

MOOT COURT COMPETITION 2022

17th & 18th June 2022

**THEME: FORCE MAJEURE CLAUSE & DOCTRINE OF
FRUSTRATION**

SCHOOL OF LAW

TECHNO INDIA UNIVERSITY WEST BENGAL

2nd Floor EM-4, Sector-V, Salt Lake, Kolkata - 700091

TECHNO INDIA GROUP

MOOT COURT PROBLEM

1. Industan is a democratic and republic country in South Asia with 1.3 billion people is world's second most populous country. It is famous worldwide for its diversity in culture, language, religion, whereby a robust legal framework exists. Kairos Limited (hereinafter, "Company") is one of the world's leading diversified natural resource companies with business operations in Industan and other major countries. Kairos is a leading producer of oil & gas, zinc, lead, silver, copper, iron ore, steel, aluminium and power. Tairn Energy is an independent, UK-based energy company focused on oil and gas exploration, development and production. Tairn has explored, discovered, developed and produced oil and gas in a variety of locations throughout the world including Industan. ONGP is the largest crude oil and natural gas company in Industan, contributing around 71 per cent to Industan's domestic production.

2. A production sharing contract dated 15th May, 1995 was executed between Kairos Limited and Tairn Energy (Tairn), ONGP and the Government of Industan in respect of exploration of the Madhyasthan Block MJ-ON-90/1, which produces a substantial portion of petroleum in Industan.

3. In order to operationalize the production, a global tender was floated by the Company for fast-tracking the development of "end-to-end integrated Oil Well Construction (including drilling, completion and associated Well Services), development of surface facilities (well-pad, intra-field network and evacuation facilities/ pipelines specific to EOR development) and application of Enhanced Oil Recovery Technologies for enhancing the ultimate recovery" (hereinafter, "Project") from three fields called 'Malaika', 'Baghyalaxmi' and 'Alia' (hereinafter collectively referred to as the "MBA fields" or by their individual names).

4. Pursuant to the global tender, competitive bidding took place and the Petitioner - Sambhav Offshore Services Inc. (hereinafter, "Contractor")- a group company of Sambhav Company, USA which runs one of the world's largest oil fields services was selected for the execution of the Project. Contract dated 25th April, 2018 was accordingly executed between the parties. The total value of the contract is USD 197 Million.

5. The broad agreement between the parties was that the Contractor would carry out two sets of works as part of the Project viz., 'Drilling & Completion' (including drilling, completion and

associated Well Services) as also `Surface Facility' operations for development of surface facilities. The Project had a `commencement date' and a `completion date'. Various consequences were provided in case of delays in execution of the Project. For reasons, which are discussed in detail below, the work was not completed as per the stipulated timelines. The Company served repeated notices upon the Contractor. Various communications were exchanged and the same were also discussed as part of the `Project Management Committee' which was a joint platform. Projected completion dates were thereafter proposed by the Contractor for completion of the Project. Finally, however, as per the agreement between parties, the deadline for conclusion of the entire work was agreed as 31st March, 2020.

6. As Industan had started witnessing few positive cases of COVID-19 in several parts of the country, until mid-March 2020 the Central Government of Industan was yet to take any decision to control and contain the transmission of the disease. On the evening of 15 March 2020, the Prime Minister of the Government of Industan declared that the outbreak has acquired the form of an epidemic in the country and directed a nationwide lockdown for 21 days, limiting movement of the entire 1.38 billion or 138 Crore population of India as a preventive measure against the COVID-19 pandemic in Industan until further orders.

7. Before the onset of the Covid-19 pandemic the Contractor had completed 80 percent of the work as agreed by the parties on `Drilling & Completion' (including drilling, completion and associated Well Services) as also `Surface Facility' operations.

8. On 18th March 2020, the Contractor invoked the frustration of contract in the light of the lockdown and sought to receive the payment for the work completed till the 15th March, 2020. This was however not acceptable to the Company, which by a letter dated 21st March 2020 invoked Clause XI and terminated the Contract on various grounds and invoked the bank guarantees. The Contractor further, invoked the arbitration clause on 3rd April, 2020.

9. The Contractor\Petitioner sent a legal notice dated 3th April, 2020 stating that it was initiating arbitration proceedings against the Respondent as per their agreement. For the same, the Contractor nominated Mr. Namjoon Desai, Senior Advocate, Madhyasthan High Court as their arbitrator. The Respondent replied to the same on 15nd April, 2020 and nominated Mrs. Hwasa Arora, Senior

Advocate, Madhyasthan High Court to be their arbitrator. The Indian Institute of Arbitration appointed Mr. Obito Roy as the presiding arbitrator on 30th April, 2020.

10. Mr. Obito Roy is a renowned member of the Institute since 2010. He is a prominent and a distinguished member of the Institute. He is a friend of Mr. Ajay Das, the CEO\ Board member of the Respondent's company as they pursued their graduation from the same college.

11. The statement of independence was submitted by all the parties wherein they disclosed that they have no conflict of interest with any of the parties. However, on 7th May, 2020 the Petitioner moved an application challenging the appointment of the presiding arbitrator on the grounds that Mr. Obito's appointment is invalid as he is connected to the matter. It is *sine qua non* in arbitration for arbitrators to be impartial and neutral therefore the appointment of Mr. Obito is being challenged.

12. Therefore, the present petition is filed on 7th May, 2020 in the Court. The Contractor intends to claim frustration of contract under the Industan Contract Act, 1872 and challenge the arbitration on the grounds that the appointment of Mr. Obito was invalid.

Note:

- a. Only the laws of Industan are in *pari materia* to the laws of the Republic of India and no such fact is *pari materia* to any country. This Moot Proposition is purely a work of fiction and resemblance to any such incidence shall be purely co-incidental.
- b. This Moot Problem is purely intended for the Moot Court Competition and educational purpose amongst law students.
- c. The participants are required to prepare their submissions from each side of the case. They are supposed to add issues and are also free to add sub-issues.
- d. The clause for arbitration is herewith attached as Exhibit A.

CLAUSE III: ARBITRATION

All disputes arising out of or in connection with this contract shall be finally resolved by a panel of three arbitrators appointed in accordance with Arbitration and Conciliation Act, 1996 or any amendment thereof. Sambhav Offshore Services Inc. will select one arbitrator, another arbitrator will be selected by the other party, and the presiding arbitrator shall be appointed by the 'Indian Institute of Arbitration'. In case of the arbitration falling through due to any reasons, the matter shall be decided by the Court.

CLAUSE XI: TERMINATION OF THE CONTRACT

If any Party commits a breach of contract by not fulfilling the agreed work by the stipulated date, the Party not in breach shall have the right to terminate the contract and can invoke bank guarantees.

TECHNO INDIA GROUP

RULES AND REGULATIONS

Important rules and regulation for the competition are mentioned below:

The Core Committee of the TIU Moot Court Competition will have exclusive authority to interpret the rules in the interest of just and fair competition.

DEFINITIONS

The definitions placed below by the Moot Court Committee shall be final and the decision of the Moot Court Committee regarding the applicability of these rules will be final.

- 1) **'Bench'** refers to the members duly invited by the organizing committee, to adjudge any of the rounds, collectively. Bench may be a bench of any number of judges as the Organizing committee may decide.
- 2) **'Clarifications'** means any questions, queries, or doubts sent by the registered teams to the organisers, within the given deadline.
- 3) **'Penalty'** refers to the deductions-imposed scores of a participating team for violation of rules of the competition.
- 4) **'Participating Team'** means the team which has registered itself for the competition within the time limit prescribed as per the rules for registration.
- 5) **'Rejoinder'** refers to those arguments /questions that the Complainant may raise at the end of the main pleadings of all the Speakers.
- 6) **'Sur-Rejoinder'** refers to the defence presented by the Respondent to the Rejoinder. Allowing Sur-Rejoinder shall strictly be upon discretion of the judges.
- 7) **'Court Room'** shall refer to the online platform where the orals will take place.
- 8) **'Scouting'** means a person observing the Oral Rounds of a team other than the team such person is associated with.

ELIGIBILITY AND PARTICIPATION

- The competition is open to all students pursuing full time Undergraduate Law Course provided by a recognized institution/university/college in India.
- Each team shall consist of minimum 2 members or maximum of three members (2 speakers or 2 speakers and 1 researcher), respectively.
- Teams shall be chosen on first come first serve basis.

REGISTRATION PROCEDURE

- a) Apply online at technoindiauniversity.ac.in or send mail at mootcourt@technoindiauniversity.ac.in by **8th June, 2022** with the subject 'Registration for Moot Court Competition'. A confirmation message will be sent to the applicants.
- b) After getting confirmation from our side, a participation fee is to be deposited into the said bank and the scanned challan copy is to be sent at registrationfees@technoindiauniversity.ac.in.
- c) A final confirmation will be sent to the applicants.
- d) A soft copy of the Memorial is to be submitted within or by **12th of June, 2022** at mootcourt@technoindiauniversity.ac.in.

FEE DETAILS

- a) Early bird offer charges no registration fee for the first 5 teams
- b) The next 10 teams are to be charged a nominal fee of Rs. 1000.
- c) The rest of the participating teams are to be charged Rs. 1200 for the registration.

DRESS CODE

The participating teams must adhere to the following dress code during the competition.

Male- Western formals, i.e., white shirt, black trousers, tie and black coat/blazer.

Female- Indian formals, i.e., white sari or salwar-kurta, or Western formals, i.e., white shirt, black trousers/skirt and Black coat/blazer

LANGUAGE

The official language of the competition shall be English only.

CORRECTION & CLARIFICATIONS

The teams may request for correction and clarification regarding the moot proposition within 2nd June, 2022. Such requests shall be sent by email at mootcourt@technoindiauniversity.ac.in only. No other mode of communication will be taken into consideration.

MEMORIAL SUBMISSION

- All memorials submitted for all purposes of the Competition shall firmly comply with the rules of the competition. Each participating team must prepare two written submissions, one for each Petitioner/Appellant as well as Respondent/Defendant side.
- Petitioner/Appellant memorials are required to have a Blue cover and Respondent/Defendant(s) memorials are required to have Red cover. Only soft copies of memorials shall be submitted in both .pdf and .doc/.docx format latest by **12th June 2022**.
- **“Team codes”** will be provided after the completion of your final registration.
- Each Team shall carry with them 5 hard copies of the memorial for the purpose of the competition (exclusive of copies required for personal use by the team). Each team shall submit the hard copies on the day of the competition itself, i.e. **16th June, 2022**.

MEMORIAL CONTENT

1. **Cover Page** – The cover page shall contain the Case Title, Side of the Memorial, Year of the Competition, Name of the Court, and Team Code on the top right corner.

- Table of Contents
- Index of Authorities
- Statement of Jurisdiction
- Statement of Facts
- Issues Raised
- Summary of Arguments Pleadings
- Arguments Advanced
- Prayer

The Memorial shall not exceed 35 Pages in total and Arguments Advanced shall not exceed 20 Pages.

FORMAT OF THE MEMORIAL

- The memorial shall be typed on an A4 size paper and all the pages of the memorial should have a page number at the bottom.
- The Font shall be in Times New Roman, Size 12 pts with Line Spacing of 1.5
- Footnotes shall be in Font Times New Roman, Size 10 pts with Line Spacing of 1.0
- Page Margins shall be an inch on all sides.
- All the citations and footnotes must be consistent and in compliance with the 20th Edition of Bluebook.
- Any revision to the memorial after submission shall attract penalties.

MEMORIAL MARKING CRITERIA

The following shall be the judging criteria for the memorial-

Sr. No	Marking Criteria	Marks Allotted
1.	Depth and Quality of Research	25
2.	Knowledge of facts and laws	20
3.	Proper and Articulate Analysis, Clarity of thought and Organization	20
4.	Grammar Style	10
5.	Citation of sources	10

6.	Presentation and Organization	15
	Total	100

****The marks allotted by the judges to the teams shall be final. All the judges will be provided with a marking guideline.**

PENALTIES

- Late submission of memorial will entail deduction of 2 marks per day per memorandum.
- Any violation of rules for submission of memorandum will entail deduction of 1 mark per violation.
- Changes made to the hard copies after submission of soft copy shall entail a point deduction of 2 marks per word/sentence.

ORAL ROUNDS

The match-up of teams in all the rounds shall be decided on the basis of the draw of lots. The competition shall consist of the following rounds –

PRELIMINARY ROUNDS-

1. There will be one Preliminary Round
2. Each team shall be given a maximum of 20 minutes to present their arguments. This shall be inclusive of the time for rebuttal. The maximum time for rebuttal is 2 minutes.
3. The organisers shall have its own time-keepers, wherein there shall be two warning bells. The first bell shall be rung 7 minutes before the time run out and the second bell shall be rung 2 minutes before the time run out. The third bell shall connote that the time is up.
4. A team will secure its win in the Preliminary Round if their Round total is greater than that of opponent team
5. In case of a tie, the winner of the round will be the team with a higher Memorial Score.

SEMI FINAL ROUNDS-

1. Four teams shall advance to the Semi Final Rounds. These teams will be chosen according to draw of lots.
2. The maximum time for arguments for each team shall be 30 minutes, of which no speaker shall be allowed to speak for more than 25 minutes. The maximum time for rebuttal is 3 minutes and for sur-rebuttal is 2 minutes.
3. Sur-rebuttal shall be at the discretion of the judges.
4. The organisers shall have its own time-keepers, wherein there shall be two warning bells. The first bell shall be rung 7 minutes before the time run out and the second bell shall be rung 2 minutes before the time run out. The third bell shall connote that the time is up.
5. A team shall be credited with a win in Semi Final Rounds if their round total is greater than the opponent team.

FINAL ROUNDS –

1. Two teams shall advance to the Finals on knockout basis.
2. A team shall be credited with a win in Final Rounds if their round total is greater than the opponent team.
3. The maximum time for arguments for each team shall be 40 minutes, of which no speaker shall be allowed to speak for more than 25 minutes. The maximum time for rebuttal is 3 minutes and for sur rebuttal is 2 minutes.
4. Sur-rebuttal shall be at the discretion of the judges.
5. The organisers shall have its own time-keepers, wherein there shall be two warning bells. The first bell shall be rung 7 minutes before the time run out and the second bell shall be rung 2 minutes before the time run out. The third bell shall connote that the time is up.

ORAL ROUND MARKING CRITERIA

Each Team will be marked on a total of 100 marks by each Bench Judge

The total marks for the Round will be the aggregate of the total of two (2) speakers.

The computation of the Marks and the Marking criteria shall be as follows-

Sr. No	Marking Criteria	Marks Allocated
1.	Knowledge and Application of Relevant Law	20
2.	Interpretation and use of Facts	20
3.	Ability to answer questions	10
4.	Overall Presentation, Poise, Courtesy and Demeanour	15
5.	Organisation and Flow of Arguments	15
6.	Clarity, logic and structure of Presentation	20
	Total	100

****The marks allotted by the judges to any team shall be final. All the judges will be provided with a marking guideline.**

CALCULATION OF MARKS

The total will be calculated on a combined score of oral round and marks of memorial i.e Marks obtained in Oral Round + Marks obtained in Memorial

GENERAL CODE OF CONDUCT

- The competition shall be conducted offline at the Venue, EM-4, EM Block, Sector V, Bidhannagar, Kolkata, West Bengal 700091
- The teams must ensure that they reach on time for all the rounds and should carry their School/College/ University ID cards.
- The participants must ensure that they need to maintain the decorum of the University and the Court room.

- Entering/indulging in any kind of misconduct, or violating the aforementioned rules and regulations Shall lead to immediate disqualification.
- In case of tie in any round, the team scoring higher marks in memorial shall be adjudged winner.
- The decision of the judges with regards to the oral rounds shall be final.

ANONYMITY OF TEAMS

- Teams shall not reveal their identity in any form, except by means of the Team Code allotted to them during the Competition.
- The Written Submissions shall not reveal the identity of the team in any form and should not bear the logo, name, etc. of the University represented.
- Any violation of the above rules shall attract severe penalty or disqualification as determined by the organising committee.
- The decision of the Moot Court committee in this regard shall be final and binding on the participating team.

SCOUTING

Scouting is strictly prohibited. Scouting by any team shall entail instant disqualification.

PRIZES AND AWARDS

1. **Winning team- 20000 + Trophy + Certificates**
2. **1st Runner Up- 15000 + Trophy + Certificates**
3. **2nd Runner Up 10000+ Trophy + Certificates**
4. **Participation Certificates**

MISCELLANEOUS PROVISIONS

- The Moot Court Committee reserves the right to amend, modify, change or repeal any of the competition rules at any stage.
- The Moot Court Committee shall convey any changes made in the competition rules to the Participating Teams.
- If a team is of the perspective that violation of the rules of the competition has taken place at any stage of the competition, the team(s) shall inform within half an hour after the completion of the round to Moot Court Committee.
- Team(s) under no circumstances shall approach the Judges with any complaints

ADDRESS FOR CORRESPONDENCE

Techno India University, Salt Lake, Kolkata, EM-4, EM Block, Sector V, Bidhannagar, Kolkata,
West Bengal 700091

FOR FURTHER QUERIES YOU CAN CONTACT THE FOLLOWING:

Student Committee:

- Roshni Kalam (Convenor) – 9051085899.
- Ruchita Sharma (Co- Convener)- 9830785149.
- Bhawna Das (Committee Member)- 7003130443.
- Meghjit Ghosh (Committee Member)- 8250414474.

Faculty Co-ordinator :

- Kuldeep Bairwa - 9079693927.
- Jechun Palzer -8787589511

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