

FEB 2021 EXAM – CIVIL PAPER

Question 1

Your client wants to withdraw an admission from defence on the day before trial. What do you do? (5 marks)

- Assuming admission of fact was made by notice (r 17.1(1)) or because fact taken to be admitted (r 17.2(2)/17.3(2)), we require leave of court to withdraw admission {(r 17.2(3)/17.3(3))}.
- Given proximity to hearing, leave unlikely to be given. May need to consider serving notice to dispute the admitted facts.
- However must advise client that (BR 37) that if we dispute fact, and fact is subsequently proved, we will be liable to indemnity costs of proving fact (r 42.8, 42.9).
- Given proximity of hearing, if we serve notice of dispute, other side may seek adjournment so evidence of disputed fact can be put on. Adjournment likely to be granted (s 66 + 58 CPA/BR 59).

Question 2

On day of hearing - informal settlement discussions between solicitors - your solicitor tells you not to give the client any advice on settlement because there is "no immunity". Is that true? (5 marks)

- It is true that discussions concerning settlement of case, where that means there will be no judicial determination of case, means that advocates immunity will be not be applicable (Atwells).
- However, obliged to aid client to promote and protect client's interests as best I can (BR 35), advise client of alternatives to fully contested hearing (BR 36), and aid client to understand issues so they can give proper instructions (BR 37).
- Would still advise client of alternatives to fully contested hearing because it is essential (BR 36) and to not discuss these alternatives would perhaps be in my interest and not clients, which would breach BR 35 (Howen).
- Duty to administration of justice (BR 23) and efficient administration of justice (BR 58) would also apply.

Question 3

What can you tell a journo (approached unsolicited on day 3 of hearing). Can you confirm name, tell nature of client's case, comment on prospects? (5 marks)

- Can confirm the name of officer in charge provided that he has already given evidence and his evidence is completed (BR 77(a)), and provide a summary of the case generally, and issues (BR 77(a)).
- Cannot comment on the merits or prospects of a case currently before court (BR 76(a)).
- Any information cannot be known to be inaccurate and cannot disclose any confidential information (BR 76(a), (b)).

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