

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT	SESSION
Mercantile Law	Foundation Examination – Spring 2008

- Q.1 As has been observed in the past, quite a number of the students pay scant attention to the portion of the Syllabus relating to the Legal System of Pakistan. A similar pattern was witnessed in this examination also with only 37% of the students attempting this question of 7 marks.

The question required a short answer that ought to have covered the following key points:

- (i) The Federal Shariat Court (FSC) would examine and decide whether any law or any of its provision is repugnant to Islamic injunctions. The consideration of such an issue may be taken up by FSC on its own, or may be referred to it by any citizen or by Federal/Provincial Government.
- (ii) FSC shall determine the extent to which the laws or its provisions are repugnant to the injunctions of Islam.
- (iii) In the event of any dissent with the ruling of FSC, an appeal may be made to the Supreme Court.

- Q.2 This was a rather easy question requiring explanation of the difference between an offer and an invitation to offer. The question was well attempted as 70% of the students secured passing marks. Whereas most students stated the essential elements of an offer [Section 2(a) of the Contract Act 1882], many students could not clearly explain that in an invitation to offer, the person issuing the invitation does not make an offer, rather he invites the other party to make an offer.

Many students offered long narrations along with the examples of invitation to offer instead of simply listing the examples as required in the question and therefore lost precious time.

- Q.3
- (a) Undue influence: For an appropriate answer, a sound knowledge of Section 16 of the Contract Act 1882, particularly of Section 16 (2) and (3) was required. Only a few students could relate the various requisites of undue influence to arrive at their conclusions. Most of them just gave their conclusions without proper reasoning. The students are once again advised to understand that although the final conclusion is an important part of the answer, yet the more important part is the argument which the student gives to support his conclusion.
 - (b) In this part of the question, the students correctly replied that Bano was within her right to avoid the contract as her husband had used his influence in an unfair manner to obtain her consent.

Q.4 The replies to both parts of the question were unsatisfactory as only 8% of students secured passing marks.

(a) This question was about the conditions for the Enforceability of Agreement in the absence of Consideration. The conditions in the context of Section 25 (1) of the Contract Act 1882 would take cognizance of the following :

- Were Mohsin and Ahsan in near relation to each other?
- Was the agreement out of natural love and affection?
- Was the contract in writing?
- Was the contract duly registered?

Very few of the students were able to conclude on the basis of the above points.

(b) This question was based on Section 39 of the Contract Act 1882. Very few of the students were able to put forth the following arguments:

- Akhtar could not rescind the contract as he had affirmed the contract when he allowed Bushra to conduct the seventh show. However, he was entitled to claim damages sustained by him through Bushra's failure to conduct the sixth show.
- If Akhtar had put an end to the contract, it would have amounted to breach of contract and remedies of breach of contract would be available to Bushra.

Q.5 Part (a) of the question was based on Section 145 of the Contract Act 1882 whereas Part (b) was based on Section 140 thereof. The responses to both Parts was average. About 25 percent of the students secured passing grades by covering the following aspects:

- (a) **A** is not discharged from his liability to **C** and **D** by paying the full amount to **B**, unless there was an explicit agreement to such a mode of payment among the parties.
- (b) When the surety makes payment of the debt on default by the principal debtor or performs a guaranteed obligation, he steps into the shoes of the creditor and acquires all the rights and remedies available to the creditor against the principal debtor. This is called the Right of Subrogation.

Q.6 This question was well attempted and majority of the students secured passing marks. The Void Agreements and exceptions thereto are listed in Sections 11, 20, 23 to 30, 36 and 56 of the Contract Act 1882. Several students also offered explanations of such agreements which were not required.

- Q.7
- (a) This question was framed in the context of requirements of Section 30 of the Partnership Act, 1932 i.e. minors being admitted to the benefits of partnership. Several candidates secured passing marks. However, a number of candidates failed to note that **D** became aware of the fact that he had been admitted to the benefits of the partnership, about five months after attaining the age of majority. Thus, the period of six months to decide whether or not to become a partner commenced from August 16, 2007 when he became aware of the fact and not from March 6, 2007 when he attained majority. Furthermore, very few of the students could mention that **D** would become liable to share the losses of the firm six months after August 16, 2007 even if he remained silent and did not give any notice.
 - (b) This question was not comprehended by a number of the students. Liability to **D** became effective upon the delivery of goods which was made after **C**'s death. Under Section 35 of the Partnership Act 1932, the estate of a deceased partner is not liable for the debts of the firm contracted after his death, irrespective of whether any public notice of death was issued or not.
 - (c) The question pertained to compulsory dissolution of a Partnership Firm as provided for in Section 41 of the Partnership Act 1932. Students lacked clarity and their replies also included various provisions contained in Sections 42, 43, 44 related to other forms of Dissolution of Partnerships.
- Q.8
- (a) The performance in the question was poor as students didn't seem to have adequate knowledge and understanding of the Negotiable Instruments Act 1881. The common mistakes committed in various sub-parts were as follows:
 - (i) The students were generally of the opinion that being a minor, the endorsement of the Bill by Bilal was invalid. Very few could realize that although Bilal was not liable for payment yet, his endorsement in favour of Dawood was valid.
 - (ii) Very few of the students knew that Dawood was personally liable for making payment against the bill unless he had specifically stated on the bill that he was endorsing the bill in his capacity as an agent of Fareed.
 - (iii) This part was better replied as most of the students knew that Bilal being a minor was not liable for payment of the bill, even if he possessed the amount which he had received against the bill.
 - (b) According to Section 46 of Negotiable Instruments Act 1881, when a negotiable instrument is delivered conditionally or for a special purpose as a collateral security or for the purpose of safe custody and not for transferring of absolute property therein, it is referred to as an "Escrow". The rights of the holder in due course are not affected by a transfer under escrow. Only about 15% of the students could produce correct answers.

- (c) It was a poorly attempted question. Most candidates had no clues to answer and resorted to guess work. The question was based on forged endorsement amounting to ab initio absence of a valid title. Most candidates confused the concept with that of an instrument obtained by fraud and having a defective title and consequently lost marks.

Furthermore, even those few who concluded as above, were mostly unable to clarify that if it was a bearer instrument, the rights of holder in due course would not be affected.

- Q.9 (a) The students scored good marks by correctly describing unpaid seller's rights given in Sections 46, 54(2) and 55 of the Sale of Goods Act 1930.
- (b) This question was based on sections 20 to 22 and section 24 of the Sale of Goods Act, 1930. Most of the candidates secured passing marks. Some candidates spent precious time in discussing rules in respect of unascertained goods which was not required as the question sought replies relating to rules applicable for specific or ascertained goods only.
- (c) This case study was based on Sections 18 and 23(1) of the Sale of Goods Act 1930. Generally, candidates secured good marks as they correctly mentioned that the loss had to be borne by Y as the goods were not appropriated and G had not given his assent to the appropriation of goods by Y.

- Q.10 The situation referred to in para (a) i.e. shipment of explosive goods, have been specifically covered in para 6 of Article IV of the Carriage of Goods by Sea Act, 1925. It was generally answered well as it was stated that the consignor was liable for damages and expenses incurred on account of shipment of explosive material. However, part (b) was very poorly attempted. The students did not mention that the carrier was liable for the loss under the principle of general average and the shipper can claim the loss under this rule. A number of the candidates resorted to guess work which was apparent in the incorrect replies.

- Q.11 This question was based on Section 68 of the Trust Act, 1882 and pertained to liability of a beneficiary who is in breach of trust in collusion with the trustee. This again was a poorly attempted question as the students seemed to have ignored this part of the syllabus.

A good reply should have stated that a beneficiary is liable for breach of trust in the following situations:

- participates in committing a breach of trust, or
- knowingly obtains any advantage from the breach of trust, or
- deliberately conceals the breach or fails to protect the interests of other beneficiaries, or
- deceives the trustee and thereby induces him to commit a breach of trust.

Only a few candidates were aware of the rights of other beneficiaries in such circumstances i.e. the right to have the interest of the delinquent beneficiary impounded, including all those who claim under him, until the loss caused by the breach has been compensated.

(THE END)