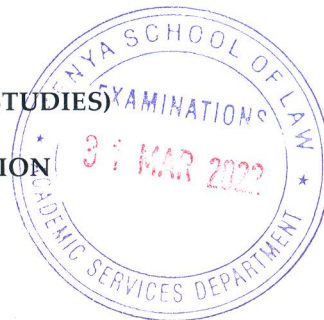


THE KENYA SCHOOL OF LAW



DIPLOMA IN LAW (PARA-LEGAL STUDIES) EXAMINATIONS

2ND YEAR TERM II EXAMINATION



INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION – PTP 205

31ST MARCH, 2022

DURATION: 2 HOURS

Instructions to Candidates

- (a) Answer Question ONE and ANY OTHER THREE Questions
- (b) Question ONE carries 25 Marks
- (c) All other questions carry 15 Marks each

PLEASE TURN OVER

QUESTION ONE

A client of yours entered into a contract with the clause below:

“All disputes arising out of or in connection with this agreement including any question regarding its existence, validity or termination (Dispute) must be attempted to be solved through negotiation by parties within 30 business days after either party notifies the other in writing of the existence of the Dispute.

Any dispute not resolved in the terms aforementioned, shall be escalated to a sole mediator who shall be appointed under the Chartered Institute of Arbitrators, Kenya Rules. The parties shall attempt to resolve the dispute within 30 calendar days after the appointment of the mediator.

The party that initiates the dispute must submit a request for arbitration according to the said Rules. To that effect, the appointing authority shall be the Chartered Institute of Arbitrators, Kenya.

The place of arbitration shall be Nairobi and the language of arbitration shall be English. The governing law shall be Kenyan Law.

The arbitration award (The Award) shall be final and binding upon the parties and shall not be subject to any appeal. Any party to the dispute may request the recognition and enforcement of the Award to any competent tribunal, if the other party doesn't comply with it.”

A dispute has arisen between your client and the other party. Your client seeks advise on how to proceed.

- a) Advise the client on the dispute resolution process, carefully outlining the various stages. **(10 marks)**
- b) Discuss the role of the lawyer at the various stages of the dispute resolution process. **(5 marks)**
- c) Advise the client on his role at all stages of the dispute resolution process. **(5 marks)**
- d) What ways can the court intervene in Arbitration on this instance. **(5 marks)**

QUESTION TWO

“Drafting of ADR agreements is everything” Do you agree? Highlight the rules and considerations when drafting ADR clauses or agreements. **(15 Marks)**

QUESTION THREE

Briefly describe the following:

- a) Hybrid processes (4 Marks)
- b) Award (3 marks)
- c) Construction adjudication. (4 marks)
- d) Conciliation (4 marks)

QUESTION FOUR

- a) Explain in detail, four types of Alternative Dispute Resolution mechanisms, highlighting some general disadvantages of ADR if at all. (15 Marks)

QUESTION FIVE

On a recent trip upcountry, a group of community organizers sought to understand if they can use local tradition and customary law to resolve disputes including criminal matters.

- a) Discuss the role of Alternative Justice Systems (AJS) in the Kenya in resolving disputes. (8 Marks)
- b) With the help of decided cases, discuss the role of ADR in resolving criminal cases in Kenya. (7 marks)

QUESTION SIX

“Alternative Dispute Resolution does not have a framework and conflicts are not defined and their cause is unknown: In light of the above statement, discuss:

- a) National Legal framework for ADR in Kenya (5 Marks)
- b) Causes of conflict in society (5 Marks)
- c) International framework for ADR in Kenya. (5 Marks)

END