

Fundamentals Level – Skills Module

# Corporate and Business Law (Malaysia)

Monday 10 December 2012



**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.**

**The Association of Chartered Certified Accountants**

# Paper F4 (MYS)

# ACCA

**ALL TEN questions are compulsory and MUST be attempted**

- 1** In relation to the Malaysian legal system, explain the following rules of statutory interpretation:
- (a) the literal rule; (3 marks)
  - (b) the golden rule; and (4 marks)
  - (c) the *ejusdem generis* rule. (3 marks)
- (10 marks)**
- 2** In relation to employment law, state:
- (a) **FOUR** ways in which a contract of service may be terminated under the Employment Act 1955; and (6 marks)
  - (b) the period of notice required to be given by employees to their employer, under the Employment Act 1955, if they wish to terminate their contract of service. (4 marks)
- (10 marks)**
- 3** (a) Define a partnership; and (2 marks)
- (b) Explain the main characteristics of a partnership. (8 marks)
- (10 marks)**
- 4** Explain the following essential elements of a valid contract:
- (a) a proposal (offer); (3 marks)
  - (b) acceptance; and (3 marks)
  - (c) consideration. (4 marks)
- (10 marks)**
- 5** In the context of company law:
- (a) describe the duties of a company promoter; and (4 marks)
  - (b) explain the remedies available to a company for a breach of its promoter's fiduciary duties. (6 marks)
- (10 marks)**
- 6** (a) Explain the rationale for the rule that a company cannot purchase its own shares. (3 marks)
- (b) Discuss the exceptions to the rule that a company cannot purchase its own shares. (7 marks)
- (10 marks)**

**7 In relation to company law:**

- (a) explain and distinguish between a fixed charge and a floating charge; (4 marks)
- (b) state THREE types of company charges that require registration under the Companies Act 1965; and (3 marks)
- (c) explain the consequences of non-registration of a registrable charge, under the Companies Act 1965. (3 marks)

**(10 marks)**

**8** Atan, Bella and Chan are the directors of ABC Bhd, a company which supplies stationery to schools and universities. Atan is the managing director of the company. Last week the court ordered ABC Bhd to be wound up on the ground that it was unable to pay its debts.

Among the creditors of ABC Bhd is JKL Bhd, which had supplied a large quantity of stationery to ABC Bhd. A week before Atan, Bella and Chan ordered the stationery from JKL Bhd, they were informed by ABC Bhd's accountant that ABC Bhd was hopelessly insolvent and that it would be unable to pay its debts.

- (a) Assume that Atan, Bella and Chan had ordered the stationery in the hope that it could be used to help the company to return to solvency.

**Required:**

- (i) Advise whether Atan, Bella and Chan have committed any criminal offence under the Companies Act 1965. (2 marks)

- (ii) Advise whether Atan, Bella and Chan can be made personally liable for the debt due to JKL Bhd. (3 marks)

- (b) Assume that in accordance with a pre-arranged plan in which Atan, Bella and Chan had participated, the stationery bought from JKL Bhd was sold to another stationery company and the proceeds of the sale used to pay Atan's personal debt to a moneylender. Assume also that at the time Atan, Bella and Chan ordered the stationery from JKL Bhd, they had no intention of ensuring that ABC Bhd paid the purchase price.

**Required:**

- (i) Advise whether Atan, Bella and Chan have committed any criminal offence under the Companies Act 1965. (2 marks)

- (ii) Advise whether Atan, Bella and Chan can be made personally liable for the debt due to JKL Bhd. (3 marks)

**(10 marks)**

- 9 Ah Kow was a director of Superman Engineering Bhd (SEB) until his resignation in June 2011.

In May 2011, Ah Kow's friend, Mitsui, from Japan visited him at his office in the premises of SEB in Kuala Lumpur. Mitsui was the managing director of a Japanese engineering company, Mariniko Corporation. He told Ah Kow that his company had been offered a major tunnelling project in Kuala Lumpur. Mitsui asked Ah Kow to suggest a Malaysian engineering company which could enter into a joint venture with Mariniko Corporation to carry out the project. Ah Kow strongly suggested to Mitsui that he should consider SEB for the joint venture project but Mitsui rejected the suggestion. Ah Kow then asked Mitsui whether Mariniko Corporation would enter into a joint venture with a new company which Ah Kow would form for the purpose of the proposed joint venture. Mitsui agreed to this.

The day after Mitsui's visit, Ah Kow informed Tan Sri Kayah, the managing director of SEB, about the above events and sought his approval regarding his intention to form a new company for the purpose of obtaining the joint venture project. Tan Sri Kayah gave his approval without hesitation.

In June 2011, Ah Kow resigned from the board of SEB. He formed a new company, Ah Kow Engineering Sdn Bhd (AKESB), with Ah Kow owning 95% of its shares. Soon after, AKESB entered into a joint venture project with Mariniko Corporation to carry out the aforesaid tunnelling project. Ah Kow, through AKESB, made a profit of RM50 million when the project was completed in October 2012.

In November 2012, Datuk Wang Wang replaced Tan Sri Kayah as the managing director of SEB. He has found out about the profit of RM50 million made by Ah Kow through AKESB. He seeks your advice whether the said profit of RM50 million could be claimed by SEB.

**Required:**

**Advise Datuk Wang Wang.**

**(10 marks)**

- 10 (a) Amarjit wanted to buy a van for his catering business. He entered into a contract with Bescars Bhd for the purchase of a new van, a Rhoton 2.5. He specifically stated that he wanted a green coloured van fitted with a green sun tint and an Anaconda alarm system. The van that was delivered to him was, in fact, fitted with a grey sun tint and a Python alarm system.

Bescars Bhd is prepared to remedy the default, or pay reasonable compensation for breach of warranty. However, Amarjit wants to rescind the contract on the ground that Bescars Bhd had breached terms which are conditions of the contract.

**Required:**

**Advise Amarjit whether he may rescind his contract with Bescars Bhd.**

**(5 marks)**

- (b) Sunil wanted to buy a small lorry for his scrap metal business. He entered into a contract with Upay Bhd for the purchase of a Magnil lorry. The contract of sale described the lorry as having been fitted with a 2,500 cc engine. When Sunil received the lorry, he found that the lorry was fitted with a 1,500 cc engine. However, the contract contains an exclusion clause stating that, 'Upay Bhd gives no warranty express or implied as to the state or description or any matter regarding vehicles purchased from it.' Sunil wishes to rescind the contract for the purchase of the Magnil lorry.

**Required:**

**Advise Sunil on his chances of successfully rescinding the contract in the light of the exclusion clause.**

**(5 marks)**

**(10 marks)**

**End of Question Paper**