

Fundamentals Level – Skills Module

Corporate and Business Law (Malaysia)

Monday 10 June 2013

**Time allowed**

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

Do NOT open this paper until instructed by the supervisor.

During reading and planning time only the question paper may be annotated. You must NOT write in your answer booklet until instructed by the supervisor.

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

Paper F4 (MYS)

ACCA

The Association of Chartered Certified Accountants

ALL TEN questions are compulsory and MUST be attempted

- 1 In relation to the Malaysian legal system, state and explain FIVE provisions which protect human rights under the Federal Constitution.
(10 marks)

- 2 In the context of employment law:
 - (a) explain and distinguish between a contract of service and a contract for services; and (5 marks)
 - (b) explain the concept of constructive dismissal. (5 marks)
(10 marks)

- 3 In the context of the law of agency:
 - (a) explain what is meant by agency by ratification; and (3 marks)
 - (b) state the requirements which must be satisfied before an agency by ratification can arise. (7 marks)
(10 marks)

- 4 Explain, with reference to the Contracts Act 1950 and relevant examples, when a contract is said to be discharged by impossibility of performance (frustration).
(10 marks)

- 5 (a) Explain the rule in *Royal British Bank v Turquand*. (4 marks)

(b) State and explain THREE exceptions to the rule in *Royal British Bank v Turquand*. (6 marks)

(10 marks)

- 6 (a) State TWO circumstances in which a company may be voluntarily wound up. (2 marks)

(b) In relation to winding up by the court:
 - (i) State THREE circumstances in which it may occur; (3 marks)
 - (ii) State when winding up by the court is deemed to have commenced; (2 marks)
 - (iii) State the effects of the commencement. (3 marks)
(10 marks)

- 7 State and explain FIVE characteristics of a company which distinguish it from other forms of business organisation, such as a partnership or a sole proprietorship.
(10 marks)

8 ABC Sdn Bhd ('ABC') has three shareholders, namely Ali, Balu and Chan. Ali and Balu each hold 36% of ABC's shares and are the directors of the company. Chan holds 28% of the shares of ABC and is not a director of the company.

Since January last year, Ali and Balu have had many differences of opinion with Chan. Chan has on two occasions used his voting rights to block the passing of special resolutions at general meetings of ABC.

To prevent Chan from using his voting rights to block special resolutions in the future, Ali and Balu propose to issue a large number of ABC's unissued shares to their friend, Danny. This issue of shares will reduce Chan's shareholding in ABC to 15%. Ali and Balu intend to issue the shares by passing a resolution at a meeting of the board of directors next week.

Ali and Balu are aware that Danny has insufficient funds to pay for the shares. They have asked Bank Anda to give a loan of RM1 million to Danny to enable him to pay for the shares. Bank Anda has agreed to give the loan to Danny, provided that ABC gives security for the loan in the form of a fixed charge over land owned by ABC in Klang.

(a) Assume that Ali and Balu carry out their intention to issue the shares to Danny at the proposed board meeting next week.

Required:

Explain the grounds on which the validity of the issue can be challenged under the Companies Act 1965.

(5 marks)

(b) Assume that Bank Anda grants the aforesaid loan to Danny and ABC provides security in the form of a charge over its Klang land.

Required:

Advise whether ABC and its officers will contravene any provision of the Companies Act 1965. (5 marks)

(10 marks)

9 DEF Bhd ('DEF') was incorporated on 1 November 2011. Chow, Ella and Fong, who together hold 9% of DEF's shares, are the company's minority shareholders.

An annual general meeting of DEF was not held in 2011 or in 2012. Chow, Ella and Fong wrote to DEF several times in 2012 urging DEF to hold its first annual general meeting before the end of 2012 but their requests were ignored by the company.

The first annual general meeting of DEF was not held until 15 April 2013. Ella was not given notice of the meeting and she did not attend the meeting. Fong could not attend the meeting as he was in London at that time. He appointed his son, Halsbury Tan, an advocate and solicitor, as his proxy. Halsbury Tan is not a member of DEF. The articles of association of DEF are silent on the issue of whether a non-member may be appointed as a proxy.

When the meeting commenced, the chairman ruled that the appointment of Halsbury Tan as a proxy was invalid because he was not a member of DEF. The chairman rejected Halsbury Tan's arguments that he was validly appointed and told him to leave the meeting hall.

Soon after the meeting had commenced, Chow informed the chairman that Ella had not received notice of the meeting and that the meeting was therefore invalid. The chairman ignored Chow and proceeded with the meeting.

Immediately afterwards, Chow and Halsbury Tan left the meeting saying that they intended to bring legal action against DEF.

Required:

Advise DEF Bhd on each of the following:

- (i) whether it contravened the Companies Act 1965 by not holding its first annual general meeting in 2011 or 2012;
- (ii) whether its failure to give notice of the meeting to Ella made the meeting invalid;
- (iii) whether the chairman was right in holding that Halsbury Tan was not validly appointed as a proxy.

Note: The total marks will be split equally between each part.

(10 marks)

10 (a) On 10 April 2013, Sonny, who lives in Kuala Lumpur, posted a letter to his friend Ron, who lives in Penang, offering to sell to Ron an antique vase for RM10,000. The letter reached Ron on 12 April 2013. Ron accepted the offer by posting his letter of acceptance the very same day. Due to a postal delay, Ron's letter of acceptance only reached Sonny two weeks later, i.e. on 26 April 2013. Meanwhile, on 20 April 2013 Sonny sold the vase to Tom, a rich businessman, who had offered him RM20,000 for it.

Ron, who has come to know of the sale of the vase to Tom, wishes to sue Sonny for breach of contract.

Required:

Advise Ron on his prospects of success.

(5 marks)

(b) On 2 May 2013, Lim wrote a letter to his friend, Jane, offering to sell his prized horse to Jane for RM2 million. Upon receipt of the letter, Jane wrote to Lim asking whether Lim would accept RM1.5 million for the horse. Lim received Jane's letter. He decided not to reply. After waiting for two weeks, Jane wrote a letter to Lim accepting Lim's original offer to sell the horse for RM2 million. However, Lim telephoned Jane stating that he had changed his mind and did not wish to sell the horse to her.

Jane wishes to sue Lim for breach of contract.

Required:

Advise Jane on her prospects of success.

(5 marks)

(10 marks)

End of Question Paper