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General Certificate of Education

Law 5161

Unit 2 (LAW2R) Dispute Solving

Report on the Examination

2008 examination - June series

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Unit 2 (LAW2): Dispute Solving

General

As with previous sittings of this paper, 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. There was evidence of thorough preparation, making use of past papers and examiner's reports. 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. As ever, candidates are encouraged to write in continuous prose.

Question 1

Part (a) was the most popular question attempted. Candidates were required to describe any three forms of ADR. They could choose from the forms of ADR mentioned in the specification – Arbitration, Tribunals, Negotiation, Mediation and Conciliation. The description could cover the types of cases heard, the make up and qualification of the panel, the nature of the hearing and the possible outcome. Stronger answers gave extremely detailed descriptions of different forms of ADR and included accurate examples of the different types of cases dealt with. Some candidates, however, referred to mediation and conciliation as a single form of ADR and weaker candidates did not explain the procedures in the different forms of dispute resolution.

In part (b), candidates were required to discuss just the disadvantages of ADR. This could have covered issues such as the cost of using ADR, funding, the possibility of unpredictable decisions, public awareness of ADR, any possible imbalance between the parties and limited appeal rights for some forms of ADR. Generally, candidates followed the instruction and dealt with the disadvantages, though there were still a number of answers that covered the advantages as well. The answers generally were of a good standard, referring in detail to several relevant points.

Question 2

This was another very popular question.

In part (a), candidates were required to describe the roles of both lay magistrates and juries. In the case of lay magistrates, this could have covered administrative work such as the granting of search and arrest warrants, issues of bail and custody and the hearing of licensing appeals. Centres should note that magistrates no longer consider the granting of liquor and gaming licences, as these are now functions of local authorities. The work of magistrates in court should have been considered – this could have covered sending serious cases to Crown Court, trials in their own court and sitting in appeals, again in the Crown Court. In the case of juries, answers needed to cover their role in court, such as listening to the evidence and the directions of the judge, as well as discussions in their own room and the different verdicts they can return. Credit was given to their limited role in civil cases. Answers varied to this question. There were many examples of candidates covering the qualification and selection methods of both forms of lay persons, which could not be credited. There were also many examples of inaccurate understanding, particularly of the way in which juries reach their verdicts and the role of the clerk in the Magistrates' Court. Some candidates also appeared to be confused about the courts that juries can sit in.

In part (b), candidates were required to discuss the advantages of using lay persons in the criminal justice system. This could have covered issues such as public confidence in the system, the fairness of trials by peers in open court resulting in few appeals and the cost of using lay persons as opposed to professional-only trials. Stronger answers, which were in the majority, used examples and cases to support their points, referring both to juries and lay magistrates.

Question 3

This was not as popular a question as in previous series.

In part (a), candidates were required to explain how both inferior and superior judges are selected and appointed. It is accepted that the process is now similar for both levels of judge but there remain differences. Candidates for both levels have to be eligible and then the process includes responding to advertisements, undertaking tests (inferior level) or paper sifts (superior), recommendation by the Judicial Appointments Commission and appointment by the Minister of Justice (Lord Chancellor). Answers could have covered the possibility of promotion for both levels. However, the majority of answers dealt with judges in general, with few distinguishing between the two categories and few referring to the possibility of promotion. Many candidates were also confused about the role of the JAC, even if it was identified.

In part (b), candidates were required to outline how a judge could be dismissed and to consider why it is difficult to dismiss a judge. Answers could have covered the different rules for dismissal of both inferior and superior judges. Reasons why it is difficult to dismiss a judge could include discussing their freedom from pressure by issues such as their status, security of tenure, independence from the Executive resulting in their complete impartiality. Many answers continued the approach adopted in part (a) by being general in nature and making few distinctions in the procedures between the two levels. There were few answers which mentioned the role of the Office for Judicial Complaints or the role of the Lord Chief Justice. Very few answers contained any relevant or detailed discussion material about why it is difficult to dismiss a judge.

Question 4

This was the least popular question.

In part (a), candidates were required to identify the courts in which Emma could have been dealt with when charged with theft and to outline the nature of the respective court hearings. As theft is an either-way offence, her case could have been tried in the Magistrates' Court, if she opted for trial here. Alternatively, she could have opted for trial before a jury in the Crown Court. The appeals from both of these forms of trial needed to be identified and described as well. As previously, the procedural question was not well answered. Most candidates who attempted this question were able to identify the trial courts (though not possible appeal courts) but were not able to describe the procedures in those courts. There were a few answers that just dealt with the appeal procedure without indicating how the case reached the appeal stage.

In part (b), candidates were required to describe and comment on the different forms of legal advice and representation available to Emma. This could have included a description of the duty solicitor scheme (both in the police station and at court), the role of the Criminal Defence Service and the different forms of state funding for trial including Legal Help and Representation. Comments could have been positive – ensuring that the defendant has legal representation and equalising the balance with the state-funded prosecution service – and negative – the difficulty of obtaining state funded representation except in serious cases and of

obtaining the service because of increasing numbers of lawyers choosing not to offer the service. Again, candidates who attempted this question were able to identify the different forms of advice and/or representation, though were then unable to go on to make any comments (either positive or negative) about the provision of that advice.

Question 5

This was another popular question.

In part (a), candidates were required to describe how solicitors, barristers and legal executives qualify for their respective professions. This would include the academic stages and the practical parts of training. Many candidates were unaware of how legal executives qualify and others covered only their work, which could not be credited. Some candidates did not appreciate that there is a separate professional body of legal executives and think that it is only a way of qualifying as a solicitor. Stronger candidates were aware of the requirements of the training and qualification of all three professions with especially detailed knowledge of solicitors and barristers.

In part (b), candidates were required to discuss how either solicitors or barristers could be held responsible for their work. This would have covered both civil responsibility in tort and, in the case of solicitors, their contractual responsibility, and professional responsibility to their ruling bodies, the Law Society and Bar Council. Some candidates did not accurately read the question and dealt with the responsibility of both solicitors and barristers. Some candidates were confused about contractual and tortious responsibility of solicitors. Stronger answers referred to cases such as *White v Jones* and *Hall v Simons* to show legal liability, though often there was confusion about the effect of the decision in *Hall v Simons*. When considering professional liability, there was plenty of evidence of up-to-date knowledge of the working of the Bar Standards Board. However, for solicitors there was less evidence of up-to-date knowledge of the Consumer Complaints Service, with many answers referring to the OSS and even the SCB.

Mark Ranges and Award of Grades

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