FOUNDATION EXAMINATIONS SPRING 2007

MERCANTILE LAW

General:

This was the first examination under the revised Mercantile Law syllabus and the main focus of the paper was on the four main legislations namely the Contract Act, 1872, the Sales of Goods Act, 1930, the Partnership Act, 1932 and the Negotiable Instrument Act 1881.

Candidates were expected to demonstrate a sound knowledge of these basic laws however, as repeatedly mentioned in comments relating to earlier attempts, the candidates were not well prepared for the paper. Their knowledge is limited only to a general understanding of the laws and in most cases, they were unable to apply the theoretical knowledge to practical situations.

The candidates' performance also suffered on account of poor language skills and incomplete or irrelevant answers. Another issue was that of selective study. It seems that students concentrate on the main topics and tend to ignore areas such as Trust Act, Carriage of goods by Sea Act and the introduction to legal system.

Question-wise comments are given below

Q.1 This question from legal system in Pakistan was not attempted by 26% of the students. This shows that students do not cover this part of the syllabus in their study or make only cursory study.

Q.2 (a) Many students confused the concept of consensus ad idem with free consent although there is no link between them.

(b) Principal and agent : Many students correctly opined that release deed was not binding but said that consent has been obtained by undue influence although coercion was the more appropriate answer. A number of students discussed the rights and liabilities of principal and agent, which was totally irrelevant.

Q.3 This was a well-attempted question and 84% students secured passing marks. However, very few were able to explain that the inadequacy of consideration may be considered by the court in determining whether the consent was freely given (explanation 2 section 25).

Q.4 (a) A large number of students wrote long answers about remedies available for breach of contract instead of narrating the principles laid down in section 73 for assessing compensation for loss or damage. Very few mentioned about damages payable under quasi contracts.

(b) It was one of the worst attempted question with 10% not attempting any part and only 9% getting pass marks.

Many students explained the grounds of supervening impossibility by which a contract is discharged rather than explaining the exceptions thereto. Some of the main exceptions are as follows:

- Default by third party on whom the promisor relied.
- Strikes, lock-outs etc. unless specifically agreed upon
- Incurrence of huge losses
- Self-induced impossibility.

Q.5 This question about the commencement of an indemnifier's liability was a difficult one as it was based on the courts decisions in which it has been held that an indemnifier must indemnify the indemnity-holder even before he has suffered any damage provided an absolute liability has been incurred by him. Only the best of students who had thorough knowledge could do it correctly whereas the rest relied on guess work.

Q.6 (a) Most of the students were able to identify the four conditions of a bailment, i.e. (i) delivery, (ii) for a purpose, (iii) return or (iv) disposal according to instruction of the bailor.

(b) B, as a car mechanic, could only exercise particular lien and not general lien and hence could retain the car for present dues of Rs. 2,500/- and not for past dues of Rs.750. Those students who were unable to answer this easy question should refer to Sections 170 and 171 of Contract Acts, 1872.

(c) Some students did not know the meaning of “hire” and hence could not conclude that in such a case Y was liable to compensate X whether he was aware of the fault in the fire-fighting equipment or not (section 150).

Q.7 (a) Those students who mentioned the mutual rights and liabilities of partners as given in Section 13 and other relevant sections of the Partnership Act could score good marks. However, many students quoted the rights and liabilities based on their general understanding and could not secure good marks.

(b) Effects of non-registration of partnership firm (Section 69): Although a recurring question in examinations, students’ performance was average. Most of them were able to explain the adverse effects of non-registration of a firm as given in sub-sections 1 and 2 of Section 69. However, very few were able to correctly narrate the exceptions thereto, as given in sub-sections 3 and 4 of section 69.

(c) This part was poorly attempted by students as they could not correctly distinguish and clarify that property acquired with the money of the firm is deemed to have been acquired for the firm but a debit in X’s account shows that the shares were not acquired for the firm.

(d) Students answered this part well and in most cases were able to explain that the firm is bound to honour an act of the partner (even if he is not authorized to do so in ordinary circumstances) which is done to protect the firm from loss provided it is an act which a man of ordinary prudence will perform under similar circumstances.

Q.8 (a & b) This was the worst attempted question. 19% of the students did not attempt it whereas only 6% got passing marks. In part (a), many students mentioned the characteristics of negotiable instruments instead of the presumptions relevant to negotiable instruments as described in Section 118 of the Negotiable Instruments Act, 1881. Part (b) was a general question which was not answered well as the students could not relate their theoretical knowledge to the given situation. Some of the common mistakes were as under:

- Since the Negotiable Instrument was drawn by A, he was responsible to honour it. C could have approached B for payment only in case the same was dishonoured by A. Most of the students reversed the situation.
- Some of the students concluded that since no consideration was received by A at the time the bill was drawn, he was not liable to honour it. They could not make out that since the bill had been subsequently endorsed against valid consideration, A cannot be absolved of his liability to honour it.

Q.9 Exceptions to the doctrine of caveat emptor: The exceptions mostly contained in Sections 15, 16 and 17 of Sale of Goods Act, 1930 were not properly explained and only 36% examinees could obtain pass marks.

Q.10 This was a straight forward question where the examinees were required to describe the rights of a buyer if the quantity supplied were different from the contracted quantity. The performance was however average as many of the students relied on guess work instead of giving proper answer based on Section 37 of the Sales of Goods Act, 1930. For example, many students discussed the transportation charges to be incurred on the return of goods and consequential damages etc. which were irrelevant.

In respect of supply of excess quantity, many examinees declared that the buyer can reject the whole quantity. They failed to mention that buyer can reject the whole quantity only if it is difficult and time consuming to separate the contracted quantity.

Q.11 Majority of the students could not list at least ten circumstances when a ship shall not be held responsible for loss or damage to the cargo. Here again, most of them relied on guess work instead of quoting the relevant material as given in clause 2 of Article IV of the Schedule attached to Carriage of Goods by Sea Act, 1925.

Q.12 The students were required to narrate the circumstances in which the trustee is not held responsible for breach of trust. 25% of the students did not attempt the question and only 16% secured passing mark. The answer was based on Sections 23, 25, 26 and 28 of the Trust Act which it seems, had not been studied properly.

(THE END)