



NATIONAL OPEN UNIVERSITY OF NIGERIA
14/16 AHMADU BELLO WAY, VICTORIA ISLAND, LAGOS
FACULTY OF LAW
20191_1 SEMESTER EXAMINATION

COURSE CODE: PPL 518

COURSE TITLE: ALTERNATIVE DISPUTE RESOLUTION II

CREDIT UNIT: 4

TIME ALLOWED: 2 ½ Hours

Instruction: ANSWER QUESTION 1 (ONE) AND ANY OTHER 3 (THREE) QUESTIONS. (QUESTION 1 (ONE) ATTRACTS 25 MARKS WHILE OTHERS CARRY 15 MARKS EACH)

1. Abakaliki Ltd. and Bakassi Plc. have entered into a contract for oil exploration off the Brass Coast. The dispute resolution clause provides as follows:

The parties do not foresee any disputes with regard to the rights and obligations contained herein. However, where any dispute arises, parties shall resolve same in line with the prevailing mode of dispute resolution in the industry. Parties shall be guided by the UNCITRAL Model Law as to procedure and attendant issues in resolving any such dispute.

11 months after exploration activities commenced, Bakassi complained in writing of Abakaliki's negligence and environmental damage. Part of their letter to Abakaliki stated:

In view of your continued negligence, damaging action and refusal to desist from same, we hereby declare a dispute and propose Engr. Too-Much-Oil as sole arbitrator. Kindly communicate your acceptance or propose another arbitrator.

Abakaliki's Head of Legal Department have advised them to ignore Bakassi's letter citing Article II(2) of the New York Convention. Advise the parties. **25Marks.**

2. The arbitration clause between A Ltd. and B Ltd. reads:

'In the event of a dispute resulting from the interpretation, the performance or notice of termination of this Agreement, A Ltd. and B Ltd. shall use their best efforts to settle it amicably. In the event that one or both of the Parties to this Agreement decide to refer the dispute to arbitration, said arbitration proceedings shall take place in London before the International Chamber of Commerce by

arbitrators appointed in accordance with the Arbitration and Conciliation Act. Such proceedings shall be conducted in the English language. The decision of the arbitration tribunal shall be final.

Advise on the validity of the following:

- a. Parties appointed 7 arbitrators
 - b. Proceedings took place in the Registered Offices of A Ltd. at 15, Walter Carrington Crescent, Victoria Island, Lagos
 - c. The Arbitration Award was drawn up at Dubai, UAE during the Oil and Gas Conference attended by the CEOs of both companies and one of the arbitrators – all of whom signed the award.
 - d. To save time and expenses, part of the arbitration award was verbally communicated to representatives of both parties.
 - e. B Ltd. is dissatisfied with the award and has instituted a suit at the Dubai Constitutional Court to have it set aside on ground of lack of notice to arbitrators.
3. Young (UK) Plc. (Y) and Zodiac (Ghana) Ltd. (Z) entered an agreement for supply of gold bars to the Central Bank of Ghana. The agreement had an arbitration clause providing for arbitration in the first instance in Ghana Arbitration Institute (GAI) Accra under UNCITRAL Model Law, and on appeal at the British Arbitration Panel (BAP) London under the ICC Rules. It was further agreed that the decision of the second arbitral tribunal would be final. In the event of a dispute, parties submitted to the first tribunal in Ghana which found in favour of Z. Y, being dissatisfied with the award approached the BAP who, after hearing both parties, made an award in favour of Y (Nig.) Plc. About the time the dispute arose, Ghana and the United Kingdom had a diplomatic incident which led to Ghana expelling the British High Commissioner to Ghana. As soon as Z received a draft of the arbitration award of BAP, they filed a suit at the Ghana High Court seeking to enforce the order made by GAI. They further filed an originating motion at the Ghana Court of Appeal contending that, in view of the diplomatic impasse between Ghana and the UK, it would be against Ghanaian public policy to enforce the award made by BAP. Discuss the legal issues. They also sought to set aside the BAP award on grounds of the panel's failure to translate the award to Ashanti language.
- 4a. Light Industries (Light) has instituted a suit against Moonshine Brothers Ltd. (Moonshine) at the Court of Appeal, Lagos. They are claiming N32 million damages for loss of business occasioned by Moonshine's failure to respond to **their** proposal of Prof. Genius as sole arbitrator to resolve the dispute which they declared 18 months earlier. Light contends, that Moonshine's delay has forced them to stop working as a result of which they have suffered loss. Advise the parties.

- b. 'It is a truism to state that Arbitration is better than Litigation, conciliation better than arbitration and prevention of legal disputes better than conciliation.' Discuss.
 - c. Pursuant to the arbitration clause in the agreement between MV My Fair Lady and Gbedu Shipping Ltd., a dispute which arose between the parties has been referred to the London Court of Arbitration, UK. While proceedings are still ongoing, Gbedu Shipping instituted a suit in the Justice Veritas of the Maritime Division, Lagos State High Court in respect of the same facts. Advise Justice Veritas
- 5a. Junior, a 16 year old Nigerian/American dual citizen entered into an agreement to maintain Chief Obi's lawn twice every week in exchange for the use of Chief Obi's Toyota Camry whenever he needs it. Chief Obi is suffering from bi-polar disorder as a result of which he sometimes falls into violent fits and has difficulty comprehending what he is doing, saying or hearing. Parties agreed that if they ever had a dispute they would refer it to a sole-arbitrator. Junior has been with Chief Obi's car for 3 weeks and has damaged it.
- b. 'As long as parties have agreed on arbitration, submitted to same and an award has been made, the competent authority in the country where recognition and enforcement is sought has no choice but to give effect to an application for recognition and enforcement.' Discuss the validity of this statement.
6. Omatek Ltd. wishes to enter into a multi-billion Naira software licensing agreement with Microsoft International for the use of Microsoft's source codes for the operation of the Windows 20 program in Omatek Computers. Though Omatek is a Nigerian company, Microsoft has no Nigerian presence. The source codes are created and managed by a team of 2 specialised IT specialists and so heavily encrypted that only 3 persons in the entire world have the secret encryption key to access the source codes. It is rumoured that it is possible to use the encryption key to hack into the Pentagon's Nuclear Arsenal. Microsoft is transferring the source codes to Omatek's IT Director who has been made to sign a strict confidentiality agreement and flown to Microsoft's offices at Silicon Valley for training. One of the two IT specialists is to be flown into Nigeria to enter the encryption key, transfer the source codes to Omatek's IT Director and return to Silicon Valley with the encryption key. Omatek is required to destroy all confidential communications with Microsoft no later than 2 hours after the communications and NEVER to store any of such communications in any retrievable system. Omatek is doing all within its power to ensure the launch of its computer systems with the Windows 20 programme. It forecasts a sale of 10 million of such systems within the first three months after it is launched in the Nigerian market. Parties wish to enter into a dispute resolution agreement which captures all the aforementioned sensitivities. Identify the specific interests that parties would like to protect and advise them on the mode of dispute resolution best suited for that purpose.

- b. Advise the parties on possible drawbacks that may attend your chosen mode, discussing why such challenges may occur.