

GROUP 8- PRE CLASS
NIGERIAN LAW SCHOOL
COUNCIL OF LEGAL EDUCATION.
Professional Ethics and Skills - Week 14

Lesson Plan/Task for Friday 29th August, 2025

WEEK 14: (I) ARBITRATION PRACTICE
(II) ARBITRATION SIMULATION (MOCK ARBITRATION)

CONTENTS

1. Arbitrable matters, arbitration clause and agreement
2. Arbitration proceedings, challenge and enforcement of award;
3. Termination of arbitral proceedings;

OUTCOMES

At the end of this lesson, students would be able to:

1. Explain and discuss arbitrable and non-arbitrable matters; the principles and the laws/rules governing arbitration in Nigeria;
2. Describe arbitration proceedings and explain how to challenge and enforce an arbitration award;
3. Draft an arbitration clause;

Pre-Class Activity – Study the Arbitration and Mediation Act 2023.

TASK

Chief Jumbo Ofili met his old business partner High Chief Gregory Kingston onboard Air Peace flight 721 from Lagos to Abuja on the 20th of October, 2024. High chief

Gregory Kingston is the Chief Executive Officer of Kingston Energy Limited a major player in the downstream sector of Nigeria's oil industry and one of the few off takers of refined petroleum products, especially diesel (AGO) and Petrol (PMS) from the Nigerian National Petroleum Company (NNPC) and the Dangote Petroleum Refinery. Chief Jumbo Ofili is now the Managing Director of Jumbo Logistics and Transport Company Limited and has agreed to play a major part in the trucking of the products of Kingston Energy Limited from the Dangote petroleum products gantry in Lekki, Lagos to the north-eastern part of the country.

You have been briefed to draft the agreement between the parties. Answer the following questions.

1. Assuming the parties in their instruction opted for arbitration. Is it applicable to a breach of the contract in the scenario above? List matters that cannot be subject of arbitration.

Answer

Section 1(5) of the Arbitration and Mediation Act 2023 limits arbitration to disputes that are commercial in nature. Nigerian courts have consistently held that matters involving public interest or statutory duties cannot be privatized through arbitration.

These include:

Criminal Offence

Constitutional Interpretation

Taxation and Revenue Matters

Wills and Probate

Insolvency

Why These Matters Are Excluded

- They involve public rights, not just private interests.
- Require judicial oversight or enforcement by state institutions.
- Arbitration lacks the coercive powers and constitutional authority to resolve them.

2. Parties having resolved that the option for dispute resolution in the arrangement is arbitration, what options are available for drafting the agreement for reference of the dispute to arbitration?

Answer

Options for Drafting Arbitration Agreements

1. Arbitration Clause in the Main Contract

- This is the most common and proactive method.
- The clause is embedded in the original contract between the parties.
- It states that any future disputes arising from the contract will be resolved by arbitration.

2. Submission Agreement (Post-Dispute Arbitration Agreement)

- Used when a dispute has already arisen and parties agree to resolve it via arbitration.
- It's a standalone agreement, not part of the original contract.

3. Reference by Court Order (Court-Annexed Arbitration)

- Under Section 5 of the Arbitration and Mediation Act 2023, courts may refer parties to arbitration if there's a valid arbitration agreement.
- Parties may also consent to arbitration during litigation, and the court stays proceedings.

3. Advise the parties on their instruction not to include an arbitration clause in the agreement have reached an oral agreement on arbitration.

Answer

If the parties have deliberately chosen not to include an arbitration clause in their written agreement but have reached an oral agreement to arbitrate, they should be aware of the legal risks and limitations of relying solely on oral consensus.

- Oral agreements to arbitrate are not legally enforceable under Nigerian arbitration law.

- Courts and arbitral institutions will likely refuse to recognize or enforce an oral arbitration agreement.
- Any attempt to commence arbitration based on oral consent may be challenged and dismissed.

4. Comment on the propriety of an arbitration agreement by means of an electronic mail which is signed electronically by parties.

Answer

An arbitration agreement formed via electronic mail and signed electronically is legally valid and enforceable in Nigeria, provided it meets the requirements of consent, clarity, and authentication. This reflects the evolving nature of contract law in the digital age and is supported by both statutory provisions and judicial reasoning.

Section 3 of Arbitration and Mediation Act 2023 recognizes arbitration agreements made in writing, including those formed through electronic communication.

5. What should a standard arbitration agreement/ clause contain? Draft the arbitration clause for the parties in the scenario above.

Answer

A well-drafted arbitration agreement or clause is the backbone of any effective dispute resolution strategy. In Nigeria, it must comply with the Arbitration and Mediation Act 2023, and should be clear, enforceable, and tailored to the nature of the contract.

DRAFT

Arbitration Clause

In the event of any dispute, controversy, or claim arising out of or relating to this tenancy agreement, including but not limited to its interpretation, performance, breach, or termination, the parties agree to refer such dispute to arbitration.

The arbitration shall be conducted under the rules of the Lagos Court of Arbitration (LCA), or any other institution mutually agreed upon by the parties. The seat of arbitration shall be Lagos, Nigeria, and the venue shall be determined by the arbitrator.

The tribunal shall consist of a single arbitrator jointly appointed by the parties. Where the parties fail to agree on the appointment within 14 days of notice of dispute, the appointing authority shall be the Lagos Court of Arbitration.

The language of the arbitration shall be English, and the governing law shall be the laws of the Federal Republic of Nigeria.

The arbitration proceedings and any award shall be confidential, and the award shall be final and binding on both parties.

6. Briefly discuss the principle in *Scott v Avery*. How does an *Atlantic Shipping Clause* affect an arbitration clause?

Answer

Scott v. Avery Clause: This is where an arbitration agreement is framed in such a manner as to prevent any right to court proceedings until an arbitral award is first made.

Atlantic Shipping Clause: This is where an arbitration agreement contains a clause that a claim shall be deemed to be waived and absolutely barred if an arbitrator is not appointed within a specific time. *Atlantic Shipping & Trading Co. Ltd V Louis Dreyfus & Co. Ltd*; Section 5 ACA

7. Arbitration is similar to litigation in many respects. List their similarities and differences.

Answer

Arbitration and litigation are both formal methods of dispute resolution that involve a neutral third party, but they differ significantly in their process, cost, and finality. Both methods are designed to resolve disputes by applying legal principles to the facts of a case.

The similarities between arbitration and litigation are as follows;

1. **Dispute Resolution:** Both are processes for resolving legal disputes between two or more parties.
2. **Third-Party Decision-Maker:** Both rely on a neutral third party, an arbitrator in arbitration and a judge in litigation to hear evidence and arguments.
3. **Legal Principles:** Both processes apply relevant laws and legal principles to the facts of the case to reach a decision.
4. **Formal Process:** Both involve a formal hearing where parties present evidence, question witnesses, and make arguments, often with legal representation.
5. **Binding Outcome:** Both outcomes are legally binding. An arbitration award can be enforced by a court, similar to a court judgment.

The differences are;

1. **Litigation:** Takes place in a public court of law before a judge. The process is formal and follows strict procedural rules, including rules of evidence and discovery.
2. **Arbitration:** A private and often more informal process. A neutral third party, called an arbitrator, is appointed to hear the case. The parties have more flexibility in setting the procedural rules.

2. Litigation: The decision is made by a judge. Judges are appointed by the state, and their expertise may not be specific to the industry or subject matter of the dispute.

Arbitration: The parties have the ability to choose their arbitrator(s). They can select someone with specific expertise in the relevant field, such as a retired judge, a lawyer specializing in the area, or an industry expert.

2. **Litigation:** Court proceedings, filings, and judgments are generally a matter of public record. This can be a disadvantage for parties who wish to keep the details of their dispute private.

Arbitration: The entire process, from the hearings to the final decision (called an "award"), is confidential. This is a significant advantage for businesses or individuals who want to protect sensitive information or avoid negative publicity.

4. Litigation: Can be very expensive due to extensive pre-trial discovery, motions, and a lengthy trial process. It is also often a time consuming process, with cases taking months or even years to reach a resolution.

Arbitration: Generally more cost-effective and faster than litigation. The parties and the arbitrator can agree on an expedited schedule, and the discovery process is more limited. However, parties may need to pay for the arbitrator's fees, which can be costly in complex cases.

5. Litigation: Court judgments can be appealed to a higher court. This provides an opportunity to correct errors but can also prolong the dispute and add to costs.

Arbitration: The arbitrator's decision is final and binding. The grounds for appeal are very limited and are usually restricted to procedural misconduct or a lack of due process, rather than an error in the arbitrator's application of the law.

6. Litigation: Parties can be compelled to participate in a court proceeding by law. Court judgments are enforceable through a court's authority.

Arbitration: Participation is voluntary unless an arbitration clause is included in a contract that requires it. While arbitration awards are generally binding, they may need to be confirmed by a court to be enforced, particularly if the opposing party is not cooperative.

8. Advise Chief Jumbo on his instruction to you to commence an action on breach of contract at the High Court of Lagos, in spite of the arbitration.

Answer

Advise Chief Jumbo on his instruction to you to commence action on breach of contract at the High Court of Lagos, in spite of the arbitration. That's.

Chief Jumbo must be advised that where parties have validly agreed to arbitration as their preferred mode of dispute resolution, the courts will generally respect and uphold the arbitration agreement.

Under the Arbitration and Mediation Act 2023 (Nigeria) and established case law, once parties choose arbitration, they are bound by it. Section 5 of the Act provides that if an action is brought before a court in respect of a matter that is subject to an arbitration agreement, the court is obliged to stay proceedings and refer the parties to arbitration.

: Commencing an Action in Court Despite Arbitration : If Chief Jumbo proceeds to commence an action at the High Court of Lagos, Kingston Energy Limited can challenge the suit by raising a preliminary objection and requesting a stay of proceedings pending arbitration.

The court will usually grant this stay, thereby frustrating the litigation attempt and possibly wasting time and resources.

9. What step will you take as counsel to Kingston Energy Limited in response to the Writ of summons in the light of the arbitration agreement by the parties.

Answer

Step as Counsel to Kingston Energy Limited Where a writ of summons has been served despite the arbitration agreement between Kingston Energy Limited and Jumbo Logistics, the proper course under Nigerian law is to apply for a stay of proceedings. Statutory Basis: Section 5(1) of the Arbitration and Mediation Act 2023 provides that: “A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if any party so requests not later than when submitting his first statement on the substance of the dispute, stay the proceedings and refer the parties to arbitration.”

Conditions to be satisfied:

1. There must be a valid arbitration agreement.
2. The dispute must fall within the scope of the arbitration agreement.
3. The applicant must be ready and willing to submit the dispute to arbitration.
4. The application must be made before filing any substantive defence.

Judicial Authority:

In M.V. Lupex v. N.O.C. & S. Ltd (2003) 15 NWLR (Pt. 844) 469, the Supreme Court held that arbitration clauses voluntarily agreed upon by parties must be respected. Similarly, in Statoil Nig. Ltd v. NNPC (2013) 14 NWLR (Pt. 1373) 1, the court affirmed that proceedings must be stayed where a valid arbitration clause exists and the party seeking the stay is ready and willing to arbitrate.

As counsel to Kingston Energy Limited, the proper step is to promptly file a Motion on Notice praying the court to stay proceedings and refer the parties to arbitration in line with section 5 of the Arbitration and Mediation Act 2023.

10. Will your answer be the same, if the contract between the parties had been declared void or one of the parties has been dissolved or wound up?

NO.

11. Discuss briefly whether an arbitration clause is severable from the main agreement.

Answer

Yes, an arbitration clause is severable from the main agreement—and this principle is widely recognized in Nigerian law and international arbitration practice. It's known as the doctrine of separability or severability, and it ensures that the arbitration clause remains valid and enforceable even if the main contract is challenged, terminated, or found to be void.

Under the Arbitration and Mediation Act 2023 and supported by Nigerian case law, the arbitration clause is treated as a distinct agreement within the contract. This means:

- If the main contract is void, illegal, or terminated, the arbitration clause still survives.
- Parties can still resolve disputes through arbitration, even if the rest of the contract is no longer enforceable.

This principle protects the integrity of the arbitration process and prevents parties from escaping arbitration simply by disputing the validity of the main contract.

12. Assuming the matter is referred to arbitration, does the tribunal have the power to determine its jurisdiction or *Kompetenz*, if it is challenged by one of the parties?

Answer

Yes, once a matter is referred to arbitration, the arbitral tribunal has the power to determine its own jurisdiction. This principle is known as kompetenz-kompetenz,

and it is firmly established under Nigerian law—specifically in the Arbitration and Mediation Act 2023.

13. Highlight briefly the options for appointing arbitrators and the implications of failure of parties to nominate.

Answer

1. Party Agreement

- Parties may agree in their arbitration clause or submission agreement on:
 - The number of arbitrators (usually one or three)
 - The method of appointment
 - The appointing authority (e.g., Lagos Court of Arbitration, CIArb)

2. Default Procedure (if no agreement)

- Sole Arbitrator: Parties must jointly appoint one within 30 days of request.
- Three Arbitrators:

- Each party appoints one arbitrator.
- The two appointed arbitrators then select the third (presiding) arbitrator.

3. Appointment by Designated Authority or Court

- If parties fail to appoint within the stipulated time, or the two arbitrators cannot agree on the third:
 - The appointing authority designated in the agreement steps in.
 - If none is designated, any recognized arbitral institution in Nigeria or the court may appoint.

Implications of Failure to Nominate

- Delay in Proceedings: Arbitration cannot commence until the tribunal is properly constituted.
- Court Intervention: A party may apply to the court or arbitral institution to appoint the arbitrator(s).
- Finality of Appointment: Once the court appoints an arbitrator, the decision is final and not subject to appeal

- Loss of Control: Parties lose the opportunity to influence the composition of the tribunal, which may affect neutrality or expertise.

14. Highlight briefly the stages of arbitration, from commencement to conclusion.

1. Notice of Arbitration

- The process begins when one party sends a formal Notice of Arbitration to the other.
- This notice outlines the dispute, the arbitration agreement, and the relief sought.

2. Appointment of Arbitrator(s)

- Parties appoint one or more arbitrators as agreed.
- If they fail to agree, an appointing authority (e.g., Lagos Court of Arbitration or the court) steps in.

3. Preliminary Meeting

- The tribunal and parties meet to set procedural rules, timelines, and logistics.
- Issues like jurisdiction, mode of hearing, and document exchange are discussed.

4. Exchange of Pleadings

- Parties submit:
 - Statement of Claim (by claimant)
 - Statement of Defence (by respondent)
 - Possible counterclaims or replies

5. Hearing

- Can be oral or based on documents.
- Witnesses may be examined and cross-examined.
- Parties present evidence and arguments.

6. Closing Submissions

- Final written or oral arguments summarizing each party's case.

- Tribunal may request post-hearing briefs.

7. Deliberation and Award

- Tribunal deliberates and issues a final award.

- The award is binding and enforceable under the Arbitration and Mediation Act 2023.

8. Enforcement or Challenge

- The winning party may apply to enforce the award in court.

- The losing party may challenge it on limited grounds (e.g., lack of jurisdiction, misconduct).

15. Where an award is made in favour of Kingston Energy Limited highlight the procedure for enforcing same. Can an award be enforced in another country?

Answer

Yes, an arbitral award can be enforced in another country, provided certain legal conditions are met. This is one of the major advantages of arbitration over litigation—international enforceability.

The key instrument enabling cross-border enforcement is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)—commonly known as the New York Convention.

16. Assuming Jumbo Logistics and Transport Company wishes to set aside the award, advise it on the procedure and the possible grounds on which it can be set aside.

Answer

GROUNDS FOR CHALLENGING ARBITRAL AWARD

•SAVOIA LTD V. SONUBI

1. Where the arbitrator fails to comply with the terms of the arbitration agreement;

2. Where the arbitrator makes an award which on grounds of public policy ought not to be enforced;
3. Where the arbitrator has been bribed or is corrupt
4. Where the arbitrator makes a mistake as to the scope of the authority conferred by the Arbitration agreement
5. Where the arbitrator fails to decide on all the matters which were referred to him;
6. Where the arbitrator has breached the rules of natural justice;
7. Where the arbitrator has failed to act fairly towards both parties.

PROCEDURE

1. An application to set aside an arbitration award must be commenced by filing an originating motion, along with the necessary accompanying documents, at either the Federal High Court or the High Court of a State.
2. Once the filing is completed, the originating motion must be served on the other parties to the application.
3. The court will fix the matter for hearing within 30 days of the service of the motion.
4. Upon the hearing of the application, the court may:
 - a. Dismiss the application and uphold the award
 - b. Set aside the award, in whole or in part, on any of the grounds alleged by the applicant
 - c. Remit the award to the tribunal for reconsideration
 - d. Make any other remedy it seems appropriate in accordance with section 55(5) of the AMA.

17. Highlight how arbitral proceedings may be terminated.

Answer

Under section 49 of the Arbitration and Mediation Act 2023, arbitral proceedings may be terminated in the following ways:

1. By the final award of the arbitral tribunal (section 49(1)).

2. By withdrawal of the claim by the claimant, unless the respondent objects and the tribunal considers that the respondent has a legitimate interest in obtaining a final settlement (section 49(3)(a)).
3. By agreement of the parties to terminate the proceedings (section 49(3)(b)).
4. By an order of the tribunal if it finds that continuation of the proceedings has become unnecessary or impossible (section 49(3)(c))