

CENTRAL UNIVERSITY COLLEGE



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FACULTY OF LAW

LAW 302

LAW OF NATURAL RESOURCES II

TIME ALLOWED: 2 HOURS 15 MINUTES

LEVEL 400

END-OF- FIRST SEMESTER EXAMINATIONS: 2016/2017

STUDENT ID No.....

INSTRUCTIONS

There are a total of five (5) questions. Candidates are to answer three (3) questions only.

Question One (1) is compulsory and must be answered by all students.

Answer Sheets will be provided. Each answer must begin on a fresh page.

Any extra answer sheet should be properly tied to the original answer sheet.

Marks will be awarded for good presentation, clarity in legal reasoning and proper use of legal authorities.

Please write legibly. Leave empty lines between paragraphs

DO NOT TURN OVER THIS PAGE UNTIL YOU HAVE BEEN TOLD TO DO SO BY THE INVIGILATOR.

Examiner: Martin Kpebu & Yaw Opong

Q.1 In September 2016 Deku & Appiah Petroleum Ltd, (DAP) applied to the Minister for Energy for a licence to explore and exploit oil and gas in Ogyakrom's oilfields. Prior to DAP's application, there had been two other applicants whose applications had been held in abeyance because of changes in the legal regime on award of licences. DAP does not appear to offer any better terms than the other two applicants.

However, the Minister by herself went ahead and commenced negotiations with DAP in the course of which the electronic media reported the negotiations as part of their news. Undeterred, the Minister granted DAP the licence. One of the terms of the licence was that DAP must deposit a bank guarantee of USD 200 million for decommissioning expenses. DAP is unhappy about the requirement for decommissioning expenses and has indicated its intention to challenge the legality of that term.

Citizens Alert (CA), a civil society organization dedicated to ensuring due process in the award of petroleum licences, is unhappy about the negotiations and when they contacted the Minister, she simply shrugged and stated that she has a discretion on the award of petroleum licences, which discretion she has exercised and is not bound to give any explanation for her decision.

CA are displeased with the Minister's reaction, CA has come to you as lawyer specializing in upstream Oil and Gas law, for a legal opinion. The laws of Ogyakrom are the same as the laws of Ghana.

With the aid of appropriate legal authorities write out your legal opinion ensuring that all the relevant legal issues raised by the above scenario are addressed.

[40 marks]

Q.2 The President of Victorialand, presented a budget to his country's Parliament in February 2017 through the Finance Minister. As part of the budget, he proposed to spend GH¢ 200 million on roads in the Westland Region of Victorialand, which is close to one of the country's oilfields. He also intended to grant loans totalling GH¢ 200 million to the inhabitants of Westlands on grounds that the fisher folk have lost their livelihood as a result of the oil and gas exploration and production in the region.

Some of the Parliamentarians from the opposition political party, Coalition for Democratic Renewal (CDR) have vowed to challenge the proposal for loans on grounds that the President's proposal is meant to pay party loyalists for their continued support. They have also raised issues with the government's failure to draw up a long-term development plan for the use of the petroleum revenue.

The Ranking Member of the CDR on the Finance Committee of Parliament, Hon. Princess Amadu has engaged you as an expert in Oil and Gas Law to provide her with a legal opinion on the CDR's intended action.

With the aid of appropriate statutory provisions and case law, write a legal opinion that identifies and addresses all the relevant legal issues.

[30 marks]

- Q.3** Ghana is not a signatory to the much-touted Energy Charter Treaty of 1994, which has a membership of 72 countries as well the regional body ECOWAS, which has signed up to it. Some commentators have postulated that ‘Ghana does not need to become a signatory to the treaty because Ghanaian law has provisions similar to the provisions of the treaty’.

Critically assess this statement in the light of Ghanaian law on Energy and Natural Resources and the Energy Charter Treaty of 1994.

[30 Marks]

- Q.4.** Discuss four (4) of the reasons usually offered by International Oil Companies for the extraction of natural resources as a ground for the choice of international arbitration for the resolution of disputes relating to the extraction of natural resources. Indicate whether you agree that such reasons are sufficient for the choice of international arbitration, for the resolution of such disputes.

[30 Marks]

- Q.5** “An international commercial arbitration transaction draws its life from the transaction whose dispute-resolution it deals with... It is therefore wrong to conceive of it as separate and independent from the transaction that generated the dispute it is required to resolve..”

To what extent do you agree with the above state in view of the concept of separability of arbitration agreements.?

[30 Marks]

- Q.6.** “...We live in a country where women are dying because the road from their villages to a health facility is not done, and you say that(the natural resources) God has blessed us with should be left for generations to come while that woman dies today because she can't go to the hospital....”

Ex-President John Dramani Mahama

Critically analyse the above statement in the light of the proposal by the Resource Curse theorists that revenue from natural resources ought to be saved in financial instruments abroad for future generations.

[30 marks]

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