

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: **Advanced Contracts (Evolving Jurisprudence in Contract Law)**
Semester-II (Batch: 2015-16)

LL.M. End Semester Examination: May-2016

Date: 18th May, 2016

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.**

Answer **any five** of the following questions

Marks

- Q.1 (a) Discuss the significance of contractual interpretation, and the principles and rules by which contracts are construed. (7+7=14)
- (b) What do you mean by 'substantive unfairness' and 'procedural unfairness' in contracts? Elucidate with the help of examples.
- Q.2 (a) 'P' purchased an electronic item, owned by 'D', from e-Bay auction site on the internet. But, after P's bid was allegedly accepted, the seller ('D') sold the said item to 'Z'. 'P' sued 'D' alleging breach of contract, fraud, and inducement of breach of contract. 'Z' asserted that 'P' merely placed a bid through the e-Bay service for the electronic item, and it (Z) also placed a bid for the said item, and that its (Z's) bid was higher than the bid placed by 'P'. (7+7=14)

The User Agreement on the e-Bay webpage, which the parties (sellers and buyers) accepted as registered users, provided that e-Bay is only a venue, and that 'they are not involved in the actual transaction between buyers and sellers' and 'they cannot ensure that a buyer or seller will actually complete a transaction'. Acceptance of the term of the User Agreement was a requirement for bidding on e-Bay. The Arbitration Clause of the User Agreement, binding on all participants in the e-Bay auction, provided as follows:

ARBITRATION: Any legal controversy or legal claim arising out of or relating to this agreement or our services, excluding legal action taken by e-Bay to collect our fees and/or recover damages for, or obtain an injunction relating to, the e-Bay site operations, intellectual property, and our services, shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in ... and judgment on the arbitration award may be entered into any court having jurisdiction thereof.

'D' alleged that 'the terms of the Agreement under which the contract was purportedly entered into require binding arbitration in lieu of litigation, should any claim or controversy arise'. His contention was that the User Agreement

provided that disputes must be arbitrated, not litigated in the court.

Whether the arbitration clause was applicable to disputes between users (user-to-user disputes) or was it applicable only to the disputes involving e-Bay (dispute between e-Bay and the user)? Decide.

- (b) Explain the difference between 'traditional auction' and 'electronic auction'.
- Q.3 (a) In the light of *Ravi Development v Shree Krishna Prathisthan* [(2009) INDLAW SC 637], (7+7=14) examine the legality of 'swiss challenge method'—as a mode of awarding infrastructure projects.
- (b) Explain the significance of 'Price' clause in a contract.
- Q.4 Discuss, in brief, the general tendering cycle followed by a public sector organisation for procurement of goods or services. (14)
- Q.5 (a) Discuss the issues pertaining to 'image rights' in sports contracts. (7+7=14)
- (b) Critically examine the judgment delivered by the Gujarat High Court in *Jan Balaz v Anand Municipality* AIR 2010 Guj 21.
- Q.6 Write short notes on **any two** of the following: (2x7=14)
- (a) The 'proper law of the contract'.
- (b) Contractual liability in a doctor-patient relationship.
- (c) 'Right of first refusal' and 'right of first offer'.
