

SECTION A

OBJECTIVES (25 marks)

INSTRUCTION:

This section consists of **TWENTY FIVE (25)** objective questions. Write your answers in the answer booklet.

1. _____ is the committing, or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatsoever, with the intention of causing any person to enter into an agreement.

[CLO 2 : C2]

- A. Coercion
- B. Undue influence
- C. Fraud
- D. Misrepresentation

2. Sec 14 of the Contract Act 1950 states that consent is said to be free when it is not caused by _____.

CLO 2 : C2]

- i. Coercion
- ii. Undue influence
- iii. Fraud
- iv. Misrepresentation

- A. i and ii
- B. ii and iii
- C. i, ii and iii
- D. All of the above

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

COMMERCE DEPARTMENT

FINAL EXAMINATION
DECEMBER 2011 SESSION

PB302 : COMMERCIAL LAW

DATE : 21 NOVEMBER 2012 (WEDNESDAY)
DURATION : 2 HOURS (2.30PM – 4.30PM)

This paper consists of **TWELVE (12)** pages including the front page.

SECTION A: OBJECTIVE (25 QUESTIONS – ANSWER ALL)

SECTION B: ESSAY (3 QUESTIONS – ANSWER ALL)

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DO NOT OPEN THIS QUESTION PAPER UNTIL INSTRUCTED BY
THE CHIEF INVIGILATOR

(The CLO stated is for lectures reference only)

7. The following agreements are declared void by the Contracts Act 1950 **EXCEPT**; [CLO 2 : C2]
- A. An agreement in restraint of marriage.
 - B. A term implied into a contract had been satisfied.
 - C. An agreement by way of wager.
 - D. An agreement made without consideration
8. _____ is a discretionary order granted by the courts directing a person to carry out their obligations under the contract. The above statement is suitable for which kind of remedy? [CLO 2 : C2]
- A. Rescission
 - B. Restitution
 - C. Damages
 - D. Specific Performance
9. Any modification of the proposal is called as _____ and it is a rejection of the original proposal. [CLO 2 : C2]
- A. Acceptance
 - B. Proposal
 - C. Counter-Proposal
 - D. Counter-Acceptance

3. Any contracts made by infants are void. However, there are some exceptions to this rule **EXCEPT**: [CLO 2: C2]
- A. Contract for necessary
 - B. Contract of scholarship
 - C. Contract of insurance
 - D. Contract of hire purchase
4. The proposal may be revoked in any of the following ways **EXCEPT**: [CLO 2: C2]
- A. Communication of the notice of revocation by the proposer to the party whom the proposal was made.
 - B. The death or mental disorder of the proposer once it comes to the knowledge of the acceptor before acceptance.
 - C. When the acceptor successfully fulfils a condition precedent to an acceptance.
 - D. The time prescribed in the proposal for its acceptance elapses, or if no time prescribed for acceptance by the lapse of a reasonable time.
5. Written law in Malaysia may be found in the following **EXCEPT**: [CLO 1: C1]
- A. Judicial Decisions
 - B. State Constitutions
 - C. Federal Constitution
 - D. Subsidiary legislation
6. Which of the following is **NOT** considered as the element of contract? [CLO 2: C2]
- A. Certainty
 - B. Written law
 - C. Consideration
 - D. Acceptance

13. Who are parties in a hire-purchase agreement?

[CLO 1 : C1]

- i. Hirer
- ii. Owner
- iii. Guarantor
- iv. Repossessor

- A. i and ii
- B. ii and iii
- C. ii and iv
- D. i, iii, iv

14. Which of the following statements is incorrect?

[CLO 2 : C2]

- A. An agency relationship may be created through necessity.
- B. An agency relationship may be created through estoppels.
- C. All agents are entitled to be paid for their services made with principal's consent.
- D. An agency creates a legal relationship between a third party and a principal only.

10. Under the Law of Contract, a proposal may be revoked through **FOUR (4)** ways which include: [CLO 2 : C2]

- i. Notice of Revocation
- ii. Lapse of Time
- iii. Failure to fulfill a condition precedent
- iv. Death or mental disorder of the proposer.

- A. i,ii and iii
- B. i,iii and iv
- C. ii, iii and iv
- D. All of the above

11. There is an implied condition that the goods are of merchantable quality and it is stated under Section _____ [CLO 2 : C2]

- A. 7 of the Hire Purchase Act 1967
- B. 7(1) of the Hire Purchase Act 1967
- C. 7(2) of the Hire Purchase Act 1967
- D. 7(3) of the Hire Purchase Act 1967

12. In an agency contract, the principal has the right to: [CLO 2 : C2]

- i. Demand for proper accounts
- ii. Repudiate transactions which were dealt without agent's consent
- iii. Payment by an agent of all sums received on his accounts

- A. i only
- B. i and ii only
- C. ii and iii only
- D. i, ii and iii only

18. Hari sold his 500 shares to Prab at market value without informing the true nature of the transaction. Is Hari in breach of his agency duties?

[CLO 2 : C2]

- A. Yes, because he has a duty to avoid a conflict of interest.
- B. Yes, because he has a duty to account.
- C. No, because he has sold Prab the shares at market value.
- D. No, because he has acted according to Prab's instructions and she has the shares just as she requested.

19. "The owner must serve on the hirer and the guarantor a copy of the hire purchase agreement within fourteen days after it is made" The above said provision is mentioned in Section _____ [CLO 1 : C1]

- A. 4(1) of the Hire Purchase Act 1967
- B. 5(1) of the Hire Purchase Act 1967
- C. 7(1) of the Hire Purchase Act 1967
- D. 15(1) of the Hire Purchase Act 1967

20. Agency by necessity can be created if the following conditions are met EXCEPT: [CLO 2 : C2]

- A. It is impossible to get the principal's instructions
- B. The agent who has been appointed has exceeded his authority
- C. The agent's action is necessary to prevent loss to the principal
- D. The agent has acted in good faith

15. Ali purchased a television set on hire purchase from Wah Siong Electric. According to the hire purchase agreement Ali is supposed to pay in 36 installments. After paying the 35th installment, Ali refused to pay the last installment. Wah Siong Electric is going to repossess the television set from Ali. What is the next procedure that should be taken by Wah Siong Electric?

[CLO 1 : C1]

- A. Wah Siong Electric must provide a receipt to the hirer
- B. Wah Siong Electric must serve on the hirer a written notice
- C. Wah Siong Electric must take back the goods from the hirer
- D. Wah Siong Electric must sell the goods to another person who is prepared to buy for cash.

16. X Ltd has two directors, Joe and Harry. Neither of the directors have the authority to individually enter into contracts on behalf of the company. In practice, Joe (with Harry's permission) enters into all the contracts on behalf of the company. What type of agency has been created when a third party acting in good faith enters into a contract with Joe who states he is acting on behalf of X Ltd?

[CLO 2 : C2]

- A. An express agency.
- B. An agency by estoppels.
- C. An agency by ratification.
- D. An agency of necessity.

17. The Hire Purchase Act provides that there is an implied condition that the goods are of merchantable quality. Merchantable quality means in essence the goods are _____

[CLO 1 : C1]

- A. fit for a purpose for which goods of that description are normally used.
- B. fit for the purpose which the hirer requires.
- C. acceptable by the hirer.
- D. in compliance with the description given by the hirer to the owner.

25. The person to whom a cheque is made payable to is called the _____
[CLO 2 : C1]
- A. Drawee
 - B. Drawer
 - C. Payee
 - D. Transferee

21. The following are NOT a remedies available to the buyer in contracts for sale of goods **EXCEPT**: [CLO 2 : C2]
- A. Specific performance
 - B. Lien
 - C. Stoppage in Transit
 - D. Resale of goods
22. Under the contract of sale, 'property in goods' refers to [CLO 2 : C2]
- A. Possession
 - B. Ownership
 - C. Goods to be sold
 - D. Transfer of property
23. There are several types of goods. Which of the following is **TRUE** about future goods? [CLO 2 : C2]
- A. Future goods exist at the time the contract is made.
 - B. Future goods are existing goods.
 - C. Future goods did not exist at the time the contract is made.
 - D. Future goods are part of specific goods.
24. Canteq endorsed a cheque to Salwa on blank endorsement, but the cheque falls into the hands of Shakina. Now Shakina is the..... [CLO 2 : C1]
- A. Bearer
 - B. Drawer
 - C. Endorser
 - D. Endorsee

QUESTION 2

- a) Describe the following legal principles of sales of goods by referring to these sections:
- i) Condition and warranty
 - ii) Quiet possession
 - iii) Goods free from any charge or encumbrance
- (15 marks)
- b) The maxim "Nemo dat quod non habet" explains the concept of transfer of title. Describe briefly the term of Nemo dat quod non habet. List down **FIVE (5)** exceptions to the maxim.
- [CLO 2 : C2]
(10 marks)

QUESTION 3

- a) Describe **TWO (2)** legal effects of each of the following made on cheques:
- [CLO 3 : C2]
- i) A general crossing (5 marks)
 - ii) A special crossing (5 marks)
 - iii) The addition of the words 'a/c payee only' in the crossing. (5 marks)
 - iv) A change made to the name of the payee without the drawer's authority (5 marks)
- b) Describe **FIVE (5)** characteristics of a cheque. [CLO 3 : C2]
(5 marks)

SECTION B

ESSAY (75 marks)

INSTRUCTION:

This section consists of **THREE (3)** essay questions. Answer **ALL** questions.

QUESTION 1

- a) A voidable contract can be caused by **FIVE (5)** elements. Describe these **FIVE (5)** elements. [CLO 2: C2]
(5 marks)
- b) Boboi, a secondary school student is seventeen years old. He operates a business that runs bus trips for secondary school students. He enters into a contract with the Cendana Travel Agency Sdn. Bhd to charter a bus for a class trip to Kuala Lumpur. He later on did not pay for the services provided by Cendana Travel Agency Sdn. Bhd. [CLO 2: C2]
- Based on the above situation, you are required to:
- i. Describe the **issue(s)** in the situation above; (2 marks)
 - ii. Elaborate on the **THREE (3)** relevant provisions of the Contracts Act 1950; (6 marks)
 - iii. Describe a minimum of **TWO (2)** relevant cases as an authority to support your argument; (4 marks)
 - iv. Conclude your arguments. (4 marks)
- c) Differentiate between actual authority and apparent authority of a partner in a partnership business. [CLO 1: C2]
(4 marks)