

**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.
