



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

PROFESSIONAL EXAMINATION

FINAL LEVEL

COMPANY & BUSINESS LAW

DECEMBER 2020

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 **THREE** questions and **SECTION B** contains **THREE** sections.
3. Answer **FIVE** questions. **TWO** questions from each section and **ONE** from either section.
4. Each answer should begin on a separate answer template.

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SECTION A
COMPANY LAW

Question 1

Faridah, Ai Ling and Parames intend to set up an online boutique, as they intend to capture just a small portion of the Malaysian market by selling various ladies clothing and dresses sourced from the markets in China, Indonesia and India. In this respect they would like to set up a company but do not know actually what a company is all about in law, compared to sole proprietorships and partnerships. With reference to the Companies Act 2016, they seek your assistance on the following matters.

Required:

- (a) **The significance of a company as a body corporate.** (10 marks)
- (b) **The basic differences between a private company and a public company.** (5 marks)
- (c) **State at least five (5) particulars the person forming a company must provide to the Registrar of Companies when applying to form a company.** (5 marks)

[Total: 20 marks]

Question 2

Miyako Sdn Bhd is a company involved in the manufacture of medical gloves and face masks. Owing to the great demand for gloves and facial marks due to the coronavirus, the company's sales revenue had increased tremendously and the company was reaping huge profits.

Izwan knew that the demand for medical gloves and facial masks will continue even after the coronavirus pandemic is contained. Therefore, he wanted to invest in the company by purchasing 50,000 shares in the company. Izwan approached his close buddy, Lew who was the Managing Director and also the major shareholder of Miyako Sdn Bhd and expressed his interest to invest in the company. Izwan informed Lew that he is unable to secure funding immediately from the banks because of the current economic situation due to the coronavirus but should be able to do so once the whole coronavirus pandemic is over.

Lew informed Izwan that he will arrange for the company Miyako Sdn Bhd to provide him a cash loan for RM20,000 and further arrange for XYZ Bank Berhad to provide Izwan a RM30,000 loan by way of Miyako Sdn Bhd providing the bank security based on the fixed deposits it has with the bank amounting to about RM1 million.

Required:

Advise Lew vis – a - vis the provisions of the Companies Act 2016 on his assistance for Izwan to purchase shares in Miyako Sdn Bhd.

[Total: 20 marks]

Question 3

Zamzam Sdn Bhd (“ZSB”) manufactures and supplies custom made metal beds to an American company based in New York. ZSB has been in the business for the past 20 years. Two of the directors and shareholders of ZSB, Michael and Sofian are very concerned as to sustainability of their business in view of the strong competition in the market posed by Chinese companies. Michael and Sofian are non-executive directors and feel that it is the best time to sell off ZSB. Otherwise they may end up making losses as they are very much labour intensive compared to their competitors. Its other two executive directors and shareholders are Kamal and Dzulkifli who however are not in favour of disposing off ZSB. Kamal and Dzulkifli basically manage ZSB and oversee the operations of the company from manufacturing, packing and the logistics aspects of exporting the beds.

The reason why Kamal and Zulkifli are not in favour of disposing off ZSB is that most of the raw materials for the company are supplied by KZ Sdn Bhd which is owned by Kamal and Zulkifli, in which, Michael and Robert are not aware of. Kamal and Dzulkifly also transport the beds for shipment via lorries owned by them. The transport cost is generally way above the normal market price. The specific details of the cost of transportation were never disclosed to the other directors even though they had numerous times requested the same.

However, Michael and Chong came to know from sources that the reason why Kamal and Zulkifli were not keen to dispose off the business is because of the profits they (Kamal and Zulkifli) were making from the two companies owned by them dealing with ZSB.

Required:

Advise Michael and Chong on what actions possibly they could pursue against Kamal and Zulkifli under the common law and statute law.

[Total: 20 marks]

SECTION B

BUSINESS LAW

Question 4

Ah Chong and Benny were in small trading business together called ACB Trading & Co. When they initially started, they had agreed in writing that if they closed the business, an account was to be made of the assets and liabilities of the firm, assets were to be sold, all liabilities and expenses were to be paid and the balance (if any) was to be divided equally between them. One of the assets of the business was a lease over a building which was situated in a prime location and therefore it was a valuable asset.

Ah Chong gave notice that he wanted to retire from the business in January. One month later, Ah Chong signed a document to have the lease transferred from ACB Trading & Co to himself, as he wanted to continue doing business in that location as a sole trader.

Required:

You are asked to advise Benny the following separate matters:

- (i) **Explain what type of business structure was being used at the outset when Ah Chong and Benny started the business.**

(4 marks)

(ii) Who owns the lease over the building? Does Benny have any legal rights against Ah Chong for his action regarding the lease? (8 marks)

(iii) When Ah Chong decided to retire from the business, what are the steps Benny should have taken to ensure that he would not be liable for debts that are incurred after Ah Chong and he are separated? (8 marks)

[Total: 20 marks]

Question 5

(a) Discuss the meaning of “invitation to treat” stating examples and case law. (10 marks)

(b) Explain the term “intention to create legal relations”. (10 marks)

[Total: 20 marks]

Question 6

Answer the following questions, using cases to support your answer.

(a) Describe the different ways in which an agency relationship may be created. (6 marks)

(b) Describe the different kinds of authority that an agent may possess. (6 marks)

(c) Explain the duties and rights of an agent. (8 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)