



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

COMPANY & BUSINESS LAW

DECEMBER 2015

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 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

Jennifer has been running a hair and beauty saloon for a long time with her two friends. Their business has been very good and they have been advised by one of their customers that they should actually form a private company and expand their business further. They are rather confused by the following issues and would like your advice on the same.

- (a) **What are the main restrictions, limitations and prohibitions that must be contained in the memorandum or articles of a private company limited by shares?**
(5 marks)
- (b) **What is the meaning of the phrase, “veil of incorporation”?**
(4 marks)
- (c) **What is the significance of a “certificate of incorporation”?**
(4 marks)
- (d) **What information must be contained in a certificate of incorporation?**
(5 marks)
- (e) **When can a private company commence business?**
(2 marks)

[Total: 20 marks]

Question 2

Ah Heng, the managing director of Creative Bhd, a local company involved in providing helicopter services, was instructed by the management of his company to purchase five helicopters for the company. Ah Heng purchased the helicopters from a Canadian company through his brother Ah Meng, who is a director in the Canadian company. Ah Heng received a commission of RM150,000 from the Canadian company. Ah Heng did not inform the management of Creative Bhd on the commission received by him.

- (a) **Under common law, state briefly whether Ah Heng has breached any of his fiduciary duties as a director of Creative Bhd.**
(12 marks)
- (b) **In the event Creative Bhd wishes to remove Ah Heng as a director of the company, briefly explain the procedure under the Companies Act 1965.**
(8 marks)

[Total: 20 marks]

Question 3

In June 2015, Razali purchased 10,000 shares in Muhibbah Bhd, a non-listed public company from Shukor and was duly registered as a shareholder of the company. In October 2015, Razali sold the 10,000 shares to Abdul Sidek. Abdul Sidek received the duly executed transfer form and the relevant share certificates from Razali. However, Muhibbah Bhd informed Abdul Sidek that they could not transfer the shares to Abdul Sidek because the initial transfer of the shares to Razali has been forged and that the actual owner of the shares is Osman who is presently pursuing legal action to have his name restored to the register of members of Muhibbah Bhd.

Advise Razali on the following:

- (a) **The significance of a share certificate.** (5 marks)
- (b) **The procedure for issuing and registering of share certificates by a company.** (10 marks)
- (c) **The legal position of Razali under the above circumstances.** (5 marks)

[Total: 20 marks]

Question 4

- (a) **Briefly explain members and creditors' voluntary winding up.** (10 marks)
- (b) Kindex Oil and Gas Bhd is a company with a paid up capital of RM50 million. The company has been doing well for the past five years. However, early this year, owing to a sudden drop of crude oil prices, the company incurred substantial losses and was unable to repay its borrowings to the banks amounting to about RM120 million. The company had borrowed monies for purchase of equipment and oil exploration purposes.

The directors are concerned that the company may be wound up and have sought your legal advice on the procedure for effecting a proposed scheme of arrangement under section 176 Companies Act 1965.

Advise Kindex Bhd's directors on the procedural requirements of section 176.

(10 marks)

[Total: 20 marks]

(The rest of the page is blank)

SECTION B
BUSINESS LAW

Question 5

- (a) Compare a cheque with a bill of exchange. (6 marks)
- (b) Jamal kept his cheque book in his open bookshelf amongst other old magazines. One day, his girlfriend, Jasmine, found the cheque book and gave it to her brother, Badrul. Badrul later forged Jamal's signature on one of the cheques amounting to RM10,000. Three months later, Jamal discovered that the amount was withdrawn when he decided to read the latest bank statement he received. Jamal wanted the bank to credit his RM10,000 back into his account. Jasmine and Badrul have since left the country. Jamal argued that the signature was obviously not the same with his signature.

Advise Jamal.

(14 marks)

[Total: 20 marks]

Question 6

- (a) **Describe the various ways in which an agency relationship may be created.** (10 marks)
- (b) Judy owns a double-storey terrace house in Bukit Amanah, Selangor. She wishes to sell off the house in order to migrate to Australia. In January 2014, she appointed Malik as her agent to find a buyer for the house. Within two weeks, Judy was informed by Malik that he had managed to find a buyer, Jason, who had agreed to buy the house for RM1,000,000. Both parties signed the sale and purchase agreement in February 2014. Judy has now discovered that Malik had collected RM15,000 from Jason. As Jason was in a hurry to buy a house, he had told Malik that the money was given to him in appreciation of his services. Judy has also discovered that in January 2014, the prevailing market price for similar houses (with the same size) in Bukit Amanah, Selangor was RM1,200,000.

Discuss what would be Judy's rights against Malik and Jason.

(10 marks)

[Total: 20 marks]

Question 7

- (a) **Define 'bankruptcy' and explain an 'act of bankruptcy' under the Bankruptcy Act 1967 by giving six examples when an 'act of bankruptcy' will occur.** (14 marks)
- (b) **What are the procedures taken by them to manage the affairs of the 'debtor' after both the Adjudicating and Receiving Orders have been issued against the 'debtor'?** (6 marks)

[Total: 20 marks]

Question 8

- (a) On 7 January 2015, Sputnik and Cindy made an agreement whereby Sputnik is to give Cindy a diamond brooch by way of a gift by 24 March 2015. It is now 14 May 2015 but Sputnik has not given Cindy the brooch.

Can Cindy enforce Sputnik's promise?

(5 marks)

- (b) Chan goes into a hardware store. In one part of the store is a pile of planks with price-tags attached to each. He picks out a length of plank and takes it to the clerk. He tells the clerk to saw it into 4 pieces of 3 feet each. The clerk takes the plank and goes away to saw the plank. Chan then realises that the lengths required are 6 feet each.

Advise Chan whether he is bound by the sale.

(5 marks)

- (c) Arthur financially supports Baldwin's family for one year during Baldwin's absence during the war. Baldwin, on returning home, promises to give Arthur RM100,000 for supporting his family.

Is there a contract?

(5 marks)

- (d) Angelina's uncle promises to pay her RM10,000 if she does not wear lipstick for ten months. Angelina has not worn lipstick for more than ten months but her uncle refuses to pay her the RM10,000.

Is there a contract?

(5 marks)

[Total: 20 marks]

Question 9

- (a) “The plaintiff seeking to recover damages must prove that he mitigated his losses”.

Explain the duty to mitigate.

(4 marks)

- (b) Amy’s grandfather was a gambler who lost the family’s ancestral home in a poker game fifty years ago. In early January, Amy finally put together the funds necessary to recover her family’s ancestral home. The home is now owned by Ah Long. After protracted and often tense negotiations with Ah Long, Amy has finally managed to get Ah Long to sell her the home for RM10,000,000. Amy pays Ah Long a deposit of RM2,000,000 and is contractually required to settle the balance purchase price by 14 April. On 2 April, Ah Long delivers to Amy a bank draft in the sum of RM2,000,000 to cover her deposit under cover of a letter informing her that he does not wish to proceed with the sale.

If Amy still wants the property, which remedy is the most appropriate for her to seek?

(4 marks)

- (c) Mr Bailey was a manager of a prestigious hotel and spa. He was wrongfully dismissed by the General Manager after being told in front of his subordinates that he was “an incompetent, good for nothing but running a goat farm” without being given the six months’ notice required by his contract of employment. Mr Bailey wishes to recover damages for wrongful dismissal and the mental anguish for the harsh and humiliating manner of his dismissal.

Can Mr Bailey recover contractual damages for his injured feelings? Give reasons. (You do not have to consider his rights for wrongful dismissal).

(4 marks)

- (d) Kenny Koh is a very successful young man. To expand his garment business, he entered into a contract to purchase two machines from Fast Machines Bhd. One of the machines was needed urgently as he had entered into a lucrative contract to supply uniforms to the Royal Mandarin Armed Forces (“the army”). Fast Machines Bhd agreed to deliver both machines on 1 April 2014. In discussions leading up to the contract for the supply of the two machines, Kenny did not inform Fast Machines Bhd, about his contract to supply the army uniforms.

The machines were delivered only on 1 November 2014. As a result, Kenny lost much of the profit from his daily business. Further, he could not fulfil his contract to supply the army uniforms and has been sued for breach of contract.

Advise Kenny Koh on the damages, if any, he may recover from Fast Machines Bhd.

(8 marks)

[Total: 20 marks]

Question 10

- (a) “Today, when entering into a contract to purchase goods, one does not even think about requiring the seller to prove that he has the right to sell the goods.”

Discuss the validity of this statement with reference to section 14 of the Sale of Goods Act 1957.

(5 marks)

- (b) Company A entered into a contract of sale to purchase 1,301.553 tons of hard redwood full sawn timber of merchantable grade from Company B, located in Sabah. The contract specified that the timber was to be free from white/yellow species, decay, dead knots splits and wane. Company A paid the agreed deposit, the receipt of which Company B acknowledged.

Company B produced the requisite quantity of timber to meet the subject of contract of sale and requested Company A to arrange for a vessel and pay the balance purchase price.

Company A acquired information that led it to fear that the timber in question might not correspond to the contract description. Company A’s agent who undertook an inspection of the timber found that the majority of the cargo was white and not redwood. He discovered that the cargo was coloured/injected with red dye to look as though it was redwood when it was in fact white wood. He concluded that the cargo did not conform to the requirements of the contract and recommended that Company A not to accept the cargo. The end buyer of the shipment also travelled from Yemen to Sabah to inspect the timber. He too confirmed that the cargo that he inspected was unsatisfactory in that it had been injected with red dye, contained white and light species of wood and contained splits and wane. The end buyer refused to accept the timber. Accordingly, Company A refused to continue with its contract with Company B on the grounds that the timber tendered did not correspond to its description in the contract.

Company B has informed Company A that unless it paid the full contract price, it will sue Company A for breach of contract.

Advise Company A.

(5 marks)

- (c) Andrew was in the business of selling milk. He supplied milk to James. The milk contained typhoid germs. Mrs. James drank the milk, got typhoid fever and died. Mr James sued Andrew for supplying him with milk which was not fit for its purpose under section 16 of the Sale of Goods Act 1957.

Will Mr James succeed?

(5 marks)

- (d) Chan Kung Hong & Co (“CHKC”) claims that a tipper lorry it had contracted to buy from Lee Kan Hong Co (“LKHC”) who were in the business of selling lorries has several defects, is not roadworthy, not fit for the purpose intended and is unmerchantable. The purpose made known to the sellers before the contract was made was that it was to be used for construction work in a water pipeline project. (There is ample independent evidence to establish this list of complaints).

CKHC also says that the tipper lorry delivered did not conform to the 'sample' provided by the defendants before the contract was entered into. LKHC admits showing a lorry of the same make and year of manufacture to CKHC’s representative but denies the sale was by sample because according to them, the lorry that CKHC had bought was the one that its representative had actually seen. CKHC wants to sue LKHC for breach of section 17 of the Sale of Goods Act 1957.

Advise CKHC.

(5 marks)

[Total: 20 marks]

(END OF QUESTION PAPER)