

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

**Course: International Trade and Business Laws
Semester-X (Batch: 2012-17)**

End Semester Examination: April-May 2017

Date: 28th April, 2017

Duration: 3 hours

Max. Marks: 50

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 any thing 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.

Part-A

Marks

Answer any three of the following:

- Q.1** Claimant, a Russian company, as a buyer, and Respondent, an Italian company, as a seller, entered into a contract for the sale of technical equipment agreement and agreed that the governing law will be Italian law including the CISG. Respondent subsequently refused to supply part of the goods, arguing that Claimant did not pay for the goods in full. Claimant argued that the payment was made in full and commenced arbitral proceedings seeking recovery of the debt for the undelivered goods. (2+3+2=07)
- In view of above stated facts answer the following:
- (a) Discuss whether there are any legal grounds for unilateral suspension of the performance of the Agreement.
 - (b) Discuss whether tribunal would refer to the UNIDROIT principles of international commercial contracts to interpret and supplement the applicable law.
 - (c) Discuss whether Claimant is entitled to recover from Respondent, the part of the price corresponding to the undelivered goods.
- Q.2** The Appellant had goods dispatched to himself on a vessel operated by the Respondent. The seller of the goods handed the goods over to the Respondent for shipping to the Appellant. On receipt of the goods, the Respondent gave the seller a document entitled 'Cargo Receipt'. It was agreed that in arranging the shipment of the goods, the seller acted as an agent for the Appellant. When the vessel arrived at the location of the Appellant, some of the merchandise had gone missing. The Appellant issued a writ of summons. At the hearing the Magistrate found in favour of the defendant carrier. The carrier relied on a limitation clause printed on the back of the 'Cargo Receipt' which provided that the shipper must notify the carrier of a loss within one month of shipment. The Magistrate found that the 'Cargo Receipt' did not incorporate the terms of the contract between the parties as that document was not brought to the attention of the shipper or his agent before the contract was concluded. However, the Magistrate gave judgment for the carrier on the basis of the limitation of time set out in the Carriage of Goods by Sea Act, 1982. The shipper appealed. (2+3+2=07)
- In view of above stated facts answer the following:
- (a) Explain whether the appeal will be allowed.
 - (b) Is it essential to indicate all the specifications of goods in the Bill of Lading though it

is a contractual specification?

(c) Did the Cargo Receipt incorporate the terms of contract between the parties?

- Q.3 The plaintiff and defendant are freight forwarding companies; the plaintiff in Australia and the defendant in Fiji. The parties had a longstanding business relationship. In one instance the plaintiff took delivery of leather from Italy and shipped it to Fiji. The shipment was consigned to the defendant under cover of a waybill. With the shipment 2 further waybills were issued by the plaintiff and naming the Italian suppliers as the shippers and Island Furniture and the 3rd party as consignees. The latter waybills contained special instructions to the effect there was to be C.O.D. payment before the goods were released. There were additional written instructions as to the required C.O.D. payment on the waybill. The consignments went to Island Furniture without payment. The leather was made into furniture which was sent to Australia and subsequently Island Furniture went into receivership. The plaintiff issued proceedings against the defendant seeking damages for breach of contract and negligence. The defendant denied liability. (2+3+2=07)

In view of above stated facts answer the following:

- What is Sea Way Bill and its impact on transport documents in international carriage of goods by sea?
- Discuss the different kinds of Bill of Lading.
- Discuss the admissibility of third party claim and the applicability of Himalaya Clause.

- Q.4 The appellant, a consignor of certain cargo that was lost during air carriage between South Africa and the United States of America (USA), instituted action in the Johannesburg High Court against the airlines that handled the consignment to recover the loss of the cargo. The respondents argued that the appellant had locus standi to sue in terms of international carriage law, as the loss had been made good by the appellant's insurer and thus the appellant suffered no loss. The High Court held that the appellant company had no locus standi to sue for the loss of the cargo and consequently dismissed its claim with costs, including the costs of two counsels. This judgment was taken on appeal to the Supreme Court of Africa. (2+3+2=07)

In view of above stated facts answer the following:

- Discuss the admissibility of appeal.
- Discuss in detail the essential character and purpose of Warsaw Convention, 1929 and Montreal Convention, 1999 for the Unification of Certain Rules for International Carriage by Air.
- Explain whether the appellant is entitled for damages claimed.

Part-B

Answer any two of the following:

- Q.5 An Italian manufacturer and a company incorporated in Hong Kong concluded three contracts for the supply of washing machines. According to all the contracts, any disputes between the parties had to be resolved by arbitration in Singapore. A dispute arose between the parties as the buyer found two of the delivered washing machines to be defective. As a result, the buyer cancelled all the contracts, and commenced arbitration before the ICC Court of Arbitration to have the price refunded and to be awarded damages. By a final award rendered the sole arbitrator of the arbitral tribunal ruled in favor of the buyer. The seller then challenged the decision of the arbitral tribunal before the High Court of Singapore seeking the setting aside of the arbitral award on the (3x2=06)

grounds that the arbitral tribunal's decision not to apply CISG as the governing law of the three contracts, infringed against the public policy of Singapore.

In view of above stated facts answer the following:

- (a) Discuss the admissibility of the claim.
- (b) Whether CISG will be the governing law of contract?
- (c) Does the buyer entitled for damages as claimed?

- Q.6 An Argentina-based manufacturer of various lumber products and a New Jersey-based import-export corporation entered into an oral agreement whereby the latter agreed to resell the former's wooden finger-joints to third parties in the U.S.A. Pursuant to that agreement, the seller sent the buyer finger-joints worth about US \$2 million, but the buyer paid the purchase price only in part. Seller initiated legal proceedings before the District Court of Argentina, asserting a breach-of-contract claim based on the buyer's refusal to pay. The District Court granted the buyer's motion for summary judgment. Seller appealed in the U.S. Court of Appeals. (3x2= 06)

In view of above stated facts answer the following:

- (a) Explain whether CISG is applicable or not in the instant case.
- (b) Discuss whether the contract for the sale of goods need to be concluded in or evidenced by writing.
- (c) Explain the concept of choice of law.

- Q.7 A German buyer and a Czech seller concluded a contract for the sale of a certain quantity of cheese. According to the contract the buyer should take delivery of the cheese in 15 separate truck loads at a distribution center indicated by the seller in the Czech Republic. The buyer was obliged to offer advance payment for each delivery. Upon advance payment the first truck load was handed over to the buyer. When it came to the second truck load, however, the seller refused to deliver it, though advance payment had been made, as long as other outstanding debts of the buyer remained unpaid. The buyer declared the contract avoided with respect to all deliveries not already performed and, pursuant to a clause contained in the contract, commenced arbitral proceedings to recover the advance payment made with interest. (3x2= 06)

In view of above stated facts answer the following.

- (a) Determine the applicability of governing law.
- (b) Discuss the provisions, applicable to both buyers and sellers, which address avoidance or partial avoidance of contract, or suspension of performance in certain special situations specifically, where a party threatened future non-performance of its obligations in case of contract of delivery of goods in installments.
- (c) Explain whether there is a fundamental breach of contract with respect to future installments.

Part-C

- Q.8 Discuss in detail the rules of the CMR convention, 1956 and what is the maximum amount of compensation payable for the loss and damage of goods? (05)

OR

What are INCOTERMS? Discuss the INCOTERMS used for Multimodal Transport of land, air and waterway transportation.

- Q.9 Write Short notes on any two of the following: (2x2.5 =05)
- (a) NAFTA
 - (b) MNEs

(c) MERCOSURE

- Q.10 In view of the observation laid down by the Hon'ble Supreme Court of India in *A* (07)
Ayyasamy v. A Paramasivam & Ors. (2016) 10 SCC 386 critically analyze the judicial
trends towards enforcement of international commercial arbitration in bringing Indian
arbitration law in line with international jurisprudence and internationally accepted
standards.
