



## Mercantile Law

Foundation Examination  
Spring 2014  
Module B

3 March 2014  
100 marks - 3 hours  
Additional reading time - 15 minutes

### Instructions to candidates:

- (i) *All the Questions from Section A are compulsory.*  
(ii) *Attempt any FOUR out of SIX Questions from Section B.*

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### Section A

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Q.1 Select appropriate answer from the options available for each of the following multiple choice questions (MCQs). Each MCQ carries **ONE** mark.

- (i) Incapacity to contract may be due to:
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|-----------------------------------|------------------------------|
| (a) absence of legal formalities. | (b) lack of consideration.   |
| (c) minority.                     | (d) absence of free consent. |
- (ii) Continuing guarantee may be revoked by:
- |                                    |                              |
|------------------------------------|------------------------------|
| (a) giving notice to the creditor. | (b) the death of the surety. |
| (c) variance in terms of contract. | (d) all of the above.        |
- (iii) Which of the following statements is **NOT** correct? Obiter dicta is:
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| (a) not binding on future Court.                     |
| (b) a judge's statement based on hypothetical facts. |
| (c) a part of ratio decidendi.                       |
| (d) a dissenting judgment of persuasive authority.   |
- (iv) Quantum meruit means:
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| (a) an instrument having equal importance in the eye of law. |
| (b) value of work which can be recovered by the plaintiff.   |
| (c) an act performed with honesty.                           |
| (d) beyond the scope of the case.                            |
- (v) Which of the following is **NOT** the right of the finder of lost goods?
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|---|
| (a) To sue for reward announced by the owner of the goods.                          |
| (b) To sell the goods if owner is not found and the goods are of perishable nature. |
| (c) To sue for the recovery of expenses incurred by him.                            |
| (d) To exercise lien over goods for expenses incurred by him.                       |
- (vi) Asif, Haq and Akram are partners in an un-registered firm. To enforce a right arising from a contract or conferred by the Partnership Act, 1932, Haq can file a suit:
- |  |
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| (a) against Asif and Akram.                            |
| (b) against Moid, a third party dealing with the firm. |
| (c) for the dissolution of the firm.                   |
| (d) for the claim of set-off.                          |
- (vii) Which of the following is **NOT** correct? A partner may retire:
- |  |
|--|
| (a) with the consent of majority of partners.                                      |
| (b) with the consent of all the partners.  |
| (c) by giving a written notice to all the partners in case of partnership at will. |
| (d) if there is an express agreement between the partners.                         |

- (viii) A proposal is said to be revoked:
- by communication of notice of revocation by the proposer to the other party.
  - by the lapse of time prescribed for its acceptance.
  - by the failure of the acceptor to fulfill a condition.
  - all of the above.
- (ix) Which of the following statements is **NOT** correct? An unpaid seller of goods:
- having a lien thereon, loses his lien if he obtains a decree for the price of the goods.
  - can exercise his right of stoppage of goods in transit when the buyer becomes insolvent.
  - has a right to re-sale the goods under certain circumstances.
  - loses his lien on goods by waiver thereof.
- (x) Under the Sale of Goods Act, 1930 'Goods' does **NOT** include the following:
- Moveable property.
  - Actionable claims.
  - Stock and shares.
  - Growing crops.
- (xi) A negotiable instrument is presumed to be:
- payable on agreed date.
  - drawn on a banker.
  - drawn by free consent of parties.
  - transferred before its maturity.
- (xii) Which of the following is **NOT** a bilateral mistake? A mistake regarding:
- a fact subsidiary to the contract.
  - existence of subject matter.
  - title to subject matter.
  - price of subject matter.
- (xiii) Which of the following is **NOT** the characteristic of a cheque?
- It must be in writing.
  - It is definite and unconditional.
  - It must be signed by the drawee.
  - It contains an order to pay.
- (xiv) A Trust is created when the author of the Trust indicates with reasonable certainty:
- the purpose of the Trust.
  - the Trust property.
  - an intention to create a Trust.
  - all of the above.
- (xv) Which of the following statements is **NOT** correct?  
The carrier or the ship shall be responsible for the loss or damage arising from:
- Fire caused by the privity of the carrier.
  - Unseaworthiness caused by want of due diligence on the part of the carrier.
  - Insufficiency or inadequacy of marks.
  - Latent defects that are discoverable by due diligence.

Q.2 Briefly differentiate between 'Statute' and an 'Ordinance'. List down any **four** purposes of an 'Act of Parliament'. **(06)**

- Q.3 (a) In case of each of the following situations, state the conditions, as specified under the Contract Act, 1872 which must be fulfilled to make a binding contract.
- In February 2014, Raheel promised to pay Rs. 300,000 to Sameer against a debt of Rs. 500,000 which was due for payment in March 2010. **(03)**
  - Shazia promised to pay Rs. 100,000 to her brother Rauf on account of his University fees for three years. **(03)**
- (b) Maya paid the electricity bill of her neighbour Wasi to avoid disconnection. Later, she claimed the amount of the bill from Wasi. Explain whether Maya is entitled for the claim. **(04)**

- Q.4 (a) Under the provisions of the Partnership Act, 1932 briefly state what may be regarded as the property of the firm. (05)
- (b) Patel, Bari and Sultan were partners in a firm of interior design. On 1 February 2014 Patel was adjudicated an insolvent by the Court. Under the provisions of Partnership Act, 1932 briefly describe whether or not Patel may be treated as a partner in the firm after adjudication. Also state the effects of such adjudication on Patel. (05)
- (c) In view of the provisions of the Partnership Act, 1932 list down the restrictions imposed on the implied authority of a partner. (05)
- Q.5 Modi wanted to buy a gift for his wife Laila on her birthday. He visited Easy Electronics, who deal in all sort of kitchen appliances. Modi asked the salesman to show him an automatic roti making appliance which his wife can use to cook at least 50 rotis per day without going through the hassle of making dough and applying oil manually on it. The salesman showed him one of the roti makers which Modi bought at a price of Rs. 150,000. After making 30 rotis the roti maker became overheated and got burst injuring Laila.
- State, giving reasons, the remedies available to Modi in the above circumstances under the provisions of the Sale of Goods Act, 1930. (08)
- Q.6 In view of the provisions of the Carriage of Goods by Sea Act, 1925 describe the liability of the carrier in each of the following situations:
- (a) Deviation of ship from the agreed or customary route. (02)
- (b) Loss or damage arising from unseaworthiness. (02)
- (c) Any damage caused to the goods due to the fault of an agent of the carrier where the value of the goods has been knowingly misstated by the shipper in the bill of lading. (02)

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### Section B

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- Q.7 Aslam, Uzair and Imran are equal partners in a firm which is engaged in the business of supplying petroleum products in the local market. Uzair is not happy with the performance of Aslam and Imran and has reasons to believe that they are engaged in malpractices. Uzair wants to dissolve the firm while Aslam and Imran want to continue the business.
- Under the provisions of the Partnership Act, 1932 advise Uzair about various grounds on which a petition may be made to the Court for the dissolution of the firm. (10)
- Q.8 What is meant by 'Ratification' and 'Agency by Ratification'? List down any of the **eight** conditions which are required to be fulfilled for a valid ratification of an agency as described under the Contract Act, 1872. (10)
- Q.9 (a) Under the provisions of the Negotiable Instruments Act, 1881 Promissory Notes, Bills of Exchange and Cheques are required to be presented for payment, at the due date for presentment, respectively to the maker, acceptor or drawee by or on behalf of the holder of such instrument.
- State **eight** circumstances under which the presentment for payment is not necessary and the instrument is deemed to be dishonoured at the due date for presentment. (08)
- (b) Saqi draws a bill payable to Zubair or order. Zubair indorses it to Habib without adding the word 'or order' or any equivalent words thereof. Advise whether Habib may further negotiate the instrument. (02)

- Q.10 (a) Under the provisions of the Contract Act, 1872 what do you understand by the term 'Contingent Contract'? Briefly describe with the help of an illustration when a contingent agreement is considered to be void ab-initio. (05)
- (b) Baqir and Qurban jointly borrowed a sum of Rs. 600,000 from Atif and Saleem. In the light of the provisions of the Contract Act, 1872 briefly explain the following: (05)
- (i) On the date of payment, Baqir paid Rs. 600,000 to Atif which he accepted. Are Baqir and Qurban discharged from their liability?
- (ii) On due date, Baqir and Qurban defaulted in making the payment. Saleem, without informing Atif, filed a suit against Baqir and Qurban for the recovery of the amount due. Will Saleem succeed in his case?
- Q.11 Under the provisions of the Sale of Goods Act, 1930 briefly explain the terms 'Contract of sale' and 'Agreement to sell'. State how a contract of sale may be made. (10)
- Q.12 (a) Nomi is a trustee for Furqan. Nomi in execution of the trust, sold the trust property to Wahid, but due to lack of due diligence on his part, he failed to recover a part of the purchase consideration from Wahid. In view of the provisions of the Trusts Act, 1882 advise the rights of Furqan under the circumstances. (03)
- (b) Talha conveyed Rs. 500,000 to three proper persons in trust for his son Afaq. All the trustees died in a road accident.
- Under the provisions of the Trusts Act, 1882 explain with reasons:
- (i) whether Afaq has the right to appoint new trustees in the above situation.
- (ii) whether a single trustee can be appointed in place of the deceased trustees.
- (iii) who may not be regarded as a proper person to be appointed as a trustee under the above circumstances. (07)

(THE END)