
Answers

1 This question tests the candidates' knowledge on the difference between legislation and delegated legislation as well as the advantages and disadvantages of delegated legislation.

(a) Legislation refers to the laws which are passed by Parliament (at the Federal level) and the State Legislative Assemblies (at the State level). Legislation passed by Parliament are generally called Acts of Parliament, while those passed by the State Legislative Assemblies are called Enactments (with the exception of Sabah and Sarawak, where they are called Ordinances).

Delegated legislation (also known as subsidiary legislation) may be defined as the rules and regulations which are passed by some person or body under some enabling parent legislation. It is defined in the Interpretation Act 1967 as 'any proclamation, rule, regulation, order, bye-law or other instrument made under any Ordinance, Enactment or other lawful authority and having legal effect'.

(b) The advantages of delegated legislation are the following:

- (i) Delegated legislation can be passed very quickly and is more flexible. This is because it does not have to undergo the various stages of procedure which has to be followed in Parliament or the State Legislative Assemblies. Similarly, if the need arises, subsidiary legislation can be just as speedily amended or even rescinded to meet the changing needs of society.
- (ii) Delegated legislation deals with the detailed rules necessary to implement the law. As Parliament does not have sufficient time to deal with such minute details, delegated legislation is the more efficient way to fulfil this need.
- (iii) Some matters require the special skill and knowledge of experts in that area. Parliament itself may not have sufficient experts for this purpose. Thus, delegated legislation fulfils this need as well.

However, delegated legislation has several disadvantages as well. These may be summarised as follows:

- (i) The growth of delegated legislation goes against the doctrine of separation of powers. This is because law is not being passed by persons elected for that purpose (i.e. the legislature). Instead it is being passed by officers of government departments.
- (ii) Parliament is unable to effectively supervise the making of delegated legislation due to lack of time. As a consequence, many rules and regulations may have been passed without proper consideration of some very important factors.
- (iii) Too much law is passed through subsidiary legislation without sufficient Parliamentary control.

2 This question which contains two parts tests the candidates' knowledge on 'lay-off' and 'redundancy' in the context of employment law.

(a) The term 'lay-off' refers to a situation where an employee has not been able to provide his employee with the kind of work the employee was employed to do, and the employee's remuneration is dependent on being provided with such work.

Redundancy, on the other hand, refers to a situation where an employer has surplus of labour and has to downsize his labour force.

(b) (i) A 'lay-off' may be said to occur in the circumstances stated in Regulation 5(1) of the Employment (Termination and Lay-off Benefits) Regulations 1980 (Revised 1983), i.e. where:

- (1) The employer does not provide work for the employee on at least a total of 12 normal working days within any period of four consecutive weeks; and
- (2) The employee is not entitled to any remuneration under the contract for the period or periods (within such period of four consecutive weeks) in which he is not provided with work.

However, in determining whether an employee has been laid-off, any period during which an employee is not provided with work as a result of a rest day, a public holiday, sick leave, maternity leave, annual leave, any other leave authorised under any written law, or any leave applied for by the employee and granted by the employer, shall not be taken into account.

(ii) A redundancy may be said to occur in the circumstances mentioned in s.12 (3) (a)–(d) of the Employment Act 1955 i.e. where:

- (1) The employer has ceased, or intends to cease to carry on the business for the purposes of which the employee was employed;
- (2) The employer has ceased or intends to cease to carry on the business in the place at which the employee was contracted to work;
- (3) The requirements of that business for the employee to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish;
- (4) The requirements of that business for the employee to carry out work of a particular kind in the place at which he was contracted to work have ceased or diminished or are expected to cease or diminish.

See also: *Food Specialities Sdn Bhd v Esa bin Mohamad* (Award 74 of 1989); *Gold Coins Feedmills Sdn Bhd v Ibrahim Shah* (Award 657 of 2001) and *PBR Automotive Sdn Bhd v Subramaniam Andi & Others* (Award 237 of 2002).

3 This question on partnership law tests the candidates' knowledge of the main characteristics of a partnership.

A partnership is defined as the relationship that subsists between persons carrying on business in common with a view of profit. See: s.3(1) Partnership Act 1961.

By virtue of this definition, the following are the characteristics of a partnership:

- (a) There must be an association of persons.
Persons include not only natural persons, but also artificial persons, like corporations. However, s.3(2) of the Partnership Act 1961 specifically provides that the relationship between members of any company or association registered as a co-operative society will not constitute a partnership. For there to be a partnership there must be more than one person. However, by s.47(2) of the Partnership Act 1961 and s.14(3)(b) of the Companies Act 1965, the number of persons cannot exceed 20 in the case of ordinary partnerships. Professional partnerships are not subject to this limit. See: s.14(3)(a) Companies Act 1965.
- (b) The persons must be carrying on a business.
Section 2 of the Partnership Act 1961 defines business to include every trade, occupation or profession. Therefore, clubs, societies and other voluntary organisations formed for charitable or religious purposes will not be considered as partnerships. This point may be illustrated by the case of *Soh Hood Beng v Khoo Chye Neo* (1897) (SSLR 115). In this case, several persons had set up a loan association the object of which was to grant loans among themselves. Each member would get his turn to receive the loans. The court held that this did not amount to the carrying on of a business and could not constitute a partnership. Additionally, it must be shown that the business is presently or currently carried on. The ordering of goods in anticipation of carrying on a business in the future will not satisfy this requirement. The case of *Keith Spicer Ltd v Mansell* (1970) 1A11 ER 462 provides an illustration. In this case one of the promoters of a proposed company ordered goods from the plaintiff company intending them to be used by the proposed company. The goods were delivered to the other promoter's address. The issue was whether there existed a partnership between the promoters. The court held there was no partnership, as they were not currently carrying on a business, though they had the intention of carrying on a business in the future in the form of a company.
- (c) The business must be carried on in common.
This is the third requirement. What this means is that the partners must have possessed a common intention to carry on the business. It is not necessary that all partners be actively involved. Even if some partners simply leave the running of the business to others, on the understanding that they would benefit from the business, there would still be a partnership. See *Sithambaram Chetty & Others v Hop Hing & Others* (1928) SSLR 53. In this case two persons established a business in Penang, but their connection with it was not made public. Although they took no part in carrying it on, and had left the running of the day-to-day business to two managers, it was held that they were liable as partners to third parties, who had lent money to the firm.
- (d) The business must be carried on with a view of profit.
This is the fourth characteristic of a partnership. What this means is that the business must be carried on with a profit motive. Non-profit oriented businesses such as social, recreational and charitable organisations will not be considered as partnerships.

4 This question, which contains two parts, tests the candidates' knowledge of the differences between a non-exempt private limited company and an exempt private limited company, as well as the definition of a wholly-owned subsidiary.

- (a) The main differences between a non-exempt private limited company and an exempt private limited company are as follows:
 - (i) The maximum number of members of a non-exempt private limited company is 50 whereas for an exempt private company, the limit is 20. See: ss.4 and 15 of the Companies Act 1965.
 - (ii) In the case of the exempt private limited company, the membership must consist only of individuals and not corporations. Further, corporations cannot have any direct or indirect beneficial interest in it. This restriction does not apply to non-exempt private limited companies. See: ss.4 and 15 of the Companies Act 1965.
 - (iii) There is also a difference in relation to filing of accounts with the Companies Commission. A non-exempt private limited company must include an audited copy of its last balance sheet and profit and loss account with its annual return. An exempt private limited company is not required to do so, though it must include an auditor's certificate in accordance with s.165A. This does not mean that an exempt private company does not have to prepare the balance sheet and profit and loss account. It is only exempted from filing them with the Companies Commission of Malaysia.
 - (iv) The exempt private limited company also enjoys a difference in relation to loans to directors and loans to persons connected with directors. Subject to certain exceptions, s.133 generally prohibits a company from giving loans to its directors while s.133A prohibits loans to persons connected with directors. Both of these sections do not apply to exempt private companies. Exempt private companies are therefore free to give loans to their directors and persons connected with them.
- (b) A wholly-owned subsidiary is defined in s.5B of the Companies Act 1965. It states that a corporation is deemed to be the wholly-owned subsidiary of another corporation if none of the members of the first mentioned corporation is a person other than:
 - (i) the second-mentioned corporation;
 - (ii) a nominee of the second-mentioned corporation;

- (iii) a subsidiary of the second-mentioned corporation, being a subsidiary none of the members of which is a person other than the second-mentioned corporation or a nominee of the second-mentioned corporation; or
- (iv) a nominee of such a subsidiary.

5 This question on contract law contains two parts. Part (a) tests the candidates' knowledge and understanding of the distinction between a proposal (offer) and an invitation to treat while part (b) tests the candidates on the ways in which a proposal (offer) may be revoked under the Contracts Act 1950.

- (a)** The offer or proposal is one of the essential elements for a valid contract. A proposal is said to be made when one party 'signifies to the other his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence'. See: s.2 (a) Contracts Act 1950. When the offer is unconditionally accepted, a binding agreement arises. The offer must be clear. If it is vague it is not a valid offer. For example, in *Gunthing v Lynn* (1831), an offer to pay an additional amount if the horse proved 'lucky' was held to be too vague.

It is important to distinguish an offer (proposal) from an invitation to treat. The invitation to treat in law only amounts to an invitation to others to make an offer. An invitation to treat is not capable of being accepted so as to form a binding agreement. A common example of an invitation to treat is a display of goods for sale in a shop. The case of *Pharmaceutical Society of Great Britain v Boots Cash Chemists* (1957) serves as a good example. In this case there was a display of drugs on the shelves of a pharmacy. The issue was whether this display amounted to an offer which was accepted when the customer took it and placed it in a wire basket. The court held that the display did not amount to an offer. It was a mere invitation to treat. Therefore it is very important to distinguish between an offer and an invitation to treat. Only an offer is legally capable of being accepted thereby giving rise to a binding agreement.

- (b)** A proposer (offeror) is not legally bound to keep his proposal open indefinitely. Therefore, a proposal (offer) will remain valid until it is revoked by the proposer. By s.5(1) of the Contracts Act 1950, a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer. Further, s.6 provides that a proposal may be revoked in the following ways:

- (i) By the communication of notice of revocation by the proposer to the other party.

Under this section the proposer is required to communicate the revocation. Communication by third parties not authorised by the proposer will probably not be valid. Thus, the English case of *Dickinson v Dodds* (1876), which held that revocation would be effective so long as the offeree becomes aware of the revocation, irrespective of who conveys the information to the offeree, may not apply in Malaysia.

- (ii) By the lapse of time prescribed in the proposal for its acceptance, or if no time is prescribed, by the lapse of a reasonable time, without communication of the acceptance.

What amounts to a lapse of a reasonable time depends on the facts of each case. In *Ramsgate Victoria Hotel Co v Montefiore* (1866) LR 1 Ex Ch 109, the defendant had applied for shares in the plaintiff company in June and was informed by the plaintiff company in November that he was allotted the shares applied for. The defendant refused to accept the shares. The court held that as the plaintiff had not accepted within a reasonable time, the refusal was justified.

See also: *Macon Works and Trading Sdn Bhd v Phang Hon Chin & Anor* [1976] 2 M.L.J. 177.

- (iii) By the failure of the acceptor to fulfil a condition precedent to acceptance.

For example, if A offers to buy B's car on condition that B provides a roadworthiness certificate issued by the Road Transport Department, the offer will be revoked if B fails to provide such a certificate.

- (iv) By the death or mental disorder of the proposer, if the fact of his death or mental disorder comes to the knowledge of the acceptor before acceptance.

Death or mental disorder of the proposer (offeror) does not automatically result in the revocation of the offer. Knowledge of the acceptor is a crucial factor. Thus if the acceptor, in ignorance of the death or mental disorder of the offeror, accepts the offer such acceptance would be valid.

6 This question tests the candidates' knowledge on reduction of capital under the Companies Act 1965.

- (a)** A company may reduce its capital in accordance with the procedures laid down in s.64 of the Companies Act 1965.

By this section a company may, subject to confirmation by the court, if so authorised by its articles, by special resolution, reduce its share capital. If these conditions are met the company can reduce its capital in any way, but s.64(1) specifically states that the company may do so in the following ways:

- (i) By extinguishing or reducing the liability on any of its shares in respect of share capital not paid up;
- (ii) By cancelling any paid up share capital which is lost or unrepresented by available assets;
- (iii) By paying off any paid up share capital which is in excess of the needs of the company.

- (b) Creditors who may be prejudiced by a reduction of capital by the company, are afforded a measure of protection.

By s.64(2), where the proposed reduction involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid up share capital, then every creditor who is entitled to any debt or claim is entitled to object to the reduction. The court must settle a list of creditors so entitled to object. For this purpose the court must ascertain as far as possible without requiring an application from any creditor, the names of those creditors and the amount and nature of their claims. The court may also publish notices fixing a final day for creditors who are not listed to enter their claims.

The court would then set a day for the hearing of the application during which the claims and objections of the various creditors would be heard and evaluated.

Where a creditor who has a valid claim does not consent to the reduction, the court has power to dispense with such consent upon the company making payment into court of the full amount of the claim or such sum which the court considers appropriate.

The court would only make an order for the reduction of capital if it is satisfied with respect to every creditor entered on the list, that, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined or has been secured. See: s.64(4). However, it must be noted that the court may not require creditors' consent, where the reduction is on the ground that capital is lost and is no longer represented by the company's assets.

- 7 This question, on corporate governance, tests the candidates' knowledge on the composition and functions of the audit committee as required to be established by public listed companies under the Bursa Malaysia Listing Requirements, pursuant to the recommendations of the Malaysian Code on Corporate Governance.

Under Part C, Chapter 15 of the Bursa Malaysia Listing Requirements, the audit committee must be composed of at least three members, the majority of whom must be independent directors. An alternate director may not be appointed to the committee. In addition, at least one member of the audit committee must be a member of the Malaysian Institute of Accountants. If he is not such a member, he must either have at least three years working experience and have passed the requisite examinations specified in part one of the 1st Schedule of the Accountants Act 1967, or be a member of one of the associations of accountants specified in Part II of the 1st Schedule of the Accountants Act 1967. Alternatively, if he is not a member of the Malaysian Institute of Accountants, he must fulfill such other requirements as may be prescribed by the Stock Exchange (Bursa Malaysia).

The audit committee's functions as stated under Para 15.13 of Part C Chapter 15 include:

- (1) reviewing the following and reporting to the board of directors:
 - (a) with the external auditor, the audit plan;
 - (b) with the external auditor, his evaluation of the system of internal controls;
 - (c) with the external auditor, his audit report;
 - (d) the assistance given by the employees of the company to the internal auditor;
 - (e) the adequacy of the scope, functions, and resources of the internal audit functions and that it has the necessary authority to carry out its work;
 - (f) the internal audit programme, processes, the results of the internal audit programme, processes or investigation undertaken and whether or not appropriate action is taken on the recommendations of the internal audit function;
 - (g) the quarterly results and year end financial statements, prior to the approval by the board of directors, focusing particularly on:
 - (i) changes in or implementation of major accounting policy changes;
 - (ii) significant and unusual events; and
 - (iii) compliance with accounting standards and other legal requirements;
 - (h) any related party transaction and conflict of interest situation that may arise within the listed issuer (i.e. the listed company) or group including any transaction, procedure or course of conduct that raises questions of management integrity;
 - (i) any letter of resignation from the external auditors of the listed issuer; and
 - (j) whether there is reason (supported by grounds) to believe that the listed issuer's external auditor is not suitable for re-appointment; and
- (2) recommend the nomination of a person or persons as external auditors.

(Candidates need only state any FIVE of these functions)

- 8 This problem-based question on company law, which contains two parts, tests the candidates' ability to identify and apply the law relating to the lifting of the veil of incorporation and partly touches on ethical issues and fraudulent behaviour.

- (a) The issue in this problem is whether the veil of incorporation of Dynamic Duo Sdn Bhd may be lifted thereby making Ah Chong personally liable for the debts of the company.

It is well established that once a company is incorporated, it becomes in law a separate legal entity distinct from its members. The company is said to be clothed with a veil of incorporation. The company's debts are that of the company and not that of

its members. As a general rule, in a limited company, a member's liability to contribute to the assets of the company in a winding up is limited to the amount unpaid on his shares. See: *Salomon v Salomon & Co Ltd* [1897] AC 22; *Re Application by Yee Yut Ye* [1978] 2 MLJ 142.

However, the strict application of this principle may lead to injustice and several exceptions have been established by the courts and the legislature to combat it.

One of the exceptions, which is relevant to the present case, is s.36 of the Companies Act 1965. By this section, where the number of members of the company falls below two and the company carries on business for a period longer than six months while the number is so reduced, then the remaining member will be personally liable for all the debts of the company incurred after those six months, unless he was unaware that the company was so carrying on business.

Applying the law to the given problem, it is clear that Ah Chong has been knowingly carrying on the business by himself. Thus, he may be personally liable for the debts of the company incurred after six months from the date he became the sole member. As he became the sole member in June 2006, he would incur personal liability under s.36 for the debts incurred by the company after November 2006. Bank Boleh may therefore be advised that Ah Chong will not incur personal liability as the debt was incurred by the company in October 2006 (i.e. within the six-month period).

On the other hand, Lenmore Bank may be advised that Ah Chong may be held personally liable for the debt owed to it, as it was incurred in August 2007 (i.e. after the first six months).

- (b) The issue in this problem is whether the veil of incorporation of All-Bright Sdn Bhd may be lifted to make Jack, Jill and Ben personally liable for any of the debts and other liabilities of the company because of fraudulent trading. By s.304(1) of the Companies Act 1965, if in the course of the winding up of the company or in any proceedings against a company it appears that any business of the company had been carried on with intent to defraud creditors of the company or for any fraudulent purpose, the court may, on the application of the liquidator, or any creditor or contributory, order any person who was knowingly a party to the carrying on of the business in that manner to be personally liable for all, or any of the debts, or other liabilities of the company as the court directs. See: *H Rosen Engineering BV v Siow Yoon Keong* [1977] 1CLJ 137; [2003] 4 MLJ 569; *Eng Iron Works Ltd v Ting Ling Kiew & Anor* [1990] 2 MLJ 440.

In the given problem, it is clear that Jack, Jill and Ben were knowingly parties to the carrying on of the business with intention to defraud creditors as they had no intention to pay Starlight for the lighting equipment they ordered. The liquidator may be advised that he may apply to the court to make them personally liable under s.304(1) for fraudulent trading. The liquidator may also be advised that Jack, Jill and Ben would be guilty of an offence against the Act by virtue of s.304(5).

- 9 This question, on company law, tests the candidates' ability to identify and apply the law pertaining to substantial property transactions involving directors as well as the appointment of over-aged directors.

- (a) In relation to the decision to purchase the Mercedes Benz from Mercy, one of the directors of the company, the board of directors of Jolly Trading Sdn Bhd may be advised that they may have breached s.132E of the Companies Act 1965. By this section, a company cannot enter into any arrangement or transaction with its directors, or directors of its holding company or a person connected with such a director, to acquire from or dispose to such a director or person, a non-cash asset of the requisite value, unless the arrangement or transaction is first approved by a resolution of the company in a general meeting.

A non-cash asset is defined in s.132E(7) to mean any property or interest in property other than cash. 'Requisite value' is defined in s.132E(5) to mean value which is not less than RM10,000 but, subject to that, exceeds RM250,000 or 10% of the company's asset value. Thus any transaction above RM250,000 must be first approved by a resolution of the company in a general meeting.

As the value of the Mercedes Benz is RM280,000, the directors must obtain the necessary shareholder approval. Since they have failed to do so, they are in breach of the section and are guilty of an offence under the Act.

- (b) With regard to the appointment of Samseng, aged 72, as an additional director, the board of directors may be advised that the appointment is in contravention of s.129 of the Companies Act 1965.

By s.129(1), no person of, or over the age of, 70 may be appointed as a director of a public company or of a subsidiary of a public company, notwithstanding anything in the memorandum or articles of the company. As Jolly Trading Sdn Bhd is a subsidiary of Jolly Holdings Bhd, which is a public company, s.129 would apply to it.

However, by virtue of s.129(6), such an over-aged person may be appointed or re-appointed by a resolution of which notice of not less than that required to be given to the members of the company of an annual general meeting has been duly given, and passed by not less than a three-fourths majority at a meeting of the company. Thus the company can only appoint an over-aged director by obtaining the approval of a three-fourths majority at a general meeting of which at least 14 days notice has been given.

As the proper procedure has not been followed, the board of directors may be advised that the appointment by them of Samseng as an additional director is not valid.

- 10** This problem-based question on contract law, tests the candidates' ability to identify and apply the law on two issues pertaining to the requirements of a valid contract, *viz*, sufficiency of consideration and certainty of subject matter.

Ali may be advised as follows:

- (a)** In relation to the contract to purchase the piece of land from Buildwell at a price of RM10,000, which is well below the market price, the issue is whether the contract can be invalidated due to insufficiency of consideration.

By s.10(1) of the Contracts Act 1950, 'all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void'.

Further, explanation two of s.26 states that an agreement to which the consent of the promisor is freely given, is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given. This may be further explained by reference to illustration (f) of s.26, which provides the following example:

'A agrees to sell a horse worth \$1000 for \$10. A's consent was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.'

In the given problem, Syarikat Buildwell & Co had agreed to sell to Ali the piece of land for RM10,000. Though the price is well below the market value, there is no indication in the question that there was no free consent on the part of Syarikat Buildwell & Co.

Thus, applying the law to the given problem, Ali may be advised that the contract is legally binding and he may sue Buildwell to enforce the sale of the land.

- (b)** In relation to the contract for the lease of the office building, the legal issue is whether it is void for uncertainty.

One of the requirements for a valid contract is that there must be certainty of subject matter. This is provided for in s.30 of the Contracts Act 1950, which provides that agreements, the meaning of which is not certain, or capable of being made certain, are void. A case in point, which is relevant to the given problem is *Karuppan Chetty v Suah Thiam* (1916) 1 FMSLR 300. In this case, the parties had agreed to a lease at a rent of \$35 per month, 'for as long as he likes'. As the period of the lease was uncertain, the court held that the agreement was void.

Applying the law to the present problem, Ali may be advised that he will not be able to enforce the lease agreement against Buildwell as it contains a similar clause and is therefore void for uncertainty.

- 1** (a) 0–3 Very good answer clearly explaining the meaning of legislation and delegated legislation will fall into the upper part of this band, while an incomplete or inaccurate one will fall into the lower part.
- (b) 6–7 Excellent answer explaining all the advantages and disadvantages of delegated legislation.
4–5 Average answer explaining the main advantages and disadvantages of delegated legislation.
0–3 Incomplete or inaccurate answer.
- 2** (a) 0–3 An accurate answer will fall into the upper part of this band while an inaccurate one will fall into the lower part.
- (b) 6–7 Very good answer stating the situations in which an employee is said to have been 'laid-off' as well as those situations in which a redundancy is said to have occurred.
4–5 Average answer mentioning some of the situations in which a redundancy and lay-off occurs.
0–3 Incomplete or inaccurate answer.
- 3** 7–10 Very good answer explaining all the characteristics of a valid partnership.
5–6 Average answer explaining some of the characteristics of a partnership.
0–4 Incomplete or inaccurate answer.
- 4** (a) 5–6 Excellent answer stating the main differences between a non-exempt private company and an exempt private company.
3–4 Average answer, sufficiently explaining some of the differences only.
0–2 Incomplete or inaccurate answer.
- (b) 0–4 Approximately 1 mark for each correct situation when one company is said to be a wholly owned subsidiary of another, as stated in s.5B of the Companies Act 1965.
- 5** (a) 3–5 Very good to average answer, distinguishing an offer from an invitation to treat.
0–2 Incomplete or inaccurate answer.
- (b) 3–5 Very good to average answer stating the ways in which an offer may be revoked with reference to the Contracts Act 1950.
0–2 Incomplete or inaccurate answer.
- 6** (a) 3–5 Good to average answer stating the procedure and methods by which a company may reduce its capital.
0–2 Incomplete or inaccurate answer.
- (b) 3–5 Good to average answer explaining the protection afforded under the Companies Act 1965 to creditors who may be prejudiced by a reduction of capital by a company.
0–2 Incomplete or inaccurate answer.
- 7** 7–10 An excellent answer explaining the composition and any five functions of the audit committee.
5–6 Average answer stating the composition and some of the functions of the audit committee.
0–4 Incomplete or inaccurate answer.

- 8 (a)** 3–5 A very good to average answer identifying the issue of s.36 of the Companies Act 1965 in relation to the lifting of the veil of incorporation with accurate application to the given problem.
0–2 Incomplete or inaccurate answer.
- (b)** 3–5 A very good to average answer identifying the issue of s.304 (1) of the Companies Act 1965 in relation to fraudulent trading and the lifting of the veil of incorporation, with accurate application to the given problem.
0–2 Incomplete or inaccurate answer.
- 9 (a)** 3–5 Very good to average answer identifying the issue of substantial property transactions involving directors with correct application to the given problem.
0–2 Incomplete or inaccurate answer.
- (b)** 3–5 Very good to average answer identifying the issue of disqualification of over-aged directors and accurate advice to the board of directors.
0–2 Incomplete or inaccurate answer.
- 10 (a)** 3–5 Very good to average answer accurately identifying the issue of sufficiency of consideration in relation to contract law, with a clear explanation of the law and proper application to the given problem.
0–2 Incomplete or inaccurate answer.
- (b)** 3–5 Very good to average answer identifying the issue of certainty of subject matter in relation to the law of contract with a proper explanation of the law and correct application to the given problem.
0–2 Incomplete or inaccurate answer.