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# Answers

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1 This question, on the Malaysian legal system, contains three parts. Part (a) tests the candidates' knowledge on the difference between private law and public law. Parts (b) and (c) test them on legislation and delegated legislation.

- (a) Private law refers to the law that regulates the relationship between persons. It is sometimes referred to as civil law. A legal action in private law is normally instituted by an individual in his own right against another. Examples of private law include contract law, tort, family law and commercial law.

Public law, on the other hand, refers to the law that regulates the relationship between the citizen and the State. A legal action in public law is normally instituted by the State against the persons who offend the law. Examples of public law include criminal law, constitutional law and administrative law.

- (b) Legislation refers to the laws which have been formally passed by the properly elected bodies, i.e. the Parliament at the Federal level and the State Legislative Assemblies at the State level. Legislation passed by Parliament is generally called an Act of Parliament, while those passed by the State Legislative Assemblies are called Enactments (with the exception of Sabah and Sarawak, where they are called Ordinances).

Delegated legislation (also known as subsidiary legislation) refers to the rules and regulations which are passed by some person or body under some enabling parent legislation. The Interpretation Act 1967 defines it as 'any proclamation, rule, regulation, order, bye-law or other instrument made under any Act, Enactment, Ordinance, or other lawful authority and having legislative effect'.

- (c) The increase in popularity of delegated legislation can be attributed to the reasons stated below:

- (i) Delegated legislation can be passed very quickly and is more flexible. This is because it does not have to undergo the various stages of procedure which have to be followed in Parliament or the State Legislative Assemblies. Similarly, if the need arises, subsidiary legislation can be just as speedily amended or even rescinded to meet the changing needs of society.
- (ii) Delegated legislation deals with the detailed rules necessary to implement the law. As Parliament does not have sufficient time to deal with such minute details, delegated legislation is the more efficient way to fulfil this need.
- (iii) Certain matters may require the special skill and knowledge of experts in that area. Parliament itself may not have sufficient experts for this purpose. Thus, delegated legislation fulfils this need as well.

2 This question on employment law tests the candidates' knowledge on what constitutes 'due enquiry' for purposes of dismissal of an employee on grounds of misconduct as well as the remedies available to an employee if he has been unjustifiably dismissed.

- (a) Section 14 Employment Act 1955 provides that the employer may dismiss the employee on the ground of misconduct by an employee. However, the employer may only do so after 'due inquiry'.

The Employment Act does not define what constitutes 'due inquiry'. However, reference may be made to the following guidelines laid down by the Industrial Court in the case of *KJJ Cleetus and Unipamol (M) Sdn Bhd* (IC Award 66 of 1975):

- (i) the inquiry is to be instituted as early as possible after the suspension of the complainant;
- (ii) the complainant is to be given particulars of the misconduct, preferably in writing; and a reasonable time is to be given to him before the inquiry to enable him to prepare his case;
- (iii) where applicable, the complainant is to be accompanied by his union or committee representative, if any, at the inquiry;
- (iv) the inquiry is to be conducted, as far as possible, by such officer(s) as not directly connected with the investigation of the misconduct, so as to give the hearing impartiality;
- (v) examination of relevant witnesses is to be allowed at the reasonable discretion of the officer-in-charge of the inquiry; and
- (vi) notes in the form of questions and answers and the final decision are to be recorded to show that the inquiry was proper, and that the decision arrived at was fair.

**(Candidates are only required to mention FOUR matters.)**

- (b) The remedies available to an employee who has been unjustifiably dismissed are as follows:

- (i) Reinstatement and backpay

This is a remedy whereby the employee is put back into the position he would have been in, had it not been for the unjustifiable dismissal. Reinstatement requires that the employee should be restored to his previous position so far as his capacity, status and emoluments are concerned. He is then entitled to backpay, i.e. arrears of salary from the time of his dismissal to the time of his reinstatement. See: *Western India Automobile Association v Industrial Tribunal* (1949).

- (ii) Compensation in lieu of reinstatement and backpay

The court may order compensation in lieu of reinstatement and backpay where it is not possible or advisable to order reinstatement. Reinstatement may be refused where the employer has lost confidence in the employee or where such reinstatement may lead to an apprehension of breach of industrial peace. Reinstatement will, of course, be impossible,

for example, where the employee had died after the commencement of legal proceedings. The compensation payable is usually at the rate of one month's pay for each year of service subject to a maximum of 24 months.

(iii) Re-engagement

Sometimes the employee is not reinstated but is merely re-engaged or re-employed. This means that the employee is given an opportunity to work for the employer. All past services will be lost. The employee will start afresh and he is not entitled to any backpay. See: *Restu Motor Sdn Bhd and Nazaruddin bin Abdul Samad* (Award 276 of 1985).

3 This question tests the candidates' knowledge on two types of remedies for breach of contract, viz, injunction and damages.

(a) Injunction

An injunction is essentially an order of the court, which prevents or stops the defendant from doing or continuing to do something in breach of the terms of the contract between him and the plaintiff. An injunction is a discretionary remedy and not one which is obtainable as of right. In Malaysia, the remedy of injunction may be obtained in accordance with the Specific Relief Act 1950, which provides for two types of injunctions viz, 'temporary injunctions' or 'perpetual injunctions'.

By s.51, temporary injunctions are such as are to continue until a specified time or until the further order of the court. This temporary injunction is sometimes called an interlocutory or interim injunction and is usually granted by the court pending the outcome of a full hearing by the court. The purpose of the temporary injunction is to preserve the status quo of the parties until the final outcome of the court case.

By s.51(2), the perpetual injunction, on the other hand, is one that is granted by the court at the end of the hearing and upon the merits of the suit. The defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Injunctions may also be classified as either mandatory or prohibitory. A mandatory injunction is to compel the performance of a term of the contract. However, s.54(f) provides that an injunction may not be granted if its effect is to enforce a contract that cannot be specifically enforced.

A prohibitory injunction is to restrain the defendant from breaching his obligations under the contract. However, it must be noted that a prohibitory injunction may only be granted to enforce a negative promise, e.g. a contract not to sell computers other than that produced by the plaintiff. This is the effect of s.55 Specific Relief Act 1950 which applies notwithstanding s.54(f) mentioned above.

(b) Damages

An order for damages refers to an order of the court requiring the party in breach to pay the other party monetary compensation for the loss or other inconvenience suffered as a result of the breach. The measure of damages recoverable is stipulated in s.74 Contracts Act 1950. This is similar to the measure of damages payable under common law as established in the case of *Hadley v Baxendale* (1854).

By virtue of this section, when a contract has been broken, the party who suffers by the breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him:

- (i) which arose naturally in the usual course of things from the breach, or
- (ii) which the parties knew when they made the contract to be likely to result from the breach of it.

However, the section also states that such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

See: *Bee Chuan Rubber Factory Sdn Bhd v Loo Sam Mooi* (1976); *Tham Cheow Toh v Associated Metal Smelters Ltd* (1972).

Damages may be classified as substantial, nominal or exemplary.

Substantial damages refers to the compensation which is intended to put the aggrieved party in the position that he would have been in, had the breach not occurred. Nominal damages refers to a token award granted by the court where the plaintiff has proved the defendant's breach but has suffered no actual loss. Exemplary damages refers to an award of damages which is intended to penalise a defendant for his breach. The plaintiff in this case will be awarded more than his actual financial loss. It is only awarded in special circumstances such as breach of promise of marriage, a breach which is actionable in Malaysia.

4 This question on company law, which contains two parts, tests the candidates' knowledge of the operation and rationale of the *ultra vires* doctrine at common law as well as the position under the Companies Act 1965.

- (a) Every company is required to have a memorandum of association which, among other things, must contain an objects clause indicating the principal purposes for which the company was formed. The company may only carry out those objects which are stated therein. Any activity of the company which is outside the scope of its objects clause is said to be *ultra vires*. At common law, any *ultra vires* act or transaction of a company was held to be void. Neither the company nor the third party could enforce such a transaction. This principle is known as the doctrine of *ultra vires*. Unfortunately, the doctrine had the tendency of creating hardship, especially upon third parties dealing with companies without being aware that the transaction

was outside the capacity of the company, i.e. *ultra vires*. It was also, sometimes, a problem to the company itself, which could not venture into new activities without altering the objects clause. However, the harshness upon third parties was justified on the ground of constructive notice, i.e. that third parties dealing with the company were deemed to know the contents of its memorandum and articles as they were its public documents and they had the opportunity to inspect those documents before transacting with the company.

The rationale behind the doctrine was to protect the investors of the company, namely, its members and creditors, as the doctrine would ensure that their money would be applied only for the purposes stipulated in the objects clause.

**(b)** The importance of the *ultra vires* doctrine has diminished in Malaysia as a result of s.20 Companies Act 1965.

By s.20(1), no act or purported act of a company, and no conveyance or transfer of property to or by a company shall be invalid by reason only that it is *ultra vires*. As a result of this section, *ultra vires* transactions are valid and binding upon the company. This might give the impression that the doctrine of *ultra vires* has been abolished in Malaysia. However, this is not so. At the most, its importance has only been diminished. Companies are still expected to act within the scope of the objects clause. This can be seen from the provisions of s.20(2).

By s.20(2)(a), any member of the company or debenture holder secured by a floating charge on the company's property or the trustees for such debenture holders may take proceedings against the company to restrain the company from doing any *ultra vires* act, or conveyance or transfer of any property to or by the company. Section 20(3) provides that the court may allow compensation to the company or other party for loss suffered as a result of granting the injunction.

By s.20(2)(b), the issue of *ultra vires* may be relied upon by the company or any member in proceedings against the present or former officers of the company.

By s.20(2)(c), the issue of *ultra vires* may be relied upon in any petition by the minister to wind up the company.

Upon an assessment of the section as a whole, it can be concluded that completed transactions remain valid as between the company and the third party and either party may sue the other upon it. The doctrine of *ultra vires* appears to have been abolished only in so far as third parties are concerned. However, as mentioned above, uncompleted transactions may be stopped on grounds of *ultra vires*. Further, the present and former officers of the company may be made liable to the company for the *ultra vires* transactions. In addition, the company may also be wound up by the minister. This serves to protect the investors of the company, i.e. the members and the creditors, thus retaining the rationale behind the *ultra vires* doctrine.

**5** This question tests the candidates' knowledge on the main duties of a company auditor in relation to reports on accounts under the Companies Act 1965.

The Companies Act imposes a number of duties upon the company auditor in relation to reports on accounts. These are stated in s.174. The main duties are summarised below.

By s.174(1), an auditor has the duty to report to the members on the accounts, which are required to be laid before the company in a general meeting and also on the company's accounting and other records. In the case of a holding company, the auditor is also required to report on the consolidated accounts.

Further, by s.175(1), in the case of a borrowing corporation, the auditor is required to send a copy of the report to the trustee for debenture holders.

By s.174(2), the auditor is required to state in his report whether, in his opinion, the accounts and consolidated accounts, if any, have been properly drawn up:

- (i) so as to give a true and fair view of the matters required to be dealt with in the accounts and consolidated accounts, if any;
- (ii) in accordance with the provisions of the Act so as to give a true and fair view of the company's affairs; and
- (iii) in accordance with the applicable accounting standards.

By s.174(3), the auditor also has the duty to form an opinion as to each of the following matters:

- (i) whether he has obtained all the information and explanations that he required;
- (ii) whether proper accounting and other records have been kept by the company as required by the Companies Act;
- (iii) whether the returns received from branch offices of the company are adequate; and
- (iv) whether the procedures and methods used by a holding company or a subsidiary in arriving at the amount taken into any consolidated accounts were appropriate to the circumstances of the consolidation.

By s.174(8), if there was a failure or shortcoming in respect of these matters, and if the auditor is of the opinion that the matter will not be adequately dealt with by comment in his report or notice to the directors, he must forthwith report the matter in writing to the Registrar.

Further, by s.174(8A) which was introduced by the Companies (Amendment) Act 2007, in the case of a public company or company controlled by a public company, if the auditor is of the opinion that a serious offence involving fraud or dishonesty is being or has been committed by the officers of the company, he must immediately report the matter in writing to the Registrar.

**(Candidates are only required to explain FIVE main duties imposed on a company auditor.)**

**6** This question, on the law of agency, tests the candidates' knowledge on the duties of the agent and the principal towards each other.

**(a)** The duties of the agent towards the principal under the Contracts Act 1950 may be summarised as follows:

- (i) By s.164, an agent has the duty to obey the principal's instructions or, in the absence of such instructions, to act according to the custom which prevails in doing business of the same kind at the place where the agent conducts the business. If the agent fails to do so, he must make good any losses or account to the principal for any profits made by him.
- (ii) By s.165, the agent has a duty to exercise care and diligence in carrying out his work and to use such skill as he possesses.  
  
The agent is expected to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of his lack of skill. He will have to compensate the principal for the consequences of his own neglect, want of skill or misconduct.
- (iii) By s.166, the agent has a duty to render proper accounts when required. The agent must account for all the monies and property handled by him. Such accounts must be produced by the agent when demanded by the principal.
- (iv) By s.167, the agent has a duty, in cases of difficulty, to use all reasonable diligence in communicating with his principal and in seeking to obtain his instructions.
- (v) By s.168, the agent has a duty to act solely for the benefit of his principal. If he deals on his own account in the business of the agency without the consent of the principal, the principal has a right to repudiate the transaction. Further, by s.169 the principal also has the right to claim from the agent any benefit received by him from the transaction.
- (vi) By s.171, the agent has a duty to pay to the principal all sums received on his behalf. However, the agent has the right to retain or deduct from such sums received, advances made or expenses incurred by him in carrying out his duty as well as commissions and other remuneration payable to him for acting as agent.

**(Candidates are only required to explain THREE duties of the agent to the principal.)**

**(b)** The duties of a principal towards his agent are stated in ss.175 to 178 Contracts Act 1950. These may be summarised as follows:

- (i) By s.175, the principal is bound to indemnify the agent against the consequences of all lawful acts done by the agent within the scope of his authority.
- (ii) By s.176, where the principal has employed the agent to do an act, and the agent does the act in good faith, the principal is liable to indemnify the agent against the consequences of that act, even if it causes an injury to the rights of third persons.
- (iii) By s.178, the principal must make compensation to his agent in respect of injury caused to the agent by the principal's neglect or want of skill.

**(Candidates are only required to explain TWO duties of the principal to the agent.)**

**7** This question on company law, which contains two parts, tests the candidates' knowledge on the rights which may be attached to preference shares and the procedure for the variation of class rights as provided under Table A of the Fourth Schedule to the Companies Act 1965, including the protection afforded to class shareholders who are dissatisfied with the variation.

**(a)** The rights attached to preference shares are usually found in the company's articles of association. Among the rights which may be attached to preference shares are the following:

- (i) right to a fixed preferential dividend  
This right to a preferential dividend is in priority to the ordinary shareholders.
- (ii) right to cumulative dividends  
This refers to the right to receive arrears of dividends in respect of those years where no dividend is declared.
- (iii) right to participate in surplus profits  
This refers to the right of the preference shareholder to enjoy a higher dividend in those years where the company has made higher profits and is able to give a higher dividend to its ordinary shareholders.
- (iv) right to participate in surplus assets in a winding up  
This refers to the right of preference shareholders to share in the surplus assets of the company when the company is wound up.
- (v) priority to repayment of capital  
This refers to the right of the preference shareholders to be repaid their capital ahead of the ordinary shareholders in a winding up of the company.

- (vi) limited voting rights

Although s.4 defines a preference share as a share that does not carry the right to vote at general meetings, they can be and often are, given limited voting rights. See for example, s.148(2) Companies Act 1965.

**(Candidates are required to explain only FIVE rights of preference shareholders.)**

- (b) By article 4 of Table A of the Fourth Schedule to the Companies Act 1965, the rights attached to any class of shares (unless otherwise provided by the terms of issue of the shares of that class) may be varied by one of two methods, namely:
- (i) by the passing of a special resolution (i.e. a resolution requiring a notice period of 21 days and a voting majority of three-fourths) at a separate meeting of that class of shareholders, or
  - (ii) with the written consent of the holders of at least three-fourths of the issued shares of that class.

It must be noted that minority shareholders of that class who did not vote in favour of the variation are given a measure of protection by virtue of s.65(1) Companies Act 1965. It states that the holders of not less in the aggregate than 10% of the issued shares of that class may apply to the court to have that variation or abrogation cancelled. The application must be made within one month after the date on which the consent was given or the resolution was passed. Upon hearing the application, the court may disallow the variation if it would unfairly prejudice the class shareholders.

If class rights are embodied in the memorandum of association they will be unalterable: s.21(1B).

- 8** This problem-based question on company law, which contains three parts, tests the candidates' ability to identify and apply the law relating to appointment of directors.

The directors of Mainco Bhd may be advised as indicated below:

- (a) The issue in this problem is whether Alan is disqualified to be appointed as a director of Subco Sdn Bhd by reason of his age. By s.129 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 subsidiary of a public company. As Subco Sdn Bhd is the subsidiary of Mainco Bhd, Alan is not qualified to be appointed as he is over the age of 70.

However, Alan may still be appointed by a special procedure under s.129(6). This subsection requires the company to pass a resolution approved by a three-fourths majority of the members at a general meeting. The length of notice required for the resolution must not be shorter than that required for an annual general meeting of the company, which, in this case, is 14 days, as Subco Sdn Bhd is a private company.

- (b) The issue here is whether Bakri is disqualified to be appointed as a director by reason of his having been convicted of theft five years ago. By s.130, persons convicted of certain offences will contravene the Companies Act if they are directors or promoters of or in any other way involved in the management of companies, unless they obtain the leave of the court. The offences listed in s.130 include offences involving fraud or dishonesty punishable on conviction with imprisonment of three months or more. The disqualification is for a period of five years from the date of conviction or where he has been sentenced to imprisonment, five years from the date of release from prison.

In the given problem, Bakri has been convicted of theft (which is an offence involving dishonesty) and he has just been released from prison. Thus he will effectively be disqualified from being appointed as a director of any company for the next five years. However, he may still be able to be appointed as a director, provided he obtains the leave of the court – s.130(2).

- (c) The issue here is whether a non-Malaysian national, who is not resident in Malaysia, can be appointed as a director of a Malaysian company. Section 122 (1) Companies Act 1965 requires every company to have at least two directors who each has his principal or only place of residence within Malaysia. This means that a company must have at least two directors who satisfy the residence requirement.

In the given problem, Mainco Bhd wishes to appoint Chandru, who is an Indian national, as a director. The question does not state whether Chandru is resident in Malaysia. Applying the law as stated above, Mainco Bhd may be advised that Chandru cannot be appointed if he is to be one of the two directors of the company if he does not satisfy the residence requirement. However, if the company has two other directors who satisfy the residence requirement, then Chandru may be appointed as an additional director, even though he may not be resident in Malaysia.

- 9** This problem-based question on company law tests the candidates' ability to identify and apply the law relating to two different aspects of maintenance of capital.

- (a) The issue in this problem is whether Uphill Bhd has the right to reduce its capital by returning excess capital to its members and if so, whether the proper procedure for doing so has been adhered to by the company.

Although an important rule designed to ensure that companies maintain their capital is that they must not reduce their share capital, s.64 Companies Act 1965 does permit reduction of capital, subject to certain conditions being satisfied. By that section, before a company may reduce its capital, there must be authority to do so under its articles, a special resolution must be passed by members in a general meeting and a confirmation by the court must be obtained. If the company can satisfy those conditions, it may reduce its capital in any way, including returning capital in excess of its needs to its members.

Section 64 also provides some protection for creditors who might be prejudiced by such reduction. By s.64(2), where the proposed reduction involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then every creditor who is entitled to any debt or claim is entitled to object to the reduction. By s.64(4), the court would only make an order for the reduction of capital if it is satisfied that the valid claims of each creditor has been discharged or has determined or has been secured or that his consent to the reduction has been obtained.

Applying the law to the given problem, it is clear that the requirements of s.64 have not been complied with by the company. Thus, the board may be advised that the proposed reduction, if implemented next week, will contravene the Companies Act.

Thus, EZ Bank's objection is valid.

- (b) Section 67(1) Companies Act prohibits the giving of any financial assistance by a company to any person to enable that person to purchase its own shares or the shares of its holding company. Financial assistance includes the granting of a loan, guarantee or the provision of security for the purpose of or in connection with a purchase of the company's shares. The purpose of the section is to ensure that a company maintains its capital and does not indirectly reduce its capital by granting such a loan. However, the section is subject to several exceptions. One of the exceptions to this rule, which applies to this case, is embodied in s.67(2)(c). By this provision, the giving of financial assistance by a company to persons, other than directors, *bona fide* in the employment of the company or of a subsidiary of the company with a view to enable those persons to purchase fully paid shares in the company or its holding company, to be held by themselves by way of beneficial ownership, is permitted.

Applying the law to the given problem, the proposed loan by Cetak Bhd to Kira, an employee, to purchase its shares would still breach the Companies Act because it does not satisfy all the requirements of s.67(2)(c). This is because Kira intends to buy and register the shares in her son's name so as to make a gift of the said shares to him. Section 67(2)(c) specifically states that the shares to be purchased are to be held by the employee himself or herself by way of beneficial ownership.

It may also be noted that if there is any contravention of this section, each officer who is in default shall be guilty of an offence against the Companies Act.

- 10 This problem-based question on contract law contains two parts testing the candidates' ability to identify and apply two aspects of the requirement of consideration for a valid contract.

- (a) This question concerns the issue of sufficiency of consideration in the law of contract.

By s.2(e) Contracts Act 1950, every promise and every set of promises, forming the consideration for each other, is an agreement. By s.10 (1), all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the Contracts Act 1950. Further, the law requires that consideration needs only to be sufficient and need not be adequate. This means that so long as there is valuable consideration, the courts will not question its adequacy. Explanation 2 of s.26 may be cited as authority for this. It states, 'An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.'

An example is provided in illustration (f) of s.26 as follows:

'A agrees to sell a horse worth RM1,000 for RM10. A's consent was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.'

Applying the law to the given problem, Danny may be advised that there is a valid contract between him and Chong for the sale and purchase of the violin for RM2,000 and Danny may sue Chong to enforce the contract. The agreed consideration of RM2,000 is sufficient. The fact that the consideration is inadequate is of no consequence.

See also: *Phang Swee Kim v Beh I Hock* (1964).

- (b) The issue in this problem is whether the contract between Thatha and Appoo is invalid due to lack of consideration. The general rule is that there must be consideration for a valid contract to arise. Consideration refers to the price paid by one party to the agreement to the other party in order to get the other party's consent to such agreement. Consideration is defined in s.2(d) Contracts Act 1950 as follows:

'when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called consideration for the promise.'

At common law, love and affection do not constitute valid consideration.

As Appoo has not given Thatha any valid consideration for Thatha's promise to give Appoo the rare vintage car, it would appear that the contract is not valid between them. However, s.26 Contracts Act provides for a number of exceptions in which a contract without consideration will still be valid.

One such situation is stated in s.26(a). By this provision, contracts without consideration will be valid if the contract was made on account of natural love and affection between parties standing in near relation to each other and the agreement is in writing and duly registered, if so required under the law. An example is provided in the illustration (b) to s.26 as follows:

'A, for natural love and affection, promises to give his son, B, RM1,000. A puts his promise to B into writing and registers it under a law for the time being in force for the registration of such documents. This is a contract.'

Applying the law to the given problem, it can be concluded that Thatha and his grandson Appoo are persons in near relation to each other. Thatha's promise was made on account of love and affection for Appoo. As the agreement is in writing and provided it has been duly registered if such registration was legally required, Appoo may be advised that he will be able to enforce the contract against his grandfather, Thatha, despite the lack of consideration.



- 1 (a) 0–4 An accurate answer clearly distinguishing private law from public law will fall into the upper part of this band, while an incomplete or inaccurate one will fall into the lower part.
- (b) 0–4 An accurate answer clearly distinguishing legislation from delegated legislation will fall into the upper part of this band, while an incomplete or inaccurate one will fall into the lower part.
- (c) 0–2 One mark for each correctly stated reason for the growth of delegated legislation.
- 2 (a) 0–4 One mark for each correctly stated guiding principle to constitute a ‘due inquiry’.
- (b) 0–6 Two marks for each remedy accurately explained.
- 3 (a) 3–4 Average to good answer, correctly explaining injunction as a remedy for breach of contract.
- 0–2 Incomplete or inaccurate answer.
- (b) 3–6 Average to good answer, correctly explaining damages as a remedy for breach of contract.
- 0–2 Incomplete or inaccurate answer.
- 4 (a) 0–4 An accurate answer explaining the operation of the *ultra vires* doctrine at common law and its rationale will fall into the upper part of this band, while an incomplete or inaccurate one will fall into the lower part.
- (b) 5–6 An excellent answer, accurately explaining how the *ultra vires* doctrine has diminished in importance in the light of s.20 Companies Act 1965.
- 3–4 Average to good answer, sufficiently explaining how the Companies Act has reduced the importance of the *ultra vires* doctrine.
- 0–2 Incomplete or inaccurate answer.
- 5 0–10 Two marks for each of the five duties correctly explained.
- 6 (a) 0–6 Two marks for each correctly explained duty of an agent to a principal.
- (b) 0–4 Two marks for each correctly explained duty of a principal to an agent.
- 7 (a) 0–5 One mark for each correctly stated right which may be attached to preference shares.
- (b) 3–5 Average to very good answer, explaining the procedure for the variation of class rights with reference to Table A of the Fourth Schedule to the Companies Act 1965 as well as the protection afforded under the Act to those who are dissatisfied with the variation.
- 0–2 Incomplete or inaccurate answer.
- 8 (a) 0–3 An accurate answer identifying the issue of disqualification of over-aged directors with correct application and advice to Mainco Bhd will fall into the upper part of this band, while an incomplete or inaccurate one will fall into the lower part.
- (b) 0–4 An accurate answer identifying the issue of disqualification of persons convicted of certain offences as directors with correct application and advice to Mainco Bhd will fall into the upper part of this band, while an incomplete or inaccurate one will fall into the lower part.
- (c) 0–3 An accurate answer identifying the issue of disqualification of non-residents as directors with correct application and advice to Mainco Bhd will fall into the upper part of this band, while an incomplete or inaccurate one will fall into the lower part.

- 9 (a)** 3–5 Average to good answer, correctly identifying and explaining the procedure for reduction of capital under the Companies Act and applying the law to the given problem, with accurate advice to EZ Bank.  
0–2 Incomplete or inaccurate answer.
- (b)** 3–5 Average to good answer, correctly identifying, explaining and applying s.67(2)(c) to the given problem.  
0–2 Incomplete or inaccurate answer.
- 10 (a)** 3–5 Average to good answer, correctly identifying and explaining the issue of sufficiency of consideration, with correct application to the given problem and appropriate advice to Danny.  
0–2 Incomplete or inaccurate answer.
- (b)** 3–5 Average to good answer, correctly identifying and explaining the issue of lack of consideration and the relevant exception under s.26 Contracts Act, with correct application to the given problem and appropriate advice to Appoo.  
0–2 Incomplete or inaccurate answer.