



## **General Certificate of Education**

# **Law 5161**

## **Unit 2 (LAW2)      Dispute Solving**

# **Report on the Examination**

*2007 examination - January series*

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## **Unit 2 (LAW2): Dispute Solving**

As with previous sittings, this examination produced some excellent responses. Some candidates were able to score very high marks, showing that it is possible, in a limited time, to write two full answers, giving appropriate depth and breadth of response. However, many candidates wrote in general terms, with limited use of authority or examples. There were again many answers including irrelevant material which could not be credited. This was particularly evident in question 1(a). Candidates must read the question carefully and be prepared to answer the question on the paper rather than the question they had prepared.

### ***Question 1***

This was by some distance the most popular question on the paper. In part (a), candidates were required to explain the work of both lay magistrates and jurors in the criminal process. It was disappointing to find that many candidates did not fully read the answer and covered at length how lay magistrates and jurors were chosen and appointed, thereby disadvantaging themselves. Also, many candidates referred to the civil responsibilities of lay magistrates such as hearing cases in the family court and licensing; again, this could not be credited. In any event, centres should be aware that magistrates do not now have any jurisdiction in liquor licensing, which has all been transferred to local authorities.

In relation to lay magistrates, better answers referred to the types of cases dealt with, the role of the clerk, sentencing powers and the role of magistrates in agreeing custody extensions or issuing search or arrest warrants. In relation to jurors, answers could have covered the role of the jury in court, how verdicts are arrived at, the announcing of the verdict and distinguishing the sentencing role of the judge.

In part (b), candidates were required to discuss the advantages and disadvantages of the use of lay magistrates alone in the criminal justice system. For the advantages, issues such as open justice, trial by community representatives, limited cost and public confidence in the system could be balanced by disadvantages such as inconsistent decisions (particularly in relation to sentencing), possible bias and make-up of the panel. The best answers included some actual examples to support their points, though it was often disappointing to see that weaker answer merely listed possible issues. Centres should encourage their candidates wherever possible to support their discussion with some authority; for example, using cases, examples, statistics or research findings.

### ***Question 2***

This was a reasonably popular question: candidates either knew or did not know relevant material. Part (a) required a description of how both inferior and superior judges are selected and appointed. Selection could include reference to the requirement of a legal qualification and various periods of service, as set out in the Courts and Legal Services Act, before appointment. As stated in the Report on the June 2006 exam, appointment for High Court judges was for a long time based on a system of secret soundings, but this has now been succeeded by a system of advertisements showing vacancies for a specific posts. Applicants have to make written applications which are then followed by interview. Appointments to the Appeal Court and House of Lords are by invitation. The role of the Lord Chancellor in the appointments procedure has, since April 2006, been replaced by the independent Judicial Appointments Commission. Similar arrangements exist for inferior level judges. References to the former appointment procedures will continue to be credited for the summer 2007 examination but centres are encouraged to cover the new appointment arrangements with their candidates.

Some of the answers to this question were based on the new arrangements but the majority described the 'old' arrangements. Most answers were able to describe, or to provide some detail of, the eligibility criteria or selection processes for both inferior and superior judges, though it was surprising how few mentioned the need for legal qualification and very few seemed to know of the possibility of legal academics being appointed. Weaker answers tended only to list the length of service required or confused the detail in the processes.

In part (b), candidates were required to explain briefly the principle of judicial independence and to consider why it is such an important part of the UK constitution. The descriptive part could have covered issues such as the need for judges to be impartial, providing justice in open court, having a system of judicial appeals, to be immune from being sued for their work in court and from being dismissed by the Executive. The discussion could have considered issues such as the need for public confidence in judges and their decisions, judges upholding the rule of law, judges being able to make decisions free from government influence in cases of judicial review. Candidates could now refer to the principle of independence set out for the first time in statute in the Constitutional Reform Act 2005. A few candidates were able to cover these issues with authority and to include relevant examples, but the majority of answers were of a general nature and contained limited discussion.

### **Question 3**

This was a popular question. Part (a) required candidates to explain any three forms of Alternative Dispute Resolution. These could have included any choice selected from Tribunals, Arbitration, Mediation, Conciliation or Negotiation. Centres are referred to the specification which lists these five forms. It does not include the role of Ombudsmen or Inquiries. Candidates who referred to these could not receive credit. The description could have covered the make-up of the panel, the style of any hearing, the types of cases dealt with and possible outcomes. Generally, answers followed the instructions; many included examples of the types of cases dealt with and were therefore able to score high marks. Some candidates did, however, ignore the instructions and explained how four or all five forms of ADR work. Again, they disadvantaged themselves, as only three could be credited.

In part (b), candidates were required to discuss just the disadvantages of ADR. Most candidates were aware of the main issues such as cost, the possible need for a court case if ADR did not succeed, the lack of state funding, unpredictable decisions due to lack of precedent, limited appeal rights or imbalance between the parties, and were able to develop these points with varying levels of quality. Some students again failed to read the question and discussed advantages as well, but the discussion of these could not be credited. This part of the question was generally well covered so that, again, many answers scored well.

### **Question 4**

This again was a popular question. In part (a), candidates were required to describe the work of both solicitors and barristers both in and out of court. This allowed candidates to cover both the ways in which these lawyers practise and the specific types of work carried out. Many answers concentrated on court-based advocacy work, though there remains the impression that solicitors only acquired rights of audience on the passing of the Courts and Legal Services Act 1990. More impressive answers covered out of court work, such as conveyancing or the preparation of wills by solicitors, and advice or preparation of complex documents by barristers. Few candidates wrote about the different styles of work carried out by, on the one hand provincial solicitors, and on the other, the commercial-orientated city solicitors. Few candidates wrote about employed barristers. There were many candidates who insisted on covering the

training and qualification of solicitors and barristers and fusion, which could not receive credit. Candidates are again reminded to read the requirements of the question.

In part (b), candidates were required to discuss briefly how solicitors and barristers can be held responsible for poor work. As in previous examinations, candidates either knew the material and were able to write in impressive detail, or wrote in very general terms. Candidates could have referred to actions of negligence for work undertaken both in and out of court, actions for breach of contract, or complaints to the disciplinary bodies. Many candidates still refer to the disciplinary body for solicitors being the Solicitors' Complaints Bureau or the Office for Supervision of Solicitors, even though the Consumer Complaints Service has been established for several years. Centres are encouraged to cover current arrangements with their students.

### **Question 5**

As with previous papers, this was by far the least popular question on the paper and there were few examples of accurate detailed answers. In part (a), candidates were required to cover the procedure in dealing with an either-way criminal trial. Most candidates recognised that the case could be tried in either the Magistrates or Crown Court (though few mentioned that it would be at the defendant's choice). Generally, the answers contained details of how the case would be dealt with in only one of the trial courts: few candidates were able to describe confidently the procedures in both courts and fewer still were able to deal with procedures in the appeal courts.

In part (b), candidates were required to outline and comment on the various forms of legal advice available to a defendant such as Laura. Generally, this part was not well answered with the majority of answers barely able to recognise the availability of advice given by solicitors and/or barristers. Some answers recognised the availability of duty solicitors at police stations or court, but few covered the availability of state-funded legal services such as Legal Help or Legal Representation, or the role of the Criminal Defence Service. There was also considerable confusion between the different advice available in civil and criminal cases, with several answers incorrectly referring to no win no fee advice or representation. Many felt that advice could be obtained through agencies such as the Citizens Advice Bureau, local authority advice centres, libraries, friends or family or the internet. While it is accepted that these sources of advice may be possible, limited credit was given to these suggestions, as it is felt that criminal cases require more specialist advice due to the threat to the liberty of the individual. As few answers identified relevant sources of advice, it followed that comments about the advice were limited, mostly being confined to the cost of obtaining private legal advice.

## **Mark Ranges and Award of Grades**

Grade boundaries and cumulative percentage grades are available on the [Results statistics](#) page of the AQA Website.