

CHUKA UNIVERSITY
MAIN EXAMINATION
JANUARY - APRIL 2023 ACADEMIC YEAR
DEPARTMENT OF LAW
BLAW 314 – ALTERNATIVE DISPUTE RESOLUTION

APRIL 2023

DURATION: 2 HRS

INSTRUCTIONS

Question ONE is COMPULSORY and answer any other two questions.

QUESTION 1

Talang'i entered into a contract with Namunyu for the supply of specific steel rods for a construction project being undertaken by Talang'i. One of the clauses provided that Talang'i would pay Namunyu within 3 months of the steel rods being delivered to the project site. The contract also contains a dispute resolution clause. Namunyu delivered the steel rods on site after Talang'i had placed an order of the specifications and quantities required. The payment period expired before Talang'i had settled payments with Namunyu. On inquiry as to why Talang'i had not honoured his part of the agreement, it was alleged that Namunyu had supplied sub-standard steel rods contrary to the specifications of Talang'i contained in the order. Namunyu vehemently denied the allegations and proceeded to remove the steel rods from the project site. The parties had been childhood friends and neighbours while growing up before each proceeded for studies and later settled in the city. The contract for the supply of steel rods between the parties had subsisted for the past 15 years.

Namunyu has approached you, an Alternative Dispute Resolution specialist, on the best ways to resolve the dispute. Taking the facts into consideration, and relying on case law and the relevant legislation, advise:

- i) Namunyu on the various Alternative Dispute resolution mechanisms that can be used to resolve the dispute, outlining the procedures and advantages of each. (20 marks)
- ii) The role of the ADR practitioner in each case. (10 marks)

QUESTION 2

Blue Tech Inc Ltd and Gentech Ltd are two medical supplies companies in Kenya that have recently decided to undertake a joint venture to supply hospitals with new and updated machinery. Both companies have agreed to use arbitration in case of a dispute arising from the contract. As the lawyer who drafted the joint venture, the parties have requested your legal opinion on the implications of the arbitration process. Relying on relevant provisions of the laws of Kenya and case law, discuss:

- i) The Role of the Courts during arbitration (10 marks)
- ii) The Role of the Courts after arbitration proceedings (10 marks)

QUESTION 3

The County Chief Executive for Justice has recently sought your services as a certified Alternative Dispute Resolution practitioner. She has requested you to appear as a guest speaker at a training to present on Traditional Dispute Resolution Mechanisms in Kenya (TDRMs). Prepare your presentation on:

- i) the framework of TDRMs in resolution of civil matters in Kenya (5 marks)
- ii) advantages of TDRMs (8 marks)
- iii) disadvantages of TDRMs (7 marks)

QUESTION 4

Liwa Ltd is a carrier company that transports goods for Simuli Ltd which manufactures cosmetics. The contract that binds the parties in business contains an arbitration clause which provides that: "...any disputes between the parties arising from their rights and obligations under this contract shall be referred to an Arbitrator to be appointed by the President of the Law Society of Kenya for hearing and determination in accordance with the Laws of Kenya..." A dispute arose between the parties regarding timelines and payments. Simuli Ltd tried to negotiate with Liwa Ltd but the negotiations fell apart. Liwa Ltd proceeded to the High Court to file a case against Simuli Ltd.

- a) Critically discuss possible reasons why the negotiations fell apart. (5 marks)
- b) Provide a detailed legal opinion to Simuli Ltd on the way forward in light of the case filed by Liwa Ltd. (15 marks)

QUESTION 5

Write elaborate notes on the following:

- a) Refusal of Recognition or Enforcement of Arbitral Award (5 marks)
- b) Effect of a Valid Award (5 marks)
- c) Structure of a Formal Negotiation Process (5 marks)
- d) Appointment of Arbitrators under the Arbitration Act (5 marks)