
Answers

- 1** This question, on the Malaysian legal system, tests the candidates' knowledge on the protection of human rights under the Federal Constitution.

Human rights refer to the basic rights which all human beings are entitled to enjoy. The Human Rights Commission of Malaysia Act 1999 states that human rights mean the fundamental liberties provided for under the Federal Constitution of Malaysia.

The provisions of the Federal Constitution which protect human rights are as follows:

1. No person may be deprived of his life or personal liberty except in accordance with the law.

By this provision, individuals are protected from being unlawfully detained or put to death. An individual who is unlawfully detained may obtain an order of the court through a writ of *habeas corpus*. This is an order of the court requiring that he be lawfully charged in court or be released. However, this right is not absolute. A person may still be deprived of his life or liberty in accordance with the law.

2. No person may be subjected to slavery or forced labour.

The Constitution recognises that individuals should not be regarded as the property of others and thus bans all forms of slavery and forced labour. However, this right of the individual is given subject to the paramount interest of the nation. Thus, Parliament may make laws providing for compulsory national service.

3. No person can be punished under a law which was not in force when the alleged crime was committed. This protects the individual from being charged with a crime which was not recognised as a crime at the time the alleged wrongful act was done. Thus, laws against crimes cannot be passed with retrospective effect.

4. A person cannot be tried more than once for the same crime of which he has already been acquitted or convicted earlier. This right recognises that an individual should not be placed in a position of double jeopardy, where he is made to undergo more than one trial for the same offence, if he has already previously been tried and either acquitted or convicted of it. However, this does not apply in cases where a higher court has quashed an earlier trial and ordered a re-trial.

5. Citizens cannot be discriminated against in relation to appointment to any office or employment under a public authority, or in relation to any acquisition of property, establishing or carrying on of any trade, business, profession, vocation or employment, merely on grounds of religion, race, descent or place of birth. However, this right is subject to Article 153 of the Federal Constitution, which permits the granting of special privileges to *bumiputras*.

6. Citizens cannot be discriminated against in relation to the providing of education, merely on grounds of religion, race, descent or place of birth. This, again, is subject to Article 153 as stated above.

7. Freedom of religion.

The Constitution also entrenches the right of the individual to profess, practise and propagate his own religion. However, as Islam is the religion of the country, restrictions may be placed upon the propagation of other religions among Muslims.

8. No citizen may be banished from the country. However, this right is subject to exceptions whereby the Federal Government is permitted to deprive a person of his citizenship under certain circumstances.

9. Every citizen has the right to freedom of speech, peaceful assembly and association. However, in the interests of security, public order or morality, Parliament may impose certain restrictions. For example, the Sedition Act 1948 provides that it is an offence to question the sovereignty, powers and prerogatives of the rulers and the special position of the Malays. Further, the freedom of speech does not entitle a person to defame another. A person defamed has a right to sue under the law of defamation.

(Candidates are required to explain only FIVE of the above rights.)

- 2** This question on employment law tests the candidates' knowledge on the difference between a contract of service and a contract for services as well as what constitutes a constructive dismissal.

- (a)** In the context of employment law, it is very important to distinguish a contract of service from a contract for services. A contract of service is a contract between an employer and an employee under which the employee agrees to work for the employer. The Employment Act 1955 defines a contract of service as, 'any agreement whether oral or in writing and whether express or implied, whereby one person agrees to employ another as his employee and that other agrees to serve his employer as employee and includes an apprenticeship contract.'

The Industrial Relations Act 1967 also defines such a contract but refers to it as a 'contract of employment'. Under this Act, a 'contract of employment' is defined in s.2 as, 'any agreement whether oral or in writing and whether express or implied, whereby one person agrees to employ another as a workman and that other agrees to serve his employer as a workman.'

Basically, there is no distinction between the two definitions. The essence of a contract of service is that it gives rise to an employer–employee relationship.

A contract for services, on the other hand, is essentially different from that of a contract of service/employment. It does not create an employer–employee relationship and does not therefore come within the purview of the Employment Act 1955 and the Industrial Relations Act 1967. It merely creates a contractual relationship between an employer and an independent contractor.

- (b) Constructive dismissal refers to a situation where the employer has not formally terminated the service of the employee but the employer has made the working environment intolerable for the employee to continue working for the employer, thereby making the employee feel forced to resign by himself. By making the working conditions intolerable, the employer is deemed to have breached the contract of employment, thereby entitling the employee to resign. Examples of such conduct are where the employer had compelled the employee to do demeaning tasks with a view of humiliating the employee, demoted the employee or subjected him to unfair or oppressive working conditions so that he himself will resign from his job. Under such circumstances, if the employee does indeed feel compelled to resign, he may be considered to have been constructively dismissed.

An illustration is found in the case of *Bumpus v Standard Life Assurance Co Ltd* (1974). In this case, the employee was faced with demotion. He wrote a letter of resignation to his employer indicating his refusal to accept the demotion and thereby accepting the repudiation by the employer. The court held that he had been constructively dismissed.

Some guidance as to whether there has been a constructive dismissal has been provided in the case of *Wong Chee Hong v Cathay Organisation (M) Sdn Bhd* (Civil appeal No. 194 of 1986). In that case, it was stated that whether there has been a constructive dismissal is to be determined by two factors. The first is whether the employer's conduct amounted to a breach of the contract of employment going to the root of the contract, or, whether the employer had shown an intention not to be bound by the contract. The second is whether the employee made up his mind to leave the employment and acted within a reasonable time after the employer's conduct.

- 3 This question, on the law of agency, tests the candidates' knowledge of what is an agency by ratification and the requirements which have to be satisfied before such an agency can come into existence.

- (a) An agency by ratification refers to a situation where a person, A, has done something for another person, B, without the authority of B, but B later accepts or confirms (i.e. ratifies) what A has done on his behalf. This is provided for in s.149 Contracts Act 1950 which states, 'Where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or disown the acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.'

Ratification can be express or implied.

- (b) The requirements which must be satisfied in order for an agency by ratification to arise are as follows:

- (i) The act or contract must be unauthorised.
- (ii) The unauthorised act must not be unlawful. Thus, void or illegal contracts cannot be ratified.
- (iii) The agent must, at the time of the contract, expressly act as agent for the principal. He must not allow the third party to believe that he is the principal. See *Keighly Maxted & Co v Durant* (1901).
- (iv) The principal must be in existence when the contract is made.

The general rule is that contracts cannot be made on behalf of non-existing principals. However, this rule does not apply to pre-incorporation contracts in Malaysia as s.35(2) Companies Act 1965 allows a company to ratify a pre-incorporation contract after it has been incorporated.

- (v) The principal must have contractual capacity at the time the contract is made and at the time of ratification.
- (vi) The principal must have full knowledge of all material facts. Section 151 Contracts Act 1950 states that no valid ratification can be made by a person whose knowledge of the facts is materially defective.
- (vii) The principal must ratify the whole act or contract. He cannot ratify one part and reject another part. If he does so, he is deemed to have ratified the whole transaction – see s.152 Contracts Act 1950.
- (viii) The ratification must be made within a reasonable time. See *Metropolitan Asylum Board v Kington & Sons* (1890).
- (ix) The ratification must not have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person – see s.153 and illustration (a) of s.153 Contracts Act 1950.

- 4 This question tests the candidates' knowledge on discharge of contracts by reason of impossibility of performance (frustration) under the Contracts Act 1950.

Section 57 Contracts Act 1950 deals with the Malaysian position on frustration of contracts. It provides for two categories where contracts are void due to impossibility of performance.

By s.57(1), an agreement to do an act which is impossible in itself is void. An example is provided in illustration (a) of that section as follows:

'A agrees with B to discover treasure by magic. The agreement is void.' Thus contracts which are obviously humanly impossible to perform are void.

By s.57(2), a contract to do an act which subsequently becomes impossible to perform or unlawful is also void. This section reflects the common law doctrine of frustration. Basically, the section provides for the discharge of a contract if any event has occurred which radically alters the position of the contracting parties. The following illustrations provided by the section serve as examples:

- (i) 'A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.' (This is illustration (b) in s.57.)
- (ii) 'A contracts to take in cargo for B at a foreign port. A's government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.' (This is illustration (d) in s.57.)

English case law on the doctrine is generally applied in Malaysia (see *Ramli v Govt of Malaysia* (1982)). In addition, there are a number of Malaysian authorities on the subject of frustration of contracts. From the above, it can be seen that a contract may be discharged by a supervening impossibility or illegality in the following circumstances:

- (i) where the subject matter of the contract has been totally destroyed. See *Taylor v Caldwell* (1863), where the plaintiff had hired out a music hall to the defendants for performing a series of concerts, but the hall was destroyed by fire before the date of performance.

But it must be noted that by virtue of s.12 Specific Relief Act 1950, there must be a total destruction of the subject matter of the contract. If only a portion of the subject matter of the contract has been destroyed, the contract is not discharged by frustration.

- (ii) where the purpose or object of the contract has been defeated by the supervening event.

For example, in *Krell v Henry* (1903), a room was hired for the purpose of viewing the coronation procession of King Edward VII. The coronation procession was cancelled due to the King's illness. The court held that the contract was frustrated.

- (iii) where a change in the law renders the performance of the contract unlawful. For example, in the case of *Lee Kin v Chuan Suan Eng* (1933), there was a lease which provided for renewal every five years. A new law was passed prescribing annual renewals. The court held that the lease was frustrated by reason of the new law.
- (iv) where the contracting party who has undertaken a personal obligation has died or suffers an incapacity. For example, where A, a well-known artist, has promised to paint a portrait of B, and A has either died or suffers from an incapacity such as the loss of his hands, the contract may be said to be frustrated, i.e. discharged due to impossibility of performance.

It may be noted that mere hardship or inconvenience to one of the parties will not amount to a frustration of contract (see *Davis Contractors Ltd v Fareham UDC* (1956)).

5 This question tests the candidates' knowledge on the rule in *Royal British Bank v Turquand* and the exceptions to it.

- (a)** The objects and powers of a company are set out in its memorandum of association and its articles of association, both of which are registered documents available for inspection by the public. In Malaysia, the constructive notice doctrine continues to apply and a person is deemed to have notice of the contents of the registered documents.

A company may also be governed by various internal rules and procedures, which do not form part of the registered documents and thus are not available for inspection by the public. The rule in *Royal British Bank v Turquand* (1856) states that a person entering into a transaction with a company is not under an obligation to inquire whether the company had complied with the internal rules and procedures associated with the transaction. Such a person can assume that the company had followed every requirement of such internal rules and procedure or indoor management.

The facts of *Turquand's* case were as follows:

The directors of a company issued a bond to the Royal British Bank. The articles of association of the company stated that they had the power to do so, if authorised by a general resolution of the company. The company claimed that there was no resolution passed authorising the issue of the bond and that therefore it was not liable. The court held that the bank was entitled to sue on the bond. The requirement for the resolution was a matter of internal regulation for the company and the bank could not know whether such a resolution had in fact been passed. Therefore, it was entitled to presume that the resolution had indeed been passed.

- (b)** The rule in *Turquand's* case is subject to several exceptions as set out below.

- (i) The rule does not apply where the alleged irregularity could be discovered from the public documents of the company. This exception was applied in *KL Engineering Sdn Bhd v Arab Malaysian Finance Bhd* (1994). In this case, the fact that a person was not a director of the company could be discovered from the registered documents of the company.
- (ii) A person cannot rely on the rule where he has actual notice of the irregularity, e.g. where a lender has notice that the company was borrowing in excess of its powers. See *Howard v Patent Ivory Co* (1888).
- (iii) In *Ruben v Great Fingall Consolidated* (1906), it was held that the rule does not apply where the document on which the person seeks to rely is a forgery.

- (iv) The rule does not apply where the person seeking to rely on it was put on inquiry and the irregularity would have been discovered if he had made due inquiry.

A case in point is *A.L. Underwood Ltd v Bank of Liverpool* (1924). In this case, a bank was not entitled to rely on the rule because it had paid cheques drawn in favour of the company into the personal account of a director without making due inquiry.

(Candidates are required to state and explain only THREE of the above exceptions.)

6 This question, which contains two parts, tests the candidates' knowledge on certain basic aspects of winding up of companies.

(a) By s.254(1) Companies Act 1965, a company may be wound up voluntarily:

- (i) when the period, if any, fixed for the duration of the company by the memorandum or articles expires, or
 - (ii) the event, if any, occurs, on the occurrence of which the memorandum or articles provide that the company is to be dissolved,
- and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; or
- (iii) if the company so resolves by special resolution.

(Candidates are required to state only TWO situations in which a company may be wound up voluntarily.)

(b) (i) By s.218(1), a company may be wound up by the court in a number of circumstances. These include the following:

- 1. if the company has, by special resolution, resolved that it be wound up by the court;
- 2. if default is made by the company in lodging the statutory report or in holding the statutory meeting;
- 3. if the company does not commence business within a year from its incorporation or suspends its business for a whole year;
- 4. the number of members is reduced in the case of a company below two;
- 5. if the company is unable to pay its debts; and
- 6. if the court is of the opinion that it is just and equitable that the company be wound up.

(Candidates are required to state only THREE situations in which a company may be wound up by the court.)

(ii) By s.219(1), where before the presentation of the petition, a resolution has been passed by the company for voluntary winding up, the winding up shall be deemed to have commenced at the time of the passing of the resolution. By s.219(2), in any other case the winding up shall be deemed to have commenced at the time of the presentation of the petition for the winding up.

(iii) The effects of the commencement of a winding up are stated in ss.223 and 224.

By s.223, any disposition of the property of the company including things in action and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the court shall, unless the court otherwise orders, be void.

By s.224, any attachment, sequestration, distress or execution put in force against the estate or effects of the company after the commencement of the winding up by the court shall be void.

7 This question tests the candidates' knowledge on the main characteristics of a company as opposed to other forms of business organisation.

There are several characteristics which a company possesses upon incorporation as opposed to unincorporated businesses such as a partnership or a sole proprietorship.

- (i) The most significant characteristic of a company is that upon incorporation the company becomes in law a separate legal entity distinct from its members and other stakeholders. This has been firmly established in the well-known case of *Salomon v Salomon & Co Ltd* (1897), where the House of Lords held that even though Salomon was in reality in absolute control of the company, upon incorporation the company was clothed with a legal personality distinct and separate from Salomon and the other shareholders. Thus Salomon could also be a secured creditor of the company and a secured debenture issued in his favour could have priority over the unsecured creditors. This position is clearly recognised in Malaysia under s.16(5) Companies Act 1965. A sole proprietorship and a partnership do not possess such a separate legal identity.
- (ii) In company law, a member of a company is not an agent of the company and cannot bind it by his actions. In a partnership, a partner is an agent of the firm as well as the other partners.
- (iii) Property of the company belongs to the company and not its members. As the company is a separate legal person, it has the power to own property in its own name. This is quite unlike unincorporated business associations, where the property may have to be registered in the names of some or all of its members. In the case of a sole proprietor, he is the owner of all the assets of his business.

- (iv) A company may be formed with limited liability. This means that the members of the company will not be liable for the debts of the company beyond the amount of capital they had agreed to subscribe. The partners of a partnership and a sole proprietor do not have limited liability and are fully liable for the debts of their business.
- (v) A registered company, if formed as a public company, may raise capital from the public, provided it satisfies the requirements of the Companies Act 1965 and the other specific legislation. A partnership and a sole proprietor cannot raise funds from the public.
- (vi) The company is said to enjoy perpetual succession. This means that the company will continue to exist despite the death of its members. Neither a partnership nor a sole proprietor enjoys perpetual succession.
- (vii) The company enjoys a privilege in relation to borrowing. It is allowed to give security in the form of a floating charge. Such a charge allows the company to continue using the assets in the ordinary course of its business. Neither a partnership nor a sole proprietor is permitted by law to create a floating charge.

(Candidates are required to state and explain only FIVE such characteristics.)

- 8** This question on company law contains two parts. Part (a) tests the candidates' ability to identify and apply the law relating to the power of the directors to issue shares as well their duty to act for a proper purpose, while part (b) tests them on their ability to identify and apply the law relating to the prohibition on companies providing financial assistance for the purchase of their own shares.

- (a)** It is to be noted that Ali and Balu intend to issue the shares to Danny by passing a board resolution. Their proposed action, if carried out, will contravene the Companies Act 1965. Section 132D(1) of the Act provides that notwithstanding anything in the company's memorandum or articles, the directors shall not, without the prior approval of the company in a general meeting, exercise any power of the company to issue the shares of a company. Section 132D(6) provides that any issue of shares in breach of s.132D is void. Thus, unless Ali and Balu obtain the prior approval of ABC's general meeting, the proposed issue of shares to Danny will be void.

Further, the resolution may also be challenged on the ground that Ali and Balu had breached the fiduciary duty to act for a proper purpose. A case in point is *Hogg v Cramphorn* (1967). In this case, the directors had issued shares for the purpose of frustrating a take-over bid for the company. The court held that the directors had not acted for a proper purpose and thus breached their fiduciary duty. Following amendments made to the Companies Act 1965 in 2007, s.132(1) today stipulates that directors must at all times exercise their powers for a proper purpose and in the best interests of the company. As they had not exercised their powers for a proper purpose in that their purpose of issuing the shares was to dilute the shareholding of Chan, they would also be in breach of s.132(1).

- (b)** It is to be noted that ABC intends to give security to Bank Anda for a loan granted by the bank to Danny for purchase of the company's shares. If ABC does so, it will be providing financial assistance for the purchase of its own shares. The giving of financial assistance by a company to purchase its own shares is an indirect reduction of capital and is not permitted under both the common law as well as statute.

Under s.67(1) Companies Act 1965, a company is not permitted to give, whether directly or indirectly, and whether by means of a loan, guarantee, the provision of any security or otherwise, any financial assistance for the purpose of, or in connection with, the purchase of a company's shares by any person. Section 67(2) provides three instances when financial assistance is permitted under the Act but they are inapplicable to the problem scenario.

Section 67(3) states that where there is a contravention of s.67(1), the company does not commit an offence but any officer in default shall be guilty of an offence against the Act and may on conviction be sentenced to imprisonment for five years or to a fine of RM100,000 or both.

Thus, if ABC gives security to Bank Anda for the loan to Danny, it will contravene the Act but it will not incur any criminal liability. However, Ali and Balu will commit the offence mentioned above and on conviction the fine or imprisonment or both, as stated above, may be imposed on them.

- 9** This question on company law which contains three parts, tests the candidates' ability to identify and apply the law relating to certain aspects of company meetings.

- (i)** Section 143 Companies Act 1965 provides that a general meeting of a company called 'an annual general meeting' must be held once in every calendar year. It must be held not less than 15 months before the last preceding meeting. The section also provides that in the case of a newly-incorporated company, its first annual general meeting may be held within 18 months of its incorporation. As long as it holds its first annual general meeting within 18 months of the date of its incorporation, it need not hold the meeting in its year of incorporation or in the following year.

DEF Bhd (DEF) has not contravened the Companies Act by holding its first annual general meeting on 15 April 2013. DEF was incorporated on 1 November 2011. It need not hold its annual general meeting in 2011 or 2012. It must hold its meeting within 18 months of its incorporation (i.e. by the end of April 2013), which in fact it did by holding it on 15 April 2013.

- (ii) Section 145(5) Companies Act 1965 provides that (i) the accidental omission to give notice of a meeting to a member or (ii) the non-receipt of a notice of meeting duly sent by a company shall not invalidate proceedings at the meeting. The vital question in the case of Ella is whether s.145(5) applies to her. If the failure to give notice of the annual general meeting by DEF was accidental and not deliberate, the meeting will not be invalidated. In *Re West Canadian Collieries Ltd* (1962), the court found that the omission to give notice was accidental and did not affect the meeting.

Second, if DEF had duly sent notice of the meeting to Ella but due to some reason it did not reach her, the non-receipt of the notice by Ella will have no effect on the validity of the meeting.

- (iii) The right to appoint a proxy is a statutory right of a member and this is enshrined in s.149 Companies Act 1965. However, s.149 places certain restrictions on who may be appointed as a proxy. The effect of s.149(1)(b) is that unless the articles provide otherwise, a member of a company may not appoint a non-member as his proxy unless the appointee is an advocate and solicitor or an approved company auditor or a person approved by the Registrar in a particular case.

The facts of the given problem indicate that the articles of association of DEF are silent on the issue as to who may be appointed as proxy. Thus s.149(1)(b) will apply and a member of DEF may appoint a non-member as his proxy as long as the appointee is an advocate and solicitor or an approved company auditor or a person approved by the Registrar in a particular case.

In the given problem, Halsbury Tan is an advocate and solicitor. Thus the fact that he is not a member of DEF is irrelevant and the chairman was incorrect in holding that his appointment was invalid.

- 10 This problem-based question, on contract law, contains two parts. Part (a) tests the candidates' ability to identify and apply the law concerning the postal rule in relation to an offer and its acceptance. Part (b) relates to the identification and application of the issue of counter-offer as opposed to an acceptance.

- (a) The issue in this case is whether there has been a valid acceptance by Ron of Sonny's proposal (offer) so as to create a binding contract between them.

According to s.2(a) Contracts Act 1950, a proposal (offer) is said to be made when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to the act or abstinence.

Section 2(b) states that an acceptance takes place when the person to whom the proposal is made signifies his assent thereto. The general rule is that the acceptance must be communicated to the proposer. By s.7, the acceptance must be expressed in some usual and reasonable manner unless the proposal itself prescribes the manner in which it is to be accepted.

However, there is an exception to this rule. The effect of s.4(2) Contracts Act 1950 is that where the parties have contemplated the use of the post as a means of communication, the communication of the acceptance is complete as against the proposer when it is put in a course of transmission to him so as to be out of the power of the acceptor.

In the present problem, Ron accepted Sonny's offer by a letter posted on 12 April 2013. Thus, though the letter of acceptance reached Sonny only on 26 April 2013, it was effective as against Sonny from the date of posting, i.e. 12 April 2013. Thus there was a valid contract between Ron and Sonny as at 12 April 2013. As Sonny had sold the vase on 20 April 2013, i.e. after the acceptance became effective against him, Ron may successfully sue Sonny for breach of contract.

- (b) An agreement will arise where one party has made a proposal (offer) to another party and that other has unconditionally accepted it. See s.2 Contracts Act 1950.

By s.7(a), the acceptance must be 'absolute and unqualified'. In the event that the person to whom the proposal is made varies the terms of the proposal, he is deemed to be making a counter-proposal (counter-offer). A counter-offer has the effect of destroying the original offer.

This is well-illustrated in the case of *Hyde v Wrench* (1840). In this case, the defendant offered to sell his estate to the plaintiff for £1,000. The plaintiff replied by letter that he was willing to purchase the estate at £950. When the defendant did not reply, the plaintiff sent another letter to the defendant accepting the original offer price. The court held that there was no contract between the parties. The counter-offer made by the plaintiff had destroyed the original offer. Reference may also be made to the Malaysian case of *Malayan Flour Mills Bhd v Saw Eng Chee (Administrator of the estate of Saw Cheng Chor, deceased) & Anor* (1997), which applied the above principle.

In the given situation, Lim had offered to sell his horse to Jane for RM2 million. Jane's letter in reply to Lim asking whether Lim would be willing to sell the horse at RM1.5 million clearly amounted to a counter-offer. It had the effect of destroying Lim's original offer. Thus Jane's subsequent letter accepting Lim's original offer to purchase the horse at RM2 million was not a valid acceptance.

Applying the law to the given problem, Jane may be advised that she will not be successful if she sues Lim for breach of contract.

- 1 0–10 Two marks for each human rights provision of the Federal Constitution correctly explained.
- 2 (a) 3–5 Average to good answer correctly explaining and distinguishing between a contract of service and a contract for services.
0–2 Incomplete or inaccurate answer.
(b) 3–5 Average to good answer correctly explaining the concept of constructive dismissal.
0–2 Incomplete or inaccurate answer.
- 3 (a) 0–3 An accurate answer explaining what is meant by agency by ratification will fall into the upper part of this band while an inaccurate one will fall into the lower part.
(b) 4–7 Average to good answer correctly stating the requirements which must be satisfied before an agency by ratification can arise.
0–3 Incomplete or inaccurate answer.
- 4 8–10 An excellent answer correctly explaining when a contract may be discharged by impossibility of performance with reference to the Contracts Act 1950.
5–7 An average to good answer explaining when a contract may be discharged by impossibility of performance.
0–4 Incomplete or inaccurate answer.
- 5 (a) 0–4 An accurate answer explaining the rule in *Turquand's* case will fall into the upper part of this band while an inaccurate one will fall into the lower part.
(b) 0–6 Two marks for each of the three exceptions correctly explained.
- 6 (a) 0–2 One mark for each correctly stated circumstance when a company may be voluntarily wound up.
(b) (i) 0–3 One mark for each circumstance in which winding up by the court may occur.
(ii) 0–2 One mark for each situation when winding up is deemed to have commenced.
(iii) 0–3 An accurate answer stating the effects of a winding up by the court will fall into the upper part of this band while an inaccurate one will fall into the lower part.
- 7 0–10 Two marks for each characteristic of a company correctly explained.
- 8 (a) 3–5 An average to good answer identifying the issue of directors' fiduciary duty to exercise their powers for a proper purpose with reference to the Companies Act 1965 as well as the duty to obtain shareholder approval for the issue of shares under the Act with appropriate explanation, application and advice.
0–2 Incomplete or inaccurate answer.
(b) 3–5 An average to good answer identifying the issue of prohibition on companies giving financial assistance for the purchase of their own shares with accurate application and advice.
0–2 Incomplete or inaccurate answer.
- 9 8–10 An excellent answer accurately stating the law, with accurate advice to DEF Bhd on all the three aspects of the question.
5–7 An average to good answer on all the three aspects of the question.
0–4 Incomplete or inaccurate answer.

- 10 (a)** 3–5 Average to good answer, correctly identifying and explaining the issue of the postal rule in relation to the acceptance of an offer, with correct application and advice.
- 0–2 Incomplete or inaccurate answer.
- (b)** 3–5 Average to good answer correctly identifying and explaining the issue of a counter-offer and its effect upon an offer with correct application to the given problem and appropriate advice to Jane.
- 0–2 Incomplete or inaccurate answer.