

CHAPTER 2: THE COURT SYSTEM AND ALTERNATIVE DISPUTE RESOLUTION

QUESTION 1

Explain clearly which court would deal with the following matters:

- a) Ace plc is suing Fox plc for £20 million. The case involves complex commercial law issues.
- b) Virju is suing Beejal for £800.
- c) Southland Bank plc is suing Useless Ltd for £14,000.
- d) Adam is being prosecuted for manslaughter (an indictable offence).
- e) Kevin is being prosecuted for careless driving (a summary offence).

Answer:

- a) The case will commence in the High Court.
- b) The case will commence in the County Court and be allocated to the small claims track.
- c) The case will commence in the County Court and be allocated to the fast track.
- d) The trial will be heard in the Crown Court before a judge and jury.
- e) The trial will be heard in the Magistrates' Court before three magistrates or one District Judge (Magistrates' Court).

QUESTION 2

Outline the advantages and disadvantages of tribunals over the court system.

Answer:

- Tribunals provide a specialist forum for dealing with disputes outside the court system. The tribunals, Courts and Enforcement Act 2007 created two generic tribunals, the first tier tribunal and the Upper Tribunal, although there are some tribunals such as the Employment tribunal that are outside this system.
- The advantages of tribunals over courts include:
 - Tribunals are less costly to run than courts.
 - The waiting period for a hearing before a tribunal is usually much shorter than for a court hearing.
 - The procedure is more informal and flexible than court procedure.
 - Tribunals have their own policies based on justice, expediency, and social policy.
 - Persons sitting on tribunals have expert knowledge in the subject area.
- The disadvantages of tribunals over courts include:
 - Technical experts sitting on tribunals may not be as impartial as judges.

- Decisions of tribunals do not usually receive much publicity, and therefore individuals are unaware of the outcome of cases similar to their own case.
- Legal aid is generally not available for tribunals and, although the proceedings may not be as formal as a court, an applicant may be facing an opponent who is an experienced government official or a lawyer paid for by an employer.

- QUESTION 3

-
- Explain what is meant by arbitration, mediation, and conciliation.

Answer:

- The court system is a method of resolving disputes; however, other means of resolving conflicts may be more appropriate in certain circumstances - these include arbitration, mediation, and conciliation.
- Arbitration is the procedure by which the parties refer their disputes to a third party or parties for resolving. An arbitrator may be legally qualified but does not have to be and is often an expert in the field in dispute.
- A contract may contain an express clause referring any future disputes to arbitration or the parties may agree to arbitration after a dispute has arisen.
- The Arbitration Act 1996 sets out the general principles on arbitration, which include that the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest. The object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without necessary delay or expense.
- Most of the powers set out in the Arbitration Act are not compulsory and it is up to the parties to decide which procedures they will adopt.
- The parties agree to be bound by the decision of the arbitrator and any award given in arbitration is enforceable through the court system.
- Mediation is the procedure where the parties appoint a mediator and he acts like a facilitator through which the disputing parties can communicate and negotiate. The emphasis is on getting the parties themselves to work out a shared agreement as to how best to settle the dispute. Therefore it is the parties themselves who determine their own solution, often through compromise rather than a 'winner' and a 'loser'.
- Mediators are trained but are not necessarily legally qualified.
- If a dispute is successfully resolved the agreement can be written down and is legally binding but if the matter is not resolved court proceedings may have to be initiated.
- The discussions in mediation are on a 'without prejudice' basis, which means that, if the parties fail to reach agreement at the end of the mediation process, the matters discussed at mediation cannot be used in later court proceedings..
- Conciliation is less a less formal procedure than mediation. The conciliator assists the parties to explore all possible solutions for settling the dispute and points out the positive and negative consequences of the different solutions. If conciliation fails the parties may bring their dispute before a court.

QUESTION 4

Raj steals Asha's car, drives it to a remote part of town and sets it on fire. Raj is caught by the police and prosecuted for theft of the car. Asha wants to sue Raj for compensation for the damage to her car. Advise Raj in which court or courts he may have to face trial and explain to Asha how to commence a civil claim.

Answer:

- Criminal issues: *R v Raj*. Criminal trials are either heard in a Magistrates' court, before three magistrates or a single District Judge (Magistrates' Court), or in the Crown Court by a judge and jury.
- In order to be heard in the Magistrates' Court the offence must be either a summary offence or one triable either way. If the offence is indictable one, Raj's trial will be in the Crown Court. If triable either way then the Magistrates may decide that it should be sent for trial at the Crown Court or Raj can request a Crown Court trial.
- In a Magistrates' Court the District judge or magistrates will decide on the guilt of the defendant and if found guilty, his sentence. In the Crown Court the jury decide on guilt and the judge on sentence.
- Civil issues: *Asha v Raj*. Asha can commence action in County Court. The case is likely to be continue in the County Court due to nature of the action (value of case, complexity of facts and issues involved).
- Before proceedings are taken the pre-action protocol should be followed. If the dispute is not settled Asha should complete a claim form and particulars of claim and submit it to court
- Raj will be served with the papers - usually by post and must acknowledge receipt within 14 days and admit claim or put in a defence.
- If claim is defended it is allocated to one of 3 tracks - small claims track, fast track or multi track.
- If the claim is not defended (or it is defended and Asha is successful) Asha can enter judgement. If Raj does not pay the sum due Asha may take court action to enforce judgement.