

DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD

Advanced Diploma in Alternative Dispute Resolution (Batch 2021 – 2022)

Take Home – Supplementary Examination (November 18-21, 2022)

Paper IV – 1.4. International Commercial Arbitration

TOTAL MARKS: 100

INSTRUCTIONS TO CANDIDATES

- a) Read the instructions for Take Home Examination carefully and adhere to the same.
 - b) *Please mention your name, ID No., subject name and total number of pages on the Answer Sheet.*
 - c) *Clearly indicate the question numbers while answering them.*
 - d) *Answer all the four questions and each question carries 25 marks.*
 - e) *The answer for the 25 marks question should be written in 1200 - 1500 words and for the 10 marks / 15 marks question it should be 800 – 1000 words.*
 - f) *All the candidates are required to submit only word / Pdf files containing the typed answers.*
 - g) *All papers will be uploaded on Turn-it-in for plagiarism check. Any paper with more than 15% similarity will be considered to be plagiarized and shall not be evaluated.*
 - h) *Since this is a take home exam, we expect your answers to be analytical rather than straight answers.*
 - i) Copying from any source including from other students is strictly prohibited. Plagiarism is considered as a serious academic mis-conduct and the University will take action as it deems fit.
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Q1. Answer the following questions:

- (A) The difficulties and uncertainties relating to the question of the law(s) governing the arbitration agreement can have repercussions on virtually any topical issue of international arbitration, such as: **(15 marks)**
- i. The extension of the arbitration agreement to non-signatories,
 - ii. The principle of separability,
 - iii. The limits of arbitrability,
- Discuss with reference to the UNCITRAL Model Law and the Indian Arbitration and Conciliation Act, 1996.
- (B) Explain which law regulates the validity of an arbitration agreement and what are the main principles regarding the form of an arbitration agreement. **(10 marks)**

Q2. Answer the following questions:

- (A) Does the arbitral tribunal have the competence to rule on its own jurisdiction? What competence do courts have on an arbitral tribunal's jurisdiction, and how do these competences relate to each other? **(15 marks)**
- (B) Critically examine the grounds on which a final award may be challenged under the New York Convention 1958. **(10 marks)**

Q3. Answer the following questions:

(A) Discuss the meaning of a 'Foreign Award' and the criteria for the enforcement of a foreign award in India. **(10 marks)**

(B) The emphasis on the "autonomy of the parties" might suggest that parties and arbitrators inhabit a private universe of their own; but this is not so. In reality, the practice of resolving disputes by the essentially private process of international arbitration works effectively only because it is supported by a complex public system of national laws and international treaties. Discuss. **(15 marks)**

QUESTION 4

(25 marks)

An English start-up 'SkyFly' enters into a sales agreement with an Indian construction company 'Excel Construction' for the sale of 100 high technology drones for monitoring construction sites. The major advantage of these drones as advertised by SkyFly is that they adapt to any pre-existing software. The agreement contains the following arbitration clause:

"Any dispute arising out of or in connection with the present agreement shall be settled by an arbitral tribunal comprising three members, having expertise in computer sciences and new technologies. The seat of such arbitration shall be Mumbai".

The first batch of drones is delivered to Excel and they function well, however, cannot be connected to the software used by Excel. An attempt by the parties to arrive at a solution fails and Excel thus, terminates the agreement. Thereafter, Excel initiates arbitration proceedings at Mumbai.

Excel appoints Dr Khanna, a professor of science and technology law at Mumbai University, as the arbitrator. He had written an article on the topic of arbitration for start-ups, in which he had opined that arbitrators should be sensitive about the difficulties faced by young businesses, especially in the area of new technologies. However, this article was not mentioned in the disclosure forwarded to the parties, but was freely accessible on his website.

SkyFly designated Mr Andrews, a renowned consultant specializing in the use of camera technology for project management, who also has a 20% stake in Skyfly.

Both arbitrators face difficulty in agreeing upon the chair of the tribunal, but eventually appoint Mr Kaushik, a lawyer with extensive experience in arbitration. At the the first hearing, Mr Kaushik remarks that he does not know much about new technologies but is looking forward to learning new things in this arbitration.

Discuss the grounds, if any, on which the parties may challenge each one of the arbitrators. Also, discuss the chances of success of such challenge.