

Fundamentals Level – Skills Module

Corporate and Business Law (Malaysia)

Monday 8 December 2014



Time allowed: 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and MUST be attempted

Section B – ALL FIVE questions are compulsory and MUST be attempted

Do NOT open this paper until instructed by the supervisor.

You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (MYS)

ACCA

Section A – ALL 45 questions are compulsory and MUST be attempted

Please use the space provided on the inside cover of the Candidate Answer Booklet to indicate your chosen answer to each multiple choice question.

1 Which of the following is an example of public law?

- A** Law of contract
- B** Law of tort
- C** Constitutional law

(1 mark)

2 Which of the following statements about exclusion clauses is NOT correct?

- A** Notice of an exclusion clause must be given to the plaintiff before, or at the time, the contract is made in order for the exemption clause to be effective
- B** An exclusion clause may be made invalid by a statutory provision
- C** The words of the exclusion clause must be clear and unambiguous
- D** An exclusion clause may be inserted into a contract to restrain one party from taking legal action against the other party to the contract

(2 marks)

3 Under the Companies Act 1965, which of the following are prohibited from being appointed as receivers of property of a company?

- (1) A corporation
 - (2) An undischarged bankrupt
 - (3) A person who is not an approved liquidator
 - (4) An official receiver
- A** (1) and (2) only
 - B** (1), (2) and (3)
 - C** (1), (3) and (4)
 - D** (2), (3) and (4)

(2 marks)

4 In the context of contract law, what is consideration?

- A** The factors taken into account before a final decision is made
- B** The price agreed to be paid by one contracting party to the other in return for that other party's reciprocal promise
- C** The cost of entering into a contract

(1 mark)

5 Persons must meet certain criteria in order to be competent to contract.

Which of the following is NOT one of these criteria?

- A They must have attained the age of 18 years
- B They must be of sound mind
- C They must not be disqualified from entering into a contract by any law to which they are subject
- D They must be employed

(2 marks)

6 **Which of the following is NOT a requirement if a company wishes to reduce its capital, under the Companies Act 1965?**

- A There must be authority given in the company's articles of association
- B A special resolution must be passed
- C Confirmation from the court must be obtained
- D Approval from the Registrar of Companies must be obtained

(2 marks)

7 On 8 December 2013, XYZ Sdn Bhd, one of the suppliers of ABC Bhd, served a notice on ABC Bhd to demand the repayment of RM10,000 owing to XYZ Sdn Bhd. ABC Bhd was to repay this sum not later than 31 December 2013. ABC Bhd failed to do so. On 16 January 2014, XYZ Sdn Bhd filed a petition to wind up ABC Bhd. The court ordered ABC Bhd to be wound up on 15 September 2014.

When did the winding up of ABC Bhd commence?

- A 8 December 2013
- B 31 December 2013
- C 16 January 2014
- D 15 September 2014

(2 marks)

8 **Which of the following is a complete defence for the tort of negligence?**

- A Contributory negligence
- B Res ipsa loquitur
- C Inevitable negligence
- D Volenti non fit injuria

(2 marks)

9 The general principle is that mere silence as to facts which are likely to affect the willingness of a person to enter into a contract is not fraud.

Which of the following types of contract does this principle NOT apply to?

- A An insurance contract
- B A contract to purchase a house
- C A loan contract

(1 mark)

10 In relation to company resolutions, which of the following correctly defines special notice?

- A** A notice of 21 days given by the company to its members
- B** A notice of 14 days given by the company to its members
- C** A notice of 28 days given by the company to its members
- D** A notice of 28 days given to the company by those proposing to pass the resolution

(2 marks)

11 Alice has been employed with ABC Sdn Bhd for the past three years under a contract of employment to which the Employment Act 1955 applies.

How many days' annual leave is she entitled to?

- A** 8
- B** 12
- C** 16

(1 mark)

12 Which of the following grounds may a member rely on to wind up a company?

- (1) It has defaulted in holding its statutory meeting
- (2) It has not commenced business or has ceased its business
- (3) It is unable to pay its debts
- (4) It is just and equitable to wind up the company

- A** (1) and (4) only
- B** (2) and (3) only
- C** (1), (2) and (4) only
- D** (1), (2), (3) and (4)

(2 marks)

13 Alice entered into a contract with Betty for the purchase of Betty's house at the price of RM380,000. Last week, Betty informed Alice that she does not wish to sell the house to Alice.

If Alice sues Betty for breach of contract, which of the following remedies is most appropriate?

- A** Rescission
- B** Injunction
- C** Damages
- D** Specific performance

(2 marks)

14 Which of the following rights may be attached to preference shares?

- (1) Right to cumulative dividends
- (2) Right to participate in surplus profits
- (3) Right to a fixed dividend
- (4) Limited voting rights

- A** (1), (3) and (4) only
- B** (3) and (4) only
- C** (1), (2) and (4) only
- D** (1), (2), (3) and (4)

(2 marks)

15 Ah Seng has been continuously employed with Sing-Song Furniture Sdn Bhd for the last six years. He now wishes to terminate his contract of employment by notice.

How many weeks' notice is he required to give to his employer?

- A** Four
- B** Six
- C** Eight

(1 mark)

16 Which of the following statements does NOT fall within the requirements of a partnership?

- A** There must be an association of persons carrying on business
- B** The business must be managed by all the partners
- C** The business must be carried on with a view of profit

(1 mark)

17 Which of the following remedies will a court make when it orders a defendant to fulfil the terms of a contract?

- A** Prohibitory injunction
- B** Specific performance
- C** Damages

(1 mark)

18 Which of the following are stages in the passing of a bill in Parliament?

- (1) First reading
 - (2) Committee stage
 - (3) Second reading
 - (4) Third reading
 - (5) Fourth reading
- A** (1), (2) and (3) only
 - B** (1), (3) and (4) only
 - C** (1), (2), (3) and (4)
 - D** (1), (3), (4) and (5)

(2 marks)

19 Which of the following statements describes the standard of care required of an auditor of a company?

- A** The reasonable care, skill and caution of another competent auditor
- B** The reasonable care, skill and caution of another competent auditor of a firm of similar size
- C** The reasonable care, skill and caution of another competent auditor with the same experience
- D** The reasonable care, skill and caution of an auditor with the highest expert skill

(2 marks)

20 Which of the following is NOT a human right provided for under the Federal Constitution?

- A** Freedom of speech
- B** Right to education
- C** Freedom of religion

(1 mark)

21 Joe promised to give his wife, Nancy, a diamond ring for her birthday as a reward for helping him with his business. However, he failed to keep his promise.

Why will Nancy NOT be able to enforce the promise?

- A** It is without consideration
- B** It is without intention to create legal relations
- C** It is void for uncertainty
- D** It is void for lack of capacity

(2 marks)

22 Who passes delegated legislation?

- A** The state legislative assemblies
- B** A person or body who has been given authority to do so under an enabling Act
- C** Government administrative officers
- D** The Senate

(2 marks)

23 Under the Employment Act 1955, which of the following conditions must a contract of service comply with?

- (1) It must be in writing
- (2) It must include a provision for termination
- (3) It must not restrict the right of employees to join a registered trade union
- (4) It must not restrict employees from working for other employers outside of their contractual hours

- A** (2) and (3) only
- B** (1), (2) and (3)
- C** (2), (3) and (4)
- D** (1), (2) and (4)

(2 marks)

24 In relation to the doctrine of binding judicial precedent, which of the following concepts is the most important?

- A** Ratio decidendi
- B** Obiter dicta
- C** Locus standi

(1 mark)

25 English common law and equity are permitted to be applied by Malaysian courts, subject to certain limitations.

Which TWO of the following reflect such limitations?

- (1) When it is suited to local circumstances
- (2) When there are conflicting court decisions in Malaysia
- (3) When the International Court of Justice has directed otherwise
- (4) When there is no local law on the matter

- A** (1) and (2)
- B** (1) and (3)
- C** (1) and (4)
- D** (2) and (4)

(2 marks)

26 What is the maximum number of members which an exempt private company can have?

- A** 10
- B** 20
- C** 50

(1 mark)

27 In which of the following ways may terms be implied into a contract?

- (1) By law
- (2) By custom
- (3) By the court
- (4) By agreement

- A** (1) and (2) only
- B** (1) and (3) only
- C** (1), (2) and (3)
- D** (4) only

(2 marks)

28 Which of the following is an example of unwritten law?

- A** Federal Constitution
- B** Enactments
- C** Common law

(1 mark)

29 Ahmad is a director of XYZ Sdn Bhd. He applied to the land office to obtain approval to convert XYZ Sdn Bhd's agricultural land in Pahang into industrial land. The application was initially rejected. Subsequently, Ahmad held a discussion with an officer at the land office during which Ahmad offered to the officer a reward of RM50,000 if he approved the application. The land officer refused to accept the reward and instead reported the matter to the Malaysian Anti-Corruption Agency.

Which of the following offences has Ahmad committed under the Malaysian Anti-Corruption Commission Act 2009?

- A** Bribery of officer of public body
- B** Using office or position for gratification
- C** Inducing public officials
- D** Accepting gratification

(2 marks)

30 Tong entered into an agreement with Sim to water the plants in Roy's garden. In return, Sim agreed to pay Tong RM200 per month. Last month, Sim paid Tong RM200. However, Tong failed to water the plants as agreed.

Who can sue Tong for failing to water the plants?

- A** Sim only
- B** Roy only
- C** Both Sim and Roy

(1 mark)

31 Which of the following agreements is enforceable, although it is without consideration?

- A** A scholarship agreement to study in an institution of higher education
- B** An agreement between family members on account of natural love and affection
- C** An agreement to donate a sum of money for charitable purposes
- D** An agreement to supply goods free of charge

(2 marks)

32 What is created once an offer has been unconditionally accepted?

- A** An agreement
- B** A binding contract
- C** A conditional contract
- D** A voidable contract

(2 marks)

33 In relation to insider trading, who is considered to be an insider?

- A** Any person who possesses relevant inside information
- B** A director or any person connected
- C** Any person holding the position of chief financial officer of a company
- D** Any family member of the chief financial officer of a company

(2 marks)

34 In the context of employees' remedies for unjustifiable dismissal, which of the following describes reinstatement?

- A The employee is restored to the position they were in before they were dismissed
- B The employee is given an opportunity to work again with the employer
- C The employee is given an opportunity to work with another employer

(1 mark)

35 Who is bound by a contract made by an agent with a third party on behalf of the principal?

- A The agent and the third party
- B The principal and the third party
- C The principal and the third party, if the agent had acted within the scope of their authority
- D The principal and the third party, if the agent had acted within the scope of their authority and the principal had ratified the contract

(2 marks)

36 Which of the following contracts can a person who is of the age of 16 enter into?

- A A contract to buy a car
- B An employment contract with a fast food restaurant
- C A scholarship agreement with the Federal Government of Malaysia

(1 mark)

37 Which of the following is NOT a characteristic of a private company?

- A It must have a restriction on the right to transfer shares
- B It may have an unlimited number of members
- C It may not issue shares to the public
- D It may not invite the public to deposit money with it

(2 marks)

38 Where is a contract made if the offeror and offeree are in different locations?

- A Where the offer is issued
- B Where the acceptance is made
- C Where the acceptance is received

(1 mark)

39 To whom must a director declare any interest in a contract with a company?

- A The members
- B The company secretary
- C The board of directors

(1 mark)

40 Under which of the following circumstances will retiring partners NOT continue to be liable for the debts of the partnership?

- A If the other partners agree to waive their liability
- B If the creditor discharges them from liability
- C If the retiring partner informs the creditor of their retirement

(1 mark)

41 In the context of employment law, which of the following statements is correct?

- A An employee works under a contract for services
- B An independent contractor works under a contract of service
- C An employee works under a contract of service

(1 mark)

42 Which of the following amounts to a principal's ratification of the agent acting in excess of their authority?

- A The principal expressly accepts the contract made by the agent on their behalf
- B The agent expressly informs the third party that their principal will accept the contract
- C The third party agrees that the principal shall be liable and not the agent

(1 mark)

43 Which of the following is NOT a valid reason for disqualifying persons from being appointed as company directors?

- A They are over 60 years old
- B They have not obtained their share qualification
- C They have been convicted of an offence involving fraud

(1 mark)

44 In the context of employment law, which of the following is NOT a redundancy situation?

- A Where a workplace is being reorganised
- B When a business is closing
- C When a workplace is closing
- D Where there is a reduced need for employees to do particular kinds of work in an organisation

(2 marks)

45 In which of the following situations may employees terminate their contract of employment without notice, under the Employment Act 1955?

- A When they or their dependants are threatened by violence or disease not contemplated under the contract of service
- B Where they have been downgraded
- C When they are transferred without their consent
- D Where they have been invited to work overtime

(2 marks)

Section B – ALL FIVE questions are compulsory and MUST be attempted

Please write your answers to all parts of these questions on the lined pages within the Candidate Answer Booklet.

1 Ali is a dealer in second-hand goods. He seeks your legal advice on the following matters:

- (a) Ali entered into a contract with Ben for the purchase of an old grandfather clock from Ben for RM200. Ben has since refused to sell the clock to Ali, stating that the price is too low and that the actual value of the clock is RM2,000.

Required:

Explain whether Ali has the right to purchase the clock at the agreed price of RM200. (3 marks)

- (b) Ali contracted with Ashley, aged 16, to sell him a vase for RM15,000. Ashley has refused to honour the contract, stating that it is void.

Required:

Explain whether the contract is void. (3 marks)

(6 marks)

2 Jenny asked Ken to act as her agent to purchase a house for her. Ken agreed to do so for free. Jenny's instructions were that the house should be located in Petaling Jaya, it should have at least four bedrooms and should not cost more than RM350,000. Ken found a suitable house in Petaling Jaya but the owner was only willing to sell it at the price of RM370,000. Ken decided to purchase the house and entered into a contract with the owner on behalf of Jenny.

Required:

- (a) **As there is no written agreement between them, and there is no consideration given by Jenny, explain whether a valid agency exists between Jenny and Ken.** (2 marks)

- (b) **Explain whether the contract made by Ken on behalf of Jenny is binding upon Jenny.** (2 marks)

- (c) **In the event that the contract is not legally binding upon Jenny, state whether or not she can choose to accept it.** (2 marks)

(6 marks)

3 Amir, Brian and Carmen are the directors and shareholders of V-3 Sdn Bhd. Danial is employed as the company secretary. Amir wants to sell all his shares in V-3 Sdn Bhd and vacate his office as director. Carmen and Danial would like to buy Amir's shares but do not have enough funds to do so.

Required:

- (a) **Explain whether V-3 Sdn Bhd is legally permitted under the Companies Act 1965 to give a loan to Carmen to enable her to purchase Amir's shares.** (2 marks)

- (b) **Explain whether Carmen may obtain a loan from a bank to purchase Amir's shares, with V-3 Sdn Bhd providing security for the loan in the form of a charge over its property.** (2 marks)

- (c) **Explain whether V-3 Sdn Bhd is legally permitted under the Companies Act 1965 to give a loan to Danial to enable him to purchase Amir's shares.** (2 marks)

(6 marks)

- 4 Suria Bhd has three directors, namely Andy, Ben and Charles. Joe, a member, has discovered that at a recent board meeting at which Charles was absent, Andy and Ben approved the following:
- (i) A loan of RM5 million to Charles to enable him to purchase a luxury yacht.
 - (ii) The purchase of a piece of land from Charles at its market value of RM1 million.
- Joe has further discovered that Andy is 72 years of age.

Required:

- (a) **State whether Andy is qualified to be a director of Suria Bhd.** (2 marks)
- (b) **Explain whether the loan approved in favour of Charles is valid under the Companies Act 1965.** (2 marks)
- (c) **Explain whether the purchase by Suria Bhd of the land from Charles would contravene the Companies Act 1965.** (2 marks)

(6 marks)

- 5 Jack and Jill are the directors of Semuaboleh Sdn Bhd, a trading company. Bernard is the purchasing officer of the company. The company has suffered losses over the past three years and is now insolvent. One year ago, Jack and Jill decided to order RM1 million worth of goods on credit from Easytrade Sdn Bhd. They directed Bernard to execute the transaction. When Bernard pointed out to them that the company was not in a position to repay Easytrade Sdn Bhd, he was told that they had no intention to repay as the company was soon going to go into liquidation. Bernard then ordered the goods on credit from Easytrade Sdn Bhd, and the goods were promptly delivered.
- Semuaboleh Sdn Bhd has now gone into liquidation and a liquidator has been appointed. Easytrade Sdn Bhd has not been paid.

Required:

- (a) **Explain whether Jack and Jill can be charged with the offence of fraudulent trading under the Companies Act 1965.** (2 marks)
- (b) **If Jack and Jill had ordered the goods on credit in the belief that the resale of those goods at a profit would save the company from insolvency, explain whether they could still be charged with a criminal offence under the Companies Act 1965.** (2 marks)
- (c) **Assuming that Jack and Jill are found guilty of the offence of fraudulent trading, explain whether they can be made personally liable for all, or any part, of the company's debts and liabilities.** (2 marks)

(6 marks)

End of Question Paper