

16 NOV 2024

**NATIONAL LAW UNIVERSITY, JODHPUR**

**End Term Examination – Nov, 2024**

**Semester: UG IX Semester (Compulsory)**

**Subject: Alternative Dispute Resolution**

**Time: Three Hours**

**Marks: 100**

**Instructions:**

1. *All questions carry equal marks.*
2. *Kindly answer any five out of six questions.*

Q 1) Sunshine Developers Pvt. Ltd. ("Sunshine") entered into a contract with CityWorks Infrastructure Ltd. ("CityWorks") for the construction of a large residential complex in New Delhi. The agreement contained an arbitration clause stating that any disputes arising from the contract would be resolved through arbitration, with a three-member arbitral tribunal. Each party was to appoint one arbitrator, and the two appointed arbitrators would jointly nominate the presiding arbitrator. The seat of arbitration was agreed to be New Delhi, and the arbitration would be conducted under the rules of the Indian Arbitration Association. Disputes arose when Sunshine accused CityWorks of delaying construction due to substandard raw materials and non-compliance with environmental regulations. CityWorks, on the other hand, alleged that Sunshine had not provided the necessary regulatory approvals on time, causing delays. Sunshine invoked the arbitration clause and appointed Mr. P, a retired engineer, as its arbitrator. CityWorks, however, refused to appoint its arbitrator, stating that Mr. P had previously acted as an expert witness for Sunshine in other construction disputes, raising concerns about his impartiality.

CityWorks argued that this prior association was not disclosed by Sunshine, and requested that the court intervene to prevent Mr. P's appointment. After a month of negotiations, CityWorks appointed Mr. Q, a lawyer with experience in infrastructure disputes, as its arbitrator. However, Mr. P and Mr. Q could not agree on a presiding arbitrator. CityWorks suggested appointing Mr. R, a retired judge, as the presiding arbitrator, but Sunshine refused, alleging that Mr. R had recently provided legal consultancy services to CityWorks in unrelated matters. Sunshine raised concerns about Mr. R's impartiality and demanded his removal from consideration. Amidst this deadlock, Sunshine filed a petition in court, seeking the court's intervention to appoint the presiding arbitrator. CityWorks filed a counter-petition, seeking the removal of Mr. P on the grounds of potential bias and lack of disclosure regarding his prior association with Sunshine.



In the meantime, new issues emerged. Sunshine discovered that Mr. Q, CityWorks' nominated arbitrator, had a longstanding professional relationship with one of the directors of CityWorks, which Sunshine claimed had not been disclosed. Sunshine filed an objection with the court, arguing that Mr. Q's impartiality was compromised and requesting that the court disqualify him from the tribunal. Further complicating matters, CityWorks argued that the entire arbitration process was defective because the arbitration clause in the contract was ambiguous. CityWorks contended that the clause did not clearly specify the arbitration procedure or the qualifications of arbitrators, and requested that the court decide on the validity of the arbitration clause before proceeding with any appointments. With both parties now embroiled in legal battles over the constitution of the arbitral tribunal and the validity of the arbitration agreement itself, the construction project came to a standstill, leading to significant financial losses and disputes over breach of contract.

*In light of the above factual matrix addresses the following issues:*

- 1) *How should the court address the challenges related to the appointment of arbitrators, considering the parties' objections to the impartiality of Mr. P, Mr. Q, and Mr. R? What procedure should be followed to address the concerns raised by the parties regarding the independence and impartiality of the arbitrators, and how should the court deal with the allegations of nondisclosure?*
- 2) *Should the court consider the validity of the arbitration clause before intervening in the appointment of the presiding arbitrator, and what factors would influence the court's decision on the validity of the arbitration agreement*

(Marks 10 x 2 = 20)

Q 2) Tech Innovators Pvt. Ltd., an Indian technology firm, entered into a collaboration agreement with Advanced Solutions Ltd., a foreign corporation from Germany, for the development of a cutting-edge software application. The agreement contained an arbitration clause specifying that any disputes would be resolved following the rules of the International Chamber of Commerce (ICC) in Paris, France. During the course of the project, a dispute arose regarding the breach of contract when Tech Innovators alleged that Advanced Solutions had failed to deliver critical components on time, leading to significant financial losses. Subsequently, Tech Innovators filed for arbitration against Advanced Solutions in Paris. However, they also sought to include a third party, Global Components LLC, a supplier closely affiliated with Advanced Solutions, arguing that Global Components was effectively part of the transaction and should be held liable due to its role in the alleged breach. Advanced Solutions contested the inclusion of Global Components, asserting that the supplier was not a party to the original arbitration agreement and thus could not be compelled to arbitrate. As this situation unfolded, the Delhi High Court was approached by Tech Innovators to enforce the arbitration agreement and to seek directions regarding the inclusion of Global Components in the proceedings, emphasizing the applicability of the Arbitration and Conciliation Act, 1996.

*Discuss the validity of Tech Innovators' claims regarding the involvement of the non-signatory party, and the jurisdiction of the Indian courts to intervene in this international arbitration context. Additionally, compare the enforcement of foreign arbitral awards under the New York Convention and the Geneva Convention, highlighting the key differences in their enforcement mechanisms and requirements.*

(Marks 20)

Q 3) Evaluate the grounds for setting aside an arbitral award on the basis that it conflicts with the public policy of India compared to being vitiated by patent illegality appearing on the face of the award. In your response, analyze the distinct legal thresholds and implications of each ground, including the nature of judicial scrutiny involved and the potential consequences for the parties involved in the arbitration. Use relevant case law to support your discussion.

(Marks 20)

Q 4) Write short notes on the following –  
a. BATNA and WATNA  
b. Online dispute resolution

(Marks 10 x 2 = 20)

Q 5) Ms. Rao recently purchased a custom-built laptop from CompuPro, specifically tailored to support graphic design software, animation programs, and video editing applications. CompuPro promised a high-speed processor, advanced graphics card, and ample storage, which Ms. Rao needed for her professional work.

However, within the first week, Ms. Rao began experiencing technical issues, including frequent crashes, lag in running graphic-intensive applications, and even an inability to save larger files. When she contacted CompuPro for repairs or a replacement, they stated that custom-built computers fall under a “no-return, no-replacement” policy, offering only to diagnose the laptop for software issues.

Ms. Rao feels misled, as the laptop clearly does not meet the specifications promised. She believes the hardware itself may be faulty and would prefer either a replacement or a full refund. Ms. Rao is frustrated with the lack of accountability and wishes to avoid lengthy repairs that could disrupt her work further.

As Ms. Rao’s legal representative, your task is to negotiate with CompuPro to secure either a replacement laptop that meets the promised specifications or a full refund. Which negotiation strategy you would opt for and why?

(Marks 20)

Q 6) Anil and Kavita have been married for 15 years and have a 14-year-old daughter, Meera. Kavita gave up her career early in the marriage to support Anil’s

entrepreneurial ambitions and handle family responsibilities. Over time, Kavita began to feel that Anil grew distant and undervalued her contributions to both the family and his professional success.

Anil claims the marriage is beyond repair due to irreconcilable differences, while Kavita feels financially vulnerable and demands considerable spousal support. They also disagree on custody arrangements. Kavita insists on primary custody, arguing that she has always been Meera's primary caregiver, while Anil wants shared custody, emphasizing his commitment to be actively involved in Meera's life.

Anil and Kavita have decided to mediate their divorce to avoid a lengthy court battle and reach an equitable agreement. How should a mediator approach this case to ensure that both Anil's and Kavita's contributions to the marriage are acknowledged? Outline initial steps the mediator can take to foster a fair, balanced dialogue.

(Marks 20)