
Answers

- 1** This question tests the candidates' understanding of the doctrine of binding judicial precedent in Malaysia.

The doctrine of binding judicial precedent is one by which decisions of higher courts are required to be followed by courts which are lower in the hierarchy of the court structure.

Although it is generally said that decisions of the higher courts bind the lower courts, it is actually the *ratio decidendi* which binds future courts. The *ratio decidendi* refers to the rationale or principle of law on which the decision is based. The *ratio decidendi* must be distinguished from *obiter dicta*, which refers to opinions or other matters expressed by the judge, which are not directly relevant to the case before him.

It is also important to know the hierarchy of the courts. In Malaysia, the highest court is the Federal Court. Below it is the Court of Appeal. Below the Court of Appeal is the High Court. These three courts may be referred to as the superior courts. Below the High Courts are the Sessions Courts and Magistrate's Courts which are referred to as the subordinate courts.

In brief, the operation of the doctrine is as follows:

- (a) Decisions of the Privy Council (which was formerly the highest court of appeal for Malaysia) given on appeal from Malaysia or from another Commonwealth country where the law is in *pari materia* to Malaysia are binding on the Malaysian courts.

See *Khalid Panjang and others v PP* (1964) and *D.G.I.R. v Kulim Rubber Plantation Ltd* (1981).

- (b) Decisions of the Federal Court (the highest court in Malaysia) are binding on all the courts below it. In the same way as the House of Lords of England (now the Supreme Court of the United Kingdom) was not bound by its own decisions, the Federal Court is not bound by its own decisions.

- (c) Decisions of the Court of Appeal will be binding on all the courts below it. As this court's position is analogous to the Court of Appeal of England, it is bound by its own previous decisions to the same extent as the latter. It was held in *Young v Bristol Aeroplane Co Ltd* (1944) that the English Court of Appeal (Civil Division) was bound by its own previous decisions as well as those of courts of co-ordinate jurisdiction. However, this was subject to three exceptions, viz:

- (i) Where there are two conflicting decisions, the court may choose to follow either.
- (ii) Where its previous decision, though not expressly overruled by the House of Lords (now the Supreme Court of the United Kingdom), cannot stand with a later decision of the House of Lords (now Supreme Court of the UK), then the Court of Appeal is bound to refuse to follow its own previous decision.
- (iii) Where its own previous decision was given *per incuriam*, it is not bound to follow the earlier decision.

In criminal cases, the English Court of Appeal (Criminal Division) regarded itself as bound by its own previous decisions in the same way as the Court of Appeal (Civil Division), except where this would cause injustice. See *R v Taylor* (1950).

Decisions of the High Court in Malaysia are binding on all subordinate courts, but one High Court judge is not bound to follow the decision of another. See *Sundralingam v Ramanathan Chettiar* (1967).

Subordinate courts are bound by precedents laid down by the Superior Courts but their own decisions do not bind any court.

- 2** This question on employment law tests the candidates' knowledge on the topics of redundancy and termination as regulated by the Employment Act 1955.

- (a)** Redundancy refers to a situation where an employer has a surplus of labour and has to downsize his labour force.

By virtue of s.12 (3)(a)–(d) of the Employment Act 1955, a redundancy may occur in the following circumstances:

- (i) The employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed;
- (ii) The employer has ceased or intends to cease to carry on the business in the place at which the employee was contracted to work;
- (iii) The requirements of that business for the employee to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish;
- (iv) The requirements of that business for the employee to carry out work of a particular kind in the place at which he was contracted to work have ceased or diminished or are expected to cease or diminish.

See also *Food Specialities Sdn Bhd and Esa bin Mohamad* (Award 74 of 1989).

- (b)** The Employment Act 1955 provides that a contract of service may be terminated in the following ways:

- (i) A contract of service for a specified period of time or for the performance of a specified piece of work will terminate automatically when the specified period of time has elapsed or the specified piece of work has been completed (s.11(1)).

- (ii) A contract of service may also be terminated by one party giving to the other notice of his intention to terminate it (s.12(1)). Section 12(4) requires the notice to be in writing. The notice may be given at any time but must comply with the period of notice stated in s.12(2).
- (iii) Either party to a contract of service may terminate it without notice (or if notice has already been given in accordance with s.12, without waiting for the expiry of the notice) by paying an indemnity to the other (s.13). The indemnity must be a sum equal to the amount of wages which would have accrued to the employee during the period of notice required under s.12 or during the unexpired term of such notice.
- (iv) Either party to a contract of service may terminate it without notice in the event of a wilful breach, by the other party, of a condition of the contract of service (s.13).
- (v) An employer may terminate the contract of service, without notice, on the grounds of misconduct of the employee after due inquiry (s.14). The section also allows an employee to terminate his contract of service without notice, where he or his dependants are immediately threatened by danger of violence or disease which was not undertaken by the employee in his contract of service.

3 This question tests the candidates' knowledge on the law of agency in relation to an agent's scope of authority, both actual as well as ostensible authority.

(a) Actual authority

Actual authority refers to the authority which is given to an agent by agreement. Actual authority comprises both express authority as well as implied authority. Express authority may be given either orally or in writing (see s.140 Contracts Act 1950). For example, if the principal appoints an agent with express instructions to buy for him or her a piece of land at a price not exceeding RM100,000, then the agent's actual authority is to purchase such land for any price not exceeding RM100,000. The principal will be bound so long as the agent has acted within this express authority.

Actual authority also includes those matters which may be properly implied in the circumstances. For example, the implied authority will include all such powers as are proper or necessary to carry out the express instructions of the principal. Thus, in the example given earlier, if the agent has to obtain the services of a valuer in order to assess the true value of the property, the principal will be bound to pay for the services of the valuer.

Implied authority may also arise from:

- (i) the circumstances of the case;
- (ii) the custom or usage of trade; or
- (iii) the situation or conduct of the parties.

The case of *Watteau v Fenwick* (1893) serves as an example. In this case, the defendant appointed a manager to run a public house and the licence, which appeared over the door, was taken out in the manager's name. The manager was forbidden by the defendant to buy cigars on credit. In disregard of this the manager bought cigars from the plaintiff, who now sued for the price. It was held that the defendant as principal was liable because a manager of a public house would usually have authority to make purchases of that kind, and the plaintiff could rely on such implied authority in the absence of express knowledge of the restrictions imposed by the principal.

See also: *Tunku Ismail bin Md Jawa & Anor v Tetuan Hisham, Sobri and Kadir* (1989).

(b) Ostensible authority

Ostensible authority (which is sometimes also referred to as apparent authority) refers to the authority which the agent is said to have as a result of the principal's words or conduct which leads a third party to believe that the agent has the authority to act on behalf of the principal. This is clearly illustrated in s.190 Contracts Act 1950.

Ostensible authority may also arise where the agent has previously acted on behalf of the principal, but such authority had been terminated by the principal, without notice to the third party.

Where ostensible authority arises, the agent is presumed to have the authority which the principal causes him or her to appear to have. The element of estoppel applies as the principal is precluded from denying that the agent had such authority. The case of *Graphic Lines Pte Ltd v Chai Chee Mein and Ors* (1987) serves as an example. In this case, the assistant manager of a nightclub had placed advertisements for the nightclub with the plaintiffs. He did not have the actual authority to do so but the general manager, who was one of the partners of the nightclub, had represented to the plaintiffs that advertisements should be authorised through the assistant manager. Since the general manager had actual authority to authorise the assistant manager to place advertisements on behalf of the club, the defendants were bound by his act. It was clear that the assistant manager had apparent authority to place such advertisements.

It must be noted that where the third party knew, or ought to have known, that the agent did not have the authority in question, then the third party cannot rely on apparent authority of the agent to enforce the transaction. See *Overbrook Estates v Glencombe Properties Ltd* (1974).

4 This question on contract law tests the candidates' knowledge on the equitable remedy of specific performance.

- (a) A decree of specific performance is one of the equitable remedies for breach of contract. Under the decree the court will order a party to a contract to carry out that which that party had agreed to perform. In Malaysia specific performance of a contract is regulated by the Specific Relief Act 1950, which emphasises the fact that it is a discretionary remedy of the court.
- (b) Specific performance is a discretionary remedy of the court. Chapter II of the Specific Relief Act 1950 in s.11 sets out the circumstances when the court may grant specific performance as indicated below:
- (i) when the act agreed to be done is in the performance, wholly or partly, of a trust;
 - (ii) where there exists no standard for ascertaining the actual damage caused by the non-performance of the act which is agreed to be done;
 - (iii) when the act agreed to be done is such that pecuniary compensation would not afford adequate relief; and
 - (iv) when it is probable that pecuniary compensation cannot be obtained for non-performance of the act agreed to be done.

(Note: Candidates are required to state only THREE of the above.)

- (c) Section 20 Specific Relief Act 1950 deals with the situations when the court will not grant the order of specific performance, namely in the case of:
- (i) a contract for the non-performance of which compensation in money is an adequate relief;
 - (ii) a contract which runs into minute or numerous details or which is dependent on the personal qualifications or wish or choice of the parties;
 - (iii) a contract the terms of which the court cannot determine with reasonable certainty;
 - (iv) a contract the nature of which makes it revocable;
 - (v) a contract made by trustees either in excess of their powers or in breach of their trust;
 - (vi) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of the company, which is in excess of its powers;
 - (vii) a contract which involves the performance of a continuous duty extending over more than three years;
 - (viii) a contract of which a material part of the subject matter supposed by both parties to exist, has, before it has been made, ceased to exist.

Further, as specific performance is a discretionary remedy, the court may exercise its discretion not to grant the remedy in the circumstances mentioned in s.21 Specific Act 1950.

(Note: Candidates are required to state only FIVE of the above.)

5 This question, which contains two parts, tests the candidates' knowledge on the concept of the company as a separate legal entity, as well as the instances in which the veil of incorporation may be lifted.

- (a) The 'veil of incorporation' refers to the legal phenomenon that upon the incorporation of a company it becomes in law a separate legal entity distinct 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 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) and 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 depart from this principle. This is often referred to as the lifting of the veil of incorporation. Such lifting of the veil of incorporation may occur either by virtue of a statutory provision or by established case law. The main circumstances 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 or she will be personally liable for the debts incurred after the first six months.

- (ii) Section 121(2) Companies Act 1965.

By this section, where an officer signs on behalf of the company a cheque, promissory note or any other document stated therein, and the company's name is not properly stated in it, he or she will be personally liable to the holder of that cheque or the other documents mentioned above for the amount stated in such a document, 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) read together with s.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.

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 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 *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, thus enabling the holding company to get compensation for the disruption of business following a compulsory acquisition of its land.

(iv) Group enterprise.

Sometimes the courts are prepared to treat groups of companies as one. This is illustrated in *DHN Food Distributors Ltd v Tower Hamlets LBC* (1976) and *Hotel Jaya Puri Bhd v National Union of Hotel Bar & Restaurant Workers* (1980).

(Note: Candidates are required to explain only FOUR instances.)

6 This question, on company law, tests the candidates' knowledge on schemes of arrangement under the Companies Act 1965.

- (a) There is no complete definition of the phrase 'scheme of arrangement' in the Companies Act 1965. Attention may be drawn to s.176(11), which states that the term arrangement 'includes a reorganisation of the share capital of a company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both these methods'. However, this statement in s.176(11) is incomplete as the phrase 'scheme of arrangement' under s.176 is a term which has in fact a wide meaning and the scheme of arrangement procedure as stated in s.176 can be used to achieve purposes other than those stated therein.

From s.176(1), it can be seen that the compromise or scheme of arrangement provisions as stated in s.176 can also be used to effect a proposal by which the rights of creditors or a class of creditors or the rights of members or a class of members are varied. It can also be used to carry out a reconstruction of a company or amalgamation of two or more companies (s.178). Thus, provided the procedure prescribed in the Act is followed and the sanction of the court is obtained, the provisions of s.176 can be used to carry out a number of objectives which may prove essential in a company's life. One of the important objectives which can be achieved through the use of the scheme of arrangement provisions as stated in s.176 is a compromise between an ailing company facing financial difficulties and its creditors, thus allowing the company to recover from its financial difficulties without going into liquidation.

- (b) The matters in respect of which provisions may be made by the court to facilitate an amalgamation are stated in s.178 Companies Act 1965. They are:

- (i) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
- (ii) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (iii) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (iv) the dissolution, without winding up, of the transferor company;
- (v) the provision to be made for any persons, within such time and in such manner as the court directs, to dissent from the compromise or arrangement; and
- (vi) such incidental, consequential and supplemental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out.

(Note: Candidates are required to state only THREE of the above matters.)

7 This question on company law contains two parts. Part (a) tests the candidates' knowledge on the circumstances in which a person may be disqualified from acting as an auditor. Part (b) tests the candidates' knowledge on removal of auditors from office.

(a) The circumstances under which a person will be disqualified from acting as an auditor of a company are set out in s.9(1) Companies Act 1965. They are:

- (i) if he is not an approved company auditor;
- (ii) if he is indebted to the company or to a corporation related to that company by virtue of s.5 in an amount exceeding RM2,500;
- (iii) if he is –
 - (a) an officer of the company;
 - (b) a partner, employer or employee of an officer of the company;
 - (c) a partner or employee of an employee of an officer of the company; or
 - (d) a shareholder or his spouse is a shareholder of a corporation whose employee is an officer of the company; or
- (iv) if he is responsible for or if he is the partner, employer or employee of a person responsible for the keeping of the register of members or the register of the holders of debentures of the company.

(b) Section 172(4) provides that an auditor of a company may only be removed by a resolution of which special notice has been given. What constitutes special notice is dealt with in s.153. Applying that section, the mover of a proposed resolution at a meeting to remove an auditor must give notice of 28 days to the company before the meeting of his intention to move the resolution. Where such notice to remove an auditor has been received by the company, it shall forthwith send a copy to the auditor concerned and to the Registrar of Companies.

The auditor may within seven days after receiving the copy of the notice make written representations against the removal, not exceeding a reasonable length, to the company (s.172(5)(b)). He or she may request that a copy of the representations be sent by the company to every member of the company to whom notice is sent of the meeting at which the resolution to remove him or her will be moved. The company is bound to do so unless the Registrar, on the application of the company, orders otherwise. The auditor concerned may also require that the representations be read out at the meeting and this would be without prejudice to his or her right to be heard orally (s.172(6)).

At the meeting, the auditor concerned may be removed from office by a resolution passed by more than half of the members present and voting in person or by proxy. After the removal of the auditor from office in accordance with the provisions of s.172(4), the company must forthwith give written notice of the removal to the Registrar (s.172(8)).

8 This problem-based question on company law tests the candidates' knowledge and ability to apply the law relating to registration of company charges and priority of charges.

(a) Section 108(1) deals with the registration of charges. Under the section, where a registrable charge is created by a company, there shall, within 30 days of the creation of the charge, be lodged for registration with the Registrar a statement of the prescribed particulars in the prescribed form. If this is not complied with, the charge shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company. Further, where a charge becomes void under s.108(1), the money secured thereby becomes immediately repayable (s.108(2)). Thus, the fixed charge given to Bank Kita is void for want of registration and the money lent by it becomes immediately repayable. As PQR Bhd has gone into liquidation, Bank Kita will rank only as an unsecured creditor.

Under s.109(1), if default is made in registering the particulars, the company and any officer of the company who is in default shall be guilty of an offence under the Companies Act 1965. Section 109 provides a default penalty of RM1,000.

(b) The fixed charge given to Bank Kita is void for want of registration and need not be considered for the purpose of priority of charges. The contest for priority is between the floating charge given to Bank Anda and the fixed charge given to Bank Kaya.

The general rule is that as between a floating charge and a fixed charge, the fixed charge has priority even if the fixed charge was created subsequent to the floating charge. This arises from the fact that a holder of a floating charge impliedly permits the company to deal with the assets charged. The fact that the fixed chargee knew of the existence of the earlier floating charge is immaterial (see *United Malayan Banking Corporation v Aluminex (M) Sdn Bhd* (1993)). This is one of the disadvantages of the floating charge as a form of security.

A floating charge may contain a 'negative pledge'. A negative pledge is a stipulation inserted into a charge that the chargor shall not create another charge ranking in priority to or in *pari passu* with it. A negative pledge in a floating charge will not affect the priority of a subsequent fixed charge unless the holder of the fixed charge took the fixed charge after he had notice of the negative pledge (see *Re Valletort Sanitary Steam Laundry* (1903) and *Wilson v Kelland* (1910)).

Thus, as a general rule, the fixed charge given to Bank Kaya will have priority over the floating charge given to Bank Anda unless Bank Kaya had notice of the negative pledge which was inserted into Bank Anda's floating charge.

- 9 This question on company law which contains three parts tests the candidates' knowledge and ability to apply the law relating to the alteration of a company's name as well as the legal effect of the articles of association.

- (a) Lam may be advised that the proposed change of name will be valid if it is passed by a special resolution. Section 23 Companies Act 1965 states that a company may, by a special resolution, resolve that its name be changed to a name by which the company could have been registered without contravening the Companies Act. Thus, a change of the name of a company is a right of the members which cannot be taken away by a provision inserted in the memorandum that its name is unalterable.

Section 21(1A), which allows matters to be included in the memorandum and made unalterable, is inapplicable in this case. This is because s.23 expressly allows the name to be altered.

- (b) The issue in this case is whether Lam can enforce the provision in the articles which states that ABC Bhd shall purchase all the stationery, furniture and office equipment which it needs from Lam. The general rule is that provisions in the articles bind the company to its members and vice versa. See *Hickman v Kent or Romney Marsh Sheep-Breeders' Association* (1915) and *Wood v Odessa Waterworks Co* (1889). However, under the orthodox rule, as recognised in cases like *Eley v Positive Government Security Life Assurance Co* (1875) and *Beattie v E and F Beattie Ltd* (1938), a member can only enforce provisions in the articles which deal with membership rights. In *Eley's* case, Eley, a member, was unable to enforce a provision in the articles which provided that he was to be the permanent solicitor of the company.

In Lam's case, the abovementioned provision in the articles does not affect him in his capacity as a member and does not infringe any of his membership rights. Thus Lam will be unsuccessful if he sues ABC Bhd for breach of contract.

- (c) The issue here is whether Ben is bound by the provision in the articles which states that a member of the company, who wishes to sell his or her shares, must first offer the shares to other members at a price to be determined by the company's auditors. It is now well settled that provisions in the articles of a company create a contract between one member and another member of the company. A case in point is *Wong Kim Fatt v Leong & Co Sdn Bhd* (1976). In this case the company had two members, A and B. The articles provided that a member, who held a certain number of shares, could requisition the other member for the purchase of the other member's shares. A held the required number of shares under the articles and requisitioned for the purchase of B's shares. It was held that the articles created a contract between A and B, and B was compelled to sell his shares to A.

The above provision in the articles is a pre-emption clause which is binding on all members. Thus, Ben is advised to comply with it and offer his shares to other members of the company before he attempts to sell the shares to Al Jadi. If he fails to do so, he is liable to be sued for breach of contract by the other members.

- 10 This problem-based question on contract law tests the candidates' knowledge and ability to apply the law relating to undue influence and coercion as matters affecting free consent and thus the validity of contracts.

- (a) The issue in this case is whether Janet's consent to sell her bungalow at a gross undervalue was given freely at the time she signed the agreement. If her consent was not freely given but was in fact caused by one of the vitiating elements like coercion, undue influence, fraud or misrepresentation, the contract would be voidable at her option. It cannot be assumed outright that her consent was not freely given merely because the price to be paid by Singa was well below the market price, although it is one of the factors which may be taken into account for the purpose of determining free consent (see Explanation 2 to s.26 Contracts Act 1950).

The crucial point in this case is whether undue influence was exercised by Singa, Janet's spiritual adviser. Section 16(1) states that a contract is said to be induced by 'undue influence' where the relationship between the parties is such that one of them is in a position to dominate the will (free consent) of the other, and uses that position to obtain an unfair advantage over the other.

By virtue of s.16(2), a person is deemed to be in a position to dominate the will or free consent of another:

- (i) where he holds a real or apparent authority over the other, or where he stands in fiduciary relation to the other, or
- (ii) where he makes a contract with the person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

In a case where a person, A, is in a position to so dominate the will of another person, B, enters into a contract with B and the contract appears to be unconscionable, the burden of proving that the contract was not induced by undue influence is on A.

In Janet's case, Singa was her spiritual adviser and in a position to dominate her free consent. Singa appears to have used his dominant position to gain an advantage for himself by impressing upon Janet that her assistance was necessary to acquire a bungalow to house those seeking his treatment. Janet appears to have made up her mind to assist Singa while she was still a resident at Singa's house and under his spiritual influence, although the contract was signed a day after she returned home. Further, Janet may not be free of Singa's influence on the day she signed the contract as the interval between the date she left Singa's house and the date she signed the agreement was just one day. Thus it is submitted that there is a presumption of undue influence, which Singa must rebut. Taking into account all the facts of the case including Janet's age and poor health, it is unlikely that he will be able to do so. Janet may be advised the contract appears to be voidable at her option.

- (b) The issue in this situation is whether Ramu can recover the amount of RM15,000 from his neighbour on the ground that his consent to pay that sum was induced by coercion.

As stated in (a) above, a contract must be entered into with the free consent of the parties. The consent would not be free if it was caused by one of the vitiating elements like coercion, undue influence, fraud or misrepresentation. The contract would be voidable at his option in the event that any of these vitiating elements are present. The issue here is whether Ramu's consent was caused by coercion.

Coercion is defined in s.15 Contracts Act 1950. It states, 'Coercion is the committing or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement'.

In *Chin Nam Bee Development Sdn Bhd v Tai Kim Choo & 4 Ors* (1988), the respondents had entered into a sale and purchase of homes to be constructed by the appellants at the price of RM29,500. Subsequently, the respondents were required by the appellants to pay an additional RM4,000, failing which the appellants threatened to cancel their bookings for the houses. The court held that the agreement to pay the additional sum was caused by coercion within the meaning of s.15 and as a consequence it was voidable at the respondents' option.

As Ramu had paid the sum of RM15,000 on the threat of detention and possible harm to his property (Barkie), it can be concluded that his agreement to pay the sum was caused by the coercion of the neighbour. Therefore the contract is voidable at his option and he may be advised that he will be able to recover the said sum.

- 1** 8–10 An excellent answer correctly and fully explaining the doctrine of binding judicial precedent and its operation in Malaysia.
 5–7 An average to good answer explaining how the doctrine of binding judicial precedent operates.
 0–4 Incomplete or inaccurate answer.
- 2** (a) 3–5 Average to good answer correctly explaining what is meant by redundancy and stating the main situations in which redundancy is said to occur.
 0–2 Incomplete or inaccurate answer.
- (b) 0–5 One mark for each correctly stated way in which a contract of employment may be terminated under the Employment Act 1955.
- 3** (a) 3–5 Average to good answer correctly explaining what is meant by actual authority of an agent in the context of the law of agency.
 0–2 Incomplete or inaccurate answer.
- (b) 3–5 Average to good answer correctly explaining what is meant by ostensible authority in the context of the law of agency.
 0–2 Incomplete or inaccurate answer.
- 4** (a) 0–2 An accurate answer explaining the meaning of specific performance will fall into the upper part of this band while an inaccurate one will fall into the lower part.
- (b) 0–3 One mark for each correctly stated situation in which the court will grant specific performance.
- (c) 0–5 One mark for each correctly stated situation in which the court will not grant specific performance.
- 5** (a) 0–2 An accurate answer explaining the meaning of the 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 correct explanation of each of the four situations in which the veil of incorporation may be lifted.
- 6** (a) 0–4 An accurate answer clearly explaining what is a scheme of arrangement with reference to the Companies Act 1965 will fall into the upper part of this band while an incomplete or inaccurate one will fall into the lower part.
- (b) 0–6 Two marks for each of three matters in respect of which provisions may be made by the court to facilitate an amalgamation.
- 7** (a) 3–5 Average to good answer explaining the circumstances in which a person may be disqualified from acting as an auditor with reference to the Companies Act 1965.
 0–2 Incomplete or inaccurate answer.
- (b) 3–5 Average to good answer explaining the procedure by which an auditor of a company may be removed from office, with reference to the Companies Act 1965.
 0–2 Incomplete or inaccurate answer.
- 8** (a) 2–4 An average to good answer explaining the civil and criminal consequences which flow from the fact that the fixed charge given to Bank Kita was not registered with the Registrar, with reference to the Companies Act 1965.
 0–1 Incomplete or inaccurate answer.
- (b) 3–6 An average to good answer explaining the order of priority of the three charges.
 0–2 Incomplete or inaccurate answer.

- 9** (a) 0–3 An accurate answer explaining whether the proposed change to the name of the company is valid will fall into the upper part of this band while an inaccurate one will fall into the lower part.
- (b) 0–3 An accurate answer explaining whether Lam may successfully sue ABC for breach of contract because it had failed to comply with its articles will fall into the upper part of this band while an inaccurate one will fall into the lower part.
- (c) 0–4 An accurate answer explaining whether Ben must first offer his shares to the other members before he can sell them to Al Jadi will fall into the upper part of this band while an inaccurate one will fall into the lower part.
- 10** (a) 3–5 Average to good answer, correctly identifying and explaining the issue of undue influence and its effect on the validity of a contract, with correct application to the given problem and appropriate advice to Janet.
- 0–2 Incomplete or inaccurate answer.
- (b) 3–5 Average to good answer, correctly identifying and explaining the issue of coercion and its effect on the validity of a contract, with correct application to the given problem and appropriate advice to Ramu.
- 0–2 Incomplete or inaccurate answer.