

**THE INDEPENDENT EXAMINATION BOARD**  
**GHANA SCHOOL OF LAW**  
**PROFESSIONAL LAW PART II FINAL EXAMINATION JUNE, 2016**  
**ALTERNATIVE DISPUTE RESOLUTION**  
**THURSDAY, 9 JUNE 2016**

TIME ALLOWED: THREE (3) HOURS

10:00am – 1:00pm

INSTRUCTIONS TO CANDIDATES:

1. Read the instructions very carefully before beginning your answers.
2. Answer any four 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 accompanying your Answer Booklets.

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**QUESTION ONE**

*"An ADR neutral must avert his mind to all ethical issues arising out of the ADR process and address them effectively."*

Identify and discuss five ethical issues under Act 798

[25 marks]

**QUESTION TWO**

The Alternative Dispute Resolution Act, 2010 places too much power in the hands of the judiciary thereby undermining the concept of party autonomy. Discuss.

[25 marks]

**QUESTION THREE**

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Korle Bu Hospital has recently instituted a mandatory arbitration procedure for all disputes between the hospital and its patients. Each patient, before being admitted to the hospital, or receiving outpatient treatment, is required to sign the following agreement printed in capitals:

**"I HEREBY AGREE THAT ALL DISPUTES BETWEEN THE HOSPITAL OR ANY DOCTOR PROVIDING SERVICES IN THE HOSPITAL, AND THE PATIENT THAT CANNOT BE OTHERWISE RESOLVE MUST BE SUBMITTED TO FINAL AND BINDING ARBITRATION. I EXPRESSLY ACKNOWLEDGE THAT BY SIGNING THIS AGREEMENT I WAIVE ALL RIGHT TO TRIAL OF ANY DISPUTE COVERED BY THIS AGREEMENT."**

- a. Under the Alternative Dispute Act, 2010, Act 798 would this agreement be enforceable against a patient who is injured but conscious after a vehicle accident is brought to the hospital's emergency room, signs the agreement, and then sues the hospital and a medical doctor employed by the hospital for medical negligence?
- b. If the patient sues in court, has the hospital got any recourse to insisting that the matter proceed to arbitration and if so how?
- c. Would it affect your answer if the agreement provided that the arbitration would be conducted by a tribunal made up of three medical doctors from Korle Bu Hospital?

[25 marks]

#### QUESTION FOUR

The National Party and the Action Party are the two leading parties in the Republic of Gaana. During recent Presidential and Parliamentary elections, each party fielded a candidate for the Asempa constituency. After polling had closed and the returning officer had collated the results, the returning officer declared Kofi of the Action Party elected and same was certified by the Electoral Commission and announced on the national media. Following a petition for recount by Kwame of the National Party, the returning officer met the candidates and their representatives and in the course of the recount detected that votes from the special voting were not added to the count. In addition results from the Trump and Bernie Polling Stations were wrongfully credited to the wrong persons. After the recount, Kwame had more votes than Kofi and therefore won the elections in the constituency. The returning Officer could, however, not

announce the new results because of jubilation in the town and fear of breaches of the peace by party supporters. In addition, Kofi had categorically stated that the whole town would burn if new results were announced. He has declared that it is the wish of his ancestors that he should represent the Asempa Constituency in Parliament. Kwame has filed an Election Petition in the High Court but Kofi is of the view that he could drag the matter out until the four (4) year term of office of the Parliament expires. The judge has appointed you the mediator to meet the parties and attempt a resolution of the dispute.

Draft an Opening Statement that you would deliver at the first mediation session.

[25 marks]

#### QUESTION FIVE

"The omission of Negotiation, the bedrock of all ADR processes in the Alternative Dispute Resolution Act 2010, Act 798 is fatal and has defeated one of the purposes of the Act to use all ADR mechanisms to ensure speedy and less expensive methods of dispute resolution." Discuss

[25 marks]

#### QUESTION SIX

What do you understand by Court-connected ADR? Is there any justification for the justice system to abandon its primary role assigned it by the Constitution in favour of court-connected ADR?

[25 marks]