



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

LEVEL 3 UNIT 9 – CIVIL LITIGATION

JUNE 2023

Note to Candidates and Learning Centre Tutors:

The purpose of the suggested points for responses is to provide candidates and learning centre tutors with guidance as to the key points candidates should have included in their answers to the June 2023 examinations. The suggested points for responses sets out a response that a good (merit/distinction) candidate would have provided. Candidates will have received credit, where applicable, for other points not addressed by the marking scheme.

Candidates and learning centre tutors should review the suggested points for responses in conjunction with the question papers and the Chief Examiners' **comments contained within this report**, which provide feedback on candidate performance in the examination.

CHIEF EXAMINER COMMENTS

There were substantially fewer candidates than in previous sittings. Candidates are directed to consider previous papers and examiner reports. It is very important that all of the Unit Specification is studied and areas are not considered in isolation.

The starting point is the Case Study Materials (CSM), and candidates need to consider the areas which are likely to be examined. The majority of questions can be discerned from the CSM with some scenarios, for example, indicating that a specific track is likely to be adopted. This in turn should enable the candidate to 'map out' the likely stages and hence the likely questions. It should be noted that a minority of questions cannot be discerned from the CSM, but enough to ensure that if the candidate is fully prepared, they should pass.

Exam questions need to be read carefully to ensure that marks are maximised. Candidates need to understand what is required of them. Where candidates failed to maximise marks, it was mainly because they did not understand the procedure, rather than what the question was asking. By having the 'litigation' map, candidates should be able to discern at what stage the scenario is at and therefore be able to answer the question fully.



A substantial minority of candidates were unable to develop their answers any further than a brief statement or sometimes a single sentence on the subject. The number of marks awarded for each question, gives a good indication as to the level of depth required. A number of candidates did not write anything for a substantial number of questions. In these circumstances obviously no marks will be given, so it is better to write something, even if it only gains a couple of marks.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

This question on the drafting of a defence, was generally well done. This is largely to be expected as the pre-seen CSM clearly indicated that this was to be expected in the exam by including the particulars of claim. A minority of candidates failed to draft the defence and just put down what was wrong with the particulars of claim. This approach gained very few marks.

(b)

Most candidates gained at least a couple of marks on this question for writing about where the application was successful and where it was unsuccessful. Candidates missed marks by not going into more depth e.g. cost consequences or mentioning conditional orders. Information provided on the procedure gained no marks.

(c)

Most candidates did well on this question. Where marks were dropped, it was because the candidate confused directions with the pre-trial checklist. This indicated a very basic understanding of civil litigation.

(d)

Some very good marks here for discussing how cost budgets work. There were, however, a substantial number of candidates who confused cost budgets with summary assessment, or did not read the question properly and discussed detailed assessment of costs (which was not appropriate as the question asked for up to the trial).

Question 2(a)

Most candidates were able to gain some marks on this question on using the protocol, however some struggled to gain the full 4 marks as they only suggested that the protocol would not be used as the employer was inferring that there was contributory negligence.

2(b)

Candidates generally did okay on this question, although note, even though in all past report's candidates have been advised that they need to get both parties/witnesses and experts/legal representatives, to get a mark for each, they are still just writing parties or experts.

(c)

A difficult question on the failure of a party to comply with a direction. As it was, most candidates were able to gain at least two marks for mentioning ordering compliance or a sanction. After that very few candidates were able to build on this to gain further marks.

(d)

A straightforward question on costs which many candidates failed to gain more than one or two marks. This was due to confusion in terms of either considering the question to be about funding or considering QWOCS which was not relevant in this situation.

Question 3(a)

A question which is asked on most civil litigation papers. Virtually all candidates were able to gain full marks here. Those who did not, clearly had little understanding of civil procedure and the timescale involved.

(b)

It is vitally important that candidates understand when documentation is sent to court and when it is not. Where candidates stated that the Part 18 Request was sent to court, not the other side, they received no marks. This was only a minority of candidates; most did gain a number of marks from this question.

(c)

Most candidates were able to gain at least 2 marks on this question concerning trial bundles. Failures to gain sufficient marks was due to failing to identify who prepares the bundle and that it is indexed and paginated.

(d)

This question was done well by the majority of candidates. Where marks were dropped, it was due to there being too much focus on the types of ADR, rather than focusing on the advantages in the scenario.

Question 4(a)

Good consideration here, with virtually all candidates gaining at least 1 mark. This was perhaps the easiest question on the paper.

(b)

Candidates either did well on this question or they did very poorly. This is due to not understanding which protocol applies in which circumstances. It should be noted that credit was provided where possible, e.g. mentioned ADR, etc.

(c)

Candidates generally did okay on this question. It has been asked a number of times and consequently candidates should have known what to expect. Where candidates did not do so well, it was because they only mentioned a couple of factors, focusing almost exclusively on the value of the claim.

(d)

Generally, candidates were able to gain a couple of marks on this question concerning the statement of truth. Some latitude was given in terms of answers concerning 'an honest belief', etc. but not for phrases such as 'to the best of their knowledge', as that is too vague.

SUGGESTED POINTS FOR RESPONSE**LEVEL 3 UNIT 9 – CIVIL LITIGATION**

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<p>Draft Defence:</p> <ul style="list-style-type: none">• 1. The Defendant denies that they contracted with the Claimant for the delivery of rolls of fabric on the 22 March 2023, but admits the contract was entered into on the 24 February 2023.• 2. The Defendant denies that the contract was for the sum of £36,500, but was in fact for the sum of £34,000.• 3. The Defendant denies that the said clothing was delivered on the 22nd March 2023, but was in fact delivered on the 27th March 2023.• 4. The Defendant admits that it rejected the goods on the 27th March 2023.• 5. The Defendant denies that the Goods were of satisfactory quality and that in the circumstances it was reasonable to reject delivery.• 6. By reason of the matters aforesaid the Claimant is not entitled to the sum claimed.	6
1(b)	<p>Outcomes for Summary Judgment:</p> <ul style="list-style-type: none">• If the Court finds wholly in favour of the Applicant then the Claim will be struck out.• The Court may dismiss the application and the matter will proceed to trial.• In such circumstances the applicant is likely to be ordered to pay costs to the respondent together with having to bear their own costs, up to that point.• The Court may provide directions for a continuance• Or they may make a Conditional Order.	5
1(c)	<ul style="list-style-type: none">• Ensuring that all directions have been complied with,• checking the availability of parties/witnesses• and information concerning experts and legal representation.• The trial itself is also considered, with a trial date being set• and the documents and fee checklist completed.	4

1(d)	<ul style="list-style-type: none"> • Costs should be agreed if possible • Budgets must be exchanged and filed by all parties with directions questionnaires. • Agreed budget discussion report must be filed no later than 7 days before the CMC. • Budget will detail costs already incurred and estimate future costs by stage and type of work • Reasonable and proportionate budgets should be agreed by the parties • Court can make a costs management order, so the court controls recoverable costs 	5
Question 1 Total: 20 marks		
Question Number	Suggested Points for Responses	Marks (Max)
2(a)	<ul style="list-style-type: none"> • The type of injury sustained is of the type covered by the protocol. • It is a employment situation. • The protocol only covers situations where the claim falls within the Fast Track, • the damages sought are not too high. • Contributory negligence put forward by employer so cannot use protocol. 	4
2(b)	<ul style="list-style-type: none"> • Fast Track case therefore the directions are likely to be dealt with through standard directions. • Disclosure and inspection • Use of experts • Exchange of witness statements • Preparation for trial (pre-trial checklist, setting down for trial) 	4
2(c)	<ul style="list-style-type: none"> • Failure to comply entitles the other party to apply for an order to enforce compliance • Or a sanction. • A failure to comply will not lead to postponement of the trial unless there are exceptional circumstances. • Sanctions can include depriving a party of the right to raise or contest an issue • Or rely on evidence to which the direction relates. <p>Where an issue cannot be dealt with at trial, the court may order a later trial with costs to be paid by the party in default.</p>	5
2(d)	<ul style="list-style-type: none"> • Costs are always at the discretion of the Court, there is no right to costs even if you win. • Costs will normally follow the event and therefore costs will be granted to the winning party. • At the conclusion of the trial the judge will normally summarily assess the costs of the claim. • Fast track costs are controlled through the proportionality test. 	4
Question 2 Total:17 marks		

Question Number	Suggested Points for Responses	Marks (Max)
3(a)	<ul style="list-style-type: none"> The Defendant will have 14 days in which to file the Defence. If the Defendant files an Acknowledgment of Service they will have up to 28 days. 	2
3(b)	<ul style="list-style-type: none"> A Request for Further Information is made under Part 18 CPR Is a formal request in the form of a letter being sent to the Defendant. The letter must identify that it is a Part 18 Request and a date by which the Reply should be made. The letter should be headed with the name of the court and the title and number of the claim, The letter must identify the first party and the second party, identifying the document and if relevant the paragraph or words to which it relates. If the response does not satisfy the first party or the second party fails to respond, then an application for a court order can be made. The application can be concluded without the need for a court hearing. <p>Where an application to the court is necessary it is normal to seek the costs of the application from the other side.</p>	5
3(c)	<ul style="list-style-type: none"> The Trial Bundle is prepared by the Claimant Contains all the relevant written material which will be referred to at the trial. It must be paginated and indexed with a description of each document and page number. It must be the same in each copy of the bundle <p>A copy will need to be provided for the Court, and each of the parties, and one for use by witnesses at the trial.</p>	4
3(d)	<ul style="list-style-type: none"> Arbitration is quicker which means she can concentrate on her business. More private than going to Court, important for her business maintaining a good reputation. The expertise of the Arbitrator means that they have a better understanding of the subject matter than the courts. <p>Not always cheaper but will save money on court fees and representation.</p>	4
Question 3 Total: 15 marks		

Question Number	Suggested Points for Responses	Marks (Max)
4(a)	<ul style="list-style-type: none"> • A payment made by a lawyer to a third party • and then claimed back from the client • Example of disbursement 	2
4(b)	<ul style="list-style-type: none"> • A letter of Claim will be sent to the Defendant and they will have 21 days to reply with their insurance details. • There will then be a three month investigation period. • At the conclusion of the three months, the Defendant will reply stating whether liability is denied, giving reasons for the denial. • This will include providing documentation which is material to the issues. • The Claimant will send to the Defendant a schedule of special damages and supporting documentation. • The rehabilitation requirements of the Claimant should also be considered. • If possible a joint medical expert should be agreed. <p>Throughout the period the parties should be involved in Alternative Dispute Resolution (ADR).</p>	6
4(c)	<ul style="list-style-type: none"> • Parties can indicate the preferred track, but final decision made by the Court. • Part 26.8 CPR indicates matters the court will take into account in reaching the decision. • Starting point is the financial value, with the limits placed on each track. • Here would indicate multi-track • Complexity of the case. • Here the case is complex, dealing with psychiatric injury (multi track) • Number of parties involved. • Only two parties (indicate fast track) • Likely to be multi-track <p>Note the extended fast track will only apply to those cases where the accident or cause of action arises after the implementation date.</p>	6
4(d)	<ul style="list-style-type: none"> • The Statement of Truth provides that the contents of a document are true • seeks to avoid conjecture on the part of the maker of the statement as to what occurred. • If found to be untrue the maker can be held in contempt of court and subsequently committal proceedings may take place. • Alternatively, the Court may exercise any of its powers under the rules <p>and for example may decide instead to impose cost sanctions or strike out the Statement of Case.</p>	4
Question 3 Total: 18 marks		