

Fundamentals Level – Skills Module

# Corporate and Business Law (Malaysia)

Tuesday 7 June 2011

**Time allowed**

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

**Do NOT open this paper until instructed by the supervisor.**

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

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

The Association of Chartered Certified Accountants

# Paper F4 (MYS)

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

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

- 1 In the context of the Malaysian legal system:**
- (a) Describe the hierarchy of the Malaysian courts. (5 marks)
  - (b) Explain how the doctrine of binding judicial precedent operates. (5 marks)
- (10 marks)**
- 2 In relation to employment law:**
- (a) Explain **FOUR** ways by which a contract of service may be terminated under the **Employment Act 1955**. (6 marks)
  - (b) Explain, and illustrate using relevant examples, what constitutes 'constructive dismissal'. (4 marks)
- (10 marks)**
- 3 In relation to the law of agency, explain the ways by which an agency may come into existence.**
- (10 marks)**
- 4 In the context of the law of obligations:**
- (a) Define a tort. (3 marks)
  - (b) Describe the following torts:
    - (i) tort of negligence; and (4 marks)
    - (ii) tort of defamation. (3 marks)
- (10 marks)**
- 5 In the context of company law:**
- (a) Explain and distinguish between a fixed charge and a floating charge as a form of security. (4 marks)
  - (b) State **FOUR DISADVANTAGES** of the floating charge as a security to a lender. (6 marks)
- (10 marks)**
- 6 In relation to company law:**
- (a) Explain the procedure by which members of a public company may remove a director from office. (5 marks)
  - (b) Explain the fiduciary duty of a director to act in the best interests of the company. (5 marks)
- (10 marks)**

**7 In relation to company law:**

- (a) Explain the rationale behind the doctrine of maintenance of capital; and (3 marks)
- (b) Discuss s.67A Companies Act 1965, which permits a company to purchase its own shares. (7 marks)

**(10 marks)**

**8** ABC Sdn Bhd is a small private limited company with five shareholders. Its directors are Ali and Balu. Its objects clause states as follows:

- (i) to manufacture and sell biscuits;
- (ii) to buy and sell wooden furniture; and
- (iii) to 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.

In April 2011, ABC Sdn Bhd entered into a contract with XYZ Sdn Bhd, a steel manufacturing company, for the purchase of 90,000 kilograms of steel. The steel will be delivered to ABC Sdn Bhd next month. The decision to purchase the steel was made by Ali and Balu with the intention of making the company branch off into the manufacture of steel cabinets and other office equipment made of steel.

Charles, a shareholder, believes that the contract for the purchase of the steel is outside the scope of the objects clause of ABC Sdn Bhd. He seeks your advice in respect of this matter.

**Required:**

**Advise Charles on:**

- (a) whether the contract to purchase the steel is an *ultra vires* transaction; and (5 marks)
- (b) his rights in respect of the said contract, assuming it is *ultra vires*. (5 marks)

**(10 marks)**

**9** Bahagia Sdn Bhd was incorporated in December 2009. The first annual general meeting (AGM) of the company was held in April 2011. Appu and his uncle Jim are members of Bahagia Sdn Bhd. Appu attended the meeting but Jim did not attend as he did not receive notice of the meeting. The company claims that no notice was sent to Jim due to an accidental omission. At the meeting two separate resolutions were passed, namely, to alter the company's articles as well as to increase the company's share capital. Both resolutions were passed by a 60% majority.

**Required:**

**Advise Appu and Jim, who seek your advice on the following:**

- (a) whether the company had breached the Companies Act 1965 in failing to hold an AGM in 2010. (3 marks)
- (b) whether the resolutions to alter the company's articles and to increase the share capital were passed by the majority required under the Companies Act 1965. (4 marks)
- (c) whether Jim can challenge the validity of the meeting on the ground that he did not receive notice of the meeting. (3 marks)

**(10 marks)**

**10** Ah Seng, who owned a rare vintage car offered to sell it to his friend Ramu. The offer was made through a letter dated 1 May 2011, which was posted on the same day. The letter expressly stated that the offer was only open until 10 May 2011. Ramu received the letter on 5 May 2011 and immediately posted his letter of acceptance to Ah Seng. Due to a postal delay, this letter reached Ah Seng only on 12 May 2011. Meanwhile, on 11 May 2011, Ah Seng, not having heard from Ramu, sold the car to someone else.

**Required:**

**Advise Ramu:**

**(a) whether he can successfully sue Ah Seng for breach of contract; and** (5 marks)

**(b) whether he is likely to obtain the remedy of specific performance, in the event there was a breach of contract by Ah Seng.** (5 marks)

**(10 marks)**

**End of Question Paper**