

**JUS5852 Fall 2019**

A Norwegian buyer and a Russian seller negotiate the prospective sale of a piece of equipment to be designed according to the buyer's specifications.

The negotiations are initiated by the buyer's parent company. After the buyer's parent company and the seller have exchanged information about the commercial terms of the prospective contract, one of the buyer's subsidiaries participates in the negotiations to provide the technical specifications of the equipment.

During one of the telephone conversations with the buyer's subsidiary, the seller had asked whether the buyer would be willing to accept an arbitration clause in the contract, according to which arbitration is to take place in Moscow. The subsidiary answered that it would ask the parent company, but that in principle it could not see any obstacles to that. There was no follow up of this matter.

The negotiations advance and the seller expects that the contract will soon be formalized. To ensure a quick performance, the seller starts purchasing some of the material necessary for the production of the equipment.

Due to unexpected developments in the market, the buyer loses interest in the equipment and the contract is never formalized. The seller affirms that the buyer had in fact committed itself to buying the equipment, and requests reimbursement of the damages that it suffered as a consequence of the buyer's breach of its de facto contractual obligations.

The seller initiates arbitration in Moscow against the parent company on the basis of an oral arbitration agreement. The buyer objects to the jurisdiction of the arbitral tribunal, because there is no arbitration agreement. Under Russian law, an arbitration agreement must be in writing. Even if there was a binding oral arbitration agreement, it would not have entered into between the seller and the buyer's parent company, because the subsidiary did not have the power to bind the parent company.

Which law governs the form of the arbitration agreement?

Which law governs the ability of the subsidiary to bind the parent company?

The arbitral tribunal finds that it has jurisdiction, and the seller obtains an award ordering the parent company to pay a certain amount. The seller seeks enforcement of the award in Norway.

Which defences does the buyer have against enforcement of the award?

**1****Fill in your answer here**

Maximum marks: 0