



## **EMTPJ Exam Questions (Answer Key)**

### **MULTIPLE CHOICE QUESTIONS**

Circle the letter that corresponds to the correct answer

1. With regard to his or her fee the mediator ethically proposes the next:
  - A. the fee counts fully for each party
  - B. the fee has each to pay only in case of a financial result
  - C. the fee is divided between the parties and/or their employer**
  - D. the fee will be paid by the party who loses the case
  
2. The objective of the EU Directive on mediation is:
  - A. ensuring better access to alternative dispute resolution in cross border commercial conflicts**
  - B. reducing backlogs of cases at the courts in the member states
  - C. dividing the cases between all dispute resolution methods
  - D. economical reasons in times of crisis, thus ensuring that mediators will have a proper income
  
3. Ethically, the mediator will feel at ease with the following role during the mediation:
  - A. advising on the solution
  - B. reflecting and summarizing**
  - C. coaching and helping
  - D. accusing a party
  
4. In the Code of Conduct for mediators the following is determined:
  - A. Mediators must be impartial, juridical trained and above 45 years of age in the process of mediation.
  - B. Mediators must be strong and vivid in the process of mediation.
  - C. Mediators must ensure that prior to the process of mediation everyone has studied the case.
  - D. Mediators must be competent and knowledgeable in the process of mediation.**
  
5. What did John Rawls mean by "political, not metaphysical"?
  - a) To solve human conflict is a political, not a metaphysical issue.**
  - b) Conflict resolution is a matter of political science, not philosophy.
  - c) Immanuel Kant correctly argued for a political solution to human conflict.
  - d) Political philosophy regarding human conflict is never about metaphysics.

6. What did Duncan Kennedy mean by "liberate contradiction"?

- a) In conflict resolution, parties gain freedom from one another through contradiction ('audi et alteram partem').
- b) In conflict resolution, parties should convince one another to be open and blunt about their positions.
- c) In conflict resolution, lawyers need to focus on the freedom of parties to hold contradictory positions.
- d) In conflict resolution, lawyers should identify and liberate hidden contradictions as essential to the resolution process.**

7. What does Affective Legal Analysis mean?

- a) In ADR as in law, focus should be on the parties' emotions.
- b) In ADR as in law, analysis should be accurate and effective.
- c) In ADR as in law, lawyers should primarily focus on the effects of the parties' interests.
- d) In ADR as in law, lawyers need to focus on whatever may affect the parties' positions.**

8. What is the difference between a 'case-driven' and a 'case-oriented' approach to conflict resolution?

- a) A case-driven approach focuses on the way new cases change our views.
- b) A case-driven approach focuses on the way cases are the origin of conflict resolution.**
- c) A case-oriented approach focuses on the way cases are the goal of conflict resolution.
- d) A case-oriented approach focuses on the way cases are the consequence of conflicts.

9. What is the underlying framework for conflict resolution and legal effectiveness?

- a) Natural law or a community sharing the same values.
- b) Public reason as a human capacity or capability
- c) Procedural justice as a neutral framework
- d) Human interaction through (legal) education**

10. “Impartiality” and “equidistance” are two definitions of what trait crucial to a mediator?

- a) authority
- b) foresight
- c) neutrality**
- d) compassion

11. According to the European Code of Conduct for Mediators, what factors should be considered when gauging the competence of a mediator?

- a) gender
- b) accreditation
- c) training
- d) both b and c**

12. What mediation quality (s) help parties achieve self-determination?

- a) transparency
- b) informed consent
- c) all of the above**
- d) none of the above

13. Which of these statements best describes the attitude and readiness of EU member states towards the EU Directive 2008/52/EC?

- a) The lawmakers in most EU countries do not have legislature recognizing (let alone procedures governing) mediation and have no intention to speed the implementation of the Directive’s provisions.
- b) The lawmakers in most EU countries see no special advantage to complying with this new EU Directive.
- c) The lawmakers in most EU countries have regulations compatible with the EU Directive already, or plans to conform their country’s regulations of mediation.**
- d) The lawmakers in most EU countries would like to repeal the Directive.

14. Which of the following EU members is not included in 2008/52/EC Directive regarding cross-border disputes?

- a) Denmark**
- b) United Kingdom
- c) Belgium
- d) France

15. Which of the following is the general trend in the EU member countries?
- a) **In most countries, litigation is considered expensive, and mediation saves money.**
  - b) In most countries, litigation is considered expensive, but mediation is even more expensive.
  - c) In most countries, litigation is considered inexpensive, and mediation is more expensive.
  - d) In most countries, litigation is considered inexpensive, and mediation is usually the same cost.
16. In most EU member countries, which of the following is the most visible form of ADR?
- a) **Arbitration**
  - b) Mediation
  - c) Conciliation
17. Which of the following is the general trend in the EU member countries?
- a) In most countries, litigation is considered speedy, and mediation takes significantly longer.
  - b) In most countries, litigation is considered slow, and mediation is about the same.
  - c) **In most countries litigation is considered slow, and mediation is generally much shorter.**
18. Most of the major pieces of *mediation* legislation have been enacted in EU countries:
- a) **Between 2000 and present**
  - b) Between 1990 and 1999
  - c) Before 1990
19. Most EU countries with legislation on mediation have seen which trend:
- a) **The number of cases being mediated has gone up**
  - b) The number of cases being mediated has gone down
  - c) The number of cases being mediated has stayed the same, but they have all gone horribly wrong
20. If the parties come to an impasse, which of the following actions may help move the mediation forward?
- a) Caucus
  - b) Role play – ask the parties to step into each others' shoes
  - c) Brainstorm ideas and possibly write them on a board
  - d) **All of the above**

21. When setting up a room for a mediation, how should the chairs NOT be arranged?

- a) all equidistant from each other
- b) all on the same level of height
- c) the mediator's chair should be raised above the others**
- d) the mediator should be able to look directly at the parties

22. When presenting in an opening joint session do you address your presentation to the mediator?

- a) Always,
- b) You keep an eye on the mediator but only address the decision maker on the other side,
- c) Never, you ignore the mediator.
- d) You present to all those in the team opposite, either individually or together.**

23. When presenting in an opening joint session do you avoid emotional issues?

- a) Always emotion is to be avoided.
- b) Sometimes, it depends on what I need to get across.**
- c) Never, if the other side are upset, that is good.
- d) It does not matter; I need to say what is important to me.

24. When presenting in an opening joint session do you avoid becoming involved in conversation with the other side?

- a) Always, that is for later,
- b) You note what is said, but complete your presentation and do not return to the intervention.
- c) Never, it is good to engage immediately or at the end of your opening,**
- d) You wait for the mediator to close down the conversation to enable you to continue your presentation.

25. Must the mediator deliver communications from one party to another using exactly the same words?

- a) Always.
- b) It does not matter as long as the essential content is communicated.
- c) Never, that is impossible.
- d) Sometimes, it is up to the mediator to select the most effective communication needed.**

26. Does the mediator need to spend the same amount of time and energy with each party?

- a) Always,
- b) As much as possible, the parties should be allocated equal time periods.
- c) It does not matter; it is never going to be the same.
- d) The mediator is in charge of the process and applies skills and energy as needed.**

27. Is mandatory mediation acceptable in the EU?

**a) The court of justice has decided that EU directives and general principles do not prevent national law from providing for mandatory mediation procedures as a condition of admissibility to court proceedings, provided that such procedure: does not result in a decision that is binding on the parties; does not cause a substantial delay in bringing legal proceedings; suspends the period for the time-barring of claims; and does not give rise to more than minimal costs for the parties.**

b) Mandatory mediation is never acceptable because of its voluntary character.

c) A national court may suggest or invite the parties to attend an information session on mediation but it is up to the parties to decide whether to mediation

d) National legislation can always make the use of mediation compulsory or subject to incentives or sanctions

28. How does the EU Directive 2008/52/EC define mediation?

**a) Mediation, according the Directive, means a structured process whereby parties to a dispute attempt on a voluntary basis to reach an agreement on the settlement of their dispute with the assistance of a mediator**

b) The Directive 2008/52/EC does not give a clear definition of mediation

c) According to the Directive, mediation means any amicable settlement with the assistance of a mediator in cross border disputes to civil and commercial matters

d) Mediation does include attempts made by the court of the judge seized to settle a dispute in the course of judicial proceedings

29. When is it acceptable for a mediator to terminate a mediation?
- a) **A mediator may terminate the mediation if a settlement is being reached, unless the mediator believes the settlement will be unenforceable**
  - b) Even if a settlement appears unenforceable, it is up to the parties to take this risk and a mediator cannot for that reason stop the mediation process
  - c) Continuing a mediation when the mediator knows that a settlement will be unenforceable can make the mediator liable for damages
  - d) The unenforceability of a settlement has not to be taken into consideration during the mediation but is a question that should be envisaged after the settlement.
30. Choose the following answer that most correctly states Belgian law
- a) In Belgium, the mediation agreement can be homologated/officially recognized by the court, even if the mediation has not been conducted by a mediator accredited by the Federal Mediation Commission;
  - b) **In Belgium, the mediation agreement can only be homologated/officially recognized by the court if the mediation has been conducted by a mediator accredited by the Federal Mediation Commission;**
  - c) In Belgium, the mediation agreement can only be homologated/officially recognized by the court if it has been conducted by the Federal Mediation Commission;
  - d) In Belgium, the mediation agreement cannot be homologated/officially recognized by the court, even if the mediation has been conducted by a mediator accredited by the Federal Mediation Commission;
31. Choose the most accurate answer about mediator accreditation in Belgium:
- a) The mediator must be accredited by the Federal Mediation Commission in the case of court-instigated mediation, but not in the case of voluntary mediation;
  - b) The mediator must be accredited by the Federal Mediation Commission in the case of voluntary mediation, but not in the case of court-instigated mediation;
  - c) The mediator must be accredited by the Federal Mediation Commission in all three cases of voluntary mediation, court-instigated mediation and free mediation;
  - d) **The mediator must be accredited by the Federal Mediation Commission both in the case of voluntary mediation as well as in the case of court-instigated mediation;**

32. Chose the answer that is most accurate about mediation law in Belgium:

- a) **The Belgian law does not exclude free mediation. This kind of mediation holds the risk that the outcome will be unenforceable by the court if one of the parties appears to be incapable to execute the outcome of the mediation agreement;**
- b) The Belgian law does not exclude free mediation. This kind of mediation can always be enforced by the court if one of the parties appears to be incapable to execute the outcome of the mediation agreement;
- c) The Belgian law does not exclude free mediation. This kind of mediation is automatically enforced by the court if one of the parties appears to be incapable to execute the outcome of the mediation agreement;
- d) The Belgian law does not exclude free mediation. This kind of mediation holds the risk that the outcome will be unenforceable by the court only if both parties appear to be incapable to execute the outcome of the mediation agreement;

### **SHORT ANSWER QUESTIONS**

Write a short paragraph answering the questions below

You arrive at the venue about 30 minutes early for the start time. What will you do to ensure the environment is as good as it can be for the parties?

The parties arrive and there is an additional person who no one told you would be coming. How will you manage the situation? Describe the approach you would take to help you discover if this is important or not for the process.