

CF03

Law and Practice of Banking

8 OCTOBER 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) (i) Name the statute (legislation) that makes money laundering an offence. [2]
- (ii) Under the statute identified in (a)(i) above, one of the obligations of a reporting institution is to file suspicious transaction reports.
- Name any **eight** types of such reporting institutions (which are also financial institutions) under the said statute. [8]
- (b) For each of the following questions, choose the **correct** answer (A, B, C, D or E):
- (i) The term which may be described as a command set by a superior being to an inferior being and enforced by sanctions or punishments is:
- A. custom.
 - B. practice.
 - C. guidelines.
 - D. law.
 - E. regulations. [1]
- (ii) Which of the following is an equitable obligation?
- A. Contract.
 - B. Tort.
 - C. Trust.
 - D. Criminal law.
 - E. Guidelines. [1]
- (iii) Which of the following is the highest in the hierarchy of the judicial system in Malaysia?
- A. The Federal Court.
 - B. The Supreme Court.
 - C. The Court of Appeal.
 - D. The Privy Council.
 - E. The High Court. [1]
- (iv) The name of the Court order which is in the form of attachment and is one of the ways to enforce a judgement is:
- A. *Mareva* injunction.
 - B. garnishee order.
 - C. Anton Piller order.
 - D. freezing order.
 - E. inspection order. [1]
- (v) The following are ways to terminate the banker-customer relationship **except**:
- A. When there is an agreement between the banker and customer.
 - B. When the banker gives notice to terminate.
 - C. When the customer gives notice to terminate.
 - D. By operation of law.
 - E. When the banker is served with a *Mareva* injunction. [1]
- (c) State any **five** of the permitted disclosures of customer information by bankers as provided under section 99 of the Banking and Financial Institutions Act 1989. [5]
- (Total:20 marks)

2. (a) The essence of the banker-customer relationship is contractual.
- (i) List any **five** main elements which constitute a valid contract. [5]
- (ii) Write short notes on each of the **five** main elements identified in (a)(i) above. [10]
- (b) For each of the following questions, choose the correct answer (A, B, C, D or E):
- (i) Which of the following statements is **incorrect**?
- A. Expressed terms of a contract can be in written form or oral (spoken) form.
 B. Terms of a contract may be expressed or implied.
 C. Terms of a contract may be classified as conditions and warranties.
 D. In banking today, it is common for banking transactions to be governed by standard contracts.
 E. Implied terms are terms which can only be implied by courts alone. [1]
- (ii) Section 14 of the Contracts Act 1950 provides that consent is said to be free when it is not caused by one or more of the following **except**:
- A. Coercion.
 B. Fraud.
 C. Mistake.
 D. Illegality.
 E. Undue influence. [1]
- (iii) The important remedies available for breach of contract are:
- I. defamation.
 II. damages.
 III. specific performance.
 IV. *Mareva* injunction.
 V. injunction.
 VI. tort.
- A. I, III and VI.
 B. II, III and IV.
 C. II, III and V.
 D. I, V and VI.
 E. None of the above. [1]
- (iv) Contracts may be discharged by the following ways, namely:
- I. performance.
 II. frustration.
 III. breach.
 IV. acceptance.
 V. exemption.
 VI. consideration.
- A. IV, V and VI.
 B. I, II and III.
 C. I, III and VI.
 D. III, IV and VI.
 E. None of the above. [1]

(v) A minor can make a valid contract for the following types of contracts:

- I. Necessaries.
- II. Scholarship.
- III. Insurance.
- IV. Wager.
- V. Housing loans.
- VI. Hire-purchase.

- A. I, II and III.
- B. II, III and IV.
- C. III, V and VI.
- D. I, III and V.
- E. None of the above.

[1]

(Total:20 marks)

3. (a) In relation to the sale of goods, fill in the blanks with the correct word(s) for each of the following:

(i) _____ goods are goods which are already owned or possessed by the seller. [1]

(ii) _____ goods are goods which are identified and agreed on at the time a contract of sale is made. [1]

(iii) _____ goods are goods which are identified by description only. [1]

(iv) _____ goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. [1]

(v) _____ means the money consideration for the sale of goods. [1]

(b) In relation to the sale of goods, answer the following:

(i) Explain the meaning of the "*nemo dat quod non habet*" rule. [5]

(ii) State **five** exceptions to the rule stated in (b)(i) above. [5]

(c) State any **five** of the statutory rights of hirers (as provided by the Hire-Purchase Act 1967) under hire-purchase contracts. [5]

(Total:20 marks)

4. (a) In relation to the law of tort, explain the term "conversion". [5]

(b) For each of the following questions, choose the **correct** answer (A, B, C, D or E):

(i) _____ liability is where employers are liable for torts or wrongs committed by their employees.

- A. Vicarious
- B. Occupier's
- C. Strict
- D. Contributory
- E. Statutory

[1]

(ii) _____ liability is the liability of an owner or tenant of premises who has a sufficient degree of control over the premises.

- A. Vicarious
- B. Occupier's
- C. Strict
- D. Contributory
- E. Statutory

[1]

- (iii) _____ is a defamatory statement or representation in permanent form.
- A. Negligence
 B. Trespass
 C. Libel
 D. Slander
 E. Conversion [1]
- (iv) Malaysian land law adopts the _____ system of registration of dealings in land.
- A. Clayton
 B. Turquand
 C. Torrens
 D. *Mareva*
 E. Anton Piller [1]
- (v) Land law in Peninsula Malaysia is codified in the _____ Land Code 1965.
- A. Malaysian
 B. National
 C. State
 D. Federal
 E. Statutory [1]
- (c) State the legal consequence if the chargor of an agricultural land (where the condition of land use specified in the land title is "agriculture") charged to a bank, builds a garment factory on the charged land. [5]
- (d) In relation to land law, describe what a "prohibitory order" is. [5]
 (Total:20 marks)

5. (a) Negotiable instruments are commonly used in banking.
 Explain the term "negotiable". [5]
- (b) In relation to bills of exchange, fill in the blanks with the correct word(s) for each of the following:
- (i) _____ is the signification by the drawee of his assent to the order of the drawer. [1]
- (ii) Order bills are negotiated by _____ followed by delivery. [1]
- (iii) The _____ is the person to whom the bill is addressed. [1]
- (iv) When a bill is presented for payment and payment is refused or cannot be obtained or when presentment is excused and the bill is overdue and unpaid, it means that the bill has been _____ by non-payment. [1]
- (v) Section 74A of the Bills of Exchange Act 1949 provides that a cheque is duly presented for payment if the cheque is presented through a _____ system, which is known as the "SPICK" (Sistem Penjelasan Imej Cek Kebangsaan) system. [1]
- (c) Describe the various types of crossings of cheques specified in the Bills of Exchange Act 1949. [10]
 (Total:20 marks)

6. (a) Answer “**True**” or “**False**” for each of the following statements:
- (i) A banker’s draft is a type of negotiable instrument. [1]
 - (ii) Debentures can be issued by business entities such as partnerships. [1]
 - (iii) Countermand of payment of cheques can be made in writing or orally. [1]
 - (iv) If a bank receives notice of the death of its customer, the bank should immediately close the deceased customer’s account. [1]
 - (v) As the collecting banker is given statutory protection under section 60 of the Bills of Exchange Act 1949, the banker is not prejudiced by forged or unauthorised indorsements on cheques collected by the banker so long as cheques are collected in good faith and in the ordinary course of business. [1]
- (b) Ahmad, Balakrishnan and Chong intend to set up a company to be known as ABC Sdn Bhd. You are their close friend and since you are working in a financial institution, they seek your advice on the following:
- (i) The nature (characteristics) and types of companies. [10]
 - (ii) The differences between a “private” company and a “public” company. [5]
- (Total:20 marks)

- END OF QUESTION PAPER -

OUTLINE ANSWERS

Question 1

Some candidates were not able to name the statute (legislation). Many candidates named the wrong institution as the reporting institution under AMLA. Candidates were also not able to state the permitted disclosures under BAFIA.

1. (a) (i) Anti-Money Laundering Act 2001
- (ii) Choose any 8 of the following:
- Banks
 - Finance companies
 - Merchant banks
 - Discount houses
 - Money-brokers
 - Islamic banks
 - Insurance companies
 - Money-changers
 - Offshore financial institutions
- (b) (i) D
(ii) C
(iii) A
(iv) B
(v) E
- (c) Choose any 5 of the following:
- Written permission to disclose is given by the customer or his personal representatives
 - Customer declared bankrupt or wound up
 - Bona fide commercial transaction to assess creditworthiness
 - For purposes of certain criminal or civil proceedings
 - Garnishee order served
 - Disclosure to an external bureau or agent appointed with Bank Negara Malaysia's (BNM) prior consent
 - Required or authorised disclosure under the Banking and Financial Institutions Act 1989 (BAFIA),
 - Disclosure to be made to the police under certain Federal laws
 - Written authorisation by BNM

Question 2

Candidates were able to give satisfactory answers on the principles and elements of the law of contract.

2. (a) (i) The elements of a contract are: (Give any 5 of the following points):
- offer
 - acceptance
 - intention to create legal relations
 - consideration
 - certainty
 - capacity

(ii) Give any 5 of the following:

- An offer is made “when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to the act or abstinence.” – section 2(a), Contracts Act 1950.
- An acceptance is made when the person to whom the proposal (offer) is made, signifies his assent thereto. – section 2(b), Contracts Act 1950. When a proposal is accepted it becomes a promise.
- A valid contract requires intention to create legal relations. Courts determine whether there is such intention from the language used and the context in which they are used. In a banker-customer relationship, being commercial in nature, the rebuttable presumption is that legal relationship is intended – *Esso Petroleum Co. Ltd v Customs & Excise Commissioner*.
- Section 26, Contracts Act 1950 states that an agreement without consideration is void. Consideration is defined in section 2(d), Contracts Act 1950 as: “When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or abstain from doing, something, such act or abstinence or promise is called a consideration for the promise”.
- The terms of an agreement must be certain. An agreement which is uncertain or is not capable of being made certain is void; for example in the case of *Karuppan Chetty v Suah Thian*.
- Parties entering into contracts should be competent to contract; i.e. have the legal capacity to do so. They should be of the age of majority (at least 18 years old), be of sound mind and not a bankrupt (or if a company, wound up).

- (b) (i) E
(ii) D
(iii) C
(iv) B
(v) A

Question 3

This question was generally well answered by the candidates.

3. (a) (i) Existing
(ii) Specific
(iii) Unascertained
(iv) Future
(v) Price
- (b) (i) Section 27 of the Sale of Goods Act 1957 codifies the *nemo dat quod non habet* rule which means “no one can give a better title than he has himself”. This means that if goods are bought from a person who is not the owner, and who does not sell them under the owner’s authority, the buyer does not acquire any title – *Lim Chui Lai v Zeno Ltd* and *Ng Ngat Siang v Arab-Malaysian Finance Bhd & Anor*.

- (ii) The exceptions to the above rule are: (Give any 5 of the following points)
- estoppel
 - sale by mercantile agent
 - sale by one of joint owners
 - sale under a voidable title
 - sale by a seller in possession after sale
 - sale by a buyer in possession
- (c) Five of the statutory rights of hirers [under the Hire-Purchase Act] are:
(Give any 5 of the following points):
- to be supplied documents and information on 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 Magistrate’s 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 – 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.

Question 4

Candidates gave poor explanations for the term “conversion”. Their answers seem to indicate they were confused about the terms “conversion” and “negligence”.

Most candidates were not able to answer the question pertaining to the legal consequence on conditions of land use.

4. (a) Conversion may be described as 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.
- (b) (i) A
(ii) B
(iii) C
(iv) C
(v) B
- (c) The legal consequence will be that there would be a breach of the condition of land use which may result in the land being liable for forfeiture by the State unless there is a conversion of land use.
- (d) A prohibitory order is where land or an interest in land held by a judgment-debtor is to be sold in execution proceedings, an order made pursuant to rules of court by a court of competent jurisdiction prohibiting the judgment-debtor from effecting any dealing therewith or from effecting such dealing therewith as may be specified in the order – section 334, National Land Code 1965. It has a life-span of six months from the date the order is granted by the court.

Question 5

Most candidates gave very brief explanations for the term “negotiable” which was inadequate for the marks allotted to the question.

Many candidates stated the types of crossings of cheques but did not elaborate on their answers.

5. (a) The term ‘negotiable’ in the words ‘negotiable instruments’ means that the instrument has the quality of negotiability. Negotiability is a form of transfer of property or ownership from one person to another in a document evidencing a contractual obligation to pay money. This change of ownership is effected by mere delivery or indorsement and delivery in such a way that the transferee who takes it in good faith and for value obtains a title superior to that of the transferor and enables him to sue in his own name.
- (b) (i) Acceptance
(ii) indorsement
(iii) drawee
(iv) dishonoured
(v) document image processing
- (c) Under the Bills of Exchange Act 1949, there are two types of crossings; namely, general and special crossings. Section 76 defines general and special crossings as follows:
- Where a cheque bears across its face an addition of:
 - the words ‘and company’ or any abbreviation thereof between two parallel transverse lines simply, either with or without the words ‘Not negotiable’; or
 - two parallel transverse lines simply, either with or without the words ‘Not negotiable’that addition constitutes a crossing, and the cheque is crossed generally.
 - Where a cheque bears across its face an addition of the name of a banker, either with or without the words ‘Not negotiable’, that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Optional answer which is also acceptable in addition to the above:

Section 81A provides that a cheque which is crossed can bear across its face the words ‘account payee’ or ‘a/c payee’, either with or without the word “only”, and such cheque shall not be transferable.

Question 6

Most candidates performed poorly in this question, as they were not able to explain the nature and types of companies. Some of the candidates were not able to clearly differentiate between a private and a public company.

Candidates lost marks because they did not elaborate on their answers. In order to answer this question well, candidates should know the provisions of the Companies Act 1965.

6. (a) (i) True
(ii) False
(iii) True
(iv) False
(v) False

- (b) (i) A company is a separate legal entity. It has an existence quite distinct from that of its directors and members. It has a distinct name under which it can sue and be sued because it is incorporated. It has a common seal and it has perpetual succession in the sense that it never dies until it is wound up. It may be formed by any two or more persons. – section 14(1), Companies Act 1965.]

A company may be:

- a company limited by shares;
- a company limited by guarantee; or
- an unlimited company

Companies may be private or public companies. An ‘exempt private company’ is a type of company which is a private company which has not more than twenty members, none of whom is a corporation.- section 4(1), Companies Act 1965.

- (ii) By virtue of section 15(1) of the Companies Act 1965, a private company has the following attributes:

- Restriction of the right to transfer shares;
- Limitation of the number of members to 50;
- Prohibition of any public invitation to subscribe for any shares or debentures; and
- Prohibition of any invitation to the public to deposit money with the company.

A public company is defined as a company other than a private company. Thus the above attributes do not apply to a public company.