

Roll No: -----



UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, May 2018

Program: B.Com.LL.B. (Hons.) Taxation Laws , BBA., LL.B. (Hons.) Corporate Laws ; B.A.LL.B. (Hons.) Energy Laws
Subject (Course): Arbitration and Conciliation & ADR Mechanism
Course Code : LLBL461
No. of page/s:

Semester – VIII
Max. Marks : 100
Duration : 3 Hrs

Section A (5 x 2 = 10)

1. Give 2 differences between role of Mediator and Conciliator.
2. How many parts does the Arbitration and Conciliation Act have?
3. There are only 3 types of ADR mechanism. T?F
4. Party Autonomy is not recognized by Indian Courts. T/F
5. Geneva Convention deals with Conciliation. T/F

Section B (10 x 2 = 20)

[Page limit for one question: 1 side of a page]

6. What is an Arbitral Award? How is it different from Foreign Arbitral Awards? What contents should be included in the Arbitral Award? [3+3+4]
7. Does the Arbitration involves only odd number of Arbitrators? What happens if the number of Arbitrator is in even number? How is the position of Indian Law different from UNICITRAL model Law? [2+3+5]

Section C (10 x 2 = 20)

[Page limit for one question: 1 side of a page]

8. What are the grounds that could give rise to justifiable doubts as to the independence and impartiality of the Arbitrators with regard to the relationship with the parties or counsel?
9. What are the limitations of Party Autonomy? How does the Indian Arbitration and Conciliation Act support party Autonomy?

Section D (5 x 10 = 50)

[Page limit for one question: 1 side of a page]

DeVoe was awarded a construction contract for Star Labs in central city by the Central Development Authority (CDA). DeVoe is the CEO of DeVoe enterprises based in Gotham City (different country).

The understanding was that the contract will be completed in 24 months for \$ 1,00,000. However, the work came to be completed only after 28 months.

Assume Central City has a similar judicial set up as India and their Arbitration Act is identical to Indian Arbitration and Conciliation Act.

DeVoe alleged that the delay arose at the instance of the CDA and subsequently made fifteen claims and consequently, Barry Allen was appointed as the sole arbitrator by the Central City High Court to arbitrate the dispute. Barry allowed four claims of DeVoe and further, scaled down two claims on the reasoning that CDA was responsible for the delay in the execution of the contract.

Thereafter, CDA moved an application before the single judge of the High Court under Section 34 of the Act to set aside the award, which was dismissed on January 1, 2013. Against this order, an appeal was filed under Section 37 of the Act before the Division Bench of the Central City High Court and vide an order dated February 8, 2014, the Division Bench found the arbitral award to be incorrect and rejected the four claims and further scaled down Claims 12 and 13. Aggrieved by the Impugned Judgment, the Appellant approach the Supreme Court by way of a Special Leave Petition.

10. What can be the contentions used by DeVoe in the Supreme Court?[10]
11. How is International Arbitration different from Domestic Arbitrations?[10]
12. Would this case be better tackled by Conciliation than Arbitration? Give reasons. [10]
13. How has Public Policy evolved through Renusagar, ONGC and Associate Builders? [10]
14. Draft an Arbitration Clause for this particular set of facts where DeVoe is your client and insists he wants least interference from the courts. [10]

The relevant section of Central City Arbitration Act are reproduced with the permission of Central City board.

Section 34 Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

Section 37. Appealable orders.—

(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

- (a) granting or refusing to grant any measure under section 9;
- (b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.—

- (a) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or
- (b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

Roll No: -----



UNIVERSITY OF PETROLEUM AND ENERGY STUDIES

End Semester Examination, May 2018

Program: B.Com.LL.B. (Hons.) Taxation Laws , BBA., LL.B. (Hons.) Corporate Laws ; B.A.LL.B. (Hons.) Energy Laws Semester – VIII

Subject (Course): Arbitration and Conciliation & ADR Mechanism Max. Marks : 100
Course Code : LLBL461 Duration : 3 Hrs

No. of page/s:

Section A (5 x 2 = 10)

1. Give 2 differences between role of Mediator and Arbitrator.
2. How many Parts does the Arbitration and Conciliation Act have?
3. There are only 4 types of ADR mechanism. T?F
4. Public Policy is not recognized by Indian Courts. T/F
5. Geneva Convention deals with Arbitration. T/F

Section B (10 x 2 = 20)

[Page limit for one question: 1 side of a page]

6. Define “Foreign Award”. What is a foreign Award as per New York Convention on foreign Awards? [5+5]
7. Does the Arbitration involves only odd number of Arbitrators? How is the position of Indian Law different from UNICITRAL model Law? [5+5]

Section C (10 x 2 = 20)

[Page limit for one question: 1 side of a page]

8. Explain whether the power of appointment of arbitrator under sec 11 of the Arbitration and Conciliation Act, 1996 is judicial or administrative in nature with help of case laws.?
9. Elucidate the difference between Arbitration and Conciliation? Explain the difference between Section 9 and Section 17 of the Arbitration and Conciliation Act, 1996?

Section D (5 x 10 = 50)

[Page limit for one question: 1 side of a page]

Sarah was awarded a construction contract for Hospital in Delhi by the Delhi Development Authority (DDA). Sarah is the CEO of Sarah enterprises based in Australia.

The understanding was that the contract will be completed in 24 months for \$ 1,00,000. However, the work came to be completed only after 28 months.

Sarah alleged that the delay arose at the instance of the DDA and subsequently made fifteen claims and consequently, Barry Allen was appointed as the sole arbitrator by the Delhi High Court to arbitrate the dispute. Barry allowed four claims of Sarah and further, scaled down two claims on the reasoning that DDA was responsible for the delay in the execution of the contract.

Thereafter, DDA moved an application before the single judge of the High Court under Section 34 of the Act to set aside the award, which was dismissed on January 1, 2013. Against this order, an appeal was filed under Section 37 of the Act before the Division Bench of the Delhi High Court and vide an order dated February 8, 2014, the Division Bench found the arbitral award to be incorrect and rejected the four claims and further scaled down Claims 12 and 13. Aggrieved by the Impugned Judgment, the Appellant approach the Supreme Court by way of a Special Leave Petition.

10. What can be the contentions used by Sarah in the Supreme Court?[10]

11. How is International Arbitration different from Domestic Arbitrations?[10]

12. Would this case be better tackled by Conciliation than Arbitration? Give reasons. [10]

13. How has Public Policy evolved through Renuagar, ONGC and Associate Builders? [10]

14. Draft an Arbitration Clause for this particular set of facts where Sarah is your client and insists she wants least interference from the courts. [10]

The relevant section of the Arbitration Act are:

Section 34 Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

[\(4\)](#) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

Section 37. Appealable orders.—

[\(1\)](#) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

- [\(a\)](#) granting or refusing to grant any measure under section 9;
- [\(b\)](#) setting aside or refusing to set aside an arbitral award under section 34.

[\(2\)](#) An appeal shall also lie to a Court from an order granting of the arbitral tribunal.—

- [\(a\)](#) accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or
- [\(b\)](#) granting or refusing to grant an interim measure under section 17.

[\(3\)](#) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.