

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF PAKISTAN**

**EXAMINERS' COMMENTS**

<b>SUBJECT</b>	<b>SESSION</b>
Mercantile Law	Foundation Examination – Spring 2014

**General:**

An average performance was witnessed in the paper. Candidates seemed to be inadequately 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 unnecessary details results in wastage of time. This time can be used in assessing the requirement of the question and planning the answers accordingly.

**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. Many candidates wasted their time by unnecessarily repeating the entire text of the answer whereas writing down the alphabet of the correct choice was enough.

**Question 2**

This question with a potential 08 marks invited candidates to differentiate between Statute and an Ordinance and list down the purposes of an Act of Parliament.

The performance on this question was highly unsatisfactory. Very few candidates were able to correctly differentiate between a Statute and an Ordinance. Most of the candidates were also unable to list down the purposes of an Act of Parliament. Most students were able to mention one or two points only. Many candidates did not have any clue about the meaning of the term 'Statute'.

**Question 3**

This question with a potential 10 marks was divided into two parts. In each part a different scenario was given. Part (a) required candidates to analyze two situations and describe the conditions which must be fulfilled to make a binding contract. Part (b) required them to describe the rights of a person who makes payment on behalf of another person which that person was legally compelled to pay.

**Part (a)**

In sub-part (i) a person had promised to make part payment against a loan which had been time-barred. Many students replied that the agreement without consideration is void and hence it is not a binding contract, without realizing that there are certain exceptions as was the case in the given scenario. In part (ii), majority of the students replied correctly that the contract is binding as it is based on natural love and affection and parties are standing in near relation to each other and hence does not need consideration. However, most of them could only explain that the agreement should be in writing but did not specify that it need to be registered also.

**Part (b)**

The performance in this part was highly unsatisfactory. This was a case of payment of legal obligations of a person by another person whereas most of the candidates replied in the context of a gratuitous payment or payment of necessities.

**Question 4**

This question with a potential 15 marks was divided into three parts. Part (a) required candidates to explain the concept of property of the firm. Part (b) consisted of a scenario which required candidates to describe the position of a partner who is adjudicated as insolvent and effects of such adjudication on the partner. Part (c) required the candidates to list down the restrictions on the implied authority of a partner.

**Part (a)**

The performance in this part was disappointing. Only a few candidates were able to correctly describe property of the firm in accordance with Partnership Act, 1932. Most of them listed the types of assets a partnership could have and other details based on pure guesswork.

**Part (b)**

The performance in this part was below average. Majority of the candidates correctly confirmed that insolvent partner will cease to be a partner in the firm but failed to mention the implications thereof on such partner. Most of them declared incorrectly that firm would be dissolved in such a situation but that is not mandatory.

**Part (c)**

The performance in this part was average as majority of the candidates listed few points only whereas only few could mention all the restrictions.

**Question 5**

This question with a potential 08 marks required candidates to list the remedies available to a buyer in case of defects found after the acceptance of goods that were purchased for a specific purpose. The performance in this question was unsatisfactory. Most of the students did not analyze the situation comprehensively. Most of them considered it as a sale by description and only stated that since the buyer had specified his requirement to the seller, the seller was bound to compensate the buyer. Matters such as the following were seldom discussed:

- The defect was such that it could not have been revealed by an apparent examination.

- The implied conditions as to fitness for the purpose were applicable on the seller.
- The seller was making the sale in the ordinary course of his business.

### **Question 6**

This question was based on Carriage of Goods by Sea Act, 1925 and consisted of three parts. The answers to all three parts were quite straightforward and based on common sense. Consequently, most of the candidates were able to secure high marks.

### **Question 7**

This question was based on Section 44 of the Partnership Act, 1932 and required the candidates to list the grounds under which a petition for the dissolution of a firm may be filed in the court. The overall performance was average as majority of the candidates covered four points i.e. misconduct by a partner, persistent breach of agreement by partner, losses incurred by the firm and any other just or equitable ground. Complete answers were provided by few students only.

### **Question 8**

This question with a potential 10 marks required candidates to explain ratification, agency by ratification and essentials of a valid ratification.

It was one of the best attempted questions. However, many students wasted a lot of time in explaining the conditions for valid ratification although the question required a list of the essential conditions only.

### **Question 9**

This question with a potential 10 marks was divided into two parts. Part (a) required candidates to state eight circumstances under which the presentment of negotiable instruments for payment is not necessary and these are deemed to be dishonoured at the due date of payment. Part (b) related to negotiability of an instrument in case it has previously been indorsed without adding the words 'or order'.

#### **Part (a)**

Most of the candidates listed the reasons for dishonour of cheques instead of the exact requirement of the question as has been explained above. Those who adopted the correct approach could mostly list down 3-4 points only.

#### **Part (b)**

This 2-mark portion was answered correctly by about 50% of the candidates.

### **Question 10**

This question with a potential 10 marks was divided into two parts of 5 marks each. Part (a) required candidates to describe a contingent contract and describe with the help of an illustration as to when a contingent agreement is considered void ab-initio. Part (b) of the

question was based on a scenario involving two joint promisors as well as two joint promisees.

**Part (a)**

Performance in Part (a) was average. Most of the candidates were able to describe a contingent contract; however, many candidates failed to produce correct example of an agreement which is void ab-initio.

**Part (b)**

The performance in this question was disappointing. According to the given situation, there were two promisors and two promisees and one of the promisors had paid the entire amount of debt to one of the joint promisees whereas the other joint promisee had filed a suit for recovery of the debt. Somehow, majority of the candidates answered in the context of a situation where there are two or more promisees with one promisor. Many candidates failed to provide appropriate justification to support their answer.

**Question 11**

This question with a potential 10 marks required candidates to (i) describe contract of sale, (ii) agreement of sale and (iii) how a contract of sale is made.

Most students described sale instead of contract of sale. Agreement to sell was described in a much better way. Moreover, instead of describing how a contract of sale is made, many candidates described the essential elements/conditions of a sale.

**Question 12**

This question with a potential 10 marks was based on Trust Act, 1882 and divided into two scenario based parts. Part (a) required candidates to narrate the right of beneficiaries to recover loss incurred on account of lack of due diligence by the trustees. Part (b) related to beneficiary's rights to appoint trustees in a situation where all the three existing trustees had died in a road accident. The overall performance was quite poor as only about 15% of the candidates could secure passing marks in this question.

**Part (a)**

This part was based on Section 15 of the Trust Act but most of the candidates answered it with reference to Section 62 and 63.

**Part (b)**

This part was based on Section 60 of the Trust Act. Most of the students did not seem to have any clue and produced varied answers based on guesswork.

**(THE END)**