

Examiners Comments -Practice and Procedure March 2009 Exam

Question 1

Answers were in the main satisfactory. Some answers referred to the contents of a document in detail, without putting the document into evidence by way of annexure.

Question 2

The answer required a discussion ss 64, 65 CPA and by reference ss 56-58. As well, answers ought to have included a discussion of case law principles. A number of the answers did not address in any sense the actual facts given in the question, and these facts would be important for the court in considering exercising its discretion under s 64.

Question 3

The answers were generally satisfactory. Some answers did not deal with the very specific requirements for an order under Part 5.3.

Question 4

There were some areas where a number of answers were inadequate.

- (a) offers not complying with Part 20.26 may still be valid *Calderbank* offers
- (b) the first defendant was successful in his defence and would be entitled to party/party costs for the whole of the proceedings. Any offer of compromise of *Calderbank* letter that is effect will only impact in that indemnity costs will run from effective date of a valid offer.

Question 5

The answers were generally satisfactory. A few answers in 5(a) did not respond to the direction concerning enforcement against land.

Question 6

Some answers recited all of the advantages and disadvantages of the ADR process. However for the quite detailed facts given in the question, answers ought to have concentrated on the benefits/disadvantages of mediation which were really relevant to the specific facts.