

**KOLEJ UNIVERSITI SAINS DAN TEKNOLOGI MALAYSIA****PEPERIKSAAN AKHIR
SEMESTER JULAI 2005/2006****NAMA KURSUS : UNDANG-UNDANG KOMERSIAL****KOD KURSUS : PGN4601A****TARIKH : 8/11/2005 (SELASA)****TEMPAT : DEWAN SULTAN MIZAN****MASA : 2.30 – 5.30 PETANG (3 JAM)****NO. MATRIK : _____****NAMA PROGRAM : _____****ARAHAN KEPADA CALON**

- i. Kertas ini mengandungi **TUJUH (7)** soalan. Jawab **LIMA (5)** soalan sahaja menggunakan **Buku Jawapan** yang telah disediakan.
- ii. Sekiranya terdapat kekeliruan di versi Bahasa Melayu, versi Bahasa Inggeris terpakai.

JANGAN BUKA BUKU SOALAN INI SEHINGGA DIBERITAHU***KERTAS SOALAN INI MENGANDUNGI 8 MUKASURAT BERCETAK***

PGN4601A

Sulit

Instruction: Answer five (5) questions out of seven (7). Support your answers with statutory provisions and judicial precedents.

Question 1

Contracts are said to be against public policy when they tend to bring about a state of affairs that is regarded by law as harmful to society. Discuss what is meant by harmful and give relevant examples.

(20 marks)

Question 2

a). Smartshop Supermarket advertised in the local newspaper that there was a vacancy for the post of chief cashier. Sarah applied for the post, but her application was rejected by Smartshop Supermarket. She wanted to take a legal action against Smartshop Supermarket for breach of contract. Representatives from Smartshop Supermarket come to seek for your advice whether the advertisement was considered as an offer to contract. Advise them.

(10 marks)

b) Section 57(2) of the Contracts Act, 1950 provides that "a contract is frustrated when there is a change in the circumstances which renders a contract legally or physically impossible of performance". Explain the meaning of this provision and give examples. What is the legal effect of frustration to the contract?

(10 marks)

Question 3

a) Abdul, Taib and Mahmud are partners in a firm called ATM Services Sdn. Bhd., which maintains and repairs automated teller machines of banks in Malaysia. Taib wants to retire as a partner. Advise Taib as to his rights and liabilities to the old and new partners of ATM Services Sdn. Bhd.

(10 marks)

b) Describe five ways of how a partnership may be dissolved.

(10 marks)

Question 4

- a) Hire Purchase Act 1967 is the law that regulates a hire purchase agreement relating to the goods specified in the First Schedule. Describe a hire purchase agreement with example of cases. (10 marks)
- b) Happy Housewives Sdn. Bhd. sells sewing machines on cash terms and on hire purchase. Mrs Tan, a housewife, bought a new sewing machine from Happy Housewives Sdn. Bhd. on hire purchase.

After she reached home, Mrs Tan wanted to sew a new shirt for her husband. However, instead of sewing the pieces of silk cloth together, the sewing machine merely made holes in the cloth.

Advise Mrs Tan as to her rights under the law of hire purchase.

(10 marks)

Question 5

Judge Tindal in **Wilson v. Tumman [1943] 6 m. & C. 242**, described a rule of law relating to a type of agency as "an act done for another, by a person not assuming to act for himself, but for such other person, though without any precedent authority whatsoever, becomes the act of principal, if subsequently ratified by him".

Identify and explain the type of agency referred to by Judge Tindal and discuss its requirements.

(20 marks)

Question 6

Super Corn Sdn. Bhd. had entered into an agreement with CareTwo Supermarket to supply 50,000 bottles of corn oil. Among the terms of the agreements are:

1. The bottles are to be packed in boxes of 30 bottles each.
2. Delivery is to be made in five monthly instalments, not later than the 7th of each month.
3. Price, which is to be determined from time to time, is payable after each delivery.
4. In case of any dispute, it is to be referred to an arbitrator.

The first two deliveries were made without any problems. However, in respect of the third delivery, there was a delay of a few days. Besides that, the packaging of the goods was not in accordance with the agreement. Some of the boxes contained only 28 bottles. Despite all these, the CareTwo Supermarket accepted the delivery because there was a great demand from their customers for the product.

The fourth delivery was made within time and the goods were packed in accordance with the agreement. However, they were mixed with coconut oil. The CareTwo Supermarket did not realize this until a month later when they received the last instalment delivery. As for this last delivery, both parties were not in agreement as to the price of the goods, although the delivery had been accepted, the price remains unpaid.

Discuss the rights and liabilities of Super Corn Sdn. Bhd. and CareTwo Supermarket towards each other.

(20 marks)

Question 7

Describe whether the promises given by the promisors in the following situations create a valid contract:

a) Siti sold her washing machine which costs RM1,000.00 to Mariam for only RM10.00.

(6 marks)

b) Due to his hardship in life, Ahmad left his family to seek his fortune elsewhere. His two sons were left neglected during his 6 months of absence. Zul, Ahmad's friend, felt sorry for the children and voluntarily helped to pay for the expenses and education of the 2 children. When Ahmad returned, he promised to pay back all the expenses incurred by Zul.

(7 marks)

c) Last week Ali found Siti's bag which contained some very important documents. Ali returned the bag to Siti yesterday. Siti was grateful that she promised to pay Ali for the sum of RM5,000.00. Siti later changed her mind and decided not to pay Ali. Can she claim that there was no consideration for the promise as Ali had already found the bag before the promise was made?

(7 marks)

Arahan: Jawab lima (5) soalan daripada tujuh (7). Sokong jawapan anda dengan peruntukkan statut dan *judicial precedents*.

Soalan 1

Kontrak dikatakan melanggar polisi awam apabila ianya cenderung membawa kepada sesuatu keadaan yang dianggap oleh undang-undang sebagai memudaratkan kepada masyarakat. Bincang apakah yang dimaksudkan dengan memudaratkan dan bagi contoh yang relevan.

(20 markah)

Soalan 2

a) Smartshop Supermarket telah mengiklankan di dalam surat khabar tempatan bahawa terdapat satu kekosongan untuk jawatan ketua juruwang. Sarah telah memohon jawatan tersebut, tetapi permohonannya telah ditolak oleh Smartshop Supermarket. Beliau ingin mengambil tindakan undang-undang terhadap Smartshop Supermarket kerana perlanggaran kontrak. Wakil kepada Smartshop Supermarket datang untuk mendapatkan nasihat dengan anda untuk mendapatkan nasihat sama ada iklan tersebut dianggap sebagai satu tawaran untuk berkontrak. Nasihatkan mereka.

(10 markah)

b) Seksyen 57(2) Akta Kontrak, 1950 memperuntukkan bahawa "sesuatu kontrak dikecewakan apabila berlaku perubahan situasi yang menyebabkan sesuatu kontrak dari segi undang-undang dan fisikalnya tidak mungkin dilaksanakan". Jelaskan maksud peruntukkan ini dan bagi contoh. Apakah kesan perundangan kekecewaan kepada kontrak?

(10 markah)

Soalan 3

a) Abdul, Taib dan Mahmud adalah rakan kongsi di dalam sebuah firma yang dikenali sebagai ATM Services Sdn. Bhd., yang menyelenggara dan membaiki mesin *bank automated teller* di Malaysia. Taib ingin bersara sebagai rakan kongsi. Nasihatkan Taib berkenaan dengan hak dan laibilitinya kepada rakan kongsi lama dan baru ATM Services Sdn. Bhd.

(10 markah)

b) Huraikan lima cara bagaimana sebuah perkongsian boleh dibubarkan.

(10 markah)

(10 markah)

Soalan 4

- a) Akta Sewa Beli, 1967 merupakan undang-undang yang mengawal selia sesuatu perjanjian sewa beli barang yang dispesifikasikan di dalam Jadual Pertama. Huraikan maksud perjanjian sewa beli bersama dengan contoh kes.

(10 markah)

- b) Happy Housewives Sdn. Bhd. menjual mesin jahit secara tunai dan sewa beli. Mrs Tan, seorang suri rumah, membeli sebuah mesin jahit daripada Happy Housewives Sdn. Bhd. secara sewa beli.

Setelah beliau tiba di rumah, Mrs Tan hendak menjahit sehelai baju untuk suaminya. Walau bagaimanapun, sebaliknya menjahit helaian sutera itu bersama, mesin jahit itu hanya membuat lubang di kain tersebut.

Nasihatkan Mrs Tan berkenaan dengan haknya di bawah undang-undang sewa beli.

(10 markah)

Soalan 5

Hakim Tindal di dalam **Wilson v. Tumman [1943] 6 m. & C. 242**, menghuraikan satu peraturan perundangan berkenaan dengan sejenis ejen sebagai "suatu perbuatan untuk seorang yang lain, oleh seorang yang tidak menganggap bertindak bagi dirinya sendiri, tetapi bagi pihak orang lain, walau tanpa apapun autoriti terdahulu, menjadi perbuatan prinsipal, sekiranya diratifikasikan olehnya kemudian.

Kenalpasti dan terangkan ejensi yang dirujuk oleh Hakim Tindal dan bincangkan syarat-syaratnya.

(20 markah)

Soalan 6

Super Corn Sdn. Bhd. telah memasuki satu perjanjian dengan CareTwo Supermarket untuk membekalkan 50,000 botol minyak jagung. Di antara terma perjanjian tersebut adalah:

1. Botol-botol tersebut perlu dibungkus di dalam kotak mengandungi 30 botol setiap satu.
2. Penghantaran hendaklah dilakukan secara 5 kali ansuran bulan, tidak lewat dari 7 haribulan setiap bulan.
3. Harga, yang akan ditentukan dari semasa ke semasa, dibayar selepas setiap penghantaran.
4. Sekiranya berlaku pertelingkahan, ianya hendaklah dirujuk kepada satu penimbangtara.

Dua penghantaran pertama telah dilakukan tanpa masalah. Walau bagaimanapun, bagi penghantaran ketiga, berlaku kelewatan beberapa hari. Disamping itu, pembungkusan barangan tersebut tidak menepati perjanjian. Sesetengah kotak mengandungi 28 botol sahaja. Meskipun begitu, CareTwo Supermarket menerima penghantaran tersebut kerana terdapat permintaan yang banyak daripada pelanggan untuk produk tersebut.

Penghantaran keempat telah dibuat di dalam tempoh yang ditetapkan dan barang dibungkus mengikut perjanjian. Walau bagaimanapun, barang tersebut bercampur dengan minyak kelapa. CareTwo Supermarket tidak menyedari perkara tersebut sehingga sebulan kemudian apabila mereka menerima penghantaran ansuran terakhir. Untuk penghantaran terakhir ini, kedua-dua pihak tidak bersetuju dengan harga barang tersebut, walaupun penghantaran telah diterima, bayaran masih belum dibayar.

Bincangkan hak dan liabiliti Super Corn Sdn. Bhd. dan CareTwo Supermarket terhadap satu sama lain.

(20 markah)

Soalan 7

Jelaskan sama ada janji yang dibuat oleh pembuat janji di dalam setiap situasi di bawah mewujudkan kontrak yang sah:-

- a) Siti menjual mesin basuhnya yang berharga RM1,000.00 kepada Maria dengan harga RM10.00 sahaja.
(6 markah)
- b) Akibat tekanan hidup, Ahmad meninggalkan keluarganya untuk mencuba nasib di tempat lain. Pergiannya selama 6 bulan menyebabkan dua anaknya terbiar. Zul, kawan Ahmad, yang bersimpati dengan keadaan tersebut secara sukarela membiayai perbelanjaan dan persekolahan anak-anak Ahmad. Setelah Ahmad kembali, dia berjanji untuk menjelaskan semua perbelanjaan yang telah dikeluarkan oleh Zul.
(7 markah)
- c) Minggu lepas, Ali telah menjumpai beg Siti yang mengandungi beberapa dokumen penting. Ali telah memulangkan beg tersebut kepada Siti semalam. Siti amat berterimakasih dan berjanji untuk membayar Ali RM5,000.00. Siti kemudiannya berubah fikiran dan bercadang untuk tidak membayar kepada Ali. Bolehkan beliau menyatakan bahaawa tiada balasan yang diterima di atas janji kepada Ali yang menjumpai beg tersebut sebelum janji dibuat?
(7 markah)

- Kertas Soalan Tamat -