

UNIVERSITY OF COLOMBO, SRI LANKA

FACULTY OF LAW

MASTER OF LAWS EXAMINATION – 2017 (REPEAT)

INTERNATIONAL COMMERCIAL ARBITRATION LAW

(Three Hours)

*Total number of questions: 04*

**Answer THREE questions, including Question 1.**

(Candidates will be penalized for illegible handwriting.)

1. Rithee fashions is a globally renowned Indian brand, specializing in upmarket casual clothing for women. It enters into a franchise agreement with Aloka Pvt. Ltd., a Sri Lankan company engaged in the manufacture and sale of handloom textiles. According to the terms of the agreement, Aloka undertook to manufacture garments according to the specifications stipulated by Rithee, using raw materials and designs supplied by Rithee, and pay the franchise fee, in return for being allowed to retail the garments under the Rithee trademark. Rithee also stipulated conditions pertaining to the size and location of the retail outlet, including the facilities to be offered to customers. When Aloka failed to pay the franchise fee for a consecutive period of 5 months, alleging poor sales, Rithee's marketing manager paid a visit to Aloka's sales outlet. There she observed that the Rithee label was being used on garments that were made using Sri Lankan handlooms, and that some of the designs were not from Rithee. Furthermore, the store was unclean and badly maintained. Rithee terminated the franchise agreement alleging violation of its terms. In order to recover the losses due to non-payment of franchise fees, Rithee took the matter to arbitration, relying on the arbitration clause in the contract between the parties, which stated, *inter alia*, that

“Any dispute arising out of this contract shall be referred to arbitration in New Delhi. The applicable law will be UK law, and the arbitration should ideally be concluded within 18 months.”

Due to the prevalent heat wave in New Delhi, the arbitrator appointed by Rithee refused to go there, and the arbitration was conducted in Mumbai instead. The Chairman of the panel, who was Indian, kept referring to Indian Law most of the time.

This delayed the proceedings. The award was given after 24 months in favour of Rithee. Rithee applied to the competent court in Sri Lanka to enforce the award.

In light of the above facts, discuss, using suitable examples, the enforceability of the award in Sri Lanka, as well as the grounds that could be relied on by Aloka in preventing the award from being enforced.

2. Though arbitration as a means of dispute resolution in the area of commercial law appears to be a relatively new phenomenon, its roots can be traced back to historical times, both in Sri Lanka as well as in other parts of the world. Using suitable examples, analyse the evolution of arbitration from being an alternative method of dispute resolution to one of the most effective methods of dispute resolution in the modern commercial world.
3. Discuss, using suitable examples, the provisions in the Arbitration Act No. 11 of 1995 regarding interim measures that could be taken by application to the courts during an arbitration proceeding, and the impact such measures have on the effectiveness of the arbitration proceedings.
4. In an arbitration between Diloshi Pvt. Ltd., and Kalum Pvt. Ltd., the lawyer for the claimant Diloshi told the management of Kalum that he would find a very good arbitrator as the arbitrator nominated by Kalum, since Kalum did not know of any experienced arbitrators. While the arbitration was ongoing, the chairman of Kalum found out that the said arbitrator was in fact a relative of the Chief Financial Officer (CFO) of Diloshi, and that he also held shares in Diloshi's subsidiary, Dilka Pvt. Ltd. With reference to the rules relating to the selection and functions of arbitrators as contained in the Sri Lankan law, assess the options available to Kalum Pvt. Ltd.

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