

**LEVEL 3 - UNIT 9 – CIVIL LITIGATION
SUGGESTED ANSWERS – JANUARY 2017**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

Question 1

- (a) The claim would fall under the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims, not for a claim for Road Traffic Accidents, as the bicycle would not be a motor vehicle for the purposes of the protocol. The protocol divides the claim into three stages.

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. Stage 3 is concerned with court assessment of damages or the approval of a settlement.

- (b) To formally begin the Claim, the Claimant will be required to send to the Court the Claim Form (N1), Particulars of Claim, a medical report, a schedule of losses and the fee.
- (c) An application for Summary Judgment (Part 24 CPR) is made on notice. It is made on the basis that the Defendant has no real prospect of defending the claim and there is no other compelling reason why the case should be disposed of at trial.

If the Court finds wholly in favour of the applicant then the Defence will be struck out. This will mean that the matter will not progress any further. Conversely, 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 as well as having to bear their own costs. The Court may provide directions for a continuance or it may make a Conditional Order. A Conditional Order requires the respondent to take a particular step such as paying money into Court.

- (d) Costs are always at the discretion of the Court; there is no right to costs. In most cases costs will follow the event and costs will be granted to the winning party, in this case our client. 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 2

- (a) The Limitation Act 1980 requires potential Claimants to bring a personal injury claim within three years of the date on which the cause of action accrued or the date of knowledge (if later) of the person injured. However, where the person injured is a minor, the limitation period will not start to run until the Claimant reaches eighteen.
- (b) As Holly Robins is a minor she will not be able bring the claim in her own name and, therefore, her mother will act as a litigation friend on her behalf.
- (c) The answer will depend upon whether an Acknowledgement of Service is used. If an Acknowledgement of Service is not used the period for filing the Defence is 14 days, this will be extended to 28 days if the form is used.
- (d) 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. In the present case only two could apply – 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 our client has not indicated that she admits liability. The money could be used to pay for the plastic surgery that Holly Robins requires.
- (e) This is a Fast Track case and therefore directions are likely to be dealt with through standard directions. The relevant directions in this case firstly relate to disclosure of documents relevant to the case. This is likely to be related to the maintenance and upkeep of the ride – there is a possibility that the ride was set too fast or that too many people were allowed onto it; records would show the maximum number allowed onto the ride. The exchange of witness statements will be relevant, although it is likely that if no names were taken of those on the ride, the passage of time will mean that they will be difficult, if not impossible, to find. The witness statements, therefore, are likely to be those of Holly and Dorothy Robins and Tamara Johnson. The use of experts will relate to medical experts e.g. doctor or consultant. The directions will also consider setting the case down for trial and the use of pre-trial checklists.

Question 3

- (a) See Claim Form.
- (b) The Trial Bundle is prepared by the Claimant and 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 and a copy will need to be provided for the Court, and each of the parties, and one for use by witnesses at the trial.

- (c) An application can be made to the Court for an Order to Obtain Information. Once it is obtained, the judgment debtor will have to attend court and give evidence of her financial position. At the hearing the debtor will be questioned on oath. A failure to attend could mean a committal order being granted by the Court. The judgment creditor can attend and ask questions of the judgment debtor's finances.

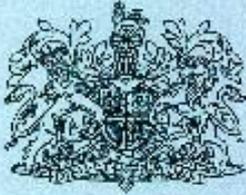
Question 4

- (a) A substantial claim like this is likely to be allocated to the Multi Track. As would be expected, the potential costs are high and the client should be advised of this at the earliest opportunity. She could pay privately under a retainer, having been advised about the potential cost consequences of losing the case. This could be alleviated by taking out after the event (ATE) insurance.

Another option is to enter into a Contingency Fee or Damages Based Agreement (DBA). The Defendant's potential costs liability is not increased, and where there is a shortfall the Claimant's lawyer can take a share of the damages. The maximum that can be taken in a case such as this is 50%. This option needs to be considered by the firm as the case may not be very strong.

As the matter relates to her property, the client is most likely to have house insurance. This is a form of before the event (BTE) insurance and the policy will have to be read very carefully to ascertain whether it covers the situation. If it does, then this would be the most appropriate means of funding and we would have to consider whether we could still continue to act due to the potential conflict with the interests of the insurance company.

- (b) Legal proceedings are a step of last resort and Alternative Dispute Resolution (ADR) is actively encouraged by the courts. It should be noted that ADR is not compulsory and an individual cannot be ordered by the court to undertake it, although 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.
- (c) Under Part 35 CPR, written questions are raised with the other party's expert. The questions raised must be proportionate and can only be put once. They must be made within 28 days of service of the report and must be for the purpose of clarification of the report only, unless the Court gives permission or the other party agrees.
- (d) Budgets must be exchanged and filed by all parties within 28 days of the date specified in the Court notice, or no later than 7 days before the case management conference. The 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. The Court can make a costs management order which would mean the Court thereafter controls the budget in respect of recoverable costs.



Claim Form

In the County Court Money Claims Centre

Fee Account no. 1334201

For court use only

Claim no.

Issue date

You may be able to issue your claim online which may save time and money.
Go to www.moneyclaim.gov.uk to find out more.

Claimant(s) name(s) and address(es) including postcode

Ida Idea LLP
The Warehouse
Deepings Road
Kempston
MK42 7AP



[1 mark]

Defendant(s) name and address(es) including postcode

Gabrielle Midor
16 Wellington Road
Kempston, MK42 3LA

[1 mark]

Brief details of claim

Breach of contract for failure to pay outstanding invoice 3424

[1 mark]

Value

More than £10,000 but less than £25,000

[1 mark]

You must indicate your preferred County Court Hearing Centre for hearings here (see notes for guidance)

Bedford County Court

[1 mark]

Defendant's name and address for service including postcode

Amount claimed

£

Court fee

Legal representative's costs

Total amount

For further details of the courts www.gov.uk/find-court-tribunal.

When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

N1 Claim form (CPR Part 7) (05/14)

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Claim No.

Does, or will, your claim include any issues under the Human Rights Act 1998? Yes No

Particulars of Claim (attached)(to follow)

Statement of Truth

*(I believe)(The Claimant believes) that the facts stated in these particulars of claim are true.

* I am duly authorised by the claimant to sign this statement. [1 mark]

Full name Ratcliffe Hampson [1 mark]

Name of claimant's legal representative's firm Kempstons

signed _____ position or office held Partner [1 mark]

~~*(Claimant)(Litigation friend)~~

(If signing on behalf of firm or company)

~~*(Claimant's legal representative)~~

**delete as appropriate*

Kempstons
Manor House
Bedford
MK42 7AB

Claimant's or claimant's legal representative's
address to which documents or payments
should be sent if different from overleaf including
(if appropriate) details of DX, fax or e-mail.