

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Banking and Insurance
Semester-I (Batch: 2018-19)

LL.M. End Semester Examination: Oct-Nov. 2018

Date: 5th November, 2018

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 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.
- Bare Act is not allowed.

Part-A

Answer all the questions

Marks

- Q.1 (a) ANB Bank had given loan facility to a company called "M/s Kinder Iron & Steel Corporation Limited" (Borrower) for their business. To secure the loan amount, the borrower had secured their assets. The borrower, however, failed to clear their loan amount and became a defaulter in its repayment. ANB, therefore, invoked their powers under Section 13(4) the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Mr. Radhey an auction purchaser's bid was accepted by ANB. However, later on there was conflict between ANB and Mr. Radhey due to non-compliance of memorandum of understanding between them. This led ANB to forfeit the appellant's deposit to which Mr. Radhey objected before the Single Judge bench of Allahabad High Court and then before the Division Bench of Allahabad High Court. The High Court dismissed the appellant's writ petition on the ground of availability of alternative statutory remedy to the appellant of filing the application before the Debt Recovery Tribunal (DRT). Do you agree with the decision of the High Court? Whether Mr. Radhey can be considered as an 'aggrieved person' under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002? Substantiate your answer with suitable examples and case laws. (5+5=10)
- (b) Discuss in detail the changes introduced under the Recovery of Debts and Bankruptcy Act, 1993 through the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.
- Q.2 Maya Textiles & Fabrics Pvt. Ltd. (MTF) is a company registered at Mumbai. It deals in readymade garments. The authorised signatory of MTF, during his visit to Gujrat Textile Expo held at Ahmedabad, signed a contract with a supplier of unstitched dress materials operating from Gandhinagar and gave advance to the supplier through a cheque drawn on Canara Bank, Andheri West Branch, Mumbai. The supplier complied with the terms of the order received and dispatched the goods to MTF at its Mumbai address. He received the remaining amount again through cheque and was encashed at Gandhinagar. However, he forgot to present the first cheque received as an advance, which he (5+10=15)

presented for encashment at his hometown, Gurugram, Haryana. This cheque was returned unpaid at his permanent address at Gurugram. He consulted his friend, who is an advocate. His friend sent the legal notice on behalf of his friend-cum-client from his office located in Delhi. The supplier still did not receive the money. He wants to file a complaint in the Court for dishonour of the cheque.

Based on the foregoing factual matrix, answer the following:

- (a) What are the conditions that make dishonouring of a cheque an offence? What is the penalty for such dishonouring? In what circumstances, the dishonouring of cheque is not an offence?
- (b) Explain the jurisprudence of territorial jurisdiction and the significant changes made to it by various important judicial pronouncements and by the legislature. Accordingly, suggest supplier the actual place for bringing the complaint.

Q.3 Write short notes on **any two** of the following:

(5+5=
10)

- (a) Bank Nationalisation
- (b) Different facets of banker customer relationship
- (c) Procedure for securitization of financial assets

Part-B

Answer all the questions

Q.4 On 29.01.2017, at about 8.30 PM, the family of Kamalesh along with his wife Kavitha, his son Krishna, and his brother, Basava, started their journey in a jeep from Sirsa, Haryana to Vaishno Devi. When the vehicle was crossing a Kali River Bridge, travelling at a speed of 80km/hour, front tyre got burst, vehicle got misbalanced, finally after crossing the bridge, the bus hit a big banyan tree resulting death of all the passengers including driver of the vehicle, namely, Naresh. Ganesh, father of the deceased Kamalesh has filed an application under Section 166 of the Motor Vehicles Act, 1988 before the Motor Vehicle Accident Claims Tribunal (MACT), Kharad and impleaded owner of the Vehicle as Respondent No.1 and National Insurance Co. Ltd. as Respondent No.2. The claimant also filed an application under Section 140 of the Act for interim relief. The owner of the vehicle contented that Naresh had taken out the Jeep unauthorized without his express instructions and it amounted to theft, therefore, he was not liable. The Insurance Company also objected that driver's act of driving the vehicle after consuming alcohol was one of the valid defences available to them as per the condition enshrined under the policy, and hence, they were also not liable to pay any compensation. The MVCT dismissed the petition holding that neither the owner of the vehicle nor the Insurance Co. was liable. The Tribunal even refused to grant interim relief under Section 140 of the Act by holding that since the claim under Section 166 was not maintainable, as the rash and negligence act of the jeep driver has not been established, therefore, the relief under Section 140 was also not maintainable. The petitioner filed an appeal before the High Court of Punjab & Haryana against the order of the MVCT.

(12)

Based on the preceding facts, answer the following:

- (a) Whether the claim under Section 140 is maintainable regardless of establishing rash, wrongful act, neglect or default of driver vehicle? Advance your arguments with the help of decided cases.
- (b) In case, the claimants had filed an application under Section 163A instead of Section

166, what would have been the remedy available to them? Elucidate the difference in terms of remedy available under both the sections with the help of decided cases.

- Q.5 'Though, the grounds for repudiation of life insurance contract on the basis of non-disclosure and misrepresentation clause has been amended through the Insurance Laws (Amendment) Act, 2015, but the said amendment is not in consonance with the leading judgments of the Supreme Court and the recommendations of the Law Commission of India.' Do you agree with the above statement? Advance your arguments with the help of the provision that existed before and after the said Amendment and decided cases. What are the changes that have been introduced for protecting the rights of nominee and assignee of the life insurance policy through the Insurance Laws (Amendment) Act, 2015? (12)
- Q.6 Whether motor vehicle insurance contract is a contract of indemnity in true sense. What are the limits of liability provided under the Motor Vehicles Act, 1988 and IRDA guidelines? With the help of decided cases, briefly discuss how the corollary principles, such as, insurable interest, subrogation and utmost good faith prevent the insurer in making the profit out of any kind of insurance contract? (11)
