

Legal Profession Admission Board

March 2023

Practice and Procedure

Examiner's comments

General observations

Practice Note SCCL 6, Annexure 3 contains a requirement that the parties are to file a Court Book, inter alia, including a clear, concise statement of matters of fact and law that are really in dispute. This should be a guiding principle to answers to the examination questions. With the word limit for this examination paper, it was essential to pay attention to real issues raised by the relevant question. However, a number of candidates repeated, essentially in full, the words of a section or rule, even though most of the provisions quoted were not directly relevant to the matters which needed to be discussed.

Other comments

1. When drafting an affidavit, it is important that a deponent has direct knowledge /involvement of the facts. For example, an affidavit by a solicitor should not depose to facts to aspects of a defence simply because the client has spoken about them – there should also be an affidavit by the client. While section 75 Evidence Act provides that hearsay evidence may be adduced in interlocutory proceedings on certain conditions, this has to be done with care. As a client's director attended a solicitor's office to give instructions about the agreement the subject of court proceedings, why would it not be far simpler to have that person depose to her own affidavit, leaving it to the solicitor to give evidence of the actual steps taken by the solicitor?
2. With offers of compromise pursuant to rule 20.26 in relation to a plaintiff's offer, where it applies, UCPR 42.12 provides the regime for costs – it is not necessary to refer to general discretion as to costs under s 98 CPA to determine the costs in favour of the plaintiff.
3. When discussing mediation pursuant to s 26 CPA, a number of candidates approached the answer as a general discussion of mediation. This question required an answer directly related to the facts of the question and a consideration of the factors which courts have applied.
4. Where facts are given in a question, a candidate should consider and apply the relevant law and principles specifically referring to the facts in the question.
5. On the whole, candidates satisfactorily addressed the various issues raised by the questions within the context of a word limited paper.

B Gowenloch

21 March 2023