



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

COMPANY & BUSINESS LAW

DECEMBER 2016

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 **FIVE** Questions and **SECTION B** contains **FIVE** 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 your answers should be written in either black or blue ink.
6. 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

Martin has just retired as a pilot after working for a major airlines for about 35 years. He intends to conduct training and seminars with his vast experience in the airline industry. He seeks your advice on the following matters.

- (a) **What are the characteristics and effects of an incorporated company?** (10 marks)
- (b) **What are the significances of a “certificate of incorporation”?** (5 marks)
- (c) **What information are contained in a certificate of incorporation?** (5 marks)

Advise Martin.

[Total: 20 marks]

Question 2

Alex had entered into a Sales and Purchase Agreement (SPA) on 1 November 2016 to purchase from Michael 20,000 ordinary shares at RM1.00 per share in a non-listed public company, Zonita Holdings Berhad (ZHB). Alex paid a deposit of RM2,000 at the time of signing the SPA. The balance RM18,000 is due and payable on 30 November 2016 by Alex to Michael.

- (a) **Alex wishes to know when he will be considered a member of the company (ZHB) and what are his rights and liabilities on becoming a member in the company.** (10 marks)
- (b) Alex would also like to know the procedure for converting:
 - (i) **a public company into a private company** (5 marks)
 - (ii) **a private company into a public company** (5 marks)

Please advise Alex on the above matters.

[Total: 20 marks]

Question 3

- (a) Stanley, Thomas, Peter and Michael are directors of Golden Phoenix Berhad involved in manufacturing and distributing water filtration products. Stanley, Thomas and Peter were keen on expanding the business by venturing into automatic coffee making machines and in penetrating into the huge market in China. Michael was however skeptical to the idea, as he felt that the Chinese may not be keen or interested in automatic coffee making machines. Michael was totally against the idea but the other three directors were very much in favour and adamant to diversify their business operations and capture the Chinese market as there was very little competition at the moment.

In order to diversify the company's activities and not being totally dependent on its water filtration business, Stanley, Thomas and Peter decided to remove Michael as a director of Golden Phoenix Berhad. They issued him a letter to remove him as a director with immediate effect.

Please advise Michael Lee on the validity of the said letter and his legal rights as a director of Golden Phoenix Berhad.

(10 marks)

- (b) With reference to question 3(a) above, Golden Phoenix Berhad was incorporated on 1 June 2015. Peter had purchased some special tools for the sum of RM3,000 on 15 May 2015 in anticipation of the proposed water filtration business. He purchased the special tools at a cheap price from Russel. However, Peter completely forgot to inform the other directors of the said purchase of the special tools for and on behalf of the company.

On 28 August 2016, Golden Phoenix Berhad received a letter of demand from Mary, Martha, Hasni & Associates demanding for the payment of RM3,000 to Russel in relation to the purchase of the special tools by Peter on behalf of the company.

Advise Golden Phoenix Berhad as to whether they are bound to pay the RM3,000 to Russel.

(10 marks)

[Total: 20 marks]

Question 4

- (a) **What are the decision making bodies of a company and how are their powers divided?** (8 marks)
- (b) **Who may be appointed as a director?** (6 marks)
- (c) **Who are disqualified from acting as directors?** (6 marks)

[Total: 20 marks]

Question 5

- (a) **Briefly explain what you understand by members' voluntary winding up.** (10 marks)
- (b) **State ten (10) powers of a liquidator of a company which is being wound up.** (10 marks)

[Total: 20 marks]

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SECTION B

BUSINESS LAW

Question 6

- (a) Fung is the owner of a language training center. As the number of students increased, a larger premises was required. Before moving out from his current premises, Fung wanted to dispose some of the office furniture and equipment and drafted the advertisement in the box below.

<p style="text-align: center;">Office Removal Sale</p> <p style="text-align: center;">Tables and chairs at RM100 each Computers and printers at RM1,000 per set and Many other items at unbelievably low prices.</p> <p style="text-align: center;">Tel. 9288 9288</p>

Using case law, advise Fung whether his advertisement is an offer or an invitation to treat.

(5 marks)

- (b) Johan has a number of racing cars. His uncle wrote to him offering to buy his Aston Martin for RM400,000 and adding: 'If I hear no more about that car, I consider it mine at that price.' When his uncle's letter reached him, Johan was discussing selling some of his cars (including the Aston Martin) with an auctioneer. Johan mentally decided to accept his uncle's offer but did not reply to his uncle. Johan told the auctioneer that the Aston Martin was to be kept out of the sale. The auctioneer inadvertently sold the car. Johan's uncle, upon discovering this, sued the auctioneer for having sold his car. The uncle contends that a contract had been formed when Johan mentally accepted his offer.

Is Johan's uncle correct?

(5 marks)

- (c) Ahmad agrees to sell a car worth RM100,000 for RM10. Ahmad's consent to the agreement was freely given.

Does the inadequacy of the consideration prevent a contract from being formed?

(5 marks)

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- (d) Anne, aged 24, is an undergraduate at Great University. Owing to Great University's "No smoking" policy, Anne is contractually obliged not to smoke while enrolled in that University. Her father is worried that his daughter, a smoker before she enrolled in the University, might weaken while preparing for her examinations, and start smoking to soothe her pre-examination nerves. He promises to buy Anne a brand new car if she refrains from smoking until she has graduated. Anne graduated six months ago but her father refuses to honour his promise to buy her a car.

Is Anne's father's promise contractual?

(5 marks)

[Total: 20 marks]

Question 7

- (a) Miss Polly, an opera singer, contracted to sing for Gye for four months. A term in the contract required her to attend six rehearsals before the opening nights. Owing to illness, she failed to attend the last two rehearsals, the opening night and the next two nights. The contract does not have a provision providing for the eventuality of Miss Polly falling ill. Gye sued her contending that her failure to sing at the rehearsals was a breach entitling him to terminate the contract and claim damages. Miss Polly disagrees. She argues instead, that by reason of her illness the contract was discharged by frustration.

Advise the parties.

(5 marks)

- (b) In January, Malaysia Metal Exports Sdn Bhd (MME) hired a ship from Pacific Metal Carriers (PMC) to transport scrap metal from Malaysia to China at the end of March. By the end of February, however, MME had not found a buyer for the metal. Consequently, on 28 February, MME informed PMC that it would no longer take the ship. This was fortunate for PMC because they wouldn't have been able to provide a ship in March anyway; its entire fleet had been seized by authorities because of serious neglect of ship maintenance issues.

PMC immediately informed MME that they considered the contract terminated for anticipatory breach and simultaneously proceeded to sue MME for damages for lost profits.

MME subsequently came to know that PMC would have been unable to supply them a ship even if they had found a buyer for its metal before the end of March.

Can MME successfully resist PMC's suit?

(5 marks)

- (c) With his wife's permission, Mr. Chan Ah Meng agreed to sell his property known as "Bumper Hall" to Madam Wong Ah Soh. Then, his wife changed her mind. Chan informed Madam Wong that he could not go through with the sale because of his wife's change of mind and offered to compensate Madam Wong for breaking the contract. Madam Wong, however, has set her heart on owning Bumper Hall and considers damages an inadequate remedy.

Advise Madam Wong on the remedy she should seek.

(5 marks)

- (d) Billy runs a bakery and sells egg tarts. His business has been booming in recent years because the Chief Minister of the State is a regular customer to his shop and this made his shop famous. In view of the escalating demand by his customers for egg tarts, Billy ordered two more new ovens from Snoopy Engineering Sdn Bhd. These cost RM20,000 and were to be delivered to Billy on Monday. There was a delay in delivery and the ovens did not arrive until Saturday. As a result of the late delivery, Billy suffers the following losses
- (i) With the 2 new ovens, Billy would have sold 2,000 more egg tarts a day. The 5-day delay in delivery resulted in a loss of RM30,000 because Billy could make a RM3.00 profit out of each egg tart.
- (ii) The Mickey Mouse Hotel was responsible for providing food and catering services for an international conference to be held in the Exhibition Centre. The Hotel placed a special order for fruit tarts with Billy's shop on Monday. The fruit tarts had to be delivered on Saturday. Due to the delay in delivery of the 2 ovens, Billy could not deliver the fruit tarts to the Mickey Mouse Hotel. As a result, Billy suffers another loss of RM100,000.

Advise Billy on the damages he may recover as a result of the late delivery of the 2 ovens by Snoopy Engineering Ltd.

(5 marks)

[Total: 20 marks]

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Question 8

- (a) Aziz bought a car from Lee. The car was subsequently seized by the police for being a stolen vehicle. Aziz then sued Lee for the return of the purchase price alleging breach of the condition implied by S 14(a) of the Sale of Goods Act 1957 ("SOGA"). Lee resisted the claim on the grounds that he was a bona fide purchaser of the car with no knowledge of any defects relating to ownership.

Advise Aziz.

(5 marks)

- (b) Jamal was the seller and Chan the buyer. It was a condition of the contract that Jamal had to supply Chan with steel bars according to the specifications set out in Chan's purchase orders. Jamal had delivered steel bars that did not comply with the specifications. Chan used the bars supplied by Jamal to reinforce the walls of a building he was erecting. Because the bars did not comply with the specifications, the bars in the walls began to buckle and crack. Chan sued Jamal for breaching S 15 of the Sale of Goods Act 1957 ("SOGA").

Advise Chan.

(5 marks)

- (c) Mary specialises in providing clothes for people who are allergic to different animal fibres. She visited Felicity Fashions ("Felicity") with the intention of purchasing a consignment of jackets for people who are allergic to wool. She told the Felicity salesgirl of her needs and that she wanted a consignment of sixty, wool-free jackets. The Felicity salesgirl points Mary in the direction of a rack, holding different coloured jackets. Mary eventually purchased a consignment of five dozen black jackets. The jackets sold like hot potatoes. However, a few days later complaints rolled in. After wearing the jacket for a day, the purchasers developed a rash that required medical treatment. Upon further investigation, Mary learnt that the jackets she purchased were 80 per cent silk and 20 per cent wool.

Mary sued Felicity for supplying her with jackets which were not fit for the disclosed purpose under Section 16 of the Sale of Goods Act 1957.

Advise Felicity Fashions.

(5 marks)

- (d) A factory ordered a diesel electricity generator from a manufacturer and the manufacturer sold and delivered the diesel electricity generator to the factory. The factory complained that at the time of delivery, the generator was defective as water was found in the engine oil and the parts of the engine was rusty. The factory wanted to claim damages under S 16(1) (b) of the Sale of Goods Act 1957 ("SOGA") because the generator was not free from defects.

Advise the factory.

(5 marks)

[Total: 20 marks]

Question 9

Jerry Tse is the Food and Beverages Manager of the Fine Fish Restaurant Sdn Bhd. As part of his job he acts as a purchasing agent on behalf of the restaurant. At a recent board of directors meeting, the directors decided not to allow him to purchase wine for the restaurant and wrote him a letter to this effect. Having read the letter, Jerry still ordered a consignment of Chardonnay from Wonderful Wines Sdn Bhd. The directors of Fine Fish Restaurant Sdn Bhd refuse to pay for the wine when the invoice was submitted for payment.

Fully advise the directors of the Fine Fish Restaurant of their legal position.

Use case law and the statute (if relevant) to support your answer.

[Total: 20 marks]

Question 10

In 2000, Adnan, Bob and Chan agreed to be partners in a trading business. They did not draw up articles of partnership or any other written agreement. They registered their business as Adnan, Bob, Chan and Associates.

Their business proved to be very profitable for fifteen years. However, over the last year they found themselves with cash flow problems because of escalating costs and a higher numbers of creditors who refuse to pay.

Adnan wishes to retire from the partnership before the situation gets any worse. He seeks your advice as to:

- (a) **His liability for the firm's debts.** (7 marks)
- (b) **The steps he should take to avoid being liable for the firm's future debts.** (7 marks)
- (c) **Would a notice from Adnan to the Registrar of Business that he is retiring from the partnership suffice to immunize him from future liabilities of the partnership?**

(6 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)