

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
Course: **Clinical Paper III- Advanced Legal Drafting**
Semester- X (Batch: 2016-21)

End Semester Online Examination: June 2021

Date: 11th June, 2021

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.
- Since this is a course on legal drafting, no word limit is prescribed. Students are advised to exercise their own discretion.

Marks

- Q.1 Mr Radhekrishna Agarwal is the present owner of 'Agarwal Sweet Mart' in Delhi. The business of 'Agarwal Sweet Mart' was started 40 years back by his grandfather Shri Sitaram Agarwal. Agarwal Sweet Mart is very popular throughout Delhi for its authentic taste of Jalebis, Gulabjamuns and Namkeen items. With the passage of time, they have developed some secret ingredients for taste enhancement of food items which make them very unique. Therefore, they are very popular in Delhi and there remains a long queue outside the shop almost every day. The secret recipe is in the domain of Mr Radhekrishna and three more trusted workers who have been serving the shop for the last 20 years. The food items of Agarwal Sweet Mart are so popular that people visit his shop from a distance of almost 40 to 50 kilometres. Many people have requested Mr Radhekrishna to open other branches, however, Mr Radhekrishna is reluctant to do that due to fear of losing his secret recipe. He has obtained a trademark for 'Agarwal Sweet Mart' and also has copyrighted its logo, its layout and other literature with the Copyright office. (12)

Mr Pitambar is a sweet vendor in Guru gram. He has recently started his business by obtaining a loan from the Bank of Baroda. Earlier he was working with a private company in the marketing department, however he lost his job in April 2020 due to nationwide lockdown. He started the business of sweets making and selling by thinking it to be a popular and profitable business. However, soon he has realized that it is very difficult to gain the trust of the people for the food items and he has reached the position that it has become difficult for him to meet his daily expenditure due to the marginal sale of his food items. He possesses a well-structured shop at a prime location in Guru gram.

One day, he visited Delhi and came to know about the popularity of 'Agarwal Sweet Mart'. He visited the shop and also enjoyed food items and he was impressed with their taste and quality and he realized the reason for not having enough customers at his shop. He met Mr Radhekrishna and explained his situation and also made a proposal for

permitting him to sell his food items at his shop at Guru gram. Thereafter Mr Radhekrishna visited the venue of Mr Pitambar many times and they made negotiations in detailed manner about the proposal. Consequently, Mr Radhekrishna also identified the opportunity to scale up his business as he started trusting Mr Pitambar and he found it convenient to serve people of Guru gram with fresh and warm food items.

They want to enter into a contract which will allow them to do business on the FOCO model. Mr Radhekrishna agreed to train the workers of Mr Pitambar to prepare fresh Jalebis and Gulabjamuns. All the raw material shall be provided by him and based on the training, food items will be prepared at the place of Mr Pitambar. Mr Pitambar agreed to use the name 'Agarwal Sweet Mart' and its layout at his outlet. It has been agreed that all the operational expenses shall be paid by Mr Pitambar including salary of workers, electricity and telephone bills, local taxes, advertisement charges, maintenance charges of the premises etc. which will be deducted from the revenue and 40% of residue shall be paid by Mr Pitambar to Shri Radhekrishna towards the training, raw material and proprietary mark.

In order to maintain the quality of food items, Mr Radhekrishna may visit the shop at his convenience and he shall have complete access at all times. It is also accepted that he will not allow any other person in Guru gram for this kind of business model so that the investment made by Mr Pitambar can be profitable and he does not have to compete with any other person in the same field. However, Mr Radhekrishna may permit the similar kind of business model in the area of Uttar Pradesh or Chandigarh which should be around 100 kilometres away from Guru Gram.

Mr Pitambar has also agreed to take proper precautions for keeping the recipe secret and he will also take care about the reputation and value of the intellectual property registered by Mr Radhekrishna. It is also agreed between them that the proposed contract will not create any relationship of principal-agent or employer- employee between them and Mr Pitambar shall not be allowed to keep or sale any other food items without the prior written permission of Mr Radhekrishna as his name and identity is being used in the business. The business can be terminated at any time by both the parties. Considering the secrecy of the recipe, Mr Radhekrishna can terminate the agreement with one months' notice whereas Mr Pitambar has to serve minimum 6 months' notice along with advance payment of his dues before his exit from the business and also he has promised that after such exit, he will not sale similar food items for the period of two years and he will not associate him in any manner with Mr Radhekrishna after the termination of the contract.

Based on the abovementioned business transactions and major terms and conditions as agreed between the parties, draft an appropriate agreement by highlighting the important legal clauses for smooth operation and implementation of the proposed business. Add all the relevant and necessary clauses including the clear obligations of the parties, financial terms, revenue sharing and other relevant boilerplate clauses.

- Q.2 With the increased population and vehicles, transportation has become one of the biggest challenges in the metro cities. On one hand, due to lots of financial options and attractive advertisements, people are buying their own vehicles and on the other hand, the non-availability of proper roads, infrastructure and traffic jams has created many serious issues. Many times, people are not able to reach their offices on time due to the heavy traffic jams. Less availability of public transport has also created a burning issue. Moreover it is also observed that the majority of private cars and two wheelers are less occupied as compared to their seating capacity and this also creates a major issue of wastage of resources. In order to address such issues, a team of three brilliant students of a well-known engineering college of Ahmedabad has come up with a unique solution. The team comprises Tanishk, Trikam and Trilok popularly known as triple 'T'. They have tried to find a solution to the transportation problem by creating a bridge between the requirement of people and the unutilized space of two wheelers. They have created a system called 'I am Bike man' wherein the commuters using two wheelers can enrol themselves who are willing to earn some extra income by carrying the commuters with them on their empty seats. They will get verified on multiple stages and thereafter they will be enrolled in the system software. The system will launch the routes where the two wheelers will be commuting. If anyone wants to travel from a designated route, they will have to fill in the data and the same will be notified to all the enrolled bike men. They can accept the ride and reach the commuter based on the GPS system and drop him at the requested place. The system is helpful as it will charge 50% less than what is being charged by cabs and rickshaws at present and the commuter can reach the destination swiftly due to travelling through two wheelers. The preliminary survey made by the students also shows that the commuters are preferring such mode of transportation if they are saved from the traffic jam issues and if they can reach their offices on time. At present the students have launched the demo version of their system to assess the demand and acceptability of their unique business idea. They have also planned very attractive rates for commuting to the users and also encouraging incentives to the owners of two wheeler who will register under the scheme. They are willing to launch the system initially in Ahmedabad and thereafter they are planning to scale it up to other cities of the country before someone else copies their idea and launches the similar kind of transportation services. (12)

As Tanishk, Trikam and Trilok are still students, they are doubtful of certain legal issues for successful implementation of their business model. They have approached you to be an expert legal advisor in their business and to help them to expand their business and also to help them for drafting necessary legal documents for the legal compliances. Following are some important points to be deliberated for your association in their business.

- a) You are a lawyer by profession and you have agreed to be available for taking care of legal compliances of the business. You want a clear description of your expected role in the business considering the present legal provisions. You are also willing to keep some room open to include some of the futuristic roles to be

- included and the same is also applicable to remaining three i.e. Tanishk, Trikam and Trilok.
- b) As you are a reputed lawyer, you have agreed to permit Tanishk, Trikam and Trilok to use your association with the business at all the places and literature with proper written consent from you. The principal tasks of the business will be performed by Tanishk, Trikam and Trilok.
 - c) Being a fresh and new business, Tanishk, Trikam and Trilok have shown their inability to pay you any remuneration for your services. However you have been agreed to have some share in the business entity which will be formed as per your advice.
 - d) The innovative idea of your business is in the domain of only four of you. Therefore it has been decided that the idea must be properly implemented and till that time no one should leave the business for whatsoever reason. All of you have also agreed to put necessary restrictions on sharing the confidential information after anyone's departure from the business.
 - e) You are also allowed to visit other cities of the country in order to make necessary legal compliances in the interest of the business and all such expenditure shall be paid from the business accounts. However prior written notice describing the nature and maximum amount of the expense shall be placed with the account department. This provision also applies to Tanishk, Trikam and Trilok.
 - f) All of you are aware about your network and you are going to raise funds for your business. However it is expected that none of you shall use the confidential information in any manner, which may deprive your business of any benefit in future. All of you have agreed for the same and have decided to take all reasonable measures to protect the secrecy of your ideas from falling into public domain.
 - g) You have promised to Tanishk, Trikam and Trilok that you will take care of registration of intellectual properties of the business which will be a great benefit to the business and you will bear all the expenditure of registration of the same and Tanishk, Trikam and Trilok have agreed to share extra profit with you for the benefit which will be earned by the business due to your genuine efforts and on doing the same, all such properties shall belong to the business only.
 - h) Your relationship with Tanishk, Trikam and Trilok is good and positive at present and you expect them to be the same in future also. However, based on your maturity and foresight you want to introduce arbitration and mediation as an effective dispute resolution mechanism, wherein mediation and negotiations will be given priority and in case of failure, a panel of 5 arbitrators shall be appointed. Decisions with regard to the seat, venue and legal aspect will be incorporated in the document.

Based on the above mentioned facts, prepare an appropriate agreement which can govern the relationship between all four of you. Ensure that you include adequate clauses considering the all factual and legal aspects as stated hereinabove and also add other necessary clauses which may be required to govern the pre incorporated aspects of their unique business/startup.

- Q.3 You are an owner of a corporate hospital in India. Considering the huge demand of health insurance plans, you are willing to launch health insurance policies for your patients. One of the foreign companies is ready to collaborate with you in this matter. Therefore you both have decided to form an independent joint venture company to introduce health insurance policies to the potential customers in India. The new joint venture company will be governed by representation of equal directors from both the existing companies and the company will take necessary permissions for launch of insurance policies from necessary authorities. Revenue of the joint venture company will be equally shared by both the companies. Draft an exhaustive agreement between both the parties by inserting all the necessary clauses. (12)
- Q.4 The current pandemic has taught the people to maintain health as a priority. There are many factors which affect health in negative ways including unhealthy lifestyle, habits of eating junk food frequently, indulging in habits of consuming tobacco, alcohol and cigarettes etc. It is also surprising that people who follow a healthy lifestyle are also found to be infected with many diseases. A close scrutiny reveals that in case a person consumes the food, which is produced with the help of harmful chemicals and pesticides, is also a probable victim of health hazard. Due to this reason, many people have started consuming organic food products which reduces health risk by minimizing the exposure of agricultural produce to toxic chemicals on the farm and soil which ultimately enters the human body. Children and aged people are more vulnerable to harmful pesticides and chemicals used for agriculture. (7)

Considering the health hazard, it is also a duty of the State to take necessary actions for such matters which are touching people at large. Government of Gujarat has taken a lead by introducing the scheme of 'Organic Farming' by the farmers wherein the Government encourages the farmers to opt for organic farming and create awareness about various methods of preparing soil for organic farming, preparing manure from the non-chemical components and also helping such farmers by providing market to sale their produce. It is also an idea of the Government that spreading more awareness about chemical free products will decrease health risk among the people, which will ultimately help the Government to cut down the budget on hospitals and medicine expenditure that is increasing year by year.

'Prakrutik Organic' is an NGO which is known for their unique experiments for cultivation of organic products. They have developed a unique mechanism for making soil free from pesticides by following some special and traditional procedures. They have also developed a system to produce natural and organic manure, seeds and medicines to save plants from harmful insects. The NGO has thousands of dedicated volunteers who are experts in the field of agriculture and they have access to many latest technologies for reaching out to the people and to spread awareness about the benefits of organic farming.

During the Vibrant Gujarat Summit, the Government of Gujarat wants to collaborate with 'Prakrutik Organic' for its mission to spread awareness among the farmer

community about benefits of organic farming. Being impressed with the working style of the NGO, the Government wants to delegate them the following tasks.

- Preparation of vision and mission for organic farming in Gujarat.
- Creating a proper roadmap for reaching out to all the villages of Gujarat.
- Organizing various awareness programs for the villagers and farmers for the use of organic method of farming
- Providing hands of training to the farmers for soil testing and ideal quantity of organic manure.
- Creating a help desk for the farmers in case of any requirement / query
- Preparing a database about the organic farmers
- Providing an effective system to the farmers to sell their produce.
- Spreading awareness among the people by launching necessary programs to explain them health benefits of organic products

The Government will provide all necessary assistance to the NGO including access to farmers and village database, access to the necessary technology for spreading awareness, assistance of Government officers to accompany volunteers of NGO for reaching to various village offices and necessary support to organise programmes. The actual cost of the activities will be reimbursed by the Government on production of necessary documents. The NGO is required to inform the respective heads of Districts in advance about the planned programs and thereafter necessary support will be given by the Government.

Based on the above mentioned details, draft a suitable legal document between the parties for fulfilment of their futuristic plans. The document should be able to create a non-binding collaboration between the parties, however, there should be proper accountability on both parts. Include the relevant clauses for smooth implementation of the programs by identifying proper point of contact persons at both sides, proper mechanism and process to be followed and other necessary clauses by forecasting the legal issues which may arise in future for implementing the program.

- Q.5 Covidcare Ltd., having its registered office at New Delhi, is involved in the research and development of medicines and vaccine for COVID-19 virus. They started their experiments in April 2020 and they have successfully completed their clinical trials in March 2021 and launched their vaccine in the Indian market under the Government mission to provide free vaccines to all the citizens of the Country. The vaccine got patented with the Indian Patent Office in April 2021 and they also have applied in some other Countries for the patent wherein the application is pending. The production cost of the vaccine is very high, however they are getting financial support from the Government. The company is allowed to sell 40% of their production as per their own choice which they are selling in the national and international market. The company has entered into a vaccine manufacturing license agreement with Moon Pharmaceutical Ltd, having its registered office at Mumbai. Moon Pharmaceuticals paid around INR 300 Crore towards royalty for manufacturing the 1 million doses and the licence is valid for 2

(7)

years. As per the licensing agreement, sub licensing is strictly prohibited and it is a non-exclusive license. Moreover, the vaccine shall be sold in India only and its export rights have been retained by Covidcare Ltd. as the Government will also export the vaccine under the international obligations.

Later on, it was observed by the officers of Covidcare Ltd. that Moon Pharmaceuticals have started selling the vaccine in Myanmar and Thailand through its one of the subsidiary company Planet Pharmaceuticals, wherein the production of vaccine is being made directly in those countries with the help of officers of Moon Pharmaceuticals.

Soon the Covidcare Ltd., through its CEO Shri Hartejsingh Sokhi, made a communication to Moon Pharmaceuticals about their unauthorised and illegal activities which are contrary to the licensing terms and conditions. They have sent a legal notice to Shri Lakhtejsingh Randhava, CEO of Moon Pharmaceuticals for the breach of license agreement and to terminate the license granted for production of the vaccine.

After the receipt of the notice, Moon Pharmaceuticals approached Shri Rajpalsingh Mehra, who was a former Assistant DCGI (Drug Controller General of India) and explained to him the situation in which the vaccines have been supplied to the other countries. Their contention is that the dispute should not be brought to the court of law and the same can be resolved amicably with the help of mediation. Covidcare Ltd has also given its consent for the same. Shri Rajpalsingh Mehra has come forward to be a mediator for resolving their dispute.

Based on the above mentioned facts and situation and before initiation of mediation, draft an agreement for the parties for resolving their dispute through mediation by incorporating all the necessary, relevant and important clauses.
