

CANDIDATE BRIEF

Introduction

This test comprises two parts. You have **75 minutes** to complete **both** sections.

Case Study 1:

Three questions worth a maximum of 92 marks.

Question 1 is worth a maximum of **10 marks**

Question 2 is worth a maximum of **5 marks**

Question 3 is worth a maximum of **77 marks**

Case Study 2:

Three questions worth a maximum of 77 marks.

Question 4 is worth a maximum of **50 marks**

Question 5 is worth a maximum of **17 marks**

Question 6 is worth a maximum of **10 marks**

Additionally, up to **5 marks** per Case Study will be awarded for clear and concise answers.

Please ensure that you show clearly which question you are answering and that your work is legible.

Please make your writing as legible as you can. If the judge marking the test cannot read your writing, you cannot get credit for the work you have done.

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Qualifying Test Paper
Case Study 1

00408: District Judge Civil (including posts in the
PRFD and the CoP) 2008/2009

CASE STUDY 1

BACKGROUND

Today is 8th September 2008. You are sitting in a Northport County Court. This is the only case in your list this morning. The usher informs you that there are no parties in attendance.

The facts of the case are set out in the documents provided in **ANNEXES 1-5**:

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Based on the materials provided in **ANNEXES 6-8**:

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ANNEX 7. Extract from Practice Directions (PD) 27		16
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Please address the following issues:

QUESTION 1 (10 marks)

Consider how this case should be decided and give reasons for your decision.

QUESTION 2 (5 marks)

How will you deliver your decision to the parties?

QUESTION 3 (77 marks)

Set out the decision with your reasons and identify all relevant points and issues.

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CASE STUDY 1

ANNEXES 1-8

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IN THE ...NORTHPORT..... COUNTY COURT
Claim No.NP805124

Claimant Ernest Olabwi

10 South Street

Northport

Defendant Darren Keane

8 Sandhill View

Northport

BRIEF DETAILS OF CLAIM

The Claimant claims damages for loss and damage caused by the negligent driving of the Defendant on 7th January 2008 and interest thereon pursuant to Section 69 of the County Courts Act 1984

The claim does not include any issues under the Human Rights Act 1998

PARTICULARS OF CLAIM

1. On the 7th January 2008 the Claimant was driving his Ford Focus motor vehicle registration no. V891 XUZ along Badger Street Northport in a northerly direction. As he approached a side street on his left a vehicle driven by the Defendant without warning executed a right turn across his path and a collision ensued.

2. The accident was caused or contributed to by the negligence of the Defendant.

PARTICULARS OF NEGLIGENCE

The Defendant was negligent in that he:

- (a) failed to keep any or any proper look out;
- (b) failed to see the Claimant's motor vehicle in time or at all;
- (c) failed to adequately or at all to heed or act upon the presence, of the Claimant's vehicle;
- (d) turned right into the path of the Claimants vehicle without warning when it was manifestly unsafe to do so

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4. As a result the Claimant suffered loss and damage.

PARTICULARS OF SPECIAL DAMAGE

The Claimant's motor vehicle was extensively damaged and the repair cost amounted to £800.

AND the Claimant claims:

- (1) The claimant claims damages of £800
- (2) Interest pursuant to Section 69 of the County Courts Act 1984

DATED 7th March 2008

Clough & Co

Amount claimed £...800
Court fee £65
Solicitor's costs £70
Total amount £935

STATEMENT OF TRUTH

The Claimant believes that the facts stated in this Claim Form and Particulars of Claim are true.

I am duly authorised by the Claimant to sign this statement.

Full Name: Dan Taylor

Name of Claimant's Solicitor's firm: Clough &co.

Signed: D Taylor position or office held: Partner

Claimant's Solicitor
company)

7th March 2008

Address for receiving documents

6 Manor View Northport

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ANNEX 2

IN THE ...NORTHPORT..... COUNTY COURT
Claim No.NP805124

Claimant Ernest Olabwi

Defendant Darren Keane

DEFENCE

1. Save that it is admitted that an accident took place on the date alleged paragraph 1 of the Particulars of Claim is denied. It is denied that the Defendant was negligent as alleged or at all and it is further denied that the accident was caused by the Defendant's driving as alleged or at all. The Defendant will contend that he was stationary in Badger Street waiting to turn right into a side street. He was indicating his intention and was waiting for the Claimant's vehicle to pass before proceeding. For reasons unknown to the Defendant the Claimant lost control of his vehicle to the extent that he was swerving from side to side. As a result the Claimant's vehicle collided with the Defendants stationary vehicle.

2. The accident was wholly caused by or, in the alternative, contributed to by the negligence of the Claimant.

PARTICULARS NEGLIGENCE

- a) driving on the wrong side of the road;
- b) driving too fast;
- c) failing to steer his car adequately or at all so as to avoid the collision;
- d) failing to take any or any adequate precautions to avoid the collision;
- e) failing to heed the presence of the Defendant's car;

3. In the premises, it is denied that the Claimant is entitled to any damages or interest as claimed or at all.

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COUNTERCLAIM

4. Paragraph 2 of the Defence is repeated herein.

5. As a result of the Claimant's negligence, the Defendant, who was born on 19th June 1989, has suffered pain, injury, loss and damage.

PARTICULARS OF INJURY

The defendant suffered shock and shaking up as a result of the accident

PARTICULARS OF LOSS

Damage to motor vehicle £1000. Miscellaneous expenses of £75

Total £1075

AND the Defendant counterclaims:

- (1) damages,
- (2) interest thereon pursuant to Section 69 of the County Courts Act 1984.

Dated 28th March 2008

Ventris & Co

STATEMENT OF TRUTH

The Defendant believes that the facts stated in this Defence are true.

Full name: Audrey Bright

Audrey Bright

Assistant SOLICITOR

28th March 2008

Address for receiving documents 12 Christchurch View Northport

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ORDER

In the Northport County Court

Parties	ERNEST OLABWI	Claimant
	DARREN KEANE	Defendant

- 1) The claim is allocated to the Small Claims Track
- 2) The claim will be heard at 10:00 am on Monday, 8th September 2008 at the Court House at 5 Main Street Northport
- 3) The court reserves the right to change the place and the date and time of the hearing. If this occurs you will be notified.
- 4) 4) From the available papers, it is estimated that the hearing will take one hour. If a party is aware of a reason why this estimate might be substantially inaccurate, that party must notify the court immediately.
- 5) The parties must send to the Court and to the opposing party copies of all documents on which they intend to rely no later than 14 days before the hearing

Dated 1st August 2008

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VENTRIS & CO
SOLICITORS
12, CHRISTCHURCH VIEW
NORTHPORT

4/9/2008

Dear Sir,

Olabwi v. Keane NP805124 Hearing 8th September 2008

We act for the Defendant. We have been sent a copy of the Claimant's Solicitors letter of 2/9/08 we likewise do not propose to attend the hearing in this matter and invite the Court to dispose of the action in our absence. We enclose the Defendant's statement and the statements of his 2 witnesses and confirm that we have notified our opponents of the position. We have sent them copies of the Defendant's statement and his 2 witnesses. We confirm that subject to liability the damage to the Claimant's motor vehicle is agreed.

Yours faithfully

Ventris & Co

The Court Manager
Northport County Court

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Statement of Darren Keane

Darren Keane will say:

1. I live at 8 Sandhill View Northport and am a full time disc jockey. My date of birth is 19/6/89. I have held a full driving licence for just over a year. I have not been involved in any road traffic accidents.
2. On 7th January 2008 at about 9.50am I was driving my Volkswagen Golf motor car along Badger Street Northport in a southerly direction. It is a busy road and traffic was heavy. The morning was sunny and bright.
3. As I approached a side road on my right I saw a car coming towards me from the opposite direction. I now know that this car was being driven by the Claimant.
4. When I first saw the claimant's car it was about 150 yards away and appeared to be moving very fast (the speed limit on Badger Street is 30mph)
5. As the Claimant's car came nearer it began to swerve from side to side even encroaching on the wrong side of the road. I brought my car to a halt because I simply did not know what the Claimant was going to do.
6. In the end he collided with my car causing damage amounting to £1000. I suffered shock and shaking up as a result of the accident. I also incurred some out of pocket expenses.
7. The Claimant appeared very confused after the accident and it took some time to exchange personal details.
8. Two police officers helped me move the vehicles to the side of the road.
9. The repairs to my vehicle were completed on 5th February 2008 and paid for on that date.
10. I believe the facts stated in this witness statement are true.

Signed Darren Keane

Dated 21/3/08

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ANNEX 4 – attachment 2

Statement of P.C.Jonathan Dixon

P.C. Jonathan Dixon will say;

1. I am a Police Officer in the Northport Constabulary. I am over 21.
2. On 7th January 2008, at about 9.55am, I was on duty in a patrol car with my colleague W.P.C. Rita Banerji. We were parked in a side road off Badger Street in Northport. We were on watch looking for troublemakers leaving the local sheep market. The weather was bright and clear. Traffic in the area was reasonably heavy.
3. I saw a car, which I now know was being driven by Ernest Olabwi proceeding along Badger Street in a northerly direction. Although I had no means of measuring its speed it did seem to be going much faster than the 30mph speed limit. As it approached a side street on its left I observed that the driver appeared to have lost control of the vehicle. The vehicle in fact was swerving from side to side. I then saw another vehicle coming in the opposite direction. This second vehicle came to a halt on its correct side of the road. The Claimant's vehicle then collided with the Defendants vehicle.
4. My colleague and I went to the scene of the accident and assisted in moving the cars to the side of the road. We checked the vehicles after the accident and found that the headlights and windscreen wipers on the Defendants vehicle were not functional due to a longstanding electrical fault.
5. I made a written report concerning this accident to the Crown Prosecution Service but no action was taken against either party.
6. I believe the facts stated in this witness statement are true.

Signed Jonathan Dixon
Dated 24th March 2008

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Statement of W.P.C. Rita Banerji

W.P.C. Rita Banerji will say;

1. I am a Police Officer in the Northport Constabulary. I am over 21.
2. On 7th January 2008, at about 10am, I was sat in a stationary patrol car with my colleague P.C. Jonathan Dixon. We were on the lookout for troublemakers who had been drinking at the local early morning sheep market. The morning was bright and clear but traffic was heavy.
3. My attention was drawn to a car, which I now know was being driven by the Claimant. The car was travelling in a northerly direction along Badger Street and appeared to be travelling at some speed. At the same time it was swerving from side to side. I then saw it collide with a car coming in the opposite direction which I now know was being driven by the Defendant. The collision took place as the Claimant's car went onto its incorrect side of the road.
4. My colleague and I assisted in moving the vehicles to the side of the road.
5. My colleague made a report concerning the accident but no action was taken.

Signed Rita Banerji
Dated 24th March 2008

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CLOUGH & CO

**SOLICITORS
6, MANOR VIEW
NORTHPORT**

2/9/2008

Dear Sir,

Olabwi v. Keane NP805124 Hearing 8th September 2008

We act for the Claimant. We do not propose to attend the hearing in this matter and invite the Court to dispose of the action in our absence. We enclose the Claimant's statement and confirm that we have notified our opponents of the position and have sent them a copy of the claimant's statement. We confirm that subject to liability the damage to the Defendants motor vehicle is agreed.

Yours faithfully

Clough & Co

The Court Manager
Northport County Court

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Statement of Ernest Olabwi

Ernest Olabwi will say:

1. I live at 10 South Street Northport. I am a retired butcher. I am 75 years old. I have held a full driving licence for 51 years. Up until last year I had an accident free driving record. Last year I was involved in 2 road accidents neither of which were my fault.
2. On 7th January 2008 at about 11.30 am I was driving my Ford Focus motor vehicle along Badger Street Northport in a northerly direction. It was a dull day and it was drizzling. My speed was about 25mph. Traffic was very light.
3. As I approached a side street on my left I saw a car approaching me. It was not indicating and I did not give it much thought until suddenly it turned right in front of me. I now know the car to have been driven by Darren Keane. I had no chance to avoid a collision.
4. After the accident we exchanged names and addresses and insurance company details.
5. In a conversation I had with the Defendant he blamed me for the accident but I do not see how it could have been my fault.
6. Two police officers came on the scene after the accident but all they did was to push the cars to the side of the road.
7. As a result of the collision my car was damaged and it cost £800 to repair.
8. The repairs to my vehicle were completed on 28th January 2008 and paid for on that date.
9. I believe the facts stated in this witness statement are true.

Signed Ernest Olabwi

Dated 7/3/2008

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Civil Procedure Rules & 27.10

27.9

Non-attendance of parties at a final hearing Small Claims Track

(1) If a party who does not attend a final hearing –

(a) has given written notice to the court and the other party at least 7 days before the hearing date that he will not attend;

(b) has served on the other party at least 7 days before the hearing date any other documents which he has filed with the court; and

(c) has, in his written notice, requested the court to decide the claim in his absence and has confirmed his compliance with paragraphs (a) and (b) above,

the court will take into account that party's statement of case and any other documents he has filed and served when it decides the claim.

(2) If a claimant does not –

(a) attend the hearing; and

(b) give the notice referred to in paragraph (1),

the court may strike out the claim.

(3) If –

(a) a defendant does not –

(i) attend the hearing; or

(ii) give the notice referred to in paragraph (1); and

(b) the claimant either –

(i) does attend the hearing; or

(ii) gives the notice referred to in paragraph (1),

the court may decide the claim on the basis of the evidence of the claimant alone.

(4) If neither party attends or gives the notice referred to in paragraph (1), the court may strike out the claim and any defence and counterclaim.

27.10

The court may, if all parties agree, deal with the claim without a hearing.

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EXTRACT FROM Practice Directions (PD) 27

Recording Evidence and the Giving of Reasons

5.1 A hearing that takes place at the court will be tape recorded by the court. A party may obtain a transcript of such a recording on payment of the proper transcriber's charges.

5.2 Attention is drawn to section 9 of the Contempt of Court Act 1981 (which deals with the unauthorised use of tape recorders in court) and to the Practice Direction ([1981] 1 WLR 1526) which relates to it.

5.3

(1) The judge may give reasons for his judgment as briefly and simply as the nature of the case allows.

(2) He will normally do so orally at the hearing, but he may give them later at a hearing either orally or in writing.

5.4 Where the judge decides the case without a hearing under rule 27.10 or a party who has given notice under rule 27.9(1) does not attend the hearing, the judge will prepare a note of his reasons and the court will send a copy to each party.

5.5 Nothing in this practice direction affects the duty of a judge at the request of a party to make a note of the matters referred to in section 80 of the County Courts Act 1984.

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Civil Procedure Rules - 22.3 and 27.8

Failure to verify a witness statement

22.3

If the maker of a witness statement fails to verify the witness statement by a statement of truth the court may direct that it shall not be admissible as evidence.

Conduct of the hearing

27.8 SMALL CLAIMS

- (1) The court may adopt any method of proceeding at a hearing that it considers to be fair.
- (2) Hearings will be informal.
- (3) The strict rules of evidence do not apply.
- (4) The court need not take evidence on oath.
- (5) The court may limit cross-examination .

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Qualifying Test Paper

Case Study 2

00408: District Judge Civil (including posts in the
PRFD and the CoP) 2008/2009

CASE STUDY 2

BACKGROUND

Today is 1st February 2009. You are sitting in a Northport County Court. The following case is presented to you on paper:

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ANNEX 9. Claim Form (CPR part 8)		4
ANNEX 10. Statement of Claimant		6
ANNEX 11. Acknowledgement of service (Part 8 claim)		7
ANNEX 11 – attachment 1. Defendant's Letter		13

Based on the documents provided in the **ANNEXES**:

	ANNEX	Page
ANNEX 12. S13-15 TOLATA 1996		14
ANNEX 13. Civil Procedures Rules (CPR) part 8		16
ANNEX 14. CPR1.1		19
ANNEX 15 CPR29.2		20
ANNEX 16 CPR29 Practice Directions (PD).3 and 4		21

please address the following questions:

QUESTION 4 (50 marks):

Identify the key issues of the case:

- a. What are the matters that the Court must consider?
- b. Based on the materials provided, what are the issues that need to be considered?
- c. How should the Claim proceed?

QUESTION 5 (17 marks)

Draft the directions order, providing all the relevant details and timescales.

QUESTION 6 (10 marks)

Give reasons for the order you have made.

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CASE STUDY 2

ANNEXES 9 - 13

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Claim No. 8NP001234

Claim Form (CPR Part 8)

Claimant NAOMI CRABBE

Defendant
MARK
HENDERSON

Does your claim include any issues under the Human Rights Act 1998? Yes No

Details of claim (*see also overleaf*): This claim is brought under Section 14 of the Trusts of Land and Appointment of Trustees Act 1996

The Claimant seeks orders in the following terms:-

1. A declaration that she has a beneficial interest in the property situated at and known as 25 Quay Avenue Northport (The property)
2. A declaration of the extent of her beneficial interest in the property
3. An order for the sale of the property and division of the sale proceeds in accordance with the beneficial interests.
4. Further or other relief
5. An order that the Defendant pays the costs of the claim

Court fee	£150
Solicitors' costs	£80
Issue date	15th December 2008

Defendant's name and address Mark Henderson
Northport
25 Quay Avenue
NP21 3AA

The court office at

is open between 10 am and 4 pm Monday to Friday. When corresponding with the Court, please address forms or letters to the Court Manager and quote the case number. N208 Claim form (CPR Part 8) (10.00)

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Details Of Claim (continued)

Statement of Truth

*The Claimant believes that the facts stated in these particulars of claim are true

*I am duly authorised by the claimant to sign this statement

Full name ____JAMES EDWARDS_____

Name of claimant's solicitor's firm **Waters & Co Solicitors** _____

Signed. JAMES EDWARDS

Claimant's solicitor) (if signing on behalf of firm or company)

**delete as appropriate*

Position or office held__Partner

WATERS & CO SOLICITORS
62-67 HIGH STREET
NORTHPORT NP3 5TT

Claimant's or claimant's solicitor's address to
which documents should be sent if different
from overleaf. If you are prepared to accept
service by DX, fax or e-mail, please add
details

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IN THE NORTHPORT COUNTY COURT
NUMBER OF MATTER: 8NP001234

BETWEEN:

NAOMI CRABBE

Claimant

And

MARK HENDERSON

Defendant

STATEMENT OF CLAIMANT

1. My full name is Naomi Crabbe. I live at 32 Anchor Way Northport. I am the above named Claimant and I make this statement in support of my claim for a declaration as to my beneficial interest in 25 Quay Street, Northport.
2. I met the Defendant in January 1998. The relationship quickly developed and in the autumn of that year we decided to live together. We had seen a house that we liked and decided to buy it. When the purchase was completed the Defendant moved in and I moved in about a month later. I thought that we had bought the house as a home for us both to live in. Before this we both had rented properties. The house was put into the Defendant's sole name. We never discussed this and so far as I know we had a 100% mortgage. I do not remember what the price was.
3. We lived together at the property until I moved out in October 2008 when it was clear that we could not get on. I have lived in rented accommodation since then. Neither of us have any children and we both worked throughout the relationship. Although the Defendant always earned more than I did we both contributed to the household bills, including the mortgage. We kept a separate joint account for the household bills and each paid into it each month. The bills were all paid from that account.
4. As well as paying my share of the bills I did my fair share of decorating and gardening. The house is in much better condition now than it was when we moved in.
5. I do not know how much the house is worth now or how much is outstanding on the mortgage as the defendant never allowed me to see the mortgage statement.
6. I ask the Court to declare that I am entitled to a 50% beneficial interest in the property and to order a sale of the property so that I may realise that interest.

I BELIEVE THAT THE FACTS STATED IN THIS WITNESS STATEMENT ARE TRUE.

Dated 10th December 2008

Signed

Naomi Crabbe

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This paper should be left in the test room at the end of the test session. The contents of the test should not be discussed with or divulged to anyone.

Acknowledgment of Service (Part 8 claim)

You should read the 'notes for defendant' attached to the claim form which will tell you how to complete this form, and when and where to send it

In the NORTHPORT COUNTY COURT	
Claim No.	8NP001234
Claimant (including ret)	NAOMI CRABBE
Defendant	MARK HENDERSON

Tick and complete sections A - E as appropriate. **In all cases** you must complete sections F and G

Section A

I do **not** intend to contest this claim

Give details of any order, direction, etc. you are seeking from the court.

Section B

**** I intend to contest this claim

Give brief details of any different remedy you are seeking.

See letter attached

Section C

I intend to dispute the court's jurisdiction

(Please note, any application must be filed within 14 days of the date on which you file this acknowledgment of service)

File court office at

is open between 10 am and 4 pm Monday to Friday. When corresponding with the court, please address forms or letters to the Court Manager and quote the claim number.

N210 Acknowledgment of Service (CPR Part 8) (3.01)
of The Court Service

Printed on behalf

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Section D ***** I object to the claimant issuing

under this procedure

My reasons for objecting are:

See letter attached

Section E I intend to rely on written evidence

My written
evidence: is filed
with this form

will be filed within 14 days as agreed with the other party (ies). A copy of the written agreement is attached to this form

Section F

Full name of defendant riling Mark Henderson
this acknowledgment

Section G

Signed

(To be signed by you or
by your solicitor or
litigation friend)

*(I believe)(The defendant believes) that the facts stated in this
form are true. *I am duly authorised by the Defendant to sign
this statement. *Mark Henderson*

**Position or office
held** (if signing
on behalf of firm
or company)

**Delete as appropriate*

Dated: 14/01/09

Give an address to
which notices about
fills case can be sent
to you

	DXno.	
Tel. no. 01 234 556677	e-mail	

25 Quay Avenue Northport Postcode NP21 3AA	if applicable	
	Ref. no.	
	fax no.	

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**ANNEX 11 – attachment 1
25 QUAY STREET
NORTHPORT
NP21 3AA**

14th January 2009

The Judge in charge.
Northport County Court
Town Square
Northport
NP2 6TS

Dear Judge,

I have received the papers in the claim that Naomi Crabbe is making against me. The case number is 8NP001234.

I want to say that the claim is a complete travesty. I intend to take legal advice and would like 3 months for my solicitor to prepare my defence.

What Naomi Crabbe says is rubbish. I bought the house about a year before we started to live together and before I even met her. I paid the deposit from my savings and raised the rest on mortgage. The Claimant never paid anything towards the mortgage but I admit that she did do some gardening and decorating and paid towards the other bills.

I am not sure what the house is worth. There have been no similar properties advertised recently. There was one on the market about 18 months ago for £200,000. I do not know what it sold for and I expect the value will be less now anyway because of the fall in house prices.

I strongly dispute that Naomi is entitled to half of the house. At best she should have a nominal amount. I want to stay here and cannot afford to pay her anything anyway.

Please adjourn the case so that I can prepare my defence.

Yours faithfully,

Mark Henderson

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Trusts of Land and Appointment of Trustees Act 1996 (c.47)

13. EXCLUSION AND RESTRICTION OF RIGHT TO OCCUPY

(1) Where two or more beneficiaries are (or apart from this subsection would be) entitled under section 12 to occupy land, the trustees of land may exclude or restrict the entitlement of any one or more (but not all) of them.

(2) Trustees may not under subsection (1)—

- (a) unreasonably exclude any beneficiary's entitlement to occupy land, or
- (b) restrict any such entitlement to an unreasonable extent.

(3) The trustees of land may from time to time impose reasonable conditions on any beneficiary in relation to his occupation of land by reason of his entitlement under section 12.

(4) The matters to which trustees are to have regard in exercising the powers conferred by this section include—

- (a) the intentions of the person or persons (if any) who created the trust,
- (b) the purposes for which the land is held, and
- (c) the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12.

(5) The conditions which may be imposed on a beneficiary under subsection (3) include, in particular, conditions requiring him—

- (a) to pay any outgoings or expenses in respect of the land, or
- (b) to assume any other obligation in relation to the land or to any activity which is or is proposed to be conducted there.

(6) Where the entitlement of any beneficiary to occupy land under section 12 has been excluded or restricted, the conditions which may be imposed on any other beneficiary under subsection (3) include, in particular, conditions requiring him to—

- (a) make payments by way of compensation to the beneficiary whose entitlement has been excluded or restricted, or
- (b) forgo any payment or other benefit to which he would otherwise be entitled under the trust so as to benefit that beneficiary.

(7) The powers conferred on trustees by this section may not be exercised—

- (a) so as prevent any person who is in occupation of land (whether or not by reason of an entitlement under section 12) from continuing to occupy the land, or
- (b) in a manner likely to result in any such person ceasing to occupy the land, unless he consents or the court has given approval.

(8) The matters to which the court is to have regard in determining whether to give approval under subsection (7) include the matters mentioned in subsection (4)(a) to (c).

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Powers of Court

14. APPLICATIONS FOR ORDER

(1) Any person who is a trustee of land or has an interest in property subject to a trust of land may make an application to the court for an order under this section.

(2) On an application for an order under this section the court may make any such order—

- (a) relating to the exercise by the trustees of any of their functions (including an order relieving them of any obligation to obtain the consent of, or to consult, any person in connection with the exercise of any of their functions), or
- (b) declaring the nature or extent of a person's interest in property subject to the trust,

as the court thinks fit.

(3) The court may not under this section make any order as to the appointment or removal of trustees.

(4) The powers conferred on the court by this section are exercisable on an application whether it is made before or after the commencement of this Act.

15. MATTERS RELEVANT IN DETERMINING APPLICATIONS.

(1) The matters to which the court is to have regard in determining an application for an order under section 14 include—

- (a) the intentions of the person or persons (if any) who created the trust,
- (b) the purposes for which the property subject to the trust is held,
- (c) the welfare of any minor who occupies or might reasonably be expected to occupy any land subject to the trust as his home, and
- (d) the interests of any secured creditor of any beneficiary.

(2) In the case of an application relating to the exercise in relation to any land of the powers conferred on the trustees by section 13, the matters to which the court is to have regard also include the circumstances and wishes of each of the beneficiaries who is (or apart from any previous exercise by the trustees of those powers would be) entitled to occupy the land under section 12.

(3) In the case of any other application, other than one relating to the exercise of the power mentioned in section 6(2), the matters to which the court is to have regard also include the circumstances and wishes of any beneficiaries of full age and entitled to an interest in possession in property subject to the trust or (in case of dispute) of the majority (according to the value of their combined interests).

(4) This section does not apply to an application if section 335A of the [M1](#) Insolvency Act 1986 (which is inserted by Schedule 3 and relates to applications by a trustee of a bankrupt) applies to it.

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Civil Procedure Rules – Part 8

Contents of this part:

Types of claim in which Part 8 procedure may be followed	Rule 8.1
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Procedure where defendant objects to use of Part 8 procedure	Rule 8.8
Modifications to the general rules	Rule 8.9

Types of claim in which Part 8 procedure may be followed**8.1**

- (1) The Part 8 procedure is the procedure set out in this Part.
- (2) A claimant may use the Part 8 procedure where—
- (a) he seeks the court's decision on a question which is unlikely to involve a substantial dispute of fact; or
 - (b) paragraph (6) applies.
- (3) The court may at any stage order the claim to continue as if the claimant had not used the Part 8 procedure and, if it does so, the court may give any directions it considers appropriate.
- (4) Paragraph (2) does not apply if a practice direction provides that the Part 8 procedure may not be used in relation to the type of claim in question.
- (5) Where the claimant uses the Part 8 procedure he may not obtain default judgment under Part 12.
- (6) A rule or practice direction may, in relation to a specified type of proceedings—
- (a) require or permit the use of the Part 8 procedure; and
 - (b) disapply or modify any of the rules set out in this Part as they apply to those proceedings.

Contents of the claim form**8.2**

- Where the claimant uses the Part 8 procedure the claim form must state—
- (a) that this Part applies;
 - (b)
 - (i) the question which the claimant wants the court to decide; or
 - (ii) the remedy which the claimant is seeking and the legal basis for the claim to that remedy;
 - (c) if the claim is being made under an enactment, what that enactment is;
 - (d) if the claimant is claiming in a representative capacity, what that capacity is; and
 - (e) if the defendant is sued in a representative capacity, what that capacity is.

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(Part 22 provides for the claim form to be verified by a statement of truth)
(Rule 7.5 provides for service of the claim form)

Acknowledgement of service

8.3

- (1) The defendant must—
 - (a) file an acknowledgment of service in the relevant practice form not more than 14 days after service of the claim form; and
 - (b) serve the acknowledgment of service on the claimant and any other party.
- (2) The acknowledgment of service must state—
 - (a) whether the defendant contests the claim; and
 - (b) if the defendant seeks a different remedy from that set out in the claim form, what that remedy is.
- (3) The following rules of Part 10 (acknowledgment of service) apply—
 - (a) rule 10.3(2) (exceptions to the period for filing an acknowledgment of service); and
 - (b) rule 10.5 (contents of acknowledgment of service).
- (4) Part 11 (disputing the court's jurisdiction) applies subject to the modification that in rule 1(4)(a) and (5)(b) (time limit for application disputing court's jurisdiction) references to the period for filing a defence are treated as if they were references to a period of 14 days from the filing of an acknowledgment of service.

Consequence of not filing an acknowledgment of service

8.4

- (1) This rule applies where—
 - (a) the defendant has failed to file an acknowledgment of service; and
 - (b) the time period for doing so has expired.
- (2) The defendant may attend the hearing of the claim but may not take part in the hearing unless the court gives permission.

Filing and serving written evidence

8.5

- (1) The claimant must file any written evidence on which he intends to rely when he files his claim form.
- (2) The claimant's evidence must be served on the defendant with the claim form.
- (3) A defendant who wishes to rely on written evidence must file it when he files his acknowledgment of service.
- (4) If he does so, he must also, at the same time, serve a copy of his evidence on the other parties.
- (5) The claimant may, within 14 days of service of the defendant's evidence on him, file further written evidence in reply.

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(6) If he does so, he must also, within the same time limit, serve a copy of his evidence on the other parties.

(7) The claimant may rely on the matters set out in his claim form as evidence under this rule if the claim form is verified by a statement of truth.

Part 20 claims

8.7

Where the Part 8 procedure is used, Part 20 (counterclaims and other additional claims) applies except that a party may not make a Part 20 claim (as defined by rule 20.2) without the court's permission.

Procedure where defendant objects to use of the Part 8 procedure

8.8

(1) Where the defendant contends that the Part 8 procedure should not be used because—

- (a) there is a substantial dispute of fact; and
- (b) the use of the Part 8 procedure is not required or permitted by a rule or practice direction, he must state his reasons when he files his acknowledgment of service.

(Rule 8.5 requires a defendant who wishes to rely on written evidence to file it when he files his acknowledgment of service)

(2) When the court receives the acknowledgment of service and any written evidence it will give directions as to the future management of the case

(Rule 8.1(3) allows the court to make an order that the claim continue as if the claimant had not used the Part 8 procedure)

Modifications to the general rules

8.9

Where the Part 8 procedure is followed

- (a) provision is made in this Part for the matters which must be stated in the claim form and the defendant is not required to file a defence and therefore—
 - (i) Part 16 (statements of case) does not apply;
 - (ii) Part 15 (defence and reply) does not apply;
 - (iii) any time limit in these Rules which prevents the parties from taking a step before a defence is filed does not apply; and
 - (iv) the requirement under rule 7.8 to serve on the defendant a form for defending the claim does not apply;
- (b) the claimant may not obtain judgment by request on an admission and therefore—
 - (i) rules 14.4 to 14.7 do not apply; and
 - (ii) the requirement under rule 7.8 to serve on the defendant a form for admitting the claim does not apply; and

(c) the claim shall be treated as allocated to the multi-track and therefore Part 26 does not apply.

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Civil Procedure Rules – 1.1

The overriding objective

1.1

(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate—
 - (i) to the amount of money involved;
 - (ii) to the importance of the case;
 - (iii) to the complexity of the issues; and
 - (iv) to the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

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Civil Procedure Rules - 29.2

Case management

29.2

- (1) When it allocates a case to the multi-track, the court will—
- (a) give directions for the management of the case and set a timetable for the steps to be taken between the giving of directions and the trial; or
 - (b) fix
 - (i) a case management conference; or
 - (ii) a pre-trial review,

or both, and give such other directions relating to the management of the case as it sees fit.

(2) The court will fix the trial date or the period in which the trial is to take place as soon as practicable.

- (3) When the court fixes the trial date or the trial period under paragraph (2), it will—
- (a) give notice to the parties of the date or period; and
 - (b) specify the date by which the parties must file a listing questionnaire.

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Civil Procedure Rules 29. Practice Directions 3 and 4

Case management conference and pre-trial review

29.3

- (1) The court may fix –
 - (a) a case management conference; or
 - (b) a pre-trial review, at any time after the claim has been allocated.

- (2) If a party has a legal representative, a representative –
 - (a) familiar with the case; and
 - (b) with sufficient authority to deal with any issues that are likely to arise, must attend case management conferences and pre-trial reviews.

(Rule 3.1(2)(c) provides that the court may require a party to attend the court)

29.4

If –

- (a) the parties agree proposals for the management of the proceedings (including a proposed trial date or period in which the trial is to take place); and
 - (b) the court considers that the proposals are suitable,
- it may approve them without a hearing and give directions in the terms

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