

DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD

Post-Graduate Diploma in Alternative Dispute Resolution (Batch 2020 – 2021)

Take Home – Annual Examination (June, 2021)

Paper I – 1.1. Alternative Dispute Resolution Systems

TOTAL MARKS: 100

INSTRUCTIONS TO CANDIDATES

- a) Read the instructions for Take Home Examination carefully and adhere to the same.
 - b) *Please mention your name, ID No., subject name and total number of pages on the Answer Sheet.*
 - c) *Clearly indicate the question numbers while answering them.*
 - d) *Answer all the questions.*
 - e) *The approximate word limit for a 25 marks question is 800-1000, for a 15 marks question, 600-700, for a 10 marks question 400-500 and for a 5 marks question 200-250*
 - f) *All the candidates are required to submit only word / Pdf files containing the typed answers.*
 - g) *All papers will be uploaded on Turn-it-in for plagiarism check. Any paper with more than 15% similarity will be considered to be plagiarized and shall not be evaluated.*
 - h) *Since this is a take home exam, we expect your answers to be analytical rather than straight answers.*
 - i) Copying from any source including from other students is strictly prohibited. Plagiarism is considered as a serious academic mis-conduct and the University will take action as it deems fit.
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I. Multiple Choice Questions - (10 X 2 marks each)

1. The first step in the problem-solving process is _____.

- A. Acknowledge the existence of problem
- B. To Generate solutions
- C. To analyze the problem.
- D. To determine the goals.

2. Negotiation is a procedure that is _____.

- A. Binding procedure
- B. Non-binding procedure
- C. Prospective binding
- D. Retrospective binding

3. Conciliator would independently investigate into the dispute and draft his report indicating the method of settlement of disputes.

- A. The conciliator would take help from the court on the settlement of the method
- B. The conciliator would rely on the application filed by the parties
- C. The conciliator would take help from the disputing parties on the settlement of the method
- D. The conciliator will hear both the parties separately

4. The conciliation proceedings shall be terminated when:

- A. by signing of the settlement agreement by the parties, on the date of agreement
- B. by written declaration of the parties and the conciliator to terminate the conciliation proceedings on the date of declaration
- C. by written declaration of the parties addressed to the conciliator to the effect that conciliation proceedings are terminated, on the date of declaration
- D. all of the above

5. The process of listening carefully to a speaker and then repeating in your own words what was said is referred to as:

- A. Facilitation
- B. Active Listening
- C. Active communication
- D. Clarification

6. Which of the following is not the role of a Dispute Board?

- A. Refer matters to courts and tribunals
- B. Resolve the conflict efficiently and cost effectively
- C. Become familiar with the construction project and the activities
- D. Draw conclusive orders and action plans that are required to be followed by the parties.

7. Which of the following is false about expert determination?

- A. Expert determination is initiated by only one party
- B. The process is neutral and flexible
- C. Expert determination is binding, unless the parties agree otherwise
- D. The process is confidential in nature.

8. Provision for Mediation is incorporated in several statutes in India. Which one of the following does not belong in this list?

- A. Code of Civil Procedure 1908
- B. The Commercial Courts Act, 2015
- C. Special Economic Zones Act, 2005
- D. The Real Estate (Regulation & Development) Act, 2016

9. The award made by the Lok Adalat

- A. is deemed to be a decree of the civil court like arbitration Award
- B. is deemed to be a decree of the civil court
- C. is effective as an Arbitral award
- D. is not binding on the party

10. A Conciliator is bound by which of the following acts:

- A. Code of Civil Procedure, 1908
- B. Indian Evidence Act, 1872
- C. Arbitration and Conciliation Act, 1996
- D. The Insolvency and Bankruptcy Code, 2016

A Mining Quandary

ELLENPEE Infrastructure Ltd (“ELLENPEE”) is an Indian multinational conglomerate headquartered in Port Blair, Andaman & Nicobar Islands. In May 2016, it won the contract for modification of NH32 into a four-lane highway (“Project”). ELLENPEE entered into a contract with its subsidiary Macrohard Ltd (“Macrohard”) for supply of rocks for the Project.

One Mr. Madhusudhan represented a valid lease bearing Quarry lease No. 424 for quarrying building stones to the extent of 5.75 acres in Bellary district in Karnataka. Mr. Madhusudhan is young but very influential in the area. It is rumoured that he will contest and is likely to win an MLA seat in his constituency. However, some rumours also indicate that he participates in ‘gang-related’ activities in his locality.

On 26.04.2018, Macrohard and Madhusudhan entered into a Memorandum of Understanding (“MoU”) with respect to carrying out mining operations for the purposes of extracting building stones and all other allied activities for a period of 3 years. The MoU contained substantial obligations of the Parties, including the right of ingress and egress. Macrohard is exclusively allowed to mine and excavate boulders, using their own equipment for a consideration of -

1. INR 50 per Metric Ton (“MT”) payable as ownership royalty (“OR”) to Madhusudhan as and when he raises invoice for the same

2. INR 100 per MT payable to the Department of Mines and Geology (“DMG”) as Government royalty (“GR”); and
3. INR 20 per MT payable to the DMG for transport permit (“TP”) through a web portal operated by Madhusudhan’s IT Team.

In addition to this, Macrohard incurs a cost of INR 125 per MT in mining and stocking of boulders. Excavation activities commenced in June 2018 and in the period from 2018-2019, Macrohard excavated and transported stones out of the mine and to the construction site without any dispute; invoices for the quantities mined were raised by Madhusudhan and payments were duly made by Macrohard.

For the period from 2017-2018, a quantity of 45,000 MT was excavated and stocked. Rather than making full payment, ELLENPEE insisted that Macrohard excavate and transport stone in instalments.

Thus, Macrohard paid all dues for 26,500 MT and only GR for the remaining 18,500 MT. They requested him to let them transport the 26,500 MT of boulders after which they would ask him to raise an invoice for OR of the remaining 18,500 MT and give them access to the web portal to apply for the TP. However, Madhusudhan permitted them to transport only 6500 MT of the 26,500 MT saying that only once full payment was made for the remaining 18,500 MT, would he allow them into the mine to transport the boulders. He claimed that he had been penalized by the DMG for the illegal mining of Macrohard and wished to secure his interest before proceeding further.

However, Macrohard’s parent company ELLENPEE will not permit them to make such payment without being allowed to remove the 26,500 MT already mined as they do not trust Madhusudhan due to his reputation of being a “rowdy” and are apprehensive that he will repudiate the contract once he receives full consideration.

Macrohard heard rumours that Madhusudhan has also started disposing of the stones that were excavated and stocked by the Macrohard. Macrohard then sent several letters to Madhusudhan requesting him to stop disposing off the stones but these letters were met with no answer. Macrohard filed criminal complaints with the local police hoping they could pressure Madhusudhan into letting them transport the boulders. To their surprise, they were also met with a criminal complaint filed by Madhusudhan against them for illegal mining.

Macrohard sent several representatives to the mining site to resolve the dispute but Madhusudhan did not permit them to enter the premises. Macrohard sought for an interim relief from the Karnataka High Court praying that Kamlesh be restrained from disposing off the boulders, pending the resolution of the dispute. In this proceeding, Madhusudhan represented that Macrohard had made a false claim and they had already transported all the boulders that were excavated. While the matter is pending, the Hon’ble Court has referred them to mediation. Thus Mr. Madhusudhan and Mr. Srinivasulu, a Project Manager from Macrohard will meet in Bangalore to discuss the dispute.

Party 1 - ELLENPEE Infrastructure Ltd represented by Mr. Madhusudhan

Party 2 - Macrohard Ltd represented by Mr. Srinivasulu

II. Hypothetical 1

1. Frame open ended questions for information gathering of the above hypothetical [A Mining Quandary] **(10 marks)**
2. For the same fact situation, you are to list the positions of each disputant and analyze what can be the disputant's interests. **(5 marks)**

III. "ADR is not an alternative to the Formal Judicial system but only a supplement to it" Write a note on this **(10 marks)**

IV. Essay question:

What is the Scope of Online ADR in India? Please identify the implementation gaps in introducing online ADR in India? Is it necessary to have a law around ODR in India? **(25 marks)**

V. State the statutes and provisions under Indian law which gives reference to mediation as method of conflict management. What are the issues facing mediation as a dispute resolution mechanism? Explain the significance of Singapore Mediation Convention that recently came into force? **(15 Marks)**

VI. Write short notes on the following:

- (a) Drawbacks/pitfalls of mediation **(5 marks)**
- (b) Communication techniques used in mediation **(5 Marks)**
- (c) Qualities of a good/effective mediator. **(5 Marks)**