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# Answers

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Section B

- 1 (a) Money laundering is defined in the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 s.3(1) as, among other things, 'the act of a person who acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity', where:
- (1) as may be inferred from objective factual circumstance, the person knows or has reason to believe, that the property is proceeds from any unlawful activity; or
  - (2) in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity.
- As James received the money from an unknown source and he failed to take reasonable steps to ascertain whether or not the money was proceeds from any unlawful activity, he has committed the offence of money laundering.
- (b) In the case of Jack, s.4(1) Anti-Money Laundering and Anti-Terrorism Financing Act 2001 applies.
- This section states that 'any person who:
- (a) engages in, or attempts to engage in; or
  - (b) abets the commission of money laundering,
- commits an offence.'
- As Jack, the bank officer, has assisted James by having the money deposited into James' account with the knowledge that the money was from an unknown source, he has abetted the commission of money laundering and has thus also committed an offence.
- 2 (a) In relation to the offer by Tom to grant a lease to Ken, it is to be noted that one of the requirements for a valid contract is that the subject matter of the contract must be certain. A case in point is *Karuppan Chetty v Suah Thian* (1916), where a lease had been granted, 'for as long as he likes'. The court held that this agreement was not valid as the period of the lease was not certain.
- The facts in the given problem are similar to the facts of the case mentioned above. Applying the law as explained above, it can be concluded that there is no valid contract between Ken and Tom for the lease, due to the uncertainty of the duration of the lease.
- (b) In relation to the offer to sell the pen collection, the issue is whether there has been a valid acceptance by Ken of Tom's offer. The rule is that an offer must be unconditionally accepted in order to constitute a valid agreement. An acceptance must be distinguished from a counter-offer. A counter-offer has the effect of extinguishing the original offer. A case in point is *Hyde v Wrench* (1840), where the defendant offered to sell his farm to the plaintiff for £1,000. The plaintiff replied that he was willing to pay £950 for it. When the defendant refused, the plaintiff purported to accept the original offer of £1,000. The court held that when the plaintiff stated that he was willing to pay £950, he was making a counter-offer. This had the effect of rejecting and destroying the original offer. Thus there was no valid acceptance of the original offer.
- Applying the law to the given problem, Ken's offer to pay RM15,000 amounted to a counter-offer which destroyed Tom's original offer.
- Thus there was no valid acceptance of Tom's offer by Ken and therefore no valid contract between Tom and Ken for the sale and purchase of the pen collection. Ken will be unsuccessful if he sues Tom for breach of contract.
- 3 (a) As ABC & Partners is a conventional partnership, the partners have unlimited liability towards the debts and liabilities of the firm. There may be instances where partners agree amongst themselves on the participation rights in the management of the business. A partner who does not actively participate in the management of the business is generally known as a 'sleeping partner'. Nevertheless, this is an internal arrangement and insofar as sleeping partners are known as a partner, they will be liable together with the other partners for the partnership's liabilities and obligations.
- Therefore Chong is liable together with the other partners for the debts and liabilities of the partnership.
- (b) By virtue of ss.19(2) and 38(1) Partnership Act 1961, a partner retiring from a firm is not automatically released from his liability for debts of the partnership whether incurred before or after his retirement. Further, under 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'.
- Retiring partners may take appropriate measures to be freed of their liability from both existing as well as future debts of the partnership. For existing debts of the partnership, they may enter into an agreement between themselves, the new partnership firm and the creditors to the effect that they shall no longer be liable for such debts (see s.19(3)). To protect themselves from

liability in respect of future debts of the partnership, the retiring partner may put a notice of their retirement by way of advertisement in the Federal Gazette, Sabah Gazette, or Sarawak Gazette (see s.38(2)).

Applying the law to this question, unless Balu has taken the measures mentioned above, he remains liable for the debts and liabilities of the partnership.

- 4 (a)** Section 108 Companies Act 1965 stipulates the categories of charges which require registration. These include all fixed charges and floating charges created by the company to secure a debenture. Thus both the fixed charge and the floating charge created by Downhill Sdn Bhd must be registered.

By s.108, the charges must be registered within 30 days of their creation.

- (b)** In the event the charges are not registered within the stipulated time, s.108 provides that the charges will be void against the liquidator and any other creditor of the company. Further, when the charge becomes void, the monies secured thereby becomes immediately payable.
- (c)** The general rule on the order of priority of charges is that fixed charges have priority over floating charges. Thus the fixed charge in favour of Bank Bagus will have priority over the floating charge in favour of Bank Kawan.

- 5 (a)** Section 133 Companies Act 1965, among other things, prohibits a company (other than an exempt private company) from giving loans to directors. However, this is subject to certain exceptions. One of the exceptions is to provide directors in full-time employment of the company with funds to enable them to meet expenditure to purchase a home on condition that it is done with the prior approval of the company given at a general meeting at which the purpose of the expenditure and the amount of the loan has been disclosed or on condition that if the approval is not given at the next annual general meeting (AGM), the loan must be repaid within six months from the conclusion of that AGM.

As Ben is a director of the company (which is not an exempt private company because it is a public company), it cannot give a loan to Ben to enable him to finance his father's surgery as a loan for such a purpose does not fall within the exceptions.

With regard to the loan for the purchase of a house, this may be permitted as Ben is a full-time director, being an executive director, subject to the conditions stated above.

- (b)** By s.133(3) where the required approval has not been given, the directors who authorised the transaction shall be liable to indemnify the company for any loss arising therefrom. Further, by s.133(4) where a company contravenes the section, the directors who authorised the transaction will be guilty of an offence.

**Section B**

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|----------|---|------------------------|
| <b>1</b> | <b>(a)</b> Correct identification as to what is money laundering as is relevant to James<br>Correct application and conclusion as regards James | 1 mark<br>2 marks      |
|          | <b>(b)</b> Correct identification as to what is money laundering as is relevant to Jack<br>Correct application and conclusion as regards Jack   | 1 mark<br>2 marks      |
|          |   | <b>(Total 6 marks)</b> |
| <b>2</b> | <b>(a)</b> Identification of issue of uncertainty<br>Correct explanation and application  | 1 mark<br>2 marks      |
|          | <b>(b)</b> Identification of issue of counter-offer<br>Correct explanation and application  | 1 mark<br>2 marks      |
|          |   | <b>(Total 6 marks)</b> |
| <b>3</b> | <b>(a)</b> Correct explanation on liability of sleeping partner<br>Correct application and conclusion   | 2 marks<br>1 mark      |
|          | <b>(b)</b> Correct explanation on liability of retired partner<br>Correct application and conclusion  | 2 marks<br>1 mark      |
|          |   | <b>(Total 6 marks)</b> |
| <b>4</b> | <b>(a)</b> Correct answer regarding the charges   | 2 marks                |
|          | <b>(b)</b> Correct answer   | 2 marks                |
|          | <b>(c)</b> Correct answer regarding priority of the charges   | 2 marks                |
|          |   | <b>(Total 6 marks)</b> |
| <b>5</b> | <b>(a)</b> Correct explanation on prohibition on loans to directors<br>Correct application and conclusion                                       | 2 marks<br>2 marks     |
|          | <b>(b)</b> Correct answer on the consequences   | 2 marks                |
|          |   | <b>(Total 6 marks)</b> |