
Answers

Section A

- 1 C
- 2 D
- 3 B
- 4 B
- 5 D
- 6 D
- 7 C
- 8 D
- 9 A
- 10 D
- 11 B
- 12 C
- 13 D
- 14 D
- 15 C
- 16 B
- 17 B
- 18 C
- 19 A
- 20 B
- 21 B
- 22 B
- 23 A
- 24 A
- 25 C
- 26 B
- 27 C
- 28 C
- 29 A
- 30 A
- 31 B
- 32 A
- 33 A
- 34 A
- 35 C
- 36 C
- 37 B
- 38 B
- 39 C
- 40 B
- 41 C
- 42 A
- 43 A
- 44 A
- 45 A

Section B

- 1 (a) The issue in this case is whether there is valid consideration for the contract between Ali and Ben. Ben claims that the consideration of RM200 is too low. Under the law of contract, consideration must be sufficient but need not be adequate. Sufficiency of consideration means that it must have some value and it need not necessarily be of equal value. Thus Ali may be advised that there is a valid contract between him and Ben and he has the right to purchase the clock at the agreed price of RM200.
- (b) The issue in this case concerns validity of contracts made by minors. Under the law of contract, a person must have the capacity to enter into a valid contract. They would have the necessary capacity if they are of full age and sound mind. Ashley is a minor as she is 16 years old. If a minor, i.e. a person under the age of 18 years, enters into a contract, the contract is void, unless it falls within certain exceptions. On the facts of the case, none of the exceptions apply. Thus Ali may be advised that the contract entered into with Ashley is void.

- 2 (a)** Under the law of agency there is no requirement for there to be a written agreement to create an agency. Furthermore, there is no requirement for consideration in order for a valid agency agreement to arise. Thus, a valid agency exists between Jenny and Ken.
- (b)** In this case, Ken is the agent and Jenny is the principal. The law is that principals are bound by the acts of their agents done within the scope of their authority. Where the agents have exceeded their authority, the principals will not be bound by the acts of the agents. In this case, as Ken exceeded his authority by contracting for the house at a higher price than that which was authorised by Jenny, the contract will not be binding upon her.
- (c)** Although a contract may not be legally binding on the principals when the agents exceed their authority, the principal may choose to ratify the contract. Upon ratification, the contract will become binding between the principal and the third party. Thus, Jenny may choose to ratify the contract for the purchase of the house at RM370,000.
- 3 (a)** Under s.67 Companies Act 1965, a company is prohibited from giving financial assistance to any person to enable the person to purchase the company's shares, unless it falls under certain exceptions. Financial assistance includes the giving of a loan. None of the exceptions apply in this instance and therefore the company cannot legally give a loan to Carmen to enable her to purchase Amir's shares.
- (b)** Financial assistance also includes the giving of security by a company for the purpose of enabling a person to obtain funds for the purchase of its shares. Thus, V-3 Sdn Bhd may not provide security to a bank to facilitate the loan to Carmen to enable her to purchase the company's shares.
- (c)** One of the exceptions to the rule that a company cannot give financial assistance for the purchase of its own shares is that it may provide financial assistance to persons other than directors, who are *bona fide* in the employment of the company, to enable them to purchase the company shares. As Danial is the company secretary, he is an employee of the company. Thus, V-3 Sdn Bhd may give a loan to Danial to enable him to purchase Amir's shares.
- 4 (a)** Under the Companies Act 1965, no person of or over the age of 70 may be appointed or act as a director of a public company or a subsidiary of a public company. As Suria Bhd is a public company and Andy is 72 years old, he is disqualified to be a director of the company. Although such over-aged directors can be appointed or reappointed by a special procedure, the question does not indicate that such a procedure was followed.
- (b)** The Companies Act 1965 prohibits a company from giving loans to directors. Although there are three exceptions to this prohibition, none of them apply to the given problem. Thus, the loan would not be valid.
- (c)** The purchase of the land from Charles who is a director would contravene the Companies Act 1965. Under the Act, a company is prohibited from disposing to or acquiring from a director, a non-cash asset of the requisite value, unless it has been approved by a resolution of the members in a general meeting. Land is a non-cash asset. Requisite value includes any value above RM250,000. Thus the purchase requires the approval of the members. As such approval has not been obtained, there is a contravention of the Act.
- 5 (a)** Fraudulent trading refers to a situation where the business of the company has been carried on with intent to defraud the creditors of the company or for any fraudulent purpose. Under the Companies Act 1965, where the business has been so carried on, every person who was knowingly a party to the carrying on of the business in such a manner will be guilty of an offence. As Jack and Jill have stated that they did not have the intention to repay the creditor, EasyTrade Sdn Bhd, it can be said that they had the intent to defraud the creditor. Thus Jack and Jill can be charged with the offence of fraudulent trading.
- (b)** If Jack and Jill had ordered the goods in the belief that the company could be saved from insolvency, then there is no intention to defraud the creditors. In such a case, they may be guilty of an offence for wrongful trading under the Companies Act 1965. Wrongful trading occurs where the company had contracted a debt at a time when there was no reasonable or probable ground of expectation of the company being able to pay the debt. In this situation, any officer who was knowingly a party to the contracting of such a debt would be guilty of an offence. Thus, Jack and Jill being the directors of the company would be guilty of the offence of wrongful trading.
- (c)** Under the Companies Act 1965, it is provided that where fraudulent trading has taken place, the court may declare any person who was knowingly a party to such fraudulent trading to be personally liable for all or any of the debts or other liabilities of the company as the court directs. Thus, Jack and Jill may be made personally liable for all or any part of the company's debts and liabilities if the court so directs.

Section A

1-45 One or two marks per question; total marks 70

Section B

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|----------|--|------------------------|
| 1 | (a) Correct identification of issue of consideration
Correct explanation and application | 1 mark
2 marks |
| | (b) Correct identification of issue
Correct explanation and application | 1 mark
2 marks |
| | | (Total 6 marks) |
| 2 | (a) Identification of point that agency need not be in writing
Identification of point that no consideration is needed for a valid agency | 1 mark
1 mark |
| | (b) Correct identification of issue
Correct explanation and application | 1 mark
1 mark |
| | (c) Correct identification of issue
Correct explanation and application | 1 mark
1 mark |
| | | (Total 6 marks) |
| 3 | (a) Correct identification of issue
Correct explanation and application | 1 mark
1 mark |
| | (b) Correct identification of issue
Correct explanation and application | 1 mark
1 mark |
| | (c) Correct identification of issue
Correct explanation of exception and application | 1 mark
1 mark |
| | | (Total 6 marks) |
| 4 | (a) Correct identification of issue
Correct explanation and application | 1 mark
1 mark |
| | (b) Identification of issue
Correct explanation and application | 1 mark
1 mark |
| | (c) Correct identification of issue
Correct explanation and application | 1 mark
1 mark |
| | | (Total 6 marks) |
| 5 | (a) Identification and explanation of fraudulent trading
Correct application and conclusion | 1 mark
1 mark |
| | (b) Identification and explanation of wrongful trading
Correct application and conclusion | 1 mark
1 mark |
| | (c) Appropriate explanation and accurate answer as to whether Jack and Jill can be made personally liable for the company's debts and liabilities | 2 marks |
| | | (Total 6 marks) |