

Name:	
Enrolment No:	

UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
End Semester Examination, December 2019

Course: International Commercial Arbitration

Semester: I

Program: LLM Energy Law / International Economic Law /Business Law / Law and Technology 2019

Time: 03 hrs.

Course Code: CLCC 7005

Max. Marks: 100

Instructions:

- 1) Mention Enrolment No at the appropriate place in the question paper.
- 2) No student will leave the room until one hour from the commencement of examination.
- 3) All sections are compulsory

S. No.		Marks	CO
Q 1	What is the group of companies' doctrine?	2	CO1
Q 2	What is arbitration clause and submission agreement?	2	CO1
Q 3	What do you mean by Arbitrability?	2	CO1
Q 4	Explain the concept of <i>Depechage</i> .	2	CO1
Q 5	What is separability?	2	CO1
SECTION B			
Q 6	Discuss compensation measures under bilateral investment treaties.	5	CO2
Q 7	Discuss about Adhoc Arbitration and Institutional Arbitration and their relative advantages.	5	CO2
Q 8	Enumerate four international treaties/conventions on International Commercial Arbitration and their main features.	5	CO2
Q 9	Enumerate Defective Arbitration Clauses and their meanings.	5	CO2
SECTION-C			
Q 10	What does Mandatory Clause mean in an Arbitral Agreement? Discuss with an example of a case law.	10	CO3
Q 11	Discuss the ratio decided/clarified by an Indian court in the light of its judgement in the case of <i>Daiichi v Ranbaxy</i> .	10	CO3

SECTION-D

<p>Q12</p>	<p>On 2 February 2013, Hardy Exploration and Production (India) Inc. (“Hardy“) obtained an arbitration award (the “Award“) in excess of £70 million against the Union of India (“UoI“). The dispute arose from a production sharing contract dated 19 November 1996 (the “PSC“), and related to oil and gas exploration rights in Indian territorial waters.</p> <p>UoI challenged the Award by filing a set-aside application under Section 34 of the (Indian) Arbitration and Conciliation Act 1996 (the “Act“) before the Delhi High Court. Hardy resisted this application on the basis that the Indian courts did not have jurisdiction to decide the set-aside application as the <i>seat</i> of the arbitration was Kuala Lumpur, Malaysia. Article 33 of the PSC contained the arbitration agreement, and Article 33.12 provided that:</p> <p><i>“The venue of conciliation or arbitration proceedings pursuant to this Article unless the parties otherwise agree, shall be Kuala Lumpur...”</i></p> <p>UoI argued that Kuala Lumpur was merely the physical <i>venue</i> where the arbitration was conducted and the award was signed, and the application of Part I of the Act (which includes Section 34) was not excluded by the parties.</p> <p>The Delhi High Court found that since the Award was made and signed at Kuala Lumpur, and there was no indication of any dispute between the parties regarding the seat of the arbitration, it could be inferred that Kuala Lumpur was the seat. As a result, the Indian courts were found to have no jurisdiction under the Act. UoI appealed the decision before the Supreme Court.</p> <p style="text-align: center;">Discuss this case with reference to the concept of seat and venue of the arbitration.</p>	<p style="text-align: center;">25</p>	<p style="text-align: center;">CO4</p>
<p>Q13</p>	<p>The Appellants had entered into an agreement with the respondents whereby the respondents were required to supply and install computer-based system at one of the</p>		

appellant premises. The prevailing law of India governed the agreement but it contained an arbitration clause that stated that the English arbitration law shall govern any dispute that may arise in future and the venue shall be London. Thus, the clause in the agreement stated that settlement or adjudication of any dispute in relation to rights or obligations under the said agreement shall be governed by English arbitration law and the venue for the arbitration proceeding shall be London.

A dispute arose between the appellants and the respondents with respect to performance of agreement and the matter was referred to arbitration. The arbitration proceeding were held in England and two awards were passed in the proceeding. The Appellants thereafter filed application under section 34 of Arbitration Act 1996 for setting aside awards. The district court and the High Court of Chhattisgarh refused the setting aside of the awards and appellants filed an appeal against the said order in the Supreme court of India.

The counsel of the appellants relied on previously held judgments of Bulk trading and Venture Global and submitted that Part I of the Act is applicable to the arbitration proceeding that were held in London and the awards by virtue of S. 34 of part 1 could be set aside. The Appellants Counsels through their submissions tried to highlight a relation between the various provisions of the Act to conclude that Part I is applicable to International Commercial Arbitration that were not held in India.

BALCO V.KAISER Dispute

The dispute was with respect to the award passed in international Commercial Arbitration held outside India with the subject matter that is assets situated in India and the most importantly the agreement governed by Indian law but arbitration proceeding governed by English Arbitration Law.

These awards by virtue of Bulk trading and Venture Global judgments could not be enforced in India and Indian party sought interim relief of injunctions against such awards by making applications under section 9 and 34 of part I of the Act to the court. BALCO appealed to Supreme Court of India.

	Discuss the ratio of the judgment passed by the Supreme Court of India in the case relating to BALCO v KAISER Aluminium Technical Service Inc. and others.	25	CO4
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