



CHIEF EXAMINER REPORT

JUNE 2024

LEVEL 6 UNIT 15 – CIVIL LITIGATION LAW

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the June 2024 examinations.

The 'suggested points for responses' sections set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

Chief Examiner Overview

The overall performance of the candidates varied. For those who did not pass, it is important to recognise the high standards required to succeed. Some candidates apparently struggled with preparation and did not fully address all parts of the questions, leading to less detailed and focused answers.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited.

Question 1a	8 marks
<p>Most candidates successfully identified the key consideration of joining the manufacturer, demonstrating a solid understanding of the scenario. This question also provided an excellent opportunity to delve into the nuances of procedural law, specifically the distinction between making an additional claim under CPR 20 versus joining a party to the original claim under CPR 19. Exploring these procedural differences and understanding the importance of initiating additional claims adds depth to legal analysis</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none">• The defendant is likely to prefer an additional claim against the manufacturer (CPR 20).• This would be a claim for a contribution or indemnity.• There would appear to be a manufacturing fault in the pizza oven for which the manufacturer is liable.• An additional claim can be made without leave of the court prior to service of the defence.• The additional claim must be served on the additional party together with a response pack and the pleadings to date.• The claimant should consider whether to join the additional party as a second defendant (CPR19.4).• However, there is no contractual nexus, nor is there a Consumer Protection Act 1987 claim as the only loss alleged is damage to commercial property.• There is at the moment no evidence of negligence to support a <i>Donoghue v Stevenson</i> product liability claim at common law.• It would not seem appropriate to seek joinder of the additional party as second defendant.	

Question 1b	10 marks
<p>Most candidates effectively covered the formal aspects, though some could have included more detail on layout and required information. While fewer candidates considered the substantive content, those who did generally noted the importance of including relevant material and avoiding hearsay. Only a small number of candidates thoroughly analysed the draft statement, identifying irrelevant material and hearsay.</p>	
<p>Suggested Points for Response:</p>	
<p>Formal requirements (CPR32.8 and PD32):</p> <ul style="list-style-type: none"> • case heading; • identifying details of the statement as in para 17.2; • full name address and occupation; • numbered pages and paragraphs; • first person; • statement of truth. • Contents: should only contain relevant and material factual information. • A lot of the information, such as the description of the general nature of the business, and the reasons for investing in the pizza oven is immaterial. • Only material which is within the knowledge of the witness should be included. • The witness was not present when the fire started, and her explanation of this is based on hearsay. • A separate witness statement should be obtained from those who were present to deal with these issues. 	

Question 1c	10 marks
<p>Most candidates provided a general account of CPR 36 offers, with varying levels of detail. Many successfully explained the consequences of a claimant's offer, particularly if rejected and later beaten at trial.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • Part 36 offers are an important part of the arrangements for seeking to achieve the overriding objective by encouraging the parties to make realistic offers to settle. • A claimant's Part 36 offer will involve an agreement to accept a lesser amount than the full value of the claim, in order to induce the defendant to settle. • The extent of the reduction will depend on all the circumstances. • In this case there is no suggestion that the claimant is in any way at fault. However, it is arguable that the claim as formulated in Document 3 by the accountants is optimistic. The trading losses may be slightly overstated. The figure for the cost of reinstatement may involve an element of betterment in that old is being replaced by new. It is here that there is room for compromise in terms of quantum. • The offer must comply with the formal requirements of CPR36.5. • Must be open for acceptance for not less than 21 days and is normally inclusive of interest. • May be for a specified period only but is normally open ended. • If accepted within its currency, the claimant will be entitled to costs on the standard basis to the date of acceptance (CPR36.13) the claim will be stayed, and the amount of the offer is payable within 14 days (CPR36.14). 	

Question 2a	8 marks
<p>This question focused on the procedure to be adopted, particularly within the Employers Liability portal. While some candidates provided detailed and accurate explanations of the CNF and initial portal stages, others included less relevant material on KYC or funding.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • The claim is within the scope of the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims as the value of the claim is between the small claims limit and £25,000. • If, as is likely to be the case, the identity of the defendant's insurer is known, a Claim Notification Form must be sent to the insurer using the relevant online portal. A defendant only Claim Notification Form must also be sent to the defendant. • The CNF (EL 1) is a form prescribed for use and available from Gov.uk. It consists of a series of mandatory content boxes including the value of the claim, name and address of the parties and their representatives/insurers. It also contains details of the injuries sustained, any loss of earnings and any rehabilitation requirements, and details of the circumstances of the accident, including the reason for alleging that the defendant is at fault. (3 marks) • The claim will continue in the portal where liability is admitted and there is no other reason for it leaving. • If the parties agree quantum the claimant will be entitled to fixed costs according to the terms of the Protocol. 	

Question 2b	5 marks
<p>This question required a focus on procedure, with limited credit given for discussing contributory negligence. Most candidates recognised the importance of procedural elements and a few acknowledged that asserting contributory negligence would cause the claim to exit the portal and proceed under the Pre-Action Protocol for Personal Injury.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • An allegation of contributory negligence will cause the claim to leave the portal procedure. (Para 6.13). • The claim will now proceed under the Pre-Action Protocol for Personal Injury. • The CNF will stand as the letter of claim. (PAPPI 2.10A). • If the claim cannot be resolved by negotiation/ADR and proceedings are necessary they will be in the County Court and allocated to the fast-track. • As a result there will be standard directions and timetable. (CPR 28.2) 	

Question 2c	7 marks
<p>Most candidates recognised the process of disclosure by list and understood the procedure for seeking specific disclosure through an informal request followed by a forma court application, with consideration of proportionality.</p>	
<p>Suggested Points for Response:</p> <ul style="list-style-type: none"> • The directions will have provided for standard disclosure (CPR 28.2). • This will take the form of disclosure by list (CPR 31.10) • Documents of the type referred to would normally be included in standard disclosure and would be available for inspection. • There is nothing to suggest that they are privileged or otherwise exempt from inspection. • An informal request can be made if it is considered that documents in the possession of the defendant have been omitted from disclosure. • If this does not result in a satisfactory resolution, an application for specific disclosure may be made pursuant to CPR 31.12. • The defendant will not be permitted to utilise undisclosed documents without the permission of the court (CPR 31.21). • The ultimate sanction is an application to strike out the defence pursuant to CPR 3.4 (c) although normally this will be preceded by an “unless” order giving the defendant a final opportunity to disclose the documents. 	

Question 3a	5 marks
<p>Most candidates recognised the need to consider the financial position of the intended defendant. Stronger responses identified multiple steps, such as conducting a company search, obtaining a credit reference report, and performing a land registry search, with some also mentioning the possibility of a statutory demand.</p>	
<p>Suggested Points for Response:</p> <ul style="list-style-type: none"> • It will be prudent to seek to establish whether there is evidence that the defendant is in financial difficulties. • A company search could be undertaken. • A credit report from an appropriate credit reference agency could be obtained. • A land registry search could be undertaken against any title known to be in the ownership of the defendant. • Consideration should be given to the service of a statutory demand pursuant to s 123 Insolvency Act 1986 which carries the threat of winding up proceedings if not complied with. 	

Question 3b	9 marks
<p>Most candidates focused on the documents required for issue and addressed the procedure, though some discussed pre-action steps that were less relevant. Nearly all candidates correctly identified the claim form and particulars of claim, explaining their function and contents effectively. However, only a few recognised that the claim should be issued using Money Claims Online, which led to a less comprehensive explanation of the procedure.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • The principal documents are the claim form and particulars of claim. • As this is a claim for a sum of money less than £100,000, it will be issued using Money Claim Online (PD 7C). • The claim form identifies the parties and the general nature of the claim and the particulars provide further details of the contract and the outstanding payments. • If the particulars form part of the claim form, the contract itself does not have to be attached and served. • Money Claim Online involves electronic issue using the Money Claims Online section of the HMCTS website. Initially the proceedings will be in the Civil National Business Centre. • The claim form will be served as a paper document, but the defendant can respond electronically. • If the particulars of claim are to be served separately this will be as a paper document (CPR 7.4). • Notice of service of the particulars of claim can be given electronically. • If a defence is filed, the case will be transferred to the appropriate County Court hearing centre (CPR 26.3). 	

Question 3c	8 marks
<p>Most candidates identified that an application for summary judgment was the appropriate step, with many explaining that a bare denial did not constitute a proper defence. While some provided detailed criteria and procedures for summary judgment, a few did not address summary judgment or striking out, instead discussing insolvency proceedings.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • An application could be made to strike out the defence pursuant to CPR 3.4 and PD 3A 1.4, as it appears to be a bare denial. • An application could also be made for summary judgment pursuant to CPR 24 on the grounds the defence has no real prospect of succeeding and there is no other compelling reason for the matter to proceed to trial. • The application is on notice and must be accompanied by appropriate evidence, if not previously filed (CPR 24.5). • It is possible that these applications could result in the defendant producing evidence that there is in fact a legitimate dispute, e.g. in relation to the quality of workmanship. • The court has power to give directions allowing the defendant to file an amended defence and for the further conduct of the action. These directions may be subject to conditions. • There is therefore no guarantee that the defence will be struck out or that summary judgment will be granted. 	

Question 3d	8 marks
<p>Most candidates successfully identified relevant enforcement procedures, such as taking control of goods, third party debt orders, charging orders, and orders for sale. Some also mentioned winding up proceedings. The quality of answers varied based on the number of procedures discussed and the level of detail provided.</p>	
<p>Suggested Points for Response:</p> <ul style="list-style-type: none"> • It will again be appropriate to carry out a company search and obtain a credit reference report. • It will be necessary to establish whether this is a single corporate entity or a group comprising several corporate entities as this will affect the extent to which enforcement can be pursued against particular assets. • If the defendant makes any offer, e.g. of periodical payments, this should be assessed in the light of all available information as the financial position of the defendant. • Consideration can be given to a third-party debt order if it is likely that the defendant has credit balances at a bank. • Consideration can be given to an application for a charging order over any real property. • Consideration can be given to an application for a warrant of control in the County Court or the transfer of enforcement to the High Court and the obtaining of a writ of control pursuant to CPR 83. • Consideration can then be given to an application for taking control of goods pursuant to schedule 12 of the Tribunal's Courts and Enforcement Act 2007 and CPR 84. 	

Question 4a	6 marks
<p>Most candidates correctly noted that private funding and BTE were excluded by the rubric, though some discussed these options before dismissing them. A few suggested trade union coverage, which was not relevant. Many identified CFA/DBA as likely funding solutions, but the depth and accuracy of their explanations varied. Many lacked detailed or accurate information. QOCS was mentioned but not always thoroughly explained and ATE was noted but not fully assessed.</p>	
<p>Suggested Points for Response:</p> <ul style="list-style-type: none"> • From the information given it is clearly impracticable for the claimant and his family to fund the case privately. • There is no suggestion of any relevant BTE. • Kempstons could offer a CFA or DBA. These are broadly similar and are described as "no win no fee agreements". • A CFA will involve agreeing a success fee. This cannot exceed 100% of the base legal costs. Here it will be significantly lower as there would seem to be very little to prevent recovery on a full liability basis. • The shortfall between what is paid by the defendant and what is due to Kempstons can be taken from the damages awarded, but this amount must not exceed 25% of general damages and past losses. • A DBA involves an agreement to pay a proportion of the damages awarded to reward the solicitor for undertaking the case on a no win no fee basis. This is similarly capped here at 25%. 	

Question 4b	5 marks
<p>Most candidates identified the urgent limitation issue, although the level of detail varied. Most also recognised the need to issue proceedings on a protective basis. However, the specifics of whether these proceedings would be stayed to follow the pre-action protocol were inconsistently addressed. Suggestions that the defence might waive limitation or that the discretion to extend the period should be relied upon were not considered valid practices.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • The limitation period for this claim, pursuant to s 11 Limitation Act 1980, is three years from the date of the accident or the date of knowledge, as defined in s 14 LA. Here it would seem that Ravi Gavaskar has known from the date of the accident that he had sustained significant injury and that it was the fault of the defendant, although he may not have known the identity of the defendant at that date. • It will therefore be necessary to commence proceedings before the expiry of the limitation period. • It might be possible to rely on the discretionary extension of the limitation period pursuant to s 33 LA, but it is preferable to commence proceedings within the primary limitation period. • Ordinarily it would be necessary to send a letter of claim and comply with the requirements of the Pre-Action Protocol Personal Injury before commencing proceedings. • However, if there is a limitation issue, it is permissible to issue proceedings and then apply to have the time for service of the particulars of claim and supporting documents such as medical reports and for service of the defence to be extended or to have the proceedings stayed to allow the Protocol procedures to take place: PAPPI 1.6. 	

Question 4c	5 marks
<p>Most candidates recognised the relevance of s11 of the Civil Evidence Act 1968. However, the depth and detail of their answers varied significantly. Some did not mention the need to plead the conviction or obtain a copy of the conviction certificate. Explanations of the effect of s11 were sometimes unclear.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • Pursuant to s 11 Civil Evidence Act 1968 the fact of the conviction is evidence that the convicted person committed the offence. • Dangerous driving is driving that falls far below the standard of a reasonable driver, and is therefore negligent. • This is not conclusive, but the burden of proof shifts to the defendant to demonstrate that he was not negligent. • The conviction should be pleaded in the particulars of claim. • A certified copy of the court register confirming the conviction should be produced. 	

Question 4d	6 marks
<p>Most candidates identified that the relevant procedure was provisional damages. A number provided a thorough explanation, while others mentioned it but lacked detailed analysis.</p>	
<p>Suggested Points for Response:</p>	
<ul style="list-style-type: none"> • This is a case where provisional damages under the Senior Courts Act 1981 or County Courts Act 1984 should be considered. • It is likely that the defendant will seek to achieve finality with a once and for all settlement, and may offer a payment to cover the risk of late-onset epilepsy which is more generous than statistically justified. • However, the claimant should be advised that there is a risk involved. Accepting a final settlement with an element for the possibility of late-onset epilepsy will mean that he is overcompensated if this does not occur, but will be under compensated if it does. • A claim for provisional damages must be pleaded in the particulars of claim (CPR 16.4 (1) (d)). • If necessary an application will have to be made to amend the particulars of claim. • Provisional damages are regulated by CPR 41. • They are available where the conditions in s 32A Senior Courts Act 1981 or s 51 County Courts Act 1984 (which are substantially the same) are met, depending on whether the case is proceeding in the High Court or the County Court. • The court must be satisfied that there is a proven or admitted chance that the claimant will at some definite or indefinite time in the future suffer a serious disease or other impairment. • The court may then award damages based on the current condition of the claimant, disregarding that serious disease. • The claimant may within such time as is prescribed make application to the court if the disease occurs for a further award of damages. • The claimant may also apply to extend the time period. 	