



Malaysian Institute of Accountants

(Established under the Accountants Act 1967)

Institut Akauntan Malaysia

(Diperbadankan di bawah Akta Akauntan 1967)

QUALIFYING EXAMINATION

Business and Company Law

Date : 14 March 2018
Time : 9.30 am – 12.45 pm
Reading and Planning : 15 minutes
Writing : 3 hours

INSTRUCTIONS TO CANDIDATES:

This question paper contains 7 questions on 6 printed pages.

Section A: Answer any 2 questions out of 3

Section B: Answer any 3 questions out of 4

Answer questions 1, 2 and 3 in separate booklet(s) from questions 4, 5, 6 and 7.

During reading and planning time only the question paper may be annotated. You must **NOT** write in your answer booklet until instructed by the invigilator.



UNIVERSITI TEKNOLOGI MARA
Examination Body

Paper : Business and Company Law

SECTION A**QUESTION 1**

- a. Mark hired David's hall for the purpose of performing concerts. They entered into a contract amounting to the sum of RM250,000. Meanwhile, Mark had sold all tickets to the concert. Two days before the date of the concert, the hall was accidentally burnt down.

Advise David on his obligations towards Mark regarding their contract.

(8 marks)

- b. Under the law of contract in Malaysia, an invitation to treat is not an offer but a mere invitation to make an offer.

Give three (3) examples of invitation to treat with the support of corresponding cases.

(6 marks)

- c. The Sale of Goods Act, 1957 (SOGA) describes three (3) vital elements in a contract of sale.

Describe all three (3) elements with the support of either statutory provisions and case laws.

(6 marks)

(Total: 20 marks)

QUESTION 2

- a. State briefly, three (3) of the conditions which must be fulfilled before an agency by necessity may arise.

(5 marks)

- b. Mello was appointed by Ijan as the F&B manager for his new hipster bistro. Mello was also authorised to make purchases for the day-to-day running of the business on behalf of Ijan. Among the items normally procured are liquor and cigarettes. Mello was approached by Idin who offered to supply liquor and cigarettes at half the price Mello usually pays. Idin also made clear to Mello that the items were smuggled into the country to evade tax, thus the low price. Normally, purchases were made on a one-month credit basis and Ijan will pay all bills at the end of each month. For this transaction, Idin requires that it be in cash terms. Mello will have to pay for the merchandise with his own money first and claim reimbursement from Ijan later. Mello, without consulting Ijan, agreed to purchase the items from Idin.

A week later, a raid by the authorities at their business premises resulted in the smuggled items being confiscated. Ijan and Mello were charged for selling and having in custody, smuggled liquor and cigarettes, which is an offence.

Despite the criminal charge, Mello seeks legal advice as to whether he may be indemnified for the money he paid for the items, since he made the purchase in the interest of Ijan's business.

Advise Mello.

(9 marks)

c. Explain the following:

i. A situation whereby an agent may have apparent/ostensible authority;

(3 marks)

ii. How a person may become an agent by necessity.

(3 marks)

(Total: 20 marks)

QUESTION 3

- a. Ed and Zane were partners in a legal firm. During their partnership, Ed and Zane had both agreed to purchase two cars, using the firm's money. These cars were meant to facilitate the day to day running of the firm's business. The cars were each registered under Ed and Zane's names. Ed recently died of a heart disease and Zane decided to retire from the business. Ed's son, acting for his estate, is now claiming that the car is a property of the partnership and requires Zane to return it.

Explain whether Zane may keep the car.

(6 marks)

- b. Explain how, a partnership may be considered to exist, even if there is no partnership agreement.

(4 marks)

- c. Ronkown & Associates was appointed as auditors to prepare the financial and due diligence report meant to be used for the initial public offering of Petra Sdn Bhd. Ronkown & Associates' audited accounts for Petra Sdn Bhd showed a consistent profit of RM500,000 per year for the last five years, when the company actually made a total loss of RM2 million during the same period.

Ronkown's financial report was somehow obtained by a manager for Durh Bank Bhd who used it in his assessment of the creditworthiness of Petra Sdn Bhd. Meanwhile, Durh Bank Bhd disbursed a sum of term loan to Petra Sdn Bhd based on this assessment and Petra Sdn Bhd eventually defaulted. Durh Bank Bhd sues Ronkown & Associates for the erroneous audit report.

Advise Ronkown & Associates, whether they owe any duty of care towards Durh Bank Bhd.

(10 marks)

SECTION B**QUESTION 4**

- a. According to Justice C. Cockburn in the case of *Twycross v Grant (1877) 2 CPD 469*, "Promoter is one who undertakes to form a company with reference to a given project and to set it going, and who takes the necessary steps to accomplish that purpose."

- i. Explain who is defined as a promoter of a company.
(2 marks)
- ii. State briefly what are the essential duties imposed by the law on a promoter of a company.
(3 marks)
- iii. Explain what are the remedies available for a company if a promoter breaches his/her duties.
(3 marks)

- b. Harris has recently been appointed as the company secretary of Mojo Bhd. He made a few inquiries on matters regarding Companies resolution.

With reference to the Companies Act 2016, advise Harris on the following:

- i. What is a special resolution and the instances in which a special resolution is required?
(6 marks)
 - ii. What are the requirements to affect the resolution requiring special notice?
(4 marks)
 - iii. What are the instances provided under the Act that would require the giving of a special notice before a resolution can be passed?
(2 marks)
- (Total: 20 marks)

QUESTION 5

- a. Justine is the director in Funmarine Sdn Bhd (Funmarine) which main business is selling and purchasing luxury yachts. He was also a shareholder and director of another company named Seaship Sdn Bhd (Seaship). Funmarine placed orders for several outboard engines but Justine had advised Funmarine to cancel the order to avoid payment of export duty. Justine also alleged that there were no buyers for the outboard engines. Funmarine cancelled the orders and had to forfeit its deposit. It was later found that Justine received commission for purchase of outboard engine from Seaship with another company.
- i. Advise Funmarine Sdn Bhd whether they have any cause of action against Justine.
(8 marks)
- ii Advise Funmarine Sdn Bhd whether they could claim damages from Justine for the secret commission, assuming they have cause of action against Justine.
(4 marks)
- b. With reference to the Companies Act 2016, state the features and the exemptions of an *Exempt private company*.
(4 marks)
- c. A director's "business judgement" is deemed to meet the requirements of the duty of care, skill and diligence when directors fulfil 4 instances which is provided under the Companies Act 2016.

State briefly the four (4) instances provided by the Act.

(4 marks)
(Total: 20 marks)

QUESTION 6

- a. Samura Sdn Bhd has four directors with equal shareholders namely Chia, Elen, Baba and Safi. The company has been in operation for the past five (5) years and is fast blooming. In recent times, there has been a communication break down between Safi and the other three directors. Worrying and fearing that Safi will be causing problems in the future, the other directors are adamant in issuing new shares to Meily, the senior operation manager of the company, which would have the effect of diluting Safi's shares to 15% only and to make the company to act as a guarantor for a loan to be taken by Meily from Cash Bank Bhd, to pay for the shares.
- i. Advise Safi whether he could successfully challenge the validity of the guarantee given by the company to Cash Bank Bhd.
(5 marks)

- ii. State briefly the six (6) exceptions to the prohibition against financial assistance by a company for the purchase of its own, or its holding company's shares.
(6 marks)
- b. An approved company auditor is disqualified from acting as auditor for a company under certain circumstances set out in the Companies Act 2016.

State any five (5) of these circumstances.
(5 marks)
- c. With reference to the Companies Act 2016, explain Corporate Voluntary Arrangement (CVA) and Judicial Management.
(4 marks)
(Total: 20 marks)

QUESTION 7

- a. Manyco Bhd has passed a special resolution to alter its articles of association, to allow the compulsory transfer to the directors of the shares of any member competing with the company's business. A minority of the shareholders are in a competing business, and are seeking to have this alteration declared invalid.
- i. With reference to the Companies Act 2016, describe the method effecting the alteration made by Manyco Bhd.
(3 marks)
- ii. Explain whether the minority shareholders in Manyco Bhd could succeed in their action to have the alteration made by Manyco declared invalid.
(7 marks)
- b. Ranskop Bhd is a public company listed on the Bursa Malaysia, whose main activity is the manufacturing of iron rods used in a heavy construction projects for high rise buildings. Due to the competitive market in the industry, Ranskop Bhd is unable to meet the demands of its creditors. Build Bank Bhd, a debenture holder secured by a floating charge intends to appoint a receiver. Ranskop Bhd is not in the course of winding up.
- i. Explain the duties of the receiver appointed by Build Bank Bhd.
(7 marks)
- ii. What is the position of the receiver assuming that Ranskop Bhd going into compulsory or voluntary winding up?
(3 marks)
(Total: 20 marks)

END OF QUESTION PAPER