

**LEVEL 4 - UNIT 9 – PREPARATIONS FOR PERSONAL INJURY TRIALS
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) The application that should be made, is for pre-action disclosure under the power in s.33 Senior Courts Act or s.52 County Courts Act 1984. This allows the court to order disclosure or production of relevant documents before court proceedings have started. The application should be supported by evidence in accordance with CPR 31.16.
- (b) The test for such an application is set out in CPR 31.16. This sets out various conditions that need to be satisfied. Firstly, both sides must be likely to be a party to the proceedings. Secondly, the documents must be of the type that would be covered by standard disclosure if proceedings were issued. Finally, disclosure before proceedings have started should be desirable in order to: dispose fairly of the anticipated proceedings; assist the dispute to be resolved without proceedings; or save costs.
- (c) The documents are a Schedule of Special Damages, a Medical Report and the Response Pack.
- (d) Given the circumstances of the accident, it is likely that Principal Foods will seek to hold its suppliers responsible in some way for the accident, as the bolts seem to be a crucial element in it. Therefore, it would seek to make a part 20 claim against the suppliers.

As Principal Foods has not taken this step at the time of serving its Defence, it will have to make an application to the court for permission to do so.

- (e) As obtaining the medical evidence is likely to delay the conclusion of the case and there is evidence to suggest that your client's claim will be successful, you should ask for a voluntary interim payment. This would allow him to recover some of his damages now. If Principal Foods did not agree to such a payment you could apply to the court for it to be made.

- (f) There is no time limit that relates to a voluntary interim payment although in normal circumstances you would give a date by which the Defendant(s) should respond.

With respect to the application, the time limits are set out in r25.6 which stipulates that the application must be served at least 14 days before the hearing. If the Defendant wishes to rely on witness evidence they would have to file and serve it at least 7 days before the hearing. The Claimant can then file and serve witness evidence in reply at least 3 days before the hearing.

Question 2

- (a) The time limit is dealt with in rule 15.4 which allows for two options. The first is 14 days after service of the Particulars of Claim. Alternatively, the Defendant could serve an acknowledgement of service. This would extend the time limit to 28 days after service of the Particulars of Claim.

Under CPR 6.14, service would be deemed to take place two business days after the documents were put in the post (2 June). This would make the date for the filing the Defence either the 16 or 30 June as it is clear from Peter's email that the Particulars of Claim were served with the other court papers.

- (b) If you did fail to respond within the above time limits the Claimant could obtain a default judgment against you. This would mean that liability in the case would be decided, but damages would still need to be assessed either at a disposal hearing or possibly a trial on quantum.
- (c) The Directions Questionnaire is on form N181 which has the following sections: Settlement, Court (i.e. which court the case should be heard in), Pre action protocols (i.e. has the party complied with them), Case Management Information (including track and disclosure), Experts, Witnesses and finally a time estimate for the trial or final hearing. The form should be accompanied by a draft order for Directions.

Credit was given to candidates who described the essence of the information required without necessarily referring to the subheadings on the form.

- (d) Under Practice Direction 32 and part 22, the statements will have to be verified by a statement of truth. You should therefore warn the witnesses that they should ensure that the contents of the statement are entirely accurate. You should also inform them that, as set out in rule 32.14, they can be prosecuted for contempt of court if they give a false statement of truth.
- (e) Your key consideration here is that you want the person you choose to be an expert with credibility. As a result, they must have the necessary qualification and/or experience (preferably both).

The person chosen should also be independent given their duties to the Court under part 35.

At a practical level, you should also check their availability to ensure they can prepare the report in time and attend the trial.

- (f) Although the report has been prepared following a direction of the court, it is privileged. In this case, it is covered by litigation privilege, as it is a document that has been prepared by a third party for the purposes of giving advice in litigation. Therefore, as a result, we wouldn't have to reveal it to the Claimant's solicitor, unless it has to be disclosed pursuant to Rickey Edwards-Tubb v JD Wetherspoon (2011).

- (g) The contents of the bundle are dealt with in PD39A. This states that the trial bundle should include a copy of: the Claim Form and all Statements of Case; a case summary and/or chronology where appropriate; requests for further information and responses to the requests; all witness statements to be relied on as evidence; notices to rely on particular types of evidence such as hearsay and certain types of documents; any medical reports and responses to them; any experts' reports and responses to them; any order giving directions as to the conduct of the trial; and any other necessary documents including any documents revealed under standard disclosure.