

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

**Course: International Trade and Business Laws
Semester-X (Batch: 2011-16)**

End Semester Examination: April-May 2016

Date: 2nd May, 2016

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.

Part-A

Marks

- Q.1 Thomas Fugit ("Thomas") is a New Jersey manufacturer of wall clocks. Simon Cranks ("Simon") is a manufacturer of precision gear works whose factory is in Windsor, Ontario. George R ("George") is Simon's authorized dealer for New York and New Jersey. On March 1, 2013, Thomas's purchasing manager telephoned George and, after describing Thomas's particular needs, ordered 1,000 sets of precision gear works, at a price of US\$50.00 per set (that's \$50,000), to be delivered to Thomas's plant no later than April 15, 2013. Later that same day, Simon faxed an acknowledgment from Windsor, agreeing to manufacture for and sell to Thomas 1,000 sets of gear works satisfying Thomas's specifications, at a price of US\$50.00 per set, and to deliver them to Thomas's plant not later than May 15, 2013. Simon's acknowledgment also contained a provision requiring Thomas to pay the full contract price, including transportation costs, upon receipt of the gears. There was no further correspondence between the parties. The goods left Simon's plant on or about April 5, 2013, and arrived at Thomas's factory on April 12, 2013. Upon receipt of the goods, Thomas paid the carrier \$52,500, representing the full contract price, plus \$2,500 for transportation costs. (05)
- If a dispute subsequently arises between Thomas and Simon, will their agreement be governed by the CISG? Explain.
- Q.2 A Chinese buyer entered in to contract with German seller for the purchase of 2,000 tons of hot dipped galvanized steel coils with payment by letter of credit (L/C). After conclusion of the contract, the buyer issued a L/C which contained many terms not complying with contract. Later on, the buyer asked the seller to divide the contract into two parts. 1,000 tons under each contract or divide Bill of Lading (B/L) into four parts, 500 tones under each, in order to avoid trouble applying to Customs. While the parties were still negotiating, the buyer modified the L/C as per Art.29 (A contract may be modified or terminated by the mere agreement of the parties.) by adding new without the consent of the seller. (3.5+3.5+4+4=15)
- Meanwhile the seller also requested to revise the reference in the L/C that read each package to weight "5~9MT" to read instead "each package to weight no more than 6MT". The buyer did not accept this request asserting that changing the weight of each package would affect the carriage of the goods. After giving notice to the buyer that if it did not revise the L/C within three days, the seller would assume that buyer has cancelled the

contract. The seller resold the goods and applied for arbitration as to require the buyer to pay the loss due to the resale of goods and the interest.

Read the above facts and answer the following:

- (a) Whether there is fundamental breach of contract?
- (b) Does the buyer has a right to avoid contract?
- (c) Why the Letter of Credit is one of the most secured instruments available to international traders?
- (d) Is it essential to indicate the value of goods in the bill of lading though it was contractual specification?

- Q.3 A US buyer, a company incorporated in the State of Delaware with its principal place of business in Texas, and a Finnish seller, entered into a contract for the sale of petroleum products to be delivered within a certain period. On the same day the oral agreement was reached, a written confirmation of the deal was faxed to both parties by an agent of the buyer. The confirmation included, inter alia, a clause, to which the seller did not agree or object, providing that "English law and arbitration would govern the contract". Later on, the seller sent written confirmation to the buyer, which, although containing provisions similar to those of the buyer's confirmation, stated that "New York law and jurisdiction would govern the contract". As the seller failed to deliver the goods within the agreed period, the buyer brought an action against it, claiming the Court to grant partial summary judgment. (3.5+3.5 =07)

Read the above facts and answer the following:

- (a) Whether the seller's written confirmation amounted to an exclusion of CISG, as it has provided for the application of New York law?
- (b) Discuss whether CISG is applicable universally to all kind of contracts involving sale of goods between parties of different countries?

Part-B

- Q.4 Discuss the crucial role played by Multinational Corporations (MNCs) in the process of globalization and in developing the economies of Developing countries. (05)
- Q.5 Write short notes on **any two** of the following: (2x4=08)
- (a) EU & ASEAN
 - (b) CIF
 - (c) TRIPS Agreement
 - (d) Himalaya Clause

Part-C

- Q.6 The Law Commission's 246th Report acknowledges the lack of efficacious redress available to a party seeking protection of assets located in India, where arbitration is seated abroad. It also acknowledges the issues caused due to the operation of two parallel trails, evolving out the precedents set out in Bhatia International and BALCO's case. (10)

In view of this, critically analyze the relevant issues discussed by Hon'ble Supreme Court in Bharat Aluminum Co. V Kaizer Aluminum Technical Service, Inc. & ors, (BALCO) (2012) 9 SCC 552.

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
Course: Clinical-IV:
Litigation Management and Alternative Dispute Resolution
Semester-X (Batch: 2011-16)

End Semester Examination: April-May 2016

Date: 28th April, 2016

Duration: 2 hours

Max. Marks: 40

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.

Q.1 Read the below problem and answer the following:

Marks
(4x1=
04)

Geetha is negotiating the purchase of a home from her neighbor Reegan. She is willing to acquire it for Rs. 15 lakhs. She has begun the negotiation by offering 12 lakhs. If Geetha cannot negotiate at a price of 16 lakhs or less for the home, she will purchase a new home from a builder for 20 lakhs. Reegan intends to sell the home for 17.5 lakhs. He has countered Geetha's initial offer by 19 lakhs. If Reegan cannot get at least Rs. 14.5 lakhs from Geetha for the home, he will sell it to a builder for 10 lakhs.

(A) the reservation prices of both Geetha and reegan are

- (a) 15 lakhs and 17.5 lakhs
- (b) 12 lakhs and 19 lakhs
- (c) 16 lakhs and 14.5 lakhs
- (d) 10 lakhs and 20 lakhs

(B) the stretch goals of Geetha and Reegan are

- (a) 15 lakhs and 17.5 lakhs
- (b) 12 lakhs and 19 lakhs
- (c) 16 lakhs and 14.5 lakhs
- (d) 10 lakhs and 20 lakhs

(C) the ZoPA is

- (a) 12 lakhs-16 lakhs
- (b) 15 lakhs-17.5 lakhs
- (c) 15 lakhs-17 lakhs
- (d) 14.5 lakhs-16 lakhs

(D) the most likely prices of Geetha and Reegan are

- (a) 15 lakhs and 17.5 lakhs
- (b) 12 lakhs and 19 lakhs
- (c) 16 lakhs and 14.5 lakhs
- (d) 10 lakhs and 20 lakhs

Q.2 Choose the Correct answer/answers:

(4x1=
04)

- (A) Which of the following is not a type of mediation?
- Facilitative
 - Evaluative
 - Baseball
 - Adjudicative
- (B) Many Indian Acts contain prior notice provisions before the initiation of the disputes in a forum, which indirectly asked the parties to settle the dispute through
- power
 - mediation
 - negotiation
 - avoidance
- (C) A deal making negotiation is not a
- problem solving
 - look to the past
 - interest based
 - Position based
- (D) Choose the wrong statements:
- RCT is having the jurisdiction to hear the accidental death and accidental injury claims.
 - The complainant can't file his complaint directly to the banking ombudsman without giving prior notice to the concerned bank.
 - Patent illegality is also one of the ground for challenging the domestic and international arbitral award.
 - The "arbitrator fee" schedule under Arbitration Act is applicable to domestic arbitration only.

Q.3 Match the following:

(5x2=
10)

- (A)
- | | |
|------------------------------------|-----------------|
| i. No provision | a. Conciliation |
| ii. Section 89 of CPC | b. Lok Adalat |
| iii. Industrial Disputes Act | c. Mini trial |
| iv. Legal Services Authorities Act | d. Mediation |
- (B)
- | | |
|-------------------|---|
| i. Delhi | a. First mediation training |
| ii. Chennai | b. First court annexed mediation center |
| iii. Ahmedabad | c. ISDLS |
| iv. San Francisco | d. ICADR |
- (C)
- | | |
|----------------|-----------------------|
| i. Review | a. section 115 of CPC |
| ii. Revision | b. section 114 of CPC |
| iii. Reference | c. section 116 of CPC |
| iv. Cost | d. section 114 of CPC |
| | e. section 35 of CPC |

(D)

- | | |
|--------------------|-----------------|
| i. DAB | a. domain names |
| ii. WIPO | b. construction |
| iii. Blind bidding | c. ODR |
| iv. UDRb | d. IPR disputes |

(E)

- | | |
|--|-----------------------------------|
| i. Manju Gupta V National Insurance Company | a. mini trial |
| ii. State of M.P Vs Madanlal | b. mediator's report to the court |
| iii. Bawa masala co v Bawa masala co pvt ltd | c. mediation in rape cases |
| iv. Moti Ram (d) v. Ashok Kumar & anr | d. lok adalat |

Q.4 Chose the true or false statement:

(12x0.5
=06)

- (a) Enhancing the pie is known as “distributive negotiation
- (b) Permanent Lok Adalat can pass an award on merits in case of no compromise has arisen between the parties in a dispute.
- (c) Indian people begin their business negotiation immediately and don't want to take time to get to know the other side
- (d) Indian judiciary hasn't adopted any code of conduct.
- (e) As per the negotiation problem in the question number 1 both Geetha and Reegan's BATNAs are strong.
- (f) EU consumer ADR directive encourages mandatory arbitration clause.
- (g) As per the amended Arbitration Act, parties of international commercial arbitration seated outside India can avail interim measures under section 9.
- (h) As per the Judicial accountability Bill, “Empower committee” is a body which hear the complaints against judges.
- (i) The arbitration matters should be heard by the commercial courts.
- (j) Remedy of “revision” is not allowed against the order of a commercial court.
- (k) Complying the stipulated timeline of arbitral proceedings is the biggest problem faced by the existing arbitral tribunal due to the retrospective implementation of Arbitration amendment Act.
- (l) The compliance of the award of Ombudsman always the discretion of the banker.

Q.5 Read the set of facts and answer the questions below: (word limit 250)

(4x4=
16)

- (a) After completing the IPL match with Mumbai Indians, Bashwin has offered a dinner party to Sohita at Mumbai Taj hotel. Bashwin has used his credit card for paying the bill. However, the payment couldn't be made out due to insufficient fund in the credit card. Sohita has come forward and paid the bill. Later, he teased Bashwin because of not having money in his account. Two weeks later, he checked the credit card account details and he found that his card is having sufficient balance. Finally, he decides to file claim against the bank who issued the credit card. Due to busy match schedule and maintaining his reputation with the banker he thought of settling his dispute in an amicable manner. Bashwin got his credit card from SBI bank Chennai. Whereas, now he is settled at Pune because of change of IPL franchise from CSK to RPS.
 - I. Can Bashwin approach Mumbai banking Ombudsman?
 - II. Can Bashwin get compensation for mental agony?
- (b) Venus and Sarina are having partition dispute and which is pending before the Ahmedabad City Civil court. The judge Martina after considering the pleadings of both the parties has referred the same dispute to Lok Adalat for the settlement without the consent of the parties.
Whether Judge Martina's act is permissible or not?

- (c) Tamtung and Orange are two big mobile companies and they are having various IPR disputes between themselves. Each party had won in their respective countries and lost other jurisdiction. Meanwhile, other mobile companies are taking advantage of this situation and gaining more profit. Considering the adverse effects of these disputes, both Tamtung and Orange have decided to settle their dispute through mediation. Mr. Bogle has been appointed as mediator and he has started the mediation proceedings immediately. During caucus, Tamtung CEO has told that one of the former employee of Orange has given the disputed technologies to Tamtung; he also asked to Bogle not to disclose this information to the Orange. After caucus, the Bogle observed that the Orange is in unequal bargaining situation and to help them he has disclosed the information which has been told by the Tamtung CEO to the Bogle during caucus.

Whether the mediator has committed any wrong or not?

- (d) Ramesh Raina is the player of Gujarat Lions team and had travelled in Rajdani express from Ahmedabad to Delhi on 10/4/2016 for playing IPL match between Gujarat Lions and Delhi Daredevils. During the journey, he had been served Railway food by the Railway. After having the food, he suffered stomach problem and due to which he was unable to play the IPL match on the very next day; because of which his team had lost that match. He would like to claim compensation from Railway. Please advise the proper forum and place for filing to Ramesh Raina.

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

**Course: Clinical-III: Advanced Legal Drafting
Semester-X (Batch: 2011-16)**

End Semester Examination: April-May 2016

Date: 27th April, 2016**Duration: 2 hours****Max. Marks: 40****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.

- | | Marks |
|--|--------------|
| Q.1 Define the following:
(a) Document
(b) Affidavit
(c) Conveyancing
(d) Pleading
(e) Deed | (10) |
| Q.2 Answer the following:
(a) Discuss facts and grounds as important clauses of a writ petition.
(b) The word ' <i>deem</i> ' is frequently used in drafting various clauses. Explain the meaning of this term with the help of a specific illustration from contract drafting.
(c) Discuss the content of a commercial contract. | (3x4=12) |
| Q.3 Which of the following covenants would a seller prefer and why? Which one would a buyer prefer and why?

a. Version 1.
Maintenance: Seller shall maintain its plants, structure and equipments in good operating condition and repair

b. Version 2.
Maintenance: Seller shall maintain its plants, structure and equipments in good operating condition and repair, subject only to ordinary wear and tear.

c. Version 3.
Maintenance: Seller shall maintain its plants, structure and equipment in customary operating condition and repair.

d. Version 4.
Maintenance: Seller shall maintain its plants, structure and equipment in accordance with industry standard.

e. Version 5.
Maintenance: Seller shall steam clean, oil, and otherwise maintain each piece of equipment as prescribed in Exhibit B. | (04) |

- f. Version 6.
Maintenance: Seller shall not permit its plants, structure and equipment to be in a state of operating condition and repair that would materially and adversely affect the operations of seller.
- Q.4 Identify the error in the following drafts and re write the improved version. (06)
- (a) Following years of erosion by Juries and Courts, almost unanimous criticism by legal scholars, and perhaps most influential, the rise of alternative no-fault systems for dealing with injuries, the common law doctrine of contributory negligence has been abandoned in a large number of jurisdiction.
- (b) The Seller shall provide a title insurance policy that the seller has clear title
The seller shall provide the current survey of the property showing no encroachments.
The seller shall provide a current certificate of inspection for termites demonstrating that the property is free from termite infestation.
- Q.5 Rahul agreed to sell his property "X" to Vijay vide agreement to sell dtd. 3 March, 2013 for Rs. 50,00,000 and had received part payment of Rs. 10,00,000 in advance. The sale deed was to be completed within three months. The balance amount is to be paid before the Sub- Registrar by the vendee to the vendor. The property "X" is a factory and all the fittings, machines and fixtures are also to be sold along with the building. Draft a comprehensive sale deed. (08)
