

Name:	 <b>UPES</b> UNIVERSITY WITH A PURPOSE
Enrolment No:	

**UNIVERSITY OF PETROLEUM AND ENERGY STUDIES**  
**End Semester Examination, May 2019**

**Course: International Arbitration**  
**Program: BBA, LL.B (Hons) Corporate Law**  
**Course Code: LLBL 152**

**Semester: X**  
**Time: 03 hrs.**  
**Max. Marks: 100**

**Instructions:** Attempt all questions. Two questions from **Section A** (each carrying 5 marks); Four **Questions** from **Section B** (each carrying 5 marks). **Two Questions from Section C** (carrying 10 marks). **Section D carries 50 marks.**

**SECTION A**

S. No.		Marks	CO
Q 1	Discuss Agreement to Arbitrate.	5	CO1
Q 2	Explain kinds of International Arbitrations.	5	CO1

**SECTION B**

Q 3	Discuss main Arbitral Institutions and explain their role in international arbitration.	5	CO2
Q 4	Interpret Arbitration Clause and Submission Agreement.	5	CO2
Q 5	Illustrate Types of Awards.	5	CO2
Q 6	Discuss Res judicata effect of the Award.	5	CO2

**SECTION-C**

Q 7	Critically analyze the role of Third Party to Arbitration Agreement.	10	CO3
Q 8	Analyze Defective Arbitration Clauses.	10	CO3

**SECTION-D**

Q 9	Parties: Claimant: Libyan American Oil Company (LIAMCO) (USA), Respondent: Government of the Libyan Arab Republic.  <b>FACTS</b>  On December 12, 1955, LIAMCO was granted under the Petroleum Law of Libya of April 1955 Concessions 16, 17 and 20. After some transfers LIAMCO continued to own 25.5%, the other participants in these Concessions being ESSO SIRTE (50%) and GRACEPETECO (24.5%). These Concessions were granted in the form of 'Deeds of Concession', representing a bilateral agreement between the Petroleum Commission and LIAMCO and approved by the Minister of Petroleum. All the concession agreements were in the form as prescribed by the Petroleum Law of 1955 in its second Schedule. Each Concession Agreement consisted of thirty clauses. Clause 28 contains		<b>CO4</b>
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the Arbitral Clause (quoted in the extract below); paragraph 7 provides for the rules of law to be applied.

On September 1, 1969, Colonel Khadafi took over from King Idriss and announced the formation of the Libyan Arab Republic. On September 1, 1973, the Libyan Revolutionary Command Council issued Law no. 66 nationalizing 51% of the concession rights of a number of companies amongst others LIAMCO. Article 2 of the said Nationalization Law provides:

'The State shall compensate people concerned for the property, rights and assets that have reverted to it under Article 1. Such compensation shall be assessed by a committee or committees which shall be formed by a decision from the Minister of Petroleum, in the following manner:

- (a) One of the Judges of the Courts of Appeal, being Chairman, to be nominated by the Minister of Justice;
- (b) A representative of the National Oil Corporation, being a member, to be nominated by the Minister of Petroleum;
- (c) A representative of the Ministry of Treasury, being a member, to be nominated by the Minister of Treasury.

'In carrying out this task, the committee may seek assistance of any employee or others whose assistance it considers necessary.'

On November 15, 1973, LIAMCO, by letter addressed to the Respondent, requested arbitration under Clause 28 of the Concession Deeds.

On February 11, 1974, the remaining 49% of LIAMCO was nationalized. After this second nationalization, LIAMCO pursued its arbitration by letter of July 2, 1974, to the Respondent. As the Libyan Government failed to appoint its arbitrator, LIAMCO requested the President of the International Court of Justice to name a single arbitrator to determine the dispute. On January 27, 1975, the President appointed Dr. Sobhi Mahmassani, Counsellor-at-Law in Beirut as Sole Arbitrator.

The arbitrator held a preliminary meeting in London on June 9, 1975. Only the Claimant appeared. No appearance was made by the Respondent. At the meeting the arbitrator, in accordance with Clause 28, decided *inter alia* that Geneva was to be the official seat of arbitration with the possibility to hold secondary meetings elsewhere and that the arbitrator 'in his procedure shall be guided as much as possible by the general principles contained in the Draft Convention on Arbitral Procedure elaborated by the International Law Commission of the United Nations in 1958'.

After production of statements and documents by the Claimant, the arbitrator held a second meeting in Geneva on November 15, 1976, at which again only the Claimant appeared.

1. Prepare a Legal Advice for the Government of the Libyan Arab Republic in the present situation.

2. Decide the dispute on behalf of the Arbitrators and provide the Legal Doctrines in support of your decision.

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**SECTION A**

S. No.	Question	Marks	CO
Q 1	Discuss the concept of Mediation and Conciliation	5	CO1
Q 2	Explain Advantages and Disadvantages of Institutional Arbitration-	5	CO1

**SECTION B**

Q 3	Discuss Arbitrations involving a State.	5	CO2
Q 4	Discuss the effect of Anti-trust and competitive law in arbitration.	5	CO2
Q 5	Discuss different Types of Awards.	5	CO2
Q 6	Illustrate Res judicata effect of the Award.	5	CO2

**SECTION-C**

Q 7	Differentiate between Lex arbitri and lex fori.	10	CO3
Q 8	Critically examine the limitations on Party Autonomy	10	CO3

**SECTION-D**

Q 9	<p><b>The Government of the State of Kuwait v. The American Independent Oil Company (AMINOIL), 1984</b></p> <p><b>Factual Background and Claims</b></p> <p>In 1948, the Sheikh of Kuwait granted to Aminoil, a US company, a 60-year concession for the exploration and exploitation of oil and gas in a designated territory in Kuwait. The price for the concession included a down payment plus a fixed royalty of US\$ 2.50 for every ton of oil recovered subject to a minimum annual royalty of</p>		<b>CO4</b>
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US\$ 625,000. The Concession Agreement contained a stabilization clause that prevented the Sheikh from unilaterally annulling or altering the terms of the Agreement. In 1954 Aminoil began commercial production and exportation of petroleum products.

Following the developments in the neighbouring Middle East countries, in 1961 Kuwait and Aminoil agreed to modify the Concession Agreement and supplement the Fixed-royalties principle with a 50/50 arrangement, according to which Aminoil had to share half of its profits with the Government. After the declaration of Kuwait's independence in early 1960-s, the Aminoil concession continued. However, in 1973 the final set of revisions to the Concession Agreement was agreed; they were designed to take account of changes in the global oil market and envisaged, among other things, an increase of the payments due from Aminoil, in compliance with OPEC-led agreements aimed at increasing the 'take' of the producer governments in oil business. The 1973 Draft Agreement between Kuwait and Aminoil was subject to ratification by the Kuwaiti parliament, but this never occurred. However, in December 1973 Kuwait's Minister of Finance and Aminoil signed a letter, in which the company agreed to make payments *as if* the 1973 Draft Agreement was effective.

In the arbitration, however, Aminoil questioned the validity and effect of the Draft Agreement and of the letter.

Continued OPEC-driven transfer of power away from oil companies to the producing governments led to the adoption of the 'Abu Dhabi formula'. Following the dramatic increase of oil prices in 1973, the OPEC took a decision to introduce the agreement reached by the producing governments in Abu Dhabi, which further increased the average government 'take' from operating oil companies. Kuwait and Aminoil failed to reach compromise on this issue and on 19 September 1977, by Decree Law No.124, Kuwait enacted that Aminoil's concession should be terminated; that Aminoil's assets in Kuwait should revert to the State; and that 'fair' compensation should be paid to Aminoil.

Subsequently, the parties concluded a separate Arbitration Agreement, whereby the disputes between the parties had to be resolved 'on the basis of law' by an *ad hoc* tribunal of three members. Both parties presented their claims to the Tribunal: The

	<p>Government’s main claims included approximately US\$ 140 million under the financial provision of the 1973 Draft Agreement, under the ‘Abu Dhabi formula’ and in respect of liabilities of the company assumed by the Government after the nationalization.</p> <p>Aminoil’s claimed US\$ 423 million paid under the 1973 Draft Agreement, as the agreement under which they had paid the money, was ineffective.</p> <p>They also claimed US\$ 2,587 million as lost profits calculated until the natural termination of the concession.</p> <p>Please answer the following:</p> <ol style="list-style-type: none"> <li>1. Government of Kuwait seeks your legal advice to deal with the case. Please discuss your advice in the light of the legal doctrines.</li> <li>2. Advice Aminoil to present counterclaim and compensation.</li> </ol>	<p style="text-align: center;"><b>25</b></p> <p style="text-align: center;"><b>25</b></p>	
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