



Mercantile Law

Foundation Examination
Autumn 2011
Module B

5 September 2011
100 marks – 3 hours
Additional reading time – 15 minutes

Instructions to candidates:

- (i) *All the Question 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) 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:
- its own motion.
 - the petition of a citizen of Pakistan.
 - the petition of Federal/Provincial Government.
 - initiation from any of the above.
- (ii) A court of first instance is the court:
- where the case is originally heard in full.
 - which has given its first verdict.
 - where the original decision is reversed.
 - of magistrates.
- (iii) In which of the following circumstances a contract can be treated as discharged under the concept of supervening impossibility?
- spurt in prices
 - change in import policy
 - non-receipt of raw material from the supplier
 - 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:
- he is not illiterate and can read and understand the terms of the contract.
 - he is capable of understanding the contract and forming a rational judgement as to its effect upon his interests.
 - he is of the age of majority and is not disqualified from contracting by any law to which he is subject.
 - 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:
- Rs. 200,000
 - Rs. 500,000
 - Rs. 700,000
 - 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:
- with the consent of active partners managing the business.
 - with the consent of majority of partners.
 - with the consent of all the partners.
 - with the consent of all the partners and Registrar of Firms.
- (vii) In a 'partnership at will', a partner may retire:
- with the consent of all other partners.
 - in accordance with an express agreement between the partners.
 - by giving notice in writing to all the other partners, of his intention to retire.
 - 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?
- No, as Ghalib did not present himself as a partner, in front of Ismail.
 - Yes, as Ismail gave credit to the firm on the faith of Ghalib's representation.
 - No, as Ghalib is not a partner in the firm.
 - Yes, as Ghalib did it intentionally to deceive others.
- (ix) Which of the following condition is implied in a contract for sale by sample?
- The bulk shall correspond with the sample.
 - The buyer shall have a reasonable opportunity of comparing the bulk with the sample.
 - The goods shall be free from any defect, rendering them unmerchantable which would not be apparent on reasonable examination of the sample.
 - 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?
- Deliver the other motorcycle and demand market price for both the motorcycles.
 - Demand return of the motorcycle from Khurram as Lehri failed to fix the price.
 - Demand a reasonable price for the motorcycle that was delivered and need not deliver the other motorcycle.
 - 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:
- any loss occasioned by his neglect or refusal to take delivery.
 - a reasonable charge for the care and custody of the goods.
 - damages for non acceptance in case seller sues him.
 - all of the above.
- (xii) An agent becomes personally liable on a bill of exchange when:
- he signs it as an agent for and on behalf of a principal.
 - he adds to his signature, words describing him as an agent.
 - 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.
 - 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:
- Rs. 40,000
 - Rs. 50,000
 - Rs. 10,000
 - nothing as it was an accommodation bill.
- (xiv) If the finder of a lost bill obtains payment, the person who pays in due course:
- is liable to all prior parties.
 - continues to be liable to the person who lost the bill.
 - does not get a valid discharge for the bill.
 - gets a valid discharge for the bill.
- (xv) Which of the following is **NOT** a material alteration of a negotiable instrument?
- A new party is added to the instrument.
 - The sum payable is changed in the instrument.
 - The crossing of an uncrossed cheque.
 - 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:

Date of transaction	Rupees	Remarks
01/01/2008	37,000	Time barred under Limitation Act.
02/03/2009	20,000	
30/08/2010	50,000	Guaranteed by Wasim.
28/04/2011	63,000	
	170,000	

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:

Date of transaction	Rupees
01.1.2008	37,000
02.3.2009	20,000
28.4.2011	13,000
	70,000

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:
- The following words were written on the back of the cheque:
(20,000 + 50,000 = 70,000) (02 marks)
 - 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)