

CF03

# Law and Practice of Banking

5 APRIL 2006

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) Answer “**True**” or “**False**” for each of the following statements:
- (i) Constitutional law lays down the rights of individuals in Malaysia. It covers areas such as the rights of Malaysian citizens as well as the state and federal powers. [1]
  - (ii) Malaysia, like England, does not have a written constitution. [1]
  - (iii) Municipal law consists largely of the rules which guide a judge when the laws of more than one country affect a case. [1]
  - (iv) A contract is based on an agreement and is a branch of private law which determines when a promise or a set of promises are legally enforceable. [1]
  - (v) A power of attorney binds the donor who deals with the trust property for the benefit of both the trustee and the beneficiaries; and he may himself be one of the beneficiaries. [1]
- (b) Is English law applicable in Malaysia? Give reasons for your answer. [10]
- (c) State **five** elements which constitute a valid contract. [5]  
(Total:20 marks)
2. (a) In relation to the law of contract, fill in the blanks with the **correct** word(s) for each of the following:
- (i) \_\_\_\_\_ 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”. [1]
  - (ii) An \_\_\_\_\_ is an undertaking to keep the offer open for a certain period of time. [1]
  - (iii) An advertisement in the newspapers for the post of bank officers is not an offer but merely an \_\_\_\_\_. [1]
  - (iv) “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 to abstain from doing, something, such act or abstinence or promise is called a \_\_\_\_\_ for the promise.” [1]
  - (v) A contract is said to be induced by \_\_\_\_\_ where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. [1]
- (b) In relation to the law of contract, answer the following:
- (i) Explain the term “fraud”. [5]
  - (ii) What is the legal effect if consent to an agreement is caused by fraud? [5]
- (c) Encik Kassim is a customer of Bank XYZ Bhd. Due to the negligence of both Encik Kassim and Bank XYZ Bhd, Encik Kassim suffered a loss of RM50,000. Encik Kassim now wants to claim the RM50,000 from Bank XYZ Bhd.
- Is Bank XYZ Bhd liable for the entire sum of RM50,000? State the legal basis (reason) for your answer. [5]  
(Total:20 marks)

3. (a) The Hire-Purchase Act 1967 applies to all hire-purchase agreements relating to certain types of goods.

State the various types of goods covered by this Act. [10]

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

- (i) The sale of \_\_\_\_\_ is not governed by the Sale of Goods Act 1957.

A. motor vehicle  
B. share  
C. crop  
D. land [1]

- (ii) \_\_\_\_\_ goods are goods already owned or possessed by the seller, and may either be specified or agreed upon at the time a contract of sale is made.

A. Certain  
B. Specific  
C. Unascertained  
D. Existing [1]

- (iii) \_\_\_\_\_ goods are goods which are identified and agreed upon at the time a contract of sale is made.

A. Certain  
B. Specific  
C. Existing  
D. Special [1]

- (iv) \_\_\_\_\_ goods are goods identified by description only.

A. Unascertained  
B. Specific  
C. Existing  
D. Owned [1]

- (v) \_\_\_\_\_ goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale.

A. Unascertained  
B. Specific  
C. Existing  
D. Future [1]

- (c) (i) Besides caveat, state another type of restraint on dealings over land provided under the National Land Code 1965 (NLC). [1]

- (ii) Name **four** types of caveats recognised by the NLC. [4]

(Total:20 marks)

4. (a) State **two** similarities and **three** differences between a private company and a public company. [15]

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

- (i) A \_\_\_\_\_ is a firm owned by one person and it is not a separate legal entity. [1]

- (ii) A company may be a company limited by shares, a company limited by \_\_\_\_\_ or an unlimited company. [1]

- (iii) \_\_\_\_\_ rule states that a third-party dealing with a company is not bound to ensure that all the internal regulations of the company have in fact been complied with as regard to the exercise and delegation of authority. [1]

(iv) \_\_\_\_\_ is the relation which subsists between persons carrying on business in common with a view of profit. [1]

(v) Generally, the minimum age for a person to incur contractual liability and be bound by such contract is \_\_\_\_\_ years of age. [1]

(Total:20 marks)

5. (a) In relation to cheques, distinguish a “general” crossing from a “special” crossing. [10]

(b) What is the legal effect if a cheque is crossed and bears across its face the words “Account Payee”? [5]

(c) In relation to the law of tort, fill in the blanks with the **correct** word(s) for each of the following:

(i) According to *The Wagon Mound* case, consequences are too \_\_\_\_\_ if a reasonable man would not have foreseen them. [1]

(ii) Defences to an action for defamation are \_\_\_\_\_, fair comment and privilege. [1]

(iii) \_\_\_\_\_ is a defamatory statement or representation in permanent form. [1]

(iv) \_\_\_\_\_ negligence is judged by the test of the ordinary-skilled man exercising and professing to have that special skill. [1]

(v) Employers may be held \_\_\_\_\_ liable for injuries caused by their employees. [1]

(Total:20 marks)

6. (a) Bukhan is an owner of a piece of land. Bukhan claims that he has never signed the charge documents which purportedly charged the land in favour of Bank ABC Bhd to secure a credit facility granted by Bank ABC Bhd to Bukhan’s son, Mannor. In other words, Burkhan claims that his signatures on the charge documents were forged.

Briefly describe the legal effect on the registered charge over the land in the event these allegations of forgery are proven to be true. [5]

(b) State **four** ways in which an offer may be revoked. [10]

(c) Answer “**True**” or “**False**” for each of the following statements:

(i) A bill of exchange is accepted when it is transferred from one person to another in such manner as to constitute the transferee the holder of the bill. [1]

(ii) Negotiation is the signification by the drawee of his assent to the order of the drawer. [1]

(iii) The payee is the person to whom the bill is addressed. [1]

(iv) The indorsee is the person who promises to pay the bill according to its tenor. [1]

(v) A bill must be duly presented for payment or else the drawer and the indorsers shall be discharged. [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 showed poor understanding of the application of English law in Malaysia. They were unable to cite the Civil Law Act 1956 in their answers.
- Candidates are advised to answer the questions according to the marks allotted for each question.

1. (a) (i) True
- (ii) False
- (iii) False
- (iv) True
- (v) False

- (b) English law, in the form of English common law and rules of equity, applies in Malaysia to a certain extent only. Section 3(1) of the Civil Law Act 1956 (Revised 1972) provides that in Peninsular Malaysia, the courts shall apply the common law of England and the rules of equity as administered in England on April 7, 1956. However, the Supreme Court in *Commonwealth of Australia v Midford (Malaysia) Sdn. Bhd. & Anor.*, held that the developments of common law after 1956 may well be applicable in Malaysia albeit on a highly persuasive basis unless it is superseded or changed by an Act of Parliament.

In the states of Sabah and Sarawak, common law and rules of equity are applied together with statutes of general application, as administered, or enforced in England on December 1, 1951 and December 12, 1949 respectively.

The application of English law in Malaysia, however, is subject to two limitations:

- It is applied only in the absence of local statutes on the particular subject concerned. English law serves to fill in the *lacuna* in the Malaysian legal system; and
- Only that part of the English law that is suited to local circumstances will be applied (That is, “so far as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary”) – proviso to section 3(1) of the Civil Law Act 1956. Cases on this point include *Chulas v Kolsan*, *Khoo Tiang Bee v Tan Beng Guat*, *Khoo Hooi Leong v Khoo Cheng Yeok* and *Chou Choon Neoh v Spottiswoode*.

The Privy Council in *Jamil bin Harun v Yang Kamsiah & Anor.*, held that it is for the Malaysian courts to decide, subject always to the statute law of the Federation, whether to follow English law. Modern English authorities may be persuasive, but they are not binding. In deciding whether to apply such English authorities, courts may have regard to the circumstances of the States of Malaysia and will be careful to apply them only to the extent that the written law permits and no further than, in their will, it is just to do so. The Supreme Court in *Karpal Singh & Anor. v Public Prosecutor* and the High Court in *Syarikat Batu Sinar Sdn. Bhd. & Ors v UMBC Finance Bhd & Ors* did not apply English law since there were existing local statutory provisions governing the matters concerned.

- (c) Give any five of the following:
- Offer
  - Acceptance of the offer
  - Intention to create legal relations
  - Consideration
  - Certainty
  - Capacity

### Question 2

- Candidates had poor knowledge of the legal aspects of the law of contract. They were unable to define fraud and state the legal effects. They were also unable to cite the relevant statutory provisions.
- Candidates are advised to cite the relevant statutory provisions whenever applicable in the question.

2. (a) (i) A proposal / An offer
- (ii) option
- (iii) invitation to treat
- (iv) consideration
- (v) undue influence
- (b) (i) Section 17 of the Contracts Act 1950 defines “fraud” as including certain acts which are committed with intent to induce another party to enter into a contract. Acts of fraud include the following:
- The suggestion, as to a fact, of that which is not true by one who does not believe it to be true;
  - The active concealment of a fact by one having knowledge or belief of the fact;
  - A promise made without any intention of performing it;
  - Any other act fitted to deceive; and
  - Any such act or omission as the law specially declares to be fraudulent.
- (ii) Section 19(1) of the Contracts Act 1950 provides inter alia that when consent to an agreement is caused by fraud, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by fraud, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representation made had been true – section 19(2), Contracts Act 1950.
- (c) Encik Kassim is unlikely to succeed in claiming the entire RM50,000. He may, however, be able to claim part of his loss. Section 12 of the Civil Law Act 1956 provides that, where a person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall 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.

Thus since Encik Kassim is guilty of contributory negligence, the damages recoverable by Encik Kassim are to be reduced to such extent as the court thinks just and equitable having regard to Encik Kassim’s share in the responsibility for the damage.

### Question 3

- Candidates failed to mention the First Schedule and the statutory provision of the Hire-Purchase Act 1967.
- They also showed poor understanding of restraint on dealings and confused “restraint on dealings” with “dealings”.

3. (a) The Hire-Purchase Act 1967 applies to all hire-purchase agreements relating to goods specified in the First Schedule. Section 1(2) of the Hire-Purchase Act 1967 states that the Act applies throughout Malaysia and in respect only of hire-purchase agreements relating to goods specified in the First Schedule.

The First Schedule lists the following goods:

- All consumer goods (defined in s.2(1) of the Act as goods purchased for personal, family or household purposes);
  - Motor vehicles, namely:
    - invalid carriages;
    - motorcycles;
    - motorcars, including taxi cabs and hire cars;
    - goods vehicles; and
    - buses, including stage buses.
- (b) (i) D
- (ii) D
- (iii) B
- (iv) A
- (v) D
- (c) (i) prohibitory orders
- (ii)
  - Private caveats
  - Trust caveats
  - Lien-holder’s caveats
  - Registrar’s caveats

### Question 4

- No comments were provided for this question.

4. (a) The similarities between a private company and a public company are that both are companies and are governed by the Companies Act 1965.

Being companies, both are separate legal entities; each having an existence distinct from that of its directors and members (shareholders). Each of these companies have a distinctive name under which it can sue and be sued, having a common seal and perpetual succession.

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.

- (b) The above attributes do not apply to a public company.
- (i) sole-proprietorship
  - (ii) guarantee
  - (iii) Turquand's
  - (iv) Partnership
  - (v) 18

**Question 5**

- Candidates showed poor understanding of "special crossing". They were unable to state the legal effect of a crossed cheque with the words "Account Payee".
- Candidates are advised to cite the relevant statutory provisions whenever applicable in the question.

5. (a) According to section 76 of the Bills of Exchange Act 1949, where a cheque bears across its face an addition of the words 'and company' or any abbreviation thereof between two parallel transverse lines; 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.
- On the other hand, 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.
- (b) Section 81A of the Bills of Exchange Act 1949 provides that such cheque shall not be transferable but shall only be valid as between the parties thereto. Thus, such cheques are not negotiable and must be banked in into the payee's account only.
- (c) (i) remote
- (ii) justification
- (iii) Libel
- (iv) Professional
- (v) vicariously

### Question 6

- Candidates were unable to cite Section 340 of the National Land Code 1965 on indefeasibility and its exceptions in the case of forgery.
- They were also unable to state the ways in which an offer may be revoked.

6. (a) Such a denial means that Bukan is alleging forgery. Where registration of the charge was obtained by forgery, the registered interest of Bank ABC Bhd (as chargee) is defeasible – section 340(2)(b), National Land Code 1965. Even where Bank ABC Bhd was not party or privy to the forgery, its interest as chargee is still defeasible.
- (b) The four ways in which an offer may be revoked are:
- by communicating the notice of revocation by the proposer to the party to whom the proposal was made;
  - where the time prescribed in the proposal for its acceptance elapses, or if no time is prescribed for acceptance, by the lapse of a reasonable time – *Ramsgate Victoria Hotel Co. Ltd. v Montefiore and Macon Works & Trading Sdn Bhd v Phang Hon Chin & Anor.*;
  - where the acceptor fails to fulfil a condition precedent to acceptance; and
  - by the death or mental disorder of the proposer if the fact of the proposer's death or mental disorder comes to the knowledge of the acceptor before acceptance.
- (c) (i) False
- (ii) False
- (iii) False
- (iv) False
- (v) True