

**LEVEL 3 – UNIT 9 – CIVIL LITIGATION
SUGGESTED ANSWERS – JANUARY 2018**

Note to Candidates and Tutors:

The purpose of the suggested answers is to provide candidates and tutors with guidance as to the key points candidates should have included in their answers to the January 2018 examinations. The suggested answers do not for all questions set out all the points which candidates may have included in their responses to the questions. Candidates will have received credit, where applicable, for other points not addressed by the suggested answers.

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

Question 1

- (a) In considering whether the case would be suitable for the protocol, it should be borne in mind that the type of injury sustained is of the type covered by the protocol and it would be a public liability matter. Unfortunately, the protocol only covers situations where the claim falls within the Fast Track and the damages sought are too high in this particular case. Liability is also disputed and to use the protocol there must be no issue as to liability.
- (b) Parties must endeavour to agree appropriate directions and submit directions 7 days before the case management conference. To help the parties there is a menu of standard directions for cases allocated to the Multi Track provided.
- (c) Where a party fails to comply with a direction, the other party can apply for an order to enforce compliance or for a sanction to be imposed. The Court will not allow such a failure to lead to postponement of the trial unless the circumstances of the case are exceptional. Any postponement or adjournment would be ordered as a last resort. Sanctions that the Court can impose may, for example, deprive a party of the right to raise or contest an issue or to rely on evidence to which the direction relates. Where an issue cannot be dealt with at the trial, the Court may order a later trial with costs to be paid by the party in default.
- (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 21 days before the case management conference. The agreed budget discussion report must be filed 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.

Question 2

- (a) The situations where a Court may set aside a Default Judgment are contained in Part 13.3 CPR. The Court may set aside or vary a judgment entered under Part 12 if the Defendant has a real prospect of successfully defending the claim, or it appears to the Court that there is some other good reason why the judgment should be set aside/varied, or the Defendant should be allowed to defend the claim. Clearly, this is a very wide discretion and it is in the interests of justice that it be so. In the present case, it is likely that the Defendant not having had any notice would be sufficient to set the Default Judgment aside.
- (b) Standard Disclosure is by List contained in Form N265. There are three main sections in relation to disclosure, the first of which are those documents that are in your possession and you are willing to disclose. The second section generally lists those documents that you have but are not willing to disclose. This is due to the nature of the documents being privileged. The final section lists those documents that you would disclose but you no longer have in your possession.
- (c) The usual procedure at trial is firstly the Claimant will give an opening speech and the Claimant's witnesses will be called. They will be examined in chief, cross examined and re-examined. The Defendant's witnesses will then be called and they will go through the same process. The Defendant will then give a closing speech, followed by the Claimant. The judge will then deliver his or her decision.
- (d) Regardless of the track, costs are at the discretion of the Court, there is no right to costs. In most cases, costs will 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 3

- (a) In civil claims the standard of proof ('the balance of probabilities'), is on the Claimant.
- (b) The following would be an appropriate Defence:
 - 1. The Defendant admits that they contracted with the Claimant for the delivery of an 18th-century Georgian sideboard.
 - 2. The Defendant admits that the said sideboard was delivered on 22 October 2017.
 - 3. The Defendant denies that the said sideboard was an 18th-century Georgian sideboard and that in the circumstances it was reasonable to reject delivery.
 - 4. The sideboard is available and has been available since 15 November 2017 to be collected by the Claimant.
 - 5. By reason of the matters aforesaid the Claimant is not entitled to the sum claimed.
- (c) 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. In the Fast

Track it is usual for there to be a joint expert who will write a report. The presumption that expert witnesses are appointed jointly is to save costs and on the basis that all experts should have the same opinion with regard to the same outcome or event. The parties can make written questions to the expert clarify the report. The expert must be qualified in the area of their expertise.

- (d) The information contained in the Listing Questionnaire (Pre-Trial Checklist), includes 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.

Question 4

- (a) A disbursement is a payment made by a lawyer to a third party and then claimed back from the client.
- (b) As this is personal injury claim and liability is disputed, the Pre-Action Protocol for Personal Injury Claims will apply. A letter of Claim will be sent to the Defendant and they will have 21 days to reply with their insurance details.

There will be a three month investigation period. At the conclusion of the three months, the Defendant will reply stating whether liability is denied, giving reasons for the denial. This will include providing documentation which is material to the issues. In this case the Defendant is likely to raise the issue of contributory negligence.

As soon as is practically possible, the Claimant will send to the Defendant a schedule of special damages and supporting documentation. The rehabilitation requirements of the Claimant should also be considered. If possible a joint medical expert should be agreed. Throughout the period the parties should be involved in Alternative Dispute Resolution (ADR).

- (c) As the amount is over £1,000 (£5,000 from March 2017), it is likely to be allocated to the Fast Track as it is not particularly complex necessitating allocation to the Multi Track.
- (d) The Defendant will have 14 days in which to file a Defence. If an Acknowledgment of Service is filed, 28 days in total will be allowed to file the Defence.
- (e) The Statement of Truth provides that the contents of a document are true and that it therefore seeks to avoid conjecture on the part of the maker of the statement as to what occurred. Where a statement is found to be untrue the maker can be held in contempt of court and, subsequently, committal proceedings may take place. Alternatively, the Court may exercise any of its powers under the rules and, for example, may decide instead to impose cost sanctions or strike out the Statement of Case.