Chartered Institute of Legal Executives (CILEX)

Paralegal Apprenticeship End-Point Assessment

Tort Law and Civil Litigation

Timed assessments

Sample assessment materials – sample model responses

Introduction

Sample model responses

The following sample model responses have been produced to support apprentices with preparing for their timed assessments.

The responses provided are a suggestion and other acceptable valid responses will be accepted.

Please note that the word count recommendations in the tasks are given as a guide. We do **not** negative mark if the word count goes above or below the recommendation.

In order to get the most out of these samples model responses, we recommend apprentices should:

- familiarise themselves with the grading criteria in the assessment plan, especially the distinction requirement
- carry out the research as stated in the advance materials
- sit the sample tests — you can do this as many times as you like.

TA1 – Task

This task requires you to produce a report based on the information provided by Sinead in the memorandum below. The memorandum will outline to you the content of the report and key information that you will need to include.

You should refer to the advance materials you were previously issued (also attached below), which outline the relevant facts and suggested legal sources for this client.

Internal memorandum

To: Paralegal
From: Sinead Albright
Client: Mr Simon Winder
File Reference: SA/36/{this year}/Winder

Further to my previous memorandum to you regarding this client, you now need to write a report providing the details of your findings, a conclusion applicable to the case and recommendations from the research you have previously carried out.

In particular, can you please prepare a report showing your findings and conclusions on the following.

Findings

By referring to the relevant legislation and case law, the report must explain the following.

- The requirement for a claimant to prove causation in a claim for negligence.
- The meaning of novus actus interveniens and its relevance to a claim brought in negligence.
- The standard of care owed to a patient by a medical professional.
- How limitation periods are calculated in a claim for personal injury.

Conclusions

Based on your research findings, applying relevant legislation and case law, explain the following.

- Whether the client will be able to prove that his employer's breach of duty caused all of his losses, with particular regard to:

  a. the employer's admitted breach of duty in failing to provide adequate PPE

  b. the actions of Dr Nkunda

  c. the client's refusal to accept a blood transfusion.

- How long the client will have to bring his claim for personal injury.

It would be helpful if you could conclude with your suggestions as to the most suitable advice for us to give to the client, based upon the law and practice that you have researched.

Your report should relate only to the issues that I have asked you to research. Your report should be at least 1250 words.

As I will be using this to advise the client, you must ensure that your report is structured logically and not provided as bullet points. It is also important for you to check your spelling, punctuation and grammar.

All legislation and case law included in the report must be explained in your own words to show understanding of the research that you have undertaken.

You must ensure that at the end of your report, for billing purposes you provide the amount of time taken.

Thank you.
Sinead Albright

Model response

Introduction

Further to instructions received from Sinead Albright in the matter of Simon Winder's personal injury claim, this report will set out research findings on the law and practice as relevant to the issues of causation, including vulnerable claimants and the principle of *novus actus interveniens,* and limitation in personal injury claims.

The report will conclude as to how the research applies to Mr Winder's claim against his employer, Professional Site Clearance Ltd (PSC Ltd).

Findings

Negligence – an overview

To bring a successful claim in negligence, a claimant must prove that a duty of care existed between claimant and defendant, and that that duty was breached by the defendant's standard of care falling below the expected standard. Finally, the claimant must prove that the defendant's breach caused the loss in both fact and law.

As duty and breach are admitted by PSC Ltd, this report will focus on the issues of causation and the contribution of potentially negligent medical care provided at Kempston General Hospital.

Causation

In a claim for negligence, the claimant must prove that his losses were caused by the defendant's breach of duty. Causation must be proved in both fact and law.

Factual Causation

Factual causation means the chain of events leading from the defendant's breach of duty and the claimant's losses. It is often referred to as the 'chain of causation'.

In straightforward cases, where the is only one potential defendant, a well-established test for the chain of causation, as applied in Barnett v Chelsea & Kensington Hospital Management Committee [1969], is known as the 'but for' test. It asks, "but for the defendant's breach, would the claimant have suffered a loss?" If the answer to that question is "no", then the test is satisfied, and factual causation

is established. If the answer is "yes", then the claimant's loss will not be attributable to the defendant's breach, and causation will not be established.

Not all causes are straightforward, and therefore this simple application of the 'but for' test will not always be appropriate. Where there are multiple causes of harm, arising successively (one after the other) or concurrently (at the same time), the courts adopt a different, more practical approach based on the balance of probabilities, or calculating what is 'more probable than not'. Sometimes, this involves taking a strict numerical approach to quantifying risk, as applied in Gregg v Scott [2005].

Another issue to be considered in factual causation is where there are multiple potential causes of harm, but where the injury is indivisible between those multiple potential causes. This would be relevant to Mr Winder's case as we are unlikely to be able to determine whether the sepsis developed because of the wound to his foot or because of the treatment he received in hospital, such as insertion of an intravenous catheter. As seen in Wilsher v Essex Area Health Authority [1986] where there are multiple potential causes of harm, as in this client's case, the claimant must prove that it was *more probable than not*, or more than 50% likely, that the defendant's negligence caused the harm.

Legal Causation

Legal causation takes a moralistic approach to the claimant's claim against the defendant, and examines whether the defendant should be liable in negligence for the harm suffered. Legal causation requires that the type of injury (not the extent of the injury) was foreseeable in the circumstances. If the type of injury was not reasonably foreseeable, the damage will be deemed *too remote* from the breach of duty, and the claim will not succeed. The test for remoteness was established in "The Wagon Mound" [1961].

Practically, the test for legal causation in a personal injury claim will require some assessment of whether the type of injury (a personal injury of some kind) was reasonably foreseeable. It does not matter that the personal injury actually suffered was more severe than the defendant could have anticipated.

This extends to claimants who, due to some characteristic individual to them, are more susceptible or vulnerable to injury than the average person. This is known as the 'thin-skull rule' and can be seen in effect in the case of Smith v Leech Brain [1962] where a claimant with a natural pre-disposition to cancer suffered a burn as a result of his employer's negligence, which became cancerous and caused his death. His employer was liable in negligence for all the loss suffered, including the claimant's death, as under the rule a defendant must *take their victim as they find him*.

The thin skull rule can be extended to include a claimant's personal beliefs, as confirmed in R v Blaue [1975]. This is of particular relevance to our client's case as he is said to have refused a transfusion of red-blood cells on religious grounds, which could be argued as having caused a delay in alleviating the sepsis infection.

***Novus actus interveniens* - a new and intervening act**

It is possible for an event which takes places after the defendant's breach to 'break the chain of causation' between the defendant's breach and the claimant's loss. This is known as *novus actus interveniens* or a '*new and intervening act*'. Where this occurs, the court can reapportion some of the original defendant's liability in negligence or absolve them of liability altogether. The chain of causation is most commonly broken by an act of the claimant themselves or by an act of a third party.

An act of the claimant themselves can, in some circumstances, be sufficient to break the chain of causation. Generally, the courts are unwilling to apportion blame to the claimant for subsequent injury unless their act is entirely unreasonable in the circumstances, such as in McKew v Holland v Hannen & Cubitts (Scotland) Ltd [1969] where a claimant was deemed to have acted entirely unreasonably by descending an unsafe stairwell with a weak and injured leg.

An act of a third party will 'break the chain of causation' where it was reasonably foreseeable at the time of the original defendant's breach. This is seen in the case of Knightley v Johns [1982], and the comments of the judge confirming *"the question to be asked is …whether the whole sequence of events is a natural and probable consequence of …[the] negligence and a reasonably foreseeable result of it".* If the defendant could not have foreseen the act of the third party, the chain of causation may be broken.

Specific consideration, however, is given to intervening acts of medical professionals which may amount to negligence. Where the standard of care provided by a medical professional during their treatment of the claimant's injuries caused by the defendant's negligence falls below the required standard and is deemed negligent, the general rule is that the courts **will not treat this as a break in the chain of causation**. This is to recognise that the claimant would not have been at risk of negligent medical treatment had the defendant not caused them to require treatment in the first place. The leading case is Webb v Barclays Banks plc and Portsmouth Hospitals NHS Trust [2001]. In this case, the negligent medical treatment did not 'break the chain of causation' and the court did not absolve the defendant of liability for the claimant's injuries but did apportion some of the liability for the claimant's injuries to the hospital.

Standard of care owed to a patient by a medical professional

Ordinarily, the standard of care required is determined by reference to the acts or omissions of the *'reasonable person'* as described in Blythe v Birmingham Waterworks Co [1856]. However, for cases involving acts or omissions of medical professionals, the standard of care is that of the '*reasonably competent professional in the same situation'*. This was established in Bolam v Friern Hospital Management Committee [1957]. A medical professional will not be liable in negligence if they can show that they acted in accordance with the views of an accepted body of professional opinion, and as the ordinary skilled professional would have acted.

Limitation periods in personal injury claims

Under s11(4) Limitation Act 1980 (LA 1980), a claimant has three years from the later of the date on which the cause of action accrued, the date the injury was sustained; or the date the claimant had knowledge of the injury. Under s14 LA 1980, the date of knowledge is the date the claimant first knew that the injury was significant, was caused by the defendant's actions, and the claimant was able to identify who the defendant is.

Conclusions

Causation in Mr Winder's case:

PSC Ltd's admitted breach (failure to provide PPE)

As presented in the research findings, the client must prove both causation in fact and in law to establish a claim in negligence against his employer. Duty and breach are admitted.

Applying the 'but for' test from Barnett v Chelsea & Kensington Hospital Management Committee [1969], but for PCS Ltd.'s failure to provide adequate PPE, the client would not have sustained injury to his foot and would not have required hospital treatment for the wound. Causation in fact in relation to his foot injury is therefore proved.

Causation in fact in relation to the subsequent anaphylactic episode, sepsis and ongoing post-sepsis syndrome is more complex, and so the simple test cannot be used. Instead, we must determine whether it was 'more probable than not' that the defendant's breach caused the loss. Sepsis is a common infection after sustaining a wound-type injury and so it is more likely than not that the infection arose because of standing on the rusty nail with inadequate footwear.

In terms of causation in law, following "The Wagon Mound" [1961], it would be reasonably foreseeable that some degree of personal injury would be sustained as a result of failure to provide PPE. The injuries suffered by Mr Winder are, therefore, not too remote and legal causation is established.

The actions of Dr Nkunda

It is reasonable to conclude that Dr Nkunda's treatment of Mr Winder in terms of the vaccination he prescribed fell below the standard of care required of a reasonably competent professional as established in the case of Bolam v Friern Hospital Management Committee [1957]. A reasonably competent professional would have checked the client's notes, discovered that he was allergic to the prescribed drug and would not have prescribed it. The anaphylactic shock would thereby have been avoided.

However, it is not possible to determine whether the client would have gone on to suffer the sepsis infection and post-sepsis syndrome 'but for' Dr Nkunda's negligence. Furthermore, following Webb v Barclays Banks plc and Portsmouth Hospitals NHS Trust [2001], the courts are generally unwilling to absolve a defendant of liability even where medical professionals have been negligent. It is likely that the court will apportion some of the liability for Mr Winder's injury, particularly his anaphylaxis, to the hospital. However, Dr Nkunda's negligence is unlikely to 'break the chain of causation' between PSC Ltd and Mr Winder's overall injuries.

Client's refusal to accept red-blood cell transfusion on religious grounds

To 'break the chain of causation', Mr Winder's decision to reject the recommended treatment of red blood cell transfusion on the grounds of his religious beliefs would have to be entirely unreasonable in the circumstances. As confirmed in R v Blaue [1975], a claimant's religious beliefs are an accepted characteristic to establish them as a 'vulnerable claimant'. The 'thin skull' rule therefore applies, and PSC Ltd must take Mr Winder as they find him, even if his post-sepsis syndrome was caused by his refusal to accept a blood transfusion.

Limitation in Mr Winder's Case

Under LA 1980, the client will have three years from the date of the incident to bring his claim for personal injury.

Billing record

Research time 2 hours [20 units]

Report preparation 1.5 hours [15 units]

TA2 – Task 1

You have been given a task via email from Sinead in relation to your client (see below).

A copy of the advance materials is attached, see below.

Once you have completed Task 1, please move on to Task 2.

Internal email

To: Paralegal
From: Sinead Albright
Client: Mr Simon Winder
File Reference: SA/36/{this year}/Winder

Thank you for your report on Simon Winder's case which I found very useful in preparing to progress the matter.

I would like to contact the client in relation to the email we have received from his sister, Tandie Winder. Please draft an email to Simon addressing the following points.

- Explain, with reference to relevant legislation and professional conduct requirements, why we are unable to email Tandie Winder and respond to her queries directly without the client's permission.
- Request that the client provides his written authority to correspond with his sister, if he instructs us to do so.
- Explain the purpose of compensation in a claim for personal injury, and the difference between general and special damages.
- Seek confirmation from the client that the financial losses identified by his sister, Tandie, are correct and summarise the financial losses that may be claimed based on the information provided so far.
- Explain, with reference to relevant case law, the significance of the client's known history of allergy in relation to his claim.

As always when writing to the client, please ensure that the tone of your email is appropriate and be aware that the client is not familiar with the law and so you will need to write clearly so that they understand your explanation of the law. As usual, please pay particular attention to correct spelling, punctuation and grammar, and your presentation.

You should include a short introduction to set out the purpose of your email and a suitable ending. Your email should be at least 900 words.

The client has also asked us to update them on the **costs incurred in this matter so far**. Please provide the client with a brief overview of your time records for this task and outline any potential timing considerations, moving forward, that they will need to be aware of.

Thank you.
Sinead Albright

Model response

Dear Mr Winder,

Your personal injury claim against PSC Ltd

I write regarding the above matter and to introduce myself as [apprentice], assistant paralegal to Sinead Albright with whom you met recently to discuss your instructions. Ms Albright has asked me to write to you to confirm some information in advance of your meeting with her next week which I set out below.

Our duty of confidentiality

I understand that your sister, Tandie Winder, has contacted Ms Albright by email with some information relating to your claim and various requests for information. Unfortunately, we are unable to reply to Tandie until such time as you authorise us to do so. This is because we, as a firm, are bound by the law and professional conduct rules which require us to maintain the confidentiality of our client's affairs. If we were to share information with Tandie without your authority, we risk breaching the Data Protection Act 2018 and the UK General Data Protection Regulation. As a firm, we are regulated by the Solicitors Regulation Authority and, as a member of CILEx, I am regulated by CILEx Regulation. Outcome 5.12 of the CILEx Regulation Code of Conduct 2019 and Principle 6.3 of the SRA Code of Conduct require that we keep the affairs of our current and former clients confidential. We would therefore be in breach of our regulatory requirements if we were to communicate with your sister without your authority.

Written authority

With your permission, we are happy to communicate with Tandie on your behalf if you feel this would enable you to engage with us as your legal representatives. If you wish for us to speak to Tandie about your personal injury claim, please provide a signed written authority confirming this. We will then store this on our file for our records and thereafter send all our communications to Tandie to deal with on your behalf.

Purpose of compensation in a claim for personal injury

Compensation is the term given to an award of money to recognise loss or injury. We recognise that money can never truly compensate someone who has been injured through no fault of their own. The purpose of compensation in a personal injury claim is to put you as the claimant back in the position you would have been in had the accident not occurred, as far as it is possible to do so with money. The compensation awarded is not intended to be a punishment to the wrongdoer.

General & special damages

In a claim for personal injury, a claimant will usually claim both general and special damages, and I explain these below to assist you in understanding the work that we will undertake as your legal representatives.

General damages in personal injury are an inexact figure awarded for various losses including pain and suffering as a result of injury, loss of amenity which is the loss of enjoyment of various aspects of life as a result of the injury, and a person's future loss of earnings. This is an amount of money claimed for the difference between what an injured person can earn and what they could have earned during their

working life, had the injury not occurred. The courts recognise that it is very difficult to accurately assess the value of these elements of a claim, as seen in the case of Lim Poh Choo v Camden & Islington Health Authority 1980 where the judge suggested that any such award will inevitably turn out to be either *too high or too low*. Please be assured that, as your legal representatives, we will endeavour to achieve the best possible result for your claim.

Special damages are those losses which can be precisely calculated up to the day of any trial. They will include travel expenses, medication and treatment costs incurred as a result of the accident, as well as any loss of earnings up to the date of trial. It is also possible for us to include a claim for a sum of money representing the care given to you during your period of illness, which we understand is relevant as your sister, Tandie, is providing day-to-day care and assistance.

Financial losses

Your sister has informed us of the following financial losses to be included in your claim. Please consider the summary below and confirm by return email that the information we hold is correct:

- Loss of earnings - you are currently unable to work and are able to evidence pre-accident earnings with payslips from PSC Ltd and your prior employment at the Kempston Hotel which paid around £200 per week
- Prescription charges - you are able to provide receipts of all prescription charges incurred to date. Please be aware that it is your duty to keep your losses to a minimum, and you should therefore consider whether an NHS Prescription Prepayment Certificate would save money if your prescriptions were to be re-issued
- Care - your sister, Tandie Winder, is currently providing day-to-day care including making meals and all domestic chores, but you are able to care for yourself in terms of dressing, washing and personal care

If there are any other financial losses to be considered, please let either myself or Ms Albright know.

The significance of your allergy to the tetanus vaccine

A key issue that I would like to address is your allergy to the tetanus vaccine which unfortunately led to your suffering severe anaphylaxis because of the vaccine being prescribed and administered. This is relevant to your claim for two reasons. Firstly, your treating doctor, Dr Nkunda, had access to your medical records and should have checked for allergies. He could also have asked you for any known allergies, although you may or may not have remembered that you are allergic to the vaccine. Medical professionals are held to a higher standard than ordinary people and, according to the law as set down in cases such as Bolam v Friern Hospital Management Committee [1957], must act in accordance with accepted practices and as any other reasonably competent professional would do. It is likely that Dr Nkunda's actions in prescribing the vaccine without checking your medical records amounts to negligence, and we may need to include the hospital as a potential defendant in your claim.

Separately, I would advise you that your pre-existing allergy to the vaccine is likely to be viewed as a 'vulnerability' by the court, making you more at risk of serious illness or injury as a result of being given the vaccine than someone without the allergy. This is known as the 'thin-skull' rule, which in fact has nothing to do with a person's skull. It comes from the case of Smith v Leech Brain & Co Ltd [1962] and refers to a claimant, such as yourself, who is more at risk of serious harm as a result of a physical vulnerability such as an allergy or pre-existing injury. I would like to reassure you that this will not affect your claim for personal injury. Your employer, PSC Ltd, and the hospital as potential defendants in this case must accept you, allergy and all, and are liable for the losses you have suffered.

Billing

Finally, Ms Albright has asked me to update you on the costs incurred in this matter so far. I can confirm that the firm has spent 5 hours on meeting and preparation time so far. Any further work will be charged at the hourly rate set out within our client care letter, charged in 6-minute units of time (being 10 units per hour).

Please do not hesitate to contact myself or Sinead Albright should you have any further queries.

Kind regards,

[Paralegal]

Task 2

You have been given a task, via email, from Sinead in relation to your research.

A copy of the advance materials is attached, see below.

Internal email

To: Paralegal
From: Sinead Albright
Reference: Development work

Our department has been tasked with producing some content for the firm's social media account, with a view to generating instructions from clients.

I think it would be useful to produce a short, interesting article reassuring clients about how we as a firm protect their data and take our duty of confidentiality seriously.

Please produce a short article that is at least 300 words. Make sure you refer to any legislation and professional conduct rules relevant to the issues of data protection and client confidentiality.

Remember, the article should be drafted suitably for our intended client audience and be as engaging as possible.

Thank you.
Sinead Albright

Model response

You're in safe hands!

At Hedley, Smith & Cutler, we are passionate about providing an excellent standard of service to our valued clients. We want to reassure you that we take our duties as lawyers seriously, and to share with you our responsibilities around confidentiality and keeping your affairs private.

The Law

Many of our clients will be aware of the Data Protection Act 2018 and the UK General Data Protection Regulation. As a law firm, we are entrusted with our clients' personal information and are legally required to make sure that information is kept safe. Under the Data Protection Act 2018, we are required to hold only the data that we need to work on your matter and satisfy our legal and regulatory requirements, and to hold your data for no longer than is necessary. We also have an in-house Data Protection Officer whose role it is to promote best practice across the firm in relation to collection and management of client data.

Our Regulators

As a firm, we are regulated by the Solicitors Regulation Authority (the SRA). Some of our staff are members of the Chartered Institute of Legal Executives (CILEx) and are therefore also regulated by CILEx Regulation.

Both the SRA and CILEx Regulation require us to comply with their Codes of Conduct. Outcome 5.12 of the CILEx Regulation Code of Conduct 2019 and Principle 6.3 of the SRA Code of Conduct require that we keep the affairs of our current and former clients confidential. We would therefore be in breach of our regulatory requirements if we were to share information about your case while it is ongoing, or after it is concluded, without your permission. Of course, there are some important exceptions where the law will require us to disclose information to relevant authorities, but we would never discuss your case with another client or outside of our offices.

If you have any queries about the ways in which we collect, store or use your data please do not hesitate to contact us.

Are you a business client? Contact us for advice on your responsibilities under the Data Protection Act 2018 and UK Data Protection Regulation.