



CHARTERED TAX INSTITUTE OF MALAYSIA (225750 T)  
(Institut Percukaian Malaysia)

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

COMPANY & BUSINESS LAW

JUNE 2016

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Student  
Registration No.

Date

Desk No.

Examination Centre

Time allowed: 3 hours

#### INSTRUCTIONS TO CANDIDATES

1. You may answer this paper **EITHER** in English **OR** in Bahasa Malaysia. Only **ONE** language is to be used.
2. This paper consists of **TWO** sections, **SECTION A** contains **FOUR** Questions and **SECTION B** contains **SIX** Questions.
3. Answer **FIVE** Questions. **TWO** Questions from each section and **ONE** from either **SECTION**.
4. Each answer should begin on a separate answer booklet.
5. All workings are to be shown in the answer sheet.
6. All your answers should be written in either black or blue ink.
7. No Question paper or answer booklet is to be removed from the examination hall.

**DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR**

**SECTION A**  
**COMPANY LAW**

**Question 1**

Barry has just been promoted as the Group General Manager of Asphalt Berhad and its group of companies ("Asphalt Group"). In view of his new position, he wishes to have a better and clearer understanding of the various companies in the Asphalt Group.

Briefly explain to Barry the following types of companies:

- (a) **Holding and subsidiary companies;** (4 marks)
  - (b) **Ultimate holding company;** (4 marks)
  - (c) **Wholly owned subsidiary;** (4 marks)
  - (d) **Exempt private company; and** (4 marks)
  - (e) **Company limited by guarantee.** (4 marks)
- [Total: 20 marks]**

**Question 2**

- (a) **State the legal principle in the case of Salomon v Salomon & Co Ltd [1897] AC 22.** (5 marks)
  - (b) **In relation to a company, explain the concept of "ultra vires doctrine".** (5 marks)
  - (c) **What is the effect or consequences of the company's corporate personality?** (10 marks)
- [Total: 20 marks]**

**Question 3**

Write briefly on the following:

- (a) **Statutory Meeting and the contents of the statutory report.** (10 marks)
  - (b) **Annual General Meeting and the matters or business to be carried out at an Annual General Meeting.** (10 marks)
- [Total: 20 marks]**

#### **Question 4**

Patricia has been working in Genetics Berhad as an Assistant Human Resource Manager for the past 10 years. Recently the company decided to transfer her to the Secretarial Department of the company to assist the Company Secretary. She is very concerned that she may end up being in the department henceforth. She is aware that being a Company Secretary of a company will enhance her future career prospects. With that in mind, she seeks your advice on the following matters:

- (a) **Briefly explain to Patricia the following:**
- (i) **Nominal capital** (2 marks)
  - (ii) **Issued capital** (2 marks)
  - (iii) **Ordinary shares** (2 marks)
  - (iv) **Preference shares** (2 marks)
  - (v) **Redeemable preference shares** (2 marks)
- (b) (i) **What are the qualifications of a Company Secretary?** (2 marks)
- (ii) **When is a person disqualified to act as a Company Secretary?** (3 marks)
- (iii) **State five (5) duties of a Company Secretary.** (5 marks)
- [Total: 20 marks]**

**SECTION B**  
**BUSINESS LAW**

**Question 5**

Jacinta owns a double-storey terrace house in Kuala Kinta, Selangor. She wishes to sell off the house in order to raise some money to pay for her husband's medical expenses. In January 2015, she appointed Mr Shane as her agent to find a buyer for the house. Within two weeks, Jacinta was informed by Mr Shane that he had managed to find a buyer, Prem, who had agreed to buy the house for RM950,000. Both parties signed the sale and purchase agreement in February 2015. Jacinta has now discovered that Mr Shane had collected RM3,000 from Prem. As Prem had been in a hurry to buy a house, he had told Mr Shane that the money was given to him in appreciation of his services. Jacinta also found out that in January 2015, the prevailing market price for similar houses (with the same size) in Kuala Kinta was RM1,200,000.

**Required:**

- (a) **Who is an agent and who is the Principal?** (4 marks)
- (b) **Explain the agent's duty to the Principal. Give supporting cases where relevant.** (8 marks)
- (c) **Discuss the remedies available to the Principal.** (8 marks)

**[Total: 20 marks]**

**Question 6**

- (a) **Compare a cheque with a bill of exchange.** (8 marks)
- (b) Ali and Katrina received a bill of exchange from Beena made in their favour. They want to use the bill to pay their mechanic for their car repairs and informed you that their mechanic is a forgetful person and may misplace the bill. They want to ensure that whoever finds the misplaced bill will not be able to present it.

**Advise Ali and Katrina and state reasons for your advice with reference to the relevant provisions in the Bills of Exchange Act 1949 where relevant.**

(12 marks)

**[Total: 20 marks]**

### Question 7

Marcia sells motorcycles in Puchong, Selangor. In the course of dealing with the merchants over the past 10 years, she enjoys a good credit arrangement. As her customer pool grew bigger, Marcia decided a year ago to borrow RM800,000 from a local bank to expand her business. However, she realised three months ago that the current economic climate was not suitable for the expansion and her customer pool has diminished drastically. She is presently having a difficult time paying her merchants as well as the installments to the bank.

#### Required:

- (a) **Who can file a bankruptcy petition against Marcia and why?** (12 marks)
- (b) **If Marcia had incorporated a company what are the consequences of having a receiving order made against the company?**

(8 marks)

**[Total: 20 marks]**

### Question 8

- (a) A year ago, a dengue fever epidemic was sweeping through the state of Selangor. The Dowell Pharmaceutical Company ("DPC") was the manufacturer and supplier of an anti-fever drug, the "DPC fever preventive". The DPC advertised the DPC fever preventive. In the advertisement, the DPC offered to pay RM10,000 to anyone who contracted any fever after having used its DPC fever preventive in the prescribed manner for a stipulated period. The advertisement went on to state that as evidence of the company's sincerity, it had deposited the sum of RM10,000 with the Alliance Bank.

In reliance on the advertisement, Mrs Chong purchased and used the DPC fever preventive as directed but still caught the dengue fever. She claimed the RM10,000. DPC refused to pay. Mrs Chong wants to sue DPC for breach of contract. DPC denies that it had a contract with Mrs Chong on various grounds. Among these, the first is that an offer has to be made to a specific person or a specific class or classes of person and not just to anyone who might happen to read an advertisement. In short, that an offer could not be made to the world at large. The second is that the advertisement was not an offer but merely a trade puff, an inducement to customers. It was, so DPC claims, absurd to assume that it really intended to pay RM10,000 to anyone who caught a fever.

#### **Is the advertisement an offer?**

(4 marks)

- (b) Pachik was charged with 'offering for sale' a DVD which infringed the copyright of the singer, Bramble. He had placed an advertisement in a periodical called Music Today which read in part: 'Bramble's First DVD, RM25.00 each.'

#### **Was Mr Pachik's advertisement an offer?**

(4 marks)

- (c) Bala has been supplying sugar cane to Ali's restaurant ("AR") for several years without a written contract. Two years ago, Bala requested a written contract. A draft was drawn up by the AR's lawyers and was sent to Bala. He filled in certain blanks, including the name of an arbitrator, and sent it back. The lawyer put it in his desk. Nothing more was done, but the parties' subsequent dealings were apparently made on the basis of its terms (which differed from those that had prevailed previously) and it was mentioned in occasional discussions between them. A dispute eventually arose and Bala refused to continue supplying sugar cane. He contended that there had been no formal acceptance of his offer and that, therefore, there was no contract in existence by which he was bound.

**Is Bala right?**

(4 marks)

- (d) Abu accepts Bakar's offer that he supervise, on behalf of Bakar, the latter's illegal trafficking in dangerous drugs. Bakar promises to pay to Abu a salary of RM10,000 a month. Abu has carried out his promise for the last three months but in spite of repeated demands, Bakar has refused, neglected or failed to pay him his agreed monthly salary.

**Can Abu enforce his agreement with Bakar?**

(4 marks)

- (e) Romeo purchased a motor car from Thamby. After details of the sale had been completed, Romeo paid Thamby the agreed price and took delivery of the car. As he was driving off in his motor car, he stopped and asked Thamby if he could assure him (Romeo) that the car had never been in an accident. Thamby promised Romeo that the car had never been in an accident. In fact, the car turned out to have been badly damaged in a collision and had only been repaired to make it look good without the real damage being repaired. Romeo wants to sue Thamby on the 'false' promise.

**Advise Romeo.**

(4 marks)

**[Total: 20 marks]**

### Question 9

- (a) Wan Mustapha is a travelling salesman who regularly uses Badul's garage to service his company vehicle. On one occasion he is told that his car will be ready for him at 11am the next day and he, arranges to visit his most important client Dahniaal at noon. He arrives at the garage at 11am to be told by Badul that the service is not yet finished because a mechanic has not turned up for work. The car is not usable. Wan Mustapha abandons his plan to visit Dahniaal because of the non-availability of his vehicle. Dahniaal is annoyed and stops all dealings with Wan Mustapha and transfers his business to another supplier. Wan Mustapha, having lost his most lucrative account, is dismissed by his employer. Wan Mustapha's family suffers the trauma of the drastic reduction in income.

Wan Mustapha's losses can be tabulated as follows:

- (1) Expenditure incurred (e.g. taxi fares, etc.) by reason of the loss of the use of the car from 11:00 am in Question;
- (2) Loss of his job; and
- (3) Mental distress and lowered standard of living suffered by his family.

**Give reasons to explain which of the damages listed above may be successfully recovered by Wan Mustapha from Badul and which would not.**

(5 marks)

- (b) Loh, the sole proprietor of a hairdressing salon, entered into an agreement with the owner of a beach hotel. Under the agreement, the hotel agreed to let to Loh certain premises in the hotel for a term of three years. Several months into the tenancy, the hotel entered the premises and evicted Loh. Loh claimed damages for breach of agreement. The hotel did not deny the re-entry of the premises but maintained that Loh, in breach of agreement, had caused illegal massage activities to be carried out on the premises, which entitled it to terminate the agreement. The hotel's admission that it had re-entered the premises before the expiry of the agreement was sufficient *prima facie* evidence to establish Loh's case. However, there was no evidence of the illegal massage activities. As a result, judgment was entered in favour of Loh.

Loh presented no evidence as to the damages he had suffered. The fact that he had suffered loss could be inferred by the disruption to his business due to the hotel's unlawful re-entry into the premises. Where the fact of loss is established, evidence is necessary to show its amount. However, no such evidence had been adduced.

**What is the quantum and kind of damages that Loh may be awarded in the above situation?**

(5 marks)

- (c) Elsa is the purchasing manager of a hotel. She contracts to buy 100 tons of fresh pineapples at RM1,000 from a supplier in Johor. The supplier fails to deliver the pineapples to her at the agreed time and date. Elsa then purchases the same quantity from a supplier in Malacca at RM1,200 per ton.

**What damage, if any, may Elsa claim against the supplier in Johor? Give reasons for your answer.**

(5 marks)

- (d) The Penny Black was the world's first adhesive postage stamp used in a public postal system. It was issued in Great Britain on 1 May 1840, for official use from 6 May of that year. Gulji is a passionate stamp-collector. One of the Penny Black is in Singapore and is owned by Ah Bah. After long and tense negotiations, Ah Bah contracts to sell his Penny Black to Gulji for RM500,000. Gulji pays Ah Bah a deposit of RM50,000 and agrees to pay the balance of the purchase price in three days by a Banker's Cheque. On the appointed day, Gulji turns up and tenders to Ah Bah a Banker's cheque made out in favour of Ah Bah in the sum of RM450,000 but Ah Bah refuses to go through with the sale.

**Gulji desperately wants the Penny Black. Which remedy would be most appropriate for Gulji?**

(5 marks)

**[Total: 20 marks]**

### **Question 10**

- (a) Which of the following are 'goods' governed by the Sale of Goods Act 1957? Give reasons.
- (i) **A kitten purchased from a pet shop.** (1 mark)
  - (ii) **An insurance policy.** (1 mark)
  - (iii) **Hair tinting at a hair salon.** (1 mark)
  - (iv) **A swimming pool.** (1 mark)
  - (v) **An aeroplane.** (1 mark)
  - (vi) **A grove of trees which are agreed before the sale to be cut down and removed by the buyer as quickly as possible.** (1 mark)

- (b) Are the following sale of goods contracts? Give reasons.
- (i) **The purchase of a UK £1 coin issued to commemorate the 2012 London Summer Olympic Games.** (1 mark)
  - (ii) **A kilo of cheese exchanged for a kilo of butter.** (1 mark)
  - (iii) **Medicines purchased by credit card at a pharmacy.** (1 mark)
  - (iv) **The financing of the purchase of shares by a loan.** (1 mark)
  - (v) **Machinery acquired under a lease.** (1 mark)
  - (vi) **The purchase of the copyright in a book.** (1 mark)

- (c) Associated Metal Smelter Ltd (“AMSL”) wanted to buy a smelting furnace capable of reaching and sustaining a temperature of 2,600 degrees. In negotiations with Tham, a seller of such furnaces, an AMSL representative said to Tham, “We need a furnace that will reach and maintain a temperature of 2,600 degrees. Any machine that you sell to us must satisfy this requirement”. Tham assured AMSL that the smelting furnace that he would sell them would satisfy that requirement. Tham sold and delivered a smelting furnace to AMSL. AMSL discovered that the furnace supplied did not, in fact, reach the required temperature.

Answer the following with reference to the Sale of Goods Act 1957 and decided cases.

- (i) **Is the term in breach of a condition or a warranty?** (2 marks)
- (ii) **Is AMSL entitled to reject the furnace and claim damages?** (3 marks)
- (iii) **Is AMSL entitled to retain the furnace and claim damages?** (3 marks)

**[Total: 20 marks]**

**(END OF QUESTION PAPER)**