



**KENYATTA UNIVERSITY**  
**EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS**  
**LPL 201: ALTERNATIVE DISPUTE RESOLUTION**

**2<sup>ND</sup> SEMESTER 2022/2023**

**TIME: 2 HOURS**

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**INSTRUCTIONS:**

1. Answer ALL Questions.
2. Support your answer with relevant illustrations from case law, statutory provisions and any other references.
3. Your writing must be NEAT and LEGIBLE.
4. Your answer booklet must bear your assigned REGISTRATION NUMBER, both on the cover and every written page therein.
5. Do not scribble or draft answers on the inner or outer cover pages or your answer booklet.
6. Do not write anything except your REGISTRATION NUMBER on this Question Paper.
7. ALL Kenyatta University Examination rules apply as if they were contained herein.

**QUESTION 1**

Kuranza County is one of the 12 (twelve) counties in the Republic of Kusi. The Republic of Jusi has a Constitution that is similar to the Constitution of Kenya, 2010. The County Government of Kuranza has noted that over the last five year, a large number of its residents have been filling suits against the County. The suits related to different issues, which range from service delivery. Contract and even tort claims.

So as to reduce the number of suits, the County Government of Kuranza is considering adopting a policy and legal framework that incorporates diverse and vast dispute resolution methods. The County Government of Kuranza has asked for your advice to help them make the decision on whether to adopt the framework they developed.



Advise the County Government of Kuranza about the process, advantages and disadvantages of the following approaches to dispute settlement, which they included into the developed legal framework:

- (a) Negotiation
- (b) Mediation
- (c) Arbitration
- (d) Traditional Dispute Resolution Methods
- (e) ODR
- (f) Litigation

Your advice should be relevant to the County and indicate whether a legal policy framework will be required for each of the approaches that you discuss. (30 marks)

## QUESTION 2

In 2019, Alfa Co. Ltd. And Beta Limited Liability Partnership (Beta LLP) made a contract for the sale to Beta LLP of 20,000 second-hand books. The arbitration clause of their contract stated that *"any defects, other than torn, dirty or dog-eared pages, were to be notified to Alfa Co. Ltd within one month of delivery and that any disputes were to be settled by an arbitrator appointed by the President of the international Institute of Bibliophiles (Kenya Chapter)."*

In 2020, Alfa Co Ltd made a contract for the sale to Beta LLP of 20,000 CDs as listed and priced in Alfa' catalogue. The contract stated:

*"all other terms as in our 2019 contract."*

Beta LLP says that 40% of the CDs delivered are cracked, warped or otherwise corrupted.

In context of the above facts, explain and using relevant judicial authorities discuss in detail the following:

- (a) Should Beta LLP start arbitration proceedings, or go to court.
- (b) If arbitration is plausible for resolution of the dispute between two parties, what would be the mode of commencement of arbitration proceedings and appointment of arbitral tribunal and its composition.
- (c) Under the 1995 Arbitration Act of Kenya, for an arbitration agreement to be 'in writing' it does not need to be in writing.

### QUESTION 3

“...The responsibility of resolving statutory labour disputes in Kenya is still heavily under the control of the Government of Kenya through the Ministry of Labour. There is still no independent statutory dispute resolution institution (Conciliation, Mediation Commission) as envisaged by the Labour Relations Act 2007. As a result, the Kenyan dispute resolution system has been criticized for lack of impartiality leading to the increases in strikes and lockouts. Similarly, it has made the attainment of effective and efficient labour dispute resolutions difficult...”

*Johana Kambo Gathongo (2018).*

“Labour dispute resolution in Kenya” compliance with international standards and comparison with South Africa.”

In the context of the above statement, analyze legal framework for court annexed conciliation in Kenya. (20 marks)