

Examiners Comments
Practice and Procedure Exam – September 2008

Question 1

Most answers were unsatisfactory in that they presented material that was not in admissible form. Where the affidavit was made by a solicitor a significant number of answers failed to apply the Evidence Act for hearsay in interlocutory matters. Some answers did not, in the affidavit, give evidence that in their belief the defendant had no defence.

Question 2

Most answers were satisfactory. Some students did not adequately address the specific case management factor that the judge on 2/5/2008 emphasised that only exceptional reasons would be considered if it were to be further adjourned.

Question 3

This question was, generally, well answered. In relation to 3(b), there should have been a reference to the overall interests of justice as a significant factor, as well as the principles in Grimshaw's case.

Question 4

This question was well answered. However some answers substantially recited the various categories listed by Powell J without referring to his final comments that these categories were not conclusive and the overall consideration is whether there has been an abuse of process.

Question 5

The question asked that each offer be discussed. Some answers did not address at all D3 offer on 1/4/2008 (and it had no effect). Some answers applied the specific costs rules applicable to Offers of Compromise under the UCPR to Calderbank offers, when it is a matter of the Court's discretion. In some answers there ought to have been a discussion with Calderbank offers when a Court will so exercise its discretion. In general, the answers were satisfactory.

Question 6

Generally, the approach adopted in the answers was satisfactory. Some answers did however recite the advantages/disadvantages outlined in the handouts without, for the specific facts, selecting the relevant arguments for and against mediation.