

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Advanced Contracts (Evolving Jurisprudence in Contract Law)**
Semester-VII (Batch: 2016-21)

End Semester Examination: October-2019

Date: 24th October, 2019

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 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.
- Bare Act is not allowed.

Answer all the questions

Marks

- Q.1 (a) 'A rule of construction cannot be more than a guide to enable the court to arrive at the true meaning of the parties. The *ejusdem generis* rule means that there is implied into the language which the parties have used words of restriction which are not there. It cannot be right to approach a document with the presumption that there should be such an implication. To apply the rule automatically in that way would be to make it the master and not the servant of the purpose for which it was designed—namely to ascertain the intention of the parties from the words they have used.'
- In view of the afore-stated statement, explicate the application of the *ejusdem generis* rule while interpreting a contractual document.
- (b) What purpose does the 'force majeure' clause serve in a contract? Explain the important points which one should bear in mind while drafting this clause.
- Q.2 (a) 'SHA is a private contract between the shareholders compared to Articles of Association of the Company, which is a public document. Being a private document it binds parties thereof and not the other remaining shareholders in the company. Advantage of SHA is that it gives greater flexibility, unlike Articles of Association. It also makes provisions for resolution of any dispute between the shareholders and also how the future capital contributions have to be made.'
- In view of the foregoing observation, examine the relevant judicial pronouncements and elucidate the correct legal position as to the enforcement of a shareholders' agreement (SHA).
- (b) Consider the following clause on 'effective date of contract', and state the merits and flaws, if any:
- Effective Date of Contract:*
The contract shall be deemed to have come into force from the Effective Date of the Contract, which is the date of receipt of the first stage payment as defined under Article ... of the Contract.'

- Q.3 (a) Non-resolution of contractual disputes between a government body and a contractor or between two private contractors comes in the way of completion of projects many a time, making stalled projects a chronic problem in the country, especially in the infrastructure sector. (5+5 =10)
- Taking into consideration the afore-stated observation, discuss how the special provisions for contracts relating to infrastructure project, as introduced by the Specific Relief (Amendment) Act, 2018, impact the implementation of such projects.
- (b) Discuss the bare essential contracts which are entered into between the various participants in the development of an infrastructure project.
- Q.4 (a) Is it possible to make doctors/physicians liable for breach of contract, irrespective of negligence on their part? Explain the theoretical bases of liability in contractual malpractice actions and also suggest ways in which contract theory may be profitably employed in a malpractice setting. (5+5 =10)
- (b) In view of the changes brought forth by the Specific Relief (Amendment) Act, 2018, discuss the specific performance of contract, as a remedy, in case of breach of entertainment and sports contracts.
- Q.5 Write short notes on **any two** of the following: (5+5 =10)
- (a) E-auction.
- (b) Exceptional circumstances under which single tender enquiry (or single source selection) may be resorted to for procurement.
- (c) Critical analysis of the Surrogacy (Regulation) Bill, 2019.
