

NLUJAA

NATIONAL LAW UNIVERSITY AND JUDICIAL ACADEMY, ASSAM

B.A.,LL.B.(Hons.): IV-Year, VIII-Semester (Academic Year: 2016-17)

Semester End Repeat Examination (August, 2017)

Subject Code: 8.3 Alternative Dispute Resolution System

Time: **3:00 Hrs.**

Total Marks: **100**

INSTRUCTIONS:

1. Read the questions carefully and answer.
 2. No clarification shall be sought on the question paper.
 3. Do not write anything on the question paper. It will be treated as malpractice.
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Answer any five questions from the following. All questions carry equal marks.

Answers should be precise, supported by the relevant provisions and appropriate decisions. If the answer to a particular question depends on additional facts or foundations not provided, candidates must describe how they are related. Credit will be given for the reasoning for the decision than the decision itself.

1. In a contract entered into between the Guwahati Metropolitan Development Authority (GMDA) and the Contractor for constructing the flyover (Bogibeel Bridge) at Brahmaputra River, there is an arbitration clause to refer all dispute arising out of the performance of the contract to the Sole Arbitrator. However there is no provision as to Escalation charge. The contractor claims apart from other claims, escalation charges to the tune of Rs. Five Crores. The advocate for GMDA did not oppose the same. The arbitration award Rs. Three Crores escalation cost. After the award is passed and handed over to the parties, the GMDA challenges the escalation cost awarded as exceeding of jurisdiction by the arbitration and asks the court to set aside the escalation cost which is separate from the other amounts awarded by the Arbitrator. Decide. In the light of Patel Engineering case decided by the Supreme Court, critically examine the power of the Arbitration Tribunal to rule on its own jurisdiction and the power of the Court to adjudicate under section 34 of the Arbitration and Conciliation Act, 1996.
2. “*Success of an arbitration proceeding depends upon the underling arbitration clause.*” Explain with the help of relevant case laws the essential ingredients of an Arbitration Agreement. Also draft a model arbitration clause highlighting the essentials of an arbitration agreement to resolve the dispute through arbitration.
3. Role of *Lok Adalat* is making inexpensive, efficacious and speedy justice accessible to the public. The Government provides free legal aid to the needy. Comment. Discuss the Concept and object of “*Permanent Lok Adalat*” with the help of legal provisions provided on the Legal Service Authorities Act, 1987.
4. An alcoholic seeking legal assistance in gaining the return of his children who are in the custody of a state agency. He tells how some “crazy” caseworker accused him of

physically abusing the children. The alcoholic also blames the grandmother for both the way which she raised the alcoholic and her current interference in family life. According to the client, other people are responsible for all of the pressures which cause the alcoholic to drink. Some have tried to influence the alcoholic to stop drinking, but somehow that is not possible for any length of time. The alcoholic approaches to you, as a working senior lawyer; to get the children returned. Give legal advice to that person and how to conduct the counselling in this above case. Describe the central goal of interviewing and counseling.

5. Critically examine the decision of the Supreme Court in *BALCO v. Kaiser Aluminum* has hauled Indian arbitration jurisprudence out of the Dark Ages”.
6. Write a short notes on the following:
 - (a) Patent illegality
 - (b) Ad-hoc Arbitration and Institutional Arbitration
