



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

NOVEMBER 2023

LEVEL 3 UNIT 9 – CIVIL LITIGATION

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 November 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 very few candidates for this sitting, due to the current qualification coming to an end. In considering this cohort, it is clear that there are some excellent candidates who have a very good grasp of civil litigation and have considered previous examiner reports and exam papers.

The starting point for practice papers are the Case Study Materials (CSM), which are sent out six weeks in advance of the examination. Candidates will need to consider the areas which are likely to be examined from the CSM. There was a degree of signposting in the pre-seen CSM, for example, there was a default judgment and candidates should have known that it would have to be set aside for there to be further questions on the scenario. Not all questions can be discerned from the pre-seen CSM, and candidates are advised to map out the potential elements of each set of facts.

A failure to take into account the individual facts of the scenario will ultimately mean that the candidate misses out on important marks.. The facts are very important in, for example, discerning the correct track and ensuring that the correct procedure is written about (costs in particular).



Exam questions need to be read carefully to ensure that marks are maximised. Where candidates failed to maximise marks, it was mainly because they did not understand the procedure, rather than what the question was asking. A few candidates were unable to develop their answers any further than a brief statement or sometimes a single sentence on the subject.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

Most candidates gained at least two marks on this question. The question was clear that two methods needed to be considered. Marks were missed by not explaining further the methods chosen e.g. not linking paying privately with QOWCS.

(b)

Generally, candidates did well on this question concerning limitation, identifying the reason why the minor could bring a claim and also identifying the correct legislation. Where candidates failed to gain marks (which was rare), it was due to not being aware of the requirements of the legislation.

(c)

Most candidates gained two marks on this question, correctly identifying the need for a litigation friend. Marks were occasionally dropped because of a lack of knowledge of the litigation process.

(d)

Candidates found this question difficult. The CSM clearly signposted that a minor would be involved and that she was likely to have medical needs. As such, this should have indicated that there was likely to be a question on interim payments.

Question 2(a)

Virtually all candidates were able to gain full marks here.

(b)

Some candidates wrote about the potential outcomes for summary judgment, however the question requires the candidate to write about the procedure to gain marks. One mark was given for mentioning summary judgment.

(c)

Candidates generally performed satisfactory on this question. Candidates have been told 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 and therefore not gaining the marks.

(d)

A standard question on costs, which, provided the candidate understood, related to the Multi Track and provided the opportunity to gain good marks. Some candidates confused this with summary assessment. A mark was awarded for mentioning cost budgets.

(e)(i)

Most candidates identified that it would be a charging order, however, they occasionally provided little further information and therefore only gained a single mark.

(ii)

Most candidates identified that it would be a writ of control.

Question 3(a)

The question was clearly signposted in the pre-seen CSM, yet a number of candidates failed to perform well. A minority of candidates believed that there was not a protocol for this type of injury.

3(b)

This question caused a great deal of difficulty for some candidates. Although the question is clear on what is required to be done by the candidate, because it was not signposted in the pre-seen CSM, some candidates appeared to struggle.

(c)

A straightforward question on the documents to be sent to court. Most candidates did well on this question and gained the four marks available. Where candidates failed to gain marks, it was due to only listing the claim form and the particulars of claim.

(d)

A proportion of candidates focused only on the amount being claimed, which meant that they gained few marks.

Question 4(a)

This question was clearly signposted in the pre-seen CSM, which included a judgment in default document, and as such it was something which candidates should have picked up on and revised for.

(b)

Generally, candidates did well on this question, with the majority of candidates gaining all four marks. Those who did not do so well confused directions with the listing questionnaire.

(c)

Good consideration here with virtually all candidates gaining at least 3 marks. Many candidates were not aware of how the witness is questioned (chief, cross examination, re-examination).

(d)

Most candidates performed well on this question concerning summary assessment of costs. Those who did not do well, focused on funding.

SUGGESTED POINTS FOR RESPONSE

NOVEMBER 2023

LEVEL 3 UNIT 9 – CIVIL LITIGATION

Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none">• Could pay privately on a retainer basis.• Qualified one-way costs shifting will alleviate the issue of having to pay the Defendants costs should the claim fail.• Enter into a Conditional Fee Arrangement (CFA)• we would be able to include a success fee if she was successful in the claim.• A Damages Based Agreement (DBA), which is a privately funded arrangement between a representative and a client where the representative's agreed fee is 'contingent' upon the case being successful.	4



Question Number	Suggested Points for Responses	Marks (Max)
1(b)	<ul style="list-style-type: none"> • The Limitation Act 1980 • Normally a personal injury claim within three years of the date on which the cause of action accrued or the date of knowledge (if later). • Where the person injured is a minor, the limitation period will not start to run until the Claimant reaches eighteen. 	3
1(c)	<ul style="list-style-type: none"> • Tammy Burton is a minor so she will not be able bring the claim in her own name. Barbara Burton will act as a litigation friend. 	2
1(d)	<ul style="list-style-type: none"> • Rule 25 Civil Procedure Rules regulates when an interim payment can be made. • One of five conditions must be met for an interim payment to be made. • Where the Defendant has admitted liability to pay damages or • where the court is satisfied that if the claim was to be determined at trial, the Claimant would obtain judgment for a substantial amount of money against the Defendant. • In this case it is likely to be the latter, rather than the former as the Defendant has not indicated that he admits liability. • The money could be used to pay for the plastic surgery that Tammy Burton requires. 	5
Question 1 Total:14 marks		

Question Number	Suggested Points for Responses	Marks (Max)
2(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
2(b)	<ul style="list-style-type: none"> An application for summary judgment requires an Application Notice together with a statement in support. The statement may well be a witness statement or the Statements of Case could be relied on. Must be served at least 14 days before the summary judgment hearing on the Claimant. Claimant can produce a statement which should be received no less than 7 days before the hearing. The Applicant can serve a further statement if they wish, 3 days before the hearing. <p>The hearing is before a District Judge.</p>	5
2(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
2(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
2(e)(i)	<p>In relation to the house:</p> <ul style="list-style-type: none"> Application for a Charging Order. An Interim Charging Order will be applied for and if the Judgment Debtor fails to pay the Interim Order will be made Final. An application can then be made for an Order for Sale. 	2
2(e)(ii)		

Question Number	Suggested Points for Responses	Marks (Max)
2(e)(ii)	In relation to the paintings: <ul style="list-style-type: none"> • An application for a Writ of Control should be made. • The Writ commands a High Court Enforcement Officer (HCEO) • to take control of and sell at auction enough of the debtor's goods. • Includes 8% per annum interest and costs. 	2
Question 2 Total:20 marks		
3(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
3(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. • Here contributory negligence is proposed by the Defendant • 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. • Throughout the period the parties should be involved in Alternative Dispute Resolution (ADR). 	6
3(c)	<ul style="list-style-type: none"> • Send to Court the Claim Form (N1) • the Particulars of Claim • a medical report • up to date schedule of special damages • the fee 	4

Question Number	Suggested Points for Responses	Marks (Max)
3(d)	<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. • Complexity of the case. • Number of parties involved. • Value of any counterclaim. • The amount of oral evidence required at trial. • The wider importance of the case. 	4
Question 3 Total:18 marks		
4(a)	<ul style="list-style-type: none"> • Where a Court may set aside Default Judgment under Part 13.3 CPR. • May set aside or vary judgment if the defendant has a real prospect of successfully defending the claim • Or it appears to the Court that there is some other good reason why the judgment should be set aside/varied or the defendant should be allowed to defend the claim • Wide discretion in the interests of justice. 	4
4(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
4(c)	<ul style="list-style-type: none"> • The usual procedure at trial is firstly the Claimant will give an opening speech. • Defendant can opt to give opening speech but only if there is no reference to Defendant giving a closing speech. • The Claimant's witnesses will be called. • They will be examined in chief, cross examined and re-examined. • The Defendant's witnesses will then be called and they will go through the same process. • The Defendant will then give a closing speech, followed by the Claimant. • The judge will then deliver his or her decision. 	6

Question Number	Suggested Points for Responses	Marks (Max)
4(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 4 Total: 18 marks		

