

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

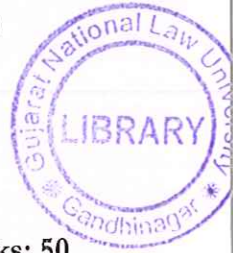
Course: **Advanced Contracts (Evolving Jurisprudence in Contract Law)**
Semester-VII (Batch: 2012-17)

End Semester Examination: Oct-Nov. 2015

Date: 30th October, 2015

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.

	Marks
Answer all the questions.	
Q.1 (a) Discuss the application of the principle of <i>contra proferentem</i> in the interpretation of commercial contracts.	(5+5 =10)
(b) In view of judicial pronouncements, what would be the safest course of action while drafting a shareholders' agreement to ensure enforceability of such an agreement even against the company under the present Indian legal framework?	
Q.2 There are mainly three routes which government agencies or local authorities may adopt for the selection of appropriate 'developer' for infrastructure projects, namely — 'direct negotiation', 'unsolicited proposal' (formalised by adopting <i>swiss challenge approach</i>) and 'competitive bidding'. Explaining the occasions that warrant the adoption of these routes, explicate the features (merits and demerits) of these routes with the help of relevant case laws.	(10)
Q.3 (a) For the purpose of removal of a considerable quantity of scar tissue from the palm of P (a patient, aged 20 years), P and his father met D, a doctor. The scar tissue was the result of a severe burn caused by contact with an electric wire. There was evidence to the effect that before the operation was performed, P and his father went to D's office, and that D, in answer to the question, 'How long will the boy be in the hospital?' replied, 'Three or four days, not over four; then he can go home and it will be just a few days, when he will go back to work with a good hand.' D also said before the operation was decided upon, 'I will guarantee to make the hand a hundred per cent perfect hand or a hundred per cent good hand.' P was present when these words were spoken. D agreed to repair the scar tissue by grafting skin taken from his chest to his hand.	(5+5 =10)
<p>The surgery was not as successful as desired, and P was left with a hairy hand. There was, however, no provable negligence on the part of D. P sought damages for breach of contract due to D's failure to produce the agreed result. Could D (the doctor) be made liable for the breach of contract? And, could P claim special damages for the alleged breach?</p>	

- (b) In the light of judicial pronouncements, elucidate the present legal position with regard to the validity of surrogacy agreements under the Indian law. How far do you agree with the Union Home Ministry Guidelines (2012) for regulating the practice of commercial surrogacy by foreign nationals interested in surrogacy?

- Q.4 (a) What are the following clauses meant for in a contract, and what care one must take while drafting these clauses: (Marks: 2.5+2.5=05) (5+5
=10)
- (i) Interpretation and definition.
 - (ii) Effective date of the contract.

- (b) Consider the following clause on 'Liquidated Damages' in a contract:

If the delivery of the Vessels is delayed by more than one month beyond the said delivery date, the Owner may at his discretion, withhold any payment until the whole of the Vessel(s) has been delivered; and the Owner may also deduct from the Builder, a sum equivalent to half (0.5) per cent of the basic cost of the Vessel(s) amounting to rupees.....per Vessel as agreed liquidated damages and not by way of penalty for each whole month and/ or part thereof on pro rata basis by which the completion of the said Vessel(s) has been delayed beyond the above said one month, subject to a ceiling of five percent (5%) of the basic cost of the Vessel(s) amounting to rupees In case, the delay in delivery exceeds 10 months, the Parties shall mutually decide upon the action to be taken under the circumstances.

Do you find any flaw in the clause? If yes, specify the flaw(s).

- Q.5 Write short notes on any two of the following: (2x5
=10)
- (a) The Information Technology Act 2000 has clarified certain aspects of e-contracting. Elucidate.
 - (b) Call option and put option.
 - (c) Evolving jurisprudence with regard to specific performance of sports and entertainment contracts.
