



NATIONAL OPEN UNIVERSITY OF NIGERIA
PLOT 91, CADASTRAL ZONE, NNAMDI AZIKWE EXPRESS WAY,
JABI, ABUJA
FACULTY OF LAW
2021_1 EXAMINATION

COURSE CODE: PPL518

COURSE TITL: ALTERNATIVE DISPUTE RESOLUTION II

TIME ALLOWED: 3 HOURS

Instruction: ANSWER QUESTION 1 (ONE) AND ANY OTHER 3 (THREE) QUESTIONS. (QUESTION 1 (ONE) ATTRACTS 25 MARKS)

1. Tai Pe Pharmaceutical (TPP) a Chinese vaccine production agreed to sell 1,000,000 COVID-19 vaccines valued at 9 million USD to British Beverage Company (BBC) for the vaccination of all African staff operating from its West African and SADC subsidiary companies. TPP falsely claimed that the vaccine was tested exclusively on 200,000 black African adults between the age bracket of 25 and 65 years and showed 99% efficacy against all strains of the disease with no side effects. It was agreed that BBC would pay TPP 80% of the cost of the vaccines upon initial delivery of 700,000 vaccines and the balance upon delivery of the balance 300,000 vaccines. A few days before delivery, a whistle-blower in TPP leaked an authentic internal report showing that the vaccine had never been tested on humans but on 100 West African monkeys of which 99 died within 24 hours and one was unconscious for over 1 month before being euthanised. On seeing the report, BBC accused TPP of fraud and terminated the contract. In line with the arbitration clause, TPP challenged BBC's action before an arbitral panel in China and an award was given in their favour. Advise on the following:
 - a. TPP has applied to a High Court in Cote D'Ivoire seeking to enforce the award by attaching BBC's assets in Abidjan. However, neither of the parties is domiciled in Cote D'Ivoire. Also no part of the transaction or arbitration took place in or is connected in any way with Cote D'Ivoire. (7 marks)
 - a. BBC have been told that Article V(1)(e) can avail them in Abidjan if TPP are able to provide supporting documents. (9 marks)
 - b. The High Court of Abidjan does not wish to grant TPP's application because of TPP's fraudulent claims and apparent insensitivity to possible hazards of administering such a dangerous 'vaccine' on Africans. (9 marks)
2. Discuss three fundamental features of arbitration (15 marks)

3. Discuss the relevance of any three of the following cases to the development of ADR in Nigeria (15 marks)
 - a. *NNPC V Lutin Investment Ltd*
 - b. *CN Onuselogu Ent. Ltd V Afribank (Nig) Ltd*
 - c. *Ogunwale v. Syrian Arab Republic*
 - d. *Royal Exchange Assurance V Benthworth Finance (Nig) Ltd*

4. Advise on the most suitable arbitral institution to deal with a dispute in the following scenario giving reasons:
 - a. Benin Republic and Cote D'Ivoire have entered into agreement for the construction of a hydroelectric dam to provide electricity to both nations. Under the agreement, Cote D'Ivoire is to provide 70% of technical support and 30% of manpower for the project, while Benin Republic is to provide 30% of technical support and 70% of manpower. Cote D'Ivoire delayed in providing the needed technical support and recently informed Benin Republic that it had entered into a technical support agreement with China to provide its 70% share while Ghana pays 50% of the China's bill for providing the required support. Benin Republic disputes this claim noting that it is not party to China's agreement with Cote D'Ivoire. Both parties have been badly hit economically by the COVID pandemic and have been included in no-travel lists of major western nations preferred for international arbitration. (7.5 marks)
 - b. AstraZeneca (a British-Swedish company) entered into an agreement to provide the European Union with 40 million doses of the COVID-19 vaccine. The recently notified the EU that they could only provide them with 8 million within the first month but the EU has discovered that they have manufactured 20 million COVID-19 vaccines in their Ireland laboratories in preparation for delivery to the UK. Italy, Germany and France have over 40% aging population and are in urgent need of vaccines. The EU has therefore stopped Astra Zeneca from shipping out any vaccines out of its borders. Laying right of priority claims to all vaccines produced. The UK government has issued an international press statement accusing the EU of trying to penalise the UK for Brexit and wishes to declare a dispute with AstraZeneca as co-claimant. (7.5 marks)

5. 'Conceptual theories in arbitration would usually operate to determine what lex arbitri is ...' Discuss three of these theories. (15 marks)

6. Chief Ajasa and Chief Kuku have submitted a dispute before Prof. Justice as sole-arbitrator. On Prof. Justice's advice, they also engaged the services of Okpetu as

administrative assistant, paid for the use of a mini-conference room at Starbright Hotels over the course of proceedings and an executive double room for Prof. Justice to stay during the proceedings. Prof. Justice has written to the parties requesting an initial deposit of N15 million to cover the following:

- i. Cost of daily transportation for the sole arbitrator at N15,000.00 per day
- ii. Cost of diesel for the venue
- iii. Cost of renting a standby generator
- iv. Cost of cleaning the venue at N5,000 per day
- v. Cost of cleaning the sole arbitrator's quarters at N5,000 per day
- vi. 50% deposit of sole-arbitrator's fees
- vii. Administrative support (dedicated hotel admin staff) and computer services to be provided by Starlight hotel at N10,000 per day
- viii. Cost of procurement of two desktop computers, 1 laptop computer, 3 computer desks, 3 extension cables, two laser jet printers and 10 ink cartridges
- ix. Cost of engaging an administrative assistant and a secretary each at N10,000 per day
- x. N5 million supplementary deposit

Advise the parties on Prof. Justice's advice and demands.