



September 9, 2005

MERCANTILE LAW

(MARKS 100)

Module B

(3 hours)

- Q.1 What is meant by 'precedent' in the legal system? In what situations a precedent may not be binding? (06)
- Q.2 What are the obligations of parties regarding performance of a contract? (05)
- Q.3 (a) What is meant by specific performance and injunction? Illustrate your answer with an example of each. (04)
- (b) List the instances when a court may:
- Order specific performance of the contract
 - Refuse specific performance of the contract. (04)
- Q.4 A, a jeweller, was entrusted with a diamond by P with the instruction that A should obtain offers for it, and if any such offer was approved by P, A should sell it to the offerer. Acting contrary to P's instruction, A sold the diamond to S who bought it in good faith. Thereafter, A absconded with the sale proceeds. P sued S to recover the diamond. Comment on the legal rights of P and S. (04)
- Q.5 (a) Define continuing guarantee. How can it be revoked? (03)
- (b) Briefly discuss the circumstances under which a contract of guarantee becomes invalid? (04)
- (c) A obtained a loan of Rs.80,000 from B. C, D and E became sureties for different amounts i.e. C for Rs.20,000, D for Rs.25,000 and E for Rs.35,000. A defaulted to the extent of Rs.65,000. How much amounts are C, D and E liable to pay? Give reasons for the same. (03)
- Q.6 (a) Under what circumstances a banker is entitled to refuse payment against a cheque? (04)
- (b) What are the liabilities of the banker towards the 'drawer' and the 'holder' if the bank wrongly refuses to honour the payment of a cheque? (04)
- (c) Arif ordered certain goods based on samples received from Zahid and sent a crossed cheque representing payment in advance. The goods arrived next day but are different from the sample.
- If Arif wishes to repudiate the contract, how should he proceed to stop the bank from honouring the cheque?
 - If the bank pays despite the aforesaid notice then what will be the legal position of the bank in relation to Arif and Zahid? (06)

- Q.7 With reference to the Sales of Goods Act, 1930, answer the following:
- (a) What are the consequences if customs duty, excise or sales tax is imposed after the contract of sale? **(03)**
 - (b) What is the general rule with regard to passing of risk in a contract of sale and what are the exceptions to this rule? **(06)**
 - (c) What are the general principles for determining the transfer of title? **(07)**
 - (d) What would be the legal consequences if:
 - the goods are not delivered on time
 - payment is not made in time. **(04)**
- Q.8 What are the responsibilities and liabilities of a carrier carrying goods by sea? **(04)**
- Q.9 (a) Briefly explain whether a firm is dissolved automatically in the following cases:
- (i) A, B and C were partners in a firm. After sometime, A and B became financially unsound and were declared insolvent by the court.
 - (ii) A, B and C were carrying on a business in partnership. Subsequently, C became insane. **(04)**
- (b) With reference to Partnership Act, 1932 discuss the consequences of not giving a public notice in the following cases:
- When a minor partner attains the age of majority.
 - When a partner retires from the firm.
 - When a partner is expelled from the firm.
 - When a partnership is dissolved. **(06)**
- (c) It is a clear maxim of law that the status for filing a suit is different for a registered and an unregistered firm. Comment on the possible outcome with this reference in the following case:
- “An unregistered firm sold goods worth Rs.200,000 to B, who gave a cheque for the amount which was dishonoured. R, a partner in the firm, demanded money from B who paid only Rs.120,000. In the meantime, the firm was dissolved and the sum of Rs.80,000, the unpaid balance was assigned to R for realization. R sues B for the recovery, who maintains that the suit is not maintainable as the firm was not registered”. **(05)**
- Q.10 (a) Explain the following terms in the context of insurance:
- Good faith
 - Insurable interest
 - Mitigation of loss **(06)**
- (b) Differentiate between ‘Actual Total Loss’ and ‘Constructive Total Loss’. **(02)**
- Q.11 Enumerate the disabilities of a Trustee under the Trust Act, 1882. **(06)**

(THE END)