

Fundamentals Level – Skills Module

# Corporate and Business Law (Malaysia)

Monday 9 June 2014



**Time allowed**

Reading and planning: 15 minutes

Writing: 3 hours

ALL TEN questions are compulsory and MUST be attempted.

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

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

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

The Association of Chartered Certified Accountants

# Paper F4 (MYS)

# ACCA

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

- 1 In relation to the Malaysian legal system, explain the operation of the doctrine of binding judicial precedent.**  
(10 marks)
- 2 In relation to employment law:**
- (a) explain what is meant by 'redundancy' and state, with reference to the Employment Act 1955, the situations in which redundancy may occur; and (5 marks)
  - (b) state the ways in which a contract of service may be terminated under the Employment Act 1955. (5 marks)
- (10 marks)
- 3 In the context of the law of agency, explain the following types of agent's authority:**
- (a) actual authority; and (5 marks)
  - (b) ostensible (apparent) authority. (5 marks)
- (10 marks)
- 4 In relation to the law of contract:**
- (a) explain what is meant by specific performance; (2 marks)
  - (b) describe THREE instances when the court would grant specific performance; and (3 marks)
  - (c) describe FIVE contracts which cannot be specifically enforced. (5 marks)
- (10 marks)
- 5 In relation to company law:**
- (a) explain the meaning of 'veil of incorporation'; and (2 marks)
  - (b) explain, with reference to relevant authorities or examples, FOUR situations in which the veil of incorporation may be lifted. (8 marks)
- (10 marks)
- 6**
- (a) Explain what is a scheme of arrangement under the Companies Act 1965. (4 marks)
  - (b) State any THREE matters under the Companies Act 1965 in respect of which provisions may be made by the court to facilitate the amalgamation of two or more companies. (6 marks)
- (10 marks)

**7 In relation to company law and the Companies Act 1965:**

- (a) State the circumstances under which a person may NOT be appointed or act as a company auditor. (5 marks)
- (b) Explain how auditors may be removed from office. (5 marks)

**(10 marks)**

**8** PQR Bhd ('PQR') owns a manufacturing plant and machinery in Shah Alam.

- (i) In October 2012, PQR gave a fixed charge to Bank Kita over the plant and machinery as security for a loan of RM2 million. This charge was not registered with the Registrar of Companies ('Registrar').
- (ii) In January 2013, PQR created a floating charge in favour of Bank Anda over the aforesaid plant and machinery as security for a loan of RM3 million. The floating charge contains an undertaking by PQR not to create any subsequent charge ranking in priority to it. The floating charge was duly registered with the Registrar.
- (iii) In February 2013, PQR gave a fixed charge over the same plant and machinery to Bank Kaya as security for a loan of RM5 million. This fixed charge was registered with the Registrar.

In January 2014, a winding up order was made by the court against PQR on the ground that it was unable to pay its debts.

At the time of the winding up order PQR had not settled the loans made by Bank Kita, Bank Anda and Bank Kaya.

**Required:**

- (a) Explain the civil and criminal consequences which flow from the fact that the fixed charge given to Bank Kita was not registered with the Registrar. (4 marks)
- (b) State and explain the order of priority of the three charges mentioned above. (6 marks)

**(10 marks)**

- 9 Lam and his son Ben each hold 7% of ABC Bhd's ordinary shares. Lam is also the sole proprietor of a separate business which deals in stationery, furniture and office equipment.

The memorandum of association of ABC Bhd ('ABC') contains a provision, which states that the name of the company shall be unalterable.

ABC's articles of association state that:

- (i) ABC shall purchase all the stationery, furniture and office equipment which it needs from Lam; and
- (ii) a member of the company, who wishes to sell his shares, must first offer the shares to other members at a price to be determined by the company's auditors.

Lam and Ben come to see you.

- (a) Lam informs you that the other members of ABC propose to pass a special resolution at a general meeting of ABC which will be held next week to change the name of the company to FGH Bhd.

**Required:**

**Advise Lam whether the proposed change is valid.** (3 marks)

- (b) Lam also informs you that ABC has stopped buying its stationery, furniture and office equipment from him. Instead it buys the said items from Lam's rival, Mitsui Tan.

**Required:**

**Advise Lam whether he may sue ABC for breach of contract because it had failed to comply with its articles of association.** (3 marks)

- (c) Ben tells you that two days ago he received an offer to buy his shares in ABC from Al Jadi, a wealthy Arab. Al Jadi has offered to buy the shares at three times their market value. Al Jadi is not a member of ABC. Ben would like to accept Al Jadi's offer.

**Required:**

**Advise Ben whether he must first offer his shares to other members before he can sell them to Al Jadi.** (4 marks)

**(10 marks)**

- 10 (a)** Janet, who is 80 years old and in poor health, is a wealthy widow who owns three bungalows in Shah Alam. Until recently she suffered from hallucinations that she was pursued by demons. About two months ago she enrolled herself for the treatment offered by a spiritual adviser, Singa, who operated from his link house in Shah Alam. Whilst she was receiving treatment as a resident at Singa's house, he told her that he needed a bungalow to house the persons seeking his treatment and impressed upon her that her assistance was required in this matter. This prompted Janet to state that she would help Singa as soon as she recovered from her ailment.

Two months after commencing the treatment offered by Singa, Janet no longer had the hallucinations mentioned above. She returned home last week. A day after she returned home she signed a contract prepared by Singa's solicitor agreeing to sell one of her bungalows in Shah Alam to Singa for RM200,000. The market value of the bungalow is RM2 million.

Janet comes to see you today. She says that she regrets having signed the contract and seeks your advice whether she could avoid the contract on any ground.

**Required:**

**Advise Janet.**

**Note:** Candidates are not required to deal with the issue of capacity to contract. (5 marks)

- (b)** Ramu's dog, Barkie, strayed into his neighbour's garden and accidentally knocked into and broke a vase valued at RM2,000. The angry neighbour detained Barkie in his compound. He refused to return Barkie to Ramu unless Ramu paid him RM15,000. Ramu was anxious about Barkie's safety and promptly paid the neighbour that amount. Barkie was then returned to Ramu unharmed. Ramu is now unhappy about having made the payment and wishes to know whether there are any grounds under the law of contract on which he could recover the amount of RM15,000 from the neighbour.

**Required:**

**Advise Ramu.**

(5 marks)

**(10 marks)**

**End of Question Paper**