GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR

Course: **Clinical 4 (Litigation Management & Alternative Dispute Resolution)**
Semester- X (Batch: 2017-22)

End Semester Online Examination: May 2022

Date: 10ᵗʰ May, 2022
Duration: 8 hours   **Max. Marks: 50**

Instructions:
- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
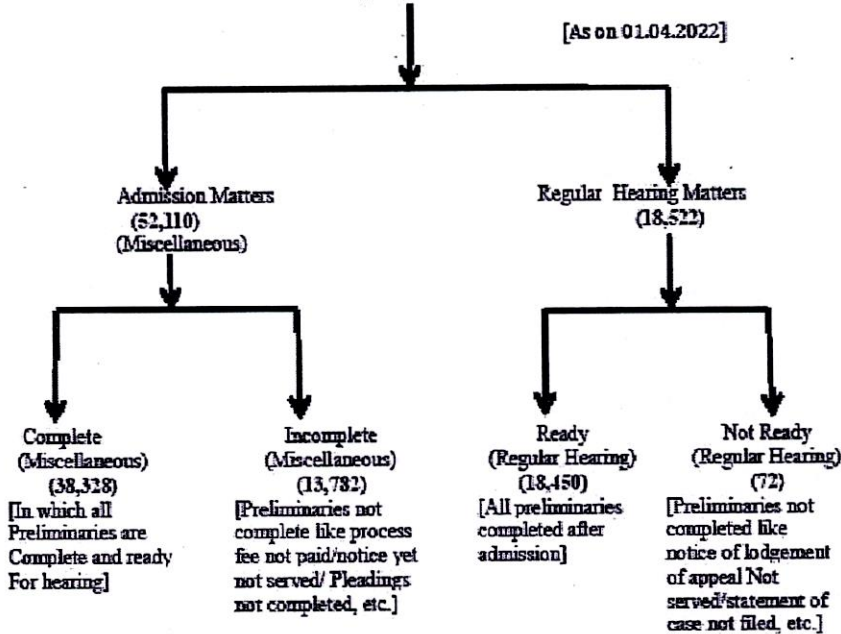- Word Limit: 10 Marks: 700 - 800 words.

Marks

Q.1 What are the 'Five Secrets of Effective Communication' given by David Burns that you think can be used for litigation management?   **(10)**

Explain how they help an advocate or person of Alternative Dispute Resolution in the legal profession to manage the clients and their litigation when they visit the law office for consultation and opinion seeking?

Draw your own chart of five secrets and corresponding methods of managing the clients. Choose any one area of clientele from the following issues to draw your own chart.
a) Victim of an injury under Indian Penal Code, 1860
b) Partner of a private company who suspects the covert dealings of other partners
c) Feelings of a hurt arising out of misunderstanding between a working employee and the superior in an organization

Q.2 In what way does the four-fold model of non-violent communication such as observation-facts, feelings-emotion, needs-values & request-choices created by Marshall Rosenberg be useful to Alternative Dispute Resolution?   **(10)**
Draw your own chart of four aspects and corresponding methods to effectively handle ADR.
Choose any one area of clientele from the following issues.

a) Scenario: Differences between husband and wife as partners in matrimonial relationships. Place: Law Office of your own
b) Scenario: Conflicts arising out of misunderstanding between Master and Servant. Scenario: Place: Labour Welfare Office Board Room
c) Scenario: Disputes arising out of hierarchical sense between senior and junior in a corporate law firm.
Place: Board Room of the Vice-President of the law firm

Q.3 Critically examine the need for Litigation Management & Alternative Dispute Resolution with respect to the backlog of cases in the Indian courts. Kindly refer to the following   **(10)**

statistics from the website of the Indian Supreme Court as available on 18.4.2022 (https://-main.sci.gov.in/statistics)

SUMMARY

TYPES OF MATTERS IN SUPREME COURT OF INDIA

Pending Matters –70,632 *

[As on 01.04.2022]

	Admission Matters (52,110) (Miscellaneous)		Regular Hearing Matters (18,522)	
	Complete (Miscellaneous) (38,328) [In which all Preliminaries are Complete and ready For hearing]	Incomplete (Miscellaneous) (13,782) [Preliminaries not complete like process fee not paid/notice yet not served/ Pleadings not completed, etc.]	Ready (Regular Hearing) (18,450) [All preliminaries completed after admission]	Not Ready (Regular Hearing) (72) [Preliminaries not completed like notice of lodgement of appeal Not served/statement of case not filed, etc.]

* 19.61 % matters are Incomplete / Not Ready required preliminaries to be completed.

* Number of Constitution Bench matters : 422 (52 main matters + 370 connected matters)

	Total	Main	Connected
Five Judges Bench Matters	272	40	232
Seven Judges Bench Matters	15	7	8
Nine Judges Bench Matters	135	5	130
Total	422	52	370

* Out of 70,632 pending matters, 13,854 matters (13,782 incomplete Miscellaneous matters and 72 Not Ready Regular Hearing matters) are such matters which cannot be listed for 'hearing' before Hon'ble Court.

Choose any one of the professions given below in order to identify the aforementioned need and give five suitable and practical recommendations to course correct the public access to justice and contribute to the management of the legal health of our Nation.

a) ADR (Mediator/Negotiator/Conciliator/Peace-Builder)

b) Advocacy

    c) Judiciary

    d) Policy Making

    e) Socio-Legal Work

Q.4   Report of the 'NITI Aayog: Designing the Future of Dispute Resolution - THE ODR   (10)
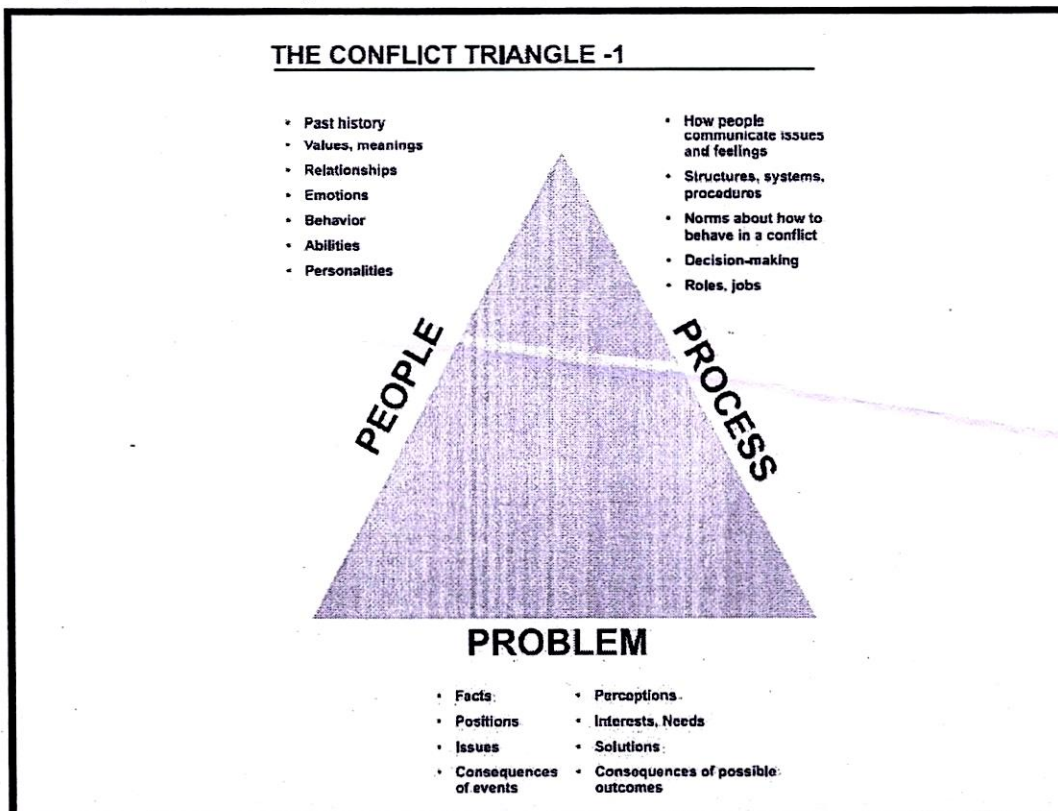POLICY PLAN FOR INDIA, October 2021' reads the following:

The concept of Online Dispute Resolution (ODR) is still evolving. At a preliminary level, ODR refers to the usage of ICT tools to enable parties to resolve their disputes. This includes using simple to complicated communication technologies such as audio-visual tools ranging from telephones to smartphones to LED screens, spreadsheets, e-mail and messaging applications, with the crux of it being to enable dispute resolution without physical congregation of the parties. From instances seen around the world, in its first phase, ODR shares its fundamentals with ADR mechanisms such as negotiation, mediation and arbitration. To this extent, most of the early ODR efforts have mirrored ADR processes through aggregated use of simple ICT tools. ODR however is not to be understood to mean just e-ADR. At a more advanced stage, ODR can work as the fourth party through the use of algorithmic assistance tools that help parties find resolutions. Such technology can take the form of intelligent decision support systems, smart negotiation tools, automated resolution, and machine learning. Eventually, ODR can also offer multi-door dispute resolution through tailored processes for specific parties and their dispute. With the help of technology tools, these tailored processes can be designed to achieve an ideal dispute resolution for all the disputants. A few of these advanced ODR systems, already underway in some jurisdictions, are described in Chapter III of the report. Even the manner in which ODR can impact the dispute resolution ecosystem is expansive. It can function as more than merely a method to 'resolve disputes'. Instead, ODR can provide a comprehensive system for access to justice, as articulated by Professor Richard Susskind. It can do so by encompassing the following stages in the life cycle of a dispute.

Kindly study the diagram.

Four Layer Model for Access to Justice
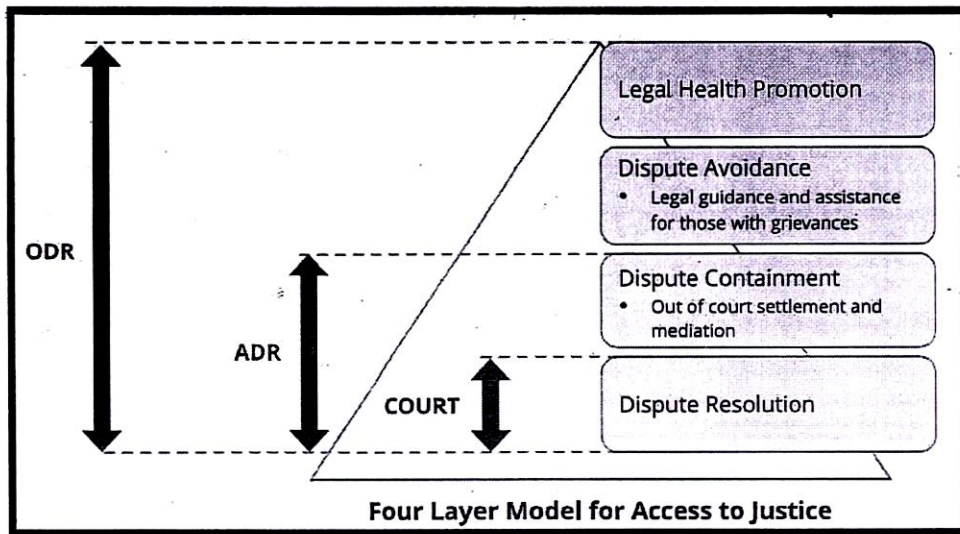
What are your plans to get used to having an ODR in your area of legal profession of either litigation or ADR or social work or digital and legal literacy capacity building? Identify 5 practical steps and stages that you would be interested in learning to empower yourself or others in the legal fraternity.

Q.5   The Mediation and Conciliation Project Committee of the Supreme Court of India in its   (10)
Mediation Training Manual of India has the following understanding of the Conflict Triangle as shown in the two pictures below. What do you understand from these two pictures in relation to Mediation and understanding of a conflict? Explain.
Kindly study both the diagrams.

THE CONFLICT TRIANGLE -1

- Past history
- Values, meanings
- Relationships
- Emotions
- Behavior
- Abilities
- Personalities

- How people communicate issues and feelings
- Structures, systems, procedures
- Norms about how to behave in a conflict
- Decision-making
- Roles, jobs

PEOPLE   PROCESS

PROBLEM

- Facts
- Positions
- Issues
- Consequences of events

- Perceptions
- Interests, Needs
- Solutions
- Consequences of possible outcomes

THE CONFLICT TRIANGLE -2

SUPPORTS the PEOPLE

CONTROLS the PROCESS

MEDIATION

SOLVES the PROBLEM

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