

00820_Qualifying Test District Judge(Civil) Questions - 75 Minutes

Civil Procedure

Question 1

How many days at least, before a hearing, must notice of an application be served?

- a) 1
- b) 2
- c) 3
- d) 4

(1 Mark)

Question 2

An application is due to be heard on Tuesday 27th August 2013 (Monday 26th August is a Bank Holiday).

The last date for service of the application is:

- a) 20th August 2013?
- b) 21st August 2013?
- c) 22nd August 2013?
- d) 23rd August 2013?

(1 Mark)

Question 3

The last date for X & Co to serve an application notice on their opponent is 29th August 2013.

Which one of the following is not good service?

- a) Service by first class post on 24th August 2013.
- b) Service by fax which is transmitted at 16:45 on 26th August 2013.
- c) Personal service at 10.15 on 26th August 2013.
- d) Service by email on 22nd August 2013.

(1 Mark)

Question 4

The Local Authority has decided to issue possession proceedings to enable it to develop land for much needed social housing which is presently used as an allotment. One of the allotment holders has filed a Defence resisting the claim. Your usher tells you that 12 other allotment holders have turned up and want to come into Court. There are also two reporters from the local newspaper which are taking a keen interest in the case.

Do you?

- a) Allow everybody into Court.
- b) Allow a restricted number into Court.
- c) Refuse to allow anybody into Court other than the Claimant and the person who filed the Defence.
- d) Allow the Claimant, the person who filed the Defence and the press reporters only.

(1 Mark)

Question 5

You are dealing with the Defendant's application for relief from sanctions pursuant to CPR 3.9. The Defence has been struck out and judgment entered against him because he failed to comply with an order requiring him to serve a List of Documents by a specified date.

He tells you that he cannot afford for his solicitor to go on the record as acting for him but that he is assisting him at each and every stage. He tells you that he has been out of the country (and produces documents to prove that) and that when he returned he found the judgment in his letterbox. He made his application promptly. The failure to comply was not intentional and he has a good explanation not least that it is actually his solicitor who has let him down.

The Claimant objects and tells you that this is the fourth unless order which is true that has been made against the Defendant. The conduct of the Defendant is just a delaying tactic which so far has worked; at each stage costs are being incurred which are rapidly approaching the value of the claim. He urges you to dismiss the application.

Do you?

- a) Accept the Defendant's explanation and set aside the judgment on condition that he pays the Claimant's wasted costs of the hearing.
- b) Accept his explanation and allow him to proceed on condition that he files his List of Documents within 48 hours and pays the Claimant's wasted costs of the hearing.
- c) Dismiss the Defendant's application.
- d) Adjourn the hearing and order the Defendant's solicitor to attend at the next hearing and explain what has happened.

Question 6

Which one of the following statements is wrong?

A Part 36 offer must:

- a) Be in writing?
- b) State whether it relates to the whole of the claim or to part of it or to an issue that arises in it?
- c) Specify a period of not less than 28 days within which the Defendant will be liable for the Claimant's costs in accordance with CPR 36.10 if the offer is accepted?

d) State whether it takes into account any counterclaim?

(1 Mark)

Question 7

A Claimant sues three Defendants in the alternative. The Second Defendant makes a Part 36 offer to the Claimant which the Claimant wishes to accept to see an end to the litigation. The First and Third Defendants make no such offer.

Which one of the following propositions is correct?

- a) The Claimant may accept the offer and the claim against all three Defendants is concluded.
- b) The Claimant may treat the offer as though it had been made by all three Defendants and can accept the same.
- c) The Claimant may accept the offer if he discontinues his claim against those Defendants who have not made the offer and those Defendants give written consent to acceptance of the offer.
- d) None of the above are correct and some other provision applies.

(1 Mark)

Question 8

You have just finished hearing a Fast Track trial in which you found for the Claimant and awarded him damages. You must now assess costs. Counsel for the Defendant tells you that his client made a Part 36 offer to settle the claim over a year ago. The amount of damages that you have awarded means that the Claimant has failed to obtain a judgment more advantageous than that offer. He therefore asks you to make "the appropriate order as to costs".

Which of the following most closely reflects the order that you are likely to make?

- a) That the Claimant shall pay the Defendant's costs of the claim.

- b) That the Defendant shall pay the Claimant's costs of the claim but excluding the costs of the trial.
- c) That the Defendant shall pay the costs of the Claimant up to the date on which the relevant period for acceptance of the Part 36 offer expired and thereafter the Claimant shall pay the Defendant's costs.
- d) That the Claimant shall pay the Defendant's costs of the claim up to the date on which the relevant period for acceptance of the Part 36 offer expired and thereafter the Defendant shall pay the Claimant's costs.

(1 Mark)

Question 9

A claim is issued on 1st February 2013. The parties enter into negotiations and the Defendant does not file a Defence. On 1st September 2013 the negotiations finally break down and the Claimant's solicitors having heard nothing from the Defendants for a month request judgment in default of Defence which is granted. Both parties write to the Court indicating that they will shortly be making "applications" and/or requesting that the claim is timetabled forward.

Which one of the following do you consider to be the correct next step in the proceedings?

- a) The Claimant should request directions for the future management of the claim.
- b) The Court should send Directions Questionnaires to the parties.
- c) The Defendant should make an application to set the judgement aside.
- d) Either the Claimant or the Defendant should make some other application.

(1 Mark)

Question 10

X & Co is a large limited company with business interests in many areas. One of its departments has a large portfolio of houses which it rents out in the private sector.

It has always used a well respected and trustworthy local managing agent to handle all aspects of the various tenancies and the managing agent has the company's complete authority to do as he sees fit in relation to all of the properties.

In your box work you see that X & Co has issued proceedings for recovery of one of their properties for arrears of rent.

Which of the following cannot sign the Claim Form on behalf of the X & Co?

- a) The company solicitor.
- b) A company director.
- c) The manager of the department of the limited company that deals with this part of the business.
- d) The managing agent.

(1 Mark)

Question 11

A Claimant applies to amend her statement of case after the end of a relevant limitation period.

Which of the following statements is incorrect?

- a) The court may allow an amendment to correct a mistake as to the name of a party, but only where the mistake was genuine and not one that would cause reasonable doubt as to the identity of the party in question.
- b) Court may allow amendment whose effect will be to add/replace a new claim, even if that claim does not arise out of the same or similar facts as a claim in respect of which the party applying for permission has already claimed a remedy.
- c) The court may allow an amendment to alter the capacity in which a party claims if the new capacity is one which that party had when the proceedings started or has since acquired.

(1 Mark)

Question 12

(The wording of this scenario is identical in questions 12 and 13)

You have heard a small claim in which the Claimant a self employed fishmonger has sued the Defendant, a pub, for non payment of 23 invoices (each relating to the supply of fish to the pub over a period of four months). Each invoice is for less than £1000. You have found for the Claimant who now asks you to award him, in addition to the sums claimed and statutory interest, compensation for late payment of each invoice pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

The Defendant objects to the payment of any compensation at all but says that if you are against him on that then you should award a lesser sum than that being sought as to do otherwise would mean that the amount of any compensation would almost be the same as the value of the claim and that on anybody's view is disproportionate and cannot be fair.

If you do decide to award compensation what is the correct amount that you can award pursuant to the Act?

- a) £40
- b) £70
- c) £100
- d) £150

(1 Mark)

Question 13

(The wording of this scenario is identical in questions 12 and 13)

You have heard a small claim in which the Claimant a self employed fishmonger has sued the Defendant, a pub, for non payment of 23 invoices (each relating to the supply of fish to the pub over a period of four months). Each invoice is for less than £1000. You have found for the Claimant who now asks you to award him, in addition to the sums claimed and

statutory interest, compensation for late payment of each invoice pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

The Defendant objects to the payment of any compensation at all but says that if you are against him on that then you should award a lesser sum than that being sought as to do otherwise would mean that the amount of any compensation would almost be the same as the value of the claim and that on anybody's view is disproportionate and cannot be fair.

Which of the following is the correct order?

- a) To refuse the Claimant's claim for compensation.
- b) To allow the Claimant's claim for compensation but to limit it to one payment in respect of all the invoices.
- c) To allow the Claimant's claim for compensation but to limit it to one award for each month that the invoices have been outstanding to the date of hearing.
- d) To allow the Claimant's claim for compensation and award him the appropriate sum for each invoice.

(1 Mark)

Question 14

Liability in your Fast Track trial is hotly disputed. Both parties represent themselves. The critical part of the defence is that there is no liability as the female Defendant was not there and the alleged accident did not happen. The Defendant appears in Court wearing a niqab. Her face, other than her eyes, is fully covered.

The Claimant objects. He is adamant that the accident happened as he said it did and that he spoke to the Defendant immediately afterwards. At the time she was not dressed like that, she was wearing denim jeans and a jacket. If he cannot see her face how can he tell if it is the same person, how can you be sure that she is telling the truth and how can he have a fair trial? The Defendant confirms that she converted to Islam four weeks ago and that wearing the veil is an important part of her faith.

After discussion you are satisfied that you need to see the Defendant's face and you ask her to remove simply that part of the veil that covers the main part of her face. She refuses.

Which of the following do you consider to be a reasonable course of action for you to take?

- a) Adjourn the hearing until she is prepared to remove the veil.
- b) Proceed with the hearing and ignore the objections of the Claimant.
- c) Proceed with the hearing but explain to the Defendant that she will have to make a choice about giving evidence whilst showing her face and not being able to be a witness.
- d) None of the above, another course of action is available.

(1 Mark)

Question 15

In proceedings for contempt of court brought pursuant to Section 14 of the County Courts Act 1984 which of the following sentencing options is not available to you?

- a) Fine.
- b) Prison sentence (suspended or immediate) for a maximum term of six months.
- c) No order.
- d) Adjourn sentence on terms.

(1 Mark)

Question 16

Which one of the following is incorrect?

- a) The purpose of costs management is that the court should manage both the steps to be taken and the costs to be incurred by the parties to any proceedings so as to further the overriding objective.
- b) Unless the court otherwise orders, all parties except litigants in person must file and exchange budgets as required by the rules or as the court otherwise directs.
- c) Unless the court otherwise orders, any party which fails to file a budget despite being required to do so will be treated as having filed a budget comprising only the applicable court fees and fixed costs.
- d) The court may at any time make a “costs management order.”

(1 Mark)

Question 17

You are about to deal with a costs case management conference. From the list below which documents should have been filed in advance of the hearing?

- a) 1) Draft directions using the specimen directions, 2) A disclosure report, 3) Estimates of costs for any proposed expert evidence and 4) A costs budget in Form H.
- b) 1) Draft directions using the specimen directions, 2) A case summary, 3) Draft witness statements from the principal witnesses and 4) A costs budget in Form H.
- c) 1) A case summary, 2) A costs budget in Form H, 3) Estimates of costs for any proposed expert evidence and 4) A disclosure report.
- d) 1) A disclosure report, 2) A certificate confirming compliance with any relevant pre action protocol, 3) A costs budget in Form H and 4) Draft directions using the specimen directions.

(1 Mark)

Question 18

Please complete the following:

The Civil Procedure Rules are a new procedural code with the overriding objective of enabling the court to deal with cases:

- a) Justly and at reasonable cost?
- b) Fairly and at proportionate cost?
- c) Justly and at proportionate cost?
- d) Fairly and at reasonable cost?

(1 Mark)

Question 19

(The wording of this scenario in the first two paragraphs is identical in questions 19 – 21 inclusive)

You are sitting in the X County Court on 1st August 2013. In box work you have a claim in which the Claimant has sued the Defendant for £17000 being the cost of putting right building work that he says was not done to a satisfactory standard.

The Defendant accepts that there are problems with the roof and admits that £7500 should be repaid, the balance of the claim is disputed. Directions Questionnaires have been filed and both parties agree that expert evidence is necessary in relation to both the quality of the build and, subject to liability, the quantum of the claim.

Do you?

- a) Allocate to the Small Claims Track.
- b) Allocate to the Fast Track.
- c) Allocate to the Multi Track.
- d) Decide that allocation is not necessary.

(1 Mark)

Question 20

(The wording of this scenario in the first two paragraphs is identical in questions 19 – 21 inclusive)

You are sitting in the X County Court on 1st August 2013. In box work you have a claim in which the Claimant has sued the Defendant for £17000 being the cost of putting right building work that he says was not done to a satisfactory standard.

The Defendant accepts that there are problems with the roof and admits that £7500 should be repaid. The balance of the claim is disputed. Directions Questionnaires have been filed and both parties agree that expert evidence is necessary in relation to both the quality of the build and, subject to liability, the quantum of the claim.

Do you?

- a) Refuse permission for expert evidence.
- b) Give both parties permission to rely upon their own expert.
- c) Allow expert evidence but from a single joint expert.
- d) Make some other order in respect of this issue.

(1 Mark)

Question 21

(The wording of this scenario in the first two paragraphs is identical in questions 19 – 21 inclusive)

You are sitting in the X County Court on 1st August 2013. In box work you have a claim in which the Claimant has sued the Defendant for £17000 being the cost of putting right building work that he says was not done to a satisfactory standard.

The Defendant accepts that there are problems with the roof and admits that £7500 should be repaid. Directions Questionnaires have been filed and both parties agree that expert evidence is necessary in relation to both the quality of the build and, subject to liability, the quantum of the claim.

A few months later at the final hearing listed before you the Claimant is represented by counsel and the Defendant represents himself. You find in favour of the Claimant. Counsel asks you to summarily assess the Claimant's costs in accordance with the schedule served. Which of the following are you most likely to do?

- a) Order that the Defendant pays the Claimant's costs, having summarily assessed the same in accordance with schedule served.
- b) Make no order for costs.
- c) Order that the Defendant pays the Claimant's costs limited to the fixed costs and court fees.
- d) Some other order.

(1 Mark)

Question 22

If you had ordered that expert evidence was permissible from a single joint expert and that his fee was £650 how much of the expert's fee would you allow?

- a) All of it.
- b) £250.
- c) £200.
- d) Some other sum.

(1 Mark)

Insolvency

Question 23

Unless an expedited hearing was ordered how many days after service can the court hear a creditor's petition?

- a) 2
- b) 7
- c) 14
- d) None of these.

(1 Mark)

Question 24

There is a request in your boxwork by the creditor asking you to dismiss his petition as he has come to an arrangement with the debtor.

Would you dismiss it?

- a) Yes.
- b) No.
- c) Neither of these.

(1 Mark)

Question 25

At the hearing of a creditor's petition the creditor fails to file a copy of the original judgment. Can you still hear the application?

- a) Yes.
- b) No.
- c) Yes provided the creditor provides an undertaking to file it with the court within 48hours.

(1 Mark)

Question 26

The court can make which of the following orders at the hearing of the creditor's petition?

- a) 1) Adjourn the proceedings, and 2) Order a change of carriage.
- b) 1) Make a suspended order, and 2) Order a change of carriage.
- c) 1) Annul the petition, and 2) Time limit the period of the bankruptcy.
- d) 1) Adjourn the proceedings, and 2) Make a suspended order.

(1 Mark)

Question 27

A person appears at a hearing of a creditor's petition and claims to be another creditor of the debtor and seeks a change of carriage order. Notice of his intention to appear has been correctly given but the original creditor is not present.

Can the application be heard?

- a) Yes.
- b) No.
- c) Yes but the order shall not take effect until he has filed the written consent of the original creditor.

(1 Mark)

Question 28

The creditors' petition is verified by a statement of truth signed by only 1 of the petitioning creditors.

Can the court accept the verification?

- a) Yes.
- b) No.
- c) Yes but the petition shall lapse in 7 days unless the remaining creditors file their verifications.

(1 Mark)

Question 29

A statutory demand has been left at the registered office of Smith and Co Ltd. You are satisfied as to service. A senior manager in the Company appears before you applying to set it aside (assume all the correct procedural steps regarding notice have been given).

Would you hear his application?

- a) Yes.
- b) No.
- c) Yes but as he has no right of audience, a Director of the Company would have to appear. (1 Mark)

Question 30

The recipient of a statutory demand for £3500 payable forthwith applies to set it aside. She admits to owing £900 but strenuously denies owing the rest.

Would you?

- a) Set it aside.
- b) Dismiss her application.
- c) Adjourn the application for 7 days for her to pay the £900.

(1 Mark)

Question 31

The bankrupt seeks an annulment of his bankruptcy as he tells you that there has been an approval of his IVA and he produces evidence to satisfy you of this.

Do you?

- a) Annul the bankruptcy.
- b) Dismiss the application.
- c) Adjourn 21 days to receive a report from the supervisor.

(1 Mark)

Question 32

Following the service of a statutory demand the recipient may apply to set it aside within how many days of service?

- a) 7
- b) 12
- c) 18
- d) 21

(1 Mark)

Divorce and Financial Remedy

Question 33

You are considering a divorce petition in boxwork citing serious allegations of unreasonable behaviour which are not denied in the acknowledgement of service. The parties were married in 2010 and separated in 2011. All the behaviour relied on occurred during 2010.

Would you?

- a) Refuse to list the case for a decree nisi as the last incident relied on occurred during the first year of the marriage.
- b) List the matter for a directions hearing.
- c) Strike out the petition as an abuse of process.
- d) List the case for the granting of the decree nisi.

(1 Mark)

Question 34

You are considering the Petitioner's statement in support of her application for a decree nisi. She does not seek costs although he did in the original petition. You are satisfied about service of the petition but there is no acknowledgement of service on the file.

Would you most likely?

- a) Make an order that the Respondent pays the petitioner's costs.
- b) Refuse to make an order for costs against the Respondent.
- c) List the issue of costs to be heard on the granting of the decree nisi.
- d) Make an order for costs limited to the court issue fees.

(1 Mark)

Question 35

The petitioner has filed a statement in support of her application for a decree nisi citing ground s1(2)(d) of the Matrimonial Causes Act 1973. There is an order for deemed service but no acknowledgement filed by the Respondent.

Would you most likely?

- a) Order the Respondent to file the acknowledgement within 14 days.
- b) Order the Respondent to attend the hearing of the decree nisi to give evidence.
- c) Refuse to allow the petition to proceed.
- d) List the hearing of the decree nisi.

(1 Mark)

Question 36

You are considering the petitioner's statement of arrangements form filed with the petition. You note that the Respondent has issued an application for contact to the children in the local Family Proceedings Court and a CAFCASS report has been ordered.

What are you most likely to do?

- a) Transfer these proceedings to the FPC to be heard with the children application.
- b) Order a further CAFCASS report within the divorce proceedings.
- c) Stay the divorce proceedings pending the resolution of the application in the FPC.
- d) Proceed to list the hearing of the decree nisi.

(1 Mark)

Question 37

You are considering a petition citing s1(2) (e) MCA 1973 and the Respondent has filed an acknowledgement of service claiming grave hardship would be caused to her if a divorce was granted.

Do you?

- a) Dismiss the petition as the Respondent has a statutory defence.
- b) Transfer the proceedings to the High Court.
- c) Check if the Respondent has filed an answer.
- d) List for directions.

(1 Mark)

Question 38

A decree nisi was granted on the 4th January 2013. The Respondent applies for the decree absolute on the 1st March 2013.

Do you grant it?

- a) Yes.
- b) No.
- c) List for a short directions hearing before the District Judge who granted the decree nisi and order the parties to attend.

Question 39

Which of the following documents must be filed before a first appointment in Financial Remedy divorce proceedings?

- a) 1) A chronology, and 2) Form Es.
- b) 1) Copies of all the parties' proposals and responses, and 2) Form Es.
- c) 1) Form Es and 2) Notice to the pension trustees.
- d) 1) All valuations that the parties wish to rely on in respect of the Former Matrimonial Home, and 2) Form Es.

(1 Mark)

Question 40

At a First Appointment in Financial Remedy proceedings the husband has filed and served his Form E in accordance with the court order but the wife has not.

Which of the following orders are you most likely to make?

- a) Adjourn and list the matter for a Financial Dispute Resolution hearing (FDR) on the next occasion.
- b) Dispense with Form Es and assist the parties to agree a final order at the hearing.
- c) Order the wife to file and serve her Form E within 14 days and to pay the husband's costs of this hearing.
- d) Form the view that the wife is not going to co-operate with these proceedings and list the application for a final hearing on the next occasion to save costs.

(1 Mark)

Question 41

The Petitioner seeks a decree nisi citing the Respondent's adultery. In his affidavit in support he states that the parties are 'living with each other in the same household; but intend to separate as soon as the house is sold as neither can afford to move out at the present time.

Would you?

- a) Allow the petition to proceed.
- b) Not allow the petition to proceed.
- c) Stay the proceedings until the house is sold.

(1 Mark)

Question 42

A consent order was made in financial remedy/divorce proceedings on 1st March 2011. On 3 April 2013 the Petitioner applies for an additional lump sum as she says that she is struggling to pay her debts from the time of the marriage and she knows that the Respondent has recently received his annual bonus but is refusing to help.

Do you?

- a) Order the parties to file and serve Form Es in 28 days.
- b) Order the parties to file narrative statements in 28 days setting out their present circumstances.
- c) Strike out the application as there is no power to make the order.
- d) Ask to staff to place the file before the District Judge who made the original order for judicial continuity so that judge can give directions.

(1 Mark)

Family Injunctions

Question 43

Can the court consider granting a non-molestation order where the parties are in a civil partnership?

- a) Yes.
- b) No.
- c) Only if both parties share parental responsibility for a child.

(1 Mark)

Question 44

In circumstances where you grant a non-molestation order without notice to the other party would you be most likely to?

- a) Grant the order for 12 months and list another hearing on notice?
- b) List a hearing on notice and grant the order until the morning of the hearing?
- c) Grant the order for 28 days with no further hearing ordered?

(1 Mark)

Question 45

If a party comes before you seeking an occupation order and a non-molestation order without notice to the other party would you most likely?

- a) List both on notice as soon as possible?
- b) Grant both until the hearing on notice?
- c) Grant the non-molestation order but not the occupation order?
- d) Grant the occupation order but not the non-molestation order?

(1 Mark)

Question 46

(The wording of this scenario is identical in questions 46 – 52 inclusive)

You have before you an application by Dev for an Occupation Order and Non-molestation injunction against Joe. They entered into a civil partnership in 2011 and have been living in a small 2 bedroom house in the sole name of Dev together with Dev's 8-year old twin daughters. Joe was personally served 2 days ago and since then Dev and the girls have slept on the floor at a friend's house but cannot stay any longer and need to go home. Both parties are present and tell you that they have had legal advice. Dev tells you that 3 days ago Joe assaulted him and broke his cheekbone. Joe was arrested and has been bailed back to Blankshire Police Station in 18 days. Dev also says that 2 weeks ago Joe lunged at him with a kitchen knife which caused a small wound but he did not report it to the police. Both incidents were witnessed by the twins and one was kicked by Joe during the last incident and has a bruised shin. Dev says the girls are frightened of Joe who has warned them to say nothing to the police. Dev seeks an order that Joe leaves the property immediately he says he has a drink problem and is very unpredictable. Joe tells you that he is very sorry and he has nowhere else to go. He says he works long hours so will only be in the property to sleep. His job is in the village where the couple live. Any alternate accommodation would have to be some miles away, so he will lose his job as he has no transport.

Under which section of the Family Law Act 1996 could you consider granting an occupation order?

- a) 33
- b) 35
- c) 36
- d) 37

(1 Mark)

Question 47

(The wording of this scenario is identical in questions 46 – 52 inclusive)

You have before you an application by Dev for an Occupation Order and Non-molestation injunction against Joe. They entered into a civil partnership in 2011 and have been living in a small 2 bedroom house in the sole name of Dev together with Dev's 8-year old twin daughters. Joe was personally served 2 days ago and since then Dev and the girls have

slept on the floor at a friend's house but cannot stay any longer and need to go home. Both parties are present and tell you that they have had legal advice. Dev tells you that 3 days ago Joe assaulted him and broke his cheekbone. Joe was arrested and has been bailed back to Blankshire Police Station in 18 days. Dev also says that 2 weeks ago Joe lunged at him with a kitchen knife which caused a small wound but he did not report it to the police. Both incidents were witnessed by the twins and one was kicked by Joe during the last incident and has a bruised shin. Dev says the girls are frightened of Joe who has warned them to say nothing to the police. Dev seeks an order that Joe leaves the property immediately he says he has a drink problem and is very unpredictable. Joe tells you that he is very sorry and he has nowhere else to go. He says he works long hours so will only be in the property to sleep. His job is in the village where the couple live. Any alternate accommodation would have to be some miles away, so he will lose his job as he has no transport.

Is Joe being on police bail the decisive factor in terms of granting the order?

- a) Yes.
- b) No.
- c) Not possible to say.

(1 Mark)

Question 48

(The wording of this scenario is identical in questions 46 – 52 inclusive)

You have before you an application by Dev for an Occupation Order and Non-molestation injunction against Joe. They entered into a civil partnership in 2011 and have been living in a small 2 bedroom house in the sole name of Dev together with Dev's 8-year old twin daughters. Joe was personally served 2 days ago and since then Dev and the girls have slept on the floor at a friend's house but cannot stay any longer and need to go home. Both parties are present and tell you that they have had legal advice. Dev tells you that 3 days ago Joe assaulted him and broke his cheekbone. Joe was arrested and has been bailed back to Blankshire Police Station in 18 days. Dev also says that 2 weeks ago Joe lunged at him with a kitchen knife which caused a small wound but he did not report it to the police. Both incidents were witnessed by the twins and one was kicked by Joe during the last incident and has a bruised shin. Dev says the girls are frightened of Joe who has warned them to say nothing to the police. Dev seeks an order that Joe leaves the property immediately he says he has a drink problem and is very unpredictable. Joe tells you that he is very sorry and he has nowhere else to go. He says he works long hours so will only be in the property to sleep. His job is in the village where the couple live. Any alternate

accommodation would have to be some miles away, so he will lose his job as he has no transport.

If you accept the account given by Dev are you most likely to?

- a) Grant an occupation order requiring Joe to leave that day.
- b) Grant an occupation order requiring Joe to leave within 7 days.
- c) Grant an occupation order only permitting Joe to be in the property between 8pm and 7am.
- d) Refuse to grant an occupation order as you intend to grant a non-molestation order to regulate Joe's behaviour.
- e) Refuse the order as you have no jurisdiction to grant it.

Question 49

(The wording of this scenario is identical in questions 46 – 52 inclusive)

You have before you an application by Dev for an Occupation Order and Non-molestation injunction against Joe. They entered into a civil partnership in 2011 and have been living in a small 2 bedroom house in the sole name of Dev together with Dev's 8-year old twin daughters. Joe was personally served 2 days ago and since then Dev and the girls have slept on the floor at a friend's house but cannot stay any longer and need to go home. Both parties are present and tell you that they have had legal advice. Dev tells you that 3 days ago Joe assaulted him and broke his cheekbone. Joe was arrested and has been bailed back to Blankshire Police Station in 18 days. Dev also says that 2 weeks ago Joe lunged at him with a kitchen knife which caused a small wound but he did not report it to the police. Both incidents were witnessed by the twins and one was kicked by Joe during the last incident and has a bruised shin. Dev says the girls are frightened of Joe who has warned them to say nothing to the police. Dev seeks an order that Joe leaves the property immediately he says he has a drink problem and is very unpredictable. Joe tells you that he is very sorry and he has nowhere else to go. He says he works long hours so will only be in the property to sleep. His job is in the village where the couple live. Any alternate accommodation would have to be some miles away, so he will lose his job as he has no transport.

Supposing that there is to be to an occupation order, for how long would you be likely to grant it?

- a) Permanently as the house is owned by Dev so Joe has no right to be there anyway.
- b) 9 months.
- c) 7 days to allow both parties to take further legal advice.
- d) Until the date Joe is bailed back to the police station to ascertain if he has been charged with a criminal offence.

(1 Mark)

Question 50

(The wording of this scenario is identical in questions 46 – 52 inclusive)

You have before you an application by Dev for an Occupation Order and Non-molestation injunction against Joe. They entered into a civil partnership in 2011 and have been living in a small 2 bedroom house in the sole name of Dev together with Dev's 8-year old twin daughters. Joe was personally served 2 days ago and since then Dev and the girls have slept on the floor at a friend's house but cannot stay any longer and need to go home. Both parties are present and tell you that they have had legal advice. Dev tells you that 3 days ago Joe assaulted him and broke his cheekbone. Joe was arrested and has been bailed back to Blankshire Police Station in 18 days. Dev also says that 2 weeks ago Joe lunged at him with a kitchen knife which caused a small wound but he did not report it to the police. Both incidents were witnessed by the twins and one was kicked by Joe during the last incident and has a bruised shin. Dev says the girls are frightened of Joe who has warned them to say nothing to the police. Dev seeks an order that Joe leaves the property immediately he says he has a drink problem and is very unpredictable. Joe tells you that he is very sorry and he has nowhere else to go. He says he works long hours so will only be in the property to sleep. His job is in the village where the couple live. Any alternate accommodation would have to be some miles away, so he will lose his job as he has no transport.

Would you attach to an occupation order?

- a) Power of arrest.
- b) No power of arrest.
- c) An order that Joe must sign an undertaking with a power of arrest attached.

(1 Mark)

Question 51

(The wording of this scenario is identical in questions 46 – 52 inclusive)

You have before you an application by Dev for an Occupation Order and Non-molestation injunction against Joe. They entered into a civil partnership in 2011 and have been living in a small 2 bedroom house in the sole name of Dev together with Dev's 8-year old twin daughters. Joe was personally served 2 days ago and since then Dev and the girls have slept on the floor at a friend's house but cannot stay any longer and need to go home. Both parties are present and tell you that they have had legal advice. Dev tells you that 3 days ago Joe assaulted him and broke his cheekbone. Joe was arrested and has been bailed back to Blankshire Police Station in 18 days. Dev also says that 2 weeks ago Joe lunged at him with a kitchen knife which caused a small wound but he did not report it to the police. Both incidents were witnessed by the twins and one was kicked by Joe during the last incident and has a bruised shin. Dev says the girls are frightened of Joe who has warned them to say nothing to the police. Dev seeks an order that Joe leaves the property immediately he says he has a drink problem and is very unpredictable. Joe tells you that he is very sorry and he has nowhere else to go. He says he works long hours so will only be in the property to sleep. His job is in the village where the couple live. Any alternate accommodation would have to be some miles away, so he will lose his job as he has no transport.

In a case where you do grant a non-molestation order would you be more likely to?

- a) Attach a power of arrest?
- b) Not attach a power of arrest?
- c) Attach a power of arrest only if the order included a child of the applicant?

(1 Mark)

Question 52

(The wording of this scenario is identical in questions 46 – 52 inclusive)

You have before you an application by Dev for an Occupation Order and Non-molestation injunction against Joe. They entered into a civil partnership in 2011 and have been living in a small 2 bedroom house in the sole name of Dev together with Dev's 8-year old twin daughters. Joe was personally served 2 days ago and since then Dev and the girls have slept on the floor at a friend's house but cannot stay any longer and need to go home. Both

parties are present and tell you that they have had legal advice. Dev tells you that 3 days ago Joe assaulted him and broke his cheekbone. Joe was arrested and has been bailed back to Blankshire Police Station in 18 days. Dev also says that 2 weeks ago Joe lunged at him with a kitchen knife which caused a small wound but he did not report it to the police. Both incidents were witnessed by the twins and one was kicked by Joe during the last incident and has a bruised shin. Dev says the girls are frightened of Joe who has warned them to say nothing to the police. Dev seeks an order that Joe leaves the property immediately he says he has a drink problem and is very unpredictable. Joe tells you that he is very sorry and he has nowhere else to go. He says he works long hours so will only be in the property to sleep. His job is in the village where the couple live. Any alternate accommodation would have to be some miles away, so he will lose his job as he has no transport.

Assume that Joe agrees to leave and offers an undertaking not to return but Dev refuses to accept an undertaking. Could the court still accept one in those circumstances?

- a) Yes.
- b) No.
- c) Not possible to say without further information.

(1 Mark)

Housing

Question 53

You have in boxwork a claim for possession under the accelerated procedure. Attached to the claim form is a s21 notice. The claim form states that the tenancy is an oral tenancy for one year which expired 3 months before proceedings were issued. A defence form is filed in which the defendant accepts everything in the claim form and asks for the maximum time to leave due to exceptional hardship.

Which one would be the correct order to make?

- a) Make a 14 day possession order and list for a short hearing in a week's time to consider the defendant's request to extend the date for possession.

- b) Make a possession order for some other period.
- c) List for hearing to ask the Claimant to provide more details about the tenancy agreement.
- d) Strike out the claim on the basis that the claim form discloses no reasonable grounds for bringing the claim.

(1 Mark)

Question 54

You have in boxwork a claim for possession under the accelerated procedure. Attached to the claim form is a s21 notice and a tenancy agreement. The tenancy is for one year from 1st January 2011 to 31st December 2011 with rent paid monthly on 1st of each month. The s21 notice was served on 1st October 2012 and expires "on 31st December 2012". Proceedings were issued on 1st February 2013. No defence form is filed.

Which one would be the correct order to make?

- a) List for hearing to ask the defendant why he hasn't filed a defence form.
- b) Strike out the claim on the basis that the claim form discloses no reasonable grounds for bringing the claim.
- c) Make a 14 day possession order.
- d) Make a 42 day possession order.

(1 Mark)

Question 55

In a busy possession list, the claimant, a private landlord, seeks possession of his property on grounds of rent arrears. He relies on grounds 8, 10 and 11 of the Housing Act 1988. Both parties are in person. The claimant tells you that at the date of service of the Notice Seeking Possession the rent, payable monthly, was over 2 months in arrears and today, the rent is still over 2 months in arrears. The defendant accepts this but says he has recently lost his job and is waiting for his housing benefit claim to be sorted out and if a possession order is made today, he and his family will be out on the street. The claimant seeks an outright order for possession. The defendant seeks an adjournment to get his housing benefit sorted out so he can carry on paying the rent.

Which one would be the correct order to make?

- a) Make an outright order for possession and give judgment for the arrears.
- b) Strike out the claim on the basis that the claim form discloses no reasonable grounds for bringing the claim.
- c) Adjourn on terms that the defendant pays current rent and £3.60 against the arrears and direct that at the next hearing, the defendant must produce evidence of his housing benefit claim.
- d) Make a suspended possession order on terms that the defendant pays current rent and £3.60 per week against the arrears.

(1 Mark)

Question 56

The claimant, a Local Authority, seeks possession of its property, which is let to the defendant on a non-secure tenancy. A valid Notice to Quit has been served. There are no rent arrears. The claimant is represented by the Income Recovery Officer. The defendant appears in person with the Duty Solicitor. The Duty Solicitor says that the defendant has done nothing wrong. His rent is up to date. He is a model tenant. He has lived at the property for 3 years. He asks you to strike out the claim as an abuse of process and says the whole claim is a breach of the defendant's Human Rights but doesn't elaborate further. He cannot understand why the claimant wants the defendant to leave. The claimant seeks an outright order for possession.

Which one would be the correct order to make?

- a) Adjourn for the defendant to file a Defence.
- b) Dismiss the claim, telling the claimant that in the absence of rent arrears or any other ground for possession, there is no basis for making a possession order.
- c) Strike out the claim as an abuse of process.
- d) Make an outright order for possession.

(1 Mark)

Question 57

The claimant, a Housing Association, seeks possession of its property, which is let to the defendant on a assured tenancy. A valid Notice Seeking Possession has been served quoting grounds 8, 10 and 11. You are satisfied that Ground 8 is made out, the arrears being

£3500 and the rent being £110 per week. The defendant appears in person with the Duty Solicitor. The Duty Solicitor says there is disrepair at the property, telling you that the heating hasn't worked for the last 4 weeks and there is a window which has been broken for the last 3 months. The claimant seeks an outright order for possession. The defendant wants to defend the claim.

Which one would be the correct order to make?

- a) Adjourn for the defendant to file a Defence and Counterclaim.
- b) Make an outright order for possession and give judgment for the arrears.
- c) Make an outright order for possession, adjourn the money claim and order the defendant to file a counterclaim in respect of the disrepair.
- d) Adjourn generally with permission to restore, telling the parties that you want the repairs to be sorted out before the case goes any further.

(1 Mark)

Question 58

Claimant X Ltd, seeks possession of its property. The defendant is named as persons unknown. The claimant is represented by Counsel. There is nobody attending for the defendant. Counsel asks for an interim possession order. The particulars of claim state that the claimant's property manager first discovered the property was being occupied by persons unknown on 4th January 2013. Proceedings were issued on 4th February 2013 and the hearing before you is on 11th February 2013.

Which one would be the correct order to make?

- a) An interim possession order.
- b) An interim possession order and list for hearing of the claim for a full possession order.
- c) Dismiss the claim for an interim possession order.
- d) Dismiss the claim for an interim possession order and list for hearing of the claim for a full possession order.

(1 Mark)

Question 59

An application for an interim possession order must be served:

- a) Within 48 hours after it is issued?
- b) Not less than 48 hours before the date of the hearing?
- c) Within 24 hours after the Claimant receives the service documents from the court?
- d) Within 24 hours after the application is issued?

(1 Mark)

Question 60

An interim possession order must be served:

- a) Within 48 hours after it is sealed?
- b) Not less than 48 hours before the date of the next hearing?
- c) Within 48 hours after the Claimant receives the order from the court?
- d) At any time before the next hearing?

(1 Mark)

Question 61

Which one of the following documents does not have to be served prior to a hearing for an interim possession order?

- a) A blank form for the Defendant's witness statement which must be attached to the application notice.
- b) The claim form.
- c) A blank form for the Defendant's defence which must be attached to the application notice.
- d) The application notice together with the written evidence in support.

(1 Mark)

Question 62

Which one of the following does not have to be served prior to a hearing of a mortgage possession claim?

- a) The housing department of the local authority within which the defendant resides.
- b) The housing department of the local authority within which the property is located.
- c) The "tenant or occupier".
- d) Any registered proprietor (other than the claimant) of a registered charge over the property.

(1 Mark)

Question 63

What is the maximum period when setting a date for possession upon making a mandatory order for possession against a tenant?

- a) 14 days
- b) 42 days
- c) 28 days
- d) There is no maximum period

(1 Mark)

Question 64

You have a mortgage possession claim. Both parties are present. The defendant cannot afford the current monthly instalment (cmi) but says she can afford £500 of the £750 cmi and expects to find work in 6 months' time and then she will be able to pay the full cmi and £100 per month against the arrears. She asks for an adjournment for 6 months. The claimant asks for an outright possession order.

Which one would be the correct order to make? The mortgage is not a regulated agreement.

- a) An outright possession order.
- b) Adjourn for 6 months to see if the defendant finds work and meantime, order her to pay £500 per month against the cmi.
- c) Make a suspended possession order on payment of £500 per month and list for review in 6 months.
- d) Adjourn for two months to see if the defendant finds a job.

(1 Mark)

Enforcement

Question 65

You have a charging order hearing with a 5 minute time estimate. Both parties are present. The interim order is based on council tax liability orders made at the Magistrates Court. The defendant opposes the application, saying that the property was let out and the tenancy agreement states the tenant is responsible for the council tax. She shows you the agreement, and she is correct. The claimant says none of this makes any difference and seeks a final order. The defendant wants the interim order discharged.

Which one would be the correct order to make?

- a) Adjourn for the defendant to make a formal application in these proceedings to set aside the interim order.
- b) Discharge the interim order.
- c) Adjourn the application for a full hearing and order sequential statements and skeleton arguments.
- d) Make a final charging order.

(1 Mark)

Question 66

At the end of a long day, the usher tells you that someone has been brought in under a power of arrest in an anti-social behaviour case. The claimant is represented by Counsel. The defendant is unrepresented. The defendant denies the alleged breaches and says he wants to instruct a lawyer and will call 3 witnesses. You decide to adjourn for a full hearing.

Within what time frame must the adjourned hearing take place?

- a) There is no mandatory time frame.
- b) 28 days from the date of the hearing before you.
- c) 1 month from the date of the hearing before you.
- d) 14 days from the date of the hearing before you.

(1 Mark)

Question 67

You have a charging order hearing with a 5 minute time estimate. Both parties are present. The interim order is based on a judgment of £6,800 applied for and entered by default on 1st November 2012 and payable at £50 per month. It is a credit card debt. The defendant says he doesn't want to lose the house. He is up to date with the instalment order. He has read on the internet that if he is up to date with instalments, the claimant cannot have a charging order. The claimant says none of this makes any difference and asks for a final order. The defendant asks for the interim order to be discharged.

Which one would be the correct order to make?

- a) Adjourn for 6 months, to see if the defendant keeps up with the instalment order.
- b) Make a final charging order.
- c) Adjourn generally with permission to restore, to see if the defendant keeps up with the instalment order.
- d) Discharge the interim order.

(1 Mark)

Question 68

You have a hearing for a final third party debt order. The claimant attends. The defendant does not. There is a letter on file from the third party (a building society) saying that there is one account in the name of the defendant but it is overdrawn. The claimant is fed up and wants his money. He asks for a final order, just in case the account goes into credit in future.

Which one would be the correct order to make?

- a) Adjourn for 6 months and extend the interim order, to see if the account goes into credit and order the building society to inform the court before the next hearing as to what money is in the account.
- b) Make a final third party debt order in the full amount owing.
- c) Discharge the interim third party debt order and dismiss the application.
- d) Adjourn the application generally with permission to restore and extend the interim order generally. (1 Mark)

Question 69

You have an application for an order for sale. The claimant is a local authority. The defendant is an individual and does not attend the hearing. The final charging order was made 6 months ago and was for £16,900. All the papers are in order save that there is no evidence of the defendant's title to the property. The claimant says a visit was made to the property last week and the defendant still lives there and so "he must still be the owner". The claimant asks for an order for sale.

Which one would be the correct order to make?

- a) Adjourn to the first open date for the claimant to produce evidence of title.
- b) Make an order for sale.
- c) Adjourn generally with permission to restore.
- d) Dismiss the application.

(1 Mark)

Question 70

To which County Court must an application be made for enforcement of a final charging order by way of order for sale? Assume that the sum due is within the County Court limit and the application will not be made to the High Court.

- a) The Court closest to the Local Authority responsible for Council Tax on the property to be sold.
- b) The Court closest to the Defendant's current address.
- c) The Court that made the final charging order.
- d) There is no requirement to use any particular Court.

(1 Mark)

Question 71

The defendant applies to suspend a warrant of possession due for execution tomorrow. Both parties are present and are in person. You notice that the possession order was made 6 months ago and is a mandatory order based on service of a s21 Notice. There is a large unsatisfied judgment for rent arrears. The defendant produces a banker's draft payable to the claimant for the whole amount of the arrears. The claimant is pleased about this and takes the cheque but says that he still wants the defendant to leave tomorrow because "he always does this to me. He never pays his rent on time".

Which one would be the correct order to make?

- a) Adjourn the application to be heard tomorrow, so that the claimant can deposit the bankers draft into his account.
- b) Order that the warrant be suspended on payment of the current rent and all of the arrears by 4pm tomorrow.
- c) Discharge the warrant, telling the parties that as the defendant has given the claimant a bankers draft rather than a personal cheque, the arrears will be cleared today.
- d) Dismiss the application

(1 Mark)

Question 72

You have in boxwork an attachment of earnings file. The defendant has failed to return the statement of means within the required time. The staff ask for your directions.

Which one would be your next step?

- a) Tell them to write to the defendant to enquire why she hasn't filed the statement of means.
- b) Tell the staff to issue Form N61.
- c) Tell the staff to issue Form N63.
- d) Tell the staff to write to the claimant informing her that the defendant has failed to file the statement of means.

(1 Mark)

Question 73

An interim third party debt order has been made in County Court proceedings. The order has not yet been made final. To which court should the debtor file an application for a hardship payment order?

- a) The County Court nearest to where the debtor lives.
- b) The County Court that made the interim third party debt order.
- c) The High Court.
- d) The debtor can file the application at any County Court.

(1 Mark)

Question 74

A file comes to you in boxwork. An interim third party debt order has been made in the court in which you are sitting. The order has not yet been made final. An application for a hardship payment order has been made to a different county court. The court asks for your directions.

Which one of the answers below would be your next step?

- a) Tell the staff to send the application for the third party debt order and the interim order to the court hearing the application for a hardship payment order.

- b) Transfer the application for the third party debt order to the court dealing with the application for a hardship payment, vacate the forthcoming hearing in your court and extend the interim order until the next hearing.
- c) Tell the staff to inform the creditor of the application for a hardship payment application and invite his comments.
- d) Tell the staff to write to the other County Court informing them, as a matter of courtesy, of the hearing date for the application for a third party debt order at your court.

(1 Mark)

Question 75

A file comes to you in boxwork. A judgment debtor has failed to attend a hearing at your county court to provide information, having been ordered to attend. There is an affidavit of service on file confirming the debtor was personally served with the order 14 days before the hearing. The court asks for your directions. They say it's urgent because the hearing was two months ago and the creditor has made a complaint.

Which one would be your next step?

- a) Relist the hearing immediately.
- b) Refer the file to a Circuit Judge.
- c) Tell the staff to write to the judgment debtor asking for his reasons for non-attendance.
- d) Relist the hearing and order that there be substituted service on the judgment debtor by first class post to his last known address.

(1 Mark)

Question 76

You are hearing an urgent application by a trespasser to suspend a warrant for possession. The possession order was made against the trespasser on 14th February 2013. The warrant was issued on 2nd May 2013 and is due for execution this morning. The trespasser tells you he has looked on the internet and the warrant has been issued too late and without the court's permission. He wants the warrant to be cancelled. Counsel for the claimant submits that the trespasser is wrong, it makes no difference when the warrant was issued, the trespasser has no right to be in occupation, the property is being destroyed by the trespasser and the only option open to you is to dismiss the application and order the warrant to go ahead.

Which one would be the correct order to make?

- a) Suspend the warrant for 7 days to allow the trespasser to find somewhere else to go.
- b) Dismiss the application and order the warrant to proceed.
- c) Grant the application and discharge the warrant.
- d) List the application for a full hearing, order statements and suspend the warrant in the meantime.

(1 Mark)

Question 77

You have a Fast Track trial in your list. Counsel represents both parties. It is a claim for unlawful eviction with a counterclaim for rent arrears. The trial bundle is with the papers and you notice the last document in the bundle is a copy of a without prejudice letter from the defendant to the claimant setting out detailed proposals for settlement of the claim and counterclaim.

Which one would be your preferred course of action?

- a) Carry on regardless and do not tell Counsel.
- b) Tell Counsel you have seen the letter but say it hasn't influenced you one way or the other and you intend to carry on regardless.
- c) You tell Counsel, without further ado, that you will recuse yourself.
- d) You ask Counsel for submissions on whether or not you should recuse yourself.

(1 Mark)

Question 78

Now assume there is no such letter in the bundle. Counsel for the defendant is cross examining the claimant. She is making a mess of it and there are many questions you think she should ask.

Which one would be your preferred course of action?

- a) You do nothing.
- b) You stop Counsel and take over her cross examination.
- c) You wait until she's finished and then ask her if she has any more questions.
- d) You wait until she's finished and then ask some pertinent questions yourself.

(1 Mark)

Question 79

Counsel for the defendant then examines his client in chief. He asks you if he can put some further questions to his client "to amplify his evidence". He says the statement doesn't deal with new matters which have arisen since the statement was served. Counsel for the claimant objects strongly to this.

Which one would be your preferred course of action?

- a) You allow Counsel to ask additional questions about the new matters and remind him of the time constraints upon you.
- b) You do not allow Counsel to ask any additional questions.
- c) You tell Counsel to start asking questions but you will stop him if you think he's "going too far"
- d) You feel that it would be unfair to the claimant to allow more questions but you also feel it would be unfair to the defendant not to be able to put his case. You adjourn the trial for the defendant to serve a further witness statement.

(1 Mark)

Question 80

In the afternoon, half way through the trial, Counsel for the defendant tells you that a witness has just arrived for the defendant and although no statement has been served, he wishes to call the witness and seeks permission to do so pursuant of CPR 32.10. Again Counsel for the claimant objects strongly to this. She says, that she has not been given any prior warning of this and there is no acceptable explanation for the failure to serve a witness statement.

Which one would be your preferred course of action? Counsel for the defendant concedes both of these points.

- a) You refuse to hear the evidence of the witness.
- b) You hear the evidence of the witness.
- c) You adjourn the trial for a written statement to be served.
- d) You adjourn the trial for the defendant to apply to serve the statement out of time.

(1 Mark)

Question 81

You come to the end of the trial. Lengthy submissions are made dealing with all aspects of the case. By this time, it is 4.45pm. You are very tired and have not yet made up your mind about many aspects of the case. Counsel both urge you to deliver your judgment today because the parties have waited years for the case to be decided. They also say that they are not available for many months if you don't give judgment today.

Which one would be your preferred course of action?

- a) You deliver your judgment.
- b) You tell parties you are tired, undecided and will reserve judgment that will be handed down to the parties. You will invite parties to make written submissions re costs and will hand down a brief written judgment as to costs.
- c) You tell the parties that you are tired and undecided about the case. You adjourn the case to a date to be fixed, to deliver your judgment, and order Counsel to file dates of availability for themselves and their clients.
- d) You tell the parties you are tired and undecided and will reserve judgment, which will be handed down in writing but you will list the case for next week to hear any further submissions arising from the judgment.

(1 Mark)