



## **General Certificate of Education**

# **Law 5161**

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

# **Report on the Examination**

*2007 examination - June series*

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## Unit 2 (LAW2): Dispute Solving

This examination produced some excellent responses. Some candidates were able to score very high marks writing two full answers, giving appropriate depth and breadth of response, using examples and authority. However, there were many candidates who wrote in very general terms, with limited use of authority or examples. There were a few answers which used abbreviations or bullet points. This does hinder the development of the answer, and is likely to affect the quality of written communication. Candidates are encouraged, wherever possible, to write in continuous prose. A slightly surprising feature is that a large number of candidates are able to score more heavily on the part (b) evaluative question, rather than, as might be expected, the part (a) descriptive question.

### **Question 1**

Part (a) required candidates to describe briefly any three of the main forms of ADR. This could have included any choice of Tribunals, Arbitration, Mediation, Conciliation or Negotiation. The description could have covered reasons for the existence of the form of ADR (perhaps based on the type of dispute), the make-up and qualification of the panel, the nature of any hearing, and possible outcomes. Generally, answers followed the instructions, though there were some examples of candidates writing about ombudsmen and inquiries, neither of which have been on the specification for some time. Many answers contained accurate and relevant material and were able to score high marks. However, it was noticeable that some candidates explained one form in much greater detail than the others and some candidates took the instruction “briefly” rather too literally. In addition, there were few examples of candidates explaining how arbitration and tribunal hearings are run.

In part (b), candidates were required to discuss advantages and disadvantages of ADR. This has been a popular question in the past, with well-rehearsed points and generally strong answers, often developing points with some degree of quality. Candidates could often have improved their answers by making comparisons with court-based resolution and by giving examples.

### **Question 2**

In part (a), candidates were required to explain how jurors qualify for service, how they are selected, and their role in a criminal trial. This should have covered:

- general qualifications and reasons for not serving, such as disqualification. It was disappointing to find that many candidates either covered both the pre- and post-Criminal Justice Act 2003 rules, or just the pre-Act rules. Centres are reminded again of comments made in previous Reports on the Examination that they should only be covering the post-2003 Act rules with their students, and only these received credit in this paper.
- selection, both initially and then in court, vetting and challenges. Many candidates were unable to deal with all these aspects in detail and especially to explain the initial random selection by the Central Summoning Bureau. Where candidates knew the rules, they were able to write accurately and at length.
- the role and how decisions are made. It is surprising how many candidates do not know the numbers sitting on a criminal jury, the figures for making majority decisions, and that jurors are the arbiters of fact, applying the judge’s legal directions to the evidence.

In part (b), candidates were required to discuss just the advantages of using lay persons in the criminal justice system. It was surprising that many answers referred to disadvantages or the use of lay persons in the civil justice system, neither of which could receive credit. However, most candidates followed the instruction to deal with both juries and lay magistrates: higher level marks could only be awarded to answers that referred to both. It was disappointing that few answers included examples or cases to support the discussion.

### **Question 3**

This was the least popular question, answered by few candidates. There were a very few answers that showed that students knew where and how a civil trial is conducted and how it could be paid for. Most candidates who attempted this question appeared to know very little about the subject.

Part (a) required an explanation of how civil cases are conducted in all levels of court. Part (b) required a brief explanation of how civil claims are paid for and a discussion of the advantages and disadvantages of the different forms of funding. It does not appear to have come to the attention of centres that civil legal aid is not generally available for personal injury claims.

### **Question 4**

In part (a), candidates were required to outline the role of a judge in both civil and criminal cases, including appeals. In both civil and criminal cases, this could have covered the important pre-trial procedural role as well as the public role in court. Generally, candidates have stronger knowledge of the criminal role but for weaker candidates there is limited awareness of the difference between civil and criminal roles. The work of appeal judges is less well known. In part (b), candidates were required to explain how judges can be dismissed and why it is difficult to dismiss them. Few answers referred to reforms introduced by the Constitutional Reform Act 2005 including:

- the enhanced role of the Lord Chief Justice
- the reduction in significance of inferior and superior judges particularly for appointment, but also to an extent in dismissal
- the statement acknowledging the independence of the judiciary
- the limited role of the Lord Chancellor. It appears that well-established issues of separation of powers involving the Lord Chancellor are no longer relevant.

As the reforms have only become clear this year, centres are encouraged to cover the new arrangements with their students, though both 'old' and 'new' rules will be credited for the 2008 exams. Again, either candidates knew about security of tenure and judicial independence and its significance, and were able to include case examples and score high marks, or they wrote in very general terms and scored at lower levels.

### **Question 5**

In part (a), candidates were required to outline the stages in training and qualifying as a solicitor and as a barrister. This could have involved covering entry to the professions, academic training (CPE or GDL, LPC and BVC) and practical training (training contracts and pupillage). Generally, candidates have a good grasp of this area of content, though there was a tendency for some to get the chronological order wrong. Also some tended to concentrate on the costs of the courses rather than their content.

In part (b), candidates were required briefly to describe and compare the work of solicitors and barristers. This gave the opportunity to deal with the whole range of work in civil and/or criminal cases and both in and out of court. In addition, the way of working, as sole practitioners, in partnership or working from chambers could be covered.

Most candidates had a good grasp of the work done by solicitors and referred to “rights of audience”, though it was again quite common to read statements that, prior to the Courts and Legal Services Act 1990, solicitors enjoyed no rights of audience in court at all. Generally, the work of barristers was not as well covered as solicitors, with many candidates unable to include much detail beyond a brief description of advocacy, and possibly the operation of chambers. There was often reference to the ‘cab-rank’ rule, though there were few examples of the more specialist court-based work of barristers including possible advice on presentation of cases and appeals.

Most answers contained plenty of description, but fewer were able to provide comparisons that would enable them to attain the higher level marks.

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

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