

Mercantile Law – Paper B5

2006

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Seminar Objectives

1. PLANNING

- MERCANTILE LAW COURSE MATERIAL
- FACTORS TO CONSIDER
- SAMPLE PLAN

2. PREPARATION

- COURSE COVERAGE
- MOCK EXAMINATIONS

3. ATTEMPTING THE PAPER

- HOW TO ATTEMPT THE PAPER
- COMMONLY MADE MISTAKES

Section 1 – PLANNING



Course Material

- 1. A manual of mercantile law by M.C.Shukla**
- 2. Mercantile law of Pakistan by Khawaja Amjad Saeed**
- 3. Mercantile law by Luqman Baig**
- 4. CA BPP Study Text**
- 5. Bare Acts – Contract Act, 1872, Sale of Goods Act, 1930, Partnership Act, 1932, Negotiable Instruments Act, 1881**

Course Material – Factors to consider

- 1. Cover topic from a single book. Otherwise you can get confused which will reflect in your answers**
- 2. The key to selecting the right text book is consulting your teachers / senior students**
- 3. The text book should be written in the “language of the law” using a textbook that is in a simple or very difficult language is not recommended**
- 4. It is important that you map the syllabus with the course material after consulting your senior students who have cleared the examinations.**

FACTORS BE CONSIDERED WHEN PLANNING

The sort of factors you should consider include:

- revision for other papers at the same time
- family commitments, relationships, friendships
- possible illness
- not understanding material when you come to look at it
- how much sleep you need
- your need for leisure activities, and fun
- You also need to build in time for things which, at the moment, you can't anticipate.

Monitoring your plan. Check your plan regularly to see how well you are doing. You may need to amend your plan, eg if something unexpected happens or if some revision takes longer than expected.

A sample plan

Topic	Law	Bare Act Yes / No	Book to cover	time required	Done	Revision 1	Revision 2	Past papers
Legal system of Pakistan	Constitution of 1973							
Contract Laws	Contract Act, 1872							
Negotiable instruments -	Negotiable Instruments Act, 1881							
Sale of Goods -	Sale of Goods Act, 1930							
<i>Carrier and Carriage of Goods</i>								
Carriage of goods by land	The Common Carriers Act, 1865 and The Railways Act, 1890							
Carriage of goods by Sea	Bill of lading Act, 1856 & Carriage of Goods by Sea Act, 1925 & Merchant and Shipping Act, 1894							
Carriage of goods by Air -	Carriage by Air Act, 1934							
Partnership -	The Partnership Act, 1932							
Insurance -	Insurance Ordinance, 2000							
Trust -	Trusts Act, 1882							

Section 2 - PREPARATION



INDICATIVE GRID

INDICATIVE GRID

SYLLABUS CONTENT AREA		WEIGHTAGE
1.	Introduction to legal system Contract Laws including indemnity and Agency	40
2.	Negotiable instruments Sale of Goods Carrier and Carriage of Goods	30
3.	Partnership Insurance (Fire and Marine) Trust	30
TOTAL		100

Note: The weightages given above are for guidance purposes only and deviations in setting of papers may be expected

SKILL LEVEL...

KNOWLEDGE

The first level of academic performance is **knowledge** — the remembering of previously learned material. Whenever you learn (i.e., remember) specific facts or explanations or definitions, you are functioning at the knowledge level.

COMPREHENSION

Comprehension is the second level of academic performance. It is the ability to grasp the meaning of material. These learning outcomes go one step beyond the simple remembering of material and represent the lowest level of understanding.

APPLICATION

The third level, **application**, is the ability to use learned material in new and concrete situations. This may include the application of such things as concepts, principles, laws, and theories. Obviously, to function at this level requires both knowledge and comprehension of the relevant material.

ANALYSIS

Analysis, the fourth level, is the ability to break down material into its component parts so that its organizational structure may be understood. This may include the identification of the parts, analysis of the relationships between parts, and recognition of the organizational principles involved.

SUMMARISING KEY POINTS

- Don't make long notes in the form of paragraphs, which you may find difficult to learn and retain
- Your notes should ideally be in the form of pointers which are easier to remember and quicker to revise
- The examiner finds it easier to allocate marks when your answer is in the form of pointers.

MOCK EXAMINATIONS

- **ATLEAST 10-15 DAYS BEFORE THE END OF THE LEAVE CONDUCT REAL TIME MOCK EXAMINATIONS**
- **SIMULATING EXAM CONDITIONS**
- **SELF ASSESSMENT**
- **IDENTIFYING WEAK AREAS**
- **WORKING ON WEAK AREAS**
- **GOING THROUGH THE EXAMINER COMMENTS**
- **ACTUALLY ATTEMPTING THE QUESTIONS AND NOT JUST GOING THROUGH THE SOLUTIONS**

EXAM SIMULATION

According to Cadogan (1990), this appraisal of performance is best directed by responding to five questions related to the marks gained:

1. What was your total mark?
2. How many marks were lost because you did not understand the theory?
3. How many marks did you lose as a result of simple errors in your responses?
4. How many marks were lost because you could not interpret a question or you answered a different question from the one you were asked?
5. How many marks were lost because you ran out of time?

***Section 3 –
ATTEMPTING THE PAPER***



EXAMINATION TECHNIQUES

- **Controlling the anxiety is the key**
- **If the paper is difficult it is same for all the students and therefore the difficult questions in the paper do not determine your success.**
- **However if you get the easy questions wrong you will loose easy marks and therefore you will not be able to pass.**

EXAMINATION TECHNIQUES

- Arrive early at the exam to avoid panic. Will it help to chat to others while waiting, or make you more nervous (if so, wait alone outside)?
- In the exam, spend the first 5 minutes reading the paper. Make sure you understand the instructions to answer the right number of questions. Decide which questions to answer.
- It is important to understand the question and answer what is asked. Underline key and 'instruction' words. You will not get marks for an irrelevant answer even if it is excellent. You could rephrase a question in your own words. Keep referring back to it while answering.
- Try to avoid questions which contain a word or phrase you don't understand.
- Decide how long to spend on a question, stop working on it when that time is up, return to it if you have time to spare.

EXAM TECHNIQUES

- 1. SCAN THE PAPER**
- 2. PRIORITIES – EASIER ONES FIRST**
- 3. The first 50% of the marks are the easiest to get; the next 25% are harder; the last 25% are the hardest. If you run out of time: two half answers may get more marks than one full one; jot down the main points to include while they are in your mind and return later.**
- 4. TIME MANAGEMENT – MARKS VS TIME**
- 5. UNDERSTANDING THE REQUIREMENTS OF EACH QUESTION**
- 6. WORKINGS AND PRESENTATION – LEGIBLE HANDWRITING**
- 7. STAYING CALM, COOL AND COLLECTED**

MOST COMMONLY MADE MISTAKES

- **GETTING STUCK OVER A SINGLE QUESTION**
- **NOT CLEARLY STATING THE ASSUMPTIONS USED**
- **PANIC AND PRESSURE HANDLING**
- **NOT BEING QUICK ENOUGH**
- **NOT RESTING ADEQUATELY BEFORE THE PAPER**
- **THE PAPER IS 2 PM TO 5 PM ENSURE THAT YOU PRACTICE DURING THE LEAVE AT THESE TIMES**
- **NOT READING THE REQUIREMENTS OF THE QUESTION CAREFULLY**
- **NOT PLANNING BEFORE ATTEMPTING THE QUESTION**
- **PRESENTATION AND WORKINGS NOT CLEARLY SHOWN**

THE SOLUTION TO ALL YOUR PROBLEMS

You can avoid these mistakes:

- by actually try attempting the past papers
- and going through the solutions

Scenario type questions

1. The reason for the introduction of these types of questions is to discourage rote learning
2. It has been noted that most students only give the conclusions in such type of questions
3. The most important aspect of giving such questions is to test if you have understood the law
4. Therefore the key such questions is the reasoning and not the conclusion.
5. The examiner is interested in the thought process that went into the conclusion.
6. You can conclude correctly with out any reasoning, by sheer guessing you have a fifty percent chance of getting it right. ICAP knows this and therefore no marks for guessing the conclusion – you must support it.
7. If you have proper reasoning that forms the basis for your conclusions you will get pass marks even if your conclusion does not match with that of the examiner .

SPRING 2006 ATTEMPT... Example of Scenario Type Qs

QUESTION NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 2 (B) MARKS – 5	A leads B to believe that 500 tons of steel is made every year at his factory. B examines the accounts of the factory which show that only 400 tons of steel is made. B thereafter buys the factory. Can B now avoid the contract?	<p>Reasoning –</p> <p>Exception – If such consent was caused by misrepresentation or by silence fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.</p> <p>Conclusion</p> <p>The contract is not voidable on Account of A’s misrepresentation.</p>

SPRING 2006 ATTEMPT..... Scenario type qs

QS NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 9(C) MARKS - 5	<p>A, B and C are partners in a firm. A buys certain goods from D and uses them at his own house. The goods are of use in the ordinary course of firm's business. D claims the price from the firm. The firm refuses to pay on the plea that the goods were never received by it.</p> <p>With reference to the Partnership Act, 1932 discuss the following:</p> <p>(i) The position of A and D vis a vis the firm.</p> <p>(ii) What would be your answer if part of the goods so bought by A were delivered to the firm and the remaining goods kept by A for his private use?</p>	<p>Reasoning –</p> <p>The law of partnership is an extension of branch of the general law of principal and agent. (Section 18)</p> <p>Section 19(1) and 22 read together provide that the act of the partner which is done in the usual way, binds the firm provided the act is done in the name of the firm. This is called the implied authority.</p> <p>Conclusion – Same for both answers, firm is bound.</p>

COPING WITH NERVES

1. Identify what happens if you are nervous in an exam. It may make the solution obvious.
2. Do good revision/preparation.
3. Find out in advance as much as possible about the exam and the exam room.
4. Identify what to do in the first 5 minutes of the exam in what order and stick to it. Doing simple things first will steady you down, rather than jumping straight into a question.
5. Make yourself comfortable for the exam (eg warm/cool clothes, handkerchiefs etc)
6. Avoid being overtired.
7. Avoid last minute revision.

SPRING 2006 ATTEMPT

QUESTION NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 1 Marks - 4	What are the powers available to the President of Pakistan under the constitution to promulgate a law? What is the legal status of such law? – Study Text Pg 34 – 35	Students with selective study pattern weren't able to answer the question. Two scenarios were required to be mentioned - If the National Assembly is in session all laws must be approved by the upper and lower houses before approval by president. Other laws enacted when the NA is not in session are Ordinance. The Ordinance is valid for 4 months unless passed by NA.

SPRING 2006 ATTEMPT

QS NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 3 MARKS - 5	<p>B agreed to perform some special work at C's premises between November 16 to 30, 2005. In order to perform the contract, B contracted with A to purchase a machine for Rs. 1,000,000 to be delivered by November 15, 2005. A failed to deliver the machine on time and consequently B failed to perform his contract with C and was thus compelled to pay compensation of Rs. 250,000 for breach of contract. Subsequently B purchased the machine from D at Rs. 1,200,000.</p> <p>(i) Ordinary damages and special damages</p> <p>(ii) Whether B can recover ordinary and special damages from A and what shall be the amount of these damages?</p>	<p>Reasoning –</p> <p>If B had informed A that specific purpose of procuring machine is execution of contract with C – A is liable for compensation B for Rs. 250,000 due to breach of contract with C (Special Damages) and Rs. 200,000 (Ordinary Damages) difference in price of machine</p> <p>Special damages can be recovered if B has specifically informed A of the purpose for which the machine is being acquired from A.</p>

SPRING 2006 ATTEMPT

QS NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 4(A) MARKS - 6	<p>When a debtor owes several distinct debts to a person and makes part payment, explain how such payment is to be appropriated?</p> <p>Pg 70 M.C Shukla Section 59,60 & 61 Contract Act, 1872</p>	<p>When the debtor has stated that the payment made by him should be appropriated to a particular debt, the creditor must do so. If intention not specified the law will gather intention from the circumstances attending the payment. E.g Where creditor demands discharge of several debts and debtor sends a lump sum the payment shall be applied proportionately.</p>

SPRING 2006 ATTEMPT

QS NUMBER & MARKS	QUESTION	IMPORTANT POINTS
<p>QS 4 (B)</p> <p>MARKS – 4</p>	<p>A regularly buys goods from B. C provided guarantee to B for any trade debt due from A but not exceeding Rs. 100,000. A became indebted to B for Rs. 120,000 and made a compromise with B to pay 75 paise in a rupee. B sued C under the guarantee. Is B's claim valid?</p> <p>Section 134 – Contract Act, 1872 Pg 652 M.C. Shukla</p>	<p>Reasoning – Discharge of surety by release of principal debtor – The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor</p> <p>Conclusion – B's claim is not valid as the principal debtor has been discharged and therefore A is discharged from being surety.</p>

SPRING 2006 ATTEMPT

QS & MARKS	QUESTION	IMPORTANT POINTS
<p>QS 5(A)</p> <p>MARKS – 5</p>	<p>Describe the circumstances in which an agent can delegate to a sub-agent.</p> <p>Pg 144 – M.C.Shukla Contract Act, 1872</p>	<p>The general rule is “Delegatus non polest delegare”. However an agent may appoint sub-agents in the following circumstances:</p> <ol style="list-style-type: none">1. Where the principal has expressly permitted the delegation of such power2. Where the custom of the trade permits the delegation3. Where the principal knows that the agent intends to delegate his authority4. Where the nature of the authority is such that a deputy is necessary to complete the business5. where the act to be done is purely ministerial and does not involve the exercise of discretion e.g clerical or routine work6. In an unforeseen emergency an agent can always delegate.

SPRING 2006 ATTEMPT

QS NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 5(B) MARKS – 5	When a third party comes to know of the undisclosed principal, what options are available with him with regard to legal action for non-performance?	<p>Reasoning –</p> <p>The principal even though his name was kept secret by the agent at the time of the contract is, on being discovered, responsible for the contracts of the agent. Here the principal is liable and not the agent, unless there is a trade custom making the agent liable. It is essential that undisclosed principal exists and cannot be brought into existence as a principal after the contract has been concluded.</p> <p>Conclusion</p> <p>The third party can sue the undisclosed principal from breach of contract once this comes to his/her knowledge and has the same remedies available non-performance as in the case of any other contract.</p>

SPRING 2006 ATTEMPT

QS NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 6 MARKS - 6	<p>A made out a cheque writing “Pay to B” and delivered the same to him.</p> <p>Afterwards,</p> <p>B put his signature on the back of the cheque and delivered it to C.</p> <p>You are required to briefly explain:</p> <p>(i) The bearer and order instruments and how they can be negotiated.</p> <p>(ii) What type of endorsement has been made by B?</p> <p>(iii) Whether C is entitled to receive the payment of cheque.</p>	<p>(i) Bearer and order instruments can be negotiated endorsing the same.</p> <p>(ii) An unconditional endorsement of a negotiable instrument followed by its unconditional delivery transfers to the endorsee the property therein, vesting in him the title to the instrument. The endorsee acquires the right to negotiate the instrument to any one he likes and to sue all parties whose name appears on it.</p> <p>(iii) C is entitled to receive the payment of the cheque as B has endorsed the negotiable instrument.</p>

SPRING 2006 ATTEMPT

QS NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 7 (A) MARKS - 3	Define an agreement to sell and briefly describe when an agreement to sell becomes a sale? Section 4 – Sale of Goods Act, 1930 Pg 689 – M.C. Shukla	<p>Where under the contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale., but where the transfer of the property in the goods take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.</p> <p>Agreement to sell becomes a sale when when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.</p>

SPRING 2006 ATTEMPT

QS & MARKS	QUESTION	IMPORTANT POINTS
<p>QS 7(B)</p> <p>MARKS – 5</p>	<p>With reference to Sale of Goods Act, 1930, briefly explain the terms:</p> <p>(i) conditions, and;</p> <p>(ii) implied conditions</p> <p>and enumerate the implied conditions as regards the title of goods.</p> <p>Pg 208 – M.C.Shukla Sale of Goods Act, 1930</p>	<p>Condition</p> <p>A condition is a stipulation essential to the main purpose of the contract, the breach of which gives the right to treat the contract as repudiated</p> <p>Implied conditions</p> <p>These conditions are not specifically mentioned but are deemed to be included unless excluded by means of express terms in a contract for the sale of goods</p> <p>Implied conditions with regards to title of goods</p> <p>The first implied condition in every contract for the sale of goods is that the seller, in actual sale, has the right to sell the goods and , in an agreement to sell he will have it when property is to pass. As a result of this if the title turns out to be defective the buyer can reject the goods</p>

SPRING 2006 ATTEMPT

QUESTION NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 7(C) MARKS – 9	<p>A sold certain goods to B. On B's failure to pay the price, A exercised his right of lien on the goods. When B failed to pay the price within a reasonable time, A resold the goods to C.</p> <p>You are required to answer the following:</p> <p>(i) Describe the circumstances in which an unpaid seller can exercise his right of resale.</p>	<p>Right of resale – unpaid seller</p> <ol style="list-style-type: none">1. Where the goods are of perishable nature2. Where there is express provision regarding such right in contract3. Where the seller gives notice to resell and buyer does not pay within a reasonable time

SPRING 2006 ATTEMPT

QUESTION NUMBER & MARKS	QUESTION	IMPORTANT POINTS
<p>QS 7(C)</p> <p>MARKS – 9</p>	<p>A sold certain goods to B. On B's failure to pay the price, A exercised his right of lien on the goods. When B failed to pay the price within a reasonable time, A resold the goods to C.</p> <p>You are required to answer the following:</p> <p>(ii) What shall be the consequences if A has resold the goods without giving notice to B and whether C shall have a good title to the goods in such a case?</p> <p>(iii) What shall be the situation if A has resold the goods after a reasonable time of giving notice to B?</p> <p>Pg 214 [Business Law – Khalid Mehmood Cheema]</p>	<p>If having sold goods, a seller continues in possession of the goods and makes a delivery to a person who received them in good faith and without notice of the previous sale, the transaction takes effect as if the seller were authorized for that purpose.</p> <p>A has the right to resell the goods if he has given notice and B has not paid within a reasonable time.</p>

SPRING 2006 ATTEMPT

QS NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 8 MARKS - 5	<p>With reference to the Carriage of Goods by Sea Act, 1925, what particulars should a Bill of Lading contain?</p> <p>Pg 263 – BPP Study Text Carriage of Goods by Sea Act, 1925</p>	<p>The Carriage of Goods by Sea Act, 1925 lays down the following contents:</p> <ol style="list-style-type: none">1. It should clearly state that the bill of lading shall be governed by that act2. Evidence of the contract between the shipper and the carrier which also makes it as evidence of title3. Marks necessary for identification of goods4. Apparent condition of goods

SPRING 2006 ATTEMPT

QUESTION NUMBER & MARKS	QUESTION	IMPORTANT POINTS
<p>QS 9 (B)</p> <p>MARKS – 6</p>	<p>Explain the doctrine of ‘holding out’ as given in the Partnership Act 1932. What is the status of a person who so holds out?</p> <p>Pg 167 M.C.Shukla– Partnership Act, 1932</p> <p><i>“Any one who by words spoken or written or by conduct represents himself, or knowingly permits himself to be represented, to be a partner in a firms is liable as a partner in that firm to any one who has on the faith of such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit” – Section 28(1)</i></p>	<p>Reasoning –</p> <p>Also referred to as partner by estoppel. As regards partners the partnership is created via agreement b/w partners. In relation to outsiders the partnership may arise out of the conduct of the partners. [Sec 28(1)]</p>

SPRING 2006 ATTEMPT

QUESTION NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 10 MARKS – 6	What are the various types of marine insurance policies available to the cargo owners? Pg 272 – CA BPP Study Text	Marine policies for cargo owners can be of the following types: <ol style="list-style-type: none">1. Floating policy2. Valued policy3. Unvalued policy4. Block policy5. Consequential loss policy6. Declaration policy

SPRING 2006 ATTEMPT

QUESTION NUMBER & MARKS	QUESTION	IMPORTANT POINTS
QS 11 MARKS – 6	What are the rights of a beneficiary under the Trust Act, 1882? Pg 278 – CA BPP Study Text	<ol style="list-style-type: none">1. Right to rents and profits2. Specific execution of the intention of the author of the trust3. Inspect copies of instrument of trust, accounts etc4. Right to transfer beneficial interest5. Right to sue for execution of trust6. Right that trust property is protected7. Right to compel trustee to do his duties8. Proceed against trustee in breach of trust

INDICATIVE GRID VS ACTUAL – SPRING 2006

S. No	Area	Indicative Grid	Actual
1	Legal system of Paksitan	40	43
	Contract laws including indemnity and agency		
2	Negotiable Instruments	30	28
	Sale of Goods		
	Carrier and Carriage of Goods		
3	Partnership	30	29
	Insurance (fire and marine)		
	Trust		
		100	100

LEVEL OF DIFFICULTY - SPRING 2006

Qs No.	Area	Marks	Level of difficulty
1	Legal system of Pakistan	4	Difficult
2b	Contract Act, 1872	5	Average
3	Contract Act, 1872	8	Average
4a	Contract Act, 1872	6	Average
4b	Contract Act, 1872	4	Average
6	Negotiable Instruments Act, 1881	6	Average
7c	Sale of Goods Act, 1930	9	Average
9c	Partnership Act, 1932	5	Average
		43	
2a	Contract Act, 1872	6	Easy
5a	Contract Act, 1872	5	Easy
5b	Contract Act, 1872	5	Easy
7a	Sale of Goods Act, 1930	3	Easy
7b	Sale of Goods Act, 1930	5	Easy
8	Carriage of Goods	5	Easy
9a	Partnership Act, 1932	6	Easy
9b	Partnership Act, 1932	6	Easy
10	Insurance Ordinance, 2000	6	Easy
11	Trust Act, 1882	6	Easy
		53	

Referral / lapse

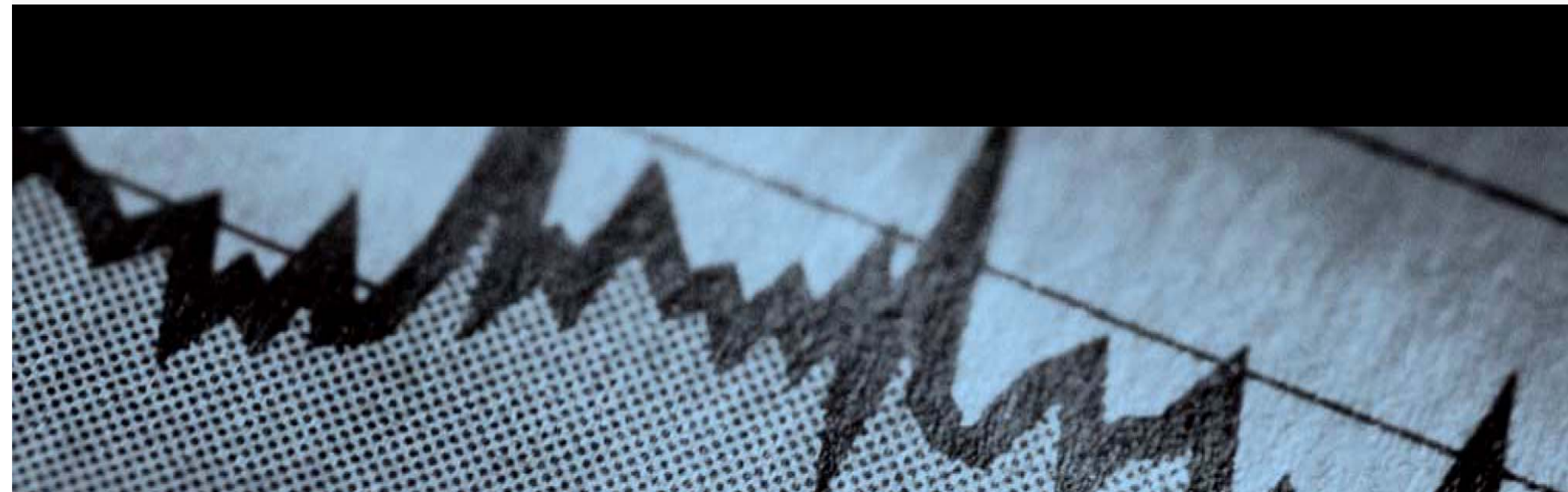
Please analyze your mistakes.....

- Step 1 – Attempt the paper which you did not pass again and mark your copy and get it marked by an independent person e.g. teacher / senior. Do not refer text book prior to attempting the paper if you want a realistic assessment
- Step 2 – On the basis of your attempt identify your weak areas. Closely analyze your answers to see drafting mistakes, grammatical mistakes and most importantly conceptual mistakes.
- Step 3 – Work on your weak areas.
- Step 4- After thoroughly revising the course conduct mock examinations as discussed earlier
- Step 5 – Constantly strive for improving your grade because even if you pass the mock the conditions in the actual exam are different

Q & A SESSION.....??



CAVEATS



CAVEATS

- **ALL COURSE MATERIAL, STUDY TECHNIQUES, KEY AREAS EMPHASIZED DURING THIS SEMINAR REPRESENT MY VIEW POINT AND NOT THAT OF ICAP.**
- **THE INSTITUTE DOES NOT PRESCRIBE A PARTICULAR PUBLISHER ALTHOUGH RECOMMENDED COURSE MATERIAL LIST IS AVAILABLE IN THE YELLOW BOOK.**
- **ANSWERS AND DISCUSSION ON EXAM QUESTIONS ARE THE PERSONAL VIEWS OF THE PRESENTOR.**

***Thank u for attending the seminar
and best of luck for the exams!!!***