



MUEO

MOI UNIVERSITY

OFFICE OF THE DEPUTY VICE CHANCELLOR
(ACADEMICS, RESEARCH, EXTENSION & STUDENT AFFAIRS)

UNIVERSITY EXAMINATIONS 2022/2023 ACADEMIC YEAR FOURTH YEAR FIRST SEMESTER SPECIAL/SUPPLEMENTARY EXAMINATION

FOR THE DEGREE OF BACHELOR OF LAWS

COURSE CODE:

FLB 408

COURSE TITLE:

COMMERCIAL ARBITRATION LAW

DATE: 15TH NOVEMBER, 2022

TIME: 2.00 P.M. – 5.00P.M

INSTRUCTION TO CANDIDATES

- ANSWER QUESTION ONE (1) AND ANY THREE (3) OTHERS
- ILLUSTRATE YOUR ANSWERS WITH RELEVANT DECIDED CASES AND STATUTORY PROVISIONS

THIS PAPER CONSISTS OF (3) PRINTED PAGES

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Question One

The promotion of arbitration in any jurisdiction is often predicated on the need to minimize court interventions in the arbitral process, so as to give effect to party autonomy. However, the Arbitration Act, 1995 drawing from the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration make specific provision for court interventions in facilitating the arbitral process in the face of the reluctance of a party to the arbitration process to perform their parts or impede the process.

Discuss the instances when court intervention is provided for under the Arbitration Act and relevant international instrument and give the rationale for each instance.

(25 Marks)**Question Two**

The provisions on the appointment, removal and replacement of arbitrators under the Arbitration Act, 1995 are considered to measure up to international best practice. Karim, a veteran arbitrator however thinks that the commencement of *ad hoc* arbitrations under the Arbitration Act, 1995 presents challenges to the claimant that they would not otherwise face in institutional arbitrations or in litigation.

Examine the appointment, removal and replacement of arbitrators under the Arbitration Act, and consider any possible reforms to the provisions on the commencement of *ad hoc* arbitrations in Kenya.

(15 Marks)**Question Three**

- a) Discuss the ethical standards that arbitrators are subject to and examine the steps that the Arbitration Act, 1995 has enacted to promote high ethical standards, justice and fair-play in arbitrations conducted in Kenya.

(9 Marks)

- b) The Arbitration Act permits a party to arbitral proceedings to be represented by a person of their choice. Consider how this provision for party autonomy may be balanced against the need to for professionals to facilitate have expeditious arbitral proceedings.

(6 Marks)**(15 Marks)**

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Question Four

The writing of an arbitral award is an important element in the enforcement of arbitral awards. Arbitral institutions are considered better placed in facilitating the rendering of valid and technically sound awards.

Discuss the measures that the Arbitration Act has enacted to ensure that arbitral awards rendered under it are valid and enforceable.

(15 Marks)

Question Five

Section 35 of the Arbitration Act provides for an aggrieved party to an arbitration process to apply for the setting aside of the arbitral award. Discuss the circumstances under which such an application may be more advisable than waiting to oppose an application for recognition and enforcement of the award under section 36 of the Arbitration Act, 1995.

(15 Marks)

Question Six

Section 36 of the Arbitration Act, 1995 provides for the recognition and enforcement of an arbitral award in Kenya. Discuss its provisions and consider how it relates to section 37 of the Arbitration Act in light of the New York Convention and the UNCITRAL Model Law on International Commercial Arbitration provisions on the subject.

(15 Marks)