Angka Giliran: _____ No. Tempat Duduk: _____

UNIVERSITI SAINS MALAYSIA

Peperiksaan Semester Pertama
Sidang Akademik 2006/2007

Oktober/November 2006

HBT 103 – BAHASA, UNDANG-UNDANG DAN PENTERJEMAHAN I

Masa : 3 jam

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

ARAHAN:

1. Kertas soalan ini mengandungi Bahagian A, Bahagian B dan Bahagian C.
2. Bahagian A mengandungi SATU soalan sahaja. Soalan ini WAJIB dijawab.
3. Bahagian B mengandungi TIGA soalan. Jawab DUA soalan sahaja daripada bahagian ini.
4. Bahagian C mengandungi TIGA soalan. Jawab DUA soalan sahaja daripada bahagian ini.
5. Tulis semua jawapan anda dalam kertas peperiksaan ini.
6. Tulis nombor soalan yang anda jawab pada kotak yang disediakan di bawah.

Bahagian	Soalan yang dijawab	Markah
Bahagian A	1	
Bahagian B		
Bahagian C		

...2/-

Angka Giliran: _____ No. Tempat Duduk: _____

Bahagian A

Soalan ini WAJIB dijawab.

1. Jawab [a] dan [b].

[a] Berikan padanan bahasa Malaysia bagi istilah undang-undang berikut.

[i] *consensus ad idem* _____

[ii] acceptance _____

[iii] fundamental breach _____

[iv] contractual capacity _____

[v] misrepresentation _____

[vi] assignment _____

[vii] *locus standi* _____

[viii] termination of offer _____

[ix] restraint of trade _____

[x] lapse of offer _____

[10 markah]

[b] Dengan menggunakan data dalam [a] dan contoh-contoh yang lain, terangkan kaedah yang disarankan oleh Dewan Bahasa dan Pustaka untuk membentuk istilah undang-undang dalam bahasa Malaysia.

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Angka Giliran: _____ No. Tempat Duduk: _____

[10 markah]

Angka Giliran: _____ No. Tempat Duduk: _____

Bahagian B

Jawab DUA soalan sahaja.

2. Jawab [a], [b] dan [c].

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

[i] pelaksanaan kontrak _____

[ii] penarikan balik tawaran _____

[iii] klausa-klausa pengecualian _____

[iv] salah nyata _____

[v] pelepasan kontrak _____

[5 markah]

[b] Semasa seorang mula bekerja, apakah terma-terma bertulis yang biasanya diberikan kepadanya? Jelaskan dengan ringkas.

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[5 markah]

Angka Giliran: _____ No. Tempat Duduk: _____

[c] Bezakan antara ‘pelaksanaan spesifik’ dengan ‘injunksi’.

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[5 markah]

3. Jawab [a], [b] dan [c].

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

[i] kontrak keperluan _____

[ii] ikatan amanah _____

[iii] pengaruh tak berpatutan _____

[iv] balasan lampau _____

[v] penamatan kontrak _____

[5 markah]

…6/-

Angka Giliran: _____ No. Tempat Duduk: _____

[b] Jelaskan maksud ‘bayaran berasaskan *quantum meruit*’.

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[5 markah]

[c] Jelaskan perbezaan antara ‘kontrak boleh batal’ dengan ‘kontrak batal’.

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Angka Giliran: _____ No. Tempat Duduk: _____

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[5 markah]

4. Jawab [a], [b] dan [c].

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

[i] pelaksanaan spesifik _____

[ii] polisi awam _____

[iii] hak dan tanggungjawab _____

[iv] penerimaan tanpa syarat _____

[v] balasan tersempurna _____

[5 markah]

[b] Terangkan konsep *remoteness of damage* dalam satu tuntutan ganti rugi.

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Angka Giliran: _____ No. Tempat Duduk: _____

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[5 markah]

[c] Bezakan antara *offer* dengan *invitation to treat*.

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[5 markah]

Angka Giliran: _____ No. Tempat Duduk: _____

Bahagian C

Jawab DUA soalan sahaja.

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

TEKS A

DISCHARGE BY ACCEPTANCE OF BREACH

Breach of contract occurs where a party fails to perform his contractual obligations, or where he repudiates his obligations, expressly or impliedly, without justification. A party not in breach usually has an action for damages against the party in default and, in certain circumstances, he may also treat the contract as repudiated by the party in breach and refuse further performance. That is to say, breach by one party may enable the other party to take steps to discharge himself from further liability.

The express and implied terms of contract are a source of primary obligations. These are the promises given by one party to the other. Where a party fails to do what he promised to do, he has failed to fulfill his own primary obligation. Apart from those comparatively rare cases in which the court is able to enforce a primary obligation by decreeing specific performance of it, breaches of primary obligations give rise to substituted secondary obligations on the part of the party in default. The failure to perform a primary obligation is a breach of contract. The secondary obligation to which it gives rise is to pay monetary compensation for the loss sustained (by the party not in default) in consequence of the breach. Lord Diplock called this secondary obligation to pay compensation (damages) for non-performance of primary obligations the “general secondary obligation”.

[Sumber: W.T. Major, *The Law of Contract*, 6th ed. (Plymouth: Macdonald and Evans, 1984), hlm. 205]

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Angka Giliran: _____ No. Tempat Duduk: _____

[25 markah]

…12/-

Angka Giliran: _____ No. Tempat Duduk: _____

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

TEKS B

AGREED DAMAGES

Sometimes the parties to a contract provide, in the contract itself, that a specified sum shall be payable in the event of breach. This is a perfectly permissible and sensible thing to do, because the quantification of damages in court can be a difficult, long and expensive process. So, in a building contract it is frequently provided that if the builder is late in completing he shall pay damages of £x per day. A demurrage clause, common in charterparties, is, of this nature. One might call it an exercise in home-made damages or do-it-yourself damages. Where there is an agreed damage clause in the contract, the plaintiff can recover the specified sum although his actual loss may be less. And if his actual loss is more than the specified sum he can still only recover the specified sum.

But a clause of this kind may be challenged on the ground that it is a “penalty,” a threat held over the head of the party, to try to force him to perform the contract. If the court holds that the clause is a penalty clause it is disregarded, and the plaintiff cannot recover more than his actual loss. Rather more curiously, if the actual loss turns out to be more than the sum mentioned in the penalty clause (an unlikely but possible event), the plaintiff is permitted to ignore the clause and recover damages in full: see *Wall v. Rederiaktiebolaget Luggude* (1915).

[Sumber: F.R. Davies, *Contract*, 4th ed. (London: Sweet & Maxwell, 1981), hlm. 201-202]

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Angka Giliran: _____ No. Tempat Duduk: _____

[25 markah]

…15/-

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7. Terjemahkan **TEKS C** ke dalam bahasa Malaysia.

TEKS C

TERMS OF A CONTRACT

The Malaysian Contracts Act 1950 does not contain any provision which deals specifically with the contents of a contract. One may say that the **contents of a contract** are made up of terms which may be **expressed** and/or **implied**. Terms may be classified as either conditions or **warranties**.

Terms may be implied by:

a. custom and usage pertaining to a particular type of transaction;
b. statutory provisions; and
c. the courts, based on the intention of the parties.

Examples of statues which provide that certain terms are to be implied into particular contracts are the Sale of Goods Act 1957, the Hire-Purchase Act 1967 and the national Land Code 1965.

Normally, the courts will imply terms into a contract:

a. to give efficacy to the transaction. That is, terms may be implied from the presumed intention of the parties and upon reason so that there will not be a failure of consideration – *The Moorcock*;
b. by applying the 'officious bystander' test or what is commonly known as the 'Oh, of course!' test. That is, if at the time the contract was negotiated, someone had said to the parties, 'What will happen in such a case?, the parties would both have replied, 'Of course, such and such will happen. We did not trouble to say that, it is too clear.' – *Reigate v. Union Manufacturing Co. Ltd*. and *Shirlaw v. Southern Foundries (1926) Ltd.*

[Diubahsuai daripada: Lee Mei Pheng, *General Principles of Malaysian La*w, 5th ed. (Shah Alam: Oxford-Fajar Bakti, 2005), hlm. 108-109]

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Angka Giliran: _____ No. Tempat Duduk: _____

…18/-

Angka Giliran: _____ No. Tempat Duduk: _____

[25 markah]