

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Alternative Dispute Resolution
Semester-V (Batch: 2017-22)

End Semester Examination: October-2019

Date: 21st October, 2019

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

	Marks
<p>Q.1 The parties had entered into a contract of 'Production-Sharing' in the month of September 2018 for the extraction, development and production of hydrocarbons in a geographic block in India. Disputes arose between the parties as the Union of India allegedly relinquished the rights of 'SkySails Exploration and Production (India) Inc' to the geographic block pre-maturely. 'SkySails Exploration and Production (India) Inc' initiated arbitration proceedings against the Union of India for re-entry to the geographic block and payment of interest on its investment. The arbitral tribunal rendered its award in favour of 'SkySails Exploration and Production (India) Inc' in the month of August 2019. The award was signed and declared in the capital city Manila, Republic of the Philippines.</p> <p>The clauses related to applicable laws and arbitration under the Contract read as:</p> <p>"This Contract shall be governed and interpreted in accordance with the laws of India. Nothing in this Contract shall entitle the Contractor to exercise the rights, privileges and powers conferred upon by this Contract in a manner which will contravene the laws of India. Arbitration proceedings shall be conducted in accordance with the UNCITRAL Model Law on International Commercial Arbitration of 1985 except that in the event of any conflict between the rules and the provisions of this Article 33 (Correction of interpretation of award; additional award), the provisions of this Article 33 shall govern.</p> <p>The 'venue' of conciliation or arbitration proceedings pursuant to this Article, unless the parties otherwise agree, shall be Republic of the Philippines and shall be conducted in English language. In so far as practicable, the parties shall continue to implement the terms of this contract notwithstanding the initiation of arbitration proceedings and any pending claim or dispute."</p> <p>The Union of India approached the Delhi High Court for setting aside of the arbitral award under S.34 of the Arbitration and Conciliation Act 1996 (the Act). An application for setting aside an arbitral award can be filed under S.34 of Part I of the Act for arbitration proceedings seated in India.</p> <p>'SkySails Exploration and Production (India) Inc' opposed this application stating that the award was a "foreign" award as the 'seat' of arbitration was Manila, Republic of the Philippines.</p>	(10)

Since the place of making the award was Manila, Republic of the Philippines, S.34 of Part I of the Act would not apply. Decide.

- Q.2 The parties namely, Sundaram Clayton India Ltd. (SCIL) and Force Motors India Ltd. (FMIL) entered into a partnership deed on 31st July 2017 for running an Automobile Engineering & Manufacturing Unit. While the SCIL was entrusted with administration, the FMIL alleged that the SCIL had failed to make regular deposits of money in the Common Operating Bank Account (COBA) and had fraudulently siphoned off an amount of INR 100, 99,050. In a separate raid conducted by the Central Bureau of Investigation (CBI) on the premises of the SCIL's relative, an amount of INR 45, 00,000 was seized and alleged to have been given by the SCIL for business. (10)

The FMIL filed a civil suit seeking right of administration of the business. The SCIL sought reference of the dispute to arbitration under Section 8 of the Arbitration & Conciliation Act, 1996 ("A&C Act") based on valid arbitration clause in the said partnership deed.

The Court rejected the SCIL's application on the ground that the dispute involved allegations of 'fraud' and serious malpractice. Aggrieved by the decision, the SCIL preferred an appeal before the higher forum.

Now the question to decide is:

Whether the issue of 'fraud' and 'malpractice' can arbitrate in India?

OR

Recently in the year 2017, the Delhi High Court after relying on the decision of the Madhya Pradesh High Court in *Sasan Power Limited v. North American Coal Corporation (India) (P) Ltd* and *Atlas Exports Industries v. Kotak & Co* has ruled that there is no prohibition if two Indian parties opting for a foreign seat of arbitration, and such an arrangement would attract Part II of the Arbitration and Conciliation Act, 1996 ("Act"). Give your opinion on, whether two Indian parties may conduct arbitration with a foreign seat under English law / foreign law?

- Q.3 In general, 'jurisdiction' might be defined as 'the power of the tribunal to hear the case'. (10)
In international arbitration, where the term of 'competence' is often used synonymously with the notion of 'jurisdiction', the 'jurisdiction of a tribunal' is generally based on the consent of the disputing parties. However, in Investment Arbitration, "the term 'jurisdiction of the Centre' is used in the International Centre for Settlement of Investment Disputes (ICSID) Convention as a convenient expression to mean the limits within which the provisions of the Convention will apply and the facilities of the Centre will be available for conciliation and arbitration proceedings. (...)" Discuss the term 'jurisdiction' under the Convention of ICSID.

OR

Most Favoured Nation (MFN) clauses are usually 'general' in their wording and leave considerable scope to argue competing interpretations. Some expressly include or exclude dispute settlement in their scope. Most BITs are silent on whether MFN treatment includes only substantive rules for the protection of investments (for example, fair and equitable treatment or protection from expropriation) or whether MFN treatment extends to procedural protections, like dispute resolution. Explain the role, importance and interpretation of MFN clause in investment arbitration.

- Q.4 In the context of Bilateral Investment Treaty (BIT), a clause that obliges the 'host state' to observe specific undertakings towards its foreign investors is 'Umbrella Clause'. An Umbrella Clause (UC) protects investments by bringing obligations or commitments that the 'host state' entered into in connection with a foreign investment under the protective 'umbrella' of the BIT. Explain how the 'Umbrella Clause' construes, interprets and protects the interest of investor in the investment arbitration. (10)
- Q.5 Write note on following (any two): (2x5=10)
- (a) Stages of 'Mediation'
 - (b) Distinction between 'Mediation' and 'Lok-Adalat'
 - (c) Distinction between 'Mediation' and 'Conciliation'
