



جامعة السلطان الشريف علي الإسلامية
UNIVERSITI ISLAM SULTAN SHARIF ALI
SULTAN SHARIF ALI ISLAMIC UNIVERSITY

Faculty of Shariah and Law
Semester II, 2021/2022 Academic Session
Final Examination

Examination Questions Paper

Course Code : LB3306
Course Name : Company Law II
Course Level : Bachelor's Degree
Time : 3 hours

Reference allowed
Company Act (CAP39)

Note (s):

1. Answer any **four (4)** questions
2. All answers, wherever relevant, must be supported by statutory provisions

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

QUESTION 1 (15 Marks)

a) Explain the powers of the court in facilitating the merger of a company and distinguish merger from takeover.

(7marks)

b) Samarata Sendirian Berhad (the company) is a small private limited company having only 9 shareholders. Red, who was one of the shareholders of the company wanted to transfer his shares to his friend, Purple and thus, an application to this effect was made and submitted to the company accordingly. Two months later, Red and Purple went to the company to check on the status of the transfer since neither of them received any news from the company regarding the same. At the company, they were informed that the transfer was refused. No reason was given for such refusal. However, to their surprise, when Red requested the return of the share certificate, they were informed that the share certificate was cancelled as the shares had been successfully transferred to another person, Brown. Red denied that he had ever executed a transfer of his shares to Brown.

Advise Red.

(8 marks)

QUESTION 2 (15 Marks)

a) Explain the differences between “fixed charge” and “floating charge”? How does a floating charge crystallized?

(7 marks)

c) Long Sdn Bhd (“the company”) obtained a loan from Bank Kaya Berhad and the loan was secured by a floating charge over all the assets of Long Sdn Bhd. However, neither Long Sdn Bhd nor Bank Kaya Berhad registered the charge. Six months later, Long Sdn Bhd obtained another loan from Bank Raya Berhad and the loan was secured by the creation of a floating charge over “the whole of the company’s assets and undertaking”. Bank Raya Berhad was not aware of the existence of the charge in favour of Bank Kaya Berhad because the company search conducted did not show

any encumbrance. The charge created in favour of Bank Raya Berhad was duly registered with the Companies Commission. Sometime later, Long Sdn Bhd went into liquidation.

Advise the liquidator as to the following:

- a) whether Bank Kaya Berhad's charge is enforceable?
- b) the priority of the charges.

(8 marks)

QUESTION 3 (15 Marks)

- a) What are the formalities which must be observed by a company before offering debenture to the public?

(7 marks)

- b) X Sdn Bhd is a company with share capital, which is divided into ordinary shares and preferential shares. Its articles of association provides that the preference shareholders of the company shall have priority as to return of capital in a winding up. The board of directors of the company found that the company's capital has been lost in the business to the extent that it no longer reflects the amount shown in the Memorandum of Association.

- i. If capital has been lost, who will bear the loss of the ordinary shareholders or the preference shareholders?

- ii. Advise the board if the company can reduce its capital and if so, how to do it?
- (8 marks)

QUESTION 4 (15 Marks)

- a. A debenture holder occupies a position mid-way between the members and the ordinary creditors. He does not have all the rights of members. Explain.

(7 marks)

- b. Minority shareholders must be treated fairly in relation to any variation of their class rights. Explain with the reference to the case of *Foss v Harbottle* (1843) 67 ER 189.

(8 marks)

QUESTION 5 (15 Marks)

- a. What is a prospectus and what are the requirements for the issuance of a prospectus?

(7 marks)

- b. Write a short note on any two (2) of these terms.

- i. Authorized capital
- ii. Issue of shares at a premium
- iii. Redeemable debentures

(4 marks each)

QUESTION 6 (15 Marks)

- a) Define the winding up of a Company. What are the various modes of winding up a Company?

(7 marks)

- b) A common feature of winding up is the appointment of a liquidator. It is the liquidator's function to carry out the winding-up process, which leads to the eventual dissolution of the company.

Discuss how liquidators are appointed in various modes of winding up.

(8 marks)