



NATIONAL OPEN UNIVERSITY OF NIGERIA
14/16 AHMADU BELLO WAY, VICTORIA ISLAND, LAGOS
FACULTY OF LAW
2018

COURSE CODE: LAW 517

COURSE TITLE: ALTERNATIVE DISPUTE RESOLUTION I

TIME ALLOWED: 21/2 HOURS

INSTRUCTION: ANSWER QUESTION 1 AND ANY THREE (3) QUESTIONS.

1. You are now an associate in a large Law Firm, the Partners knows that you have a good background in Alternative Dispute Resolution (ADR) having taking this course. One of the Partners in the firm seeks your advice about the following situation;

There are two partners in a small Beauty make over business, Tara Johnson and Amara Peter. Tara has been in the beauty make-over business for six years. Amara was a banker and a friend who knew nothing about beauty make-over business. Tara had asked Amara to be partners in the purchasing of designer makeup products and running a Beauty Salon. Amara agreed but only if she would be an equal partner. Tara agreed but on the condition that she could buy Amara out at any time at a fair market price.

The business has over a year grown so well and their products and services have become so popular with the crème de le crème of the society.

However, the two partners are now having serious problems and Tara wants to buy Amara out. Amara says according to the written partnership agreement, she is entitled to N4Million for her share. Tara thinks the agreement says that a partner's share is worth N2Million. At N4Million Tara cannot afford to buy Amara out, but Tara could buy Amara out for N2Million. Since they cannot resolve the dispute, Amara has brought a suit to dissolve the partnership and liquidate the Beauty Salon. Amara is happy to do this. Tara on the other hand does not want to sell the Beauty Salon to a third party because it was her dream to own her own a Beauty make over salon. Tara has responded to Amara's suit to dissolve the partnership by bringing a counterclaim for fraud and other related claims. The parties have decided to try to resolve their dispute through some alternative dispute resolution method.

List and explain two ADR mechanisms that you would recommend, explaining the advantages and disadvantages of each mechanism.

2. Jonah Oil Services Limited entered into a Contract with Ahmadu Engineering Limited for a Civil Engineering services worth N10B. The contract agreement contained a clause without specifically mentioning the word “arbitration” but specified that “*the decision of the Superintending Engineer shall be final conclusive and binding on all parties to the contract upon all questions relating to the meaning of the specifications, designs and drawings*”.

Can the above clause amount to an Arbitration Agreement? What are the components of an Arbitration Clause? Support your answers with statutory authorities.

3. In *Halsey v Milton Keynes NHS Trust* (2004) the English Court realized that although Mediation had several advantages compared to Litigation and even Arbitration, it would be going too far to impose it on unwilling parties. Discuss
4. Aquacade is a well-known maker and supplier of sachet and bottled water. It has significant market share in big retail supermarkets and eateries all over the country. Competition from other brands is intense. Pepper & Salt Enterprise is a contract caterer with numerous outlets in most major cities, in Nigeria and is among Aquacade clients. The contract catering sector is also extremely competitive and Pepper & Salt Enterprise is presently the one of the largest, at about twenty per cent of the size of the market leader. It is expanding by an ambitious acquisition program of small local contract caterers. It intends to be in the top three catering companies in Nigeria in five years. Aquacade is organised around ten regional distribution centers. These centers package and bottle and distribute Aquacade water products in their own regions. The marketing strategy, branding, pricing and invoicing of Aquacade is controlled nationally. Regional centers deliver bottled water and send copies of the delivery notes to national headquarters. All clients are invoiced by head office, which receives payments direct, reconciles the amounts received with the amounts owed from the delivery notes, and processes the accounts through its central computer. A ‘suspense account’ operates into which amounts paid by Pepper & Salt Enterprise that cannot be reconciled with the Aquacade invoices, are deposited. A similar arrangement operates at Pepper & Salt Enterprise with their local staff, which operates catering facilities on their clients' premises, sending to head office reports of the Aquacade products they receive. When Pepper & Salt Enterprise receives invoices from Aquacade it reconciles these with the value of the products their sites have received, consolidates the amounts owing and issues payment orders to Aquacade. The Financial Director of Aquacade reported to the Managing Director that a serious discrepancy had arisen between what Pepper & Salt Enterprise had paid in the last seven months and what they had been invoiced, to the amount of N120 000. She claimed she had made several representations to Pepper & Salt Enterprise's senior management over several months, but her phone calls and e-mails proved to be fruitless, with Pepper & Salt Enterprise denying that they owed Aquacade anything like N120 000. She recommended that her MD should intervene with Pepper & Salt Enterprise's MD, as the amount outstanding must be reported to the Board. The annual contract value of Pepper & Salt Enterprise to Aquacade was N2.2 million, equating to an annual net profit of N200 000. She also reported that Pepper & Salt Enterprise had threatened to cancel their contract with Aquacade unless the disputed claim was dropped. She felt that the Pepper & Salt Enterprise contract should be suspended if Aquacade did not receive the money owed.

Upon what context of power play and strategies should Aquacade concentrate when preparing to negotiate with Pepper & Salt Enterprise in order to have a successful concession and negotiation with Pepper & Salt Enterprises?

5. What, if any, are the legal requirements of an arbitration agreement under the laws of Nigeria? What other elements ought to be incorporated in an arbitration agreement?
6. a) Define and explain “Multi-Door Courthouse” describe its objectives and options open in Multi-Door Courthouse (8 Marks)

b) Discuss the purposes and limitations of the use of ADR in Nigeria. (7 Marks)