprus, non-payment of taxes is a criminal liability⁶³. Taxes are paid at the end of June of the next year. According to the tax law in Cyprus, the employers are responsible to ensure that all their employees pay tax. All payments made to the employees are transferred after withholding the tax. This way, the taxation of employees' earnings is regulated.

Tax obligations are different for corporations and individuals residing in Cyprus. Companies are considered as Cyprus tax residents provided that they are managed and controlled in Cyprus. The main determining factor for establishing management and control in Cyprus is to ensure that all board of directors' meetings take place in Cyprus. Minutes of such meetings should be prepared and maintained at the company's registered office in Cyprus. A company which is tax resident in Cyprus is taxed on worldwide net income at the rate of 12.5%. In case of corporate tax, it is collected through a self-assessment system. Corporate tax rate has to be paid in two instalments⁶⁴. The first instalment is paid by 31st July while second is paid by 31st December. 4% late payment is to be charged if these instalments are missed. Personal tax requirements are different in comparison to the corporate tax obligations.

Summary:

It is important that the body of law governing in any country should provide guidance about day to day dealings of people. Public law and civil law help in achieving this goal. In Cyprus, there is a very well-developed body of civil and public law which helps in maintaining order among public. Law is not only

⁶³Kyriakides, Nicolas, "Civil Procedure Reform In Cyprus: Looking To England And Beyond" (2016) 16 Oxford University Commonwealth Law Journal

⁶⁴Kyriakides, Nicolas, "Civil Procedure Reform In Cyprus: Looking To England And Beyond" (2016) 16 Oxford University Commonwealth Law Journal

important for deciding business matters. It is equally important in helping and guiding people in resolving their personal disputes too. As this discussion has shown, family courts and rent control courts regulate some of these issues in Cyprus. By legally regulating these matters, personal or family disputes as well as the real estate issues can be resolved peacefully⁶⁵.

Story

John and Vanessa don't want to continue paying tax in Greece for the money they earn in Cyprus. They wonder at which point they will become Cyprus tax residents. They know that a person can become a Cyprus tax resident if he meets either of the below conditions:

- 1) if he/she resides in Cyprus for a period or more which in aggregate exceed 183 days. This way John and Vanessa would become Cyprus tax residents provided that in any calendar year they spent more than 6 months in Cyprus; or
- 2) Provided they meet the following conditions after 60 days of residence in Cyprus:
 - (i) do not reside in any other single state for a period exceeding 183 days in aggregate, and
 - (ii) are not tax resident in any other state, and
 - (iii) reside in Cyprus for at least 60 days, and
 - (iv) have other defined Cyprus ties.

John and Vanessa are also contemplating about getting married at the Municipality. As they learned from Bright project to do so they need to follow the below steps:

- a) As a first step, John and Vanessa should be in possession of legal identification (passports and birth certificates) have to fill in, sign and submit to the Marriage Officer a joint application called "Notice of Marriage" indicating their will to marry each other and containing their particulars on the basis of their passport.
- (b) At the same time, each of John and Vanessa must make a declaration on oath or affirmation before the Marriage Officer that they know of no impediment or other lawful hindrance to their marriage and that any necessary consent required for the marriage has been obtained, or that no such consent is required.
- (c) The interested persons should also furnish an official certificate indicating that they are not married. If however the Marriage Officer has any doubt about the

⁶⁵ Ibid

accuracy or genuineness of the certificate furnished by the interested persons, or if the interested persons are unable to produce such an official document (like British citizens) they will be called upon to make a sworn declaration before the Registrar of a District Court that they are single and have never been married before.

Can John and Vanessa divorce by common will?

- Yes
- No

Can John marry Steven if he later discovers he is homosexual?

- Yes
- No

Sources

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6.

Data Protection Laws

Personal data refers to any type of information that relates to a living person. Examples of personal data include, date of birth, passport number, email, home address amongst others. In numerous circumstances, we as individuals find ourselves in situations where we have to disclose some personal information. These events occur on a daily basis. To illustrate this, when you are shopping online and making an order, you will usually be asked for some information such as your name, email, shipping address etc. It happens all the time, when opening a bank account, buying a flight ticket, or simply answering a survey. However, have you ever wondered how this information is stored and how it is processed?⁶⁶

Privacy is a very important matter in peoples social, professional and personal lives. Moreover, the privacy of personal information has a large impact on the private life of citizens. The law has recognised the importance of personal data and the

⁶⁶ F. Boehm, 'Assessing The New Instruments In EU-US Data Protection Law For Law Enforcement And Surveillance Purposes' (2016) 2 European Data Protection Law Review.

need for it to be addressed by the public and other organisations during general daily operations.⁶⁷

The the processing, collection and proper use of the personal data is regulated by EU Law and in particular by the general Data Protection Regulation (GDPR), Regulation 2016/679, that entered into force in May 2016 and was implemented as of the 25th of May 2018. GDPR applies to all areas of the public and the private sector.

What does the GDPR aims to achieve?

The GDPR has a dual purpose. It aims to protect natural persons from the processing of their personal data but, at the same time, it aims to ensure the free movement of these data within the EU. In this aspect, the GDPR is a legislative tool that regulates when personal data can move freely and when they cannot.

What rights do persons have under the GDPR?

The GDPR provides one uniform set of rules, for all companies and persons in the EU. According to GDPR, data subjects have the below rights:

Data subject right	GDPR provision
1. A right to know what data is processed, how it is processed and shared and to receive a copy of their personal data	Art. 15
2. A right to erasure, where there are no laws or regulations which mandate the retention of that data	Art. 17
3. A right to rectification of inaccurate personal data	Art. 16
4. A right to withdraw their consent	Art. 7 sec. 3
5. A right to data portability	Art. 20
6. A right to restriction of processing of specific personal data items	Art. 18

⁶⁷ M. Brkan, 'Data Protection And Conflict-Of-Laws: A Challenging Relationship' (2016) 2 European Data Protection Law Review.

7. A right to object to processing performed in the legitimate interests of European University Cyprus subject with the objection evaluated in the context of the risk to the data subject	Art. 21
8. A right to object to direct marketing and have the direct marketing ceased immediately.	Art. 21
9. A right not to be subject to a decision based solely on automated processing	Art. 22
10.A right to claim compensation for damages caused by a breach of the Act	Art. 82

Apart from the rights awarded to data subjects, GDPR also imposes a lot of obligations on data controllers (the person (or business) who determines the purposes for which, and the way in which, personal data is processed) and data processors.

In particular, Chapter IV, of the GDPR, is devoted to the obligations of controllers and processors. Particular attention should be given to data protection by default and by design, set out in Article 25, which obliges companies to implement appropriate technical and organizational measures, such as pseudonymization, and data minimization, when determining the means for processing and at the time of the processing itself. In addition, if companies assign or outsource some processing activities to external contractors (the processors), particular attention should be devoted to Article 28 which governs the relation between companies and contractors, in their respective capacity as controller and processors.

Articles 34 and 35 of the GDPR oblige companies to inform the Data Protection Authority and data subjects of data breaches, under certain conditions.

If the core activities of a company consist of processing operations which, by virtue of their nature, scope and/ or purpose, require regular and systematic

monitoring of its customers on a large scale, according to Article 37, this company is obliged to designate a Data Protection Officer (the DPO). The position and tasks of the DPO are regulated by Articles 38 and 39, respectively. It should be noted that the role of the DPO is advisory and he acts as a liaison with data subjects and the supervisory authority. It should also be noted that all the legal responsibilities derived from the GDPR, burden the controller and the processor, but not the appointed DPO.

In addition, the Principle of Accountability obliges businesses to be able to demonstrate their compliance with the GDPR. There are several tools for demonstrating compliance with the GDPR. Articles 40 and 41 regulate the codes of conduct and their monitoring. Codes of conduct are voluntary, but they can be used for demonstrating GDPR compliance. Also, they can serve as appropriate safeguards for the transfer of personal data from the EU to controllers or processors established in third countries who commit, via contractual or other legally binding instruments, to apply those appropriate safeguards and to respect the rights of data subjects. The same mechanism applies to certifications, data protection seals and marks.

The GDPR follows a risk-based approach. In other words, businesses have obligations proportional to the risks associated with their core activities. Lower risk means fewer obligations to a business and higher risk means more statutory obligations. Such risks should always be eliminated or mitigated. Article 30 obliges

companies to keep a record of all processing activities and to make this record available to the Data Protection Commissioner, on request. This obligation does not apply to SMEs, i.e., companies with less than 250 employees, unless their core activities pose privacy and data.

Transfers to third countries can be carried out on the basis of an adequacy decision where the Commission has decided that a country, a territory or a sector therein ensures an adequate level of protection. Such transfers do not require a prior authorization. In the absence of an adequacy decision, transfers can be carried out on the basis of appropriate safeguards such as standard contractual clauses adopted by the Commission or standard contractual clauses adopted by the DPA and approved by the Commission, or by binding corporate rules, approved codes of conduct or approved certification mechanisms with enforceable commitments. Where the transfer affects citizens in several Member States, it may also rely on contractual clauses authorized by a DPA in the frame of the consistency mechanism. In specific situations, transfers may be carried out on the basis of the derogations set out in Article 49 of the GDPR that may rely, inter alia, on consent, performance or conclusion of a contract and the exercise of legal claims.

Processing Data

The operations that include the recording, preservation, collection, alteration, storage, organization, transmission, use, dissemination and any form of the

disposal, combination or connection, destruction, blocking and erasure of the data is actually some form of data processing. The business activities that are conducted with the help of automatic means that are in the same description are affected mostly by legislation of the protection of personal data⁶⁸.

Parties involved in processing personal data

The data subjects are first that are concerned with the personal data. It is all of us that must learn at what time should we share data and when not to share the data. The next party is the data controller that is supposed to process and collect the data from the different categories of the data subjects, customers, applicants and employees etc. In some cases, the controller has no knowledge or the equipment that is needed for conducting the processing that is mostly assigned to a processor that is mainly the one who acts properly as the controller provides the written instructions.

Conditions of processing personal data

The law has allowed the processing of the personal data if the permission through personal consent is given. It is also permitted in the case the processing is required by compliance of the legal sort of obligations or in case of the contract that we are party in, or in case of the protection of the different personal interests that are vital, if there are legitimate interests of the controller or some third party, in some conditions if the interests are overriding our different rights, fundamental freedom

⁶⁸ M. Recio, 'Practitioner's Corner · Data Protection Officer: The Key Figure To Ensure Data Protection And Accountability' (2017) 3 European Data Protection Law Review.

or the interests. The sensitive data as per the Law provides the proper methods that are necessary for protecting the sensitive data and its processing is actually prohibited⁶⁹.

Condition exemptions

There are actually some of the exemptions that are important for the processing of the different sensitive data, the example is that in case when the data subject is actually giving explicit sort of consent or in the fulfilment of the different employment sector related obligations, protection of the different vital sort of interests, in context of organizational activities or the union of the data subject is actually a processing member that is important for relating data that is made public and further in the case of the processing by the bound of professional rules for the confidentiality of the grounds or the public or national security, or in cases of statistical research or journalistic sort of purposes and finally scientific purposes⁷⁰.

The particular law is actually serving two important purposes, the first one is to protect the individuals and the next one is to properly facilitate the proper movement of the personal data in the European Union. These exemptions are present for properly serving these purposes so it is not possible to easily circumvent the law⁷¹.

⁶⁹ Douwe Korff, 'New Challenges To Data Protection Study - Comparative Chart: Divergencies Between Data Protection Laws In The EU' [2010] SSRN Electronic Journal.

⁷⁰ Douwe Korff, 'New Challenges To Data Protection Study - Comparative Chart: Divergencies Between Data Protection Laws In The EU' [2010] SSRN Electronic Journal.

⁷¹ F. Boehm, 'Assessing The New Instruments In EU-US Data Protection Law For Law Enforcement And Surveillance Purposes' (2016) 2 European Data Protection Law Review.

Cyprus Law

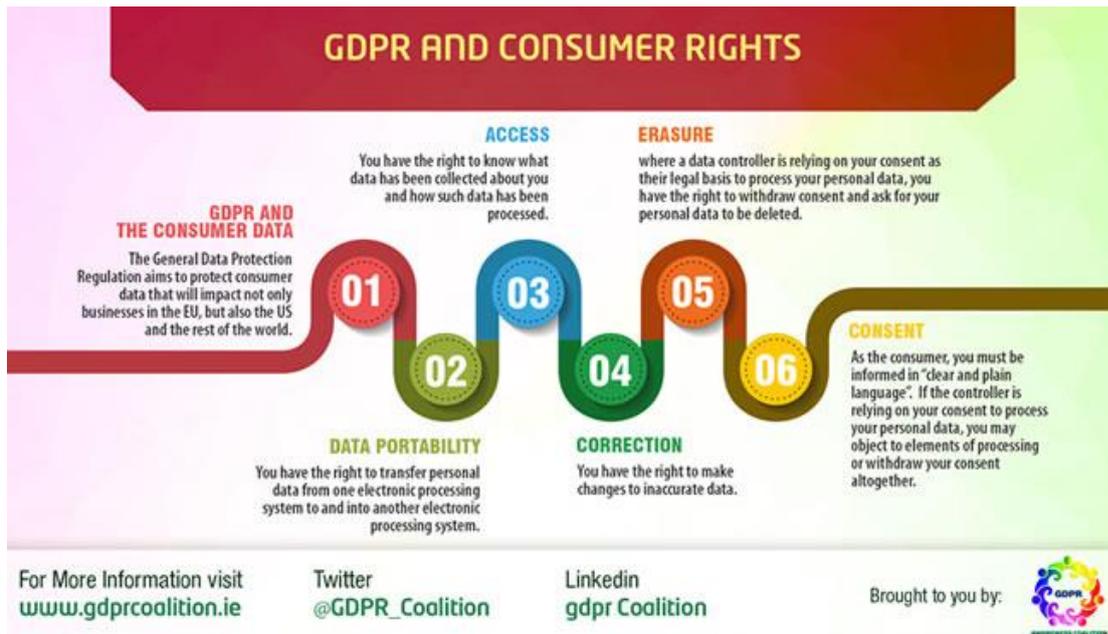
The Cyprus law that implemented GDPR is Law For the Protection of Natural Persons against Processing of Personal Data and the Free Movement of Data (2018) (Επεξεργασίας των Δεδομένων Προσωπικού Χαρακτήρα και της Ελεύθερης Κυκλοφορίας των Δεδομένων αυτών Νόμος του 2018) is applied to the controller that is actually established in Cyprus and also for the controllers that are outside of Union and the Economic Area of the European Union who are using the automatic methods for the processing of the personal data⁷².

The law actually gives the data subjects the basic information that is important for properly processing their data and for making the proper decisions. The individuals that are not having the right access for the personal data are allowed to access by writing the requests to the controllers. The controller is able to charge around 17 euros for the requests.

Story

John and Vanessa often receive spam emails from companies they have never heard of. They wonder how the new GDPR protects their rights:

⁷² F. Boehm, 'Assessing The New Instruments In EU-US Data Protection Law For Law Enforcement And Surveillance Purposes' (2016) 2 European Data Protection Law Review.



As can be seen, these GDPR ‘consumer rights’ in this infographic include:

- The mentioned right to data portability.
- The data subject’s right to access to information.
- The right of correction, technically known as the right to rectification.
- The also mentioned right to be forgotten (erasure).
- The rights in the scope of consent (if that’s the legal ground for processing).

Is the right to erasure an absolute right?

- Yes
- No

What is the responsible Authority for data protection in Cyprus?

- The Registrar of Companies?
- The Ministry of Interior
- **The Cyprus Personal Data Commissioner**

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