

Advanced Diploma in Alternative Dispute Resolution (Batch 2021 – 2022)

Take Home – Annual Examination (June, 2022)

Paper I – 1.1. Alternative Dispute Resolution Systems

TOTAL MARKS: 100

INSTRUCTIONS TO CANDIDATES

- a) Read the instructions for the Examination carefully and adhere to the same.
 - b) Please mention your name, ID No., subject name and the total number of pages on the Answer Sheet.
 - c) Clearly indicate the question numbers while answering them.
 - d) Answer all the questions.
 - e) The answer for the 25 marks question should be written in 1200 - 1500 words and for the 10 marks / 15 marks question it should be 800 – 1000 words.
 - 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 serious academic misconduct and the University will take action as it deems fit.
-

PART A

I. Multiple Choice Questions – (10 x 1 marks each)

1. Disputes in Lok Adalat are resolved by:

- a. Mediation
- b. Negotiation
- c. Arbitral Process
- d. Mediation, negotiation or conciliation

2. Which on the following laws is the Arbitration and Conciliation Act, 1996 modeled on?

- a. Universal Declaration of Human Rights
- b. United Nations Commission on International Trade Law (UNCITRAL) Model law on International Commercial Arbitration
- c. United Nations Commission on International Trade Law (UNCITRAL) Model law on Arbitration
- d. Vienna Convention

3. When are mediation outcomes referred to as voluntary?

- a. When both the parties accept the resolution
- b. When the mediator affirms the resolution
- c. The court approved the resolution plan
- d. One of the parties accepts the resolution plan

4. What terminology is the most suitable to describe the role of a mediator?
 - a. Plays the role of a Judge
 - b. Plays the role of a facilitator
 - c. Plays the role of an experienced person in the field of the dispute
 - d. Plays the role of an advisor and only advises the parties on what is of legal standing

5. An arbitral tribunal has no jurisdiction to issue a _____.
 - a. Ex-parte orders
 - b. Winding up orders
 - c. Award
 - d. An interim award

6. Which of the following is not true about expert determination?
 - a. It is a non-binding process
 - b. The expert shall not be an independent third party in the dispute
 - c. Expert determination is a confidential procedure
 - d. A party cannot unilaterally withdraw from expert determination

7. Which of the following is correct about the Med-Arb process?
 - a. Mediation takes place first and even if all issues are resolved, it goes to arbitration for final seal of approval
 - b. There is no separation of the process.
 - c. Confidentiality is only to be maintained by the mediator
 - d. Mediator and arbitrator are 2 different people

8. Which of the following statutes do not make a reference to ADR?
 - a. The Commercial Courts Act, 2015
 - b. The Insolvency and Bankruptcy Act, 2016
 - c. The Companies Act, 2013
 - d. The Information Technology Act, 2001

9. In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Company Pvt. Ltd.*, the court held that the following are normally suitable for ADR processes. Please choose the option that does not belong to this list
 - a. Disputes relating to fraud and cheating
 - b. Disputes relating to insurance, the insurer and the insured
 - c. Disputes relating to employees and employers
 - d. Claims for compensation in motor accidents/other accidents

10. The award made by the Lok Adalat
 - a. Is deemed to be a decree of the civil court like an 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

PART B

- II. *McDougal Entertainment Co. Ltd.* is a registered company that deals in publishing and selling used video games and fan related merchandise under the Trademark (TM) 'Tootsies'. Garble Co. Ltd had been using the TM 'Tootsies' for selling its product since 1976 and is very famous amongst the common public, particularly children of all age groups. They also got their TM registered in 1980. The respondent company, *INK Games Pvt. Ltd.* started using: 'Tootsies' as a TM for security locks for bicycles in 1981, which is the main cause of conflict between the two parties. After 2 years of

intense negotiations, the parties reached an agreement whereby the claimant company, “McDougal Entertainment Co. Ltd. restricted INK Games Pvt. Ltd. from using the TM ‘Tootsies’ only for the following:

- a. Security devices and accessories thereof;
- b. INK Games Pvt. Ltd shall use ‘Tootsies’ in a way that bears and projects no link between the 2 companies whatsoever.

Now the claimant company (*McDougal Entertainment Co. Ltd.*) alleges and claims that the agreement has been breached insofar as the respondents have expanded their business and started manufacturing security solutions for household purposes under the identical and phonetically similar TM ‘Tootsies’.

McDougal Entertainment Co. Ltd claims that:

- i. That if the respondent continues to do what it has been doing, it may lead the general public to believe that the 2 companies are linked somehow;
- ii. That the usage of ‘Tootsies’ on part of the respondents amounts to passing off as well as infringement of their registered TM.
- iii. It amounts to breach of their previous agreement.

Now, *McDougal Entertainment Co. Ltd* seeks compensation of INR 2 Crore and seeks to restrain the other party, *INK Games Pvt. Ltd.* from using ‘Tootsies’ TM for any other product except bicycle locks. They are open to further negotiations.

1. What do you think is the appropriate ADR forum to solve the conflict contrasting it with litigation? Supplement your reason with a list of arguments. **(10 marks – 300 to 400 words)**
2. Using the same fact situation illustrated above, you are to list the positions of each of the disputant and analyze what may be the disputants’ interests. **(15 marks – 300 to 400 words)**

III. In an instance that the above conflict (*Question II*) has reached a settlement, draft a suitable dispute resolution clause using any means of ADR that might become a part of the contract between the two parties in the future. **(15 marks – 600 words)**

- IV.** Write a note on the following:
- a. Ethics in ADR **(15 marks – 1000 words)**
 - b. Constitutional mandate to ADR in India **(10 marks – 250 words)**

V. Identify all methods of Hybrid ADR processes addressed in class, all with the features, advantages and disadvantages **(25 marks – 1200 words)**