



KISII UNIVERSITY
UNIVERSITY EXAMINATIONS

SPECIAL EXAMINATIONS
SECOND YEAR EXAMINATION FOR THE AWARD OF THE
DEGREE OF BACHELOR OF LAWS
FIRST SEMESTER, 2021/2022
(FEBRUARY - JUNE, 2022)

LLBK 221: ARBITRATION & OTHER ALTERNATIVE DISPUTE
RESOLUTION METHODS

STREAM: Y2 S1

TIME: 2 HOURS

DAY: MONDAY, 11:30 – 1:30 P.M.

DATE: 25/07/2022

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

- a. Compare and Contrast mediation and Court Annexed Mediation under the Mediation (Pilot Project) Rules 2015 an Arbitration under the Arbitration Act 1995.

(14 Marks)

b. Mr. Rodgers and Ms. Tandiwe entered into contract for the supply of butternut with an arbitration clause. The clause stipulated that disputes should be referred to arbitration within 15 days. Mr. Rodgers had been out of the country for the past two months and hence did not supply the butternuts as contracted. Flummoxed at the turn of events, Ms. Tandiwe enters your chambers. On keen perusal of the contract you discover that it is unsigned. Secondly, that the arbitration clause delimited its application to only disputes arising from the quality of the butternuts supplied. (16 Marks)

QUESTION TWO

James Havi entered into contract with Dominic Kanjama for the supply of Mercedes Benz spare parts with an arbitration clause. The spare parts are to be delivered every fortnightly and payment made three days later via electronic funds transfer (EFT). Mr. Havi has received delivery of the spare parts for the past two months but has failed to make the requisite payments, despite Kanjama's numerous reminders. Dominic seeks legal representation from Masharubu and Mashurubu Advocates. Mr. Havi receives plaint and summons to enter appearance from a court process server in his spare parts shop. Confused, James enters your chambers with the contract, plaint and summons in hand.

Advice

(20 Marks)

QUESTION THREE

(a) Discuss three features of a well drafted arbitral award

(6 Marks)

(b) Discuss seven instances where the court may intervene in arbitral proceedings.

(14 Marks)

QUESTION FOUR

(a) Karen is the founder of Lawyers Hub Kenya. Karen entered into contract with Shingles a Chinese innovator. The contract is for the sale of the intellectual property over Shingle's 'Ape' software application. Ape is programmed to automatically copy and pastes pleadings while deleting specific details of the parties concerned. Karen is desirous of making a fortune off the backs of slothful advocates. Upon payment of the full purchase price and an acquiring the state of the art innovation. Karen discovers that Fred had purchased Ape two months earlier from Shingles. A fact that Shingles failed to disclose during the contractual negotiations. She has sought your services an arbitrator registered under the Chartered Institute of arbitrators Kenya Branch. Advice (6 Marks)

(b) Discuss the Jurisdiction and powers of an Arbitrator under the Arbitration Act 1995 (14 Marks)

QUESTION FIVE

Write explanatory notes on the following

- (a) Negotiation (4 Marks)
- (b) Conciliation (4 Marks)
- (c) Rent-a-Judge (4 Marks)
- (d) Mini- Trial (4 Marks)
- (e) Med-Arb (4 Marks)