

VOLUME 1

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# HOSPITALITY LAW HANDBOOK

Designed for tourism & hospitality  
students

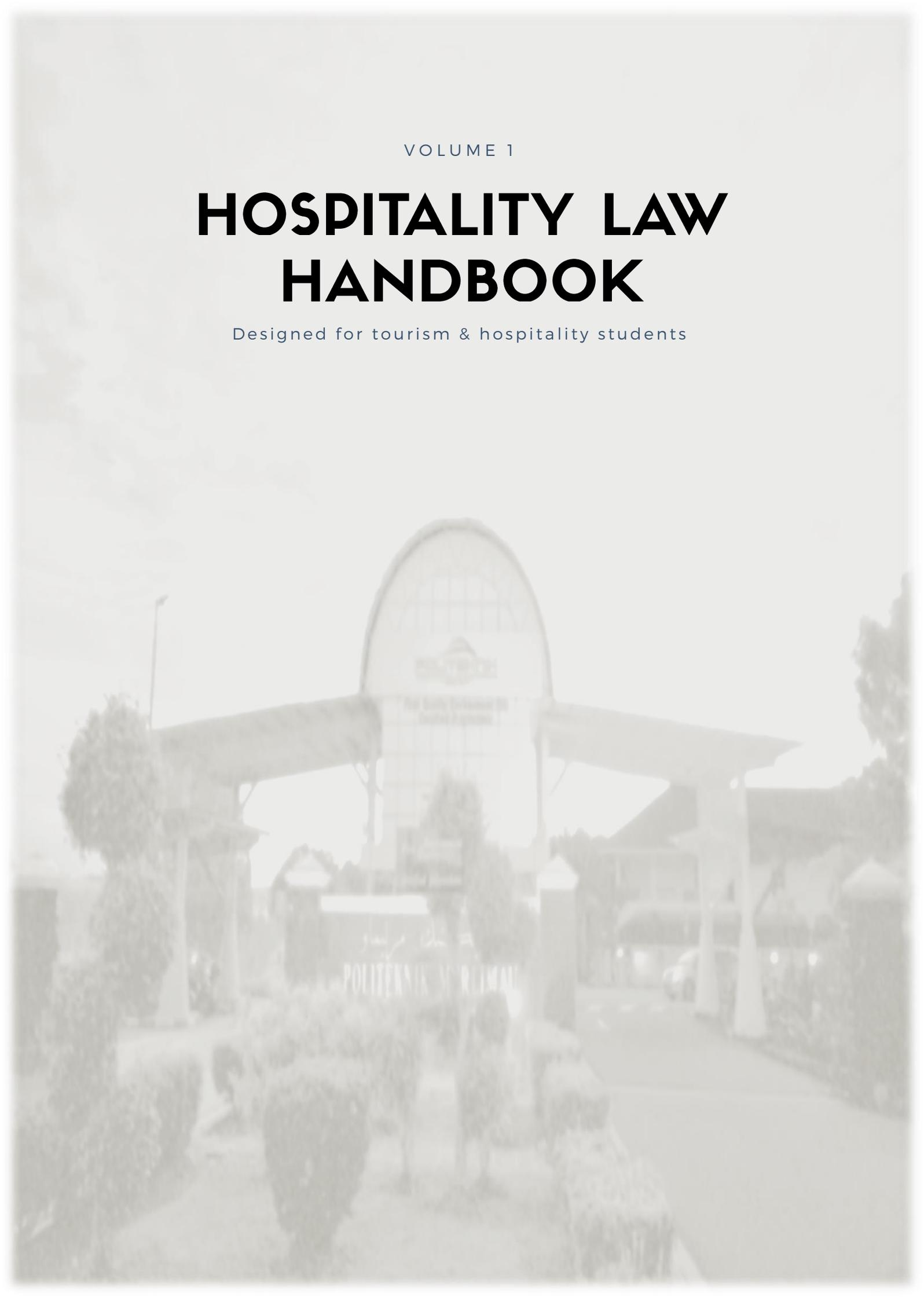
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HANIS ALIAA RAMLEY  
WAN NOR HAFIZA WAN SULAIMAN  
RUHANA WATI IRAN

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Thank you.

# Preface

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Hospitality Law e-book is a handy way provide students with an easy style and accessible to a basic knowledge of law especially for hospitality student. Each chapter of the e-book deals with topics in detail and has the following reader-friendly features. Learning objective briefly explain what to expect when going through in the text. They give an initial framework of reading.

Therefore, this e-book contains of five (5) chapter which are Chapter 1, The Malaysian Legal System; Chapter 2 Law of Contract; follow by Chapter 3, Negligence; Chapter 4, Employment Law and the important chapter for hospitality student in Chapter 5, Innkeeper Act.

The glossary by collection terms and their meaning are providing by the end of each chapter to consistent the terminology and accelerating the translation process. A simple question will be given after each chapter to enhance the understanding and knowledge of student. This e-book will be help and beneficial for the students and the readers.

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## CHAPTER 3

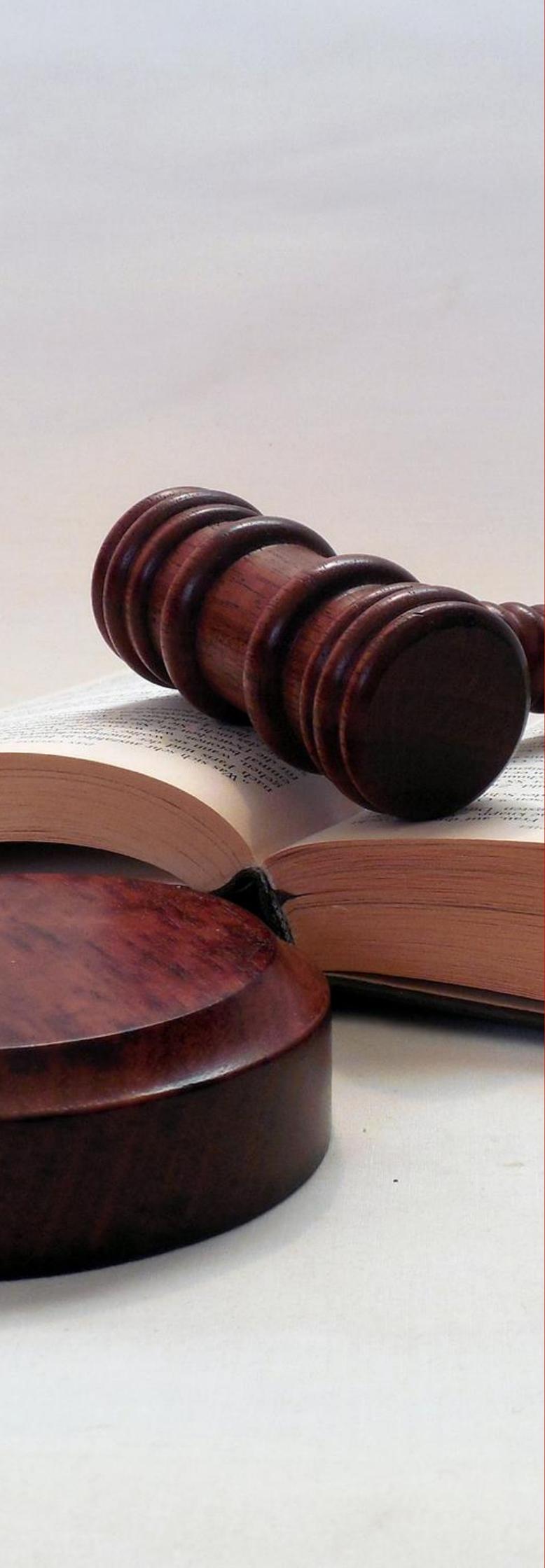
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**1**

THE  
MALAYSIAN  
LEGAL  
SYSTEM



**T**he Malaysian legal system is based upon the English common law system which Malaysia inherited by virtue of a long history of colonization by the British. Central to the Malaysian legal system is a written Constitution based upon the Westminster model. The organs of government and administration, together with their respective power and functions are to be found within the Malaysian Federal Constitution.

### 1.1 WHAT IS LAW?

- a. Oxford English Dictionary: **“the body of enacted or customary rules recognized by a community as binding”**.
- b. Law also defined as **any system of regulations to govern the conduct of the people of a community, society or nation, in response to the need for regularity, consistency and justice based upon collective human experience**.
- c. Sir John Salmond (Jurisprudence); **the body of principles recognized and applied by the State in the administration of justice**. In other words, law consists of the rules recognized and acted no by courts of justice. Law is a body of rules which are enforced by the state.
- d. Collisions Essential English Dictionary: **As a rule, or set of rules regulating what may or may not be done by members of a society or community**.
- e. The American Heritage - Dictionary of the English Language: **A rule of conduct or procedure established by custom, agreement or authority**.

### 1.2 THE IMPORTANCE OF LAW

- a. Living together necessarily involves social interaction. That involves the interaction of people in a community knowing what behavior is acceptable and what is not. So, it is probably accurate to say that law is a natural consequence of living together.
- b. Majority of people will agree that law is a necessary tool to regulate and protect the collective interest of society.
- c. Justice Donaldson of English court: **“without the rule of law and courts to enforce it, each one of us would be free to push and bully our fellow citizens, and which may be thought more important, our fellow citizens would be free to push and bulls us”**.
- d. Law undoubtedly restrains the exercise of some personal freedom, a sacrifice indispensable to the maintenance of communal harmony. Individual freedom often gives way to community interest, and in return, the law protects the individual and community.

## 1.3 CLASSIFICATION OF LAW

Law has been classified in a variety of ways. One of the more commonly adopted ways is to classify law into **THREE (3)** broad divisions:

### 1.3.1 Public Law

Public law is basically the law which governs the relationship between individuals and the state. Public law may be further subdivided into two categories;

- **Constitutional law** lays down the rights of individuals in the State. It deals with questions such as supremacy of Parliament and rights of citizens.
- **Criminal law** codifies the various offences committed by individuals against the State. It aims at punishing criminal and suppressing crime. Thus, criminal law imposes on individuals the obligation not to commit crimes. A crime is a wrong against the state for which punishment is inflicted by the state, the proceeding being brought by the public prosecutor.

### 1.3.2 International Law

International law may have defined as that body of law which is composed for its greater part of the principles and rules of conduct which States feel themselves bound to observe, and consequently commonly do observe, in their relations with each other. Divided into two categories;

- **Public international law:** is the law that prevails between States.
- **Private international law:** is a part of municipal law, as a result of which in every country there will be different version of it, consist of the rules that guide a judge when the laws of more than one country affect a case. Often called “conflict of laws”.

### 1.3.3 Private Law (Civil Law)

Private law is concerned with matters that affect the rights and duties of individuals among themselves. Basically, private or civil law is intended to give compensation to person injured, to enable property to be recovered from wrongdoers, and to enforce obligation. It covers areas such as:

- **Contract law:** is a branch of private law which governs the rights and obligations that arise by agreement.
- **Tort:** based on obligations imposed by law (i.e. offences against individual).
- **Trust:** the law of trust governs relationship between trustees and beneficiaries.

## 1.4 LAW IN MALAYSIA

Malaysia, which consists of Peninsular Malaysia, Sabah and Sarawak is one political unit, but is not governed by the same set of laws. In recent decades, there has been a deliberate attempt to achieve uniformity in the law throughout Malaysia.

There are **TWO (2)** important links which unite; the Parliament and the Federal Court:

- i. The **Malaysian Parliament** can and does legislate for the whole country.
- ii. The **Federal Court** as a final court of appeal for the whole country.

## 1.5 THE FEDERAL SYSTEM

Malaysia is a federation of thirteen States and three Federal territories. In a federal system, there are two levels of government; the central or federal government and the state government.

Under a federal system, the federal government has no complete power over the state government. At the same time, a state government does not have total freedom to make the laws or to implement the policies it wants. This structure is laid down by Article 1 (1) of the Federal Constitution, the supreme law of our country.

The Federal Constitution lays down the foundational characteristics of the country, the form and powers of the government, and the fundamentals principles by which the country should follow.

### 1.6 PARLIAMENT, THE EXECUTIVE AND THE JUDICIARY

Parliament, the executive and the judiciary are often called the three branches of state. Parliament makes the law; the executive (government) implements the law; while the judiciary (courts) deals with disputes or breaches of law.

#### 1.6.1 PARLIAMENT

Parliament is the **supreme legislature or law-maker** of the country (Article 44). Parliament consists of the Yang di-Pertuan Agong, the Dewan Negara (Senate), and the Dewan Rakyat (House of Representatives).

There are **222 members in the Dewan Rakyat**, elected by their respective constituencies during the general election. The Senate has 70 appointed senators.

Parliament is elected for a maximum period of five years. However, it is often dissolved at any time before five years by the Yang di-Pertuan Agong on the device of the Prime Minister. This is usually to make way for a general election.

Laws are normally passed by all three bodies acting in agreement. However, there are exceptions to this rule. If the country is threatened by an emergency, the Yang di-Pertuan Agong is empowered by article 150 to issue a proclamation of emergency. Once a proclamation is issued, the Yang di-Pertuan Agong may take law independently of the Dewan Rakyat and Dewan Negara.

### 1.6.2 THE EXECUTIVE

The executive is the government of the day. In the broadest term, the function of a government is to implement the laws as enacted by Parliament and to act in the interests of the people. As a rule, any political party that has a majority control of the Dewan Rakyat forms the government.

Government policies and actions directly impact on the hospitality industry. Many statutes on this area were tabled in Parliament by the government for example, the Food Act 1983 and the Tourism Industry Act 1992. The Ministry of Health is responsible for the enforcement of the Food Act. The Ministry of Tourism is charged with implementing the Tourism Act.

### 1.6.3 THE JUDICIARY

The main function of the judiciary is **to decide cases based on existing law**. Judges sometimes come up with new interpretations that effectively create new laws. There might be situations where a judge could not find an existing legal principle that covers the case before him, and he is forced to 'make' law when deciding the case. The body of law that is developed by the courts is called 'common law', 'judge-made law' or 'case law'.

## 1.7 THE SOURCES OF MALAYSIAN LAW



**Figure 1.1: Sources of Malaysian Law**

### 1.7.1 Written Law

#### a) The Federal Constitution

Supreme law of the country. E.g. the name, states and territories of the Federation, citizen, religion of the Federation, financial provision, election, public service etc.

#### b) Legislation

Refers to law enacted by a body constituted for this purpose. In Malaysia, law is legislated by Parliament at federal level and by the various state legislative at state level. Law that is enacted by parliament before Independence is called Ordinances. Those made after Independence called Acts Law made by the State Legislative Assemblies (except in Sarawak) is called Enactments. The law in Sarawak is called Ordinances.

#### c) Subsidiary Legislation

The Interpretation Act 1967 – ‘any proclamation, rule, regulation, order, notification, by-law or other instruments made under any Ordinance, Enactment or other lawful authority and having legislative effect. Subsidiary legislation deals with the details about which legislature has neither the time nor the technical knowledge to enacts law. Legislative merely lays down the basic and main laws, leaving the details to persons or bodies to whom they delegate their legislative power-YDPA, ministers and local authorities etc.

#### d) The State Constitution

Each state possesses its own constitution regulating the government of the state. Contains provisions which are enumerated in the Eighth Schedule – Ruler, The Executive Council, the legislative assembly, financial provisions, state employees and amendment of the constitution.

### 1.7.2 Unwritten Law

#### a. English Law

Not all England's law and rules of equity form part of Malaysian Law. English Common Law – “the said Common Law, rules of equity and statutes of general application shall be applied so far only the circumstances of the states of Malaysia and their respective inhabitants permits subject to such qualification as local circumstances render necessary”.

#### b. Judicial Decisions

Judicial Decision of the High Court, Supreme Court, Judicial Committee of the privy Council. Precedents are basically “decision made by judges previously in similar situation”.

#### c. Customs

Custom of the inhabitants in Malaysia. Relating to family law i.e. marriage, divorce and inheritance are given legal force by the courts in Malaysia. ‘Adat’ applies to Malays, prior to enforcement of the law reform (Marriage and Divorce) Act 1976, Hindu & Chinese customary law applied to the Hindus and Chinese respectively

### 1.7.3 Muslim Law

The Federal Constitution provides that States have the power to administrative Muslim Law. The head of Muslim religion in state (except Penang, Malacca, Sabah, Sarawak and. The Federal Territories) is the Sultan. Penang, Malacca, Sabah, Sarawak and The Federal Territories are Yang di-Pertuan Agong. The courts which enforce Muslim Law in the country are the Syariah Courts. Muslim Law only applies to Muslims.

## 1.8 THE COMMON LAW

- The common law of England, that is, the general rules made common to the whole of the country as distinct from local customs. English common law and the rules of equity suitable to local circumstances form part of the laws of Malaysia.
- In west Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7th April 1956. In Sabah, apply the Common Law of England and the rules of equity, together with statutes of general application, as administered or in force in England on the 1st Dec 1951. In Sarawak, apply the common law of England and the rules of equity, together with statute of general application, as administered or in force in England on 12th Dec 1949.
- The Common Law of Malaysia is found in the decision of judges. Decisions of the High Court, Supreme Court, the former Federal Court and the Privy Council are authoritative source of law.

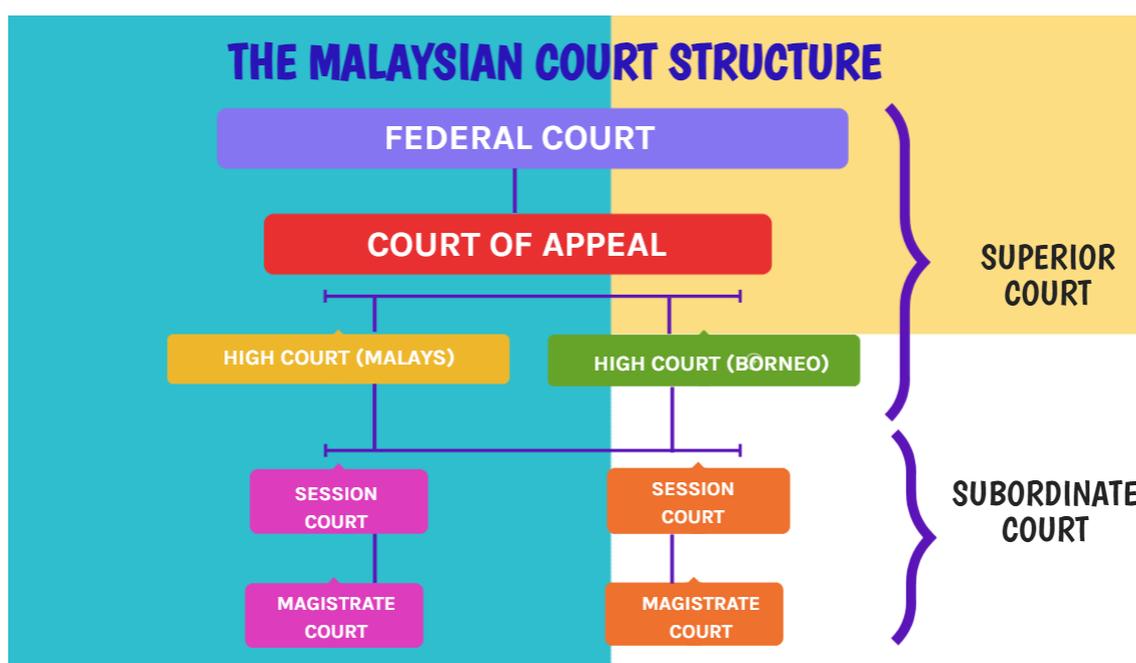
## 1.9 LEGISLATIVE PROCESS

Legislation is enacted by Parliament by introducing a Bill which is passed by both Dewan and assented to by Yang di-Pertuan Agong. There are **THREE (3)** types of Bill:

- a. **Public Bill:** Bills on matters of public interest such as national defense, public order and taxation.
- b. **Private Bill:** Bills which deal with matters of local or private concern.
- c. **Hybrid Bill:** Bills concerning matters of public interest which also affect adversely the interest of some private bodies or persons.

## 1.10 COURT STRUCTURE

The courts are organized in a hierarchical order or ranking in terms of power. Cases commence (start) in different courts depending on the nature of the claims and their monetary values. Therefore, a basic knowledge of the court structure is important.



**Figure 1.2: The Malaysian Court Structure**

- a. **Federal Court:** The Federal Court hears civil appeals from the Court of Appeal. The Federal Court also hears criminal appeals from the Court of Appeal but only where the case was heard by the High Court in its original jurisdiction.
- b. **Court of Appeal:** The Court of Appeal hears civil and criminal appeals against decisions of the High Court.

c. **High Court:** The High Court can try all criminal cases. In civil matters, the High Court generally hears cases where the **claim exceeds RM 1,000,000 except motor vehicle accidents, landlord and tenant and distress**. Certain matters, such as grant of probate, divorce, bankruptcy, enforcement of trusts, must be heard by the High Court. The High Courts also hear civil and criminal appeals against decisions of the subordinate courts.

d. **Sessions Court:** The sessions Court hears all civil claims that **exceed RM 100,000 but not exceed RM 1,000,000**. However, the Sessions Court can hear all matters concerning motor vehicle accident, landlord and tenant and distress, regardless of the monetary value. On the other hand, there are some cases that cannot be heard by the Sessions Court even if the claims do not exceed the RM 1,000,000 limit. For example, the Sessions Court cannot hear matters pertaining to probate and administration of estates, divorce, guardianship or custody of infants and bankruptcy. These matters must be heard by the High Court.

From 1 March 2013, the Sessions Court can try all actions for specific performance or rescission of contracts or for cancellation or rectification of instruments within the monetary limit of RM 1,000,000. The Sessions Court can also grant injunctions and make declarations within the monetary limit of RM 1,000,000. The Sessions Court can try all criminal cases except offences punishable with death, and may impose any sentences allowed by law except the sentence of death.

e. **Magistrates Court:** The monetary jurisdiction of the Magistrates Court is RM 100,000. However, there are TWO (2) types of Magistrate:

- o **First Class Magistrate** can hear all civil claims that do not exceed RM 100,000.
- o **Second Class Magistrate** can only hear a civil matter that does not exceed RM 10,000.

In criminal matters, the Magistrates Court can only try offences that are punishable with a maximum term of 10 years only or punishment by fine only. The Magistrates Court may pass a sentence not exceeding five years imprisonment; a fine of up to RM 10,000; whipping of up to 12 strokes; or any one of the above sentences combined. Small Claims Procedure: An individual (not a company) whose claim does not exceed RM 5,000 may proceed under the small claims procedure. This is done by filling in the Form 164 (Summons and Statement of Claim) which available upon request at the Subordinate Courts Building. The matter will be heard by the Magistrates Court but no legal representation is allowed. While a person may consult a lawyer, he may not be represented by him at the hearing.

**f. Other Courts and Tribunals:**

- i. **Syariah Court:** The Syariah Court exercises jurisdiction over matters relating to Islamic law where the parties are Muslims.
- ii. **Native Court:** The Native Court only exists in Sabah and Sarawak. It deals with matters relating to 'native customs' where the parties are natives.
- iii. **Industrial Court:** The Industrial Court hears matters relating to trade disputes and dismissal of employees. It is not strictly a civil court; thus, its procedures are less formal. The decision of the Court is final; however, reference may be made to the High Court on questions of law.
- iv. **Consumer Claims Tribunal:** The Consumer Claims Tribunals is established under the Consumer Protection Act 1999. The Tribunal deals with claims arising from alleged contravention of the Act. The Act only deals with consumer transaction, which means the Tribunals jurisdiction is quite limited. The monetary limit of a claim is RM 25,000. However, the tribunals can hear a claim that exceeds this limit if both parties agree in writing that the Tribunal should have jurisdiction to hear and decide the claim. No legal representation is allowed. However, either party can bring a family member or friend in the case of the seller or supplier, a full time paid employee to assist at the hearing.

# REVIEW QUESTIONS

## QUESTION 1

### MATCH THE RIGHT EXAMPLE



Written Law

Unwritten Law

Muslim Law

Common Law

Judicial Decision

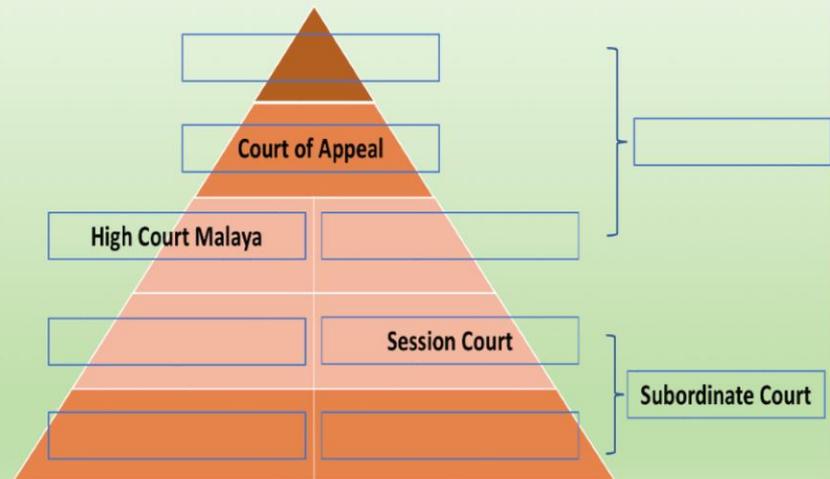
In force in England

The State  
Constitution

Syariah Court

## QUESTION 2

### FILL IN THE BLANKS



Hierarchy of Courts in Malaysia

# REVIEW QUESTIONS

## QUESTION 3

### FILL IN THE BLANK

Ordinances

Custom

Executive

Bills

Statue

1.	A practice that has been accepted over a long period and generally followed	
2.	Law enacted by Parliament	
3.	Law that are enacted by Parliament before independence.	
4.	Is a plan for a possible new law that normally presented to Parliament by the Minister responsible for the particular portfolio.	
5.	The government of the day.	





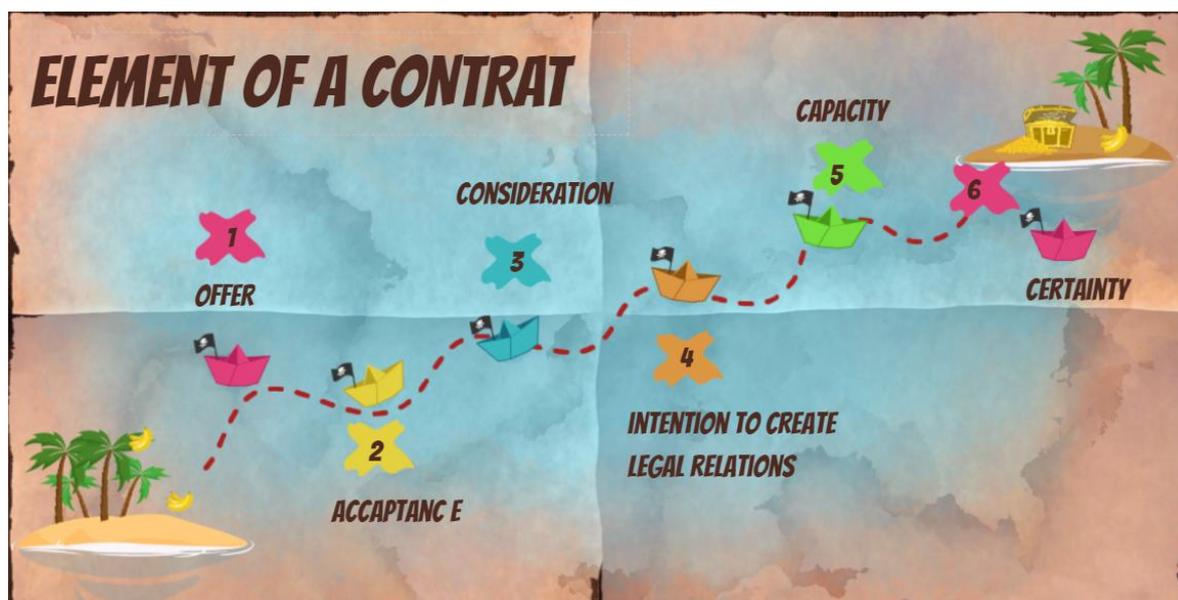
2

CONTRACT  
LAW



**A** contract is an agreement between two or more parties that is legally enforceable. When one party fails to perform his side of the bargain, he is said to have 'breached' the contract, and the other party can bring an action in court. This is what we mean by 'legally enforceable'. The word 'contract' may be defined as 'an agreement enforceable by law'. In other words, a contract is an agreement which is legally binding between the parties.

## 2.1 ELEMENTS OF A CONTRACT



### 2.1.1 Offer

When a person shows his willingness to do something or abstain (stop) from doing something, in exchange for something of value, he makes an offer (s 2 (a) of the Contracts Act 1950 (Contract Act)). An offer can be made in writing. It can also be made orally. For hotels, travel agents and tour operators, this means that a contract can arise from a telephone conversation or walk-in inquiry.

An **offeror** is a person who makes an offer. An **offeree** is a person to whom an offer is made. An offer must be communicated to the offeree, who has the option either to accept the offer or reject it. Offers can be divided into two types: unilateral offer and bilateral offer. When an offeror makes a unilateral offer, he has no specific offeree in mind. A 'lost pet' poster is an example of an unilateral offer. A bilateral offer is one where the offeree is identifiable.

An offer, if accepted, is intended to be binding. It is different from an invitation to treat, which is a non-binding statement or conduct that invites interest. Most advertisements are invitations to treat. They invite interests in the advertisers' product/service and may or may not lead to the making of offers. Display of goods on a shop window is an invitation to treat. The shop does not offer to sell the item on display and may reject a customer's request to purchase the item.

**Examples Case:**

Carlill v Carbolic Smoke Ball (1893) 1 QB 256

**Facts:** The defendant was the manufacturer of a medicinal smoke ball. In its advertisement, the defendant claimed that the smoke ball could prevent influenza. The smoke ball was to be used three times daily for two weeks in accordance with the printed instruction that comes with each product. The advertisement promised that the defendant would pay \$100 to anyone who caught influenza after using the smoke ball in accordance with instruction. The advertisement also stated that \$1,000 was deposited with a bank as evidence of their sincerity. Mrs. Carlill used the smoke ball in accordance with instruction but caught influenza all the same. She claimed \$100 as promised in the advertisement. The defendant argued that the advertisement was a mere 'puff' or a boast and not an offer. Thus, they were not under an obligation to pay the \$100 compensation to Mrs. Carlill.

**Decision:** The advertisement was a unilateral offer made to the world at large. The advertisement could not be said to be an invitation to treat considering the defendant's commitment, evidenced by the deposit of \$1,000 with a bank. Here, Mrs. Carlill had accepted the offer by acting on it, namely, she used the smoke ball in accordance with instruction. Performance by action was enough, it was not necessary to communicate the acceptance to the defendant.

**Others Case:**

- Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd (1953) 1 QB 401.
- Harvey v Facey (1893) AC 552.

**2.1.2 Acceptance**

When an offeree accepts an offer, he is said to have made known (by words or conduct) to the offeror that he agrees to the terms of the offer. An acceptance must be absolute and unqualified (s 7 (a)). In other words, acceptance must match the terms of the offer.

Section 2(b) of the Contracts Act 1950 provides that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to have been accepted. A proposal, when accepted, becomes a promise.

As a general rule, acceptance must be communicated or brought to the notice of the offeror (s 4(2)). Acceptance can be by words or by conduct. In the case of a unilateral offer, like the one we see in Carlill v Carbolic Smoke Ball, acceptance is by performance of the conditions in the offer.

### 2.1.3 Consideration

Consideration is 'value' for a promise. When someone is willing to give value for a promise, it shows that he takes the deal seriously and intends to be bound by it. Consideration comes in many forms.

As a general rule, an agreement made without consideration is void. There are, however, limited statutory exceptions where agreements without consideration are enforceable. The exceptions are as follows:

- First, under s 26(a), a written agreement made without consideration is not void if it is registered under the relevant law and made on account of love and affection between the parties standing in a near relation to each other (e.g. father and child)
- Secondly, s 26(b) states that promise to compensate a person for something that he has already voluntarily done is not void for lack of consideration. For examples, Aminah supported Bakri's son. Bakri's promise to pay Aminah the expenses incurred is enforceable. Aminah does not have to give consideration for Bakri's promise as the promise relates to something that Aminah has already done, namely, caring for Bakri's son.

#### Examples case:

Kerpa Singh v Bariam Singh (1966) 1 MLJ 38

**Facts:** A father incurred debts. His son negotiated with the creditor and agreed to pay part of the debt if the creditor would release the father from the whole debt. The creditor agreed, and so the son made part payment of the debt. The creditor later sued for the balance.

**Decision:** The creditor's willingness to accept the part payment had discharged the debtor from his remaining debts.

### 2.1.4 Intention to Create Legal Relations

When we say that two parties have the intention to create legal relations, it means that they intend to be legally bound by the agreement. Thus, if one party fails to fulfill his contractual obligation, the other party can enforce the contract in court. To determine the parties 'intention' we apply an objective test. We consider whether a reasonable person looking at the parties' words and conduct, would consider there to be an intention to create legal relations.

As a general rule, social or domestic agreements (those entered into between spouses, siblings, relatives or friends) are not considered to be legally binding. However, it does not mean that all domestic agreements are not legally enforceable. A plaintiff can show evidence to prove that a domestic agreement is intended to be legally enforceable. In doing so, he 'rebutts' the presumption that there is no intention to create legal relations.

Different assumption applies to commercial agreements. As a general rule, intention to create legal relations is presumed to exist. A gentlemen's agreement is not legally enforceable; neither can one enforce a mere memorandum of understanding.

**a) Domestic agreements:**

- Presumption: no intention to create legal relations.
- Presumption rebuttable

**b) Commercial agreements:**

- Presumption: there is intention to create legal relations.
- Presumption rebuttable

### 2.1.5 Capacity to Contract

When we say that a person has legal capacity to contract, it means that he has the ability to understand the terms of the contract. He also understands that failure to fulfill his contractual obligations can result in legal liability. A person who lacks contractual capacity is someone who does not have the power to enter into contracts. Minors and persons of unsound mind lack the capacity to contract. (s 11).

Under the Children and Young Persons (Employment) Act 1966, 'young persons' are allowed to enter into employment contracts. A 'young persons' is a minor who is above 15 years old but below 18 years old.

Education and training are considered necessities (Government of Malaysia v Gurcharan Singh & Ors 1971 1 MLJ 211). A minor who enters into a scholarship, bursary, loan or sponsorship contract with the government or other institution (such as a university) is liable under the contract (Contract (Amendment) Act 1976).

### 2.1.6 Certainty

The terms of an agreement cannot be vague but must be certain. An agreement which is uncertain or is not capable of being made certain is void. For example, if Ronaldo agrees to sell to Mary a hundred crates of toys without specifying what kind they are, such an agreement is void on the grounds of uncertainty. Similarly, if Ronaldo agrees to sell to Mary his house for RM 200,000, such an agreement is also void.

## 2.2 VOID AND VOIDABLE CONTRACT

### 2.2.1 Void Contract

An agreement that is destitute of any legal effect “ab initio” (the agreement should be declared) so that no right or obligations are created at all. No legal rights and obligations exist. Section 25 provides, if any part of a single consideration for one or more object, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

### 2.2.2 Voidable Contract

Section 2(i): an agreement which is enforceable by law at the option of one or more of the parties thereto, but not an option of the other or others is a voidable contract. Section 14 provides the consent is said to be free when it is not caused by one or more of the following:

- a) **Coercion:** Section 15 of the Contract Act 1950 as the committing or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. Let say the seller threatened the buyer to burn the buyer’s house if he refuses to enter into contract. Then in this case the contract will be void due to coercion.
- b) **Undue Influence:** Section 16 of Contract Act states that a contract is said to be induced by ‘undue influence’ where the relations subsisting between the parties are such that one of the parties is able to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
- c) **Fraud:** Section 17 of the Contracts Act defines ‘fraud’ as including certain acts which are committed with intent to induce another party to enter into contract. Acts of fraud including the following:
  - i. The suggestion, as to a fact, of that which is not true by one who does not believe it to be true.
  - ii. The active concealment of a fact by one having knowledge or belief of the fact.
  - iii. A promise made without any intention of performing it.
  - iv. Any other fact fitted to deceive and
  - v. Any such act or omission as law specially declares to be fraudulent.

- d) Misrepresentation:** Section 18 of the Contract Act as including: The term misrepresentation normally refers to certain false statements made by the representation and which induce the other party to enter a new contract. The remedy for this would be rescission but there is some exception to this.
- e) Mistake:** A mistake which has the effect of rendering a contract void is described as an 'operative' mistake. Mistake itself covers a broad set of situation and courts often distinguish between unilateral mistake and mutual mistake.

## 2.3 DISCHARGE OF CONTRACT

Discharge of a contract relates to the circumstances in which the contract is brought to an end. Where a contract is discharged, each party is freed from their continuing obligations under the contract.

**FOUR (4)** ways in which a contract can be discharged:

**a. Performance:** A contract becomes discharged through performance where both parties have fully performed their contractual obligations. As a general rule, performance must be complete and exact before payment is due. There are, however, four exceptions where a contract is partly enforceable even though performance is incomplete. The exceptions are as follows:

- i. Divisible contract
- ii. Substantial performance
- iii. Acceptance of partial performance
- iv. Prevention of complete performance

**b. Frustration:** A contract may be discharged by frustration. A contract may be frustrated where there exists a change in circumstances, after the contract was made, which is not the fault of either of the parties, which renders the contract either impossible to perform or deprives the contract of its commercial purpose. Where a contract is found to be frustrated, each party is discharged from future obligations under the contract and neither party may sue for breach.

**c. Breach:** A contract may, in some circumstances, be discharged by a breach of contract. Where there exists a breach of condition (as oppose to breach of warranty) this will enable the innocent party the right to repudiate the contract (bring the contract to an end) in addition to claiming damages. A contract cannot be discharged by a breach of warranty.

**d. Agreement:** A contract may be discharged by agreement when both parties agree to bring the contract to an end and release each other from their contractual obligations. For a contract to be discharged through agreement there must be Accord & Satisfaction.

## 2.4 CONTRACTUAL REMEDIES

The plain ordinary meaning of 'remedies' is 'cures'. In this context, 'remedies' refers to the legal solutions that an innocent party is entitled to, in the event that the defaulting party breached the contract.

Legal means to recover a right or to prevent or obtain redress for a wrong. In simple words, a remedy for the breach of contract is the legal solution to such problem:

- **Rescission:** Rescission allows the innocent party to terminate the contract. Rescission is used in two contexts. First, one can rescind a contract which was not entered freely but procured as a result of a vitiating factor. This kind of rescission is called 'rescission ab initio'. Secondly, one can rescind a contract where the other party is in breach. In other words, an innocent party can cancel the contract if the other party refuses or disables himself from performing his contractual obligations. This is called 'rescission for breach'.
- **Damages:** Damages is money compensation. The purpose of damages is not to punish the defaulting party. A court awards damages to restore the innocent party to the financial position he would have been in if the contract has been performed.
- **Specific Performance:** This remedy calls for the performance of the act promised in the contract. In most cases, the situation that give rise to loss or damage in the hospitality sector are such that a plaintiff is unlikely to seek a specific performance or an injunction as remedy. However, for completeness, we will consider these remedies.
- **Injunctions:** An injunction is an order of the court requiring a person to perform a negative obligation. In terms of function, injunctions are divided into **TWO (2)** types:
  - a) A prohibitory injunction: prevents a defendant from doing or continuing an action.
  - b) A mandatory injunction: orders a defendant to do an act. In exceptional circumstances, the court can order a mandatory injunction before trial.

# REVIEW QUESTIONS

## QUESTION 1

ANSWER Performance Frustration Breach Agreement

### FILL IN THE BLANK

A contract may, in some circumstances, be discharged by a breach of contract	
A contract may be discharged by frustration. A contract may be frustrated where there exists a change in circumstances, after the contract was made, which is not the fault of either of the parties, which renders the contract of its commercial purpose	
A contract becomes discharged through performance where both parties have fully performed their contractual obligations.	
A contract may be discharged by agreement when both parties agree to bring the contract to an end and release each other from their contractual obligations.	

## QUESTION 2



### LIST ELEMENT OF CONTRACT

01	02	03	04	05

# REVIEW QUESTIONS

## QUESTION 3



DISCHARGE OF A CONTRACT RELATES TO THE CIRCUMSTANCES IN WHICH THE CONTRACT IS BROUGHT TO AN END

**LIST FOUR (4) WAYS IN WHICH A CONTRACT CAN BE DISCHARGED:**

1.

2.

3.

4

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# 3

## NEGLIGENCE



**A** tort is a civil wrong for which the remedy is an action for damages. Negligence is one of the most common torts and has become more important over the years. Assume the hole in the restaurant rug had been there for two weeks. Failure to repair it was careless; the restaurant could have anticipated that someone would be injured by it. As a result, the restaurant will be liable for the customer's injury.

### 3.1 ELEMENTS OF NEGLIGENCE

Definition: A breach of a legal duty to act reasonably that is the direct or proximate cause of injury to another. In other words, negligence is the omission to do something which a reasonable person would do or doing something which a prudent and reasonable person would not do. It is the failure to exercise reasonable care and skills.

To sue under negligence, FOUR (4) elements must be proven:

- A legal duty on the part of A towards B to exercise care in such conduct of A as falls within the scope of duty; the existence of a legal duty to act reasonably owed by the defendant to the plaintiff.
- Breach of that duty.
- Consequential damage to B; injury to the plaintiff.
- Proximate cause (means the breach of duty must be the direct cause of the injury, there can be no intervening cause).

#### 3.1.1 Duty of take care

- The test for the existence of a duty owed to the plaintiff is the 'neighbour' principle stated by the Lord Atkin in *Donoghue v Stevenson*, i.e. the foresight of the reasonable man.

"The rule that you are to love your neighbour ... must not injure your neighbour ... must take reasonable foresee would be likely to injure your neighbour. Who ... is my neighbour? The answer seems to be persons who are so closely and directly affected by my act..."

(By Lord Atkin).

- Basically, it's a duty to act reasonably to those who are likely to be injured by our action.

**CASE: DONOGHUE v STEVENSON (1932)**

**Facts:** A manufacturer of ginger beer had sold to a retailer ginger beer in an opaque bottle. The retailer resold it to A, who treated her friend to its contents. The ginger beer bottle also contained the decomposed remains of a snail which had found its way the bottle at the factory. A's friend alleged that she became seriously ill in consequence and sued the manufacturer for negligence.

**Issues:** Whether A's friend could commence an action against the manufacturer of ginger beer.

**Held:** Although there was no contractual duty on the part of the manufacturer towards A's friend, the manufacturer owed her a duty to take care that the bottle did not contain noxious matter and he would be liable if that duty was broken. Thus, the plaintiff was entitled to recover damages against the manufacturer in negligence. Any person who manufactures products in such a way that there is no reasonable possibility of intermediate examination before they reach the ultimate consumer, and who knows that the absence of reasonable care on their part will result in an injury to the consumer's life or property, owes a duty to the consumer to take reasonable care.

**3.1.2 Breach of duty**

The defendant must not only owe the plaintiff a duty of care, he must be in breach of it. The standard of care is that of the hypothetical reasonable man and in applying this standard, it is necessary to ask what, in the circumstances, the reasonable man would have foreseen. If the defendant in a lawsuit has not breached a duty, he is not liable. The plaintiff has the burden of proving the defendant's wrongdoing. If the plaintiff unable to prove, the plaintiff will not be able to recover money for his losses.

**Example 1:** A restaurant owes a duty to its customers not to serve rancid food because customers who eat it will foreseeable become ill. If the restaurant serves spoiled food, it thereby breaches that duty.

**Example 2:** Failure by a hotel to maintain floors in its building in a safe condition constitutes a breach of duty to those who utilize the premises.

**Example 3:** A hotel owes its guests and the occupants of adjacent buildings a duty to maintain fire extinguishers in operable condition. Failure to do so will foreseeable cause injury in the event of a fire and so constitutes a breach of duty.

In deciding whether there was a breach of duty, a balance must be struck between the magnitude of the risk and the burden to the defendant in doing or not doing what is alleged he should or should not have done. Thus, in every case where a duty of care exists, the courts must consider whether the risk was sufficiently great to require of the defendant more than he has actually done.

The **THREE (3)** factors the courts must consider are:

**a. The magnitude of the risk**

- The TWO (2) elements which make up the magnitude of the risk are:
  - i. Likelihood that injury will be incurred.
  - ii. Seriousness of the injury that is risked.

**b. The importance of the object to be attained**

- It is necessary to balance the risk against the consequences of not taking it.

**c. The practicability of precautions**

- The risk must be balanced against the measures necessary to eliminate it, and the practical measures which the defendant could have taken must be considered.
- Remoteness damage.
- The plaintiff damage must have been caused by the defendant's breach of duty and must not be too remote a consequence of it.
- Remoteness of damage is concerned with question whether damages may be recovered for particular items of the plaintiff loss.
- This means that one has to ask whether the breach of duty was the primary cause of the damage.

**CASE: BOURHILL v YOUNG (1943)**

**Facts:** A motorcyclist carelessly collided with a tram. The plaintiff, who had just alighted from the tram, was some ten meters away and on the off-side of the tram at the time of the accident. She suffered nervous shock as a result of hearing the noise of the collision and the seeing the aftermath.

**Held:** It was not reasonably foreseeable to the motorcyclist that she (the plaintiff) would be injured as a result of his careless riding. She was physically outside the area of foreseeable danger and this in itself was sufficient to prevent her from recovering.

**3.1.3 Consequential damage to B; injury to the plaintiff**

This element covers the issues of fact and an issue of the law. The issue of fact is the extent to which the actions of the defendant were the factual cause of the plaintiff's loss. The issue of law is the extent to which the law recognizes the loss sustained by the plaintiff and provides compensation for such loss. Remoteness of damage is that the plaintiff's damage must have been caused by the defendant's breach of duty and must not be too remote a consequence of it. Remoteness of damage is concerned with the questions whether damages may be recovered for particular items of the plaintiff's loss.

To win a lawsuit, a plaintiff must have been injured as a result of the defendant's breach of duty. The injury might be bodily harm such as broken arm or a head wound. The injury could also be property damage, such as a dented car or it could be emotional suffering or monetary loss.

### 3.1.4 Proximate Cause

The proximate cause of an injury refers to its direct and immediate cause. The requirement of proximate cause to prove negligence means that the injury must have been caused by the breach of duty, in other words, there must be a cause-and-effect relationship between the unreasonable conduct and the injury. The connection also must be direct or immediate so that a reasonable person could foresee the potential danger of the careless act.

Proximate cause is a limit on legal liability; it is a policy decision that the defendant's conduct and the plaintiff's injury may be too remote for the law recovery.

**Example 1:** Assume a hotel van driver adjusting the radio while driving and not watching the road. He carelessly swerved up and over a curb and came to a stop near the sidewalk. An inline skater was skating on the sidewalk near the van and looking up at a low-flying plane. She thus failed to see an uneven spot in the cement slabs. She fell due to the jagged edges of the sidewalk. As a result, the hotel employee was negligent and the skater was injured but the negligence was not the cause of injury, so the hotel will not be liable.

**Example 2:** Shampoo was spilled in a hotel stairwell on the landing and the right side of the first step. The spillage had not been cleaned for more than a day, constituting negligence. A guest using the stairs slipped and was injured as she descended along the right side of the stairway on the third step below the landing. The cause of her fall was a break in the heel of her shoe. Although the hotel was negligent in not cleaning the shampoo and although the guest was injured, the guest did not trip on the shampoo and thus her injuries were not the proximate cause of the hotel's negligence. Therefore the hotel would not be liable.

## 3.2 CONTRIBUTORY NEGLIGENCE

At the common law, if the plaintiff's injuries have been caused partly by the negligence of the defendant and partly by his own negligence then the plaintiff can recover nothing. It is clear that, this rule is harsh one and hardship is caused especially where the plaintiff's negligence was the major cause of the accident.

The plaintiff is not guilty of contributory negligence in his conduct could not have been foreseen as likely to result in his own injury. As section 12 of the Civil Law Act 1956, the damages recoverable by the plaintiff are to be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

### 3.3 PROFESSIONAL NEGLIGENCE

The duty of care may arise in contract, in tort, or by reason of a statute and may be owed by the professional to a client or to a third party. It can only be incurred when there has been a breach of duty of care owed to some person.

The duty of a professional depends very much on what the professional is employed to do. The plaintiff complaining of a breach of duty must prove that there was such a breach and damage is caused by the breach of that duty. The plaintiff complaining of a breach of duty must prove that there was such a breach and damage is caused by the breach of that duty.

### 3.4 OCCUPIER LIABILITY ACT 1957

#### 3.4.1 Introduction

Occupier's liability is the liability of an occupier of premises for any damage suffered by visitors to the premises. In the hospitality industry, the visitor is known as an invitee. An invitee is someone who comes to an establishment for the purpose for which the business is open to the public.

#### 3.4.2 Occupier

Occupier is a **person who has sufficient degree of control over premises** to put him under a duty of care towards those who came lawfully upon the premises. Example case, Lord Denning in *Wheat V.E. Lacon & Co*-The foundation of occupier's liability is on occupational control not exclusive possession.

Occupier's liability refers to the liability of an occupier of premises for any damage suffered by the visitors to the premises. The foundation of occupier's liability is occupational control; that is control associated with and arising from presence in and use of or activity in the premises. Occupier owes the duty only when the trespasser's presence is known or reasonably foreseeable.

#### 3.4.3 Visitor

There is one class of person namely visitor. Includes contractual entrant, invitees and licensee under common law. Under the Act a person can be a visitor if:

- By express invitation or permission.
- By authority of law.
- By implied permission. This is question of law the visitor must prove it.

### 3.4.4 Duties of an Occupier

The highest degree of care: owed by the occupier to one who has entered the premises in pursuance of a contract with him.

- **A lower duty 1:** owed to the 'invitee', that is a person who, without any contract, entered the premises on business of interest both to himself and the occupier.
  - For a hotel, invitees include guests and visitors of guest. For example, the friend of a guest invited to dinner at the hotel, a child who attends a birthday party held at the hotel, unregistered visitors attended a party in the room of a registered guest and non-guest enters the hotel to patronize the store or purchase tickets.
  - For restaurant, diners are invitees.
  - For a bar, patrons are invitees.
  - For these types of establishments, employees are invitees.
  - Delivery person delivering some item necessary for the business such as food or alcohol.
  
- **A lower duty 2:** the duty to the 'licensee', a person who entered with the occupier's express or implied permission but without any committing of interest with the occupier; someone who is on the premises of another by permission or acquiescence of the owner or occupier and not by invitation. His presence does not further the defendant's business. For example:
  - An off-duty who goes to the place of employment to pick up a paycheck.
  - A former employee who enters the premises to meet with a current worker.
  - A mother who accompanied her adult daughter to an employment interview.
  - Postman.

The least duty is owed to a trespasser; to who there is owed only a duty to abstain from deliberate or reckless injury and enter private place without permission. For example:

- Someone who enters the restaurant after it is closed; employee who has been fired enters the premises.
- An employees who has been fires and ordered not to return to the hotel nonetheless enters the premises.

### 3.4.4 Common Duty of Care

Section 2(2) of Occupier' Liability Act provides that the common duty of care only applies where the visitor is using the premises for the purposes for which he is invited or permitted to be there. The occupier on the other hand under a duty to take such care in all circumstance of the case is reasonable to see that the visitor will reasonably safe in using the premises for the purpose he is invited.

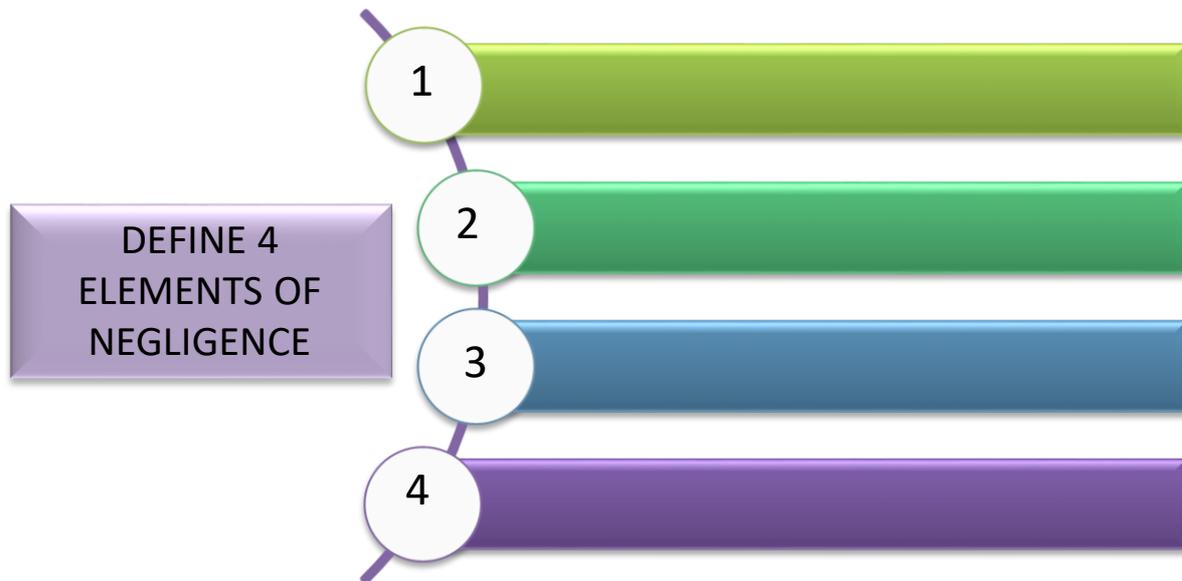
- Section 2(3)(a) Occupiers' Liability Act: an occupier must be prepared for children to be less careful than adults.
- Section 2(3)(b) Occupiers' Liability Act: an occupier may expect that a person, in the exercise of his calling will appreciate and guard against special risks ordinary incident to it, so far as the occupier leaves him free to do so.

### 3.4.5 Specific Aspects

- **Warning:** Section 2(4)(a) provides that the warning by the occupier regarding the danger must be sufficient for him to escape liability.
- **Volenti Non Fit Injuria:** Section 2(5) of Occupiers' Liability Act stated that this defense is available to the occupier, if visitor willing takes the risk.
- **Independent Contractor:** Section 2(4)(b) provides that if damage caused to a visitor due to the faulty execution of any work of construction maintenance, repair by an independent contractor employed by him, the occupier is not liable if he had acted reasonably in entrusting the work to the contractor and he is satisfied that the contractor is complete and work properly done.
- **Contributory Negligent:** If the visitor is at the same time is careless of his own duty and the occupier breach his common duty the damage will be apportion.
- **Exclusion of Occupier's Duty:** Section 2(1) – An Occupier may exclude or modify his liability to a visitor by express terms in a contract with his visitor or otherwise. Occupiers' Liability Act – if the occupier brings the condition of notice to the visitor attention the occupier can escape liability.

# REVIEW QUESTIONS

## QUESTION 1



## QUESTION 2

### MATCH THE RIGHT DEFINITION

Occupier

Invitee

Licensee

A person who, without any contract, entered the premises on business of interest both to himself and the occupier

A person who entered with the occupier's express or implied permission but without any committing of interest with the occupier

A person who has sufficient degree of control over premises to put him under a duty of care towards those who came lawfully upon the premises

# REVIEW QUESTIONS

## QUESTION 3

### SOLVE THE CASE

Affan bought three packets of roti from Jati Restaurant. After eating the roti, he and his wife suffered severe stomach ache and diarrhea. They had to be taken to the hospital. They were hospitalized for 4 days. The doctor in charge confirmed that they had severe food poisoning. Advice what causes of action can be taken against Jati Restaurant.

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# 4

## EMPLOYMENT LAW

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**H**otel and tourism with its immense employment generation capability is very often called 'people intensive industry'. In this industry, human resources constitute a higher element of total operating cost. Employment Act 1952 applies to Malaysian employees and employers. But they are free to form employment contracts as long as these contracts comply with the current development of the employment legislation. This is due to the changes of certain parts of the Act. Employment Act is established to provide the minimum benefits for those workers covered by the Act and to establish certain rights to both employees and employers.

## **4.1 ENFORCEMENT OF THE EMPLOYMENT ACT 1952**

### **4.1.1 Coverage of the Employment Act 1952**

The Act **only applies to West Malaysia**. Workers in Sabah and Sarawak are covered under separate legislation (Labor Ordinance of Sabah and Sarawak). According to the first schedule of the Act, those covered are as follow:

- a) Any person who has entered into a contract of service with an employer under which such person's wages do not exceed RM 1,500 a month.
- b) Any person who has entered into a contract of service with an employer without regard to his wages who:
  - i. is engaged as a manual worker
  - ii. is engaged in the operation or maintenance of any vehicle for the transport of passengers or goods
  - iii. supervises other employees engaged in manual labor
  - iv. is engaged as a domestic servant
- c) Public sector employees, consisting of the civil service, statutory bodies and local authorities, have been exempted from the Act.

### **4.1.2 Employment Contract**

Once an employment accepts an offer of employment from an employer, a contract of employment also known as a 'contract of service' comes into existence. A contract of employment is an agreement between an employer and an employee that can be enforced in a court of law.

Basically in a contract of employment, the employer agrees to remunerate the employee for services of work performed and the employee agrees to remunerate the employer for services or work performed and the employee agrees to work for the employer. The terms, or details of the employment should be expressly and clearly stated to avoid future disputes.

Details of the terms of the contract of employment may be stated in the employee's letter of employment. The employer may include only the bare details such as the job title and wages in the letter of appointment and refer the employee to a company handbook which provides a complete listing of all the applicable terms.

A contract of employment does not have to be in writing. If a worker has no written letter of appointment it does mean that no contract of employment exists between him and his employer. Such a contract can be implied by the fact that he is working for the employer. However, if a dispute arises about the terms of the contract, both parties will have a difficult time providing to the Labor Department or a Court what the agreed terms are. "Terms" of a contract are the contents of the contract or the promises made by each party to the other. In return for providing his labor, an employee is rewarded with certain benefits including wages and holidays. The terms of a contract can be implied or expressed.

#### **4.1.2.1 Implied terms of a contract of employment**

There are many items which are not normally included in a contract and yet are still considered part of the contract. These obligations are known as implied terms. Terms which are put in writing or are agreed orally are known as express terms of the contract. There are also implied terms. The law courts will imply certain terms into a contract on the grounds that these items are so obvious that there is no need to put them expressly in the contract.

It is an implied term of an employee's contract that he will serve his employers:

- With due care – doing his work responsibly and safety
- Obediently – he will carry out any lawful order of his employer
- Faithfully – he will not take any action which would harm his employer's business or undertakings

#### **4.1.2.2 Express term in a contract of employment**

The express terms of a contract are usually found in letters of appointment, company handbooks, and collective agreements and would include agreements made during the recruitment process. The terms stated in a contract should cover all the important conditions of service.

A contract of employment must include the following information:

- The job-holder's occupation or designation
- The wage rate, allowances payable, if any and the overtime rates payable
- All other benefits including increment and bonus, if any
- The duration of the wage period
- The normal hours of work per day
- The holiday and paid annual leave entitlement of the worker

#### 4.1.2.3 Changing the terms in a contract of employment

An employer cannot unilaterally change the terms in an employee's contract. If he should wish to make some major changes, he will need to get the written consent of the individual employee.

#### 4.1.2.4 Duration of the Employment Contract

Employment contract can be for a particular period of time or they can be open-ended and not specify the duration. The former are known as fixed-term contracts. Such contracts specify the time period for which the worker is to be employed or they may say that the employee is to be employed until the completion of a given project or task.

A fixed-term contract for any period longer than one month or one terminating on the performance of a specified piece of work which may be expected to take longer than one month must be in writing. Such contracts terminate automatically at the end of the stated period or when the work is finished. An employee on such a contract is protected by the Employment Act if he is within its scope.

The majority of employees are offered open-ended contracts for unspecified periods of time, meaning that the job is their until such time as their services are formally terminated by the employer or they decide to leave the organization.

#### 4.1.2.5 Termination of the Contract

A lot of confusion exists concerning the rights of the parties to a contract of service to terminate that contract. The Section 12, Employment Act says:

“Either party to a contract of service may at any time give to the other party notice of his intention to terminate such contract of service.”

If the employee wishes to give notice of his intention to resign there is no difficulty but problem arises when employers decide that they wish terminate the employee's services.

Section 12, Employment Act 1955, the employer has the right to dismiss an employee without assigning any reason providing he gives proper notice. There are **TWO (2)** provisions of the Employment Act relating to notice of termination of a contract of employment:

- i. The length of the notice period required of each party must be the same.
- ii. The employer can decide on the notice period required and have this agreed to in the contract of employment.

However, if the contract is silent on this matter then the provisions of the Employment Act will apply. Section 12, Employment Act states that where the contract is silent on the length of the notice period then the notice shall be not less than:

- **“Four week”** notice if the employee has been employed for less than two years on the date on which the notice is given.
- **“Six weeks”** notice if he has been employed for two years or more but less than five years.
- **“Eight weeks”** notice if he has been employed for more than five years.

A number of terms and conditions of employment in the Employment Act are dependent on the employee's length of service. These include his right to paid sick leave, annual leave and termination benefits. Either the employer or the employee can terminate a contract of service without giving the required notice if he pays to the other party an indemnity example a sum of money equivalent to the amount of wages which would have been earned during the notice period (Section 13, Employment Act, 1955).

This means that once an employee has given notice an employer has the right to disallow the worker from working during the notice period and pay him an indemnity. If an employee's services are summarily terminated example he is not given the proper notice nor is he paid the indemnity mentioned above, then he can make a complaint at the nearest Labor Office to claim the indemnity. He cannot, however also make a claim of unfair dismissal at the Industrial Relations Department (Section 69, Employment Act). He must choose which remedy he wishes to pursue.

The contract of a domestic servant can be terminated by either party by giving 14 days' notice or wages in lieu of the notice period unless there is a written contract between them with a clause providing for a different period of notice. If the contract is terminated on the grounds of misconduct no notice or wages in lieu thereof are payable.

#### **4.1.2.6 Termination for Misconduct**

Gives the right to an employer to dismiss, downgrade or impose any other lesser punishment on an employee who, after “inquiry”, is found guilty of misconduct (Section 14, Employment Act 1955). If prior to holding the inquiry, usually known as a domestic inquiry, the employer wishes to suspend the employee from work to facilitate investigations for any other reason he can do so up to maximum of two (2) weeks.

During the suspension period, the employee is entitled to half his wages and if he is subsequently found not guilty of any misconduct, the remaining half-pay must be paid to the worker concerned.

#### 4.1.2.7 Breach of Contract

Both employers and employees can be guilty of breaching the contract of employment if an employer fails to pay wages as required by the relevant section on wages, and then he is guilty of breach of contract (Section 15, Employment Act 1955). In such a case, if the employer intentionally refused to pay the employer's wages, the latter could walk off the job without giving notice. He could, in fact claim constructive dismissal.

More commonly, employees are found guilty to breach the contract of employment by being absent without permission (Section 15 (2), Employment Act 1955). Before the breach of the contract can be assumed on the grounds of absence, an employer has to look at a number of factors.

The breach does not occur until the employee has been absent for more than **TWO (2)** consecutive working days. Thus, absence for one or two days is misconduct for which disciplinary action can be taken, but it cannot be cause to assume the employee has breached his contract. If the employee has a **REASONABLE** excuse for his absence and he has informed or tried to inform, the employer as to why he is absent then once again he has not breached his contract of employment.

#### 4.1.3 Termination Benefits

The Employment Act entitles employee whose services are terminated to receive termination benefits from the employers. If the employee wishes to challenge the validity of his termination, he can make a request for reinstatement under the machinery of the Industrial Relation Act 1967. If he accepts his termination but is not paid the benefits due, he can make a complaint at the Labor Office.

Employees are **NOT entitled to termination benefits** if they retire at the age stipulated in their employment contract, if they are dismissed for misconduct or if they resign of their own accord. Only workers with a minimum of 12 months' service are entitled to termination benefits. The quantum is:

- **10 days'** wages for every year of employment if the worker has been employed less than 2 years;
- **15 days'** wages for every year of employment if the worker has between two and five years' service with his employer;
- **20 days'** wages for every year of employment if the worker has five or more years' service with his employer.

## 4.2 PAYMENT OF WAGES

### 4.2.1 Minimum Wages

In exercise of the powers conferred by section 23 of the National Wages Consultative Council Act 2011 (Act 732), the Ministry makes the order cited as the Minimum Wages Order 2020 and this order enforced on 1st February 2020.

The minimum wages rates payable to an employee who works in a place of employment in any City Council or Municipal Council areas as specified in the schedule shall be as follows:

<b>Monthly</b>	<b>Number of working days in a weeks</b>	<b>Hourly</b>
RM 1,200	6 days	RM 46.15
	5 days	RM 55.38
	4 days	RM 69.23

The minimum wages rates payable to an employee who works in a place of employment in any areas other than the City Council or Municipal Council areas as specified in the schedule shall be as follows:

<b>Monthly</b>	<b>Number of working days in a weeks</b>	<b>Hourly</b>
RM 1,100	6 days	RM 42.31
	5 days	RM 50.77
	4 days	RM 63.46

### 4.2.2 Wage Period

Wages must be paid at least once every month. Having decided on a wage period, the employer must make payment of wages to his employees not later than 7 days after the end of that wage period.

### 4.2.3 Advances on Wages

Employers are not encourages to lend money to their employees as this may lead to all kinds of industrial relations problems. However, some employers are willing to offer an advance on wages to their employees at certain times of the year, particularly at festival times. If employer agrees to give one or more of his employees an advance on wages, the maximum advance that can be given is the equivalent of one month's wages. If the employer want to provide, an advance for any other purpose where the amount is more than one month's wages he must request permission from the Director-General of Labor.

#### 4.2.4 Deduction from Wages

Deduction from employees' wages are only allowed in certain restricted circumstances. The maximum monthly total deduction must not exceed 50% of the employee's wages unless the amount to be deducted includes repayment of a housing loan.

In this case, with the permission of the Director-General of Labor, the total deductions may be increased to 75% of the monthly wage. The employer has the right to make certain deductions, such as for the purpose of:

- Recovery of wages overpaid in the immediately preceding three (3) months.
- Payment of the Employees Provident Fund, Social Security Organization and Income Tax.
- Recovery of advances where no interest is charged.

If the employee wishes deductions to be made and paid on his behalf to a third party, this may be done if the employee puts his request in writing and providing the deduction is for payment to a trade union (the check-off system) or a co-operative society. Any other deductions require the written permission of both the employee and the Director-General of Labor.

#### 4.2.5 Truck System

The Employment Act stipulates that wages must be paid in legal tender. With the employee's written agreement, payment may also be paid directly into the employee's bank account or by cheque. Section 25 of the Employment Act is intended to ensure that workers get paid in money for their services rather than being forced to take unwanted goods as payment.

#### 4.2.6 Priority of Wages

If an employer is forced by a court to sell of property and assets to pay debts, employees who have not been paid their wages receives priority over all debtors, but they can only claim a maximum of four (4) months' wages.

### 4.3 WORKING HOURS AND LEAVE

The Employment Act requires all employees protected by the Act to be permitted **ONE (1) rest day per week**. When a daily rated employee agrees to work on his rest day at the request of his employer he is entitled to a higher than the normal rate pay example if he works less than half his normal hours of work, he is to be paid one full day’s wages and if he work between half the normal hours and if he work between half the normal hours and the full hours he is entitled to TWO (2) day’s wages.

A monthly rated employee who works in a rest day will not only receive his normal monthly wages, he is also entitled to an extra half-day’s wages for up to a half-day’s work and a full day’s wages if he works between half the normal hours and a full day.

According to the Act, the **maximum working hours per day that can be required of an employee are 8 hours**. With overtime, this can be increased to 12 hours. If the organization does not require the employee to work 6 full days per week then daily working hours can be increased to 9 hours.

Usually, any lunch and tea breaks are not considered working hours unless the employees are not free to leave the company premises in which case working hours will be inclusive of such breaks. The Director-General of Labor has the authority to exempt any group of employees from the sections of the Act referring to working hours. A number of organizations have been granted such exemption, especially those in the tourism industry.

It is reasonable to expect that employees should be able to enjoy public holiday. However, the Act only entitles worker to a **minimum of 10 public holidays per year** whereas Malaysia has 16 or 17 depending on the state such holidays.

The amount of annual leave granted to workers depends on their length of service with their employer.

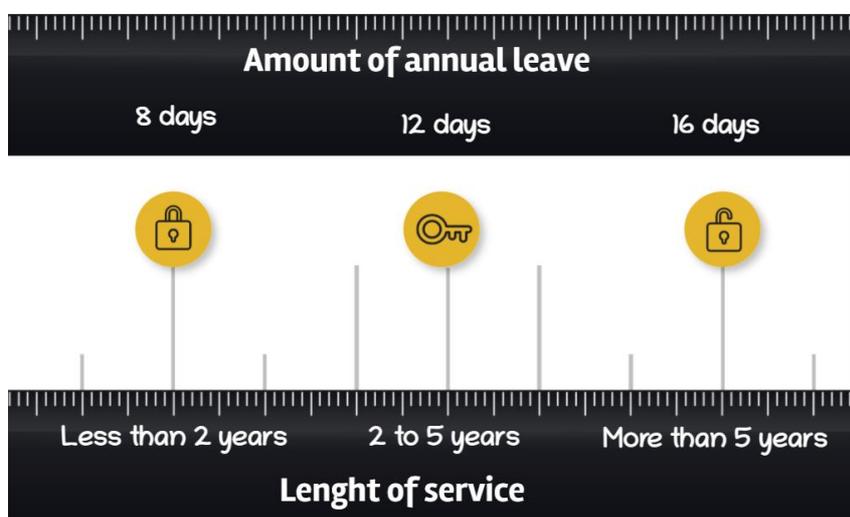


Figure 4.1 : Amount of annual leave

Emergency leave or compassionate leave is not provided for in the Employment Act although in practice many employers do permit employees to take such leave, often on an unpaid basis.

A further benefit to which employees are entitled under the Employment Act is paid sick leave. Before they can avail themselves of this privilege they must undergo an examination by a registered medical practitioner appointed by the employer also known as a panel doctor and be certified unfit for work by the doctor. The employer is required to pay for his medical examination and he frequently also pays for any treatment recommended by the doctor. The employer does not have to accept medical certificates from doctors not on his duly appointed panel unless the employee is being faced with a medical.

An employee's sick leave entitlement, like his annual leave and other benefits depends on his length of service. When hospitalization is required the employee is entitled to up 60 day's paid medical leave per year inclusive of any sick leave entitlement.

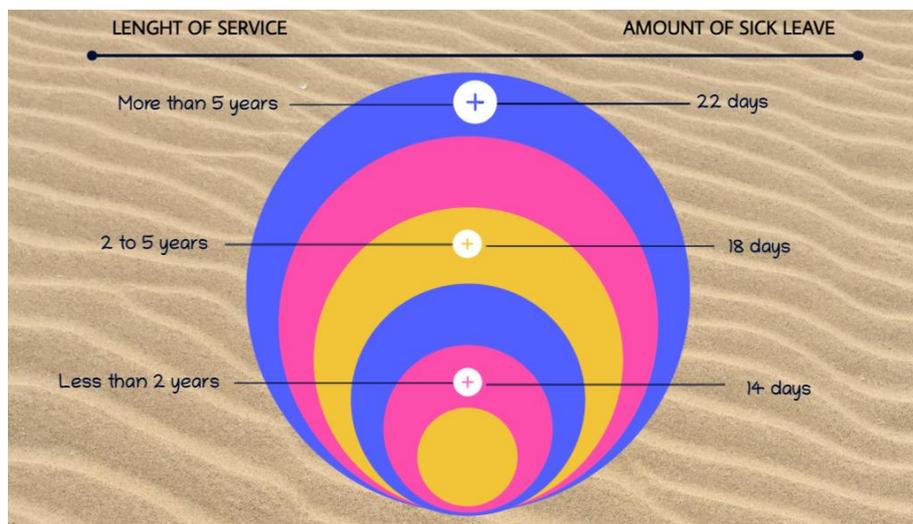


Figure 4.2 : Amount of sick leave

#### 4.4 EMPLOYMENT OF WOMEN

The Employment Act provides special protection for female workers. The Act does not require equal pay for equal work, nor does it outlaw discrimination against women. The provisions of the Act relating to women concern working hours and maternity benefits. Women may **not work between the hours of 10.00 p.m. until 5.00 a.m.** in industrial and agriculture undertakings.

The Director-General of Labor has the power to exempt any group of female employees from this restriction upon the application of the employer. If the Director-General is satisfied that there would be no unduly negative effects on the employees concerned, exemption is usually granted, with a number of condition relating to transportation and payment of shift allowance for female workers.

All female employees are entitled to 60 days' maternity leave each and every time they give birth. Up to a maximum of 30 days of this leave may be taken before the workers give birth. If a doctor appointed by the employer certifies that the pregnant employee is unable to satisfactorily carry out her duties, the employer can insist she start her maternity leave up to 14 days before her expected confinement.

During the maternity leave period, a female employees does not receive wages but they are entitled to be paid a maternity benefit which is an amount equivalent to her wages if at the time of confinement, she has not more than 5 surviving children. An employee may not be dismissed for any reason during her maternity leave.

#### **4.5 CHILDREN AND YOUNG PERSON (EMPLOYMENT) ACT 1966**

Malaysian law does not prohibit children from being employed. It does, however, try to protect them from abuses. The Children and Young Person (Employment) Act sets out the rules and conditions for employing children and young persons. It is enforced by the Department of Labor and it also covers employment in West Malaysia only.

A **child** is defined as a person under the age of **15 years old**; a **young person** is any person not being a child and **not completed his 18 years old of age**. Thus, once a worker attains the age of 18 years old, he is considered adult for the purposes of employment and is given no special consideration.

##### **4.5.1 Employment of Children**

A child may be employed in light work suitable to his capacity in a family undertaking. He may also work in public entertainment or in areas relating to his studies in any school or training institution or as an apprentice. For the purpose of the latter, he must have an apprenticeship contract in writing which is to be deposited with the Director-General of Labor.

Children may **not work between the hours of 8.00 p.m. until 7.00 a.m.** and they must be permitted a **rest of 30 minutes after every 3 consecutive hours of work**. They may not work more than 6 hours per day. The restriction on night work does not apply to children working in any public entertainment.

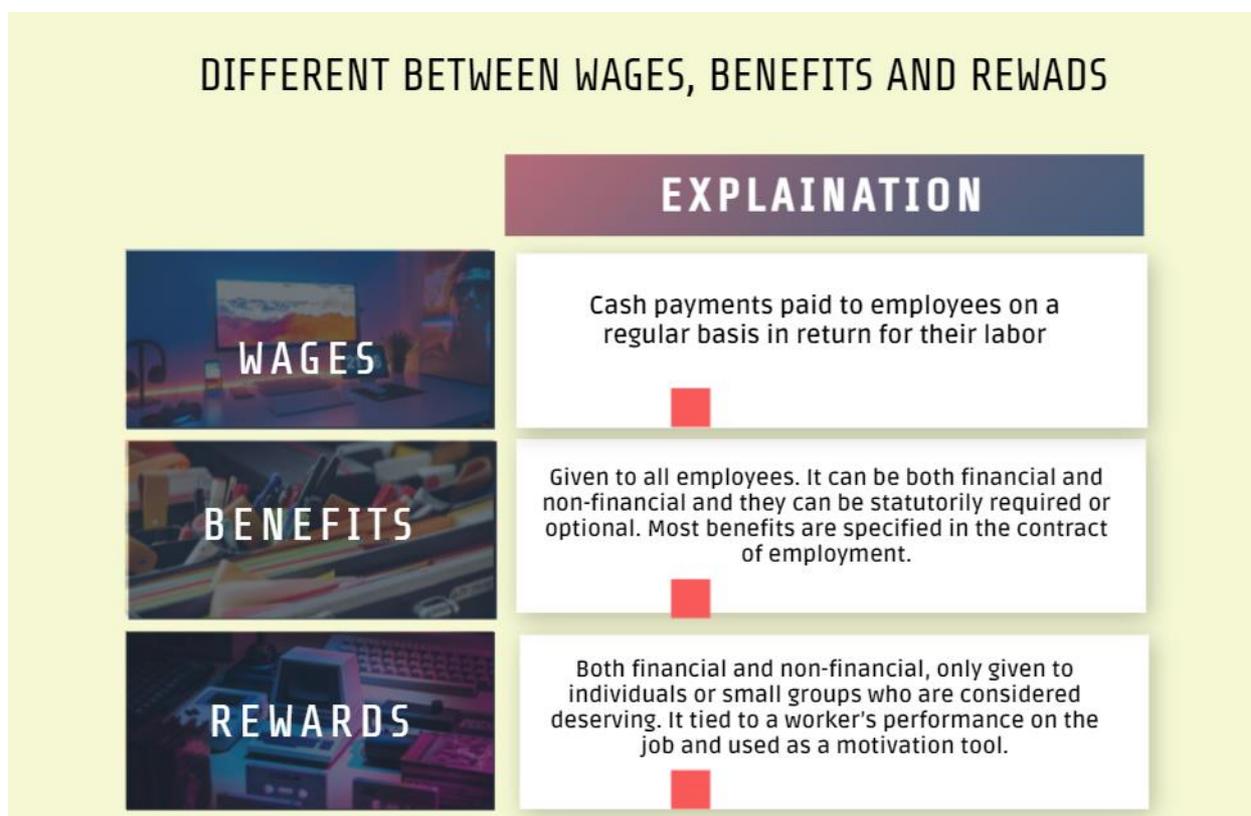
### 4.5.2 Employment of Young Person

Young person may be employed in the same circumstances as children as describe before and also in any light work not necessarily in a family business, in any office, shop, cinema, club, factory and etc. Female workers may not however, work in a hotel, bar, restaurant or club unless this organization is controlled by their parents.

Young person are **not permitted to work between 8.00 p.m. until 6.00 a.m.** and they are entitled to a **rest break of at least 30 minutes every 4 hours.** They may not work more than 7 hours in a day, although apprentices may work for a full 8 hours each day. If the young persons are employed in public entertainment or in the agricultural sector, the restrictions on night work do not apply.

### 4.6 BENEFITS AND REWARDS

Workers usually receive both wages and benefits as compensation for their labor. The remuneration system consists of a combination of wages, benefits and rewards. Figure 4.3 shown the different between wages, benefits and rewards.



**Figure 4.3 : Different between wages, benefits and rewards**

### 4.6.1 Benefits

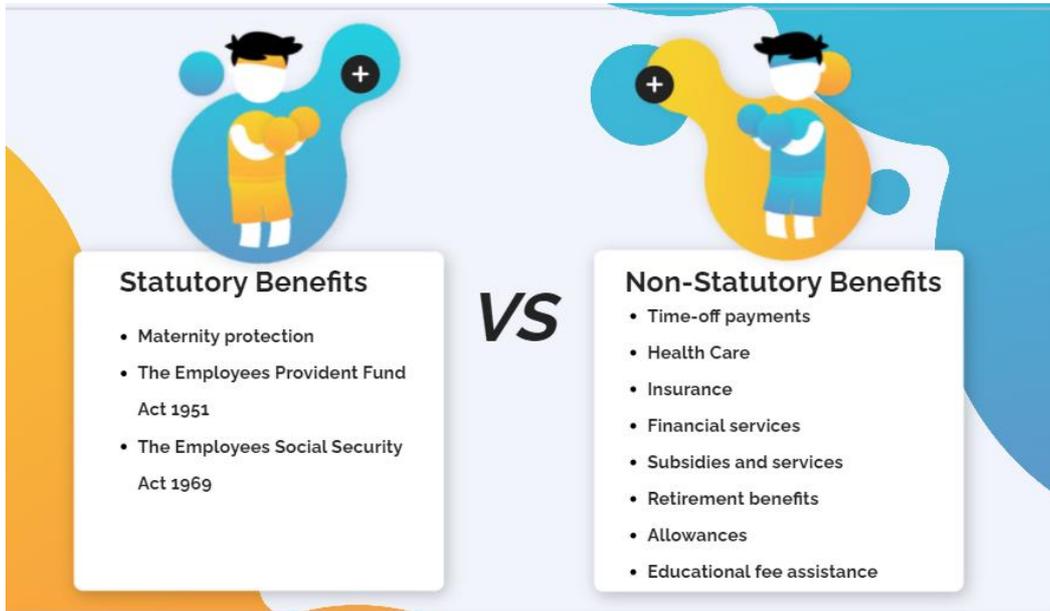


Figure 4.4 : Statutory benefits and non-statutory benefits

### 4.6.2 Reward System

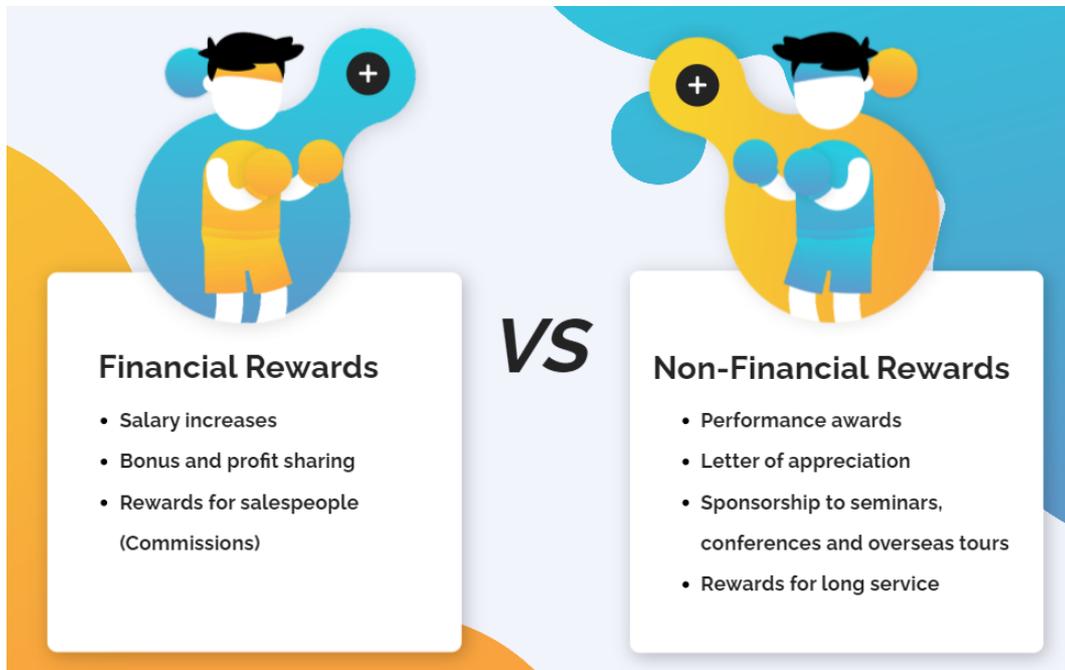


Figure 4.5 : Financial rewards and non-financial rewards

# REVIEW QUESTIONS

## QUESTION 1

### FILL IN THE BLANKS



Length of the notice period

1. \_\_\_\_\_ notice if the employee has been employed for less than two years on the date on which the notice is given.
2. \_\_\_\_\_ notice if he has been employed for two years or more but less than five years.
3. \_\_\_\_\_ notice if he has been employed for more than five years.

## QUESTION 2

### MATCH THE RIGHT AMOUNT OF ANNUAL LEAVE

8 days

12 days

16 days

2 – 5 years

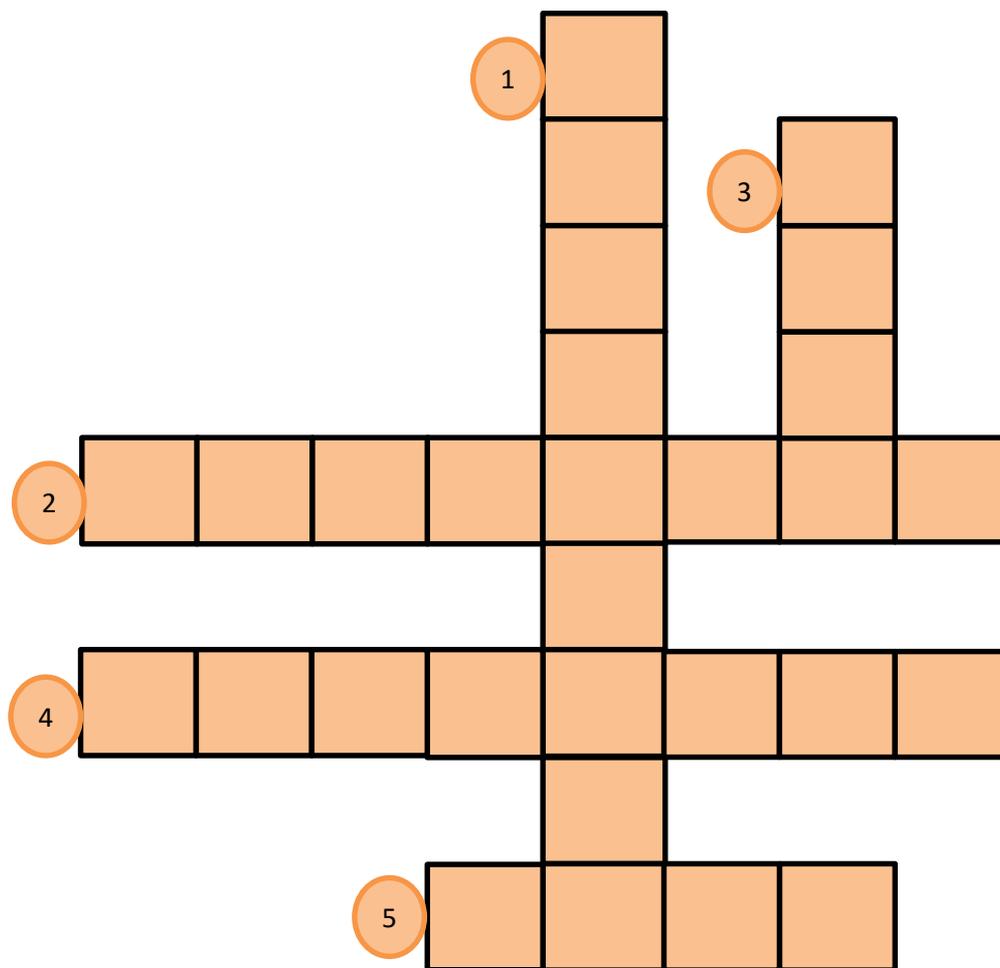
More than 5 years

Less than 2 years

# REVIEW QUESTIONS

## QUESTION 3

### CROSSWORD PUZZLES



1. \_\_\_\_ days sick leave for service more than 5 years.
2. \_\_\_\_ days sick leave for service less than 2 years.
3. Women may not work between the hours of 10.00 p.m. until \_\_\_\_ a.m. in industrial and agriculture undertakings.
4. A young person is any person not being a child and not completed his \_\_\_\_ years old of age.
5. A young person entitled to a rest break of at least 30 minutes every \_\_\_\_ hours.

# REVIEW QUESTIONS

## QUESTION 4

LIST DOWN THE POINT BELOW



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5

INNKEEPERS  
ACT



**M**alaysia's Innkeepers' Act included the common law right of lien, they have applied this right not only to the traditional inn but also to certain other establishments such as taverns, public houses, boarding and lodging houses. The keeper of such an inn or other establishment is given a lien on a guest's goods for the value of any accommodation or food provided. The innkeeper is also given the right to sell the goods if the guest's bill remains unpaid for three months. Once goods have been retained or seized by an innkeeper, the guest has to apply to a court judge for their release.

## 5.1 DUTIES OF INNKEEPERS

### 5.1.1 Duty to provide refreshment

An innkeeper is under a duty to provide reasonable food and drink at the request of travelers. If a traveler arrives at an inn after set meal times, he cannot demand a full cooked meal. If a traveler arrives at an inn late at night, the innkeeper merely has a duty to serve him a modest meal, since the kitchen is either closed or operating at minimal capacity. Similarly, a traveler can only demand alcoholic drinks during licensing hours if he is not a guest.

#### CASE: R v HIGGINS (1948)

**Facts:** A family arrives at the defendant's inn at Sunday lunchtime. The defendant refused to serve them a full meal, although tables were available at the restaurant. The defendant claimed that he had only a limited supply of food and this was required for the evening meal and Monday morning breakfast of existing guests.

**Held:** As a rule, an innkeeper has a duty to provide travelers with the refreshment. However, an innkeeper may lawfully refuse to discharge this duty if he has a reasonable excuse. What amounts to a reasonable excuse depends on the facts of the case. Here, Shortage of supply was legitimate excuse.

As a general rule, an innkeeper may refuse to a traveler who insists that admittance be granted to his pet. However, there are now many pet-friendly hotels. The innkeeper of a pet-friendly hotel still retains discretion to turn away certain guests and their pets, particularly where the pets are aggressive animals that might endanger the safety of other guests. In *R v Rymer (1877)*, the innkeeper turned away a traveler who insisted on bringing into the inn a muzzled mastiff. The court held that he was entitled to do so, in order not to cause alarm and annoyance to other guests.

### 5.1.2 Duty to provide accommodation

An innkeeper has a duty to provide accommodation without prior contract to any traveler who seeks accommodation. An innkeeper can ascertain whether a traveler is in a fit state to be received and whether he is able to pay a reasonable sum for the room. In this regard, the excuse “fit state to be received” is a flexible tool that an innkeeper can use to refuse accommodation to travelers. An innkeeper whose rooms are fully occupied is not under an obligation to provide accommodation to a traveler.

#### CASE: BROWNE v BRANDT (1902)

**Facts:** The traveler was a stranded motorist. His vehicle broke down and he arrived at an inn at 2.00 a.m. The inn provided refreshment but refused him accommodation. The innkeeper stated that all the rooms at the inn were occupied. The traveler asked if he could sleep in a public room. The innkeeper refused.

**Held:** The innkeeper was entitled to refuse accommodation to the traveler as there was no room to spare.

An innkeeper cannot fulfill his duty by offering accommodation to the traveler at another hotel if his inn has available bedrooms. If he cannot fulfill his duty to a traveler at one inn, he cannot direct the traveler to another inn under his management and delegate his duty to the second inn.

#### CASE: CONSTANTINE v IMPERIAL LONDON HOTELS LTD (1944)

**Facts:** Learie Constantine was a famous West Indian cricketer. He was refused accommodation at the Imperial Hotel, on the basis that he was black. The Imperial Hotel directed him to Bedford Hotel, which was owned by the same company. Constantine brought an action against Imperial Hotel for refusing him accommodation when they had vacant rooms. Imperial Hotel argued that it had discharged its duty as innkeeper by affording Constantine accommodation at the Bedford Hotel.

**Held:** The Imperial Hotel had not discharged its duty as an innkeeper. An innkeeper owes separate duties to travelers at each inn. Imperial Hotel's duty cannot be discharged by another inn even though both establishments were under the control of the same company.

### **5.1.3 Duty to take care of guests' property**

Under the common law, an innkeeper has a duty to take care of guest's property but if the lost or injury of the property is due to guest's negligence, then he will not be liable. For example of case *Armistead v Wilde* (1851), the innkeeper was not found guilty because of the guest carelessness that he faces a loss and not because of the innkeeper fault.

### **5.1.4 Duty to provide service in a non-discriminatory manner**

In light of the current state of our anti-discrimination law, it would be difficult to state what constitute discriminatory treatment in the workplace or in education. Fortunately, innkeepers should not discriminate against his guest on the ground of race, gender or disability. Such characteristics or grounds of discrimination could be race (including ethnic or national origins, color and nationality), gender and disability discrimination.

### **5.1.5 Duty to record guest information**

The Registration of Guests Act 1965 (GRA) imposes upon persons or companies that manage accommodation for reward the obligation to maintain proper record of the guest. In other words, all innkeepers are required to record certain information concerning the guest.

Basically, the register must contain the name, address, occupational, sex and nationality of the guest. If the guest is a Malaysian, details of his national identity card should be recorded. If the guest is a non-Malaysian, his passport number should be recorded.

Recording false information into the register or failure to record the necessary information is also an offence punishable by imprisonment for a term not exceeding one year or a fine not exceeding RM 2,000 or to both.

## **5.2 RIGHTS OF AN INNKEEPER**

### **5.2.1 Right of payment**

An innkeeper would logically charge a price for the accommodation provided. He may also demand payment in advance. It is lawful to demand payment in advance provided that the requirement is applied uniformly in a manner that does not unlawfully discriminate among guests. If a guest does not present himself at the front desk for payment by the posted check-out time, or authorize a charge to a credit or account, the innkeeper can remove the guest from the inn for non-payment.

### 5.2.2 Right of control the inn

An innkeeper has control over the running of the inn. He can enter the room sold to the guest at any time. This means he can bring their stay to an end in the event of non-payment or where guests behave disruptively and affect the comfort of other guest. The innkeeper can remove a guest to a hospital in the event of accident and illness.

### 5.2.3 Right of lien

An innkeeper can detain any property brought by the guest into the hospitium of the inn should the guest fails to pay his bill. A lien is a creditor's right to keep possession of the debtor's property until the debt owed to him is paid. The innkeeper has a power of sale over such the goods. If the guest is unable to settle the bill, the innkeeper may sell the guest's property to satisfy the guest's debts.

## 5.3 INNKEEPERS ACT 1952

### 5.3.1 Section 1 (Short title and application)

This act applies to Peninsular Malaysia only.

### 5.3.2 Section 2 (Interpretation)

- "Goods" means any moveable property.
- "Inn" means any hotel, boarding house or other place where any person is harboured or lodged for any kind whatsoever of hire or reward and where any domestic service whatsoever is rendered by the owner, lessee, principal tenant, occupier or manager to the person so harboured or lodged, licensed under any written law for the time being in force in Peninsular Malaysia.
- "Innkeeper" means the keeper of any such inn and includes a company or corporation.
- "Manager" means the agent or servant of the innkeeper for the time being the charge of the inn or any person duly appointed by the innkeeper to receive the goods of his guests for safe custody.
- "Peninsular Malaysia" has the meaning assigned thereto in section 3 of the Interpretation Acts 1948 and 1967 and includes the Federal Territory.

### 5.3.3 Section 3 (Power of sale of goods deposited with innkeeper)

An innkeeper shall, in addition to his ordinary lien, have the right absolutely to sell by public auction any goods which may have been deposited with him or left in the inn he keeps or in any garage, car park or other premises. Provided that:

- a) no such sale shall be made until after six (6) weeks in such charge or custody without such debt having been paid or satisfied,
- b) the innkeeper shall pay to the person depositing or leaving any such goods the surplus (if any) remaining after such sale,
- c) the debt for the payment of which a sale is made shall not be a by other or greater debt than the debt for which the goods could have been retained by the innkeeper under his lien,
- d) at least ONE (1) month before any such sale the innkeeper shall cause to be inserted in a newspaper circulating in Malaysia an advertisement containing notice of following details:
  - such goods intended to be sold,
  - the name of the owner or person who deposited or left the same where known.

### 5.3.4 Section 4 (Limitation of innkeepers' liability)

Innkeeper shall not be liable to make good to any guest of such innkeeper any loss of or injury to goods brought to his inn, not being a horse or other live animal, or any car or carriage to a greater amount than the sum of RM 500.00 except in the following cases:

- a) where such goods shall have been stolen, lost or injured through the willful act, default or neglect of such innkeeper or any servant in his employ,
- b) where such goods shall have been deposited expressly for safe custody with such innkeeper or his manager:
  - the guest shall at the time such deposit declare the value of such goods',
  - the goods shall be deposited in a box or other receptacle, fastened and sealed by the same person.

Provided the innkeeper or his manager refuse to receive for safe custody any goods the declared value of which exceeds RM 5000.00 and the innkeeper will not be liable for loss of or injury to goods so deposited by a guest to an amount exceeding the declared value thereof.

**Table 5.1: Innkeeper’s liability under section 4 of the Innkeepers Act**

LIABILITY NOT EXCEEDING RM500	LIABILITY EXCEEDS RM500
<p>Where there is not proof that the innkeeper’s (or his employee’s) negligence, deliberate act or theft caused the loss or damage.</p> 	<ul style="list-style-type: none"> <li>✓ Lost or damage caused by innkeeper’s negligence.</li> <li>✓ Loss or damage caused by the innkeeper’s deliberate act.</li> <li>✓ Loss or damage from theft by the innkeeper or his employee.</li> <li>✓ Loss or damage to property deposited with the innkeeper for safe custody.</li> </ul> 

**5.4.5 Section 5 (Refusal to accept property for safe custody)**

Innkeeper and his manager shall refuse to receive for safe custody any goods of his guest the declared value of which does not exceed RM 5000.00 or if any such guest shall through any default of such innkeeper or manager be unable to deposited such as good as aforesaid, such innkeeper shall not be entitled to the benefit of this Act in respect of such goods.

**5.4.6 Section 6 (Copy of section 4 to be exhibited)**

Every innkeeper shall cause at least one copy of section 4 of this Act printed in plain type to be exhibited in a conspicuous part of the hall or entrance to his inn. The innkeeper shall be entitled to the benefit of this Act in respect of such goods only as shall be brought to his inn while such copy shall be so exhibited.

**5.5 INNKEEPERS’ RIGHT**

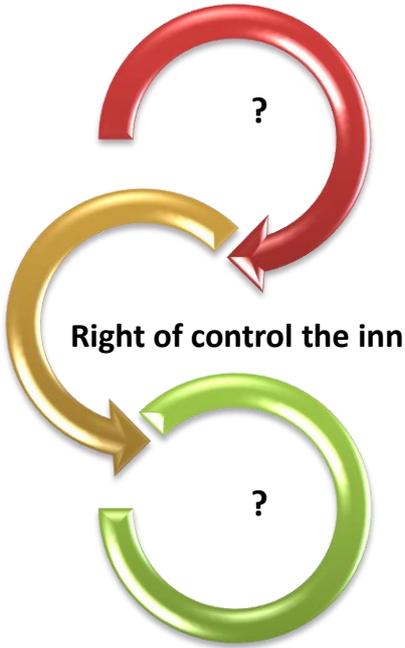
Rights of refusal to receive guest as example not to accommodate a traveler or guest under common law can be exercised in the following situations:



# REVIEW QUESTIONS

## QUESTION 1

### RIGHTS OF INNKEEPERS



An innkeeper would logically charge a price for the accommodation provided.

?

An innkeeper can detain any property brought by the guest into the hospitium of the inn should the guest fails to pay his bill.

## QUESTION 2

### DUTIES OF INNKEEPERS



# REVIEW QUESTIONS

## QUESTION 3

### FILL IN THE BLANKS

SECTION 1	SECTION 2	SECTION 3	SECTION 4	SECTION 5	SECTION 6

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# Answers

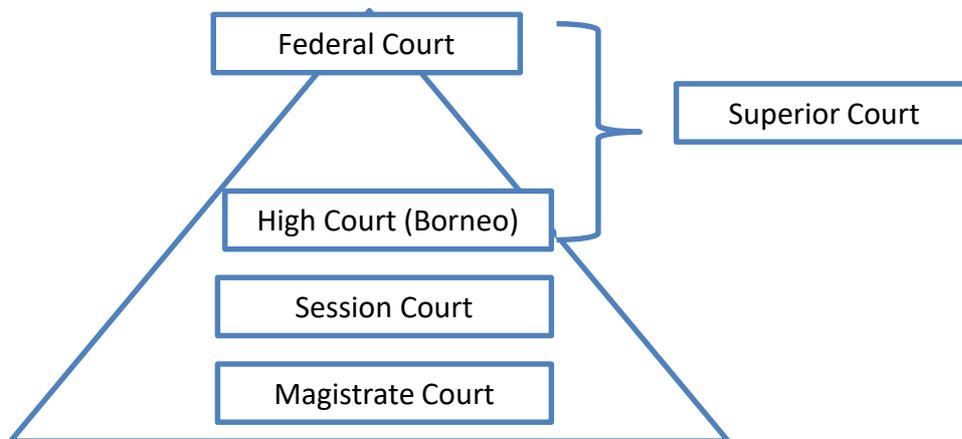
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## CHAPTER 1

### QUESTION 1

1. Written law	The State Constitution
2. Unwritten law	Judicial Decision
3. Muslim law	Syariah Court
4. Common law	In force in England

### QUESTION 2



### QUESTION 3

1. Custom
2. Statue
3. Ordinance
4. Bills
5. Executive

# Answers

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## CHAPTER 2

### QUESTION 1

1. Breach
2. Frustration
3. Performance
4. Agreement

### QUESTION 2

1. Offer and acceptance
2. Consideration
3. Intention to create legal relation
4. Capacity
5. Certainty

### QUESTION 3

1. Rescission
2. Damages
3. Specific performance
4. Injunctions

## CHAPTER 3

### QUESTION 1

1. Duty of take care
2. Breach of that duty
3. Consequential damage to B; injury to the plaintiff
4. Proximate cause

### QUESTION 2

Occupier	A person who has sufficient degree of control over premises to put him under a duty of care towards those who came lawfully upon the premises
Invitee	A person who, without any contract, entered the premises on business of interest both to himself and the occupier
Licensee	A person who entered with the occupier's express or implied permission but without any committing of interest with the occupier

### QUESTION 3

1. Affan can sue Jati Restaurant because Jati Restaurant has a Duty of take care of Affan & his wife after they bought roti.
2. Jati restaurant owes a duty to its customers not to serve bad food because customers who eat it will foreseeable become ill.
3. If the restaurant sell spoiled food, it thereby breaches that duty.
4. Consequential damage to B; injury to the plaintiff.
5. The issue of fact is the extent to which the actions of the Jati Restaurant (defendant) were the factual cause of the Affan, wife (plaintiff's) loss, food poisoning.
6. The proximate cause of an injury refers to its direct and immediate cause. The doctor confirmed that they had severe food poisoning.

# Answers

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## CHAPTER 4

### QUESTION 1

1. **Four week** notice if the employee has been employed for less than two years on the date on which the notice is given.
2. **Six weeks** notice if he has been employed for two years or more but less than five years.
3. **Eight weeks** notice if he has been employed for more than five years.

### QUESTION 2

1. 8 days	Less than 2 years
2. 12 days	2- 5 years
3. 16 days	More than 5 years

### QUESTION 3

1. Twenty two.
2. Fourteen
3. Five
4. Eighteen
5. Four

### QUESTION 4

1. Statutory benefits	<input type="checkbox"/> Maternity protection <input type="checkbox"/> The employees Provident Fund Act (1951) <input type="checkbox"/> The employees Social Security Act 1969 (1969)
2. Non-statutory benefits	<input type="checkbox"/> Time-off payments <input type="checkbox"/> Health Care <input type="checkbox"/> Insurance
3. Financial rewards	<input type="checkbox"/> Salary increase <input type="checkbox"/> Bonus & profit sharing <input type="checkbox"/> Reward (commissions)
4. Non-financial rewards	<input type="checkbox"/> Performance award <input type="checkbox"/> Letter of appreciation <input type="checkbox"/> Sponsorship to seminar , conference

# Answers

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## CHAPTER 5

### QUESTION 1

1. Duty to provide refreshment
2. Duty to provide accommodation
3. Duty to take care of guests' property
4. Duty to provide service in a non-discriminatory manner
5. Duty to record guest information

### QUESTION 2

1. Right of payment	An innkeeper would logically charge a price for the accommodation provided.
2. Right of control the inn	An innkeeper has control over the running of the inn. He can enter the room sold to the guest at any time.
3. Right of line	An innkeeper can detain any property brought by the guest into the hospitium of the inn should the guest fails to pay his bill.

### QUESTION 3

1. Section 1	Short title and application
2. Section 2	Interpretation
3. Section 3	Power of sale of goods deposited with innkeeper
4. Section 4	Limitation of innkeepers' liability
5. Section 5	Refusal to accept property for safe custody
6. Section 6	Copy of section 4 to be exhibited

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# HOSPITALITY LAW HANDBOOK

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