

DPB30073

GUIDELINE BUSINESS LAW FOR POLYTECHNIC

NOORJI MOHD JAPAR
ZURYA ALIAS

The background of the cover features a stack of books, with the pages of the top book fanned out. The books are set against a blue and white geometric background that transitions from a solid blue at the top to a white at the bottom, with a diagonal line separating the two colors.



DPB30073 BUSINESS LAW

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We hereby declare that this module is our original work. To the best of our knowledge it contains no materials previously written or published by another person. However, if there is any, due acknowledgement and credit are mentioned accordingly in the e-book.

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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 has successfully produced. We, Noorji Mohd Japar and Zurya Alias 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 guidelines and cases in the Business Law course at polytechnic.

Finally, it is hoped that the student will gain the required understanding of Business Law courses and easy to catch cases relate to the syllabus



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 assists 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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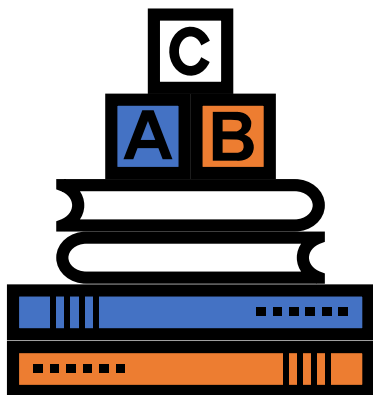
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CHAPTER 1

INTRODUCTION TO MALAYSIAN LEGAL PRINCIPLES

At the end of this topic students are able :



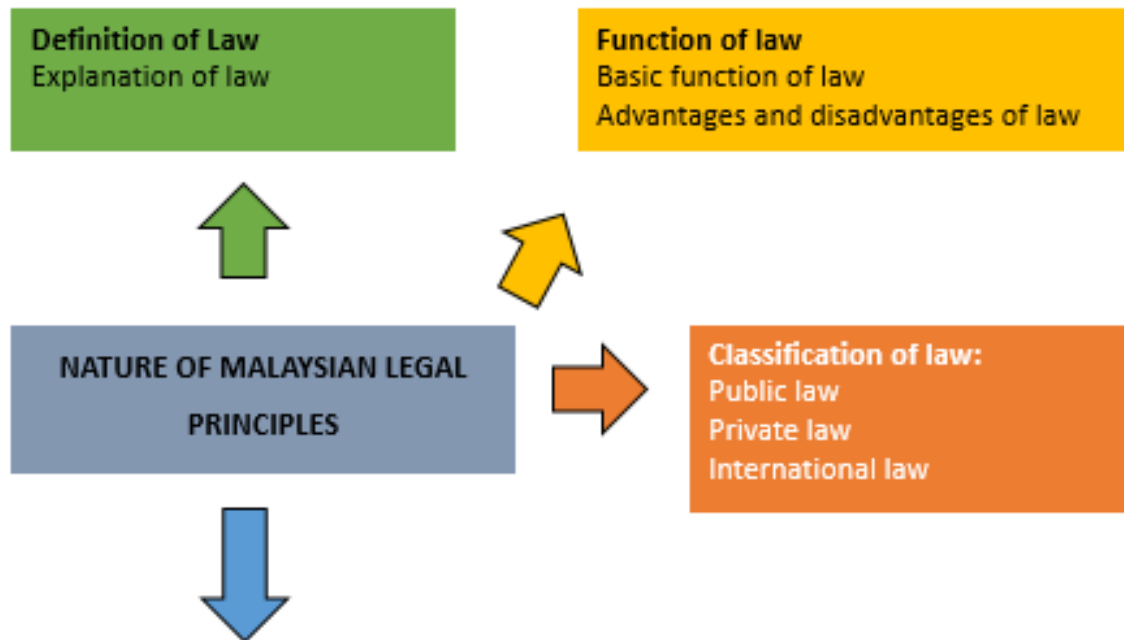
1

Explain the nature of Malaysian legal principles

2

Outline Malaysian judicial system

INTRODUCTION TO MALAYSIAN LEGAL PRINCIPLES



Sources of law in Malaysia

Written Law

Section 4(1) Federal Constitution

Federal Constitution: Act, Enactment, Ordinance

State Constitution; Law passed legislative assembly

Legislation; Parliament and State Legislative

Subsidiary Legislation; Examples of subsidiary legislation, Advantages and disadvantages of subsidiary legislation.

Unwritten law (English law, customary law, judge-made law)

English Law/ Common Law; Section 3 and Section 5 Undang-undang Sivil 1956

Condition to apply English Law; The absence of local law in regards to the legal issue in concern.

Only if it is suited to the local circumstances:

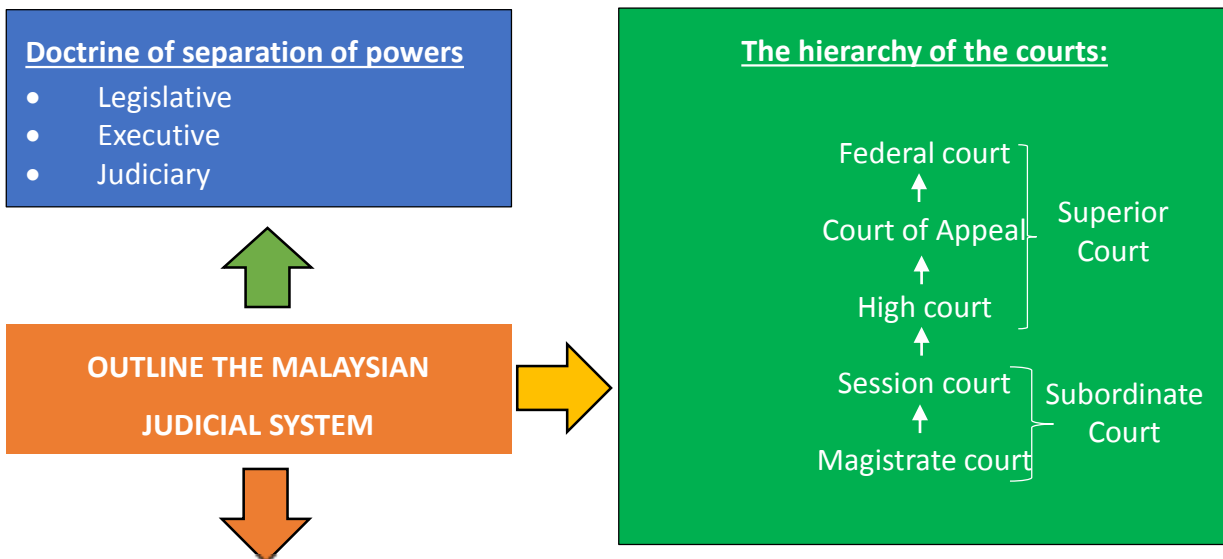
Customs / Native law; Law regulates local inhabitants usually based on race and ethics,

Examples: Malay would involve Adat Perpatih / Temenggung, Applying land and family matters.

Islamic law: Applicable to Muslim only and matters govern to Muslim affairs such as marriage, custody, divorce and inheritance, Administered by the Shariah Court, Head of Muslim religion (YDPA / Sultan)

INTRODUCTION TO MALAYSIAN LEGAL PRINCIPLES:

The Malaysian Judicial System



Synopsis of the Courts Hierarchy					
	Federal court	The Court of Appeal	High court	The Sessions Court	Magistrates' Court
Jurisdiction	To hear civil and criminal appeals from Courts of Appeals.	Hear both Civil and Criminal and 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 In civil matters, it has jurisdiction to try all actions and suits of a civil nature where the amount of dispute the subject matter does not exceed RM1,000,00.00*5 subsequent to (Amendment) Act 2010	Deals with minor civil and criminal cases. 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 RM100,000.00

INTRODUCTION TO MALAYSIAN LEGAL PRINCIPLES:

The Malaysian Judicial System

Synopsis of Courts Hierarchy					
	The Federal court	The Court of Appeal	High court	Sessions Court	The Magistrates' Court
Judges				S 59 Subordinate Court Act 1948	<p>The court is presided over by a magistrate.</p> <p>S 35 if Subordinate Court Act 1948.</p> <p>i. Try all offence maximum term of punishment with exceed 10year imprisonment.</p> <p>ii. All offence punishable by fine only.</p> <p>The First class Magistrate:</p> <p>i) Five years imprisonment</p> <p>ii) Fine of RM10,000.00</p> <p>iii) 12 strokes whipping (up to combination of any).</p> <p>The Second Class Magistrate:</p> <p>i. Not exceed more than 6 months imprisonment.</p> <p>ii. Five not more than RM1,000.00</p> <p>iii. Any combining sentence</p>

INTRODUCTION TO MALAYSIAN LEGAL PRINCIPLES:

Malaysian Judicial System

Synopsis of The Courts Hierarchy					
	The Federal court	The Court of Appeal	High court	The Sessions Court	The Magistrates' Court
Sentencing	The court has: Chief Justice, President of the Court of Appeal Chief Judge of High Court Malaya Chief Judge of High Court Sabah& Sarawak 6 federal court judges	The court has: 1 President and 15 other judges Appointed by YDPA.	The court has: 2 chief judges		

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, common law
 - B. Written, unwritten law
 - C. Historical, legal sources
 - D. Judicial decisions, 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 the government and individual ?
 - 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. The Session Court
 - B. The High Court
 - C. The Court of appeal
 - D. The Federal court

7. Name the highest court in Malaysia.
 - A. Federal Court
 - B. High Court
 - C. Industrial Court
 - D. The Court of Appeal

8. The jurisdiction of the High Court as follows **EXCEPT**:
 - A. Appeal jurisdiction
 - B. Origin 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, 000.00
 - B. RM 100,000.00
 - C. RM 250,000.00
 - D. RM 1,000,000.00

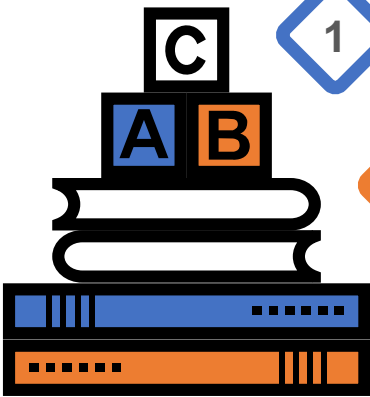
10. The high court has _____ judges.
 - A. One
 - B. Two
 - C. Three
 - D. No



CHAPTER 2

LAW OF CONTRACT

At the end of this topic, students are able :

- 
- 1 Define contract
 - 2 Apply the elements that form a valid contract and terms in contract
 - 3 Ascertain effects of contract
 - 4 Explain discharge of contract
 - 5 Ascertain remedies for breach of contract

THE LAW OF CONTRACT

Definition the contract
Section 2(h) CA 1950

Element of Contract

Offer

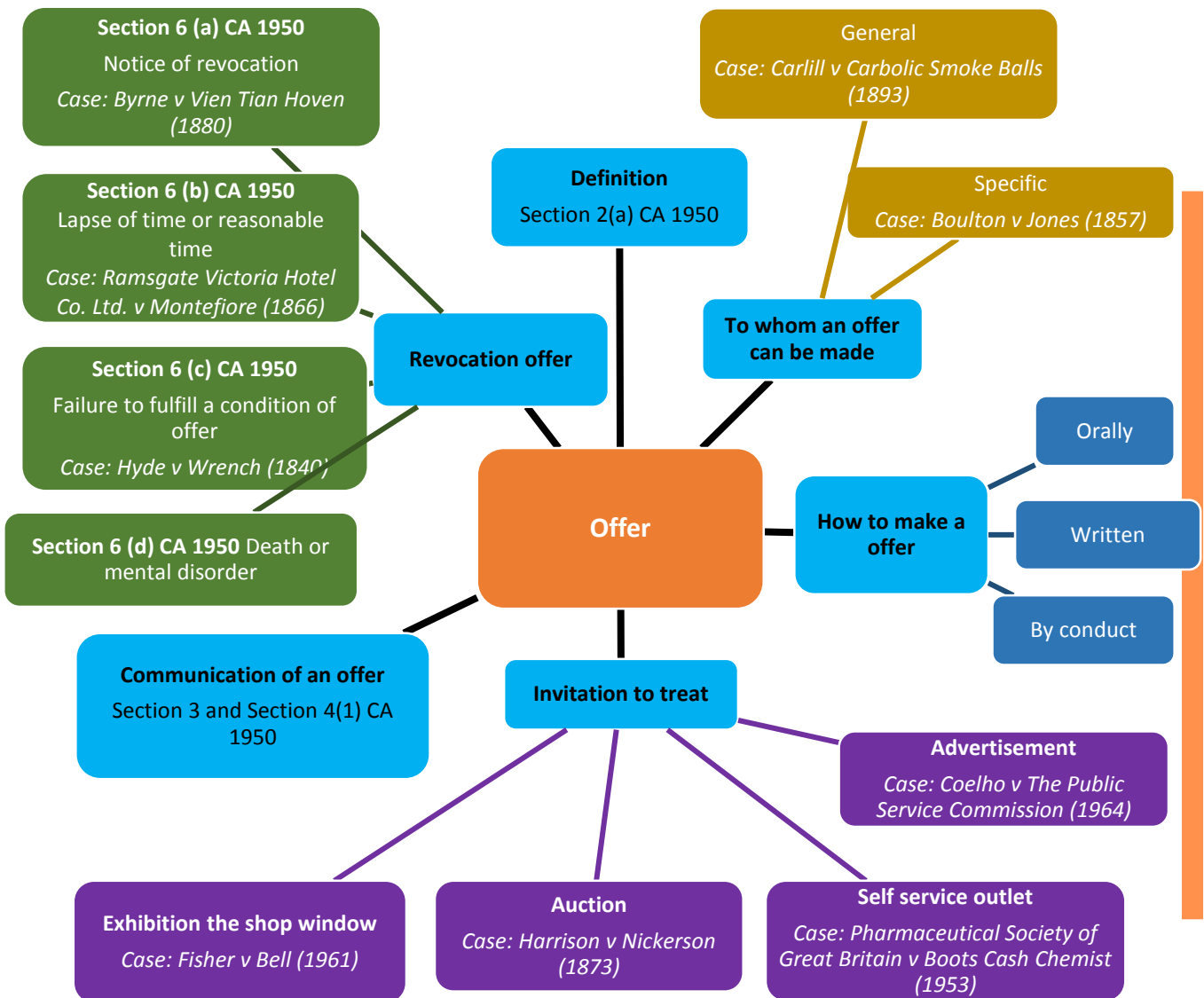
Acceptance

Consideration

Intention

Capacity

Certainty



LAW OF CONTRACT:

The element of Contract; Offer

Case: Boulton v Jones (1857)

Boulton had taken over the business of one Brocklehurst, with whom Jones had previous dealings. Jones sent an order for goods to Brocklehurst, which Boulton supplied without informing Jones that the business had changed hands. When Jones learned that the goods were not from Brocklehurst, he refused to pay for it and was sued by Boulton over the price.

Held: Jones is not liable to pay for the good. It is a rule of law that if a person intends to contract with A, then B cannot give himself any right under it.

Case: Carlill v Carbolic Smoke Balls (1893)

Carbolic Smoke Ball advertises that they will be offering £ 100 to anyone still suffering from influenza after using certain medications for a fixed period of time. Plaintiff duly used it but was infected with influenza. Plaintiff then demanded money.

Held: Plaintiff is entitled to £ 100 as he accepts an offer made to the rest of the world

Case: Coelho v The Public Service Commission (1964)

The applicant has applied for the position in response to a newspaper advertisement. He was then told that his application had been accepted. Subsequently, the Public Service Commission sought to terminate his employment on the grounds that he was appointed on probation. The applicant then applied to the court to order the annulment of the decision.

The High Court ruled, the advertisement was an invitation for a qualified person to file an application and the resulting results were offered.

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

Defendant runs a self-service store where drugs and non-prescription drugs, most of which are listed on the List of Poisons provided under the Pharmacy and Poisons Act of 1933, are sold. These items are displayed on open shelves where they can be selected by customers, placed in shopping carts, and taken to the place where they will be paid. The manufacture is operated by a registered pharmacist. However, the claimant brought proceedings against the defendant for breach of section 18(1) of the **Pharmacy and Poisons Act 1933**, which requires the supervision of a registered pharmacist for the sale of any item in the Poisons List.

Held: The Court of Appeal held that the defendant was not in breach of the Act, as the contract was completed on payment under the supervision of the pharmacist. The display of the goods on the shelves was not an offer which was accepted when the customer selected the item; rather, the proper construction was that the customer made an offer to the cashier upon arriving at the till, which was accepted when payment was taken.

LAW OF CONTRACT:

Element of Contract; Offer

Case: Harrison v Nickerson (1873)

The defendant advertised that an auction of certain goods would take place at a stated time and place. The plaintiff travelled to the auction only to find that items that he was interested in had been withdrawn. He claimed compensation for breach of contract, arguing that the advertisement constituted an offer, and his travelling to the auction, an acceptance by the conduct.

Held: The advertisement was not an offer, merely a declaration of intention.

Case: Fisher v Bell (1961)

Defendant displayed a flick knife plastered on his shop window with a price tag on it. The statute makes it a criminal offense to 'offer' such a strange knife for sale. His confidence was erased because the items on display in the store were not technical 'offers' but invitations to treats. The court applied the literal rule of statutory interpretation.

Case: Byrne v Van Tienhoven (1880)

The defendant wrote a letter, on October 1, to the plaintiff offering the sale of 1000 boxes of tin plates. The defendant was based in Cardiff and the plaintiff was based in New York, and letters took around 10-11 days to be delivered. The plaintiff received this letter on October 11 and accepted it on the same day by telegram, as well as by letter on October 15. However, on October 8, the defendant sent a letter to the plaintiff which withdrew their offer and this arrived with the plaintiff on October 20. The plaintiff claimed for damages for the non-delivery of the tin plates.

Held: The court held that the withdrawal of the offer was ineffective as the contract was made between the parties on 11 October when the plaintiff accepted the offer in a letter dated 1 October. On this basis, it is assumed that an offer for the sale of goods cannot be withdrawn by simply sending a secondary letter that does not arrive before the first letter has been replied to and received.

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

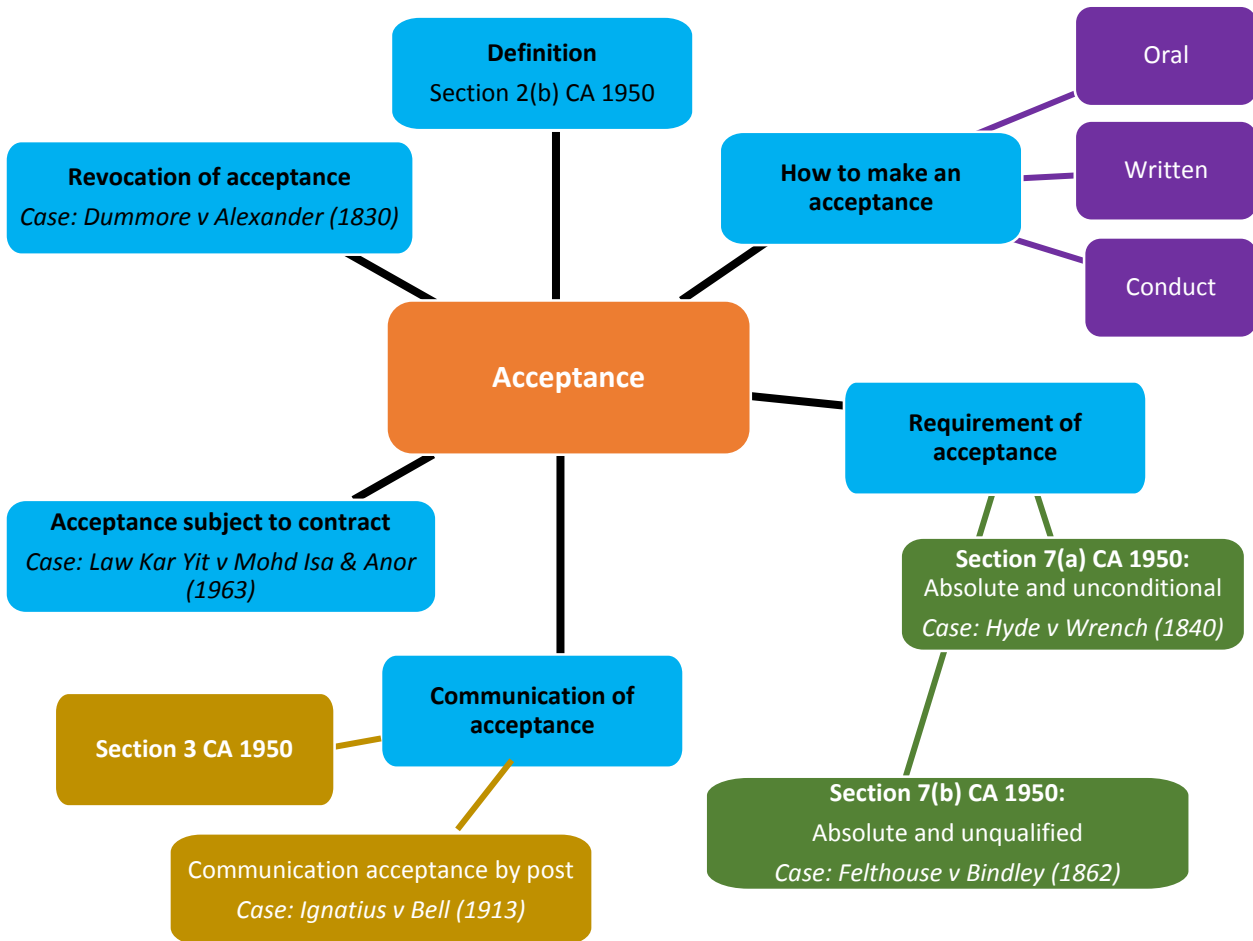
Defendant offered to buy shares in the claimant company at a certain price. Six months later the claimant accepted this offer at a time when the value of the shares was falling. Defendant did not withdraw the offer but refused to execute its sale. The claimant demands action to perform a particular contract. Withheld: The offer is no longer open due to the principal nature of the contract for which the offer expires after a reasonable period of time. Therefore, there is no contract and the action of the claimant for a particular performance is unsuccessful

Case: Hyde v Wrench (1840)

Defendant offered to sell the farm to the plaintiff for £ 1,000. The plaintiff in return offered £ 950 which was rejected by the defendant. Plaintiff then sought to accept the original offer of £ 1,000. Defendant refused to sell to claimant and claimant took action for certain performance. Held: No contract. When a counter offer is made, this will destroy the original offer so that it is no longer open to the recipient to accept.

LAW OF CONTRACT:

Element of Contract: Acceptance



Case: Hyde v Wrench (1840)

The defendant offered to sell a farm to the claimant for £1,000.00. The claimant in reply offered £950 which the defendant refused. The claimant then sought to accept the original offer of £1,000.00. The defendant refused to sell to the claimant and the claimant brought an action for specific performance.

Held: No contract. Where a counter offer is made, this will ruin the original offer so that it is no longer open to the recipient to accept.

Case: Felthouse v Bindley (1862)

A nephew discussed buying a horse from his uncle. He offered to purchase the horse and said if I don't hear from you by the weekend I will consider him mine. The horse was then inadvertently sold at auction. The auctioneer had been asked not to sell the horse but had forgotten. The uncle commenced proceedings against the auctioneer for conversion. The action depended upon whether a valid contract existed between the nephew and the uncle.

Held: There was no contract. You cannot have silence as acceptance.

LAW OF CONTRACT:

Element of Contract; Acceptance

Case: Ignatius v Bell (1913)

Defendant, Bell gave the plaintiff the option to purchase a piece of land provided that the option should be exercised on or before August 20, 1912. Both parties contemplated the use of the posts as means of communication. The plaintiff sent a registered letter on 16 August 1912. Because he was not at home, the defendant only received it on the evening of 25 August.

Held: The court held the contract bound the defendant on 16 August 1912, that is when the plaintiff posted the letter of acceptance. The said option was executed within the specified time.

Case: Law Kar Yit v Mohd Isa & Anor (1963)

The defendant gave an option to plaintiff's agent to buy a piece of land subject to a formal contract to be drawn up and agreed upon the parties and approval by the court. The plaintiff's agent had exercised the option but the Defendant refused to sign the agreement, so the plaintiff sued the defendant.

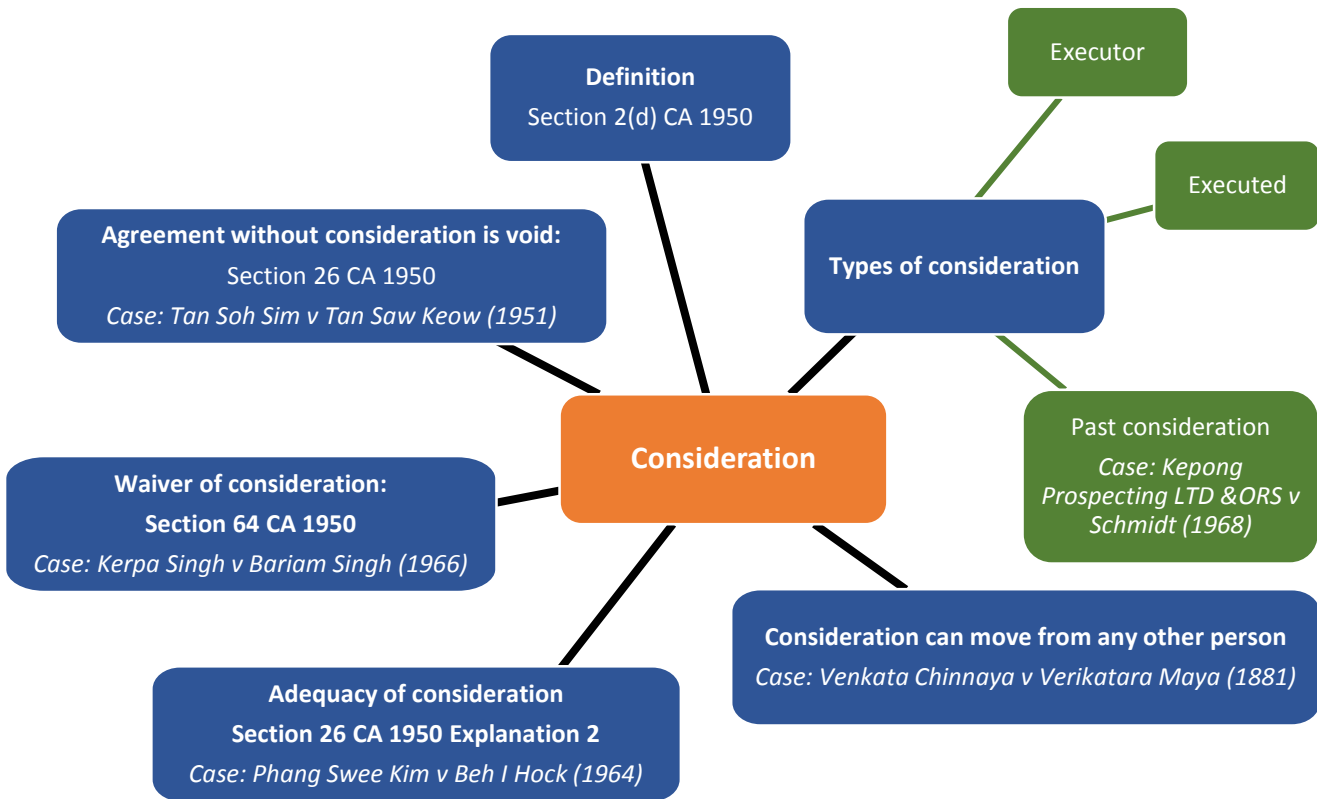
Held: The opinion was conditional upon a formal contract to be drawn up agreed upon the parties and accordingly, there was no concluded contract between the parties.

Case: Dummore v Alexander (1830)

In that celebrated decision, Betty Alexander wished to leave the employment of Lady Agnew. This does not seem to have been because of any difficulties in their relationship; Lady Agnew sought to help her servant by writing to the Countess of Dunmore to ask if she had any need for a servant such as Betty. The Countess then sent a letter to Lady Agnew asking her to engage Betty for her, and Lady Agnew (who was away from home) forwarded that letter to Betty on 5th November. On 6th November, Lady Agnew received another letter from the Countess withdrawing the previous one. Lady Agnew forwarded this letter on by express, with the result that Betty received both letters simultaneously. In an action that Betty brought against the Countess it was ultimately held that there was no contract. Bell's doctrine was invoked on Betty's behalf to argue that the Countess had accepted the servant's offer when transmitting her first letter to Lady Agnew and that the second letter could therefore have no effect.

LAW OF CONTRACT:

Element of Contract; Consideration



Case: Kepong Prospecting LTD &ORS v Schmidt (1968)

Schmidt a consultant engineer has assisted another in obtaining a prospecting permit for mining iron, he helped in the subsequent formation of Kepong Prospecting Ltd and was appointed as it's MD. After the company was formed they entered into an agreement whereby the company undertook and pay 1% of the value of all ore sold from the mining land. This being 'in consideration of the services rendered by the consulting engineer for and on behalf of the company prior to its formation, after incorporation and for future services. Were the services rendered after the incorporation but before the agreement sufficient consideration? This was clearly past consideration.

Held: The Privy Council ruled that it did constitute a valid consideration so that Schmidt was entitled to his claim on the amount.

LAW OF CONTRACT:

Element of Contract; Consideration

Case: Venkata Chinnaya v Verikatara Maya (1881)

A sister agreed to pay an annuity of Rs 653 to her brothers who provided no consideration for the promise.

But on the same day, their mother had given the sister some land stipulating that she must pay the annuity to her brothers. When the sister subsequently failed to pay to fulfill her promise to pay the annuity, her brothers sued her on the promise.

Case: Phang Swee Kim v Beh I Hock (1964)

Respondent sold the land for \$500/- when it was worth more than that. Seller refused to honour promised citing that the price was inadequate for a consideration. Held: The trial court judge held that the agreement was void due to inadequacy of consideration. However, upon appeal to the Federal Court, the decision of the trial judge was reversed and applied explanation 2 and illustration (f) of Section 26.

Case: Kerpa Singh v Bariam Singh (1966)

The respondent owed the appellant RM 8,869.94 under a judgment debt. The respondent's son wrote a letter to the appellant offering RM 4,000 in full satisfaction of the respondent debt. And if the appellant refused to accept, the cheques should be returned to him. The appellant's lawyer having cashed the cheques, proceeded to ask the balance of the debt by taking bankruptcy notice on the respondent

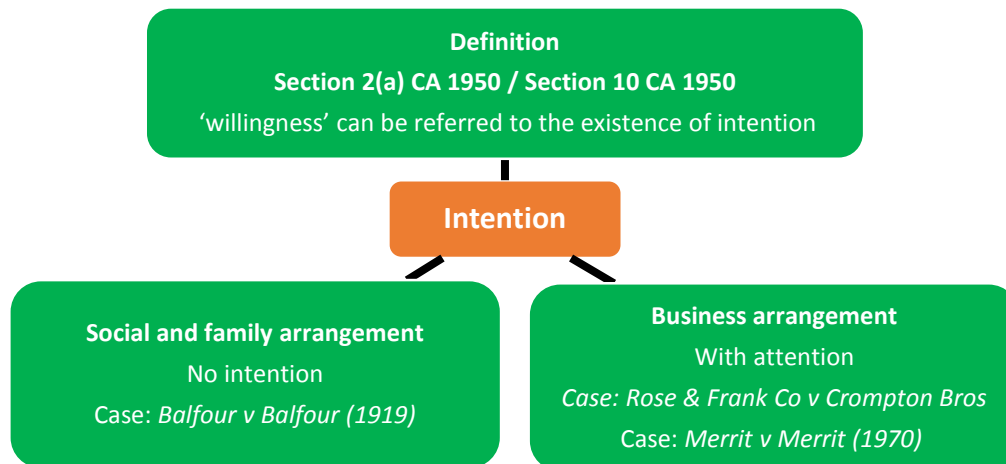
Held: The Federal Court ruled that the acceptance of the cheques from the respondent's son in full satisfaction precluded them from claiming the balance.

Case: Tan Soh Sim v Tan Saw Keow (1951)

In the case of Tan Soh Sim, deceased; Chan Lam Keong & Ors v Tan Saw Keow & Ors (1951), the court held that the validity of consideration depended on natural love and affection between near relations, relationship and nearness depended on the mores of the group to which the parties belong and the circumstances of the particular family.

LAW OF CONTRACT:

Element of Contract; Intention



Case: *Rose & Frank Co v Crompton Bros*

The claimants and defendants entered an agreement for the supply of some carbonized tissue paper. Under the agreement the claimants were to be the defendant's sole agents in the US until March 1920. The contract contains an honorable affirmation clause stating that the agreement is not a formal or legal agreement and will not be subject to the jurisdiction of the courts in the United Kingdom and the US. The defendants terminated the agreement early and the claimants brought an action for breach.

Held: The honourable pledge clause rebutted the presumption which normally exists in commercial agreements that the parties intend to be legally bound by their agreements. The agreement, therefore had no legal effect and was not enforceable by the courts.

Case: *Balfour v Balfour (1919)*

A husband works abroad and agrees to send alimony payments to his wife. At the time of the agreement the couple was happily married. The relationship eventually deteriorated and the husband stopped making payments. The wife tried to enforce the agreement. Held: The agreement was a purely social and domestic agreement and therefore it was presumed that the parties did not intend to be legally bound.

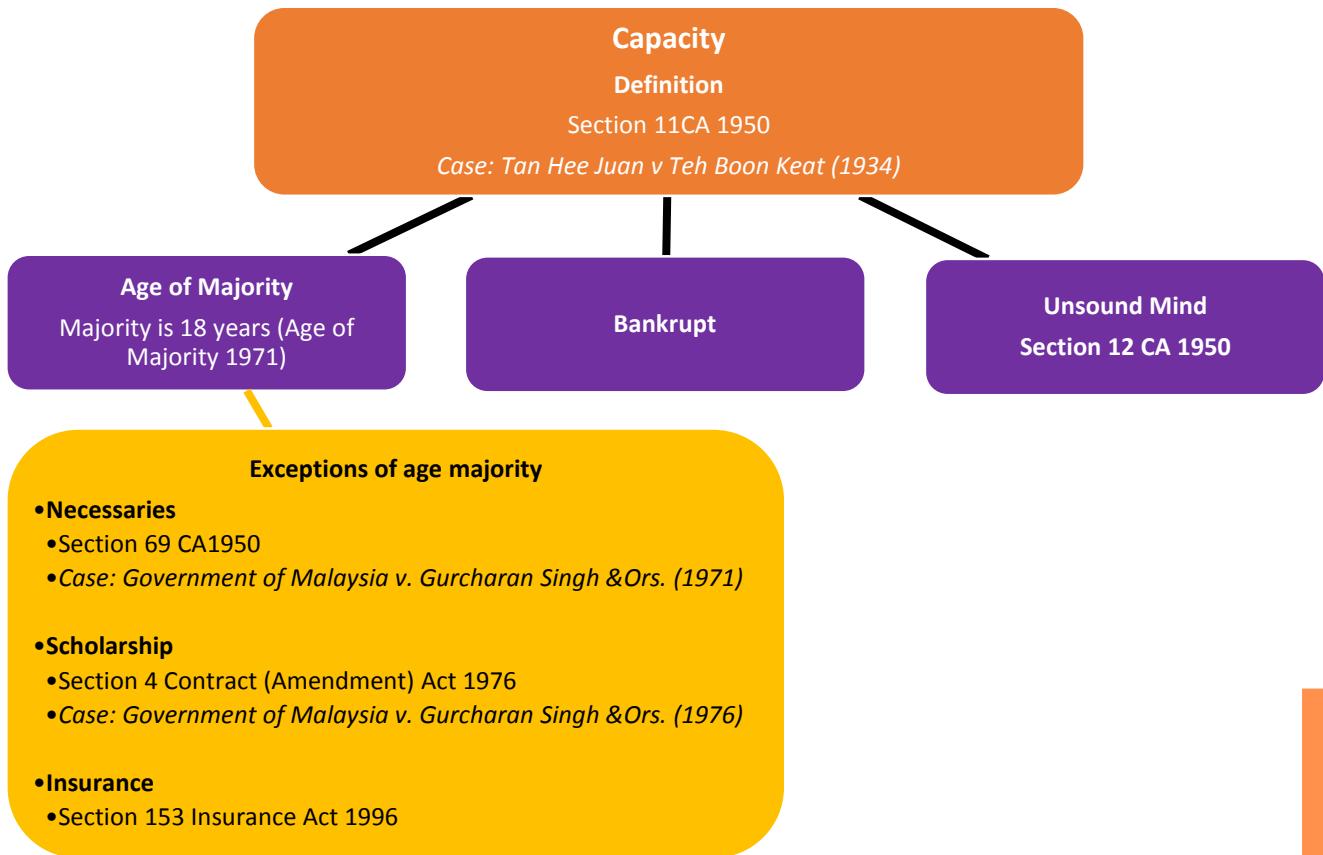
Case: *Merrit v Merrit (1970)*

A husband leaves his wife and goes to live with another woman. Stayed £ 180 in the house co-owned by the couple. The husband signed an agreement whereby he would pay the wife £40 per month to enable her to meet the mortgage payments and if she paid all the charges in connection with the mortgage until it was paid off he would transfer his share of the house to her. When the mortgage was fully paid she brought an action for a declaration that the house belonged to her.

Held: The agreement was binding. The Court of Appeal distinguished the case of *Balfour v Balfour* on the grounds that the parties were separated. Where a married couple has separated, it is generally assumed that they are meant to be bound by their agreement. The written agreement signed was further evidence of an intention to be bound.

LAW OF CONTRACT:

Element of Contract; Capacity



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

When a minor executed a transfer of land. The plaintiff applied for the court order to revoke the said transfer.
Held: The contract made by minor is not only void but voidable.

Case: Government of Malaysia v. Gurcharan Singh & Ors. (1971)

The government sued the first defendant (minor) and the second and third defendants (guarantor) for breach of contract. The total claim is RM 11,500 as the amount spent by the Government for the education of minors. At the time the contract was made, the first defendant was a minor.

Held: the contract is invalid but because education is required, the little one is responsible for the repayment of a reasonable amount of money to him. The amount ordered as payment to the Government is RM 2,683 as the minor has served the Government for three years and 10 months from the contract period of five years.

LAW OF CONTRACT:

Element of Contract; Certainty

Certainty

Definition

Section 30 CA 1950

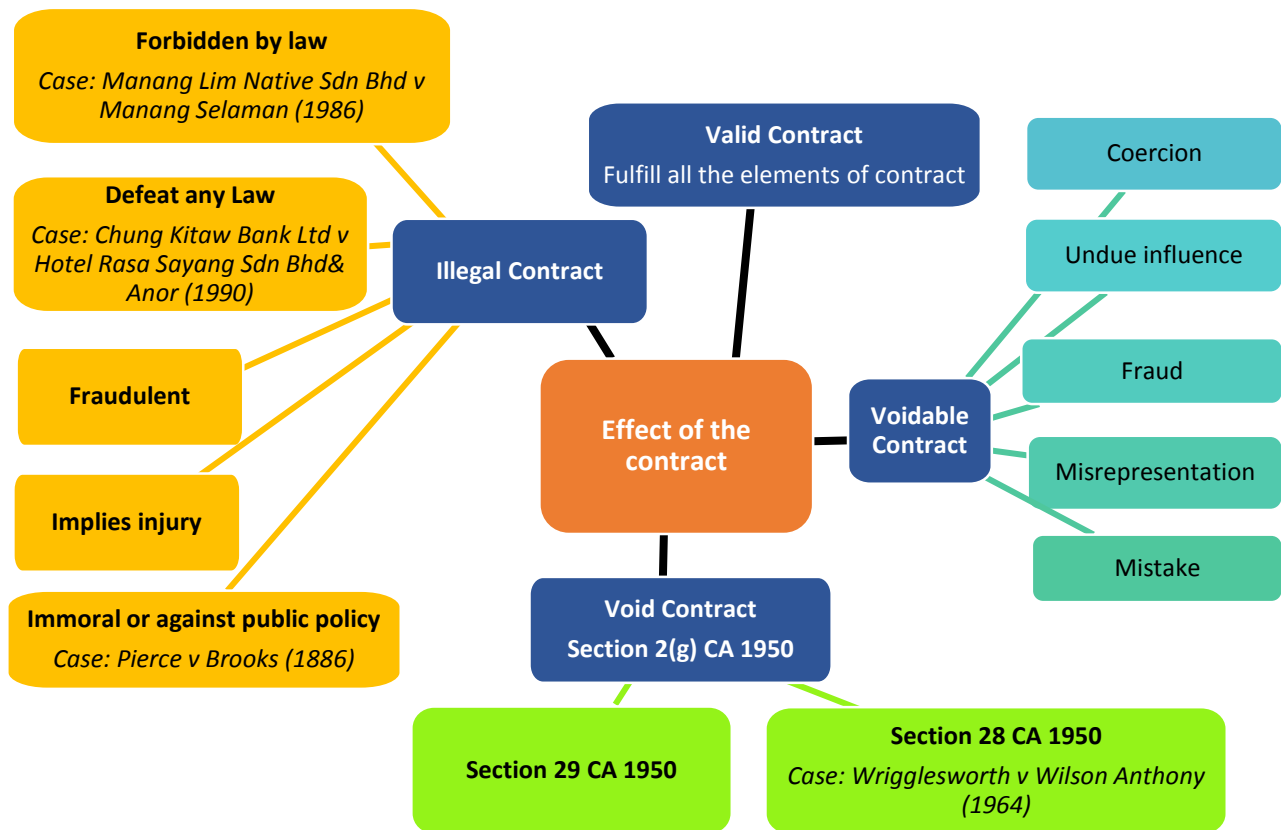
Case: KaruppanChetty v Suah Thian (1916)

Case: Karuppan Chetty v Suah Thian (1916)

The court held that the requirement of certainty was not met when the parties agreed upon the granting of a lease at RM35.00 per month as long as he likes.

LAW OF CONTRACT:

Effect of Contract



Case: *Wrigglesworth v Wilson Anthony* (1964)
Defendant was barred from practicing as an advocate and lawyer in Kota Bahru for two (2) years from his termination of service with his employer.
Held: The court ruled the retention was invalid.

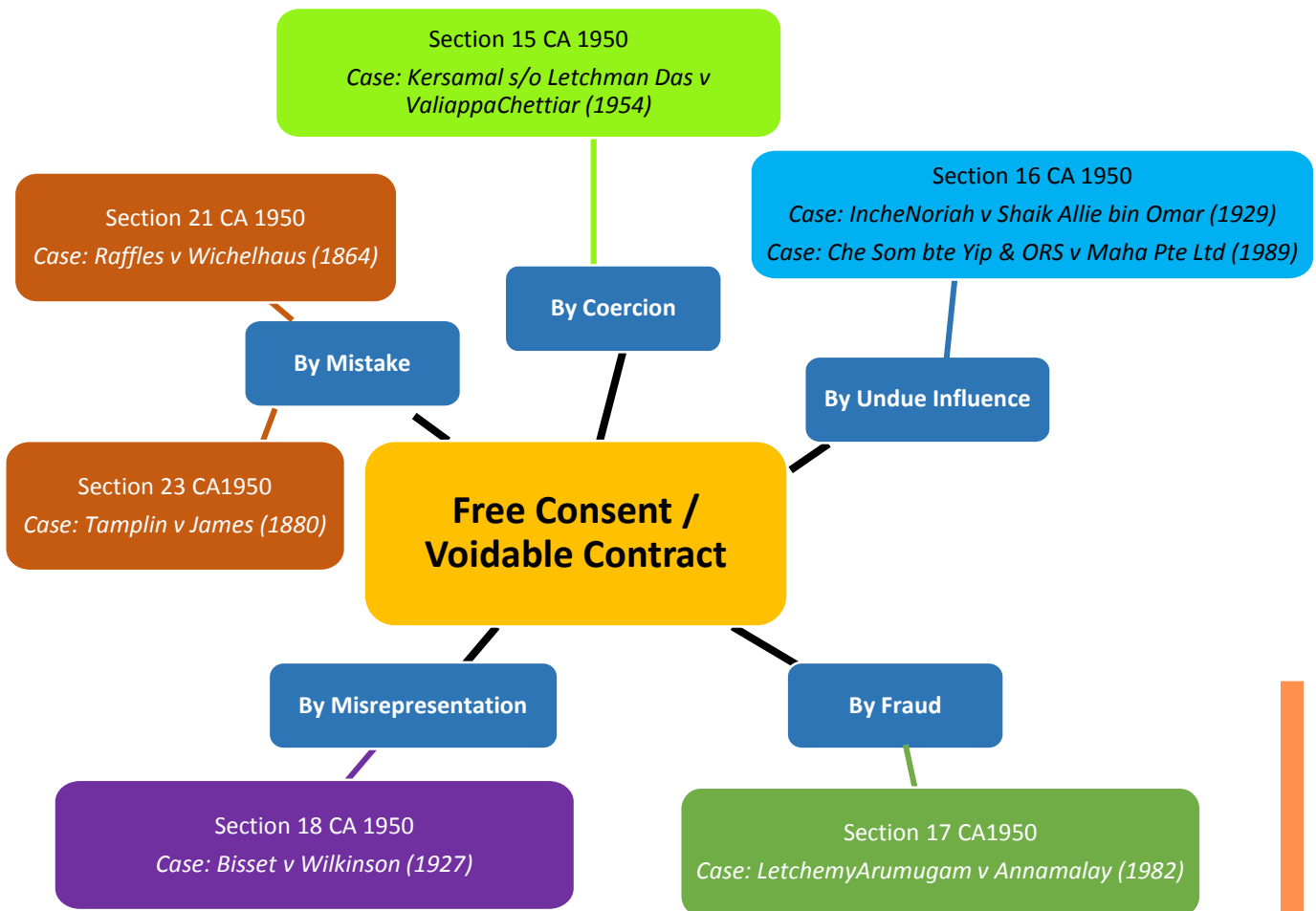
Case: *Manang Lim Native Sdn Bhd v Manang Selaman* (1986)
Held: that the agreement entered into contrary to the law (Sarawak Land Code) was entered into for invalid consideration and therefore, is an invalid agreement within the meaning of section 2 (g) of the Contracts Act 1950.

Case: *Chung Kitaw Bank Ltd v Hotel Rasa Sayang Sdn Bhd & Anor* (1990)
Where the Supreme Court ruled that the use of a loan from the plaintiff's bank secured by the defendant's hotel land to purchase shares in the defendant's owner's company, constituted financial assistance. It is also noted that the prohibition in section 67 of the Companies Act 1965 broadly, means that any direct or indirect financial assistance for the purpose of dealing with the shares of the company or its parent company is prohibited.

Case: *Pierce v Brooks* (1886)
The owner of a horse-drawn coach was prevented from recovering the costs of hire from a prostitute who had hired the coach in order to attract clients.

LAW OF CONTRACT:

Voidable Contract



Case: Kersamal s/o Letchman Das v ValiappaChettiar (1954)

A transfer of property which was made under 'the orders of the Sultan, issued in the ominous presence of 2 Japanese officers during the Japanese occupation of Malaysia was held to be not valid. This is because the consent given was not free and therefore the transfer became voidable at the will of the party whose consent was so caused.

Case: Inche Noriah v Shaik Allie bin Omar (1929)

An old and illiterate Malay woman implements the property grant act in Singapore for the sake of her nephew who manages her affairs. Prior to the execution of the act, the donor has independent advice from an attorney acting in good faith. However, he did not realize that the gift was practically his entire estate and did not affect him that he could prudently, and equally effectively had utilized the proceeds by giving the property to him by will.

Held: The prize should be set aside because the presumption of undue influence, posed by a proven relationship between the two parties, is not disputed.

LAW OF CONTRACT:

Voidable Contract

Case: Che Som bte Yip & ORS v Maha Pte Ltd (1989)

Court held that because defendant did not know about plaintiff unsound mind while contracting, the contract is valid.

Case: Letchemy Arumugam v Annamalay (1982)

Defendant has made false interpretations against plaintiff, an illiterate Indian women rubber tapper and induced her to enter into a sale purchase agreement. The defendant had fraudulently represented to the plaintiff that the document she was a required to sign was for a loan she took and to free the land from charge. In fact, the documents she signed included a sale agreement relating to the land, a transfer of the land.

Held: The court found the agreement was voidable at the option of the plaintiff and must be rescinded

Case: Bisset v Wilkinson (1927)

The claimant purchased a piece of farmland to use as a sheep farm. He asked the seller how many sheep the land would hold. The seller had not used it as a sheep farm, but estimated that it would carry 2,000 sheep. In reliance of this statement the claimant purchased the land. The estimate turned out to be wrong and the claimant brought an action for misrepresentation.

The Privy Council held that the statement was only a statement of opinion and not a statement of fact and therefore not an actionable misrepresentation. The claimant's action was therefore unsuccessful.

Case: Raffles v Wichelhaus (1864)

The parties entered a contract for the sale of some cotton to be shipped by 'The Peerless' from Bombay. The Peerless had a sailing from Bombay in October and in December. The defendant thought that it was the October sailing and the claimant believed it was the December sailing which had been agreed. The court applied an objective test and stated that a reasonable person would not have been able to state with certainty which sailing had been agreed. Therefore, the contract is invalid because there is no consensus ad idem.

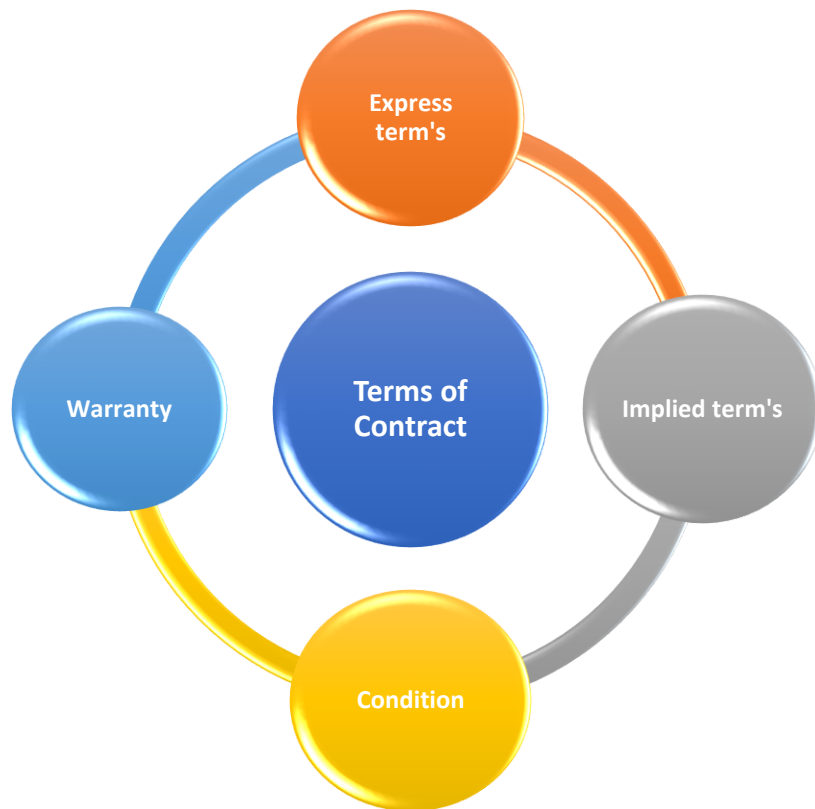
Case: Tamplin v James (1880)

Tamplin wanted to buy some property. He went to look at some plans of some property to satisfy what he wanted. Through his own carelessness he thought the property was much bigger than it was, so when he bought them, he wanted the contract set aside

Held: The court said he could not do this because his own carelessness was the reason for the mistake

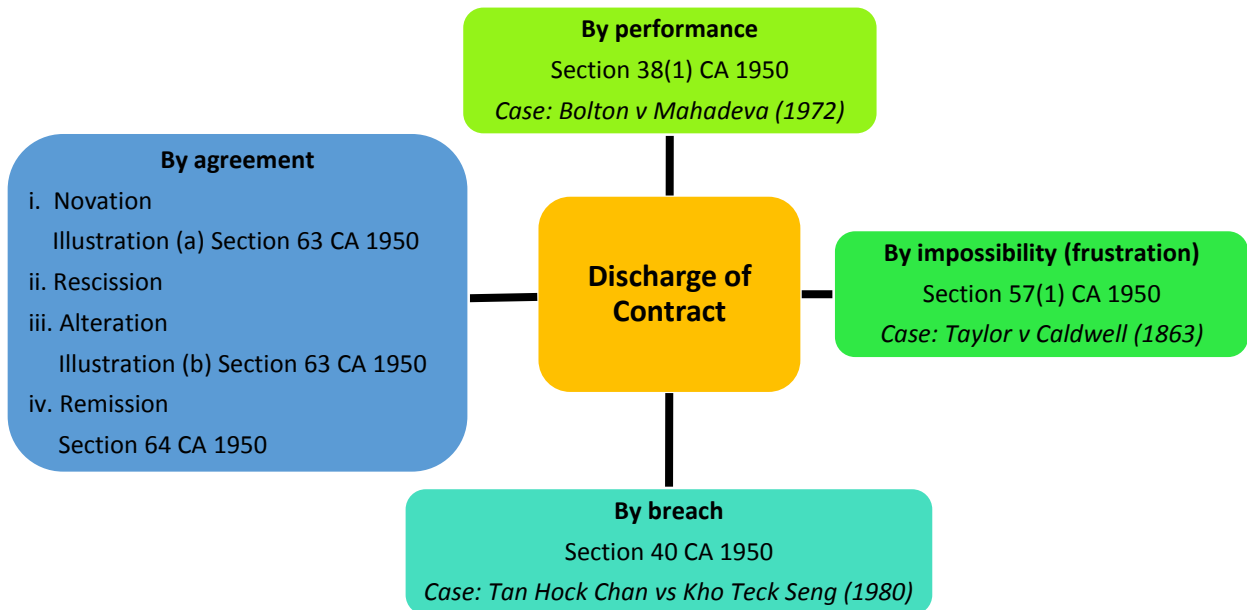
LAW OF CONTRACT:

Element of Contract; Terms of Contract



LAW OF CONTRACT:

Discharge of Contract



Case: Bolton v Mahadeva (1972)

The claimant installed central heating in the defendant's home. The agreed contract price was £560. The defendant was not happy with the work and refused to pay. Defects in the work amounted to £174. The action by the claimant to enforce the payment failed since the court held there was no substantial performance.

Case: Taylor v Caldwell (1863)

The plaintiff hired out a music hall in Surrey for the purpose of holding four grand concerts. The plaintiff went to great expense and effort in organizing the concerts. However, a week before the first concert was scheduled to take place the music hall was destroyed by an accidental fire. The plaintiff sought to bring an action for breach of contract for failing to provide the hall and claiming damages for the expenses incurred.

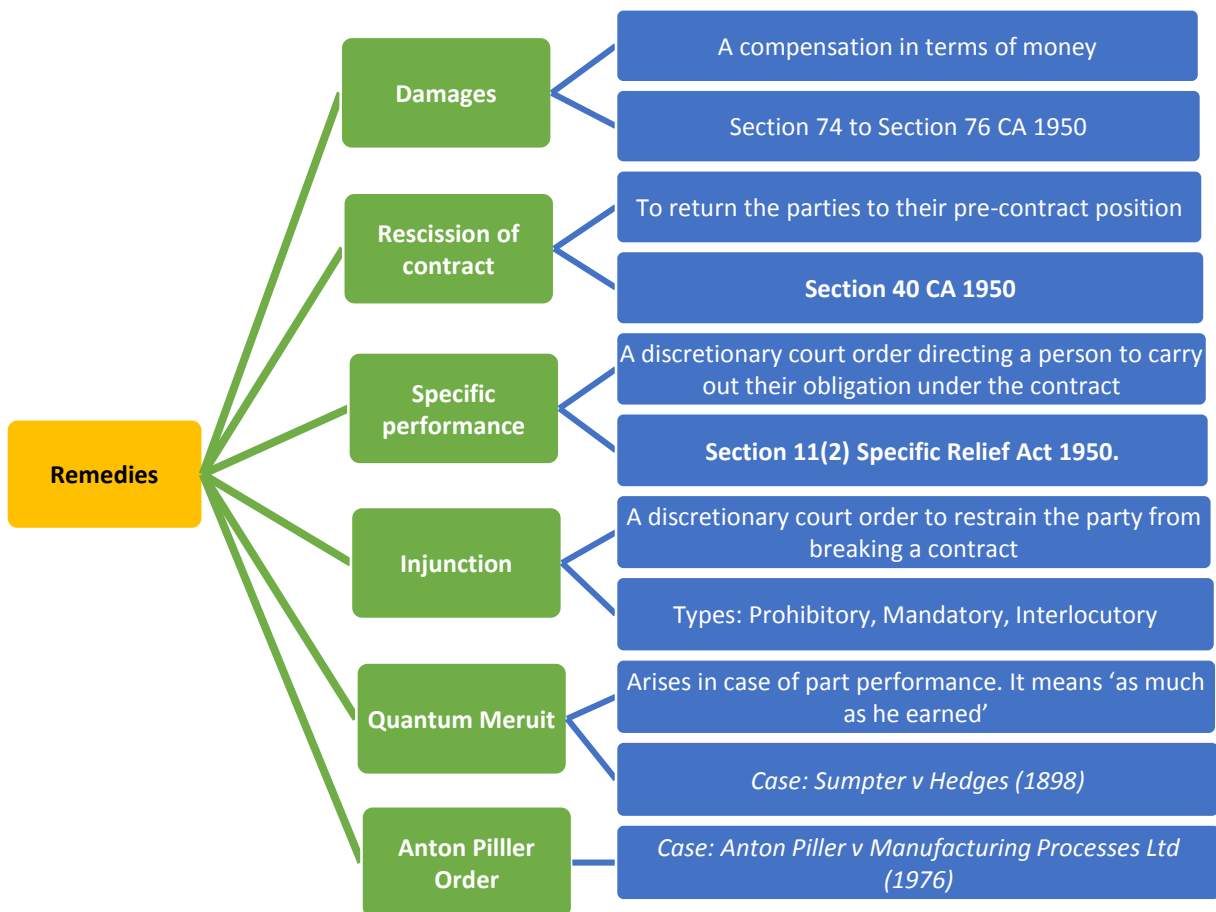
Held: The plaintiff's action for breach of contract failed. The contract had been frustrated as the fire meant the contract was impossible to perform.

Case: Tan Hock Chan v Kho Teck Seng (1980)

Respondents agreed to the application to build six units of shophouses at a price of RM 223,000. The agreement provides for the payment of progress upon completion of a specified stage of construction. The contractor completed five of the six units, but the owners were unable to assign ownership of the site's remnants due to difficulties in removing the squatters. The contractor claims the full amount under the contract.

LAW OF CONTRACT:

Remedies of Contract



Case: Sumpter v Hedges (1898)

The claimant agreed to build two houses and stables for the defendant. It was agreed that £565 would be payable on completion. The claimant commenced performance and then ran out of money and was unable to complete. He had performed just over half of the contract. The defendant completed the work himself. The claimant sought to recover £333 representing the value of the work he had completed. He argued that in completing the work himself, the defendant had thereby accepted partial performance and prevented the claimant from completing the contract.

Held: The claimant's action failed. The court held that the defendant had no choice but to accept partial performance as he was left with a half-completed house on his land.

Case: Anton Piller v Manufacturing Processes Ltd (1976)

The Anton Piller company was under the belief that one of its agents was supplying confidential information to one of its competitors. They believed that the agent had documentation in his possession that would prove their breach. However, they were concerned that a subpoena would give the agent advance warning of their intentions and that any relevant documents would then be destroyed.

Held: As there was a strong prima facie case of infringement which could cause damage to the applicant, and clear evidence that the defendants had incriminating material in their possession which they would destroy, the order was granted.

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. Arda 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 remedies 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 RM31,000.00. Sheikh seem very happy and agree with the price. He is also ready to make payment on the motorcycle.

- (i) State the issue. (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)

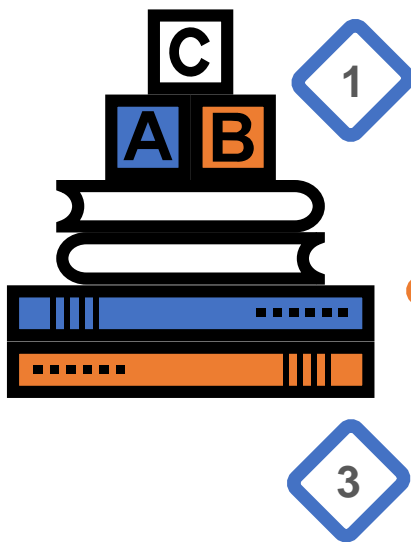
(b) Section 10 Contract Act 1950 provides that all agreement is contracted if they are made by free consent of parties. By virtue of section 14, consent is said to be free when it is caused by some elements. Thus, illustrate **FOUR (4)** elements which caused a consent not to be free. (10 marks)



CHAPTER 3

LEGAL ASPECTS OF BUSINESS ENTITIES

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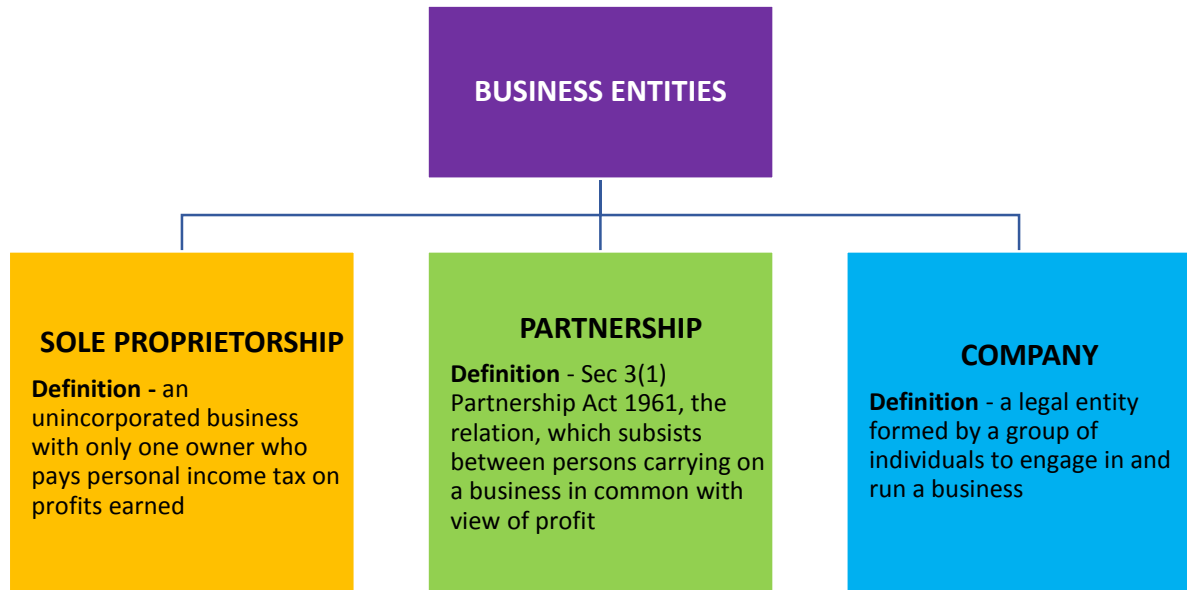


1 Categorize types of business entities in Malaysia

2 Compare the characteristics of sole proprietorship, partnership and company

3 Ascertain rights and duties of partners and dissolution of partnership based on Partnership Act 1961

LEGAL ASPECTS OF BUSINESS ENTITIES



Characteristics	Sole proprietorship	Partnership	Company
Formation	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.
Management	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.
Registration	Need to register his business under the Registration of Business Act 1956.	Register with the Companies Commission of Malaysia under the Business Registration Act 1956	Must be registered with the Companies Commission of Malaysia as a company under the Companies Act 1965
Number of members	There is only one person.	The maximum for a regular partnership is twenty whereas for a professional partnership there is no number of members.	There is no limit to the number of people who can join (unless 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 required.	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	Can 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

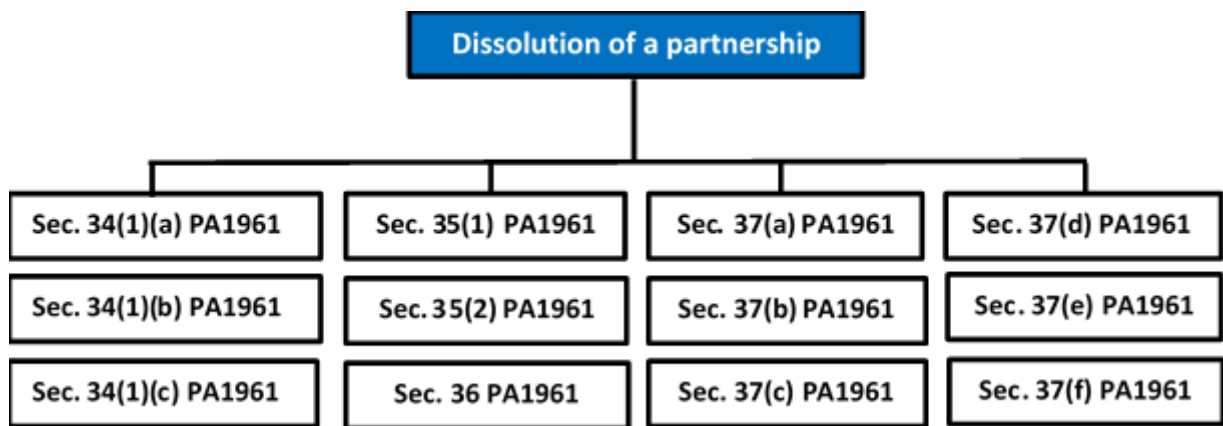
LEGAL ASPECTS OF BUSINESS ENTITIES

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



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]

- i. The minimum and maximum numbers of partners in the firm
- ii. The registrations of the firms
- iii. Liability of partners

QUESTION 4

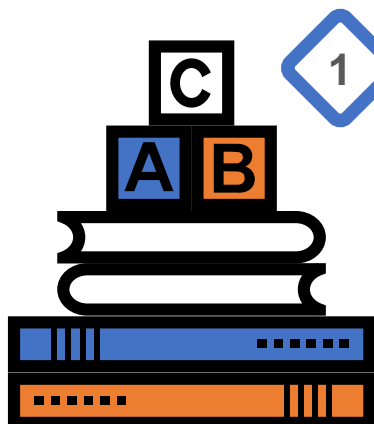
Explain **FIVE (5)** rules that govern the relationship between partners in the absence of partnership agreement. [6 marks]



CHAPTER 3

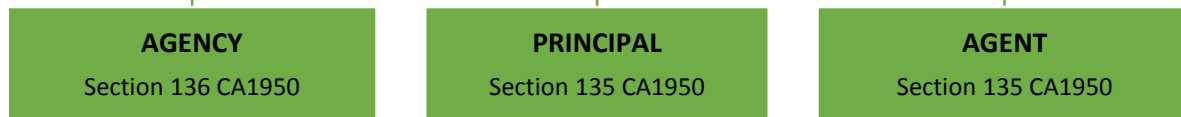
AGENCY

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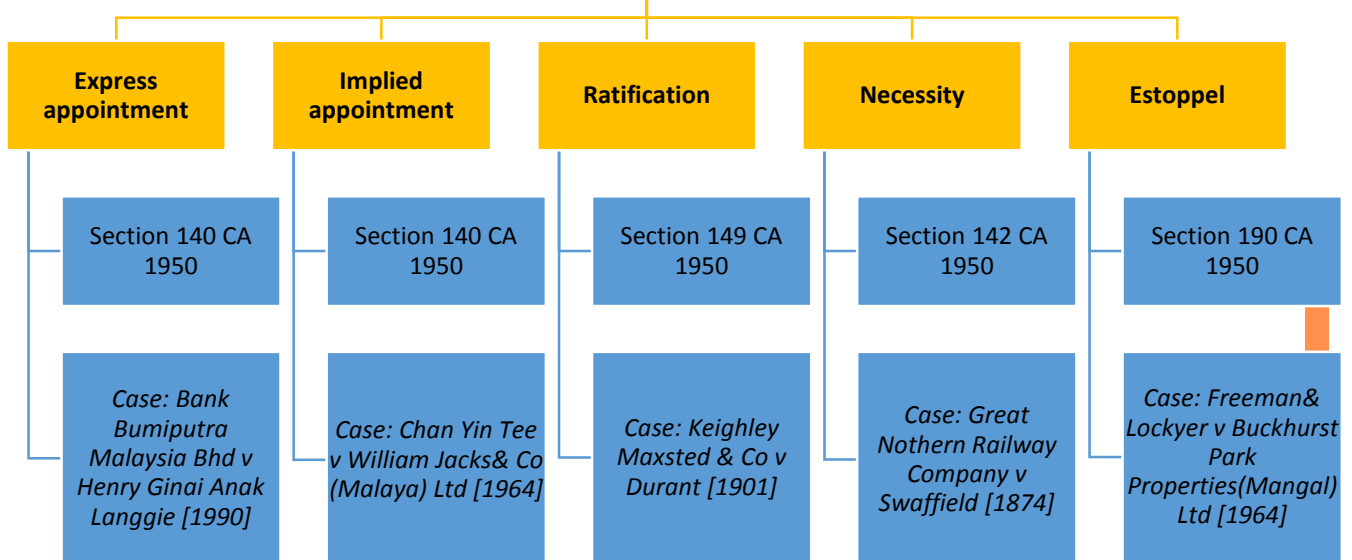
- 
- 1 Ascertain nature of agency
 - 2 Discuss types of agency
 - 3 Demonstrate the relationship between principals and agents
 - 4 Outline termination of agency

AGENCY

DEFINITION



TYPES OF AGENCY BY FORMATION



BY EXPRESS /DIRECT APPOINTMENT

Section 140 CA 1950

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

Facts : The defendant, the owner of a certain piece of land granted power of attorney to his brother, John A Langgie in respect of the land. The attorney, in purported exercise of his powers, charged the land to the plaintiff to obtain overdraft facilities of RM50,000 and letter of credit/trust receipts for the use of Tanah Sheema Enterprise. The plaintiff applied for an order for sale of the charged land.

Held : A power of attorney is construed strictly by the courts according to well-recognized rules. The powers of attorney are interpreted as giving only such authority as they confer expressly or by necessary implication.

An attorney in purported exercise of his authority acted in excess of and outside the reasonable scope of his special powers by charging the land for his own personal benefit or for the use of the company and not for the benefit of the defendant. Unless the defendant expressly authorized it or adopted it by taking the benefit of it or otherwise, the plaintiff, as the third party, will be unable to make the defendant, as principal, liable.

AGENCY

Types of Agency by Formation

BY IMPLIED APPOINTMENT

Section 140 CA 1950

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

On In the case of Chan Yin Tee v. William Jacks & Co, appellant and Yong were registered as partners and during a meeting with the respondent company, appellant identified himself as Young's partner. The Federal Court held that because appellant had stated Yong as his agent who had the power to do something on his behalf, appellant was liable for Young's actions.

BY RATIFICATION

Section 149 CA 1950

Case: Keighley Maxsted & Co v Durant [1901]

An agent, Roberts was authorized by appellant to purchase wheat at a certain price. The agent went beyond his authority and bought at a higher price in his own name but meant for Keighley. Keighley agreed to take the wheat at the price but failed to take it.

Held: Keighley was not liable to Durant because Roberts at the time of the contract did not claim to act as an agent.

BY NECESSITY

Section 142 CA 1950

Case: Great Nothern Railway Company v Swaffield [1874]

Facts: Defendant owner sent his horse by rail from Kings Cross to Sandy station. When the horse arrived at Sandy station there was no one to collect it and no one at the station knew the name or address of the owner. The claimant railway company arranged for the horse to be fed and stabled. When the defendant collected his horse, he refused to reimburse the railway company for their expenses in having the horse stabled.

Held: The claimant had acted in the best interests of the defendant in arranging to have the horse stabled. An agency of necessity had arisen and the defendant was bound to pay for the cost of stabling the horse.

BY ESTOPPELS

Section 190 CA 1950

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

Freeman and Lockyer were engaged by Buckhurst properties to work • When they sought their payment, they were informed that the person from Buckhurst did not have the authority to make the contract on behalf of the company and was therefore not liable to pay the fees.

Held: The person from Buckhurst Park did not have actual authority to act on behalf of the company he did have apparent authority. The court ruled in favour of Freeman and Lockyer.

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)

The principal instructed his agent to take out insurance on his ship, but he failed to do so. The court ruled that the agent was responsible for the damage when the ship went missing.

Skill in diligence required from agent.

Section 165 CA 1950

Case: Keppel v Wheeler [1927]

In this case, the defendant is the plaintiff's agent. The agent was asked by the Plaintiff to sell the house. An offer is made by A through an agent, and it is accepted by the principal on condition. Then, another offer was made by B, but this time the offer was higher than the first offer made by A. The agent did not inform the Principal about B's offer. The Principal signed a contract with A. The Principal took action against the agent.

It is said that: The agent is responsible because he must use his skills and care for the benefit of the principal. Since the agent did not do so, he was liable to pay the principal of the difference between the two offers.

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

Section 166 CA 1950

Case: Foley v Hill

The agent is under a general duty to account to the principal. The agent is under a duty to keep accounts of all transactions and to produce them to the principal on demand.

Agent's duty to communicate with principal.

Section 167 CA 1950

Case: Springer v Great Western Railway [1921]

A cargo of tomatoes arrived at Weymouth station. The defendant railway company was contracted by the claimants to deliver the tomatoes to Covent Garden. There was a railway strike, and the railway company, noticing that the cargo of was in poor condition, sold them locally.

DECISION: It would have been possible for the railway company to seek the instructions of the owners of the tomatoes by sending a telegram. They had been contracted to carry, not sell, the tomatoes. To give them the right on sell, circumstances must exist which put them in the position of agents of necessity for the owners. As the railway company could have communicated with the owners, there was no agency of necessity.

AGENCY

Duties and Rights of Agent

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]

Where the principal manages to recover the commission paid to the agent plus the secret commission received by his agent from a third party. In that case, the plaintiff ordered the defendant to sell the property and agreed to pay a commission of £ 50 to him. Defendant received £ 100 from the buyer as a deposit for the property. Defendant paid 50 pounds to plaintiff and kept another 50 pounds to pay his commission with the knowledge of plaintiff. However, the plaintiff learned that the defendant had also received another 20 pounds as commission from the buyer. He demanded his agent to recover these 20 pounds and the 50 pounds he paid to the defendant in the first place.

The court ruled that he could recover both; Not to disclose confidential information. Do not delegate authority to others.

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]

Officers Co-operative Housing Society Ltd [1978] 1 MLJ 149, the appellant was a director and secretary of the respondent co-operative society. He bought land at a price of \$944,000 from the vendor who had earlier paid \$456,000 for it. The appellant knew of this fact, however, he failed to inform the society. The society discovered the fact only after the sale was done and discovered the appellant had received \$122,000 as secret commission from the vendor. As a result, the Privy Council held that the respondent could recover either bribe or the amount of the actual loss suffered by it because of entering the contract.

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

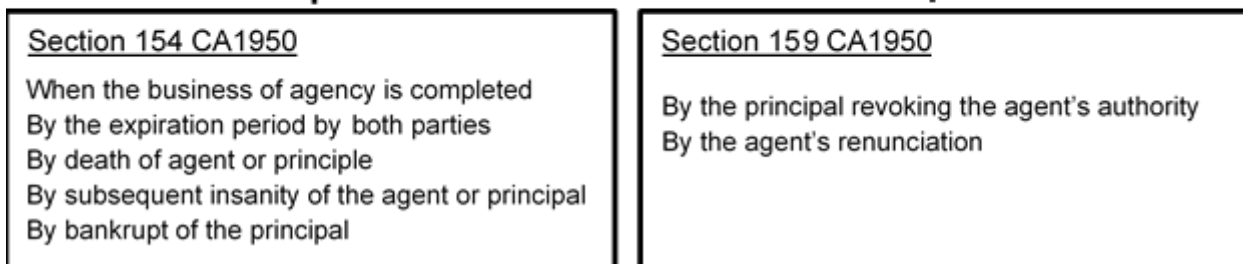
Section 176 CA 1950

Section 178 CA 1950

EXCEPTION

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

Termination of agency



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.

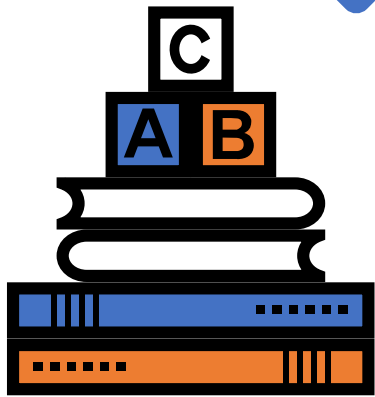
(3 marks)



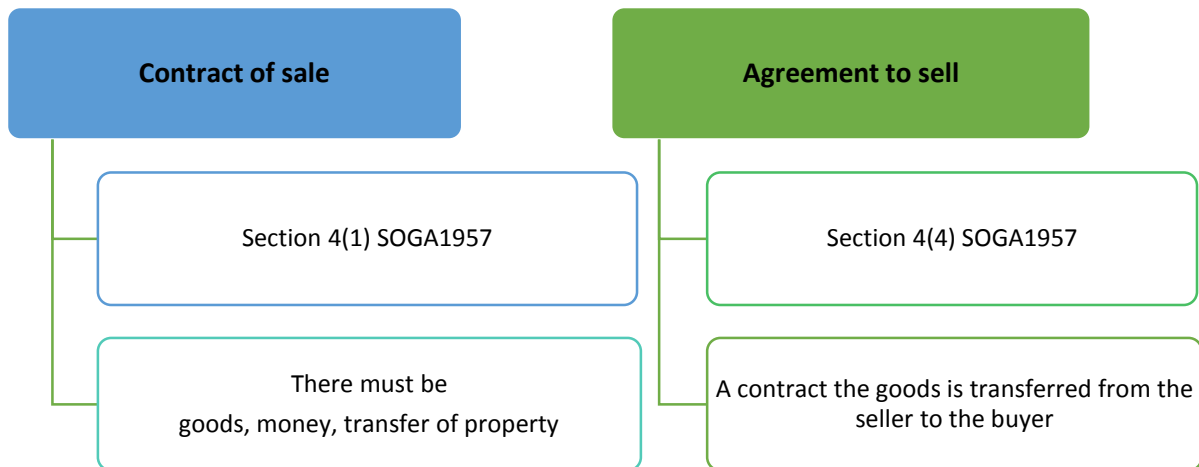
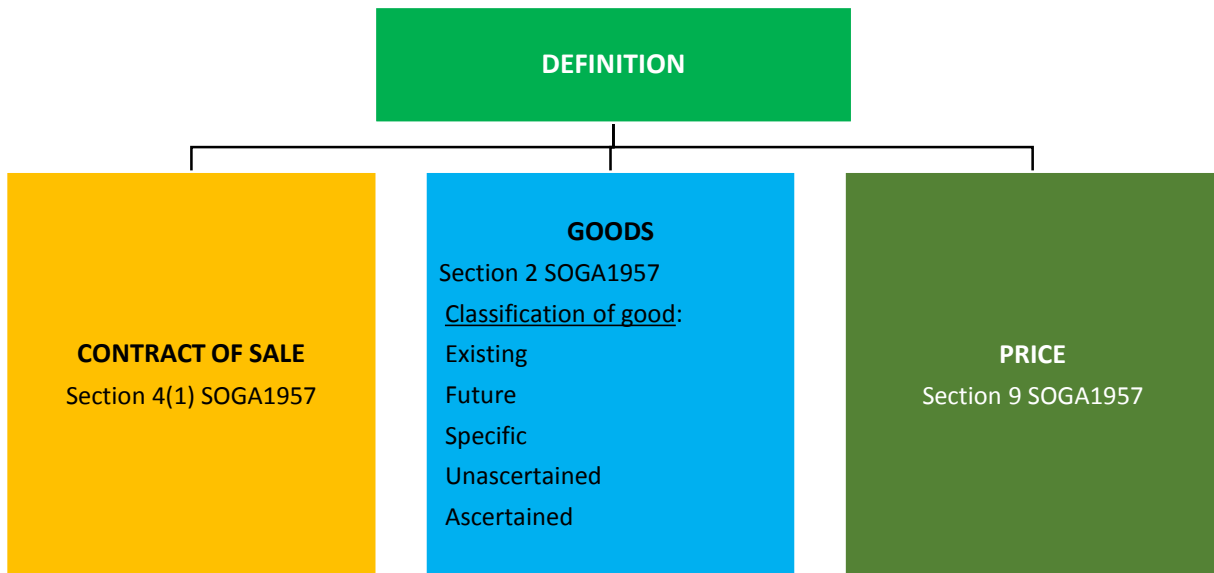
CHAPTER 5

SALES OF GOODS

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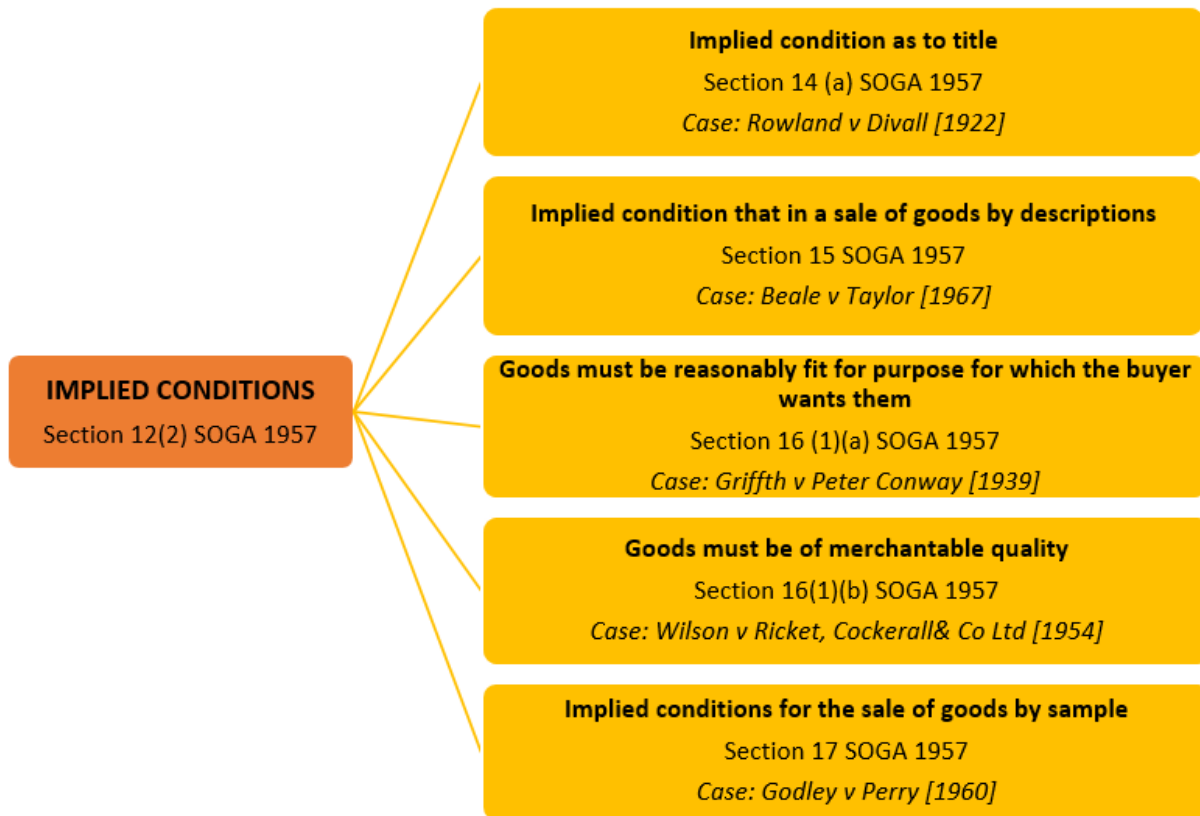
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- 1 Discuss the nature of the sale of goods
 - 2 Apply implied terms relating to the sale of goods contract
 - 3 Discuss transfer of property and title under sale of goods
 - 4 Ascertain protections to buyers and owners
 - 5 Outline breach of contract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

SALES OF GOODS



SALES OF GOODS

Implied Conditions



Implied condition as to title

Section 14 (a) SOGA 1957

Case: Rowland v Divall [1922]

The claimant, a car dealer, bought a car from the defendant for £334. He painted the car and put it in his showroom and sold it to a customer for £400. Two months later the car was impounded by the police as it had been stolen. It was then returned to the original owner. Both the claimant and defendant were unaware that the car had been stolen. The claimant returned the £400 to the customer and brought a claim against the defendant under the Sale of Goods Act.

Held: The defendant did not have the right to sell the goods as he did not obtain good title from the thief. Ownership remained with the original owner. The defendant had 2 months use of the car which he did not have to pay for, and the claimant was not entitled to any compensation for the work carried out on the car.

Case: Ahmad Ismail v Malayan Motors [1973]

A hire purchase car was detained by police on suspicion of having been stolen. However, the car was released because there was no evidence that it was a stolen item.

Held: The court held that since the car was not a stolen item, the owner there was entitled to sell it

SALES OF GOODS

Implied Conditions

Implied condition that in a sale of goods by descriptions, the goods must correspond with the description.

Section 15 SOGA 1957

Case: Beale v Taylor [1967]

A car salesman advertised a car "Herald Convertible, white"... for sale. The buyer inspected the car before buying it. After buying it, he discovered that the car consisted of parts of two cars welded together, one being earlier than 1961.

Held: The court decided the buyer was entitled to sue for damages because there was a breach of contract.

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

Section 16 (1)(a) SOGA 1957

Case: Griffith v Peter Conway [1939]

The plaintiff bought a Harris Tweed, tailor-made coat from the defendants. Due to her abnormally sensitive skin, she contracted dermatitis from wearing the coat. Only someone who had a similar skin type would have suffered from this problem.

Held : Plaintiff failed. The defendants did not know of the plaintiff's sensitive skin and could not be expected to assume its existence. The coat was fit for most people. s14 (3) of the Sale of Goods Act did not apply.

Goods must be of merchantable quality.

Section 16(1)(b) SOGA 1957

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

A woman ordered fuel by its trade name "Coalite" from a fuel merchant. During delivery, a detonator was embedded in an apiece of coal, causing an explosion.

Held: The court held that the consignment of the goods was not of merchantable quality.

Implied conditions for the sale of goods by sample

Section 17 SOGA 1957

Case: Godley v Perry [1960]

A boy buys a catapult from a corner store. As he pulled back the elastic to release the missile, the elastic jerked releasing his eyes. He sued the retailer for damages. The retailer in turn can sue the manufacturer to recoup its losses. However, this poses a problem if the contract chain is broken, either when the recipient is given the item or one party no longer exists.

Held: Although the retailer had made a reasonable examination, The defect was not one which was apparent on such examination. Thus, he had an action against the wholesaler.

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]

The buyer must have quiet possession of the goods.

Section 14(b) SOGA 1957

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

The claimant purchased some road marking machines from the defendant. After the purchase, a third party was granted a patent right in the machines. This meant the claimant could not use the machines unless they were granted a license to do so. There was no breach of s.12(1) as at the time of the sale the seller had the right to sell the goods. However, there was a breach of s.12(2) in that the buyer could not enjoy quiet possession of the goods.

The goods are unencumbered.

Section 14(c) SOGA 1957

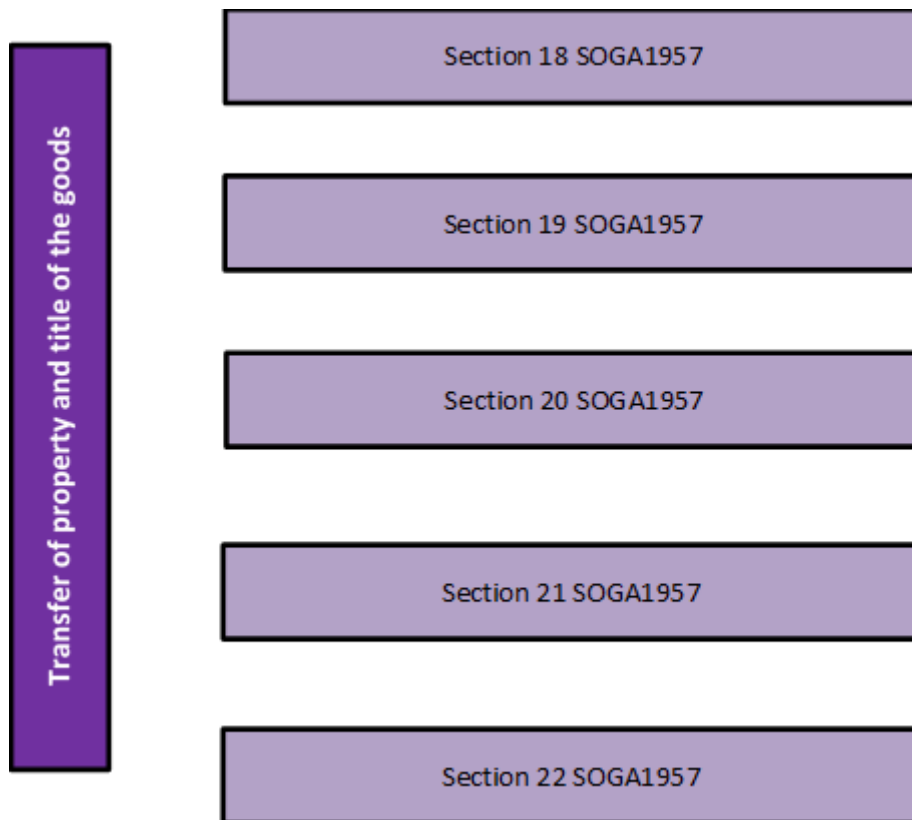
Case: Steinke v. Edwards [1935]

The Plaintiff who had bought a car paid off the tax owing and sought to recover it from the Defendant (seller).

Held: the right of the govt. to levy a tax on vehicles coupled with a right to seize the car to enforce collection was a 'charge or encumbrance'. Therefore, the claim was allowed for breach of the implied warranty.

SALES OF GOODS

Transfer of Property



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 join 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]

REFERENCES

Main:

Lee Mei Pheng and Ivan JeronDetta (2013). Commercial Law. 2nd Edition. Oxford Fajar Sdn Bhd. (ISBN: 978-9-83-470857-3)

Additional:

Aiman Nariman Mohd Sulaiman et. al. (2011). Corporations and Partnership in Malaysia The Netherlands: Kluwer Law International BV. (ISBN: 978-9-04-113787-6)

Lee Mei Pheng and Ivan Jeron Detta (2011). Business Law. Oxford Fajar Sdn Bhd. (ISBN: 978-9-83-450969-9)

Wu Min Aun and Beatrix Vohrah (2009). The Commercial Law of Malaysia. Longman (ISBN: 978-9-83-741587-4)

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

Characteristics	Sole proprietorship	Partnership
Formation	Individual in business on his own	Two or more persons carrying on business with a view of profit.
Management	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.
Number of members	There is only one person.	The maximum for ordinary partnership is twenty whereas for professional partnership no ceiling number of members.
Constitution	No agreement is necessary.	May be formed orally in writing
Dissolution	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 + explanation
- 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

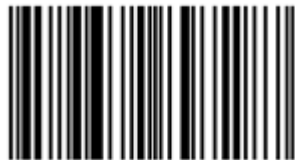
Q3

- 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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