

**LEVEL 4 - UNIT 3 – THE LAW AND PRACTICE RELATING TO ROAD
TRAFFIC ACCIDENTS
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.

SECTION A

1. A conditional fee agreement is agreement between a lawyer and a client that the client only becomes responsible for the lawyer's fees on condition that the lawyer succeeds in the client's case. If the case is successful, the lawyer can charge a percentage uplift on his/her base costs. This is known as a success fee and is deductible from the client's damages but capped at 25% of damages.
2. There are several possible ways of obtaining a defendant driver's motor insurance details. A direct request to the defendant driver could be made if his/her contact details are known. Another way would be to obtain the police accident report (if the police attended the accident locus). Alternatively, a claimant solicitor could carry out an online search of the Motor Insurers Database (MID search) against the defendant driver's vehicle registration, or request that the Motor Insurers Bureau carry out the search.
3. The MedCo Portal is used to obtain details of appropriate medical experts for soft tissue (whiplash) injury claims.
4. A breach of the Highway Code may assist in proving one or more of the following: liability i.e. breach of duty of care, contributory negligence, contribution or indemnity.
5. The documents to file with the court in stage 3 of the RTA Protocol are: Court Proceedings Pack Part A Form, Court Proceedings Pack Part B Form - Part B in sealed envelope, medical report, evidence of special damages, evidence of disbursements: CPR Practice Direction 8B.
6. There are various situations when a car driver may be uninsured. These include when there is a valid insurance policy for the vehicle but the driver

is not a named driver under the policy or if the insurer voids the insurance cover due to breach by the driver/policy holder, for example he/she made a false statement when applying for the insurance. Similarly, non-disclosure of relevant information at the time of making an application for insurance may render the policy void. A driver will also be uninsured if there is a valid insurance cover for the vehicle but the driver is driving without permission of the policy holder, for example because he/she is driving a stolen vehicle.

7. A claim may leave the RTA Protocol for the following reasons: the defendant insurer disputes liability, the value of claim exceeds £25,000, the defendant insurer alleges that the claimant is making a fraudulent claim or alleges that the claimant solicitor has provided inadequate information in CNF/RTA1, or the defendant insurer fails to respond to the claim notification within the required timescales in stage 1.
8. The effect of Regulation 3 of the European Communities (Rights against Insurers) Regulations 2002 is that where a claimant has a right of action in tort against an insured defendant driver, he/she has a right of action directly against the defendant's motor insurance company. The claimant can issue court proceedings against either the defendant driver or the insurance company or both.
9. Section 58 of the Highways Act 1980 provides a statutory defence if the Highway Authority can prove that it took such care as in all the circumstances was reasonable to ensure that the relevant stretch of highway was not dangerous for traffic.
10. In relation to an accumulation of snow on the highway, there is a significant difference in the responsibility imposed on the highway authority under statute and in common law. Section 41(A) of the Highways Act 1980 provides that a highway authority must ensure, so far as is reasonably practicable, that safe passage along the highway is not endangered by snow (or ice). Breach of this provision creates a civil right of action. Section 150 of the Highways Act 1980 imposes a duty on a highway authority to remove obstruction by snow although this section does not create a civil right of action if it is breached. By contrast, in common law there is no duty on the highway/local authority to remove snow: Sandhar and Murray v Department of Transport, Environment and the Regions (2004).

SECTION B

Scenario 1 Questions

1.
 - (a) There are several reasons for obtaining the police accident report following a road traffic accident. The report should contain information relevant to assessing liability such as a diagram of the accident locus and, possibly, witness statements and/or witness contact details. The report will also indicate whether Matthew Harding was convicted of a relevant offence and, if so, the report should include details of the conviction and the relevant magistrates' court. The report should also contain statements to the police from the parties involved in the accident. These may be the most contemporaneous accounts of the circumstances of the accident.
 - (b) The hospital triage notes should indicate injuries sustained in the accident, if Kevin was conscious following the accident, whether he provided his account of how the accident occurred and whether he appeared to be under the influence of alcohol or drugs. This may be the most contemporaneous account available, particularly if the police did not attend or attended but did not take witness accounts/statements at the scene of the accident.
 - (c) The certificate of conviction may be relevant to Matthew Harding's negligent driving. If so, we may plead it in the particulars of claim and it is admissible in evidence: s11 Civil Evidence Act 1968 and Stupple v Royal London Insurance (1970). Evidence of the conviction will be persuasive rather than binding on the court. Credit was also given for recognising that the conviction is secured with a higher standard of proof than that usually required in civil law and that the conviction reverses the burden of proof, with a brief explanation.
2.
 - (a) Matthew Harding owes Kevin a recognised duty of care: Nettleship v Weston (1971). Alternatively, it could be argued before the court that there was sufficient proximity between Matthew and Kevin, and foreseeability of harm to Kevin from Matthew's driving, to establish a duty of care owed by Matthew to Kevin: Donoghue v Stevenson (1932). Matthew was driving in excess of the speed limit but this of itself is not evidence of negligence. However, Matthew was required to exercise the standard of driving of an experienced and skilled driver. This is an objective standard of the reasonable person in Matthew's circumstances: Blyth v Birmingham Waterworks (1856). The fact that Matthew had only recently passed his test is irrelevant to the standard required: Nettleship v Weston (1971). A reasonable person in Matthew's situation would have driven around the bend at a sufficiently slow speed to maintain control of the motorcycle. Matthew's failure to do this suggests that he failed to meet the required standard of care / breached his duty of care.
 - (b) Matthew Harding's solicitors are likely to argue that Kevin was contributorily negligent. Although he was wearing a helmet, which is a legal requirement under s16 Road Traffic Act 1988, he had failed to fasten the chin strap. The court may accept an argument that he was contributorily negligent. Section 1 of the Law Reform (Contributory Negligence) Act 1945 enables the court to reduce the

amount of damages awarded to Kevin by an amount, considered to be just and equitable, which reflects his degree of blame for his injuries. However, the court will only make this deduction if the medical evidence indicates that fastening the chin strap would have avoided Kevin's injuries or reduced their severity: Capps v Miller (1989).

3. (a) The claimant solicitors will take the following steps, in stage 1 of the RTA Protocol, to notify the defendant insurer of the claim: carry out an 'askCUE PI' search to check the claimant's claims history and reduce the risk of inadvertently running a fraudulent claim, complete the CNF/RTA1 form and include the 'askCUE PI' search number on the form. They will then send the CNF/RTA1 form electronically to the defendant insurer. They will also send a copy to Matthew Harding by first class post.
- (b) After receiving an acknowledgement from the defendant insurer, the claimant solicitor would expect the defendant insurer to then complete the 'Insurer Response' section of CNF/RTA1 form and send it electronically to claimant's solicitor within 15 business days of the date when the claimant's solicitor sent the CNF/RTA1 form. This means by 10 March 2017.
4. (a) Where the defendant insurer admits liability and, following disclosure of medical evidence, you negotiate settlement of the claim, the claim is likely to have concluded in stage 2 of the RTA protocol as you have not completed the stage 2 settlement pack or issued court proceedings.

The firm will receive fixed costs from the defendant calculated as follows:

Stage 1:	<u>£200</u>
Stage 2:	<u>£600</u>
Total :	£800

- (b) Success fee: 25% (agreed percentage) x £800 (costs) = £200

Kevin will receive damages minus the success fee:

$£16,000 - £200 = \underline{£15,800}$

Scenario 2 Questions

1.
 - (a) The court will take the following factors into account when assessing Irene's conduct in relation to determining liability for the accident. Irene was driving carefully as there was a risk of pedestrians stepping unexpectedly into road. She did reduce her speed because she was approaching a pelican crossing and the light was amber. She was not obliged to stop because the light turned to green and no one was visible at, or on, the crossing. She did brake and swerve when she saw Victor running across the crossing.
 - (b) The court will note that Victor sprinted onto the crossing, which suggests he may have been moving too fast for Irene to see him in time to stop. As an adult, Victor had a duty of care not to harm or endanger other road users. He had a responsibility to consider other road users and to look out for approaching traffic entering the crossing. Victor appears to have run into Irene's stopping distance giving her no or little opportunity to avoid the collision. On the balance of probabilities from the facts provided, the court may find Victor at fault. Relevant authority e.g. Nance v British Columbian Elective Railway (1951) or Birch v Paulson (2012).
 - (c) The court may find Irene primarily responsible for the accident but make a deduction from any damages awarded to Victor to reflect his contributory negligence in running across the pelican crossing: Section 1 Law Reform (Contributory Negligence) Act 1945. (Please note that credit is given for reasoned arguments advising of a different possible decision).
 - (d) A breach of the Highway Code may support a civil claim in court as section 38(7) Road Traffic Act 1988 permits the Highway Code to be relied on as admissible evidence on the issue of breach of duty. However, a breach of the Highway Code does not necessarily mean Irene was negligent: Goad v Butcher (2011).
2. Following an admission of liability by Aldrite Insurers, Victor Murzak's solicitors would be expected to obtain a medical report on Victor's injuries from an appropriate expert. They are not required to liaise with Aldrite Insurers as they can select an expert of their choice and singly instruct him/her. The solicitors will disclose the medical report with the completed RTA5 form containing details of special damages claimed and their settlement offer. They should then seek to negotiate settlement with our firm.
3.
 - (a) In view of Victor Murzak's criminal conviction for theft, which he committed immediately before the accident, the defence of illegality/*ex turpi non causa* should be considered. If successful, this would be a complete defence, which means that it would defeat Victor Murzak's claim entirely. We will need to argue that Victor Murzak should not recover damages for injuries sustained while engaged in the commission of a criminal offence, namely theft, having stolen cash from a local shop. It is contrary to public policy that a claimant should be able to recover compensation for consequences of his criminal conduct. We may also argue that

Victor's injuries were caused by his illegal act rather than Irene's driving: Gray v Thomas Trains Ltd (2009) and Pitts v Hunt (1991). On balance the defence is likely to succeed.

- (b) If the defence of Victor Murzak's claim is successful, there are significant cost consequences for Aldrite insurers. The general civil litigation costs rule states that a losing party pays the successful party's costs (as well as its own legal costs). However, in personal injury claims qualified one-way costs shifting (QOCS) applies, which means that a successful defendant can only enforce an order for costs to the extent of damages awarded to the claimant. If the claim has failed entirely with no award of damages to Victor Murzak, then Aldrite Insurers will not receive any costs: CPR Rule 44.14. The exceptions to QOCS do not apply.
- 4.
- (a) If Irene had been uninsured at the date of the accident, Victor Murzak could have made a claim against Irene as the allegedly negligent driver, and against the Motor Insurers Bureau (MIB), as it is a requirement of the MIB Uninsured Agreement 2015 that the MIB is named as a co-defendant in proceedings against the uninsured driver.
 - (b) If Victor Murzak's claim had succeeded against Irene and the MIB, the MIB would have met his claim initially and Irene would not have had to pay damages directly to Victor. However, the MIB has the legal right to pursue an uninsured driver for recovery of its outlay so it may subsequently have required Irene to reimburse its outlay.