

<b>Title</b>	<b>Damages, Settlement and Costs in Personal Injury Cases</b>	
<b>Level</b>	4	
<b>Credit value</b>	8	
<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<b>The learner will:</b>	<b>The learner can:</b>	
<b>1 Understand the use of General Damages in personal injury litigation</b>	1.1 Evaluate General Damages	1.1 Purpose of general damages; assessment of an appropriate award to compensate for pain suffering and loss of amenity
	1.2 Analyse matters to be considered by the judge when awarding damages for pain, suffering and loss of amenity	1.2 The nature, cause and extent of injury; impact on lifestyle and working life; pre-existing symptoms, prognosis the JC Guidelines; and comparable case law; impact of Law Reform (Contributory Negligence) Act 1945
	1.3 Evaluate factors to be considered by the Claimant's solicitor when claiming damages for pain suffering and loss of amenity	1.3 - The cause of the injury - The nature of the injury - The severity of injury - The duration of injury - The impact of pre-existing conditions (acceleration and exacerbation); and - The impact of the injury on domestic and working life; impact of Law Reform (Contributory Negligence) Act 1945
	1.4 Evaluate the use of the JC Guidelines in personal injury litigation	1.4 Guidelines only; provides objective starting point for assessment; how the JC Guidelines are laid out; need to refine assessment with reference to case law, which is subjective

	1.5 Apply given JC Guidelines through worked examples	1.5 Application of the Guidelines applicable to minor injuries through worked examples; application of <i>Simmons v Castle [2012]</i> EWCA Civ 1039;
	1.6 Analyse other miscellaneous issues relating to the award of general damages	1.6 Importance of case law in evaluation of general damages e.g. sources and relevance; application of the approach in <i>Dureau v Evans (1996)</i> ; for overlapping injuries see <i>Sadler v Filipiak (2011)</i> ; application of the approach in <i>Hale v London Underground (1993)</i> ; application of the approach for loss of enjoyment of holiday e.g. <i>Milner v Carnival (t/a Cunard) (2010)</i> EWCA CIV 389; disadvantage on the labour market applying <i>Smith v Manchester Corporation (1974)</i> ; inter-relationship with Ogden Table calculations see for example <i>Billett v Ministry of Defence [2014]</i>
	1.7 Apply knowledge of the rules on general damages to a given scenario involving minor injuries	1.7 Application to a complex scenario; minor injuries could include cuts, sprains, fractures and residual scarring
<b>2 Understand the use of Special Damages in personal injury litigation</b>	2.1 Explain the purpose of Special Damages	2.1 The loss can be itemised with precision; purpose is to reimburse for past losses and expenses and compensate for future losses and expenses
	2.2 Analyse the contents of a basic loss of earnings claim	2.2 - Fixed earnings - Variable earnings - Obtaining evidence of loss of earnings - Allowing for the prospect of promotion - Dealing with undeclared income - Giving credit for statutory sick pay - Considering alternative employment - Calculating loss of pension rights - Deductions for sums paid by employer - contractual entitlement of employer for recovery

	2.3 Evaluate other important heads of special damage	2.3 Accommodation (rule in <i>Roberts v Johnstone (1989)</i> ); extra fuel costs; extra travel costs; domestic help e.g. cleaning, cooking, laundry, dressing, feeding, shopping, gardening and DIY; damage to personal property; principle of betterment, damage to and loss of use of vehicles
	2.4 Analyse the provisions covering nursing and other medical care	2.4 The impact of s2(4) Law Reform (Personal Injuries) Act 1948; the impact of s5 Administration of Justice Act 1982; the impact of s17 Health and Social Services and Social Security Adjudications Act 1983; the correct rate payable for care - the 'Crossroads' rate
	2.5 Analyse the provisions covering care provided gratuitously	2.5 Objective of the award for gratuitous care i.e. to recompense the carer applying the rule in <i>Hunt v Severs (1994)</i> ; recovering the notional cost less a deduction for the gratuitous element; typical deduction (25%-33%); gauging the scope of gratuitous loss, e.g., <i>Giambrone v Sunworld Holidays Ltd (2004)</i> ; loss of earnings by carer; cost of employing professional help; the "ceiling principle" e.g. <i>Housecroft v Burnett [1986]</i> - any claim should be limited to commercial rate
	2.6 Apply knowledge of the principles of Special Damages to the facts of a given case	2.6 Application to a complex scenario
<b>3 Understand the application of Special Damages for future loss in the context of Personal injury litigation</b>	3.1 Explain the theory underpinning the calculation of future loss	3.1 <i>Wells v Wells (1999)</i> - how multiplicands and multipliers can be used in the calculation of loss; the role of the Ogden Tables and their different use in relation to: a loss which will last for life and a loss of earnings terminating at a putative retirement date; the use of the 2.5% discount column and being able to apply this knowledge; the impact of gender

		on the calculation of loss and being able to apply this knowledge; in relation to loss of earnings, the impact of factors with particular reference to Ogden Tables A to D and being able to apply this knowledge
	3.2. Apply knowledge of the law relating to the award of Special Damages (Future Loss) to a given scenario	3.2 Application to a complex scenario
<b>4 Understand the law relating to the application of interest on damages in the context of personal injury litigation</b>	4.1 Analyse the rules in relation to calculation of interest on general damages	4.1 Mandatory award for damages exceeding £200; <i>Birkett v Hayes</i> (1982) - guideline rate of 2%; remains unchanged <i>Lawrence v Chief Constable of Staffordshire</i> (2000); interest runs from date of service of proceedings; no interest payable before issue of proceedings
	4.2 Analyse the rules in relation to calculation of interest on special damages (past loss)	4.2 Guidelines in <i>Jefford v Gee</i> (1970); the relevance of the special account rate; distinguishing between long-term and short term loss
	4.3 Apply knowledge of the rules relating to the calculation of interest on special and general damages to a given situation	4.3 Application to a complex scenario and set of calculations
<b>5 Understand the recoupment of benefits in personal injury litigation</b>	5.1 Identify the legislation applying to the recoupment of benefits	5.1 Social Security (Recovery of Benefits) Act 1997
	5.2 Explain the scope of legislation relating to the recoupment of benefits	5.2 When the Act applies: s1 SS(RB)A 1997; the relevant period for which the Act applies: s3 SS(RB)A 1997

	5.3 Explain the application of the legislation	5.3 Obtaining a certificate of recoverable benefits: s4 SS(RB)A 1997; the contents of the certificate: s5 SS(RB)A 1997 and its applicability to the heads of claim; who is bound to pay under the Act: s6 SS(RB)A 1997; what sanctions may be applied: s7 SS(RB)A 1997; the effect of discharging the CRU obligation: s8 SS(RB)A 1997; the role of the Court and the impact of CPR Part 36; other general matters relating to the operation of the system
	5.4 Apply knowledge of the recoupment of benefits in personal injury litigation to a given situation	5.4 Application to a complex scenario
<b>6 Understand the recoupment of the cost of road traffic accidents (RTA) and other medical treatment in personal injury litigation</b>	6.1 Identify the legislation applying to the recoupment of RTA and other medical treatment costs	6.1 Road Traffic Act 1988 and Health and Social Care (Community Health and Standards) Act 2003
	6.2 Explain the scope of legislation relating to the recoupment of RTA and other medical treatment costs	6.2 Road Traffic Act 1988 and Health and Social Care (Community Health and Standards) Act 2003; recovery of charges for NHS treatment at hospital and use of NHS ambulance services; relevant NHS recovery period; s157 RTA 1988 - arising out of use of a motor vehicle;; s150 HSCA 2003 - definition of compensation payment; amount to be paid by the compensator covered by Personal Injuries (NHS Charges) (Amounts) Amendment Regulations 2016; Certificate of NHS charges - how obtained and contents of certificate
	6.3 Explain the application of the legislation relating to the recoupment of RTA and other	6.3 Under RTA 1988:  - Payment of cost of in-patient hospital

	<p>medical treatment costs</p>	<p>treatment</p> <ul style="list-style-type: none"> <li>- Payment of costs of outpatient hospital treatment</li> <li>- Payment of the cost of vehicle use</li> </ul> <p>Under HSCA 2003:</p> <ul style="list-style-type: none"> <li>- Payment of cost hospital treatment</li> <li>- Payment of cost of ambulance services</li> <li>- Other general matters relating to the operation of the system</li> </ul>
	<p>6.4 Apply knowledge the recoupment of the cost of RTA and other medical treatment in personal injury litigation to a given situation</p>	<p>6.4 Application to a complex scenario</p>

<p><b>7 Understand final costs orders and how those costs are assessed by the court</b></p>	<p>7.1 Explain the concept of costs</p>	<p>7.1 Concept used to assist one party to recoup all or part of their legal fees and expenses from the opposing party subject to court's discretion CPR44.2</p>
	<p>7.2 Analyse the matters which the court may take into account when making a costs order</p>	<p>7.2 Usual rule that loser pays the winner's costs; other factors to be taken into account including whether winner has succeeded on all issues; offers other than Part 36; conduct; CPR 44.5 factors to be taken into account when deciding amount of costs; CPR qualified one way costs shifting - implication of CPR44.15 and 44.16; CPR 3.12-18 court's powers of costs management and budgeting interaction with CPR 36.23 and its purpose in promoting settlement</p>
	<p>7.3 Differentiate between the "standard basis" and "indemnity basis" of assessment of costs</p>	<p>7.3 Standard basis: costs must be proportionate and reasonably incurred; any doubt resolved in favour of paying party; any costs which are disproportionate may not be allowed even if reasonably or necessarily incurred;</p> <p>Indemnity costs: costs must be reasonably incurred and reasonable in amount – any doubt resolved in favour of the receiving party</p>
	<p>7.4 Analyse the particular orders which may be made in relation to costs</p>	<p>7.4 CPR 44: the power that the court has to make different types of award; Qualified One Way Cost Shifting; rules relating to the assessment of additional liabilities - recoverability/deductibility of success fees, insurance premiums; costs capping and costs budgeting; the effect of estimates as to costs; the parameters set by an estimate and when a party will be held to an estimate</p>

	7.5 Outline the procedure for the detailed assessment of costs	7.5 Understanding of CPR47. Drawing up detailed bill; use of costs draftsman; format of bill; notice of commencement of detailed assessment; time for commencement; service of points of dispute by opponent; replies to points of dispute; request to court to commence detailed assessment proceedings; lodging case files at court; court will provisionally assess costs without a hearing; court will send bill as provisionally assessed to parties; either party may request court to list assessment for full argument at hearing; procedure at detailed assessment hearing; consideration of any offers made in relation to costs; costs of detailed assessment process; scope for provisional assessment under CPR47.15 for costs up to £75,000 (subject to amendment) and power of court to issue interim certificates CPR47.16
	7.6 Apply knowledge of final costs orders and how those costs are assessed by the court to a given situation	7.6 Application to a complex scenario
<b>8 Understand the methods available for compromising a claim</b>	8.1 Evaluate the role that negotiation plays in personal injury litigation	8.1 Try and settle case early without going to trial, saving time and costs for the parties and court time; accords with the overriding objective CPR 1
	8.2 Explain the function of "without prejudice" communications	8.2 "Without prejudice" communications can be letters, telephone conversations or meetings; contents of communications cannot be referred to in the legal proceedings; used to make offers of settlement; offers will be kept secret from judge  "Without prejudice save as to costs" used to preserve right to refer to the offer after judgment has been given; may be used in

		context of costs arguments and relevant to Part 36
	8.3 Describe how to effect the compromise of a dispute	8.3 Assessing the strengths and weaknesses of a case; the process of negotiation from initial (low) offer via counter-offer to accord and satisfaction; general outline of the tactics used in negotiation; having objectives; understanding the opponent; understanding strengths and weaknesses; knowing where to begin; low bids; evaluation; closure; establishing trust
	8.4 Evaluate the role that mediation plays in personal injury litigation	8.4 Form of non-determinative alternative dispute resolution (ADR); often used alongside the litigation process to assist parties in settling outside court; mediator explores each parties' case with them; discovers party's needs/wants/expectations; does not express view on prospects of success; but can break deadlock by reality testing; attempts to broker settlement between parties without parties negotiating face to face; appropriate where parties have reached deadlock in negotiations
	8.5 Draft a valid consent order	8.5 Understanding that consent orders on settlement record terms of settlement; understanding that court cannot order a party to accept a sum of money in settlement; understanding meaning of consent order; requirements of valid consent order CPR 40.6 and PD40B and appropriate circumstances for use e.g. agreement as to payment of money in settlement ; "Tomlin" orders and appropriate circumstances for use e.g. where settlement agreed without admission of liability or go beyond what the court has power to order; ; which settlement terms must be recorded on face of order and which

		terms should go into schedule in order to gain court approval and which terms are enforceable without further litigation
	8.6 Explain how to make a valid Part 36 offer	8.6 Requirements of valid Part 36 offer; importance of wording to attract the costs consequences of Part 36; impact of new Part 36 rules for offers made after 6 April 2015
	8.7 Analyse the implications for both parties of accepting a Part 36 offer	8.7 Time for acceptance; when and how offer accepted, action stayed and automatic costs consequences – amount of damages must be paid within 14 days of acceptance
	8.8 Analyse the implication for both parties of rejecting a Part 36 offer	<p>8.8 If not accepted, effect of CPR36.9(4) on withdrawing or changing the terms of the offer; sunset clauses</p> <p>Interest and costs consequences at trial:</p> <p>Effect of CPR 36.17(3)- Claimant has failed to obtain a judgment more advantageous than defendant's Part 36 offer CPR but recovers some damages; split costs orders; defendant may recover costs from the date of expiry of the relevant period for acceptance , interest on costs . Application of CPR 44.14(1)</p> <p>Effect of 36.17 (4) - Claimant has obtained a judgment at least as advantageous as claimant's own Part 36 offer; Defendant pays 10% increase in damages; Defendant pays costs on the indemnity basis from the date the offer expired; Defendant pays interest on costs</p> <p>Claimant fails to establish liability at trial; a costs order can be made against the claimant but as QOCS applies CPR44.14(1) must be considered; effect of this</p>

	8.9 Evaluate the impact of benefits recoupment and lump sum payments on Part 36 offers	8.9 CPR 36.22: need to specify CRU element of offer; CRU element discounted from calculation when calculating whether judgment more or less advantageous
	8.10 Explain the process for obtaining court approval of the settlement involving a minor	8.10 The need for the court's permission to be gained under CPR 21; the effect of CPR 21.10; the need for court approval and the impact of lack of that approval on validity of any compromise reached; the information to be filed by a claimant under CPR PD 21 para 5.1-5.2; the use of the Part 8 procedure
	8.11 Apply knowledge of the methods available for compromising a claim to a given situation	8.11 Application to a complex scenario

<b>Additional information about the unit</b>	
Unit aim(s)	The learner will understand the key concepts relating to claims for damages, recoupment of benefits and/or costs of medical treatment as part of a claim in Personal Injury cases. They will also understand the methods available for compromising a claim as well as the concept of costs and how those costs can be assessed by the court.
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically SFJ1B14: Personal Injury Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/A
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/A
Endorsement of the unit by a sector or other appropriate body (if required)	N/A
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	Chartered Institute of legal Executives (CILEx)
Availability for delivery	1 <sup>st</sup> April 2013