

THE INDEPENDENT EXAMINATION BOARD
GHANA SCHOOL OF LAW
SUPPLEMENTARY EXAMINATION
PROFESSIONAL LAW COURSE PART II EXAMINATION
ALTERNATIVE DISPUTE RESOLUTION
24 NOVEMBER, 2016

TIME ALLOWED: THREE (3) HOURS

10:00am – 1:00pm

INSTRUCTIONS TO CANDIDATES

1. Read the instructions very carefully before beginning your answers.
2. Answer any **FOUR** questions
3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.
4. Do not write or sign your name on the answer booklet. Only write your index number.
5. Adhere strictly to the instructions accompanying your Answer Booklet.

QUESTION ONE

1, Comet LLC of Uruguay on 24 July 2016 entered into a Power Purchase Agreement (PPA) with the Government of Ghana (GoG), acting by and through the Ministry of Mines and Energy, for the purchase of electric power. Within the PPA was an arbitration clause to submit all disputes between Comet and GoG to arbitration in London. Comet alleged a breach of the agreement and instituted arbitration proceedings against GoG in London. Meanwhile, the Attorney-General, representing GoG has since 8 September 2016 instituted an action at the High Court, Commercial Division, and filed a motion for injunction restraining Comet from proceeding with arbitration in London. In the present action at the Commercial Court GoG argues that the PAA is unconstitutional and void for non-compliance with article 181(5) of the 1992 Constitution. GoG further prays the court to declare that due to the unconstitutionality of the court, it was unlawful for an arbitral tribunal to purport to determine any rights and remedies under the PPA, that the

question of illegality of the contract must be determined by the court not the arbitral tribunal.

Article 181 of the Constitution provides:

"181. (1) Parliament may, by a resolution supported by the votes of a majority of all the members of Parliament authorise the Government to enter into an agreement for the granting of a loan out of any public fund or public account.

(2) An agreement entered into under clause (1) of this article shall be laid before Parliament and shall not come into operation unless it is approved by a resolution of Parliament.

(3) No loan shall be raised by the Government on behalf of itself or any other public institution or authority otherwise than by or under the authority of an Act of Parliament.

(4) An Act of Parliament enacted in accordance with clause (3) of this article shall provide –

(a) that the terms and conditions of a loan shall be laid before Parliament and shall not come into operation unless they have been approved by a resolution of Parliament; and

(b) that any moneys received in respect of that loan shall be paid into the Consolidated Fund and form part of that Fund or into some other public fund of Ghana either existing or created for the purposes of the loan.

(5) This article shall, with the necessary modifications by Parliament, apply to an international business or economic transaction to which the Government is a party as it applies to a loan."

You are the Commercial Court judge. Identify and resolve the issues arising.

[25 marks]

QUESTION TWO

2. Discuss the principles of interest-based negotiation with practical illustrations, if any. (Your answer should not be more than 5 pages),

[25 marks]

QUESTION THREE

3. Menzy Building and Construction Ltd entered into a building contract with Acacia Ltd to build 5,000 apartments on a 10,000 acre of land belonging to Acacia Ltd. Both companies had their headquarters in Accra with offices in Iceland too. In the agreement, the two parties inserted this clause:

"Any dispute arising as to time of completion of each phase of the construction shall first be submitted to the Barbri Mediation Center in Iceland for mediation. Should mediation fail, parties shall then submit the dispute to arbitration under the auspices of the Ghana Arbitration Centre"

A dispute has arisen between Menzy and Acacia. Mediation proceedings have begun at Barbri Mediation Centre. Unknown to Acacia and prior to the end of mediation, Menzy has initiated a separate action at the Commercial Court, Accra concerning the same matter. The mediator, Kinzi, has not been informed of the proceedings at the Commercial Court.

Advise the parties

[25 marks]

QUESTION FOUR

4. Discuss any five roles of a mediator.

[25 marks]

QUESTION FIVE

5. What are the essential similarities and differences between the following:

- Mediation and arbitration
- Litigation and arbitration
- Mediation and Principled Negotiation

[25 marks]

QUESTION SIX

6. Write short notes on the following:

- Med-Arb
- Rent a judge
- Settlement conference
- Neutral expert fact finding
- Settlement week

[25 marks]
