

SECTION A

QUESTION 1

- a. In the context of invitation to treat in contracts, elaborate on the following using case illustrations:

- i. Goods on display;
- ii. Auction.

(6 marks)

- b. State the circumstances provided under the Contracts Act, 1950 which may cause a revocation of an offer.

(4 marks)

- c. Salim assisted in the incorporation of a construction company and also secured a housing development contract for the company. After the incorporation of the company, it made the following pledge in writing, which includes inter alia "*in appreciation of Salim's services, the company agreed to pay Salim 1% of the value of the entire housing development secured by Salim on behalf of the company, prior to its formation...*".

The company failed to honour its promise to Salim.

Required:

Salim seeks your advice as to the validity of the contract.

(10 marks)

(Total: 20 marks)

QUESTION 2

- a. The definition of a contract of sale under section 4(1) of the Sales of Goods Act (SOGA), 1957 describes that, "*a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price*". There are three (3) vital elements in the definition which, in the absence of any one of them in the transaction, it is not a sale of goods within the 1957 Act.

Required:

State all three (3) elements.

(6 marks)

- b. In order to protect commercial transactions, the SOGA, 1957 creates various exceptions to the *nemo dat* rule. One of the exceptions is for the sale by a mercantile agent.

Required:

Explain the above exception with reference to statutory provisions and case laws.

(6 marks)

- c. State all the conditions that must be fulfilled for an agency by ratification to arise. Support your answer with statutory provisions or case laws.

(8 marks)

(Total: 20 marks)

QUESTION 3

- a. In relation to section 3 of the Partnership Act, 1961, explain the essential elements that determines the existence of a partnership.

(4 marks)

- b. Romeo and Juliet are partners in a legal firm, styled as Romeo and Juliet & Co (RJ & Co). At the formation of the partnership, it was agreed between them that the firm will not undertake to render their professional services to any commercial development which involves the destruction of any gazetted forest reserve.

Recently, Racoust Development Bhd (RBD), a property development company, contacted Juliet requiring RJ & Co to act as their solicitor for a development project which involves the destruction of a forest reserve.

Juliet explained their policy to RBD but RBD offered a very lucrative legal fee if Juliet agrees to represent them. Without Romeo's knowledge, Juliet gave her agreement to act on behalf of RBD.

Juliet made some mistakes in one of the contract documents, resulting in RBD suffering losses. RBD now sues RJ & Co for the losses incurred.

Required:

With reference to statutory provisions, determine whether Romeo and Juliet & Co may be liable for the losses caused to Racoust Development Bhd.

(6 marks)

- c. Asiah's husband had vomited after drinking tea at a coffee shop. Asiah brought him to Hospital Alpa for treatment. It was 3 am in the morning and there was no doctor on duty. The nurse on duty had called doctor Hairani who was the doctor on-call, for instructions. Dr Hairani instructed the nurse to tell the patient to go home and consult his own doctor in the morning. Asiah's husband died later that day. The cause of death was diagnosed as arsenic poisoning and that he would have died anyway, even if Dr Hairani had treated him.

Required:

Advise Asiah whether she may be successful in suing Hospital Alpa and Dr Hairani for negligence.

(10 marks)

(Total: 20 marks)

SECTION B**QUESTION 4**

- a. Incorporation of a company casts a veil over the true controllers of the company, a veil through which the law will not usually penetrate. However, in the interest of justice and equity, number of statutory provisions have also provided for the lifting of the corporate veil, in certain situations.

Required:

Explain the corporate principle and any five (5) situations where the veil of incorporation may be lifted.

(11 marks)

- b. Anand, Patrick and Zarif decided to form a Real Estate company to be called Sunstone Sdn Bhd (the company). A week before the company obtained its certificate of incorporation, Patrick acting on behalf of the company, entered into a contract with Kala Sdn Bhd, whereby Kala Sdn Bhd was to supply RM30,000 worth of stationery to the company. After the company's incorporation, the company refused to honour the contract.

Prior to obtaining the certificate of incorporation from the Registrar of Companies, Anand and Zarif purchased a piece of land from Fredy at a bargain price of RM250,000 (the market value of the land was RM350,000). After the company was formed, they sold it to the company for RM350,000 without disclosing its bargain purchase price. The company has now discovered the true facts and wishes to rescind the sale, or alternatively, claim from Anand and Zarif the profit of RM100,000 which they made on the sale.

Required:

- i. Advise Kala Sdn Bhd as to whether it can enforce the contract against the company, or alternatively against Patrick personally.

(4 marks)

- ii. Advise Sunstone Sdn Bhd on the possible cause of action that could be made against Anand and Zarif for the non-disclosure of the actual land price.

(5 marks)

(Total: 20 marks)

QUESTION 5

- a. Laifstail Sdn Bhd is a company specialising in manufacturing and trading of all kinds of home-ware products. Since 2016, the business has taken for the worst due to stiff competition. In order to counter this downturn, the company then resorted to heavy borrowing.

Laifstail Sdn Bhd took a loan from Nuro Bank Bhd for a sum of RM3 Million. This loan was secured by a debenture on a floating charge over all the company's assets and undertakings. This floating charge document had incorporated a 'negative pledge clause' in it. This loan was given in June 2017.

Subsequently, in September 2017, Laifstail Sdn Bhd applied for and obtained another loan from Dolla Bank Bhd. A sum of RM2 Million was given to the company and secured by a fixed charge on the company's factory and shop-houses in Taiping.

In January 2018, the company needed more fund and borrowed another RM3 Million from Dime Bank Bhd. This loan was secured by a debenture on a floating charge over all of its assets and undertakings. One of the express conditions of this charge is, it ranks in priority over all other floating charges created by the company.

Last week, a winding up order was made against Laifstail Sdn Bhd. A liquidator has been appointed. The company's liabilities far exceeded its assets.

Required:

Presuming that all the charges have been duly registered, advise the liquidator on:

- i. the position of Nuro Bank Bhd and Dime Bank Bhd in this situation. (8 marks)
- ii. the effect of the 'negative pledge clause' that has been incorporated in the floating charge document. (2 marks)
- iii. the position of Dolla Bank Bhd as a secured creditor having priority over the other two creditors. (3 marks)
- b. Explain, "raising up capital" by a company in the context of:
- i. Public company
- ii. Private company (5 marks)
- c. Explain the civil liability of persons with regard to the issuance of a misleading prospectus. (2 marks)
- (Total: 20 marks)

QUESTION 6

- a. Khan and Rukh are shareholders of Tigmo Sdn Bhd. Together they hold 40% of the issued shares of the company. The directors of the company are Shah, Manju, Leo and Lily who are also shareholders, each holding 15% of the company's shares.

In September 2019, the company entered into a contract with Steelwood & Co for the purchase of RM400,000 worth of office furniture. It has recently been discovered that Leo and Lily are partners in Steelwood & Co, together with two others.

Two months ago, Shah and Manju negotiated on behalf of the company a contract with the government of Nonethelan under which Tigmo Sdn Bhd would get a profit of RM7 million. Last month, the directors diverted the benefit of the contract to another company, Maisuri Sdn Bhd, a company which was set up by the directors themselves and the shareholders of which are also themselves. When Khan and Rukh protested over this, the directors called up a general meeting at which this matter was ratified by the directors as majority shareholders.

Required:

Discuss whether there has been any breach of duty to the company by any or all of the directors in respect of the above two matters and any remedies that may avail the company.

(12 marks)

- b. Sam and Dave have been appointed as directors of Majuduo Sdn Bhd, a company which was incorporated only two weeks ago. They intend to appoint their friend, Lina, as the company's auditor.

Lina, who has just graduated with a degree in engineering, is delighted to accept the offer.

Required:

Advise Lina:

- i. Whether, there are any specific requirements under the Companies Act, 2016 as to the qualifications of a company auditor and whether she qualifies to be appointed as one.

(4 marks)

- ii. Whether, the directors can remove an auditor at any time at their option or whether there is any procedure under the Companies Act, 2016 which may afford an auditor some protection from such removal.

(4 marks)

(Total: 20 marks)

QUESTION 7

- a. The corporate disclosure rules on Bursa Malaysia require a listed company to make immediate public announcement of all 'material information' concerning its affairs.

Required:

- i. Explain what is 'material information'.
(2 marks)
- ii. State six (6) examples of events which may require immediate disclosure as illustrated in the rules.
(3 marks)
- b. In relation to corporate rescue mechanism introduced by the Companies Act 2016, explain Judicial Management and the parties involved in making the application.
(3 marks)
- c. Kwasa Enegi Sdn Bhd, a company dealing in the manufacture of light bulbs, has two directors, Jani and James. Both were childhood friends. The business was very profitable for the first few years, however, between 2016 to 2019 Kwasa Enegi Sdn Bhd is facing critical financial issues.

Things have gone from bad to worse when its founding shareholders, Jani and James could no longer tolerate one another and had caused a battle for control in the company. James began to question Jani on minor matters and cast doubts as to Jani's sincerity in the conduct of the business. Jani made decisions on his own without consulting James. He began using company's funds for his personal matters and took frequent trips overseas, supposedly to secure business deals on behalf of the company. In fact, no such business deal had ever been successfully concluded on behalf of the company. Soon, matters came to a head and they stopped communicating with each other.

Operations were severely affected when Jani started to terminate the employees seen to align themselves with James from the company.

James, feeling aggrieved and disheartened comes to you for legal advice.

Required:

Advise James on the following matters:

- i. Explain whether James can wind up the company or whether the company can be wound by the creditors.
(10 marks)
- ii. In the event Kwasa Enegi Sdn Bhd is wound up, explain when the winding up will commence.
(2 marks)
- (Total: 20 marks)

END OF QUESTION PAPER