

ADR (PLC) 2018 MARKING SCHEME

) What is ADR? [3 marks]

i) Define who a Neutral is in ADR [3 marks]

iii) What ADR process do you recommend for resolving this dispute and why this choice? [2 marks]

iv) State three advantages of the ADR process you have recommended and why you prefer them. (3 marks for each well-reasoned advantage) --- [9 marks]

v) A well drafted appropriate agreement reflecting the outcome of the ADR process. ---- [12 marks]

One (1) mark for clarity of presentation, etc.

Total marks 30

2

(a) Appropriate advise to Simple Aluminium Products on their rights under the ADR Act. [6 marks]

(b) Legal implications of Woyanco's Threat to file an appeal against the Award properly entered. --- [8 marks]

(c) Appropriate draft for the enforcement of the Award - [15 marks]

One (1) mark for clarity of presentation, etc.

Total mark 30

- (i) What is a hybrid ADR process? [2 marks]
- (ii) Identify five hybrid ADR processes. [5 marks]
- (iii) Describe the different processes used in each of the identified hybrid ADR processes with explanation on how each is used and the role expected to be played by the Neutral in each of these hybrid processes; together with what advantage each ADR process has. ----[12 marks]

One (1) mark for clarity of presentation, etc.

Total mark 20.

Q.4

- (i) A good definition of who a Mediator is. [3 marks]
- (ii) Full discussion of the various stages of the Mediation process from Commencement to closure..... [16 marks]

One (1) mark for clarity of expression, etc.

Total marks 20

Q. 5

- (i) Identification of four (4) features of Arbitration which are distinguishable from Mediation ... [4 marks]

- (ii) Appropriate description of each Arbitration distinguishing feature from that of Mediation... [15 marks]

One (1) mark for clarity, etc.

Total mark 20 marks

(i) The arbitration clause is defective or 'pathological'. Candidate will submit that there are several inconsistencies in this arbitration clause. The parties cannot submit their dispute to arbitration and litigation. The arbitration award is final and binding and the parties are not entitled to re-litigate the issues which were the subject matter of the arbitration.

[5 marks]

(ii) Within the same context of the use the word 'pathological' write your view about the clause which requires that 'in the event of an unresolved dispute, the matter will be referred to the International Chamber of Commerce and the UNCITRAL rules shall apply'. Candidate will submit that the clause will not affect the arbitration process as a whole.

[4 marks]

(iii) The requirement that 'any dispute or claim arising out of this agreement shall be resolved by Mr. Kwaku Forjour of the Ghana Arbitration Centre' is wrong. Submit that the reference ought to have been to the Ghana Arbitration Centre as the institution for referral of the dispute to arbitration. The real problem becomes obvious in the event that Kwame Forjour is unwilling or unable to act as the parties appointed arbitrator.

[5 marks]

(iv) The arbitration clause erroneously attempts to specify certain qualities the parties require of the arbitrator even though the parties have also agreed to select the

arbitrator from the list provided by the Ghana Arbitration Centre. The inconsistencies in this clause render it defective. [5 marks]

One (1) mark for clarity of presentation, etc.

Total marks 20