

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR****Course: Clinical 3 (Advanced Legal Drafting)
Semester- X (Batch: 2017-22)****End Semester Online Examination: May 2022****Date: 08th May, 2022****Duration: 8 hours****Max. Marks: 40****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.

Marks

- Q.1 Mr. Shekar is working as a Team Leader in Alaska Pvt. Ltd., a company registered for the purpose of manufacturing and marketing of various household products. The company has a registered office at Delhi and Mr. Shekhar is working at Ahmedabad branch. As a part of his work, he has to obtain reporting and follow ups from his team members and take necessary efforts to improve their performance in case of decrease in sale below the given target. His team comprised of 2 members and all members were performing well except one lady, Ms. X. He has to call her again and again for giving suggestions about improving her performance in sales. On 2/3/2022, he called a meeting of his team and on finding that Ms. X has performed below the average, he scolded her and gave her a final warning that in case her performance will not get improved in March, she will have to tender her resignation. On 5/3/2022, Mr. Shekhar received a call from the office of Chairman of the Company and he was issued a show cause notice as to why action should not be taken against him under the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and he was informed orally that he has to undergo suspension pending the inquiry. Mr. Shekhar got shocked with the sudden development of such nature and he tried to find out the reasons for such actions where he came to know that the complaint was filed against him by Ms. X who happens to be cousin of sister in law of chairman of the company as she was not happy with the strict action taken by Mr. Shekhar during the meeting of team members. The Chairman of the company acted under the provisions of said act, however the necessary committee was yet to be formed. Moreover his team members were aware that there was not a single incident wherein any situation was arisen when Mr. Shekhar had any conversation with Ms. X in isolation as she has to remain out of the company for field work only. Mr. Shekhar's name and career has been on stake due to such action by the chairman and therefore he needs your help. Being his advocate, draft a suitable petition before appropriate forum which can save him from the said action and also can secure his services. (10)
- Q.2 Mrs. Malathi is a resident of Chennai and she holds expert knowledge in preparation of various delicacies of south Indian cuisine. She inherits the knowledge and skills for (10)

preparation of mouth-watering delicacies from her grandparents who were owners of restaurant few decades back. She has preserved an art of mixing various spices in proper proportion for different dishes. On getting admiration for her tasty cooking, she decided to start her own business in the year 2010 and soon it became very popular in the city. She incorporated a private company namely Malthi Pvt. Ltd. having a registered office at Chennai, wherein she resumes being a Managing Director. She got her trademark registered with the name 'MALTHI'S' before the Chennai office having registration no. T/102030458. She has also designed various unique utensils and mechanism for preparing idli and dosa in a quick manner. She was willing to reach more number of people with health and delicious food, therefore, she took advice from a business consultant and she opened her five branches in various parts of the city wherein she was operating from the main branch and she hired a staff and trained them to prepare delicacies in a manner taught by her. Now she is willing to bring her business out of the State and therefore she is interested to spread her business through franchise model and more particularly FOFO model. She has developed a system for preparation and preservation of raw material, a unique design for outlets, a software for maintenance of accounts and inventory. She decided to charge an amount of Rs. 2,00,000/- for franchise fees and 20% revenue on net sale of the outlet. The first franchisee of company will be given to a Mumbai based entrepreneur Mr. Madhav Mishra. She has prepared the following agreement to be signed with franchisee.

Go through the agreement and correct it in case of any discrepancy or mistakes in the nature of sequencing of the clauses and/or typographical mistakes, if any. Add necessary and important clauses if you think they are missing from the agreement as per the standard practice and **redraft the agreement by highlighting the changes you have made in it.**

Franchise Agreement

This **Agreement** is entered into on 11/6/2022 **BY AND BETWEEN** Mrs. Malthi S. aged about 45 years, residing at 305, Alice Apartment, M.G. Road, Chennai hereinafter referred to as **Franchisor** ;

AND Mr. Madhav Mishra, aged about 58 years, residing at 1004, Milena Apartment, S.G. Road, Mumbai, Maharashtra, hereinafter referred to as **Franchisee**;

The Franchisor and the Franchisee are hereinafter individually referred to as a **Party** and collectively as the **Parties**.

WHEREAS:

The Franchisor has designed, developed and owns the business known as MALTHI'S which includes business of preparing and selling south Indian delicacies. The Franchisor has established a significant reputation in respect of the Business, its business and activities. The Franchisor wishes to expand the Business by expanding the Franchisor's business and reputation. The Franchisee wishes to set up and carry on at the Franchisee's own risk a franchised business in Mumbai. Accordingly, the Franchisee wishes to be granted relevant rights by the Franchisor to carry on the trade of a Franchisor. The Franchisee having taken professional advice wishes to enter into this franchise agreement ("Contract") in respect of the franchised business.

NOW THEREFORE, in consideration of the promises and the mutual covenants set forth herein, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. Dispute Resolution:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration only and in no case, the parties shall have a right to approach any court, however, the Franchisor reserves the right to approach courts of Chennai in case of any dispute or claim of any damages in case of breach of contract

2. Term

The Agreement shall remain in full force for the initial term of six months and it will be subject to renewal as per the discretion of the Franchisor only. Any renewal agreement shall operate from the date of the expiry of this Agreement and except in respect of liability for legal costs, no renewal fee will be charged to the Franchisee in respect of a renewal.

3. Indemnity

The Franchisee agrees to indemnify the Franchisor and keep the Franchisor indemnified against all loss, damage or liability suffered by the Franchisor as a result of the Business and the actions of the Franchisee.

4. Franchisee's Responsibilities

During the term of this Contract, the Franchisee shall diligently and faithfully serve the Franchisor as its franchisee and undertake to the Franchisor as follows:

1. To use all Rights, the Manual, the Intellectual Property and all trademarks solely for the operation of the Business and in accordance with the provisions of this Contract.
2. To maintain high standards in the Business as prescribed by the franchisor.
3. To obtain and maintain valid licenses for the operation of the Business
4. To insure with a reputable insurance company in accordance with the requirements and for the relevant cover set out in the Manual.
5. To operate the Business properly and strictly in accordance with the Manual.
6. To only use the name MALTHI'S during the Term and not after the termination of this agreement.
7. Not to be directly or indirectly engaged, concerned or interested in a similar business(s) forever.
8. To keep the Franchisor fully informed including in relation to complaints; supplying a copy of all complaints received by the Business.
9. To comply with all statutory and local legislations.
10. Not to carry on the Business in any manner that may adversely affect the reputation of the Business, the Franchisor, the Franchisee, other franchisees and the Rights.
11. At all times to ensure that all employees of its business conduct themselves in such manner as not to prejudice the Rights or adversely affect the reputation of the Business, the Franchisor or its franchised network.
12. To obtain prior written consent of Franchisor in the event of any proposed special arrangements, prices or prior to departing from any specified requirements or obligations.

13. Not to disclose at any time during the Term of this Contract and after its termination, any confidential information, whether technical or otherwise made available to the Franchisee by the Franchisor.
14. Not to do similar kind of business without the prior written consent of the Franchisor, during the Term of this Contract and for a period of 10 years after its termination in the Territory or any part of the Territory.
15. To bear all the costs incurred by the Franchisor in connection with performance of the duties and obligations under the Contract.
16. To provide the Franchisor with periodic updates and reports of the marketing and promotional activities carried out by the Franchisee in the Territory together with an account of all promotional plans

5. Termination

The Franchisee agrees to pay to the franchisor the following:

1. The Initial refundable Franchise Fee for Rs. 1000000/- (Rupees Ten Lakh only)
2. Royalty at the rate of 20% of total sale made by the franchisor.
3. Other fees and sums due by direct debit or other method specified by the Franchisor from time to time.

6. Appointment:

The Franchisor gives appointment to the Franchisee with effect from 1st May 2023 and grants to the Franchisee rights to do the business subject to the terms and conditions of this Contract and more particularly the right to carry on the business of MALTHI'S which is specially for sale of south Indian delicacies and to carry on the Business in accordance with the methods of operating the Business using the know-how and systems for operating the Business contained and detailed in the operations manual and

7. Notices: Any notice required to be given pursuant to this Contract shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post to the address of the relevant party set out in this Contract or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery.

8. Confidentiality and Intellectual Property

Unless otherwise expressly agreed in writing between the parties, all right, title and interest in and to all trademarks, logos, trade names, literature, copyrights, database rights, patents, designs and all other intellectual property rights (the "Intellectual Property") in and relating to the Franchisor, the Business or to the Business's or the Franchisor's website) shall belong to the Franchisor. The Franchisee agrees to maintain secret and confidential all information (whether technical or otherwise) obtained pursuant to this Contract. The Franchisee acknowledges that the Franchisee has no rights in or to the Intellectual Property and undertakes not to do or omit to do anything by which the goodwill and reputation associated with the Intellectual Property might be diminished or jeopardised.

9. Consideration:

This Contract may be terminated immediately, by a mutual agreement in writing between both parties. It may be terminated by the franchisor by giving written notice to the Franchisee having immediate effect if the Franchisee breaches this Contract and fails to

remedy that breach within 10 days of being given a written notice identifying the breach and requiring it to be remedied. This Contract shall terminate without notice in the event of the death of the Franchisee.

10. Transfer by Franchisee

Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this Agreement on reliance of his/her business skill and financial capacity. Accordingly, neither Franchisee nor any immediate or remote successor to Franchisee shall sell, assign, transfer, convey, donate, pledge, mortgage, or otherwise encumber any direct or indirect interest in the Franchisee or in this Agreement.

11. Franchisor's Responsibilities

During the term of this Contract, the Franchisor will undertake the following:

1. Support the Franchisee in the Business as reasonably requested or required pursuant to the terms of this Contract including the provision of timely responses to enquiries from the Franchisee.
2. The franchisor shall take complete control over the business of the franchisee and the franchisor will provide a copy of the Manual to the franchisee about the operation of the business.
3. Review and audit the Business from time to time for quality control purposes.
4. Provide the Franchisee with reasonable marketing and sales information

12. Property

The Franchisee confirms that it is owner of the Property at the time of this Agreement and it shall keep the ownership of the property intact till the time of running of the business of the franchisee.

13. Limitation of Liability

Except in the case of fraud or wilful default, or in the case of death or injury for which the Franchisor is liable to the Franchisee in negligence, the Franchisor shall not be liable to the Franchisee, as a result of breach of contract or negligence or otherwise, for any loss of profit or business or other economic or financial loss arising directly or indirectly out of or in connection with this Contract.

14. Non-Assignment: The Franchisee shall not assign, delegate or otherwise transfer the performance of the franchise granted by this Agreement or any right or obligation under it.

15. Inspection: The Franchisor shall be entitled to inspect and the Franchisee's books of account at any time by service of reasonable notice to the Franchisee of not less than two days of such proposed inspection or audit which shall be during reasonable business hours.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement on the day and year first above written. Signed and delivered for and on behalf of:

Franchisee _____

Franchisor _____

- Q.3 Eklavya is poor hunter who could not complete his formal education. He is good in archery and because of this, he got some sponsors and took part in the archery events. He has a bank account with Gauravas bank, Hasthinapuram branch. He asked his bank (10)

through email communication to make a payment for Rs. 20000/- for participation in an Archery Cup Tournament which will be held in Guruchetra on 2/6/2021. In the email communication, Eklavya did not mention his account number and account details for transferee and he has asked his bank to make the payment to the Dhrona Gurukul association, organisers for the Archery events. On 3/6/2021 Arjuna, an employee of the Gauravas bank, noticed this email and called Eklavya and asked about the exact account details. Eklavya informed him about his inability to read and write in English language and also explained how he made his previous payments with the help of the Gauravas bank employee Mr. Karna. Arjuna further informed him that he was unable to make the payment unless he is provided with proper bank details. Later on, both came to understanding wherein, Arjuna provided the account details of the transferee on the basis of the previous transaction details and based this details, Eklavya sent a fresh email to the bank for transfer and Arjuna made the transaction on the basis of the latest email. On 22/6/2021 Aswathama from Dhrona Gurukul called Eklavya and inquired about his participation in the event. Eklavya informed about the payment made on 3/6/2021. Later both have realized that the bank hasn't made the payment to the Dhrona Gurukul association. On 30/6/2021, Eklavya inquired with the banker about the transaction and the banker informed him that as per his email request, the bank had completed the transaction. Later, he visited the bank and found that the transferee's account details were completely wrong. Immediately, he urged the bank manager to stop the payment and requested refund of the money. The bank manager informed him that the bank has not committed any wrong and therefore, they cannot help him. Aggrieved by the reply from the manager, Eklavya has decided to file a case against the bank for negligence in performing duty and he has sent a legal notice demanding the misappropriated amount along with compensation of Rs 20,000/-. After the receipt of the notice the bank has requested Eklavya to settle this through mediation.

Confidential information:

Karna has told Eklavya not to believe the bank employees and not to disclose about his inability otherwise they may take the advantage. He also explained about the bank rules, which clearly urged the customer's vigilance. When Karna got transferred, before leaving he once again reminded the same to Eklavya. In his email, Eklavya has mentioned transferee's account details wherein he had also mentioned the transferee's name as Dhrona Gurukul association whereas, the amount has been transferred to the account of someone else. He has come to know about this from the bank employee during preliminary enquiry. He doesn't want to lose the relationship with the bank and he wants to get back his actual amount.

Vidhura is a general manager of Gauravas bank, Hasthinapuram branch. Eklavya is one of the regular customer of this bank. As per his inquiry into the transaction, the transferee's name was different from the account holder's name, therefore, the transaction should not have been done by the transferee bank. Arjuna has been transferred from Panipat to Hasthanapuram due to some allegation of bank fraud. Karna has been transferred from this branch to Dhuwaraga as a promotion and customers like Eklavya have given good opinion about him. Because of customer friendly approach, this bank has received best bank award from RBI. This bank is an emerging one and this branch has not received any such complaint from a customer earlier and it doesn't want

to lose its reputation because of any dispute. As per the arrangement between the banks, it has found that the amount has been transferred to Abimanue, from SBI bank, Kedharnath branch. This bank doesn't want to lose such a customer who may become the future Icon of India in Archery and therefore, if the bank will not get success to get back the amount, it has intended to pay the actual amount which is in dispute to the Eklavya.

Based on the above mentioned facts and circumstances, draft a suitable agreement for resolution of dispute through mediation. Shree Kishan Chandra Yadav has agreed to be a mediator between the parties.

- Q.4 Mr. Mehta has purchased two flats with 4 bedrooms each in the developing area of Ahmedabad. His area is near to metro station and national highway. He is planning to make some structural changes in both flats by converting them in 10 different rooms. He has a plan to install necessary furniture in each room including lights, fan, AC, bed, table, TV, Set Top Box, etc. and each room will be used to provide PG accommodation to the working executives. He has also appointed a cook in the house who will provide food on required basis and also have installed Wi-Fi router giving connectivity to each room. Considering the facilities provided, he is expecting the amount of Rs. 20,000/- per month. This is to be paid as an advance basis which will undergo 10% increase in case of renewal. He plans to charge double of said amount as an interest free security deposit to be returned at the time of vacating premises. He seeks your assistance for preparing a formal agreement format which may be used while providing PG accommodation. He want to provide accommodation for only that period which can save him from the formalities of mandatory registration of document and at the same time can save him from the provisions of the Rent Control Act. Prepare a proper comprehensive document for Mr. Mehta to be executed with users at the time of allowing them to use the premises with facilities as mentioned above. (10)
