

THE BOARD OF LEGAL EDUCATION
GHANA SCHOOL OF LAW

PROFESSIONAL LAW PART II EXAMINATION 2014/2015

THURSDAY 25TH JUNE 2015

ALTERNATIVE DISPUTE RESOLUTION

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), which is compulsory, and THREE other questions
 3. Credit will be given to eligible handwriting, clarity of expression and orderly presentation of material.
 4. Do not write your name on the answer book. Write only seat or index number.
 5. Adhere strictly to the instructions on the front cover of your answer book. Non-compliance with any of the instruction may result in the rejection and cancellation of your answer paper.
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QUESTION ONE

In the Memorandum to Ghana's Alternative Dispute Resolution Act 2010, (Act 798) the Attorney-General states:

"The object of this Bill is to bring the law governing arbitration into harmony with international conventions, rules and practices in arbitration,....provide the legal and institutional framework that will facilitate and encourage the settlement of disputes through alternative dispute resolution procedures;... It is expected that when this Bill comes into force it will help ease congestion in the courts by reducing the number of cases that go to court and that it will further create a congenial environment for investors."

Do you think the Act in its present state will achieve the dream envisaged to create a congenial environment for investors to use Accra as the hub for International Arbitration in West Africa?

[28 MARKS]

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QUESTION TWO

"When parties are represented by Counsels who are both astute negotiators, they have no need for a Mediator".

Evaluate this statement in the light of the role and functions of a mediator.
[24 MARKS]

QUESTION THREE

The neutral functions first as a mediator/conciliator, helping the parties arrive at a mutually acceptable outcome. If the mediation/conciliation fails, the same neutral then serves as an arbitrator, issuing a final and binding decision". Can this process be classified as a dispute resolution mechanism under the ADR Act 2010, (Act 798)?
[24 MARKS]

QUESTION FOUR

Ethics regulate the morality of professions all over the world and without its strict adherence almost all professions would crumble for lack of integrity. Are arbitrators an exception?

[24 MARKS]

QUESTION FIVE

Party Autonomy is a no compromise concept in Arbitration. To what extent has the ADR Act 2010, (Act 798) given recognition to this concept?

[24 MARKS]

QUESTION SIX

The popularity of mediation has grown tremendously in the last 25 years and statistics boast of phenomenal success in creating settlements. Nevertheless, mediation lacks some of the principal protections afforded by the adversarial model of justice. Discuss.

[24 MARKS]

QUESTION SEVEN

- a. Your law firm has been asked by Papaye Foods, a large food processing company, to write a dispute resolution clause for its form contracts with about 50 poultry farmers providing chicken for Papaye Food's frozen Kentucky fried chicken. Disputes between Papaye Foods and its chicken suppliers are frequent, growing out of such matters as the quality of the chicken and the appropriate price for them. These disputes have led to substantial turnover in suppliers, interruption in chicken supplies, and temporary curtailment in production of spiced fried chicken. Still, there has been no litigation arising out of these disputes, since the farmers lack the resources to sue.

What dispute resolution clause will you recommend and why?

- b. In a small village called Golgotha, a dispute arose between two neighbours, Opanyin Nanasei and Chief Kwabena Bonne. According to Chief Kwabena Bonne, Patapaa, the 20 year old son of Opanyin Nanasei had defiled his 13 year old daughter, Amanda. Chief Kwabena Bonne submitted this dispute to the Odikro of the village who summoned Opanyin Nanasei to the palace to resolve the case through customary arbitration. Opanyin Nanasei appeared before the Odikro but refused to pay the demanded token for the arbitration to commence. Opanyin Nanasei upon arrival at the Palace with his son humbly told the Odikro:

"Nana Odikro, this Chief Kwabena Bonne here is fond of fabricating stories against my good son. Respectfully, I refuse to be part of this proceeding. If Chief Kwabena Bonne has a case, let him report my son to the Police authorities"

With this Opanyin Nanasei stormed out of the palace. The Odikro proceeded to find Patapaa "guilty" of defilement and fined him two sheep and three drinks.

What is the position of the ADR Act (Act 798) on the scenario above?

- c. In 2009, Commandant Ltd entered into a construction contract with Housing Estates Ltd to build 5,000 houses on 10,000 acres of land belonging to Housing Estates. In the contract was this clause.

"Any dispute arising out of this contract shall be submitted to arbitration under the auspices of 'Unwind Arbitration Center' in France, Paris."

In 2010, a dispute arose between the two companies regarding completion of the first phase of building. Commandant has filed a suit at the Commercial Court, Accra arguing that the dispute in question is beyond the jurisdiction of any arbitrator and it is only the court that has jurisdiction in this matter.

Advise the parties.

[24 MARKS]