



CHARTERED TAX INSTITUTE OF MALAYSIA
(Institut Percukaian Malaysia)
Registration Number: 199101015438 (225750-T)

PROFESSIONAL EXAMINATION

FINAL LEVEL

COMPANY & BUSINESS LAW

DECEMBER 2023

Student
Registration No.

Date

Desk No.

Examination Centre

Time allowed: 3 hours

INSTRUCTIONS TO CANDIDATES

1. This paper consists of **TWO** sections. **SECTION A** contains **THREE** questions and **SECTION B** contains **THREE** questions.
2. Answer **FIVE** questions. **TWO** questions from each section and **ONE** from either section.
3. Each answer should begin on a separate answer template.

DO NOT TURN OVER THIS PAGE UNTIL INSTRUCTED BY THE INVIGILATOR

SECTION A COMPANY LAW

Question 1

Binco Marine Insurance Bhd is involved in the business of providing insurance coverage to large shipping companies involved in shipping cargo to the European market. They mainly provide hull and cargo coverage to their clients. Owing to the rapid increase in shipping after the Covid 19 pandemic, they employed about 15 to 20 fresh business graduates to be based in their headquarters. Most of these graduates do not have knowledge about what a company is and how it functions as a legal entity.

As part of their in-house training, you are required to explain the following to them;

(a) What does the constitution of a company mean and its significance in relation to the Companies Act 2016?

(10 marks)

(b) The doctrine of ultra vires with reference to the position of the doctrine under the common law and the Companies Act 2016.

(10 marks)

[Total: 20 marks]

Question 2

Smart Vege Fertilizers Sdn Bhd ("Smart Vege") carries on the business of supplying various types of fertilizers as well as pesticides to farmers throughout Malaysia. They have been in business for the past 5 years. It is a family business run by the Choi family. The directors are Choi Kim An and Choi Hue San who both own 20% shares in the company respectively. The other 60% is owned equally by Choi Soon, Choi Ho, and Choi Fu.

Choi Soon, Choi Ho, and Choi Fu intend to call for a meeting of the shareholders to pass a resolution to purchase a fertilizer factory in Southern Thailand, as Choi Kim An and Choi Hue San are totally against the idea of purchasing the said factory, especially in Thailand.

Required:

(a) Advise Choi Soon, Choi Ho, and Choi Fu on whether they have a right to ask the directors to call a meeting of shareholders and the procedure for calling the same.

(10 marks)

(b) What are the rights of Choi Soon, Choi Ho, and Choi Fu, if the directors refuse to call a meeting of the members?

(6 marks)

(c) Smart Vege has not held its Annual General Meeting for the past 3 years. Advise the directors as to whether they are in breach of the Companies Act 2016 for failing to hold the Annual General Meeting for the past 3 years.

(4 marks)

[Total: 20 marks]

Question 3

Zicosan Fruit Growers Sdn Bhd (“Zicosan”) owns a 20 acre durian orchard in Bentong, Pahang. It mainly grows the “Musang King” variety and exports 80% of the fruits to China. Its directors are Chan, Patrick, Rizaki, and Bakar.

Most of the business dealings with Chinese wholesalers and retailers are done by Chan and Patrick as they are able to converse in Mandarin. All business dealings are done in Mandarin and meetings are held in Shanghai or in Beijing, China. Generally, Chan and Patrick are the ones who meet up with the wholesalers and retailers concerned. Rizaki and Bakar take care of the running and management of the durian orchard.

Recently, Rizaki and Bakar discovered that Chan and Patrick sometimes go to China on the pretext of business but actually spend their time holidaying in China with their families at the company’s expense. Hotel, transport, and food bills incurred in China are charged to Zicosan.

Moreover, Chan and Patrick have also formed a company in China with their business associates in China to sell and market durians in China and have been receiving commissions and other benefits. Chan and Patrick did not disclose the said arrangements or business matters to Zicosan and/or to Rizaki and Bakar.

Required:

With reference to the common law and the Companies Act 2016, advise Rizaki and Bakar on the various breaches of directors' duties by Chan and Patrick.

[Total: 20 marks]

**SECTION B
BUSINESS LAW**

Question 4

Shaun, a 15-year-old student who looks much older than he is, walks into his local café and orders RM700.00 worth of food for a party. The café owner who has seen him before as a regular customer who has bought coffee from his café, is happy to provide the catering services. The café owner took a 10% deposit from Shaun. It was agreed that the balance would be paid within 10 days after the party. The food was duly delivered. Despite the bill being sent to Shaun and various reminders thereafter, Shaun refuses to pay.

Required:

Advise the café owner whether the contract is enforceable.

[Total: 20 marks]

Question 5

(a) What is the statutory definition of a 'cheque'?

(10 marks)

(b) Describe in relation to Bills of Exchange who is a:

(i) Drawer

(ii) Drawee

(10 marks)

[Total: 20 marks]

Question 6

Akard Sdn Bhd sells washing machines on cash terms and on hire-purchase. Sally, bought a brand-new washing machine from Akard Sdn Bhd on hire-purchase. When Sally tried to switch on the washing machine, the washing machine short-circuited and there was a power failure in her whole house.

Required:

Advise Sally as to her rights under the law of hire-purchase.

[Total: 20 marks]

(END OF QUESTION PAPER)