

CF03

Law and Practice of Banking

6 OCTOBER 2004

1. Time allowed : Three (3) hours
2. Total number of questions : Six (6) questions
3. Number of questions to be answered : Five (5) questions [20 marks each]
4. Answers should be supported by references to cases and/or statutes.
5. Begin each answer to a new question on a fresh page.
6. Answer **all** questions in **English**.

ANSWER FIVE (5) QUESTIONS ONLY

1. (a) State **five** statutory rights of hirers (as provided by the Hire-Purchase Act 1967) under the hire-purchase contracts. [5]
- (b) The following questions are in relation to the Anti-Money Laundering Act 2001 (AMLA). For each of the questions, choose the **correct** answer (A, B, C or D):
- (i) The term "financial institution" means institutions licensed under all of the following **except**:
- A. Islamic Banking Act 1983.
 - B. Hire-Purchase Act 1967.
 - C. Takaful Act 1984.
 - D. Insurance Act 1996. [1]
- (ii) The following activities are carried out by the reporting institutions **except**:
- A. dealing with import and export businesses.
 - B. money-changing.
 - C. dealing in securities (excluding providing investment advice).
 - D. discount house business. [1]
- (iii) Money laundering means the act of a person who does any one or more of the following **except**:
- A. transfers, converts, exchanges, carries, disposes, uses, removes from/brings into Malaysia proceeds of any unlawful activity which must always be of a substantial amount.
 - B. engages directly in a transaction that involves proceeds of an unlawful activity.
 - C. acquires, receives, possesses, disguises proceeds of any unlawful activity.
 - D. conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of an unlawful activity. [1]
- (iv) Which of the following statements is **correct**?
- A. It is an offence to abet money laundering.
 - B. It is not an offence to money launder so long as one does so in good faith.
 - C. Property purchased with proceeds of money laundering may be forfeited by the State Government where such property is situated.
 - D. In the bank, only officers and above can be held liable under AMLA. [1]
- (v) The reporting institutions are obligated to report to the competent authority on:
- A. money laundering offences.
 - B. suspicious transactions of money laundering.
 - C. frauds.
 - D. crimes. [1]
- (c) In relation to sources of Malaysian law, fill in the blanks with the **correct** word(s) for each of the following:
- (i) Malaysia has a written constitution called the _____ Constitution. [1]
- (ii) Constitutional law and criminal law are components of _____ law. [1]
- (iii) English law is mainly found in English _____ law and rules of equity. [1]
- (iv) Bank Negara Malaysia Guidelines are examples of _____ legislation. [1]
- (v) In Malaysia, appeals from the High Court are heard by the _____. [1]
- (d) Rita has just been employed as a credit officer in Bank Pinjam Bhd. At the same time, Rita's father has applied for an overdraft facility from Bank Pinjam Bhd.
- What are the legal considerations that Bank Pinjam Bhd should take into account when deciding whether it should grant the facility to Rita's father? Give reasons for your answer. [5]
(Total:20 marks)

2. (a) Answer “**True**” or “**False**” for each of the following statements:
- (i) A tortious liability arises from the breach of contract primarily imposed by law. [1]
 - (ii) A trust is an equitable obligation binding a person who deals with the property over which he has control for the benefit of the beneficiaries. [1]
 - (iii) Under the Banking and Financial Institutions Act 1989 (BAFIA), Bank Negara Malaysia is empowered to issue Guidelines for bankers. [1]
 - (iv) The Magistrates’ Court is a subordinate court in the Malaysian judicial system. [1]
 - (v) BAFIA has no relevance to discount houses. [1]
- (b) In relation to the law of contract, answer the following questions:
- (i) Explain what the term “capacity” means. [5]
 - (ii) What is the legal effect if consideration is not adequate? [5]
- (c) For each of the following questions, choose the **correct** answer (A, B, C or D):
- (i) Which of the following statements is **correct**?
 - A. All customers are account holders.
 - B. In the case of a joint account, if there is a dispute, all the joint account holders must sign in order to instruct the bank to freeze the account.
 - C. It is not advisable to allow a person who is a Biro Maklumat Cek offender to be a mandate holder of an account.
 - D. Section 2 of BAFIA defines “customer” as a person having either a deposit or a current account or some similar relation with a bank. [1]
 - (ii) Which of the following statement(s) is/are **correct**?
 - I. Bank staff are all bound by banking secrecy by virtue of the Secrecy Act 1989.
 - II. Employees of financial institutions are agents of their respective institutions.
 - III. The minimum penalty for breach of banking secrecy is imprisonment for three years or RM3million fine or both.
 - A. I only.
 - B. II only.
 - C. I and II only.
 - D. I, II and III. [1]
 - (iii) If a bank wishes to close a customer’s account that is in credit balance, the bank:
 - I. can only do so if the customer is a Biro Maklumat Cek offender and not otherwise.
 - II. needs to give a reasonable notice to the customer.
 - III. can automatically do so without giving a notice to the customer.
 - A. I only.
 - B. II only.
 - C. I and II only.
 - D. I and III only. [1]
 - (iv) The banker-customer relationship may be terminated by operation of law in all the following circumstances **except**:
 - A. liquidation or bankruptcy of the customer.
 - B. litigation commenced against the customer.
 - C. mental incapacity of the customer.
 - D. death of the customer. [1]

- (v) Which of the following is legally **not** a customer of a bank? [1]
A. A holder of a cash cheque.
B. A walk-in customer purchasing traveller's cheques.
C. A person having a safe deposit box account.
D. A fixed deposit account holder. (Total:20 marks)

3. (a) Describe **three** remedies available for breach of contract. [15]
(b) State **five** duties of an agent. [5]
(Total:20 marks)

4. In relation to the law on sale of goods in Malaysia, define and explain the following terms:
(a) Goods [5]
(b) Contract of sale [5]
(c) Agreement to sell [5]
(d) Price [5]
(Total:20 marks)

5. (a) In relation to the law of tort, explain the term "contributory negligence". [5]
(b) For each of the following questions, choose the **correct** answer (A, B, C or D):

- (i) Mr LLB was granted a RM500,000 credit facility by Bank ABC Bhd. The security offered was a charge over land owned by Mr CM. Mr LLB forged Mr CM's signature on the charge documents which were later registered.

Which of the following statements **best** describes the effect of this forgery?

- A. It is one of the exceptions to indefeasibility of titles or interest in land as provided under section 340 of the National Land Code 1965.
B. It amounts to fraud but due to equitable principles, the chargor and borrower are still liable but on an unsecured basis.
C. If there was adequate consideration, the charge cannot be deemed void and unenforceable.
D. Forgery of the chargor's signature can be rectified by the chargee's bank. [1]

- (ii) Which of the following statements is **correct**?

- A. Leasehold land is land with a fixed tenure of 99 years or less.
B. Freehold land cannot be considered as good security.
C. A leasehold title is such that security cannot be taken over it.
D. A tenancy exempt from registration can exceed three years and can be registered as a dealing. [1]

- (iii) Which of the following statements is **incorrect**?

- A. Final titles are the final forms of title under which lands are alienated after they have been surveyed.
B. Registry titles may take the form of either grants or state leases.
C. In the case of Land Office titles, upon default by the chargor, the chargee has to apply for an order for sale from the High Court.
D. The National Land Code 1965 allows for alienation of land under qualified titles. [1]

- (iv) Which of the following is **not** a condition of land use?
- A. Agriculture.
 - B. Multimedia.
 - C. Building.
 - D. Industry.
- [1]

- (v) Under the National Land Code 1965, the chargee possesses all the following rights **except** the:
- A. power of sale.
 - B. right to possession.
 - C. right to garnishee proceedings.
 - D. right to transfer the charge.
- [1]

- (c) State **four** differences between a private caveat and a lien-holder's caveat.
- [10]
(Total:20 marks)

6. (a) Answer "**True**" or "**False**" for each of the following statements:

- (i) If a bill of exchange is not transferable, it cannot be negotiated. [1]
- (ii) Section 73 of the Bills of Exchange Act 1949 provides that if a cheque bears a date more than six months, the cheque is considered as a "stale" cheque. [1]
- (iii) A cheque is valid by reason only if it is post-dated. [1]
- (iv) There are only two types of crossings recognised in the Bills of Exchange Act 1949, namely, the general crossing and the special crossing. [1]
- (v) A traveller's cheque is a type of promissory note. [1]

- (b) What is the legal definition of a "cheque"? [5]

- (c) In relation to bills of exchange, describe the term "indorsement". [5]

- (d) Fill in the blanks with the **correct** word(s) for each of the following:

- (i) A company limited by _____ means a company formed on the principle of having the liability of its members limited by the memorandum to the amount (if any) unpaid on the shares respectively held by them. [1]
- (ii) A minor is someone who is below the age of _____ years. [1]
- (iii) An _____ private company is a company in the shares of which all beneficial interests are held directly or indirectly by a maximum of twenty shareholders none of whom are corporations. [1]
- (iv) A _____ company can be defined as a company, other than a private company, which must be listed in the stock exchange and must have more than fifty shareholders. [1]
- (v) The principle of "indoor management" where third parties dealing with a company need not concern themselves with the internal management rules of the company is laid down in _____'s case. [1]

(Total:20 marks)

- END OF QUESTION PAPER -

OUTLINE ANSWERS

The comments given in the boxes below indicate the areas of weaknesses the examiners have identified and their advice to future candidates.

Question 1

- Candidates were unable to explain section 62 (Prohibition of credit facilities to director and officer) of the Banking and Financial Institutions Act 1989 (BAFIA).
- Candidates should acquire more knowledge on the BAFIA.

1. (a) Statutory rights of hirers (under the Hire-Purchase Act 1967).

(Give any five of the following:)

- To be supplied documents and information in the amount paid, the amount unpaid and due as well as the amount payable – section 9.
- Where there is more than one hire-purchase agreement entered into by the hirer with the owner, the hirer can require the owner to appropriate payments – section 10.
- The hirer may apply to the Magistrates' Court for an order approving the removal of the goods to another place – section 11.
- With the consent of the owner, the hirer can assign his right, title and interest under the hire-purchase agreement. If the owner withholds his consent unreasonably, the hirer can assign without the owner's consent – section 12.
- The hirer may have his right, title and interest passed on by operation of law – section 13.
- The hirer may complete the purchase of the goods earlier than the due date - section 14.
- The hirer can determine the hiring by returning the goods; and if, after sale, the value of the goods is less than the balance outstanding under the hire-purchase agreement, the hirer has to pay the difference to the owner – section 15.

(b) (i) B

(ii) A

(iii) A

(iv) A

(v) B

(c) (i) Federal

(ii) public

(iii) common

(iv) subsidiary

(v) Court of Appeal

- (d) Bank Pinjam Bhd should bear in mind that this overdraft facility should not be granted to Rita's father. Section 62 of the Banking and Financial Institutions Act 1989 prohibits licensed institutions (which includes banks) from giving credit facilities to its director or officer or any employee. The word "officer includes a spouse, child or parent of a director or officer – section 62(4).

Subject to certain conditions specified in section 63, banks can grant housing loans to the spouse, child or parent of the officer and the executive director. Thus, Bank Pinjam Bhd should not grant the overdraft facility to Rita's father. Contravention of this provision attracts a maximum of imprisonment of five years and RM5million fine.

Question 2

- Candidates could not state the legal effect if consideration is not adequate.
- Candidates failed to substantiate answers with relevant cases and statutory provisions.
- Candidates should support their answers with cases and statutory provisions.

2. (a) (i) False
- (ii) True
- (iii) True
- (iv) True
- (v) False
- (b) (i) Capacity is one of the elements constituting a contract. Parties entering into a contract should be competent to contract. They must have the legal capacity to do so. Section 11 of the Contracts Act 1950 provides that every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.
- (ii) Explanation 2 to section 26 of the Contracts Act 1950 provides that an agreement is not void merely because the consideration is inadequate – *Phang Swee Kim v Beh I Hock*.
- (c) (i) C
- (ii) B
- (iii) B
- (iv) B
- (v) A

Question 3

- Candidates were unable to explain the remedies in detail.
- Candidates should answer according to the marks allotted to the question.

3. (a) The remedies available in the event of a breach of contract are damages, specific performance and injunctions. Section 74 of the Contracts Act 1950 provides for damages to be granted to a party as compensation for damages, loss or injury he has suffered through a breach of contract.

Specific performance is a discretionary remedy provided for by the Specific Relief Act 1950. The court has the discretion not to decree specific performance under certain circumstances, such as under section 20 of the said Act where damages will provide an adequate remedy – *Yeo Long Seng v Lucky Park (Pte) Ltd.*

An interlocutory injunction is used by a party to maintain the status quo of the subject matter in a pending suit. A mandatory injunction is a court order requiring something to be done. A prohibitory injunction stops something from being done.

- (b) Duties of an agent.

(Give any five of the following:)

- to obey the principal's lawful instructions
- to act according to customs and the usual business manner, (in the absence of instructions from the principal)
- to exercise care and diligence
- to render proper accounts
- to pay his principal all sums received on his behalf
- to communicate with the principal
- to not let his interest conflict with his duty
- to not make a secret profit
- to not disclose confidential information
- to not delegate his authority

Question 4

- Candidates could not define and explain the various terms related to sale of goods.

4. (a) Goods are defined as every kind of movable property other than actionable claims and money; and include stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Land is excluded from this definition.

- (b) Section 4(1) of the Sale of Goods Act 1957 defines a contract of sale as “a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price.” A sale occurs when the ownership or property in goods passes or is transferred to the buyer.

- (c) An agreement to sell is a contract under which the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled – section 4(3), Sale of Goods Act 1957. An agreement to sell becomes a contract of sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred – section 4(4) of the said Act.

- (d) Price means the money consideration for the sale of goods. Prices may be fixed by the contract, the manner agreed to in the contract; or, in the course of dealings between the parties. When price is not fixed, the buyer must pay a reasonable price for the goods.

Question 5

- Candidates were unable to explain the term “contributory negligence”.

- Candidates could not state the differences between a private caveat and a lien-holder’s caveat.

5. (a) The term “contributory negligence” means that the damages recoverable by the plaintiff are to be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage. – section 12, Civil Law Act 1956.

(b) (i) A

(ii) A

(iii) C

(iv) B

(v) C

(c) The four differences between a private caveat and the lien-holder’s caveat are as follows:

- A private caveat, unless earlier withdrawn or removed, lapses upon the expiry of 6 years from the time it took effect. On the other hand, a lien-holder’s caveat subsists until it is withdrawn.
- A private caveat is merely prohibitive and does not create any security; whereas, a lien-holder’s caveat coupled with a lien is a form of security.
- A private caveat is merely based on a claim (caveatable interest); whereas a lien-holder’s caveat may only be lodged by a person with whom the document of title has been deposited as security for a loan.
- To lodge a private caveat, the caveator does not need possession of the land title involved; whereas the lien-holder’s caveat may only be lodged by the lien-holder who possesses the land title as the title has been deposited as security for a credit facility.

Question 6

- Candidates’ answers generally lacked elaboration.

- Candidates were unable to explain the term “indorsement”.

6. (a) (i) True

(ii) False

(iii) True

(iv) True

(v) False

- (b) A cheque is a species of bills of exchange. Sections 3(1) and 73 of the Bills of Exchange Act 1949 read together provide the definition of a cheque as follows:

That is, a cheque is an unconditional order in writing addressed by one person (the drawer) to another (the drawee, who must be a banker) signed by the person giving it, requiring the banker to pay on demand, a sum certain in money to, or to the order of, a specified person or to bearer.

- (c) An indorsement transfers the property in the bill to the transferee and involves liability on the part of the transferor (indorser). An indorsement is essential in order to negotiate order bills. An indorsement is usually in the form of a signature at the back of the bill by the indorser. The indorsement may be made in blank or special (i.e. specifying the name of the indorsee).

- (d)
- (i) guarantee
 - (ii) eighteen
 - (iii) exempt
 - (iv) public
 - (v) Turquand