

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Law of Banking and Insurance  
Semester-I (Batch: 2015-16)

**LL.M. End Semester Examination: Oct-Nov. 2015**

**Date: 9<sup>th</sup> November, 2015**

**Duration: 3 hours**

**Max. Marks: 70**

**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 any thing 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.

Part-A	Marks
Q.1 (a) Explain in detail the objectives & achievements of bank nationalization in India? Was it a right step? (b) Write a note on the recommendations of Narasimhan committee.	(6+6= 12)
Q.2 In the light of the Supreme Court decisions of <i>K. Bhaskaran v. Sankaran Vaidhyan Balan</i> and <i>Dasrath Rupsingh Rathod v. State of Maharashtra &amp; Anr</i> , explain the concept of territorial jurisdiction for an offence committed under section 138 of the Negotiable Instruments Act, 1881.	(12)
Q.3 ZNT Bank wants to file an application before Debts Recovery Tribunal for recovery of debt from the borrower Mr. Rakesh. With the help of leading case laws, examples and relevant provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, advice the bank.	(11)

**Or**

A' took a loan of Rs. 50 lakhs from a Bank for which B has mortgaged his house as a guarantor of his friend A under an agreement of guarantee to the bank making himself liable for repayment of loan amount with interest. Some irregularity was observed in the repayment of loan, which was duly informed by bank to both A & B through letter. They did not pay attention to this letter and hence after waiting for a reasonable time, bank declared the loan as Non-Performing Assets and thereby, sent a fresh letter to both A & B requiring them to deposit the outstanding dues within a given time limit. Thereupon, some amount has been deposited by A along with a written undertaking to pay the rest amount in instalments which he failed to perform in later course of time. The Bank issued a notice thereby to both A & B requiring them to pay the balance amount of Rs. 30 lakhs including interest within 60 days. Upon receipt of the notice, Mr. A offered a sum of Rs. 25 lakhs for settlement of loan account, which has not been accepted by the Bank and hence, bank moved an application for recovery of debt under the SARFAESI Act and application was allowed by the District Magistrate. Thereafter, bank issued notice to both A & B under Section 13(4) of the SARFAESI Act. Faced with imminent threat of losing the mortgaged property, B has filed a Writ petition praying to restrain the bank from taking coercive action in pursuance of notices issued under section 13(4) of SARAESI Act on the ground that no action has been taken against the actual borrower A and hence, the recovery of outstanding dues from mortgaged property of guarantee



are *ex facie* illegal and liable to be quashed.

Explain in detail the recovery mechanism provided under SARFAESI Act and give your opinion on maintainability of the writ petition filed by the guarantor on the basis of relevant provisions of the Act and decided case laws.

### Part-B

- Q.4 Mr. Ranganath was working as an engineer in Cotton Industries Pvt. Ltd. at Surat, Gujarat. He had taken an insurance policy from the Life Insurance Corporation of India commencing from 15.01.2012 for a sum assured of Rs. 5,00,000/-. On 16.01.2013, he fell sick and recovered immediately and no serious ailment was diagnosed. Again on 18.03.2013, he was hospitalized for severe continues fever and finally diagnosed as Leukemia (blood cancer) upon conducting various tests in Government Hospital, Surat. Thereafter, he was taken to HCG Hospital, Ahmedabad and admitted for treatment from 24.03.2013 to 02.04.2013 and subsequently was back to the normal work from 14.04.2013. The Insured has assigned the policy on 12.05.2013 in favour of the Bank of India for Rs. 1,00,000/-. Meanwhile he was not revived his life Insurance Policy, which is due for payment of premium on 02.01.2015. The Insurance Laws (Amendment) Act, 2015 was passed by the parliament effective from 23rd March, 2015. The said Act amends the provisions relating to non-disclosure and mis-representation under the Insurance Act, 1938. The LIC by public notification in the newspaper dated 30.03.2015 had given an opportunity for revival of the policy which were lapsed due to non-payment of premiums. The Insured has revived the policy on 01.05.2015 and under which he has not revealed his ailment and subsequently died on 10.06.2015 due to Leukemia. Mr Rakesh Ambani, Manager of Bank of India approached LIC for the claim. Mr. Balasubramanyam, father of the deceased and nominee under the policy also approached the Life Insurance Corporation for the claim. Mrs. Balashri, wife of the deceased also approached the LIC for the claim. Based on the above facts, answer the following issues: (12)
- Discuss the liability of the Insurer before and after passing the Insurance Laws (Amendment) Act, 2015. Whether the said amendment to the concept of non-disclosure and misrepresentation under the Act is in conformity with the various judicial decisions.
  - Briefly analyze the rights of Nominee, Assignee and Legal heir based on the new amendments and in what way it effects the rights of Assignee in the above case.
- Q.5 What are the rights of Insurance Company to absolve from its liability to pay compensation under the provisions of the Motor Vehicles Act, 1988 with special focus on issues of driving licence? What is the method of determining the amount of compensation in the case of overloading of passengers? With the help of decided case laws, briefly discuss the concept of computation of compensation based on the Structural formula/multiplier method. (12)
- Q.6 Explain the concept of Insurable Interest in Insurance Contract? Discuss its importance under the marine insurance contract with the help of provisions of the Marine Insurance Act, 1963 and decided case laws. (11)

Or

Explain the concept of Utmost goodfaith in Insurance contracts. Discuss the different kinds of warranty clauses and its consequences of breach under the Marine Insurance Act, 1963?

\*\*\*\*

