



NATIONAL OPEN UNIVERSITY OF NIGERIA
PLOT 91, CADASTRAL ZONE, NNAMDI AZIKWE EXPRESS WAY,
JABI, ABUJA
FACULTY OF LAW
2020_2 EXAMINATION

COURSE CODE: PPL518

COURSE TITLE: ALTERNATIVE DISPUTE RESOLUTION II

TIME ALLOWED: 3 HOURS

Instruction: ANSWER QUESTION 1 (ONE) AND ANY OTHER 3 (THREE) QUESTIONS. (QUESTION 1 (ONE) ATTRACTS 25 MARKS)

1. Examine any 3 definitions of arbitration known to you, identifying the gaps in each of the definitions, your preferred definition and reasons for your choice. (25 marks)
2. Janet and John agreed to settle any future disputes by arbitration. Following a dispute, Janet invited John to nominate an arbitrator but John refused and Janet then instituted a suit against John at the High Court. John was duly served with all the processes and he instructed his lawyer to cross examine Janet when she gave evidence before the court. Thereafter, he failed to enter into his defence and judgment was given in Janet's favour. John appealed asking that the judgment be set aside for lack of jurisdiction. He also submitted the judgment at the Lagos Multi-door Court House to have it set aside. Advise him on his chances of success. (15 marks)
3. Discuss any three of the following cases and their relevance to ADR.
 - a. *Akpanji v. Udemba* (2003) 6 NWLR (Part 815) 169
 - b. *Ipitrade v. Nigeria* 465 F.Supp. 824 (1978)
 - c. *Heyman V Darwing* [1942] AC 356
 - d. *Minaj Systems Ltd. v. Global Plus Communications Systems & Ors* CA/L/279M/2009
4. Yahoo and Mugu entered into an agreement to trick Adolf – a German businessman into parting with \$5 million for the shipping of face masks to the US. They agreed that whatever gain they made from the 'operation' would be shared 50/50 and that Yahoo would communicate directly with Adolf while Mugu would be in charge of all back-end ICT work. To formalise this agreement, they signed a contract which contained an arbitration clause. After Yahoo made contact with the Adolf, he contracted COVID-19

and had to be quarantined, so Mugu was then in charge of the entire operation till the very end. After Adolf wired \$4.5 million to Mugu's account, Mugu gave Yahoo a cheque for \$.5 million contending that Yahoo was only entitled a fraction of the proceeds of their scam since he was down with COVID all the while. Thereafter, he got his lawyers to write a notice of termination of the contract with Yahoo. Yahoo has engaged your services to pursue a claim for an extra \$1.75 million contending that the arbitration clause survives the contract – Mugu's termination of same notwithstanding. He has promised to pay you 20% if your claim succeeds. Advise Yahoo. (12 marks)

- b. Would your answer be different if Mugu had not terminated the contract? (3 marks)
- 5. The seat of arbitration does not change with changes in location. Discuss. (15 marks)
- 6. Advise on the following scenarios
 - a. Ali and Simbi have agreed to submit their dispute for arbitration. When asked to nominate an arbitrator, Ali nominated Nemo Judex Legal Services Ltd. a company in under receivership. (5 marks)
 - b. Wakama is challenging the appointment of Justice Edet as arbitrator. He has written a letter to Justice Edet ordering him to resign honourably. (5 marks)
 - c. An arbitral panel of 3 arbitrators has been appointed to resolve the dispute between Matthew and Mark. Prof. Lawlord, the presiding arbitrator has decided on his own that there is need to schedule a hearing. He has therefore fixed 1st to 3rd December 2020 for hearing and informed the other arbitrators as well as the parties. (5 marks)