



Mercantile Law

Foundation Examination
Autumn 2012
Module B

3 September 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.*
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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 High Court has a supervisory role over other courts subordinate to it. It may issue a writ of habeas corpus which is an order:
- (a) to prevent a court or tribunal from exceeding its jurisdiction.
(b) to submit the record of the subordinate court's proceedings to the High Court for review.
(c) for the release of a person wrongfully detained.
(d) to carry out a public duty.
- (ii) The fundamental principle of awarding damages is:
- (A) to punish the guilty party for breach of contract.
(B) to compensate the innocent party.
(C) to put the innocent party in the same position as if the contract had been carried out correctly.
- (a) (B) only. (b) (C) only.
(c) (B) and (C). (d) (A), (B) and (C).
- (iii) C refused to sell certain goods to D at the previously agreed price of Rs. 240 thousand. D sued C for breach of contract. If identical goods are readily available in the market at a price of Rs. 220 thousand, which one of the following is correct?
- (a) D is entitled to an order of specific performance, forcing C to carry out the contract.
(b) D is entitled to damages of Rs. 20,000.
(c) D is entitled to nominal damages only.
(d) D is not entitled to damages.
- (iv) A owns some land, part of which is woodland. He sells the land to B who covenants in the contract that he will not cut down the trees. One year later, B prepares to cut down the trees. What remedy can A seek?
- (a) damages. (b) specific performance.
(c) injunction. (d) rescission.
- (v) Which of the following may employ an agent?
- (a) any person who is capable of understanding the contract and forming a rational judgment as to its effect upon his interest.
(b) any person who is engaged in business or profession.
(c) any person who is of the age of majority according to the law to which he is subject and who is of sound mind.
(d) all of the above.

- (vi) The following is not a ground for dissolution of a partnership by a court:
- continued losses;
 - persistent breach of agreement by a partner;
 - insolvency of a partner;
 - a partner becoming of unsound mind.
- (vii) When a firm is dissolved, the assets of the firm are applied to:
- distribute cash among the partners in the profit and loss ratio;
 - pay to each partner ratably what is due to him on account of capital;
 - pay the debts of the firm to third parties; and
 - pay to each partner ratably what is due to him from the firm for advances as distinguished from capital.
- These steps should be performed in the following order:
- (D), (C), (A), (B)
 - (C), (B), (A), (D)
 - (D), (A), (C), (B)
 - (C), (D), (B), (A)
- (viii) A minor admitted to the benefits of partnership in a registered firm on attaining majority decides to become a partner. He has to give a public notice of his decision to become a partner by:
- publication in the Official Gazette and in at least one vernacular newspaper.
 - publication in at least one English newspaper and one Urdu newspaper.
 - a notice to the Registrar of Firms and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.
 - a notice to the Registrar of Firms and by publication in the Official Gazette.
- (ix) A new partner can be admitted into a firm:
- with the consent of majority of the partners.
 - with the consent of all the partners.
 - with the consent of senior most partner.
 - with the consent of a court.
- (x) A buyer is deemed to accept the goods:
- when he has taken the delivery of goods.
 - when he does any act which is inconsistent with the ownership of the seller.
 - when he pays the price of the goods.
 - all of the above.
- (xi) The making, acceptance or endorsement of a promissory note, bill of exchange or cheque is completed by:
- signature of maker, acceptor or endorser.
 - delivery, actual or constructive.
 - endorsement and delivery thereof.
 - presentment for payment.
- (xii) Ghalib accepted for honour a bill of exchange which has been noted and protested for non-acceptance. If his acceptance does not express for whose honour it is made, then such acceptance is:
- invalid.
 - deemed to be made for the honour of the drawee.
 - deemed to be made for the honour of the drawer.
 - for the honour of any party to the bill.
- (xiii) Ismail, an endorser of a promissory note, paid the amount due on its dishonour, to the holder. He will now be entitled to receive from the maker of promissory note:
- the amount paid by him.
 - the amount so paid with interest at six percent per annum from the date of payment until tender or realization thereof.
 - the amount so paid together with all expenses caused by the dishonour and payment.
 - the amount so paid with interest at six percent until tender or realization thereof, together with all expenses caused by the dishonour and payment.

- (xiv) Which of the following statements is incorrect?
- A breach of condition only gives the injured party the right to terminate the contract.
 - A breach of warranty does not give the injured party a right to rescission.
 - A breach of condition gives the injured party the right to terminate the contract and claim damages.
 - A breach of warranty gives the injured party a right to claim damages.
- (xv) In a contract of sale, there is no implied condition that:
- the goods suit the purpose of the buyer.
 - the bulk should correspond with the sample in sale by sample.
 - the seller has a valid title to the goods.
 - the goods must correspond with their description where there is a sale by description.
- Q.2 (a) Distinguish between civil law and criminal law giving two examples of each. *(06 marks)*
- (b) What are the requisites of a binding precedent? *(04 marks)*
- Q.3 (a) Karim bought a textile mill from Laeeq on his assurance and a certificate from Registrar that the mill and its assets were free from any encumbrance. Later, Karim received a notice for payment of mortgage dues and found that the certificate of Registrar was forged by Laeeq. What rights are available to Karim under the Contract Act, 1872? *(04 marks)*
- (b) Tariq promised to pay Tahir for his services whatever amount Tariq might think reasonable. Tahir is now dissatisfied with the amount paid by Tariq. Explain whether Tahir can sue Tariq. *(04 marks)*
- Q.4 (a) What is implied authority of a partner? What conditions should be met for the act of a partner to become binding on the firm? *(04 marks)*
- (b) Explain the term “**promissory note**” in accordance with Negotiable Instruments Act, 1881. Also state the liabilities of its maker. *(06 marks)*
- Q.5 (a) Cassim intends to deliver an agreed quantity of various computer hardware items to Eveready Company, a carrier, for the purpose of transmission to the buyer. The route to destination includes sea transit.
- List the conditions under the Sale of Goods Act, 1930 which Cassim must comply with, in order to constitute a proper delivery to the buyer. *(03 marks)*
 - In case such conditions are not fulfilled by Cassim, what rights are available to the buyer in the event of goods being damaged in transit? *(02 marks)*
- (b) Ghazal chose her bedroom furniture from Habib Furniture, paid 50% advance and agreed to pay the balance on delivery next week. Habib Furniture separated the chosen furniture and scheduled it for polishing the next day. A fire broke out at night due to short circuit and the entire shop was destroyed. Ghazal claimed her advance. Habib Furniture refused to repay and claimed the balance. In your opinion, who should bear the loss? Justify your answer in the light of the Sale of Goods Act, 1930. *(03 marks)*
- Q.6 (a) Isfandyar Chemicals loaded a cargo of inflammable chemicals in a ship. The nature of cargo was mentioned on the bill of lading. During voyage the carrier destroyed the said cargo. What are the liabilities of the carrier and what rights are available to the shipper under the Carriage of Goods by Sea Act, 1925? *(03 marks)*
- (b) How and for what purpose may a trust be created? *(06 marks)*

Section B

- Q.7 (a) What are the essential requisites of a valid offer of performance? What is the effect of refusal by the promisee to accept tender of goods and money, from the promisor? *(07 marks)*
- (b) Explain the nature of a bailee's particular lien. How does it differ from the general lien of a banker? *(03 marks)*
- Q.8 State the circumstances under which an agent is personally bound by the contract entered into by him on behalf of his principal. *(10 marks)*
- Q.9 Vaqas, Waqar and Yaseen are partners in a registered firm which is not at will. Yaseen wants to retire from the partnership. Advise him about his rights and liabilities in the event of his retirement and restrictions, if any imposed on him under the Partnership Act, 1932. *(10 marks)*
- Q.10 (a) Any material alteration to a negotiable instrument renders the instrument void. What are the exceptions to this rule? *(07 marks)*
- (b) A drew a bill payable by B which is due after three months. It passed through several hands before X became its holder. On presentation by X, B refused to pay the bill. Discuss the rights of X. *(03 marks)*
- Q.11 Explain the term "caveat emptor". What are the exceptions to its application in a contract of sale of goods? *(10 marks)*
- Q.12 Answer the following in the light of Sale of Goods Act, 1930.
- (a) What is the general rule with regard to passing of risk (as opposed to ownership) in a contract of Sale of Goods and what are the exceptions to this rule? *(07 marks)*
- (b) What are the consequences if customs duty, excise duty or sales tax is imposed after a contract of sale has been executed but delivery of goods has not been made? *(03 marks)*

(THE END)