DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD

Post-Graduate Diploma in Drafting, Negotiation & Enforcement of Contracts
(Batch 2020 – 2021)

Take Home – Annual Examination (June, 2021)

Paper III – 1.3. Drafting and Negotiating Contracts

TOTAL MARKS: 100

INSTRUCTIONS TO CANDIDATES

a) **Read the instructions for Take Home Examination carefully and adhere to the same.**
b) ***Please mention your name, ID No., subject name and total number of pages on the Answer Sheet.***
c) ***Clearly indicate the question numbers while answering them.***
d) ***Answer all the four questions and each question carries 25 marks.***
e) **As discussed in class, footnote any information you need from your client or the opposite party. However, keep such queries to a bare minimum. You have the liberty to make certain assumptions, if absolutely necessary. In that case, please footnote your assumptions as well. No clarifications may be sought. You will be expected to draft on the basis of your client's inputs alone and are expected to a basic research on applicable law.**
f) ***All the candidates are required to submit only word / Pdf files containing the typed answers.***
g) ***All papers will be uploaded on Turn-it-in for plagiarism check. Any paper with more than 15% similarity will be considered to be plagiarized and shall not be evaluated.***
h) ***Since this is a take home exam, we expect your answers to be analytical rather than straight answers.***
i) **Copying from any source including from other students is strictly prohibited. Plagiarism is considered as a serious academic mis-conduct and the University will take action as it deems fit.**

I. Answer the following questions:

a. Critically examine the relationship between negotiation and drafting of contracts. [**15 marks**]

b. Elucidate (with the help of illustrations) the concepts of BATNA, WATNA and MLATNA in a negotiation. [**10 marks**]

II. Answer the following questions:

a. Kindly review (as a markup) the following consideration (Rent and Default in Payment of Rent) clauses: [**10 marks**]

1. RENT

1.1. The Landlord is entitled to receive a payment of 25,000 in the form a rent ("Rent") till the agreement is in existence.

1.2. The Landlord is agreeable to receive the Rent in the form of cash or cheque in the name of the Landlord.

1.3. The Landlord will expect Tenant to pay any taxes such as GST if applicable.

2. DEFAULT IN PAYMENT OF RENT

2.1. Let us assume if the Rent is not paid by the Tenant for any month then Tenant will have to pay the Rent for that month on or before the first week is over. This will also include the situation if the Rent paid is not accepted due to any reason. In that case, the Landlord will have to tell the Tenant in writing about such delay in payment of the Rent or the non acceptance of the Rent.

2.2. In case the Tenant still does not pay the payment of the Rent despite having being reminded multiple times the Tenant will have to pay a penalty by way of interest @ 1 (one) % per day for the delayed period till 1 (one) month. If the Tenant still does not payment the Rent or the penalty the Tenant will have to leave the Premises as soon as possible.

2.3. If the Tenant still does not understand and continue to stay on Premises then tenant will pay unauthorized use and occupation charges @ 10,000 per week.

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b. Kindly review (as a markup) the following clauses or parts of the contracts keeping in mind the classroom discussions on the drafting principles and the reading material: [**7.5*2 marks**]

   i. *Review/Redraft/Markup the following dispute resolution clause to correct the drafting errors*:

"The Parties have decided to submit all disputes arising under or relating to this Agreement to binding arbitration before a single judge as per the rules decided by the judge. Any expense related to the arbitration should be paid as the arbitrator may direct. The single judge will be appointed by the party first raising the dispute in consultation with the other party. The arbitration can happen anywhere with the mutual consent of both the parties."

ii. *Review (as a markup) the following preamble and recitals section of an agreement*

THE AGREEMENT FOR MANUFACTURING AND SUPPLY

This Agreement made as of 21th day of May in 2021, by and between Supartite Private Limited, a Bangalore Company ("hereinafter referred to as Bangalore Company") and Mini HLF Pvt. Ltd., a Shimla Company ("hereinafter referred to as Shimla Company").

WITNESSETH:

WHEREAS, Shimla Company designs, promotes, distributes, and sells disposable plastic utensils, including the Products (as hereinafter defined); and

WHEREAS, in accordance with a Sales Agreement between the parties, Shimla Company has concurrently herewith sold to Bangalore Company all of Shimla Company's rights in the machinery and equipment that Shimla Company used to manufacture the Products; and

WHEREAS, Bombay Company and Shimla Company have determined that they will mutually benefit from an exclusive manufacturing and distribution relationship in accordance with which Shimla Company will use Bangalore Company to manufacture the Products to Shimla Company's specifications and in accordance with which Bangalore Company will manufacture the Products for sale to Shimla Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Bangalore Company and Shimla Company hereby agree as follows:

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III. You are a lawyer. You recently had a meeting with your client *Dr. Siddhi Dhani, D/o Samriddhi Dhani, R/o 24 Down to Earth Valley, Jubilee Hills, Hyderabad – 500037, Telangana*, [Client] who owns an eco-friendly bungalow named '*Sukoon'* situated at *42, Pleasant Valley, Munnar, Kerala*. The client was recently approached by a young lawyer named *Ms. Nishtha Parishrami, D/o Suvigya*

Dheeraj, R/o House Number 16, Cloud 9 Colony, Banjara Hills, Hyderabad – 500034, Telangana [Tenant], who is currently on a sabbatical to work on his PhD. She wishes to rent Dr. Siddhi's bungalow to exclusively focus on her PhD in a peaceful and serene environment.

Draft a Rent Agreement based on the following notes taken by you in the client conference: [**25 Marks**]

a. The Bungalow has 3 spacious rooms with all the modern electronic items and furniture. It also has a jacuzzi, a terrace bar, two gardens, and a private parking space for 2 cars – all included in the Bungalow.

b. The rent agreed is INR 45,000/- per month payable on or before 10^{th} day of each month, preferably by NEFT deposit. One month rent in advance.

c. A security deposit of INR 2,00,000/- is necessary and to be paid on or before the execution of this rent agreement. Refundable without interest.

d. The term for the Agreement should be from September 01, 2021, to July 31, 2022. The tenant has told the client that the tenant is not sure if she would need another year for her PhD. The client wants to keep the option open for an extension for a year subject to mutual acceptance by both the parties and only after 10% increase in Rent.

e. Client is not confident if Ms. Nishtha will be able to pay the rent for the entire year since she is on a sabbatical and not drawing her salary. Kindly make arrangements to ensure that the rent is paid or the client is adequately secure if there is a default in the payment of the rent.

f. A strict policy of no pets allowed. The client does not want pets on the premises at any cost.

g. Maintenance and payment of electricity, water, cleaning bills, etc. will be the tenant's responsibility since she has agreed to do the same.

h. Termination can happen with prior notice of 2 months.

i. The client does not want to travel to Munnar for any dispute. Kindly make arrangements to settle any dispute in Hyderabad itself, preferably through amicable mutual settlement and through arbitration as a last resort. 1 arbitrator only, preferably someone from Hyderabad itself. The arbitrator can be decided mutually, but if the other party does not agree, the client should get the right to initiate the arbitration.

IV. 'Dreamland Biryani' is one of the most famous chain of restaurants which serves the best Chicken Biryani in the Biryani Capital of the World – Hyderabad. Having started with one small outlet, Dreamland Biryani now operates from a three-storey building from Gachibowli and are looking for franchisees who can serve their marquee biryani in different parts of the city. One of the prominent businessmen of the city – Mr. Khansama Bawarchi approached the sole proprietor of Dreamland, Ms. Manju Baker for acquiring franchise of Dreamland Biryani to serve their famous menu at Necklace Road, Hyderabad. They negotiated their terms and conditions in a record time and mutually agreed on the following points:

a. Franchise on an exclusive basis.

b. Agreement to be entered on August 15, 2021 for initial period of 2 years and then extendable to 5 years on mutual agreement. Franchise fee to be revised after 2 years.

c. Franchise fee is INR 1.6 Lakhs per month to be payable on a monthly basis.

d. Mr. Khansama Bawarchi will be responsible to cook on their own and Ms. Maju Baker will provide the recipe and secret spices, and initial training for a month to Mr. Khansama Bawarchi and his staff.

e. All IPRs should not be misused, and the secret spices cannot be disclosed to any one else apart from the cooking staff of Mr. Khansama Bawarchi.

f. No compromises on the quality or the taste of the biryani. Ms. Manju Baker entitled to do regular quality checks.

g. No right to transfer the franchise and Mr. Khansama should not sell any other biryani from any other outlet.

h. Termination if the payment is not made on time or default in payment for two consequent months.

i. Disputes to be resolved through mutual negotiations or arbitration.

Ms. Manju Baker, the owner of Dreamland Biryani, has approached you to draft the franchise agreement for her. You are required to draft a franchise agreement based on the above-mentioned facts and the general instructions given at the beginning of the paper. [**25 Marks**]