

# NATIONAL LAW UNIVERSITY, DELHI

LL.M. (Professional), Semester-I (Batch of 2020-21)

End -Term (Online) Assessment- 2020

Paper: Commercial Contracts and Business Ethics

Time: 6:00 Hours

Total Marks: 100

## Instructions:

1. Attempt any 5 questions. All questions carry equal marks.
  2. No clarification shall be sought on the question paper.
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1. Indemnity is a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person. Explain the principle of indemnity as contained in the Indian Contract Act with the help of relevant case laws.
2. An agreement was entered into between the two parties, ABC Ltd. (a Govt. enterprise) and M/s. XYZ (a firm). As per the agreement:
  - i. A mobilization advance to the extent of 5% of the value of the contract will be paid to the opposite party contractor by the petitioner against production of Bank guarantee from Bank of Kshitij, Sopote Branch, Kolkata, (Hereinafter referred to as BoK), a nationalized bank.
  - ii. It was agreed that an interest of 18.5% shall be charged against the mobilization advance and the advance including interest shall be recovered on pro rata basis from the running bills of the opposite party and the recovery will be completed before 80% of the work is executed.
  - iii. A Bank Guarantee was furnished in Dec.2015 by the BoK, to the tune of Rs. 8, 50,000/- in favour of the ABC Ltd. and the ABC Ltd. made an advance of the said sum to the opposite party by way of mobilization advance. It was provided, *inter alia*, in the Bank guarantee that if the opposite party contractor failed to utilize the mobilization advance for the purpose of the contract and/or the said advance of Rs. 8,50,000/-together with interest thereon, was not fully recovered by the ABC Ltd., Bok would unconditionally undertake to pay to the ABC Ltd. on demand and without demur the said sum of Rs. 3, 50,000/- with interest at the rate of 10% per annum.
  - iv. The opposite party contractor having failed to adhere to the work schedule as agreed, ABC Ltd. had to rescind the contract. The contract was rescinded by a notice dated the 24th Sept. 2016. By another letter dated 18th/19th Oct. 2016. ABC Ltd. directed the opposite party to deposit the balance sum of Rs. 2, 65,400/- with interest @ 18.5% per annum which was lying with the opposite party as

mobilization advance, within 7 days from the receipt of the letter, failing which they would ask the BoK for making payment of the said sum against the Bank Guarantee.

Advise M/s. XYZ while referring to the provisions of the applicable laws and the case law.

3. Differentiate between:

- a. Liquidated Damages and Penalty
- b. *Force Majeure* and Commercial Hardships

4. To provide residential flats, an agreement is entered into between Somnath Builders Limited (Party I) and the prospective buyers/ allottees (Party II) which was duly incorporated and signed by both the parties. Few of the clauses of the agreement stated as follows:

- a) Party I undertakes to indemnify Party II for any loss in case of undue delay due to any act of Party I or change in layout plan without consent of Party II.
- b) Party I could charge interest at the rate of 24% in case of a default by party II in making payment of any of the installments.
- c) In case, if there is any escalation in price due to any reason while the agreement is still subsisting, Party II shall be bound to pay all such sums as shall be decided by Party I.
- d) The decision of Party I shall be final and binding on Party II.

In view of the above, discuss the enforceability of these clauses as per the principles and provisions applicable to commercial contracts in India.

5. Identify the major ethical issues that business faces today. In the wake of Covid-19 Pandemic, whether the contours of – business ethics and the ethical dilemmas have changed? Support your answer with the help of ANY ONE case law in detail.

6. Mr. Kohli based at Delhi appointed Mr. Ishaan at Singapore as his commercial agent. Under instructions from Kohli, Mr. Ishaan contracts with Mr. Pant to deliver a consignment of cricket bats and balls. Mr. Pant does not send the goods within the stipulated time. Mr. Kohli sues Mr. Pant for breach of contract. Discuss liability of Mr. Ishaan and Mr. Pant in the given case.