



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 : 18 March 2020
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 5 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. Consideration must be sufficient but need not be adequate.

Explain the above expression in relation to the law of contract in Malaysia.

(5 marks)

- b. Section 28 of the Contracts Act 1950 provides that any agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is, to that extent, void.

Explain three (3) exceptions to the above provision.

(6 marks)

- c. Under the law of contract in Malaysia, explain three (3) ways by which a contract may be discharged.

(9 marks)

(Total: 20 marks)

QUESTION 2

- a. Under the Sale of Goods Act 1957 (SOGA), there are three (3) vital elements that must be present in a transaction, before it is defined as a contract of 'sale of goods'.

State and explain the three (3) elements.

(6 marks)

- b. With reference to the Sale of Goods Act 1957, explain the meaning of 'future goods'.

(4 marks)

- c. State and explain the duties of a principal towards his agent.

(10 marks)

(Total: 20 marks)

QUESTION 3

- a. In relation to partnership, briefly explain the legal principles concerning the following:

- i. the minimum and maximum number of partners in the firm;
- ii. each partner's liability for debts;
- iii. whether the partnership is a legal entity.

(4 marks)

- b. Abu and John were partners in a legal firm. In the course of their partnership, Abu and John had both agreed to purchase two vans, using the firm's money. These vans were meant to facilitate the day to day running of the firm's business. The vans were each

registered under Abu and John's names respectively. Abu recently died and John decided to retire from the business. Abu's son, acting for his estate, is now claiming that the van is a property of the partnership and requires John to return it.

Explain whether John may keep the van.

(6 marks)

- c. Park Hung Bhd., a finance company, lent money to a group of companies after reviewing their audited accounts. John Lanja, an investor, bought shares of the companies with a view of making profit. The borrowers were unable to meet their commitments and Park Hung Bhd. has filed an action against the external auditors, alleging that they had been negligent in conducting the audit and that the negligence had caused Park Hung Bhd. to suffer loss. Meanwhile, John Lanja also filed a legal action against the auditors, claiming that the audited accounts were inaccurate and had caused him losses.

Advise the auditors as to whether they owed a duty of care to Park Hung Bhd. and John Lanja.

(10 marks)

(Total: 20 marks)

SECTION B

QUESTION 4

- a. A company incorporated under this Act is a body corporate and shall have legal personality separate from that of its members; and continue in existence until it is removed from the register. (Section 20 of the Companies Act 2016)

With reference to the law as stated in Section 20 above, explain the effects of incorporation of a company.

(6 marks)

- b. Briefly discuss an exempt private company.

(5 marks)

- c. The objects clause of Horizon Bhd. provides that the business of the company is to design and create electronic commerce websites. The company's three directors, Dillon, Bella and Ann own 20 per cent each of the company's shares, with the remaining shares split equally between two members, Sim and Mel. The board, and Sim have agreed to diversify their business to incorporate design and installation. However, Mel believes that the company should stick to its original aim of only designing electronic websites. She argues that Sim and the board are acting outside the scope of its constitution. The board, and Sim are tired of Mel's complaints and passed a resolution to alter the company's constitution, which provides the majority with the power to compulsorily purchase the shares of any minority member. They exercise this power and expel Mel as a member.

Required:

- i. Advise Mel whether she is likely to be successful if she challenges the validity of the resolution.
(6 marks)
- ii. The company contains a clause which states that the name of the company is not alterable. Advise Mel whether she can challenge Horizon Bhd. if it passes a resolution to alter its name to Vertical Bhd.
(3 marks)
(Total: 20 marks)

QUESTION 5

- a. With reference to company law, briefly explain 'company's share capital'.
(2 marks)
- b. Ekses Bhd., a public listed company, intends to reduce its capital under the Companies Act 2016. However, the company is very concerned that the reduction of capital may go against the doctrine of maintenance of capital as creditors may be prejudiced.

Explain on the 'methods' and 'ways' on how Ekses Bhd. may reduce its capital under the Companies Act 2016.
(4 marks)
- c. Tata, a preference shareholder of Dualcomm Bhd., holds 10% of the preference shares in the company which entitles him to a fixed dividend of 7% per annum and a voting right on a poll of one vote per share on all matters at general meetings of the company. The company has been suffering losses due to the economic downturn for the past 3 years. Consequently, Dualcomm Bhd. has proposed to change the fixed dividend of preference shareholders from 7% per annum to 6% per annum.

Required:

- i. Briefly state, the rights that could be acquired by Tata as a preference shareholder as mentioned under the law.
(6 marks)
- ii. Advise Tata whether the proposed change by Dualcomm Bhd. is permitted under the Companies Act 2016.
(5 marks)
- iii. Assuming that the proper procedure has been followed by Dualcomm Bhd. in effecting the proposed change, explain whether Tata could challenge the validity of the changes made.
(3 marks)
(Total: 20 marks)

QUESTION 6

- a. 'A director owes duties to his company. Traditionally no duty is owed to the members of the company.' (*Percival vs Wright (1902)*).

With reference to the above stated law, discuss the fiduciary duties of directors.

(7 marks)

- b. Meriaya Bhd. wishes to appoint one of its directors, Stan, as its company secretary. Stan holds a master's degree in public administration from a local university, but has no previous experience as a company secretary.

Advise the company, with reference to the Companies Act 2016, as to:

- i. the qualifications required to become a company secretary; (4 marks)
- ii. the disqualifications, of a company secretary; AND (4 marks)
- iii. whether Stan is qualified to be appointed as the company secretary of Meriaya Bhd. (2 marks)
- c. Define a 'written resolution' and state when a written resolution may not be used.

(3 marks)

(Total: 20 marks)

QUESTION 7

- a. The court may order the winding up of a company on the grounds that the company is unable to pay its debts. In reference to the Companies Act 2016, explain what is meant by 'unable to pay its debts'. (6 marks)
- b. Baba, the managing director and majority shareholder of a small private limited company, Tanamira Sdn. Bhd., is very concerned that the company is not trading well and may have to cease doing business. He seeks your advice to explain the differences between members voluntary winding up and creditors winding up. (5 marks)
- c. Explain the major differences between a liquidator and a receiver and how each of them are appointed. (6 marks)
- d. Briefly define corporate governance. (3 marks)

(Total: 20 marks)

END OF QUESTION PAPER