

Name:	 UPES UNIVERSITY WITH A PURPOSE
Enrolment No:	

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
End Semester Examination, May, 2019

Program: LL. M in ENERGY Laws
Subject (Course): Energy Transaction and Litigation
Course Code : CLEL 7012
Instructions:

Semester: I1
Max. Marks: 100
Duration: 3 hours

SECTION A

Attempt all the questions

2x5=10

S. No.	Objective Type Questions/Definitions	Marks	CO
Q 1	The seminal paper ‘Energy Law as an Academic Discipline’ (1996) written by	2	CO1
Q 2	There are few legal principles of law specific to the energy field and most energy issues have to be resolved by general principles of law established in other contexts such as _____	2	CO3
Q 3	Energy law as the regulation of energy related rights and _____ of various stake holders	2	CO1
Q 4	Define “ Lex Petrolea”	2	CO1
Q 5	ICSID stands for;	2	CO1

SECTION B

Short Answer Questions: Attempt any four

4x5=20

Q 6	Describe the five stages of evolution of energy law	5	CO3
Q 7	Elucidate the difference between energy contracts and normal contracts	5	CO1
Q 8	What do you understand from postmodern synthetic market and how does it change the energy investment pattern?	5	CO2
Q 9	Identify five common trends in energy disputes.	5	CO4
Q 10	Discuss the four essential ways the energy industry differs from other industries?	5	CO1
Q 11	What are the seven principles of energy law highlighted in the essay “ a treatise of Energy Law”	5	CO1

SECTION C

Descriptive/Analytical Questions: Attempt any two

2x10=20

Q 12	Discuss the nature, characteristics and types of regimes in energy transactions.	10	CO2
Q 13	Elucidate the nature and characteristics of Upstream Petroleum Agreements: Evaluate the policy, contractual, fiscal and regulatory issues associated with it.	10	CO3
Q 14	“Internationalization of energy sector is more apparent and seems to be adopted in all types of energy transactions and litigation spaces which also led to the internationalization of national laws”, Analyze the statement with the valid application of various norms of international law to the energy sector.	10	CO4

SECTION-D

Application Based/ Case Studies; Attempt both the questions

50 marks

Q 15


The pursuit of energy as an end or an objective can also lead to conflict in less direct ways. In several contemporary cases, the quest to meet a country's energy needs is creating tensions which could be precursors to violent conflict. Here, war is not the strategy employed to actually secure energy resources, but armed confrontation is the possible by product of other sorts of strategies countries employ to secure energy. In the terminology of today, conflict or even war could result from a global resource scramble, particularly if countries believe the world is closing in on the limits of its energy endowment.

In the previous decade, there is a many fold increase in the numbers of energy-related disputes in both commercial and investment arbitration. The bulk of these cases related to oil and gas disputes, while electricity related disputes took a proportion of approximately 40 percent. Among the commercial disputes, certain claims, such as price-reviews, are specific to trade in energy supplies and are less common in other industries. Price-review arbitrations are limited in comparison to claims for damages and specific performance. The most important trend of the past 15 years is the development of energy jurisprudence are based on transactions, disputes and litigations. This trend also led to the evolution various major international instrument securing legal framework for international cooperation in the energy investment sector.

Generally, investment instruments include multiple protections for foreign investments. When these protections are breached by the home state, an investor may initiate arbitration. International investment agreements include four primary forms of protection for investors in foreign states. First, most international investment agreements provide for fair and equitable treatment, which is a non-contingent form of protection. Although the substantive content of fair and equitable treatment has been fleshed out by arbitral tribunals on a case by case basis, it can be generally defined as prohibiting arbitrary decision making, discrimination and abusive treatment of foreign investors. The principle of fair and equitable treatment is considered the cornerstone of most investment treaty obligations. Most treaties also protect against discriminatory practices. It is only natural that each state entering into an agreement wishes to be treated equally with any or all other states. These non-discriminatory protections may include non-discriminatory treatment or 'most favoured nation' clauses. These protections, essentially, prohibit a state from treating a foreign investor differently to any other: if one trading partner is provided a tax subsidy, then all trading partners must be offered the same privilege. International investment agreements also provide investors with protection against the expropriation of an investor's assets by the state. Such expropriation can occur through the nationalisation of property or enterprises, or by such actions that may affect the sustainability of an investment. Though expropriation may be legal, given the satisfaction of certain requirements (such as compensation), where the expropriation does not satisfy the general requirements, it can be considered a breach under which an investor may bring a claim under investment arbitration. The final protection normally provided under international investment agreements is the protection of transfer of funds, which can include the payment, conversion or repatriation of investments from a host country to the investor.

	<p>A. Analyse the recent trends in national and international energy disputes.</p> <p>B. What do you understand from a global resource scramble? How does this tendency affect the energy sector?</p> <p>C. Over a period of time, how energy disputes shaped international investment dispute resolution?</p> <p>D. With the support of couple of energy international arbitral award, discuss the principle of fair and equitable treatment is considered the cornerstone of most investment treaty obligations.</p> <p>E. Briefly spell out the four primary forms of protection provided in international energy investment agreements for investors in foreign states</p>	<p>5</p> <p>5</p> <p>5</p> <p>5</p> <p>5</p>	<p>CO2</p> <p>CO2</p> <p>CO1</p> <p>CO4</p> <p>CO3</p>
Q 16	<p>Mundra Ultra Mega Power Project (“MUMPP”) was conceived to be a huge power project which was to supply power to at least three states- Gujarat, Haryana and Rajasthan through the state power procurers. The tariff for the sale of power was to be determined through a competitive bidding process as per the electricity regulatory laws, which was undertaken. In the competitive bidding process, the bidders had the flexibility to choose escalable or non-escalable tariff (that is, tariff based on an increase in tariff formula). Both Adani and Tata quoted a non-escalable tariff. This was because the only major component that required an escalable tariff was an increase in fuel (coal) price. Since Adani and Tata had long term fuel supply agreements from coal mines in Indonesia at fixed/ predictable prices, there was no need to factor in price escalation.</p> <p>Accordingly the lowest tariff was arrived at and power producers began to sell power at the said tariff after executing Power Purchase Agreements (PPAs) with the state power procurers. In two-three years after the determination of tariff, there was a massive jolt to the power producers in the form of new regulations passed by the Indonesian Government. The effect of these regulations was that the coal price under the long term fuel supply agreements was to be benchmarked to the international prices instead of the then prevailing pricing mechanisms. This meant that the price under those agreements had drastically increased, thereby making the tariff at which these price producers sold price to the power procurers very unviable. It may be recollected that a non-escalable tariff was quoted because of the long-term fuel supply agreements.</p> <p>A. Discuss the main characteristics of Power Purchase Agreement</p> <p>B. How does the power tariff determination in home state would be influenced by the international energy transactions in this case? Define the non-escalable tariff.</p> <p>C. Analyse the Supreme Court views on the grievances on the power producers on the force majeure as well as the change of law arguments.</p> <p>D. In the context of regulatory law, how the decision offers clarity on the extent to which a tribunal/ court can go in balancing the competing interests</p>	<p>5</p> <p>5</p> <p>5</p> <p>5</p>	<p>CO1</p> <p>CO4</p> <p>CO4</p> <p>CO3</p>

	<p>of protecting consumers on the one hand and preserving the efficacy of the industry sought to be regulated on the other.</p> <p>E. Why the decision of the Supreme Court has received considerable criticisms from the energy industry especially from the power sector?</p>	<p>5</p>	<p>CO4</p>
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UNIVERSITY OF PETROLEUM AND ENERGY STUDIES End Semester Examination, May, 2019			
Program: LL. M in ENERGY Laws Subject (Course): Energy Transaction and Litigation Course Code : CLEL 7012 Instructions:		Semester: II Max. Marks: 100 Duration: 3 hours	
SECTION A Attempt all the questions 2x5=10			
S. No.	<i>Objective Type Questions/Definitions</i>	Marks	CO
Q 1	Define exclusive consumer club versus exclusive producer club in energy industry	2	CO1
Q 2	Define OPEC;	2	CO1
Q 3	Energy industry and energy operations have an inherently _____ and cross border in nature.	2	CO1
Q 4	Define the concept energy justice.	2	CO1
Q 5	Define the concept of Take-or-Pay (TOP) obligation into gas contracts	2	CO1
SECTION B Short Answer Questions: Attempt <u>any four</u> 4x5=20			
Q 6	“Markets are the locus for investment and transactions in energy”, Discuss	5	CO3
Q 7	Analyse, the areas of convergence reflected in national and international law interfaces in an energy transactions?	5	CO3
Q 8	Describe the four types of Exploration and Production Agreements in Petroleum sector	5	CO1
Q 9	Explain the evolution of energy law and elucidate what drives energy law?	5	CO2
Q 10	Discuss the four dimensional framework of energy market	5	CO1
Q 11	What is international energy law and how it’s different from national energy law or what is the relation between two?	5	CO1
SECTION C Descriptive/Analytical Questions: Attempt <u>any two</u> 2x10=20			
Q 12	With the help of case studies, evaluate the orders/ judgments pertaining to investment arbitration and how it would be implemented in the real life energy dispute resolution and court practice.	10	CO4
Q 13	Discuss how the concept of ‘International energy law’ covers the application of various norms of international law.	10	CO2
Q 19	Analyse the way in which the existing global energy institutional architecture inter alia allow to smoothen the energy transactions, limit the volatility and mitigate the litigations.	10	CO4

SECTION-D

Application Based/ Case Studies; Attempt both the questions

50 marks

Q 20

Given the nature of energy investments – highly capital intensive with long lead times and pay- back periods, and the internationalization of the energy trade, it is no surprise that this industry- specific investment protection scheme appeared in the 1990s. The increasingly international nature of energy markets has originated from an objective asymmetry between the geographical locations of centres and volumes of energy production and centres and volumes of energy consumption. This has led to the growth of international energy trade which also called, and still calls, for growth in international energy investments. The growth in international energy trade and investments has been quite naturally complemented by new international instruments and international institutions that support this internationalization development and minimize the risks of international trade and investment flows. This means that the types of international institutions were created at a time when the demand for its appearance and the opportunities/possibilities for its creation simultaneously coexisted. Energy markets have developed in stages and through a particular logic. The first step was local markets with one producer and a few customers and within a specific territory or specific state. The initial investments that had to be made at this stage of the oil market were not as large as they would be in the later stages or in the gas sector. This process first leads to regional markets. The final stage is the stage of future internationalization or even globalization of energy trade and then investment. The globalization trend then leads to globalization of the markets for energy materials and products as has been the case of oil, and coal to certain extent. In relation to gas, there is no international market but only regional markets – yet. However, we can see a trend towards a similar type of development (as in oil) in the case of LNG which has been uniting regional gas pipeline markets into a global integrated pipeline and LNG based gas market. The next stage in the market development, brought about by the internationalization of energy markets, first in trade, then in investments, creates a need for an international response to international projects and markets. Here, international law instruments come into play. Firstly, it is possible to adopt bilateral agreements with the main commercial partners: bilateral investment treaties (‘BIT’) and/ or double taxation treaties (‘DTT’). Multilateral treaties present the most recent phenomenon among the available set of tools of investment protection/stimulation in energy. Unlike the BITs/DTTs, a multilateral framework applies to all those countries that have opted to join the framework in the same manner and its application is therefore more predictable within the broader area covered by its contracting parties. The major comparative benefit of multilateral instruments against bilateral ones is that one multilateral instrument has a consolidated strength/ power of a number of bilateral ones, thus saving time, money and negotiating efforts for their preparation. On the other hand, multilateral instruments provide a common denominator – a minimum

	<p>standard (if agreed as such) of applicable rules which is quite difficult to achieve through a multitude of bilateral instruments.</p> <p>A. Evaluate the factors which led to the growth of international trade and investment in the energy sector</p> <p>B. Discuss the important characteristics of energy investment agreements</p> <p>C. How does the energy markets have evolved in stages and through a particular logic?</p> <p>D. Analyse the basic difference between multilateral and bilateral investment treaties and prove that which one is better than the other.</p> <p>E. How energy disputes shaped international investment dispute resolution?</p>	<p>5</p> <p>5</p> <p>5</p> <p>5</p>	<p>CO1</p> <p>CO3</p> <p>CO3</p> <p>CO2</p> <p>CO3</p>
Q 21	<p>The oil, gas and/or mineral leases which are included as part of the Oil and Gas Properties. The gas and oil agreements are simple contracts that bring the gas producer and purchaser into a network monopoly relationship with clearly defined rights and obligations arising from the significant upfront capital investment involved in gas fields and other long term infrastructure to bring the gas delivery points to the purchasers. All contracts and agreements, licenses, permits and easements, rights of-way and other rights-of-surface use comprising any part of or otherwise relating to the Properties. And all contracts and agreements (“Operational Contracts”) that are reasonably necessary to own, explore, develop, operate, maintain or use the Oil and Gas Properties. It is necessary to evaluate that in the manner in which they are currently being owned, explored, developed, operated, maintained or used in accordance with the prudent practices of the oil and gas industry.</p> <p>Natural Gas developments are financed by significant upfront fixed costs through the use of long term GSA. This is because their development takes longer than that of oil due to the longer payback period for Gas which is required because of the high investment and operation costs as well as the long nature of gas sales contracts. These contract provide the medium through which the aspirations of the gas producer and purchaser are maintained because it offers the gas producer guarantees of minimum cash flow and by extension collateral security to the lender. It also offers the purchaser regular, flexible supply of gas.</p> <p>A. What are the key legal considerations and essential for a GSPA?</p> <p>B. Discuss the nature of oil and gas supply value chain. How does the knowledge on this value chain will help us to understand the intricacies of GSPA’s?</p> <p>C. How do these contracts provide the medium through which the aspirations of the gas producer and purchaser are maintained?</p>	<p>5</p> <p>5</p> <p>5</p> <p>5</p>	<p>CO3</p> <p>CO1</p> <p>CO2</p> <p>CO1</p>

	<p>D. What are the five important dates necessarily being part of these agreements?</p> <p>E. Identify the main issues that may give rise to liability of buyer and seller in normal GSPA's in distinct periods with different rights and obligations</p>	5	CO3
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