



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

COMPANY AND BUSINESS LAW

DECEMBER 2014

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 papers or answer booklets 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

- (a) Briefly explain the procedure for registering a company with a share capital with the Companies Commission of Malaysia (the CCM) pursuant to the Companies Act 1965.
(12 marks)
- (b) What are the restrictions that must be contained in the Memorandum or Articles of Association of a private company?
(8 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

- (a) Briefly explain the phrase “members voluntary winding up” under company law.
(10 marks)
- (b) State ten (10) statutory powers of a liquidator of a company which is being wound up.
(10 marks)
- [Total: 20 marks]**

**SECTION B
BUSINESS LAW**

Question 5

Hari is the Supervisor of Big Ben Bhd, a retail outlet selling designer watches. He often acted as the Acting Manager of the outlet while the Managing Director and other senior staff were absent. His normal duties when in such a position involved overseeing overall sales and ensuring that his own sales staff performed well. While acting as Acting Manager, Hari purchased two diamond bracelets on behalf of the company for RM2 million from Brilliant Bhd.

- (a) Describe the different ways in which an agency relationship may be created and if Hari is an agent of Big Ben Bhd. (6 marks)
- (b) If Hari is an agent, may the Big Ben Bhd withdraw from the contract with Brilliant Bhd on the ground that Hari acted outside his authority? (8 marks)
- (c) If the company could withdraw from the contract has Brilliant Bhd any legal remedy against Hari? (6 marks)

[Total: 20 marks]

Question 6

- (a) What is a 'cheque'? Is a cheque without a date written on it valid? (6 marks)
- (b) State the requirements for an instrument to be a bill of exchange? (7 marks)
- (c) Peter and Jane received a bill of exchange from Zeta made in their favour. They want to use the bill to pay their mechanic for their car repairs. They inform 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 Peter and Jane and state reasons for your advise with reference to the relevant provisions in the Bills of Exchange 1949 where relevant. (7 marks)

[Total: 20 marks]

Question 7

Jesse sells cupcakes in Ipoh. In the course of dealing with suppliers over the past 10 years, she enjoys a good credit arrangement. As her customer pool grew bigger, Jesse decided 8 months ago to borrow RM35,000 from a local bank to expand her business. However, she realized three months ago that Ipoh's market was not ready for a larger shop selling cupcakes and is presently having a hard time paying her suppliers as well as instalments to the bank.

Required:

- (a) Who can file a bankruptcy petition against Jesse and why?
(10 marks)
- (b) What are the objectives for the administration of bankrupts by the Official Assignee?
(5 marks)
- (c) If Jesse had incorporated a Company, Hot Cakes Sdn. Bhd., what are the consequences of having a receiving order made against the company?
(5 marks)

[Total: 20 marks]

Question 8

Answer all three parts.

- (a) Distinguish between an invitation to treat and an offer.
(2 marks)
- (b) Candy sees a rare Ming vase in the window of a shop dealing in antiques. It is labelled "Rare Ming Vase - RM50,000. Credit Cards Accepted". Candy goes into the shop, places her credit card on the counter and asks for the vase. The dealer tells Candy that the vase was marked RM50,000 by mistake and that its real price is RM1,200,000. Is the antique dealer bound to sell the vase to Candy? Give reasons for your answer.
(6 marks)
- (c) Charlie advertised in the local newspaper that he would pay a reward of RM1000 to anyone who returned to him his lost pet, a white cat answering to the name of "Rosie". Charlie's colleague, Andrew, recognised Rosie as it was running down the street on which he lived. He captured and returned Rosie to Charlie. At the time he returned Rosie, Andrew was not aware of the reward. Can he now claim the reward? Give reasons for your answer.
(6 marks)
- (d) Jerry applied for the post of research assistant in a university. The selection committee of the university concerned met and decided to appoint Jerry. Then, the selection committee recessed for lunch at a nearby restaurant and, as it had not yet completed its work, agreed to reconvene after lunch. During lunch at the restaurant one member of the selection committee who knew Jerry met him having lunch there and informed him that he had been appointed. Immediately after lunch, Jerry tendered his resignation from his job. At its continued meeting after lunch, the

selection committee changed reversed its decision to appoint Jerry and appointed Sumie instead. A week later Jerry received a letter signed by the secretary of the university thanking him for his application but regretting that he had not been successful. Advise Jerry whether he can sue the university for breach of contract.

(6 marks)

[Total: 20 marks]

Question 9

Answer all four parts of this question.

(a) What is the purpose of an award of basic damages for breach of contract?

(2 marks)

(b) After considerable effort and expenditure, Milly finally identifies a piece of property on which she can build her dream home. She contracts to buy it from its owner, Andrew, for the sum of RM1,000,000. Milly pays Andrew a deposit of RM100,000 and is contractually required to settle the balance purchase price on 14 January. On 2 January, Andrew delivers her a bank draft in the sum of RM100,000 to cover her deposit under cover of a letter informing her that he does not wish to proceed with the sale. If Milly still wants the property, which remedy is the most appropriate for her to seek?

(6 marks)

(c) Adnan contracts to buy a second-hand car from Sam for which Sam himself had paid RM75,000. Adnan agrees to pay Sam RM70,000 for the car. Adnan subsequently refuses to accept or pay for the car. Sam is willing to accept RM 70,000 for the car although the car now commands a price of RM75,000 but Adnan, however, is adamant and refuses to have anything to do with the car. Later, Sam, sells the car for RM77,000. What damage, if any, can Sam claim against Adnan?

(6 marks)

(d) Fast Auto Service Company contracted to overhaul a fleet of taxi cabs for Laju Taxi Company. It was agreed that work would commence on 15 September and be completed by 1 October. Owing to a shortage of manpower and spare parts, the overhaul of all the vehicles was only completed on 15 October. Laju Taxi Company was also unable to accept a lucrative contract to drive 100 tourists from a cruise ship around the state of Selangor for 3 days. The contract was offered to it on 10 October. Fast Auto Service Company admits liability but has difficulty with the quantum of damages claimed under the following heads:

(i) RM1,000,000 for loss of half a month's business profits (as certified by the auditors)

(3 marks)

(ii) RM1,500,000 for the loss of certified profits on the new contract, offered to Laju Taxi Company on 10 October but which the company had to decline.

(3 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 new Civic car purchased from a car showroom.
- (ii) A piece of land purchased from the owner.
- (iii) Eye surgery at a clinic.
- (iv) Shares in a limited company.
- (v) A massive air conditioning plant permanently fixed to the ground and housed in a specially constructed chamber to cool down an adjacent factory building.
- (vi) A claim for copyright infringement.

(1 mark each for a total of 6 marks)

(b) Are the following sale of goods contracts? Give reasons.

- (i) RM1,000 exchanged from UK£ upon arrival at the Kuala Lumpur International Airport currency exchange counter.
- (ii) A diamond ring exchanged for a gold necklace at a jewellery shop.
- (iii) Tinned food and dairy products purchased by credit card at a supermarket.
- (iv) The financing of a house by a housing loan.
- (v) The purchase of furniture on hire purchase.
- (vi) The purchase of a car which, unknown to the parties, has been destroyed in an accident.

(1 mark each for a total of 6 marks)

(c) Simon went to Durable Office Supplies Ltd. ('DOS') to buy a paper shredder for his office. The shop manager of DOS showed him a 2014 model which, he said, was the latest on the market. The shop manager said that the shredder could shred up to 20 pages each time. Simon did not examine the model and paid the price. After delivery, when Simon started using the shredder, he discovered that the machine could not shred 20 pages at a time. This caused Simon to do some research. He discovered that although the machine delivered to him looked exactly as a year 2014 model, it was actually a year 2012 model.

Can Simon return the machine and recover the money he paid for it under s15 of the Sale of Goods Act 1957?

(8 marks)

[Total: 20 marks]