



**KOLEJ YAYASAN PELAJARAN JOHOR
FINAL EXAMINATION**

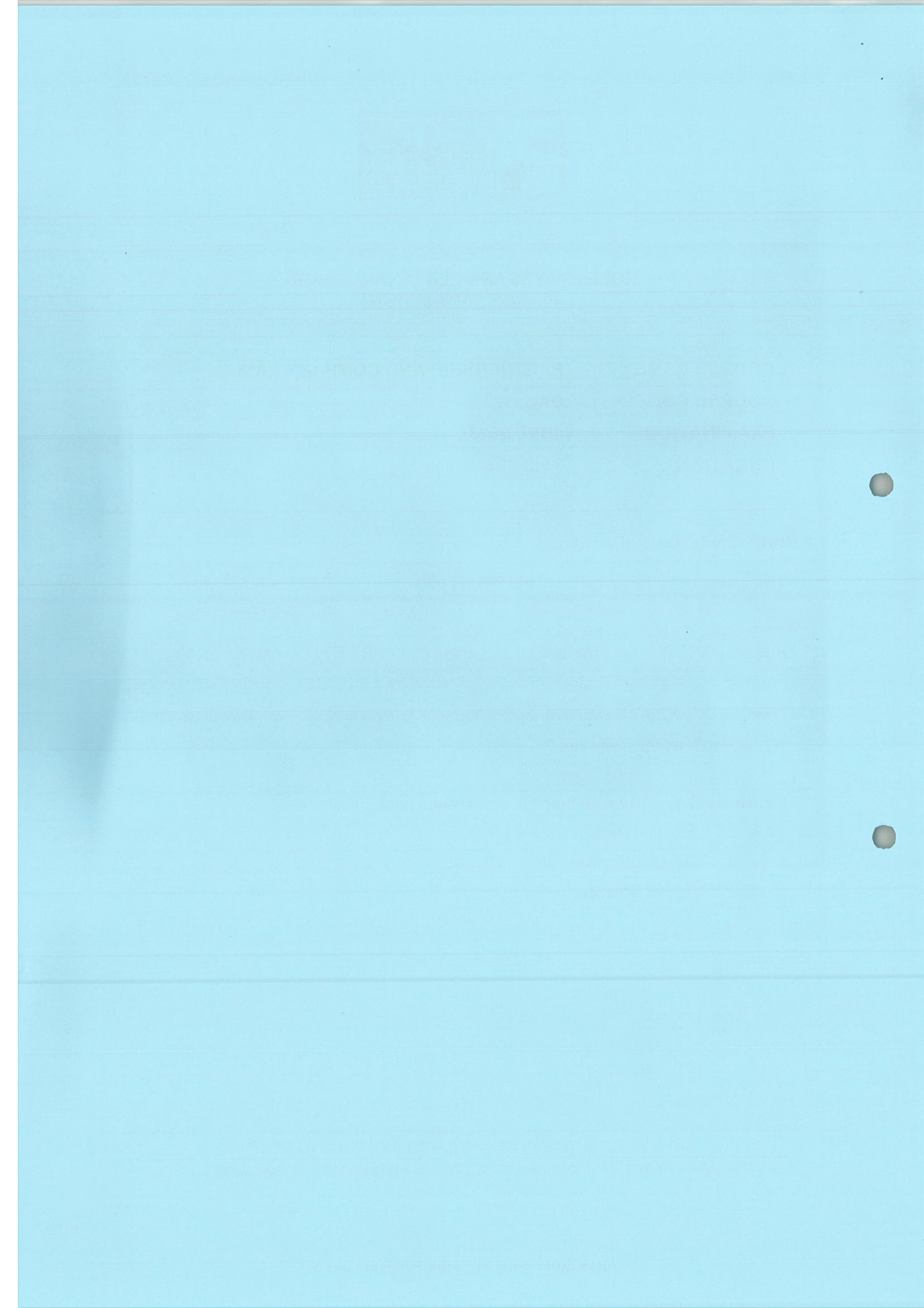
COURSE NAME : PARTNERSHIP AND COMPANY LAW
COURSE CODE : DAC2123
EXAMINATION : JUNE 2023
DURATION : 3 HOURS

INSTRUCTION TO CANDIDATES

1. This examination paper consists of **TWO (2)** parts :
PART A (25 Marks)
PART B (75 Marks)
2. Answer **PART A** in the objective answer sheet and **PART B** in the answer booklet.
3. Candidates are not allowed to bring any material to examination room except with the permission from the invigilator.
4. Please check to make sure that this examination pack consist of:
 - i. Question Paper
 - ii. Objective Answer Sheet
 - iii. Answer Booklet

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This examination paper consists of 12 printed pages including front page



PART A

This part contains **TWENTY FIVE (25)** questions.

Answer **all** questions in the Objective Answer Sheet.

1. What is the maximum number of partners in a professional partnership?
 - A 2
 - B 20
 - C 50
 - D Unlimited

2. The following circumstances do not create a partnership **except**
 - A An author receives payment of royalty from the publisher.
 - B Co-owners of a property sharing a payment of rental paid by the tenant.
 - C Samad and Said ran a business together and they shared the net profits of the business.
 - D Dollah, a land owner and Arief, a property developer formed a joint venture to build houses on Dollah's land.

3. The statute which governs the registration of a partnership is the
 - A Partnership Act 1961.
 - B Companies Act 2016.
 - C Registration of Businesses Act 1956.
 - D Limited Liability Partnership Act 2012.

4. Alice and Carol formed a partnership running a restaurant business. Two years later, due to the economic downturn, they had to close down the restaurant. The assets of the business were valued at RM60,000 while the liabilities amounted to RM100,000.

Which of the following statement is **true** regarding the above situation?

- A Alice and Carol were not liable for the debts of the business.
 - B The creditors could only collect RM60,000 from the business.
 - C Alice and Carol were personally liable for the outstanding debt of RM40,000.
 - D In the event of a dissolution of the partnership the creditors were not allowed to make their claims if their debts had not been proven in court.
5. A partner who takes no part in the management of the business but is liable for the debt of the partnership is called
- A a quasi partner.
 - B an active partner.
 - C a salaried partner.
 - D a dormant partner.
6. The contractual liability of a partner is stated in
- A Section 11 of the Partnership Act 1961.
 - B Section 15 of the Partnership Act 1961.
 - C Section 19 of the Partnership Act 1961.
 - D Section 14 of the Partnership Act 1961.

7. Sunny is a partner of Sunny, Moon & Co. running a printing business. Recently her partners found out that Sunny had been using the office printing software and machine to print wedding cards and selling them on her own.

Which of the following sections can be referred to if Sunny's partners want to take an action against her?

- A Sections 21, 26 and 27 of the Partnership Act 1961.
 - B Sections 12, 13 and 14 of the Partnership Act 1961.
 - C Sections 30, 31 and 32 of the Partnership Act 1961.
 - D Sections 28, 29, and 34 of the Partnership Act 1961.
8. The principle of agency is stated in _____ of the Partnership Act 1961.
- A Section 3
 - B Section 6
 - C Section 7
 - D Section 8
9. Ben, who was a partner in the firm of Bell & Co, was charged with causing grievous bodily harm in the Magistrate's Court. His partners wanted to know whether they can be charged for the same offence as well.
- A No, because the act done was not in his capacity as a partner.
 - B Yes, because every partner is liable jointly with his other partners.
 - C No, because the term "wrongful act" does not include criminal liability.
 - D Yes, because the act is done within the ordinary course of the business.

10. Abu is a partner and he was appointed as a trustee to a large settlement. He used the trust property for the purpose of the firm's business and this fact was known to the other partners. The beneficiary to the trust fund wanted to recover the property from the firm.

Which of the following is **true** regarding the situation above?

- A Only Abu can be made liable because he committed the breach of trust.
- B The other partners can be made liable because they knew of the breach of trust.
- C The other partners cannot be made liable because Abu was appointed as a trustee in his personal capacity.
- D The other partners can be made liable because the trust property was misapplied while it is in the custody of the firm.

11. A partnership may not expel any of his partners unless

- A the partner has breached his duty.
- B the partner has committed a misconduct.
- C the partner is involved in a dispute with the other partners.
- D there is an express provision to expel in the partnership agreement.

12. A partnership at will is one where

- A the partners must make a will.
- B the duration of the partnership is fixed.
- C the duration of the partnership is not fixed.
- D the partners are not required to make a will.

13. Which of the following statement is **false** regarding public and private companies?
- A The minimum number of members in a private company is one while the minimum number of members in a public company is two.
 - B The maximum number of members in a private company is 50 while the maximum number of members in a public company is unlimited.
 - C A private company is not required to hold an annual general meeting while a public company is required to hold an annual general meeting annually.
 - D A private company must have a restriction on the transfer of its shares while a private company is allowed to sell its shares to the members of the public.
14. What are the advantages of choosing a company as a medium for carrying out a business compared to a partnership?
- i The ease of formation.
 - ii The limitation on liability.
 - iii The availability of capital.
 - iv The ability to sue in its own name.
- A i, ii, iii
 - B ii, iii, iv
 - C i, iii, iv
 - D i, ii, iv

15. The following statement regarding a company limited by shares and a company limited by guarantee is true **except**
- A companies limited by shares can pay dividends to its members while a company limited by guarantee is prohibited from paying any dividends to its members.
 - B a company limited by shares can be formed as a private or public company while a company limited by guarantee can only be formed as a public company.
 - C companies limited by shares and companies limited by guarantee are allowed to issue shares to the general public.
 - D a company limited by shares may adopt a constitution while a company limited by guarantee must have a constitution.
16. An application to form a company must be made to
- A the Registrar of Societies.
 - B the Registrar of Business.
 - C the Registrar of Companies.
 - D the Registrar of Limited Liability Partnership.
17. Upon payment of the prescribed fee, the Registrar may reserve the proposed name of a company for a period of
- A 14 days.
 - B 21 days.
 - C 30 days.
 - D 60 days.
18. Which of the following is conclusive evidence that a company has been duly registered?
- A Common seal
 - B Notice of registration
 - C Statutory declaration
 - D Certificate of incorporation

19. Who is a promoter?
- A A person who does marketing for the company.
 - B A person who sues the company for breach of contract.
 - C A person who creates the separate legal entity of a company.
 - D A person who is a party to the preparation of the prospectus of the company.

20. A company promoted by Adam bought a piece of land. The said land was subdivided and offered for sale to the public. Adam set up a partnership with three other people and bought one of the lots. He did not disclose his interest in the purchase to the company.

Decide whether the company can rescind the contract.

- A Yes, because Adam sold his own property to the company.
- B No, because the parties cannot be restored to their original position.
- C No, because the land was offered for sale to the public and Adam is entitled to buy one of the lots.
- D Yes, because the promoter's failure to disclose his interest is a ground for rescission of the contract.

21. Andrew is a promoter of a company and he enters into a contract with a third party on behalf of the company prior to its formation. Under common law, would a valid contract exist, and if so, who are the parties to the contract?

- A No contract would exist.
- B A valid contract exists and it would be between Andrew and the company.
- C A valid contract exists and it would be between Andrew and the third party.
- D A valid contract exists and it would be between the company and the third party.

22. Samuel who is a director and also a member of a company is sued for breach of director's duty to the company in the High Court. The constitution of the company states that,

"...in the event of a dispute between the company and its members, the matter should be referred to arbitration."

Can Samuel enforce the provision in the constitution against the company?

- A No, because as a director, he is a third party to the company.
 - B No, because only a director can bring an action on behalf of the company.
 - C Yes, because the constitution is a contract between the company and its members.
 - D Yes, because the provision in the constitution is included in the contract between Samuel and the company.
23. The constitution of Syarikat Radius Berhad states that the main object of the company is,

"to engage in the business as entrepreneurs in building construction materials".

The company wishes to obtain a loan from a bank to develop a land for a housing project. What would be the effect of the contract?

- A Void
 - B Valid
 - C Illegal
 - D Voidable
24. What is a "special resolution"?
- A A resolution that is passed by 51 percent of the members.
 - B A resolution that is passed by 60 percent of the members.
 - C A resolution that is passed by 75 percent of the members.
 - D A resolution that is passed by 100 percent of the members.

25. Which of the following statement is **true** regarding winding up?
- A The creditors can wind up the company even though the company can still meet their debts when they become due.
 - B The Central Bank of Malaysia can submit a petition for the winding up of all licensed insurance companies in Malaysia.
 - C The date of commencement for members' voluntary winding up is the date of petition for winding up is submitted to the court.
 - D In members' voluntary winding up, the director or majority of directors must make a declaration of solvency and the declaration is lodged with the Registrar before the notice of the meeting is sent to the members.

[25 MARKS]

PART B

This part contains **THREE (3)** questions.

Answer **all** questions in the Answer Booklet.

QUESTION 1

- (a) With reference to the Partnership Act 1961 and relevant cases, discuss the characteristics of a partnership.

(15 marks)

- (b) Ahmad, Badrul and Combi formed a partnership under the name of ABC & Associates. Ahmad died and his widow, Lisa continued to receive the profits made from the business. Besides that, Daud, who is an employee of the firm had advanced RM15,000 to the firm. Daud signed an agreement with ABC & Associates, in which Daud would be receive a salary plus one-eighth of the profits. Daud and Lisa claimed that they are partners in the partnership.

Advise ABC & Associates on the validity of their claim.

(15 marks)

QUESTION 2

- (a) With reference to relevant cases, discuss the circumstances where the court will lift the corporate veil.

(15 marks)

- (b) Mukhriz and Nazri formed a company called Enigma Sdn. Bhd. Mukhriz holds 70% of the shares while Nazri holds the remaining 30%. In January 2023, the company ran into financial difficulties and had to lay off some of its employees. The employees made a claim for compensation to the Industrial Tribunal and an order was made ordering Mukhriz and Nazri to be personally liable for paying the compensation. In May 2023, fire broke out and destroyed most of their stocks. Mukhriz had insured the stocks under his own name. He tried to make a claim under the insurance policy but his claim was rejected. Advise Mukhriz and Nazri.

(15 marks)

QUESTION 3

Ibrahim is one of the directors of Awesome Sdn. Bhd, a company specialising in producing leather fashion accessories. The company wished to sell its products in New Trend Superstore and sent Ibrahim to negotiate a contract with the store. Ibrahim returned and informed the company that New Trend Superstore had declined to make the contract. It was later discovered that New Trend Superstore had entered into a contract for the supply of various types of leather fashion accessories from a firm called Looking Good and that Ibrahim is one of the partners of the firm.

The company wished to sue Ibrahim for breach of duties and claim all profits that he obtained from the contract.

(15 marks)

[75 MARKS]

--END OF QUESTION PAPER--

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