

THE INDEPENDENT EXAMINATION COMMITTEE

GENERAL LEGAL COUNCIL

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PROFESSIONAL LAW COURSE

FINAL EXAMINATION 2017/2018 ACADEMIC YEAR

DATE: WEDNESDAY, 20 JUNE 2018
SUBJECT: ALTERNATIVE DISPUTE RESOLUTION [ADR]
TIME ALLOWED: THREE (3) HOURS 10:00am – 1:00pm

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions **very carefully** before beginning your answers.
2. Answer **QUESTION ONE (1) AND QUESTION TWO (2) WHICH ARE COMPULSORY AND ANY TWO (2) other questions. Marks will only be awarded for answers to the two compulsory questions and any other two questions answered. Marks will not be awarded where a candidate answers more than two non-compulsory questions.**
3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.
4. **Do not** write or sign your name on the Answer Booklet. **Only write your index number.**
5. Adhere strictly to the instructions on the front cover of your Answer Booklet.

THIS QUESTION PAPER MUST NOT BE REMOVED FROM THE EXAMINATION HALL

QUESTION ONE

The Apam Rural Bank is a small community bank which has been in the banking business for over 25 years. Over the years, the Bank has established a healthy business relationship with one of their major customers, the Apam Fishermen Co-operative Society (“Co-operative Society”), lending money to fishermen and women within Apam and its environs through the Cooperative Society during the lean season. This is to enable them to settle school fees, medical bills and other emergency expenditures. The Co-operative Society has been diligent in arranging for prompt repayment of all outstanding loans

immediately after the bumper harvest even though they have complained about the high interest rate and unexplained bank charges. There are over 600 fisher folk who are registered members of the Co-operative Society. However, for the past two (2) years, Chinese trawlers have made clandestine nightly incursions into Apam waters and using unorthodox means to fish. All attempts by the fisher folk to drive away the Chinese have proved futile. Two fishermen were severely injured during a scuffle with the Chinese. All reports to the local police, marine police and a Petition to the Minister of Fisheries have received little attention. The Co-operative Society which signed the loan agreement has been unable to service the loan for three (3) years. The Apam Rural Bank has been warned by the Bank of Ghana to correct its capital position or its licence would be revoked. The Bank has filed an action against the Co-operative Society before the High Court at Winneba, Central Region for recovery of the outstanding debt of GH¢545,780.34. By their Statement of Defence, the Co-operative Society has admitted the principal sum of GH¢302,000.00 and denied that the total outstanding balance is GH¢545,780.34. The Co-operative Society further claims that the interest charges are incorrect and that some unauthorised and unexplained amounts have been debited to their account. The Co-operative Society is proposing to pay GH¢302, 000.00 with an immediate deposit of GH¢202,000.00 and the rest by 6 instalment payments within a period of 6 months. The Court has referred the matter to ADR giving the Neutral one (1) week to resolve the matter and to report back to the Court with a settlement agreement. The ADR process could not be completed during the week as the parties were unable to agree on the issue of interest and unauthorised charges, while the bank did not object to the proposed payment schedule with respect to the GH¢302,000.00. Both parties have agreed to meet the Neutral in a week's time to discuss outstanding issues, with the Bank committing to consider waiving a percentage of the interest and bank charges by the next session.

- a) **As the Neutral appointed by the court, what ADR process would you recommend to the parties for resolution of their dispute? Discuss.**
- b) **State three (3) advantages of the ADR process you have recommended. Give reasons for the choice. (3 marks for each advantage).**

[30 Marks]

QUESTION TWO

On 1st June 2017, the Arbitration Award delivered by the sole Arbitrator in the matter of an Arbitration of a dispute between Woyanco Steel Works Ltd. vrs Simple Aluminium Products was as follows:

1. Woyanco Steel Works Ltd (“Woyanco Ltd.”) filed this action against Simple Aluminium Products for recovery of possession of all that parcel of land measuring 2 acres and situate at Tema New Town, damages for trespass and costs. The composite plan indicates that the 2 acres being claimed by Woyanco falls within the 6.2 acres being claimed by Simple Aluminium Products.
2. Both parties produced Title Deeds in support of their claims of ownership to the land in dispute. Simple Aluminium Products submitted a Deed of Conveyance stamped as AC 2341/06 registered at the Lands Registry, Accra as No. 8674, dated 12th December 2006 and made between the late Adam Kwartei Quarcoo and Simple Aluminium Products in respect of all that piece and parcel of land measuring 6.23 acres and situated at Tema New Town which was purchased by Simple Aluminium Products for a sum of GHC200,000.00. Adam Kwartei Quarcoo died intestate on 15th August 2010.
3. Woyanco Ltd. submitted an unstamped and unregistered Deed of Conveyance made between the Administrators of the Estate of Adam Kwartei Quarcoo and Woyanco Ltd. dated 23rd December 2016 in respect of all that piece and parcel of land situated at Tema New Town and measuring 2 acres which was conveyed to Woyanco Ltd. at a purchase price of GH C600,000.00 as part of the residue of properties which formed part of the deceased’s Estate.
4. An application for interim injunction filed by Woyanco Ltd. against Simple Aluminium was granted in part, restraining Simple Aluminium Products from constructing their warehouse on the portion of land measuring 2 acres and shown edged red on the site plan of Woyanco Ltd. (same attached).
5. After examining the documents of both parties together with their pleadings and statements, I find that the action filed by Woyanco Ltd. has no merit. The registered and stamped Deed of Conveyance made in favour of Simple Aluminium Products was dated on 12th December 2006, ten (10) years before the purported unregistered Deed of Conveyance was made in favour of Woyanco Ltd. In addition, no evidence was adduced during the arbitration proceedings to demonstrate that the deceased’s parcel of land at Tema New Town formed part of the residue of his Estate under intestacy.

6. The action filed by Woyanco Ltd. against Simple Aluminium Products is hereby dismissed.
7. Costs of GHC35,000.00 is awarded against Woyanco Ltd.

DATED AT TEMA THIS 20th day of February 2018.

Signed: _____

ARBITRATOR

As soon as the Award was delivered, the Lawyer for Woyanco Ltd. informed the Arbitrator of his client's dissatisfaction with the terms of the Award and indicated their intention not to comply with the terms of the Award. The Lawyer made it clear that his clients intended to file an Appeal to the Court against the Award. By 5pm on 20th day of February 2018, the Lawyer for Woyanco had served the Arbitrator and the Lawyer for Simple Aluminium Products, a Notice of Intention to Appeal against the Arbitration Award. Six (6) weeks has elapsed and there has been no action from Woyanco or its Lawyers. Simple Aluminium Products have consulted your firm seeking legal advice on how to enforce the Arbitration Award.

- a) Advise Simple Aluminium Products on what their rights are under the ADR Act. [6 Marks]
- b) Discuss the legal implications of Woyanco's threat to file an Appeal against the Arbitration Award. [8 Marks]
- c) If in your opinion Simple Aluminium Products are entitled to enforce the Arbitration, draft the appropriate process for enforcement of the Arbitration Award indicating the appropriate forum? [16 Marks]

[Total 30 Marks]

QUESTION THREE

The primary ADR processes are Negotiation, Mediation and Arbitration. However, aside from these primary ADR processes, there are other ADR processes currently in use which are referred to as Hybrid ADR processes.

- (i) Define a hybrid ADR Process. [3 Marks]
- (ii) Identify five hybrid ADR processes. [5 Marks]
- (iii) Describe the different processes used in each of the identified hybrid ADR processes explaining how they are used; indicating what role the Neutral is

expected to play in each of the identified hybrid processes and the advantage of using the identified ADR process. [12 Marks]

[10 Marks) +2 Marks for the role to be played by the neutral]

QUESTION FOUR

Who is a Mediator? [4 Marks]

What are the various stages of the mediation process from commencement to closure? **Discuss.** [16 Marks]

[Total 20 Marks]

QUESTION FIVE

Identify and describe 4 features in Arbitration which are distinguishable from Mediation explaining how they are distinguishable from each other.

[20 Marks]

QUESTION SIX

Frederic Eisemann used the term “pathological” to describe arbitration clauses drafted in such a way that they may lead to disputes over the interpretation of the arbitration agreement, may result in the failure of the arbitral clause or may result in the unenforceability of an award. Effective drafting of arbitration clauses is therefore necessary to alleviate or mitigate the effects of pathological arbitration clauses.

Against this backdrop, comment on the arbitration clauses below:

a. In the case of a dispute, the parties undertake to submit to arbitration but in case of litigation, the tribunal. [5 Marks]

b. In the event of an unresolved dispute, the matter will be referred to the International Chamber of Commerce and the UNCITRAL rules shall apply.

[5 Marks]

c. Any dispute or claim arising out of this agreement shall be resolved by Mr. Kwaku Forjour of the Ghana Arbitration Centre. [5 Marks]

d. Any dispute or claim arising out of this agreement shall be submitted to the Ghana Arbitration Centre. The parties shall select the Arbitrator from the list provided by the Centre. The Arbitrator to be selected from the list shall be an English-speaking Italian, with a law degree and be familiar with American Construction contracts. [5 Marks]

[Total 20 Marks]

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