

MARK SCHEME for the May/June 2007 question paper

9084 LAW

9084/02

Paper 2, maximum raw mark 50

This mark scheme is published as an aid to teachers and candidates, to indicate the requirements of the examination. It shows the basis on which Examiners were instructed to award marks. It does not indicate the details of the discussions that took place at an Examiners' meeting before marking began.

All Examiners are instructed that alternative correct answers and unexpected approaches in candidates' scripts must be given marks that fairly reflect the relevant knowledge and skills demonstrated.

Mark schemes must be read in conjunction with the question papers and the report on the examination.

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- 1 (a) These questions look at the different methods of alternative dispute resolution on offer in England and Wales. The better answers will look at the alternatives and choose which one is appropriate to the facts in question.
- (i) Clearly conciliation would be appropriate but mediation will be the obvious solution. The better students may consider the inclusion in the FLA 1996 of the need to use mediation. A definition of what is involved is needed. The key element is that the parties talk to the other side through a third party to reach a resolution which is agreeable with the other side. The mediator is independent and is paid by both parties. The mediator does not put his/her views but helps the parties to come to agreement between themselves. In marriage breakdown such as this, mediation gives the parties a chance to deal with practical issues such as contact arrangements. Max 5 if answer misses mediation altogether. Max 8 if discuss mediation alone. Credit for negotiation [10]
- (ii) This part looks at alternatives available to an employee in an employment dispute with his/her employer. The candidate should include the source material, which refers to the procedure for a dissatisfied employee in the employment tribunal. Marks will be awarded, initially for candidates who identify the issue and further marks will be awarded for candidates who explain the procedure for the employee. Max 5 marks if miss employment tribunal. Max 10 can be achieved without reference to other methods of ADR but must be an excellent answer. [10]
- (iii) This part expects the candidate to consider conciliation and possibly negotiation but the key method of resolving the dispute will be arbitration. A definition is needed which should include that the arbitrator is a person chosen by both parties in agreement and not someone based at court. Their decision is final but the parties can reject the decision and choose to take the case to court. Max 5 if miss arbitration. [10]
- (b) This is a general question on the advantages of alternative dispute resolution. The obvious advantages include the informality and the simpler procedures. It is possible to argue that it is cheaper as well but some research suggests that this is not always the case. The parties themselves have greater control over the outcome in negotiation and mediation. The disadvantages include the lack of funding and the lack of appeals procedures. There are several relevant points made within the source material and candidates will only reach higher bands if they develop these ideas. Max 12 for tribunals alone. No mention of ADR. Max 9 for all questions if no reference to source material. [11–16] some basic critical analysis. [17–20] must have good critical analysis. [20]

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2 The first two parts of this question require detailed analysis of the source material. Candidates should consider whether the facts come within the definition of murder and also whether any of the defences are available.

(a) This part focuses on whether the facts come within murder and whether there is a defence under s.3 because the defendant had been provoked. The previous history suggests that the accused has had a history of abuse and the Thornton case is similar. Criticism of her cooking though trivial in itself may be enough after a history of violent abuse. The facts could suggest provocation and the courts would be likely to accept that the accused was provoked here. Max 8 for answer which argues against provocation. Max 4 for sensible applications of diminished responsibility only. [10]

(b) (i) This part also looks at the Homicide Act 1957 but here there may be a defence under s.2 Diminished Responsibility. Marks will be awarded for correctly identifying the appropriate section with candidates moving into the higher bands if they are able to identify whether the behaviour of either Manuel or Carmen comes within diminished responsibility. [10]

(ii) Credit for reasoned answer on lack of mens rea for Carmen. [10]

(c) This question looks at procedure and how the murder case can be brought to trial. The full answer would look at proceedings in the magistrates and then crown court trial depending on the nature of the plea. The better answers will consider the burden of proof and also such issues as the use of the jury and the role of the CPS. [20]