

LEVEL 4 - UNIT 6 – DAMAGES, SETTLEMENT AND COSTS IN PERSONAL INJURY CASES

SUGGESTED ANSWERS - JUNE 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 June 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) Four factors which the court are likely to take into account when determining Gaia's award for general damages are: the cause of the injury; the nature of the injury; the severity of the injury; and the duration of the injury. Any pre-existing conditions (exacerbation and acceleration) and the impact of the injury on domestic and working life may also be taken into account.
- (b) The RTA is relevant as Gaia suffered post-traumatic stress disorder as a result, from which she had not recovered at the date of the accident at school. This will affect her claim for general damages, as her pre-existing symptoms have become worse and, therefore, have been exacerbated as she has become increasingly anxious.
- (c) Gaia has suffered what is described as a wrench to her neck similar to a minor whiplash or soft tissue injury. The relevant chapter will be identified from the JC Guidelines. Here they are chapters 7 and 13. The relevant band needs to be identified. If using chapter 7 for neck injuries, it is 7(A) (c) (iii). This shows that symptoms which resolve within a matter of weeks of the injury can attract an award up to, but capped at, £1,860. The likely award can be refined with reference to case law if necessary. However, Gaia is likely to receive much less than the cap as her symptoms resolved within 2 weeks. Therefore, a reasonable estimate is likely to be a sum up to £500.
- (d) It may make a difference to Gaia's award if the pain, suffering and loss of amenity overlap. Where injuries overlap, the likely awards are not simply added together, as some discount is applied to take account of overlapping injuries.

This is done to avoid duplicating compensation for pain, suffering and loss of amenity/general damages, see e.g. Sadler v Filipiak (2011). Here, Gaia's symptoms from physical injury and psychiatric injury are different and her neck injury is minor, so it is unlikely that a significant discount will be applied.

Question 2

- (a) Gaia may make a claim for special damages to recover the costs of her purchases. The purpose of making such a claim is to reimburse past losses and expenses. Those losses should be foreseeable and reasonable. The cost of the ankle supports and painkillers is likely to be recoverable as they were directly incurred because of the hospital's recommendations. However, the claim for all of the other items may be challenged or may not be allowed as recoverable by the court, as they were not recommended purchases and seem disproportionate or unnecessary. This is because the prognosis was for the neck symptoms to resolve within 2 weeks and the purchases were made several days into the timescale for recovery within two weeks.
- (b) It would be appropriate to claim interest on these expenses at the rate of 0.5% as this is the court's Special Account Rate. This is appropriate here as the loss has been incurred and is not a continuing loss.
- (c) Under the Health and Social Care (Community Health and Standards) Act 2003, the payment of the costs of hospital treatment and the payment of the costs of ambulance services is recoverable by the State on behalf of the NHS through the CRU system.
- (d) Under the Social Security (Recovery of Benefits) Act 1997, the defendant/compensator must notify the CRU of the claim so that benefits paid can be recovered by the state from them. For this reason, Jennifer will need to notify the defendant of Gaia's National Insurance number and the hospital where she was treated.

Question 3

- (a) But for her fall, Gaia would have returned to earning £2,000 per month from May 16 2016. Gaia now earns about £1,300 per month, which is continuing. The difference of £700 per month is her monthly loss of earnings.
- (b) (i) Gaia's pre-accident earnings should be calculated/averaged over 13 weeks and anomalous blips should not be included. Therefore week 2 should be ignored in the sum of £900. The salary amounts for weeks 1-13, excluding week 2, should be totalled and then divided by 12 to give £343, which is Gaia's pre-accident average weekly salary.
- (b) (ii) The claim for future loss of earnings should be based upon her full time earnings figure of £2,000 which Gaia would have earned from May 2016.
- (c) (i) Gaia is currently earning more as a tutor at £600 per week than she was as a full-time teacher at £500 per week. As she is not sustaining a loss at present, a claim for future loss cannot reasonably be made.

- (d) (ii) Gaia can make a claim for disadvantage on the labour market as she may still be unable to work full-time as a teacher and may not easily find suitable part-time work. This is especially relevant because of her anxiety. The risk is compensated as general damages and is not capable of precise quantification, but is assessed, usually by reference to pre-accident earnings - see e.g. Smith v Manchester Corporation (1974).

Question 4

- (a) Liability has been admitted and, therefore, only quantum remains in dispute. If the claim is settled early it would save in time and costs, which would benefit the client, as it would mean less anxiety for the client. Gaia would also have certainty about her future and could invest her compensation sooner. Negotiating a settlement would also accord with the overriding objective.
- (b) The argument for a reduction for contributory negligence is weak and there is little or no justification for a substantial reduction for contributory negligence as suggested by the defendant. The accident was caused by the fact that a rung suddenly snapped and this is admitted. The accident was not caused because no-one was holding it securely. Gaia had asked for help but her colleague was too busy and she was working under pressure, as her head of Department had told her that the display had to be completed before the open evening. In the circumstances there should be no reduction for contributory negligence.

Question 5

- (a) A Tomlin Order is only necessary if liability has not been admitted and terms of settlement have subsequently been agreed. Upon acceptance of a Part 36 offer, damages must be paid within 14 days.
- (b) Gert's letter says that the last costs budget was £32,000, which is less than £75,000. Therefore, provisional assessment by the court is most likely to take place, although there remains a potential for detailed assessment at the claimant's risk should they not recover more than costs as provisionally assessed by the court.