



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

Faculty of Shariah and Law
Semester II, 2020/2021 Academic Session

Final Examination Questions Paper

Course Code : LB 3306

Course Name : Company Law II

**Course Level : Bachelor of Laws (LL.B) & Bachelor of
Shariah Law (BSL)**

Time : 3 hours

Reference allowed
Company Act (CAP39)

Note (s):

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

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

QUESTION 1 (15 Marks)

a. X Sdn Bhd is a company with share capital, which is divided into ordinary shares and preferential shares. Its articles of association provide 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?

(7 marks)

b. "Shares are freely transferable unless restrictions are imposed by the memorandum or articles. The right to transfer shares may also be restricted by agreement. In the case of a private company, the transfer of shares must be restricted in some way. This is commonly done by giving discretion to the directors to refuse to register a transfer, or by stipulating to whom shares may be transferred, or by giving to the existing members a right to have any shares offered to them first before they can be transferred ('pre-emptive rights')."

Discuss.

(8 marks)

QUESTION 2 (15 Marks)

Beta Sdn. Bhd. has an authorised, issued and paid up share capital of BND1 million made up of 700,000 one-dollar ordinary shares and 300,000 one-dollar preference shares. The articles of association of the company gives the preference shareholders a right to a fixed dividend of 10% per annum, a general voting right of one vote per share and a priority as to return of capital.

Ali, Beng and Chandran are the directors of the company. Ali is also its managing director. The directors have found that preference shareholders have a tendency to oppose proposals which the ordinary shareholders were in favor of and this has led to several special resolutions not being able to be passed.

Ali is rather concerned about this and is considering either increasing the share capital of the company by issuing more ordinary shares or reducing the voting power of the preference shareholders. He is also considering the option of getting rid of the preference shareholders by paying them off and cancelling their shares. Advice Ali, Beng and Chandran in relation to :

- a. The procedure to effect an increase of the company's authorized share capital?
(3 marks)
- b. The legal obstacles that may hinder the directors from proceeding to issue new ordinary shares?
(4 marks)
- c. If the company passes a special resolution altering the articles of association to restrict the voting power of the preference shareholders to matters affecting their rights only, would they (preference shareholders) be able to challenge the validity of the alteration?
(5 marks)
- d. Possibility of the company reducing its share capital by BND300, 000 by paying back the preference shareholders in full?
(3 marks)

QUESTION 3 (15 Marks)

Discuss the following:

- a. What is a Debenture and what are the types of Debentures.
(5 marks)
- b. What are the formalities that must be observed by a company before offering debenture to the public?
(5 marks)
- c. 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.
(5 marks)

QUESTION 4 (15 Marks)

Bigwhale Bhd. ("Bigwhale") has a 10% shareholding in Smallfish Sdn. Bhd. ("Smallfish"). Apparently Bigwhale is not happy with the way Smallfish's business is being run for the past few years. Bigwhale has decided to take over control of the management of Smallfish.

- a. Explain the differences between "compulsory takeover" and "partial takeover".
(7 marks)
- b. Explain the Permissible tactics that Smallfish may use to defeat the takeover process.
(8 marks)

QUESTION 5 (15 Marks)

- a. Explain, what is a Prospectus and its contents? (3.5 marks)
- b. Explain the 'Statement-in-lieu of Prospectus'. (3.5 marks)
- c. "The failure to issue a prospectus when one is necessary may lead to the prosecution of the corporation under the various sections which require the issuance of the same."

Explain the above statement with reference to the liability of the company and its directors / persons who are responsible for the issuance of the prospectus in contravention with its requirements. Give examples from both the civil and criminal point of view.

(8 marks)

QUESTION 6 (15 Marks)

- a. What do you understand by the term 'compulsory winding up' of a company? Discuss the circumstances where a court grants an order for compulsory winding up.

(8 marks)

- b. Discuss the powers and duties of a liquidator in voluntary winding up of a Company.

(7 marks)