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UNIVERSITI SAINS MALAYSIA

Peperiksaan Semester Pertama  
Sidang Akademik 2007/2008

Oktober / November 2007

**HBT 103 - BAHASA, UNDANG-UNDANG DAN  
PENTERJEMAHAN I**

Masa : 3 jam

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Sila pastikan bahawa kertas peperiksaan ini mengandungi LAPAN muka surat yang bercetak sebelum anda memulakan peperiksaan ini.

**ARAHAN KEPADA CALON:**

1. Jawab ENAM soalan sahaja.
2. Soalan 1, 2 dan 3 di Bahagian A wajib dijawab.
3. Jawab DUA soalan dari Bahagian B.
4. Jawab SATU soalan dari Bahagian C.
5. Tulis nombor soalan yang telah anda jawab pada muka hadapan buku jawapan anda.

Bahagian A

Jawab SEMUA soalan.

1. Bincangkan langkah-langkah yang boleh diambil untuk meningkatkan penggunaan bahasa Malaysia dalam bidang perundangan di Malaysia.

[10 markah]

2. Teliti petikan berikut.

*“A contract is an agreement which binds the parties. Some agreements are not contract; for example, an agreement to meet under the clock...what distinguishes contractual agreements from other agreements is the feature of binding legal obligation.”*

[Sumber: F.R. Davies, *Contract*, 4<sup>th</sup> ed. (London: Sweet & Maxwell, 1981), hlm. 1]

Bincangkan kenyataan ini dengan memberikan contoh-contoh yang sesuai.

[10 markah]

3. Terangkan dengan ringkas lima ciri utama sebuah kontrak.

[10 markah]

Bahagian B

Jawab DUA soalan sahaja daripada bahagian ini.

4. Jawab [a] - [d].

[a] Berikan padanan dalam bahasa Inggeris bagi istilah-istilah berikut:

[i] penerimaan melalui pos

[ii] pelaksanaan spesifik

[iii] penolakan liabiliti

[iv] gantirugi

[v] terma tersirat

[5 markah]

[b] Terangkan maksud "balasan lampau".

[4 markah]

[c] Huraikan perbezaan antara *executory consideration* dengan *executed consideration*.

[6 markah]

[d] Jelaskan cara sesuatu kontrak itu dapat dianggap menyalahi undang-undang.

[5 markah]

5. Jawab [a] - [c].

[a] Berikan padanan dalam bahasa Inggeris bagi istilah-istilah berikut:

[i] penerimaan tanpa syarat

[ii] pengaruh tak wajar

[iii] kontrak keperluan

[iv] salah nyata

[v] klausa pengecualian

[5 markah]

[b] Bezakan antara kontrak tak sah (*void*) dan kontrak boleh tak sah (*voidable*).

[6 markah]

[c] Terangkan tiga jenis kesilapan (*mistake*) yang mungkin berlaku dalam sesuatu kontrak.

[9 markah]

6. Jawab [a] - [d].

[a] Berikan padanan dalam bahasa Inggeris bagi istilah-istilah berikut:

[i] kekecewaan kontrak

[ii] pelepasan melalui pelaksanaan

[iii] penamatan kontrak

[iv] penerima janji

[v] balasan lampau

[5 markah]

- [b] Jelaskan perbezaan antara undang-undang sivil dengan undang-undang jenayah.  
[6 markah]
- [c] Semasa seseorang mula bekerja, apakah terma-terma bertulis yang biasanya diberikan kepadanya? Jelaskan dengan ringkas.  
[5 markah]
- [d] Huraikan maksud “bawah umur” dalam konteks undang-undang.  
[4 markah]

Bahagian C

Jawab SATU soalan sahaja daripada bahagian ini.

7. Terjemahkan **TEKS A** ke bahasa Malaysia.

**TEKS A**

ADVERTISEMENTS

The courts have usually taken the view that advertisements in newspapers and magazines are also invitations to treat, not offers.

Most of us shop at various times by mail order. Let us suppose your eye is caught by one of the advertisements in the small squares that appear in the papers, particularly at weekends – an advertisement for Afghan slipper socks, say, in *The Guardian*. Such an advertisement does not amount in law to an offer. It is you, the customer, that makes the offer when you write your letter saying, 'Please send me ....', and enclosing a cheque. The mail order company is free to accept or reject this offer.

Again, it is good common sense. The company may have imported 10,000 pairs of slipper socks from Afghanistan. It cannot know how many orders it will receive. If the law was that the advertisement amounted to an offer which was accepted by a customer placing an order, it would mean that if the company, for example, received 11,000 orders it would be in breach of contract 1000 times! It is commercial common sense that the company should be able to reject orders, and it can do this because it is the customer that is making the offer. If the company does receive more orders than it is able to supply, it will inform the customer of the position and return the cheque. In the eyes of the law it is rejecting an offer made by a customer.

*Police v. Crittenden (1968)*

The Protection of Wild Birds Act made it an offence to offer wild birds for sale. Mr. Crittenden inserted an advertisement in a fortnightly journal, *Cage and Aviary Birds*. The ad, placed in the classified columns, read 'Bramblefinch cocks and hens 25 shillings each'. Mr. Crittenden was prosecuted for offering for sale a wild bird contrary to the Act. *The court held* that the defendant was not guilty. The advertisement constituted merely an invitation to treat and not an offer to sell.

[Sumber: Barry Hawkins & Grant Bage, *Making Contracts: Agreements to Buy or Supply* (London: Kogan Page, 1991), hlm. 19-20]

8. Terjemahkan **TEKS B** ke bahasa Malaysia.

**TEKS B**

MITIGATION

There is a general principle that where a breach has occurred the injured party, if he accepts the breach as discharging the contract, must take all reasonable steps to mitigate the loss occasioned by the breach. So, a buyer, faced with the seller's refusal to deliver the goods due on March 15, must go in to the market at once to buy replacement goods. If he waits unreasonably until, say, April 15, and the market price has risen, he will not receive in damages the difference between the contract price and the April 15 price, but only between the contract price and the March 15 price. Similarly, an employee wrongfully dismissed must mitigate his loss by accepting a reasonable offer of other employment.

Reasonableness is the key-note of the principle. The injured party is not required to act with lightning speed, or to accept any old offer of other employment that comes along, or to embark on some difficult course. For example, in *Pilkington v. Wood* (1953) the plaintiff instructed the defendant, a solicitor, to act for him in the purchase of a house. The defendant negligently advised the plaintiff that the title to the house was good. This breach of contract led to all sorts of unfortunate results, and the case is interesting on remoteness of damage. But we are concerned with it in reference to mitigation. The defendant argued that the plaintiff should have mitigated his loss by taking legal proceedings against the vendor for having conveyed a defective title. The judge rejected this argument, holding that the duty to mitigate does not oblige the plaintiff to "embark on a complicated and difficult piece of litigation against a third party."

The onus lies on the defendant to prove, if he can, that an opportunity of mitigation has been neglected.

Sometimes the parties to a contract provide, in the contract itself, that a specified sum shall be payable in the event of breach.

[Sumber: F.R. Davies, *Contract*, 4<sup>th</sup> ed. (London: Sweet & Maxwell, 1981), hlm. 201]

9. Terjemahkan **TEKS C** ke bahasa Malaysia

**TEKS C**

FRAUD

Fraud is defined in Section 17 of the Contracts Act 1950, to include certain acts which are committed with intent to induce another party to enter into contract. Section 17 then lays down five different acts which may constitute fraud. As a general rule, it may be stated that wherever a person causes another to act on a **false representation** which the maker himself does not believe to be true, he is said to have committed a fraud. Section 17 reads:

17. 'Fraud' includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into contract:
- (a) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;
  - (b) the active concealment of a fact by one having knowledge of belief of the fact;
  - (c) a promise made without any intention of performing it;
  - (d) any other act fitted to deceive; and
  - (e) any such act or omission as the law specially declares to be fraudulent.

Explanation – Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

The general rule is that, **mere silence** or **non-disclosure** would not constitute fraud. However, there may be certain circumstances under which silence or non-disclosure may constitute fraud. The Explanation to Section 17 provides that the circumstances may be such that 'it is the duty of the person keeping silence to speak' or, in certain circumstances, silence may be 'equivalent to speech.'

[Sumber: Lee Mei Pheng, *General Principles of Malaysian Law*, 5<sup>th</sup> ed. (Selangor: Penerbit Fajar Bakti, 2005), hlm.126-127]

[30 markah]