



Mercantile Law

Foundation Examination
Autumn 2013
Module B

2 September 2013
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) Which of the following is **NOT** a Private Law?
 - (a) Law of tort.
 - (b) Law of agency.
 - (c) Company law.
 - (d) Administrative law.
- (ii) Which of the following is a type of prerogative order?
 - (a) Habeas corpus.
 - (b) Certiorari.
 - (c) Stare decisis.
 - (d) Obiter dicta.
- (iii) Fraud means:
 - (a) the suggestion, as a fact of that which is not true, by one who believes it to be true.
 - (b) silence of a person as to facts likely to affect the willingness of another to enter into a contract.
 - (c) a promise made without any intention of performing it.
 - (d) any act fitted to deceive where aggrieved party had the means of discovering the truth with ordinary diligence.
- (iv) Rao promises to deliver 50 bags of sugar to Bilal on 30 August 2013 on payment of a price of Rs. 82,000. Rao dies before that date.
 - (a) The contract stands discharged on Rao's death.
 - (b) The contract cannot be enforced either by Rao's representatives or by Bilal.
 - (c) Rao's representatives are bound to deliver 50 bags of sugar to Bilal.
 - (d) Bilal cannot enforce the contract as it was only a promise.
- (v) Sami, Asif and Zain give guarantees to Wali for the repayment of a loan taken by Danish from Wali. In the event of Danish's default, Sami, Asif and Zain agree to make payment of the amount of the loan to the extent Rs. 5,000, Rs. 8,000 and Rs. 12,000 respectively. Danish commits default to the extent of Rs. 15,000.
 - (a) All the three sureties are liable to pay Rs. 5,000 each.
 - (b) Sami is liable for Rs. 3,000, Asif for Rs. 4,800 and Zain for Rs. 7,200.
 - (c) Sami is liable for Rs. 5,000, Asif for 8,000 and Zain for Rs. 2,000.
 - (d) Sami and Asif are liable for Rs. 1,500 each and Zain is liable for Rs. 12,000.
- (vi) An outgoing partner, subject to a contract to the contrary, may:
 - (a) not carry on a business competing with that of the firm.
 - (b) not use the firm name.
 - (c) not be entitled to share subsequent profits on his unsettled accounts.
 - (d) all of the above.

- (vii) Murad paid a premium of Rs. 25,000 on entry into a partnership firm for a fixed term. The firm was dissolved before the expiry of that term. Murad shall **NOT** be entitled to return of the premium, if:
- the firm was dissolved by the adjudication of a partner as insolvent.
 - the firm was dissolved by the Court.
 - the firm was dissolved by the happening of any event which made it unlawful to carry on the business of the firm.
 - the firm was dissolved mainly due to Murad's own misconduct.
- (viii) Which of the following is **NOT** the duty of the buyer?
- To reject delivery of goods by installment.
 - To apply for the delivery of goods.
 - To return the goods to the seller on its rejection by him.
 - To intimate seller of his rejection of goods.
- (ix) Prestigious Jewelers wrote a letter to Qasim stating, "We have received an exceptionally fine necklace which we will sell to you at a very favourable price."
- The letter is an offer to sell.
 - The letter lacks the essential element of an offer.
 - The letter contains a valid offer which will terminate within a reasonable time.
 - An offer made by a letter must be accepted by a letter.
- (x) Nasir is a holder in due course of a cheque issued by Arif. Which of the following defenses would permit Arif to avoid paying Nasir for the cheque?
- Discharge in bankruptcy proceedings.
 - Breach of warranty.
 - Unlawful consideration.
 - Fraud in inducement.
- (xi) Which of the following is a bailment situation?
- A conditional sale of goods.
 - Money deposited in a bank account.
 - A car parked and locked in a self service parking lot and keys kept by the driver.
 - Property held by a lender as collateral.
- (xii) Which of the following statements is incorrect?
- A trustee is bound to keep clear and accurate accounts of the trust property.
 - A trustee is not liable for the acts of his predecessor.
 - A trustee can delegate his office in the regular course of business.
 - A trustee committing a breach of trust is not liable to pay interest where he may be fairly presumed to have received it.
- (xiii) Which of the following is a common law remedy?
- Injunctions.
 - Specific performance.
 - Damages.
 - Rectification.
- (xiv) Aslam directs Hadi, his solicitor, to sell his property by auction and to employ an auctioneer for the purpose. Hadi appoints Munaf, an auctioneer, to conduct the sale. Munaf in this case is a:
- sub-agent.
 - co-agent.
 - pretended agent.
 - none of the above.
- (xv) Which of the following statements is **NOT** true?
A bill of lading:
- is the guarantee for delivery of goods.
 - in a strict legal sense, is not a negotiable instrument.
 - is an acknowledgement of the receipt of the goods on board the ship.
 - is a document of title to the goods.

- Q.2 List the circumstances in which a precedent will not be binding on the Court. (05)
- Q.3 (a) What is a contract of guarantee as described in the Contract Act, 1872? What may be regarded as a sufficient consideration for surety under such a contract? (05)
- (b) Yawar lends his van to his friend Moid for picnic. The van broke down en-route from Islamabad to Muree due to a fault in axle, injuring Moid.
- Discuss the rights of Moid under the provisions of Contract Act, 1872. What would be Yawar's responsibility had Moid acquired the van on hire? (05)
- Q.4 (a) No suit can be instituted in any Court on behalf of a firm unless the firm is registered.
- In the light of the provisions of Partnership Act, 1932 narrate the procedure the partners of a firm should follow for its registration. (10)
- (b) Atif, Raja and Nazir are partners in Buland Associates. Atif without informing Raja and Nazir sold one of Buland Associates prime property to his friend Tariq and embezzled the money received in consideration. In the light of the provisions of Partnership Act, 1932 advise the rights available to Raja and Nazir under the circumstances. (06)
- Q.5 List the situations in which a seller of goods may be regarded as an unpaid seller. Briefly describe the rights of an unpaid seller of goods as specified in the Sale of Goods Act, 1930. (08)
- Q.6 What is meant by "Carrier" and "Carriage of Goods" under the Carriage of Goods by Sea Act, 1925? List the implied warranties in a contract for the carriage of goods by sea. (06)

Section B

- Q.7 Marvi, Zahid and Ahmed were partners in a firm of Consultants. Marvi, without informing Zahid and Ahmed started her own business of fashion garments. Zahid and Ahmed on knowing the fact expelled Marvi from the partnership.
- Under the provisions of Partnership Act, 1932 briefly describe whether Zahid and Ahmed were justified in their act. Would Marvi be liable for the acts of partners or the firm after her expulsion from the partnership? (10)
- Q.8 (a) In view of the provisions of Contract Act, 1872 explain the general rule "Agreement in restraint of legal proceedings is void". State the exceptions to the above rule. (08)
- (b) Bari, a cashier in a departmental store, embezzled cash from the store. Mohsin, the owner of the store, instituted proceedings against Bari. Bari agreed to return the cash and Mohsin agreed to drop the proceedings against him. Bari fulfilled his part of the promise. Explain whether Mohsin is bound under the provisions of Contract Act, 1872 to withdraw the case against Bari. (02)
- Q.9 (a) What do you understand by the term "Cheque" as specified in the Negotiable Instruments Act, 1881? When is a cheque deemed to be crossed generally? (06)

- (b) State the conditions when a cheque crossed generally is considered to be paid by a banker in due course or out of due course. Describe the rights of the banker when payment of a cheque crossed generally is made in due course and the consequences of payment out of due course under the Negotiable Instruments Act, 1881. **(04)**

Q.10 (a) Narrate the conditions implied in a contract for sale of goods by sample according to the provisions of Sale of Goods Act, 1930. **(04)**

- (b) Monzer purchased a second hand mobile phone from Tariq, a shopkeeper, for Rs. 5,000. Monzer spent Rs. 1,000 on its repair and used it for some time. Both Monzer and Tariq were not aware of the fact that the mobile phone was in fact snatched by a robber from Monzer's friend and was sold to Tariq. Monzer was forced to return the mobile to his friend.

Describe the remedies available to Monzer under the Sale of Goods Act, 1930. **(03)**

- (c) Ravi, Mazen and Sonu jointly owned a machine which they plied for hire. Ravi and Mazen entrusted the responsibility of caring of the machine to Sonu and left the possession of the machine with him. Sonu sold the machine to Nidal who bought it in good faith for value.

Under the provisions of Sale of Goods Act, 1930 explain whether Nidal can be treated as one of the co-owners with Ravi, Mazen and Sonu. **(03)**

Q.11 List how and by whom may an agency be terminated. Also describe the circumstances in which an agency cannot be terminated by the principal under the Contract Act, 1872. **(10)**

Q.12 (a) Narrate the circumstances under which a beneficiary may institute a suit for the execution of the trust under the Trusts Act, 1882. **(04)**

- (b) Mr. Wali is a beneficiary of Sukoon Welfare Trust. Mr. Babar, who is a trustee, has wrongfully purchased the trust property.

Explain the rights of Mr. Wali under the circumstances as provided in the Trusts Act, 1882. **(06)**

(THE END)