Answers

1 This question, on the Malaysian legal system, tests the candidates' knowledge of the hierarchy of the Malaysian courts and the operation of the doctrine of binding judicial precedent.

(a) The hierarchy of the Malaysian court system is as follows:

At the very top of the hierarchy is the Federal Court, which is headed by the Chief Justice.

Below the Federal Court is the Court of Appeal, which is headed by the President of the Court of Appeal.

Below the Court of Appeal are two High Courts with co-ordinate jurisdiction. One is the High Court of Malaya, which serves West Malaysia (Peninsula Malaysia), while the other is the High Court of Sabah and Sarawak, which serves East Malaysia, i.e. Sabah and Sarawak. Each of the High Courts is headed by a Chief Judge.

Below the High Courts are the Subordinate Courts. These consist of the Sessions Courts and the Magistrates' Courts. Magistrates' Courts come below the Sessions Courts. Parallel to the Magistrates' Court is the Court for Children.

In addition, there are Syariah Courts, which operate at the State level on matters pertaining to Islamic law in the respective states.

(b) The doctrine of binding judicial precedent refers to the rule that decisions of higher courts must be followed by courts which are lower in the hierarchy of the court structure. Among other things, this will ensure uniformity in court decisions.

In Malaysia, the doctrine will operate in the following way:

(i) Decisions of the Privy Council given on appeal from Malaysia or from another Commonwealth country, where the law is identical to Malaysia, are binding on the Malaysian courts.

(ii) Decisions of the Federal Court are binding on all courts below it. However, the Federal Court is not bound by its own decisions.

(iii) Decisions of the Court of Appeal will be binding on all courts below it. It is bound by its own previous decisions, just like the Court of Appeal of England.

(iv) Decisions of the High Court are binding on all Subordinate Courts, but one High Court judge is not bound to follow the decision of another.

It must be further noted that the Subordinate Courts are bound by precedents laid down by the Superior Courts but their own decisions do not bind any court.

2 This question, on employment law, tests the candidates' knowledge on termination of contracts of service as well as constructive dismissal.

(a) A contract of service may be terminated under the provisions of the Employment Act 1955 in the circumstances mentioned below:

(i) By s.11(1), a contract of service for a specified period of time, or for the performance of a specified piece of work, will terminate automatically when the specified period of time has elapsed, or the specified piece of work has been completed.

(ii) By s.12(2), a contract of service may also be terminated by one party giving to the other notice of his intention to terminate it. By s.12(4) such notice must be in writing. It must also comply with the period of notice stated in s.12(2).

(iii) By s.13(1), either party to a contract of service may terminate it without notice (or if notice has already been given in accordance with s.12, without waiting for the expiry of the notice) by paying an indemnity to the other.

(iv) By s.13(2), either party to a contract of service may terminate it without notice in the event of a wilful breach, by the other party, of a condition of the contract of service.

(v) By s.14, an employer may terminate the contract of service without notice, on grounds of misconduct of the employee, after due inquiry.

(vi) Section 14(3) also allows an employee to terminate his contract of service without notice, where he or his dependants are immediately threatened by danger of violence or disease, which was not undertaken by the employee in his contract of service.

(Candidates are only required to explain FOUR of the above)

(b) Constructive dismissal refers to a situation where the employee himself has resigned because the employer has made the working environment intolerable for the employee to continue working for the employer. 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, demoted the employee, or subjected him to unfair or oppressive working conditions with a view of humiliating the employee 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 guideline 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 tests the candidates' knowledge on the ways by which an agency may come into existence.

An agency may come into existence in the ways mentioned below:

(i) By express appointment by the principal

This is the most common way of creating an agency. The principal may make the appointment either orally or in writing. An express appointment in writing is commonly done through the grant of a power of attorney.

(ii) By implied appointment

An implied appointment may arise where from the surrounding circumstances it can be presumed that the principal had given authority to the agent to act on his behalf. An illustration of this is provided in s.140 Contracts Act 1950 as follows:

'A owns a shop in Kajang, living himself in Kuala Lumpur and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purpose of the shop, and of paying for them out of A's funds with A's knowledge. B has implied authority from A to order goods from C in the name of A for the purposes of the shop.'

(iii) By ratification by the principal

An agency by ratification arises where the agent acts outside the scope of his authority but the principal subsequently accepts or ratifies the act of the agent. Section 149 Contracts Act 1950 provides for such a situation. It states, 'where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or to disown the acts. If he ratifies them, the same effect will follow as if they had been performed by his authority'.

(iv) By necessity

Sometimes an agency may arise as a result of an emergency or urgency of the situation. This may be referred to as an agency by necessity. This is provided for in s.142 Contracts Act 1950.

An agency by necessity will arise if the following conditions are satisfied:

(1) It must be impossible to obtain the principal's instruction.
(2) The agent's action must be necessary in the given circumstances, to prevent loss to the principal.
(3) The agent must have acted in good faith.

(v) By *estoppel*

An agency by *estoppel* will arise where a person (the principal) has led a third party to believe that someone was his agent when in fact he was not; and the third party has relied on that representation to his detriment.

This is provided for in s.190 Contracts Act 1950. Illustration (a) of s.190 provides the following example:

'A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.'

4 This question, on the law of obligations, tests the candidates' knowledge on the definition of tort as well as the elements of the torts of negligence and defamation.

(a) Tort does not have a fixed definition. It has been variously defined by scholars and judges. A learned writer on torts has defined a tort as a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of a trust or other equitable obligation. A tort may also be said to be a civil wrong which arises by operation of the law and not through the agreement of the parties concerned. The basis of liability in tort is that no one has the right to cause injury or damage to a person or his property. The person suffering the injury or damage has the right to claim monetary compensation (damages) from the party who caused such injury. Trespass, negligence and defamation are examples of torts.

(b) **(i)** Negligence may be simply described as the failure of a person to do what a reasonable man would do or the doing of something that a reasonable man would not do. See: *Blyth* v *Birmingham Waterworks Co* (1856). The tort of negligence contains three elements:

(1) The duty of care

This means that a person (the defendant) has a duty to take reasonable steps to avoid acts or omissions which he can reasonably foresee is likely to injure someone else.

(2) Breach of the duty of care

A breach of the duty of care is said to occur when the defendant has failed to do what a reasonable person would have done, or has done something which a reasonable person would not have done.

(3) Resultant damage

This means that the defendant's act or omission must have caused the plaintiff to suffer damages. The damages must also be reasonably foreseeable and not too remote. See: *The Wagon Mound* (No 1) (1961).

(ii) Defamation may be described as the publication of a statement which tends to lower the reputation of a person in the eyes of right thinking members of society. Thus, for example, the publication of a statement which attacks the moral character of the plaintiff, associating him with crime, dishonesty, untruthfulness or sexual immorality would amount to defamation. See: *Syed Husin Ali* v *Syarikat Penchetakan Utusan Melayu Bhd & Anor* (1973).

Defamation may be of two types, namely, libel and slander. Libel refers to defamation in a permanent form, for example in writing. Slander, on the other hand, is defamation which is not in permanent form. Thus defamatory words which are spoken but not written will amount to slander.

It must also be noted that in an action for libel the plaintiff does not have to prove damage whereas in an action for slander, the plaintiff has to prove damage.

5 This question, on company law, contains two parts. Part (a) tests them on the differences between a fixed charge and a floating charge while part (b) tests them on the disadvantages of floating charges as a form of security.

(a) A fixed charge is a charge on a specific asset or assets of a company. The fixed charge attaches immediately to the asset concerned. After the creation of a fixed charge the company cannot dispose of the said asset free of the charge. Fixed charges are most commonly given over land.

The floating charge, on the other hand, is one which does not immediately attach to the assets concerned and gives the chargor freedom to continue to deal with the assets in the ordinary course of business. In *Re Yorkshire Woolcombers' Association* (1903), it was stated that a charge will be a floating charge if it has the three characteristics mentioned below:

(i) It is a charge on a class of assets present and future.

(ii) The class of assets fluctuates in the ordinary course of business.

(iii) Until such time that the lender takes steps to enforce his security, the company is free to deal with the assets in the ordinary course of business.

(b) The floating charge suffers from a number of disadvantages as a security to a lender. These are summarised below:

(i) The value of the security will be uncertain as the company is free to deal with the assets in the ordinary course of business.

(ii) The floating charge ranks lower in priority in comparison with a fixed charge over the same assets, even if the floating charge was created before the fixed charge, unless the floating charge restricts the creation of subsequent charges ranking in priority to the floating charge and the subsequent fixed chargee has notice of it.

(iii) Assets subject to a floating charge may themselves be subject to a retention of title clause in favour of a seller of goods. In such a case, if the chargor had not paid for the goods, the seller of the goods may be entitled to those goods and the floating chargee would have no claim to them.

(iv) The assets subject to a floating charge may be lost to judgement creditors, who have levied and completed execution on the goods charged. Prior to crystallisation the floating chargee cannot prevent judgement creditors from levying execution.

(v) Prior to crystallisation, the assets may be seized and sold by a landlord who has taken distress proceedings for overdue rent.

(vi) The assets subject to a floating charge may be utilised to pay off certain preferential creditors, if the company does not have sufficient funds to pay them. See: ss.191 and 292(4) Companies Act 1965.

(vii) Floating charges created within six months of the commencement of a winding up will be invalid except to the amount of cash paid to the company at the time of, or subsequent to, the creation of the charge, unless the company was solvent immediately after the creation of the charge. See: s.294 Companies Act 1965.

(Candidates are only required to explain any FOUR of these disadvantages.)

6 This question, on company law, contains two parts. Part (a) tests the candidates' knowledge on the procedure for the removal of directors of a public company while part (b) tests them on the fiduciary duty of directors to act in the best interests of the company.

(a) The procedure for the removal of a director of a public company is set out in s.128 Companies Act 1965. A director may be removed by an ordinary resolution notwithstanding anything to the contrary in the company's constitution or in any agreement between him and the company.

Members must give special notice of 28 days, as defined in s.153, to the company, of their intention to remove the director.

On receipt of the notice, the company must forthwith send a copy of it to the director concerned. The director then has the right to make a written representation of a reasonable length and send it to the company with a request to have it circulated to the members before the meeting. In the event the representations are received too late by the company to do so, the director may request that his representations be read out at the meeting. In any event he also has the right to be heard orally at the meeting.

If the director was appointed to represent the interests of any particular class of shareholders or debenture holders, the resolution to remove him shall not take effect until his successor has been appointed.

It may be noted that under s.128(8), a director of a public company shall not be removed by any resolution, request or notice of the board of directors, notwithstanding anything in the articles or any agreement.

(b) Duty to act in the best interests of the company.

Among the important fiduciary duties of a director is his duty at all times to act *bona fide* in the best interests of the company. This basically means that when directors make a decision they must do so in what they honestly consider to be for the benefit of the company. The desire to advance the company's interest must be their overriding motive. Where the directors have acted in their own selfish interest rather than that of the company, the directors would be considered to have breached this duty. A case in point is *Re W & M Roith Ltd* (1967), where a director used his position as the effective controller of a company to enter into a contract with the company under which his wife would be paid a pension upon his death. The court held that the director had clearly not acted in the best interests of the company.

Difficulties arise in determining what exactly would constitute the interests of the company as a whole. While it is clear that the directors do not owe their fiduciary duty to the individual shareholder but to the general body of shareholders as a whole (see: *Percival* v *Wright* (1802)), it is not clear whose other interests the directors could take into account. Often, directors may have to consider the interests of creditors, employees and others. It has been said by Latham CJ in the case of *Mills* v *Mills* (1938) that in the ultimate analysis it is a question of what is fair among the shareholders. So long as the decision does not discriminate between one group of shareholders and another, it is likely to be considered in the best interests of the company.

It must be noted that this common law duty to act in the best interest of the company is now also provided for in s.132(1) Companies Act 1965.

7 This question, on company law, tests the candidates' knowledge on the rationale for the doctrine of maintenance of capital and the exception under s.67A Companies Act 1965 which permits a company to purchase its own shares.

(a) One of the cardinal principles in company law is that the share capital of the company must always be maintained. This does not mean that a company must keep its capital and not utilise it at all. Indeed, it must necessarily apply its capital towards achieving its objects and, if the capital is lost because the venture turns out to be unprofitable, it is a risk that the investors must accept.

However, the capital of the company must not be simply wasted away and the law has developed rules to ensure that share capital is maintained. The rationale behind those rules is to protect the investors of the company, primarily creditors. This rationale is reflected in the words of Jessel MR in *Re Exchange Banking Co* (*Flitcroft's Case*) (1882) where he said, 'The creditor has no debtor but that impalpable thing the corporation, which has no property except the assets of the business. The creditor, therefore, I may say, gives credit to that capital, gives credit to the company on the representation that the capital shall be applied only for the purposes of the business and he has therefore a right to say that the corporation shall keep its capital and not return it to the shareholders'.

(b) At common law there was an absolute prohibition on a purchase by a company of its own shares. This was established in the case of *Trevor* v *Whitworth* (1887). Section 67 Companies Act 1965 also prohibits such a purchase. The purpose of the rule is to ensure that a company's capital is maintained, i.e. remains intact and does not get wasted away.

However, following the Asian financial crisis in 1997, amendments were made to the Companies Act 1965, allowing companies to purchase their own shares subject to certain conditions. This is reflected in s.67A Companies Act 1965, which was introduced by the Companies (Amendment) Act 1997. The conditions are mentioned below:

(i) It must be a public company with a share capital.
(ii) The articles of association of the company must permit such purchase.
(iii) The company must be solvent at the date of the purchase and must not become insolvent as a result of the purchase.

(iv) The purchase must be made through the Stock Exchange on which the shares are quoted and must be in accordance with the relevant rules of the Stock Exchange.
(v) The purchase must be made in good faith and in the interests of the company.

The company is permitted to utilise the share premium account to fund the purchase of the shares.

As the public listed company is permitted to buy its own shares, concern has been voiced that the doctrine of maintenance of capital has been compromised. However, it can be argued that the rationale behind s.67A is to protect the position of the creditors by stabilising share prices of listed companies. This would provide an economic environment for the company to prosper and save it from going into liquidation. Further, it must be noted that creditors are protected because any purchase by the company must satisfy the stringent conditions mentioned above. Thus, the doctrine has not been compromised.

8 This problem-based question on company law, which contains two parts, tests the candidates' ability to identify and apply the law relating to the *ultra vires* doctrine in Malaysia.

(a) As a general rule, companies only have the capacity to carry out those activities which are within the objects clause of the company. Where they have acted outside their capacity as stated in the objects clause, they are said to be acting *ultra vires*. At common law any transaction which was *ultra vires* was void. Neither the company nor the third party could sue to enforce such transactions. See: *Ashbury Rly Co Ltd* v *Riche* (1875); *AG* v *Gr Eastern Rly* (1880); *Re Jon Beauforte* (1953).

The *ultra vires* doctrine operated rather harshly on both the company as well as third parties and several methods of drafting the objects clause were resorted to in order to ensure that the transactions remained *intra vires*. One such method was the 'Bell Houses' clause following its successful application in a case called *Bell Houses Ltd* v *City Wall Properties Ltd* (1966). In this case, Bell Houses Ltd was essentially a property company but its objects also included the following clause:

'To carry on any other trade or business whatsoever, which can, in the opinion of the board of directors, be advantageously carried on by the company in connection with or as ancillary to …the general business of the company.'

Another company, City Wall Properties Ltd needed a loan from a Swiss financier. Bell Houses Ltd was willing to give City Wall Properties Ltd an introduction to the Swiss Financier, for a commission. City Wall Properties Ltd agreed, but after obtaining the loan it refused to pay the commission agreed upon on the ground that the agreement to pay it was *ultra vires* the objects clause of Bell Houses Ltd. Bell Houses Ltd argued that it was in fact *intra vires* relying on the above clause. The court held that it was *intra vires*.

In the given problem, a similar clause exists in the objects clause of ABC Sdn Bhd, i.e. that the company can carry on any other business, which in the opinion of the board of directors can be carried on with the above businesses of the company.

Thus it is possible to argue that the contract for the purchase of steel is within the scope of the objects clause and is therefore *intra vires* and valid.

(b) In Malaysia, s.20 Companies Act 1965 has modified the common law position regarding the *ultra vires* doctrine.

By s.20(1), an act or purported act of the company will not be invalid only on the ground that it was outside the capacity of the company.

However, by s.20(2), the lack of capacity or power may be relied upon in the three situations mentioned below.

(i) In proceedings against the company to restrain it from acting *ultra vires*. Such proceedings must be brought by a member or debenture holder secured by a floating charge.

This would mean that if the company has not yet completed a transaction which is outside its objects, the company can be prevented from completing it.

(ii) In proceedings against the present or former officers of the company. Such proceedings may be brought by the company or any member.

This would enable the company or any member to recover from the officers concerned, the losses suffered by the company as a result of the transaction.

(iii) In a petition by the Minister to wind up the company.

Assuming that the contract to purchase the steel is an *ultra vires* transaction, Charles may be advised that he could obtain an injunction under s.20(2)(a) to restrain ABC Sdn Bhd from proceeding with the contract, as the contract has not been fully executed.

In addition Charles could, under s.20(2)(b) Companies Act 1965, institute legal proceedings against the directors or other officers of the company to compensate the company for any loss arising from the purchase of the steel.

9 This question tests the candidates' knowledge and application of the law relating to company meetings and resolutions.

Appu and Jim may be advised as follows:

(a) By s.143(1) Companies Act 1965, the annual general meeting (AGM) of a company must be held once in every calendar year and not more than 15 months after the holding of the last preceding AGM. However, in the case of the first AGM, it may be held within 18 months of incorporation even if this would result in no AGM being held in the year of its incorporation or the following year. By s.143(2) these periods may be extended by the Registrar for any special reason, as he deems fit, on the application of the company.

In the given problem, Bahagia Sdn Bhd was incorporated in December 2009. It may therefore hold its first AGM within 18 months, i.e. before the end of May 2011. Thus it may hold its AGM in April 2011 and by doing so it has not breached the Companies Act 1965 for failing to hold an AGM in 2010.

(b) Under s.31(1) Companies Act 1965, an alteration of a company's articles of association requires a special resolution. By s.152 Companies Act 1965, a special resolution is one which must be passed by a three-fourths majority of the members present and voting at a meeting of which at least 21 days' notice has been given.

In the given problem, the resolution to amend the articles of association was passed only by a 60% majority. Therefore this resolution is invalid.

As for the resolution to increase the capital, the Companies Act does not require a special resolution. It may be passed by an ordinary resolution. This is the effect of s.62 of the Companies Act 1965. Thus this resolution is valid.

(c) Under s.145(5) Companies Act 1965, the accidental omission to give notice of a meeting to any member shall not invalidate the proceedings at the meeting.

Therefore, if in fact the omission to give notice was accidental, Jim will not be able to challenge the validity of the meeting.

However, if Jim can prove that the omission was in fact deliberate, then he may be able to challenge its validity.

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) tests them on their knowledge and application of the remedy of specific performance.

(a) The issue in this case is whether there has been a valid acceptance by Ramu of Ah Seng's proposal (offer) so as to create a binding contact 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. By s.4(3) Contracts Act 1950, 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, Ramu accepted Ah Seng's offer by a letter posted on 5 May 2011. Thus, though the letter of acceptance reached Ah Seng only on 12 May 2011, it was effective as against Ah Seng from the date of posting, i.e. 5 May 2011. Thus there was a valid contract between Ramu and Ah Seng as at 5 May 2011 and Ramu may successfully sue Ah Seng for breach of contract.

(b) The issue here is whether Ramu is likely to obtain the remedy of specific performance against Ah Seng for breach of contract.

Specific performance is an order of the court requiring the party who is in breach of the contract to perform his part of the contract exactly as he had promised.

The remedy of specific performance is provided for under the Specific Relief Act 1950.

By s.11(1), specific performance of any contract may be granted at the discretion of the court in certain circumstances. Among them are:

(i) where there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done.

For example, A agrees to buy and B agrees to sell, a picture by a dead painter and two rare China vases. A may obtain specific performance as there is no standard for ascertaining the actual damage which would be caused by its non-performance; and

(ii) when the act agreed to be done is such that compensation for its non-performance would not afford adequate relief. An example is provided by illustration (c) to s.11(1)(c) Specific Relief Act 1950 as follows:

'A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.'

Applying the above principles to the given problem it is quite clear that monetary compensation is unlikely to be adequate for Ramu as the car was a rare one and on principle Ramu should obtain the remedy of specific performance.

However, there is also an equitable principle that the court would not grant an order of specific performance if the subject matter of the contract has been acquired by a *bona fide* purchase for value without notice of the previous sale.

Ramu may therefore be advised that the court is unlikely to grant specific performance as the vintage car has been sold and delivered to a third party, presuming that the third party was a *bona fide* purchaser for value.

1 **(a)** 3–5 Good to excellent answer correctly describing the hierarchy of the Malaysian courts. The better answers will also refer to the head of the relevant court.

0–2 Incomplete or inaccurate answer.

(b) 3–5 Good to excellent answer clearly explaining the operation of the doctrine of binding precedent with reference to the court hierarchy.

0–2 Incomplete or inaccurate answer.

2 **(a)** 0–6 One and a half marks for each correctly stated way in which a contract of service may be terminated under the Employment Act 1955.

(b) 2–4 Good to excellent answer correctly explaining what constitutes constructive dismissal in the context of employment law.

0–1 Incomplete or inaccurate answer.

3 0–10 A maximum of 2 marks for each correctly explained situation in which an agency may arise.

4 **(a)** 0–3 An accurate answer correctly defining a tort with relevant examples will fall into the upper part of this band while an incomplete or inaccurate one will fall into the lower part.

(b) **(i)** 2–4 Average to excellent answer correctly describing the tort of negligence. The better answers will refer to relevant examples.

0–1 Incomplete or inaccurate answer.

(ii) 0–3 An accurate answer correctly describing the tort of defamation and distinguishing between libel and slander will fall into the upper part of this band while an incomplete or inaccurate one will fall into the lower part.

5 **(a)** 2–4 Average to excellent answer, correctly distinguishing a fixed charge from a floating charge. The better answers will refer to appropriate examples.

0–1 Incomplete or inaccurate answer.

(b) 0–6 One and a half marks for each disadvantage of a floating charge correctly explained.

6 **(a)** 3–5 Good to excellent answer correctly explaining the procedure for the removal of directors of public companies. The better answers will also state the rights of the director being removed.

0–2 Incomplete or inaccurate answer.

(b) 3–5 Good to excellent answer correctly explaining the director's fiduciary duty to act in the best interests of the company. The better answers will refer to relevant examples.

0–2 Incomplete or inaccurate answer.

7 **(a)** 0–3 An accurate explanation of the rationale for the doctrine of maintenance of capital will fall into the upper part of this band while an incomplete or inaccurate one will fall into the lower part.

(b) 6–7 A full and accurate answer clearly explaining the power of public companies to purchase their own shares and the conditions which must be satisfied under the Companies Act 1965 in order to do so.

4–5 A fair answer explaining the power of public companies to purchase their own shares.

0–3 Incomplete or inaccurate answer.

8 **(a)** 3–5 Good to excellent answer explaining what constitutes an *ultra vires* transaction as well as correctly identifying the Bell Houses clause and stating its effect with accurate application to the given problem.

0–2 Incomplete or inaccurate answer.

(b) 3–5 Good to excellent answer explaining the effect of *ultra vires* transactions under s.20 Companies Act 1965 with correct application to the given problem and accurate advice to Charles.

0–2 Incomplete or inaccurate answer.

9 **(a)** 0–3 An accurate answer with reference to the Companies Act 1965, stating the period within which a company must hold its first AGM with correct advice to Appu and Jim 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 stating that an alteration of articles requires a special resolution which must be passed by a three-fourths majority while the increase of capital only requires a simple majority will fall into the upper part of this band. An incomplete or inaccurate one will fall into the lower part.

(c) 0–3 An accurate answer stating that an accidental omission to give notice of a meeting shall not invalidate the meeting with reference to the Companies Act 1965 will fall into the upper part of this band while an inaccurate one will fall into the lower part.

10 **(a)** 3–5 An accurate answer correctly identifying the issue of the postal rule in relation to acceptance of an offer with correct application to the given problem and accurate advice to Ramu.

0–2 A weak answer indicating little or no knowledge of what the question requires.

(b) 3–5 An accurate answer explaining the nature of specific performance and the relevant situations in which the court is likely to grant or refuse to grant this remedy in the light of the given problem, with correct advice to Ramu.

0–2 A weak answer indicating little or no knowledge of what the question requires.