



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

PROFESSIONAL EXAMINATIONS

FINAL LEVEL

COMPANY & BUSINESS LAW

JUNE 2015

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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 **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**

- (a) Briefly state and explain five (5) differences between a partnership and a body corporate? (10 marks)
- (b) Param and Tarmizi have been running a food business as a partnership under the name of "Parmizi Fried Chicken" in Kampar, Perak for the past 10 years. Their prices have been reasonable and "Parmizi Fried Chicken" has been well received by the local people in Kampar. They have been advised by friends to form a company as their liability would be limited. However, they are unsure as to the type of company which would possibly suit their business requirement as they would like to ensure they have complete control of the business although the company is incorporated.

**You are hereby required to advise them on the various types of company and the nature of the companies that may be incorporated under the Companies Act 1965 and the type of company which will best suit their business requirement.**

(10 marks)

**[Total: 20 marks]**

**Question 2**

Kamaruddin, Ridzuan, Chan and Alfred are directors of Genesis Berhad involved in the business of manufacturing and export of rubber gloves to the countries in the Middle East. Kamaruddin, Chan and Alfred intend to diversify their business by manufacturing plastic disposable garbage bags. Ridzuan is dead against the idea of the company manufacturing plastic disposable garbage bags at this point of time. Being very concerned of the company being totally reliant on one product, Kamaruddin, Chan and Alfred issued a letter removing Ridzuan as a director of Genesis Berhad with immediate effect from the date of the letter. Genesis Berhad was interested in setting up a factory in Mantin, Negeri Sembilan for the purpose of manufacturing the plastic disposable garbage bags. It decided to purchase a factory at RM35 million from Zaltan Sdn Bhd. Alfred owns 80% of the ordinary shares in Zaltan Sdn Bhd. During the board meeting of Genesis Berhad, Alfred did not inform the board of his interest in Zaltan Sdn Bhd.

- (a) **Advise Ridzuan on the validity of the said letter and the procedure for removal of him as a director of the company under the Companies Act 1965.** (10 marks)
- (b) **Advise Genesis Berhad of its legal rights (if any) against Alfred?**

(10 marks)

**[Total: 20 marks]**

### Question 3

- (a) The directors of Monaco Bhd, a cash-rich non-listed public company intend to reduce its share capital. The directors of the company are unsure on the requirements of the Companies Act 1965 and would like to seek your advice on the same.

**You are required to advise the directors on the following:**

- (i) **Three (3) methods by which the company could possibly reduce its share capital;**  
(6 marks)
- (ii) **Procedure or requirements for a company to reduce its share capital.**  
(4 marks)
- (b) In what order of priority are assets of a company applied in payment of debts to its creditors under a winding up?  
(10 marks)

**[Total: 20 marks]**

### Question 4

- (a) **State the qualifications of a Company Secretary.**  
(2 marks)
- (b) **Explain when a person is disqualified to act as a Company Secretary.**  
(8 marks)
- (c) Thomas, Stanley and Peter had plans to go into the food catering business. They intended to operate the business under a proposed company "Zipron Berhad" which has yet to be incorporated. Thomas had purchased a Toyota van for RM80,000 from Michael on 1<sup>st</sup> March 2015 for Zipron Berhad's food catering business. Zipron Berhad was only incorporated on 30<sup>th</sup> March 2015 and Thomas was appointed as its Chief Executive Officer. Zipron Berhad never took delivery of the van as the directors felt that the van was not suitable for the catering business. Zipron Berhad refused to pay Michael the purchase price of the van. Michael decided to bring an action against Zipron Berhad and Thomas.

**Advise Michael as to his legal rights against Zipron Berhad and Thomas.**

(10 marks)  
**[Total: 20 marks]**

**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 check 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 had been in a hurry to buy a house, he had told Malik that the money was given to him in appreciation of his services. Judy also found out 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 the term '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) **Explain the procedures taken to manage the affairs of the Debtor after both the Adjudicating and Receiving Orders have been issued against the Debtor.** (6 marks)

(6 marks)  
**[Total: 20 marks]**

**Question 8**

- (a) **Distinguish between executed and executory consideration.** (2 marks)

- (b) Kelvin offered to sell his motor car to Joan for RM100,000. Joan replied, offering RM 95,000, which Kelvin refused. Joan then agreed to pay the original price of RM100,000. Kelvin, although had not withdrawn his offer at that stage, he neither assented nor rejected this proposal but he subsequently refused to go through with the sale.

**Can Joan bring an action against Kelvin?** (6 marks)

- (c) Kandasamy and Muniandy wrote to each other on the same day. Kandasamy offered to buy 800 tons of iron at RM690 per ton, Muniandy offered to sell the same quantity at the same price.

**Will Kandasamy be able to enforce the resulting 'contract'? Give reasons for your answer.** (6 marks)

- (d) Philip, the owner of a palatial mansion worth RM20 million, freely agrees to sell it to his long-time friend for RM1.00.

**Is this a valid promise?** (6 marks)

**[Total: 20 marks]**

### Question 9

(a) **“Plaintiffs must prove their damage to recover damages”. Explain.** (2 marks)

(b) Gulji is a passionate collector of antique cars. Just before the Second World War, the Mercedes Benz Tourer was produced. All but seven of these cars were destroyed during the war. One of these cars is in Malaysia and it is owned by Ah Bah. After a long and tense negotiations, Ah Bah contracts to sell his Mercedes Benz Tourer to Gulji for RM20 million. Gulji pays Ah Bah a deposit of RM2 million and agrees to pay the remaining RM18 million in three days' time with a banker's cheque. On the appointed day, Gulji turns up and tenders to Ah Bah a banker's cheque made out in favour of Ah Bah in the sum of RM18 million but Ah Bah refuses to go through with the sale. Gulji desperately wants the car.

**Which remedy would be most appropriate for Gulji?**

(6 marks)

(c) Elsa is the purchasing manager of a hotel. She contracts to buy 100 tons of fresh pineapples at RM1,000 from a supplier in Johor. The supplier fails to deliver the pineapples to her at the agreed time and date. Elsa then purchases the same quantity from a supplier in Malacca at RM900 per ton.

**What damage, if any, may Elsa claim against the supplier in Johor? Give reasons for your answer.**

(6 marks)

(d) Max is the owner of a high-class coffee shop located inside a shopping mall in Sunway. He placed an order for top grade coffee beans with Brian, a coffee beans importer and the delivery date was agreed to be May 2014. As business in the Sunway Coffee Shop was good, Max decided to open another coffee shop in Petaling Jaya. He rented a shop and paid rent and deposit totaling RM50,000. Brian delivered the coffee beans to Max in October 2014. Without the top-grade coffee beans, Max had to use lower-grade coffee beans to serve his customers in the Sunway Coffee Shop and many customers stopped coming to his coffee shop. Also, he had to cancel the lease of his new shop and the landlord refused to refund him the RM50,000.

**Give reasons to explain whether Max can successfully bring an action against Brian for:**

(i) **Loss of profits for his Sunway shop;** (3 marks)

(ii) **Loss of RM50,000 due to the cancellation of the lease of his new coffee shop in Petaling Jaya.**

(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 refrigerator purchased from a showroom.
- (ii) A bungalow purchased from the owner.
- (iii) Beauty treatment at a saloon.
- (iv) Allotted but yet to be paid for shares in a company.
- (v) A claim for breach of contract.
- (vi) An air conditioning unit installed in a window.

(1 mark each for a total of 6 marks)

(b) **Are the following transaction considered a contract of sale of goods under the Sales of Goods Act 1957? Give reasons.**

- (i) UK currency exchanged for RM\$1,000 at the currency exchange counter outside the departure lounge of the Kuala Lumpur International Airport.
- (ii) A diamond ring exchanged for a ruby.
- (iii) Fresh bread and a 40-pound roast turkey purchased by credit card at a supermarket.
- (iv) The financing of a car by a loan.
- (v) Furniture acquired under a lease.
- (vi) The purchase of a cargo of sugar cane on board a ship which, unknown to the parties, had earlier perished at sea.

(1 mark each for a total of 6 marks)

(c) Charlie enters a shop named “Rambo Adventures Ltd”. He speaks to a salesperson to whom he says, “Look, I have never done this before and need your help. I’m going climbing the Himalayas and I need a warm sleeping bag. What have you got?”

The salesperson shows Charlie three sleeping bags, one of which is manufactured by X. The salesperson tells Charlie to select one. Charlie selects X’s tent and pays the cashier RM1,750.

Charlie goes to the Himalayas and suffers frost -bite because the sleeping bag is totally inadequate. In fact the sleeping bag is designed for use in mild climates. Charlie, having consulted his lawyer friend, hobbles into R’s store and demands compensation on grounds that the sleeping bag was not fit for its purpose under the Sale of Goods Act 1957.

**Advise the shop manager whether the sleeping bag is fit for its purpose under the Sale of Goods Act 1957.**

(8 marks)

**[Total: 20 marks]**