

INDEPENDENT EXAMINATIONS COMMITTEE
GENERAL LEGAL COUNCIL
PROFESSIONAL LAW COURSE
PART I SUPPLEMENTARY EXAMINATION
ALTERNATIVE DISPUTE RESOLUTION

19 MARCH, 2021

Time Allowed: Three (3) hours

10:00 a.m. – 1:00 p.m.

INSTRUCTIONS TO CANDIDATES

1. Read the instructions very carefully before beginning your answers.
 2. Answer **ANY FOUR (4) QUESTIONS**.
 3. Credit will be given for legible handwriting, clarity of expression and orderly presentation of material.
 4. Do not write your name on the Answer booklet. Write only your seat or Index number.
 5. Adhere strictly to the instructions on the front cover of your Answer Booklet.
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QUESTION 1

A fundamental principle that runs through views on ADR is the proposition that, with the limited exception of matters not amenable to settlement by ADR, it is more beneficial for parties to resolve their disputes by ADR rather than through litigation. Do you agree with this statement? **[25 Marks]**

QUESTION 2

Interest-based negotiations, when properly conducted, allow the parties to resolve all issues, and not merely to arrive at a compromise solution of their problems. How is this achieved in interest-based negotiation? **[25 Marks]**

QUESTION 3

“The presence of a third-party neutral in a mediation creates a dynamic that does not exist when only the parties themselves or their representatives undertake direct negotiations”. Discuss the statement in the light of the role and functions of the mediator.

[25 Marks]

QUESTION 4

Nananom Motors Limited entered into an Equipment Contract with Oboutabiri Construction Limited for the supply of heavy-duty equipment required by Oboutabiri for construction works. Among other terms, the Equipment Contract shall be governed by and construed in accordance with the laws of Ghana. An aggrieved party shall be entitled to terminate the Equipment Contract when the other party is in breach of the Contract.

The Equipment Contract ran into difficulties when Nananom Motors Limited was unable to meet the payment schedule in the Contract. Further Nananom Motors Limited did not have the trained human resources to handle the equipment resulting in damage to four excavators valued in the sum of \$750,000.00 and a piece of heavy-duty dredging equipment amounting to \$300,000.00. In the exchange of letters which ensued between the parties, Oboutabiri Construction Limited informed Nananom Motors Limited it wants the dispute to be resolved through arbitration under the Rules of the Ghana Arbitration Centre. Nananom Motors Limited agreed with Oboutabiri to apply arbitration at the Ghana Arbitration Center to resolve the dispute. As the difference remained unresolved, Nananom issued a writ of summons against Oboutabiri for a number of reliefs.

Oboutabiri disagrees with the action taken by Nananom on the ground that the parties agreed to resolve the dispute through arbitration and not through court action. Nananom takes a contrary view and holds the view that the parties did not enter into an arbitration agreement.

- (a) As counsel for Oboutabiri draft the necessary court process to uphold its position that the dispute should be resolved through arbitration.

[13 Marks]

- (b) If Oboutabiri's court process is granted and it intends to initiate arbitration proceedings against Nananom, draft the necessary process. **[12 Marks]**

QUESTION 5

In a distribution agreement between Obiba J.K. Limited and Auroras Limited the parties agreed to resolve their disputes under the following clause: *"All disputes or differences arising out of this agreement shall be resolved through arbitration by a sole arbitrator appointed in accordance with the Alternative Dispute Resolution Act, 2010 (Act 798)."*

You have been appointed as the sole arbitrator by the parties to resolve the dispute. You have invited the parties to a Case Management Conference to determine the conduct of the arbitration proceedings. Draft the appropriate process for consideration at the Case Management Conference.

[25 Marks]

QUESTION 6

The codification of Customary Arbitration under the Alternative Dispute Resolution Act, 2010 (Act 798) resulted only in unnecessary confusion and added nothing at all to the practice of Customary Arbitration practiced over the years. Critically evaluate this statement with reference to decided cases and the provisions of the Act 798. **[25 Marks]**