CHIEF EXAMINER REPORT

January 2025

LEVEL 6 UNIT 15 – CIVIL LITIGATION

The purpose of the suggested points for responses is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2025 examinations.

The 'suggested points for responses' sections set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed in the suggested points for responses or alternative valid responses.

Chief Examiner Overview
The question paper performed as intended and successfully differentiated between those candidates who did have sufficient knowledge and understanding of the areas being examined and those who did not. Some of the borderline pass candidates did so despite a lack of application and on the basis of the ability to describe the relevant procedures. Some weaker performances failed to understand or properly apply material from the case study.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking this examination limits the scope for constructive and valid feedback to be given and for firm conclusions to be reached and embraced for positive use by candidates.

Therefore, no feedback on candidate performance has been included.

Question 1a	15 marks

Most candidates were able to explain how the limitation period worked, and that as a person under disability, the claimant would have three years from her eighteenth birthday to commence proceedings. A minority failed to appreciate this, and some of the explanations lacked detail.

Candidates tended to consider the position if a litigation friend acted, and sometimes when excessive detail. The more obvious comment would have been that, if proceedings did not commence until April 2025, the claimant would no longer be under disability.

Nearly all candidates recognised that contributory negligence was an issue, but the coverage was often quite thin, with no consideration of the age of the claimant, or whether this was a case where wearing a seatbelt would have avoided or simply limited the injuries. A few better answers did recognise that some of the injuries would, but others would not, have been avoided by wearing a seatbelt.

Suggested Points for Response:

- Pursuant to s 11 Limitation Act 1980 the limitation period for a claim involving personal injuries is three years from the date when the cause of action accrued, i.e. the date of the accident (or the date, if later, when the claimant had knowledge that the injury was significant and was attributable to the tort, and of the identity of the defendant).
- In this case it is likely that the claimant had the relevant knowledge from very shortly after the accident.
- Time does not run against a person under disability, which includes a minor.
- Time will only start running once Aileen Forton attains the age of 18 on 4 April 2025. The primary limitation period will expire on 3 April 2028
- There is therefore no urgency to commence proceedings for limitation purposes.
- A minor will require a litigation friend in order to pursue proceedings, for example her father George Forton.
- However, if proceedings are commenced after she attains her majority this will not be necessary.
- A relevant conviction can be pleaded pursuant to s 11 Civil Evidence Act 1968.
- This conviction would have been relevant as it would establish that the defendant had driven negligently.
- If the conviction is proved the person concerned is taken to have committed the offence.
- The defendant can adduce evidence to rebut that presumption.
- Following the successful appeal there is no longer a conviction which can be pleaded under s 11.
- The claimant can still seek to establish the negligence of the defendant, and this will be on the civil standard of proof on the balance of probabilities.
- The defendant can plead that the failure to wear a seatbelt amounts to contributory negligence pursuant to s 1 Law Reform (Contributory Negligence) Act 1945.

- While the failure to wear a seatbelt did not cause the accident, it will normally be regarded as fault of the claimant which partly causes her to suffer damage.
- A child of 14 is old enough to be found to be contributorily negligent in relation to an obvious matter such as wearing a seatbelt.
- In Froom v Butcher (1975) it was held that damages would be reduced by 25% if wearing a seatbelt would have eliminated the injuries or by 15% if wearing a seatbelt would have reduced the injuries significantly.

Question 1b	6 marks

Most candidates recognised that private funding, a CFA or DBA were the options. Too many candidates failed to explain clearly what a CFA or DBA entailed. A significant minority omitted any reference to QOCS. While ATE may be relevant, candidates did not really explain why, given that QOCS would deal with the other side's costs.

Suggested Points for Response:

- In the absence of BTE insurance or any relevant affiliation, consider private funding or CFA/DBA.
- The costs and disbursements could be substantial so private funding would only be appropriate if the Forton family had substantial financial resources.
- CFA/DBA are both so-called "no win no fee" arrangements.
- In the case of a CFA Kempstons would carry out an initial risk assessment to establish what the success fee uplift would be, based on the likelihood of success. This would be applied to the base costs.
- If the claim is successful, the success fee can be recovered from the general damages and past pecuniary damages up to a total of 25%.
- In the case of a DBA the success fee is calculated as a proportion of the damages, again up to a total of 25%.
- The claimant will have the benefit of QOCS unless one of the exceptions applies.
- After the Event (ATE) insurance could be considered in relation to the cost of disbursements.

Question 1c	6 marks
A significant number of candidates considered issues that would only arise after the commencement of proceedings. Others failed to appreciate that this claim was far higher in value than any of the portal procedures. Many failed to refer to the need to consider ADR.	
Suggested Points for Response:	
• The value of the claim is such that it does not fall within any of the relevant Pre-Action Protocols. • The Practice Direction Pre-Action Conduct and Protocols requires the parties to adopt the spirit of the Protocols, in particular the PI pre-action protocol. • This involves early and full exchange of information, proactive consideration of whether some form of ADR they be appropriate, and consideration of any rehabilitation needs (although none seem to be present here). • The claimant's representative should send to the defendant a detailed Letter of Claim. A copy should be provided to be sent to the insurer. • The defendant/insurer should acknowledge the Letter of Claim within 21 days and provide a substantive response within three months. • There is a presumption that one medical expert as to quantum will be instructed, nominated by the claimant and approved by the defendant. • [Credit any reasonable additional points based on the PDPACP.]	

Question 2a	10 marks
The majority did understand in broad terms what was required of a letter of claim. The best candidates presented their answers effectively in the required format. Weaker answers tended to run together the various issues that need to be discussed, and were often weak in identifying the allegations of negligence. There was considerable uncertainty over the timescale for acknowledgement and response.	
Suggested Points for Response:	
Dear Mr Wilkins Re: **Aileen Forton** • 28 Laxey Road Ollerton Nottinghamshire NG21 4CC • We are instructed by the above named to claim damages in connection with a road traffic accident on 10 December 2021 at A614 approximately 800 m south of the junction between the A614 and Station Road Ollerton and 300 m south of the railway bridge. • Please confirm the identity of your insurers. Please note that the insurers will need to see this letter as soon as possible and it may affect your insurance cover and/or the conduct of any subsequent legal proceedings if you do not send this letter to them. • The circumstances of the accident are: • Our client was a front seat passenger in a BMW motor car driven by her mother proceeding north on the A614. You were proceeding south, overtook a vehicle but failed to return to your own carriageway thus causing a collision as a result of which the car in which our client was travelling in turn collided with a road sign. **Liability** • The reason why we are alleging fault is: • You were driving at an excessive speed, failing to keep a proper lookout, failed to see or have any regard to the presence of the vehicle in which our client was travelling and drove your vehicle into collision while on the wrong side of the carriageway. **Injuries**	

- A description of our clients' injuries is as follows:
- Her face, neck and arms were cut by the broken window glass and she suffered a fractured cheekbone, a severe whiplash injury and a fractured ankle. The cheekbone and ankle have now resolved, but there is still moderate facial and other scarring.
- Our client [insert hospital reference number] received treatment for the injuries at Kings Mill Hospital [insert address].
- Our client is still suffering from the effects of her injury. We invite you to participate with us in addressing her immediate needs by use of rehabilitation.
- A copy of this letter is attached for you to send to your insurers.
- Finally we expect an acknowledgment of this letter within 21 days by you or your insurers.

Question 2b	6 marks

Most candidates were able to give a reasonable account of the formal requirements. There was relatively weak application in the sense that the statement provided contained at least one piece of inadmissible opinion, and one piece of immaterial background, and only a minority of candidates identified one or other of these. Far more stated that opinion and irrelevance should be excluded, but without identifying the actual examples.

Suggested Points for Response:

- Must be compliant with PD 32
- Headed with the title of the action.
- In top right hand corner the identifying indicators – made on behalf of the claimant, name and initials, that it is the first statement and the date made.
- Must be in the first person, in the witnesses own words, contain full details of the name address and profession of the witness, and how produced (e.g. face-to-face interview, telephone conversation).
- In numbered paragraphs and in chronological order.
- Statement of truth (CPR22)
- In this case there should be a clear factual account of the circumstances of the accident as set out in Document 2.
- The witness cannot give opinion evidence as to the cause of the accident.
- Given that he has estimated the speed of the Mondeo the statement that it was travelling "far too fast" while strictly an opinion will be acceptable as a way of describing what the witness actually perceived.
- The reason why he was driving slowly is not strictly relevant.

Question 2c	8 marks
While most candidates realise that something had gone wrong, relatively few were able to identify exactly what the issue was, and what the consequences for the defendant might be many candidates did refer to the Denton criteria, but far fewer actually applied these properly. Some candidates adopted an unnecessarily belligerent and confrontational approach when, in all likelihood, the appropriate response would have been to consent to the application for relief from sanctions.	
Suggested Points for Response:	
• The defendant has not complied with the direction and is in default. • What has been served and filed is not a witness statement for the purposes of CPR, and in particular does not contain a statement of truth. • If a witness statement has not been served, that witness may not be called to give evidence without the leave of the court (CPR 32.10). • The defendant will need to apply for relief from sanctions (CPR 3.9). • The application will be assessed using the Denton v White (2014) three stage approach: the serious and significance of the non-compliance, the reason for the non-compliance and how to achieve a fair outcome in all the circumstances. • Here the non-compliance can be rectified speedily and without significant inconvenience to the court or other parties and certainly without prejudicing any hearing date or other procedural deadline. It appears to be oversight or human error. The importance of the defendant giving evidence is significant and in all the circumstances relief is likely to be granted. • The defendant may request that the claimant consent to the application for relief, and this should probably be accepted having regard to the overriding objective.	

Question 3a	8 marks
A minority of candidates appeared unaware of the existence of the new intermediate track. Insofar as the expert evidence is concerned, most candidates did recognise that the expert should be asked to meet and prepare a statement as to what was agreed and not agreed, but a lot of the coverage was quite generic beyond that.	
Suggested Points for Response:	
• As the value of the claim is significantly in excess of £25,000, and significantly less than £100,000 the intermediate track would be the normal track. • There is no suggestion that more than two experts will be needed or that the trial would last longer than three days. • Many of the case management provisions relate equally to the fast-track and intermediate track, e.g. the pre-trial checklist, the listing of the trial date or trial window (CPR 28 Part I). • The court may give standard directions or direct a case management conference. • The provisions as to the matters to be covered by directions are more complex under CPR 28 Part IV. • There is clearly a significant difference of opinion between the two experts as to the reason for the tanning cabinet catching fire. • When giving directions the court has to have regard to the overriding objective. • It is likely that the court will direct that the experts meet and produce a joint report indicating those matters on which they agree and those on which they disagree and the reasons for that disagreement. • The normal direction is that only one expert may give oral evidence for each party	

Question 3b	12 marks
Only a minority of candidates recognised that this claim would need to be commenced in the Damages Claims Portal and could explain what this entails. Coverage of service of the proceedings was quite sketchy, particularly among those who were unaware of the DCP. The quality of explanation of what would go into the Claim Form and Particulars of Claim was very variable. Only a minority specifically advised that a copy of the contract should be annexed to the Particulars of Claim. Some candidates even suggested that the claim was in negligence rather than contract.	
Suggested Points for Response:	
• This is not a claim for a specified sum of money. It does not fall within the scope of PD7B. • As it is a damages claim it does fall within the scope of the damages claims pilot governed by PD51ZB. • The value means that it will be issued in the County Court. • It is assumed that Kempstons are already registered users of the Damages Claims Portal (DCP). • The Claim Form and Particulars of Claim will be created electronically in the DCP. Any other documents (e.g. the contract to purchase of the tanning cabinet) must be uploaded. • The claim will be issued once payment of the court fee has been confirmed. • If the defendant's solicitors are registered users of the DCP the Claim Form and other documentation will be served electronically. • Otherwise Kempstons must serve the Claim Form and other documentation as generated in the DCP on the defendant by one of the approved methods (see CPR 6 and PD 6A). Service must be affected within the time prescribed by CPR 7.5 • The claim form uses the fields provided in the portal. • The names and addresses of the parties (and their representatives) are required. • Brief details of the claim, here "Damages for breach of contract involving and consequential on the sale of a defective tanning cabinet." • Details of the value of the claim and fee. • The preferred County Court hearing centre. • Statement of Truth (produced automatically by pressing the Submit button when using the DCP). • The Particulars of Claim should plead the relevant cause of action and the facts on which it is based. • Here details of the contract for purchase of the tanning cabinet are required, and the contract should be annexed. • Details of the alleged breach of contract (i.e. selling a cabinet with dangerously defective parts). • Details of the events giving rise to the claim. • Details of the various heads of damage. • Details of interest claimed. • Statement of Truth (unless the particulars are incorporated into the Claim Form uploaded to the DCP)	

Question 3c	8 marks

Virtually all candidates were able to explain the basic nature of a Part 36 offer. Some candidates did not consider whether, from a tactical perspective, it might be appropriate to accept the offer because of the uncertainty over the valuation of the claim. The discussion of the precise adverse cost consequences of failing to beat an offer which has not been accepted was extremely variable in quality. Very few candidates suggested a counteroffer, let alone what the consequences might be.

Suggested Points for Response:

- A Part 36 offer is an important element in the structure of the CPR. It assists achieving the overriding objective by encouraging parties to take a realistic approach to claims. The offeror is effectively offering a compromise.
- The offer will not be disclosed to the trial judge.
- The offer is inclusive of interest up-to-date.
- The offer should remain open for at least 21 days. Thereafter it can be withdrawn or modified if not previously accepted.
- If the offer is accepted the defendant will pay the amount of the offer together with the claimant's costs to be agreed or if necessary assessed by the court.
- If the offer is not accepted there may be adverse consequences.
- If the case proceeds to trial and the claimant recovers more than the amount of the offer there will be no adverse consequences and judgment will be entered for the amount awarded and costs on the usual basis.
- This is of course subject to the overriding principle that costs are in the discretion of the court which may take into account such matters as the conduct of the parties, including any refusal to engage in mediation or other ADR.
- If the claimant fails to recover a judgment more advantageous than contained in the offer, the claimant will normally be ordered to pay the defendant's costs from a date 21 days after the making of the offer together with interest on those costs.
- The claimant could make a counteroffer. If it secures a judgment at least as advantageous as that offer there will be adverse consequences for the defendant, who will normally be ordered to pay the claimant's costs from 21 days after the making of the offer on the indemnity basis together with interest, interest at 10% above base rate on the damages awarded and an uplift of 10% of those damages

Question 4a	5 marks

Virtually all candidates recognised that this would involve an application for a default judgment under CPR 12. The level of detail about the circumstances in which such a judgment is available, and the procedure for securing one was very variable. Virtually no candidates recognise that the actual application would be for judgment for damages to be assessed, as it is not a claim for a liquidated sum.

Suggested Points for Response:

- The case will have been commenced in the DCP pursuant to PD 51ZB.
- The appropriate step is an application for default judgment.
- Default judgment can be obtained where the defendant has not responded to the claim within the prescribed time limit by completing the relevant screens in the DCP (PD 51ZB 6.6)
- As this is a claim for unliquidated damages, it will be a default judgment for damages to be assessed.
- The case will be assigned to an appropriate County Court hearing centre.

- A court date will be assigned for a hearing at which the amount of damages will be determined.

Question 4b	6 marks

Again, virtually all candidates recognised that this would involve an application to set judgment aside under CPR 13. Some discussed mandatory setting aside under CPR 13.2 when it was clear that this was not appropriate. The ability to explain the statutory grounds for discretionary setting aside under CPR 13.3 was distinctly variable, and application even more so. It seems fairly clear that the defendant is alleging that there is a defence on the basis that there was no breach of contract. Even though there is other evidence to the contrary, that does not prevent the defendant presenting their case.

Suggested Points for Response:

- The appropriate step will be an application to set aside the default judgment pursuant to CPR 13.
- This does not appear to be a case where default judgment was entered inappropriately so the defendant cannot apply to have the judgment set aside as of right pursuant to CPR 13.2.
- In order to have the default judgment set aside under CPR 13.3 in the discretion of the court the defendant must show that:
  - he has a real prospect of successfully defending the claim, or
  - that there is some other good reason to set aside the judgment or allow the defendant to defend.
- The court will consider whether the application was made promptly, but this appears to be the case here.
- The defendant appears to be disputing that there was a breach of contract, which would be a defence to the claim.
- It is not just a question of quantum, which could be resolved at the disposal hearing.
- Consideration should be given to a request to consent to having default judgment set aside.

Question 4c	5 marks

Many candidates failed to appreciate that leave to appeal would be required. The coverage of the criteria on which leave would be granted and the appeal decided was very variable, and often quite sketchy. There was also little awareness of which court the appeal would go to. As the original decision was by a District Judge, the appeal would lie to a Circuit Judge in the County Court.

Suggested Points for Response:

- Normally the decision to dismiss the application to set aside default judgment will have been made by a District Judge.
- An appeal will lie to a Circuit Judge in the County Court.
- Leave to appeal will be required.
- This may be given by the judge who dismissed the application or by an application to the court which would hear the appeal.
- The test for granting leave to appeal is set out in CPR 52.6.
- The primary test is that the appeal would have a real prospect of success or that there is some other compelling reason.
- Leave to appeal may be given on a limited basis or subject to conditions.

Question 4d	5 marks
Most candidates were able to list a number of enforcement options. The use of a statutory demand and bankruptcy occurred relatively infrequently. A number of candidates referred to attachment of earnings, although the facts make it clear that the defendant has been self-employed and is probably no longer economically active. This suggests a lack of application.	
Suggested Points for Response:	
• A statutory demand could be issued to require payment of the total amount due within 21 days. • If not complied with, bankruptcy proceedings could be commenced. • Alternatively enquiries could be made, either by requiring the defendant to appear pursuant to CPR 71 to provide information as to his financial circumstances, or by instructing an enquiry agent or credit reference agency. • A third-party debt order may be appropriate if the defendant has a bank account with a credit balance. • If enquiries show the defendant owns real property, a charging order and subsequently an order for sale could be deployed, but are not a quick remedy. • The judgment could be transferred to the High Court for enforcement as it exceeds £5000 and a writ of control could be obtained to allow the sheriff to take possession of tangible assets with a view to sale.	