

**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**PLOT 91, CADASTRAL ZONE, NNAMDI AZIKWE EXPRESS WAY, JABI – ABUJA**

**FACULTY OF LAW**

**DEPARTMENT OF PRIVATE AND PROPERTY LAW (PPL)**

**OCTOBER/NOVEMBER EXAMINATION 2016**

**COURSE CODE: LAW 517 (PPL 517)**

**COURSE TITLE: ALTERNATIVE DISPUTE RESOLUTION I**

**CREDIT UNIT: 4**

**TIME ALLOWED: 2 ½ HOURS**

**INSTRUCTIONS: ANSWER FOUR QUESTIONS ONLY. QUESTION ONE IS COMPULSORY**

1. In Halsey v. Milton Keynes NHS Trust (2004) the English Court realized that, although mediation had several obvious advantages compared to both litigation and arbitration, it was going too far to impose it on unwilling litigants. Discuss. (25 marks)
2. Mary and Rose are partners in a small Beauty and Makeover business. Rose has always been in the makeover business but did not have enough capital to expand her business. Mary on the other hand has been in a full time employment as a marketing officer in a bank before she lost her job in the recent bank industry retrenchment exercise. She knew nothing about beauty and makeover business, but had the capital for the expansion rose needed in her business. Rose had asked Mary to be partners in the running of the business. Mary agreed only if she would be an equal partner. Rose agreed but on the condition that rose could buy out Mary any time at a fair market value. After 6 months into the partnership, the business enjoyed a robust patronage from crème dele crème of the society. The two parties later started having serious problems, as rose was the one doing most of the jobs. Rose wants to buy Mary out. Mary says according to the partnership agreement she is entitled to n1.5m (50% of profit made over a period of 6months) aside nn500, 000 equity contribution. Rose thinks that the agreement says a partner is only entitled to 50% of the profit and 50% of equity share. Since they cannot resolve the dispute, Mary has brought a suit to dissolve the partnership and a sale of the business. Mary is happy to do this. Rose on the other hand is not happy as she does not want to sell the makeover and beauty business to a third party because it was her dream to own her own makeover and beauty business. Rose has responded to Mary’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 mechanisms as their suit has suffered many adjournments in court.

List two methods that you would recommend, explaining the advantages and disadvantages of each method.

If you were to advise Mary which method would you recommend and why?

If you were advising Rose which method would you recommend and why?

1. a. Discuss the sources of arbitration law in Nigeria. (10Marks)

b. List and discuss the categories of Arbitration (5Marks).

1. 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 programme 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? (15 Marks)

1. Discuss the development of the arbitration legal frameworks and rules in

 Nigeria. (15 MARKS)

1. Jonah Oil Services Limited entered into a Contract with Peace Engineering Limited for a Civil Engineering services worth $10M. 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. (15 MARKS)