

EXAMINATION AND EVALUATION DIVISION
DEPARTMENT OF POLYTECHNIC EDUCATION
(MINISTRY OF HIGHER EDUCATION)

COMMERCE DEPARTMENT

FINAL EXAMINATION
DECEMBER 2011 SESSION

PB302: COMMERCIAL LAW

DATE: 23 APRIL 2012 (MONDAY)
DURATION: 2 HOURS (8.30 AM - 10.30 AM)

This is a paper consisting of **NINE (9)** pages including the front page.
Section A: Objective (25 questions – answer all)
Section B: Essay (3 questions – answer all)

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THE CHIEF INVIGILATOR

SECTION A

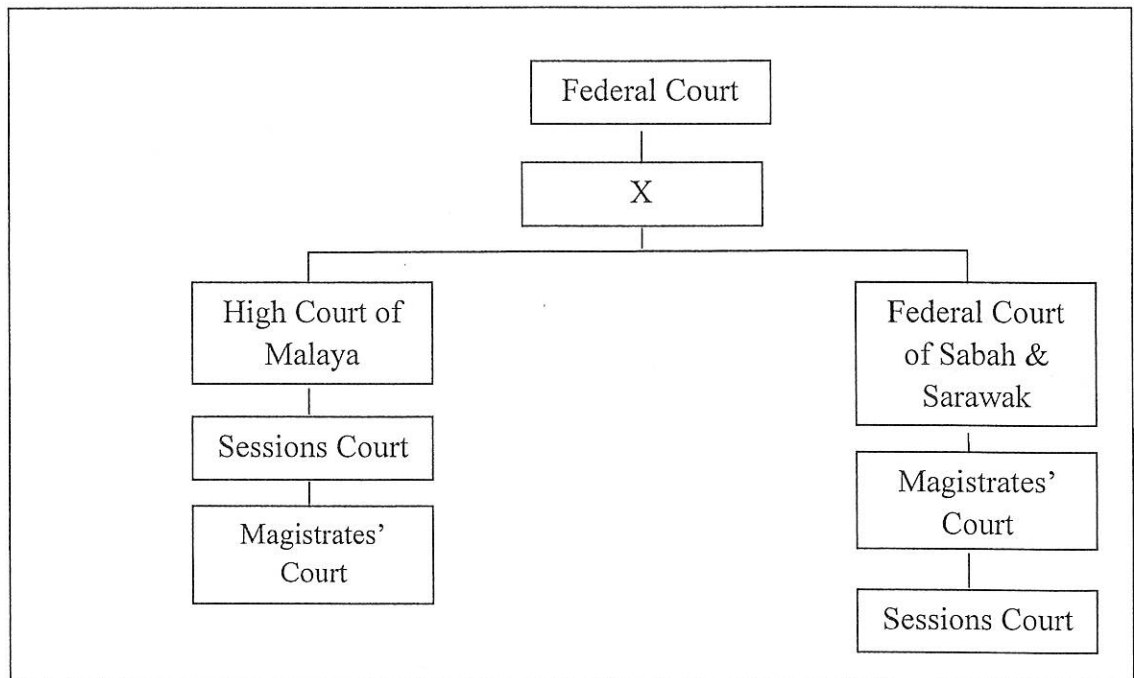
OBJECTIVES (25 marks)

Instructions: This section consists of 25 objective questions. Answer all questions.

1. The case of *Hyde vs. Wrench [1840]* is one of the examples of
 - A. offer
 - B. counter-offer
 - C. acceptance
 - D. communication

2. The definition of contract can be found in
 - A. Section 2(a) of the Contracts Act 1950
 - B. Section 2(b) of the Contracts Act 1950
 - C. Section 2(d) of the Contracts Act 1950
 - D. Section 2(h) of the Contracts Act 1950

3.



What is X?

- A. High Court of Borneo
- B. Penghulu's Court
- C. Court of Appeal
- D. Syariah Court

4. Choose the correct statements.
- i. The word 'consideration' is defined under Section 2(d) of the Contracts Act 1950.
 - ii. An agreement without consideration is void.
 - iii. Explanation 2 to Section 26 of the Contracts Act 1950 provides that an agreement is not void merely because the consideration is inadequate.
 - iv. The past consideration is considered as a valid consideration by virtue of Section 2(d) of the Contracts Act 1950.
- A. i, ii, iii and iv
B. i and ii
C. iii and iv
D. i, ii and iii
5. In Section 154 of the Contract Act 1950, the following statements are related to the termination of agency.
- i. Business of the agency being completed
 - ii. Agent or principal dying or becoming of unsound mind
 - iii. Principal being adjudicated or declared a bankrupt or an insolvent
 - iv. The principal revoking his authority
- A. i and ii
B. i, ii, and iii
C. i and iii
D. i,ii, iii, and iv
6. The main sources of Malaysian law comprise written law and unwritten law. Which of the following are the examples of the unwritten law.
- i. Statute law
 - ii. Judicial decision
 - iii. Customary law
 - iv. Federal constitution
- A. i & ii
B. ii & iii
C. iii & iv
D. i & iv

7. If a party to a contract fails to comply with the term of contract or delay in the performance where the time is of the essence in the contract, the contract is discharged by
- A. breach of contract
 - B. frustration
 - C. agreement
 - D. performance
8. The purpose of an injunction is
- A. to enforce a negative restraint in a contract
 - B. to ensure timely and complete performance
 - C. to ensure that the defaulting party does not profit from his breach
 - D. to compel compliance with the contract's obligations
9. Agent is a person employed to do any act for another or to represent another in dealings with third persons. Principal is the person such act is done, or who is so represented. The above definition of an agent and principal which will create an agency consist in
- A. Section 135
 - B. Section 136
 - C. Section 137
 - D. Section 142
10. _____ mainly consists of constitutional law and criminal law.
- A. Private law
 - B. Business law
 - C. Public law
 - D. Partnership law
11. One of the duties of principal to his agent is
- A. to obey the principal's instruction
 - B. not to make any secret profit
 - C. to pay the agent the commission
 - D. to make the agent popular
12. All the following are the elements of a valid contract **EXCEPT**
- A. Acceptance
 - B. Offer
 - C. Certainty
 - D. Public

13. All the followings are negotiable instruments **EXCEPT**
- A. Traveller's cheque
 - B. Bills of exchange
 - C. Debentures
 - D. Cash bills
14. Which section defines a partnership as 'the relation which subsists between persons carrying on business in common with a view of profit'
- A. Section 3(1)
 - B. Section 3(2)
 - C. Section 3(1)(a)
 - D. Section 3(2)(a)
15. According to Section 2 of the Sale of Goods Act 1957, the word 'goods' may be defined as
- A. every kind of moveable property other than actionable claims and money
 - B. every kind of immoveable property including actionable claims and money
 - C. every kind of moveable and immoveable property
 - D. every kind of immoveable property especially land
16. A seller is ready and willing to deliver the goods and requests the buyer to take delivery within reasonable time, but the buyer fails to do so (to take the delivery). According to Section 44 of the Sale of Goods Act 1957, the seller has right to
- A. claim for damages or reasonable charge for the care and custody of the goods
 - B. force the buyer to accept the goods or take delivery
 - C. find a new buyer
 - D. disposes the goods
17. A partnership may be dissolved without the court order in the following situations **EXCEPT**
- A. By agreement
 - B. By death or bankruptcy
 - C. By insanity of partner
 - D. By operation of law

18. The rules and regulation for negotiable instruments is governed under
- Contracts Act 1950
 - Companies Act 1965
 - Bill of Exchange Act 1949
 - Interpretation Act 1967
19. Identify the correct rights of hirer
- To be supplied documents and information
 - To terminate the hiring agreement
 - To recover possession of the goods if the hirer commits a breach
 - To give notice of repossession of the goods
- i & ii
 - ii & iii
 - iii & iv
 - i & iv
- 20.
- Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner.
- Which section is relevant to the above statement?
- Section 11 of the Partnership Act 1961
 - Section 12 of the Partnership Act 1961
 - Section 13 of the Partnership Act 1961
 - Section 15 of the Partnership Act 1961
21. A Bill may be accepted either in general or qualified. Acceptance means
- the drawee accepts the bill subject to the conditions or qualities
 - the signification by the drawee of his assent to the order of the drawer
 - the drawer accepts the order of the drawer in general condition
 - a holder who presents a bill for acceptance is entitled to an unqualified or general acceptance
22. In a contract of sale of goods by sample, implied conditions are as follows **EXCEPT**
- the goods shall correspond with the sample in quality.
 - the goods shall be delivered to the buyer on time.
 - the buyer shall have a reasonable opportunity of comparing the goods with the sample before making an acceptance.
 - the goods shall be free from any defect.

23. Isabella and Laura are parties to a contract; pursuant to which Isabella has agreed to provide Laura, who runs a gown rental company, with 100 gowns by a certain date. In turn, Laura has agreed to provide Sara with 50 gowns for an upcoming wedding ceremony. If Isabella fails to provide Laura with the gowns, can Sara sue Isabella and Laura?
- A. Sara can sue both Isabella and Laura because there are privity of contract between them
 - B. Sara cannot sue both Isabella and Laura because they are not in privity of contract with one and another
 - C. Sara can sue Isabella because there are privity of contract between them but not Laura
 - D. Sara can sue Laura because there are privity of contract between them but not Isabella
24. Which is **TRUE** regarding a cross cheque?
- A. Cross the receiver name cheque
 - B. Cross at the end upper left of the cheque
 - C. Cross the amount of the cheque
 - D. Cross at the signature
25. A hire agreement
- A. can be made either in writing or oral
 - B. must be in writing
 - C. can be made oral
 - D. need not be signed by the parties to the agreement

SECTION B**ESSAY (75 marks)**

Instructions: This section consists of **THREE (3)** essays questions. Answer all questions.

QUESTION 1

- (a) A valid contract must consist of offer, acceptance, consideration, intention, certainty and capacity elements. Explain the capacity element regarding Section 11 of Contract Act 1951.

(8 marks)

- (b) Bad is a lorry driver for Ben Logistic Services. He is responsible to deliver strawberries from Cameron Highlands to Ads Wholesales in Johor Bahru twice a week. Early this morning, he drove to Johor Bahru with the strawberries loadings. On his way at Simpang Pulai, he was involved in an accident and he was badly injured while the strawberries were destroyed.

Advise Ben Logistic Services on this matter.

(13 marks)

- (c) State the remedies that can be claimed due to breach of contract.

(4 marks)

QUESTION 2

- (a) Explain **FIVE (5)** ways an agency may be created.

(15 marks)

- (b) Describe **FIVE (5)** ways an agency may be terminated.

(10 marks)

QUESTION 3

- (a) Describe **FOUR (4)** rights of hirer which are provided in the Hire Purchase Act 1967.

(8 marks)

- (b) Nasir bought a car from Leong Motor which was financed by Mesra Finance Berhad. When Nasir defaulted in making three months installment, the car was repossessed by Mesra Finance Berhad. Explain the procedures for the repossession of goods under the hire purchase agreement according to Hire Purchase Act 1967.

(17 marks)