
Answers

- 1 (a) Fundamental rights are what have traditionally been known as the 'natural rights' of human beings. The idea behind the concept of fundamental rights is that political institutions and social structures rest on the theory that all men have certain rights of life, liberty and the pursuit of happiness, which are inalienable, fundamental and inherent. When these inalienable rights are protected by Constitutional guarantees, they are called 'fundamental rights' (*K.B. Threads (Private) Limited v Zila Nazim, Lahore* PLD 2004 Lahore 376).

In Pakistan, the fundamental rights are set out in Part (II) of Chapter (1) of the Constitution of Pakistan, 1973 (the 'Constitution') and relate to life, liberty and privacy (Article 9); freedom of movement (Article 15); freedom of assembly (Article 16); freedom of association (Article 17); freedom of trade, business and profession (Article 18); free speech (Article 19); religious rights (Article 20); protection of property rights (Articles 23 and 24); equality of citizens/non-discrimination (Article 25), etc. The Lahore High Court in the case of *Ahmed Abdullah v Government of the Punjab* PLD 2003 Lahore 752 has held that fundamental rights are not absolute rights, rather such rights are often encumbered by provisos and qualifying conditions.

Article 8 of the Constitution provides that any law, custom or usage having the force of law, inconsistent with the fundamental rights shall be void to the extent of such inconsistency and mandates that state shall not make any law, which takes away or abridges such rights. If any law in contravention of the fundamental rights is made then the same shall be void to the extent of such contravention. The superior Courts of Pakistan have held that even in a 'state of emergency' the state can not make laws in violation of fundamental rights, however, as per Article 233(2) of the Constitution, the right to move the court for enforcement of such rights can be suspended.

- (b) The rule of law is one of the most fundamental constitutional doctrines of modern democracies which provides that no person is above the law. It envisages the rule of law as opposed to the rule of men (i.e. unchecked discretionary rule) Pakistan has a written Constitution which is not a code of rights only; it lays equal stress on obligations. Nobody is above the law, and everybody has the basic obligation to obey the Constitution and the law – *Ch. Zahur Elahi v Zulfikar Ali Bhutto* (PLD 1975 SC 383). Article 4 and 5 of the Constitution provide that rule of law is the basis of all Constitution. It is reproduced hereunder:

Right of individuals to be dealt with in accordance with law, etc. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular:

- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
- (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
- (c) no person shall be compelled to do that which the law does not require him to do.

While interpreting Article 4, the Lahore High Court held that 'equal protection and equal treatment of citizens similarly placed was guaranteed by provisions of Articles 4 and 25 of the Constitution. Government and other statutory functionaries in a democratic set-up were bound to act in public functions could not make any individual distinction for any extraneous reasons. Discretion vested in public functionaries must be free from arbitrariness and caprice.' *Ehsanullah Bajwa v Chairman, City and Regional Planning Department*, UET Lahore (1991 MLD 1988).

In the famous *NRO Case* (PLD 2010 SC 265) the Supreme Court of Pakistan has cited English jurist A. V. Dicey's following formulation of the rule of law with approval:

- (i) No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense rule of law is contrasted with every system of government based on the experience by person in authority of wide, arbitrary, or discretionary powers of constraint;
- (ii) No man is above the law. Every man and woman, whatever be his or her rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals; and
- (iii) The general principles of the constitution (as, for example, the right to personal liberty, or the right of public meeting) are, with us, the result of judicial decisions determining the rights of private persons in particular cases brought before the courts.

The Supreme Court further comments that (i) the rule of law excludes arbitrariness; its postulate is 'intelligence without passion' and 'reason freed from desire'; (ii) wherever we find arbitrariness or unreasonableness there is denial of the rule of law; and (iii) what is a necessary element of the rule of law is that the law must not be arbitrary or irrational and it must satisfy the test of reason and the democratic form of polity seeks to ensure this element by making the framers of the law accountable to the people (PLD 2010 SC 265).

- 2 (a) In the English case of *Reddaway (Frank) & Co Ltd v George Banham & Co Ltd* [1896] A.C. 199, Lord Halsbury summed up the tort of passing off as '*nobody has any right to represent his goods as the goods of somebody else*'. The tort of passing-off concerns conduct by the defendant that is intended to deceive the public believing that goods belonging to or manufactured by the defendant are really the property or product of the plaintiff. The same is true of services.

The five elements of passing off are:

- (1) a misrepresentation;
 - (2) made by a trader in course of trade;
 - (3) to prospective customers of his or ultimate customers of goods or services supplied by him;
 - (4) which is calculated to injure the business or goodwill of another trader (in the sense that this is a reasonably foreseeable consequence); and
 - (5) which causes actual damage to a business or goodwill of the trader by whom the action is brought or will probably do so.
- (b) Negligence is the failure to exercise the degree of care demanded by the circumstances and the want of care which the law prescribes under particular circumstances existing at the time or the act or omission which is involved. Negligence is an omission to do something which a reasonable man guided by those considerations which ordinarily regulate human affairs, would do, or doing something which a prudent and reasonable man would not do [*Saadat Parvez Sayan v Chief Secretary, Punjab* 2003 PLC (C.S.) 1277].

The tort of negligence is based on the concept of fault and carelessness and it exists where four conditions are present:

- (i) the defendant must have owed a duty of care to the plaintiff. Duty connotes a relationship between one person and another, imposing on the one the obligation for the benefit of the other to take reasonable care in dealing with the other (*S. Iqbal Hussain Jaffery v KESC* (1994) CLC 1903);
- (ii) the defendant must have breached that duty. Breach is assessed by the standard of a reasonable-and-prudent person, i.e. whether a reasonable man in the tortfeasor's place would have acted in such a manner or not;
- (iii) breach of that duty must be the actual as well as the legal cause of injury. The test commonly used is called the 'but for test', i.e. but for the defendant's breach of duty, the loss and damage would not have been suffered. The loss must also be not too remote and must be reasonably foreseeable;
- (iv) the injury must be one that the law recognises and for which money damages may be recovered.

When the above-mentioned elements are present a cause of action based on negligence is established. To be successful, a plaintiff must overcome any defences to negligence liability that may be raised by the tortfeasor. The usual defences to negligence are (i) 'contributory negligence' – a court may reduce the amount of damages paid to the claimant if the defendant establishes that they contributed to their own injury or loss; and, (ii) '*volenti non fit injuria*' – where a defendant's actions carry the risk of a tort being committed they will have a defence if they can prove that the claimant consented to the risk.

- 3 The Code of Corporate Governance ('Code') issued by the Securities and Exchange Commission of Pakistan ('SECP') lays down certain requirements for ensuring regular and comprehensive reporting on financial matters pertaining to listed companies.

The Code mandates that the directors of listed companies shall include statements to the following effect in the directors' report, prepared under s.236 Companies Ordinance, 1984:

- (a) the financial statements, prepared by the management of the listed company, present fairly its state of affairs, the result of its operations, cash flows and changes in equity.
- (b) proper books of account of the listed company have been maintained.
- (c) appropriate accounting policies have been consistently applied in preparation of financial statements and accounting estimates are based on reasonable and prudent judgment.
- (d) International Accounting Standards, as applicable in Pakistan, have been followed in preparation of financial statements and any departure therefrom has been adequately disclosed.
- (e) the system of internal control is sound in design and has been effectively implemented and monitored.
- (f) there are no significant doubts upon the listed company's ability to continue as a going concern.
- (g) there has been no material departure from the best practices of corporate governance, as detailed in the listing regulations.

The directors' reports of listed companies are also required to include the following, where necessary:

- (a) if the listed company is not considered to be a going concern, the fact along with reasons shall be disclosed.
- (b) significant deviations from last year in operating results of the listed company shall be highlighted and reasons thereof shall be explained.
- (c) key operating and financial data of last six years shall be summarised.

- (d) if the listed company has not declared dividend or issued bonus shares for any year, the reasons thereof shall be given;
- (e) where any statutory payment on account of taxes, duties, levies and charges is outstanding, the amount together with a brief description and reasons for the same shall be disclosed;
- (f) significant plans and decisions, such as corporate restructuring, business expansion and discontinuance of operations, shall be outlined along with future prospects, risks and uncertainties surrounding the listed company;
- (g) a statement as to the value of investments of provident, gratuity and pension funds, based on their respective audited accounts, shall be included;
- (h) the number of board of directors meetings held during the year and attendance by each director shall be disclosed;
- (i) the pattern of shareholding shall be reported to disclose the aggregate number of shares (along with name wise details where stated below) held by:
 - (i) associated companies, undertakings and related parties (name wise details);
 - (ii) National Investment Trust and Investment Corporation of Pakistan (name wise details);
 - (iii) directors, Chief Executive Officer and their spouse and minor children (name wise details);
 - (i) executives;
 - (ii) public sector companies and corporations;
 - (iii) banks, Development Finance Institutions, Non-Banking Finance Companies;
 - (iv) insurance companies, modarabas and mutual funds; and
 - (v) shareholders holding 10% or more voting interest in the listed company (name wise details).
- (j) All trades in the shares of the listed company, carried out by its directors, Chief Executive Officer, Chief Financial Officer, Company Secretary and their spouses and minor children shall also be disclosed.

4 The legal regime for the establishment and regulation of companies in Pakistan is detailed in the Companies Ordinance, 1984 ('Ordinance') and the rules made thereunder. The function of administration of these companies is vested in the Securities and Exchange Commission of Pakistan (the 'SECP') and the Registrar of Companies appointed by the SECP for each province of Pakistan (the 'Registrar'), where such company is to be registered.

Under the provisions of the Ordinance, a company may be formed by persons associating for any lawful purpose by subscribing their names to the memorandum of association. The Ordinance provides for three different forms of companies:

- A company limited by shares
- A company limited by guarantee
- An unlimited liability company.

Further, under the Ordinance two types of limited liability companies are provided for, namely, (a) a private limited company and (b) a public limited company (which may be listed or unlisted). Any one or more persons associated for any lawful purpose, by subscribing their name(s) to the memorandum of association, and complying with other registration specific requirements of the Companies Ordinance, 1984, may incorporate a private limited company.

The following documents are required to be filed with the Registrar of the Companies Registration Office ('CRO') in respect of the registration of a private company in Pakistan.

1. Availability of Name

An application for the availability of the proposed name of the company, along with a fee, has to be made to the CRO. This can be undertaken as soon as the proposed name of the company is finalised. The confirmation of the availability of the proposed name of the company has to be submitted to the CRO at the time of the incorporation of the company.

2. Memorandum and articles of association

Detailed information on the company profile, its objects and corporate structuring in terms of shareholding and subscribers is required in order to prepare the memorandum and articles of association.

Once the memorandum and the articles are finalised, four copies, duly signed by the subscribers, are required to be submitted to the CRO for the incorporation of the company. The names, addresses, description, occupation and nationality of the subscribers to the memorandum and the articles are to be indicated. Additionally, copies of the national identity cards (in the case of Pakistani citizens) or the passports (in the case of foreign nationals) of the subscribers and the witnesses to the memorandum and the articles have to be submitted to the CRO.

3. Details of the Subscribers

The names, addresses and nationality of the subscribers and the number of shares to be held by each subscriber to the memorandum and articles of association are to be indicated. Additionally, a copy of the national identity cards (in the case of Pakistani nationals) or passport (in the case of foreigners) of each subscriber and witness to the memorandum and article of association are also required.

4. Forms

The following forms are required to be filed along with the memorandum and articles of association:

- (i) Form – 1 (Declaration of compliance with the pre-requisites for formation of the company) to be signed by an Advocate.
- (ii) Form – 21 (Notice of situation of registered office of the company) to be signed by any one (1) of the proposed directors of the company.
- (iii) Form – 29 (Particulars of directors and other officers of the company) to be signed by any one (1) of the proposed directors in respect of the company.

5. Power of Attorney/letter of authority

A power of attorney/letter of authority has to be executed on a stamp paper worth Rs. 500, signed by the subscribers of the company, authorising the attorney to submit the memorandum and articles of association along with the necessary documents on behalf of the subscribers for the incorporation of the company.

6. Registration Fee

A copy of the original paid Challan in the authorised branches of Habib Bank Limited or Muslim Commercial Bank and/or a Bank Draft/Pay Order drawn in favour of the SECP of the prescribed amount of the registration fee has to be submitted. The fee payable on registration of the company is directly related to the amount of the authorised share capital with which the company is proposed to be set up. A minimum registration fee of Rs. 2,500 is payable in respect of a company where the authorised share capital does not exceed Rs. 100,000. If it exceeds Rs. 100,000, in addition to Rs. 2,500, an additional fee is required to be paid depending on the increase in the amount of the authorised share capital.

- 5 (a) (i) Section 4 Partnership Act 1932 ('Act') defines a partnership as the relationship between persons who have agreed to share the profits of a business carried on by, all or any of them, acting for all. Persons who have entered into a partnership with one another are called individually 'partners' and collectively 'a firm'.
- (ii) Section 7 of the Act provides that where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is a 'partnered at will'.
- (iii) Section 8 provides that a person may become a partner with another person on particular adventures or undertakings. Such a partnership is referred to as a 'particular partnership'.
- (b) Section 25 of the Act provides that *'Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner'*. The statement in s.25 lays stress upon three main points of the general principle of liability:
- (i) first, the liability of the partners is joint as well as several;
 - (ii) second, they are liable only for 'acts of the firm'. Section 2(a) Act defines an 'act of a firm' to mean 'any act or omission by all the partners, or by a partner or agent of the firm which gives rise to a right enforceable by or against the firm';
 - (iii) third, a partner is liable for an act of the firm only if the act was done while he was still a partner.
- 6 (a) Winding up of a company is the process whereby its business is wound up and its assets are realised and distributed amongst its creditors and/or contributories. Section 297(1) of the Companies Ordinance, 1984 ('Ordinance') provides that the winding up of a company may be either: (i) by the court; or (ii) voluntary; or (iii) subject to the supervision of the court.
- Winding up by the court is also referred to as 'compulsory' winding up. It can be initiated by shareholders, creditors and/or the Registrar of Companies. In compulsory winding up the liquidator is appointed by the court.
- On the other hand voluntary winding up is not ordered or initiated by the court. It is initiated by the members/shareholders and conducted without involvement of the court (unless it becomes subject to the supervision of the court or the court's orders are required for specific purpose, for instance, extension in the one-year statutory period of winding up). In voluntary winding up the liquidator is appointed by the shareholders.
- (b) Section 305 of the Ordinance sets out the grounds and circumstances on/in which a company may be compulsorily wound up by the court. These grounds are as follows:
- (a) if the company has, by special resolution, resolved that the company be wound up by the court;
 - (b) if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;
 - (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
 - (d) if the number of members is reduced, in the case of private company, below two or, in the case of any other company, below seven;

- (e) if the company is unable to pay its debts;
- (f) if the company is:
 - (i) conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities;
 - (ii) carrying on business not authorised by the memorandum;
 - (iii) conducting its business in a manner oppressive to any of its members or persons concerned with the formation or promotion of the company or the minority shareholders [i.e. shareholders together holding not less than 20% of the equity share capital of the company];
 - (iv) run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the company; or
 - (v) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this Ordinance or fail to carry out the directions or decisions of the court or the registrar or the Commission given in the exercise of powers under this Ordinance;
- (g) if, being a listed company, it ceases to be such company; or
- (h) if the court is of opinion that it is just and equitable that the company should be wound up; or
- (i) if a company ceases to have a member.

7 (a) The expression 'workman' is defined in s.2(i) West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ('Ordinance') as '*any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical work for hire or reward*'.

(b) The classification of workmen for the purposes of the Ordinance is given in Standing Order No. 1 ('S.O.1') contained in the Schedule to the Ordinance. This classification is important because the rights and privileges conferred by the Ordinance may vary from one class of workmen to another.

S.O.1 lays down the following classes of workmen:

- (a) '**Permanent workman**': is a workman who has been engaged on work of a permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, and includes a badli, who has been employed for a continuous period of three months or for 183 days during any period of 12 consecutive months, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment and includes a badli who has been employed for a continuous period of three months or for 183 days during any period of 12 consecutive months;
- (b) '**Probationer**': is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein. If a permanent employee is employed as a probationer in a higher post he may, at any time during the probationary period of three months, be reverted to his old permanent post.
- (c) '**Badli**': is a workman who is appointed in the post of a permanent workman or probationer, who is temporarily absent.
- (d) '**Temporary workman**': is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a period not exceeding nine months.
- (e) '**Apprentice**': is a person who is an apprentice within the meaning of the Apprenticeship Ordinance, 1962 (LVI of 1962).
- (f) '**Contract worker**': means a workman who works on contract basis for a specific period of remuneration to be calculated on piece rate basis.

8 Section 23 Contract Act, 1872 ('Contract Act') provides that the consideration or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted it would defeat the provisions of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

In the present factual scenario, the object of the agreement between Mr Qasim and Mr Ali appears to be an attempt to 'buy off' the opposing party's witness with a view to procuring false evidence in court. The Rangoon High Court has held in the case of *Ko Pa Tu v Azimulla & others* (AIR 1940 Rangoon 73) that where a litigant has agreed to give property to a certain person in consideration of the latter agreeing to give false evidence on behalf of the former, the agreement is void as the consideration for it is opposed to public policy and therefore, illegal. This is based on an old and well-known legal maxim '*ex turpi causa non oritur actio*' – no court ought to enforce an illegal contract or allow itself to be made the instrument of enforcing obligations arising out of an illegal contract.

Accordingly, the agreement between Mr Qasim and Mr Ali being against public policy is void and hence, unenforceable.

- 9 Section 253 Companies Ordinance, 1984 ('Ordinance') provides the procedure which is to be adopted in situations where the person to be appointed as auditor is a person other than a retiring auditor. Section 259 prescribes penalties for non-compliance with s.253.

Section 253(1) provides that a notice shall be required for a resolution at a company's annual general meeting appointing as auditor a person other than a retiring auditor. In the present case, MCA would be retiring at the upcoming annual general meeting. Section 253(2) provides that the aforesaid notice shall be given by a member of the company to the company not less than fourteen days before the annual general meeting and the company shall forthwith send a copy of such notice to the retiring auditor and shall also give notice thereof to its members not less than seven days before the date fixed for the annual general meeting. In the present case, since SEPL is a private company, it is likely the directors are also shareholders/members. Therefore, it is likely that a notice under sub-s.(2) will be delivered.

Further s.253(3) provides that where notice is given of such resolution and the retiring auditor makes with respect thereto a representation in writing to the company not exceeding a reasonable length and requests its communication to the members of the company, the company shall, unless the representation is received too late for it to do so:

- (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and,
- (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent whether before or after receipt of the representation by the company.

If a copy of the representation is not sent as aforesaid because it was received too late or because of the company's default, the auditor may, without prejudice to his right to be heard in person, require that the representation shall be read out at the meeting. Provided that it shall not be necessary to send out or to read out the representation at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the registrar is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter; and the registrar may order the company's costs on an application under this section to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application.

From the foregoing, it is clear that MCA ought to have been informed of the intention of not retaining their services and they ought to have been provided a copy of the notice under s.252(1). From the given facts, it seems likely that such notice was not given and consequently MCA has not been given the chance to make any representation. On this issue SEPL may argue that MCA's representative was present at the AGM but did not object and therefore MCA is deemed to have waived its right to representation. However, given the circumstances this argument is not likely to succeed.

Section 259 provides that if default is made by a company in complying with any of the provisions of s.253, the company and every officer of the company who is knowingly and wilfully a party to the default shall be punishable with fine which may extend to Rs. 50,000 and in the case of continuing default to a further fine which may extend to Rs. 2,000 for every day after the first during which the default continues. In the given circumstances where s.253 has not been followed at all, SEPL and its officers (particularly, the chairman of the board) are liable to this punishment.

However, since s.259 does not invalidate the appointment of the new auditors, and the appointment of KCA has been duly approved by the shareholders, it would appear to be valid.

- 10 (a) A charge is an encumbrance upon real or personal property granting the charge holder certain rights over that property, usually as security for a debt owed to the charge holder. A company may raise capital for its business through loans. A charge does not depend upon either the delivery of possession or transfer of ownership, but represents an agreement between creditor and debtor by which a particular asset or class of assets is appropriated to the satisfaction of the debt, so that the creditor is entitled to look to the asset and its proceeds to discharge the indebtedness, in priority to the claims of unsecured creditors and junior encumbrancers.

Section 121 Companies Ordinance, 1984 ('Ordinance') provides that every mortgage, charge or other interest created by a company including any 'mortgage or charge on any immovable property' [s.121(1)(c)] and any 'mortgage or charge, not being a pledge, on any movable property' [s. 121(1)(e)] shall, so far as any security on the company's property or undertaking is thereby conferred, be void against any creditors of the company, unless the prescribed particulars of the mortgage or charge, together with a copy of the instrument, if any, verified in the prescribed manner, by which the mortgage or charge is created or evidenced are filed with the registrar for registration in the manner required by the Ordinance within 21 days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured. And, when a mortgage or charge becomes void under s.121 the money secured thereby shall immediately become payable.

On the given facts, although the charge creating documents were signed by FTL and handed over to FTL's legal advisor, the ABL Charges appear not to have been registered in accordance with s.121. Consequently, the said charges are void against any creditors of the company, including RBL. Whilst non-compliance with s.121 has not extinguished FTL's liabilities towards ABL, ABL can not avail the security purported to be created through the ABL Charges. It is in the position of an unsecured creditor.

RBL Charges on the other hand are stated to be duly registered and hence enjoying the protection of s.121. Accordingly, RBL would be able to avail the security created through the RBL Charges to satisfy its debt.

- (b) Section 131 of the Ordinance provides that the Commission (i.e. the SECP) on being satisfied that the omission to register a mortgage or charge within the time required by s.121, or that the omission or misstatement of any particular with respect to any such mortgage or charge, or the omission to give intimation to the registrar of the payment or satisfaction of a debt for

which a charge or mortgage was created, was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and, on such terms and conditions as seem to the Commission just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified, and may make such order as to the costs of the application as it thinks fit.

Therefore, the ABL Charges may be registered now with the Commission's approval and subject to such conditions as it may impose. However, in the given circumstances and the quantum of RBL's loan, ABL Charges are not likely to supersede the RBL Charges unless RBL permits otherwise.

- 1** This question requires the candidates to explain in detail the constitutional concept of fundamental rights and the rule of law as envisaged under the Constitution of Pakistan, 1973.
- (a) 3–4 Comprehensive answers which correctly identify the constitutional provision of fundamental rights and shows an adequate explanation of each.
- 0–2 A good to poor answer showing understanding of the concept of fundamental rights as envisaged under the Constitution of Pakistan 1973.
- (b) 4–6 A comprehensive description of the doctrine of rule of law supported with case law.
- 0–3 A good to poor answer identifying the basic principle of the doctrine of rule law.
- 2** This question expects the candidates to demonstrate their understanding of the basic concepts of the tort law regarding the tort of ‘passing off’ and the tort of ‘negligence’.
- (a) 3–5 Comprehensive to very good answers covering all aspects of the concept with adequate explanation and case-law reference.
- 0–2 Fair to poor answers showing fair to poor understanding of the concept of ‘passing off’.
- (b) 3–5 Very good answers showing clear understanding of the basic elements of negligence with adequate explanation and case-law reference.
- 0–2 Good to poor answer showing average to little knowledge of the elements of negligence or inadequate explanation.
- 3** This question requires the candidates to demonstrate their understanding of the directors’ reports to the shareholders as a basic requirement of financial reporting of a listed company under the provisions of the Code of Corporate Governance (‘Code’).
- 7–10 Comprehensive to fairly good discussion of all aspects of the directors’ reports to shareholders with reference to the Code.
- 4–6 Good to average answer providing adequate knowledge of the salient aspects the directors’ reports to the shareholders with reference to the Code.
- 0–3 A fair to poor answer proving some or very little account of the directors’ reports to shareholders.
- 4** This question expects the candidates to demonstrate their knowledge of the basic procedure for the registration of a private company (other than a single member company) under the provisions of the Companies Ordinance, 1984 (‘Ordinance’).
- 7–10 A comprehensive answer proving each and every step for the registration of a private company under the provisions of the Ordinance.
- 4–6 A good account of statutory provisions and necessary details of each and every step of the registration of a private company under the provisions of the Ordinance.
- 0–3 Answer shows some or little knowledge of the steps involved in the registration of a private company.
- 5** This question requires the candidates to demonstrate their knowledge of some of the basic concepts of the law of partnerships under the Partnership Act, 1932.
- (a) (i) 2–3 An accurate definition of partnership.
- 0–1 Fair to poor understanding.
- (ii) 1 mark for accurate definition.
- (iii) 1 mark for accurate definition.
- (b) 3–5 A comprehensive description of the liability and its scope.
- 0–2 A fair to poor description.

- 6** This question requires the candidates to display their understanding of the requirements pertaining to winding up of companies under the Companies Ordinance 1984.
- (a)** 3–4 Comprehensive answers clearly distinguishing the two types of winding up.
0–2 Average to poor answers showing fair to little knowledge of the differences.
 - (b)** 5–6 Comprehensive knowledge of the grounds for compulsory winding up.
3–4 Fair to good knowledge of the grounds for compulsory winding up.
0–2 Some knowledge of the grounds for compulsory winding up.
- 7** This question requires the candidates to display their knowledge of the concept and classes of workmen under the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968.
- (a)** 2 marks for an accurate definition of 'workman'.
 - (b)** 6–8 Comprehensive to good description of the different classes of workmen with adequate explanation.
3–5 Good to fair answers describing difference classes of workmen with explanation.
0–2 Fair to poor answers showing some or little understanding of different classes of workmen.
- 8** This question expects the candidates to demonstrate their knowledge of lawful and unlawful consideration in contracts.
- 7–10 A complete answer highlighting and dealing with all the issues presented in the problem scenario while relying on the relevant statutory provisions.
 - 4–6 An accurate recognition of the issues involved, together with an attempt to apply relevant legal provisions and principles to the situation.
 - 0–3 An ability to recognise some issues without a complete application of relevant statutory provisions.
- 9** This question requires the candidates to demonstrate their understanding of the requirements in relation to retirement of an auditor and appointment of a new auditor by a company under the provisions of the Companies Ordinance 1984.
- 7–10 A complete answer highlighting and dealing with all the issues presented in the problem scenario while relying on the relevant statutory provisions.
 - 4–6 An accurate recognition of the issues involved, together with an attempt to apply relevant legal provisions and principles to the situation.
 - 0–3 An ability to recognise some issues without a complete application of relevant statutory provisions.
- 10** This question requires the candidates to demonstrate their understanding of the provisions regarding the need and manner of registration of company charges and the consequences of non-registration.
- (a)** 3–5 Good to comprehensive understanding of the issues.
0–2 Some understanding of the issues.
 - (b)** 3–5 Good to comprehensive understanding of the issues.
0–2 Some understanding of the issues.