

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

**Course: Advanced Contracts (Evolving Jurisprudence in Contract Law)  
Semester-VII (Batch: 2017-22)**

**End Semester Online Examination: December 2020**

Date: 27<sup>th</sup> December, 2020

Duration: 8 hours

Max. Marks: 50

**Instructions:**

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Bare Act is not allowed.

**Answer all the questions**

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|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Q.1 | A company (MNO Ltd) was awarded a contract on 01.08.2015 pursuant to a tender floated by the Oil India Ltd (OIL), a Government of India enterprise. The contract was for the purpose of well drilling and other auxiliary operations in Assam. The contract was for a period of four years, and the contract price was payable to the 'Contractor' (MNO) for full and proper performance of its contractual obligations. | Marks<br>(2x5=<br>10) |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|

During the subsistence of the contract, the prices of High Speed Diesel (HSD), one of the essential materials/components for carrying out the drilling operations, increased (through a circular issued under the authority of the Government of India). Consequently, MNO raised a claim that increase in the price of HSD triggered the 'Change in Law/Subsequently Enacted Law' Clause under the Contract (i.e. Clause 35) and the OIL became liable to reimburse it for the same. When the OIL kept on rejecting the claim on the ground that the Contract was based on a firm and fixed rate as per Clause 30 of the Contract, MNO eventually filed a writ petition in the Guwahati High Court.

Clauses 30 and 35 of the Contract read as under:

*'Clause 30. The rates, terms and conditions under this Contract shall remain in force until the completion or abandonment of the last well being drilled.'*

*Clause 35. Subsequently Enacted Laws: Subsequent to the date of price of Bid Opening, if there is a change in or enactment of any law or interpretation of any existing law, which results in additional cost/reduction in cost to the Contractor on account of the operation under the Contract, the OIL/Contractor shall reimburse/pay Contractor/OIL for such additional/reduced cost actually incurred.'*

Admitting the writ petition, the High Court allowed the claim of MNO and awarded a sum of Rs Ten Lakh. The Court held that while an increase in HSD price through a circular issued under the authority of State or Union was not a 'law' in the literal sense, but had the 'force of law' and, thus, would fall within the ambit of Clause 35.



Aggrieved by the decision of the High Court, the OIL challenged the same before the Supreme Court of India. Based on the afore-stated facts, decide the following issues:

- a) Could the High Court have entertained the writ petition filed by MNO?
- b) Whether the interpretation of the terms of the contract (particularly Clauses 30 and 35) by the High Court, so as to expand the meaning of Clause 35 to include change in the rate of HSD, was fair and legally correct?

Q.2 'The exigencies of the present situation have resulted in contracting parties across the globe revisiting their contractual arrangements and assessing the enforceability of their obligations and contractual addressal of risks.' In view of the foregoing observation, discuss the impact of Covid-19 on infrastructure projects/contracts in India. (10)

Q.3 Recently, the Union Cabinet has approved the Surrogacy (Regulation) Bill, 2020. In the said Bill, there is no provision for 'surrogacy contract'. Do you think that there should be a specific provision for surrogacy contract in the statute (to be enacted) to govern the arrangements clearly spelling out the rights and obligations of each party? Justify your answer. If yes, draft a comprehensive provision on surrogacy contract to be included in the Bill. (10)

Q.4 The Board of Control for Cricket in India (BCCI) entered into a Staging Agreement with 'Company A' whereunder Company A was granted the right and it assumed the obligation to stage an Event (i.e. the Opening Show to be organised and staged by the Company at a stadium specified by the BCCI on a particular date). Under the said Agreement, the BCCI appointed Company A to do so on agreed terms and conditions. One of the terms of the Agreement is as under: (10)

*The BCCI shall have the right to bring an action seeking injunctive or other equitable relief before the Courts of Mumbai in connection with this Agreement including if it reasonably believes that damages may not be an adequate remedy for any breach by the Company of this Agreement.'*

Five months prior to the Event, Company A refuses to perform its contractual obligations. Consequently, the BCCI seeks specific performance of contract from Company A.

Based on the provisions of the Indian Contract Act, 1872, the Specific Relief Act, 1963 (particularly the amendments introduced in the year 2018), argue for or against the remedy of specific performance for the breach of Staging Agreement by Company A. (*Note: The examinees are required to clearly mention whether they are arguing for or against the remedy of specific performance*).

Q.5 '[W]here the parties have included in their contract a clause which is intended to and does deal fully and completely with the effects of an event which would otherwise, absent the clause, frustrate the contract, the doctrine of frustration is inapplicable to the effects of that event if it occurs. Put another way, an event for the effects of which full and complete provision is made in the contract cannot, by definition, effect so radical a (2x5= 10)

change in the contractual adventure that, on a true construction of the contract, it ceases to bind the parties.'

In the light of the afore-stated observation, answer the following:

- a) What is the inter-relationship between a *force majeure* clause and the doctrine of frustration?
- b) Bearing in mind the principles of interpretation of contract, what care should a contract draftsman take while drafting a *force majeure* clause?

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