

DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD

Post-Graduate Diploma in Alternative Dispute Resolution (Batch 2020 – 2021)

Take Home – Annual Examination (June, 2021)

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 approximate word limit for a 25 marks question is 800-1000, for a 15 marks question, 600-700, for a 10 marks question 400-500 and for a 5 marks question 200-250*
 - 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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1. Answer the following questions:

- a. Critically examine the relevance of international commercial arbitration as a method of dispute resolution **[15 marks]**
- b. Critically analyse the definitions of the term “international” and “commercial” in international commercial arbitration. **[10 marks]**

2. Answer the following questions:

- a. Critically examine the doctrine of party autonomy in international commercial arbitration. **[10 marks]**
- b. Briefly explain the process and grounds of setting aside an arbitral award and how they are different than the process and grounds of challenging the enforcement of an arbitral award. **[15 marks]**

3. Answer the following questions:

- a. Critically examine the impact of judicial intervention in an international commercial arbitration proceeding. **[10 marks]**

- b. Discuss the cross-border enforcement of an arbitral award under the New York Convention. **[15 marks]**
4. Please read the following facts and answer the questions that follows:

Facts:

- a. Reddington Corporation Pvt Ltd (“**RC**”), a Delhi based entity and Federal Corporation (“**FC**”), a Mauritius based entity, entered into a joint venture agreement (“**JV**”) for the manufacturing of the most delicious ice cream in the world and for that they formed a special purpose vehicle in the name and style of Keen Enterprises (“**KE**”) registered at Delhi.
- b. RC was responsible for procuring the fruits for the flavours of the Ice Creams, and FC was responsible for the packaging of the Ice cream and arranged for the factory premises and distribution outlets. However, after earning profits for several years, FC decided to open a franchise of KE. However, the same was opposed by RC, which led to the spat between RC and FC, and they both decided to part ways.
- c. At the time of discussing the distribution of profits, RC claimed that since RC was responsible for the procurement of fruits for the flavour of the ice cream, which eventually led to the maximum sale of ice cream, RC is entitled to 51 % of the entire profits, which was obviously disputed by the FC. Resultantly, FC invoked the arbitration clause in the JV agreement (with the seat in India) and nominated Mr. Donald Ressler as their arbitrator, and subsequently, RC nominated Mr. Dembe Zuma as their arbitrator, and both the arbitrator appointed Mr. Townsend as the president of the Arbitral Tribunal.
- d. After a few weeks, RC, from one of its sources, came to know that FC is represented by Stewmaker and Co. LLP in the present arbitration proceedings and Mr. Donald Ressler was previously appointed as an arbitrator in three other arbitration cases by the clients of Stewmaker and Co. LLP. Moreover, the award in all three arbitration proceedings was given in favour of the client of Stewmaker and Co. LLP. However, the same was not disclosed by the arbitrator at the time of his appointment. RC immediately challenged Mr. Donald Ressler on the ground of lack of independence and impartiality.

[Note: (i) There is no relation between FC and other clients of Stewmaker and Co. LLP

(ii) In India it is a general practice that arbitrators are recommended by the counsel of the parties rather than parties themselves]

Question:

Whether Mr. Donald Ressler can be challenged for the lack of independence and impartiality? **[state your reasons in no more than 500 words] [25 Marks]**