

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Advanced Contracts (Evolving Jurisprudence in Contract Law)  
Semester-II (Batch: 2016-17)

LL.M. End Semester Examination: May-2017

Date: 10<sup>th</sup> May, 2017

Duration: 3 hours

Max. Marks: 70

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Barc Act is not allowed.**

	<b>Part-A</b> (Answer any four of the following questions)	<b>Marks</b>
Q.1	<p>(a) 'It is not the task of the Courts to make contracts for the parties or to improve them but only to interpret them. While interpreting the contracts, Courts are only concerned with the meaning which the contracts would convey to a reasonable man having all the background knowledge that would reasonably be available to the public to whom such contract is addressed. This objective meaning is conventionally referred to as intention of the parties. Therefore in every case when Courts are to determine whether a provision is to be implied in a document, the question for the Court is: "what the instrument, read as a whole against the relevant background, would reasonably be understood to mean?"'</p> <p>In the light of the afore-stated observation, explicate the principles and rules of interpretation of contracts.</p> <p>(b) With the aim of regulating surrogacy effectively, the Union Cabinet has recently cleared the Surrogacy (Regulation) Bill, 2016. Analyse the Bill from the Contract Law perspective.</p>	(6.5+6.5 =13)
Q.2	<p>(a) Deepika is an app developer. She has recently developed an iOS and Android application for a client, 3WHEELS, which is a transportation network company for auto rickshaw. To register for 3WHEELS, users have to proceed through a multi-staged process using the 3WHEELS smart phone app. The app initially prompts riders to register using either Google or Facebook account and they have to enter their name and password. Users have to click "Next" before they are directed to another screen to make payment and register to use the service.</p> <p>The registration and payment fields are prominently displayed with font size of 14pt at the top of the screen. Below that, there is a smaller button accompanied by the words: "By creating a 3WHEELS account, you agree to the terms of service". The font size of these words is 8pt, hardly visible with light grey colour.</p> <p>A user can click on the "register" button without clicking on the hyperlink to the terms and conditions. On clicking the hyperlink to the terms and conditions, the user is directed to another button; and on clicking that button, the user is taken to a screen which provides access to terms. The 'terms of use' is a nine-page document</p>	(6.5+6.5 =13)

describing a highly legalistic agreement.

Before launching the application, the Managing Director of the Company (3WHEELS) has shared the details of application developed by Deepika for legal due diligence to the Head of the Legal Department.

Assuming yourself to be the Head of the Legal Department, advise the Managing Director of the Company as to the legality of the agreement.

- (b) Differentiate between 'mailbox rule' and 'receipt rule'. Which rule is applied in India for electronic contracting? Substantiate your answer with legal reasoning.
- Q.3 (a) With the help of judicial pronouncements, examine the legality of 'swiss challenge method' — as a mode of awarding infrastructure projects. (6.5+6.5 = 13)
- (b) Recently in *Uttar Haryana Bijli Vitran Nigam Ltd, Dakshin Haryana Bijli Vitran Nigam Ltd v Central Electricity Regulatory Commission, Adani Power Limited, & Gujarat Urja Vikas Nigam Ltd* (decided on 7 April 2016), the Appellate Tribunal for Electricity held that the increase in price of coal on account of the intervention by the Indonesian Regulation as also the non-availability/short supply of domestic coal in case of Adani Power constituted a *force majeure* event in terms of the Power Purchase Agreement (PPA).  
Do you agree with this part of the judgment? Critically analyse the reasoning given by the Appellate Tribunal for Electricity (APTEL) for this issue. **Note:** Examinees are supposed to discuss this particular issue only.
- Q.4 (a) Give a detailed account of the development of the concept of standard form contracts through English and Indian judicial pronouncements. What are the modes of protection evolved by the courts to address the challenges posed by such contracts? (6.5+6.5 = 13)
- (b) Discuss the jurisprudence behind the evolution of *Coogan law*.
- Q.5 (a) What is the legal position regarding the enforceability of a shareholders' agreement in India? In view of the leading judgments on the subject, what would be the safest course of action while drafting a shareholders' agreement to ensure enforceability of such an agreement even against the company under the present Indian legal framework? (6.5+6.5 = 13)
- (b) Explain the significance of 'Liquidated Damages' clause and 'Survival' clause in a contract.

### Part B (Compulsory)

- Q.6 Answer the following by citing relevant provisions of law and judicial pronouncements: (3+3= 06)
- (a) Whether contracts with a foreign choice of law clause are valid under Indian law? Are there any limitations to this choice made by parties?
- (b) Whether an Indian court has jurisdiction to entertain a suit arising out of an agreement specifying a foreign court as having exclusive jurisdiction/non-exclusive jurisdiction, if the cause of action has arisen in India?
- Q.7 With the help of judicial pronouncements, discuss the scope of contractual liability of a doctor in a doctor-patient relationship. (06)
- Q.8 Examine the process of tendering cycle followed in public procurements. Critically analyse the Public Procurement Bill, 2012. (06)