

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: **Advanced Contracts (Evolving Jurisprudence in Contract Law)**  
Semester- II (Batch: 2023-24)

**End Semester Examination: April 2024 (LL M)**

**Date: 29<sup>th</sup> April, 2024**

**Duration: 3 hours**

**Max. Marks: 50**

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- 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.
- Bare Act is not allowed.
- Word Limit: (10 Marks: 700-800 words), (5 Marks: 400 words)

**Answer any five of the following questions:**

**Marks**

- Q.1 *AP* is an exporter of fish meat and fish oil, whereas *RT* is a government insurance company. *RT* provides a range of credit risk insurance cover to exporters. On 13 December 2012, *AP* paid premium to *RT* for a Policy, which covered foreign buyer's failure to pay for goods exported. The Policy was, thus, taken to protect against failure of the foreign buyer in paying the Indian exporter for goods exported; it was not a policy taken to cover in-transit insurance. The coverage of this Policy was for 2.45 crore with effect from 14 December 2012 to 13 December 2013. The vessel set sail on 15 December 2012. The Bill of Lading was prepared on 19 December 2012, with a line specifying the date of 'onboard' (i.e. date on which vessel commenced loading the goods in question on board) as 13 December 2012. The vessel delivered the goods on 22 January 2013. The overseas buyer defaulted on payment. *AP* then lodged a claim with *RT* on 14 February 2013. *RT* rejected *AP*'s claim on several levels, more particularly, on the basis that the date of 'despatch/shipment' (provided in the Policy) was not clearly defined, and therefore, it placed reliance on the definition contained in the Director General of Foreign Trade (DGFT) Guidelines. For containerised cargo, the same was to be interpreted as the date of 'Onboard Bill of Lading', which in the present case was 13 December 2012. This was just a day prior to the effective date of the Policy, i.e. 14 December 2012. It was, therefore, reasoned that *AP* was not entitled to the claim amount. *AP*, feeling aggrieved, complained of deficiency of service, and approached the National Consumer Disputes Redressal Commission ('NCDRC') for compensation. *RT* resisted the claim. NCDRC upheld the rationale of *RT* and rejected *AP*'s contention that in the absence of a clearly specified provision in the Policy, it was entitled to the benefit of the rule of *verba chartarum fortius accipiuntur contra proferentem*. Hence, an appeal was preferred by *AP* to the Supreme Court of India against the decision of the NCDRC.
- (10)

The relevant clauses of the Policy are reproduced as follows:

*Definitions*

(1) *DESPATCH OR DESPATCHED*

*'Despatch' means passing or handing over of the goods to the first carrier for through carriage to the place where the Insured Buyer or his nominee is to accept them 'despatched' will be construed accordingly.*



The DGFT Guidelines defined the date of 'shipment' as follows:

*Date of shipment/despatch for exports will be reckoned under:-*

(i) *By Sea: For bulk cargo, date of Bill of Lading or date of mate receipt, whichever is later.*

a) *For containerised cargo, date of "Onboard Bill of Lading", or "Received for Shipment Bill of Lading", where the L/C provides for such Bill of Lading. For exports by containers from Inland Container Depot (ICD), date of Bill of Lading issued by shipping agents at the time of loading of export goods in ICD after customs clearance.*

b) *For Lash barges, date of Bill of Lading evidencing loading of export goods on board.*

AP submitted that a plain reading of the above stipulation did not clarify the exact date of initiation of the coverage. However, the condition must be interpreted to mean the date on which the vessel set sail, and not the initial date of loading of the goods, given that too many containers were to be loaded, which took time, and was completed by 14 December 2012. Thus, possession by the first carrier (the vessel) could only be completed when all the goods were loaded, and the vessel sailed. To support this submissions, AP alluded to the Mate's Receipt (i.e. the receipt issued by the Master of the vessel when the cargo was loaded on board), issued on 15 December 2012. Therefore, the date of 'despatch/shipment' had to be construed as 15 December 2012, and not 13 December 2012.

RT submitted that the DGFT, as the statutory body for regulation and promotion of foreign trade, had formulated the DGFT Guidelines to provide a legal framework to the Foreign Trade Policy 2009-2014 as envisioned by the Ministry of Commerce and Industry, Government of India. According to RT, on an application of the definition of date of 'despatch/shipment' under the DGFT Guidelines, it was clear that the date to be construed was 13 December 2012, which was a day prior to the effective date of the Policy. Thus, as argued by RT, the date of shipment being a day prior to the effective date of implementation of the Policy, it was not bound to honour the claim.

In view of the afore-stated factual matrix, explicating the *contra proferentem* rule of interpreting a contract, decide whether or not RT would be liable to pay the claim amount to AP. Substantiate your answer with the help of the principles and rules of interpretation of contracts.

- Q.2 BEST floated a tender (dated 26 February 2022) for the supply, operation and maintenance of 1000 Single Decker AC Electric Buses with driver, for the purpose of public transport service within the city of Mumbai along with other civil infrastructure development at the BEST depots for a period of 10 years. The tender document provided for 'technical specifications', under which the bidders were required to provide Single Decker Buses which can run 200 km in single charge without interruption in actual conditions for the relevant Gross Vehicle Weight with air conditioning with not more than 80% battery being consumed. BEST opted for a specific reference to 'in actual conditions' and excluded any reference to 'AIS 040' or 'standard conditions' in the tender specifications. (10)

The tender also provided the following:

*The Operating Schedule shall be provided by BEST and the successful bidder has to ensure the uninterrupted operation of the schedules through adequate spare buses. In case the successful bidder is unable to maintain uninterrupted operation of schedules for want of charging, then BEST shall take suitable action by levying additional penalty by non-payment towards assured distance (in km) for*



*that entire day per instance and if the instance keeps on recurring for a long period of time, then the BEST may resort to even termination of the Contract.'*

Clause 15 of the tender document (Definitions and Instructions to Tenderers), reads as under:

*'15. The Bidders shall accept unconditionally BEST's "Conditions of Tender & Conditions of Supply" in TOTO, failing which their financial bids shall not be considered for opening. Bidders are requested to go through the same carefully.'*

Eight bidders participated in the tender process, including EVEY and TATA Motors. TATA Motors submitted its bid, wherein it guaranteed operating range of 200 km with 80% State of Charge (i.e. 20% reserve left upon running 200 km in single charge); however, the same was achieved 'in standard test conditions as per AIS 040'. This was a deviation from the tender specifications. EVEY submitted its bid claiming that the same was submitted without any deviation from the tender conditions including the condition of minimum operating range of 200 km in a single charge.

The bids were opened on 04 May 2022 and the technical suitability evaluation was announced on 06 May 2022. BEST, in its technical suitability evaluation dated 06 May 2022, held TATA Motors along with four other bidders, to be 'technically non-responsive'. TATA Motor's bid was rejected on account of technical deviation with respect to the operating range. The bid offered by EVEY in the said report was deemed to be 'technically responsive'. Thereafter, on 06 May 2022, the price bids of the eligible bidders were opened, and EVEY was declared to be the L1 bidder. The price bid of TATA Motors was not opened. Aggrieved by the technical suitability evaluation issued by BEST by which it rejected the bid of TATA Motors, the latter approached the High Court of Judicature at Bombay by way of a writ petition dated 10 May 2022.

The High Court *vide* its judgment, dated 05 July 2022, took the view that the requirement for the operating range to be more than 200 km in a single charge in 'actual conditions' was unambiguous. Accordingly, the High Court upheld the disqualification of TATA Motors and rejected their claim for being considered as an eligible bidder, as they failed to comply with the technical requirements of the Tender. The High Court proceeded further to discuss as to why the bid of EVEY also should have been rejected, and that BEST in its discretion might undertake a fresh tender process. Feeling aggrieved by the judgment of the High Court, TATA Motors preferred an appeal to the Supreme Court.

In view of the afore-stated factual matrix, decide the following issue: Whether the High Court after upholding the disqualification of TATA Motors from the Tender was justified in undertaking further exercise to ascertain whether EVEY also stood disqualified and that BEST in its discretion may undertake a fresh tender process? Support your answer with the help of convincing reasoning and leading case laws.

- Q.3      a) Expound the distinction between 'Public Private Partnership' and 'Privatization'. (5x2=10)
- b) 'The lack of mutual assent in browse-wrap agreements is evident in the fact that the user is not required to actually view the terms of the agreement before proceeding beyond the home page, at which point the agreement is said to become valid. This characteristic distinguishes browse-wrap agreements from shrink-wrap and click-wrap agreements, which have been enforced by several courts.'

In consideration of the afore-stated observation and with the help of relevant judicial pronouncements, explain the enforceability of browse-wrap agreements.

- Q.4 'A surrogacy contract is a remarkable option for people who wish to realise their dream of having a child as, nowadays, parents are more interested in having genetically developed children rather than going for adoption.' (10)

In view of the foregoing observation, analyse the Surrogacy (Regulation) Act, 2021 from a contract law perspective.

- Q.5 a) Is it possible to make doctors/physicians liable for breach of contract, irrespective of negligence on their part? Explain the theoretical bases of liability in contractual malpractice actions and also suggest ways in which contract theory may be profitably employed in a malpractice setting. (5x2=10)
- b) Examine the specific performance of contract, as a remedy, in case of breach of entertainment and sports contracts.
- Q.6 Answer the following: (5x2=10)
- a) Distinguish between 'Earnest Money Deposit' and 'Performance Security'.
- b) Elucidating the meaning of a joint venture agreement, discuss why people/entities form joint venture agreements.

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