



CHIEF EXAMINER COMMENTS WITH SUGGESTED POINTS FOR RESPONSES

JANUARY 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 January 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

It should be noted that this paper was a legacy paper in that those who sat it were completing their studies and that there are no 'new' candidates. Consequently, fewer candidates sat this paper than in previous sessions.

It should be stressed that candidates should look closely at previous examiner reports and exam papers, ensuring that they have a good grasp of civil litigation procedure. A substantial number of candidates continue to have a limited grasp of civil litigation and as such struggle with the majority of the questions, not just specific questions which they may not have covered.

The starting point is the Case Study, and candidates need to consider the areas which are likely to be examined. The majority of questions can be discerned from the case study, 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 case study, 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. 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.

CANDIDATE PERFORMANCE FOR EACH QUESTION

Question 1(a)

A number of candidates struggled with this question, largely as they did not fully consider the pre-seen materials or the context of why the low value protocol would not apply. Those who went down this route scored few if any marks. Those who grasped the need to consider the personal injury protocol did well.

1(b)

Most candidates did well on this question. It has been asked a number of times and consequently candidates knew 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.

1(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.

1(d)

Some candidates have no idea about how QOWCS operates and consequently did not score as well on this question. As the claimant was successful, QOWCS did not apply, yet some candidates wrote extensively on the subject (no marks were awarded).

Question 2(a)

Candidates do not always read the question carefully. Here a large number of candidates wrote about the potential outcomes for summary judgment. This did not attract any marks – the question is clear; it requires the candidate to write about the procedure for making an application.

2(b)

Most candidates on this question gained all four marks. A minority of candidates failed to identify the correct part of the CPR and had clearly not revised the use of experts in civil litigation.

2(c)

Candidates generally did well on this question, although note, even though in all past Chief Examiner reports, 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.

2(d)

A standard question on costs, which provided the candidate understood related to the Multi Track, provided the opportunity to gain good marks. Some candidates confused this with summary assessment and so received no marks.

Question 3(a)

A funding question on which most candidates were able to gain full marks. Areas of concern related to the failure to consider the scenario and just write a list relating to funding.

3(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 'different stages', etc.

3(c)

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.

3(d)

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.

Question 4(a)

Good consideration here, with virtually all candidates gaining at least 3/4 marks. This was perhaps the least challenging question on the paper.

4(b)

This question was not done well by the majority of candidates. There was far too much focus on the advantages of using ADR, rather than focusing on how arbitration works. Some candidates confused arbitration with mediation.

4(c)

Only a minority of candidates were able to do well on this question, with the majority only writing vague answers where little credit could be awarded.

SUGGESTED POINTS FOR RESPONSE

JANUARY 2023

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Question Number	Suggested Points for Responses	Marks (Max)
1(a)	<ul style="list-style-type: none">• Denied liability so the Low Value Personal Injury protocol will not apply.• Personal Injury Protocol for Personal Injury Claims will apply.• Letter of Claim sent to Defendant requesting insurance details within 21 days.• Three month investigation period.• Defendant reply stating whether liability is denied with reasons.• Defendant will provide documentation which is material to the issues.• Claimant will send a schedule of special damages and supporting documentation.• Rehabilitation requirements of the Claimant to be considered.• Possible joint medical expert to be agreed. Throughout the period parties should engage in ADR.	6
1(b)	<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.	5
1(c)	<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
1(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.	4



	<ul style="list-style-type: none"> • 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. 	
	Question 1 Total:19 marks	
2(a)	<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. • The hearing is before a District Judge. 	6
2(b)	<ul style="list-style-type: none"> • The appointment and use of experts is regulated by Part 35 CPR. • There is a duty to co-operate under CPR and a presumption that experts will be appointed from the Court panel with the Court's permission. • The Court can control which experts give evidence and limit the issues they should address. • The first duty of the expert witness is to the Court. • This is a Multi Track case, however the use of joint experts is likely to be appropriate, though each party may consider the need for their own expert. <p>The expert must be qualified in the area of their expertise.</p>	4
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. 	5
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 <p>Court can make a costs management order, so the court controls recoverable costs</p>	4
	Question 2 Total:19 marks	
3(a)	Two marks for each explained option	4

	<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 he 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. • Before the Event Insurance • Home insurance policy 	
3(b)	<ul style="list-style-type: none"> • Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims. • Stage 1 is concerned with submitting the claim and the Defendant's liability response. • If the Defendant does not admit liability the claim will not remain in the process. • At Stage 2 the parties will exchange evidence. • This is limited to quantum only, since to get to Stage 2 the Defendant must have admitted liability. <p>Stage 3 is concerned with court assessment of damages or the approval of a settlement.</p>	6
3(c)	<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(d)	<ul style="list-style-type: none"> • A Request for Further Information is made under Part 18 CPR (1) • 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>	6
Question 3 Total:18 marks		
4(a)	<ul style="list-style-type: none"> • Companies House • Credit rating company 	4



	<ul style="list-style-type: none"> • Private investigator • Search at the Land Registry • Search of the Register of Judgments • Information from the client. 	
4(b)	<ul style="list-style-type: none"> • Requires the parties to go through arbitration rather than court proceedings. • The Arbitrator is independent. • The Arbitrator is likely to be an expert, • who is not bound to follow a set procedure as is a court. • The decision made by the Arbitrator is in the majority of cases final. • The Award can be reserved until he or she has been paid. • An Award can be enforced through the courts. 	6
4(c)	<ul style="list-style-type: none"> • ADR is not compulsory and an individual cannot be ordered by the court to undertake it. • The court may require some evidence that the parties have at least considered ADR. • Where a party has declined ADR then only when it can be shown that the declining party acted unreasonably in the circumstances are there likely to be any consequences. • If the declining party wins the case then the court may disallow some or all of the costs awarded. If the declining party loses the case they could also be penalised through indemnity costs. 	4
Question 4 Total:14 marks		