



Qualifying Test Paper:

00435: Deputy District Judge (Civil), 2009/10

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CANDIDATE BRIEF

Please read carefully before you start

You have 90 minutes to complete the entire test.

You should attempt to answer every question.

The following breakdown of marks available should help you apportion your time between the questions:

Question 1 is worth a maximum of **50** marks

Question 2 is worth a maximum of **50** marks

Question 3 is worth a maximum of **30** marks

There are also a further **10** marks available overall to award at the marker's discretion. These will be awarded for: a) display of focus and clarity of thought in the answers provided, as opposed to a discursive approach; b) display of good and logical reasoning in answers; and c) good points made that are not anticipated in the marking schedule.

- **You do not have to answer the questions in any particular order, but please mark each section of your answer script clearly with the corresponding question number.**
- **You should give your reasons for each answer.**
- **You are strongly encouraged to use bullet points throughout, unless expressly instructed otherwise.**

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MATERIALS PROVIDED FOR QUESTION 1
(No materials are provided for Questions 2 or 3)

- a)** Application notice to set aside judgement.

- b)** Statement in support of the application to set aside judgement.

- c)** Letter from the claimant's solicitors.

- d)** Relevant extracts from Civil Procedure Rules 12.3, 13.2 and 13.3

TEST PAPER

Question 1 (Maximum of 50 marks)

Assume that this hearing is listed before you on 1st November 2009. You are dealing with the case of *British Gas v John Brown*, which is an application to set aside judgment. No one appears before you, but on the file is:

- a) the application to set aside judgment (you should assume the form is correctly completed);
- b) a statement in support of the application;
- c) a letter from the claimant's solicitors; and
- d) relevant extracts* from CPR 12.3, 13.2 and 13.3

You should assume that the judgment was entered on 15th January 2008.

A) Set out how you would decide the application in the absence of the parties, giving brief reasons for your decision. (Maximum 33 marks)

B) Identify and reference the relevant rules that apply, stating briefly why. (Maximum 12 marks)

C) Draft briefly and in bullet form the substantive elements of the order you would make. (Maximum 5 marks)

* As the following rules are referred to in the extracts, but not provided, for the purposes of the question, assume that:

1. there is no counterclaim made under Rule 20.4; and
2. the conditions set out in CPR 12.3 (3) were satisfied.

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Question 2 *(Maximum of 50 marks)*

You are the Judge dealing with the final hearing of a personal injury claim in the fast track, where both liability and quantum are in issue. The case has a time estimate of 1 day and there is nothing else in your list.

The following different scenarios occur, not dependent upon each other:

A) At the commencement of the trial, claimant's Counsel applies for an adjournment, on the basis that their medical expert cannot now attend Court. The application is strenuously opposed. **List the questions that you would expect to be answered by Counsel's submissions, or that you would otherwise raise.** *(Maximum 13 marks)*

B) The claimant's Counsel applies for an adjournment, as the claimant is ill and unable to attend Court. The claimant's son is present in Court and produces a medical certificate dated 2 weeks ago. **List the questions that you would expect to be answered by Counsel's submissions, or that you would otherwise raise.** *(Maximum 6 marks)*

Assume you are satisfied an adjournment is appropriate. Give the substantive elements of the order you would make. *(Maximum 4 marks)*

C) The defendant's Counsel asks for permission to call a witness - who is present at court - to give oral evidence, when no statement of that evidence has been prepared or served. **Set out the factors that would guide your decision, and state the decision you would make.** *(Maximum 10 marks)*

In each of scenarios D and E, give your decision and brief reasons in support.

D) The parties attend and ask for an adjournment of 8 weeks so that they can consider mediation. *(Maximum 7 marks)*

E) When reading the papers you note that the claimant's main supporting witness is a member of the same Golf Club as you. *(Maximum 10 marks)*

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Question 3: (*Maximum of 30 marks*)

You are dealing with the wife's application for an injunction. The application is listed for final hearing with a time estimate of one day. The wife is seeking an order continuing an earlier order restraining her husband from using any violence against her and evicting him from the matrimonial home.

This is the third hearing in this case.

- a) The first hearing was without any notice being given to the husband, and at that hearing an injunction was granted restraining the husband from using any violence against his wife and evicting the husband from the matrimonial home.
- b) At the second hearing, which the husband attended, he strongly opposed the application, and was ordered to file and serve his statement setting out his position (which he has done).
- c) Today is the contested hearing of the application, the date of which the parties were notified of four weeks ago.

Both the wife and the husband are unrepresented and emotions are running high.

The husband says in his statement that whilst he has been able to stay temporarily with his parents, their accommodation is very cramped and he is sleeping on the sofa in the living room. His parents are unwell and reluctantly they have asked him to leave. He will have nowhere to stay from today. He also says that there is not a shred of truth in the allegations and that his wife has previously made unfounded allegations to the police, who have taken no action.

Assume that the parties have no children.

The following situations arise. **In each case, state how you would deal with the situation, and give brief reasons for your decision.**

A) The wife wants an adjournment, because she now wants to instruct solicitors and needs time to properly instruct them. On checking with the court staff, you are told that the next free date is in eight weeks time. (*Maximum 20 marks*)

B) One party starts to shout at the other party. (*Maximum 5 marks*)

C) The first party mentioned in B again shouts at the other party and is clearly losing control of his/her emotions. (*Maximum 5 marks*)

END OF TEST

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Supporting Documents:

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a) Application notice to set aside judgment

See separate loose-leaf sheet.

b) Statement in support of the application to set aside judgment

I used to live at 26 Tottenham High Road London until I left on the 1st of October 2007

I remember that I got behind with my gas bill and that I owed British Gas about £400.

I received a Summons from your Court just before I moved, but in all the confusion over the move, I forgot to do anything about it.

Some time later I was contacted by British Gas and agreed to pay off the debt at the rate of £50 per month. I have kept to the agreement and the debt was cleared in December 2008.

I have now found out that my credit rating has been affected by the judgment

My new job makes it very difficult for me to attend any hearing. Can you please deal with the matter in my absence and arrange for judgment to be set aside.

Thank you

Mr John Brown

c) Letter from the claimant's solicitors

Dear Sir,

Re: British Gas v John Brown CL 030068

We refer to the defendant's application to set aside judgment.

We confirm that we issued proceedings in this case and that these were served at the defendant's last known address. As no acknowledgment of service or defence was filed we applied for judgment to be entered by default.

We are pleased to say that subsequently and after we contacted the defendant, we entered into an agreement with him whereby the judgment was to be paid by monthly instalments of £50

We would confirm that all monies due have now been paid

We do not intend attending the hearing so as to keep costs to a minimum but would assure the Court that we mean no disrespect.

We leave the matter in the Court's capable hands.

Yours faithfully,

d) Relevant extracts from Civil Procedure Rules 12.3, 13.2 and 13.3

CPR 12.3

(1) The claimant may obtain judgment in default of an Acknowledgment of service only if:

- a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
- b) the relevant time for doing so has expired.

(2) Judgment in default of defence may be obtained only:

- a) where an acknowledgment of service has been filed, but a defence has not been filed;
- b) in a counterclaim made under Rule 20.4, where a defence has not been filed,

and in either case, the relevant time limit for doing so has expired.

[12.3(3) intentionally omitted]

CPR 13.2

The Court must set aside a judgment entered under Part 12 if judgment was wrongly entered because:

- a) in the case of a judgment in default of an acknowledgment of service, any of the conditions in rule 12.3(1) and 12.3(3) was not satisfied;
- b) in the case of a judgment in default of a defence, any of the conditions in rule 12.3(2) and 12.3(3) was not satisfied; or
- c) the whole of the claim was satisfied before judgment was entered.

CPR 13.3

(1) In any other case, the court may set aside or vary a judgment entered under Part 12 if:

- a) the defendant has a real prospect of successfully defending the claim;
or
- b) it appears to the court that there is some other good reason why: (i) the judgment should be set aside or varied; or (ii) the defendant should be allowed to defend the claim.

(2) In considering whether to set aside or vary a judgment entered under Part 12, the matters to which the Court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly.

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A) Application notice

For help in completing this form please read the notes for guidance form N244Notes.

Name of court Central London	
Claim no.	CL030068
Warrant no. (if applicable)	
Claimant's name (including ref.)	British Gas
Defendant's name (including ref.)	John Brown
Date	14th September 2009

1. What is your name or, if you are a solicitor, the name of your firm?

John Brown

2. Are you a Claimant Defendant Solicitor
 Other (please specify) _____

If you are a solicitor whom do you represent? _____

3. What order are you asking the court to make and why?

To set aside the judgment.
 Because I did not know of the judgment, and in any case, the debt has been paid in full.

4. Have you attached a draft of the order you are applying for? Yes No

5. How do you want to have this application dealt with?
 at a hearing without a hearing
 at a telephone hearing

6. How long do you think the hearing will last?
 Hours Minutes
 Is this time estimate agreed by all parties? Yes No

7. Give details of any fixed trial date or period _____

8. What level of Judge does your hearing need?
 District Judge

9. Who should be served with this application?
 Claimants

10. What information will you be relying on, in support of your application?

- the attached witness statement
- the statement of case
- the evidence set out in the box below

If necessary, please continue on a separate sheet.

Statement of Truth

(I believe) (~~The applicant believes~~) that the facts stated in this section (and any continuation sheets) are true.

Signed [ASSUME SIGNATURE] Dated 14/9/09
Applicant (~~'s Solicitor~~) (~~'s litigation friend~~)

Full name John Brown

Name of applicant's solicitor's firm _____

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

11. Signature and address details

Signed [ASSUME SIGNATURE] Dated 14/9/09
Applicant (~~'s Solicitor~~) (~~'s litigation friend~~)

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

Applicant's address to which documents about this application should be sent

2nd Floor Steel House 11 Tothill Street London Postcode S W 1 H 9 L H	If applicable	
	Phone no.	020 3334 0553
	Fax no.	
	DX no.	
	Ref no.	
E-mail address		