

Level 4 Certificate for Associate Paralegals - Sample PBQs

Problem-based questions: Learners will typically answer 3 main questions in this element of assessment which may be sub-divided into smaller questions.

Total marks available: 40.

Unit 1: English Legal System for Associate Paralegals

An example of ONE part of a main question for English Legal System is below:

Question:

Discuss the effectiveness of Alternative Dispute Resolution (ADR) methods in resolving disputes in the UK, with particular reference to arbitration, conciliation, mediation, tribunals, and the Legal Ombudsman. Evaluate the advantages and disadvantages of these methods compared to traditional court proceedings

[12 Marks]

Answer

- 1. Arbitration:** Arbitration involves an impartial arbitrator who makes a binding decision after hearing evidence and arguments. It is often used in commercial disputes.
 - **Advantages:**
 - The process is private, protecting sensitive business information.
 - Arbitrators are often experts in the relevant field, ensuring informed decisions.
 - It is typically faster and less expensive than court proceedings.
 - **Disadvantages:**
 - Limited grounds for appeal make the decision final, which could be a drawback for losing parties.
 - Costs can escalate, especially in complex cases.
 - The formality of some arbitration proceedings may resemble court processes, reducing flexibility.

2 marks - 1 mark for type of ADR and 1 mark for Adv/Dis

2. Conciliation: Conciliation involves a neutral conciliator who facilitates discussion and proposes solutions to help parties reach a settlement.

- **Advantages:**
 - It preserves relationships by fostering cooperative discussions.
 - Less formal and less costly than arbitration or court litigation.
 - The process can be tailored to the needs of the parties.
- **Disadvantages:**

- The outcome is non-binding unless the parties agree to it, which may lead to delays if no settlement is reached.
 - Success depends on the willingness of both parties to compromise.
 - Perceived lack of neutrality if the conciliator proposes solutions.
- 2 marks - 1 mark for type of ADR and 1 mark for Adv/Dis

3. Mediation: Mediation uses a neutral mediator to assist disputing parties in negotiating a mutually acceptable solution. It is widely used in family law, employment disputes, and community conflicts.

- **Advantages:**
 - Emphasizes collaboration, improving the likelihood of preserving relationships.
 - Parties maintain control over the outcome, enhancing satisfaction with the process.
 - Cost-effective and quicker than litigation.
 - **Disadvantages:**
 - The mediator cannot enforce a resolution, which could prolong disputes.
 - Not suitable for cases where power imbalances exist, as one party may dominate.
 - Lack of legal precedent may make it unsuitable for disputes requiring clarity on legal rights.
- 2 marks - 1 mark for type of ADR and 1 mark for Adv/Dis

4. Tribunals: Tribunals are specialized forums for resolving disputes in areas like employment, immigration, and benefits.

- **Advantages:**
 - Expertise in specific areas of law ensures informed decision-making.
 - The process is less formal than courts and often more accessible for individuals without legal representation.
 - Tribunal decisions are binding and enforceable.
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 - **Disadvantages:**
 - Limited scope to appeal decisions can leave parties feeling dissatisfied.
 - Delays and backlogs in certain tribunals reduce the time-saving advantage.
 - Parties may face difficulties navigating the process without professional advice.
- 2 marks - 1 mark for type of ADR and 1 mark for Adv/Dis

5. Legal Ombudsman: The Legal Ombudsman addresses complaints about poor service from lawyers and legal professionals.

- **Advantages:**
 - Provides a cost-free avenue for individuals seeking redress.
 - Decisions are binding on service providers, ensuring accountability.
 - Focuses on service quality rather than legal outcomes.

- **Disadvantages:**

- Limited jurisdiction, as it only deals with service complaints, not substantive legal issues.
 - Decisions are not enforceable in the same way as court judgments unless escalated.
 - The process may not fully satisfy complainants seeking higher compensation.
- 2 marks - 1 mark for type of ADR and 1 mark for Adv/Dis

Evaluation of Advantages and Disadvantages of ADR Compared to Courts:

- **Advantages:**

- ADR is generally faster, less expensive, and less adversarial than court litigation.
- Processes like mediation and conciliation allow parties to craft creative solutions, fostering better long-term relationships.
- Privacy is a key benefit in ADR methods like arbitration.

- **Disadvantages:**

- ADR methods may lack procedural safeguards and public accountability compared to courts.
 - Non-binding outcomes in conciliation and mediation can lead to protracted disputes.
 - Power imbalances between parties may be more pronounced in ADR.
- 2 marks for discussion of any of the above points

Unit 2: Law of Tort for Associate Paralegals

An example of ONE part of a main question for Law of Tort is below:

Question:

A beauty salon called Buff and Glow owned by Lily is having an opening event. They send out 500 invitations each of which says, "bring a friend!"

Daljit receives an invitation and brings her friend Derek with her. When they arrive the floor of the salon is wet with spilt drinks. Lily had put down not slip mats to deal with the wet floor, but Derek slipped anyway and broke his hip

Advise Lily whether she owes Derek any liability and if so on what grounds.

[12 marks]

Answer:

- Occupiers Liability Act 1957 imposes a duty on occupiers towards visitors. Under this Act the occupier may be liable for a visitor's personal injuries and property damage if caused by the state of the premises. (3 marks)

- Here Lily is the occupier as she has control of the premises: *Wheat v Lacon & Co Ltd* [1966] (2 marks)
- Derek is a lawful visitor as, although Daljit was the person invited the invitation asked her to bring a friend (2 marks)
- The “common duty of care” owed by occupiers under s2(2) OLA 1957 to their visitors is to: “Take reasonable care in all the circumstances to see that the visitor is reasonably safe in using the premises for the purpose for which they are permitted to be there.” (2 marks)
- *Laverton v Kiapisha* [2002] it may be that Lily has done everything that is reasonable, if so, she will have fulfilled her duty of care and there will be no liability to Derek (3 marks)

Unit 3: Criminal Law for Associate Paralegals

An example of ONE part of a main question for Criminal Law is below:

Question:

Eleanor went to her local supermarket with her 3-year-old daughter Zara to buy a chocolate bar.

As they were walking towards the tills Zara fell over and cut her knee. Whilst Eleanor was comforting Zara, Eleanor put the chocolate bar in her pocket and forgot about it. Eleanor left the supermarket without paying for the chocolate

Three days later Eleanor found the chocolate bar in her pocket decided not to go back to the supermarket in order to pay for it.

What offence has Eleanor committed if any?

[13 marks]

Answer:

- Theft (1 mark)
- s1 of the Theft Act 1968 (TA) (1 mark)

Actus Reus

- Appropriation (1 mark)
- Of property (1 mark)
- Belonging to another (1 mark)

Mens rea

- Dishonesty (1 mark)
- With intention to permanently deprive (1 mark)
- Dishonesty = Ivey v Genting Casinos [2017] (1 mark)
- When Emma took the chocolate in her pocket and left the store, she did not intend to steal it (1 mark)
- But when she discovered it and decided not to return the chocolate she assumed the rights of the owner (1 mark)
- At that moment she was dishonest in that she knew that the store would not consent to her taking the chocolate without paying for it and she also had the intention to permanently deprive the store of it by her keeping it. Velumyl [1989] (3 marks)

Unit 4: Employment Law and Practice

Question:

Gary, a warehouse manager, was dismissed for poor performance after one warning. The company followed no formal process. Gary claims unfair dismissal. Discuss the legal framework and potential outcome.

[10 Marks]

Answer:

- Under **ERA 1996 s.98**, dismissal must be for a **fair reason** (2 Marks – 1 for each highlighted point)
- and follow a **fair procedure**. (1 Mark)
- **Capability** is a potentially fair reason. (1 Mark)
- Lack of procedural fairness breaches the **ACAS Code of Practice**, (1 Mark)
- which could increase compensation. (1 Mark)
- The employer failed to conduct a fair investigation (1 Mark)
- or provide opportunity to improve (1 Mark).
- Alex could successfully claim **unfair dismissal** at a tribunal (1 Mark)
- due to procedural failings. (1 Mark)