



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

APRIL 2023

RLB 311: ALTERNATIVE DISPUTE RESOLUTION (ADR)

EXAMINER: Dr. VICTOR LANDO

INSTRUCTIONS

1. This is the final examination in **ALTERNATIVE DISPUTE RESOLUTION (ADR)**. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THREE QUESTIONS**.
3. This examination has 3 pages, including this one.
4. Time allocated for this examination is **TWO** (2) Hours. You must stop writing when time is called.
5. This is a **CLOSED BOOK** examination. This means that you are not permitted to bring any hard or soft materials to the examination room. You are also not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, statutes, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
6. This examination is governed by the **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the course instructor any incidences of academic dishonesty compromising the integrity of this examination.
7. Indicate your registration Number and the Course Code of the Exam on your script. **DO NOT** indicate your name on the answer script.

QUESTION ONE. (30 Marks)

Onyango and Akinyi have been neighbours for the last 10 years. Their farms border each other in the restive and fertile slopes of the Mbita highlands. Akinyi majors in breeding prized goats which she sells at a premium to avid goat collectors. Onyango is more inclined towards horticulture thus he grows vegetables, fruits and spices, which he exports to the middle east. On the evening of 15th March 2023, it rained so heavily that Akinyi forgot to properly shut-in her goats in their goat pen. Similarly, Onyango, who was working on his farm, had to run fast to seek shelter from the heavy rain. In the process he did not properly shut the gate to his farm. Early 16th Morning, Akinyi's goats woke up with a ravenous appetite and wandered off into Onyango's farm where they feasted on lettuce, carrots, cucumbers, French beans and an assortment of fruits. After about an hour or so, Onyango's worker, Yunis, who was coming to spray the farm stumbles upon the heard of goats. In a fit of rage, he hits one of the prized goats with a metal bar he was holding as he chases the rest out of the farm. Unfortunately, he also stumbles, falls and fractures his ankle.

After the entire incident, it emerges that Akinyi's goats have caused damage to Onyango's farm in the tune of Ksh.300,000. However, one of Akinyi's goats which was hit by Yunis, was pregnant with twins and dies. She is counting losses of about Ksh. 500,000.

Yunis has a fractured ankle, and thus is out of work for the next 6 months. He was being paid a monthly salary of Ksh.30,000. Meanwhile Onyango will have to find alternative help in the farm.

The matter goes before the local chief who is your uncle. He knows that you are an expert at ADR and he thus seeks your opinion.

- a) **Advise the Chief on the most appropriate ADR mechanism/ mechanisms that may be employed to resolve the dispute between Akinyi and Onyango. (5 marks)**

- b) **Assuming the parties are desirous of resolving their dispute via mediation, advise them on the qualities that they would need to look out for in a mediator. (10 marks)**

- c) **Advise the parties on how the mediation process would be conducted from start to finish including any key milestones that they would need to take note of.**

(15 marks)

QUESTION TWO. (20 Marks)

John and James have been friends since they were in high school. John works as a consultant for a tech company in Nairobi. James is a self-made ‘hustler’ who has several businesses ranging from sale of motor vehicles to being a successful entrepreneur. James is also a horticulture farmer and sells his produce to several institutions including hotels, schools and universities.

John knows that the cars James deals in are stolen luxury cars shipped in from neighbouring countries and are sold at ‘competitive’ rates in the local market.

On 1 January 2023, John and James enter into an Agreement for Sale of a motor vehicle for the amount of **Kenya Shillings Three Million Only**.

- a. **They have come to you to advise them on whether they can incorporate an arbitration clause into their agreement should a dispute arise. Advise the parties on whether they would be able to successfully resolve any dispute arising from their contract by way of arbitration. (5 marks)**
- b. **Assume that John was purchasing a consignment of fruits from James. Prepare an arbitration clause to be incorporated into their Agreement for Sale and Purchase. (10 marks)**
- c. **What would be the benefits of arbitration over litigation should a dispute arise in point (b) above? (5 marks)**

QUESTION THREE. (20 Marks)

The Riara Law School has been invited by the Law Society of Kenya to prepare a presentation on the theme “A critical analysis of ADR in Kenya”. You have been nominated to represent the Law School. Prepare your well-reasoned brief. (20marks)