

INDEPENDENT EXAMINATIONS BOARD

GHANA SCHOOL OF LAW (All rights reserved)

OLD PART II PROFESSIONAL LAW RESIT EXAMINATION,
ACADEMIC YEAR 2016/2017

ALTERNATIVE DISPUTE RESOLUTION

DATE: MONDAY 15 JUNE, 2017

TIME: 10.00AM - 1.00PM; TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS TO CANDIDATES

1. Read these instructions very carefully before writing down your answers.
 2. Answer Question One (1) and Three (3) other Questions.
 3. Answer All Questions in the Answer Booklet
 4. Please indicate your Index Number Only on the Answer Booklet
 5. Do NOT Write or Sign Your Name anywhere on the Answer Booklet
 6. Credit will be given for legible handwriting, clarity of expression and orderly presentation of answers.
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QUESTION ONE

Kric Company, an Asian company and Pizlets Gh. Ltd, a Ghanaian software development company, negotiated to form a joint venture company and entered into a licence agreement to provide a mobile payment service in a number of West African countries. A clause in the licence agreement reads:

“All disputes arising out of this agreement shall be referred to arbitration under the auspices of the Ghana Arbitration Centre”

Last month, a dispute arose between the two parties in connection with the licence agreement. Kric has filed a suit at the Commercial Court in Accra claiming that the licence agreement is invalid. In its claim, Kric makes reference to a “purported” arbitration clause in the licence agreement and asserts that the clause has also been invalidated as the main licence agreement is in itself invalid. Further, Kric argues that it is only the court that can pronounce on the invalidity of the licence agreement and that any attempt by any arbitrator to determine validity or otherwise of the arbitration agreement shall be beyond the scope of powers of the arbitrator.

Pizlets has requested your legal opinion in the present suit. Advise Pizlets.

[25 marks]

QUESTON TWO

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:

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- a. In the case of a dispute, the parties undertake to submit to arbitration but in case of litigation, the tribunal.
 - 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.
 - c. Any dispute or claim arising out of this agreement shall be resolved by Mr. Kwaku Forjour of the Ghana Arbitration Centre.
 - 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 a familiarity with American Construction contracts.

[25 marks]

QUESTION THREE

The Memorandum to the Alternative Dispute Resolution (ADR) Bill provides:

*“The object of this Bill is to... provide the **legal and institutional framework** that will facilitate and encourage the settlement of disputes through alternative dispute resolution procedures...It is expected that... **it will further create a congenial environment for investors.**”*

In your reasoned opinion, how does the ADR Act of 2010, Act 798 accomplish (or fail to accomplish) this object in the light of the quote above? **25 marks**

QUESTION FOUR

“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

QUESTION FIVE

Komfo Anokye Teaching 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 RESOLVED 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?

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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 Komfo Anokye Teaching Hospital?

[25 marks]

QUESTION SIX

A distinguishing feature of ADR is its malleability and this has resulted in various innovative hybrid processes. Examine four of these hybrid processes.

[25 marks]