



KISII UNIVERSITY

UNIVERSITY EXAMINATIONS FIRST YEAR EXAMINATION FOR THE AWARD OF THE DIPLOMA IN LAW SECOND SEMESTER, 2021/2022 (FEBRUARY – JUNE, 2022)

DLAW 0123: INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION

STREAM: DLAW 1 S2

TIME: 2 HOURS

DAY: THURSDAY, 12:00 – 2:00 P.M.

DATE: 26/05/2022

INSTRUCTIONS

- 1. Do not write anything on this question paper.***
- 2. Answer Question ONE [Compulsory] and any other TWO Questions.***
- 3. Illustrate your answer with relevant cases and statutory provisions where applicable.***

QUESTION ONE

The justice system requires that if legal redress or equitable relief to an injured party is available, but is not forthcoming in a timely fashion, it is effectively the same as having no remedy at all. This statement has been thwarted by the backlog of cases that have been witnessed in the courts. It is against this backdrop that the constitution 2010 by dint of article 159(2)(c) promotes ADR mechanisms to aid in clearing backlog of cases in the facilitation of access to justice. The judiciary in giving life to this provision has developed the Court Annexed Mediation(CAM) process since 2015. Under this project, the court shall screen and refer the case for mediation.

- a) Define screening as used in the court-annexed mediation. **(2 marks)**
- b) Describe the procedure followed when the case is referred to mediation with regard to CAM. **(13 marks)**
- c) Discuss the instances the court may intervene in arbitral proceedings. **(10 marks)**
- d) It is a general requirement that the information given in mediation is confidential; however, this right can be waived or disclosed. Discuss the instances where the information can be disclosed. **(5 marks)**

QUESTION TWO

R.J. Rummel in one of his Articles and Writings; Understanding Conflict and War: Vol.5: The Just Peace. He outlined principles of conflict prevention and resolution.

- a) Discuss those principles. **(10 marks)**
- b) State and explain the advantages and disadvantages of ADR. **(10 marks)**

QUESTION THREE

- a) Discuss the domestic and international legal framework governing ADR **(10 marks)**
- b) Discuss;
 - i) The mode of appointment of an arbitral tribunal **(5 marks)**
 - ii) The powers and jurisdiction of an arbitrator under the Arbitration Act 1995 **(5 marks)**

QUESTION FOUR

- a) Briefly illustrate instances for the stay of legal proceedings for arbitration. **(6 marks)**
- b) Discuss the modes of opposing and challenging arbitration reference. **(6 marks)**
- c) The constitution 2010 under chapter 15 establishes the independent commissions and offices. The Commission on the Administration of Justice (CAJ) also known as the Ombudsman shall discharge their duties independently without interference from any authority. State and explain the roles/functions of CAJ/Ombudsman with regard to ADR. **(8 marks)**

QUESTION FIVE

Write explanatory notes on the following subheadings:

- a) Advantages and characteristics of negotiation **(6 marks)**
- b) Conciliation and characteristics of a conciliator **(6 marks)**
- c) Mini trial **(4 marks)**
- d) Arbitration-mediation(arb-med) **(4 marks)**