

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Advanced Contracts (Evolving Jurisprudence in Contract Law)**
Semester- II (Batch: 2020-21)

End Semester Online Examination: June 2021 (LLM)

Date: 28th 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.
- Word Limit: 500-700 words.

Answer Any Five

Marks

- Q.1 '[C]ontract interpretation pursues four main goals—respecting the contractual freedoms, enhancing the security of transactions, settling disputes non-arbitrarily under the Rule of Law, and achieving administrability. A theory of contract interpretation tells us how to perform the three interpretative tasks—identifying the contract's terms, deciding whether they are ambiguous in a contested respect, and resolving any ambiguity—to further the goals.' (10)
- In the light of the afore-stated observation, elucidate the 'objective contextual interpretation' theory of contract interpretation.
- Q.2 'The difference between clickwrap and browsewrap contracts is that assent to terms may exist in the former but not the latter. If there is a presentation of the terms of the contract and affirmative acceptance of them, courts will likely find that a contract exists. If there is a presentation of the terms without affirmative acceptance, a court will require actual or constructive notice of the terms and use of the website before finding existence of a contract.' (10)
- Taking the afore-stated observation into consideration, analyse the following two judicial pronouncements: *Specht v Netscape Communications* [(2002) 306 F 3d 17 (2nd Cir)] and *Pollstar v Gigmania Ltd* [(2000) 170 F Supp 2d 974].
- Q.3 Discuss 'two-bid system' and 'two-stage bidding'. Explain the occasions when these systems are to be resorted to. (10)
- Q.4 'Shareholders' Agreement (for short SHA) is essentially a contract between some or all other shareholders in a company, the purpose of which is to confer rights and impose obligations over and above those provided by the Company Law. 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.' (10)

In view of the foregoing observation, discuss the nature of a shareholders' agreement with the help of case laws.

- Q.5 Given the urgency of India's demographic transition and the experience India has already gained in managing Public Private Partnerships (PPPs), do you think that the Government must move the PPP model to the next level of maturity and sophistication? If yes, why should the PPP mode of infrastructure development be revisited and revitalised? (10)
- Q.6 The outbreak of Covid-19 has a profound effect on the global economy, and a widespread impact on the ability of parties to perform their contractual obligations. In that context, how would you analyse a *force majeure* clause in the contract in order to assess what remedies or relief are available, and to take account of the risks and issues associated with Covid-19 when triaging your contracts? Suggest the key points one should take into consideration while drafting a *force majeure* clause in a contract. (10)
