



NATIONAL OPEN UNIVERSITY OF NIGERIA
14/16 AHMADU BELLO WAY, VICTORIA ISLAND, LAGOS
SCHOOL OF LAW
2018

COURSE CODE: LAW 518

COURSE TITLE: ALTERNATIVE DISPUTE RESOLUTION II.

TIME ALLOWED: 2 ½ HOURS.

INSTRUCTION: ANSWER QUESTION ONE AND ANY OTHER THREE QUESTIONS.

1. a.) Where there is an arbitration clause in a contract that is the subject matter of proceedings in court, the court will order a stay of proceedings and refer the parties to arbitration. Examine this statement in line with judicial and statutory authorities.

b.) An arbitration agreement was signed between Abbey Petroleum Ltd and Xanny International Ltd to submit any dispute to arbitration. After one year, as a result of lack of Health and Safety Procedures in Abbey Petroleum premises which resulted in the death of one of Xanny International Engineers, Xanny International Ltd initiated criminal proceedings against Abbey Petroleum for Corporate Manslaughter. Abbey Ltd filed a Motion, requesting the Court to stay the criminal proceedings as there is an arbitration agreement between the parties. Advise Xanny International Ltd.
2. Omar and Mikhail are Cocoa Merchants. Omar procures produce from indigenous sources in the hinter lands, while Mikhail transports and markets them. The parties agreed that when the Cocoa is sold, the net produce will be shared in the net profit of 60/40%. In the contract executed both parties consented to submit all disputes that arise between them to arbitration but did not agree on the details of the process. The 80% of the Cocoa got damaged in transit and the parties experienced a huge loss. A dispute arises as to how to share the loss as Omar contends that the loss occurred at the instance of Mikhail and should be borne by him. As Omar is a Nigerian and Mikhail Russian, there are issues in respect of the language of the proceedings and the place of the arbitration. Mikhail contends that these matters go to the root of the arbitration and thus the agreement to arbitrate is frustrated and the parties should resort to litigation. Discuss the legal issues raised.
3. You have been chosen as one of the Arbitrators in a three man arbitration tribunal for the settlement of disputes between two parties. One of the Parties is a French national and has its place of business in Paris. The arbitration agreement between the parties did not specify the place of Arbitration and language of Arbitration.

Advise on the following:

- i) What are the factors to be considered for the place and language of the arbitral proceedings?
 - ii) The mode of communication between the Arbitral tribunal and the Parties
4. Describe the grounds on which a party can challenge an Award under the ACA 2004. Are these grounds different from the grounds under the New York Conventions 1958?
5. Chinconent International Phones Company of China entered into a contract for supply of 'TRIPLE SIMS PHONES' in three shipments with Ndubiz Nig. Limited. The first shipment contained 'DUAL SIMS MOBILE PHONES' instead of the TRIPLE SIMS PHONES as specified in their contract agreement. The contract agreement contained an arbitration clause which provided for the settlement of disputes by arbitration and in addition that the appointment of arbitrators should be by an application to the Chief Judge of the Federal High Court of Nigeria. Ndubiz refused to pay for the balance of the shipment of the other two shipments as he alleged failure of Chinconent to supply to specification. Chiconent claimed frustration of the contract as the Government of China had banned exportation of that type of mobile phones. Chiconent applied to the Chief Judge of the Federal High Court Nigeria to appoint arbitrators to settle the disputes. 3 persons were appointed arbitrators. The Arbitral tribunal heard the dispute and in the course of hearing the dispute, Ndubiz challenged the jurisdiction of the arbitral tribunal to entertain the disputes on the ground that one of the arbitrators appointed by the CJ was a bias person as he was a known competitor in the Mobile Phone industry in Nigeria. The arbitration tribunal overruled his objections and granted a partial award in this regard. Ndubiz has gone ahead to the High Court where he filed an application for the court to set aside the partial award and that the court should declare that the arbitration tribunal wrongly assumed jurisdiction over the disputes.

Discuss with legal authorities all the issues in this matter.
6. An agreement was executed between Kbee Ventures Ltd (KVL) and Toyol Fabrics for the supply of Exquisite Lace Fabrics. KVL was to supply the Fabrics on or before the 20th of July 2017 for the wedding of well Nigerian Celebrities which was to take place in October 2017. The Fabrics were to be supplied in two tranches to enable the families of the couples to sell out as 'Aso Ebi' well before the D-Day. The total amount of 400 pieces of 5yards each was placed at N15, 000,000 (Fifteen Million Naira only) per shipment. An agreement to submit all disputes arising from or in connection with the contract to arbitration was inserted into the contract. Answer the following questions.
 - i. What are the essential characteristics of a valid arbitration clause/agreement
 - ii. KVL has been unable to supply the second tranche of Fabrics owing to the seizure of the consignment by the Nigeria Customs as importation of Lace Fabric has been banned. KVL is arguing that the matter is not arbitrable. Advice Toyol Fabrics on arbitability.