

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Principles of Transparency and Accountability- Regulatory Framework**
Semester-II (Batch: 2018-19)

LL.M. End Semester Examination: May-2019

Date: 10th May, 2019

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.

Part-A

Marks

Answer all the questions:

- Q.1 (a) Digvijay Pvt. Ltd. company was the manufacturer of chocolates. It manufactured chocolates in its factories and the chocolates so manufactured were packed initially in paper/card board packets of 10 and 20 and these packets were then packed together in paper/card board cartons/outers. These cartons/outers were then placed in corrugated fibre board containers and these corrugated fibre board containers filled with cartons/outers containing packets of chocolates of 10 and 20 were delivered by the company to the wholesale dealers at the factory gate. The wholesale price charged by the company for the chocolate sold to the wholesale dealers included not only the cost of primary packing in packets of 10 and 20, but also the cost of secondary packing in cartons/outers and the cost of final packing in corrugated fibre board containers. On May 19, 2012 the Chocolate Manufacturers Association made a representation to the Central Board of Excise and Customs pointing out that corrugated fibre board containers are not an integral or essential requirement for the sale of chocolates and are used for the sole purpose of protecting chocolates from any damage that may arise during transportation, and that the cost of such corrugated fibre board containers should not therefore be included in the value of goods for the purpose of excise duty. The Board accepted this plea of the Association and by a letter dated May 24, 2012 intimated to the Association that "Instructions have been issued to the Collectors of Central Excise that the cost of corrugate fibre board containers in question does not form part of the value of chocolate for the purposes of excise duty". This representation contained in the letter dated May 24, 2012 continued to hold the field until November 2, 2012 when the Central Board of Excise and Customs addressed a circular to all Collectors of Central Excise, stating that the matter had been re-examined and the earlier advice should be treated as cancelled. The company pleaded that the promissory estoppel would be applicable and the Board could not do so.
- On the basis of the above stated facts, decide whether promissory estoppel will be applicable in this case?
- (b) What is the relevance of the doctrine of 'Promissory Estoppel' in India? Elucidate with suitable case laws.

- Q.2 Mohan was working as a Clerk in Rajapalayam Taluk Co-operative Housing Society Ltd., Vijaynagar. Sohan is a resident of Mugavoor Village, Rajapalayam Taluk. On April 24, 2009, for the purpose of constructing a house owned by him in Mugavoor village, Sohan and his daughters became members of the above said Society. On April 29, 2009, he submitted an application for loan of ₹ 25,000/- to construct a house before the said Society. On July 11, 2009, he received the initial payment of ₹ 10,000/- through a cheque and he was informed to get the second instalment of ₹ 7,500/- after 15 days. On August 21, 2009, when he went to the Society along with his friend Raju, and enquired about the second instalment, the newly appointed Secretary viz., Ramesh asked them to meet the Clerk Mohan and accordingly, when Sohan met Mohan, he informed that only if he pays a sum of ₹ 3000/- as bribe, the Secretary would sign the cheque and asked him to come next day with money. Since Sohan had decided not to give the amount as demanded by clerk Mohan, he along with his friend decided to file a complaint under the Prevention of Corruption Act, 1988. (5+5= 10)

On the basis of the above stated facts, decide the following issues:

- Whether the complaint is admissible under the Prevention of Corruption Act, 1988?
- Who are the authorities and what procedure do they follow in dealing with the complaints under the Prevention of Corruption Act, 1988?

- Q.3 M/s Vidya T. Transport company (hereinafter referred to as "company") was "Handling and Transport Contractor" registered in Food and Civil Supplies Department for handling and transportation of food grains. It was registered with Regional Food Controller, Gorakhpur Region, Gorakhpur (hereinafter referred to as "RFC, GKP"). The principal function of company was that whenever contract was awarded, it had to transport and handle food grains available for Public Distribution System (hereinafter referred to as "PDS") in Gorakhpur Region, Gorakhpur. A work tender was floated in 2012 for handling and transportation of food grains for transporting the same from Warehouse Depot, Railway Go-downs and other centres to different distribution centres in Gorakhpur Division for Financial Year (hereinafter referred to as "F.Y.") 2012-13, i.e., upto March 31, 2013. The company was ultimately issued work order on December 28, 2012 by RFC, GKP. Two of the conditions of work order in Clauses-6 and 7 were: *any information, if given by Contractor, is found incorrect, his security amount shall be forfeited, contract shall be cancelled and Contractor shall be blacklisted. Further, Contractor if fails to lift and transport goods or deliberately allows allocation to lapse, it will be deemed to be in violation of terms and conditions of contract and would result in cancellation of registration of Contractor and also forfeiture of security amount and blacklisting of Contractor.* In compliance of the work order, agreement was executed between company and RFC, GKP. The above contract was extended for F.Y. 2013-14 and subsequently vide order dated March 29, 2014, it was extended for F.Y. 2014-15. (10)

Later on, the truck drivers of transport vehicles arranged by the company, diverted food grains meant for distribution to poor people through PDS and thereby committed a serious offence. This diversion also resulted in breach of terms of contract. A Show Cause Notice was issued to the company, after suspending contract by order dated December 12, 2014. A criminal case was also registered under sections 419, 420, 467, 468 of the Indian Penal Code and also under the Essential Commodities Act. The order was passed on March 11, 2015, forfeiting security and permanent blacklisting of Vidya Transport. The company has contended that blacklisting cannot be permanent.

If you are appointed as the lawyer for the company, what will be your arguments in favour of the company?

- Q.4 Write short notes on: (2x5=10)
- (a) Central Bureau of Investigation
 - (b) Commission of Inquiry

Part-B

Answer **any two** of the following:

- Q.5 In its competitive elections, coalition politics free press, and judiciary, India's democracy is exemplary by most institutional standards. And yet as anyone who has ever encountered the Indian state in the hospitals, schools, police stations, local courts, electricity and water supply offices, or fair price shops would vouch, something in the way institutional ideals translate into practice makes the mechanics and the everyday experience of the state in India far from exemplary. The de jure policies might appear to be all in place, and yet the de facto implementation and delivery, there is rampant corruption, absenteeism, indifference, incompetence, inefficiencies or outright failures. At the heart of these failures, is a systemic crisis of accountability. (3x5=15)

In view of the above-stated observation, answer the following questions:

- (a) How far have the institutional gains in accountability translated into practical improvements in service delivery and governance?
 - (b) Is there a link between institutional provisions for citizen engagement and their uptake by the citizens and by extension improvement in accountability in service delivery? And how can these links be strengthened?
 - (c) Is institutionalization of citizen participation falling prey to its risks of over-institutionalization and hence ritualization, tokenism, or worse, co-option?
- Q.6 Improved governance requires an integrated, long-term strategy built upon cooperation between government and citizens. It involves both participation and institutions. The Rule of Law, Accountability, and Transparency are technical and legal issues at some levels, but also interactive to produce government that is legitimate, effective, and widely supported by citizens, as well as a civil society that is strong, open, and capable of playing a positive role in politics and government. (15)

In the light of the above stated proposition, discuss how the concept of the rule of law and doctrine of separation of power both can play role in achieving the goals for better governance, as also key challenges confronting efforts at reform. Support your answer with the help of the examples of successful good-governance efforts, and action steps for improving both participation and institutions.

- Q.7 Write short notes on: (3x5=15)
- (a) Openness & Access to information
 - (b) Transparency & Judicial Review
 - (c) Corruption & Maladministration
