

**LEVEL 4 - UNIT 6 - DAMAGES, SETTLEMENT AND COSTS IN PERSONAL
INJURY CASES
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) To evaluate general damages, a medical report will be required to report on the cause, nature, severity and duration of the injury. The report will also provide a diagnosis and prognosis. The physiotherapy records/other medical records/x-rays might also be obtained, which would show the treatment received and the duration of symptoms. To establish the level of an award, the JC Guidelines will be consulted. These are an objective starting point for assessment, which can be refined with reference to case law, which is specific to the individual case.
- (b) General damages are to compensate for pain, suffering and loss of amenity. In evaluating general damages, the impact of the injury on someone's life will be taken into account, and so it is relevant that Spencer was unable to play tennis during the summer months.
- (c)
 - (i) No interest is recoverable before issue of proceedings as interest on general damages runs from date of service of proceedings. Therefore, Spencer must issue proceedings in order to recover interest on any award for general damages.
 - (ii) The guideline rate of 2% applies on awards on interest for general damages.
- (d) It will be necessary to notify CRU as a certificate of NHS charges must be obtained as it is clear that Spencer was hospitalised overnight. Under the Health and Social Care (Community Health and Standards) Act 2003, the compensator must repay to the NHS the charges set out in the certificate. Even though Spencer says that he received no benefits, he may be mistaken and the position should be checked. In this case a NIL CRU

Certificate is likely to be provided showing only the NHS charges. An up-to-date CRU Certificate must be obtained before settlement is concluded.

Question 2

- (a) The purpose of a claim for special damages is to reimburse for past losses and expenses, compensate for future losses and expenses, and also to recover interest on past losses and expenses.
- (b) The invoice from the cleaning company may be challenged because it calculates the expense/loss from 1 June 2016 although the accident was 15 June 2016 and therefore some of the costs shown pre-date the accident. It also includes cleaning costs although Spencer already had his cleaning done by the company before the accident. Spencer cannot expect to be reimbursed for costs which he would have spent in any event. The invoice does not give a breakdown of the hourly rate for each activity. The invoice also does not give a breakdown of the hours spent on gardening, washing and ironing, and so the reasonableness of each individual claim cannot be evaluated with reference to a reasonable hourly rate. It includes a claim for gardening which may be thought unreasonable over the winter months. On the face of it, the amount being claimed looks to be based on a very high hourly rate/number of hours.
- (c) (i) It will be possible to make a claim on behalf of Spencer's brother for the gratuitous care provided, as long as it is over and above that which is ordinarily provided.
- (ii) Spencer's brother's proposed hourly rate for his services is based upon his hourly rate as a piano tutor. This is not a suitable basis for the claim for assistance as it appears much higher than employing professional help. The 'ceiling principle' applies. Any claim should be limited to the commercial rate for the provision of such care with a deduction applied for the gratuitous element (Housecroft v Burnett (1986)) because no tax or NI will be payable. A typical deduction might be 25%-33%.
- (d) (i) The calculation to claim physiotherapy charges is based on a cost of £40 twice per week for 8 weeks, which is $40 \times 2 \times 8 = £640$.
- (ii) The charges are not continuing special damages but were limited to a finite period. Therefore, while the loss was continuing/over 8 weeks, the rate of interest is half the special account rate i.e. $1/2 \times 0.5\% = 0.25\%$ and thereafter the rate is calculated at the full rate/0.5% to the date of trial.

Question 3

- (a) (i) Spencer cannot work at the same level as he did pre-accident but is able to work in some capacity and earn an income. This is his residual earning capacity.
- (ii) To calculate the multiplicand, as a starting point, a first calculation must be done to determine what Spencer would have earned but for the accident. Spencer would have expected to earn per year £60,000 from commissions and £33,600 from his employed work. A second calculation must then be done to determine his residual

income. He has decided to halve the number of college lessons he does (income reduced to £50 per week). He has decided to reduce his days at the art gallery to 2 days per week (income reduced to £400 per week).

He is likely to accept half the number of commissions (income reduced to £30,000). The difference between the two calculations will provide the multiplicand.

- (b) To arrive at a suitable multiplier, the Ogden tables must be used. Spencer cannot expect to be compensated for 9 years' loss of earnings as this would fail to take account of contingencies. Relevant information can be found in Table 9/ loss of earnings. The losses are assumed to begin immediately but to continue only until Spencer's retirement at 65. Spencer's age at date of trial will be selected from the table. Spencer will be 57 at date of trial. Reading down and across the columns, the multiplier is the 2.5% discount rate column, which allows for accelerated receipt. This multiplier must be revised to take account of Spencer's individual circumstances. Table A will be used/non-disabled male loss of earnings to age 65. Category D of Table A is relevant as Spencer is a graduate and is in employment. The multiplier from Table 9 will be multiplied by the figure given in Table A to provide a revised multiplier.

Question 4

- (a) The offer contained in the letter does not put Spencer at risk of paying the defendant's costs because it is a without prejudice letter, which means that it cannot be brought to the court's attention as it is privileged. This is important as conduct is a relevant factor in determining costs. The offer does not comply with the requirements of Part 36 and is not a valid Part 36 offer. Spencer is therefore not at risk of the Part 36 costs consequences should he not beat the offer at trial.
- (b) If the defendant makes a valid Part 36 offer, and at trial Spencer does not beat the offer but recovers some damages, Spencer would be at risk of a split costs order being made. This is a personal injury matter and therefore QOCS applies, which provides that an order for costs made against a claimant may be enforced, without the permission of the court, against damages and interest awarded to the claimant. Therefore, Spencer may have to pay the defendant's costs which could be enforced against his award of damages.

Question 5

EXTRACT FROM TOMLIN ORDER

BETWEEN

Spencer Fellows (Claimant)

and

Brite and Lite (a firm) (Defendant)

ORDER

Dated

UPON the claimant and defendant having agreed to the terms set out in the Schedule attached hereto

IT IS ORDERED THAT:

- 1. all further proceedings in this claim be stayed except for the purpose of carrying such terms into effect and the parties have liberty to apply
- 2. the parties have liberty to apply

(A) The defendant do pay the claimant's costs on the standard basis to be subject to detailed assessment if not agreed.

SCHEDULE

- 1. The claimant agrees to accept the sum of £40,000 in full and final settlement of all claims set out in this matter inclusive of interest.
- 2. The said sum of £40,000 shall be paid within 28 days from the date of this order.

(B).....
.....