DIRECTORATE OF DISTANCE EDUCATION
NALSAR UNIVERSITY OF LAW, HYDERABAD

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

Take Home – Supplementary Examination (November, 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) ***All the candidates are required to submit only word / Pdf files containing the typed answers.***
f) ***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.***
g) ***Since this is a take home exam, we expect your answers to be analytical rather than straight answers.***
h) **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.**

I. Multiple Choice Questions - (10 X 2 marks each)

1. Which of the following is an incorrect statement?
A dispute __________________.

A. Is based due to difference in opinion or opposing views
B. An outcome due to legal position, rights or obligations
C. is an irreparable outcome.
D. May lead to a law suit

2. Which of the following acts does not make a reference to mediation?

A. The Arbitration and Conciliation Act, 1996
B. The Real Estate (Regulation & Development) Act, 2016
C. The Company Act, 2013
D. The Commercial Courts Act, 2015

3. ______________ is not a part of the process of negotiation?

A. Preparation and planning
B. Drafting of the negotiation award
C. Setting of ground rules of the negotiation process
D. Clarification and justification

4. Which of the following statements is not true about expert determination?

A. It is nonconsensual and can be initiated by either party to the agreement
B. It is a confidential procedure
C. The determination of an expert is binding unless the parties agree otherwise
D. The parties mutually choose the expert

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. Lok Adalat is given the power of a civil court by the _______________.

A. High Court of the state in which the Lok Adalat is located
B. State Government in consultation with the Central Government
C. Civil Procedure Code, 1908
D. Law Commission of India

7. Which of the following is false about Lok Adalats?

A. The parties may have access to a lawyer.
B. The function of the neutral is evaluation and facilitative.
C. The focus of the approach in the Lok Adalat is on the present and the past.
D. The process is not confidential in nature.

8. Which one of the following statements is not true about Arbitration?

A. There are time limits for making an arbitral award.
B. an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract
C. An arbitrator cannot be relieved of his duties after commencing the arbitration process.
D. An arbitration award cannot be in conflict with the public policy of India.

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. Which of the following statements is NOT true?
A mediator shall __________________________.

A. Not divulge any information to any third party in any circumstances.
B. Ensure her does not have any conflict of interest in the dispute involved.
C. Ensure his/her personal values or belief system does not interfere with the process of mediation
D. Shall not play the role of multiple neutrals.

The Last Resort – Fijian Islands

Global private equity fund "Zarin Capital Management" Zarin is a global asset management firm specializing in alternative investment strategies. It emphasizes an opportunistic, value-oriented and risk-controlled approach to investments, corporate debt control investing, convertible securities, real estate and listed equities.

As of 1 December 2015, the company managed USD 100 billion, mainly on pension funds, foundations, endowments and sovereign wealth funds. It has over 500 employees with offices in New York, where it is headquartered, Mumbai, Delhi, London and Melbourne. In recent years, it has formed several strategic relationships.

Nasser Group Resorts (Nasser) is a Fijian family business established by siblings, Vasanth and Hi Ji Hu, over 30 years ago and follows the same vision as it did on day 1 – To be able to offer the services of a world class resort while at the same time maintaining a human scale as well as protecting the unique beauty of its surrounding environment.

In March 2018, Nasser and Zarin form a Joint Venture (JV) 'Seascan Resorts. The plan of this JV is to create all-inclusive 5 star resorts in the Fijian islands, each individually designed and crafted, starting with Solomon islands. In this JV, Zarin is the major shareholder at 90% and shall contribute the full investment amount needed, while Nasser has to contribute one of its hotels to the new chain, remains the minor shareholder at 10% and runs the management. The resorts investment is expected to exceed USD 1 billion.

The plans include acquiring existing hotels at fair market value and building new ones that fulfil the set criteria. The all-inclusive luxury concept is considered to be the future mainstream trend in tourism since it offers an all-inclusive package including food and beverages along with signature golf courses, world class spas, state of the art conference facilities for business meetings, addressed to medium – upper income families at a specified price so the cost of the stay is pre-determined.

The new JV shall be based on the knowledge of the local market and culture and the expertise of Nasser in the operation of luxury resorts and Zarin's capabilities to support large scale investments. The JV contract was signed for 10 years and renews afterwards under mutual agreement. The first resort acquired, intended to be the chain's landmark, was a beachfront resort in Fijian island, originally built in the 70's on an 80 acre estate along with a 6 km stretch of child friendly sandy beach facing the Aegean Sea.

Renovation will be extensive to make spacious, family-friendly guest rooms and village-style bungalows amongst colourful gardens. Furthermore, local and international cuisine restaurants shall be created including a barbeque grill on the beach, a spa and fitness centre and sports and entertainment outdoor facilities and activities.

The estimated cost for this project was USD 100 million, that is USD 20 million to buy the property in Fijian Island and USD 80 million for renovation, new facilities and implementing the project to the high standard required for this chain. Zarin shall contribute to the full amount in instalments, upon completion of agreed milestones.

Nasser took on the responsibility for the architectural design, the supervision of the construction and the implementation, which was sub-let to a major Fijian contractor. Additionally, Nasser was responsible to get the appropriate permits to start the renovation, and the state permission for the removal of the rocks in the sea in front of the resort with explosives. Nasser agreed to consult with Zarin on the design and Zarin in turn employed a design consultant to advise it.

However, weather conditions and late-stage change required by Zarin's design consultant to have an infinity pool excavated in rock, have cause an estimates six month delay in the completion of the resort from the original deadline, which was originally 1 February 2019 to 1 August 2019.

According to the JV with Nasser, Zarin has the right terminate the agreement in case of delays beyond the set deadline, or be paid compensation at the rate of USD 30,000 per calendar day of delay beyond the set completion date which is 1 February 2019. Until the time of this dispute, both parties had excellent corporation based on honesty, integrity and good communication. This is the current dispute can be overcome, they should be able to commit to the future of this JV.

Under the dispute resolution provision of the JV agreement, before commencing litigation for any controversy concerning the agreement, the parties have to attempt to resolve the dispute by mediation. Nasser notified Zarin of its exercise of its right to mediation.

Party 1 - Zarin Capital Management
Party 2 - Nasser Group Resorts

II. <u>Hypothetical 1</u>

1. You are planning to do a private meeting with each party separately, Zarin Capital Management and Nasser Group Resorts. To prepare for these private meetings, frame open ended questions you would like to ask each party in the private meeting with them for information gathering [The Last Resort – Fijian Islands] (**10 marks – 500 words**)

2. From the same fact situation, you are to identify the position and the interests of both parties. (**5 marks each – 250 words each**)
    1. Zarin capital Management
    2. Nasser Group Resorts

III. "In addition to dispute resolution, mediation allows building stronger relationships between the parties and focuses on people cohesion more than the actual problem." Write a note on this (**10 marks – 500 words**)

IV. Essay question:

State the difference between judicial processes, arbitration, mediation and conciliation. You are required to provide a comprehensive answer identifying differences in the process, the role of the neutral, the techniques, jurisdictions etc (**20 marks – 1200 words**)

V. Write an essay on importance of mediation to resolve recovery matters of MSMEs. (**15 Marks – 800 words**)

VI. Write short notes on the following:

(a) Explain neutrality and impartiality in ADR process in India (**5 marks – 200 words**)
(b) Med-Arb Process (**5 Marks – 200 words**)
(c) Confidentiality in Mediation (**5 Marks – 200 words**)