

Angka Giliran: _____ No. Tempat Duduk: _____

UNIVERSITI SAINS MALAYSIA

Peperiksaan Semester Pertama
Sidang Akademik 2003/2004

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HBT 103 – Bahasa, Undang-undang dan Penterjemahan I

Masa : 3 jam

Sila pastikan bahawa kertas peperiksaan ini mengandungi **TUJUH BELAS** muka surat sebelum anda memulakan peperiksaan ini.

1. Kertas soalan ini mengandungi **Bahagian A** dan **Bahagian B**.
2. **Bahagian A** mengandungi LIMA soalan. Jawab EMPAT soalan sahaja daripada **Bahagian A**.
3. **Bahagian B** mengandungi SATU soalan sahaja. Soalan ini WAJIB dijawab.
4. Tulis semua jawapan anda dalam kertas peperiksaan ini.

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Bahagian A

1. Jawab [a] DAN [b].

[a] Berikan maksud ungkapan di bawah secara ringkas.

[i] legally binding

[ii] possibility of performance

[iii] kontrak eksekutori

[iv] balasan tak sempurna

[v] salah nyata

[vi] hak membatalkan hilang

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[vii] divisible contract

[viii] liquidated damages

[8 markah]

[b] Terangkan maksud undang-undang bagi ungkapan bahasa Latin di bawah. Berikan contoh-contoh yang sesuai untuk menunjukkan penggunaan ungkapan tersebut.

[i] ex turpi causa non oritur actio

[ii] nemo iudex in causa sua

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[iii] ignorantia juris non excusat

[12 markah]

2. Jawab [a] DAN [b].

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

- [i] promissory estoppel _____
- [ii] restraint of trade _____
- [iii] lapse of offer _____
- [iv] contract of utmost faith _____
- [v] innocent misrepresentation _____
- [vi] privity of contract _____
- [vii] non est factum _____
- [viii] unilateral mistake _____
- [ix] contractual capacity _____
- [x] common law _____
- [xi] fiduciary _____
- [xii] constitutional monarch _____

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- [xiii] customary law _____
- [xiv] judicial immunity _____
- [xv] mitigation _____
- [xvi] ultra vires _____
- [xvii] reasonable man _____
- [xviii] equity of law _____
- [xix] liquidated damages _____
- [xx] rule of law _____

[10 markah]

- [b] Dengan menggunakan data di atas, terangkan kaedah yang digunakan dalam penggubalan istilah undang-undang dalam bahasa Malaysia.

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[10 markah]

3. Nyatakan perbezaan yang terdapat dalam pasangan konsep-konsep berikut.

[a] “executory consideration” dengan “executed consideration”

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[b] kontrak tak sah (void) dengan kontrak boleh tak sah (voidable)

[c] "condition" dengan "warranty"

[d] terma nyata (express terms) dengan terma tersirat (implied terms)

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[e] duress (duress) dengan pengaruh tak wajar (undue influence)

[20 markah]

4. Jawab [a] DAN [b].

[a] Pilih mana-mana LIMA ayat di bawah dan terjemahkan ke dalam bahasa Malaysia.

[i] An offeree may have decided, in his own mind, that he accepts an offer, but that decision in itself does not amount in law to acceptance. It is necessary that he should communicate his acceptance to the offeror.

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- [ii] A counter-offer operates as a rejection of the original offer. Where an offeree makes a counter-offer, the original offer is deemed to have been rejected and cannot subsequently be accepted.

- [iii] The distinction between a quantum merui claim and a claim for damages is that the former is a claim for reasonable remuneration while the latter is a claim for compensation for loss.

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- [iv] Where there is no special fiduciary relationship between the two parties, the person who complains that he was pressed into the contract must prove that actual pressure was applied.

- [v] The Court may in its discretion order the defendant to perform his part of the contract instead of letting him buy himself out of it by paying damages for breach. Specific performance is an order of the Court ordering the defendant to perform a promise that he has made.

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[vi] An offer must be distinguished from an invitation to treat. An invitation to treat is not an offer which is capable of being turned into a contract by acceptance. An invitation to treat is a mere invitation by one party to the other party to make an offer.

[vii] Misrepresentation renders a contract voidable and not void. The contract is valid unless the innocent party, on discovering the misrepresentation, elects to rescind it. The effect of rescission is to nullify the contract *ab initio*.

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- [b] Bincangkan masalah yang anda hadapi untuk menterjemah ayat-ayat pilihan anda dalam 4 [a].

[5 markah]

5. Jawab [a] hingga [e].

- [a] Terangkan maksud “the separation of powers” dari sudut “judiciary”, “the executive branch” dan “the legislature”.

[6 markah]

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[b] Huraikan maksud "natural justice".

[5 markah]

[c] Terangkan maksud 'restitusi' dan 'indemniti'.

[3 markah]

[d] Nyatakan maksud 'perlembagaan bertulis' dan 'perlembagaan tidak bertulis' dengan memberi contoh yang sesuai.

[3 markah]

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- [e] Terangkan konsep “parliamentary supremacy” dan kaitannya dengan perlembagaan Malaysia.

[3 markah]

Bahagian B

6. Jawab [a] DAN [b].

- [a] Terjemahkan TEKS A ke dalam bahasa Malaysia.

TEKS A

A contract is discharged by frustration if, during the currency of the contract, further performance becomes illegal. A clear example of this principle is that a contract is frustrated if legislation (including delegated legislation) is passed after the contract was made, which renders it illegal. Another example is where the outbreak of war means that further performance of a contract would amount to “trading with the enemy.”

As with destruction of the subject-matter, so with illegality, it is sufficient if the “object of the exercise” is defeated; the fact that some minor part of the contract could still be performed does not save it from frustration.

[Sumber: F.R. Davies, *Contract* (London: Sweet & Maxwell, 1981), ms. 185]

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[b] Terjemahkan TEKS B ke dalam bahasa Inggeris.

TEKS B

Adalah menjadi suatu kenyataan bahawa Mahkamah mempunyai kuasa mentafsir undang-undang bertulis, dan laporan undang-undang mengandungi banyak contoh yang menunjukkan bahawa Mahkamah melakukan sedemikian. Menurut kuasa seksyen 2, Ordinan Perlembagaan Persekutuan, 1957, Perlembagaan Persekutuan mempunyai kuatkuasa undang-undang. Oleh sebab ia adalah sesuatu yang bertulis, maka ia adalah undang-undang bertulis; oleh itu, Mahkamah mempunyai kuasa mentafsirkannya. Perlembagaan Persekutuan tidak mempunyai apa-apa persamaan dengan fasal 153 Perjanjian Persekutuan Tanah Melayu, 1948 yang dengan nyata meletakkan kuasa mentafsirkan perjanjian itu kepada suatu Tribunal Pentafsiran, dan tribunal itu telah bersidang hanya sekali sahaja dalam kes yang berkenaan dengan *Pengambilan Tanah oleh Kerajaan Negeri Selangor*.

[Sumber: Tun Muhammad Sufian Hashim, *Mengenal Perlembagaan Malaysia* (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1984), ms. 149]

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[10 markah]