



NATIONAL OPEN UNIVERSITY OF NIGERIA
UNIVERSITY VILLAGE, PLOT 91, NNAMDI AZIKWE EXPRESSWAY,
JABI, ABUJA
FACULTY OF LAW
JULY 2017_1 SEMESTER EXAMINATION

Course Code: Law 518

Course Title: ALTERNATIVE DISPUTE RESOLUTION 11

Course Unit: 4 UNITS

Time Allowed: 2 1/2 Hours

INSTRUCTION: ANSWER QUESTION 1 AND ANY OTHER 3 QUESTIONS.

QUESTION 1 CARRIES 25 MARKS. OTHERS CARRY 15 MARKS.

QUESTION 1

Pears Computers Limited entered into a contract agreement with Bassey Enterprises for the supply of Singsong Surface Computers. Pears Computers Limited was to supply Bassey enterprise with 50 units of the Surface computers at the sum of N150, 000 each (Seven Million Five Hundred Thousand Naira). Bassey Enterprises was to make an advance payment of 30% and the balance of 70% to be paid 30 days after receipt of the consignment. A clause to submit all disputes arising from or in connection with the contract to arbitration was inserted into the contract. Answer the following questions. After the 30 days of receipt of the Surface computers Bassey enterprise has defaulted in paying the balance of 70% arguing that the Surface computers supplied were made in China and not Singapore as advertised by Pears Computers Ltd and there was a significant change of N5 each in the contractual value of the computers. Pears Computers Limited wishes to institute arbitration proceedings. Advise Pears Computers on the following:

Arbitrability of the matter

The procedure for arbitration proceedings -

2. I). what do you understand by the word “delocalization” in Arbitration. (7Marks)
ii. What are the three conceptual theories in arbitration? (8Marks)
3. Abdeel and Gustav are Ivory merchants. Abdeel procures the ivory from indigenous sources in the Indian Forests, while Gustav transports and markets them. The Ivory is sold; the parties share the net profit in the ratio of 58:42. They consent to submit all disputes that arise between them to arbitration but did not agree on the details of the process. The Ivory is damaged in transit and the parties experience a huge loss. A dispute

arises as to how to share the loss as Abdeel contends that the loss occurred at the instance of Gustav and should be borne by him. As Abdeel is Arab and Gustav Russian, there are issues in respect of the language of the proceedings, the place of the arbitration and the cost.

i. Gustav 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.

ii. Is he correct? Give reasons for your answer
(15marks)

4a. Cyril a sole arbitrator in the dispute between Deco Enterprises Nig.(DEN) Ltd and Solar International Ltd of China. The parties have entered into an agreement for the supply of medical equipment. The place of arbitration is Nigeria. Disputes arose between the two parties as result of the quality of goods supplied. Deco Enterprise refused to pay the outstanding balance of the goods. Solar International has initiated Arbitration and Mr, Cyril was appointed as the sole Arbitrator. The DEN is contending that the arbitration clause is null and void. On the basis of this argument, the DEN claims that Cyril do not have jurisdiction and have requested he steps down.

Can Mr. Cyril you rule on your jurisdiction? With the aid of statutory and case law authorities give reasons for your answers.

4b. Write short notes on the following: 7marks

i. Party autonomy.

ii. Difference between Arbitration Agreement and a Submission Clause

5. You have been chosen as an Arbitrator in a 3 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 in determining the place and language of the arbitral proceedings? (8Marks)

ii) The mode of communication between the Arbitral tribunal and the Parties(7Marks)

6. A ruling by a tribunal on its jurisdiction is final and not subject to appeal. Discuss with the aid of statutory authorities. (15Marks)