



## Mercantile Law

Foundation Examination  
Spring 2012  
Module B

5 March 2012  
100 marks - 3 hours  
Additional reading time - 15 minutes

### **Instructions to candidates:**

- (i) *All the Questions 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) A positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true is said to be a:  
(a) fraud (b) misrepresentation (c) mistake (d) misinterpretation
- (ii) According to the Sale of Goods Act, 1930 documents of title to goods include:  
(a) bill of lading. (b) railway receipt.  
(c) warehouse keeper's certificate. (d) all of the above.
- (iii) A minor can:  
(a) be an agent (b) be a principal (c) both (d) none
- (iv) In the case of goods sold on sale or return basis, the property in goods passes:  
(a) when price is paid. (b) when goods are delivered.  
(c) when approval is conveyed. (d) in all of the above cases.
- (v) Partnership is:  
(a) the relationship between persons who have agreed to share the profits of jointly owned property managed by all or any of them acting for all.  
(b) the relationship created by an agreement between a banking company and person(s) providing for sharing of profit and loss arising from the finance provided to such person(s).  
(c) both of the above.  
(d) the relation between persons arising from a contract who have agreed to share the profits of a business carried on by all or any of them acting for all.
- (vi) The consent is said to be free when:  
(a) two or more persons agree upon same thing in the same sense.  
(b) all parties to the contract benefit from the contract.  
(c) it is not the result of coercion or undue influence or fraud or misrepresentation or mistake.  
(d) all of the above.
- (vii) What are the consequences of resale of goods by unpaid seller where he expressly reserves such right in case of buyer's default?  
(a) The original contract of sale is rescinded.  
(b) The new buyer acquires a good title thereto.  
(c) The seller may claim damages based on the original contract of sale.  
(d) All of the above.

- (viii) Laila, Munir and Naseem were partners in a firm. After Naseem's death, Laila and Munir continued the partnership. Public notice of Naseem's death was not given by the surviving partners or the legal representatives of Naseem.

Omar supplied goods on credit to the firm assuming Naseem to be a partner in the firm. Laila and Munir are unable to settle the debt. Can Omar recover his debt from Naseem's estate?

- (a) No, as the transaction was made after Naseem's death.
  - (b) Yes, but only after Naseem's private debts have been paid off.
  - (c) Yes, as Omar extended credit on the faith of Naseem being a partner in the firm.
  - (d) Yes, as neither the surviving partners nor the legal representatives of Naseem gave public notice of his death.
- (ix) Peter sold 40 cartons of mangoes to Raheel for Rs. 30,000. Raheel took delivery of 15 cartons and requested Peter to hold the remaining 25 cartons which Raheel agreed to collect soon. Owing to the weather conditions, without any negligence on the part of Peter, the quality of mangoes deteriorated. Raheel refused to take delivery and pay their price. Is Raheel justified and should the loss of 25 cartons be borne by Peter?
- (a) No, but Raheel can sue for damages.
  - (b) Yes, as the condition as to wholesomeness is violated.
  - (c) Yes, as mangoes though sold were still in Peter's possession.
  - (d) No, because at the time of agreement these were specific goods in a deliverable state.
- (x) An instrument is said to be ambiguous if:
- (a) no time for payment is specified in it.
  - (b) it may be construed either as a promissory note or a bill of exchange.
  - (c) the amount in figures differs from the amount in words.
  - (d) all of the above.
- (xi) Sohail issued a cheque of Rs. 500,000 payable to Tanveer at sight. Sohail had sufficient funds at the bank to meet this payment. However, Tanveer presented the cheque at the bank after two weeks by which time the bank had failed. Can Tanveer recover the amount from Sohail?
- (a) Yes, as the debt is not discharged.
  - (b) Yes, as Sohail has not suffered actual damage through any delay in presenting the cheque.
  - (c) Yes, as Sohail did not advise Tanveer to encash the cheque immediately.
  - (d) No, Sohail is discharged and Tanveer can now claim the amount of cheque from the bank.
- (xii) On dissolution of a firm, the separate property of a partner:
- (a) can be used both for firm's debts and private debts proportionately.
  - (b) can be used in accordance with the court's judgment.
  - (c) cannot be used in paying the firm's debts.
  - (d) must be applied first in payment of his private debts and surplus in payment of the debts of the firm.
- (xiii) Sarmad is a beneficiary in a trust. He knowingly obtains an advantage without the consent of the other beneficiaries. The other beneficiaries are entitled to:
- (a) sue the trustees for making good the loss incurred by the other beneficiaries.
  - (b) sue Sarmad for making good the loss incurred by the beneficiaries.
  - (c) impound Sarmad's beneficial interest in the trust to compensate the loss.
  - (d) all of the above.
- (xiv) The provision of Sale of Goods Act, 1930 are applicable to:
- (a) immovable goods.
  - (b) all type of goods.
  - (c) moveable goods.
  - (d) moveable goods other than actionable claims and money.

- (xv) Liquidated damages mean:
- (a) A sum calculated at the time of breach of contract, equivalent to difference between the contract price and market price, at the place of performance.
  - (b) A sum fixed at the time of entering into a contract which compensates the aggrieved party for direct/indirect loss arising from the breach.
  - (c) A sum fixed as compensation for any loss or damage which the parties knew, when they made the contract, to be the likely result from the breach of contract.
  - (d) None of the above.

- Q.2 (a) How and on what grounds a proposal stands revoked? (04 marks)
- (b) What is the time limit after which a proposal cannot be revoked? (03 marks)

- Q.3 (a) Define a pledge, a pawnor and a pawnee. For what purposes can the pledged goods be retained? (05 marks)
- (b) Mash Bank granted a loan of Rs. 10 million to Tahir Limited against the pledge of shares of a listed company. Tahir Limited defaulted on repayment of the loan. The market value of the shares at the time of default was Rs. 9 million.

What remedies are available to Mash Bank in the above situation? (04 marks)

- Q.4 (a) A and B are partners in a barbeque business. They decided to sell their business alongwith its goodwill to Lahori Maza which is owned by C. Describe the rights of above parties under the Partnership Act, 1932 if A and B decide to carry on similar business and nothing is mentioned in this regard under the agreement. (05 marks)
- (b) Explain the following terms as given in the Negotiable Instrument Act, 1881:
- (i) payment in due course
  - (ii) holder
  - (iii) holder in due course (08 marks)

- Q.5 Younus repossessed the goods which he had sold to Ibad as Ibad had failed to pay the price. Describe the circumstances under which Younus can exercise his right of resale and how the resulting surplus or loss may be dealt with, as specified under the Sale of Goods Act, 1930. (06 marks)

- Q.6 (a) With reference to the Carriage of Goods by Sea Act, 1925 state the particulars that a bill of lading may contain. (04 marks)
- (b) How and by whom may a trust be revoked under the Trust Act, 1882? (06 marks)

### Section B

- Q.7 (a) How does the High Court exercise its supervisory role over subordinate courts? Describe the three types of prerogative orders that it may issue. (05 marks)
- (b) Briefly explain the term 'substituted agent' in the light of Contract Act, 1872. Is the (original) agent responsible to the principal for the acts of a substituted agent? (05 marks)
- Q.8 (a) Faiz had sold goods on credit to Gulzar for Rs. 5 million on guarantee of Haseeb. Gulzar has also mortgaged his shop as a security against the above amount. Haseeb was unaware of this mortgage and honoured his guarantee when Gulzar failed to make the payment. What rights are available to Haseeb under the Contract Act, 1872? (04 marks)
- (b) When and how a continuing guarantee is revoked? (06 marks)

- Q.9 Describe the provisions of Contract Act, 1872 related to the following:
- (a) Assessment of compensation for loss or damage caused by breach of contract. **(05 marks)**
  - (b) Obligations of persons enjoying benefit under the quasi contracts. **(05 marks)**
- Q.10 (a) Describe the liabilities of:
- (i) a partner for the acts of the firm.
  - (ii) the firm for wrongful acts of a partner.
  - (iii) the firm for misapplication of money or property by a partner. **(08 marks)**
- (b) A and B were partners in an unregistered firm carrying on business of printing and stationery. The firm advanced Rs. 50,000 to C for supply of printing paper. Soon afterwards, the firm was dissolved. On division of assets of the partnership, this debt of Rs. 50,000 was allotted to A. Can A sue C to recover the amount? **(02 marks)**
- Q.11 (a) State the presumptions that are applicable to all negotiable instruments unless the contrary is proved. **(07 marks)**
- (b) A draws a bill on B who accepts it without consideration. A indorses the bill to C for valuable consideration. On due date C presents the bill to B for payment but B contends absence of consideration and refuses to pay. Is B's contention justified? **(03 marks)**
- Q.12 List the circumstances as mentioned in the Sale of Goods Act, 1932 under which a person who is not the owner of the goods can convey a good title to a buyer if the buyer buys in good faith and has no notice that the seller has no authority to sell. **(10 marks)**

**(THE END)**