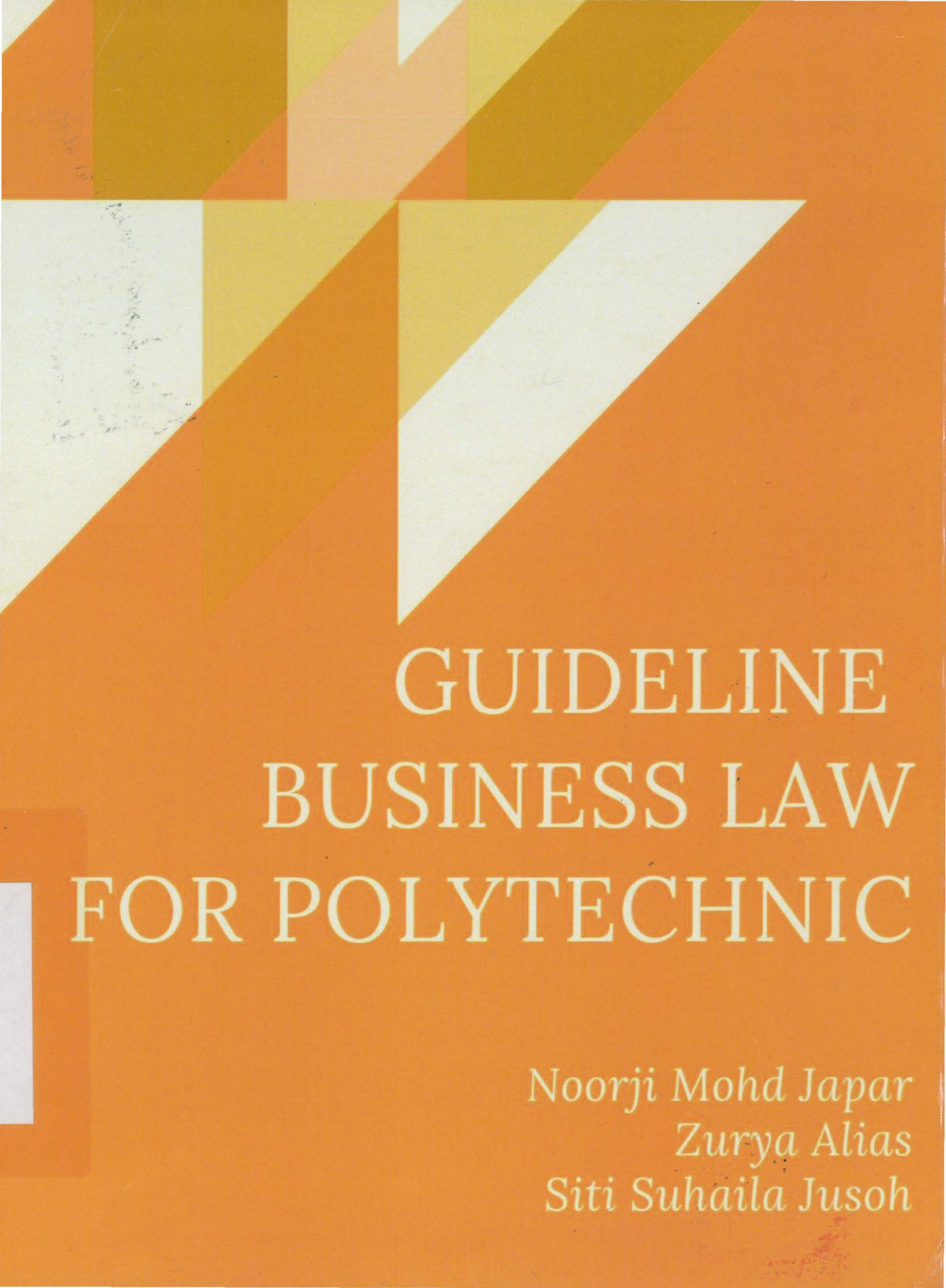




# GUIDELINE BUSINESS LAW FOR POLYTECHNIC

Noorji Mohd Japar  
Zurya Alias  
Siti Suhaila Jusoh

KB479 .N66 2021



0000030058  
Noorji Mohd Japar, 1974-  
Guideline business law for Polytechnic / Noorji Mohd Japar,  
Zurya Alias, Siti Suhaila Jusoh.

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## GUIDELINE BUSINESS LAW FOR POLYTECHNIC

Noorji Mohd Japar  
Zurya Alias  
Siti Suhaila Jusoh

| PERPUSTAKAAN<br>POLITEKNIK PORT DICKSON |                     |
|-----------------------------------------|---------------------|
| PESANAN KERAJAAN                        | —                   |
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| PEMBEKAL                                | Sumbangan           |
| NO. PANGGILAN                           | LB 479. N66<br>2021 |



85003000

Jabatan Perdagangan  
Politeknik Port Dickson  
KM14 Jalan Pantai, 71050 SiRusa  
Negeri Sembilan  
No Tel : 06-6622000  
No Faks : 06-6622026  
[www.polipd.edu.my](http://www.polipd.edu.my)

Perpustakaan Negara Malaysia  
Cataloguing-in-Publication Data

Noorji Mohd Japar, 1974-

GUIDELINE BUSINESS LAW FOR POLYTECHNIC / Noorji Mohd Japar,

Zurya Alias, Siti Suhaila Jusoh.

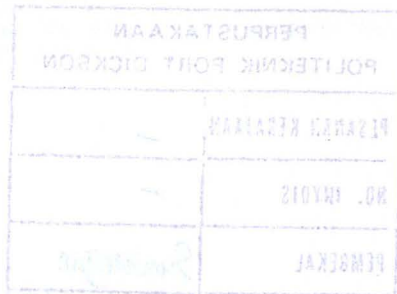
ISBN 978-967-2897-08-8

1. Commercial law--Malaysia.
  2. Contracts--Malaysia
  3. Law--Malaysia
  4. Government publications--Malaysia.
- I. Zurya Alias, 1974-. II. Siti Suhaila Jusoh, 1984-.

III. Title.

346.0709595

First Edition 2021



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## PREFACE

Assalamualaikum w.b.t dan Greetings,

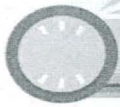
Bismillahirrahmanirahim. Alhamdulillah, thanks to Allah for his bounty, the Business Law Guideline for Polytechnic's student was successfully produced. We, Noorji Mohd Japar, Zurya Alias and Siti Suhaila Jusoh produced this guideline for students who take Business Law courses at the Polytechnic Diploma level. This guideline consists of Five (5) chapters that will provide student simple guideline as well as the cases in Business Law course at polytechnic.

Finally, it is hoped that the students will gain the required understanding in Business Law courses and can easily relates the cases in syllabus.

Noorji Mohd Japar

Zurya Alias

Siti Suhaila Jusoh



## ABSTRACT

The goal of the Business Law eBook is to enhance students understanding of business law. This eBook can be used by students as a quick reference to help them grasp the topic and cases in Business Law. This edition of eBook has five chapters and for each topic, questions are accessible to show students what the final exam questions would look like. It can also assist students in exercising and testing their knowledge.

### **Chapter 1 : Introduction to Malaysian Law**

This chapter gives an overview of Malaysian Legal Principles, its nature and outline the judicial system in Malaysia.

### **Chapter 2 : Law of Contract**

The objective of this chapter is to explain how the contracts may be entered and legally binding. This chapter explains how to apply elements that form a valid contract and terms in contract, ascertain effects of contract, explain discharge of contract, ascertain remedies for breach of contract.

### **Chapter 3 : Legal Aspects of Business Entities**

This chapter will assist students to categorize types of business entities in Malaysia, compare the characteristics of sole proprietorship, partnership and company, ascertain rights and duties of partners and dissolution of partnership based on Partnership Act 196.

### **Chapter 4: Law of Agency**

Agency is the relationship that subsists between the principal and the agent. In this chapter, students will ascertain nature of agency, discuss types of agency, demonstrate the relationship between principals and agents and outline termination of agency.

### **Chapter 5: Sales of Goods**

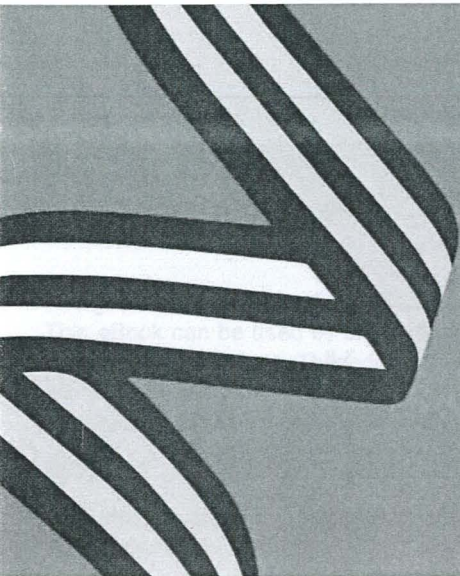
This chapter will discuss the nature of sale of goods, apply implied terms relating to sale of goods contract, discuss transfer of property and title under sale of goods, ascertain protections to buyers and owners, outline breach of contract and remedies of contract of sale.

Cases included in this eBook has been selected and comply with syllabus DPB 30073 Business Law



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# CHAPTER 1

## INTRODUCTION TO MALAYSIAN LEGAL PRINCIPLES

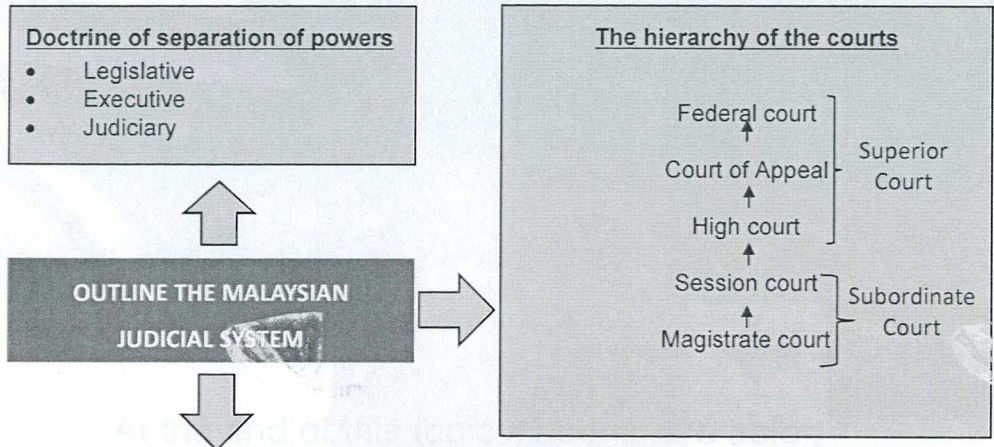
At the end of this topic students are able :

- Explain the nature of Malaysian legal principles
- Outline Malaysian judicial system



# INTRODUCTION TO MALAYSIAN LEGAL PRINCIPLES:

## Malaysian Judicial System



| Synopsis of Courts Hierarchy |                                                         |                                                        |                                                                                                               |                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------|---------------------------------------------------------|--------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                              | Federal court                                           | Court of Appeal                                        | High court                                                                                                    | Sessions Court                                                                                                                                                                                                | Magistrates' Court                                                                                                                                                                                                                                                                                                                                                    |
| Jurisdiction                 | Hear civil and criminal appeals from Courts of Appeals. | Hear both Civil and Criminal appeal Civil Appeal cases | It has unlimited criminal and civil powers which the Session and Magistrates Courts do not have jurisdiction. | In criminal jurisdiction extends to all offences other than punishable with death                                                                                                                             | Deals with minor civil and criminal cases.                                                                                                                                                                                                                                                                                                                            |
|                              |                                                         |                                                        |                                                                                                               | In civil matters, it has jurisdiction to try all actions and suits of a civil nature where the amount of dispute or value of the subject matter does not exceed RM1,000,00*Subsequent to (Amendment) Act 2010 | First class magistrate possesses jurisdiction to try all offences for which the maximum term of punishment provided by law does not exceed 10-year imprisonment or all offences under Sections 392 and 457 of the Penal Code. It has the authority to try all actions and suits where the amount in dispute or value of the subject matter does not exceed RM100,000. |



# INTRODUCTION TO MALAYSIAN LEGAL PRINCIPLES:

## Malaysian Judicial System

ANSWER ALL QUESTIONS

### Synopsis of Courts Hierarchy

|        | Federal court | Court of Appeal | High court | Sessions Court                  | Magistrates' Court                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------|---------------|-----------------|------------|---------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Judges |               |                 |            | S 59 Subordinate Court Act 1948 | The court is presided over by a magistrate.<br>S 35 if Subordinate Court Act 1948.<br>i. Try all offences maximum term of punishment with exceed 10year imprisonment.<br>ii. All offences punishable by fine only.<br>First class Magistrate:<br>i) Five-year imprisonment<br>ii) Fine of RM10,000<br>iii) Whipping up to 12 stroke<br>Combination of any.<br>Second Class Magistrate:<br>i. Not exceed 6 months imprisonment.<br>ii. Five not more than RM1,000<br>iii. Any combining sentence |

# INTRODUCTION TO MALAYSIAN LEGAL PRINCIPLES:

## Malaysian Judicial System

### Synopsis of Courts Hierarchy

|            | Federal court                                                                                                                                                                                            | Court of Appeal                                                                        | High court                                  | Sessions Court | Magistrates' Court |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|---------------------------------------------|----------------|--------------------|
| sentencing | <p>The court has:</p> <p>Chief Justice,</p> <p>President of the Court of Appeal</p> <p>Chief Judge of High Court Malaya</p> <p>Chief Judge of High Court Sabah &amp; Sarawak</p> <p>6 federal judges</p> | <p>The court has:</p> <p>1 President and 15 other judges</p> <p>Appointed by YDPA.</p> | <p>The court has:</p> <p>2 chief judges</p> |                |                    |

## QUESTIONS

### ANSWER ALL QUESTIONS.

1. Choose the sources of the unwritten law.

- A. Act
- B. Constitution
- C. Judicial Precedent
- D. Enactment

2. State the types of sources in Malaysian law.

- A. Customs and common law
- B. Written and unwritten law
- C. Historical and legal sources
- D. Judicial decisions and common law

3. Private Law consists of the following **EXCEPT**:

- A. Tort law
- B. Trust law
- C. Contract law
- D. Criminal law

4. State the supreme law of Malaysia.

- A. Act of Parliament
- B. State Constitution
- C. Federal Constitution
- D. Subsidiary Legislation

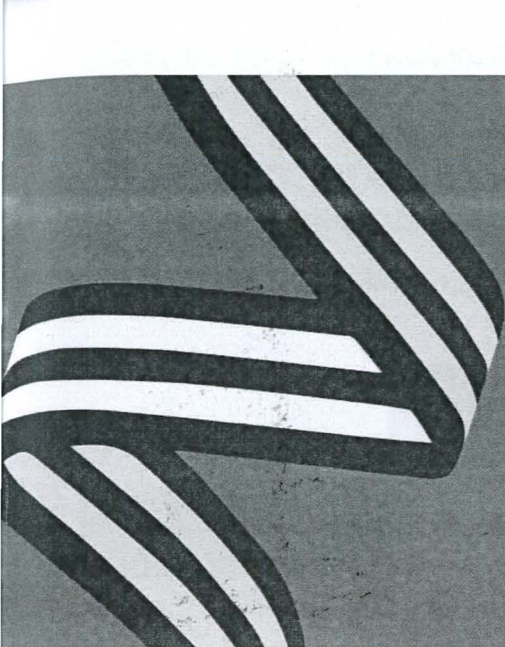
5. Indicate the law that regulates the relationship between individual and the government?

- A. Private law
- B. State law
- C. International law
- D. Public law



## QUESTIONS

6. Which of the following is a subordinate court in Malaysia?
- A. Session Court
  - B. High Court
  - C. Court of appeal
  - D. Federal court
7. Name the highest court in Malaysia.
- A. Federal Court
  - B. High Court
  - C. Industrial Court
  - D. Court of Appeal
8. The jurisdiction of High Court are as follows **EXCEPT**:
- A. Appellate jurisdiction
  - B. Original jurisdiction
  - C. Supervisory jurisdiction
  - D. Hear any disputes between any State and the Federal Government
9. High court can hear all civil matters when the amount involved is exceeding \_\_\_\_\_.
- A. RM 25, 000
  - B. RM 100,000
  - C. RM 250,000
  - D. RM 1,000,000
10. The high court has \_\_\_\_\_ judges.
- A. One
  - B. Two
  - C. Three
  - D. No



## CHAPTER 2

## LAW OF CONTRACT

At the end of this topic students are able :

- ☐ Explain contract
- ☒ Apply elements that form a valid contract and terms in contract
- ☐ Ascertain effects of contract
- ☒ Explain discharge of contract
- ☐ Ascertain remedies for breach of contract



# LAW OF CONTRACT

Definition the contract

Section 2(h) CA 1950

## Element of Contract

Offer

Acceptance

Consideration

Intention

Capacity

Certainty

### Section 6 (a) CA 1950

Notice of revocation

Case: *Byrne v Van Tienhoven* (1880)

### Section 6 (b) CA 1950

Lapse of time or reasonable time

Case: *Ramsgate Victoria Hotel Co. Ltd. v Montefiore* (1866)

### Section 6 (c) CA 1950

Failure to fulfill a condition of offer

Case: *Hyde v Wrench* (1840)

Section 6 (d) CA 1950 Death or mental disorder

### Communication of an offer

Section 3 and Section 4(1) CA 1950

**Exhibition on the shop window**

Case: *Fisher v Bell* (1961)

### Definition

Section 2(a) CA 1950

Revocation of offer

## Offer

Invitation to treat

**Auction**

Case: *Harrison v Nickerson* (1873)

General

Case: *Carlill v Carbolic Smoke Balls* (1893)

Specific

Case: *Boulton v Jones* (1857)

To whom an offer can be made

Orally

How to make an offer

Written

By conduct

**Advertisement**

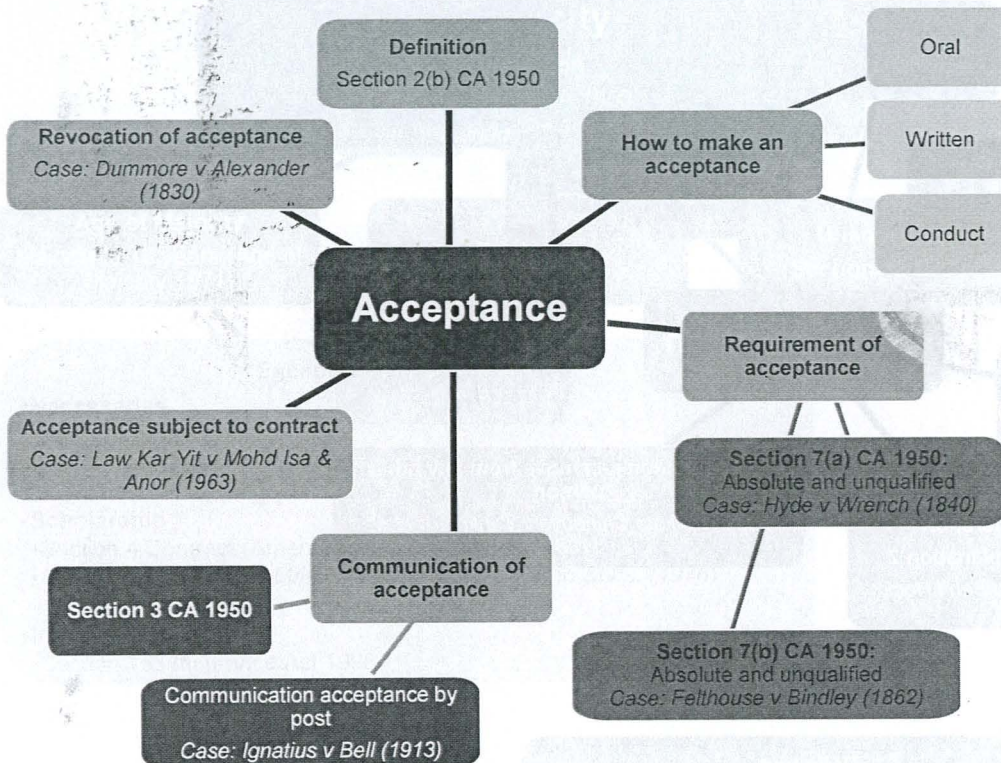
Case: *Coelho v The Public Service Commission* (1964)

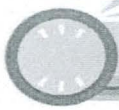
**Self-service outlet**

Case: *Pharmaceutical Society of Great Britain v Boots Cash Chemist* (1953)

# LAW OF CONTRACT:

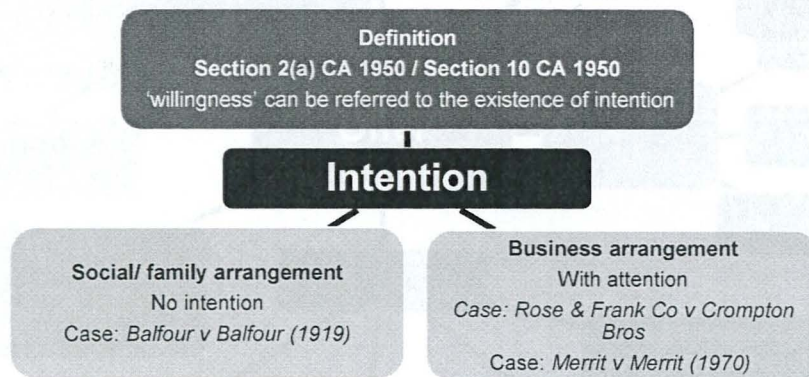
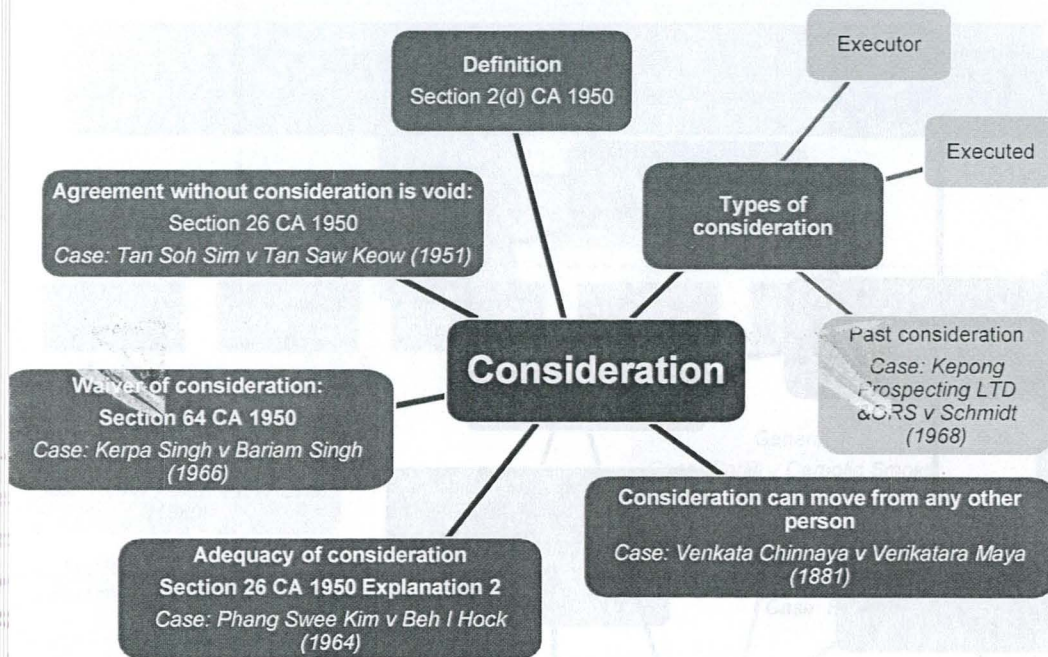
## Element of Contract: Acceptance





## LAW OF CONTRACT:

### Element of Contract; Consideration



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## LAW OF CONTRACT:

### Element of Contract; Capacity

#### Capacity

##### Definition

Section 11 CA 1950

Case: *Tan Hee Juan v Teh Boon Keat* (1934)

##### Age of Majority

Majority is 18 years (Age of Majority 1971)

##### Bankrupt

##### Unsound Mind

Section 12 CA 1950

##### Exceptions of age majority

###### •Necessaries

- Section 69 CA1950
- Case: *Government of Malaysia v. Gurcharan Singh &Ors.* (1971)

###### •Scholarship

- Section 4 Contract (Amendment) Act 1976
- Case: *Government of Malaysia v. Gurcharan Singh &Ors.* (1976)

###### •Insurance

- Section 153 Insurance Act 1996

#### Certainty

##### Definition

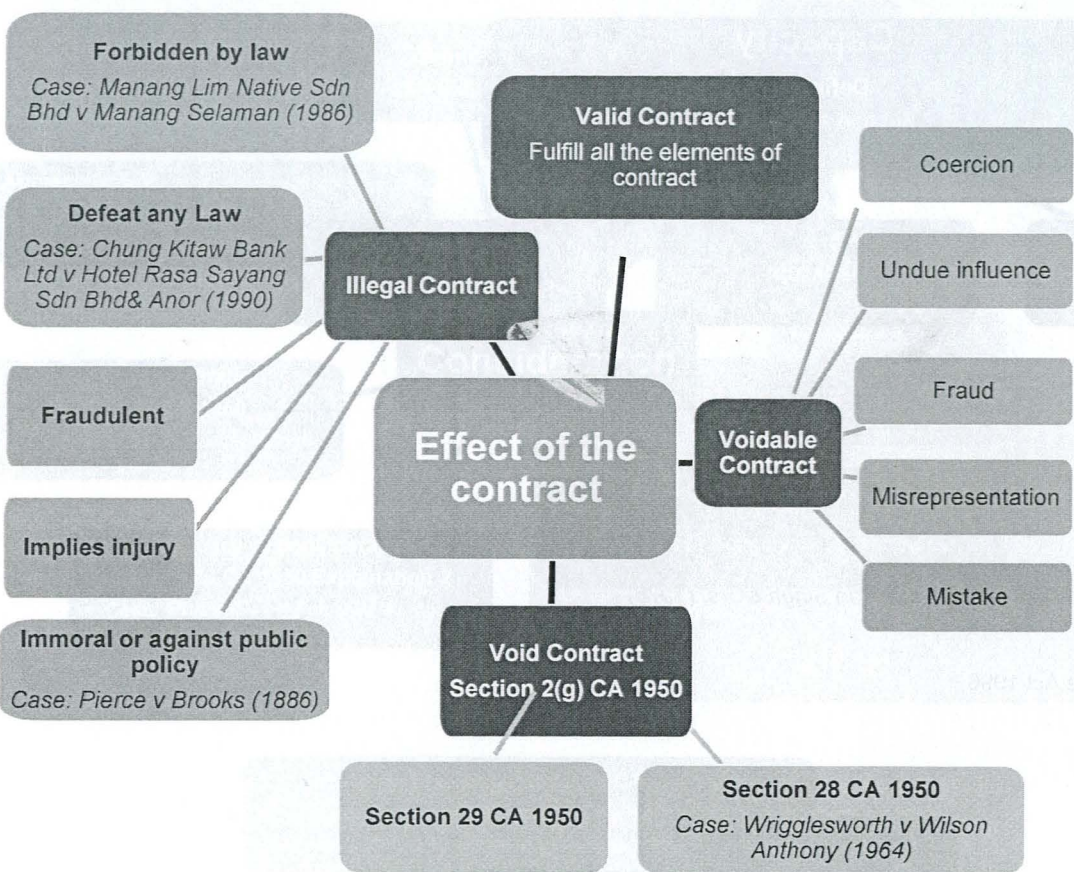
Section 30 CA 1950

Case: *KaruppanChetty v Suah Thian* (1916)



# LAW OF CONTRACT:

## Effect of Contract





# LAW OF CONTRACT:

## Voidable Contract

Section 15 CA 1950  
Case: *Kersamal s/o Letchman Das v Valiappa Chettiar* (1954)

Section 21 CA 1950  
Case: *Raffles v Wichelhaus* (1864)

By Mistake

Section 23 CA 1950  
Case: *Tamplin v James* (1880)

By Misrepresentation

Section 18 CA 1950  
Case: *Bisset v Wilkinson* (1927)

By Coercion

Section 16 CA 1950  
Case: *Inche Noriah v Shaik Allie bin Omar* (1929)  
Case: *Che Som bte Yip & ORS v Maha Pte Ltd* (1989)

By Undue Influence

**Free Consent /  
Voidable Contract**

By Fraud

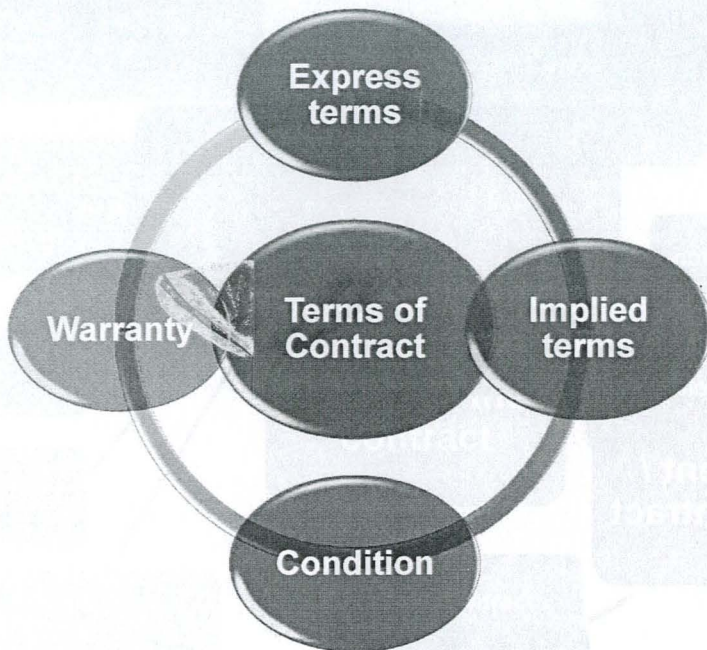
Section 17 CA 1950  
Case: *Letchmy Arumugam v Annamalai* (1982)



## LAW OF CONTRACT:

### Terms of Contract

### Discharge of Contract



#### By performance

Section 38(1) CA 1950  
Case: *Bolton v Mahadeva* (1972)

#### By agreement

- i. Novation - Illustration (a) Section 63 CA 1950
- ii. Rescission
- iii. Alteration - Illustration (b) Section 63 CA 1950
- iv. Remission - Section 64 CA 1950

### Discharge of Contract

#### By impossibility (frustration)

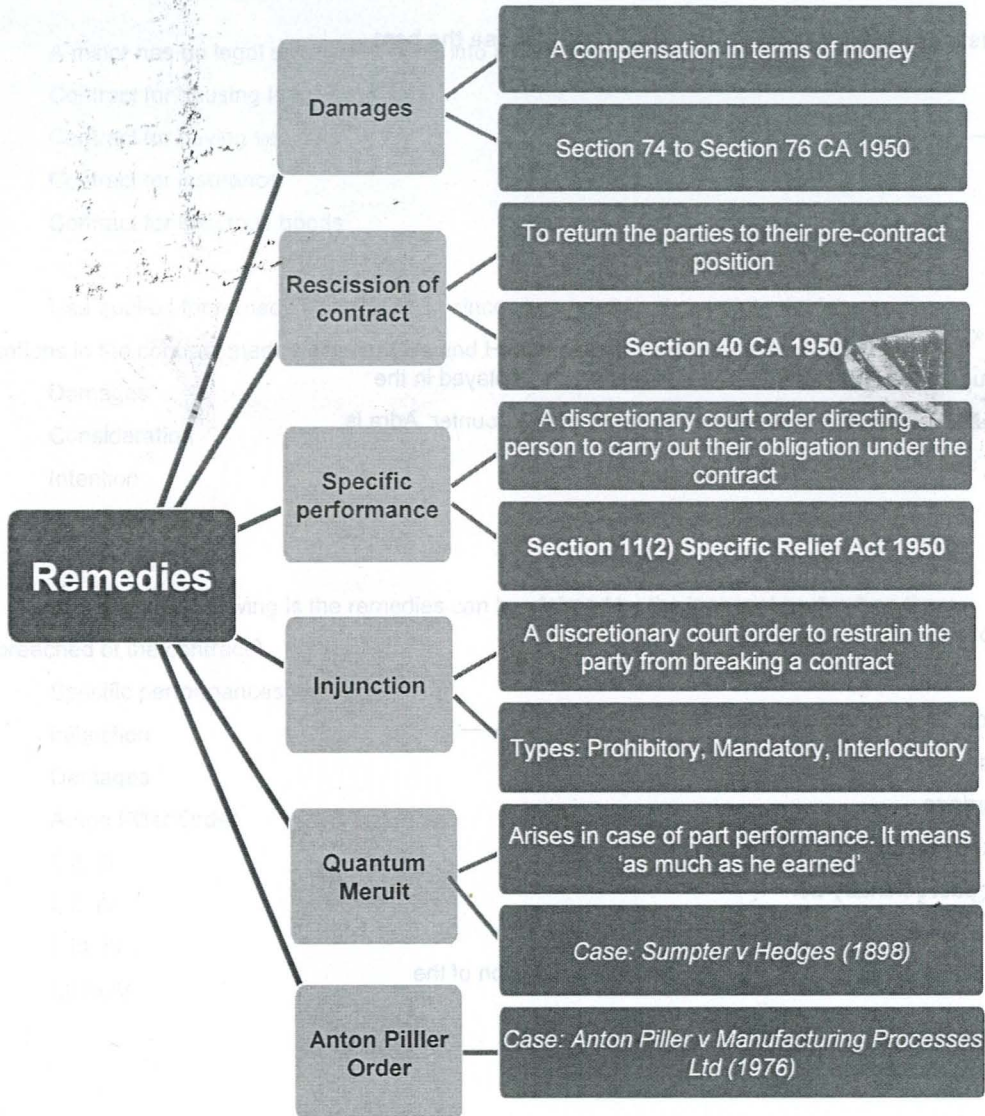
Section 57(1) CA 1950  
Case: *Taylor v Caldwell* (1863)

#### By breach

Section 40 CA 1950  
Case: *Tan Hock Chan vs Kho Teck Seng* (1980)

## LAW OF CONTRACT:

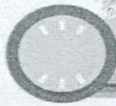
### Remedies of Contract



## QUESTIONS

**SECTION A:** This section consists of SEVEN (7) objective questions. Choose the best answers.

1. Promisee also known as \_\_\_\_\_.
  - A. Offeree
  - B. Offeror
  - C. Proposer
  - D. Promisor
  
2. Arda went to The Mayo Supermarket intended to buy a titanium pan displayed in the supermarket with the price tag of RM300.00. She took the pan to the cashier's counter. Adra is making \_\_\_\_\_ and the cashier is making \_\_\_\_\_.
  - A. an offer, an acceptance
  - B. an acceptance, an offer
  - C. an offer, a counter-offer
  - D. an invitation to treat, an offer.
  
3. An agreement made without consideration is void, EXCEPT \_\_\_\_\_.
  - A. contract is restraint of trade.
  - B. contract in restraint of marriage
  - C. contract made by a drunken person
  - D. contract to compensate a past voluntary act
  
4. Modifications of the offer is named as \_\_\_\_\_ and it is a rejection of the original offer.
  - A. Acceptance
  - B. Consideration
  - C. counter-offer
  - D. invitation to treat



## QUESTIONS

5. A minor has no legal capacity to enter into a contract EXCEPT:
- A. Contract for housing loan
  - B. Contract for buying vehicles
  - C. Contract for insurance
  - D. Contract for luxurious goods
6. Lisa applied for remedy from the court since Hans could not complete the job as mentions in the contract made between Lisa and Hans. What is the remedy available for Lisa?
- A. Damages
  - B. Consideration
  - C. Intention
  - D. Ownership
7. Which of the following is the remedies can be claimed by the innocent party when there is breached of the contract?
- I. Specific performances
  - II. Injunction
  - III. Damages
  - IV. Anton Pillar Order
- A. I, II, III
  - B. I, II, IV
  - C. I, III, IV
  - D. I, II, III, IV

## QUESTIONS

**SECTION B: THIS SECTION CONSISTS OF TWO (2) QUESTIONS. ANSWER ALL QUESTIONS.**

### QUESTION 1

(a) Sheikh was born in the year of 2005. He just celebrated his birthday last month. For his birthday, he wants to treat himself with a new motorcycle. He went to Tan & Shazwan Cycle Sdn Bhd and saw a new edition of Vespa Primavera 150 worth RM31,000. Sheikh seem very happy and agree with the price. He is also ready to make payment on the motorcycle.

- (i) State the issue arise. (2 marks)
- (ii) Give the relevant provision (1 mark)
- (iii) Explain the relevant case (4 marks)
- (iv) Conclude your answer (3 marks)

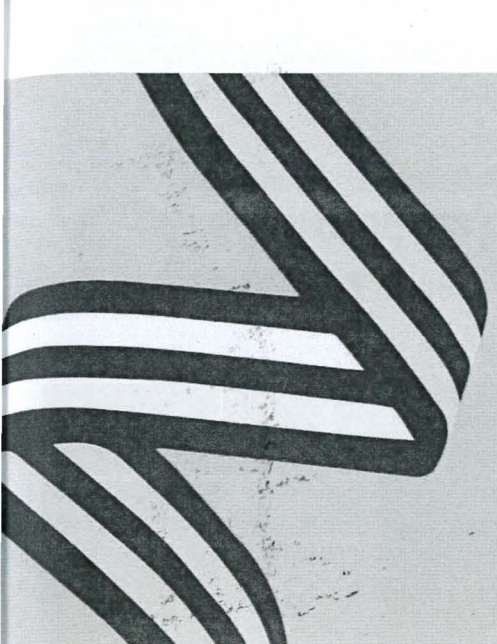
(b) In relation to the law of contract, write short notes on the following: (10 marks)

- (i) Coercion
- (ii) Mistaken
- (iii) Fraud
- (iv) Undue Influence
- (v) Misrepresentation

### QUESTION 2

Describe **THREE (3)** examples of an invitation to treat and support your answer with relevant cases. (15 marks)

(b) Section 10 Contract Act 1950 provides that all agreement is contracted if they are made by free consent of parties. By virtue of section 14, consent is said to be free when it is caused by some elements. Thus, illustrate **FOUR (4)** elements which caused a consent not to be free. (10 marks)



## CHAPTER 3

### LEGAL ASPECTS OF BUSINESS ENTITIES

At the end of this topic students are able :

- Categorize types of business entities in Malaysia
- Compare the characteristics of sole proprietor- ship, partnership and company
- Ascertain rights and duties of partners and dissolution of partnership based on Partnership Act 1961

## LEGAL ASPECTS OF BUSINESS ENTITIES

### BUSINESS ENTITIES

#### SOLE PROPRIETORSHIP

**Definition** - an unincorporated business with only one owner who pays personal income tax on profits earned

#### PARTNERSHIP

**Definition** - Sec 3(1) Partnership Act 1961 the relation, which subsists between persons carrying on a business in common with a view of profit

#### COMPANY

**Definition** - a legal entity formed by a group of individuals to engage in and operate a business

| Characteristics          | Sole proprietorship                                                                    | Partnership                                                                                                                                   | Company                                                                                                                           |
|--------------------------|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <b>Formation</b>         | Individual in business on his own                                                      | Two or more persons carrying on business with a view of profit.                                                                               | A company is a separate entity from its members.                                                                                  |
| <b>Management</b>        | Owns and manages the firm himself and can employ employees to manage the firm for him. | Partners are agent of the firm for carrying on its business in the ordinary course of business and are generally entitled to manage the firm. | A company's members are neither its managers (directors) nor its agents as a whole.                                               |
| <b>Registration</b>      | Need to register his business under the Registration of Business Act 1956.             | Register with Companies Commission of Malaysia under the Registration of Business Act 1956                                                    | Need to be registered with the Companies Commissions of Malaysia as a company under the Companies Act 1965                        |
| <b>Number of members</b> | There is only one person.                                                              | The maximum for ordinary partnership is twenty whereas for professional partnership no ceiling number of members.                             | There is no limit to the number of people who can join (except where it is a private company, in which case the maximum is fifty) |



## LEGAL ASPECTS OF BUSINESS ENTITIES

### Business Entities

| Characteristics | Sole proprietorship                                                          | Partnership                                                                                          | Company                                                                                                                                                                                                |
|-----------------|------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Constitution    | No agreement is necessary.                                                   | May be formed orally in writing                                                                      | Must be constituted in writing, for example by a Memorandum and Articles of Association                                                                                                                |
| Liability       | May withdraw capital. The company's liability to its creditors is limitless. | Partners may withdraw capital but their liability for the firm's debt to its creditors are unlimited | Capital subscribed by the members for their shares cannot ordinary be returned to them but ( in a limited company) Once they own fully paid shares, they are no longer liable for the company's debts. |
| Dissolution     | May be dissolved informally by the sole-proprietor himself.                  | Partnership may be dissolved informally or by agreement of the partners.                             | Dissolved by winding up and liquidation which is a format procedure                                                                                                                                    |



# LEGAL ASPECTS OF BUSINESS ENTITIES

## Rights and Duties

Rights and duties of partners

Section 26 PA 1961

a. Each partner entitled to share equally in the capital and profits.

b. Every partner must be indemnified by the firm for payments made and personal liabilities incurred by him.

c. A partner is entitled to interest at the rate of 8% per annum from the date of the payment or advance.

d. A partner is not entitled to interest on the capital he contributed before the profits ascertain.

e. Every partner has the right to participate in the management of the partnership.

f. For operating in the partnership business, no partner shall be entitled to remuneration.

g. Without the permission of all existing partners, no one can be introduced as a partner.

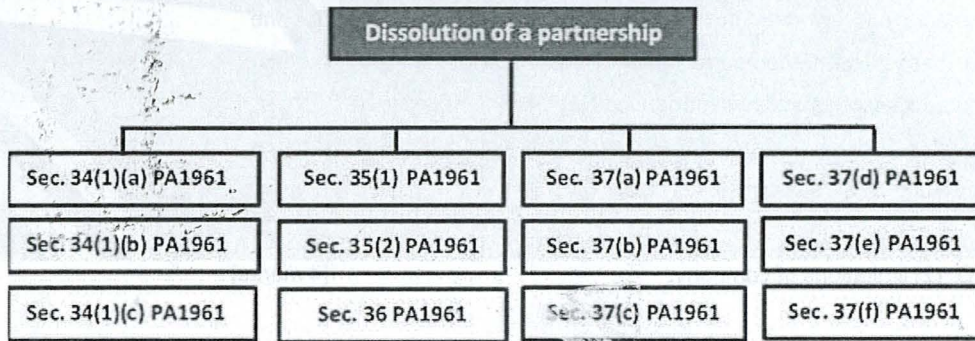
h. Any differences arising as to ordinary matters connected with the partnership may be decided by a majority of the partners, but without the permission of all existing partners, there is no changes to the nature of the partnership firm may be made.

i. The partnership books must be stored at the business partnership's location, and each partner has the right to see and copy any of them.



# LEGAL ASPECTS OF BUSINESS ENTITIES

## Dissolution



At the end of this topic students are able to:

1. Ascertain nature of agency

2. Discuss types of agency

3. Demonstrate the relationship between agency and partnership

4. Explain the legal consequences of agency and partnership

## QUESTIONS

### QUESTION 1

- (a) Munirah and Moli are partners in a registered business of Kedai Komputer Bersatu. After one year carrying out the business in selling computer, Munirah would like to change the nature of business into handphone accessories and has introduced Nabil as the new partner.

Moli disagree with Munirah's decision and would like to seek your justification on this matter.

Refer to the Partnership Act of 1961 state the justification.

[7 marks]

- (b) Identify and explain **TWO (2)** limitations of company.

[4 marks]

- (c) Describe **THREE (3)** ways in which a partnership may be dissolved.

[9 marks]

- (d) Interpret any **FIVE (5)** characteristics of partnership.

[10marks]

### QUESTION 2

- (a) Explain **FIVE (5)** differences between sole proprietorship and partnership.

[10marks]

- (b) Kak Yaa and Miss Keen are two talented and brilliant inventors of robotic surgery. They have created a product that they want to sell. They were advised to form a partnership. Kak Yaa and Miss Keen seek for your advice on the definition of a partnership and describe **TWO (2)** advantages of the business.

[4 marks]

### QUESTION 3

State the legal principles relating to the following regarding partnership.

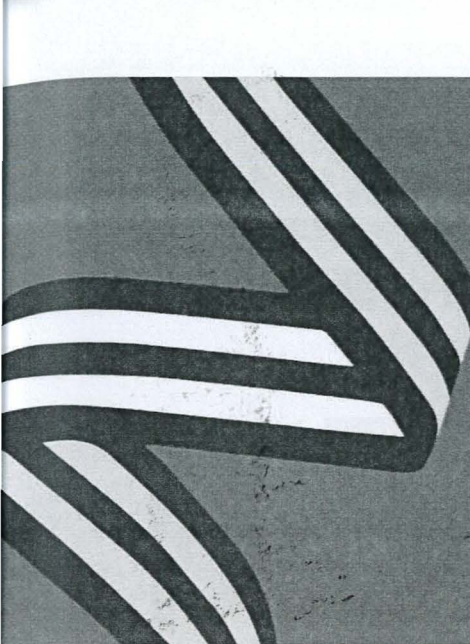
[6 marks]

- The minimum and maximum numbers of partners in the firm
- The registrations of the firms
- Liability of partners

### QUESTION 4

Explain **FIVE (5)** rules that govern the relationship between partners in the absence of partnership agreement.

[6 marks]



## CHAPTER 3

### AGENCY

At the end of this topic students are able :

- Ascertain nature of agency
- Discuss types of agency
- Demonstrate the relationship between principals and agents
- Outline termination of agency



## AGENCY

### DEFINITION

#### AGENCY

Section 136 CA1950

#### PRINCIPAL

Section 135 CA1950

#### AGENT

Section 135 CA1950

### TYPES OF AGENCY BY FORMATION

#### Express appointment

Section 140 CA 1950

Case: Bank Bumiputra Malaysia Bhd v Henry Ginai Anak Langgie [1990]

#### Implied appointment

Section 140 CA 1950

Case: Chan Yin Tee v William Jacks & Co (Malaya) Ltd [1964]

#### Ratification

Section 149 CA 1950

Case: Keighley Maxsted & Co v Durant [1901]

#### Necessity

Section 142 CA 1950

Case: Great Northern Railway Company v Swaffield [1874]

#### Estoppel

Section 190 CA 1950

Case: Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd [1964]



## AGENCY

### Types of Agent by Function

#### TYPES OF AGENT BY FUNCTION

**BROKER** – an agent who is engaged to make contracts between two principals engaged in some aspect of trade, commerce or navigation.

**FACTOR** – an agent who has more extensive powers to act for a principal than a broker possessed.

**A DEL CREDERE** – an agent who assumes a super-added duty to ensure the principal is paid by the third party.

**POWER OF ATTORNEY** – legal instruments under which principals

**COMMISSION AGENT** – an agent appointed by a principal is paid by third party

### TYPES OF AGENT BY AUTHORITY

**Actual**  
Orally  
In writing

**Apparent**  
From the circumstances of the case



## AGENCY

### Duties and Rights of Agent

#### DUTIES AND RIGHTS OF AN AGENT TOWARDS HIS PRINCIPAL.

Agent's duty in conducting principal's business.

Section 164 CA 1950

Case: *Turpin v Bilton* (1843)

Skill in diligence required from agent.

Section 165 CA 1950

Case: *Keppel v Wheeler* [1927]

Agent's account to render proper accounts to his principal on demand.

Section 166 CA 1950

Case: *Foley v Hill*

Agent's duty to communicate with principal.

Section 167 CA 1950

Case: *Springer v Great Western Railway* [1921]

Right of principal when agent deals, on his own account, in business of agency without principal's consent

Sections 168 CA 1950

Case: *Andrew v Ramsey & Co* [1903]

Principal's right to benefit gained by agent dealing on his own account in business or agency.

Section 169 CA 1950

Agent's right of retainer out of sums received on principal's account.

Section 170 CA 1950

Agent's duty to pay sums received on behalf of the principal.

**Sections 171 CA 1950**

Case: *Mahesan v Malaysian Government Officers Co- Operative Housing Society Ltd* [1978]

Delegatus non proles delegare

Section 143 CA 1950



## AGENCY

### Duties of Principals

#### DUTIES AND RIGHTS OF PRINCIPAL TOWARDS HIS AGENT

To indemnify and reimburse the agent.  
Section 175 CA 1950

To indemnify and reimburse the agent.  
Section 175 CA 1950  
Section 176 CA 1950  
Section 178 CA 1950

#### EXCEPTION

Section 177 CA 1950 – Non-liability of employer of agent to do a criminal act.

#### Termination of agency

##### Section 154 CA1950

When the business of agency is completed  
By the expiration period by both parties  
By death of agent or principle  
By subsequent insanity of the agent or principal  
By bankrupt of the principal

##### Section 159 CA1950

By the principal revoking the agent's authority  
By the agent's renunciation

## QUESTIONS

### QUESTION 1

Ms. Salina, requested Ms. Malina to hunt for a piece of land on which to build a factory. Ms. Malina has been informed she will be given a 1% commission. Mrs. Salina's budget was RM 800,000. Ms. Malina discovered a good piece of land for RM 700,000. Ms. Salina was informed that the land was for sale for RM 800,000 by Ms. Malina. Without Ms. Salina knowledge, Ms. Malina arranged with the seller to give her the extra RM100,000.

- |                            |           |
|----------------------------|-----------|
| i. The issue               | (2 marks) |
| ii. The relevant provision | (4 marks) |
| iii. Suitable case         | (6 marks) |
| iv. Conclusion             | (3marks)  |

### QUESTION 2

According to the Contract Act of 1950, an agent has **FIVE (5)** obligations to the principal.

(5 marks)

### QUESTION 3

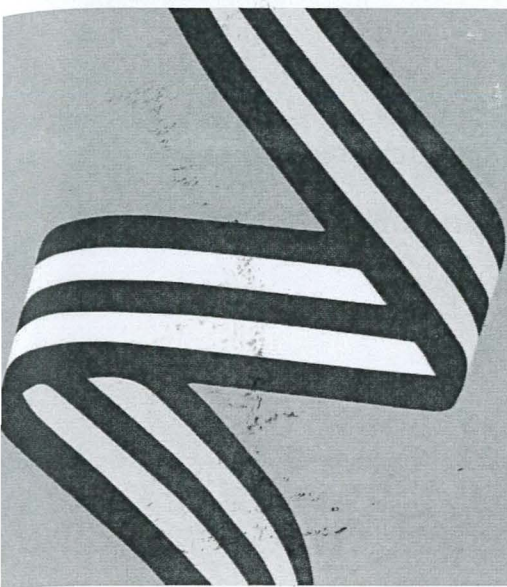
Suzie was instructed by his principle Lusie to find a landed house within Nilai for a price not more than RM500,000. Suzie found a condominium of RM600,000 in Shah Alam and without telling Lusie, Suzie agreed with the seller, Mr Lim by paying a deposit of RM 10,000,00.

- |                                                                                                 |           |
|-------------------------------------------------------------------------------------------------|-----------|
| i. Identify the breach of duties committed by Suzie in the above situation.                     | (4 marks) |
| ii. Recognize the liability of Suzie as an agent in the above situation.                        | (4 marks) |
| iii. Explain whether Lusie has the right to reject the contract with Mr Lim in above situation. | (2 marks) |

### QUESTION 4

Describe **THREE (3)** conditions in which ratification can be made.

(3 marks)



## CHAPTER 5

### SALES OF GOODS

At the end of this topic students are able :

- Discuss the nature of the sale of goods
- Apply implied terms relating to the sale of goods contract
- Discuss transfer of property and title under sale of goods
- Ascertain protections to buyers and owners
- Outline breach of contract and remedies of contract of sale



# SALES OF GOODS

## DEFINITION

### CONTRACT OF SALE

Section 4(1) SOGA1957

### GOODS

Section 2 SOGA1957

Classification of good:

Existing

Future

Specific

Unascertained

Ascertained

### PRICE

Section 9 SOGA1957

### Contract of sale

Section 4(1) SOGA1957

There must be  
goods, money, transfer of property

### Agreement to sell

Section 4(4) SOGA1957

A contract the goods is transferred  
from the seller to the buyer



## SALES OF GOODS

### Implied Conditions

#### IMPLIED CONDITIONS

Section 12(2) SOGA 1957

#### Implied condition as to title

Section 14 (a) SOGA 1957

Case: *Rowland v Divall* [1922]

#### Implied condition that in a sale of goods by descriptions

Section 15 SOGA 1957

Case: *Beale v Taylor* [1967]

#### Goods must be reasonably fit for purpose for which the buyer wants them

Section 16 (1)(a) SOGA 1957

Case: *Griffith v Peter Conway* [1939]

#### Goods must be of merchantable quality

Section 16(1)(b) SOGA 1957

Case: *Wilson v Ricket, Cockerall & Co Ltd* [1954]

#### Implied conditions for the sale of goods by sample

Section 17 SOGA 1957

Case: *Godley v Perry* [1960]



## SALES OF GOODS

### Implied Warranties

#### IMPLIED WARRANTIES

Section 12(3) SOGA 1957

The buyer shall have quiet possession of the goods

Section 14(b) SOGA 1957

Case: *Microbeads AG v. Vinhurst Road Markings Ltd* [1975]

The goods are unencumbered

Section 14(c) SOGA 1957

Case: *Steinke v. Edwards* [1935]



## SALES OF GOODS

### Transfer of Property

#### Transfer of property and title of the goods

Section 18 SOGA1957

Section 19 SOGA1957

Section 20 SOGA1957

Section 21 SOGA1957

Section 22 SOGA1957

#### CAVEAT EMPTOR RULE AND ITS EXCEPTIONS

Doctrine of Caveat Emptor: the buyer could not recover from the seller for defects on the property that rendered the property unfit for ordinary purposes. Exceptions:

- Buyer makes known to seller the particular purpose for which the goods are required to show that he relies on the seller's skill and judgment.
- The goods are of description which during the seller's business to supply.

Section 16 (1)(a) SOGA 1957

Case: *Griffith v Peter Conway* [1939]

Consumer is a lady who goes into a lady's shop and asks for a tweed jacket. She is recommended a Harris Tweed jacket. This is very rough tweed. She buys it and gets a case of dermatitis. There is nothing wrong with the jacket. It is the customer's skin that is very delicate. The rough material on her skin gave her dermatitis. The defence was that if she had told the seller, she had delicate skin, they would not have recommended that tweed.



## SALES OF GOODS

### Nemo Dat Quod Non Habet

#### Principle of 'Nemo Dat Quod Non Habet'

##### Section 27 SOGA1957



Estoppel

Section 27 SOGA1957



Sale by mercantile agent

Section 27 SOGA 1957



Sale by one of joint owners

Section 28 SOGA 1957



Sale under a voidable title

Section 29 SOGA 1957



Sale by a seller in possession after sale

Section 30(1) SOGA 1957



Sale by a buyer in possession

Section 30(2) SOGA 1957

#### Remedies for unpaid seller

Definition Unpaid seller ; Section 45 SOGA1957

A lien on the goods for the price

- Section 46(1)(a) SOGA1957
- Section 47 SOGA1957

A right of stopping the goods in transit in the case of buyer's

- Section 46(1)(b) SOGA1957
- Section 50 SOGA1957

A right to resale

- Section 46(1)(c) SOGA1957

#### Remedies for buyers

Damages: Section 57 SOGA 1957

Specific performance: Section 58 SOGA 1957



## QUESTIONS

### QUESTION 1

Pn. Mona has to attend an International Law Conference on Marriage & Divorce which will be held in Dubai, UAE. Before her departure, she handed over her Honda Civic 2.0 together with the registration book to her cousin, En. Jaafar, who is a secondhand dealer for safekeeping. During her absence, En. Jaafar who was in need of money, sold Pn. Mona's car to En. Zarul for only RM30,000. Pn. Mona was so upset when she knew about this and wanted to take legal action against En. Zarul to get her car back. Thus, based on the situation, you are required to:

- a) the issue arises in the situation. [2 marks]
- b) the relevant provision of the law. [4 marks]
- c) the relevant case that describe the above situation. [6 marks]
- d) the conclusion of the above issue. [3 marks]

### QUESTION 2

Discuss **FIVE (5)** exceptions to the rule by referring to the Sale of Goods Act 1957.

[15 marks]

### QUESTION 3

Jane bought a car, Proton Primax from Zalia and has been using it for several months. Jane has discovered that Zalia did not have the legal rights to the car. The car is still the property of Shahrul. Jane had to give the car to Shahrul and claim the money that has been paid. Zalia refused to hand the money to Jane. You are required to:

- a) Interpret an issue arises in the situation above. [2 marks]
- b) Give the relevant provision under Sale of Goods Act 1957. [4 marks]
- c) Apply **ONE (1)** relevant case to support your answer. [6 marks]
- d) Conclude your answer. [3 marks]

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### Additional:

Aiman Nariman Mohd Sulaiman et. al. (2011). *Corporations and Partnership in Malaysia The Netherlands: Kluwer Law International BV*.  
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### Related Acts:

*Companies Act 1965*

*Contract Act 1950 (Revised 1974)*

*Partnership Act 1961 (Revised 1974) Civil Law Act 1956*

*Sale of Goods Act 1957*

# ANSWER

## CHAPTER 1

- |      |       |
|------|-------|
| 1. C | 6. A  |
| 2. B | 7. A  |
| 3. D | 8. D  |
| 4. C | 9. D  |
| 5. D | 10. B |

## CHAPTER 2

### Section A

- |      |       |
|------|-------|
| 1. A | 6. A  |
| 2. A | 7. D  |
| 3. D | 8. B  |
| 4. C | 9. C  |
| 5. C | 10. C |

### Section B

#### Q1(a)

- i. Whether the contract between Sheikh and Tan & Shazwan Cycle Sdn Bhd valid?
- ii. Section 11 Contract Act 1950
- iii. Case: Tan Hee Juan v Teh Boon Keat (1934) (with explanation case)
- iv. There is no valid contract exist between Sheikh and Tan & Shazwan Cycle Sdn Bhd because Sheikh are minor.

#### Q1(b)

- i. Coercion - Section 15 CA1950 + Explanation
- ii. Mistaken - Section 21 CA1950 + Explanation
- iii. Fraud - Section 17 CA1950 + Explanation
- iv. Undue Influence - Section 16 CA1950 + Explanation
- v. Misrepresentation - Section 18 CA1950 + Explanation

## ANSWER

### Q2 (a)

- i. Advertisement  
Case: Coelho v The Public Service Commission (1964) + Explanation
- ii. Self-service outlet  
Case: Pharmaceutical Society of Great Britain v Boots Cash Chemist (1953) + Explanation
- iii. Auction  
Case: Harrison v Nickerson (1873) + Explanation
- iv. Exhibition on the shop window  
Case: Fisher v Bell (1961) + Explanation

### Q2 (b)

- i. Section 15 Contract Act 1950 - Coercion
- ii. Section 16 Contract Act 1950 - Undue influence
- iii. Section 17 Contract Act 1950 - Fraud
- iv. Section 18 Contract Act 1950 - Misrepresentation
- v. Section 21, 22, 23 Contract Act 1950 - Mistake

## CHAPTER 3

### Q1(a)

Munirah cannot change the nature of partnership business without permission all partners refer to sec 26 (g) Partnership Act 1961 and Munirah cannot bring Nabil as a new partner without permission all partners refer to sec 26(h) Partnership Act 1961.

Section 26 (g) Partnership Act 1961. Without the permission of all existing partners, no one can be introduced as a partner.

Section 26 (h) Partnership Act 1961. Any differences arising as to ordinary matters connected with the partnership may be decided by a majority of the partners, but without the permission of all existing partners, there are no changes to the nature of the partnership firm may be made.

### Q1(b)

Limitation of company

- i. High set-up costs
- ii. High taxation

### Q1(c)

- i. Dissolution by expiration or notice – section 34 Partnership Act 1961 (explanation)
- ii. Dissolution by bankruptcy, death or charge – section 35 (1) (2) Partnership Act 1961 (explanation)
- iii. Dissolution by illegality of partnership – section 36 Partnership Act 1961 (explanation)

## ANSWER

Q1(d)

- i. Formation - Two or more persons carrying on business with a view of profit.
- ii. Registration - Register with Companies Commission of Malaysia under the Registration of Business Act 1956
- iii. Number of partners - The maximum for an ordinary partnership is twenty whereas for professional partnership no ceiling number of members.
- iv. Constitution - May be formed orally in writing
- v. Dissolution - Partnership may be dissolved informally or by agreement of the partners

Q2(a)

| Characteristics          | Sole proprietorship                                                                    | Partnership                                                                                                                                    |
|--------------------------|----------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Formation</b>         | Individual in business on his own                                                      | Two or more persons carrying on business with a view of profit.                                                                                |
| <b>Management</b>        | Owns and manages the firm himself and can employ employees to manage the form for him. | Partners are agents of the firm for carrying on its business in the ordinary course of business and are generally entitled to manage the firm. |
| <b>Number of members</b> | There is only one person.                                                              | The maximum for ordinary partnership is twenty whereas for professional partnership no ceiling number of members.                              |
| <b>Constitution</b>      | No agreement is necessary.                                                             | May be formed orally in writing                                                                                                                |
| <b>Dissolution</b>       | May be dissolved informally by the sole-proprietor himself.                            | Partnership may be dissolved informally or by agreement of the partners.                                                                       |

## ANSWER

### Q2(b)

- i. Partnership definition - Sec 3(1) Partnership Act 1961 the relation, which subsists between persons carrying on a business in common with a view of profit
- ii. Advantages
  - a. sharing the skills, experiences and burden between partners
  - b. gain more capital among partners
  - c. partnership may be formed informally and they need not to supply information to the public.

### Q3

- i. The maximum for ordinary partnership is twenty whereas for professional partnership no ceiling number of members
- ii. Register with Companies Commission of Malaysia under the Registration of Business Act 1956
- iii. Partners may withdraw capital but their liability for the firm's debt to its creditors is unlimited

### Q4

Right and duties of a partner according to Partnership Act 1961 – Section 26 a – i due to absence of partnership agreement.

## CHAPTER 4

### Q1

- i. Whether Malina entitled to make a secret commission /profit?
- ii. Section 168 Contract Act 1950 + expansion
- iii. Andrew v Ramsay + relevant facts case.
- iv. Malina cannot make any secret commission/profit without the knowledge of her principle.



## ANSWER

Q2

FIVE (5) obligations agents to the principal

- i. Agent's duty in conducting principal's business
- ii. Skill in diligence required from agent
- iii. Agent's account to render proper accounts to his principal on demand
- iv. Agent's duty to communicate with principal
- v. Right of principal when agent deals, on his own account, in business of agency without principal's consent

Q3

- i. Suzie does not follow the principal instruction
- ii. Suzie has exceeded his duty as an agent to her principal Lusie.
- iii. Lusie has the right to reject the contract or ratify the act of her agent.

Q4

- i. The agent must purport to act on behalf of the principal;
- ii. The principal must be in existence at the time of the contract
- iii. The principal must have the capacity to enter into the contract.

## CHAPTER 5

Q1

- i. Whether Pn. Mona can take legal action against En. Jaafar since he has sold Pn. Mona's car?
- ii. Section 14(a) of the SOGA 1957 and its explanation
- iii. Rowland v Divall - together with the facts of the case and the court held
- iv. Pn. Mona may take a legal action against En. Jaafar. Since En. Jaafar has sold Pn. Mona's car, without her permission (the car is not En. Jaafar title). Thus, Pn. Mona could recover the car from En. Zarul, since the transaction is illegal, and furthermore En. Zarul may recover the full price of the car from En. Jaafar.

## ANSWER

Q2

- i. Estoppels
- ii. Sale by mercantile agent
- iii. Sale by one of the joint owners
- iv. Sale under a voidable title
- v. Sale by a seller in possession after sale
- vi. Sale by a buyer in possession

Q3

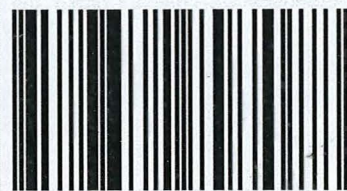
- i. Whether the contract between Zalia and Jane can be repudiated ?
- ii. Section 14 Sale of Goods Act 1957 + explanation
- iii. Rowland v Divall + explanation
- iv. The contract between Jane and Zalia can be repudiated. As a buyer, Jane is entitled to repudiate the contract and recover the price that she paid to Zalia.

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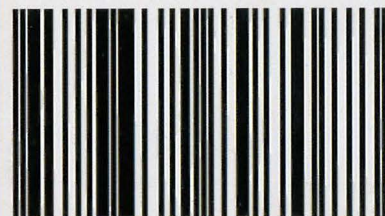


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