

Fundamentals Level – Skills Module

Corporate and Business Law (Malaysia)

Specimen Exam applicable from
December 2014



Time allowed: 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and MUST be attempted

Section B – ALL FIVE questions are compulsory and MUST be attempted

Do NOT open this paper until instructed by the supervisor.

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)

The ACCA logo, consisting of the letters 'ACCA' in a bold, white, sans-serif font, centered within a solid black square.

Section A – ALL 45 questions are compulsory and MUST be attempted

Please use the space provided on the inside cover of the Candidate Answer Booklet to indicate your chosen answer to each multiple choice question.

1 Which of the following is the supreme law of the Federation of Malaysia?

- A The Parliament
- B The Prime Minister
- C The Federal Constitution

(1 mark)

2 Which of the following parties has the burden of proving negligence?

- A The plaintiff
- B The defendant
- C The court

(1 mark)

3 Which of the following is NOT a defence to the tort of negligence?

- A Res ipsa loquitur
- B Volenti non fit injuria
- C Novus actus interveniens
- D Inevitable accident

(2 marks)

4 Which of the following refers to the law passed by Parliament?

- A Act
- B Enactment
- C Statute

(1 mark)

5 What is the effect of a contract made by a minor?

- A It is void
- B It is voidable
- C It is unenforceable

(1 mark)

- 6 Certain charges on the assets of a company to secure borrowings by a company have to be registered with the Companies Commission of Malaysia.

Which of the following statements describes the effect of non-registration of a registrable charge?

- A It becomes voidable at the option of the creditor
- B It is void against the company
- C It is void against the liquidator and any creditor of the company
- D It is illegal

(2 marks)

- 7 Jeremy checked into a room in a hotel. He left his luggage in the room and went shopping. Upon returning he found his luggage missing. When he reported this loss to the hotel management to make a claim, he was shown a notice on the wall of his room which stated that patrons keep their belongings in the room at their own risk and that the hotel is excluded from liability for any loss that may occur to them.

Which of the following statements accurately reflects Jeremy's legal position?

- A He is not bound by the exclusion clause and may sue the hotel management for his loss
- B He is bound by the exclusion clause and cannot sue the hotel management for his loss
- C He is partly bound by the exclusion clause and may only sue to recover part of his loss
- D He is partly bound by the exclusion clause and may only sue the cleaners and not the hotel management

(2 marks)

- 8 **Which TWO of the following requirements are necessary for a valid agreement to arise?**

- (1) Proposal
- (2) Consensus ad idem
- (3) Invitation to treat
- (4) Acceptance
- (5) Consideration

- A 1 and 2
- B 2 and 4
- C 3 and 5
- D 1 and 4

(2 marks)

- 9 One of the characteristics of persons who have the capacity to enter into a contract is that they must be of sound mind when they enter into the contract.

Which of the following criteria must a person of sound mind fulfil?

- (1) Not certified as mentally incapacitated by a medical doctor
- (2) Capable of understanding the nature of the contract
- (3) Capable of forming a rational judgment as to its effects upon his interests
- (4) Capable of fulfilling his obligations under the contract

- A** 1 and 2
- B** 2 and 3
- C** 3 and 4
- D** 1, 2, 3 and 4

(2 marks)

- 10 Ah Meng has been employed by ABC Sdn Bhd for the last six years.

What is the number of days of annual leave that he is entitled to under the Employment Act 1955?

- A** 8 days
- B** 12 days
- C** 16 days

(1 mark)

- 11 **In Malaysia, the Special Court has jurisdiction over which of the following selected people?**

- (1) The Yang di Pertuan Agong
- (2) The Sultans of the respective states
- (3) The Prime Minister
- (4) The Cabinet Ministers

- A** 1 and 2 only
- B** 3 and 4 only
- C** 1 and 3 only
- D** 1, 2, 3 and 4

(2 marks)

- 12 **Which of the following is a discharge of a contract by frustration?**

- A** Ali contracted with Bakar to supply 1,000 cans of milk packed into boxes of 10. However, the cans of milk were packed into boxes of 8. This was due to the mistake made by Ali's worker.
- B** Ali contracted with Bakar to supply 100 cans of milk packed into boxes of 10. Ali's factory caught fire and Ali could not fulfil his contractual obligation.
- C** Ali contracted with Bakar to supply 100 cans of milk packed into boxes of 10. However, due to an increase in prices of raw material, Ali refused to deliver the goods unless Bakar pays another RM1,000 for the said goods.
- D** Ali contracted with Bakar to supply 100 cans of milk packed into boxes of 10. Ali delivered the goods to Bakar 2 weeks later than the agreed date.

(2 marks)

13 One of the grounds for the winding up of a company by the court is that the company is unable to pay its debts.

Which of the following statements with regard to when a company is deemed to be unable to pay its debts is correct?

- A When the creditor to whom a sum exceeding RM500 has served a demand upon the company and the company has for three weeks thereafter failed to pay
- B When the creditor to whom a sum exceeding RM1,500 has served a demand upon the company and the company has for three weeks thereafter failed to pay
- C When the creditor to whom a sum exceeding RM2,500 has served a demand upon the company and the company has for three weeks thereafter failed to pay
- D When the creditor to whom a sum exceeding RM5,000 has served a demand upon the company and the company has for three weeks thereafter failed to pay

(2 marks)

14 Which of the following accurately defines a void agreement?

- A One that can be enforced by all parties
- B One that can be enforced at the option of the party who did not breach the contract
- C One that is not enforceable by law

(1 mark)

15 In the context of corporate personality, which of the following statements with respect to the debts of the company are correct?

- (1) The liability of a member in a limited company is limited
- (2) The liability of a limited company is limited
- (3) The liability of a member of an unlimited company is not limited
- (4) The liability of an unlimited company is not limited

- A 1, 2, 3 and 4
- B 1 and 3 only
- C 2 and 4 only
- D 1, 3 and 4 only

(2 marks)

16 In the context of the law of contract, which of the following statements is NOT correct?

- A An offer may be made to a specific person or to the world at large
- B An offer must be communicated to the offeree before the offeree is eligible to accept the offer
- C An offer must be express or implied
- D An offer must be in writing

(2 marks)

17 Which of the following is NOT an element of the tort of negligence?

- A The defendant owes a duty of care to the plaintiff
- B The plaintiff has breached their duty of care to the defendant
- C The plaintiff has suffered loss as a result of the defendant's breach of duty
- D The defendant has breached their duty of care to the plaintiff

(2 marks)

18 Which of the following is NOT a remedy for an employee for unjustifiable dismissal?

- A Reinstatement
- B Specific performance
- C Compensation in lieu of reinstatement

(1 mark)

19 Amry agreed to sell his car to Bama for RM25,000. Amry agreed to fit the car with new tyres before delivery to Bama. However, when the car was delivered to Bama it was found that the car was not fitted with new tyres as promised.

Which type of contractual term has been breached by Amry?

- A Condition
- B Warranty
- C Intermediate term
- D Non-significant term

(2 marks)

20 Which of the following is NOT a duty of an agent to the principal?

- A Duty to follow the instructions of the principal
- B Duty to insure the property of the principal
- C Duty to render true accounts

(1 mark)

21 There are several rules which are applied in the interpretation of statutes. One of the rules is that where a statute refers to a class of items followed by a general term, the general term is interpreted to refer to that class of items only.

Which of the following rules of interpretation reflects this situation?

- A The ejusdem generis rule
- B The golden rule
- C The mischief rule
- D The literal rule

(2 marks)

22 What is the maximum number of partners for a professional partnership?

- A 20
- B 50
- C Unlimited

(1 mark)

23 Irene offered to sell her car to Devi for RM50,000. Rani heard about the offer and told Irene that she wanted to buy the car for RM50,000. The next day, Devi told Irene that she was willing to buy the car for RM50,000 as offered by Irene.

To whom should Irene sell the car?

- A** Rani
- B** Devi
- C** Up to Irene

(1 mark)

24 Which of the following describes the classification of sources of law?

- A** Written or unwritten
- B** Civil or criminal
- C** Common law or equity
- D** Substantive or procedural

(2 marks)

25 Froddo wanted to make a false claim from his insurance company. He gave his doctor an incentive of RM1,000 to obtain a medical report to support his claim. He also offered RM1,000 to his insurance agent, Bala, as an incentive for Bala to convince the insurance company that his claim was genuine. Bala accepted the money and convinced the insurance company to pay Froddo.

Which of the following offences under the Malaysian Anti-Corruption Commission Act 2009 apply to this situation?

- A** Offence of accepting gratification only
- B** Offence of giving or accepting gratification by agent only
- C** Offence of intending to deceive principal by agent only
- D** All of the above offences

(2 marks)

26 In the context of the Malaysian legal system, which of the following is the highest court in Malaysia?

- A** Supreme Court
- B** Federal Court
- C** Apex Court

(1 mark)

27 Which of the following statements with regard to a company secretary is NOT correct?

- A** They must have their principal or only place of residence in Malaysia
- B** They must not be above 70 years of age in a public company
- C** They must not be convicted of offences under the Companies Act 1965

(1 mark)

28 What is the consequence of breaching a warranty?

- A** The innocent party may terminate the contract
- B** The innocent party may claim for damages
- C** The innocent party may delay in the performance of their obligations

(1 mark)

29 Which of the following requirements must be fulfilled in order for a company to validly pass a special resolution?

- (1) At least 14 days' notice of the meeting must be given to the members
- (2) At least 21 days' notice of the meeting must be given to the members
- (3) More than 50% of the members actually voting must vote in favour of the resolution
- (4) At least 75% of the members actually voting must vote in favour of the resolution

- A** 1 and 3
- B** 1 and 4
- C** 2 and 3
- D** 2 and 4

(2 marks)

30 When is a winding up by the court deemed to have commenced?

- A** At the time the resolution for the winding up by the court was passed by the members
- B** At the time the resolution for the winding up by the court was passed by the creditors
- C** At the time the petition for the winding up of the company was presented
- D** At the time the court made the order for the winding up of the company

(2 marks)

31 Who is the head of the Federal Court?

- A** The Chief Judge
- B** The Chief Justice
- C** The Lord President

(1 mark)

32 In the context of employment law, which of the following situations reflects constructive dismissal?

- A** After five years of being employed as a clerk Danny was re-designated as an executive officer. He immediately resigns.
- B** Elaine was employed as an accountant based in the head office in Kuala Lumpur. She has been directed to report for duty next week to the company's factory in Sandakan, Sabah. She immediately resigns.
- C** Fiona was accused by her manager of using the company's car for personal purposes and following an inquiry she was dismissed.
- D** Gary discovered that his employer was obtaining valuable contracts from a third party as a result of bribery and corruption. He resigns.

(2 marks)

33 In relation to corporate restructuring and a scheme of arrangement under s.176 Companies Act 1965, which of the following statements are NOT true?

- (1) It is only binding on members who voted in favour of it
- (2) It may be effected even where the company is hopelessly insolvent
- (3) In addition to it, a reconstruction can also be carried out

- A** 1 only
- B** 1 and 2 only
- C** 2 and 3 only
- D** 1, 2 and 3

(2 marks)

34 Which of the following statements about contract formation is NOT correct?

- A** They must always be in writing
- B** They are agreements
- C** They can be enforced in a court of law

(1 mark)

35 What is the length of notice required to be given by the employee to the employer under the Employment Act 1955 on termination, where the contract does not prescribe the length of notice and the employee has been employed for a period of 10 years?

- A** Four weeks
- B** Six weeks
- C** Eight weeks

(1 mark)

36 From which of the following sources may a company pay a cash dividend to its members?

- (1) Profit
- (2) Share premium account
- (3) Share capital

- A** 1 only
- B** 2 only
- C** 2 and 3
- D** 1 and 2

(2 marks)

37 Which of the following is the most important feature of a limited liability partnership as compared with a conventional partnership?

- A** The limited liability partnership can have an unlimited number of partners
- B** The limited liability partnership is a separate legal entity distinct from the partners
- C** Partners in a limited liability partnership will never be liable for the debts of the limited liability partnership

(1 mark)

38 Which of the following situations does NOT fall within the meaning of money laundering under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001?

- A Where a person engages in a transaction that involves the proceeds of any unlawful activity
- B Where a person acquires, receives, removes from or brings into Malaysia, proceeds of any unlawful activity
- C Where a person unlawfully acquires property belonging to another and disposes of it to a third party for a monetary consideration
- D Where a person impedes the establishment of the true origin of proceeds of unlawful activity

(2 marks)

39 Which of the following persons may be appointed as a director of a company only if such appointment has been approved by the court?

- A A bankrupt
- B A person who was a director of a company which was wound up due to insolvency
- C A person who was once removed as a director of a company

(1 mark)

40 Which of the following describes a contract of service?

- A A contract under which one party supplies services to another
- B A contract under which one party is employed by the other to work for the other in accordance with the terms of employment in consideration of wages
- C A contract under which one party is required to supply workers for the other
- D A contract under which one party provides personal services to the other for a fixed duration in return for a fee

(2 marks)

41 Which TWO of the following are tests used to determine whether there is a contract of service or a contract for services?

- (1) The control test
- (2) The true earnings test
- (3) The master-servant test
- (4) The integration test

- A 1 and 2
- B 2 and 3
- C 3 and 4
- D 1 and 4

(2 marks)

42 Which of the following procedures must be used by a company to alter its objects clause?

- A The passing of the special resolution
- B The approval from the court
- C The lodgement of special resolution with the court

(1 mark)

43 What is the period of maternity leave that female employees are eligible for under the Employment Act 1955?

- A** 60 days
- B** 90 days
- C** 45 days

(1 mark)

44 Which of the following does NOT terminate an agency?

- A** The death of the agent
- B** The death of the principal
- C** The third party giving notice of termination to either the principal or the agent
- D** The principal giving notice of termination to the agent or vice versa

(2 marks)

45 In relation to contract law, which of the following statements about consideration is true?

- A** It must not be inadequate
- B** It must not be insufficient
- C** It must not be past
- D** It must not come from a third party to the contract

(2 marks)

Section B – ALL FIVE questions are compulsory and MUST be attempted

- 1 Ah Chong placed an order for the purchase of a new motorcar from a car dealer, Wheels 'r Us Sdn Bhd, for RM250,000. Ah Chong expressly stated that he wanted the car in pink colour and with a specific type of tyres. When the car was delivered, Ah Chong discovered that the car was fitted with a different type of tyres, which were inferior in quality to those he ordered.

Required:

(a) Explain what is the remedy of rescission, and whether Ah Chong is entitled to such remedy for breach of contract against Wheels 'r Us Sdn Bhd. (4 marks)

(b) State what remedy Ah Chong may seek if he is not entitled to rescind the contract. (2 marks)

(6 marks)

- 2 Chan and Danny are partners in CD & Co, a firm which deals in the sale and purchase of second hand books. Recently, Chan and Dan decided to give Emma, their long serving employee, a right to receive 10% of the firm's annual net profits as a bonus. Emma was delighted about this.

Last week, Emma agreed to sell to a customer a van belonging to the firm. However, Chan and Dan refused to allow the customer to take delivery of the van, stating that Emma had no right to sell the van belonging to the firm.

Required:

(a) State whether Emma has become a partner in CD & Co. (2 marks)

(b) Assume that Emma has become a partner, and state whether Chan and Danny are legally bound to sell the van to the customer. (2 marks)

(c) In the event Chan wishes to retire from the firm, describe how he may do so. (2 marks)

(6 marks)

- 3 Senyum Selalu Bhd has four directors, namely Arun, Bachan, Cindy and Dinah. The articles of association of the company requires all directors to acquire and hold a minimum of 10,000 shares in the company. The articles further state that no director may be removed from office before the expiry of their term of office.

Last week Arun sold off all his shares. Two days ago he entered into a RM 1 million contract on behalf of the company with a third party. Cindy and Dinah are not happy with this contract. They claim that Arun is disqualified to act as a director of the company and that the contract is not binding upon the company. Further, they wish to remove Bachan as a director although his term of office has not expired.

Required:

(a) Explain whether Arun is disqualified to act as a director of the company. (2 marks)

(b) Explain whether the company is bound by the contract entered into on its behalf by Arun, presuming he is disqualified to act as a director. (2 marks)

(c) Explain whether Bachan can be removed from office before the expiry of his term of office, presuming he has not been disqualified to act as a director. (2 marks)

(6 marks)

- 4 A, B, C and D are equal shareholders of Evergood Bhd. A and B are also the directors of Evergood Bhd. C wishes to sell his shares to his friend Eric, but A and B do not want an outsider to become a member of the company. They seek your answer to certain queries they have.

Required:

- (a) **State whether Evergood Bhd itself may purchase C's shares.** (2 marks)
- (b) **State whether, Evergood Bhd may grant a loan to D to enable D to purchase C's shares.** (2 marks)
- (c) **State whether, in the event D obtains a loan from a bank to finance the purchase of shares from C, Evergood Bhd may grant a fixed charge over its property in favour of the bank as security for the loan.** (2 marks)

(6 marks)

- 5 Aminah works as a cleaner in Quikrise Bhd, a public listed company that deals in the manufacture and sale of bread and confectionery. One day as she was cleaning the managing director's room she overheard the managing director, Jack, talking to his personal secretary, Jessie, in the next room. He said that Quikrise Bhd was soon going to take over another confectionery company, which is likely to result in an increase in the price of Quikrise Bhd's shares on the stock exchange.

Aminah told her son Ali about this and Ali bought some shares in Quikrise Bhd. After the takeover of the new confectionery, Quikrise Bhd's share price fell causing Ali to lose a substantial amount.

Required:

- (a) **Explain whether Aminah or Ali have committed any offence in relation to insider trading under the Capital Markets and Services Act 2007.** (4 marks)
- (b) **State whether Jessie has committed any offence under the Capital Markets and Services Act 2007.** (2 marks)

(6 marks)

End of Question Paper

Answers

Section A

- 1 C
- 2 A
- 3 A
- 4 A
- 5 A
- 6 C
- 7 A
- 8 D
- 9 B
- 10 C
- 11 A
- 12 B
- 13 A
- 14 C
- 15 D
- 16 D
- 17 B
- 18 B
- 19 B
- 20 B
- 21 A
- 22 C
- 23 B
- 24 A
- 25 D
- 26 B
- 27 B
- 28 B
- 29 D
- 30 C
- 31 B
- 32 B
- 33 B
- 34 A
- 35 C
- 36 A
- 37 B
- 38 C
- 39 A
- 40 B
- 41 D
- 42 A
- 43 A
- 44 C
- 45 B

Section B

- 1 (a) Rescission is a remedy which entitles the party who is not in breach of the contract, to treat the contract as terminated from the beginning. It will entitle each party to be restored to his original position as if the contract had not been entered into.

A party to the contract will only be entitled to rescind a contract if the other party had breached a condition stipulated in the contract. If the breach is only a minor one amounting to a breach of warranty, he will only be entitled to damages. In the given problem, the car was fitted with a lower quality of tyres than what was stated in the contract. This is only a breach of warranty and therefore Ah Chong will not be entitled to the remedy of rescission against Wheels' r Us Sdn Bhd.
- (b) Ah Chong may seek the remedy of damages if he is not entitled to the remedy of rescission. Since the term which has been breached is a warranty he is likely to be successful in obtaining damages. Damages refers to the monetary compensation that he is entitled to claim for the loss arising from the breach of contract.

- 2 (a) Although the Partnership Act 1961 states that the sharing of profits is prima facie evidence that a person is a partner of a firm, it also states that the receipt by a person of a share of the profits does not of itself make them a partner. In particular, if a person receives a share of the profits as remuneration for their services as an employee, that of itself will not make the employee a partner in the firm. Thus, as Emma is given the right to 10% of the profits of the firm as part of her remuneration as employee, she has not become a partner in CD & Co.
- (b) Under the Partnership Act 1961, each partner is regarded as the agent for the firm and the other partners. Thus any act done within the ordinary course of the firm's business and in the usual way will bind the firm and the other members. On the facts of the case, assuming Emma has become a partner, the sale of the van cannot be within the ordinary course of business of a firm that deals in second hand books. Thus Chan and Danny are not legally bound to sell the van to the customer.
- (c) If Chan wishes to retire from the firm, he may do so. Under the Partnership Act 1961, where the partnership has not been formed for a fixed term, any partner may determine the partnership at any time by giving notice to all the other partners. If the partnership was originally formed by a written agreement then a notice in writing is sufficient.
- 3 (a) Arun is disqualified to act as a director and must vacate office as he has lost his share qualification. The Companies Act 1965 requires every director, who is required by the articles, to satisfy a share qualification, to obtain such qualification within two months of appointment, or any lesser period stipulated in the articles. Where after acquiring the share qualification they cease at any time to hold the requisite number of shares, they are disqualified and must vacate office. As Arun has sold his qualification shares he is disqualified as a director.
- (b) Although Arun is disqualified, the acts done by him on behalf of the company will be binding upon the company. This is the effect of s.127 Companies Act 1965.
- (c) Bachan can be removed from office before the expiry of his term of office, by an ordinary resolution despite any limitation in the memorandum or articles or in any contract between the company and him. This is permitted by s.128 Companies Act 1965 and is subject to the procedures stated therein.
- 4 (a) Under the Companies Act 1965, a company is prohibited from purchasing its own shares. This is subject to several exceptions which do not apply to the given problem. Thus, Evergood Bhd is prohibited from purchasing C's shares in the company.
- (b) The Companies Act 1965 also prohibits a company from giving financial assistance to anyone to enable that person to purchase the company's shares. This is also subject to some exceptions which do not apply here. As a loan is a form of financial assistance, Evergood Bhd is not allowed to give a loan to D to enable D to purchase C's shares in the company.
- (c) Financial assistance also includes the giving of security to facilitate the purchase of a company's own shares. Thus the grant by Evergood Bhd of a fixed charge in favour of the bank as security for a loan given by the bank to D, to enable D to purchase C's shares in the company, is also not permitted under the Companies Act 1965.
- 5 (a) Aminah and Ali have committed an offence in relation to insider trading. By s.188 Capital Markets and Services Act 2007, a person is an insider if that person possesses information which is not generally available and on becoming generally available is likely to have a material effect on the price or value of the securities, and knows or ought reasonably to know that the information is not generally available. Aminah possesses such information because she overheard it from Jack, the managing director. Ali possesses such information because Aminah told him about it. Thus both are insiders. The section further states that an insider shall not, *inter alia*, acquire or dispose of securities to which the information relates. As Ali has acquired shares based on such information he has committed an offence under that section.
- Section 188, *inter alia*, also prohibits an insider from communicating such information to another person if they know that the other person is likely to acquire or dispose of securities to which the information relates. As Aminah has communicated the information to Ali, she has also committed an offence under the section.
- (b) As discussed in (a) above, Jessie is an insider because she now possesses the information given to her by Jack. However, she has not acquired or disposed of securities based on the information. Neither has she communicated that information to another. Thus, she has not committed any offence in relation to insider trading under the Capital Markets and Services Act 2007.

Section A

1–45 One or two marks per question; total marks 70

Section B

- 1** (a) 1 mark Explanation of rescission.
1 mark Distinction between condition and warranty.
2 marks Correct application and conclusion.
- (b) 1 mark Identification of damages for breach of warranty as alternate remedy for Ah Chong.
1 mark Correct application and conclusion.
- 2** (a) 1 mark Identification of general rule that sharing of profits is *prima facie* evidence of the existence of partnership.
1 mark Identification of relevant exception and conclusion.
- (b) 1 mark Identification of issue of partners as agents.
1 mark Correct application of law.
- (c) 1 mark Correct answer as to whether a partner can retire.
1 mark Correct reference to giving of notice of retirement.
- 3** (a) 1 mark Identification of issue of share qualification.
1 mark Correct application and conclusion.
- (b) 1 mark Correct answer as to whether the contract is binding.
1 mark Correct reference to the Companies Act.
- (c) 1 mark Correct answer as to whether Bachan can be removed as director.
1 mark Correct reference to Companies Act.
- 4** (a) 1 mark Identification of issue of prohibition on loans to directors.
1 mark Correct application of law and conclusion.
- (b) 1 mark Identification of issue of loans to persons connected to directors.
1 mark Correct application of law and conclusion.
- (c) 1 mark Correct identification of exception.
1 mark Correct application and conclusion.
- 5** (a) 1 mark Identification of issue relating to insider trading under the Capital Markets and Services Act (CMSA) 2007.
2 marks Relevant explanation.
1 mark Correct application and conclusion.
- (b) 2 marks Correct answer as to the criminal consequences with reference to CMSA 2007.