



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

COMPANY & BUSINESS LAW

DECEMBER 2019

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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 **THREE** Questions and **SECTION B** contains **THREE** 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**

Brandon wanted to open up a car service centre in Sunway. He had engaged JJ Secretarial Services ("JJ") to set up a private company under the name of Brandon Auto Services Sdn Bhd. He was informed by JJ that it would probably take about a month to properly set up the company. In the meantime, while waiting for the company to be incorporated, Brandon bought some major service equipment for RM40,000.00 from Derby Car Equipment Bhd ("Derby"). Brandon informed the General Manager of Derby that he will have the new company pay the full amount once it was incorporated within the next 4 weeks.

However, two weeks later Brandon changed his mind and decided not to go ahead with his proposed car services business and never followed up with JJ on the formation of the company. The company in fact was never set up and Derby was demanding payment from Brandon. Brandon kept giving the excuse that he was waiting for the company to be formally incorporated.

**Required:**

**(a) Briefly state the duties of a promoter and what are the remedies available to a party for breach of promoter's duties?**

(10 marks)

**(b) Advise Derby whether they have any legal right against Brandon and/or the proposed new company in view of Brandon informing Derby that the new company will pay Derby in full, for the equipment.**

(10 marks)

**[Total: 20 marks]**

## Question 2

Mesa Berhad was incorporated in June 2010 and is involved in trading of various goods by buying and supplying them to the domestic market in Malaysia. Most of the goods are brought into Malaysia from either India, China or Indonesia. The company has been doing very well. The Managing Director, Mr Wong See Beng owns 100,000 ordinary shares in the company and is the majority shareholder accounting for 80% of the shares of the company. The other remaining ordinary shares are held equally by five other shareholders, that is 4% each. The company has also issued 10,000 preference shares to Tony Tam.

Mr Wong See Beng intends to expand his supplier network by purchasing goods from the Philippines, Vietnam and Thailand and wishes to raise capital by issuing a further 200,000 ordinary shares.

Further, the company secretary of Mesa Berhad, Ms Ng Soo San who had been working for the company for the past 5 years had forged Mr Wong See Beng's signature in a transfer form and had transferred 10,000 shares of Mr Wong into her name and later within a week sold the shares to Patricia Lim for RM20,000.00. Patricia Lim was not aware of the forgery. After selling the shares to Patricia, Ms Ng Soo San resigned from the company by giving a one-week notice.

### Required:

(a) **Advise Mr Wong See Beng as to what the company has to do if he wishes to issue the 200,000 ordinary shares and any consequences if he fails to comply with the requirements on the issuance of the said shares.**

(10 marks)

(b) **Advise whether Patricia Lim has any legal right to the 10,000 shares that she had bought from Ms Ng Soo San.**

(10 marks)

**[Total: 20 marks]**

### Question 3

Robert is one of the directors and a major shareholder of Beason Sdn Bhd, which is involved in manufacturing spark plugs for various car models. Robert owns 80% of the shares in Beason Sdn Bhd. The three other directors and shareholders of the company are Michael, Aaron and Daniel. Presently, their rented factory is situated in Banting.

The company had recently purchased a 20-acre land in Dengkil for RM5 million to set up its own factory. The land is owned by ZZ Sdn Bhd and Robert is a beneficial owner of 60% of the shares of ZZ Sdn Bhd. Robert purchased the property on an urgent basis and was unable to discuss the same with the other three directors of the company, as he did not want to miss the opportunity to secure the property, as the actual market value of the property was RM8 million.

Robert has also been travelling extensively overseas in the pretext of company's business and has been incurring very high travelling and entertainment expenses. Robert has also been meeting with some other companies in the same business and sharing with them Beason's future plans and how he intends to make the company one of the key manufacturers of car spark plugs in the country. In fact, Robert has been purchasing materials for Beason Sdn Bhd from his other business colleagues, with a view that he may be able to obtain their help and assistance in the future whenever a need arises.

Michael, Aaron and Daniel have become very concerned as to how Robert is managing the company and they wish to remove him as a director and probably make him as the Chief Executive Officer or Chief Operating Officer and be accountable to the board. They also intend to appoint another two directors for the company.

#### **Required:**

**With reference to the Companies Act 2016, advise Michael, Aaron and Daniel:**

- (a) **On the various breaches of statutory duties by Robert as the director of the company.**  
(12 marks)
- (b) **On the procedure and their rights (if any) to remove and appoint new directors for Beason Sdn Bhd.**  
(8 marks)

**[Total: 20 marks]**

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

**Question 4**

Macy and Linda have great talent in music and decided to start a music centre for adults. The name of the music centre was ML Center of Music. Being relatively a small business, they agreed that they must agree to everything. They also agreed not to withdraw any salary or profit from the business until it grows and generates profits.

**Required:**

**(a) What kind of business is the above structure?** (4 marks)

**(b) Linda was offered a secondhand guitar at a very competitive price which she wanted to use for her teaching. She tried contacting Macy but could not get her. Worried that she might miss out on this deal, she bought the guitar in the name of ML Center of Music on credit. Macy was not happy as she feels that the business should not have to pay for the said guitar.**

**Advise Macy.** (8 marks)

**(c) Macy wants to retire from the business.**  
**What notice should she give in order to avoid being liable for the debts incurred after her retirement?** (8 marks)

**[Total: 20 marks]**

**Question 5**

**(a) Discuss the types of consideration that exist under the Contracts Act 1950.** (10 marks)

**(b) Agreement without consideration is void. State the exceptions to this principle.** (10 marks)

**[Total: 20 marks]**

### **Question 6**

Beatrice went to an IT dealer Comp Tech Sdn Bhd Kedah and said that she wanted a navigating system for a personal holiday in Singapore. She specifically stated that the device must provide good directions as she was totally clueless as to her way around Singapore.

John the dealer at Comp Tech Sdn Bhd recommended a satellite navigation system, which was popular amongst tourists for its reality. Beatrice bought the satellite navigation system.

Beatrice started her journey but when she was on the North-South Highway, the satellite navigating system malfunctioned and she found herself at the Thai border. It was discovered that the satellite system was not designed to navigate on Malaysian roads.

**Required:**

**Discuss,**

- (a) **What remedies, if any, could Beatrice obtain against Comp Tech Sdn Bhd under SOGA for the defective satellite system?** (10 marks)
- (b) **What rights does Beatrice have if she later discovers that the satellite navigation system was stolen goods?** (10 marks)

**[Total: 20 marks]**

**(END OF QUESTION PAPER)**