

CF03

Law and Practice of Banking

9 APRIL 2003

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 the number and the names of the Guidelines issued by Bank Negara Malaysia concerning the following subjects:
- (i) Minimum standards of conduct expected of employees of financial institutions in Malaysia [2½]
 - (ii) Electronic funds transfers [2½]
- (b) In the context of the Anti-Money Laundering Act 2001, define the term "money laundering". [10]
- (c) For each of the following questions, choose the **correct** answer (A, B, C or D):
- (i) Law may be classified into all the following divisions **except**:
 - A. public law.
 - B. international law.
 - C. natural law.
 - D. private law. [1]
 - (ii) Which of the following statements is **incorrect**?
 - A. The law of tort is the branch of private law which determines when a promise or a set of promises are legally binding.
 - B. A trust is an equitable obligation which binds the trustee who deals with trust property for the benefit of the beneficiaries.
 - C. The two main sources of banking law in Malaysia are written law and unwritten law.
 - D. Written law includes the Federal Constitution, the State Constitutions, legislation and subsidiary legislation. [1]
 - (iii) Which of the following statements is **correct**?
 - A. Subsidiary legislation are mainly made by Parliament.
 - B. The Federal Constitution, being the supreme law of Malaysia, lays down the powers of the federal and state governments as well as the basic or fundamental rights of an individual.
 - C. An example of a Malaysian statute relevant to bankers is the Secrecy Act 1989.
 - D. There is total importation of English law in Malaysia today. [1]
 - (iv) Which of the following is **not** a superior court in the present judicial system in Malaysia?
 - A. The Federal Court.
 - B. The Court of Appeal.
 - C. The Supreme Court.
 - D. The High Court. [1]
 - (v) The Bills of Exchange Act 1949, the Contracts Act 1950 and the Hire-Purchase Act 1967 are examples of:
 - A. legislation.
 - B. subsidiary legislation.
 - C. judicial precedents.
 - D. common law. [1]

(Total:20 marks)

2. (a) In relation to contracts, explain what the term "counter-offer" means. [5]
- (b) Write short notes on any **two** of the three most important remedies available for breach of contract. [10]
- (c) For each of the following questions, choose the **correct** answer (A, B, C or D):
- (i) Which of the following is **not** a main element of a contract?
- A. Acceptance.
 - B. Invitation to treat.
 - C. Consideration.
 - D. Capacity. [1]
- (ii) Minors can enter into valid contracts if they concern the following types of contracts **except** contracts regarding:
- A. necessities.
 - B. hire-purchase of motor vehicles.
 - C. scholarship.
 - D. insurance. [1]
- (iii) According to the following doctrine, only the parties to a contract can enforce the rights or be subject to the obligations which arise under it:
- A. doctrine of human rights.
 - B. doctrine of strict liability.
 - C. doctrine of "first in-first out".
 - D. doctrine of "privity of contract". [1]
- (iv) Section 19 of the Contracts Act 1950 provides that the agreement is a contract voidable at the option of the party whose consent was caused by one or more of the following **except**:
- A. coercion.
 - B. illegality.
 - C. fraud.
 - D. misrepresentation. [1]
- (v) Which of the following agreements is **not** void?
- A. An agreement made with inadequate consideration.
 - B. An agreement in restraint of trade.
 - C. An agreement by way of wager.
 - D. An agreement with uncertain terms and which are not capable of being made certain. [1]

(Total:20 marks)

3. (a) In the context of insurance contracts, define all of the following terms:
- (i) Insurance contract [3]
 - (ii) Risk [3]
 - (iii) Insurance policy [3]
 - (iv) Premium [3]
 - (v) Insurable interest [3]
- (b) For each of the following questions, choose the **correct** answer (A, B, C or D):
- (i) Which of the following statement(s) concerning the sale of goods is/are correct?
 - I. Risk *prima facie* passes with property.
 - II. The *nemo dat quod non habet* rule means no one can give a better title than he has himself.
 - III. Goods may be classified as existing or future goods.
 - IV. Goods may be classified as specific or unascertained goods.
 - A. I only.
 - B. I and II.
 - C. I, II and III.
 - D. I, II, III and IV. [1]
 - (ii) The hirer in a hire-purchase contract has all of the following rights **except** the right to:
 - A. assign his right, title and interest without the consent of the owner.
 - B. be supplied relevant documents and information.
 - C. appropriate payment.
 - D. complete the purchase earlier than the due date. [1]
 - (iii) Agency can be created by all of the following ways **except**:
 - A. express appointment.
 - B. necessity.
 - C. implied appointment.
 - D. rectification. [1]
 - (iv) In an agency contract, the principal has the right to:
 - I. demand for proper accounts.
 - II. repudiate transactions which were dealt without the principal's consent.
 - III. payment by the agent of all sums received on the principal's account.
 - A. I only.
 - B. I and II.
 - C. II and III.
 - D. I, II and III. [1]
 - (v) Agency is terminated by _____ when the principal dies.
 - A. operation of law
 - B. renunciation by the agent
 - C. mutual consent
 - D. revocation by the principal [1]

(Total:20 marks)

4. (a) (i) State the **three** defences to an action for defamation. [3]
- (ii) Briefly describe any **one** of the defences mentioned in (a)(i) above. [2]
- (b) Name and briefly describe **five** of the six types of dealings with respect to land that are capable of being effected under the National Land Code 1965. [10]
- (c) In respect of the law of tort, choose the **correct** answer (A, B, C or D) for each of the following questions:
- (i) The definition of "negligence" may be stated as follows:
- A. The breach of a legal duty to take care which results in damages undesired by the defendant, to the plaintiff.
 - B. The breach of contractual duty not to be careless in the discharge of the defendant's contractual duties.
 - C. The breach of an equitable duty which is dependant on the discretion of the courts.
 - D. The breach of a duty fixed by public law and enforced by sanctions. [1]
- (ii) In determining whether there exists a breach of a duty of care, the courts would consider all of the following **except**:
- A. the magnitude of the risk.
 - B. the intention of the parties.
 - C. the importance of the object to be obtained, that is to balance the risk against the consequences of not taking it.
 - D. the practicability of precautions. [1]
- (iii) In the context of professionals, negligence is judged by the test of:
- A. the best expert exercising and professing to have that special skill.
 - B. the ordinary skilled man exercising and professing to have that special skill.
 - C. the ordinary man with reasonable and ordinary skills.
 - D. the man "in the omnibus" who is ordinary and unskilled. [1]
- (iv) A wrong committed by a dealing with the goods of a person which constitutes an unjustifiable denial of his rights in them or the assertion of rights inconsistent therewith is called:
- A. conversion.
 - B. negligence.
 - C. breach of contract.
 - D. breach of sale of goods contract. [1]
- (v) The following are elements necessary to prove defamation **except**:
- A. the words must be defamatory.
 - B. they must refer to the plaintiff.
 - C. there must be privity of contract.
 - D. they must be "maliciously" published. [1]

(Total:20 marks)

5. A bill of exchange is defined in section 3(1) of the Bills of Exchange Act 1949 as follows:

“A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person, or to bearer.”

In the context of the above definition, briefly explain the following phrases:

- (a) Unconditional order [4]
 - (b) In writing [4]
 - (c) One person to another [4]
 - (d) Signed by the person giving it [4]
 - (e) To pay on demand or at a fixed or determinable future time [4]
- (Total:20 marks)

6. (a) Name the statutes (Acts/legislation) which provide for the following legal principles or which govern the following:

- (i) Age of a minor [1]
- (ii) Companies [1]
- (iii) Agencies [1]
- (iv) Banking secrecy [1]
- (v) Cheques [1]

(b) Ali and his friends want to form a partnership. Advise them on the legal principles concerning the following:

- (i) The minimum and maximum number of partners in the firm. [3]
 - (ii) Whether a written partnership agreement is necessary. [3]
 - (iii) Registration of the firm, if necessary. [3]
 - (iv) Each partner's liability for debts. [3]
 - (v) Whether the partnership is a legal entity. [3]
- (Total:20 marks)

- END OF QUESTION PAPER -

OUTLINE ANSWERS

Question 1

Most candidates were not able to identify the BNM/GP for the given subjects.

The majority of the candidates seemed to be unclear on what money laundering is, and thus were unable to define the term.

The multiple-choice questions on the classification and sources of law, and the judicial system were well answered.

1. (a) (i) BNM/GP 7: Code of Ethics
- (ii) BNM/GP 11: Guidelines on Consumer Protection of Electronic Funds Transfers
- (b) Section 3 of the Anti-Money Laundering Act 2001 defines the word “money laundering” as the act of a person who:
- engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;
 - acquires, receives, possesses, disguises, transfers, converts, exchanges, carries, disposes, uses, removes from or brings into Malaysia proceeds of any unlawful activity; or
 - 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;
- where:
- as may be inferred from objective factual circumstance, the person knows or has a reason to believe, that the property is proceeds from any unlawful activity; or
 - in respect of the conduct of a natural person, the person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity.
- [Note: Marks will still be awarded for answers which are not as per the above definition so long as the term “money laundering” is explained correctly]
- (c) (i) C
- (ii) A
- (iii) B
- (iv) C
- (v) A

Question 2

Candidates were not able to define the term “counter-offer”.

Some candidates confused the concept of voidable contracts, with remedies for breach of contract.

There were also candidates who mixed up the principle of “performance” with “specific performance”. Candidates should note that “performance” is one of the ways a contract is discharged, while “specific performance” is a type of remedy for breach of contract.

Notwithstanding the above, candidates were able to answer the multiple-choice questions on contracts.

2. (a) Where a purported acceptance is qualified by the introduction of a new term, this may be considered by the courts as a counter-offer destroying the original offer – *Hyde v Wrench*. By making a counter-offer, the original offer may be considered rejected and cannot be accepted later.
- (b) The three most important remedies available for breach of contract are:
- damages;
 - specific performance; and
 - injunction.

[Note: The answer should describe only **two** of the following remedies and may be on legal principles different from the following so long as they are correct statements of the law]

Damages

Section 74 of the Contracts Act 1950 provides for damages to be granted to a party as compensation for the damage, loss or injury he has suffered through a breach of contract. The illustrations to section 74 clearly indicate that the party may recover damages for:

- other expenses incurred as a result of the breach;
- the loss of profits arising as a result of the breach; and
- the difference between the price of goods as contracted for and the actual price the goods were sold for as a result of the breach.

The plaintiff is only allowed to recover a reasonable sum for breach of contract – section 75, Contracts Act 1950. The plaintiff is required to prove the actual damage he has suffered – *Wearne Brothers (M) Ltd v Jackson*.

Specific performance

Specific performance is a discretionary remedy provided for by the Specific Relief Act 1950 (Revised 1974). Section 21 of the said Act provides the court with discretion to refuse specific performance where the granting of it would cause undue hardship to the defendant. The court will also exercise its discretion not to decree specific performance under section 20 of the Specific Relief Act 1950 where damages will provide an adequate remedy – *Yeo Long Seng v Lucky Park (Pte) Ltd*.

Specific performance will also be refused where:

- the terms of the contract are uncertain – *Lim Nyuk Chan v Wong Sz Tsin*;
- there has been delay in bringing the action – *Itam binti Saad v Chik binti Abdullah*;
- there is evidence of fraud – *Siah v Tengku Nong*;
- constant supervision of the court would be required – *Lee Sau Kong v Leow Chang Chiang*; or
- the contract is for personal services – *Dato' Abdullah bin Ahmad v Syarikat Permodalan Kebangsaan Bhd & Ors*.

Injunction

An interlocutory injunction is used by a party to maintain the status quo of the subject matter in a pending suit. An injunction is an equitable remedy. It can therefore be varied or dissolved if the court discovers subsequently that the application for injunction was made on suppressed facts or that the facts upon which the order was granted no longer exist.

Types of injunction include mandatory and prohibitory injunctions. A mandatory injunction is a court order requiring something to be done whilst a prohibitory injunction stops something from being done.

- (c) (i) B
- (ii) B
- (iii) D
- (iv) B
- (v) A

Question 3

Although the question on insurance contracts was straightforward, some candidates were unable to give satisfactory answers.

Candidates were able to answer the multiple-choice questions on sale of goods, hire purchase and agency.

- 3. (a) (i) An insurance contract is a contract whereby one person (the insurer) agrees to indemnify another person (the insured) against a loss which may arise on the occurrence of some event or to pay a certain definite sum of money on the occurrence of the particular event.
- (ii) Risk is the loss which is being insured against.
- (iii) When the insurer and the insured enter into a contract of insurance, the document is called the insurance policy.
- (iv) Premium is the consideration paid to the insurer by the insured either in a lump sum or by a periodical amount.
- (v) An insurable interest is a risk which can be insured. A person has an insurable interest in the subject matter insured if he will suffer loss in the event of that property being destroyed.
- (b) (i) D
- (ii) A
- (iii) D
- (iv) D
- (v) A

Question 4

Most candidates were able to list the defences for an action of defamation, although there were some who wrote on the “elements” of defamation instead of the defences. However, many candidates were unable to describe any of the defences correctly.

Although most of the candidates could name the types of dealings relating to land, some were unable to describe the dealings as they confused leasing of land with other types of leasing. This lease is not a leasing of machinery/goods, nor is it leasehold land. Some also thought that caveats were a type of dealing.

Candidates performed well in the multiple-choice questions on the law of tort.

4. (a) (i) The three defences to an action for defamation are:
- justification
 - fair comment
 - privilege
- (ii) As for fair comment, if the statement is a fair comment on a matter of public interest, the defendant has a defence so long as the matter commented on is of public interest; it is an expression of opinion and the comment is “fair” and not malicious.
- (b) Dealings with respect to land that are capable of being effected under the National Land Code 1965 (NLC) are:
- transfers
 - leases
 - tenancies
 - charges
 - liens
 - easements

[Note: The answer requires any **five** of the above]

Under s.214 of the NLC, the whole of any alienated land, the whole of any undivided share of alienated land, any lease of alienated land, any charge and any tenancy exempt from registration may be **transferred**. The instrument of transfer will operate to transfer the title or interest to the land upon registration.

A **lease** may be defined as an interest in land granted by the lessor, whether he is the owner of the land or not, to a lessee for a certain period. A lease is a letting of land for a term exceeding three years and is a registrable interest.

A **tenancy** is a letting of land for a term not exceeding three years.

A **charge** takes effect upon registration so as to render the land or lease in question liable as security – s.243, NLC. The charge confers upon the chargee the power of foreclosure upon default of repayment of the debt.

A **lien** is created by the proprietor or lessee of land depositing the issue document of title or the duplicate lease as security for a loan and a lien-holder’s caveat will then be entered.

An **easement** is a right granted by a proprietor of the servient land to the proprietor of the dominant land for the beneficial enjoyment of the latter’s land.

- (c) (i) A
- (ii) B
- (iii) B
- (iv) A
- (v) C

Question 5

Many candidates lacked knowledge on the elements of a bill exchange, and thus gave very poor explanations of the phrases found in the definition of a bill of exchange. Some of the candidates could not even explain “drawer”, “drawee” and “payee”.

5. (a) An “unconditional order” means that there must be an order and such order must be unconditional; such as, “Pay...”

Section 3(3) of the Bills of Exchange Act 1949 states what is unconditional and what is conditional. It states that an order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with an indication of a particular fund out of which the drawee is to reimburse himself or a particular account to be debited with the amount; or a statement of the transaction which gives rise to the bill is unconditional.

In *Ong Kim Lian v Kwek Beng Choo* and *Cooperative Exportvereniging ‘Vecofa’ U.A. v Maha Syndicate*, it was stated that the words ‘unconditional order to pay’ have the effect that instructions given must be imperative and unambiguous.

- (b) The word “writing” is defined in section 3 of the Interpretation Act 1967 as including “painting, lithography, typewriting, photography and any other mode of representing or reproducing words in visible form”. In practice, a bill of exchange is usually printed and bills of exchange such as cheques can even be written in ink.
- (c) A bill of exchange is addressed by one person to another. The word “person” in this context means a legal person who may be individuals or companies. As an illustration, in the case of a cheque, the drawer of the cheque addresses his bank.
- (d) A bill of exchange must be signed by the person giving it (the drawer). Section 23 of the Bills of Exchange Act 1949 provides that no person is liable as drawer, indorser, or acceptor of a bill who has not signed as such.
- (e) Section 10(1), Bills of Exchange Act 1949 states that a bill is said to be payable on demand which is specified to be payable on demand, or at sight, or on presentation; or in which no time for payment is specified.

Section 11(1) of the said Act states that a bill is payable at a determinable future time which is expressed to be payable at a fixed period after date or sight; on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

Question 6

Candidates gave average answers to this question. Some of them were confused with the principles of legal entities, or thought that a partnership and a company were the same. Candidates are advised to familiarise themselves with the main statutes affecting bankers.

6. (a) (i) Age of Majority Act 1971
- (ii) Companies Act 1965
- (iii) Contracts Act 1950
- (iv) Banking and Financial Institutions Act 1989
- (v) Bills of Exchange Act 1949
- (b) (i) The minimum number of partners is two whilst the maximum is twenty. However, there is no ceiling on the number of partners for professional firms.
- (ii) In accordance with the Partnership Act 1961, a written partnership agreement is not strictly necessary, as partnerships can be formed orally or in writing.
- (iii) Partnerships must be registered with the Registry of Businesses.
- (iv) Each partner is liable for the firm's debts and his/her liability is unlimited. Section 11 of the Partnership Act 1961 provides that every partner is liable jointly with the other partners for all debts and obligations of the firm incurred while he/she is a partner.
- (v) A partnership is not a legal entity by itself. It merely comprises two or more persons carrying on business with a view to profit.