

UNIVERSITY OF COLOMBO, SRI LANKA

FACULTY OF LAW

DEGREE OF MASTER OF LAWS BY COURSEWORK - 2023/24

SECOND SEMESTER END EXAMINATION

Commercial Mediation– TLLM 1235

(Three Hours)

Total number of questions: 04

Answer any **Three** questions

(Candidates will be penalized for illegible handwriting)

01. Answer **both** (i) and (ii).

- (i) 'In commercial mediation, it is the parties that focus on their 'interest' and attempt to find the solution for their 'interests'.'

Critically analyse the above statement in comparison with the role of an arbitrator in commercial arbitration.

(10 Marks)

- (ii) Discuss the role of a mediator in the commercial mediation process, with a focus on the strategies and skills of a mediator when facilitating a mutually beneficial resolution between disputing parties.

(10 Marks)

(Total 20 Marks)

02. The mediation process consists of three primary stages: pre-mediation, mediation, and post-mediation. Critically analyse the specific steps in each phase, focusing on the roles of the mediator and the parties involved.

(20 Marks)

03. Answer All Questions.

(a) Is the distinction between facilitative and evaluative mediation relevant? Substantiate your answer with the reasons.

(5 Marks)

(b) Identify the most suitable mediation style for each of the following situations. Substantiate your answer with the reasons for your choice.

i. Ramani, a small business owner, borrowed Rs. 500,000/- from a microfinance organization to expand her business. Her business collapsed during the economic crisis and she was unable to pay the loan installments. Currently, the total outstanding principal and interest exceeds Rs. 1 million.

(5 Marks)

ii. Ravi and Meena, both successful professionals, are going through a divorce and are claiming full custody of their 12-year-old daughter. Ravi, the conservative parent, wants their daughter to attend university and pursue a career in medicine or law. On the other hand, Meena takes a more liberal stance and wants to help their daughter to develop her artistic talents, which have been prominently displayed in her school activities.

(5 Marks)

iii. Alpha PVC Ltd, a Sri Lankan manufacturer of PVC pipes and fittings, entered into an exclusive distribution agreement with Sunshine Pipes Ltd to distribute Alpha's pipes and fittings throughout Sri Lanka. After three years of operation, Alpha decided to terminate the agreement due to Sunshine's arrears of payment of around Rs. 15 million. Sunshine blamed Alpha, claiming that Alpha undermined Sunshine's distribution operation by engaging in direct sales that violated the agreement. Sunshine also claimed that the termination of the contract was illegal because Alpha failed to provide the contractual notice of three months prior to exercising the right of termination. There is a high level of distrust and animosity between the parties.

(5 Marks)

(Total 20 Marks)

04. The introduction of the Recognition and Enforcement of International Settlement Agreements resulting from the Mediation Act, No. 5 of 2024 is a significant step in the alternative dispute resolution [ADR] landscape relating to commercial disputes in Sri Lanka. Critically analyse the applicability of the enforcement mechanism under the legislation, especially in Cross-Border and International Commercial disputes.

(20 Marks)
