

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Banking and Insurance
LL.M. Semester-I (Batch: 2014-15)



LL.M. End Term Examination: November-2014

Date: 19th November, 2014

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.
- **Bare Act is not allowed.**

**Part A
Answer all the Questions**

Marks

- Q.1 In June 2014, Mr. Ravi had requested Mr. Rajat for a hand loan of Rs. 85,000 in order to meet the construction expenses. In view of their acquaintance, Mr. Rajat had paid Rs. 85,000 by way of cash. On receiving this amount, Mr. Ravi had initially assured repayment by July 2014, but on the failure to do so, he sought more time till the end of July. Mr. Ravi had then issued a cheque bearing No. 0886322, post-dated for 28-8-2014 for Rs. 85,000. Consequently, on 1-9-2014, Mr. Rajat had presented this cheque for encashment. However, on 6-9-2014 the Bank issued a return memo stating that the 'Payment has been stopped by the drawer' and this memo was handed over to Mr. Rajat. As a result of that he had then issued notice to Mr. Ravi on 10-9-2014. On receiving the same on 12-9-2014, Mr. Ravi failed to honour the cheque within the prescribed statutory period and also did not reply to the notice. Following these developments, Mr. Rajat had filed a complaint against Mr. Ravi before the Judicial Magistrate First Class for the offence relating to dishonouring of cheque. The accused had raised the defense that the cheque in question was issued as a gift in favour of the payee and there was no legally enforceable debt or liability between the parties since he had not asked for a hand loan as alleged by the complainant. Discuss the following in the light of above mentioned facts by applying the relevant provisions of Negotiable Instruments Act, 1881 and with the help of judicial pronouncements:
- (a) Whether the Stop payment instruction by Mr. Ravi attracts an offence of dishonouring of cheque?
- (b) Whether it will make any difference if it can be proved that the cheque was drawn as a gift in favour of Mr. Rajat?
- (c) Whether a post dated cheque can be dishonoured?
- Q.2 Discuss in detail about the bankers obligation to maintain secrecy of customers account. Whether this obligation is absolute or qualified decide with the help of relevant case laws? (10)
- Q.3 Discuss the Banker Customer relationship with regard to deposits in the account and loans and advances by analysing leading cases. (10)

Q.4 Answer **any one** of the following: (05)

- (a) *"It is important to remember that underlying objective of the judgment is to rationalise the law relating to jurisdiction in such cases and also to prevent harassment to accused who may have to face cases in remote and distant corner of the country, where the complainant may choose to present cheque, although that place may have nothing to do with the contract/transaction. Seen in such light – the fact – that the cheque was payable at drawee bank's branch in the city of payee itself would not be of consequence, as in such cases too the actual dishonour of the cheque takes place only at the drawee bank, where either the cheque physically or a scanned truncated copy travels, and its dishonour is merely communicated by the branch of drawee bank".*

In light of the above statement comment on the significance and objective of the latest judgment delivered by the Honourable Supreme Court regarding the territorial jurisdiction in cases of offences relating to dishonour of cheques.

- (b) Explain the provision relating to audit of banking companies under the Banking Regulation Act, 1949.

Part-B Answer all the Questions

- Q.5 Dimple Saraswati and Ramesh Tagore, a married couple living happily as wife and husband. On 10-01-2013 all of a sudden Ramesh Tagore suffered with heart attack and admitted in hospital and later on recovered and discharged. Ramesh Tagore had obtained a policy on his life effective from 10-02-2013 from Life Insurance Corporation of India for Rs.10,00,000/- and in which he has nominated his father Chandan Tagore as his nominee. While submitting the proposal form, he has not disclosed his ailment. On 10-04-2014 Ramesh Tagore assigned the policy in favour of Bank of India and taken a loan of Rs.5,00,000/- for a family problem, finally he died on 10-10-2014 due to severe heart attack. After the death of husband, wife approached LIC to claim the amount as a legal heir according to the provisions of Hindu Succession Act, and father also claimed the amount as nominee. Insurance Company rejected the claim on the ground that deceased has not entered the contract with utmost good faith and more over policy was assigned in favour of the Bank of India. Both the wife and the father of the deceased filed a separate case for claiming the amount in the capacity of legal heir and nominee respectively against the LIC and in both the cases Bank was also impleaded as a respondent. (10)

Advance your arguments on behalf of Life Insurance Corporation of India.

- Q.6 Every contract of Insurance, except life insurance, is a contract of Indemnity. The meaning of which is that the assured in case of loss is to receive a full indemnity, but is never to receive more. The corollary principles like insurable interest, subrogation, and utmost good faith enforces the rule of indemnity? Elucidate. (10)
- Q.7 What is the difference between claim under 'fault' and 'no fault' liability as per the Motor Vehicles Act, 1988? Discuss the issues arising out of driving license and computation of compensation in the case of overloading of passengers with the help of decided cases and provisions of the MV, Act. (10)
- Q.8 Answer **any one** of the following: (05)
- (a) Commencement of the risk in life insurance contract
- (b) Smt. Kaushnuma Begum & Ors Vs The New India Assurance Co. Ltd. and Ors.
