

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN

EXAMINERS' COMMENTS

SUBJECT	SESSION
Mercantile Law	Foundation Examination – Autumn 2013

General Comments:

The paper consisted of twelve questions. The first six questions in section A were compulsory whereas the candidates were required to answer any four questions out of six from section B. Overall it was a balanced paper; however, the performance remained far below the general level of expectation. Candidates seemed not to be adequately prepared for the examination as answers to most of the questions were out of context showing lack of knowledge and understanding. The candidates are advised to carefully read the question and figure out its requirements before attempting to answer it. Candidates who write lengthy answers are under the wrong impression that they would secure better marks. They must appreciate that providing un-necessary details results in sheer wastage of time. Candidates are advised to be specific. They should also study from Bare Acts which is the primary source containing variety of practical examples as well. Other books and notes may also be consulted to supplement the knowledge gained from Bare Acts. They should also refrain from answering the questions on the basis of general knowledge and perception instead of the specific knowledge of law.

Specific comments are as under:

Question 1

This question with a potential 15 marks was based on MCQs. Each MCQ carried one mark. Candidates generally performed well in this question; however, about 50% of the candidates were unable to secure passing marks. Many candidates wasted their time by unnecessarily repeating the entire text of the answer, as writing down the alphabet of the correct choice was enough.

Question 2

This question with a potential 05 marks invited candidates to list the circumstances in which the precedent will not be binding on the Court.

The performance on this question was not satisfactory. Very few candidates were able to state all the conditions where the precedent is **not** binding on the Court. Most of the candidates ended up defining what a precedent is. Others, on the contrary, tried to explain the conditions when precedent is binding on the Court.

Question 3

This question with a potential 10 marks was divided into two parts. Part (a) required candidates to describe the contract of guarantee and specify as to what may be regarded as consideration of surety under such a contract. Part (b) was a scenario based question. It required candidates to describe the rights of bailee under gratuitous bailment and the responsibilities of bailor in case of a non-gratuitous bailment.

Question 3 (a)

Majority of the candidates were unable to produce satisfactory answers. Many candidates though explained contract of guarantee but failed to mention the parties involved in such a contract. They also failed to appreciate what may be regarded as a sufficient consideration for the surety and thought that the consideration for the surety is the amount received by him from the principal debtor after his default.

Question 3 (b)

The performance in this part was also not upto the mark. A large majority of the candidates were unable to describe the responsibility of bailor in case of non-gratuitous bailment whereas many candidates deliberated on the rights of bailor instead of a bailee in case of gratuitous bailment.

Question 4

This question with a potential 16 marks was divided into two parts. Part (a) invited candidates to narrate the procedure the partners may follow for the registration of the firm. Part (b) consisted of a scenario which required candidates to advise two of the partners Raja and Nazir about their rights under the given circumstances.

Question 4 (a)

Candidates' performance in this part was not satisfactory. Only few candidates were able to describe the complete procedure for the registration of firms as envisaged in section 58 of the Partnership Act, 1932. Many candidates instead of writing the particulars which are required to be included in the application for registration wrote about the contents of a partnership deed. Similarly some candidates wasted considerable amount of time by unnecessarily deliberating on the disadvantages of non-registration of firms.

Question 4 (b)

The performance in this part was disappointing. Majority of the candidates were not aware that Raja and Nazir may rescind the partnership contract on the grounds of fraud or misrepresentation. Candidates were also unable to describe the rights available to Raja and Nazir under section 52 of the Partnership Act, 1932. Most of the candidates just wrote that Raja and Nazir are entitled to get back the property and claim damages from Atif. They did not seem to know the fact that besides other rights, Raja and Nazir were entitled to be indemnified by Atif against all the debts of the firm.

Question 5

This question with a potential 08 marks required candidates to list the situations in which a seller of goods may be regarded as an unpaid seller and to briefly describe the rights of an unpaid seller of goods.

Although it was a very basic and simple question but unfortunately performance in this question remained average. Many candidates just wrote that the seller who has either wholly or partly not been paid is regarded as an unpaid seller. On the other hand, most of the candidates described at length when the rights of lien, stoppage in transit and resale can be exercised and when these rights would be terminated without realizing that these details were not required.

Question 6

This question with a potential 06 marks invited candidates to define 'Carrier' and 'Carriage of Goods' and list the implied warranties in a contract of carriage of goods by sea.

Again the candidates' performance was average. Most of the candidates failed to properly define Carrier. Many of them wrote that a captain or master of the ship is called a carrier. Similarly, majority of the candidates quoted the ordinary dictionary meanings of Carriage of goods whereas in the Act, it has been defined quite differently. Many candidates, contrary to the requirement of the question which was only to name the implied warranties in a contract of carriage of goods by sea, described the implied warranties in detail which added no value as far as marks obtained are concerned.

Question 7

This question with a potential 10 marks required the candidates to deliberate on the provisions of section 33 relating to expulsion of a partner from the firm.

It was among one of the worst attempted questions in the paper. Majority of the candidates without comprehending the requirements of section 33 of the Partnership Act, 1932 incorrectly stated that a partner cannot be expelled from the firm on carrying on a non-competing business. Even those who knew that Marvi could be expelled from the partnership after fulfillment of certain conditions, failed to elucidate whether Marvi would be liable for the acts of partners or the firm after her expulsion from the partnership or not.

Question 8

This question with a potential 10 marks was divided into two parts. Part (a) invited candidates to explain the general rule 'Agreement in restraint of legal proceedings is void' and state the exceptions to this rule. Part (b) was based on a situation whereby a person named Mohsin had filed a suit against his cashier named Bari because Bari had committed a fraud. Mohsin agreed to withdraw the suit if Bari returned the cash. The candidates were required to discuss whether Mohsin was under obligation to withdraw the suit after Bari had returned the cash.

Question 8 (a)

The performance in this part was very poor. Majority of the candidates produced incomplete answers. They either failed to explain the rule or failed to state the exceptions to the rule. Few candidates, without understanding the requirement of the question, explained agreements in restraint of trade.

Question 8 (b)

The performance in this part remained average as most of the candidates rightly acknowledged that agreement between Mohsin and Bari is void but majority among them, failed to state the reason to support their decision.

Question 9

This question with a potential 10 marks was divided into two parts. Part (a) required candidates to explain the term 'Cheque' and state when a cheque is deemed to be crossed generally. Part (b) was related to the payment of a generally crossed cheque in due course and out of due course. Candidates were also required to describe the rights of a banker when a cheque crossed generally is paid in due course and consequences of payment of such a cheque out of due course.

Question 9 (a)

The performance in this question remained average. Majority of the candidates correctly defined "Cheque" but failed to properly explain the general crossing of the cheque. Many candidates also elaborated on the types of crossing instead of general crossing.

Question 9 (b)

The performance in this question was disappointing. Candidates could not figure out the difference between payment in due course and out of due course and consequently failed to appreciate the rights of a banker making payment of a cheque crossed generally in due course and consequences of payment of such a cheque out of due course. The main reason for such a failure seems to be selective study.

Question 10

This question with a potential 10 marks was divided into three parts. Part (a) with 04 marks required candidates to narrate the conditions implied in a contract for sale of goods by sample. Part (b) and (c) with 03 marks each were scenario based questions. Part (b) was related to one of the implied warranty that 'the buyer shall have and enjoy quiet possession of the goods'. Candidates were required to describe the remedies available to Monzer, the buyer of a stolen mobile phone, under the provisions of section 14(b) of the Sale of Goods Act, 1930. Part (c) of the question was related to a situation where a machine jointly owned by three persons Ravi, Mazen and Sonu was sold by Sonu to another person, Nidal, without informing other co-owners. Candidates were required to explain whether Nidal was to be treated as one of the co-owners under such a sale.

Question 10 (a)

It was a simple and straight forward question and candidates' performance in this question was satisfactory. However, few candidates wasted considerable amount of time in describing all the implied conditions in a contract of sale instead of restricting themselves to sale by sample.

Question 10 (b)

The performance in this question was disappointing. Majority of the candidates could not figure out the implied warranty on which the scenario was based and wrongly took it either as a case of 'goods with a charge or encumbrance' or the case of 'sale by non-owner'.

Question 10 (c)

This question was based on Section 28 of Sale of Goods Act (Sale by one of the joint owners) but most of the students answered it with reference to Section 27 (sale by person other than the owner). Many students considered the machine a divisible item and stated that a joint owner can sell his part of the machine.

Question 11

This question with a potential 10 marks required candidates to list how and by whom an agency may be terminated and also to describe the circumstances under which an agency cannot be terminated by the principal.

The candidates' performance in this question was satisfactory. However, only few candidates were able to specify that a reasonable notice is to be given of such termination by the person terminating the agency and that the termination may be expressed or may be implied by the conduct of the principal or agent respectively. Some candidates also discussed the liabilities of principal and agents in case of wrongful termination of an agency, which was not required at all.

Question 12

This question with a potential 10 marks was based on Trust Act, 1882 and divided into two parts. Part (a) required candidates to narrate the circumstances under which a beneficiary may institute a suit for the execution of the trust. Part (b) was related to beneficiary's rights in case of wrongful purchase of a trust property by the trustee.

Question 12 (a)

The candidates who attempted this optional question exhibited very poor performance. Most of them did not seem to have any clue and produced varied answers based on their perceptions instead of narrating the circumstances as mentioned in Section 59 of the Trust Act.

Question 12 (b)

The case was based on Section 62 of the Trust Act. Most of the students answered it with reference to Section 63 to 67.

(THE END)