MERCANTILE LAWS
(SPRING 2008 TO SPRING 2014)

ICAP PAST PAPERS BANK
MERCANTILE LAW

Module B

(MARKS 100)

(3 hours)

Q.1 Briefly describe the kind of cases handled by the Federal Shariat Court and the procedures followed in the discharge of these cases. (07)

Q.2 Differentiate between an offer and an invitation to offer. Give at least four examples of invitation to offer. (06)

Q.3 (a) Tariq was seriously ill and needed money for his operation. Murad agreed to lend him Rs. 100,000 at 15% per annum. The rate of interest prevalent in the market was 10% per annum. Later, Tariq refused to pay interest in excess of 10% claiming that he entered into the agreement under undue influence of Murad. Do you agree with Tariq? Explain with appropriate reasons. (05)

(b) Arif told Bano, his wife, that he would divorce her, if she does not transfer her personal assets to him. She agreed to transfer her assets to him. Can Bano avoid the contract? (03)

Q.4 (a) Mohsin promised Ahsan that he will pay his university fee. Later Mohsin suffered losses in his business and refused to pay the fee. Mohsin is of the view that since the agreement was without consideration, it does not constitute a valid contract. However, Ahsan believes that the agreement is enforceable under law as it meets certain other conditions.

You are required to narrate the conditions which Ahsan may be referring to. (04)

(b) Bushra entered into a contract with Akhtar, the manager of a radio programme, to conduct a show, twice a week, during the next three months. Bushra did not appear for the sixth show. She conducted the next show but soon thereafter Akhtar rescinded the contract and informed her that her services were no longer required as she failed to conduct the sixth show.

Narrate the rights of Akhtar and Bushra in the above situation. (05)

Q.5 (a) A borrowed Rs. 300,000 jointly from B, C and D. When the debt became due, A paid the full amount to B. Explain whether A’s debt has been discharged. (03)

(b) Explain the term ‘right of subrogation’ in the context of a contract of guarantee. (03)

Q.6 Certain agreements have expressly been declared to be void under the Contract Act, 1872. List such agreements along with exceptions, if any. (08)

Q.7 (a) A, B and C, partners of a firm, admitted D, a minor to the benefits of the firm. D attained majority on 6th March 2007. He became aware of the fact that he has been admitted to the benefits of the firm on 16th August 2007. Being undecided about the situation he preferred to wait for sometime before announcing his decision about joining the firm. On 27th February 2008, the firm suffered heavy losses due
to an unforeseen event. A, B and C informed D that on account of such losses, his capital in the firm has been reduced by 40%. Discuss the rights and liabilities of D in the above situation.

(b) A firm in which A, B and C were partners, placed an order with D for supplying certain goods on credit. Before D could supply the goods C died. D supplied the goods after C’s death, being totally ignorant about the fact. A and B subsequently became insolvent. Can D make C’s estate liable for his debt? Explain.

(c) List the circumstances in which a partnership firm is compulsorily dissolved?

Q.8 (a) Ahmed draws a bill of exchange in favour of Bilal, a minor or to his order. Bilal endorsed the bill in favour of Dawood, an agent of Fareed, against appropriate consideration. Dawood endorsed the same in favour of Ghalib. Answer the following giving appropriate reasons:

(i) Can Ahmed refuse to pay the bill on the plea that it was issued in favour of Bilal who being a minor was not competent to contract?

(ii) If Ahmed fails to pay the bill on presentation, can Ghalib claim the amount from Dawood?

(iii) Can Ghalib claim the amount from Bilal if the amount received by Bilal as consideration for the bill is still available with Bilal?

(b) What is meant by instrument transferred on escrow? Does such transfer affect the rights of holder in due course?

(c) A bill was drawn payable to ‘Ahmed or order’. It was lost subsequently. Basheer who found the bill forged Ahmed’s signature and endorsed it to Chawla who took it for value and in good faith.

(i) Is Chawla a ‘holder in due course’? Discuss.

(ii) Would your answer be the same, if the bill was bearer? Discuss.

Q.9 (a) What are the rights available to an unpaid seller under the following circumstances:

(i) When the property in goods has passed to the buyer.

(ii) When the property in goods has not passed to the buyer.

(b) The property in specific or ascertained goods is transferred to the buyer at such time as the parties intend. Narrate the rules that have been specified under the Sale of Goods Act, 1930 to determine the transfer of property in goods, if the intentions of the parties cannot be judged from the contract of sale.

(c) Y, a wheat stockist, had a large godown where he kept all his wheat. He sold 100 kgs of wheat to G and received an advance payment of 40%. On the same day, before the goods could be set aside for G, the entire godown caught fire and everything was destroyed. Who would bear the loss of 100 kgs of wheat sold to G and why?

Q.10 Sameer Enterprises shipped a cargo containing explosive material on a ship owned by Mehran Shipping Company. Explain the rights and liabilities of each party in the following situations:

(a) If the goods were shipped without the knowledge of the shipping company.

(b) If all the relevant details were provided to the shipping company.

Q.11 State the circumstances in which a beneficiary of a trust may become liable for breach of trust. What are the rights of other beneficiaries in such circumstances?

(THE END)
MERCANTILE LAW (MARKS 100) (3 hours)
Module B

Q.1 What do you understand by the term ‘civil law’? Give few examples of such laws. (04)

Q.2 Briefly describe the essential conditions for the acceptance of an offer to be valid, under the Contract Act, 1872. (07)

Q.3 (a) Asif stole cash and merchandise from the ABC Store. Basit, the owner of the store, initiated legal proceedings against him. Asif contacted Basit with an offer to return the stolen cash and merchandise if Basit withdraws the suit. Basit accepted the offer. Is it a valid agreement? Discuss. (02)

(b) Shahid agreed to buy used printing machinery from Amir who confirmed that the machine was in a good condition. After taking possession, Shahid complained that there were defects in the machine. Amir and Shahid agreed to have it repaired and to share the repair charges equally. Few days after repairing, the machine again started malfunctioning. Shahid now wants to rescind the contract. Can he do so? Discuss. (04)

Q.4 (a) Danish owes a sum of Rs. 100,000 to Adil against three different agreements. In March 2008, Danish sent a cheque of Rs. 70,000 and Adil appropriated the amount in the following manner:

<table>
<thead>
<tr>
<th>Year of agreement</th>
<th>Amount</th>
<th>Appropriation by Adil</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>20,000</td>
<td>20,000</td>
</tr>
<tr>
<td>2006</td>
<td>40,000</td>
<td>10,000</td>
</tr>
<tr>
<td>2007</td>
<td>40,000</td>
<td>40,000</td>
</tr>
<tr>
<td>Total</td>
<td>100,000</td>
<td>70,000</td>
</tr>
</tbody>
</table>

The loan taken in 2006 has been guaranteed by Feroze who has demanded that Adil must appropriate Rs. 40,000 against the debt guaranteed by him. Explain whether Adil is bound to accept Feroze’s point of view. (04)

(b) Bashir supplies goods worth Rs. 100,000 each month to Anwar under a contract which is due to expire on December 31, 2009. Ameen has guaranteed that he will compensate Bashir in case of default by Anwar.

On August 29, 2008 the amount due to Bashir is Rs. 325,700. Ameen intends to revoke his guarantee. Can he do so? Discuss. (03)
Q.5 A agreed to supply machinery to B at a specified date. B informed A that if the delivery is delayed he would not be able to execute a contract with C. It was agreed that A would pay Rs. 500,000 per month as compensation in case of delay beyond the agreed date. The machinery was supplied five months after the agreed date due to which B lost the contract with C, which could have earned him a profit of Rs. 2.0 million. As a result of the delay, B was also compelled to pay Rs. 1.5 million to another party i.e. Sunny Enterprises as compensation for breach of contract. B claimed damages of Rs. 3.5 million from A being the actual loss suffered by him.

Determine the amount of compensation which A would be required to pay B, giving appropriate reasons under the Contract Act, 1872.

Q.6 (a) Explain the term “pledge”. Identify the circumstances under which a pledge made by a non-owner will be considered valid even if the owner has not authorized him to pledge the goods.

(b) Briefly state the duties of an agent towards his principal.

Q.7 (a) Narrate the rights available to the aggrieved partner who rightfully rescinds the partnership contract due to fraud or misrepresentation by the other partners.

(b) ABC & Company, a partnership firm, has suffered losses and the partners have decided to dissolve the firm. You are required to explain how the accounts shall be settled, in accordance with the Partnership Act, 1932.

(c) Asad, Bilal and Cassim formed a partnership for 10 years. They decided that Bilal and Cassim will actively manage the business and they performed their responsibilities in the best interest of the partnership for 6 years. However, Asad was not satisfied with the arrangement and served a notice of dissolution of the firm which was disregarded by the other partners. Then Asad filed a suit for dissolution on the grounds that his notice for dissolution of the firm was disregarded. Can he succeed in his suit? Explain.

Q.8 (a) Faisal drew a bill on Ghazi for an amount of Rs. 45,000 which was payable to the order of Faisal. Ghazi accepted the bill in consideration of goods supplied to him by Faisal worth Rs. 30,000 and the remaining Rs. 15,000 to accommodate Faisal. On the due date, Ghazi dishonoured the bill. You are required to explain the following:

(i) If Faisal sues Ghazi, can he succeed in recovering the amount due on the bill?
(ii) What would be the rights of Hamid and Ghazi if Faisal endorses the bill to Hamid for value and on dishonour, Hamid sues Ghazi on the bill?

(b) Explain the term “ambiguous instruments” giving at least two examples. Can such instruments be negotiated?

(c) List the rules for determining the compensation payable in case of dishonour of negotiable instruments.

Q.9 (a) List the implied conditions which are attached to a contract of sale by sample.

(b) Discuss the remedies available to a buyer in case of non-delivery of goods by a seller.
(3)

(c) Describe the rules relating to place and time of delivery of goods.

(d) Haroon contracted to purchase pineapples from Ismail. It was agreed that Ismail would fill the tins weighing 500 gms each and pack them in cases containing 30 tins each. Ismail’s staff had filled 40% of the pineapples in tins in presence of Haroon when a fire broke out accidentally and the entire stock was destroyed. Ismail contends that Haroon should bear 40% of the loss.


Q.10 The goods received by Haseeb Brothers were damaged owing to improper cooling system in the ship owned by Blue Ocean Shipping Company. State the rules relating to claim for loss of goods to be lodged by Haseeb Brothers with Blue Ocean Shipping Company, with reference to Carriage of Goods by Sea Act, 1925.

Q.11 What are the essential conditions for creating a valid trust, under the Trust Act, 1882?

(THE END)
MERCANTILE LAW

Module B

(MARKS 100)

(3 hours)

Q.1 Briefly discuss the right of appeal, the basis thereof and the procedure for appeals, in criminal cases.

(04)

Q.2 Identify the circumstances under which a proposal may be revoked under the Contract Act, 1872.

(07)

Q.3 (a) Describe the principles of determining compensation for loss or damages caused due to breach of contract.

(04)

(b) Talib was indebted to Bashir for Rs. 10,000. On Talib’s request Bashir agreed to accept Jahangir as his debtor, in place of Talib. Jahangir failed to make payment on due date. Under the provisions of Contract Act, 1872 you are required to explain whether Bashir can now demand payment from Talib.

(02)

Q.4 (a) Discuss the rights of the finder of goods under the Contract Act, 1872.

(04)

(b) Shahid pledged gold with Mehreen against a loan of Rs. 100,000 at a markup of 15% per annum. Being concerned with the growing incidences of burglary in the city, Mehreen insured the gold. At the time of repayment, Mehreen claimed the cost of insurance cover in addition to the principal sum due and interest thereon.

In the light of Contract Act, 1872 briefly explain whether Mehreen is justified in her claim.

(02)

Q.5 (a) What is a contract of Indemnity as defined under the Contract Act, 1872?

(02)

(b) A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue the principal debtor, discharges the surety. Briefly state the exceptions to this principle.

(06)

Q.6 (a) “A person cannot pass a better title than what he himself has”. List the exceptions to this rule, under the Sale of Goods Act, 1930.

(04)

(b) Who is an unpaid seller? Can a seller be deemed to be unpaid if goods are sold on credit? Explain in the light of the Sale of Goods Act, 1930.

(03)

(c) Describe the circumstances as mentioned in the Sale of Goods Act, 1930, under which a seller loses the right of:

(i) lien
(ii) stoppage of goods in transit.

(04)
Q. 7 (a) When may an agent’s authority be revoked by the principal under the Contract Act, 1872? Also narrate the exceptions to the above provision.

(b) When does the termination of an agent’s authority take effect? Explain.

(c) Aslam appointed Zakir to recover Rs. 7.0 million from Naveed. Zakir misbehaved with Naveed as a result of which Naveed sued Aslam. Later, Aslam sued Zakir claiming reimbursement of the cost incurred by him in defending the suit filed by Naveed. Explain whether Aslam is justified in his claim.

Q. 8 (a) Qadeer and Javed are partners in a confectionery business. They admitted Hasan, a minor son of their deceased friend, to the benefits of the partnership.

(i) State the procedure that should be followed by Hasan on attaining majority.

(ii) What would be the rights and liabilities of Hasan on attaining majority:

- if he decides to become a partner
- if he decides not to become a partner.

(b) Qadeer and Javed sold their confectionery business along with goodwill to Asad Sweets. They also agreed not to carry on similar business for a period of three years. After one year of the sale, Qadeer started a similar business on the ground that agreements in restraint of trade are void. Describe the relevant provisions of Partnership Act, 1932 and explain whether Qadeer is justified in his contention.

(c) Discuss the restrictions which can be imposed by Asad Sweets in the above situation, under the Partnership Act 1932, if there is no condition in the agreement, preventing Qadeer from carrying on similar business.

(d) Explain the concept of “Holding out” as described in the Partnership Act, 1932.

Q. 9 (a) List the persons who are required to give notice of dishonour of negotiable instrument. Also list the persons to whom such notice should be given.

(b) State the circumstances when notice of dishonour of negotiable instrument is not necessary.

(c) A cheque is drawn payable to ‘B or order’. It is stolen and B’s endorsement is forged. The banker pays the cheque in due course. Is the banker discharged from liability? Would it make any difference if the drawer’s signature were forged?

Q.10 List the key contents of a bill of lading as described in the Carriage of Goods by Sea Act, 1925.

Q.11 (a) Narrate the circumstances under which a trust can be revoked under the Trust Act, 1882.

(b) What are the rights of a beneficiary if the trustee has wrongfully bought the trust property?

(c) A trustee of ABC Welfare Trust deposited the Trust’s funds in XYZ Bank Limited which subsequently became insolvent. Explain whether the beneficiaries can sue the trustee for recovery of the loss.

(THE END)
MERCANTILE LAW

Module B

(MARKS 100)

(3 hours)

Q.1 (a) What is the composition and tenure of Federal Shariat Court? (03)

(b) What does court of first instance mean? List the areas of jurisdiction of the High Court. (03)

Q.2 Describe the circumstances under which an agreement made without consideration is considered valid and binding under the Contract Act, 1872. (07)

Q.3 (a) Sara planned to spend her vacations in Islamabad with her parents. She therefore, requested her neighbour, Farha to take care of her pet cat during this period. On her return from vacations, Farha informed Sara that she had to spend Rs. 500 on usual feeding and grooming of the cat and Rs. 1,000 on medical expenses as the cat fell sick, without any negligence on Farha’s part.

You are required to state the amount, if any, which Sara needs to reimburse to Farha in each of the situations given below. Justify your answer with reasons under the provisions of Contract Act, 1872.

(i) No remuneration was agreed to be paid to Farha for the safe custody of the pet.

(ii) Sara had agreed to remunerate Farha for her services. (04)

(b) Describe the following as defined under the Contract Act, 1372.

(i) Bailee’s particular lien

(ii) General lien of a banker (04)

(c) Majid gave a piece of fabric to Stylish Suiting for sewing a coat at a consideration of Rs. 5,000. On completion, Majid paid the whole amount; however, Stylish Suiting refused to deliver the coat until the payment of previous dues of Rs. 3,000.

Explain under the provisions of Contract Act, 1872, whether Stylish Suiting is justified in refusing to deliver the coat. (02)

Q.4 (a) Explain the term ratification in relation to the contract of agency under the Contract Act, 1872. What is the effect of a valid ratification? (03)

(b) List down the conditions necessary for a valid ratification. (04)
(c) Sami rented his house to Qurban for a period of one year at an agreed sum of Rs. 10,000 per month. After the first two months, Qurban defaulted in making payment of the rent. Baqir, a neighbour, being concerned with the strained relationship between Sami and Qurban, paid the rent with good intention. Subsequently, on Qurban’s refusal to reimburse the amount, Baqir filed a suit against him on the grounds that he made the payment to Sami which Qurban was legally bound to make and being a quasi contract Baqir is entitled to the reimbursement.

Explain whether Baqir is justified in his suit.

Q.5  (a) Mehboob, a promisor and Saulat, a promisee, entered into a valid contract. However, when Mehboob made an offer of performance, Saulat refused to accept the same. Briefly state the rights and responsibility of Mehboob against such refusal. Also state the essentials of a valid offer of performance under the provisions of Contract Act, 1872.

(b) Asim agreed to construct a bungalow for Ali at a cost of Rs. 50 million. However, it was agreed that payment would only be made on completion of the project. Is this a contingent contract under the Contract Act, 1872? Give reasons. Also list the requisite characteristics of a contingent contract.

Q.6  (a) The authority of a partner to bind the firm is called “Implied Authority.” List the acts which cannot be exercised by a partner as his implied authority.

(b) Karim, Luqman and Noman were partners in a firm. They admitted Moeen as a partner on the payment of a premium, for a fixed term of five years. However, the firm was dissolved after three years. Consequently, Moeen claimed repayment of the proportionate part of his premium. The other partners refused to return the premium.

You are required to explain whether Moeen is entitled to claim the refund under the provisions of Partnership Act, 1932.

(c) Obaid, Raheel and Pervez were partners in a firm. On September 1, 2009 Pervez retired from the partnership. The remaining partners continued the business, with the property of the firm, without final settlement of accounts as between them and Pervez.

In the light of the Partnership Act, 1932, describe the rights of Pervez, in the above circumstances.

(d) Sohail, Talha, Umar & Co., a partnership concern is engaged in trading of cloth. The firm bought a plot of land from Shining Star Limited. After some time Talha and Umar on their own account bought three more plots of land in the same locality and made good profits. Sohail on becoming aware of such profits sued Talha and Umar for his share.

Under the provisions of Partnership Act 1932, explain whether Talha and Umar are liable to share such profits with Sohail.

Q.7  (a) Explain the term “Cheque” as defined in the Negotiable Instruments Act, 1881 and list down the essential elements of a valid cheque.

(b) Who can cross the cheque after its issue? Also describe the manner in which it can be crossed.
(c) Wali made a promissory note in favour of Yaseen for an amount of Rs. 50,000. Wali died and the note was found by Wali’s brother among his papers which he delivered to Yaseen. Yaseen sued Wali’s legal representative.

In the light of the provisions of Negotiable Instruments Act, 1881 you are required to explain whether Yaseen can recover the amount.

Q.8 (a) Explain the following terms as defined under the Sale of Goods Act, 1930.
   (i) Contract of sale  (ii) Sale  (iii) Agreement to sell

(b) Describe the various modes of fixing the price in a “Contract of Sale” and an “Agreement to Sell”.

(c) What are the liabilities of buyer for neglecting or refusing to take delivery of goods under the Sale of Goods Act, 1930? Explain the remedies available to the seller in this regard.

Q.9 (a) What are the conditions implied in a contract for the Carriage of Goods by Sea?

(b) “Neither the carrier nor the ship shall be liable for loss or damage to the cargo arising or resulting from unseaworthiness of ship.” List the exceptions to this rule, under the Carriage of Goods by Sea Act, 1925.

Q.10 (a) Describe the circumstances under which a trustee committing a breach of trust is liable to pay interest under the provisions of Trust Act, 1882.

(b) Tanmure entrusted a trust land to Danish and Ghazi with the instruction to sell it and invest the proceeds for the benefit of Essa. The sale proceeds were received by Ghazi. Danish requested Ghazi to invest the proceeds. After four years Danish inquired from Ghazi about the status of investment. Ghazi informed Danish that he was unable to invest the sale proceeds as he became insolvent and lost all the money. Essa instituted a suit against Danish who pleaded that he is not liable for the breach of trust committed by his co-trustee.

Under the Trust Act, 1882, you are required to explain whether Essa can recover the loss from Danish and to what extent?

(THE END)
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Autumn 2009

Ans.1 (a) The Federal Shariat Court:
The Federal Shariat Court consists of not more than eight Muslim Judges including the Chief Justice which are appointed by the President. Out of the number of judges not more than three shall be Ulemas who should be well-versed in Islamic law.

The judges hold office for a period of three years. However, the President may, extend such period.

(b) Court of first instance:
A court of first instance is the Court where the case is originally heard in full.

Areas of jurisdiction of the High Court:
Following are the five areas of jurisdiction of the High Court.

(i) Original civil jurisdiction;
(ii) Appellate civil jurisdiction;
(iii) Appellate criminal jurisdiction;
(iv) Supervisory jurisdiction;
(v) Constitutional jurisdiction.

Ans.2 Validity of an agreement made without consideration
An agreement without consideration is considered valid in any of the following circumstances:

(i) it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other;
(ii) it is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do.
(iii) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt which is barred by the law for the limitation of suits.
(iv) any gift which is actually made as between the donor and the donee.
(v) no consideration is necessary to create an agency.
(vi) Remission by the promisee of the performance of the promise. A creditor can agree to give up either the whole or part of his claim or may agree to extend time for the performance of the promise and no consideration is required for such an agreement.
(vii) a promise to contribute to charity, though gratuitous, would be enforceable, provided the promisee on the faith of such promise undertakes a liability not exceeding the amount so promised.

Ans.3 (a) Repayment by bailor of necessary expenses

(i) No remuneration is to be paid to Farha for the safe custody of pet:
Sara should reimburse Rs. 1,500 to Farha, as where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred for the purpose of the bailment.

(ii) Farha is to be remunerated for her services:
Sara should reimburse Rs. 1,000 to Farha, as where, under the terms of the bailment, the bailee is to receive remuneration for his services; it is the duty of the bailor to bear extraordinary expenses only, if any, incurred by the bailee in relation to the thing bailed.
(b) **Bailee’s particular lien**
Where the bailee has, in accordance with the purposes of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of such goods.

**General lien of a banker**
- In the absence of a contract to the contrary, a general lien is a right to retain the goods of another as a security for a general balance of account.
- A banker has a general lien on all goods, cash, cheques and securities deposited with him as banker by a customer, for any money due to him as a banker.
- However, where the valuables and securities are deposited for a specific purpose such as safe custody, the banker has no general lien on them.

(c) **Stylish Suiting** is not justified to refuse delivery of the coat to Majid, because a bailee who renders a service involving the exercise of labour or skill in respect of the goods bailed which improves the value of the article, is entitled to a right of particular lien, and not a general lien.

**Ans.4**

(a) **Ratification**
Ratification means the subsequent adoption and acceptance of an act originally done without knowledge or authority.

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

(b) **Essentials of a valid ratification:**
A valid ratification must fulfill the following conditions:

(i) The agent must purport to act as agent for a principal who is in contemplation and is identifiable at the time of contract.
(ii) The principal must be in existence at the time of contract.
(iii) The principal must be competent to contract both at the time of the contract and at the time of ratification.
(iv) The act to be ratified must not be void, or illegal.
(v) Ratification must be with full knowledge of all material facts.
(vi) The principal must signify his unconditional acceptance of the act.
(vii) Ratification must be made within a reasonable time.
(viii) Ratification must be of whole transaction.
(ix) Ratification must be communicated.
(x) Ratification must not injure a third person.

(c) **Reimbursement of person paying money due by another, in payment of which he is interested**
No, however, Baqar may recover the amount, if he has his interest in the payment.

To constitute a quasi contract and be entitled for reimbursement, following conditions must be satisfied:

(i) the person who made the payment must have his own interest in the payment; and
(ii) the other person must be bound by law to pay.
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Autumn 2009

Ans. 5  (a) Rights and responsibilities of Mehboob

- Mehboob would not be responsible for non-performance;
- he will not lose his rights under the contract, for instance he will be entitled to compensation and contract will become voidable at his option;
- in case of performance by Saulat on Mehboob’s demand, Mehboob will be responsible to perform his promise.

Essentials of a valid offer of performance:
(i) it must be unconditional;
(ii) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;
(iii) if the offer is an offer to deliver anything to the promisee, the promisee must have reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

(b) Contingent Contract

No, this is not a contingent contract as the condition i.e. construction of a bungalow is not collateral to the contract; but in itself forms a consideration and is thus an integral part of the contract.

Essentials of a contingent contract
The following are the essential characteristics of a contingent contract:
(i) the performance of such a contract depends upon the happening or non-happening of some future event;
(ii) the event must be uncertain;
(iii) the event must be collateral i.e. incidental to the contract.

Ans. 6  (a) Partner’s Act not under implied authority

In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:

(a) submit a dispute relating to the business of the firm to arbitration,
(b) open a banking account on behalf of the firm in his own name,
(c) compromise or relinquish any claim or portion of a claim by the firm,
(d) withdraw a suit or proceeding filed on behalf of the firm,
(e) admit any liability in a suit or proceeding against the firm,
(f) acquire immovable property on behalf of the firm,
(g) transfer immovable property belonging to the firm, or
(h) enter into partnership on behalf of the firm.

(b) Return of premium on premature dissolution

Moeen would be entitled to claim the refund of the premium or of such part thereof as may be reasonable, however, regard being had to the terms upon which he became a partner and to the length of time during which he was a partner.

Moeen would however, not be entitled for the return of premium if:
(i) the dissolution is mainly due to his own misconduct; or
(ii) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it; or
(iii) the dissolution is due to the death of a partner.
(c) Right of Pervez to share subsequent profits
In the absence of a contract to the contrary, Pervez has an option either:

(i) to claim such share of the profits of the firm, earned after he ceased to be a partner, as may
be attributable to the use of his share of the property of the firm; or

(ii) to claim interest at the rate of six percent per annum on the amount of his share in the
property of the firm.

(d) Personal profits earned by partners
No, Talha and Umair are not liable to share such profits with Sohail as this transaction was not
within the scope of the partnership.

Subject to the contract between the partners, the partner shall account for that profit and pay it to
the firm, which:

(i) he derives for himself, from any transaction of the firm, or from the use of the property or
business connection of the firm or the firm’s name, or

(ii) he made for himself, from carrying on any business of the same nature as and competing
with that of the firm.

Ans.7  
(a) Cheque
A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable
otherwise than on demand.

Essential elements of a valid cheque:
Following are the essential elements of a valid cheque.

(i) It must be in writing,
(ii) It must contain an unconditional order to pay,
(iii) It must contain an order to pay in terms of money,
(iv) It must contain an order to pay a definite amount of money,
(v) The parties to the cheque must be certain (real),
(vi) It must be signed by the drawer,
(vii) It must be drawn on a specified banker,
(viii) It must be payable on demand.

(b) Who can cross the cheque after issue
Following persons can cross the cheque:

(i) Holder
(ii) Banker

Crossing of cheque after issue

(i) Where a cheque is uncrossed, the holder may cross it generally or specially.
(ii) Where a cheque is crossed generally, the holder may cross it specially.
(iii) Where a cheque is crossed generally or specially, the holder may add the words “not
negotiable”
(iv) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it
specially to another banker, his agent, for collection.
(v) When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for
collection, he may cross it specially to himself.

(c) Until the instrument is delivered after execution, it is incomplete and there is no cause of action
on it. Therefore, Yaseen cannot recover amount on the note, as it was never delivered to him by
Wali.
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Autumn 2009

Ans. 8 (a) (i) Contract of sale
A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the
property in goods to the buyer for a price.

The term covers sale and agreement to sell both.

(ii) Sale
Where the property in the goods is transferred from the seller to the buyer, the contract is
called a sale.

(iii) Agreement to sell
Where the transfer of property in the goods is to take place at a future time or subject to
some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(b) Ascertainment of price in case of contract of sale
The price in a contract of sale may be fixed in the following manner:
(i) by the contract itself, or
(ii) may be left to be fixed in an agreed manner, or
(iii) may be determined by the course of dealing between the parties.

Where the price is not determined in accordance with the above provisions, the buyer shall pay
the seller a reasonable price. What is a reasonable price is a question of fact dependent on the
circumstances of each particular case.

Ascertainment of price in case of an agreement to sell
In case of agreement to sell, price can be ascertained on the basis already given above. However,
when it is left to be fixed by the valuation of a third party and such third party cannot or does not
make such valuation, the agreement is thereby avoided.

Provided that, if the goods or any part thereof have been delivered to and appropriated by the
buyer, he shall pay a reasonable price for the delivered goods.

(c) Liability of buyer for neglecting or refusing delivery of goods
When the seller is ready and willing to deliver the goods and requests the buyer to take delivery,
and the buyer does not within a reasonable time after such request take delivery of the goods, he is
liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a
reasonable charge for the care and custody of the goods.

Remedies available to the seller
(i) he may repudiate the contract
(ii) he may sue for the price or damages for non acceptance.

Ans. 9 (a) Implied conditions in a contract for the carriage of goods by sea
(i) The ship is seaworthy and reasonably fit to encounter the “perils of the sea.”
(ii) The ship shall be ready to commence the voyage and shall carry out the same with all
reasonable dispatch and diligence.
(iii) The ship shall carry out the voyage in the usual and customary manner and shall not
deviate from the prescribed or usual course.
(iv) The shipper shall not ship dangerous or unauthorized goods.

(b) Exception to rule that carrier and the ship is not liable for loss due to sea unworthiness
When loss to the cargo arising from sea un-worthiness caused by want of due diligence on the part
of the carrier:
(i) to make the ship seaworthy, and
(ii) to secure that the ship is properly manned, equipped and supplied, and
(iii) to make the holds, refrigerating and cool chambers and all other parts of the ship in which
goods are carried, fit and safe for their reception, carriage and preservation.
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Autumn 2009

Ans. 10  (a) **Circumstances under which trustee is liable to pay interest**
Under the following circumstances a trustee committing a breach of trust is liable to pay interest:

(i) where he has actually received interest;
(ii) where the breach results in unreasonable delay in paying trust-money to the beneficiary;
(iii) where the trustee ought to have received interest, but has not done so;
(iv) where he may be fairly presumed to have received interest;
(v) where the breach results in failure to invest trust-money and to accumulate the interest or dividends thereon;
(vi) where the breach consists of the employment of trust-property or the proceeds thereof in trade or business.

(b) **Breach of trust by co-trustee**
Yes, Essa can recover the amount of sale proceed from Danish along with interest or dividends accrued thereon due to the following reasons.

(i) Danish delivered the trust property to Ghazi without seeing to its proper application.
(ii) He allowed Ghazi to receive the proceeds and then failed to make due enquiry as to his dealings therewith allowing him to retain it longer than would otherwise have been reasonable.

Since the breach has resulted in the failure to invest trust-money and to accumulate the interest or dividends thereon, Danish is also liable to account for compound interest at the rate of six percent per annum with half yearly rests.

**(THE END)**
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Spring 2010

A.1 Fill in the blanks with the appropriate answers:
(a) Legal sources are the means by which the law is currently brought into existence. There are four current sources of law in Pakistan: Holy Quran OR Agreement, Precedent, Legislation and Custom.
(b) Obiter dicta in a judgment means the statements which are not essential to the decision in a case but are things said by the way.
(c) The right of appeal in criminal cases is given by law both to the accused convicted of criminal charges and to the prosecution.
(d) The statement of law on which the judge bases his decision is called ratio decidendi.
(e) There are four types of precedents namely: Original precedent, Declaratory precedent, Binding precedent and Persuasive precedent.

A.2 (a) Agreement
Every promise and every set of promises, forming the consideration for each other, is an agreement.

An agreement not enforceable by law is said to be void.

Circumstances in which an object of an agreement is considered unlawful:
The object of an agreement is unlawful when:
(i) it is forbidden by law; or
(ii) is of such a nature that, if permitted, it would defeat the provisions of any law; or
(iii) is fraudulent; or
(iv) involves or implies injury to the person or property of another; or
(v) the court regards it as immoral, or opposed to public policy.

(b) Agreement in restraint of legal proceedings
No. Rafiq is not justified in his contention. As every agreement, by which any party thereto is restrained absolutely from enforcing his right under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Exception:
A contract however, shall not be rendered illegal, where there is a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration.

A.3 (a) (i) Afzal alone cannot compel Mohsin to make payment unless a contrary intention appears from the contract. The right to claim performance rests with all the promisees jointly and a single promisee cannot demand performance.

(ii) Mohsin may compel every other joint promisee to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Therefore, Faizan must share the loss arising from default of Laila equally with Mohsin.

(b) Fraud – Fraud means acts committed by a party to a contract, or with his connivance, or by his agent with intent to deceive another party thereto or his agent, or to induce to enter into the contract and includes any of the following –
(i) the suggestion, as 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 act fitted to deceive;
(v) any such act or omission as the law specially declares to be fraudulent.
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Spring 2010

A.4 (a) (i) Agent’s authority in an emergency
An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

(ii) Agent’s right of retainer
An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

(iii) Agent’s right of lien
In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

(b) Since the knowledge regarding the ownership of the generator was not obtained by Rais in the course of the business transacted by him, Sami may set off the debt owed to him by Atif against the price of the generator.

Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal.

A.5 (a) Novation
When the parties to a contract mutually agree to substitute a new contract for an existing contract, it is called novation of a contract.

Novation takes place when:
(i) a new contract is substituted for an existing one between the same parties; or
(ii) parties to the contract are substituted by the new contracting parties while the terms of the contract remain the same.

Difference between novation and alteration
In case of novation there may be a change of parties also while in case of alteration parties remain the same, only the terms of a contract are altered.

(b) Free Consent – Consent is said to be free when it is not caused by:
(i) coercion, or
(ii) undue influence, or
(iii) fraud, or
(iv) misrepresentation, or
(v) mistake.

Various modes of discharge of contract:
Following are the various modes in which a contract may be discharged.
(i) Discharge by agreement
(ii) Discharge by operation of law
(iii) Discharge by breach of contract
(iv) Discharge by performance
(v) Discharge by subsequent impossibility
(vi) Discharge by lapse of time
A.6  (a)  (i)  **Delivery of wrong quantity:**
Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts the goods so delivered he shall pay for them at the contract rate.

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or if the goods delivered are such that it is difficult or time consuming to separate the quantity contracted for, he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

The above provisions are subject to any usage of trade, special agreement or course of dealing between the parties.

(ii)  **Implied conditions in a contract for sale by sample**
- that the bulk shall correspond with the sample in quality;
- that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

(b)  **Goods sent on approval or “on sale or return”**
Farhan would be justified to record the sale of jewellery when the property in the goods passes to Sonia.

When goods are delivered to the buyer on approval or on sale or return or other similar terms, the property in the goods passes to the buyer —

(i)  when he/she signifies his/her approval or acceptance to the seller or does any other act adopting the transaction;
(ii)  if he/she does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time and if no time has been fixed on the expiration of a reasonable time.

A.7  (a)  **Mutual rights and liabilities of partners**
In the absence of any express contract:

(i)  every partner has a right to take part in the conduct of the business;
(ii)  every partner shall have the right to express his opinion before a matter is decided. Any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, but no change may be made in the nature of the business without the consent of all the partners;
(iii)  every partner has a right to have access to and to inspect and copy any of the books of the firm;
(iv)  a partner is not entitled to receive remuneration for taking part in the conduct of the business;
(v)  the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm;
(vi) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of the profits;

(vii) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six percent per annum;

(viii) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him:
• in the ordinary and proper conduct of the business, and
• in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and

(ix) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.

(b) Rights of transferee of a partner’s interest
Where a partner’s interest is transferred, the transferee does not become a partner and similarly the transferee does not cease to be a partner. Therefore, Adil would not be considered as a partner in the firm.

Rights of Adil:
Adil would be entitled only to receive the share of the profits of the firm to which Fauzia is entitled. He would be bound to accept the account of profits agreed to by the partners.

Upon dissolution of the firm or, in case, if Fauzia ceases to be a partner, Adil would be entitled, as against the remaining partners, to receive the share of the assets of the firm, to which Fauzia was entitled and for the purpose of ascertaining that share he would be entitled to ask for the accounts as from the date of the dissolution.

Restrictions on Adil:
Adil would not be entitled, during the continuance of the partnership:
(i) to interfere in the conduct of the business; or
(ii) to require accounts; or
(iii) to inspect the books of the firm.

(c) A contract of partnership like any other contract may be rescinded on the ground of fraud or misrepresentation. Therefore, Basit who was mislead by Danish has a right to rescind the partnership contract and is entitled to the following rights, without prejudice to any other right:

(i) to a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;
(ii) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and
(iii) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

A.8 (a) Enforceability of inchoate stamped instruments
If a person becomes a party to an inchoate stamped instruments before its completion, inchoate stamped instrument may on completion be enforceable against such person provided it is filled up within a reasonable time and strictly in accordance with the authority given.

Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up.
within a reasonable time and strictly in accordance with the authority given.

**Extent of liability**
The person so signing shall, subject to the above provisions, be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course, for the amount specified in the instrument or filled upon therein.
Provided that no person other than a holder in due course shall receive from the person so signing the paper anything in excess of the amount intended by him to be paid thereunder.

(b) **Holder’s right to duplicate of lost bill**
Zohair, being the holder of a bill of exchange may apply to Zahid, the drawer, to give him another bill of the same tenor, giving security to Zahid, if required, to indemnify him against all persons, in case the bill alleged to have been lost shall be found again.

If Zahid on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

A.9 (a) (i) **Carrier** includes the owner or the charterer who enters into a contract of carriage with a shipper.
(ii) **Goods** includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.
(iii) **Carriage of goods** covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

(b) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

OR

Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within 3 days of the delivery.

OR

Removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, is prima facie evidence of the delivery of the goods by the carrier as described in the bill of lading, unless notice of the loss or damage and the general nature of such loss or damage is given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods. If the loss or damage is not apparent, the notice must be given within 3 days of the delivery.

A.10 (a) **Revocation of Trust**
Stiff may revoke the trust only if it has not been communicated to the creditors.
However, if the creditors are parties to the arrangement, the trust can only be revoked with their consent.

(b) **Liability of beneficiaries**
The beneficiary becomes liable for the breach of trust under the following circumstances. Where one of several beneficiaries:
(i) joins in committing breach of trust, or 
(ii) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or 
(iii) becomes aware of breach of trust committed or intended to be committed, and either actually
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Spring 2010

(iv) conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(iv) has deceived the trustee and thereby induced him to commit a breach of trust.

(THE END)
Q.1 (a) Based on the Legal System of Pakistan, identify the correct answer of the following:

(1) District Magistrate is appointed by the:
   (i) President
   (ii) chief justice
   (iii) federal government
   (iv) provincial government

(2) The Civil Court does NOT have jurisdiction over:
   (i) contract and tort claims
   (ii) disputes concerning land
   (iii) blackmailing cases
   (iv) bankruptcy cases

(3) Choose the INCORRECT statement:
    Following must be considered when examining a precedent before it can be applied to a case:
    (i) the precedent must be a proposition of law
    (ii) the precedent must form part of the obiter dicta of the case
    (iii) the material facts of each case must be the same
    (iv) the preceding court must have had a superior status to the later court, such that its decisions are binding on the later court

(b) Briefly explain the following terms as used in the Courts in Pakistan.
   (i) Juveniles  (ii) Decision reversed

Q.2 Explain the term “Quasi contract”. Briefly describe different types of relationships commonly referred to as quasi contracts under the Contract Act 1872.

Q.3 In view of the provisions of Contract Act, 1872 identify the correct answer:

(1) Wasi, with intent to deceive Tpu, falsely represented that twenty thousand motorcycles are manufactured annually at his factory and induced him to buy the factory. The contract is:
   (i) void
   (ii) Voidable
   (iii) illegal
   (iv) Valid

(2) The term “Quid pro quo” means:
   (i) something in return
   (ii) something important
   (iii) something of value
   (iv) something relevant

(3) Which of the following is not an essential element of a valid contract:
   (i) adequacy of consideration
   (ii) capacity to contract
   (iii) free consent
   (iv) none of the above

(4) If a contract provides for the payment of a certain amount on breach of a contract, such payment is termed as:
   (i) special damages
   (ii) nominal damages
   (iii) liquidated damages
   (iv) compensatory damages
(5) Choose the INCORRECT statement:
To constitute a wager, following elements should be present in the agreement:
(i) uncertain event
(ii) each party must be in a win or lose situation
(iii) neither party should have any control over the event
(iv) there should be a promise to pay money only

(6) Aamir has proposed to sell a car to Parkash at a certain price by sending a letter. The communication of the proposal is complete when:
(i) Aamir posts the letter
(ii) Parkash receives the letter
(iii) Aamir comes to know that Parkash has received the letter
(iv) Parkash posts his acknowledgment to Aamir

Q.4 In the light of the provisions of Partnership Act, 1932 select the correct answer:

(1) Public notice is NOT required to be given in case of:
(i) insolvency of a partner
(ii) retirement of a partner
(iii) expulsion of a partner
(iv) dissolution of a registered firm.

(2) X and Y formed a partnership firm to undertake construction of a shopping plaza. Such a partnership is called:
(i) limited partnership
(ii) particular partnership
(iii) partnership at will
(iv) implied partnership

(3) The implied authority of a partner does NOT empower him to:
(i) submit a business dispute to arbitration
(ii) withdraw a suit filed on behalf of the firm
(iii) open a banking account on behalf of the firm
(iv) all the above

(4) Choose the INCORRECT statement:
In the absence of a contract to the contrary,
(i) a partner is not entitled to receive remuneration for taking part in the conduct of the business
(ii) the partners are entitled to share profits equally
(iii) the partners are entitled to interest on capital subscribed by them
(iv) a partner shall indemnify the firm for any loss caused to it by his willful neglect

(5) Where a partner has paid a premium on entering into partnership for a fixed term and the firm is dissolved before the expiration of that term, such partner shall NOT be entitled to repayment of the premium if the dissolution is:
(i) mainly due to his own misconduct
(ii) in pursuance of an agreement between all the partners, containing no provision for the return of the premium
(iii) caused by the death of the partner
(iv) all the above

(6) On dissolution of a firm, where there are joint debts due from the firm and also separate debts due from any partner, the separate property of a partner:
(i) shall be applied proportionately in the payment of the firm’s debts and his separate debts
(ii) cannot be used in the payment of the firm’s debts
(iii) shall be applied, in the first instance, in payment of the firm’s debts and the surplus, if any, in payment of his separate debts
(iv) shall be applied first in the payment of his separate debts and the surplus, if any, in the payment of the firm’s debts

(06 marks)
Q.5 (a) Explain the following as described under the Contract Act, 1872.
(i) Undue influence  
(ii) Contract of guarantee  

(b) Behram employed Thaseen to sell his car to Asad for Rs. 500,000 and invest the proceeds in Government Bonds. Thaseen invested Rs. 400,000 in Government Bonds and Rs. 100,000 in a blue chip company expecting a high return on such investment. Consequently, Behram lost Rs. 50,000 on the blue chip investment.

With reference to the provisions of Contract Act, 1872 describe the rights and obligations, if any, of Thaseen under the circumstances.

Q.6 (a) Ramla borrowed Rs. 100,000 from Ovais for a period of three months and kept her jewellery with Ovais as a security. On due date, Ramla defaulted in repayment. In view of the provisions of Contract Act, 1872 describe the remedies available to Ovais under the circumstances.

(b) Raheel leased a building from Atif, on five years term, for a rent of Rs. 200,000 per annum and the payment was guaranteed by Kamal. Raheel defaulted in payment of the rent in the third year. Atif sued Kamal and recovered the rent from him. Later, Kamal gave a notice to Atif for revoking his guarantee for the remaining period of lease.

Under the Contract Act, 1872 discuss whether Kamal is justified in doing so.

Q.7 (a) Aziz, Zohair and Ikram are partners in Moon Enterprises, an unregistered firm, engaged in trading business. Ikram contracted on behalf of the firm to supply two tons of sugar to Mohsin in special bags of eight kg each. However, Ikram packed the sugar in bags of ten kg each. Consequently, Mohsin accepted the sugar but refused to pay the full amount resulting in a loss of Rs. 52,000 to the firm.

In the light of the provisions of Partnership Act, 1932 explain the following:
(i) Can Zohair file a suit against Ikram for the recovery of the loss as it was caused due to Ikram’s mistake? 
(ii) Can Moon Enterprises file a suit against Mohsin for the recovery of the full amount?

(b) Advise Aziz, Zohair and Ikram about the procedure they should follow for the registration of Moon Enterprises, as enumerated under the Partnership Act, 1932.

Q.8 (a) Under the provisions of Sale of Goods Act, 1930 briefly explain the terms “Condition” and “Warranty”. Briefly describe the circumstances in which a “Condition” can be treated as a “Warranty” under the above Act.

(b) When is a buyer deemed to have accepted the goods under the Sale of Goods Act, 1930?

(c) Arif contracted to purchase from Talib 100 containers of cooking oil in special size containers of 15 liters each. When ready and packed, Talib informed Arif. Before Arif could reach the premises, fire broke out and the entire stock was destroyed. Arif contended that Talib should bear the loss as the goods were not delivered to him.

Who in your opinion should bear the loss? Discuss with reference to the Sale of Goods Act, 1930?
Q.9 (a) Based on the provisions of Negotiable Instruments Act, 1881 briefly explain whether the following are promissory notes or not.

(i) I promise to pay Rahat on demand Rs. 5,000 at my convenience.
(ii) On demand, I promise to pay Sonu or order Rs. 5,000, for value received.
(iii) I promise to pay Adil or order Rs. 5,000 and 500 shares of Sigma Limited.
(iv) I promise to pay Mahi or order Rs. 5,000 with interest calculated at quarterly rests.
(v) I promise to pay you or your successors on demand Rs. 10,000.
(vi) I promise to pay Rafi or order Rs. 10,000 seven days after Salik’s death.
(vii) I am liable to pay Ahmad Rs. 5,000.

(b) Haris drew a bill of exchange on Idress which was payable three months after sight. The bill passed several hands before Ali became its holder. Ali presented the bill to Idress for payment who dishonoured the bill by non-payment. Fouad, in turn, paid the bill to Ali without any consideration.

Under the Negotiable Instruments Act, 1881 enumerate the rights available to Fouad on the bill and the conditions he must fulfill to enforce such rights.

Q.10 (a) Under the Carriage of Goods by Sea Act, 1925 list various circumstances under which a carrier shall not be responsible for loss or damage to the cargo.

(b) Ashok, Ravi and Meher were partners. Ashok bequeathed all his property in the partnership business to Ravi in trust for Mazen. Ashok died. Ravi and Meher continued with the partnership business without settling the account of Ashok.

In the light of the Trust Act, 1882 discuss the rights available to Mazen against Ravi and Meher.

(THE END)
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Autumn 2010

A.1  
(a)  
(1) (iv)  
(2) (iii)  
(3) (i)  

(b)  
(i) **Juveniles:**  
Any offence, other than one punishable with death or transportation for life, committed by any person under the age of fifteen years. The age is calculated at the date when he appears or brought before the court, may be **tried by a District Magistrate** working under the Reformatory Schools Act, 1897.

(ii) **Decision Reversed:**  
If an appeal court gives its judgment in favour of the party making the appeal (the appellant) the original decision is said to be reversed.

A.2  
**Quasi contract:**  
A quasi contract is a kind of contract by which one party is bound to pay money in consideration of something done or suffered by the other party, though: **no contractual relation exists** between the parties. As a result of the above, certain legal rights and obligations are created between the concerned parties. Such type of relations resembles those created by the contract and such a contract is called Quasi contract.

It is an obligation based on the principle of equity and justice, which the law creates in the absence of any formal agreement.

**Different Types of relationships causing Quasi Contract:**  
There are five kinds of quasi contractual obligations. These are discussed below:

(a) **Supply of necessaries:** – If a person incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

(b) **Payment of lawful dues by interested person:** – A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

(c) **Obligation of a person enjoying benefit of a non-gratuitous act:** – Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

(d) **Responsibility of finder of goods:** – A person, who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

(e) **Liability of a recipient of goods delivered by mistake or under coercion:** – A person to whom money has been paid or anything delivered, by mistake or under coercion, must repay or return it.

A.3  
(1) (ii)  
(2) (i)  
(3) (i)  
(4) (iii)  
(5) (iv)  
(6) (ii)
A.4 (1) (i)
(2) (ii)
(3) (iii)
(4) (iii)
(5) (iv)
(6) (iv)

A.5 (a) (i) **Undue influence:**
A contract is said to be induced by "undue influence" where the relation subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain unfair advantage over the other.

In particular and **without prejudice to the generality of the foregoing principle**, a person is deemed to be in a position to dominate the will of another ---

- where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or
- where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

where a person who is in a position to dominate the will of another enters into a contract with him and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

(ii) **Contract of guarantee:**
A "contract of guarantee" is a contract to perform the promise, or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

(b) **Rights of an agent:**
In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act.

Therefore, under the given situation, Thaseen is entitled to receive remuneration for selling the car and recovering Rs. 500,000 from Asad and for investing Rs. 400,000 on good security, according to the instructions given by Behram.

However, he is not entitled to receive any remuneration for investing Rs. 100,000 on volatile security. As he is guilty of misconduct relating to that part of investment.

Thaseen is also liable to make good the loss of Rs. 50,000 to Behram as he acted otherwise than the directions given to him by Behram.

A.6 (a) **Payee’s right where paynor makes default:**
On default in payment of debt by Ramula, Ovais may:

(i) bring a suit against Ramula upon the debt and retain the goods pledged as a collateral security; or

(ii) he may sell the jewellery pledged on giving Ramula reasonable notice of the sale.
If the proceeds of such sale are less than the amount due in respect of the debt, Ramula would still be liable to pay the balance.
If the proceeds of the sale are greater than the amount so due, Ovais shall pay over the surplus to Ramula.
(b) **Revocation of a Continuing guarantee:**

No, Kamal is not competent to revoke his guarantee. Where a guarantee is given for an entire consideration, the contract is not divisible and the guarantee is considered as a specific guarantee. In this case also, the contract is not one of a continuing guarantee because "lease for five years" is an entire or indivisible consideration and not a fragmented one.

A.7 (a) **Effect of non-registration:**

(i) No Zohair cannot file a suit against his co-partner Ikram to recover the loss, as in case of an unregistered firm no suit can be instituted in a Court by any co-partner to enforce a right arising from a partnership contract, or conferred by a Partnership Act, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.

(ii) Similarly, Moon Enterprises also cannot file a suit against Mohsin to enforce its right arising from a contract in the court of law. If Moon Enterprises wants to file a suit it will have to get registered itself before filing a suit. The persons suing as a firm should be shown in the Register of Firms as partners in the firm.

(b) **Procedure for registration of a firm:**

The registration is obtained by filing an application on a prescribed form accompanied by the prescribed fee and filing the same with the Registrar of the Firms of the area in which any place of business of the firm is situated or proposed to be situated. This application can be sent by post also.

The statement should be signed and verified in the prescribed manner by all the partners, or by their agents specially authorized in this behalf.

A.8 (a) **Condition and Warranty:**

**Condition:** A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.

**Warranty:** A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

**When condition to be treated as warranty:**

Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated.

Where the buyer has accepted the goods or part thereof and the contract is indivisible, he will have to treat the breach of any condition by the seller as a breach of warranty only and not as a ground for rejecting the goods and treating the contract as repudiated.

(b) The buyer is deemed to have accepted the goods under the following circumstances:

(i) when he intimates to the seller that he has accepted them or

(ii) when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or

(iii) when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them.

(c) **Risk prima facie passes with property:**

Arif would bear the entire loss, as the ownership in the goods had passed to him as soon as the goods were put in deliverable state and notice of the fact was given by Talib, irrespective of the fact whether delivery has been made or not.
MERCANTILE LAW
Suggested Answers
Foundation Examinations - Autumn 2010

A.9 (a) (i) It is not a promissory note as promise to pay is not “unconditional”.
(ii) It is a valid promissory note containing all the essential elements.
(iii) It is not a promissory note as the payment is not in terms of money only.
(iv) It is not a promissory note as the amount payable under it is not certain.
(v) It is not a promissory note as the payee in the instrument is not certain.
(vi) It is a valid promissory note. It is not considered to be conditional, for it is certain that Salik will die, though the exact time of his death is uncertain.
(vii) It is not a promissory note as it lacks unconditional undertaking. There is only an acknowledgement of indebtedness.

(b) Payment for honour:
Yes Fouad is entitled to all the rights, in respect of the bill, which were available to Ali at the time of such payment. Fouad may recover the amount along with interest from Idress, on whose honour he paid the amount to Ali and with all expenses properly incurred by him in making such payment.

However, in order to make such payment for honour, the bill of exchange is required to be noted or protested for non-payment. Also Fouad or his agent in this behalf must have previously declared before a notary public the party (in this case Idress) for whose honour he was paying and that such declaration had been recorded by such notary public.

A.10 (a) The carrier shall not be responsible for loss or damage arising or resulting from:
(i) act, neglect or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship:
(ii) fire, unless caused by the actual fault or privity of the carrier:
(iii) perils, dangers and accidents of the sea or other navigable waters:
(iv) act of God:
(v) act of war:
(vi) act of public enemies:
(vii) arrest or restraint of princes, rulers or people, or seizure under legal process:
(viii) quarantine restriction:
(ix) act or omission of the shipper or owner of the goods, his agent or representative:
(x) strikes or lock-outs or stoppage or restraint of labour from whatever cause whether partial or general:
(xi) riots and civil commotions:
(xii) saving or attempting to save life or property at sea:
(xiii) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods:
(xiv) insufficiency of packing:
(xv) insufficiency or inadequacy of marks:
(xvi) latent defects not discoverable by due diligence:
(xvii) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the default or neglect of the agents or servants of the carrier contributed to the loss or damage.

(b) Wrongful employment by partner trustee of trust property for partnership purposes:
Mazen is entitled to compel Ravi to account for so much of the profits as are derived from Ashok’s share of property in the partnership.

Ravi is also liable to Mazen for the improper employment of Ashok’s assets.

Mazen can also compel Meher, jointly and severally with Ravi, if he had a notice of the breach of trust. Otherwise, Meher would not be personally liable to Mazen.

(THE END)
Mercantile Law

Foundation Examination – Spring 2011
March 7, 2011
Module B
100 marks - 3 hours

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

(i) The Family Courts deal with:
   (a) divorce cases.
   (b) family property cases.
   (c) proceedings relating to wardship, guardianship, adoption, etc.
   (d) all of the above.

(ii) The Federal Shariat Court consists of:
   (a) at least eight Muslim Judges including the Chief Justice and out of these, not more than three shall be Ulema who should be well versed in Islamic Law.
   (b) not more than eight Muslim Judges including the Chief Justice who are appointed by the President. Out of the number of Judges not more than three shall be Ulema who should be well versed in Islamic Law.
   (c) eight Muslim Judges including the Chief Justice and all of them shall be Ulema who should be well versed in Islamic Law.
   (d) not more than eight Judges including the Chief Justice who are appointed by the President. Out of the number of Judges not more than three shall be Ulema who should be well versed in Islamic Law.

(iii) Karim borrowed Rs. 500,000 from Bashir in 2002. The debt became time-barred under the limitation law. However, Karim met Bashir in 2009 and verbally acknowledged his liability to the extent of Rs. 300,000. Can Bashir hold Karim liable?
   (a) No, the promise should be for entire debt.
   (b) Yes, the promise is valid as an exception to agreement without consideration.
   (c) No, because it is not a written and signed promise.
   (d) Yes, he admitted his liability partly in satisfaction of whole debt.

(iv) The effect of refusal to accept a properly made offer of performance is that:
   (a) the promisor is not responsible for non-performance and can sue the promisee for the breach of contract.
   (b) such offer lapses on rejection by the offeree.
   (c) the contract is rendered voidable at the option of promisor.
   (d) the contract is discharged by anticipatory breach.

(v) A surety is NOT discharged from his liability:
   (a) if terms of contract are varied without his consent.
   (b) if the creditor gives time to the principal debtor without his consent.
   (c) if the creditor releases the other co-surety.
   (d) if the creditor releases the principal debtor.

(vi) Which of the following case is not covered by the concept of supervening impossibility?
   (a) Destruction of subject matter
   (b) Death or incapacity of the promisor
   (c) Outbreak of war
   (d) Difficulty of performance
(vii) Abdul Majid contracted to supply a specialized machine at Sultan’s factory in Lahore. Sultan informed him that if the machine does not reach his factory on time, he will incur an average loss of Rs. 20,000 per day. Abdul Majid delivered the machine a week after the agreed time owing to his other commitments. Due to this delay, Sultan lost a contract which could have generated a profit of Rs. 250,000. Sultan is entitled to receive from Abdul Majid a compensation of:
- (a) Rs. 250,000
- (b) Rs. 140,000
- (c) Rs. 390,000
- (d) any amount which the Court deems fit subject to a maximum of Rs. 390,000

(viii) A firm is liable to make good the loss of third party if:
- (a) one of the partners acting within his apparent authority misapplies the money or property received from a third party.
- (b) one of the partners misapplies the money or property received from a third party by the firm in the course of its business while it is in the custody of the firm.
- (c) by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, loss or injury is caused to any third party.
- (d) all of the above.

(ix) The conclusive evidence of a partnership is:
- (a) mutual agency
- (b) sharing of profit and loss
- (c) mutual understanding
- (d) capital contribution

(x) A partnership firm is dissolved compulsorily when:
- (a) one of the partners dies.
- (b) one of the several ventures carried on by the firm is illegal.
- (c) all the partners except one, are adjudged insolvent.
- (d) one of the partners becomes insane.

(xi) In the absence of a contract to the contrary, the buyer of goodwill of the firm can prevent the partners of the dissolved firm from:
- (a) carrying on a business competing with that of buyer.
- (b) representing themselves as carrying on the business of the old firm.
- (c) advertising for their new business.
- (d) all of the above.

(xii) Which of the following is a sale?
- (a) Kawish agrees to buy 100 kgs of wheat at Rs. 40 per kg from Barkat and the wheat is yet to be weighed.
- (b) Tasawwaf agrees to buy Ikram’s car for Rs. 500,000 if his solicitor approves.
- (c) Tanveer and Inaam are joint owners of a diamond necklace. Tanveer transfers his share to Inaam for Rs. 5 million.
- (d) Vazir agrees to buy furniture from Wali for Rs. 100,000 provided Wali acts as his surety in a transaction with Yameen.

(xiii) Amin places an order with Ohulam Rasool for supply of 30 bottles of apple juice. Ohulam Rasool supplied 40 bottles. Amin has a right to:
- (a) accept the whole.
- (b) reject the whole.
- (c) accept and pay for 30 and return the balance.
- (d) all of the above.

(xiv) Right of stoppage in transit is available to seller when:
- (a) the goods are in transit and the buyer fails to pay the price on the due date.
- (b) the goods are in transit and the buyer becomes insolvent.
- (c) the seller has not expressly waived his right.
- (d) the buyer or his agent fails to obtain possession of goods.

(xv) If the seller makes use of pretended bidding to raise the price during an auction, the sale is:
- (a) void.
- (b) voidable at the option of buyer.
- (c) not voidable.
- (d) none of the above.
Q.2  Briefly describe the following legal terms:
(a) Arbitration  (b) Exemplary Damages  
(c) Precedent  (d) Ratio Decidendi  (06 marks)

Q.3  
(a) Zaheer, an accountant in Abid’s company, embezzled and absconded with Rs. 5 million. Abid obtained a promissory note from his wife, Bint-e-Aslam, for the said amount when he informed her that her husband would be arrested against the charge and his name would appear in the newspapers. Can Bint-e-Aslam avoid the contract? Discuss in the light of the Contract Act, 1872.  (05 marks)

(b) Binyamin borrowed Rs. 1 million from Hatim and Tahir jointly and promised to repay the amount on March 1, 2011. With reference to the Contract Act, 1872, state who can claim performance in the following situations.
   (i) Both Hatim and Tahir are alive on due date  
   (ii) Hatim dies before due date  
   (iii) Both Hatim and Tahir die before the due date  (02 marks)

(c) Mujahid agreed to accept Rs. 300,000 from Adnan against a debt of Rs. 400,000 if Adnan pays within a week. Adnan did not tender the required amount within this period.
   (i) What rights are available to Mujahid under the Contract Act, 1872?  
   (ii) If Adnan tenders the said amount on the fifteenth day and Mujahid accepts it, what rights are available to Mujahid under the Contract Act, 1872?  (05 marks)

Q.4  
(a) Amin, Imran and Shahid agreed to act as sureties for Emmad to Saleem and agreed to pay Rs. 20,000, Rs. 30,000 and Rs. 40,000 respectively in case of default by Emmad. On such surety Saleem lent Rs. 90,000 to Emmad. Emmad repaid Rs. 6,000 only. Saleem called upon the sureties to pay the balance of Rs. 84,000. Discuss keeping in view the Contract Act, 1872 how much should each surety pay.  (03 marks)

(b) Under what circumstances a contract of bailment may be terminated?  (05 marks)

Q.5  
(a) Briefly describe the rules specified in the Contract Act, 1872 in respect of the following.
   (i) Time and place for performance where these have not been specified in the contract;  (03 marks)
   (ii) Order of performance of reciprocal promises; and  
   (iii) Effect of release by promisee of one of the joint promisors.  (02 marks)

(b) Maimar promised to manufacture and deliver to Nasir, remote-controlled toy helicopters of agreed specifications in first week of March 2011. Nasir in turn promised to pay for them by second week of March 2011. Maimar did not deliver the toys according to his promise. Should Nasir keep his promise and what remedy, if any, is available to him?  (02 marks)

Q.6  
(a) Uzair, Vaqar and Waheed are partners in a firm. Waheed wants to make his nephew Yawar who is 17 years old, a partner. Explain whether and under what conditions Yawar can join the partnership. What will be Yawar’s rights and liabilities under the Partnership Act, 1932?  (07 marks)

(b) Kashif, Irfan and Shujaat are partners in a firm. Irfan bought a shop in his own name. He issued a cheque from the partnership account and debited his account with the purchase price. He rented out the shop and credited the receipts of rent in his capital account. Kashif has objected to this practice and asked Irfan to register the shop in the firm’s name contending that the shop is partnership’s property. Irfan disagrees.

Explain what constitutes partnership property under the Partnership Act, 1932 and whether the shop is partnership property or not.  (07 marks)
Q.7  
(a) Salman is an agent of Malik and has an authority to draw bills of exchange on Malik’s behalf. Ghani who had supplied goods to Malik on credit approached Salman to accept a bill of exchange for the amount due. Salman signed the bill of exchange. On due date, Malik did not honour the bill. Discuss the rights and liabilities of Salman under the Negotiable Instruments Act, 1881.  
(03 marks)

(b) When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder is required to cause such dishonour to be noted and protested by a notary public. What are the contents of such protest as required by the Negotiable Instruments Act, 1881?  
(07 marks)

Q.8  
(a) Asif Khan purchased a refrigerator set from Abdul Ghaffar and paid for it on the spot. Abdul Ghaffar agreed to deliver it at Asif Khan’s house the next day. Later the same day Faheem saw the refrigerator, which was still in Abdul Ghaffar’s shop and agreed to buy it from Abdul Ghaffar. Faheem also paid cash and took the refrigerator away. Abdul Ghaffar is in financial difficulties and neither Asif Khan nor Faheem can recover their money. Explain who is entitled to the refrigerator and why.  
(05 marks)

(b) Junaid agreed to supply to Danial, 10 bags of 50 kg each of A quality wheat flour at Rs. 2,000 per bag. However, Junaid supplied B quality wheat flour which was available at Rs. 1,900 per bag. Which type of breach has Junaid committed? What are the rights and remedies available to Danial as per the Sale of Goods Act, 1930?  
(06 marks)

(c) List the responsibilities of a seller and the rights of the buyer as specified in the Sale of Goods Act, 1930 in respect of delivery of goods to a carrier or wharfinger.  
(05 marks)

Q.9  
(a) Gulzar Associates loaded a cargo of explosives to be used in demolition of old buildings in a ship owned by Mehran Shipping Company. What will be the rights and liabilities of the shipper and the carrier if the explosives were shipped:

(i) without the consent of Mehran Shipping Company.  
(ii) with the consent of Mehran Shipping Company.  
(05 marks)

(b) Ripple Shipping Company issued a bill of lading acknowledging receipt of a package of pistachios (as declared by the supplier). However the package contained cashew nuts. While unloading the ship the stevedores employed by the shipping company damaged the goods, on account of their negligence. Explain whether Ripple Shipping Company is liable for the loss.  
(02 marks)

Q.10  
Saeed, Aamir and Saleem are three beneficiaries to a plot of land, all competent to contract. Kamran, the author of the trust, directs Latif, a trustee, to sell the plot to Mansoor for a specified sum. However, all the beneficiaries want to override the instructions of Kamran.

Keeping in view the provisions of the Trust Act, 1882 advise how Latif should act in each of the following situations:

(a) If the beneficiaries instruct him to sell the plot to Moin for a lesser amount.
(b) They instruct him to sell the plot to Navid for a higher amount. Navid has promised to pay some token money immediately and the balance after a year. However, according to Latif’s sources, Navid does not enjoy sound credibility.  
(05 marks)

THE END
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Spring 2011

A.1 (i) (d)  
(ii) (b)  
(iii) (c)  
(iv) (a)  
(v) (c)  
(vi) (d)  
(vii) (b)  
(viii) (d)  
(ix) (a)  
(x) (c)  
(xi) (b)  
(xii) (c)  
(xiii) (d)  
(xiv) (b)  
(xv) (b)  

A.2 (a) **Arbitration:** It is a method of dispute resolution where the disputing parties agree to the appointment of one or more neutral third parties whose decision in the dispute is binding.  

(b) **Exemplary damages:** In certain restricted cases, the courts award compensation / damages to the plaintiff over and above what is due to plaintiff as a means to punish the defendant. These are called exemplary damages.  

(c) **Precedent:** is a judgment or decision of a court of law cited as an authority for deciding an identical case (i.e. similar set of facts);  

(d) **Ratio decidendi:** literally means reason for deciding. The ratio decidendi of a case is any rule of law expressly or impliedly treated by the judge as a necessary step in reaching his conclusion, having regard to the line of reasoning adopted by him.  

A.3 (a) No, Bint-e-Aslam cannot avoid the promissory note. It is not coercion as there was a proper basis for prosecution and such act is not forbidden by Pakistan Penal Code.  

(b) Unless a contrary intention appears from the contract, the right to claim performance rests:  
(i) with Hatim and Tahir jointly  
(ii) after the death of Hatim, with the representative(s) of Hatim jointly with Tahir  
(iii) after the death of both Hatim and Tahir, with the representative(s) of both, jointly.  

(c) (i) The contract becomes voidable at the option of Mujahid and now Mujahid may claim Rs. 400,000 if the intention of the parties was that time was of the essence of the contract.  

If time was not of essence to the contract, Mujahid is entitled to compensation for any damage/loss which he has sustained through the non-fulfillment of the contract.  

(ii) If Mujahid accepts the amount even after the delay he can claim compensation provided at the time of acceptance of performance, he had given notice to Adnan of his intention to do so.
A.4 (a) Co-sureties who are bound in different sums are liable to pay equally as far as limits of their respective obligations permit.

Therefore, the co-sureties should pay:

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Amin</td>
<td>20,000</td>
</tr>
<tr>
<td>Imran</td>
<td>30,000</td>
</tr>
<tr>
<td>Shahid</td>
<td>34,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>84,000</strong></td>
</tr>
</tbody>
</table>

(b) A contract of bailment may be terminated under the following circumstances:

(i) If the bailee does any act with regard to the goods bailed, which is inconsistent with the terms of bailment, the bailment may be terminated by the bailor even though the term of bailment has not expired or the purpose of bailment has not been accomplished.

(ii) If the bailment is gratuitous, and involves lending of goods, it may be terminated by the bailor at any time, even before the specified time or before the purpose is achieved; however, where such termination causes loss in excess of benefit actually derived by the bailee, the bailor must indemnify the bailee.

A contract of bailment may also be terminated:

(iii) If the bailment is for specific period, on expiry of the stipulated period.

(iv) If the bailment is for a specific purpose, on fulfilment of the purpose.

(v) If gratuitous, on the death either of the bailor or of the bailee.

A.5 (a) Time and place of performance not specified in contract:

If according to the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the promise must be performed within a reasonable time.

When a promise is to be performed without application by the promisee, and no place is fixed for the performance, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

The question “what is reasonable time and place” is, in each particular case, a question of fact.

**Order of performance of reciprocal promises**

The promises must be performed in the order expressly fixed by the contract, and where the order is not expressly fixed, they must be performed in the order which the nature of transaction requires.

**Effect of release of one joint promisor**

Where two or more persons have made a joint promise, release of one such promisor by the promisee does not discharge the other joint promisor(s); neither does it free the joint promisors so released from responsibility to the promisor who was not released.
(b) No, Nasir need not perform his promise to pay and Maimar must compensate Nasir for any loss which Nasir may sustain due to Maimar’s non-performance.

A.6
(a) Yawar, a minor may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.

Rights
(i) He has a right to such share of the property and of the profits of the firm as may be agreed upon, and
(ii) He may have access to and inspect and copy any of the accounts of the firm.

Liabilities
(i) His share is liable for the acts of the firm but he is not personally liable for any such act.
(ii) He may not sue the partners for an account or payment of his share of the property or profits of the firm.

(b) The property of the firm
Subject to the contract between the partners, the property of the firm includes:
(i) all property and rights and interests in property originally brought into the stock of the firm or
(ii) all property acquired by purchase or otherwise, by or for the firm or for the purposes and in the course of the business of the firm,
(iii) the goodwill of the business,
(iv) property and rights and interests in property acquired with money belonging to the firm unless the contrary intention appears.

The shop is not property of the firm as Irfan has bought it with the firm’s money and by debiting it in his account, he showed his intention of taking the money as loan.

A.7
(a) If Salman has authority only to draw bill of exchange, he cannot accept or endorse it so as to bind his principal and shall then be personally liable to Ghani.

If Salman normally signs the bill of exchange in the ordinary course of business, he has a right to be indemnified by Malik or else, Salman can recover the amount from the estate of /amount due to Malik.

(b) A protest must contain:
(i) either the instrument itself or a literal transcript of the instrument and of everything written or printed thereupon;
(ii) the name of the person for whom and against whom the instrument has been protested;
(iii) The fact and reason for the dishonour i.e a statement that payment or acceptance, or better security as the case may be, has been demanded of such person by the notary public, the terms of his answer, if any, or a statement that he gave no answer or that he could not be found.
(iv) when the note or bill has been dishonoured, the place and time of dishonour and, when better security has been refused, the place and time of refusal;
(v) the signature of the notary public making the protest;
(vi) in the event of acceptance for honour or of a payment for honour, the name of the person by whom, and of the person for whom, and the manner in which such acceptance or payment was offered and effected.
A.8 (a) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, even though delivery may not have been made.

However, where a seller who, after selling goods, continues to have possession of the goods and again sells them, he will convey a good title to the goods if he delivers them under sale to a person who takes them in good faith and without notice of the previous sale.

Hence if Faheem was unaware that the refrigerator had already been sold to Asif Khan, he would obtain a good title to the refrigerator.

(b) Junaid has committed breach of condition as the matter related to the quality of a product is considered a condition.

Rights available to Daniyal
(i) He has the right to treat the contract as repudiated and reject the goods or
(ii) He may elect to waive the condition i.e. treat the breach of condition as breach of warranty and accept the goods.

Remedies available to Daniyal
(i) Where he repudiates the contract he can also claim damages.
(ii) Where Daniyal accepts the goods he may:
   • ask Junaid to reduce the price, or
   • sue Junaid for damages for the breach of warranty.
   • even if Junaid reduces the price, Daniyal can still sue him if he has suffered further damages.

(c) (i) Unless otherwise authorized by the buyer, the seller shall make such contract with the carrier or wharfinger on behalf of the buyer as may be reasonable having regard to the nature of the goods and the other circumstances of the case. If the seller omits to do so and the goods are lost or damaged in course of transit or whilst in the custody of the wharfinger, the buyer may decline to treat the delivery to the carrier or wharfinger, as a delivery to himself, or may hold the seller responsible in damages.

(ii) Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit, in circumstances in which it is usual to insure, the seller shall give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails so to do, the goods shall be deemed to be at his risk during such sea transit.

A.9 (a) (i) Explosives shipped without consent of Mehran Shipping Company
In this case, the cargo may be landed at any place or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

(ii) Explosives shipped with consent of Mehran Shipping Company
In this case, if the goods become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

(b) No, the shipping company is not liable for the loss of goods as the nature and value of the goods has been knowingly misstated by the shipper in the bill of lading.
A.10 (a) Latif is bound to follow the directions of the author of the trust given at the time of its creation; however, they could be modified by the consent of all the beneficiaries being competent to contract. Hence, Latif should sell the land to Moin as directed by the beneficiaries.

(b) In this case, though all the beneficiaries being competent to contract modified the directions of the author of the trust but Latif may not follow them as such action could be injurious to the beneficiaries. Hence in this case, Latif may sell the land to Mansoor for the specified sum.

(The END)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS’ COMMENTS

SUBJECT
Mercantile Law

SESSION
Foundation Examination – Spring 2011

General:

The examination of the copies revealed that a large number of students were not adequately prepared for the examination. The answers of a significant number of students were out of context. The students are advised to read the questions carefully and figure out its requirements, before attempting to answer it.

It has been observed that by giving irrelevant and unnecessary details in a question, students feel that they have achieved the target of getting some marks from here or there. They must realize by now that this does not work in the professional exams. They need to be quite specific and precise to obtain good score.

Q.1 This constituted 15 multiple choice questions. A large number of students scored good marks in this question. Few students wasted their time in writing the full script instead of writing correct reference number.

Q.2 The students were required to describe the terms (a) Arbitration (b) Exemplary Damages (c) Precedent (d) Ratio Decidendi with 2 marks allocated to each. Many students did not attempt the question and those who attempted, could not do justice.

While defining “Exemplary Damages” many students tried to explain through illustrations but failed to express themselves properly.

Many candidates did not mention that arbitration involves an independent / third party.

While explaining “Precedent”, the students named various kinds of Precedents, which was not relevant.

Q.3 (a) It was among the worst attempted questions. A scenario was given based on the concept of ‘free consent’. Almost everyone identified the relevant law but only few could apply and conclude correctly that the consent was not obtained through coercion. The candidates were not able to appreciate that coercion includes threatening to implicate someone on false charges but it does not include disclosing a crime which has actually been committed.

(b) A very large number of students correctly attempted this part of the question; however, very few mentioned that situation may be different if contrary intention appears from the contract.
Again, it was among the worst attempted questions with the same irony that candidates had knowledge of applicable law but it was either incorrectly applied or not answered in its entirety. It was a scenario based on options available to the aggrieved party in case of default by other party. The candidates wrote only one aspect i.e. when time was of the essence of the contract and ignored the situation where time was not of the essence. Further, if the promisee accepts delayed performance where time was of the essence then he is entitled to claim compensation only if he gave notice of his intention to do so, to the promisor, at the time of acceptance of performance. This aspect was seldom explained correctly.

Q.4 (a) This was a scenario based on the liability of co-sureties who were bound in different sums. The unpaid amount should have been divided equally among the sureties as far as limits of their respective obligations permitted. Many candidates wrote the applicable law correctly but divided the unpaid amount proportionately in the ratio of commitments, by the co-sureties. Some candidates divided the payment made by the debtor equally among the co-sureties and deducted it from their respective commitments.

(b) This part was based on contract of bailment. Majority of the students attempted this part and got good marks.

Q.5 (a) This was one of the worst attempted parts. Basic concepts were not adequately replied:

(i) Time & Place for performance: Most candidates only mentioned that “the time & place of performance shall be reasonable”. Very few were able to demonstrate their knowledge about the concepts of “performance without application by the promisee” and “duty of promisor to apply for performance”.

(ii) The candidates could not correctly describe the rules for order of performance of reciprocal promises according to Section 52. Many candidates listed the kinds of reciprocal promises which was not required.

(iii) This part was well answered in general.

(b) This question was mostly attempted well as the students were generally able to mention that Nasir need not perform his promise to pay and Maimar must compensate Nasir for any loss which Nasir may sustain due to Maimar's non-performance.

Q.6 (a) This was a fairly straight forward question but received a mixed response. More than 50% candidates secured atleast 50% marks. However, in many cases it was observed that the candidates were confused as to whether or not a minor can be a partner in a firm. Ambiguous statements were frequently observed such as Yawar can become a ‘minor partner’ or ‘partner in profit’ etc.
Examiners’ Comments on Mercantile Law Spring 2011

(b) It was among the worst attempted questions. Most candidates did not explain ‘partnership property’ as required in the question and only discussed that part of the definition which was related to the scenario. While explaining partnership property many candidates used their general understanding of the subject and could not give specific answers.

Q.7 (a) Candidates with the exception of very few, failed miserably as they had no clue to the answer. The candidates did not know that authority of agent to draw bills of exchange does not include authority to accept it as well.

(b) Students were simply asked to write the contents of a ‘Protest’. Very few were able to provide correct information. Lack of preparation was evident in general. However, few candidates secured good marks as well.

Q.8 (a) It was a scenario based on the concept of sale by seller having possession of goods after sale. Performance of candidates was very poor. Most candidates seemed to know the law but were not able to apply it and gave incorrect justification. Further, as usual, many candidates only gave the conclusion without giving any justification.

(b) Performance was good. However, most candidates did not mention that the buyer may sue for further damages even if the seller reduces the price.

(c) In this part the candidates were simply asked to write the responsibilities of a seller in respect of delivery of goods to a carrier or wharfinger. Extremely vague and irrelevant answers were provided. A vast majority wrote about the general liabilities of a seller / rights of a buyer, right of examination, acceptance of goods, duration of transit etc. Only about 10% candidates were able to produce relevant and correct answers.

Q.9 (a) This part was based on elementary testing of rights and liabilities available to shipper and carrier in case of explosive goods in a cargo.

(i) This part pertained to a situation where goods were loaded without the consent of the carrier. It was generally better answered and the right of disposal of goods and liability of shipper in case of any damage were correctly identified by a vast majority.

(ii) Many candidates wasted time in writing general rights and duties of carrier and shipper. It was really annoying to see that some of the candidates could not even differentiate between carrier and the shipper. They identified Gulzar Associates as the carrier and Mehran Shipping Company as the shipper. This was yet another indication of the low level of knowledge and understanding among the candidates.

(b) This was an easy question and students secured good marks.

Q.10 Very few students could attempt the question properly. Many of them wrote in detail about the responsibilities of a trustee under normal circumstances, which was not the requirement of the question. Many candidates did not give justification for arriving at the conclusion. In some cases, relevant law was referred but incorrect conclusion was drawn.

THE END
Mercantile Law

Section A

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

(i) The Federal Shariat Court examines and decides the question whether or not any law or provision of law is repugnant to the Injunctions of Islam on:
   (a) its own motion.
   (b) the petition of a citizen of Pakistan.
   (c) the petition of Federal/Provincial Government.
   (d) initiation from any of the above.

(ii) A court of first instance is the court:
   (a) where the case is originally heard in full.
   (b) which has given its first verdict.
   (c) where the original decision is reversed.
   (d) of magistrates.

(iii) In which of the following circumstances a contract can be treated as discharged under the concept of supervening impossibility?
   (a) spurt in prices
   (b) change in import policy
   (c) non-receipt of raw material from the supplier
   (d) shortage of working capital

(iv) Under the Contract Act, 1872 a person is said to be of sound mind for the purpose of making a contract if:
   (a) he is not illiterate and can read and understand the terms of the contract.
   (b) he is capable of understanding the contract and forming a rational judgement as to its effect upon his interests.
   (c) he is of the age of majority and is not disqualified from contracting by any law to which he is subject.
   (d) he is not suffering from any mental disease or distress.

(v) Pervaiz contracted with Dilbar, a comedian, for performance in a live show and paid Rs. 200,000 in advance. Before the show, Dilbar had an accident and was hospitalized. He could not appear in the show due to which Pervaiz suffered a loss of Rs. 500,000. Dilbar is liable to pay Pervaiz:
   (a) Rs. 200,000
   (b) Rs. 500,000
   (c) Rs. 700,000
   (d) nothing as his absence was not wilful.
(vi) Subject to contract between the partners, a change may be made in the nature of business of the firm:
   (a) with the consent of active partners managing the business.
   (b) with the consent of majority of partners.
   (c) with the consent of all the partners.
   (d) with the consent of all the partners and Registrar of Firms.

(vii) In a ‘partnership at will’, a partner may retire:
   (a) with the consent of all other partners.
   (b) in accordance with an express agreement between the partners.
   (c) by giving notice in writing to all the other partners, of his intention to retire.
   (d) in any one of the manners described above.

(viii) Emmad and Faraz are partners in cloth trading business. In the presence of Faraz, his friend Ghalib boasted that he is also a partner in the business, in front of Haroon, a customer. Haroon gave this information to Ismail and on this belief, Ismail supplied cloth on credit to the firm. Can Ismail make Ghalib liable for the unpaid amount in this transaction?
   (a) No, as Ghalib did not present himself as a partner, in front of Ismail.
   (b) Yes, as Ismail gave credit to the firm on the faith of Ghalib’s representation.
   (c) No, as Ghalib is not a partner in the firm.
   (d) Yes, as Ghalib did it intentionally to deceive others.

(ix) Which of the following condition is implied in a contract for sale by sample?
   (a) The bulk shall correspond with the sample.
   (b) The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
   (c) The goods shall be free from any defect, rendering them unmerchantable which would not be apparent on reasonable examination of the sample.
   (d) All of the above

(x) Jahan agreed to sell two of his motorcycles to Khurram at a price to be fixed by Lehri. Lehri refused to fix the price of the motorcycles. By that time, Khurram had taken delivery of one motorcycle. What option is available to Jahan?
   (a) Deliver the other motorcycle and demand market price for both the motorcycles.
   (b) Demand return of the motorcycle from Khurram as Lehri failed to fix the price.
   (c) Demand a reasonable price for the motorcycle that was delivered and need not deliver the other motorcycle.
   (d) All of the above.

(xi) When the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not take delivery of the goods within reasonable time after such request, the buyer is liable to the seller for:
   (a) any loss occasioned by his neglect or refusal to take delivery.
   (b) a reasonable charge for the care and custody of the goods.
   (c) damages for non acceptance in case seller sues him.
   (d) all of the above.

(xii) An agent becomes personally liable on a bill of exchange when:
   (a) he signs it as an agent for and on behalf of a principal.
   (b) he adds to his signature, words describing him as an agent.
   (c) he signs it for and on behalf of a principal on assurance by the person inducing him to sign on the belief that principal alone would be held liable.
   (d) he signs it under the specific authority extended by the principal.
(xiii) Mohsin supplied goods to Nomi on credit for Rs. 40,000. He drew a bill of exchange for Rs. 50,000 payable after three months on Nomi, which Nomi accepted. Mohsin discounted the bill. On due date Nomi did not honour the bill. Mohsin can recover from Nomi:
(a) Rs. 40,000
(b) Rs. 50,000
(c) Rs. 10,000
(d) nothing as it was an accommodation bill.

(xiv) If the finder of a lost bill obtains payment, the person who pays in due course:
(a) is liable to all prior parties.
(b) continues to be liable to the person who lost the bill.
(c) does not get a valid discharge for the bill.
(d) gets a valid discharge for the bill.

(xv) Which of the following is NOT a material alteration of a negotiable instrument?
(a) A new party is added to the instrument.
(b) The sum payable is changed in the instrument.
(c) The crossing of an uncrossed cheque.
(d) Tearing off the material part of the instrument.

Q.2 How is a law promulgated when national assembly is not in session? Is such law in any way different from an act of parliament? What is its tenure? (05 marks)

Q.3 (a) Following is the statement on August 4, 2011 of sums payable by Ubaid on account of cloth supplied by Bilal:

<table>
<thead>
<tr>
<th>Date of transaction</th>
<th>Rupees</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/01/2008</td>
<td>37,000</td>
<td></td>
</tr>
<tr>
<td>02/03/2009</td>
<td>20,000</td>
<td></td>
</tr>
<tr>
<td>30/08/2010</td>
<td>50,000</td>
<td>Guaranteed by Wasim.</td>
</tr>
<tr>
<td>28/04/2011</td>
<td>63,000</td>
<td></td>
</tr>
<tr>
<td></td>
<td>170,000</td>
<td></td>
</tr>
</tbody>
</table>

Ubaid sent a cheque for Rs. 70,000 on August 5, 2011. There being no instructions from Ubaid, Bilal adjusted the payment against the following:

<table>
<thead>
<tr>
<th>Date of transaction</th>
<th>Rupees</th>
</tr>
</thead>
<tbody>
<tr>
<td>01.1.2008</td>
<td>37,000</td>
</tr>
<tr>
<td>02.3.2009</td>
<td>20,000</td>
</tr>
<tr>
<td>28.4.2011</td>
<td>13,000</td>
</tr>
<tr>
<td></td>
<td>70,000</td>
</tr>
</tbody>
</table>

The guarantor (Wasim) objected to such appropriation and claimed that since the amount of Rs. 37,000 was time barred, it should not be adjusted and the full amount guaranteed by him should be fully adjusted. Is the objection of Wasim valid? (05 marks)

(b) Discuss how should the above payment of Rs. 70,000 be applied under each of the following independent circumstances, according to the provisions of the Contract Act, 1872:

(i) The following words were written on the back of the cheque:

(20,000 + 50,000 = 70,000) (02 marks)

(ii) No instructions about appropriation of payment were given by Ubaid. Bilal did not make any appropriation either. (02 marks)
(c) A was badly in need of money and offered to sell his motorcycle worth Rs. 50,000 to B for Rs. 10,000. B accepted the offer but before the motorcycle could be delivered, A received another offer for Rs. 35,000 and sold the motorcycle. A refused to carry out the contract with B on the ground of inadequacy of consideration. Is A liable to B for damages?  

(03 marks)

Q. 4  

(a) Distinguish between fraud and misrepresentation.  

(05 marks)

(b) X appointed Y as his agent to collect rent and asked him to execute a fidelity bond in which Z was the surety. Some time after execution of the bond, Z died. Y committed various acts of dishonesty after Z’s death. Is Z’s estate liable for loss caused to X? Explain.  

(03 marks)

(c) Saima and Nishat jointly own many exotic sets of bridal jewellery. Nageen borrowed a set from them for her wedding and agreed to return it after the wedding. In the absence of any agreement between them, to whom should Nageen return the jewellery?  

(03 marks)

Q. 5  

Faiz, Ghani and Habib are partners in a trading business. They have incurred losses in the last two years of business and have agreed to dissolve the partnership. Habib is heavily indebted in his individual capacity and his personal assets are not enough to meet his obligation.  

State how the accounts of the firm and the private debts of Habib be settled, if the partnership agreement does not prescribe any mode of settlement of accounts upon dissolution.  

(07 marks)

Q. 6  

(a) Can an overdue instrument be negotiated? Explain.  

(05 marks)

(b) State the rules relating to transfer of property to the buyer, in case of unascertained and future goods, as prescribed by the Sales of Goods Act, 1930.  

(05 marks)

---

**Section B**

Q. 7  

(a) Define acceptance. When is an acceptance considered valid, under the Contract Act, 1872?  

(07 marks)

(b) Omair did not pay rent of his shop for 3 months. Qasim, a mutual friend, with the good intention of mending the relationship between Omair and the landlord, paid the rent. After a year, Omair promised to repay Qasim. With reference to the relevant provisions of the Contract Act, 1872 explain whether Qasim can enforce this promise.  

(03 marks)

Q. 8  

Narrate the duties of an agent towards his principal as specified in the Contract Act, 1872.  

(10 marks)

Q. 9  

Based on the provisions contained in the Sale of Goods Act, 1930 explain the rules relating to the following in case of sale by auction:  

(a) goods put up for sale in lots.  

(b) the time by which a bidder may retract his bid.  

(c) right of the seller to make a bid.  

(d) reserve price.  

(10 marks)
Q.10 (a) Explain the implied warranties and conditions in a contract of sale as regards the goods and their fitness for any particular purpose, where the goods are sold by description but not by sample.  
(07 marks)
(b) How is an implied warranty or condition affected by an express warranty or condition?  
(03 marks)

Q.11 (a) What liabilities does the drawer of a bill of exchange incur under the Negotiable Instruments Act, 1881?  
(03 marks)
(b) When must a bank refuse payment against a cheque?  
(07 marks)

Q.12 (a) Manpasand Foods (MF) shipped canned food and fruits on a ship owned by Samundar Shipping Company. On reaching the destination, it was found that the quality of goods had deteriorated during the voyage owing to the malfunctioning of air conditioning system of the ship. State the conditions that need to be satisfied and the procedure which MF should follow, to file the claim against Samundar Shipping Company for loss as prescribed by the Carriage of Goods by Sea Act, 1925.  
(05 marks)
(b) Wahab transferred his house to Quresh and Raees under a trust deed. They were required to sell the house within three years and invest the proceeds for the benefit of Sohail who is competent to contract.

How should Quresh and Raees respond in each of the following independent circumstances, keeping in view the requirements of the Trust Act, 1882?

(i) Sohail directs Quresh and Raees to transfer the house in his name.
(ii) Sohail directs Quresh and Raees to transfer the house in the name of his brother Suraj.
(iii) Quresh and Raees sold the property and Raees collected the proceeds. Quresh was busy in his business. After three years Quresh enquired about the trust money from Raees. Raees was insolvent and could not pay anything.  
(05 marks)

(The End)
A.1 (i) (d)
   (ii) (a)
   (iii) (b)
   (iv) (b)
   (v) (a)
   (vi) (c)
   (vii) (c)
   (viii) (b)
   (ix) (d)
   (x) (c)
   (xi) (d)
   (xii) (b)
   (xiii) (a)
   (xiv) (d)
   (xv) (c)

A.2 If the President deems necessary to take an immediate action, he has the power to promulgate an ordinance if the Senate or National Assembly is not in session. Such ordinances have the same force and effect as an act of the Parliament. The ordinance stands repealed after one hundred twenty days if it is not passed by the National Assembly or by National Assembly and Senate both as the case may be. However, National Assembly may extend it for another period of one hundred twenty days. Thereafter it will stand repealed.

A.3 (a) The payment is correctly applied by Bilal and the objection of Wasim is not valid. In the absence of any intimation from debtor or circumstances indicating to which debt payment is to be applied, the creditor is free to use his discretion and apply it to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

   (b) (i) The payment should be applied in discharging the following debts:

<table>
<thead>
<tr>
<th>Debt of</th>
<th>Rupees</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 2, 2009</td>
<td>20,000</td>
</tr>
<tr>
<td>August 30, 2010</td>
<td>50,000</td>
</tr>
<tr>
<td></td>
<td>70,000</td>
</tr>
</tbody>
</table>

   As Ubaid has written the break-up of payment at the back of the cheque, it implies that payment should be applied to discharge those particular debts.

   (ii) The payment should be applied in discharging the debts in the order in which they became due. It is irrelevant whether the debts are or are not barred by the law in force for the time being as to limitation of suits.

   (c) A is liable to B for damages as A had agreed to sell the motorcycle willingly; hence the contract is not void merely because the consideration is inadequate.

A.4 (a) The following are the points of distinction between the two:
   (i) Fraud implies an intention to deceive; it is deliberate or wilful; whereas misrepresentation is innocent without any intention to deceive.
   (ii) Fraud is a civil wrong which entitles a party to claim damages in addition to the right of rescinding the contract. Misrepresentation gives the right to avoid the contract but damages cannot be claimed.
(iii) In misrepresentation, if the aggrieved party had the means to discover the truth with ordinary diligence, it cannot avoid the contract. But in fraud, the contract is voidable even though the party defrauded had the means of discovering the truth with ordinary diligence.

(b) The death of the surety results in the revocation of a continuing guarantee, as regards future transactions, unless it has been expressly agreed otherwise.

As Y committed various acts of dishonesty after Z's death, Z's estate will not be liable for any loss caused to X.

(c) In the absence of a contrary agreement, Nageen can return the jewellery set either to Saima or Nishat as the bailee is required to deliver the bailed goods to or according to direction of one joint owner without the consent of others.

A.5 The partners must proceed in the following manner:

The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:

- In paying the debts of the firm to third parties;
- In paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
- In paying to each partner rateably what is due to him on account of capital;
- The residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profit.

In respect of Habib's individual debts, following rules shall apply:

(i) The property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of the partner shall be applied in payment of his separate debts or paid to him.

(ii) The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus, if any, in the payment of the debts of the firm.

A.6 (a) An overdue instrument may be negotiated by the holder of such an instrument but the transferee will not be considered as holder in due course and his title will not be better than that of its transferor. Such a holder can recover the amount from the immediate preceding party only.

However, in case of an accommodation bill or note, any person who, in good faith and for consideration becomes the holder after maturity, is a holder in due course and can recover the amount of the bill or note from any prior party.

(b) Rules in respect of transfer of property to the buyer in case of unascertained and future goods are as follows:

(i) The property in the goods can be transferred to the buyer only after the goods are ascertained.

(ii) Where there is a contract for the sale of unascertained or future goods by description, the property in the goods passes to the buyer when goods of that
description in the deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller. Such assent may be express or implied and may be given either before or after the appropriation is made.

A.7 (a) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.

(i) Acceptance must be absolute and unqualified.
(ii) It must be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner and not otherwise, but if he fails to do so he accepts the acceptance.
(iii) Acceptance must be made by the offeree i.e. by the person(s) to whom offer was made and only such person, or a person with his authority must communicate the acceptance to the offeror.
(iv) Acceptance must be given within a reasonable time and before the offer lapses and/or is revoked.
(v) Acceptance must succeed the offer.

(b) Yes, Qasim can enforce the promise though consideration is not present. It being a promise to compensate the voluntarily payment which Omair (the promisor) was legally compellable to make.

A.8 The main duties of an agent towards his principal are:

(i) To conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business.

(ii) To conduct the business with as much skill as is generally possessed by persons engaged in similar business and to act with reasonable diligence. In the absence of any special skill, the agent should use such skill as he possesses.

(iii) To render proper accounts to his principal on demand.

(iv) In cases of difficulty, to use all reasonable diligence in communicating with his principal and in seeking to obtain his instructions.

(v) An agent must not deal on his own account in the business of agency; i.e. he must not himself buy from or sell to his principal goods he is asked to sell or buy on behalf of his principal without obtaining the consent of his principal and after disclosing all material facts to him.

(vi) The agent is bound to pay his principal all sums received on his account subject to deductions such as all moneys due to him in respect of advances made or expenses properly incurred and his agreed remuneration.

These sections also imply that the agent should not make secret profit.
(vii) When an agency is terminated by the principal dying or becoming of unsound mind, the agent must take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

(viii) Subject to certain exceptions, an agent must not further delegate his authority to another person, but perform the work of agency himself.

A.9 (a) Where goods are put up for sale in lots, each lot is prima facie deemed to be the subject of a separate contract of sale.

(b) An auction sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner, and, until such announcement is made, any bidder may retract his bid.

(c) (i) The right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter contained, bid at the auction,

(ii) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person, and any sale contravening this rule may be treated as fraudulent by the buyer.

(iii) If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

(d) Reserve Price is the amount that a seller of goods stipulates as the lowest acceptable offer.

A.10 (a) When goods are sold by description but not by sample, the following conditions are implied:

(i) That the goods shall correspond with the description.

(ii) That the goods shall be reasonably fit for the purpose for which the buyer requires them, where he makes known to the seller, expressly or by implication, the particular purpose for which the goods are required, so as to show that he relies on the seller’s skill or judgment, and the goods are of a description which it is in the course of the seller’s business to supply;

Provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose.

(iii) That the goods shall be of merchantable quality, if they are bought from a seller who deals in goods of that description.

Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed.

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.
(b) In a contract for the sale of goods, an express warranty or condition does not negate an implied warranty or condition unless it is inconsistent therewith.

Where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement or by the course of dealing between the parties, or by usage, if the usage is such as to bind both parties to the contract.

A.11 (a) The liabilities incurred by the drawer of a bill are as follows:

(i) on due presentment, the bill shall be accepted and paid according to its tenor, and that
(ii) if the bill is dishonoured, the drawer shall compensate the holder or any indorser who is compelled to pay it, provided that due notice of dishonour of the bill is given to or received by the drawer.
(iii) Until acceptance, the drawer is liable thereon as principal debtor.

(b) A banker must refuse payment of a customer's cheque in the following cases:

(i) When customer countermands payment i.e. when a customer (i.e. an account holder) issues instructions to the bank not to honour a cheque issued by him.
(ii) When banker receives notice of customer's death, but a payment made before receipt of notice is valid.
(iii) When customer has become insolvent i.e. when a competent court had adjudicated the account holder as insolvent.
(iv) When banker receives notice of customer's insanity, cheques issued by him while he was sane should not be made until the customer recovers from malady or court orders for payment.
(v) When court prohibits payment i.e. when Garnishee Order or other legal orders attaching or dealing with customer's money in its custody is made.
(vi) On notice of assignment i.e. when the customer has given notice to banker of assignment of his credit balance.
(vii) When holder's title is defective i.e. when the banker comes to know of any defect in the title of the holder presenting for payment.
(viii) Closing of account i.e. when the customer has given notice to banker of closing his account or has already closed the account.

A.12 (a) (i) Manpasand Food should give notice in writing of loss or damage and general nature of such loss or damage to the carrier or his agent at the port of discharge before or at the time of removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage. However, if the loss or damage is not apparent then such notice shall be given within three days.
(ii) The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.
(iii) The suit for loss or damage should be brought up within one year after delivery of the goods.

(b) (i) Quresh and Rakesh should transfer the house to Sohail as he is competent to contract and thus has the right to require the trustees to transfer the trust property to him.
(ii) Quresh and Rakesh should transfer the house to Suraj as Sohail is competent to contract and thus has the right to require the trustees to transfer the trust property to the person he directs.
(iii) In the absence of an express declaration to the contrary in the instrument of trust, Quresh is liable for the breach of trust committed by his co-trustee Raees as he:

- allowed him to receive the trust property;
- failed to make due enquiry as to the dealings therewith; and
- allowed him to retain the proceeds longer than the circumstances of the case reasonably require.

As Quresh failed to invest the trust money he will also be liable to pay interest.

(THE END)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS’ COMMENTS

SUBJECT
Mercantile Law

SESSION
Foundation Examination – Autumn 2011

General:

It was noted that the students did not read the instructions carefully though additional reading time has now been allowed. It was clearly instructed in the question paper that students should attempt any four questions from section - B. However, majority of the students attempted more than four questions and squandered their precious time that could have been better used in the required questions.

The examination of the copies revealed that a large number of students were not adequately prepared for the examination. The students are advised to read each question carefully and figure out its requirements, before attempting to answer it. They are also advised to refrain from writing unnecessary and irrelevant details.

Selective studies was also evident as most candidates performed poorly in questions pertaining to introduction to legal system, the Carriage of Goods by Sea Act 1925, the Trust Act 1882, and the Negotiable Instruments Act 1881.

Question-wise comments are given hereunder:

Q. 1 This was an MCQ based question and most of the students could score more than 50% marks. However, following points should be noted:

- Candidates sometimes reproduce the whole question along with all options and in doing so spent a lot of time unnecessarily.
- At times the written description is different from the alpha option (a,b,c,d) chosen by the candidate and they lose marks because of the ambiguity.

Q. 2 The following common mistakes were observed in this question:

- The correct tenure i.e. 4 months was not mentioned, instead 90 days, 180 days and 30 days etc. were mentioned.
- Some of the students were not aware of the term “Ordinance” and therefore either used the word “Law” or “Act”.
- Many candidates relied on guess work and assigned the responsibility of issuance of ordinance to Supreme Court, Senate etc.

Q. 3 (a) Majority of the students were able to explain that in the absence of express or implied instructions by the debtor, the creditor is free to use his discretion and apply the payment to any lawful debts including time barred debt and therefore, claim of the guarantor is invalid.
Examiners’ Comments on Mercantile Law Autumn 2011

(b)(i) This part of the question was well answered by majority of the students as they were able to explain that the amounts mentioned on the back of the cheque implied that the proceeds of the cheque shall be applied in discharging those debts.

(b)(ii) This part was poorly answered. Most of the students mentioned that amounts should be appropriated equally or on proportionate basis.

(c) It was well attempted by the majority. However, many students got confused with the inadequacy of the consideration. Some of them mixed it up with the provisions of Sale of Goods Act relating to seller or buyer in possession of goods after sale.

Q.4 (a) Instead of comparing the distinctive features of fraud and misrepresentation, many students tried to write the definition and mixed up their answers. Most students failed to mention the important point provided in exception to section 19 of the Contract Act i.e. where the aggrieved party has means of discovering the truth with ordinary diligence. Most answers were only limited to one or two points such as ‘intentional’ or ‘unintentional’ act. Very few discussed damages, right to avoid the contract, exercising ordinary diligence etc. Many candidates tried to explain through illustrations instead of as defined under the law.

(b) It was inquired whether a surety’s estate would be liable to the principal for loss caused to him by the agent after surety’s death. Most students gave half the answer i.e. “the death of the surety results in revocation of continuing guarantee” whereas the fact that the revocation applies to future transactions unless it has been expressly agreed otherwise was not mentioned. Many candidates got confused and declared that acts of dishonesty are not covered under the guarantee.

(c) This part was based on section 165 of the Contract Act and majority of the students performed well. Surprisingly, some candidates declared that in the absence of any contract, Nageen is not liable to return the jewellery.

Q.5 The question pertained to the settlement of the accounts of partnership firm and private debts of a partner, where partnership is dissolved and mode of settlement of accounts upon dissolution is not prescribed in the partnership agreement. The question was based on section 48 and 49 of the Partnership Act 1932. Only few students could enumerate the steps in proper sequence, which was important in the given situation.

Q.6 (a) Majority of the students were not aware of the provisions of the Negotiable Instrument Act 1881 related to negotiations of overdue instruments. Some students only stated that an overdue instrument can be negotiated, but could not elaborate further. Majority of the students gave entirely incorrect reply i.e. that an overdue instrument cannot be negotiated.
Examiners' Comments on Mercantile Law Autumn 2011

(b) This part of the question inquired about the rules related to transfer of property to the buyer in case of unascertained and future goods and was based on section 18 and 23 of the Sale of Goods Act, 1930. The performance was quite poor as the following mistakes were commonly observed:

- Many candidates wrote in detail about the circumstances under which goods are rejected by the buyer. This was totally irrelevant.
- Many candidates discussed provisions relating to specific goods in a deliverable state and those that have to be put in a deliverable state. This was also not relevant.
- Majority of the students explained the meaning of unascertained and future goods with examples, but did not mention the rules for transfer of such goods.

Q.7  
(a) This question was based on some very basic provisions of the law and was attempted pretty well. However, some of the students did not seem to have read the question properly and instead of defining essentials of valid acceptance, they narrated the essentials of a valid contract. Some students tried to discuss modes of acceptance which was irrelevant.

(b) This part was based on the provisions of section 25 (2) of the Contract Act, 1872. Many students got confused on account of absence of consideration and declared that the promise is not enforceable. Many students correctly answered in the affirmative but didn’t give any reason and therefore lost majority of the marks.

Q.8  
Students were required to specify duties of an agent towards his principal as specified in the Contract Act, 1872. Being an easy question, many students produced correct answers and gained high marks. However, general and irrelevant points were also mentioned which are not specified under the law. It shows that students are mostly relying on reference books and notes instead of studying from the bare Act, and this practice is affecting their performance. Few such points are produced below which were written by a significant number of students:

- Agent should be honest and hardworking.
- Agent should not deceive his principal.
- Agent should work for generating profit.

Many students explained each duty of an agent by writing unnecessary illustrations.

Q.9  
This question aimed at testing the rules related to sale by auction and was based on Section 64 of the Sale of Goods Act, 1930. It seems that those students who had studied from the bare Act were able to produce more relevant and to the point answers. The others produced lot of irrelevant material and missed out the key points.
Q.10 (a) The students were required to explain the implied warranties and conditions in a contract of sale as regards goods sold by description but not by sample and their fitness for any particular purpose, under the Sales of Goods Act, 1930. It appeared that the students did not read the question properly because many students specified the conditions when goods are sold either by sample only and/or by description as well as by sample.

(b) The question required very specific answers based on Section 16(4) and Section 62 of the Sale of Goods Act, 1930. However, most of the students did not seem to have the required knowledge. Their answers were limited to stating that express conditions/warranty will override implied conditions/warranty. Other issues were rarely covered.

Q.11 (a) The question was very poorly answered as majority of the students were not aware of the drawer’s liability on presentation of the bill and until acceptance, as mentioned under section 30 of the Negotiable Instruments Act, 1881. It was also noted that candidates generally do not have clear concepts about various fundamental terms such as drawer, drawee, holder, indorser, principal debtor etc.

(b) In this part, candidates were simply asked to narrate the circumstances when a banker must refuse payment on a cheque. Very few of the students realized that ‘must refuse’ is different from ‘may refuse’ and also included circumstances such as:
   - Where signature on the cheque do not match with the records.
   - Where banking hours are closed.
   - Where cheque is mutilated, defaced etc.

Q.12 (a) The candidates were required to write the procedure that has to be followed for filing claim against a shipping company for loss on account of deterioration in the condition of goods during the voyage. It was based on Rule 6 of Article III of the Carriage of Goods Act, 1925.

(b) (i) The questions were based on interesting situations whereby the sole & beneficiary of a Trust who was competent to contract, gave instructions to the Trustees which seemed to be in conflict with the requirements of the Trust Deed. Majority of the students answered correctly that the Trustees should follow the instructions of the sole beneficiary as he was competent to contract. However, many candidates wrote in detail about the responsibilities of a trustee under normal circumstances, which was contrary to the requirement of the question.

   (iii) It was also quite interesting as the trustee who had misappropriated the trust funds was insolvent. Most of the students were able to identify that Quresh would be responsible for breach of trust committed by a co-trustee. However, most of them could not specify that this liability is on account of the fact that Quresh had failed to take due care and to comply with the instructions contained in the trust deed and not because of Raees’s insolvency. The point related to liability for payment of interest was rarely covered.

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

(i) A positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true is said to be a:
   (a) fraud  (b) misrepresentation  (c) mistake  (d) misinterpretation

(ii) According to the Sale of Goods Act, 1930 documents of title to goods include:
   (a) bill of lading.  (b) railway receipt.  (c) warehouse keeper’s certificate.  (d) all of the above.

(iii) A minor can:
   (a) be an agent  (b) be a principal  (c) both  (d) none

(iv) In the case of goods sold on sale or return basis, the property in goods passes:
   (a) when price is paid.  (b) when goods are delivered.  (c) when approval is conveyed.  (d) in all of the above cases.

(v) Partnership is:
   (a) the relationship between persons who have agreed to share the profits of jointly owned property managed by all or any of them acting for all.
   (b) the relationship created by an agreement between a banking company and person(s) providing for sharing of profit and loss arising from the finance provided to such person(s).
   (c) both of the above.
   (d) the relation between persons arising from a contract who have agreed to share the profits of a business carried on by all or any of them acting for all.

(vi) The consent is said to be free when:
   (a) two or more persons agree upon same thing in the same sense.
   (b) all parties to the contract benefit from the contract.
   (c) it is not the result of coercion or undue influence or fraud or misrepresentation or mistake.
   (d) all of the above.

(vii) What are the consequences of resale of goods by unpaid seller where he expressly reserves such right in case of buyer’s default?
   (a) The original contract of sale is rescinded.
   (b) The new buyer acquires a good title thereto.
   (c) The seller may claim damages based on the original contract of sale.
   (d) All of the above.
(viii) Laila, Munir and Naseem were partners in a firm. After Naseem’s death, Laila and Munir continued the partnership. Public notice of Naseem’s death was not given by the surviving partners or the legal representatives of Naseem.

Omair supplied goods on credit to the firm assuming Naseem to be a partner in the firm. Laila and Munir are unable to settle the debt. Can Omair recover his debt from Naseem’s estate?
(a) No, as the transaction was made after Naseem’s death.
(b) Yes, but only after Naseem’s private debts have been paid off.
(c) Yes, as Omair extended credit on the faith of Naseem being a partner in the firm.
(d) Yes, as neither the surviving partners nor the legal representatives of Naseem gave public notice of his death.

(ix) Peter sold 40 cartons of mangoes to Raheel for Rs. 30,000. Raheel took delivery of 15 cartons and requested Peter to hold the remaining 25 cartons which Raheel agreed to collect soon. Owing to the weather conditions, without any negligence on the part of Peter, the quality of mangoes deteriorated. Raheel refused to take delivery and pay their price. Is Raheel justified and should the loss of 25 cartons be borne by Peter?
(a) No, but Raheel can sue for damages.
(b) Yes, as the condition as to wholesomeness is violated.
(c) Yes, as mangoes though sold were still in Peter’s possession.
(d) No, because at the time of agreement these were specific goods in a deliverable state.

(x) An instrument is said to be ambiguous if:
(a) no time for payment is specified in it.
(b) it may be construed either as a promissory note or a bill of exchange.
(c) the amount in figures differs from the amount in words.
(d) all of the above.

(xi) Sohail issued a cheque of Rs. 500,000 payable to Tanveer at sight. Sohail had sufficient funds at the bank to meet this payment. However, Tanveer presented the cheque at the bank after two weeks by which time the bank had failed. Can Tanveer recover the amount from Sohail?
(a) Yes, as the debt is not discharged.
(b) Yes, as Sohail has not suffered actual damage through any delay in presenting the cheque.
(c) Yes, as Sohail did not advise Tanveer to encash the cheque immediately.
(d) No, Sohail is discharged and Tanveer can now claim the amount of cheque from the bank.

(xii) On dissolution of a firm, the separate property of a partner:
(a) can be used both for firm’s debts and private debts proportionately.
(b) can be used in accordance with the court’s judgment.
(c) cannot be used in paying the firm’s debts.
(d) must be applied first in payment of his private debts and surplus in payment of the debts of the firm.

(xiii) Sarmad is a beneficiary in a trust. He knowingly obtains an advantage without the consent of the other beneficiaries. The other beneficiaries are entitled to:
(a) sue the trustees for making good the loss incurred by the other beneficiaries.
(b) sue Sarmad for making good the loss incurred by the beneficiaries.
(c) impound Sarmad’s beneficial interest in the trust to compensate the loss.
(d) all of the above.

(xiv) The provision of Sale of Goods Act, 1930 are applicable to:
(a) immovable goods.
(b) all type of goods.
(c) moveable goods.
(d) moveable goods other than actionable claims and money.
(xv) Liquidated damages mean:
(a) A sum calculated at the time of breach of contract, equivalent to the difference between
the contract price and market price, at the place of performance.
(b) A sum fixed at the time of entering into a contract which compensates the aggrieved
party for direct/indirect loss arising from the breach.
(c) A sum fixed as compensation for any loss or damage which the parties knew, when
they made the contract, to be the likely result from the breach of contract.
(d) None of the above.

Q.2 (a) How and on what grounds a proposal stands revoked? (04 marks)
(b) What is the time limit after which a proposal cannot be revoked? (03 marks)

Q.3 (a) Define a pledge, a pawnor and a pawnsee. For what purposes can the pledged goods be
retained? (05 marks)

(b) Mash Bank granted a loan of Rs. 10 million to Tahir Limited against the pledge of shares of
a listed company. Tahir Limited defaulted on repayment of the loan. The market value of
the shares at the time of default was Rs. 9 million.

What remedies are available to Mash Bank in the above situation? (04 marks)

Q.4 (a) A and B are partners in a barbeque business. They decided to sell their business along with
its goodwill to Lahori Maza which is owned by C. Describe the rights of above parties under
the Partnership Act, 1932 if A and B decide to carry on similar business and nothing is
mentioned in this regard under the agreement. (05 marks)

(b) Explain the following terms as given in the Negotiable Instrument Act, 1881:
   (i) payment in due course
   (ii) holder
   (iii) holder in due course (08 marks)

Q.5 Youmus repossessed the goods which he had sold to Ibad as Ibad had failed to pay the price.
Describe the circumstances under which Youmus can exercise his right of resale and how the
resulting surplus or loss may be dealt with, as specified under the Sale of Goods Act, 1930. (06 marks)

Q.6 (a) With reference to the Carriage of Goods by Sea Act, 1925 state the particulars that a bill of
lading may contain. (04 marks)
(b) How and by whom may a trust be revoked under the Trust Act, 1882? (06 marks)

Section B

Q.7 (a) How does the High Court exercise its supervisory role over subordinate courts? Describe the
three types of prerogative orders that it may issue. (05 marks)

(b) Briefly explain the term ‘substituted agent’ in the light of Contract Act, 1872. Is the
(original) agent responsible to the principal for the acts of a substituted agent? (05 marks)

Q.8 (a) Faiz had sold goods on credit to Gulzar for Rs. 5 million on guarantee of Haseeb. Gulzar
has also mortgaged his shop as a security against the above amount. Haseeb was unaware
of this mortgage and honoured his guarantee when Gulzar failed to make the payment. What
rights are available to Haseeb under the Contract Act, 1872? (04 marks)

(b) When and how a continuing guarantee is revoked? (06 marks)
Q.9 Describe the provisions of Contract Act, 1872 related to the following:
(a) Assessment of compensation for loss or damage caused by breach of contract. (05 marks)
(b) Obligations of persons enjoying benefit under the quasi contracts. (05 marks)

Q.10 (a) Describe the liabilities of:
(i) a partner for the acts of the firm.
(ii) the firm for wrongful acts of a partner.
(iii) the firm for misapplication of money or property by a partner. (08 marks)

(b) A and B were partners in an unregistered firm carrying on business of printing and stationery. The firm advanced Rs. 50,000 to C for supply of printing paper. Soon afterwards, the firm was dissolved. On division of assets of the partnership, this debt of Rs. 50,000 was allotted to A. Can A sue C to recover the amount? (02 marks)

Q.11 (a) State the presumptions that are applicable to all negotiable instruments unless the contrary is proved. (07 marks)

(b) A draws a bill on B who accepts it without consideration. A indorses the bill to C for valuable consideration. On due date C presents the bill to B for payment but B contends absence of consideration and refuses to pay. Is B’s contention justified? (03 marks)

Q.12 List the circumstances as mentioned in the Sale of Goods Act, 1932 under which a person who is not the owner of the goods can convey a good title to a buyer if the buyer buys in good faith and has no notice that the seller has no authority to sell. (10 marks)

THE END
A.1 (i) (b) Misrepresentation
(ii) (d) all of the above
(iii) (a) be an agent
(iv) (c) when approval is conveyed
(v) (d) the relation between persons arising from a contract who have agreed to share the profits of a business carried on by all or any of them acting for all.
(vi) (c) It is not the result of coercion or undue influence or fraud or misrepresentation or mistake.
(vii) (d) all of the above.
(viii) (a) No, as the transaction was made after Naseem’s death.
(ix) (d) No, because at the time of agreement these were specific goods in a deliverable state.
(x) (b) it may be construed either as a promissory note or a bill of exchange.
(xi) (d) No, Sohail is discharged and Tanveer can now claim the amount of cheque from the bank.
(xii) (d) must be applied first in payment of his private debts and surplus in payment of the debts of the firm.
(xiii) (c) impound Sarhad’s beneficial interest in the trust to compensate the loss.
(xiv) (d) moveable goods other than actionable claims and money.
(xv) (c) A sum fixed as compensation for any loss or damage which the parties knew, when they made the contract, to be the likely result from the breach of contract.

A.2 (a) A proposal is revoked –
(i) by the communication of notice of revocation by the proposer to the other party
(ii) by the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance.
(iii) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
(iv) by the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

(b) A proposal cannot be revoked after the communication of its acceptance is complete as against the proposer i.e. when the acceptance is put in a course of transmission to the proposer so as to be out of the power of the acceptor.

A.3 (a) The bailment of goods as security for payment of a debt or performance of a promise is called a “pledge”. The bailor is called “pawner”. The baillee is called “pawnee”.

The pawnee may retain the goods pledged for:
(i) payment of the debt
(ii) the performance of the promise,
(iii) the interest of the debt, and
(iv) all necessary expenses incurred by him in respect to/of the possession or for the preservation of the goods pledged.

(b) When the Pawnee lends money to the same debtor after the date of the pledge without any further security, it shall be presumed that the right of retainer over the pledged goods extends even to subsequent advances.

Mash Bank can file a suit for the recovery of the defaulted amount and retain the pledged shares or after giving reasonable notice to Tahir Limited may sell the shares of the listed company to recover the defaulted amount, and sue Tahir Ltd. for the balance amount.
MERCANTILE LAW
Suggested Answers
Foundation Examination – Spring 2012

A.4 (a) A and B may carry on a business competing with that of Lahori Maza and they may advertise such business. However, it is the right of C that A and B do not:
(i) use the firm name
(ii) represent themselves as carrying on the business of the firm, or
(iii) solicit the persons who were dealing with the firm before its sale.

(b) (i) Payment in due course
Payment in due course implies the following:
- The payment is in accordance with the apparent tenor of the instrument.
- The payment is made in good faith and without negligence.
- The payment is made to a person in possession of the instrument
- The payment is honestly made in the bonafide belief that the person demanding payment is legally entitled to it.

(ii) Holder
The ‘holder’ of a negotiable instrument means any person entitled to the possession of the instrument in his own name and to receive or recover the amount due thereon from the parties liable thereto.

(iii) Holder in due course
Holder in due course means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before it becomes overdue, without notice that the title of the person from whom he derived his own title was defective.

A.5 Youmna has a right of resale of goods which he can exercise in the following circumstances:
(a) where the goods are of a perishable nature;
(b) where such a right is expressly reserved in the contract in case the buyer should make a default, or
(c) where the seller has given a notice to the buyer of his intention to resell and the buyer does not pay or tender the price within a reasonable time.

If after giving notice to Ibad, the buyer, there is a loss to Youmna (the unpaid seller) on resale, he can recover it from the defaulting buyer. In case of surplus on the resale, the unpaid seller can retain the same.

If no notice of resale is given to the buyer then Youmna (unpaid seller) is not entitled to recover such loss and he shall be under obligation to hand over the surplus to the buyer on such resale.

A.6 (a) Among other things, a bill of lading should show the following:

(i) The leading marks necessary for identification of the goods;
(ii) Either the number of packages or pieces or the quantity, or weight, as the case may be;
(iii) The apparent order and condition of the goods;

Provided that carrier shall not be bound to state or show in the bill of lading any marks, number, quantity or weight where it has reasonable ground to suspect that they do not accurately represent the goods that have actually been received.
(b) A trust created by will may be revoked at the pleasure of the testator/author.

A trust otherwise created can be revoked only:
(i) where all the beneficiaries are competent to contract - by their consent.
(ii) where the trust has been declared by a non-testamentary instrument or by word of mouth – in exercise of a power of revocation expressly reserved to the author of the trust or
(iii) where the trust is for the payment of the debts of the author of the trust and has not been communicated to the creditors – at the pleasure of the author of the trust.

A.7 (a) The High Court exercises its supervisory role in the following manner:

(i) It may issue a writ of habeas corpus. That is, it may order for the release of a person wrongfully detained by a court subordinate to it.

(ii) It may issue prerogative orders against sub-ordinate courts, tribunals and other bodies such as local authorities in so far as they have a duty to exercise a decision fairly.

There are three types of prerogative orders:
- Mandamus requires the court or other body to carry out a public duty.
- Prohibition prevents a court or tribunal from exceeding its jurisdiction.

Certiiorari is exercised when an inferior court has acted illegally by exceeding its jurisdiction or reached its decision contrary to the principles of natural justice without giving the person concerned the right to know and reply to the case against him. Essentially it is a review of what has been done after it has been done.

(b) Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is a substituted agent, and an agent of the principal for such part of the business of the agency as is entrusted to him.

The original agent is not responsible to the principal for the acts or negligence of the substituted agent so selected if he has exercised in selecting such agent the same amount of discretion as a man of ordinary prudence would exercise in his own case.

A.8 (a) Haseeb upon payment of guaranteed amount is invested with all rights which Faiz (the creditor) had against Gulzar (the principal debtor).

Haseeb the surety is entitled to the benefit of every security which Faiz (the creditor) has against Gulzar (the principal debtor) at the time when the contract of suretyship is entered into whether Haseeb knows of the existence of such security or not.

He is entitled to recover from Gulzar (the principal debtor) whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

(b) (i) A continuing guarantee may at any time be revoked by the surety, as to future transactions by notice to the creditor.

(ii) In the absence of any contract to the contrary, the death of the surety results in the revocation of a continuing guarantee, as regards future transactions.
Other modes of revocation of a continuing guarantee:

(iii) If the terms of the contract are changed by the creditor and the principal debtor without the consent of the surety.

(iv) When a creditor discharges principal debtor from the liability.

(v) When the creditor makes a composition with, or promises to give time to, or not to sue the principal debtor, without the consent of the surety.

(vi) When a creditor's act or omission impairs the eventual remedy of a surety.

(vii) When a creditor loses security under the contract, the surety gets discharged to the extent of the value of the security.

A.9 (a) Assessment of compensation on account of breach of contract:

(i) The aggrieved party is entitled to receive compensation for such loss or damage as is caused to him by breach of contract:
   - which naturally arose in the normal course of things from such breach; or
   - which the parties knew, when they made the contract to be likely to result from the breach of it.

(ii) Compensation will not be given for any remote or indirect loss or damage sustained by reason of the breach.

(iii) In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

(iv) If a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the Court will allow a reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

(v) The injured party is to be placed in the same position, so far as money can do as if the contract has been performed.

(b) Obligations under Quasi Contracts

If a person incapable of entering into a contract or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

A.10 (a) (i) Liability of a partner for acts of the firm

Every partner is liable jointly with all the other partners and also severally for all acts of the firm done while he is a partner.
(ii) **Liability of the firm for wrongful acts of a partner**
Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable to the same extent as the partner.

Although the firm is liable to the third party for the loss caused to him (third party) by fraud committed by a partner, but, as between the partners, the same must be borne by the partner committing the fraud and cannot be shared among all the partners.

(iii) **Liability of firm for misapplication of money or property by a partner**
The firm is liable to make good the loss where:
- A partner acting within his apparent authority receives money or property from a third party and misapplies it, or
- A firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while it is in the custody of the firm.

(b) Yes, A can sue C to recover the amount of Rs. 50,000 because the unregistered firm or its partners are allowed to file a suit for the realization of the assets upon the dissolution of the firm.

A.11 (a) Unless the contrary is proved, the following presumptions shall be assumed in respect of all negotiable instruments:

(i) **Consideration**: that every negotiable instrument whenever made, drawn, accepted, endorsed, negotiated or transferred, was accepted, endorsed or transferred for consideration;

(ii) **Date**: that every negotiable instrument bearing a date was made / drawn on such date;

(iii) **Time of acceptance**: that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(iv) **Time of transfer**: that every transfer of a negotiable bill of exchange was transferred within a reasonable time after its date and before its maturity;

(v) **Order of endorsements**: that the endorsements appearing on a negotiable instrument were made in the order in which they appear thereon;

(vi) **Stamps**: that a lost promissory note, bill of exchange or cheque was duly stamped;

(vii) That the holder is a holder in due course; Provided that, where the instrument has been obtained from any person in lawful custody thereof by means of an offence or fraud or for unlawful consideration, the burden of proving that the holder in due course lies upon him (the holder).

(viii) **Presumption on proof of protest**: In a suit upon an instrument which has been dishonoured, the court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved.

(b) No, B’s contention is not justified against C who is a holder of the bill for value, even if C knew that B is an accommodation party. Absence of consideration can be taken as a defence to avoid liability only towards parties who stand in immediate relation to each other.
MERCANTILE LAW
Suggested Answers
Foundation Examination – Spring 2012

A.12 Sale by non-owners which transfers a good title under the Sales of Goods Act, 1930

Transfer of title by estoppels
When the owner of the goods by his conduct or by statement wilfully leads the buyer to believe that the seller has the authority to sell.

Sale by a mercantile agent
Where the mercantile agent is, with the consent of the owner, in possession of the goods or of documents of title to the goods, and sells the goods while acting in the ordinary course of business of a mercantile agent.

Sale by one of joint owners
If one of several joint owners of goods has sole possession of them by the permission of the co-owner.

Sale by person in possession under voidable contract
When a seller of goods has obtained possession thereof under a contract voidable under Contract Act, 1872 but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods.

Sale by seller in possession of goods after sale
Where a seller, having sold goods, continues to be in possession of the goods or of the documents of title to the goods, sells them himself or through a mercantile agent.

Sale by a buyer in possession of goods before sale
Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or documents of title to the goods and sells by himself or through an agent.

Resale by the unpaid seller
Where an unpaid seller who has exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title thereto as against the original buyer notwithstanding that no notice of the re-sale has been given to the original buyer.

(THE END)
General:

The overall performance of candidates was average. The examination of the copies revealed that a large number of students were not adequately prepared for the examination. The answers of a significant number of students were out of context. The students are advised to read the questions carefully and figure out its requirements, before attempting to answer it. They are also advised to refrain from writing unnecessary details. Another major problem which was noted generally during the examination of the copies was lack of expression power and language skills of the students.

It is strongly suggested that the students should also study from the Bare Acts. Among the books recommended by ICAP for this subject, the first one is the Bare Acts. Good command of the various topics cannot be obtained without studying the exact requirement of the law from the bare acts.

In Section B of this question paper, the students were required to attempt only four out of six questions. Regretfully many students were careless and wasted time in attempting more than the minimum number of questions.

Question-wise comments are as follows:

Q.1 This was a multiple choice question having 15 marks. The question was well answered by majority of the students. Most of the errors were found in sub-parts (x),(xi), (xiii) and (xv). Some students wasted time in writing down the full sentence, whereas they could have just indicated their choice by writing the corresponding alphabets.

Q.2 (a) This part of the question related to revocation of a proposal. The question was well answered by most of the students as a significant number of students mentioned the grounds on which proposal stands revoked. However, very few students were able to specify all the grounds. Some of them mentioned irrelevant stuff such as counter offer, rejection by offeree etc.

    (b) This part of the question was about time limit after which a proposal cannot be revoked. This was poorly answered mostly due to selection of inappropriate words. The correct answer that a proposal cannot be revoked after communication of its acceptance is complete as against the proposer i.e. when it is put in a course of transmission so as to be out of power of the acceptor. Most students mentioned that proposal can be revoked before acceptance, however, they did not highlight that communication of acceptance is equally important. Further, they did not explain as to when the communication of acceptance is considered to be complete.
Examiners' Comments on Mercantile Law Spring 2012

Q.3 (a) This question was based on Sections 172 to 174 and Section 176 of the Contract Act, 1872 and majority of the students performed fairly well. Some of the common errors were as follows:

- Definitions of “pawnor” and “pawnee” were interchanged.
- Very few candidates could mention that the right to retain the pledged goods extended to subsequent advances also.

(b) The answer was reasonably well written and both the rights i.e. right to retain and right to sell the pledged shares were correctly discussed except that in some cases an important point that Mash Bank was required to give reasonable notice to Tahir Limited before selling the shares was missed out.

Q.4 (a) This part was based on Section 55(2) of the Partnership Act, 1925. Majority of the students did not read the question carefully. Despite the fact that it was clearly stated in the question that nothing is mentioned in the agreement about carrying on similar business, majority of the students answered the question with reference to sub-section 3 of Section 55 which discusses such restrictions. Some of the students listed the rights of individual partners instead of mentioning the rights of the buying and selling parties. The right to advertise a similar business was missed out in most cases. Further, the restriction that the sellers would not solicit persons who were dealing with the firm prior to its sale was also missed out by many students.

(b) It has been observed that the Negotiable Instrument Act has always been a weak area for the students. Although it is tested regularly, yet the students seem to give less than the required time for its preparation. This time also, the students were found to possess little understanding of Negotiable Instrument Act, 1881. The terms required in the question were explained using guess work. Most of the students gave the same explanation for the holder and holder in due course which are totally different terms. The performance remained well below average.

Q.5 Unpaid seller’s right to resell the goods and treatment of resulting surplus or loss were required to be discussed in this part of the question which was based on Section 54(2) of the Sale of Goods Act, 1930. The performance remained average. About half the students who attempted the question were not even able to fully describe the circumstances under which right of resale can be exercised. Moreover, the situation changes depending upon whether the goods have been resold after giving notice or without giving notice to the buyer. Many students were unable to distinguish between the two situations. Further, many students explained the treatment of surplus resulting from the sale but did not discuss the situation in case the sale proceeds are insufficient to recover the amount due.

Q.6 (a) This part was based on Rule 3 of Article III of the Carriage of Goods by Sea Act, 1925. Many students ignored the fact that the requirement of the question was to specify particulars with reference to the above Act. Such students gave general particulars which anybody could easily think of but failed to mention the particulars that have specifically been discussed in the Act. As usual, many irrelevant things were also included in most answers, such as, sea worthiness and responsibility of carrier and the ship’s captain etc.
(b) This part was based on Section 78 of the Trust Act, 1882 pertaining to Revocation of Trust. Though many students scored full marks yet a vast majority resorted to guess work. Some were totally ignorant whereas many students confused the revocation of trust with extinction of trust as has been discussed in Section 77 of the Act. Many of them did not distinguish between a trust created by will or a trust created otherwise.

Q.7 (a) This part was poorly attempted. Rather than explaining how the High Court exercises its supervisory role over subordinate courts, many students described the types of courts and pointed out only that these lower courts are supervised by the High Courts. Secondly, instead of describing the three types of prerogative orders, they described prohibition orders. Probably, very few students possessed the required knowledge and most of them answered using their imagination and perception as regards the High Court and its functions.

(b) This part was based on Section 194 of the Contract Act and was poorly attempted probably because this concept has not been tested for many years. Most of the students confused substituted agent with sub-agent or a new agent.

Q.8 (a) In this part of the question, the candidates were required to discuss the rights of a surety who had honoured his commitment and had made the required payment to the creditor but was unaware of the fact that the debt was also secured by way of a mortgage of the property of the principal debtor. The question was to be answered in terms of Section 140, 141 and 145 of the Contract Act, 1872. However, many students did not possess the required knowledge and gave wayward replies.

Many students could not understand the situation and answered it with reference to Section 143 (concealment).

(b) Candidates were asked to mention as to when and how a continuing guarantee is revoked. This part was well answered. Points which were commonly missed out were as follows:

- Change in terms of the contract without surety’s knowledge.
- Creditor’s act or omission which impairs the eventual remedy of the surety.

Q.9 (a) Generally, the candidates preferred not to attempt this question, wherein they were required to discuss the assessment of loss or damage on account of breach of a contract. The question was based on Sections 73 and 74 of the Contract Act, 1872. Those who chose to attempt this part wedged around one or two points such as:

- Loss or damage which naturally arose in the normal course of things.
- Injured party to be placed in the same position as it would have been if the contract had been performed.
Examiners’ Comments on Mercantile Law Spring 2012

Other points such as remote or indirect loss, means that existed to remedy the inconvenience, sum named in the contract etc. were generally missing. Many students explained the different kinds of damages instead of explaining the principles/rules for the assessment of compensation.

(b) In this part, obligations of person enjoying a benefit under quasi contract were to be described. However, most of the students confined themselves to only one situation i.e. finder of lost goods. Other situations were either not covered or only headings were given with little or no explanation.

Q.10 (a) This part of the question required students to describe liabilities of (i) a partner for the acts of the firm; (ii) the firm for wrongful acts of the partner; and (iii) the firm for misapplication of money or property by a partner. Comments on each sub-part are given below:

(i) It was quite straightforward and was mostly well replied in line with Section 25 of the Partnership Act, 1925.

(ii) This was poorly attempted in general. Only few candidates were able to understand as to what was needed to be written. Various irrelevant concepts were messed up. A large majority of the students mentioned the general rights and liabilities of a partner as are provided in Section 13 of the Partnership Act, 1925 instead of referring to Section 26.

(iii) This was also poorly attempted in general. Candidates seemed to have no clue as to what was exactly required. Many students discussed the partner’s liability on misapplication of money or property belonging to the firm instead of the firm’s liability for misapplication of money or property of a third party, by a partner of the firm.

(b) This part was based on Section 69 (3) (a) of the Partnership Act, 1925. Majority of the students did not seem to have read that section carefully. They only knew that a partner of an unregistered firm cannot file a suit for recovery of an amount but were ignorant of the fact that the above restriction does not apply if the suit is being filed for realization of the assets, upon dissolution of the firm.

Q.11 (a) This part was based on Section 118 of Negotiable Instruments Act, 1881. Majority of the students tried to explain the essential elements of a negotiable instrument rather than the presumptions applicable to negotiable instruments. Many students just gave the sub-headings that are appearing in Section 118 but did not elaborate them.

(b) This part contained a brief situation whereby ‘B’ accepted a bill without consideration. Later, A who is the drawer, indorsed it for value to ‘C’. On presentation ‘B’ refused to pay claiming that he had not received any consideration. Very few students knew how to respond. About half the students stated correctly that ‘B’ would be required to make the payment but most among them could not produce the appropriate reason i.e. that absence of consideration can be taken as a defence to avoid liability only towards parties who stand in immediate relation to each other i.e. only if ‘B’ were to make payment to ‘A’ and not in this case when payment was to be made to ‘C’.
Q.12 In this question those circumstances were required to be identified where a non-owner can convey a good title to a buyer who buys in good faith without notice that seller has no authority to sell. This was well replied in line with Section 27 to 30 and Section 54 (3) of the Sale of Goods Act, 1930. However, many students listed the circumstances based on Contract Act, 1872 and even Negotiable Instrument Act, 1881 and could not secure any marks. In certain cases students only gave the headings but did not write the circumstances properly.

(THE END)
Mercantile Law

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

Section A

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

(i) A High Court has a supervisory role over other courts subordinate to it. It may issue a writ of habeas corpus which is an order:
   (a) to prevent a court or tribunal from exceeding its jurisdiction.
   (b) to submit the record of the subordinate court’s proceedings to the High Court for review.
   (c) for the release of a person wrongfully detained.
   (d) to carry out a public duty.

(ii) The fundamental principle of awarding damages is:
   (A) to punish the guilty party for breach of contract.
   (B) to compensate the innocent party.
   (C) to put the innocent party in the same position as if the contract had been carried out correctly.
   (a) (B) only.
   (b) (C) only.
   (c) (B) and (C).
   (d) (A), (B) and (C).

(iii) C refused to sell certain goods to D at the previously agreed price of Rs. 240 thousand. D sued C for breach of contract. If identical goods are readily available in the market at a price of Rs. 220 thousand, which one of the following is correct?
   (a) D is entitled to an order of specific performance, forcing C to carry out the contract.
   (b) D is entitled to damages of Rs. 20,000.
   (c) D is entitled to nominal damages only.
   (d) D is not entitled to damages.

(iv) A owns some land, part of which is woodland. He sells the land to B who covenants in the contract that he will not cut down the trees. One year later, B prepares to cut down the trees. What remedy can A seek?
   (a) damages.
   (b) specific performance.
   (c) injunction.
   (d) rescission.

(v) Which of the following may employ an agent?
   (a) any person who is capable of understanding the contract and forming a rational judgment as to its effect upon his interest.
   (b) any person who is engaged in business or profession.
   (c) any person who is of the age of majority according to the law to which he is subject and who is of sound mind.
   (d) all of the above.
(vi) The following is not a ground for dissolution of a partnership by a court:
(a) continued losses;
(b) persistent breach of agreement by a partner;
(c) insolvency of a partner;
(d) a partner becoming of unsound mind.

(vii) When a firm is dissolved, the assets of the firm are applied to:
(A) distribute cash among the partners in the profit and loss ratio;
(B) pay to each partner ratably what is due to him on account of capital;
(C) pay the debts of the firm to third parties; and
(D) pay to each partner ratably what is due to him from the firm for advances as distinguished from capital.

These steps should be performed in the following order:
(a) (D), (C), (A), (B)  (b) (C), (B), (A), (D)
(c) (D), (A), (C), (B)  (d) (C), (B), (A), (A)

(viii) A minor admitted to the benefits of partnership in a registered firm on attaining majority decides to become a partner. He has to give a public notice of his decision to become a partner by:
(a) publication in the Official Gazette and in at least one vernacular newspaper.
(b) publication in at least one English newspaper and one Urdu newspaper.
(c) a notice to the Registrar of Firms and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.
(d) a notice to the Registrar of Firms and by publication in the Official Gazette.

(ix) A new partner can be admitted into a firm:
(a) with the consent of majority of the partners.
(b) with the consent of all the partners.
(c) with the consent of senior most partner.
(d) with the consent of a court.

(x) A buyer is deemed to accept the goods:
(a) when he has taken the delivery of goods.
(b) when he does any act which is inconsistent with the ownership of the seller.
(c) when he pays the price of the goods.
(d) all of the above.

(xi) The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by:
(a) signature of maker, acceptor or endorser.
(b) delivery, actual or constructive.
(c) endorsement and delivery thereof.
(d) presentment for payment.

(xii) Ghulam accepted for honour a bill of exchange which has been noted and protested for non-acceptance. If his acceptance does not express for whose honour it is made, then such acceptance is:
(a) invalid.
(b) deemed to be made for the honour of the drawer.
(c) deemed to be made for the honour of the drawer.
(d) for the honour of any party to the bill.

(xiii) Ismail, an endorser of a promissory note, paid the amount due on its dishonour, to the holder. He will now be entitled to receive from the maker of promissory note:
(a) the amount paid by him.
(b) the amount so paid with interest at six percent per annum from the date of payment until tender or realization thereof.
(c) the amount so paid together with all expenses caused by the dishonour and payment.
(d) the amount so paid with interest at six percent until tender or realization thereof, together with all expenses caused by the dishonour and payment.
(xiv) Which of the following statements is incorrect?
(a) A breach of condition only gives the injured party the right to terminate the contract.
(b) A breach of warranty does not give the injured party a right to rescission.
(c) A breach of condition gives the injured party the right to terminate the contract and claim damages.
(d) A breach of warranty gives the injured party a right to claim damages.

(xv) In a contract of sale, there is no implied condition that:
(a) the goods suit the purpose of the buyer.
(b) the bulk should correspond with the sample in sale by sample.
(c) the seller has a valid title to the goods.
(d) the goods must correspond with their description where there is a sale by description.

Q.2  
(a) Distinguish between civil law and criminal law giving two examples of each.  (06 marks)
(b) What are the requisites of a binding precedent?  (04 marks)

Q.3  
(a) Karim bought a textile mill from Laeq on his assurance and a certificate from Registrar that the mill and its assets were free from any encumbrance. Later, Karim received a notice for payment of mortgage dues and found that the certificate of Registrar was forged by Laeq. What rights are available to Karim under the Contract Act, 1872?  (04 marks)
(b) Tariq promised to pay Tahir for his services whatever amount Tariq might think reasonable. Tahir is now dissatisfied with the amount paid by Tariq. Explain whether Tahir can sue Tariq.  (04 marks)

Q.4  
(a) What is implied authority of a partner? What conditions should be met for the act of a partner to become binding on the firm?  (04 marks)
(b) Explain the term “promissory note” in accordance with Negotiable Instruments Act, 1881. Also state the liabilities of its maker.  (06 marks)

Q.5  
(a) Cassim intends to deliver an agreed quantity of various computer hardware items to Eveready Company, a carrier, for the purpose of transmission to the buyer. The route to destination includes sea transit.
(i) List the conditions under the Sale of Goods Act, 1930 which Cassim must comply with, in order to constitute a proper delivery to the buyer.  (03 marks)
(ii) In case such conditions are not fulfilled by Cassim, what rights are available to the buyer in the event of goods being damaged in transit?  (02 marks)

(b) Ghazal chose her bedroom furniture from Habib Furniture, paid 50% advance and agreed to pay the balance on delivery next week. Habib Furniture separated the chosen furniture and scheduled it for polishing the next day. A fire broke out at night due to short circuit and the entire shop was destroyed. Ghazal claimed her advance. Habib Furniture refused to repay and claimed the balance. In your opinion, who should bear the loss? Justify your answer in the light of the Sale of Goods Act, 1930.  (03 marks)

Q.6  
(a) Isfandyar Chemicals loaded a cargo of inflammable chemicals in a ship. The nature of cargo was mentioned on the bill of lading. During voyage the carrier destroyed the said cargo. What are the liabilities of the carrier and what rights are available to the shipper under the Carriage of Goods by Sea Act, 1925?  (03 marks)
(b) How and for what purpose may a trust be created?  (06 marks)
Section B

Q.7 (a) What are the essential requisites of a valid offer of performance? What is the effect of refusal by the promisee to accept tender of goods and money, from the promisor? (07 marks)

(b) Explain the nature of a bailee’s particular lien. How does it differ from the general lien of a banker? (03 marks)

Q.8 State the circumstances under which an agent is personally bound by the contract entered into by him on behalf of his principal. (10 marks)

Q.9 Vaqas, Waqar and Yaseen are partners in a registered firm which is not at will. Yaseen wants to retire from the partnership. Advise him about his rights and liabilities in the event of his retirement and restrictions, if any imposed on him under the Partnership Act, 1932. (10 marks)

Q.10 (a) Any material alteration to a negotiable instrument renders the instrument void. What are the exceptions to this rule? (07 marks)

(b) A drew a bill payable by B which is due after three months. It passed through several hands before X became its holder. On presentation by X, B refused to pay the bill. Discuss the rights of X. (03 marks)

Q.11 Explain the term “caveat emptor”. What are the exceptions to its application in a contract of sale of goods? (10 marks)

Q.12 Answer the following in the light of Sale of Goods Act, 1930.

(a) What is the general rule with regard to passing of risk (as opposed to ownership) in a contract of Sale of Goods and what are the exceptions to this rule? (07 marks)

(b) What are the consequences if customs duty, excise duty or sales tax is imposed after a contract of sale has been executed but delivery of goods has not been made? (03 marks)

(THE END)
A.1 (i) (c) for the release of a person wrongfully detained.
(ii) (c) (B) and (C).
(iii) (c) D is entitled to nominal damages only.
(iv) (c) injunction.
(v) (c) any person who is of the age of majority according to the law to which he is subject and who is of sound mind.
(vi) (c) insolvency of a partner;
(vii) (d) (C), (D), (B), (A)
(viii) (c) notice to the Registrar of Firms and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business
(ix) (b) with the consent of all the partners
(x) (b) when he does any act which is inconsistent with the ownership of the seller.
(xi) (b) delivery, actual or constructive.
(xii) (c) deemed to be made for the honour of drawer.
(xiii) (d) the amount so paid with interest at six percent until tender or realization thereof, together with all expenses caused by the dishonour and payment.
(xiv) (a) A breach of condition only gives the injured party the right to terminate the contract.
(xv) (a) The goods suit the purpose of the buyer

A.2 (a) Civil law regulates the disputes in respect of rights and obligations between persons dealing with each other.

The court does not punish the wrong doers but imposes a settlement, either by awarding damages or granting injunctions or other orders.

Examples of civil laws are:
(i) company law (ii) revenue law (iii) commercial law
(iv) constitutional law (v) family laws (vi) employment law

Criminal law is a body of law:
- defining offenses against the community at large;
- regulating how suspects are investigated, charged and tried and;
- establishing punishments for convicted offenders.

Criminal law deals with crimes such as murder, violence, terrorism, theft, robbery etc.

(b) For a precedent to be binding it must meet the following requirements:

(i) The ratio decidendi (reason for judgment) is clearly identified;
(ii) The material facts of the case must be similar;
(iii) The status of the court which set the precedent must be such as to bind the present court.
A.3  (a)  The following are the rights of Karim:

(i)  When consent to an agreement is caused by fraud, the agreement is a contract voidable at the option of the party whose consent was so caused. Karim could therefore rescind the contract.

However, if Karim could have discovered the truth with ordinary diligence, then the contract is not voidable.

(ii) If Karim thinks fit he can insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representations made had been true.

(b)  Tahir’s suit will not be admitted by the Court because if the performance of a promise is contingent upon the mere will and pleasure of the promisor, there is no contract. The rule of law is that “agreements, the meaning of which is not certain, or capable of being made certain, are void.”

A.4  (a)  The authority of a partner to bind the firm with his acts is referred to as the implied authority of a partner. Accordingly, for an act to be covered within the implied authority, it is necessary that:

(i)  The act should be for the kind of business carried on by the firm;
(ii)  The act should be done in the usual way of such business; and
(iii)  The act must be done in the name of the firm or in any other manner expressing or implying an intention to bind the firm.

(b)  A promissory note is:
An instrument in writing (not being a bank note or a currency note) containing an unconditional undertaking signed by the maker to pay on demand or at a fixed or determinable future time a certain sum of money to a certain person or to his order or to the bearer of the instrument

Liabilities of the maker
In the absence of a contract to the contrary, the maker of a promissory note, by making it, promises that:

(i)  He will pay it according to the tenor of the note and
(ii)  In default of such payment, he will compensate any party to the note for any loss or damage sustained by that party and caused by such default.

A.5  (a)  (i)  The following conditions must be fulfilled by Cassim (the seller) in order to constitute a proper delivery to the buyer:

- Unless otherwise authorized by the buyer, Cassim must make such contract with Eveready Company (carrier) on behalf of the buyer as is reasonable having due regard to the nature of the goods and other relevant circumstances.
- Unless otherwise agreed, where goods are being sent by a route involving sea transit, in which it is usual to insure, Cassim should give such notice to the buyer to enable him to insure them during sea transit.
(ii) Rights of the buyer where the above mentioned conditions are not met by Cassim:

- If Cassim omits to make such contract with the carrier as mentioned in (i) above and the goods are lost or damaged in the course of transit then the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold Cassim responsible in damages.
- If Cassim fails to inform buyer about insuring goods as required in (i) above, then the goods shall be deemed to be at Cassim’s risk during such transit.

(b) Habib Furniture should bear the loss as the goods were not in a deliverable state at the time of sale. The property in goods does not pass to Ghazal until the furniture is polished (is in deliverable state) and she has notice thereof.

A.6 (a) The carrier can destroy such cargo, shipped with its knowledge and consent, when it becomes a danger to the ship or cargo without liability. The only right available to shipper is of general average, if any.

If the goods did not become a danger, then the carrier is liable for loss arising from its failure to keep, care for and discharge the goods carried on notice of loss in writing to the carrier or his agent at the port of discharge.

(b) A trust is created when the author of the trust indicates with reasonable certainty, by words or acts:

(i) an intention on his part to create thereby a trust.
(ii) the purpose of trust.
(iii) the beneficiary or beneficiaries.
(iv) the trust property.
(v) except in the case of trust declared by will or when the author of the trust is himself to be the trustee, the trust property is transferred to the trustee.

Purpose of trust
A trust can be created only for a lawful purpose. Purpose is lawful unless:

(i) It is fraudulent; or
(ii) It is forbidden by law; or
(iii) It is such that if permitted, it would defeat the provisions of any law; or
(iv) It involves or implies an injury to the person or any property of another; or
(v) It is regarded by the court as immoral or opposed to public policy.

A.7 (a) Every offer/tender of valid performance must fulfill the following conditions:

(i) It must be unconditional.
(ii) It must be made:
   - At a proper time.
   - At a proper place.
   - Under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Autumn 2012

(iii) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of ascertaining that the thing being offered is the one which the promisor is bound to deliver.

Effect of refusal to accept offer of performance: Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

(b) Bailee’s particular lien
Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, right to retain such goods until he receives due remuneration for the service he has rendered.

Banker’s General lien
A banker has general lien on all goods, cash, cheques and securities deposited with him as banker by a customer, for any money due to him as a banker.

A.8 General Rule
In the absence of any contract to that effect, an agent is not personally bound by a contract.

Subject to the foregoing, the Agent becomes personally liable in the following cases:

(a) In Case of Foreign Principal: Where the contract is made by an agent for the sale or purchase of goods for a merchant residing abroad, it is presumed that the agent is personally liable for such contracts.
(b) In Case of Undisclosed Principal: Where the contract is made by an agent for an undisclosed principal, it is presumed that the agent is personally liable.
(c) In Case of Incompetent Principal: When a contract is made by an agent for a person who cannot be sued (e.g. minor, lunatic, foreign ambassador), it is presumed that the agent is personally liable.
(d) In case of Custom or Usage of Trade: Where there is a custom or usage of trade making the agent personally liable.
(e) In Case of Acts not Ratified: A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.
(f) Unauthorized acts of agent: Where acts are done by the agent on behalf of the principal but without the knowledge or authority and such acts are not ratified by the principal, the agent is personally liable.
(g) Sub-agent appointed without authority: Where an agent without having authority to do so has appointed a person to act as a sub-agent, then the agent is personally responsible for the acts of the sub-agent.
(h) In Case of Acts in his Own Name: Where a contract is made by an agent without disclosing that he is contracting as an agent, the agent is personally liable.
(i) In Case of Express Agreement: Where a contract made by an agent specifically provides for the personal liability of the agent, the agent will be personally liable.
(j) In Case of Principal not in Existence: Where a contract is made by the promoter for a company not yet incorporated, the promoters are personally liable.
A.9 **Rights of retiring partner**

(i) Yaseen may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.

(ii) Subject to any contract to the contrary, he may carry on a business competing with that of the firm and he may advertise such business.

(iii) If other partners carry on the business of the firm without any final settlement of accounts as between them and Yaseen then in the absence of any contract to the contrary, Yaseen is entitled at his option, to such share of profits made since he ceased to be a partner as may be attributable to the use of his share of the property of firm or to interest at the rate of six percent per annum on the amount of his share in the property of the firm.

**Liabilities**

Yaseen or the continuing partners must give public notice of his retirement. Otherwise Yaseen and the continuing partners will continue to be liable as partner to third parties for any act done by any of them which would have been an act of the firm if done before the retirement.

Subject to the contract to the contrary, Yaseen may not:

(i) use the firm’s name

(ii) represent himself as carrying on the business of the firm, or

(iii) solicit the custom of persons who were dealing with the firm before he ceased to be a partner.

A.10 (a) **In the following situations, the alteration does not prejudice the rights and liabilities of the parties to a negotiable instrument:**

(i) Alteration made for the purpose of correcting a mistake or a clerical error.

(ii) Alteration made to carry out the common intention of the original parties.

(iii) Alteration made with the consent of the parties liable on the instrument.

(iv) Conversion of bearer cheque into an order cheque.

(v) Crossing of an uncrossed cheque.

(vi) Filling blanks in the case of inchoate or incomplete instruments.

(vii) Conversion of blank endorsement into an endorsement in full.

(viii) Making qualified acceptance.

(ix) Alteration which is the result of an accident, e.g., mutilation by washing, ravages by white ants, document torn by a child, document burnt in part by the hot end of a cigarette.

(x) Alteration made before the instrument is issued.

(b) X can claim the amount from A being the principal debtor.

On A’s refusal or inability to pay, he can claim the same from all intervening parties in the order of acceptance/ transfers/ endorsements.
A.11 **Doctrine of Caveat Emptor:**

The maxim of caveat emptor means "let the buyer beware."

It is the duty of the buyer to make careful enquiry from the seller, as the seller is not bound to disclose every defect in goods of which he may be cognizant.

The buyer must examine the goods thoroughly and must see that the goods he buys are suitable for the purpose for which he wants them. If the goods turn out to be defective or do not suit his purpose, the buyer cannot hold the seller liable for the same, as there is no implied undertaking by the seller that he shall supply such goods as suits the buyer's purpose.

While making purchases of goods, the buyer has to depend on his own skill and if he makes a bad choice, he must blame himself.

**Exceptions:**
The doctrine of caveat emptor does not apply:

- Where the seller makes a misrepresentation or he makes a false representation amounting to fraud and the buyer relies on it.
- Where the seller actively conceals a defect in the goods so that the same could not be discovered on a reasonable examination.
- Where the goods are purchased by description and do not correspond with the description.
- Where the goods are purchased by description from a seller who deals in such class of goods and they are not of 'merchantable quality' but the doctrine applies, if the buyer has examined the goods, as regards defects which such examination ought to have revealed.
- Where the goods are bought by sample, the doctrine of caveat emptor does not apply if:
  1. The bulk does not correspond with the sample,
  2. The buyer is not provided an opportunity to compare the bulk with the sample, or
  3. There is any hidden or latent defect in goods.
- Where the goods are bought by sample as well as by description and the bulk of the goods do not correspond both with the sample and with the description, the buyer is entitled to reject the goods.
- Where the buyer informs the seller about the purpose for which he requires the goods and relies upon the seller's skill and judgment but the goods supplied are unfit for the specified purpose, the seller is liable in damages.
- Where the trade usage attaches an implied condition or warranty as to quality or fitness and the seller deviates from that, the seller is liable in damages.
- Where the contract with the third party relates to a subject-matter in which the agent has a special interest, agent is personally liable to the extent of his interest because he is really a principal for that interest.

A.12 (a) Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not.
Exceptions to the rule that the risk passes with the ownership.

Agreement between the parties
When the contracting parties specify in the contract as to when the risk in the goods shall be deemed to pass, irrespective of the time of passing the property, the risk in the goods passes at that time only. Thus the risk and the ownership may be separated by an agreement between the seller and buyer.

Goods are at the risk of the party in default
Sometimes, the delivery of the goods is delayed due to the fault of either seller or buyer. In such cases, the goods shall be at the risk of the party in default although their ownership is with the other party.

Party in possession still liable as bailee
Even if property had passed to buyer, seller in possession of goods will be liable as bailee, to the buyer. Similarly, even if the property is not passed to a buyer, buyer in possession of goods will be liable as bailee, to the seller.

Trade Customs
The risk and the ownership may also be separated by the trade custom. Trade custom is the customary rule prevalent in a particular trade which is generally followed by the parties.

(b) Unless otherwise agreed between the parties, if any custom or excise duty on goods, or any tax, is imposed after the making of the contract of sale of such goods, then the seller can recover the same from the buyer.

(The END)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS’ COMMENTS

SUBJECT
Mercantile Law

SESSION
Foundation Examination – Autumn 2012

General:

An analysis of the overall performance revealed the following:

- The students seemed to have focused on Contract Act, Sale of Goods Act and the Partnership Act. Preparation in other areas was lacking. This selective approach was one of the main causes of below average performance in this paper.

- The answers of a significant number of students were out of context. The students are advised to read the questions carefully and figure out its requirements, before starting to write. For this purpose, 15 minutes of reading time is provided at the beginning of the paper.

- There was a tendency to write unnecessary details. Some students are under the impression that they will get more marks if they write more. In fact, writing unnecessary details will result in sheer wastage of time and nothing else. The past question papers and ICAP’s suggested answers are available on the website and it is strongly suggested that the students should study them carefully to know as to how questions should be answered.

- A sizeable number of students had poor language skills and did not know how to organize their answers properly.

- Many students tried to answer the questions on the basis of their general knowledge and by applying logics which are based on their perception rather than the exact knowledge of the statute. A probable reason for this approach is that the students do not study the bare acts although the first name appearing in the list of books issued by the Institute is that of Bare Acts. Bare Acts are the primary source and also contain a large variety of practical examples. Thorough reading and good understanding of the bare acts allows the students to understand the major topics covered by a statute and how each topic is related to the other. Other books and notes are for reference purposes and need to be studied to supplement the knowledge gained by studying the bare acts.

- Many students attempted more than four questions from Section B and wasted their precious time.

Q.1 This question included 15 MCQs of one mark each. Majority of the students obtained between 6 to 12 marks. Majority of the errors were found in sub-part (ii), (v), (vii), (xi) and (xii). Many students wasted time in writing the entire text although it was not necessary as they could have indicated the correct choice only.
Q.2 (a) Candidates were required to distinguish between Civil Law and Criminal Law and give two examples of each. Around 10% of the students did not attempt this question which indicates that they did not prepare themselves for this topic. The remaining students did fairly well. However, majority of them missed out one or two points as only few could secure full marks.

(b) Instead of explaining the requisites of a binding precedent, many students explained the meaning of Precedent. Many students stated that the ratio decidendi (reason for judgment) should be the same instead of mentioning that the ratio decidendi should be clearly identified.

Q.3 (a) The requirement was to determine the rights of a party which has been lured to enter into a contract by the other party by submitting a forged document. About half the candidates were able to identify that the consent has been obtained by fraud and to specify the options available to the aggrieved party. However, an important exception i.e. that if the aggrieved party could have discovered the truth with ordinary diligence, then it would not have the option to rescind the contract was mentioned by few candidates only.

(b) This was a question based on a situation where consideration is not defined with certainty and therefore contract becomes void. A good number of students seemed to know about this and could score good marks. Some students however replied that the court would not admit the suit but did not provide any explanation in this respect. Some students mis-understood the issue as that of adequacy of consideration and could not secure any marks.

Q.4 (a) The requirement of this part of the question was to explain the meaning of the term “implied authority” and the conditions under which the act of a partner becomes binding on the firm. The answer should have been based on Section 19 and 22 of the Partnership Act, 1932. About half the candidates were able to provide reasonably correct answer. The most common error was that students gave list of implied authorities of the partner instead of defining what the term “implied authority” actually means and empowers the partner to do.

(b) This was an easy question based on sections 4 and 32 of Negotiable Instruments Act, 1881. The students were generally able to list most of the elements of a promissory note but most of them were unable to state the liabilities of its maker.

Q.5 (a) The question was based on Section 39 (2 & 3) of the Sale of Goods Act, 1930 and the candidates were required to discuss the duties of seller as regards delivery of goods to carrier. Only 10% of the students attempted this question correctly. A significant majority among the rest seemed ignorant and gave entirely irrelevant answers, as discussed below:

- Some students narrated the responsibility of the carrier i.e. proper equipment, crew, ship etc.
- Many students explained the general rules of delivery and rights of the buyer.
- Some students explained matters such as packing and weighing of goods before delivery.
Examiners’ Comments on Mercantile Law Autumn 2012

(b) The question was based on a practical situation in which goods had been destroyed and the students needed to decide as to who would bear the loss, i.e., the buyer or the seller. To reach the ultimate conclusion, the candidates were first required to determine whether the property in the goods had passed from seller to buyer or not. Since the goods were not in deliverable state, the property had not passed (section 21 of Sale of Goods Act, 1930). Many students mentioned incorrectly that the title has passed as the seller has separated the goods or/and the buyer has paid advance also.

The question tested a very basic concept and the inability of many students to analyze the situation correctly reflected serious conceptual weakness. However, a significant number of good students secured full marks also.

Q.6 (a) In this question which was based on Rule 6 of the Article IV of the Carriage of Goods Act, 1925, a practical situation was given whereby the carrier had accepted a consignment consisting of inflammable chemicals, and the consignment had to be destroyed during the voyage. According to the Carriage of Goods by Sea Act, 1925 no liability (except general average, if any) shall be incurred by the carrier if it had destroyed the goods because of any threat to the ship or the cargo. If no such threat/damage existed, the carrier shall be responsible for the loss. Most of the students did not discuss this aspect and were of the view that since the carrier has accepted the goods with knowledge about their nature, it shall be liable to make good the loss.

(b) This part was based on Section 6 of the Trust Act, 1882. Candidates were asked to mention as to how and for what purpose a “trust” may be created. It was a straightforward question and the students who had studied the Trust Act were able to secure high marks. However, majority of the candidates tried to guess the answer on the basis of their general understanding of the topic and performed poorly. Many candidates wasted their time by describing the terms “trustee”, “beneficiary” and “public and private trusts”.

Q.7 (a) A vast majority of candidates did not read the question carefully and instead of mentioning the essentials of a valid offer of performance they mentioned the conditions for a valid offer. A significant number of candidates performed well also and were also able to deal with the other issue i.e., consequences of not accepting the offer of performance.

(b) Candidates were simply asked to explain the nature of bailee’s particular lien and how it differs from general lien of a banker. The performance was above average but a large number of candidates did not even know the meaning of bailment or the meaning of lien. Many students described the term “lien” but failed to explain particular lien.

Q.8 The requirement of the question was to state the circumstances whereby an agent becomes personally liable for a contract entered into by him on behalf of his principal. Generally, it was attempted well; however, only few candidates were able to mention all the points. The common mistakes were as follows:

• Some candidates mentioned the headings only without any explanation. It was rather astonishing as to how one can assume that 10 marks can be scored by giving 10 headings only.
Examiners’ Comments on Mercantile Law Autumn 2012

- Many students tried to state the general responsibilities of the agent towards the principal instead of mentioning the circumstances in which the agent becomes personally liable.

- Some students wasted time in explaining the matter in too much detail. For example, they also tried to explain the meaning of Undisclosed Principal and usage of Trade etc.

Q.9 The requirement of this question was quite straightforward i.e. to mention the rights and liabilities of the retiring partner of a registered firm and the restrictions imposed on them under the Partnership Act, 1932. However, a large number of candidates provided vague, irrelevant and incomplete answers. The common errors were as follows:

(i) Entitlement of retiring partner to share profit/return in case the same business was continued by the remaining partners was not mentioned by majority of the candidates.

(ii) Very few candidates discussed the provisions relating to discharge of liability to third parties.

(iii) Many of the related provisions became applicable in the absence of a contract to the contrary. This point was not mentioned by majority of the students.

Q.10 (a) Past experience shows that the students are generally weak in dealing with questions based on Negotiable Instruments Act, 1881. Accordingly, this was the least attempted question in Section B. However, majority of those students who did attempt the question performed well. Some students instead of listing the exceptions wasted their time in describing the examples of clerical errors or types of crossings which were not required.

(b) This question was based on the most basic concept related to negotiable instruments i.e. dishonour of bill by the drawer and the rights of the holder of the bill. A poor performance in this part was indicative of the fact that even the students who had studied this topic had weak conceptual understanding. The students generally knew that the holder of the bill can claim the amount from the principal debtor but very few could elaborate that in case of dishonor by the principal debtor, the holder can claim the amount from all intervening parties, in the order of acceptance/transfers/endorsements.

Q.11 This question required explanation of the term “caveat emptor” and the exceptions to its application. This was one of the very well attempted question and a large number of students could score full marks. Most of the exceptions are mentioned in Sections 15, 16 & 17 of the Sale of Goods Act, 1930.
Examiners’ Comments on Mercantile Law Autumn 2012

Q.12 (a) The requirement of this question was to mention the difference between passing of risk as against passing of ownership, along with exceptions. Majority of the candidates seemed to have a vague idea of this aspect and scored between 2-3 marks. It showed that students are by and large relying on reference books and notes without referring to the Bare Act, and this practice restricts them from having a complete idea of the situation. A significant number of students discussed irrelevant things such as ascertainment and appropriation of goods and conditions in sale on approval basis. Some students narrated the sale of goods by a non-owner, which was surprising, as it had no relevance to the given situation.

(b) The students were required to comment on a situation whereby tax is imposed by the government on goods after a contract has been signed but before the delivery of goods. Only about half the students were able to mention correctly that in such a situation the seller may claim the amount from the buyer. Moreover, very few among them mentioned that this right is available only if there is no prior agreement on this issue, between the two parties.

(THE END)
The Institute of Chartered Accountants of Pakistan

Mercantile Law

Foundation Examination 4 March 2013
Spring 2013 100 marks - 3 hours
Module B 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.

Section A

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

(i) In Senate, all provinces are represented:
   (a) for 3 years.
   (b) equally.
   (c) by number in the same ratio as the members of the National Assembly.
   (d) by number in the same ratio as the members of the Provincial Assembly.

(ii) The constituents of the Parliament are:
   (a) National Assembly.
   (b) President and National Assembly.
   (c) National Assembly and the Senate.
   (d) President, National Assembly and the Senate.

(iii) An Ordinance promulgated by the President:
   (a) stands repealed when National Assembly comes into session.
   (b) remains effective for four months if National Assembly is not convened.
   (c) stands repealed after four months if it is not passed by the National Assembly.
   (d) remains effective unless repealed by the National Assembly.

(iv) Which of the following is not an essential element of a valid contract?
   (a) the contract must be in writing.
   (b) the parties must be in agreement.
   (c) each party must provide consideration.
   (d) each party must intend legal relations.

(v) Consensus-ad-idem is:
   (a) when consent is free.
   (b) when consideration is adequate.
   (c) when one party promises to do an act at the desire of another party.
   (d) when both the parties agree to the same thing in the same sense.

(vi) In breach of a contract, special damages can be claimed only when the:
   (a) offending party knew at the time of making the breach that such damages are likely to result from the breach.
   (b) offending party knew at the time of making the breach that such damages would result from the breach.
   (c) parties knew at the time of making the contract that such damages are likely to result from the breach.
   (d) parties knew at the time of making the contract that such damages would occur as a result of such breach.
(vii) Which of the following is not a reasonable ground for supervening impossibility of a contract?
(a) the destruction by lightning of a hall let out for a concert.
(b) the lead singer of a musical band becoming ill.
(c) outbreak of war, causing a ship to be trapped at a port until the end of hostilities.
(d) closure of a mountain pass due to bad weather, causing traffic to take an alternative route, 100 miles longer.

(viii) Which of the following is a sale?
(a) A agrees to buy 10 tons of rice at Rs. 85 per kg from B and the rice is yet to be weighed.
(b) A agrees to buy jewellery from B for Rs. 75,000 if his wife approves.
(c) A and B are joint owners of a house. A transfers his share to B for Rs. 2 million.
(d) Both (a) and (c).

(ix) Hamid and Ismail are partners and work as legal advisors. Jehangir, an old client of theirs, gave a sum of money to Hamid while he was in the firm's premises for investment in some good security which Hamid misappropriated without knowledge of Ismail. Jehangir filed a suit against the firm for recovery of his money. Can Jehangir succeed?
(a) Yes, as money was given to Hamid in firm's premises.
(b) No, as this transaction is not the ordinary business of legal advisors.
(c) Yes, as Hamid had previously carried out similar transactions with the knowledge of Ismail.
(d) Both (b) and (c).

(x) Which of these can be treated as just and equitable ground for dissolution of a partnership firm under the Partnership Act, 1932?
(a) loss of mutual confidence.
(b) deadlock amongst the partners.
(c) both (a) and (b).
(d) none of the above.

(xi) Select the false statement.
(a) On the death of a partner his heir becomes a partner.
(b) Minor partner has no right to see secret books/records of the partnership.
(c) A partner has no authority to submit a dispute relating to the business of the firm to arbitration.
(d) A partner has no authority to enter into partnership with other firm on behalf of the firm.

(xii) Any material alteration of a negotiable instrument:
(a) renders it void ab-initio.
(b) renders it void as against any one who is a party thereto at the time of making such alteration and does not consent thereto.
(c) renders it voidable at the option of the drawer.
(d) renders it voidable at the option of the bank.

(xiii) A partnership firm is dissolved compulsorily when:
(a) one of the partners dies.
(b) all the partners except one, are adjudged insolvent.
(c) one of the partners becomes insane.
(d) all of the above.

(xiv) Insolvent as defined in the Sale of Goods Act, 1930 means a person who:
(a) fails to offer/tender performance of contract when due.
(b) ceases to pay his debts in the ordinary course of business.
(c) both (a) and (b).
(d) none of the above.
(xv) Which of these is not an implied warranty under the Sale of Goods Act, 1930?
(a) quality or fitness.  (b) freedom from encumbrance.
(c) warranty of quiet possession.  (d) none of the above.

Q. 2 In the light of Contract Act, 1872, explain the difference between coercion and undue influence.  

Q. 3 Under the provisions of Contract Act, 1872, what are the duties of the finder of lost goods?
Under what conditions a finder of goods can exercise his right of sale?  

Q. 4 (a) What do you understand by the term reciprocal promises? Discuss the rule related to the order of performance of the reciprocal promises in accordance with the Contract Act, 1872.

(b) Imran contracted with Yousuf for taking bricks to the second floor of Yousuf’s under construction house. However, stairs to the second floor were blocked as Yousuf had dumped some construction materials on the stairs. Discuss the rights of Imran.

Q. 5 (a) What are the rights of a partner as regards the conduct of business?

(b) Waseem and Xavier are partners in a trading business. Yaseen was admitted in the partnership firm for five years on payment of a premium. After two years of successful operations, the firm was dissolved. Yaseen claimed refund of premium paid by him on his admission as a partner.
Is Yaseen entitled to such refund? If so, to what extent and if not, then under what circumstances? Answer in the context of the Partnership Act, 1932.

Q. 6 (a) What is ‘Price’? How is it ascertained in a contract of sale? What would be the impact on the contract if price cannot or has not been determined accordingly?

(b) Adeel paid the contracted price of goods in advance but the goods were not delivered on time by Bilal. Adeel repudiated the contract as time was of essence in the contract.
What remedies Adeel has under the Sale of Goods Act, 1930?

(c) Moin sold his car to Jamal for Rs. 800,000. Jamal agreed to make payment after one week and take delivery of the car at the time of payment. After two days, Moin sold the same car to Usman who bought it in good faith and without any notice of the prior sale.

Answer the following questions in the light of the Sale of Goods Act, 1930 giving appropriate reasons:
(i) Whether Moin was the owner of the car when he sold it to Usman.
(ii) Whether Usman has got valid title to the car.
(iii) What right does Jamal have against Moin and Usman?
Section B

Q.7 (a) Identify six types of cases that are filed in civil courts. (03)

(b) In view of the Contract Act, 1872, explain what a contract of indemnity is. When does the liability of the promisor under such contract commence? What damages/costs/sums is a promisee entitled to recover from the promisor under such contract? (07)

Q.8 Under the provision of Contract Act, 1872, list the various ways in which a contract may be discharged. Briefly describe the different situations whereby a contract is discharged by mutual agreement. (10)

Q.9 (a) “An agreement in restraint of trade is void”. State the exceptions to this rule as given in the Partnership Act, 1932. (06)

(b) A, B and C are partners in a firm sharing profits in the ratio of 4:3:2. They admitted D to the partnership on 1 January 2013. In the absence of any agreement, state how they will share future profits. (02)

(c) In view of the Partnership Act, 1932, briefly explain the meaning of ‘Partnership at Will’ and ‘Particular Partnership’. (02)

Q.10 When a promissory note or a bill of exchange is dishonoured, the holder may get such dishonour noted and protested under the Negotiable Instruments Act, 1881. Briefly describe the terms ‘Noting’ and ‘Protesting’ and list their contents. (10)

Q.11 In the light of the Sale of Goods Act, 1930:
(a) state the basic rules of delivery of goods in a contract of sale of goods. (08)
(b) briefly describe the meaning of the term ‘Upset Price’. (02)

Q.12 (a) What are the duties of a carrier under the Carriage of Goods by Sea Act, 1925? (05)

(b) Describe the circumstances under which a trustee is liable for the breach of trust committed by a co-trustee. (05)

(The End)
Section A

A.1

(i) (b) equally.
(ii) (d) President, National Assembly and the Senate.
(iii) (c) stands repealed after four months if it is not passed by the National Assembly.
(iv) (a) the contract must be in writing.
(v) (d) when both the parties agree to the same thing in the same sense.
(vi) (c) parties knew at the time of making the contract that such damages are likely to result from the breach.
(vii) (d) closure of a mountain pass due to bad weather, causing traffic to take an alternative route, 100 miles longer.
(viii) (c) A and B are joint owners of a house. A transfers his share to B for Rs. 2 million.
(ix) (b) No, as this transaction is not the ordinary business of legal advisors.
(x) (c) Both (a) and (b)
(xi) (a) on the death of a partner his heir becomes a partner.
(xii) (b) renders it void as against any one who is a party thereto at the time of making such alteration and does not consent thereto.
(xiii) (b) all the partners except one, are adjudged insolvent.
(xiv) (b) ceases to pay his debts in the ordinary course of business.
(xv) (d) none of the above.

A.2 The differences between coercion and undue influence are as follows:

<table>
<thead>
<tr>
<th>Coercion</th>
<th>Undue Influence</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) The consent of the aggrieved party is</td>
<td>The consent of the aggrieved party is</td>
</tr>
<tr>
<td>obtained by committing or threatening to</td>
<td>affected from the domination of the will of one</td>
</tr>
<tr>
<td>commit an act forbidden by(Pakistan Penal</td>
<td>person over another.</td>
</tr>
<tr>
<td>Code) PPC or detaining or threatening to</td>
<td></td>
</tr>
<tr>
<td>detain some property unlawfully.</td>
<td></td>
</tr>
<tr>
<td>(ii) It involves the use of physical or</td>
<td>In undue influence, mental or moral influence is</td>
</tr>
<tr>
<td>violent force.</td>
<td>used to dominate the will of other.</td>
</tr>
<tr>
<td>(iii) There is no presumption of coercion by</td>
<td>There is presumption of undue influence in the case of</td>
</tr>
<tr>
<td>law under <strong>any</strong> circumstances. The burden</td>
<td>certain relationships. The burden of proof rests on</td>
</tr>
<tr>
<td>of proof rests on the aggrieved party.</td>
<td>the defendant.</td>
</tr>
<tr>
<td>(iv) In case of rescission, any benefit</td>
<td>The Court has discretion to direct the aggrieved</td>
</tr>
<tr>
<td>received by the aggrieved party has to be</td>
<td>party to restore the benefit whether in whole or in</td>
</tr>
<tr>
<td>restored to the other party.</td>
<td>part or set aside the contract without any direction</td>
</tr>
<tr>
<td>(v) The offending party exposes itself to</td>
<td>for refund of benefit.</td>
</tr>
<tr>
<td>criminal liability under PPC and also an</td>
<td></td>
</tr>
<tr>
<td>action under Contract Act, 1872.</td>
<td></td>
</tr>
</tbody>
</table>
A.3 Duties of the finder of lost goods are as follows:

(i) To put in reasonable efforts to find the true owner of the goods.
(ii) To take as much care of the goods as a person of ordinary prudence would under similar circumstances, take of his own goods of the same description.

Right of sale
When a thing which is commonly the subject of sale is lost, and the owner cannot be found with reasonable diligence, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may exercise his right of sale:

- when the thing is in danger of perishing or of losing the greater part of its value, or
- when the lawful charges of the finder, in respect of the thing found amount to two-thirds of its value or more.

A.4 (a) Reciprocal promises
Promises which form the consideration or part of the consideration (between the parties) for each other are called reciprocal promises.

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and

Where the order is not expressly fixed by the contract, they shall be performed in the order which the nature of transaction requires.

(b) In the given situation, the contract becomes voidable at the option of Imran and he is entitled to compensation from Yousef for any loss which he may sustain in consequence of the non-performance of the contract.

A.5 (a) Subject to contract between the partners,

(i) every partner has a right to take part in the conduct of the business;
(ii) every partner is bound to attend diligently to his duties in the conduct of the business;
(iii) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion before the matter is decided;
(iv) no change may be made in the nature of the business without the consent of all the partners;
(v) every partner has a right to have access to and to inspect and copy any of the books of the firm;
(vi) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him

- in the ordinary and proper conduct of the business, and
- in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

(b) Yaseen is entitled to the repayment of premium or of such part thereof as may be reasonable regard being had to the terms upon which he became a partner and to the length of time during which he was a partner. He will not be entitled to the repayment of premium if the dissolution of the firm was:

(i) By the death of a partner.
(ii) Mainly due to his own misconduct.
(iii) In pursuance of an agreement containing no provision for the return of the
A.6 (a) **Price**
Price means the money consideration for a sale of goods.

The price in a contract may be fixed:

(i) by the contract or
(ii) may be left to be fixed in a manner thereby agreed or
(iii) may be determined by the course of dealing between the parties.

If price is not determined in accordance with the above mentioned methods then the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

(b) Adeel may sue for refund of price already paid to Bilal and for damages for non-delivery. In the absence of a contract to the contrary the court may award interest at such rate as it thinks fit on the amount of the price from the date on which the payment was made.

(c) (i) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both are postponed. As such, in the given case the ownership of car passes to Jamal at the time of contract. Therefore Moin was not the owner of the car when he sold it to Usman.

(ii) When the seller continues to have the possession of the goods even after the sale and resells the same goods to a new buyer, the second buyer gets valid title to the goods. Usman gets a valid title to the car provided he buys it in good faith and without notice of the prior sale.

(iii) Since Usman has got valid title of the car, Jamal has no right against him. But because Moin failed to deliver the car, Jamal is entitled to claim damages from Moin.

---

**Section B**

A.7 (a) The following kinds of cases may be filed in civil courts:

(i) contract and tort claims
(ii) matters concerning trusts
(iii) matters concerning mortgages
(iv) matters concerning partnership dissolution
(v) disputes concerning property
(vi) matrimonial cases
(vii) custody of child
(viii) other family disputes such as inheritance.

(b) **Contract of indemnity**

A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a 'contract of indemnity'.

The liability of promisor (indemnifier) commences as soon as the liability of the indemnity holder to pay becomes absolute (clear and certain).
The indemnity-holder has the following rights against the vendor i.e., the indemnifier:

(i) He is entitled to recover all damages which he may be compelled to pay in respect of a suit to which the promise to indemnify applies.
(ii) He is entitled to recover costs reasonably incurred, in bringing or defending such suit, provided he acted prudently or with the authority of the promisor (indemnifier).
(iii) He is entitled to recover all sums which he may have paid under the terms of any compromise of such suit, provided the compromise was not contrary to the order of the indemnifier and was prudent or was authorized by the promisor (indemnifier).

A.8 A contract may be discharged in any of the following ways:

(i) by performance - actual or attempted.
(ii) by mutual consent or agreement.
(iii) by subsequent or supervening impossibility or illegality.
(iv) by lapse of time.
(v) by operation of law.
(vi) by breach of contract.

Following are the different situations in which a contract is discharged by mutual agreement:

Novation
Novation takes place when a new contract is substituted for an existing one.

Alteration
Alteration means change in one or more of the terms of a contract.

Rescission
Rescission means cancellation of the contract. A contract may be rescinded by agreement between the parties at any time before it is discharged by performance or some other way.

Waiver
Waiver takes place where the promisee gives up his rights to claim performance of the contract.

Remission
Remission means acceptance of lesser amount or lesser degree of performance than what was contracted for, in full discharge of the contract.

A.9 (a) The following are the exceptions to the rule that agreement in restraint of trade are void:

(i) Restraint on Existing Partners
   The Partnership agreement may provide that a partner shall not carry on any business other than that of the firm, while he is a partner.

(ii) Restraint on Outgoing Partners
   A partner may make an agreement with his partners that on ceasing to be a partner on retirement or upon dissolution, he will not carry on any business similar to that of the firm within a specified period or within specified limits; and the agreement shall be valid if the restrictions are reasonable.
(iii) **Restraint on Partner selling goodwill**
A partner may, upon the sale of the goodwill of a firm make an agreement that such partner will not carry on any business similar to that of the firm within specified period or specified local limits; and such agreement shall be valid if restrictions imposed are reasonable.

(b) In the absence of any agreement, D will be entitled to 1/4th of the profits and A, B and C will share the balance of the profits in the ratio of 4:3:2.

(c) **Partnership at will**: where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is “partnership at will”.

**Particular Partnership**: A person may become a partner with another person in particular adventures or undertakings. The partnership so formed will be called particular partnership.

A.10 Noting takes place when dishonour of an instrument is noted by a notary public upon the instrument or upon a paper attached thereto, or partly upon each on request by the holder of such instrument.

Such note must be made within reasonable time after dishonor and must specify the date of dishonor, the reason, if any, assigned for such dishonor, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured and the notary’s charges.

**Protesting** is the formal certificate of dishonour issued by the notary public to the holder of the bill or note, on his demand.

**Contents of protest**
The protest must contain the following particulars:

(i) the instrument itself or a literal transcript of the instrument and of everything written or printed thereupon;

(ii) the name of the person for whom and against whom the instrument has been protested;

(iii) a statement that payment or acceptance, or better security as the case may be, has been demanded of such person by the notary public, the terms of his answer, if any, or a statement that he gave no answer or that he could not be found

(iv) when the note or bill has been dishonoured, the place and time of dishonour and, when better security has been refused, the place and time of refusal;

(v) the signature of the notary public making the protest;

(vi) in the event of acceptance for honour or of a payment for honour, the name of the person by whom, and of the person for whom, and the manner in which such acceptance or payment was offered and effected.

A.11 (a) Under **Sale of Goods Act, 1930**, the following are the basic rules of delivery of goods:

(i) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied between the parties.

In the absence of any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or if not
then in existence, at the place at which they are manufactured or produced.

(ii) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(iii) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf.

(iv) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(v) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

(b) **Upset Price:**
Upset price or reserve price means the price below which the auctioneer refuses to sell or reserves to himself the option of buying. In this manner, the seller can protect himself against too low a bid by fixing a reserve price below which he will not sell.

A.12 (a) This article lays down the following duties of a carrier by sea:

(i) He shall be bound, before and at the beginning of the voyage, to exercise due diligence to:
   - Make the ship seaworthy.
   - Properly man, equip and supply the ship.
   - Make the hold, refrigerating and cool chambers, and all other parts of the ship in which the goods are carried, fit and safe for their reception, carriage and preservation.

(ii) He shall properly load, handle, stow, carry, keep, care for and discharge the goods carried.

(iii) He shall after receiving the goods into his charge, on demand of the shipper, issue to the shipper, a bill of lading showing the prescribed particulars.

(b) In the absence of an express declaration to the contrary in the instrument of trust, a trustee is liable:

(i) where he has delivered trust-property to his co-trustee without ensuring its proper application.

(ii) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee’s dealings therewith or allows him to retain it longer than the circumstances of the case reasonably require.

(iii) where he becomes aware of a breach of trust committed or intended by his co-trustee and either actively conceals it, or does not within a reasonable time take proper steps to protect the beneficiary’s interest.

THE END
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS’ COMMENTS

SUBJECT
Mercantile Law

SESSION
Foundation Examination – Spring 2013

General:

An improved performance was witnessed in this attempt as 40.80% students were able to pass. A post result analysis revealed that far better performance was witnessed from those students who were appearing in their 5th or 6th attempts as they were forced with disqualification after the 6th attempt. It was a clear indication of the fact that if candidates study with hard work and dedication, they can achieve good results.

Question-wise comments are as follows:

Question 1

This was a multiple choice question having 15 marks. It was generally performed well, but still about 25% students were not able to secure passing marks. In this question, many students wasted their valuable time by unnecessarily repeating the entire text of the answer, although it was enough to mention only the correct alphabet of their choice. Few students listed the MCQs in random order which should be avoided.

Question 2

In this question students were required to explain the difference between coercion and undue influence. Though overall performance in this question was good, many students failed to make a comparison and instead simply wrote the definitions of the two terms.

Question 3

This was again a straightforward question from Contract Act, 1872. The first requirement i.e. the duties of the finder of lost goods was well attempted by almost all the students. However, the students failed to mention all conditions where a finder of goods can sell the goods.

Question 4 (a)

In this part, students were required to explain the term reciprocal promises and describe the order of performance of such promises. An average performance was seen here. About 50% of the students did not know as to what reciprocal promises were. Most such students resorted to guess work and gave replies such as “Reciprocal promises are similar promises made by each other”. Even worse performance was seen while explaining the order of performance as only about 25% of the candidates gave correct answers. Many students ignored this altogether.
Examiners’ Comments on Mercantile Law Spring 2013

Question 4 (b)

This question pertained to a simple scenario in which the students were required to discuss the right of a promisor who was unable to perform his promise because of an act of the promisee. Most of the students only mentioned about the compensation and damages that the promisor could claim. Very few could specify that the contract was voidable at the option of the promisor.

Question 5 (a)

This part was based on section 12 and 13 of the Partnership Act, 1932. Majority of the students did not understand the question and tried to explain the general rights and duties of partners instead of their rights as regards the conduct of business.

Question 5 (b)

In this part, right to claim refund of premium paid by a partner (Yaseen) at the time of admission as a partner was to be discussed, in case where the firm was subsequently dissolved. The performance was reasonable as majority could secure passing marks. However, a significant number of students did not mention the circumstances under which the premium is not refundable. Many students explained the distribution of assets on dissolution, which was not relevant.

Question 6 (a)

This part was based on Sections 2 and 9 of the Sale of Goods Act, 1930. Most of the students described ‘Price’ correctly. However, as regards the ascertainment of price, most of them only mentioned fixation of price by the contract. The other two methods allowed under Section 9 were rarely mentioned.

Question 6 (b)

Candidates were given a situation where they were asked to mention the remedies available to the buyer on non-delivery of goods, for which payment has been made by the buyer in advance. Most of the students rightly discussed the right to refund of amount paid alongwith damages. However, only few students knew that in such a case, the court may also award interest on the amount of advance paid by the buyer.

Question 6 (c)

In this part, a situation was given where a car had been sold but it had been agreed between the buyer and the seller that the delivery and payment would be made after a week. Later, the seller sold and delivered the car to another person.

A significant number of students did not know that where the goods are in deliverable state and the sale is unconditional as was the case in the given scenario, the title passes at the time of contract and hence the title had already passed to the first buyer when the car was sold to the next buyer. Further, very few candidates knew about another interesting aspect of the situation i.e. that since the second buyer purchased the car in good faith, he would get a valid title although the title had already passed to the first buyer. The remedy available to the first buyer would be to claim damages from the seller.
Examiners’ Comments on Mercantile Law Spring 2013

Question 7 (a)

In this part, the candidates were simply asked to mention six types of cases that are referred to the Civil Courts. In vast majority of cases, the candidates could not differentiate between civil and criminal disputes. Vague statements were mostly given, whereas many students tried unsuccessfully, to guess the answer as they listed the names of the statutes that are included in the syllabus.

Question 7 (b)

This part of the question had three different requirements based on Sections 124 and 125 of the Contract Act, 1872. Most of the students correctly defined ‘indemnity contract’ but very few could specify as to when the liability of the guarantor commences. While discussing the types of damages and cost that the indemnity holder is entitled to recover, many students wrote a few correct points based on their logical reasoning rather than a proper understanding of the law. Some candidates were not even sure about the term ‘indemnity holder’ and considered it to be the guarantor.

Question 8

The requirement of this question was to list the various ways in which a contract can be discharged and to briefly describe the different situations whereby a contract is discharged by mutual agreement. Candidates generally availed this opportunity and scored very good marks. Many among them scored full marks. Common mistakes were mostly observed in describing the ways of discharge by mutual agreement as follows:

- Candidates were confused as between discharge by Novation and Alteration. Few wrote similar explanation in both cases.
- Remission was in most cases defined incorrectly.
- Many candidates chose to omit the description part.

Question 9 (a)

Candidates were asked to mention the exceptions to the rule that agreements in restraint of trade are void. A mixed response was seen as almost all students produced many correct points but very few could give a complete answer. Most of the students omitted the situation where a partner selling goodwill is lawfully restrained from carrying on the same business.

Question 9 (b)

The question was based on an interesting situation i.e. where three partners who were sharing profits and losses in the ratios of 4:3:2 had agreed to admit another partner. The candidates were required to work out the revised profit or loss sharing ratio in the absence of any other information in this regard. The question was based on Section 17(a) of the Partnership Act, 1932. It was not answered well as majority of the students stated that in the absence of any agreement all the partners will share the profits equally or according to capital invested, both of which were incorrect.
Examiners' Comments on Mercantile Law Spring 2013

Question 9 (c)

This part was correctly attempted by almost all the students and a significant majority scored full marks. However, most of the students gave lengthy explanations despite the fact that it was merely a 2 mark question.

Question 10

This question was based on Sections 99, 100 and 101 of the Negotiable Instruments Act, 1881. It was the least favourite question among the students and only about 10% attempted it. Overall performance in this question was below average as the students could generally explain the term noting and protesting but failed to mention their contents.

Question 11(a)

The candidates were asked to state the basic rules of delivery of goods in a contract of sale of goods, as have been specified in Section 36 of the Sale of Goods Act, 1930. An average performance was witnessed as generally the candidates mentioned few of the points but only few could give a complete answer. Generally the students were unable to specify as to whose responsibility would be to ensure/take delivery if nothing in this regard is stated in the Contract [Section 36(1)]. Many candidates expressed the term ‘expenses of and incidental to putting goods in deliverable state’ as ‘selling expenses’.

Question 11(b)

Very poor and unexpected performance was witnessed in this part of the question as a significant number of candidates were of the view that ‘upset price’ is the price at which the bid starts.

Question 12(a)

A straightforward question based on Article III of the Carriage of Goods Act, 1925, but majority of the students failed to capitalize on this opportunity because of the following mistakes:

- Most of the candidates gave incomplete answers as they could not mention all the points and included incorrect points also.
- Contents of a Bill of Lading were written which were not relevant.
- Many candidates incorrectly stated that it is the duty of the Carrier not to deviate from the prescribed route.

Question 12(b)

Candidates were asked to describe the circumstances under which a trustee is liable for the breach of trust committed by a co-trustee. The question was based on Section 26 of the Trust Act, 1881. It appears that students did not read the question properly and most of them mentioned the situations relating to breaches jointly committed by the trustees.

THE END
Mercantile Law

Instructions to candidates:
(i) All the Questions from Section A are compulsory.
(ii) Attempt any FOUR out of SIX Questions from Section B.

Section A

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

(i) Which of the following is NOT a Private Law?
   (a) Law of tort.  (b) Law of agency.
   (c) Company law.  (d) Administrative law.

(ii) Which of the following is a type of prerogative order?
   (a) Habeas corpus.  (b) Certiorari.
   (c) Stare decisis.  (d) Obiter dicta.

(iii) Fraud means:
   (a) the suggestion, as a fact of that which is not true, by one who believes it to be true.
   (b) silence of a person as to facts likely to affect the willingness of another to enter into a contract.
   (c) a promise made without any intention of performing it.
   (d) any act fitted to deceive where aggrieved party had the means of discovering the truth with ordinary diligence.

(iv) Rao promises to deliver 50 bags of sugar to Bilal on 30 August 2013 on payment of a price of Rs. 82,000. Rao dies before that date.
   (a) The contract stands discharged on Rao's death.
   (b) The contract cannot be enforced either by Rao's representatives or by Bilal.
   (c) Rao's representatives are bound to deliver 50 bags of sugar to Bilal.
   (d) Bilal cannot enforce the contract as it was only a promise.

(v) Sami, Asif and Zain give guarantees to Wali for the repayment of a loan taken by Danish from Wali. In the event of Danish's default, Sami, Asif and Zain agree to make payment of the amount of the loan to the extent Rs. 5,000, Rs. 8,000 and Rs. 12,000 respectively. Danish commits default to the extent of Rs. 15,000.
   (a) All the three sureties are liable to pay Rs. 5,000 each.
   (b) Sami is liable for Rs. 3,000, Asif for Rs. 4,800 and Zain for Rs. 7,200.
   (c) Sami is liable for Rs. 5,000, Asif for 8,000 and Zain for Rs. 2,000.
   (d) Sami and Asif are liable for Rs. 1,500 each and Zain is liable for Rs. 12,000.

(vi) An outgoing partner, subject to a contract to the contrary, may:
   (a) not carry on a business competing with that of the firm.
   (b) not use the firm name.
   (c) not be entitled to share subsequent profits on his unsettled accounts.
   (d) all of the above.
(vii) Murad paid a premium of Rs. 25,000 on entry into a partnership firm for a fixed term. The firm was dissolved before the expiry of that term. Murad shall NOT be entitled to return of the premium, if:
(a) the firm was dissolved by the adjudication of a partner as insolvent.
(b) the firm was dissolved by the Court.
(c) the firm was dissolved by the happening of any event which made it unlawful to carry on the business of the firm.
(d) the firm was dissolved mainly due to Murad's own misconduct.

(viii) Which of the following is NOT the duty of the buyer?
(a) To reject delivery of goods by installment.
(b) To apply for the delivery of goods.
(c) To return the goods to the seller on its rejection by him.
(d) To intimate seller of his rejection of goods.

(ix) Prestigious Jewelers wrote a letter to Qasim stating, "We have received an exceptionally fine necklace which we will sell to you at a very favourable price."
(a) The letter is an offer to sell.
(b) The letter lacks the essential element of an offer.
(c) The letter contains a valid offer which will terminate within a reasonable time.
(d) An offer made by a letter must be accepted by a letter.

(x) Nasir is a holder in due course of a cheque issued by Arif. Which of the following defenses would permit Arif to avoid paying Nasir for the cheque?
(a) Discharge in bankruptcy proceedings.
(b) Breach of warranty.
(c) Unlawful consideration.
(d) Fraud in inducement.

(xi) Which of the following is a bailment situation?
(a) A conditional sale of goods.
(b) Money deposited in a bank account.
(c) A car parked and locked in a self service parking lot and keys kept by the driver.
(d) Property held by a lender as collateral.

(xii) Which of the following statements is incorrect?
(a) A trustee is bound to keep clear and accurate accounts of the trust property.
(b) A trustee is not liable for the acts of his predecessor.
(c) A trustee can delegate his office in the regular course of business.
(d) A trustee committing a breach of trust is not liable to pay interest where he may be fairly presumed to have received it.

(xiii) Which of the following is a common law remedy?
(a) Injunctions.
(b) Specific performance.
(c) Damages.
(d) Rectification.

(xiv) Aslam directs Hadi, his solicitor, to sell his property by auction and to employ an auctioneer for the purpose. Hadi appoints Munaf, an auctioneer, to conduct the sale. Munaf in this case is a:
(a) sub-agent.
(b) co-agent.
(c) pretended agent.
(d) none of the above.

(xv) Which of the following statements is NOT true?
A bill of lading:
(a) is the guarantee for delivery of goods.
(b) in a strict legal sense, is not a negotiable instrument.
(c) is an acknowledgement of the receipt of the goods on board the ship.
(d) is a document of title to the goods.
Q.2 List the circumstances in which a precedent will not be binding on the Court.

Q.3 (a) What is a contract of guarantee as described in the Contract Act, 1872? What may be regarded as a sufficient consideration for surety under such a contract?

(b) Yawar lends his van to his friend Moid for picnic. The van broke down en-route from Islamabad to Murree due to a fault in axle, injuring Moid. Discuss the rights of Moid under the provisions of Contract Act, 1872. What would be Yawar’s responsibility had Moid acquired the van on hire?

Q.4 (a) No suit can be instituted in any Court on behalf of a firm unless the firm is registered. In the light of the provisions of Partnership Act, 1932 narrate the procedure the partners of a firm should follow for its registration.

(b) Atif, Raja and Nazir are partners in Buland Associates. Atif without informing Raja and Nazir sold one of Buland Associates prime property to his friend Tariq and embezzled the money received in consideration. In the light of the provisions of Partnership Act, 1932 advise the rights available to Raja and Nazir under the circumstances.

Q.5 List the situations in which a seller of goods may be regarded as an unpaid seller. Briefly describe the rights of an unpaid seller of goods as specified in the Sale of Goods Act, 1930.

Q.6 What is meant by “Carrier” and “Carriage of Goods” under the Carriage of Goods by Sea Act, 1925? List the implied warranties in a contract for the carriage of goods by sea.

Section B

Q.7 Marvi, Zahid and Ahmed were partners in a firm of Consultants. Marvi, without informing Zahid and Ahmed started her own business of fashion garments. Zahid and Ahmed on knowing the fact expelled Marvi from the partnership.

Under the provisions of Partnership Act, 1932 briefly describe whether Zahid and Ahmed were justified in their act. Would Marvi be liable for the acts of partners or the firm after her expulsion from the partnership?

Q.8 (a) In view of the provisions of Contract Act, 1872 explain the general rule “Agreement in restraint of legal proceedings is void”. State the exceptions to the above rule.

(b) Bari, a cashier in a departmental store, embezzled cash from the store. Mohsin, the owner of the store, instituted proceedings against Bari. Bari agreed to return the cash and Mohsin agreed to drop the proceedings against him. Bari fulfilled his part of the promise. Explain whether Mohsin is bound under the provisions of Contract Act, 1872 to withdraw the case against Bari.

Q.9 (a) What do you understand by the term “Cheque” as specified in the Negotiable Instruments Act, 1881? When is a cheque deemed to be crossed generally?
(b) State the conditions when a cheque crossed generally is considered to be paid by a banker in due course or out of due course. Describe the rights of the banker when payment of a cheque crossed generally is made in due course and the consequences of payment out of due course under the Negotiable Instruments Act, 1881.

Q.10 (a) Narrate the conditions implied in a contract for sale of goods by sample according to the provisions of Sale of Goods Act, 1930.

(b) Monzer purchased a second hand mobile phone from Tariq, a shopkeeper, for Rs. 5,000. Monzer spent Rs. 1,000 on its repair and used it for some time. Both Monzer and Tariq were not aware of the fact that the mobile phone was in fact snatched by a robber from Monzer’s friend and was sold to Tariq. Monzer was forced to return the mobile to his friend.

Describe the remedies available to Monzer under the Sale of Goods Act, 1930.

(c) Ravi, Mazen and Sonu jointly owned a machine which they plied for hire. Ravi and Mazen entrusted the responsibility of caring of the machine to Sonu and left the possession of the machine with him. Sonu sold the machine to Nidal who bought it in good faith for value.

Under the provisions of Sale of Goods Act, 1930 explain whether Nidal can be treated as one of the co-owners with Ravi, Mazen and Sonu.

Q.11 List how and by whom may an agency be terminated. Also describe the circumstances in which an agency cannot be terminated by the principal under the Contract Act, 1872.

Q.12 (a) Narrate the circumstances under which a beneficiary may institute a suit for the execution of the trust under the Trusts Act, 1882.

(b) Mr. Wali is a beneficiary of Sukoon Welfare Trust. Mr. Babar, who is a trustee, has wrongfully purchased the trust property.

Explain the rights of Mr. Wali under the circumstances as provided in the Trusts Act, 1882.

THE END
Section A

Ans. 1
(i) (d) Administrative law.
(ii) (b) Certiorari.
(iii) (c) a promise made without any intention of performing it.
(iv) (c) Rao’s representatives are bound to deliver 50 bags of sugar to Bilal.
(v) (a) all the three sureties are liable to pay Rs. 5,000 each.
(vi) (b) not use the firm name.
(vii) (d) the firm was dissolved mainly due to his own misconduct.
(viii) (c) to return the goods to the seller on its rejection by him.
(ix) (b) the letter lacks the essential element of an offer.
(x) (a) discharge in bankruptcy proceedings.
(xi) (d) property held by a lender as collateral.
(xii) (d) A trustee committing a breach of trust is not liable to pay interest where he may be fairly presumed to have received it.
(xiii) (c) damages.
(xiv) (b) co-agent.
(xv) (a) is the guarantee for delivery of goods.

Ans. 2
Precedent not binding on the Court:
In the following situations a precedent will not be binding.

(i) When a precedent has been overruled by a higher court and the law for future cases has changed.
(ii) When a precedent has been overruled by a statute i.e. by an Act or National Assembly which is the highest law making authority.
(iii) When a precedent was made per incuriam i.e. through lack of knowledge.
(iv) When the facts of the case are materially distinguished from the facts of the previous case which created precedent.
(v) When ratio decidendi is obscure and cannot be clearly identified.

Ans. 3
(a) Contract of guarantee
A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the “surety”; the person in respect of whose default the guarantee is given is called the “principal debtor”, and the person to whom the guarantee is given is called the “creditor”. A guarantee may either be oral or written.

Consideration of guarantee
Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

(b) Bailor’s duty to disclose faults in goods bailed:
Moid has a right to claim damages arising to him directly from the fault in axle only if Yawar was aware of such fault in the axle which materially interfered with the use of van and exposed Moid to extraordinary risks as Yawar was bound to disclose such fault to Moid.

If the van was given on hire:
In case the van was hired, Yawar would be responsible for such injury to Moid, whether he was or was not aware of the existence of such fault in the van.
Ans. 4  
(a) **Procedure for registration of a firm:**
The registration is obtained by filing an application on a prescribed form accompanied by the prescribed fee and filing the same with the Registrar of the Firms of the area in which any place of business of the firm is situated or proposed to be situated. This application can be sent by post also. The application for registration should contain the following particulars:

(i) Name of the firm,
(ii) Place or principal place of business of the firm,
(iii) Names of any other places where the firm carries on business,
(iv) Date when each partner joined the firm,
(v) Names in full and permanent addresses of the partners, and
(vi) Duration of the firm.

The statement should be signed and verified in the prescribed manner by all the partners, or by their agents specially authorized in this behalf.

(b) Like any other contract a contract of partnership may be rescinded on the ground of fraud or misrepresentation. Therefore, Raja and Nazir who were defrauded by Atif have the right to rescind the partnership contract and are entitled to the following rights, without prejudice to any other right:

(i) to a lien on, or a right of retention of,
   - the surplus or
   - the assets of the firm remaining after the debts of the firm have been paid,
   - for any sum paid by them for the purchase of a share in the firm; and
   - for any capital contributed by them;

(ii) to rank as a creditor of the firm in respect of any payment made by them towards the debts of the firm; and
(iii) to be indemnified by Atif who is guilty of fraud or misrepresentation against all the debts of the firm.

Ans. 5  
**Unpaid seller:**
The seller of goods is deemed to be an unpaid seller, when:

- The whole of the price has not been paid or tendered.
- A bill of exchange or other negotiable instrument has been received as conditional payment, and it has been dishonoured.

**Rights of an unpaid seller of goods (against the goods):**

(i) Subject to the provisions of Sale of Goods Act and of any law for the time being in force, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such, by implication of law has the following rights:

- a lien on the goods for the price while he is in possession of them;
- in case of the insolvency of the buyer a right of stopping the goods in transit after he has parted with the possession of them;
- a right of re-sale as limited by the act.
(ii) Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

Rights of an unpaid seller of goods (against the buyer):
The unpaid seller has the following rights against the buyer personally;

- Where the property in the goods has passed to the buyer, the seller can sue for the price. Where property in the goods has not passed to the buyer and price is payable on a certain day irrespective of delivery, the seller may sue for the price.
- Where the buyer wrongfully neglects or refuses to pay for the goods, the unpaid seller has the right to sue the buyer for damages.
- The unpaid seller has the right to recover interest or special damages in any case where by law interest or special damages may be recoverable.

Ans.6 (i) Carrier includes the owner or the charterer who enters into a contract of carriage with a shipper.
(ii) Carriage of goods covers the period from the time when the goods are loaded on the ship to the time when they are discharged from the ship.

Warranties implied in a contract for the carriage of goods by sea.
(i) The ship is seaworthy and reasonably fit to encounter the “perils of the sea.”
(ii) The ship shall be ready to commence the voyage and shall carry out the same with all reasonable dispatch and diligence.
(iii) The ship shall carry out the voyage in the usual and customary manner and shall not deviate from the prescribed or usual course.
(iv) The shipper shall not ship dangerous or unauthorized goods.

Section B

Ans.7 Expulsion of a partner:
Marvi cannot be expelled from the firm by Zahid and Ahmed except if the following conditions are fulfilled:

(i) the power of expulsion has been expressly provided in the partnership deed;
(ii) the power has been exercised by all the partners whose concurrence must be necessary under the agreement;
(iii) the power has been exercised in absolute good faith.

Liability of Marvi after expulsion from partnership:
So far as the liability is concerned, Marvi would be treated as if she were a retired partner.

Marvi may be discharged from any liability to any third party for the acts of the firm done before her retirement if,

(i) Zahid and Ahmed agree with Marvi to release her from the existing debts and liabilities; and
(ii) the third party is informed of Marvi’s expulsion and the new arrangement and such third party has expressly or impliedly agreed to release Marvi and accept the reconstituted firm as their debtor.
Marvi will not be liable for any act of the firm done after her expulsion if a public notice of expulsion is given either by Marvi herself or by Zahid or Ahmed of the reconstituted firm.

If a public notice is not given Marvi and the partners will continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the expulsion.

**Ans.8**

(a) **Agreement in restraint of legal proceedings is void:**
Every agreement, by which any party thereto is restricted absolutely from enforcing his right under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

**Exception 1: Saving of contract to refer to arbitration dispute that may arise**
A contract shall not be rendered illegal by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

**Exception 2: Savings of contract to refer questions that have already arisen**
Similarly any contract in writing, shall not be rendered illegal, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

(b) The agreement between Mohsin and Bari is void as its object is unlawful. Mohsin, therefore, is not bound to fulfill his part of the promise.

**Ans.9**

(a) **Cheque:**
A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.

**General crossing:**
A cheque is said to be crossed generally when it bears across its face an addition of:-
(i) the words “and company” or any abbreviation thereof, between two parallel transverse lines, either with or without the words “not negotiable”;
(ii) two parallel transverse lines simply, either with or without the words “not negotiable”.

(b) **Payment in due course of a cheque crossed generally:**
In order that payment of a cheque crossed generally may be considered a payment in due course it is necessary that the banker on whom it is drawn should pay it in good faith without negligence to a banker.

**Consequences of payment of a cheque, crossed generally, in due course:**
If a banker pays a cheque crossed generally in due course, he can debit his customer, the drawer, with the amount so paid even though the amount of the cheque does not reach the true owner and is entitled to and be placed in the same position in all respects as if the amount of the cheque had been paid to and received by the true owner thereof.
Payment out of due course of a cheque crossed generally:
If a banker pays a cheque crossed generally otherwise than to a banker, in contravention of the direction of the cheque, is said to have paid it out of due course.

Consequences of payment of a cheque, crossed generally, out of due course:
If a banker pays a cheque crossed generally in contravention of the direction of the crossing he is liable to compensate the true owner of the cheque for any loss sustained by him owing to the cheque having been so paid.

Ans.10 (a) **Implied conditions in a contract for sale of goods by sample**
Following are the conditions implied in a contract for sale of goods by sample:

- that the bulk shall correspond with the sample in quality;
- that the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

(b) **Remedies available to Monzer:**

**Warranty as to quiet possession:**
In every contract of sale, unless contrary intention appears, there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

If the possession or use of goods by the buyer is disturbed by a person having superior rights than that of seller, the buyer may hold the seller responsible for the breach of warranty.

Therefore, in this case, Monzer is entitled to recover the cost of mobile and the amount spent on its repair from Tariq on account of breach of warranty.

(c) **Sale by one of joint owners:**
Sonu was in sole possession of the machine with the permission of the co-owners. Nidal bought the machine from Sonu in good faith and without notice of fact that Sonu has no authority to sell. Therefore, Nidal has obtained a good title to the machine. He is the sole-owner and not a co-owner.

Ans.11 **Termination of agency:**

An agency is terminated by:
(i) agreement between the parties
(ii) the principal revoking his authority; or
(iii) the agent renouncing the business of the agency; or
(iv) the business of the agency being completed; or
(v) either the death of the principal or agent or them becoming of unsound mind; or
(vi) the efflux of time if created for a fixed time; or
(vii) the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.
(viii) the destruction of the subject matter for which an agency was created.
(ix) the happening of a subsequent event rendering the agency unlawful; or
(x) dissolution of a company.
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Autumn 2013

Reasonable notice must be given of such termination by the person terminating the agency.

The termination may be expressed or may be implied in the conduct of the principal or agent respectively.

Agency cannot be terminated:

An agency cannot be terminated by the principal under the following circumstances:

(i) Where an agent has himself an interest in the property forming subject matter of the agency OR the agency is coupled with interest.
(ii) Where the agent has partly exercised the authority so far as regards such acts and obligations as arise from acts already done in the agency.
(iii) Where an agent has incurred a personal liability, the agency becomes irrevocable.

Ans.12 (a) Circumstances under which a beneficiary may institute a suit for the execution of the trust under the Trust Act, 1882.

The beneficiary may institute a suit for the execution of the trust where:

(i) no trustees are appointed, or
(ii) all the trustees die,
(iii) all the trustees disclaim, or
(iv) all the trustees are discharged, or
(v) for any other reason, the execution of a trust by the trustees is or becomes impracticable

(b) Wrongful purchase by trustee

Where a trustee has wrongfully purchased trust property, the beneficiary has a right to:

(i) have the property declared subject to trust, or
(ii) have it retransferred by the trustee, if it remains in his hands unsold, or
(iii) have it retransferred by the person who bought the property from the trustee and who had a notice of the trust
(iv) deduct a proportionate part of the purchase money, while returning the purchase money with interest to the trustee, if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

(THE END)
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS’ COMMENTS

<table>
<thead>
<tr>
<th>SUBJECT</th>
<th>SESSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mercantile Law</td>
<td>Foundation Examination – Autumn 2013</td>
</tr>
</tbody>
</table>

General Comments:

The paper consisted of twelve questions. The first six questions in section A were compulsory whereas the candidates were required to answer any four questions out of six from section B. Overall it was a balanced paper; however, the performance remained far below the general level of expectation. Candidates seemed not to be adequately prepared for the examination as answers to most of the questions were out of context showing lack of knowledge and understanding. The candidates are advised to carefully read the question and figure out its requirements before attempting to answer it. Candidates who write lengthy answers are under the wrong impression that they would secure better marks. They must appreciate that providing unnecessary details results in sheer wastage of time. Candidates are advised to be specific. They should also study from Bare Acts which is the primary source containing variety of practical examples as well. Other books and notes may also be consulted to supplement the knowledge gained from Bare Acts. They should also refrain from answering the questions on the basis of general knowledge and perception instead of the specific knowledge of law.

Specific comments are as under:

Question 1

This question with a potential 15 marks was based on MCQs. Each MCQ carried one mark. Candidates generally performed well in this question; however, about 50% of the candidates were unable to secure passing marks. Many candidates wasted their time by unnecessarily repeating the entire text of the answer, as writing down the alphabet of the correct choice was enough.

Question 2

This question with a potential 05 marks invited candidates to list the circumstances in which the precedent will not be binding on the Court.

The performance on this question was not satisfactory. Very few candidates were able to state all the conditions where the precedent is not binding on the Court. Most of the candidates ended up defining what a precedent is. Others, on the contrary, tried to explain the conditions when precedent is binding on the Court.

Question 3

This question with a potential 10 marks was divided into two parts. Part (a) required candidates to describe the contract of guarantee and specify as to what may be regarded as consideration of surety under such a contract. Part (b) was a scenario based question. It required candidates to describe the rights of bailee under gratuitous bailment and the responsibilities of bailor in case of a non-gratuitous bailment.
Question 3 (a)

Majority of the candidates were unable to produce satisfactory answers. Many candidates though explained contract of guarantee but failed to mention the parties involved in such a contract. They also failed to appreciate what may be regarded as a sufficient consideration for the surety and thought that the consideration for the surety is the amount received by him from the principal debtor after his default.

Question 3 (b)

The performance in this part was also not up to the mark. A large majority of the candidates were unable to describe the responsibility of bailor in case of non-gratuitous bailment whereas many candidates deliberated on the rights of bailor instead of a bailee in case of gratuitous bailment.

Question 4

This question with a potential 16 marks was divided into two parts. Part (a) invited candidates to narrate the procedure the partners may follow for the registration of the firm. Part (b) consisted of a scenario which required candidates to advise two of the partners Raja and Nazir about their rights under the given circumstances.

Question 4 (a)

Candidates’ performance in this part was not satisfactory. Only few candidates were able to describe the complete procedure for the registration of firms as envisaged in section 58 of the Partnership Act, 1932. Many candidates instead of writing the particulars which are required to be included in the application for registration wrote about the contents of a partnership deed. Similarly some candidates wasted considerable amount of time by unnecessarily deliberating on the disadvantages of non-registration of firms.

Question 4 (b)

The performance in this part was disappointing. Majority of the candidates were not aware that Raja and Nazir may rescind the partnership contract on the grounds of fraud or misrepresentation. Candidates were also unable to describe the rights available to Raja and Nazir under section 52 of the Partnership Act, 1932. Most of the candidates just wrote that Raja and Nazir are entitled to get back the property and claim damages from Atif. They did not seem to know the fact that besides other rights, Raja and Nazir were entitled to be indemnified by Atif against all the debts of the firm.

Question 5

This question with a potential 08 marks required candidates to list the situations in which a seller of goods may be regarded as an unpaid seller and to briefly describe the rights of an unpaid seller of goods.

Although it was a very basic and simple question but unfortunately performance in this question remained average. Many candidates just wrote that the seller who has either wholly or partly not been paid is regarded as an unpaid seller. On the other hand, most of the candidates described at length when the rights of lien, stoppage in transit and resale can be exercised and when these rights would be terminated without realizing that these details were not required.
Question 6

This question with a potential 06 marks invited candidates to define ‘Carrier’ and ‘Carriage of Goods’ and list the implied warranties in a contract of carriage of goods by sea.

Again the candidates’ performance was average. Most of the candidates failed to properly define Carrier. Many of them wrote that a captain or master of the ship is called a carrier. Similarly, majority of the candidates quoted the ordinary dictionary meanings of Carriage of goods whereas in the Act, it has been defined quite differently. Many candidates, contrary to the requirement of the question which was only to name the implied warranties in a contract of carriage of goods by sea, described the implied warranties in detail which added no value as far as marks obtained are concerned.

Question 7

This question with a potential 10 marks required the candidates to deliberate on the provisions of section 33 relating to expulsion of a partner from the firm.

It was among one of the worst attempted questions in the paper. Majority of the candidates without comprehending the requirements of section 33 of the Partnership Act, 1932 incorrectly stated that a partner cannot be expelled from the firm on carrying on a non-competing business. Even those who knew that Marvi could be expelled from the partnership after fulfillment of certain conditions, failed to elucidate whether Marvi would be liable for the acts of partners or the firm after her expulsion from the partnership or not.

Question 8

This question with a potential 10 marks was divided into two parts. Part (a) invited candidates to explain the general rule ‘Agreement in restraint of legal proceedings is void’ and state the exceptions to this rule. Part (b) was based on a situation whereby a person named Mohsin had filed a suit against his cashier named Bari because Bari had committed a fraud. Mohsin agreed to withdraw the suit if Bari returned the cash. The candidates were required to discuss whether Mohsin was under obligation to withdraw the suit after Bari had returned the cash.

Question 8 (a)

The performance in this part was very poor. Majority of the candidates produced incomplete answers. They either failed to explain the rule or failed to state the exceptions to the rule. Few candidates, without understanding the requirement of the question, explained agreements in restraint of trade.

Question 8 (b)

The performance in this part remained average as most of the candidates rightly acknowledged that agreement between Mohsin and Bari is void but majority among them, failed to state the reason to support their decision.
Question 9

This question with a potential 10 marks was divided into two parts. Part (a) required candidates to explain the term ‘Cheque’ and state when a cheque is deemed to be crossed generally. Part (b) was related to the payment of a generally crossed cheque in due course and out of due course. Candidates were also required to describe the rights of a banker when a cheque crossed generally is paid in due course and consequences of payment of such a cheque out of due course.

Question 9 (a)

The performance in this question remained average. Majority of the candidates correctly defined “Cheque” but failed to properly explain the general crossing of the cheque. Many candidates also elaborated on the types of crossing instead of general crossing.

Question 9 (b)

The performance in this question was disappointing. Candidates could not figure out the difference between payment in due course and out of due course and consequently failed to appreciate the rights of a banker making payment of a cheque crossed generally in due course and consequences of payment of such a cheque out of due course. The main reason for such a failure seems to be selective study.

Question 10

This question with a potential 10 marks was divided into three parts. Part (a) with 04 marks required candidates to narrate the conditions implied in a contract for sale of goods by sample. Part (b) and (c) with 03 marks each were scenario based questions. Part (b) was related to one of the implied warranty that ‘the buyer shall have and enjoy quiet possession of the goods’. Candidates were required to describe the remedies available to Monzer, the buyer of a stolen mobile phone, under the provisions of section 14(b) of the Sale of Goods Act, 1930. Part (c) of the question was related to a situation where a machine jointly owned by three persons Ravi, Mazen and Sohu was sold by Sohu to another person, Nidal, without informing other co-owners. Candidates were required to explain whether Nidal was to be treated as one of the co-owners under such a sale.

Question 10 (a)

It was a simple and straightforward question and candidates’ performance in this question was satisfactory. However, few candidates wasted considerable amount of time in describing all the implied conditions in a contract of sale instead of restricting themselves to sale by sample.

Question 10 (b)

The performance in this question was disappointing. Majority of the candidates could not figure out the implied warranty on which the scenario was based and wrongly took it either as a case of ‘goods with a charge or encumbrance’ or the case of ‘sale by non-owner’.
Examiners’ Comments on Mercantile Law Autumn 2013

Question 10 (c)

This question was based on Section 28 of Sale of Goods Act (Sale by one of the joint owners) but most of the students answered it with reference to Section 27 (sale by person other than the owner). Many students considered the machine a divisible item and stated that a joint owner can sell his part of the machine.

Question 11

This question with a potential 10 marks required candidates to list how and by whom an agency may be terminated and also to describe the circumstances under which an agency cannot be terminated by the principal.

The candidates’ performance in this question was satisfactory. However, only few candidates were able to specify that a reasonable notice is to be given of such termination by the person terminating the agency and that the termination may be expressed or may be implied by the conduct of the principal or agent respectively. Some candidates also discussed the liabilities of principal and agents in case of wrongful termination of an agency, which was not required at all.

Question 12

This question with a potential 10 marks was based on Trust Act, 1882 and divided into two parts. Part (a) required candidates to narrate the circumstances under which a beneficiary may institute a suit for the execution of the trust. Part (b) was related to beneficiary’s rights in case of wrongful purchase of a trust property by the trustee.

Question 12 (a)

The candidates who attempted this optional question exhibited very poor performance. Most of them did not seem to have any clue and produced varied answers based on their perceptions instead of narrating the circumstances as mentioned in Section 59 of the Trust Act.

Question 12 (b)

The case was based on Section 62 of the Trust Act. Most of the students answered it with reference to Section 63 to 67.

(THE END)
The Institute of Chartered Accountants of Pakistan

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.

Section A

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:
   (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:
   (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:
   (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?
   (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:
   (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:
(a) by communication of notice of revocation by the proposer to the other party.
(b) by the lapse of time prescribed for its acceptance.
(c) by the failure of the acceptor to fulfill a condition.
(d) all of the above.

(ix) Which of the following statements is NOT correct? An unpaid seller of goods:
(a) having a lien thereon, loses his lien if he obtains a decree for the price of the goods.
(b) can exercise his right of stoppage of goods in transit when the buyer becomes insolvent.
(c) has a right to re-sale the goods under certain circumstances.
(d) loses his lien on goods by waiver thereof.

(x) Under the Sale of Goods Act, 1930 ‘Goods’ does NOT include the following:
(a) Moveable property. (b) Actionable claims.
(c) Stock and shares. (d) Growing crops.

(xi) A negotiable instrument is presumed to be:
(a) payable on agreed date.
(b) drawn on a banker.
(c) drawn by free consent of parties.
(d) transferred before its maturity.

(xii) Which of the following is NOT a bilateral mistake? A mistake regarding:
(a) a fact subsidiary to the contract.
(b) existence of subject matter.
(c) title to subject matter.
(d) price of subject matter.

(xiii) Which of the following is NOT the characteristic of a cheque?
(a) It must be in writing. (b) It is definite and unconditional.
(c) It must be signed by the drawer. (d) It contains an order to pay.

(xiv) A Trust is created when the author of the Trust indicates with reasonable certainty:
(a) the purpose of the Trust. (b) the Trust property.
(c) an intention to create a Trust. (d) 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:
(a) Fire caused by the privity of the carrier.
(b) Unseaworthiness caused by want of due diligence on the part of the carrier.
(c) Insufficiency or inadequacy of marks.
(d) Latent defects that are discoverable by due diligence.


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.
(i) 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.
(ii) Shazia promised to pay Rs. 100,000 to her brother Rauf on account of his University fees for three years.
(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.
Q.4 (a) Under the provisions of the Partnership Act, 1932 briefly state what may be regarded as the property of the firm.

(b) Patel, Bara 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.

(c) In view of the provisions of the Partnership Act, 1932 list down the restrictions imposed on the implied authority of a partner.

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.

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.

(b) Loss or damage arising from unseaworthiness.

(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.

Section B

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.

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.

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 drawer 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.

(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.
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.  

(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:

(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.

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.

(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.

(THE END)
MERCANTILE LAW
Suggested Answers
Foundation Examinations – Spring 2014

Section A

Ans. 1
(i) (c) Minority.
(ii) (d) all of the above.
(iii) (c) a part of ratio decidendi.
(iv) (b) Value of work which can be recovered by the plaintiff.
(v) (c) To sue for the recovery of expenses incurred by him.
(vi) (c) For the dissolution of a firm.
(vii) (a) With the consent of majority of partners.
(viii) (d) All of the above.
(ix) (a) having a lien thereon, loses his lien if he obtains a decree for the price of the goods.
(x) (b) Actionable claims.
(xi) (d) Transferred before its maturity.
(xii) (a) A fact subsidiary to the contract.
(xiii) (c) It must be signed by the drawee.
(xiv) (d) All of the above.
(xv) (c) Insufficiency or inadequacy of marks.

Ans. 2
Statute:
The Act of Parliament is also termed as ‘Statute’. It is the primary source of law and is made by the Parliament itself. Act begins as a bill and after passing through the National Assembly and Senate becomes law on the granting of assent of the President. Act is binding on everyone.

Ordinance:
When the National Assembly is not in session and the President deems necessity of an immediate law, he can promulgate Ordinance. The Ordinance has the same force and effect as an Act of Parliament. The Ordinance, if not presented or passed by the National Assembly within 4 months, stands repealed.

Purposes of Act of Parliament:
Following are the purposes of the Act of Parliament:
(i) Create new law when none exists before.
(ii) Consolidate existing law.
(iii) Amend existing law.
(iv) Cancel existing law.
(v) Authorize taxation.
(vi) Codify and clarify existing law.

Ans. 3
(a) (i) Agreement without consideration void:
In order to make a binding contract, Raheel needs to make his promise in writing and sign it either by himself for by his agent generally or specially authorized in that behalf. In this case, Raheel must be the person against whom the liability might have been enforced by Sameer but for the law for the limitation of suits.

(ii) Agreement without consideration void:
To make it a binding contract, Slazia needs to express it in writing and get it registered under the law for the time being in force for the registration of documents. This agreement must be made on account of natural love and affection between the parties standing in near relation to each other.
(b) Reimbursement of person paying money due by another, in payment of which he is interested:
Apparently Maya acted voluntarily and had no interest of her own in the payment, she cannot recover the amount from Wasi.

However, Maya can recover the payment if she can prove her interest in the payment which Wasi was bound by law to pay. Or

Wasi promises to compensate Maya wholly or in part for the payment she made which Wasi was legally compelled to do.

Ans.4 (a) The Property of the firm:
Subject to contract between the partners, the property of the firm includes all property and rights and interests in property
- originally brought into the stock of the firm, or
- acquired by purchase or otherwise by or for the firm, or
- for the purposes and in the course of the business of the firm, and it also includes the goodwill of the business.

(b) Insolvency of a partner:
No, Patel ceases to be a partner in the firm on the date on which the order of adjudication is made by the Court, whether or not the firm is thereby dissolved.

Effects of adjudication on Patel:
Subject to contract between the partners, if the firm is not dissolved by the adjudication of Patel as insolvent, the estate of Patel shall not be liable for any act of the firm and the firm will not be liable for any act of Patel, done after the date on which the order of adjudication was made.

(c) Restrictions imposed on the implied authority of a partner:
In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to:

(i) submit a dispute relating to the business of the firm to arbitration,
(ii) open a banking account on behalf of the firm in his own name,
(iii) compromise or relinquish any claim or portion of a claim by the firm,
(iv) withdraw a suit or proceeding filed on behalf of the firm,
(v) admit any liability in a suit or proceeding against the firm,
(vi) acquire immovable property on behalf of the firm,
(vii) transfer immovable property belonging to the firm, or
(viii) enter into partnership on behalf of the firm.

Ans.5 Condition as to quality and fitness for purpose:
The general rule with regard to contract of sale is that, a buyer is supposed to satisfy himself about the quality and suitability of goods for his purpose i.e. the Rule Caveat emptor applies. Thus, later on, if the goods purchased are found unsuitable or unfit for the purpose of the buyer, he will have no legal remedy against the seller.
MERCANTILE LAW
Suggested Answers
Foundation Examinations - Spring 2014

However, under the circumstances, the implied condition as to fitness for the purpose is applicable on Easy Electronics as the defect in the roti maker was not of the kind which would have been revealed on the apparent examination of the roti maker. Therefore, Easy Electronics were bound to supply the roti maker which was suitable for the purpose of Modi, as:

(i) At the time of buying the roti maker, Modi expressly disclosed his purpose to the salesman that he wants to buy a roti maker which can cook 50 rotis per day.
(ii) He also relied upon the skill and judgment of the salesman for supplying him the roti maker which was fit for his purpose; and
(iii) The roti maker sold was of the description which Easy Electronics deals in the ordinary course of their business.

Therefore, under the given circumstances, since Modi has already accepted the roti maker he cannot return it to Easy Electronics. However, he is entitled to treat the breach of condition (i.e. implied condition as to quality or fitness) as breach of warranty and claim damages.

Ans.6 The liability of the carrier in each of the above situations is as under:

(i) The carrier is responsible for loss or damage arising or resulting from the deviation from the agreed route. However, the carrier will not be responsible for loss or damage arising or resulting from such deviation if it deviated for saving or attempting to save life or property at sea.
(ii) The carrier shall not be responsible for the loss or damage arising from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy.
(iii) The carrier is not responsible for loss or damage to or in connection with goods if the value thereof has been knowingly mis-stated by the shipper in the bill of lading.

Ans.7 Dissolution by the Court:
Uzair may file a petition for the dissolution of the firm and the Court may dissolve the firm on any of the following grounds, namely:

(a) That either Aslam or Imran or both has become of unsound mind;
(b) That either Aslam or Imran or both of them have become in any way permanently incapable of performing his/their duties as partner;
(c) That either Aslam or Imran or both of them, is/are guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;
(d) That either Aslam or Imran or both of them, willfully or persistently commit breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself/himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him/them;
(e) That either Aslam or Imran or both of them, had in any way transferred the whole of his/their interest in the firm to a third party, or has allowed his/their share to be charged under the provisions of rule 49 of Order XXI of the first Schedule to the Code of Civil Procedure, 1908, or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;
(f) That the business of firm cannot be carried on otherwise than at a loss; or
(g) On any other ground which renders it just and equitable that the firm should be dissolved.
Ans. 8  **Ratification and Agency by Ratification:**
Ratification means the subsequent adoption and acceptance of an act originally done without instruction or authority.

Agency by ratification comes into existence retrospectively, when a principal subsequently affirms or adopts the unauthorized act of his agent.

**OR (Alternatively)**
Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

**Essentials of a valid ratification:**
A valid ratification must fulfill the following conditions:

(i) The agent must purport to act as agent for a principal who is in contemplation and is identifiable at the time of contract.
(ii) **The principal must be in existence at the time of contract.**
(iii) The principal must be competent to contract both at the time of the contract and at the time of ratification.
(iv) **The act to be ratified must not be void, or illegal.**
(v) Ratification must be with full knowledge of all material facts.
(vi) The principal must signify his unconditional acceptance of the act.
(vii) Ratification must be made within a reasonable time.
(viii) Ratification must be of whole transaction.
(ix) Ratification must be communicated to the other party.
(x) Ratification must not injure a third person.

Ans. 9  **(a) When presentment is unnecessary:**
Under the following circumstances presentment of the negotiable instrument for payment is not necessary and the instrument is deemed to be dishonored at the date for presentment:

(i) **Presentment intentionally prevented:** If the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
   - **Business place closed:** If the instrument is payable at his place of business and he closes such place on a business day during the usual business hours, or
   - **No person at the specified place of payment:** If the instrument is payable at some other specified place and neither he nor any person authorized to pay it attends at such place during the usual business hours, or
   - **Payer cannot be found:** If the instrument is not payable at any specified place, he cannot after due search be found;

(ii) **Waiver either express or implied:** Presentment of a note or bill at maturity is not necessary if the party entitled to require presentment promises to pay it regardless of non-presentment.

(iii) **Waiver after maturity (implied waiver):** Such implied waiver may be assumed, with knowledge that the instrument has not been presented, when after maturity of the instrument any party:
   - Makes a part payment on account of the amount due thereon; or
   - Promises to pay the amount due thereon in whole or in part; or
   - Waives his right to take advantage of any default in presentment for payment.

(iv) **When drawer could not suffer damage:** If want of presentment is not likely to cause the drawer any injury or loss, presentment for payment by the holder is excused.
(v) Where the drawee is a fictitious person.
(vi) As regards an indorser, where the negotiable instrument was made, drawn or accepted for the accommodation of that indorser and he had reason to expect that the instrument would not be paid if presented; and
(vii) Where after the exercise of reasonable diligence, presentment cannot be effected.

(b) Advise whether Habib may further negotiate the instrument:
Zubair has not restricted or excluded the negotiability of the instrument, mere absence of words implying right to negotiate does not make the indorsement restrictive. Therefore, Habib may further negotiate the instrument.

Ans.10 (a) Contingent Contract:
A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Contingent agreement considered void ab-initio:
Contingent agreement to do or not to do anything becomes void ab-initio, if an impossible event happens. whether the impossibility of the event is known or not known to the parties to the agreement at the time when it is made.

Illustration:
Bilal agrees to pay Rs. 100,000 to Yasin if he will marry Zahid’s daughter Razia. She was dead at the time of the agreement. The contract is void ab-initio.

(b) (i) Discharge of Baqir and Qurban from their liability.
No, they are not discharged as Saleem and Atif are joint promissors and jointly have the right to receive payment. Thus payment to anyone of them does not operate as a complete discharge of debt.

(ii) Will Saleem succeed in his case?
No, Saleem will not succeed in his case. He must be joined by Atif as the right to claim performance rests with all the promissors jointly and a single promisee cannot claim performance.

Ans.11 Contract of Sale and Agreement to SELL:

(i) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one part-owner and another.

(ii) A contract of sale may be absolute or conditional.

(iii) Agreement to Sale: Where under a contract of sale the transfer of property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

Contract of sale how made:

(i) A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by installments, or that the delivery or payment or both shall be postponed.
(ii) Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.

Ans.12

(a) **Care required from Trustee:**
A trustee is bound to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own and in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust property.

Therefore, under the circumstances, Furqan is entitled to recover the loss from Nomi as he failed to perform the due diligence before selling the property to Wahid.

(b) **Right to proper trustees:**
(i) The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Afaq cannot himself appoint the new trustees. However, he may institute a suit for the appointment of proper persons to act as trustees under the above circumstances.

(ii) No, under the given circumstances, a single trustee cannot be appointed in place of the deceased trustees. Since the administration of the trust involves the receipt and custody of money, the number of trustees should be at least two.

(iii) The following are not proper persons for appointment as trustees:

- A person domiciled abroad;
- an alien enemy;
- a person having interest inconsistent with that of the beneficiary;
- a person in insolvent circumstances; and
- unless the personal law of the beneficiary allows otherwise,
  - a married woman; and
  - a minor.

**(THE END)**
THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS’ COMMENTS

<table>
<thead>
<tr>
<th>SUBJECT</th>
<th>SESSION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mercantile Law</td>
<td>Foundation Examination – Spring 2014</td>
</tr>
</tbody>
</table>

General:

An average performance was witnessed in the paper. Candidates seemed to be inadequately prepared for the examination as answers to most of the questions were out of context showing lack of knowledge and understanding. The candidates are advised to carefully read the question and figure out its requirements before attempting to answer it. Candidates who write lengthy answers are under the wrong impression that they would secure better marks. They must appreciate that providing unnecessary details results in wastage of time. This time can be used in assessing the requirement of the question and planning the answers accordingly.

Question 1

This question with a potential 15 marks was based on MCQs. Each MCQ carried one mark. Candidates generally performed well in this question. Many candidates wasted their time by unnecessarily repeating the entire text of the answer whereas writing down the alphabet of the correct choice was enough.

Question 2

This question with a potential 08 marks invited candidates to differentiate between Statute and an Ordinance and list down the purposes of an Act of Parliament.

The performance on this question was highly unsatisfactory. Very few candidates were able to correctly differentiate between a Statute and an Ordinance. Most of the candidates were also unable to list down the purposes of an Act of Parliament. Most students were able to mention one or two points only. Many candidates did not have any clue about the meaning of the term ‘Statute’.

Question 3

This question with a potential 10 marks was divided into two parts. In each part a different scenario was given. Part (a) required candidates to analyze two situations and describe the conditions which must be fulfilled to make a binding contract. Part (b) required them to describe the rights of a person who makes payment on behalf of another person which that person was legally compelled to pay.
Part (a)

In sub-part (i) a person had promised to make part payment against a loan which had been time-barred. Many students replied that the agreement without consideration is void and hence it is not a binding contract, without realizing that there are certain exceptions as was the case in the given scenario. In part (ii), majority of the students replied correctly that the contract is binding as it is based on natural love and affection and parties are standing in near relation to each other and hence does not need consideration. However, most of them could only explain that the agreement should be in writing but did not specify that it need to be registered also.

Part (b)

The performance in this part was highly unsatisfactory. This was a case of payment of legal obligations of a person by another person whereas most of the candidates replied in the context of a gratuitous payment or payment of necessities.

Question 4

This question with a potential 15 marks was divided into three parts. Part (a) required candidates to explain the concept of property of the firm. Part (b) consisted of a scenario which required candidates to describe the position of a partner who is adjudicated as insolvent and effects of such adjudication on the partner. Part (c) required the candidates to list down the restrictions on the implied authority of a partner.

Part (a)

The performance in this part was disappointing. Only a few candidates were able to correctly describe property of the firm in accordance with Partnership Act, 1932. Most of them listed the types of assets a partnership could have and other details based on pure guesswork.

Part (b)

The performance in this part was below average. Majority of the candidates correctly confirmed that insolvent partner will cease to be a partner in the firm but failed to mention the implications thereof on such partner. Most of them declared incorrectly that firm would be dissolved in such a situation but that is not mandatory.

Part (c)

The performance in this part was average as majority of the candidates listed few points only whereas only few could mention all the restrictions.

Question 5

This question with a potential 08 marks required candidates to list the remedies available to a buyer in case of defects found after the acceptance of goods that were purchased for a specific purpose. The performance in this question was unsatisfactory. Most of the students did not analyze the situation comprehensively. Most of them considered it as a sale by description and only stated that since the buyer had specified his requirement to the seller, the seller was bound to compensate the buyer. Matters such as the following were seldom discussed:

- The defect was such that it could not have been revealed by an apparent examination.
Examiners’ Comments on Mercantile Law Spring 2014

- The implied conditions as to fitness for the purpose were applicable on the seller.

- The seller was making the sale in the ordinary course of his business.

Question 6

This question was based on Carriage of Goods by Sea Act, 1925 and consisted of three parts. The answers to all three parts were quite straightforward and based on common sense. Consequently, most of the candidates were able to secure high marks.

Question 7

This question was based on Section 44 of the Partnership Act, 1932 and required the candidates to list the grounds under which a petition for the dissolution of a firm may be filed in the court. The overall performance was average as majority of the candidates covered four points i.e. misconduct by a partner, persistent breach of agreement by partner, losses incurred by the firm and any other just or equitable ground. Complete answers were provided by few students only.

Question 8

This question with a potential 10 marks required candidates to explain ratification, agency by ratification and essentials of a valid ratification.

It was one of the best attempted questions. However, many students wasted a lot of time in explaining the conditions for valid ratification although the question required a list of the essential conditions only.

Question 9

This question with a potential 10 marks was divided into two parts. Part (a) required candidates to state eight circumstances under which the presentation of negotiable instruments for payment is not necessary and these are deemed to be dishonoured at the due date of payment. Part (b) related to negotiability of an instrument in case it has previously been indorsed without adding the words ‘or order’.

Part (a)

Most of the candidates listed the reasons for dishonour of cheques instead of the exact requirement of the question as has been explained above. Those who adopted the correct approach could mostly list down 3-4 points only.

Part (b)

This 2-mark portion was answered correctly by about 50% of the candidates.

Question 10

This question with a potential 10 marks was divided into two parts of 5 marks each. Part (a) required candidates to describe a contingent contract and describe with the help of an illustration as to when a contingent agreement is considered void ab-initio. Part (b) of the
question was based on a scenario involving two joint promisors as well as two joint promisees.

Part (a)

Performance in Part (a) was average. Most of the candidates were able to describe a contingent contract; however, many candidates failed to produce correct example of an agreement which is void ab-initio.

Part (b)

The performance in this question was disappointing. According to the given situation, there were two promisors and two promisees and one of the promisors had paid the entire amount of debt to one of the joint promisees whereas the other joint promisee had filed a suit for recovery of the debt. Somehow, majority of the candidates answered in the context of a situation where there are two or more promisees with one promisor. Many candidates failed to provide appropriate justification to support their answer.

Question 11

This question with a potential 10 marks required candidates to (i) describe contract of sale, (ii) agreement of sale and (iii) how a contract of sale is made.

Most students described sale instead of contract of sale. Agreement to sell was described in a much better way. Moreover, instead of describing how a contract of sale is made, many candidates described the essential elements/conditions of a sale.

Question 12

This question with a potential 10 marks was based on Trust Act, 1882 and divided into two scenario based parts. Part (a) required candidates to narrate the right of beneficiaries to recover loss incurred on account of lack of due diligence by the trustees. Part (b) related to beneficiary’s rights to appoint trustees in a situation where all the three existing trustees had died in a road accident. The overall performance was quite poor as only about 15% of the candidates could secure passing marks in this question.

Part (a)

This part was based on Section 15 of the Trust Act but most of the candidates answered it with reference to Section 62 and 63.

Part (b)

This part was based on Section 60 of the Trust Act. Most of the students did not seem to have any clue and produced varied answers based on guesswork.

(THE END)