

EXAMINERS' COMMENTS

SUBJECT	SESSION
Mercantile Law	Foundation Examination – Autumn 2008

General:

In comparison with the previous attempts, it was an easy paper. However, the overall performance was seriously marred by student's lack of comprehension and target approach to specific problems. Despite having knowledge of the relevant legal provisions, many students failed to apply it to practical situations and lost easy marks. Another major problem which prevented them from getting good marks was their lack of proper expression and language skills. 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 detail and to cover the entire syllabus instead of concentrating on few selected topics. The substandard performance in Question number 1, 8(c), 10 and 11 clearly indicated that the students had not given due attention to Carriage of Goods by Sea Act 1925, Trust Act 1882, Negotiable Instruments Act 1881 and the topic of introduction to legal system.

Question-wise comments are as under:

- Q.1 20% of the students didn't attempt the question at all. Even among those who attempted, only about 40% could clearly identify the key characteristics of civil laws i.e. (i) they regulate the disputes related to rights and obligations between persons; and (ii) the court does not punish the wrong doer but imposes a settlement such as awarding damages and granting injunctions etc.
- Q.2 Students generally performed well in this question. However about 10% of the students couldn't understand the requirements of the question and instead of pointing out the essential conditions for the acceptance of an offer, narrated essential conditions of a valid offer and therefore, could not secure any mark. Many students wasted considerable time in giving long descriptive answers along with illustrations whereas the question clearly asked for only a brief description of the essential conditions.
- Q.3 (a) Most of the students correctly answered the question and got full marks by concluding that the agreement between Asif and Basit was not valid because the object was unlawful. However, some of them gave improper reasons such as, opposed to public policy and agreement in restraint of legal proceedings etc.
- (b) This part of the question was very well attempted and students secured good marks by clarifying that Shahid lost his right of avoiding/rescinding of contract when he accepted Amin's offer of sharing the repair charges.
- Q.4 (a) This question was also attempted well by majority of the students as they were able to specify that in the absence of any express intimation from the debtor (Danish), the creditor (Adil) is entitled to apply the payment to any of

- (b) This part of the question was attempted well. Majority of the students were able to identify that it was a case of a continuing guarantee and therefore the guarantor (Ameen) was entitled to revoke it as regards future transactions but he will remain liable for the amount which would be due at the time of such revocation.

Q.5 The question was attempted by almost all the students but very few of them managed to secure good marks. They were required to explain as to how compensation will be determined in the given circumstances along with the reasons thereof. Instead, majority of the answers contained irrelevant details such as explanation of the meanings of Liquidated damages, Ordinary damages, Special damages, penalties etc.

Q.6 (a) Most of the candidates correctly explained the term pledge but failed to identify the circumstances under which a pledge made by non-owner would be valid even without having been authorized by the owner. They were expected to cover the following situations in their answers:

- Pledge by mercantile agent, refer section 178 of Contract Act, 1872.
- Pledge by person in possession of goods under a voidable contract, refer section 178-A of the Contract Act, 1872.
- Seller in possession of goods after sale, refer section 30(1) of the Sale of Goods Act, 1930.
- Buyer in possession of goods under an agreement to sell, refer section 30(2) of the Sale of Goods Act, 1930.

Few students only provided the headings as given above without giving any description and therefore lost most of the marks.

- (b) This was an easy and scoring part of the question. However, performance remained average as many students repeated the same points again and again whereas many of them got confused and stated the principal's responsibilities towards the agent instead of mentioning the agents duties towards the principal.

Q.7 (a) Performance remained poor. Most of the students were unable to state the rights of the aggrieved partner who rightfully rescinds the partnership contract on account of fraud and misrepresentation by other partners. These rights have been specified in Section 52 of the Partnership Act, 1932.

- (b) The performance in this part of the question also remained average. Very few of the candidates got full marks as most of them applied their general understanding of the subject or the knowledge which they have gained while studying partnership accounts instead of answering in accordance with section 48 of the Partnership Act, 1932.

- (c) The performance in this part remained below average. Although students were able to declare correctly that Asad's suit for dissolution is likely to be successful, yet most of them were unable to give proper reasons to support their point of view. A large number of students listed situations where a particular partnership could generally be dissolved or where a partnership could be dissolved by court. Such details were not required as the question had sought opinion on a specific situation.

- Q.8 (a) Most of the students attempted to answer this part of the question. However, their performance remained average mainly due to the lack of understanding of the concept of accommodation bill. The answer was required to be based on Section 44 of the Negotiable Instruments Act, 1881 according to which the acceptor of the bill i.e. Ghazi was only liable to the drawer i.e. Faisal, to the extent of the consideration received i.e. Rs. 30,000.

On the other hand, according to the situation in sub part (ii) of the question, Hamid was entitled to recover the full amount from Ghazi i.e. Rs. 45,000 because Hamid was a holder in due course. Most of the students who secured passing marks in this part could only explain to the extent discussed above. Very few could mention the following:

- If Ghazi is unable to pay, Hamid can recover the full amount i.e. Rs. 45,000 from Faisal.
- If Ghazi makes payment of Rs. 45,000 to Hamid, Ghazi can recover Rs. 15,000 from Faisal.

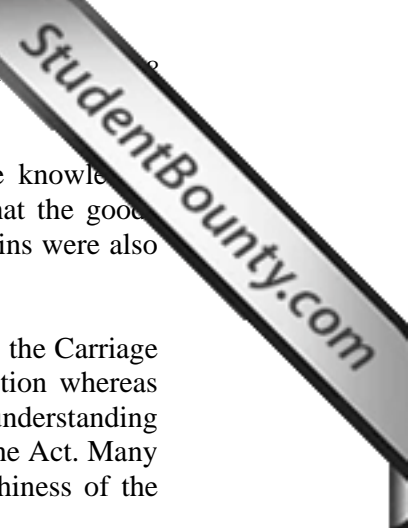
- (b) This part of the question was quite straightforward and easy, but again many of the students failed to properly define the term "Ambiguous Instrument" in accordance with Section 17 of the Negotiable Instruments Act, 1881. Many students simply wrote "An Instrument which has some ambiguity is called an Ambiguous Instrument".

- (c) The performance in this part of the question was very poor as most of the students failed to list down the rules for determining the compensation payable on dishonour of a negotiable instrument, as laid down in Section 117 of the Negotiable Instruments Act, 1881. Many students discussed various kinds of negotiable instruments or tried to explain the parties who would be responsible in case the instrument is dishonoured by the drawer, which was totally irrelevant.

- Q.9 (a) Most of the students answered this part of the question correctly i.e. in accordance with Section 17 (2) of the Sale of Goods Act, 1930.

- (b) This was a simple question based on Sale of Goods Act, 1930 but performance was far below expectation. Almost all the students wrote about claiming damages but failed to mention the right to claim specific performance (Section 58) or the right of recovery of price paid along with interest at reasonable rate [Section 61 (2b)].

- (c) This part of the question related to place and time of delivery of goods. The rules relating to place of delivery have been narrated in Section 36 (1) of the Sale of Goods Act, 1930 whereas those relating to time of delivery are given



- (d) This part of the question required practical application of the knowledge. Most of the students failed to derive the correct conclusion that the goods would not be considered to be in a deliverable state unless the tins were also packed in cases.

- Q.10 As discussed previously, the students had not given due emphasis to the Carriage of Goods by Sea Act, 1925. Almost 20% didn't attempt the question whereas many others wrote answers based on common sense and general understanding instead of mentioning the relevant rules contained in Article III of the Act. Many of them wrote lengthy paragraphs on cooling chambers, sea worthiness of the ship, change of route etc., which were not relevant.

- Q.11 The performance in this question also remained below average as instead of writing the essential conditions for the creation of a valid Trust as have been stated in Section 6 of the Trust Act, 1882, the students debated irrelevant issues like who may create the trust, characteristics of the author of the trust, rights of beneficiaries, lawfulness of the purpose and how trust/trustees should function etc.

(THE END)