
Answers

- 1 This question on the Malaysian legal system tests the candidates' knowledge on 'human rights' and the functions of the Human Rights Commission.
- (a) Human rights refers to the basic rights that all human beings are entitled to enjoy. Human rights is defined in s.2 Human Rights Commission of Malaysia Act 1999 to mean the fundamental liberties provided for under the Federal Constitution of Malaysia.
- (b) By s.4(1) Human Rights Commission of Malaysia Act 1999, the functions of the Human Rights Commission (SUHAKAM) are:
- (i) to promote awareness of, and provide education, relating to human rights;
 - (ii) to advise and assist the Government in formulating legislation and procedures and recommend the necessary measures to be taken;
 - (iii) to recommend to the Government with regard to subscription or accession of treaties and other international instruments in the field of human rights; and
 - (iv) to inquire into complaints regarding infringements of human rights.
- (c) The provisions relating to human rights in Malaysia refer to the fundamental liberties as stated in Part II of the Federal Constitution. These include the following:
- (i) No person may be deprived of his life or personal liberty except in accordance with the law.
By this provision, individuals are protected from being unlawfully imprisoned or put to death. An individual who is unlawfully detained may obtain an order of the court through a writ of *habeas corpus*. This is an order of the court requiring that he be lawfully charged in court or be released. However, this right is not absolute. A person may still be deprived of his life or liberty in accordance with the law. Thus the Internal Security Act 1960 (which was passed under powers conferred by Art. 149 of the Constitution) permits, among other things, preventive detention.
 - (ii) No person may be subject to slavery or forced labour.
The Constitution recognises that individuals should not be regarded as the property of others and thus bans all forms of slavery and forced labour. However, this right of the individual is given subject to the paramount interests of the nation. Thus, Parliament may make laws providing for compulsory national service.
 - (iii) No person can be punished under a law which was not in force when the alleged crime was committed. This protects the individual from being charged with a crime that was not recognised as a crime at the time the alleged wrongful act was done. Thus, laws against crimes cannot be passed with retrospective effect.
 - (iv) Citizens cannot be discriminated against in relation to appointment to any office or employment under a public authority, or in relation to acquisition of property, establishing or carrying on of any trade, business, profession, vocation or employment, merely on grounds of religion, race, descent or place of birth. However, this right is subject to Art. 153 of the Federal Constitution, which permits the granting of special privileges to *bumiputras*.
 - (v) Citizens cannot be discriminated against in relation to the providing of education, merely on grounds of religion, race, descent or place of birth. This again is subject to Art. 153, which permits the granting of special privileges to *bumiputras*.
 - (vi) Freedom of religion
The Constitution also entrenches the right of the individual to profess, practise and propagate his own religion. However, as Islam is the religion of the country, restrictions may be placed upon the propagation of other religions among Muslims.
 - (vii) No citizen may be banished from the country. However, this right is subject to exceptions whereby the Federal Government is permitted to deprive a person of his citizenship under certain circumstances.
 - (viii) Every citizen has the right to freedom of speech, peaceful assembly and association. However, in the interests of security, public order or morality, Parliament may impose certain restrictions. For example, the Sedition Act 1948 provides that it is an offence to question the sovereignty, powers and prerogatives of the rulers and the special position of the Malays. Further, the freedom of speech does not entitle a person to defame another. A person defamed has a right to sue under the law of defamation.
- (Candidates are only expected to explain any THREE of the above rights.)

2 This question on contract law tests the candidates' knowledge and understanding of the distinction between a proposal and an invitation to treat as well as the distinction between an acceptance and a counter-proposal.

- (a) It is very important to distinguish a proposal from an invitation to treat. A proposal (offer) is one of the essential ingredients of a valid contract. Section 2(a) Contracts Act 1950 states that a proposal is made when one party 'signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence'. When the proposal is unconditionally accepted, a binding agreement arises. For example, A may make an offer to B in the following terms: 'I offer to sell you my car, a Proton Saga 2005 model, for the price of RM20,000.' If B unconditionally accepts the offer, a binding agreement arises.

The offer must be clear. If the terms of the offer are vague it will not be a valid offer. The case of *Gunthing v Lynn* (1831) provides an illustration. In this case, an offer to pay an additional amount if the horse proved 'lucky' was held to be too vague.

A proposal must be distinguished from an invitation to treat. The invitation to treat is in law only an effort to invite others to make an offer. An invitation to treat is not capable of being accepted so as to create a binding agreement. A common example of an invitation to treat is a display of goods for sale in a shop. A case in point is *Pharmaceutical Society of Great Britain v Boots Cash Chemists* (1957). In this case, the issue was whether a display of drugs on the shelves of a pharmacy amounted to an offer, which was accepted when the customer took it and placed it in a wire basket. The court held that the display of the drugs did not amount to an offer. It was a mere invitation to treat.

Other examples of invitation to treat are advertisements and invitation for tenders.

- (b) It is also very important to distinguish an acceptance from a counter-proposal (counter-offer). As stated in (a) above, there must be a valid acceptance of an offer in order to create a binding agreement. Section 2(b) Contracts Act 1950 states that a proposal is accepted, 'when the person to whom the proposal is made signifies his assent thereto'. Further, by s.7(a) Contracts Act 1950, such acceptance must be 'absolute and unqualified'. Thus, there will only be a valid acceptance if the acceptor (offeree) accepts the terms of the offer without any conditions or modifications. If the offeree purportedly accepts with some modification made to the offer, then it would only amount to a counter-proposal (counter-offer). A counter-proposal has the effect of rejecting the original proposal.

A case in point is *Hyde v Wrench* (1840). In this case, the defendant offered to sell his property to the plaintiff for a price of £1,000. The plaintiff replied stating his willingness to purchase it at a price of £950. When this price was not acceptable to the defendant, the plaintiff wrote to the defendant accepting the original offer. The court held that the plaintiff's reply indicating his willingness to purchase the property at £950 amounted to a counter-proposal (counter-offer), which had the effect of destroying the original offer. Thus, when the plaintiff purportedly accepted the original price, the offer had ceased to exist.

3 This question on employment law tests the candidates' knowledge on the distinction between a contract of service and a contract for services and the methods applied by the courts to determine whether a contract of service has come into existence.

- (a) A contract of service is a contract between an employer and an employee under which the employee agrees to work for the employer. The Employment Act 1955 defines a contract of service as, 'any agreement whether oral or in writing and whether express or implied, whereby one person agrees to employ another as his employee and that other agrees to serve his employer as employee and includes an apprenticeship contract'.

The Industrial Relations Act 1967 also defines such a contract but refers to it as a 'contract of employment'. Under this Act, a 'contract of employment' is defined as, 'any agreement whether oral or in writing and whether express or implied, whereby one person agrees to employ another as a workman and that other agrees to serve his employer as a workman'.

It has generally been accepted that there is no distinction between the two definitions.

A contract for services, on the other hand, is essentially different from that of a contract of service/employment. It does not create an employer–employee relationship and does not therefore come within the purview of the Employment Act and the Industrial Relations Act. It merely creates a contractual relationship between an employer and an independent contractor.

- (b) It is sometimes difficult to distinguish a contract of service from a contract for services.

The criteria applied by the courts in order to determine if a contract of service has in fact arisen are the following tests as explained below:

- (i) The control test.

This test relates to the extent of control which the employer has over the employee in relation to the manner in which the employee was to do his work. The greater the control, the greater the possibility that there is a contract of service.

The control test has been seen as inadequate especially in occupations of a skilled or professional nature because the employer may be unable to exercise such control.

- (ii) The integration test.

This test relies on the extent to which a person can be considered as part and parcel of an organisation. The greater the integration with the organisation the greater the possibility of a contract of service.

(iii) The multiple test.

This test, which is more relied upon nowadays, takes into account multiple considerations in order to determine whether a contract of service exists. Among other things, the courts will take into consideration the extent of control, the power of selection and appointment, the power to suspend and dismiss the employee, the intention of the parties and the nature and contents of the agreement between them.

4 This question on company law tests the candidates' knowledge on some basic aspects of liquidation of companies.

(a) The persons who can petition for the winding up of a company by the court are listed in s.217(1) Companies Act 1965. Among the persons listed are:

- (i) the company itself;
- (ii) any creditor, including a contingent or prospective creditor of the company;
- (iii) a contributory or his or her personal representative or a trustee in bankruptcy or the Director-General of Insolvency of the estate of a bankrupt contributory;
- (iv) the liquidator;
- (v) the Minister in the circumstances specified under the Act;
- (vi) Bank Negara Malaysia in the circumstances mentioned in s.217(1)(f) and (g);
- (vii) The Registrar of Companies on the ground specified in s.217(1)(m) or (n).

(Candidates are only required to state any FOUR of the above.)

(b) Section 218(1) Companies Act 1965 deals with the circumstances in which a company may be wound up by the court. One of the circumstances is that the company is unable to pay its debts. Section 218(2) provides that a company shall be deemed to be unable to pay its debts in three circumstances:

- (i) if a creditor to whom the company owes RM500 or more has served on the company a written demand by leaving the same at the company's registered office requiring the company to pay the debt and the company has neglected for three weeks thereafter either to pay or secure or compound it to the reasonable satisfaction of the creditor; or
- (ii) if a creditor has obtained from the court an execution or other process and this is returned unsatisfied in whole or in part; or
- (iii) if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due and this includes the situation where it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, including its contingent and prospective liabilities.

5 This question tests the candidates' knowledge of the 'veil of incorporation' in company law as well as the situations where that veil may be disregarded.

(a) The 'veil of incorporation' refers to the concept that upon the incorporation of a company it becomes in law a separate legal entity distinct and separate from its members. The company is regarded as an artificial legal person having its own rights, duties and liabilities. For example, the company has power to hold land and to sue and be sued in its own name. It also enjoys perpetual succession (unlike a partnership) and in the case of a limited company its members enjoy limited liability in the sense that their liability to contribute to the assets of the company in the event of a liquidation is limited to the amount, if any, unpaid on their shares. See: *Salomon v Salomon & Co Ltd* (1897); s.16(5) Companies Act 1965.

(b) Although the company is a separate legal entity, there are a number of circumstances where the courts are prepared to disregard this principle. This is often referred to as the lifting of the veil of incorporation. The veil of incorporation may be disregarded either by virtue of a statutory provision or by established case law. The main circumstances when the veil will be lifted are stated below:

Under Statute:

(i) Section 36 Companies Act 1965.

By this section where the number of members of a company falls to one and the sole remaining member knowingly carries on business for a period longer than six months, he will be personally liable for the debts incurred after the first six months.

(ii) Section 121 Companies Act 1965.

By this section where an officer signs on behalf of the company, a cheque, promissory note, etc, and the company's name is not properly stated therein, he will be personally liable to the holder of that cheque, etc, for the amount stated therein, if the company does not pay.

(iii) Section 304(1) Companies Act 1965.

By this section where the company's business has been carried on with intent to defraud creditors or for other fraudulent purpose, any person knowingly a party thereto may be made personally liable to pay the debts or other liabilities of the company as the court deems fit.

(iv) Section 303(3) and 304(2).

By these sections where the company had incurred a debt when there was no reasonable prospect of the company being able to repay, the person or persons responsible for it may be made personally liable to repay it.

(v) Section 169 and the Ninth Schedule of the Companies Act 1965.

By these provisions a holding company is required to produce group accounts in which the assets, liabilities, profits and losses of the other companies in the group as a whole are reflected, although the other companies are separate bodies.

Under Case Law:

(i) In times of war to determine whether the company is controlled by enemy aliens.

This is illustrated by the case of *Daimler Co Ltd v Continental Tyre & Rubber Co (Great Britain) Ltd* (1916) where the court lifted the veil of incorporation to look at the nationality of the persons in effective control of the company.

(ii) Where the company has been set up to perpetrate a fraud or to avoid a legal obligation.

In *Jones v Lipman* (1962), the defendant who had agreed to sell property to the plaintiff sold it instead to a company which he had formed, in order to avoid an order of specific performance. The court lifted the veil of incorporation, holding that the defendant and the company were one and the same. See also: *Aspatra Sdn Bhd v Bank Bumiputra Malaysia Bhd* (1988).

(iii) On the basis that a company is in fact the agent of its controllers.

This may be illustrated by the case of *Smith Stone & Knight Ltd v Birmingham Corpn* (1939), where the court held that the subsidiary company was acting as the holding company's agent in carrying on a business on its land, thus enabling the holding company to get compensation for the disruption of business following a compulsory acquisition of its land.

(Candidates are only required to discuss any FOUR instances of lifting the veil of incorporation.)

6 This question tests the candidates' knowledge on the liability of a retiring partner in respect of partnership debts incurred both before and after his retirement.

Although a partner retires from the firm, he is not automatically freed of his liability for partnership debts whether incurred before or after his retirement. This is made clear by virtue of ss.19(2) and 38(1) Partnership Act 1961.

By s.19(2), a partner who retires from the firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.

Further, by s.38(1) 'where a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm, until he has notice of the change'.

However, a retiring partner may, by taking appropriate measures, be released from his liability from both existing as well as future debts of the firm.

In the case of existing debts, he may not be liable if there is an agreement between himself, the new firm and the creditors to the effect that he shall no longer be liable for such debts. Such an agreement may either be express or implied. The authority for this is s.19(3), which states, 'a retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either express or inferred as a fact from a course of dealing between the creditors and the firm as newly constituted.'

In the case of future debts, the retiring partner may protect himself from liability towards new creditors by advertisement in the Federal Gazette, Sabah Gazette, or Sarawak Gazette. See: s.38(2) Partnership Act 1961.

In so far as existing creditors are concerned actual notice is necessary. A case that illustrates this is *Re Siew Inn Steamship* (1934). In this case a retired partner had placed a notice of his retirement in certain newspapers which were regularly read by some old customers. Subsequent to his retirement these old customers lent money to the firm. They had not read the notice in the newspapers. The court held that the retired partner was liable. The newspaper advertisement was insufficient. Further, it was held in *Phillips Singapore Private Ltd v Han Jong Kwang & Anor* (1989) that even a notice to the Registrar of Business, of the retirement of the partner, is not sufficient notice towards old customers of the firm.

However, it is to be noted that the retiring partner will not be liable after the retirement towards new persons who deal with the firm, and who never knew him to be a partner of the firm.

7 This question on corporate governance tests the candidates' knowledge on the composition and duties of the audit committee as recommended under the Malaysian Code on Corporate Governance.

(a) The board should establish an audit committee comprising at least three members, a majority of whom are independent directors.

All members of the audit committee should be non-executive directors.

The board should provide the audit committee with written terms of reference which deal clearly with its authority and duties.

Members of the audit committee should be financially literate.

At least one should be a member of an accounting association or body.

(b) The duties of the audit committee should include the following:

- (i) to consider the appointment of the external auditor, the audit fee and any question of resignation or dismissal;
- (ii) to discuss with the external auditor before the audit commences, the nature and scope of the audit, and ensure co-ordination where more than one audit firm is involved;
- (iii) to review the quarterly and year-end financial statements of the board;
- (iv) to discuss problems and reservations arising from the interim and final audits, and any matter the auditor may wish to discuss (in the absence of management where necessary);
- (v) to review the external auditor's management letter and management's response;
- (vi) to consider any related-party transactions that may arise within the company or group;
- (vii) to consider the major findings of internal investigations and management's response; and
- (viii) to consider other topics as defined by the board.

(Candidates are only required to mention any FOUR of the above.)

8 This problem-based question on company law tests the candidates' ability to identify and apply the law relating to two aspects of duties of company directors.

(a) FGH Sdn Bhd may be advised that the proposed purchase of Sapu's land will contravene s.132E(1) Companies Act 1965. This section creates the general rule that a company shall not carry into effect any arrangement or transaction where a director or substantial shareholder or person connected to such a director or substantial shareholder,

- (i) acquires or is to acquire shares or non-cash assets of the requisite value, from the company; or
- (ii) disposes of or is to dispose of shares or non-cash assets of the requisite value, to the company.

Where s.132E is contravened the director, substantial shareholder or the person connected referred to in s.132E(1) and any other director who knowingly authorised the arrangement or transaction shall be subject to the civil and criminal penalties mentioned in s.132E(4) and s.132E(6). Further, the arrangement or transaction shall be void.

The proposed purchase of Sapu's land, the market value of which is RM2.5 million exceeds RM250,000 and falls within the definition of requisite value in s.132E(7).

To avoid contravention of s.132E(1) prior approval of the arrangement or transaction must be obtained by a resolution at a general meeting of the company itself or of the holding company concerned. The board is therefore advised to convene a general meeting of the company for this purpose before any steps are taken to purchase Sapu's land.

(b) KLM Bhd may be advised that the contemplated loan may be prohibited under s.133 Companies Act 1965. By this section, a company (other than an exempt private company), may not make a loan to a director of the company or a related company or enter into any guarantee or provide any security in connection with a loan made to such a director.

However, the following three exceptions are provided for under the section:

- (i) The company may provide such a director with funds to enable him to meet expenditure incurred or to be incurred by him for the purpose of enabling him to properly perform his duties as an officer of the company.
- (ii) The company may provide such a director who is in full-time employment with the company or its holding company with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home.
- (iii) The company may give a loan to a director who is in full-time employment with the company or its holding company, where the company has, at a general meeting of the company, approved of a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme.

By s.133(2) the first two exceptions may be exercised by the company either with the prior approval of the company in a general meeting or, alternatively, on condition that if the approval of the company is not given at or before the next annual general meeting, the loan shall be repaid or the liability under the security or guarantee shall be discharged, within six months of the conclusion of that meeting.

The proposed loan to Jane will be caught by the prohibition in s.133(1) unless any of the three exceptions applies.

Jane is an executive director. She may qualify to obtain a loan under the third exception if the company has established an employees' loan scheme.

Further, it may be possible to argue that the first exception applies as Jane needs the loan for the purposes of surgery which is required for her to return to good health, and in turn enable her to properly perform her duties as a director.

9 This problem-based question on company law tests the candidates' on their knowledge and ability to apply the law relating to alteration of a company's constitution.

(a) By virtue of s.28(1) Companies 1965, the objects clause in the memorandum of association may be amended by a special resolution. The issue is whether Dol and Sah may apply to the court for the cancellation of the resolution, which altered the objects clause of ABC Bhd. By virtue of s.28(5), members who hold not less than 10% of a company's issued share capital may apply to the court to cancel the alteration and on the application being made the alteration shall not have effect except so far as it is confirmed by the court. The application must be made within 21 days after the date on which the resolution was passed: s.28(8).

Unfortunately, Dol and Sah do not qualify to make an application under s.28(5) because they do not hold the requisite 10% of the issued share capital of the company.

Dol and Sah may be advised accordingly.

(b) Any alteration of the articles of association must be made *bona fide* for the benefit of the company and its members as a whole. In normal circumstances an alteration of the articles to give directors power to compulsorily acquire the shares of a member will not be permitted by the court: *Brown v British Abrasive Wheel Co* (1919). Such a resolution will be considered as an unlawful expropriation of members' property and as a fraud on the minority.

However, an alteration to allow directors to compulsorily acquire the shares of members who are in competition with the company may be considered to be for the benefit of the company. In *Sidebottom v Kershaw, Leese and Co* (1920) such an alteration was held to be valid as it was for the company's benefit not to have competing members.

Mat may be advised that on the authority of *Sidebottom's* case, the alteration will be valid.

(c) Section 18 Companies Act 1965 provides that the name of the company is one of the matters which must be stated in the memorandum. Section 23 Companies Act provides that a company may alter its name in the memorandum by passing a special resolution. Thus, if the three-fourths majority required for a special resolution can be achieved, the name of a company can be altered. This right of the majority to alter the name of a company cannot be taken away by a clause in the memorandum as such a clause will conflict with a statutory right of the members provided in s.23.

Manis may be advised that the clause in the memorandum which provides that the name of the company is unalterable is void and is not binding on ABC Bhd and its members.

Manis will therefore be unsuccessful if she challenges the validity of the alteration.

10 This problem-based question on contract law tests the candidates' knowledge on the remedies for breach of contract and their ability to apply the law and give appropriate advice.

(a) There are several remedies for breach of contract. These include damages and specific performance.

In relation to the contract to purchase Ramu's land, Umar may be advised that the most appropriate remedy for him against Ramu for Ramu's breach of contract is specific performance. Specific performance is a remedy that entitles the party not in default to demand that the contract be performed as promised by the other party. This remedy is provided for in the Specific Relief Act 1950. It is a discretionary remedy and not one that may be obtained as of right. Section 11(1) provides, among other things, that specific performance may be granted:

- (i) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; and
- (ii) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief.

Further, the section also provides for a rebuttable presumption that the breach of a contract to transfer immovable property cannot be adequately compensated in money. The case of *Zaibun Sa binti Syed Ahmad v Loh Koon Moy & Anor* (1982) is illustrative. In this case, the Privy Council upheld the decision of the Federal Court of Malaysia which had applied s.11 Specific Relief Act 1950 and ordered specific performance of a contract for the sale of land.

Applying the law as explained above to the given problem, the presumption is that Umar cannot be adequately compensated in monetary form as the contract in question relates to land, i.e. immovable property. Thus he will be entitled to seek the remedy of specific performance against Ramu.

- (b) In the case of breach of contract by Umar in refusing to sell the motorcar to Ramu, Umar may be advised that the most likely remedy that the court will order against him in favour of Ramu is damages. Damages refers to the monetary compensation awarded to a plaintiff for the loss suffered by him as a result of the defendant's breach of contract.

At common law, the principles regarding the assessment of damages recoverable by a plaintiff was laid down in the case of *Hadley v Baxendale* (1854). Section 74 Contracts Act 1950 has adopted these principles. Under the section, the party who suffers loss by the breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from the breach or which the parties knew, when they made the contract, to be likely to result from the breach of it. However, such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. This rule has been applied in numerous cases. See for example: *Bee Chuan Rubber Factory Sdn Bhd v Loo Sam Mooi* (1976).

Specific performance will not be granted in the case of a sale of movable property (e.g. a car) unless the movable property is unique and damages will not be an adequate remedy.

Applying the law to the given problem, the court is unlikely to grant an order of specific performance against Umar in favour of Ramu as the contract relates to a sale of a common type of motorcar which is readily available in the second-hand car market. As such, monetary compensation will be deemed to be an appropriate remedy for Ramu and he will only be entitled to an order for damages against Umar for breach of contract.

- 1** (a) 0–2 An accurate answer will fall into the upper part of this band while an inaccurate one will fall into the lower part.
(b) 0–2 One mark for each function correctly stated.
(c) 0–6 Two marks for each human right provision correctly explained.
- 2** (a) 3–5 Average to good answer clearly distinguishing between a proposal and an invitation to treat in relation to contract law.
0–2 Incomplete or inaccurate answer.
(b) 3–5 Average to good answer clearly distinguishing between an acceptance and a counter-proposal in relation to contract law.
0–2 Incomplete or inaccurate answer.
- 3** (a) 2–4 Average to good answer clearly explaining the distinction between a contract of service and a contract for services.
0–1 Incomplete or inaccurate answer.
(b) 0–6 Two marks for each of the three methods of determining the existence of a contract of service accurately explained.
- 4** (a) 0–4 One mark for each correct answer as to who may petition for the winding up of the company.
(b) 5–6 Very good answer fully explaining when a company is deemed to be unable to pay its debts with reference to the Companies Act 1965.
3–4 Average answer explaining when a company is deemed to be unable to pay its debts.
0–2 Incomplete or inaccurate answer.
- 5** (a) 0–2 An accurate answer explaining the meaning of ‘veil of incorporation’ will fall into the upper part of this band while an inaccurate one will fall into the lower part.
(b) 0–8 Two marks for each instance of lifting the veil of incorporation correctly explained.
- 6** 8–10 Excellent answer, fully explaining the liability of a retired partner for the debts incurred by the partnership both before as well as after his retirement.
5–7 Average answer reasonably explaining the liability of retired partners for partnership debts.
0–4 Incomplete or inaccurate answer.
- 7** (a) 0–4 A full answer stating how the audit committee should be composed will fall into the upper part of this band while an inaccurate or incomplete one will fall into the lower part.
(b) 0–6 One and a half marks for each accurately explained duty of the audit committee as recommended under the Code.
- 8** (a) 3–5 Average to good answer accurately identifying and explaining the law under s.132E of the Companies Act 1965 with correct application and advice to the board of FGH Sdn Bhd.
0–2 Incomplete or inaccurate answer.
(b) 3–5 Average to good answer, accurately identifying and explaining the law pertaining to the prohibition of loans to directors and the exceptions thereto with correct application and advice to KLM Bhd.
0–2 Incomplete or inaccurate answer.

- 9 (a)** 2–4 Average to good answer explaining the law on alteration of the objects clause of a company and the rights of the minority who object to it with correct application and advice to Dol and Sah.
0–1 Incomplete or inaccurate answer.
- (b)** 2–3 Average to good answer identifying and explaining the law that an alteration of the articles must be done *bona fide* for the benefit of the company as a whole, with correct application and advice to Mat.
0–1 Incomplete or inaccurate answer.
- (c)** 2–3 Average to good answer identifying and explaining the law relating to the power of the company to alter its name with correct advice to ABC Bhd.
0–1 Incomplete or inaccurate answer.
- 10 (a)** 3–5 Average to good answer correctly identifying and explaining specific performance as the most appropriate remedy for Umar against Ramu in relation to the given problem.
0–2 Incomplete or inaccurate answer.
- (b)** 3–5 Average to good answer correctly identifying and explaining damages as the most appropriate remedy for Ramu against Umar in relation to the given problem.
0–2 Incomplete or inaccurate answer.