



EXTRA

EXPERIENCED TEACHER RESOURCES & ASSESSMENTS

2024 LEGAL STUDIES Unit 3 Outcome 2

SUGGESTED SOLUTIONS

<i>Section</i>	<i>Number of questions</i>	<i>Number of questions to be answered</i>	<i>Number of marks</i>
A	5	5	25
B	2	2	25
			Total 50

SECTION A (25 marks)**Question 1 (6 marks)**

Wilbur is a handyman who was hired to build steps to an existing deck, and the client paid a small deposit. Wilbur completed the job within two days, and the client stated they were happy with Wilbur's work. Later, however, the client stated that the job was too expensive and refused to pay the rest of the money owed. Wilbur has approached Consumer Affairs Victoria (CAV) for assistance in resolving this dispute.

- a. Explain **one** reason why CAV **may not** be appropriate in resolving this dispute. 3 marks

Marking Guide

Marks	Description
3	A full and complete explanation of one reason CAV is not appropriate, which includes: <ul style="list-style-type: none"> • An explanation (more than stating) of one reason • An understanding of CAV as a dispute resolution body • A link to the dispute/stimulus material
2	A strong/good response that falls short of full marks. For example: <ul style="list-style-type: none"> • A general or brief explanation of a reason • There is no link to the dispute/stimulus material • The answer lacks depth or detail. • There are one or two errors that cannot be ignored
1	Response is more than nothing and, in some way, relates to the question. For example: <ul style="list-style-type: none"> • The answer incorrectly explains a reason but demonstrates some understanding CAV as a dispute resolution body
0	<ul style="list-style-type: none"> • Incorrect response or no response given

Possible Responses

- Provide free legal information
- Provide information and advice through a Victims Legal Service (on obtaining financial assistance or compensation)
- Provide duty lawyers at the Magistrates Court
- Provide grants of legal assistance (legal representation)
- Provide referrals to other support services for victims of crime

Suggested Response

Consumer Affairs Victoria (CAV) is not an appropriate body to assist in resolving this dispute because the dispute is outside CAVs 'jurisdiction'. CAV only offers dispute resolution services to complaints initiated by the consumer as they are concerned primarily with 'consumer affairs'. As such, they do not provide dispute resolution services for disputes where the trader, such as Wilbur, is the complainant.

- b. Describe the purpose of CAV. 3 marks

Marking Guide

Marks	Description
3	A full and complete description of the purpose of CAV, which includes:

Question 2 (13 marks)

Alternative Dispute Resolution (ADR) refers to dispute resolution methods other than the determination of a dispute by a judicial officer (judge or magistrate). In 2011, the National Alternative Dispute Resolution Advisory Council (NADRAC) formulated a set of National ADR Principles.

Below is a summary of those principles.

1. People have a responsibility to take genuine steps to resolve or clarify disputes and should be supported to meet that responsibility.
2. Disputes should be resolved in the simplest and most cost-effective way. Steps to resolve disputes including using ADR processes, wherever appropriate, should be made as early as possible and both before and throughout any court or tribunal proceedings.
3. People who attend a dispute resolution process should show their commitment to that process by listening to other views and by putting forward and considering options for resolution.
4. People in dispute should have access to, and seek out, information that enables them to choose suitable dispute resolution processes and informs them about what to expect from different processes and service providers.
5. People in dispute should aim to reach an agreement through dispute resolution processes. They should not be required or pressured to do so if they believe it would be unfair or unjust. If unable to resolve the dispute, people should have access to courts and tribunals.
6. Effective, affordable and professional ADR services that meet acceptable standards should be readily available to people as a means of resolving their disputes.
7. Terms describing dispute resolution processes should be used consistently to enhance community understanding of, and confidence in, them.

Source: NADRAC, 'Principles of ADR', 2016
<<https://www.adrac.org.au/principles-of-adr>>

a. Identify **one** role of the parties when using ADR.

2 marks

Marking Guide

Marks	Description
2	<ul style="list-style-type: none"> • Response identifies/states one role of the parties when using alternative dispute resolution • The response draws on the salient and relevant facts of the stimulus material
1	<ul style="list-style-type: none"> • The answer identifies/states one role of the parties but makes no link to the stimulus material
0	<ul style="list-style-type: none"> • Incorrect response or no response given

Possible Responses

Below is a non-exhaustive list of possible points that could be made...

- Parties have a responsibility to take genuine steps to resolve or clarify disputes.
- Parties should attempt to resolve their dispute in the simplest and most cost-effective way.
- Parties should show their commitment to that process by listening to other views and by putting forward and considering options for resolution.

Suggested Response

Parties to a civil dispute have the role or responsibility when using alternative dispute resolution to “attempt to resolve their dispute in the simplest and most cost-effective way”, as is outlined in point 2 of the source material.

- b. Explain the impact of time delays on the ability of the civil justice system to achieve access during a civil dispute. 4 marks

Marking Guide

Marks	Description
4	An excellent response which has the following features: <ul style="list-style-type: none"> • A comprehensive explanation of the impact of time delays in the civil justice system • Demonstrates an understanding of the principle of access in the civil justice system • A link between time delays and achieving the principle of access (relationship between the two concepts) • There is effective and accurate use of the stimulus material
3	A good response which falls short of full marks. For example: <ul style="list-style-type: none"> • The response is brief and falls short of being comprehensive. There is a lack of depth in explaining time delays or the principle of access • The impact of time delays on the principle of access is not addressed. The relationship between the two concepts is not present. • The civil justice system is not addressed • There is limited use of the stimulus material • There is an error that cannot be ignored
2	More than a 1-mark response. For example: <ul style="list-style-type: none"> • Either time delays OR the principle of access are comprehensively explained and linked to the stimulus material, but not both • A detailed explanation of time delays in the civil justice system and the principle of access in the civil justice system, but the response goes no further • There are a significant number of errors in the response
1	The response is more than nothing and, in some way, relates to the question. For example: <ul style="list-style-type: none"> • Time delays in the civil justice system are outlined • The principle of access is defined or briefly outlined • Some valid points are made about the stimulus material
0	<ul style="list-style-type: none"> • Incorrect response or no response given

Possible Responses

Below is a non-exhaustive list of possible points that could be made...

Time Delays

- The adversary system gives parties control over the preparation and presentation of their case. This means the parties are responsible for gathering evidence, locating and interviewing witnesses and deciding how the case can be presented in the best possible light, which can take considerable time.
- Pre-trial procedures such as pleadings and discovery can be complex and take considerable time to complete. ADR may assist in reducing some of these delays.
- The more cases that are brought before the court and the slower those cases progress, the bigger the backlog of cases that the court needs to hear. ADR may act to reduce these backlogs.

Access

- Delays may deter injured parties from pursuing their case because they don't want it to drag on for many months and cause disruption to their lives, which can limit their ability to achieve justice. ADR may address these delays by offering quicker and more effective methods of dispute resolution.
- Delays may also prevent a party from being able to afford legal representation for the duration of the proceeding, which could limit their ability to understand their rights and pursue their case. ADR may offer a cheaper method of resolving civil disputes, and costs may be further reduced due to the informal nature and quicker procedures of some ADR methods.

Suggested Response

Time delays in the civil justice system include any delays associated with resolving a civil dispute. Time delays can occur because the adversary system gives parties control over the preparation and presentation of their case. This means the parties are responsible for gathering evidence, locating and interviewing witnesses and deciding how the case can be presented in the best possible light, which can take considerable time. Further, civil court procedures such as pre-trial procedures may be complex and take considerable time for parties to complete. This means that civil disputes are not 'resolved in the simplest and most cost-effective way'.

Such time delays may impact on the ability of the civil justice system to achieve the principle of access. These delays may deter injured parties from engaging with the justice system to pursue their case. Parties may need a speedier resolution than can be offered by a civil hearing or trial, or the cost associated with a civil hearing or trial are too great to make pursuing a case worthwhile. Further, this may prevent people in a dispute from having 'access to, and seek out, information that enables them to choose suitable dispute resolution processes'. This therefore prevents individuals from physically accessing the civil justice system and pursuing their case.

- c. Considering the seven ADR principles, discuss the appropriateness of **two** dispute resolution methods in resolving civil disputes 7 marks

Marking Guide

Marks	Description
7	<p>A detailed and comprehensive discussion that has the following features:</p> <ul style="list-style-type: none"> • Comprehensive discussion (not explanation) of the appropriateness of two dispute resolution methods • A discussion is more than an explanation, so counter-arguments, limitations, cons, and restrictions should be raised. The response should address both sides of the argument, why a method/s would be and would not be appropriate <ul style="list-style-type: none"> ○ The response may provide more points in favour or against one method than the other method. The discussion does not need to be evenly weighed between the two methods, but both methods should be sufficiently addressed • Draws on the salient and relevant facts of the stimulus material to support response
5-6	<p>A strong response that falls short of full marks. For example:</p> <ul style="list-style-type: none"> • There is not sufficient depth to some points made, and elaboration could have lifted some of the points. For example, there could have been greater depth of discussion. • There is limited use of the stimulus material • There are one or two errors that cannot be ignored
3-4	<p>The response is 'middle of the range' but is significantly lacking in some areas. For example:</p>

	<ul style="list-style-type: none"> • Response is an explanation rather than a discussion. The response explains two methods of dispute resolution and links those methods to the stimulus. But there is no discussion or consideration of when the two methods would be appropriate in resolving a civil dispute • Response may only address one side of the argument, e.g. the response explains when the two methods would be appropriate for resolving civil disputes but provides no counter-arguments. • Response feels like a shopping list of dispute resolution method points with no significant application to the stimulus material or discussion of when the methods are appropriate (max 3 marks) • Only one dispute resolution method has been ‘discussed’ (max 3 marks) • There is limited use of the stimulus material and salient points have been missed • There are significant errors
1-2	<p>The response is more than nothing and, in some way, relates to the question. For example:</p> <ul style="list-style-type: none"> • One or two good points about the chosen dispute resolution methods have been made • A dispute resolution method has been explained • The response makes some link to the stimulus material about a sentencing factor
0	<ul style="list-style-type: none"> • Incorrect response or no response given

Possible Responses

Below is a non-exhaustive list of possible points that could be made...

Mediation and Conciliation – May be appropriate where:

- A relationship between the parties needs to be maintained (e.g. neighbours or family).
- The parties can’t afford the legal costs of resolving the dispute through the courts.
- Parties want privacy and confidentiality when resolving the dispute.
- A flexible remedy is being sought or would benefit the parties.
- Parties are willing to discuss issues and reach an agreement.

Mediation and Conciliation – May not be appropriate where:

- Parties are highly emotional, which could interfere with the negotiation process.
- Parties are unwilling to engage in the process or discuss issues (i.e. settlement is unlikely).
- There is a history of violence or threats (e.g. domestic violence).
- There is a power imbalance between the parties.
- The matter is urgent.

Arbitration – May be appropriate where:

- The dispute requires a binding and enforceable decision (i.e. certainty).
- The parties can’t afford the legal costs of resolving the dispute through the courts.
- Parties are unable to come to their own agreement with or without the assistance of a mediator/conciliator.
- Parties agree to arbitrate (e.g. a contract may stipulate that disputes are decided by arbitration).
- Parties want to keep the matter private, but have it decided by an independent 3rd party.

Arbitration - May not be appropriate where:

- Parties do not agree to arbitrate.
- Parties want greater control over the dispute resolution process and outcome (e.g. flexible agreements).
- Parties are comfortable with formal rules of evidence and procedure.
- Parties are happy to have the matter heard in public.

Suggested Response

Below is the start of a high-scoring response...

Mediation is a dispute resolution method that uses an independent and impartial 3rd party called a mediator, who facilitates discussion and encourages the parties to communicate and voluntarily come to an agreement. Mediation may be an appropriate method for resolving a civil dispute when parties can't afford the legal costs of resolving the dispute through the courts. This is because mediation is often a far cheaper option for resolving civil disputes than through the courts as often legal representation is not used and the fees associated with this process are much less. Therefore, mediation may achieve the ADR principles because mediation is an 'effective, affordable' method of dispute resolution that is 'readily available to people as a means of resolving their disputes'.

However, mediation may not be an appropriate method...