



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

COMPANY & BUSINESS LAW

DECEMBER 2018

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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**

Muthu and Ahmad intend to register a company for the purposes of carrying on a general trading business wherein they intend to import and export various types of automotive parts within the ASEAN region.

- (a) **Advise them on the major features of a private limited company and a public limited company.**  
(5 marks)
- (b) **State the fiduciary duties that would be owed by Muthu and Ahmad as promoters of the company.**  
(5 marks)
- (c) **What are the documents that they must keep at the registered office of the company?**  
(10 marks)

**[Total: 20 marks]**

**Question 2**

Atos Sdn Bhd was incorporated in 20.2.2002. The company is involved in the food catering business. The company had issued 30,000 ordinary shares and 20,000 preference shares. The company has been doing very well and is cash rich. The directors of the company have decided to return some of the company's capital to the ordinary shareholders. When the preference shareholders heard about the same, they were very upset and felt that the company should return the capital to them first.

- (a) **Advise the preference shareholders on the procedures and under what circumstances can Atos Sdn Bhd return its capital to shareholders.**  
(12 marks)
- (b) **What are the requirements a company must fulfill in its constitution if it intends to issue preference shares.**  
(8 marks)

**[Total: 20 marks]**

### Question 3

Pitos Medical Berhad (PMB) is a major manufacturer of pharmaceutical products. Its directors and shareholders are Susan, Victor, Kassim and Muthu. Kassim and Muthu are the executive directors of PMB and are fully in charge of the marketing and operational matters of the company. Kassim and Muthu are also the directors and shareholders of Brown Pharmacy Sdn Bhd (BPSB) which is involved basically in the sale of pharmaceutical products to end customers.

Kassim and Muthu had actually been approving and supplying pharmaceutical products of PMB to BPSB at far below the retail price normally charged by PMB to other pharmaceutical shops supplied by them. They also always provide long credit periods for BPSB to pay for the products supplied to them and in fact hardly pursue for any overdue payments due from BPSB and tend to right-off monies owing by BPSB to PMB.

Recently, Susan and Victor came to know about the actions of Kassim and Muthu and they intend to pursue legal action against Kassim and Muthu on behalf of PMB.

**With reference to the common law and statute law, advise what actions may Susan and Victor pursue against Kassim and Muthu.**

**[Total: 20 marks]**

## SECTION B

### BUSINESS LAW

#### Question 4

Briefly describe the following terms with regards to the law of agency by citing case laws where relevant

- (a) **Implied authority** (5 marks)
- (b) **Ostensible authority** (5 marks)
- (c) **Duties of the Principal in an Agency** (10 marks)

**[Total: 20 marks]**

### Question 5

- (a) Briefly state and explain any five (5) of the many elements that make up a legally enforceable contract.

(10 marks)

- (b) Mary wishes to sell her laptop because she needs money to buy the latest iPad. She advertises her laptop for sale in the newspaper for RM1000. John saw the advertisement and telephoned Mary and says he will buy it at that price. Mary says she has changed her mind and now says, she will not sell it below RM1200.

John replied that he would give her RM1100. Mary replied she would only sell it for RM1200 but she would keep the offer open for seven days. The next day Mary sold the laptop to David because he was prepared to pay RM2000 for it. Mary informed John of the sale of the laptop to David.

**Advise Mary, John and David of their contractual liabilities. Support your answers with relevant case law.**

(10 marks)

**[Total: 20 marks]**

### Question 6

Ali and Benny were in business together in a small trading firm in Penang called AB Trading & Co. When they formed the business together, they agreed in writing that if the business was closed, an account was to be taken of 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 the two of them. One of the assets of the business was its lease over a building situated in a prime location. Due to the location of the building and the low rent required, the lease was a valuable asset.

Ali gave notice that he wanted to leave the business in July. One month later, Ali signed a document that claims to transfer the lease from AB Trading & Co to himself as he wanted to continue doing business in that location but as a sole trader.

Benny needs your advice on the following:

- (i) Explain what type of business structure is being used here by Ali and Benny when they were together.

(4 marks)

- (ii) Who owns the lease over the building? Does Benny have any legal rights against Ali for his actions involving the case?

(8 marks)

- (iii) When Ali decided to resign from the business, what steps should Benny have taken to ensure that he would not be liable for debts that shall be incurred by Ali's sole trading firm after they separated?

(8 marks)

**[Total: 20 marks]**

**(END OF QUESTION PAPER)**