

Module 19
Advisory Services (Rules & Regulations)
Questions and Answers

Topic 1
Contractual Issues

Question 1

Which of the following items are the essential elements of a contract, YES or NO?

Elements:

Intention (**YES**)

Written terms (**NO**)

Acceptance (**YES**)

Consideration (**YES**)

Invitation to treat (**NO**)

Offer (**YES**)

Agreement (**YES**)

Question 2

Brochures – Quotation – Display of goods on a shelf

The above items are all example of **AN INVITATION TO TREAT**.

Question 3

Identify whether the following statements on limiting and excluding liability under the common law are TRUE or FALSE.

Statements

In practice, limiting clauses are used as a defence while excluding clauses are often used to define the obligation of the parties to the contract. (**TRUE**)

It is sufficient for a party seeking to rely on a limiting or excluding clause if the party implies this intention. (**FALSE**)

The party relying on a limiting or excluding clause must adequately bring it to the attention of the other party before the contract was concluded. (**TRUE**)

Topic 2

Negligent Misstatement

Question 1

Describe the essential components of the tort of negligence listed below:

1. **DUTY:**

Answer: There must be a duty owed by the defendant to the complainant

2. **BREACH OF DUTY:**

Answer: There must have been a failure to attain that standard of care, prescribed by the law.

3. **DAMAGE OR INJURY RESULTING FROM THAT BREACH:**

Answer: Some direct and consequential loss must have been suffered by the complainant which is causally connected to breach in particular and must be recognized by the law

Question 2:

Identify whether the following statements on the general liability of stockbrokers are TRUE or FALSE?

1. A stockbroker's duty can be subjected to contractual principles. **TRUE / FALSE**

2. From a tort perspective, a stockbroker may be liable for failing to use skill and diligence, which a reasonably competent and careful stockbroker would exercise. **TRUE / FALSE**

3. Common law provides that if a customer suffers loss by a stockbroker's breach of duty, it must be

proven that the stockbroker had acted fraudulently. TRUE / FALSE

4. In the investment market, the mere fact of losses suffered by a third party can in itself be evidence of negligence on the part of a broker. TRUE / FALSE

Question 3

Any of parties as set out in Section 248 of the Capital Markets and Services Act 2007.

1. The issuer and each director of the issuer at the time issue of the disclosure document or prospectus.
2. A person who consented or caused himself to be named and was named in the disclosure document or prospectus given to an investor as a director or as having agreed to become a director either immediately or after an interval of time.
3. A promoter, for any loss or damage arising from the disclosure document or prospectus or any relevant portion of the disclosure document or prospectus in respect of which he was a party to the preparation thereof.
4. A person other the issuer, who was responsible for preparing the disclosure document or prospectus, or responsible for conducting the due diligence of the information or statement contained in the disclosure document or prospectus, by whatever name called and may include the principal adviser or lead arranger.
5. A person named in the disclosure document or prospectus with his consent, as having made statement, that was included in the disclosure document or prospectus or on which a statement made in the disclosure document or prospectus was based, for any loss or damage caused by the inclusion of the statement in the disclosure document or 387 prospectus.
6. A person named in the disclosure document or prospectus with his consent as a stockbroker, sharebroker, underwriter, auditor, banker or advocate of the issuer in relation to the issue od, offer for subscription or purchase od, or invitation to subscribe for or purchase, securities and who had made a statement that was included in the disclosure document or prospectus or on which a statement made in disclosure document or prospectus was based, for any loss or damage caused by the inclusion of the statement in the disclosure document or prospectus; or
7. A person who authorized or caused the issue of any disclosure document or prospectus in contravention of section 246, for any loss or damage caused by such contravention.

Question 4

ABC Investment Bank is the Adviser for a corporate transaction undertaken by Company X. As a result of the ABC Investment Bank's negligence in providing advice on the transaction, Company X incurred certain hardships and financial losses amounting to RM1,500,000. Company X filed and won a lawsuit against ABC Investment Bank. The court judgement required ABC Investment Bank to pay Company X RM1,500,000 for the loss incurred. The court also required ABC Investment Bank pay RM2,000,000 to Company X, to make an example of the Bank's wrongful behaviour. **What type of damages are ABC Investment Bank paying?**

- I. General damages
- II. Special damages
- III. Nominal damages
- IV. Punitive damages

- A. I and III only
- B. I and IV only
- C. II and III only
- D. II and IV only**

Explanation:

General damages – General damages amount to financial compensation that is issued by a court to compensate for injuries suffered, for which no real dollar value can be calculated. Examples of general damages can include financial compensation for pain and suffering, or for a shortened life expectancy. General damages may also arise from a breach of contract claim. To explore this concept, consider the following general damages definition.

Special damages – Special damages are a type of damages awarded in some civil lawsuits. But, the exact specifics of what they refer to vary depending on the type of case that you are involved in.

Nominal damages – Nominal damages refer to a small sum of money awarded to a plaintiff to commemorate the fact the plaintiff won their civil case in court. These damages are awarded when a plaintiff proves that their legal rights have been violated but does not demonstrate they are actually entitled to receive monetary compensation. Simply put, it is a trivial sum of money awarded to a plaintiff.

Nominal damages – Nominal damages refer to a small sum of money awarded to a plaintiff to commemorate the fact the plaintiff won their civil case in court. These damages are awarded when a plaintiff proves that their legal rights have been violated but does not demonstrate they are actually entitled to receive monetary compensation. Simply put, it is a trivial sum of money awarded to a plaintiff.

Punitive damages, also known as exemplary damages, are damages that are awarded in personal injury lawsuits in addition to compensatory damages. They can be awarded by courts and juries.

While cases in which punitive damages have been awarded often make the latest news headlines, punitive damage awards are actually made much less frequently than compensatory damages.

The majority of states permit plaintiffs to seek punitive damages in civil cases, although each state has its own rules and regulations governing the types of cases in which punitive damages can be sought, as well as other limitations. For example, some states only permit punitive damages if the defendant acted with intent to harm.

Topic 3

Licensing of Persons Who Carry On The Business Of Investment Advice, Advising On Corporate Finance And Their Representatives

Question 1

What are the requirements that the Securities Commission Malaysia will take into consideration when determining the fit and proper status of an application for a CMSRL?

- I. Solvency and financial standing
- II. Ability and readiness of the person to carry on the regulated activities he is proposing to do competently, efficiently, honestly and fairly.
- III. Probity, reputation, character, integrity and reliability
- IV. Educational or professional background, experience and track record of the person living regard to the nature of duties that the person would be performing

- A. I and II Only
- B. II and III Only
- C. I, III and IV Only
- D. All of the above**

Question 2

Under which of the following circumstances can the Securities Commission Malaysia (SC) revoke the CMSRL for advising on corporate finance?

- I. The license of his principal is revoked
- II. The SC is of the opinion that it would be contrary to the interests of the public for the CMSRL to continue to hold the licence
- III. He fails to ceases to act as a representative in respect of all or any of the regulated activities for which he was licensed.
- IV. The holder contravenes any condition or restriction in respect of the licence or any directions issued by the SC under the CMSA.

- A. I and II only
- B. II and IV only
- C. I, II and II Only
- D. All of the above.**

Topic 4

Prohibited Conduct And Insider Trading

Question 1:

Match the prohibited conduct relating to negligent misstatement and the CORRECT provision as set out in the Capital Market and Services Act 2007.

1. FALSE TRADING AND MARKET RIGGING TRANSACTION (SECTION 175):

Answer: Purchasing or selling securities that do not involve a change in the beneficial ownership of the securities.

2. STOCK MARKET MANIPULATIONS (SECTION 176):

Answer: Effecting transactions in securities of a corporation that have the effect of raising, or pegging the price of securities of the corporation on a stock market in Malaysia so as to induce other persons to acquire or dispose of the securities of the corporation.

3. FALSE OR MISLEADING STATEMENTS, ETC. (SECTION 177):

Answer: Disseminating information that is likely induce the sale or purchase of securities by other persons if the licensed person makes it without caring whether the statement or information is true or false or knows (or ought reasonably to have known) that the statement or information is false or misleading in a material particular.

4. FRAUDULENTLY INDUCING PERSONS TO DEALS IN SECURITIES (SECTION 178):

Answer: Dishonest concealment of material facts to induce or attempt to induce another person to deal in securities.

Question 2:

Which of the following considered as "information" under the provision in the CMSA governing the prohibited conduct of Insider Trading?

- 1. Matters of supposition and other matters that are insufficiently definite to warrant their being made known to the public.
- 2. Matters relating to the information, or likely intentions of a person.
- 3. Matters relating to negotiations or proposals with respect to commercial dealings or dealing in securities.
- 4. Information relating to the financial performance of a corporation;
- 5. Information that a person proposes to enter into or has entered into a transaction or agreement in

relation to securities.

6. Matters relating to the future

Question 3:

Identify whether the following statements on the general liability of stockbrokers are TRUE or FALSE:

1. Insider Trading is the trading on the basis of non-public, price sensitive information. **TRUE**
2. A corporation is deemed to possess Insider information which an officer of the corporation possesses in the course of his duties or knows (or ought reasonably to have known) because he is an officer of the corporation. **TRUE**
3. A CMSL (or dealer representative) contravenes the section on Insider Trading 188(2) by entering into a transaction on the stock market in respect of securities quoted for trading, as an agent for another person, if the transaction was entered into under a specific instruction by the other person and the instruction was not solicited by the dealer (or its representative). **FALSE**
4. Information is generally available if that information has been made known in a manner that would bring it to the attention of reasonable persons who invest in securities of a kind whose price and value be affected by the information. **TRUE**

Exercises:

1. Which of the following is insider trading?

- A. You sell your company's stock because you know it is about to announce poor earnings
- B. Your company starts supplying parts for a customer's secret major product, so you buy the client's stock
- C. You dump a company's shares after your broker confidentially tells you the CEO at that company just sold stock, but the sale has not yet been publicly reported

D. All of the above

2. While feeling good at a family party, you tell your brother-in-law that your company is about to announce a big deal with Microsoft. What are you guilty of?

- A. Talking shop
- B. Consumer fraud

C. Tipping / insider trading

D. All of the above

3. What is a blackout period?

- A. A period when your company's stock price is lower than the exercise price of your options
- B. A period of stock-trading activity that you cannot remember during an SEC interview
- C. A period during which your company prohibits you from buying or selling its stock**
- D. A period during which a company prohibits its insiders from exercising their stock options or receiving restricted stock

4. What would probably not be considered insider trading during a blackout period if you knew inside information?

A. Exercising and holding stock options

- B. Exercising and selling stock options
- C. Trading company stock in a 401(k)
- D. None of the above