**SUMMARY QUESTIONS**

**ESSAY QUESTIONS**

1. ‘Courts are intimidating, daunting and expensive ways of resolving disputes.’

Critically assess the above statement with specific reference to the benefits provided by tribunals in the administration of justice.

**Indicative content outline answer:**

* Tribunals were established as an alternative, with an emphasis on greater informality, to the traditional court system.
* Tribunals were created on a regional basis, with areas of local knowledge and expertise in areas such as welfare, immigration and employment. Tribunals were so called because of the three members, a legally qualified chairperson, along with two independent wing (lay) members with expertise / experience in the area.
* As the binding force of precedent moves downwards, the tribunal is not bound by decisions made in previous cases, although they frequently look to such decisions when considering a case.

***The Advantages of the Tribunal System***

* **Speed of Cases:** Tribunals enable an effective balance to be established between the legality of the hearings and the formalities that any ‘real’ hearing must adhere to. The decisions of the tribunals are also provided more quickly than in the courts, with awards frequently being made within the day of the hearing.
* **Reduction in Costs:** As tribunals were created to remove the necessity for legal representation, this very expensive aspect of the legal system would be removed. Tribunals also do not always charge fees unlike courts, and costs are not always awarded against the losing side.
* **Expert Knowledge in Jurisdiction and Locality:** Tribunals were established in areas such as welfare to consider claims and appeals on benefits and so on; employment tribunals were established to hear claims on disputes between employers and employees. They would therefore begin to establish a body of expertise in these specific areas and this would assist in deciding future cases more expeditiously. A further benefit would be that as tribunals were regionally based, they would be able to establish an understanding and expertise of practices in the local region.
* **Informality:** There are various tribunals, and each has its own jurisdiction and methods of work, however, they are generally less formal and therefore, it was hoped, less intimidating than courts.
* **Reducing the Workload of Courts:** As cases such as disputes in employment are heard by employment tribunals, the courts would be free to hear other claims with the perceived result that it would assist in speeding up the judicial system by reducing their workload.
* **Reasoned Hearings:** Tribunals are presided by a legally qualified chairperson, and work within the rules established by law. Therefore, decisions are based on the rule of law and the parties can have confidence that justice was seen to be done. There is also an appeals procedure.

***The Disadvantages of Tribunals***

* **Increased Formality:** Tribunals have increasingly become legalistic and barristers have begun to specialise in certain jurisdictions (such as employment law). The increasing competence of tribunals in legal jurisdictions, and the technical rules governing claims and the formalities of procedure, have lessened this distinct advantage.
* **Limitation in Legal Assistance:** Assistance through the Community Legal Service Fund is not available for those individuals who are presenting claims at a tribunal.
* **The Complexity of the Tribunal System:** The system of tribunals as being less formal and legalistic than courts is now increasingly unrealistic. Employment tribunals hear well over 80 different jurisdictions of law.
* **No Precedent Established in Tribunals:** Tribunals are not bound by the decisions of other tribunals, and with reference to employment tribunals, as many of the decisions are made on the basis of the facts of the case, then decisions can be made that appear to contradict similar cases.
* The speed and low costs have been largely removed from many tribunals, but this is keenly evidenced in Employment Tribunals with the introduction of the issue and hearing fee system, the compulsory early conciliation system, and the awards of costs against claimants when the employers are often legally represented and, due in no small part to the austerity measures since 2010, the lack of legal advice and free representation of many claimants means they are not represented in cases.

**2.** ‘There are various ways of looking at (the Supreme Court): as a change of place and name which was of major constitutional importance; as an interesting social experiment, which left it to the Justices to create a new set of rules and conventions to replace those that regulated their conduct in the House of Lords; as an ill-judged political exercise, which has cost a great deal of money and exposed the Court to pressures on its budget imposed by the Executive which the Lords of Appeal in Ordinary never encountered while they were in Parliament.’

Lord Hope, Barnard’s Inn Reading, 24 June 2010.

Critically assess the above statement. Specifically comment on the rationale for the development of the Supreme Court and the perceived advantages its introduction has had over the judicial branch of the House of Lords.

**Indicative content outline answer:**

* The House of Lords held a dual function as a legislative body (to initiate Bills and to review the Bills sent to it by the Commons) and it was the highest court of appeal (presided by the Law Lords).
* Concern was often raised that for the separation of powers to be demonstrated clearly in the UK, the roles performed in the House of Lords should be reformed. It was deemed ‘unfortunate’ that the highest court of appeal was also the second chamber of government – although of course there existed rules separating the functions of each.
* To aid transparency, the judicial function of the House of Lords was transferred to the Supreme Court.
* This movement clearly (and physically) separated the two functions; it also gave the Law Lords more room and space to carry out their functions.
* Reasons forwarded as to why we should not have created the Supreme Court was the expense of moving to a new building and the ongoing additional costs at a time when the economy was in downturn.
* It could even by argued that much of the tradition associated with the House of Lords has been changed (perhaps negatively) which the physical move to the Middlesex Guildhall.
* It is not a ‘real’ Supreme Court’ in the sense that other countries have constitutional courts. It has no greater powers than had the Law Lords in the House of Lords. Indeed, the UK already had the Supreme Courts which had to be renamed the ‘Senior Courts’ on the creation of the Supreme Court.
* It was, of course, an expensive exercise, and it may be questioned whether such a move was necessary rather than politically motivated following the reforms started by the Labour Government.

**PROBLEM QUESTIONS**

1. Janet was recently shopping in a retail outlet of All Bright Consumables (ABC) Ltd. She asked the sales assistant to recommend a Personal Computer (PC) for her to purchase having given him the information he asked for. Janet was very clear that whilst she had little experience of computing, she required a computer to surf the Internet, run word processing, and have a camera for video chats. Finally, for entertainment she wanted to make sure it had a blu-ray disc player, and she had been told to ensure it had at least 4GB of RAM. Having received this information, the sales assistant obtained a PC from the store and Janet purchased it.

When Janet’s friend set up the computer at home, Janet was informed that the computer actually only had 2GB of RAM, it had a DVD disc player not the blu-ray as requested, and it did not have a video camera. Janet immediately returned to the store to complain and asked for a refund. The store manager refused as he said as soon as the PC was opened there could be no returns unless the PC was faulty (which it was not), and he did not believe that the sales assistant would get her order wrong. Rather, the manager suggests Janet was not clear about her requirements and could not obtain a refund just because she ‘had second-thoughts’ about the purchase.

Using your knowledge of the court system, explain to Janet which court(s) would hear any claim she made for a refund. Explain to her the tracking system used and how this would impact on her legal action for compensation.

**Indicative content outline answer:**

* Given that this case involves a claim under the Sale of Goods Act 1979 (ss. 13, 14(2) and 14(3)), if Janet is acting in the course of a business, or the Consumer Rights Act 2015 if she is a consumer, the costs would be relatively inexpensive, it would likely be heard in the County Court.
* The County Court is the ‘lowest’ of the courts in the hierarchy.
* The Court hears many cases with a business emphasis, and as such, it follows the High Court in possessing unlimited jurisdiction to hear contract and torts claims.
* In the absence of a claim including personal injury, if the value of the claim is less than £25,000 then it will generally be heard in the County Court.
* It will deal with many of the claims between a consumer and a trader and there exist mechanisms to assist in reaching a speedy resolution to a dispute.
* Cases in the County Court are heard by a District Judge when the issue is straightforward or the matter is uncontested. Where the issue is more complex, a Circuit Judge will hear the case, and appeals from the County Court will proceed to the High Court.
* Judgments of the Court will be entered into the Registry of County Court Judgments, which is a public document and is often used by credit agencies prior to an offer of a loan or where goods are to be paid for over a period of time.
* Due to the small value of the claim it will be heard in the ‘small claims court’ – this is actually the County Court using the ‘Small Claims Track’.

***Using the Small Claims Track.***

* When a case is initiated, the parties are sent a questionnaire (called an ‘allocation questionnaire’) that identifies the most cost-effective and just method of dispensing with the case.
* If the claim involves a dispute with an amount of less than £5,000; if it involves a situation such as consumer claims (faulty goods, poor workmanship, problems with the sale or supply of goods and services and so on), then it may be suitable for this track.
* These types of claims will not normally involve a lot of witnesses or any difficult or complex points of law, otherwise a different track may be more appropriate.
* The major benefit to a claim under this track is that legal costs are not generally awarded against the losing side.
* The Court hears claims including breach of contract, faulty goods, goods not supplied, claims for bad workmanship, personal injury and so on.
1. ABC Ltd has experienced the following problem with one of its major customers and requires appropriate advice to ensure an effective resolution. ABC has a significant corporate customer, BigByte Ltd, which regularly places very large orders for PC components. However, while ABC provides BigByte with a standard trade credit period of ‘full payment within 30 days’, BigByte has got into the habit of paying late (sometimes as late as 90 days). ABC’s concern is that if other trade customers get to know that they are relaxed about enforcing payment according to the terms of its trade credit agreement, the other customers may ask for similar extended credit periods. ABC has considered increasing the price of goods sold to BigByte so as to ‘charge’ the company for the additional credit but fear that any increase in price will merely result in this valued customer going elsewhere.

Advise ABC about alternative forms of dispute resolution (ADR) that could be used to resolve this situation. Specifically identify the advantages ADR may provide compared with traditional court action in relation to business relationships.

**Indicative content outline answer:**

* There are many approaches to ADR including internal dispute resolution techniques, negotiations, the ombudsman scheme and so on.
* Internal techniques may not involve third parties, utilise any procedures for the use of arguments or evidence in the dispute, or indeed produce enforceable solutions. However, they are informal and may produce a mutually acceptable resolution. They are also being increasingly used in employment disputes to prevent resort to tribunal.
* The ombudsman scheme is used in banking, public services and central and local government.
* The process for using ADR will begin with some form of negotiation, then, unless there is an arbitration agreement in the contract (as often included in construction cases), the parties may attempt some form of mediation, and then possibly moving towards conciliation and then arbitration in the event that the dispute cannot be resolved.
* The most common forms of ADR include Arbitration, Conciliation and Mediation.

***Arbitration***

* This is a voluntary system of ADR and involves the parties relying on the services of an arbitrator who is an independent, fair and impartial third party, and is often legally trained or is an expert in the subject matter of the dispute.
* The process has the benefit of privacy and the arbitrator will decide the case on the basis of the evidence, with the application of the law, and the decision is legally binding upon the parties.
* The Arbitration Act 1996 provides for the dispute to be resolved according to rules of procedure similar to those used in the High Court, and as such, due to the ‘legal’ nature of this method of ADR, it may not prove to be less expensive than traditional court action, particularly as ‘legal aid’ is unavailable in arbitration.
* Arbitration may be selected as a means of dispute resolution by the parties, the parties may be referred to it by the court, or an Act of Parliament may require it.
* The parties may apply to the court hearing the case to stay the proceedings if the matter involves an aspect of the dispute that they had agreed to be dealt with under arbitration.
* Arbitration may also involve the entire case, or it may be selected as appropriate for one aspect of the dispute. As such, it has flexibility in approach.
* When arbitration is selected, the parties should do everything in their powers to ensure compliance with procedural and evidential matters, and to limit any delays in the proceedings.
* The arbitrator’s decision (an award) is binding on the parties, although an appeal process exists, with the permission of the court, on a point of law, or with the permission of each party, to the High Court. Such appeals are, however, not commonplace.
* Whilst the hearings under arbitration are conducted in a judicial manner and are subject to the rules of natural justice, they have the benefit of being private and hence in business, a firm’s actions, or their contractual dealings, financial records and so on are not subject to public scrutiny.

***Conciliation***

* This process is somewhat similar to mediation, and indeed is often considered to be interchangeable with mediation, however, the conciliator adopts a more proactive role.
* His/her role is to offer solutions and identify strategies for the successful resolution of the dispute.
* A very common example of the use of conciliation is in employment disputes, where ACAS intervenes with the parties to reach a settlement without recourse to the employment tribunal. The conciliation officer speaks with the parties and identifies their concerns, sharing evidence and identifying the likely success of any claims.
* However, there is a concern that due to the interventionist approach of the conciliator, and the unequal bargaining power of the parties, settlements are often to the detriment of employees who may have obtained a more appropriate remedy had the case been heard by a tribunal.

***Mediation***

* Mediation may be ‘evaluative’ (where an assessment is made of the ‘legal’ issues of the subject forming the dispute) or it can involve a ‘facilitative approach’ (where the emphasis is on assisting the parties to resolve their differences in a mutually acceptable way).
* The parties appoint the mediator (as opposed to an independent body as is the case with arbitration or litigation) and where the process is successful in establishing a resolution, this may form the basis of a legally binding agreement between the parties, unless there is a provision between the parties that such agreements are not to be binding.
* The mediator will establish a set of ‘ground rules’ by which the dispute will be assessed, and they will gather information from each of the parties.
* This is where a specific concern of mediation has been identified. The gathering, and sharing, of information may be undertaken not to reach a settlement or compromise, but rather used surreptitiously to obtain information regarding the strength or weaknesses of the other party’s claim.
* This form of ADR is a significant mechanism in attempting to resolve disputes and indeed is a feature considered by the European Union in its proposal for a new Directive to be transposed into domestic legislation by 2010.