



ZCAS UNIVERSITY

SCHOOL OF LAW

BACHELOR OF LAWS IN COMMERCIAL LAW

MID SEMESTER EXAMINATION

L332 ALTERNATIVE DISPUTE RESOLUTION

OCTOBER, 2023

TIME ALLOWED: THREE (3) HOURS (plus FIVE (5) minutes reading time)

Instructions

1. Answer four (4) questions, QUESTION ONE is compulsory and three (3) from Part B
2. The examination paper carries a total of 70 marks.
3. Candidates are not permitted to bring any statutes into the examination room.
4. Candidates must not turn this page until the invigilator tells them to do so.

PART A: THIS QUESTION IS COMPULSORY AND MUST BE ATTEMPTED.

QUESTION 1

The Mbeza Community v. GreenOre Mining Ltd. case has been referred to mediation. The Mbeza community, comprised of indigenous people living near a mining site, alleges that GreenOre Mining Ltd. has encroached upon their ancestral land without proper compensation and has caused significant environmental harm, impacting their livelihoods and health. The mining company, on the other hand, asserts that they obtained the necessary permits and followed the appropriate regulations during their mining operations.

You are the mediator assigned to facilitate this mediation process. Both parties have agreed to participate in mediation with the goal of reaching a mutually acceptable resolution. The community is seeking fair compensation for the land and environmental damages, as well as assurances for sustainable mining practices that do not harm their community. GreenOre Mining Ltd. is open to discussing compensation and implementing responsible mining practices while ensuring their business operations continue uninterrupted.

Develop a set of potential mediation questions and considerations for both parties in this scenario, focusing on ethical, cultural, and legal aspects of the mediation process. Discuss any concerns or challenges that might arise during the mediation, and how these could be addressed in a manner consistent with Zambian principles of justice and mediation ethics.

[TOTAL: 25 MARKS]

PART B: ANSWER THREE QUESTIONS FROM THIS PART

QUESTION 2:

As a member of the Ali Bar Association (ABA) Committee drafting advisory standards for the use of mediation in civil litigation, you have been presented with a proposal to evaluate the appropriateness of mediators conducting private caucuses with parties during the mediation process. The proposal suggests that mediators should avoid private caucuses due to concerns about giving evaluations of merits and potential inconsistency with principles of justice. Share your views on this proposal, considering various circumstances, types of disputes, and justifications for your stance.

Do you believe it is necessary for mediators to engage in private caucuses with parties during mediation proceedings? Under what circumstances, if any, do you think it might be more or less appropriate or entirely permissible or impermissible for mediators to meet in private caucus with a party? Provide examples to clarify your reasoning. **[TOTAL MARKS 15]**

QUESTION 3:

You are a seasoned negotiator specializing in business and commercial disputes. Your expertise is sought in resolving a complex negotiation between two international corporations, Corporation A and Corporation B. Corporation A is an established tech giant based in the United States, while Corporation B is an up-and-coming e-commerce company based in China. The dispute revolves around a breach of contract and intellectual property rights concerning a joint venture they had entered into to develop cutting-edge artificial intelligence (AI) software.

Corporation A claims that Corporation B breached the confidentiality clauses of the contract by sharing critical AI algorithms with a competitor. Additionally, they assert that Corporation B utilized elements of their patented technology without proper licensing. Corporation B denies these allegations, arguing that the technology was independently developed and that Corporation A's claims are unfounded.

The negotiations are to take place over a span of three days at a neutral venue agreed upon by both parties. Each party will have a team of legal advisors, technology experts, and negotiators present during the negotiation sessions. Both parties are highly invested in the success of the negotiation but are also prepared to pursue litigation if an agreement is not reached.

Questions:

- (a) Explain to the parties the benefits and drawbacks to using ADR over litigation. (9 marks)
- (b) Explain the concept of Best Alternative to a Negotiated Agreement (BATNA). (6marks)

[TOTAL MARKS15]

QUESTION 4:

Critically assess the significance of the concept of confidentiality and privilege to Alternative Dispute Resolution referring to cases & statutory provisions to support your arguments.

[TOTAL MARKS 15]

[TOTAL NUMBER OF CASES/AUTHORITIES 3]

QUESTION 5:

Answer the following questions:

(a) How do you determine your BATNA? (5 marks)

(b) Explain the concept and relevance of negotiation Jujitsu. (10 marks)

[TOTAL MARKS 15]

...END OF EXAMINATION...