

Name:



Enrolment No:

University of Petroleum and Energy Studies
End Semester Examination May 2019

Course: Arbitration, Conciliation & ADRM
Programme: B.Tech. LL.B. (Cyber/IPR)
Time: 03 hrs.

Semester: X
CC:LLBL 461
Max. Marks:100

Instructions:

Attempt any four questions from **Section A** (each carrying 2.5 marks)

Section A

1.	Explain any four : a) Arbitral Award b) Court c) International Commercial Arbitration d) Arbitration by Reference e) Waiver of right to object f) Confidentiality	2.5x4	CO1
SECTION B			
2.	Discuss extent of judicial intervention.	[10]	CO2
3.	Discuss interim measure.	[10]	CO2
SECTION C			
5.	Compare the determination of <i>existence</i> and <i>validity</i> of arbitration agreement.	[10]	CO3
6.	Differentiate the role of mediator and conciliator under various laws	[10]	CO3
SECTION D			
8.	Factual Background A consumer dispute regarding the delivery of possession of a flat by M/s Emaar MGF Land Limited (Appellant) and deficiency of services stemming from the same was brought before a Single Bench of the NCDRC by Aftab Singh (Respondent). The Appellant, in turn, filed an application before the Single Bench of the NCDRC under Section 8(1) of the Arbitration Act to refer the dispute to arbitration because of the existence of an arbitration clause in the agreement from which the dispute arose. Several similar applications under Section 8(1) of the Arbitration Act were grouped together with	[25]	CO4

	<p>it. The Single Bench of the NCDRC referred all these applications to a three-member Bench of the NCDRC because it was of the opinion that the dispute posed a significant question of law regarding the arbitrability of consumer disputes.</p> <p>The three-member Bench of the NCDRC decided that consumer disputes were not capable of being submitted to arbitration because the Consumer Protection Act, 1986 (CPA) was enacted in light of certain public policy concerns and for the benefit of consumers. Accordingly, it dismissed the Appellant's application. The Appellant filed connected appeals before the Delhi High Court, but the Delhi High Court did not entertain it for want of jurisdiction. All the Civil Appeals filed before the Supreme Court were dismissed because the Supreme Court found no grounds to interfere with the impugned order of the NCDRC. Therefore, the Appellant filed a Review Petition before the Supreme Court stating that the matter posed a significant question of law as to whether consumer disputes are arbitrable and whether a judicial authority may dismiss an application under the amended Section 8(1) of the Arbitration Act on the ground that a dispute is not arbitrable.</p> <p>Arguments Advanced</p> <p>The Appellant's main contention in support of its application was the wording of Section 8(1) of the Arbitration Act after the 2015 Amendment. The amended Section 8(1) of the Arbitration Act unequivocally states that a judicial authority is bound to refer a dispute to arbitration unless it finds that prima facie no valid arbitration agreement exists, "notwithstanding any judgment, decree or order of the Supreme Court or any Court" Therefore, any other ground, such as the arbitrability of the subject matter, is immaterial for the purposes of the NCDRC's consideration of an application under Section 8(1) of the Arbitration Act.</p> <p>On the other hand, the Respondent's contention was based on the CPA being a legislation enacted in public interest, which envisages beneficial remedies that are separate from those that are available in private arbitration. He further contended that it was never the legislative intent for the amended provisions of Section 8(1) of the Arbitration Act to override all other statutes which provide such specific remedies and make disputes related to criminal law, trusts, tenancy, family law, telecom, IPR, etc, "arbitrable" subjects, contrary to landmark judgments like <i>A Ayyasamy v A Parasivam & Ors</i> ((2016) 10 SCC 729) (<i>Ayyasamy</i>) and <i>Booz Allen Hamilton Inc v SBI Home Finance Limited & Ors</i> ((2011) 5 SCC 532) (<i>Booz Allen</i>).</p> <p>Decide with reasons, in the light of case laws.</p>		
9	<p>Facts</p> <p>The appellant after being aggrieved with the orders of the trial court and High Court has filed an appeal at The Supreme Court. The issue arose when the appellant failed to vacate the shop leased to him after the expiry of the lease deed. The appellant after being served</p>	[25]	CO4

<p>with notice of a civil suit, filed an application under Section 8 of the 1996 Act. The application was not entertained by the two subordinate courts on two grounds contended by the respondent. First, the fact that the lease deed had come to an end, such lease deed was not enforceable by the appellant. And second, that the disputes which are subject matter of a civil suit, are incapable of being referred to an arbitrator. Now the Supreme court has to decide the latter, i.e. whether the respondents have rightly field the civil suit in a civil court seeking plaintiff's eviction from the premises notwithstanding an arbitration clause for resolution of disputes arising out of the lease deed.</p> <p>Issue</p> <p>Whether disputes pertaining to tenancy/eviction/rent disputes, i.e. disputes subject matter of a civil suit, arbitrable?</p> <p>Analyse and Decide in the light of relevant case laws.</p>		
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Section A

1.	Explain any four : g) Enforcement h) Failure or Impossibility to act i) Number of Arbitrators j) Substitution of Arbitrator k) Appointment of Expert l) Settlement agreement	2.5x4	CO1
SECTION B			
2.	Discuss the duty of Gram Nyayalaya to make efforts for conciliation and settlement of civil disputes.	[10]	CO2
3.	Discuss <i>public utility services</i> in the light of Section 22A of Legal Services Authority Act, 1987.	[10]	CO2
SECTION C			
5.	Compare the process of conciliation in the Legal Services Authority Act, 1987 and Gram Nyayalay Act, 2008.	[10]	CO3
6.	Differentiate New York Convention, 1958 and Geneva Convention, 1961	[10]	CO3
SECTION D			
9.	Kandoli Fried Chicken (KFC) and Bidholi Pappad (BP), both nationals of India entered into a contract relating to sale of goods and licensing of a trademark, with an arbitration clause therein. When a dispute arose between them, KFC requested BP to appoint arbitrator. BP even after repeated requests from KFC did not appoint arbitrator. KFC requested the High Court of Delhi to appoint arbitrators. While appointing the arbitrator, the High Court observed that the arbitration agreement does not authorize the arbitral tribunal to decide on the issue of licensing. Arbitration was commenced and during the arbitral proceedings the tribunal ventured into the issue of licensing, to which KFC objected. a) Shall BP have any legal recourse if the tribunal accepts the objection raised by KFC, and if so, what? Explain.	[12.5x 2=25]	CO4

	b) What shall be legal implications of rejecting the objections raised by KFC? Explain.		
10.	<p>Death Deferred Corporation India Inc. (DDCI Inc.) and Free Labour Inc. (FL Inc.) were companies incorporated under the laws of India. IKL was carrying its operation and management from Indonesia. These two companies had entered into Service contracts which provided for dispute resolution in form of arbitration. The arbitration clause designated Indian law as substantive law and the seat of arbitration was in Delhi.</p> <p>Critically analyze the legal implications arising out such a situation.</p>	[25]	CO4