

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN**EXAMINERS' COMMENTS**

SUBJECT	SESSION
Mercantile Law	Foundation - Autumn 2007

General Comments:

The students generally showed poor performance in the paper. The main areas of deficiency can be summarized as under:

- Syllabus coverage was identified as one significant issue which should be addressed by the candidates. A balanced approach should be adopted and all areas should be given proper coverage.
- Improper use of the English language was identified as another most important reason for poor performance in this paper. The students should learn to use appropriate words and phrases, without which they will be unable to express or convey their ideas properly and to the satisfaction of the examiner.
- The inability to comprehend the questions correctly was witnessed in a number of cases as would be apparent from the question wise comments.

Q.1 It was apparent from the answer scripts that candidates were not prepared for this question. 32 % of the students did not attempt it whereas only 12% were able to secure passing marks. Most of the candidates were not aware of the correct procedure that is required for enactment of any Act in Pakistan. Those who had some knowledge of the matter, generally provided correct steps, but in scattered bits. The following types of errors were generally seen:

- Very few students knew that all bills proposed by the government are formally approved by the cabinet before being forwarded to the National Assembly.
- Most of the students mentioned that the bills are approved by the National Assembly but many of them did not know that these have to be approved by the Senate also (except money bill).
- Most of the candidates mentioned the same set of procedures for a money bill or any other bill. Very few of them could identify that a money bill is not required to be approved by Senate.
- Very few of the candidates discussed the role of the President, his power to refer the bill back to the National Assembly and the fact that he is bound to give his assent if the bill on being referred back to National Assembly and Senate is reconsidered and approved by them.

- Many students did not know the difference between a 'bill' and an 'Act', and stated that the Act has to be approved by National Assembly.
- Correct sequence of steps was not followed by many students.

- Q.2
- (a) Most of the students were able to identify the difference between an agreement and a contract, in terms of Sections 2(e) and 2(h) of the Contract Act 1872. The method of answering varied but the students were generally able to clarify the key issues.
- (b) Most of the students correctly identified that whereas a void agreement does not entail any right or liability on either of the parties, in case of a voidable agreement one of the party, has the option to avoid the agreement. While describing the rights under voidable agreements students mentioned the rights of the aggrieved party but very few of them could mention the rights of the other party.
- (c) This part was not well answered by the students. A large majority gave their final verdict without giving any reason for their answer. Many students declared that the offer can be revoked at any time and hence X was not required to pay any compensation to Y. However, they failed to realise that the revocation can only be valid when the same is duly communicated. Hence in this case Y was entitled to claim compensation from X on account of X's failure to honour his commitment.

- Q.3
- Two situations were given in the question. The second situation was quite clear wherein an untrue statement was made by C but in good faith. Hence it was a clear cut case of misrepresentation. Therefore in this case D was entitled to avoid the contract but could not claim any damages.

The first situation was a bit tricky. Here also, there was no intention to deceive or defraud D but the statement was made recklessly i.e. with extreme negligence. Consequently many students got confused and declared that in this case D was also entitled to compensation. Few students were careful and made a more appropriate statement that although it was a case of misrepresentation as C did not intend to defraud D but it was a matter for the court to decide whether the negligence was of such a degree that C needed to compensate D.

- Q.4
- The examinees, were required to explain the terms 'Novation' and 'Restitution' which have been dealt with in Sections 62 and 64/65 respectively of the Contract Act 1872. While describing the term 'Novation' some examinees described it as "change of parties" instead of "replacement of the contract with a new contract". A large number of students could not describe the term 'Restitution'. Many others described it as restoration of benefits received. They failed to mention the important fact that only such restoration of benefits which takes place when a contract becomes void is called 'restitution'.

- Q.5 (a) This was a very straightforward question pertaining to delivery of goods to the wrong person. Most of the candidates declared that the goods should be delivered to the true owner. Very few candidates knew that the goods could also be delivered back to the DVD seller.
- (b) In this question, most students lost marks as they failed to identify the real issue that in case of rare/unique items, where actual damages cannot be ascertained, the only remedy available is specific performance. Many students incorrectly stated that the agreement is void.
- Q.6 This was an easy question requiring the examinees to list the various circumstances under which an agent becomes personally bound by the contract and was answered well by majority of the students. However, some students mentioned the relevant headings only and gave no explanations. For example they mentioned "In case of Principal not in Existence" without clarifying that they are referring to the promoters of a company which has not yet been incorporated.
- Q.7 (a) It was a well answered question as most of the students were able to enumerate the acts that do not fall within the implied authority of the partners, as given in Section 19(2) of the Partnership Act, 1932.
- (b) This question was rather poorly answered as most of the students stated that since the partnership gets dissolved on the death of a partner, the heirs can only claim his capital. They failed to refer to Section 37 of the Partnership Act, 1932 according to which the legal heirs were also entitled to claim either the share of profit or interest on capital @ 6% per annum.
- (c) The students generally failed to highlight that (under section 22 of the Partnership Act 1932), a partner can bind the firm only when an act is done either in the firm's name or with express or implied intention to bind the firm. They just gave the answer in yes or no without giving any reason and lost most of the marks. On the other hand, only few candidates could explain the liability of the firm under the Negotiable Instruments Act, 1932, according to which the firm will only become liable if the fact of the agency is mentioned on the instrument.
- Q.8 (a) Only few of the students were able to list the situations in which alteration of negotiable instrument does not affect the rights and liabilities of the parties. A few such situations are listed below:
- (i) Alteration made to carry out the common intention of the original parties.
 - (ii) Crossing of an uncrossed cheque.
 - (iii) Converting a blank endorsement into an endorsement in full.
 - (iv) Filling blanks in case of incomplete instruments.

- (b) In this part of the question most examinees failed to realise that they were required to describe the manner in which a cheque is crossed after it has been issued as explained in section 125 of the Negotiable Instruments Act, 1881. Instead, they started describing methods and techniques of crossing a cheque at the time of issuance, which was not required.
 - (c) A large number of candidates could not understand this part of the question and stated that X should sue B because of his non acceptance of the bill. In fact, the bill was drawn by A and being the principal debtor he was liable to pay the amount to X. However, in case A refuses or is unable to pay the bill all intervening parties become liable in the order of their acceptance.
- Q.9
- (a) Most of the students were able to answer this well in accordance with Section 42 of the Sales of Goods Act, 1930.
 - (b) A large number of students did not read the requirement of the question carefully. They tried to give reasons on account of which the buyer may refuse to take delivery of goods (Refer Section 44 of Sales of Goods Act 1930) instead of explaining the buyer's liability for any loss or damage caused to the seller on account of such refusal. Moreover, the point that the buyer was liable to pay a reasonable charge for the care and custody of the goods was mentioned by very few students only.
 - (c) Most of the candidates explained how the examination of goods shall be made in various situations instead of concentrating on the requirement, that was to explain the rights of the buyer for examination of goods, as have been described in Section 41 of the Sales of Goods Act 1930.
 - (d) This part was well attempted by most of the candidates as they were aware about the remedies available to the buyer for breach of warranty, i.e. claiming damages or demanding a reduction in price.
- Q.10
- Almost all the students could secure a reasonable number of marks as they used their general understanding of the topic. However, only those candidates who based their answers specifically on Carriage of Goods by Sea Act, 1925 could secure full marks.
- Q.11
- This question was not attempted by approximately 17% of the students which indicated the growing trend of selective studies. Moreover, answers specific to Chapter III and Section 47 of the Trust Act, 1882 were rarely given. Here again, general understanding of the rules of business, was used to answer the question. As a result, many points were missed or duplicated.

(THE END)