

**Examiners Comments**  
**Practice and Procedure Exam – September 2009**

**Question 1**

- (a) This was answered for the most part satisfactorily.
- (b) This question required a discussion of the nature of the evidence required under 13.1, a discussion of triable issue, and coming to a decision on the facts given whether one believes summary judgment will be given or declined.

**Question 2**

Practice Notes are essential tools in practice. Some students failed to address the actual procedures detailed in Practice Note S.C. Eq 3 but instead dealt generally with case management principles. This was not the question which needed to be answered.

**Question 3**

A common error was to fail to address the service of the Calderbank offer on D2 and whether it was effective. If the student's decision was that it was, then indemnity costs would probably flow from that date. The offer of compromise on D2 of 1/4/2009 would therefore simply be unnecessary in terms of an application for indemnity costs – although answers should have still considered it in case the Court did not order indemnity costs on the Calderbank offer.

**Question 4**

The late service of the report is essentially a question of the prejudice to the other party. In terms of amendment, some answers went into some detail concerning Queensland v J.L Holdings, even if AON's case was also discussed. The question did not require a theoretical comparison between the two decisions but rather an analysis of the C.P Act provisions and principles from cases but in a practical application to the facts given.

**Question 5**

As emphasized in lectures, and applying evidence principles, conversations should be in direct speech. A number of answers also failed to provide any evidence trying to explain the lateness of the amendments and the service of the report. It was not sufficient to only rely on recent correspondence and telephone calls seeking consent to the amendments –

### **Question 6**

A significant number of answers were unsatisfactory, especially in relation to, effectively, merely reciting the advantages and disadvantages of mediation.

As the lawyer for the defendant with some cogent arguments to make in your client's case, why would the Court be swayed, or even interested, in a submission that ADR inhibits the development of precedent, as an example (unless the answer actually argues that the client is specifically intent on running the matter as a precedent).