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**FINAL EXAMINATION
(TAKE HOME)
SEMESTER II
SESSION 2019/2020**

COURSE NAME : CONSTRUCTION LAW
COURSE CODE : BPD 20302
PROGRAMME CODE : BPC
EXAMINATION DATE : JULY 2020
DURATION : 24 HOURS
INSTRUCTION : ANSWER ALL QUESTIONS
OPEN BOOK EXAMINATION

THIS QUESTION PAPER CONSISTS OF **FOUR (4)** PAGES

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TERBUKA

- Q1** These are unprecedented times. With increasing numbers of patients tested positive for COVID-19 (Corona Virus) nationwide, the Prime Minister of Malaysia has announced a Movement Control Order (“MCO”) from 18.03.2020 to 31.03.2020. Save for “essential services”, all public or private premises are ordered to close during the MCO period.

Construction is not recognised as “essential service” under Schedule 2 of the Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020. However on 18.03.2020, the National Security Council announced that “in-progress construction” affecting “safety and security” would be permitted to continue during the MCO period, subject to the evaluation by the Public Works Department and the Department of Occupational Safety and Health (“DOSH”). On the same day, the Ministry of Works also clarified that the exemption is only for critical works and provided examples of the same.

In other words, the construction industry, save for the aforesaid exempted works, will be affected by the MCO and generally, by the COVID-19 pandemic.

These unprecedented times present the construction industry with challenges unheard of before. Whilst uncertainty looms, the construction industry may wish to take note of extension of time clause in construction contract.

(Source. <https://www.zainmegatmurad.com>, 2020)

Interpret impacts of MCO towards construction contract in Malaysia construction industry. Support your discussion with related clauses in Standard Form of Contract.

(25 marks)

- Q2** **Bukit Kukus road project director faces negligent charge in fatal landslide incident**

Monday, 26 Aug 2019 03:43 PM MYT

GEORGE TOWN, Aug 26 — A project director today claimed trial at the Sessions Court to a charge of failing to ensure the safety of his workers at the Bukit Kukus paired road project under the Occupational Safety and Health Act 1994.

Lai Sin Kian, 58, was charged under Section 15 (1) of the Act for failing to provide safe working procedures at the site of a fatal landslide last October. Lai, who is an employee of Syarikat Yuta Maju Sdn Bhd, allegedly failed to obtain engineering calculations from a registered engineer to conduct backfill earthworks for the temporary slope that led to a landslide from 1.56pm to 6pm on October 19 last year.

After his charge was read out to him, Sessions Court Judge Mazdi Abdul Hamid told the prosecution that the charge sheet was flawed as the time of the incident was stated from “1.56pm to 6pm”.

“This could affect the defence so I will give the prosecution time to change the charge and if there are any further mistakes, I will throw out the case,” he said.

Deputy Public Prosecutor Norliza Abu Othman told the court that the offence was committed at 1.56pm while the investigations on the incident started at 6pm.

Mazdi said the reason was unacceptable as the charges was supposed to be based on the time of the incident and not when investigations into the case started.

This was not the first time there was an issue with the charge against Lai as back in July, he was given a discharge not amounting to an acquittal due to documentation issues of the charge against him

The court had ordered the prosecution to register Lai’s case again after resolving the documentation issues.

Mazdi fixed September 27 for mention of the case, the same mention date as three other charges against Syarikat Yuta Maju over the same incident.

The main contractor for the Bukit Kukus paired road project was also charged with three counts of failing to provide safe working procedures at the fatal landslide on the infrastructure project last October.

The first charge was for failing to employ a competent person to act as a safety and health officer at the place of work.

This charge is under Section 29(2) of the Occupational Safety and Health Act 1994 which carries a fine not exceeding RM5,000 or a term of imprisonment not exceeding six months or both.

The second charge was for failing to ensure safe worksite procedures when moving beams using a crane, causing the beams to fall from the span on October 11 last year.

The final charge was for failing to implement proper engineering procedures by a registered engineer to conduct backfill earthworks for the temporary slope that led to a landslide on October 19 last year.

Both of these last two charges and the charges against Lai were under Section 15 (1) of the act that stipulates every employer must ensure the safety, health and welfare at work of all his employees.

Those found contravening the provision will be liable to a fine not exceeding RM50,000 or imprisonment of not exceeding two years or both.

Yuta Maju, through its lawyer, had filed a representation to the Attorney-General’s Chambers for the three charges against it to be struck off.

The fatal landslide occurred during construction of the Bukit Kukus elevated paired road project, killing nine foreign workers living on the site.

(Source: Malay Mail, 2019)

Based on the news above, Law of Tort is one of significant principles to protect plaintiff from any damages in construction project.

- (a) Describe with example **THREE (3)** basic requirements to establishing an action in negligence. (15 marks)
- (b) Interpret the principles of the law of torts regarding negligence in the case of Hedley Bryne & Co. vs Heller & Partners Ltd (1964). (10 marks)

- END OF QUESTIONS -