Moot Proposition

1. The Republic of Oxyonia is a developing economy. Several economic reforms were introduced post-1992 in the industrial sector as a result of the liberalization policies by the government. This resulted in increased foreign investments in this sector. Oxyonia which previously was an agrarian and technologically backward economy was suddenly flooded with heavy investments particularly in the research and development (R&D) in technology. Although not amongst the most technologically advanced economies, Oxyonia did break into the list of the top 50 nations in terms of growth in science and technology by 2007. Post this period, due to the global financial crisis of 2009, Oxyonia seemed to have hit the wall and its progress in the technology sector plateaued.

2. The outbreak of the COVID-19 gave a second wind to Oxyonia's technology sector. Due to a prolonged lockdown, reliance on efficient technology became imperative thus skyrocketing the demand. This coupled with the 'Make in Oxyonia' schemes of the government which provided significant subsidies and introduced policies that eased the doing of business for domestic players led to an influx in the number of new Oxyonian companies.

3. ABC Company Limited. ("ABC") is one of the new Oxyonian companies which was established in May 2020 as a private limited company having its registered office located in Carbonica City in the State of Hydronia Oxyonia. It is an insurance company which deals with travel insurance. The unique selling point ("USP") of ABC is the fact that all the transactions that the company does with the consumers are only through smart contracts. These smart contracts run on an "Ethereum" blockchain which functions on "if-then" scenarios that require no human intervention once the contract is entered into. This system is further connected to an "Oracle" which would extract the required data from the external world (for example travel websites) and feed it to the smart contract for execution. They advertised this system of contracting by boasting their smart contract to be '*self-executing*' with '*zero problem of enforcement*' thus propagating it with a slogan called '*digitising trust through certainty of execution*'. In a span of six months, ABC was listed among the top 20 insurance companies in Oxyonia in terms of the number of loyal policyholders of a total amounting to over thirty million.

4. Mr. Padman is an Oxyonian luxury travel blogger who is quite a big name in the travel blogging industry. As a part of his latest project, he was signed up by a leading fashion channel called FTV as a host of a live program called '*Around Oxyonia in 30 days with Padman*'. The project required him to travel across 30 major travel destinations in Oxyonia in 30 days.

5. Clause 14 of FTV's contract with Padman stipulated:
    "*Time is of Essence. FTV shall have the right to terminate the contract at will if Padman fails to reach the required destinations as per the schedule of the program.*"

6. This effectively meant extensive and prompt travel plans for Padman. He was scheduled to reach Neverland, the capital of Oxyonia on 22nd February 2021 at 6 p.m. sharp at the 'Brown Stadium'. There he was to cover as a host a carnival called 'Moonburn', which takes place on the 22nd of February only once in 4 years, as his first destination as part of the '*Around Oxyonia in 30 days with Padman*' program.

7. On 20th January 2021, while booking his tickets, he noticed an advertisement for ABC with its slogan. After having booked his flight to Neverland for 22nd February 1:00 PM. Via 'Misstara' airlines, he decided to secure his travel with ABC's insurance plan since

it seemed promising in terms of immediate and hassle-free transfer of the insurance amount, unlike the other traditional insurance companies who would leave the transfer pending for months subject to various time-consuming formalities. Furthermore, ABC was quite lustrous with its offers where some of its insurance plans provided up to 1000 times of the insurance premium as the insurance amount even on flight delay and cancellation plans.

8. The topmost section of the advertisement box read, '*No questions asked self-execution*' while the centre and bottom parts read '*100X in case of flight delay!*' '*1000X in case of flight cancellation!*' When he clicked on the advertisement box, a new tab opened in his browser, and he was directed to ABC's website. The website at the top section of the page read '*We used a "Ricardian Contract". Just enter your required personal and travel details and we would not only generate a contract, but Ethereum would also automatically execute the same for you!*' After entering the required details, Padman clicked the confirm button at the bottom of the page.

9. This directed him to a new page where he found a QR code for payment which required payment in Ethereum cryptocurrency. He scanned the code using a crypto app from his phone called *Cryptoswitch* and paid the required premium of 0.01 Ether. This premium would grant him an insurance amount of 1 Ether in case of flight delay for more than 4 hours and an amount of 10 Ether should the flight get cancelled, as per Clause 17 and 18 of the "Insurance Contract" respectively. These clauses were clearly laid out at the top section of the website. The section below the QR code was filled with advertisements and testimonials to boast the services of ABC. These adverts occupied two-thirds of the bottom section of the website. After a quick scroll down, Padman didn't pay much attention to the bottom two thirds and quickly scrolled back up and pressed the '*Confirm*' button situated at the centre of the page right below the QR code. Subsequently, he received an email and an SMS confirmation from ABC stating that he had been successfully insured for flight delay and cancellation.

10. Due to the COVID-19 lockdowns, the airline industry took a big financial blow and multiple airline companies failed to pay their employees on time. Numerous airlines began suffering because of their employees going on strikes from time to time. Misstara airline in particular failed to pay its employees their salaries since April 2020.

As a result, it had already suffered from strikes twice; one in August 2020 and the second one in December 2020. These strikes were a disaster for Misstara's reputation on account of delays and cancellations that were caused as a result. This was widely reported in the media and Misstara was quick to be perceived as notorious for its deficient services. This caused further losses which threw Misstara down a vicious cycle. In order to get the situation back in control, the HR head of Misstara, Mr Patel entered into prolonged negotiations with the employees in December 2020. By the end of January 2021, the negotiations had concluded where he promised an upfront payment of salaries to all the employees for the unpaid months of April 2020 to May 2021 in addition to a payment of 50% interest on the said amount as compensation along with resuming the salaries of all the employees from May 2021 onwards. In return, the employees assured that they will not initiate another strike and fully corporate until May 2021.

11. On 15th February 2021, *The Times of Oxyonia*, a prominent newspaper in the country printed a 2-page long analysis of how Misstara is at the brink of bankruptcy drowning in a debt of $500 million. The analysis scrutinized the financial statements of Misstara for the year 2019-20. This was conducted by Mr Sheokand, a nationwide renowned financial expert who quoted that he wouldn't be surprised if Misstara was to shut down by March 2021. By the evening of 15 February 2021, the share price of Misstara plummeted by 47%. This caused a widespread rumour among the employees that Misstara will not be paying their employees as promised from May 2021 onwards and that in all probabilities it would not even exist, to begin with. Amidst this state of affairs, the employees of Misstara began considering the possibility that the promises made to them were too good to be true and that they were taken for a ride by the charismatic Mr Patel. As a result, unrest was sparked among the employees, and they called for an indefinite strike on 20th February 2021 until their salaries resume with immediate effect.

12. On 22nd February 2021, there was a heavy unprecedented rainfall causing minor difficulties for flights to function smoothly. When Padman arrived at the airport at 11 a.m. on 22nd February, he was appalled by the utter chaos at the airport. After a struggle, he finally made it to the waiting room by 12:15 p.m. To his utter disbelief, at 12:30 p.m. he was told that his flight has been delayed by 6 hours. In a panic, he tried to book

another flight to make it in time but to his misfortune, all the other flights were totally booked for the day. Padman landed in Neverland at 9 p.m. and reached 'Brown Stadium' at 10 p.m. By this time the carnival was concluded. Subsequently, the very same night his contract with FTV was terminated. To make things worse, he couldn't find the insurance amount credited into his crypto wallet by ABC despite the delay of six hours for his flight.

13.   Upon inquiring, ABC claimed that the Smart Contract got triggered by Clause 130 of the Insurance Contract as the Oracle fed the relevant data of the presence of a strike being the reason for delay. The Oracle took this information from the Misstara Airline website itself who themselves attributed the delay to the same. Therefore, ABC asserted that despite the delay the insurance amount was not credited to Padman and cannot be claimed. Clause 130 stated:

Clause 130 – Third-Party Force Majeure Exclusions

ABC will not be liable for any loss caused to the insured due to failure or delay of any third party in performing any obligation under any Agreement that is due to inter alia any of the following causes (which events and/or circumstances are hereinafter referred to as "Force Majeure"), to the extent that are under reasonable control of the said third party whether directly or indirectly involved: accident, strike, shortages, delays etc.

14.   After visiting the website again, very carefully this time, Padman figured out that there were two "browse wrap terms" in the form of a hyperlinks titled '*Terms and Conditions*' and '*privacy policy*'. This was situated at the extreme bottom of the page containing the QR code for the payment. When he clicked on '*Terms and Conditions*' link a new tab opened containing a 150-page long PDF. He found Clause 130 which was contained in this PDF on page number 127.

15.   Feeling cheated by ABC, Padman filed a suit at the District Consumer Disputes Redressal Commission of Carbonica City alleging unfair contract and unfair trade practices on part of ABC. He sought the insurance amount of 1 Ether on the ground that even if Clause 130 was a valid clause, strikes in the instant matter cannot fall under the scope of Clause 130. He also sought an additional compensation of Rs. 10 Lakhs for *inter alia* mental trauma. The District Commission found no merit in the suit of Padman

and passed the judgment in favour of the ABC finding *inter alia* that there was no valid contract between the parties. The designated Appellate authorities upheld the ruling by the District Commission. Aggrieved by the decisions of Appellate authorities Padman filed an appeal before the Supreme Court of Oxyonia.
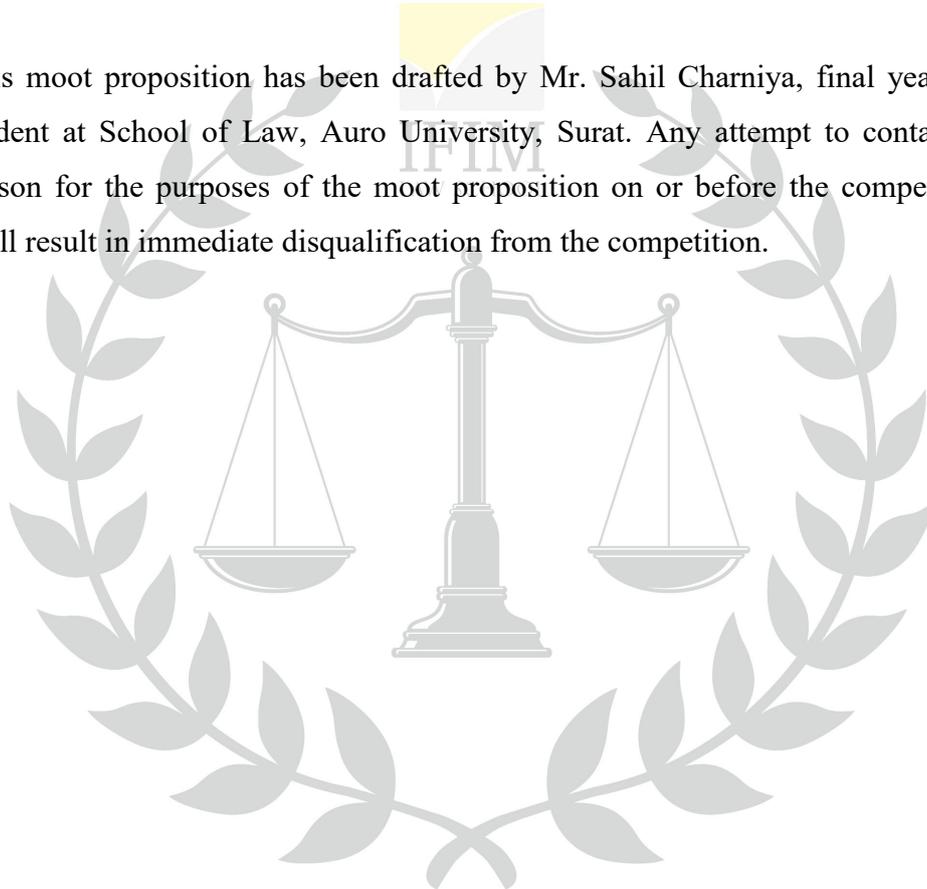
16.   ABC on the other hand claims that no legal contract took place between Padman and ABC on the ground that smart contracts are not valid forms of contract in Oxyonia nor is the exchange of cryptocurrency a lawful form of consideration. Thus, no question of damages arises. ABC further submits that in arguendo there is a valid contract, there were no unfair trade practices carried out by ABC nor was the contract in any way unfair. Lastly, that the Smart Contract has correctly interpreted Clause 130 in the instant case and thus ABC is not liable to pay the insurance amount to Padman.

17.   By this time, the national media of Oxyonia was flooded with reports of countless complaints from consumers across the country alleging how ABC's insurance policies are fraud and how only in the rarest of the rare circumstances an insured receives the hyped insurance amount. Their allegations were the same as that of Padman's with some consumers paying an even higher insurance premium.

Issues for the Court's consideration:

1.   Whether there is a valid contract between ABC and Padman *inter alia* on the following grounds:

   1.1. Whether the instant smart contract is a valid form of contract which is enforceable?

   1.2. Whether the instant smart contract is admissible in the court as valid evidence?

   1.3. Whether the exchange of cryptocurrency is a valid and lawful consideration?

2.   Whether there was any unfair trade practice carried out by ABC with respect to the transactions between ABC and Padman?

3.   Whether the adhesion contract drafted by ABC was unfair?

4.   Whether the smart contract has correctly interpreted Clause 130?

5.   Whether ABC is liable to pay:

   5.1. The Insurance Amount.

   5.2. Additional damages for *inter alia* mental trauma.

Note:

1. All the laws of the Republic of Oxyonia are *in pari materia* to the laws of the Union of India. The Cryptocurrency Bill, 2021 has not been introduced in the Republic of Oxyonia and will not be considered as a law for the purposes of this moot proposition.

2. Teams are expected to confine their arguments to these issues and sub-issues but can club issues together and can also create additional sub-issues thereon.

3. This moot proposition has been drafted by Mr. Sahil Charniya, final year BA LLB student at School of Law, Auro University, Surat. Any attempt to contact the said person for the purposes of the moot proposition on or before the competition dates shall result in immediate disqualification from the competition.