

CF03

Law and Practice of Banking

11 OCTOBER 2000

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) Describe any **three** provisions (i.e. sections) of the Banking and Financial Institutions Act 1989, which are relevant to bankers. [6]
- (ii) State the names (or headings) of any **two** of Bank Negara Malaysia (BNM) Guidelines relevant to bankers. [4]
- (b) Write the **correct word(s)** to fill in the blanks for each of the following:
- (i) On civil matters, the _____ Court hears appeals from the Court of Appeal. [1]
- (ii) _____ is based on legal obligations and is the breach of a general duty of care imposed by law; for example, negligence. [1]
- (iii) A _____ is an equitable obligation binding a person to deal with property over which he has control of, for the benefit of the beneficiaries. [1]
- (iv) A _____ injunction is an order of the court restraining a party to proceedings from removing from the jurisdiction of the court or otherwise dealing with assets located within the jurisdiction. [1]
- (v) The Code of Good Banking Practice was implemented on 1 July 1995 by the _____, making provisions in relation to customers and their banks, customers and their cards and principles of conduct for staff. [1]
- (c) In relation to the law governing contracts, briefly explain what the term "privity of contract" means. [5]
(Total:20 marks)
2. (a) Y Too K Sdn Bhd was granted a term loan facility by Bank Gabung Bhd. A letter of offer pertaining to the facility was sent to Y Too K Sdn Bhd for their acceptance.
Explain the terms "offer" and "acceptance". [10]
- (b) (i) State **three** ways in which a contract may be discharged. [3]
- (ii) Briefly describe any **two** of the ways stated in (b) (i) above. [2]
- (c) In relation to contract law, choose the **correct word(s)** from the words in the brackets for each of the following:
- (i) Consideration need not be (certain, adequate, good, valid, warged). [1]
- (ii) The party seeking damages is under a duty to (substitute, compensate, mitigate, subrogate, litigate) the loss. [1]
- (iii) In (domestic, commercial, illegal, *prima facie*, *inter alia*) arrangements, the rebuttable presumption is that legal relationships are intended by the parties concerned. [1]
- (iv) An example of an equitable remedy is (injunction, damages, civil suit, criminal action, breach of contract). [1]
- (v) Some commercial contracts in Malaysia may provide that any dispute arising therefrom be referred to (specific performance, arbitration, Anton Pillar order, interlocutory injunction). [1]
(Total:20 marks)
3. (a) In relation to the sale of goods, distinguish the following, treating each sub-question separately:
- (i) Existing goods and future goods [2½]
- (ii) Specific goods and unascertained goods [2½]

- (b) State the respective legal terms, as used in the Insurance Act 1963 and in insurance law, for each of the following:
- (i) The person who agrees to indemnify another person 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. [1]
 - (ii) The loss which is being insured against. [1]
 - (iii) The consideration paid (either a lump sum or by periodic amount) by the insured pursuant to the contract of insurance. [1]
 - (iv) A risk which can be insured. [1]
 - (v) A fact that would influence the mind of a prudent insurer in deciding whether to enter into the contract of insurance with the insured, and if so, on what terms. [1]
- (c) In relation to the law of agency, list down any **five** rights and **five** duties of an agent. [10]
(Total:20 marks)
4. (a) Both Ms Choo Ai and Ms Choo Lii maintain separate current accounts with Bank YZ Bhd. Due to the negligence of an officer of Bank YZ Bhd, a sum of RM3,000 was wrongly debited from Ms Choo Ai's account, instead of Ms Choo Lii's account, for a cheque actually drawn on Ms Choo Lii's account.
- Before Bank YZ Bhd discovered the mistake, Ms Choo Lii closed her account with the bank, and Bank YZ Bhd has no knowledge of her whereabouts. Ms Choo Ai wants to claim damages for **negligence** and **conversion** from Bank YZ Bhd.
- Explain the terms negligence and conversion. [10]
- (b) In relation to bills of exchange, answer "**True**" or "**False**" for each of the following:
- (i) Acceptance is a form of transfer of property or ownership from one person to another. [1]
 - (ii) All bills of exchange are either in the form of cheques or promissory notes. [1]
 - (iii) A bill of exchange must always be payable on demand. [1]
 - (iv) Mere delivery is sufficient in order to negotiate order bills. [1]
 - (v) The drawer is the person to whom the bill of exchange is addressed. [1]
- (c) What is the legal definition of a "cheque"? [5]
(Total:20 marks)
5. (a) In relation to land law, choose the **correct word(s)** from the words in the brackets for each of the following:
- (i) The (Parliament, state authorities, individuals, corporations, Senate) alienate(s) land in Malaysia. [1]
 - (ii) Land alienated in perpetuity is also called (leasehold, freehold, indefeasible, acquired, final title) land. [1]
 - (iii) The duplicate copy of land title issued to the proprietor of the land is called the (Register, Strata, Issue, Subsidiary, Separate) Document of Title. [1]
 - (iv) Forms of land titles are either final titles or (subjective, strata, qualified, temporary, subsidiary) titles. [1]
 - (v) (Presentation, Registration, Litigation, Lodgment, Discharge) confers indefeasibility.[1]

- (b) The National Land Code 1965 makes provisions for and recognises **four** types of caveats which can be lodged over land.
- (i) Name the **four** types of caveats. [4]
 - (ii) Describe any **two** types of caveats stated in (b) (i) above. [6]
- (c) State any **five** statutory rights given to chargees under the National Land Code 1965. [5]
(Total:20 marks)
6. (a) A bill of exchange may be dishonoured by non-acceptance or by non-payment. Explain the meaning of the phrase "dishonour by non-payment". [5]
- (b) Write short notes (by describing the nature of or providing a definition for) on the following types of customers of financial institutions:
- (i) a partnership firm [2]
 - (ii) a private limited company [2]
 - (iii) a public limited company [2]
 - (iv) a society [2]
 - (v) a 20 year-old person [2]
- (c) Answer "**True**" or "**False**" for each of the following:
- (i) A company may be an unlimited company, that is, the liabilities of its shareholders are unlimited. [1]
 - (ii) An exempt private company is a company exempted from paying tax. [1]
 - (iii) A partnership is a firm, which is a type of legal entity. [1]
 - (iv) Only directors who are also shareholders of a private limited company are personally liable for debts incurred by the company. [1]
 - (v) In the context of company law, the term "*ultra vires*" means "beyond the powers of". [1]
- (Total:20 marks)

OUTLINE ANSWERS

Question 1

This was a badly answered question. Candidates showed little knowledge on BAFIA 1989 and the BNM Guidelines that was required for part (a) while for part (c), many failed to understand the meaning of “privity of contract”. However, candidates fared a little better for part (b), which required candidates to fill in the blanks with the correct word.

1. (a) (i) Three of the provisions of the Banking and Financial Institutions Act 1989 (BAFIA) relevant to bankers are:
 - Section 56 which sets out various disqualifications which apply to directors, managers, secretaries and officers concerned in the management of licensed institutions, such as, bankruptcy, conviction of certain crimes, BAFIA offence, etc.
 - Section 60 which prohibits a licensed institution (other than banks and merchant banks) from giving to any person any credit facility without security.
 - Section 97 which provides for banking secrecy and bankers are prohibited from disclosing any information whatsoever about their customers, subject to certain permitted disclosures e.g. under sections 98 to 101.
- (ii) Two of the BNM Guidelines are:
 - BNM/GP 7 Code of Ethics.
 - BNM/GP 9 Guidelines on Money Laundering and “Know Your Customer Policy”.
- (b) (i) Federal
- (ii) Tort
- (iii) trust
- (iv) Mareva
- (v) Association of Banks in Malaysia (ABM).
- (c) According to the doctrine of “privity of contract”, only the parties to a contract can enforce the rights or be subject to the obligations which arise under it. Thus, as a general rule, a person who is not a party to a contract has no right to sue on the contract.

Question 2

This question on contract law was generally well answered. However, for part (b), apart from stating the ways in which a contract may be discharged, most candidates could not further describe them as required by the question.

2. (a) An offer or a proposal 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. The person who makes the offer or proposal, in this case, Bank Gabung Bhd is the “promisor” or “offeror”. An offer may be made expressly (oral or written) or impliedly (for example, by conduct or actions). In this instant case, the offer is made in writing, i.e. expressly.

An acceptance is made when the person to whom the proposal is made (called the “promisee”) signifies his assent thereto – section 2(b) of the Contracts Act 1950. The promisee who is accepting the proposal, in this case is Y Too K Sdn Bhd. Where the acceptance is made in words, the acceptance is expressed. Where the acceptance is made other than in words, it is implied – section 9, Contracts Act. In this instant case, Y Too K Sdn Bhd may accept the offer in writing. Once the offer is accepted, the agreement between Bank Gabung Bhd and Y Too K Sdn Bhd is entered into and legal documentation will then be proceeded with.

- (b) (i) Three ways in which a contract may be discharged are by performance, frustration or by breach.
 - (ii) A contract may be discharged by performance which is exact and precise. Performance should be in accordance with what the parties have promised. Section 38(1) of the Contracts Act 1950 provides that parties to a contract must either perform or offer to perform their respective promises, unless such performance has been dispensed with by any law.
- A contract may be discharged by frustration. A contract is frustrated when there is a change in the circumstances which renders the contract legally or physically impossible of performance – section 57(2) Contracts Act 1950.
- (c) (i) adequate
 - (ii) mitigate
 - (iii) commercial
 - (iv) injunction
 - (v) arbitration

Question 3

This three-part question tested candidates' understanding on special contracts in relation to sale of goods and insurance and law of agency. Generally, the answers to parts (a) and (b) were only average and most candidates failed to cite the relevant statutory provision required for part (a). However, candidates managed to give good answers for part (c) of the question, on law of agency.

- 3. (a) (i) Sale of goods may concern either existing goods or future goods – section 6, Sale of Goods Act 1957 (SGA). Existing 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. On the other hand, future goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale – section 2, SGA.
 - (ii) Specific goods are goods which are identified and agreed upon at the time a contract of sale is made – section 2, Sale of Goods Act 1957. On the other hand, unascertained goods are those identified by description only.
 - (b) (i) insurer
 - (ii) risk
 - (iii) premium
 - (iv) insurable interest
 - (v) material fact
 - (c) Five rights of an agent are:
 - (i) the right to remuneration – sections 172 and 173, Contracts Act 1950
 - (ii) the right to a lien on the principal's property until payment to him for commission, disbursement and services are rendered – section 174 Contracts Act
 - (iii) the right to be indemnified against consequences of lawful acts – section 175 Contracts Act
 - (iv) the right to be indemnified against consequences of acts done in good faith – section 176 Contracts Act
 - (v) the right to be compensated for injury caused by the principal's neglect or want of skill – section 178 Contracts Act
- Five duties of an agent are:
- (i) to obey the principal's lawful instructions – section 164, Contracts Act and *Turpin v Bilton, Bostock v Jardine* and *Cohen v Kittel*

- (ii) to exercise care and diligence in carrying out his work and to use such skill as he possesses – section 165 Contracts Act
- (iii) to render proper accounts when required – section 166 Contracts Act
- (iv) to pay to his principal all sums received on his behalf – section 171 Contracts Act
- (v) not to let his own interest conflict with his duty – section 169 Contracts Act

Question 4

A popular question amongst candidates was this three-part question on law of tort. Part (a) tested candidates' ability in explaining the terms, "negligence" and "conversion". Candidates that attempted this question could explain the former but lost marks as they failed to explain the term "conversion" correctly. On the whole candidates fared better in the second part, a True or False section on the law of tort. A few candidates also failed to cite the relevant statutory provisions or give the correct legal definition of a cheque in part(c).

4. (a) Negligence is the breach of a legal duty to take care which results in damages undesired by the defendant to the plaintiff. The elements of negligence are:
- (i) A legal duty on the part of X towards Y to exercise care in such conduct of X as falls within the scope of the duty;
 - (ii) Breach (by X) of that duty; and
 - (iii) Consequential damage to Y.

In the instant case it is clear that Bank YZ Bhd owes its customer, Ms Choo Ai a duty of care. The bank breached that duty by debiting the wrong account and such carelessness has resulted with damages suffered by the customer, Ms Choo Ai.

Conversion is a wrong committed by dealing with the goods of a person which constitutes an unjustifiable denial of his rights in them or the assertion of rights inconsistent therewith. The main element to prove is conduct by the defendant which amounts to a denial of the plaintiff's rights or the assertion of inconsistent rights. In this case, the wrongful debit of the account amounts to conversion as Ms Choo Ai has been wrongfully deprived of her RM3,000.

- (b)
- (i) False
 - (ii) False
 - (iii) False
 - (iv) False
 - (v) False

- (c) 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.*

Question 5

Generally, the answers to this question on land law were poor. The poor performance showed that they had little or no knowledge on land law. Candidates lost marks further when they could not provide a correct description on the types of caveats.

5. (a)
- (i) state authorities
 - (ii) freehold
 - (iii) Issue
 - (iv) qualified
 - (v) Registration

- (b) (i) The four types of caveats are private caveats, trust caveats, lien-holder's caveats and Registrar's caveats.
- (ii) A lien-holder's caveat may be lodged by a person with whom the document of title has been deposited as security for a loan – section 281, National Land Code (NLC). It operates as a form of security, and the holder of the lien can, after obtaining judgment, be entitled to apply to court for an order for sale.
- A Registrar's caveat may be entered by the Registrar for the prevention of fraud or improper dealing, for protecting the federation or the state authority or mentally disabled persons or minors or where there are errors in land titles – section 320, NLC. A Registrar's caveat is not a form of security.
- (c) Five of the statutory rights of a chargee provided under the National Land Code are:
- (i) power of sale
 - (ii) right to sue the chargor personally
 - (iii) right to possession
 - (iv) right to transfer the charge
 - (v) right to custody of issue document of title or duplicate lease

[Note: The other rights are tacking, discharge, consolidation]

Question 6

Candidates attempting this question fared poorly for part (a) as many did not cite the relevant provisions of the Bills of Exchange Act 1949 nor did they possess an understanding of the legal concept on "dishonour of bills". However, candidates fared slightly better in parts (b) and (c), which tested candidates knowledge on a partnership firm, private and public limited companies.

6. (a) "Dishonour by non-payment" is 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 – section 47(1), Bills of Exchange Act 1949 (BEA). When this happens, notice of dishonour must be given to the drawer and each indorser – section 48, BEA.
- (b) (i) A partnership is the relation which subsists between persons carrying on business in common with a view of profit – section 3(1), Partnership Act 1961. Partnerships are formed by two or more persons for the purpose of making profit. Partnerships are registered under the Registration of Businesses Act 1956 and are not legal entities.
- (ii) Private companies carry in their names the word "Sendirian" or "Sdn". A private company must not have more than fifty members. It has restricted rights on share transfers and cannot invite the public to be shareholders. If the company is of limited liability, it has in its name the word "Berhad" or "Bhd". Usually such companies are limited by shares. That is, the liability of a member's contribution to the company's assets is limited to the amount, if any, unpaid on his shares.
- (iii) A public limited company carries in its name the word "Berhad" or "Bhd". A public company is a company other than a private company – section 4(1), Companies Act 1965. Thus a public limited company has no restrictions on the number of shareholders and the transfers of its shares. The liabilities of its shareholders are usually limited by shares.
- (iv) Societies are registered with the Registry of Societies. They do not have a legal entity of their own and the legal personality concerned are their members.
- (v) A 20 year-old person is considered an adult as he/she is no longer a minor. A minor is anyone below the age of 18 – Age of Majority Act 1971. An individual above 18 years of age has the legal capacity to enter into contracts – Contracts Act 1950.
- (c) (i) True

