

Personal Injury and Clinical Negligence Assignment Brief

General Guidance

Where a question is in several parts and a words total is indicated, that is the total for the whole question, not for each part of it. Where a word limit is per part of a question, this will be clearly stated. You will not incur penalty for exceeding the word limit by up to 10% but excessively lengthy and prolix scripts will be penalised.

Whilst it is acceptable to use the internet for legal research, this means proper legal research on sites such as Westlaw, Lexis, Bailii, legislation.gov.uk etc; citing Google or Wikipedia and such as authority for any legal proposition is unacceptable.

Paper-based resources will include the materials given to you for this module but you are expected to read more widely and to locate relevant materials beyond the course materials.

Module Guidance

Module Title:	Personal Injury and Clinical Negligence
Module Code:	Module 2(c)
Assignment Number:	1
Assignment Type:	Letters (two)
Date Set:	23 March 2020
Date Due:	19 April 2020

Module Learning Outcomes

1. Explain personal injury law and procedure and clinical negligence law and procedure
2. Apply the law and practice to presenting legal arguments on costs matters in personal injury and clinical negligence claims
3. Explain the process of proving negligence or breach of duty and the process of proving causation

Prepare a memo of 1,500 words. You must ensure you meet ALL requirements to achieve a pass on the assessment.

Please Note: All submissions must be made no later than midnight on 19 April 2020. Work MUST be submitted via the online learning environment.

Brief

You are a trainee solicitor working at a high street firm of solicitors that specialise in Personal Injury and Clinical Negligence, Montagues LLP. The firm is situated in Hammersmith. You have been asked to review the file of Harrison Clarke and draft some preliminary advice. On 4th September 2019, your supervising solicitor, Bob Mistry, attended Harrison Clarke. Harrison had been injured in an accident at his home.

Following the attendance, Bob sent you a memo (see document 1, below) asking you, as the department trainee, to write to Harrison summarising the position in relation to:

- ☑ evaluating an appropriate general damages award for his injury;
- ☑ whether his incapacity to play tennis is relevant to his claim for damages;
- ☑ why it is necessary to issue proceedings if he wishes to recover interest on his general damages; and
- ☑ the purpose of a claim for special damages.

Proceedings on the file were then issued and negotiations entered into. Bob then sent you a further memo (see document 2, below). He attached copy correspondence from the defendant's solicitors (see document 3, below) and requested that you write to the client advising:

- ☑ why the offer contained in the letter from the defendant's solicitors does not put Harrison at risk of paying the defendant's costs; and
- ☑ how he may become at risk of paying the defendant's costs.

Requirements
You MUST complete all of the following requirements:
Requirement 1: Presentation
<ul style="list-style-type: none"> ☑ Produce two letters of no more than 1,500 words in total. The word count must be included on your submission. ☑ You must include a bibliography (this does not form part of the word count). ☑ Your submission must be headed appropriately and formatted as a letter in accordance with the guidance set out in the academic handbook. ☑ You should include references to specific sections of Legislation, Delegated Legislation and other authority, using OSCOLA referencing. ☑ You should present your submission in a logical order in paragraphs using the appropriate business language for a letter to a lay client. ☑ You must include your student number on your submission. ☑ You must not include your name on your submission. ☑ Your final submissions must be in word format and be incorporated within one document. <p>Failure to comply with the general presentation requirements will impact upon the academic rigour mark.</p>
Requirement 2: First letter to Harrison Clarke
Your memo must deal with the following:
<ul style="list-style-type: none"> ☑ You must advise how you would evaluate an appropriate general damages award for his injury; ☑ You must advise why it is necessary to issue proceedings if he wishes to recover interest on his general damages; and ☑ You must advise what the purpose of a claim for special damages is.
Requirement 3: Second letter to Harrison Clarke
Your memo must deal with the following:
<ul style="list-style-type: none"> ☑ You must advise why the offer contained in the letter from the defendant's solicitors does not put him at risk of paying the defendant's costs; and ☑ You must advise how he may become at risk of paying the defendant's costs.

Your work will be marked against the following criteria:

Depth of Knowledge (30%): How well do you show that you know the subject and in what depth and detail.

Application of Theory (30%): How well you can apply the content you have learnt during the course to the brief given.

Critical Analysis (30%): How well you show you have weighed up options, why you have come to the conclusions you have.

Presentation (10%): Your grammar, spelling, punctuation, referencing and following of academic writing criteria at undergraduate level (level 6) and professional level to reflect the standard that is expected by the court, government agencies and your client / office.

Full Marking Scheme: Costs Pleadings Assignment 2020

	Requirement 2: Depth Of Knowledge (30 marks or 30% of overall grade)	Requirement 1: Application Of Theory (30 marks or 30% of overall grade)	Requirement 2: Critical Analysis (30 marks or 30% of overall grade)	Requirement 3: Presentation (10 marks or 10% of overall grade)
Fail	Very superficial knowledge of subject matter shown. Fails to adequately demonstrate knowledge of the learning outcomes.	Very little evidence of application of theory to the question e.g. unable to explain the purposes of damages and the costs consequences that a claimant in personal injury claims may face.	Little real analysis of any value	Some sense but difficult to follow
Borderline Fail 12+ Marks	Largely superficial but with some areas of depth. Attempts to adequately demonstrate knowledge of the information required.	Small amount of evidence of application. Attempts to demonstrate an ability to answer the fee earner's questions.	Some analysis with reasonable depth of understanding Tries to identify potential areas of weakness in the claim.	Poor use of grammar and English leads to poor coherence. There will be spelling and grammatical mistakes and/or inappropriate use of verbs. Some attempt at structure of writing a file note.
Pass 15+ Marks	RQ2: Reasonable knowledge demonstrated of most of the main areas. Adequately demonstrates knowledge of the information required, albeit somewhat superficially. Was able to show a reasonable understanding of the purpose of both special and general damages (including PSLA). RQ3: Reasonable knowledge demonstrated of most of the main areas. Adequately	RQ2: Several good examples of evidence of application provided. Demonstrates an ability to explain how the law would impact upon this scenario. Was able to consider the facts and supporting personal characteristics of the claimant when considering damages e.g. may have considered recreational activities as well as the profession of the claimant.	RQ2: Some solid and well founded analysis. e.g. grasped some elements of the deficiency in current law. Able to identify potential problems in progressing the claim and the calculation of damages. RQ3: Demonstrates an ability to analyse facts and project costs consequences where at least one variable had been considered.	Good grammar and letter structure. Some good paragraphs and sentence structure. There will be spelling and grammatical mistakes without detracting from overall meaning.

	<p>demonstrates knowledge of the information required, albeit somewhat superficially. Was able to demonstrate knowledge of the formalities of a part 36 offer and the framework of the CPR in respect of QOCS.</p>	<p>RQ3: Several good examples of evidence of application provided. Demonstrates an ability to explain how the law would impact upon this scenario. Demonstrates, based on the facts presented, an ability to apply the relevant CPR to predict the impact of the offer to settle. Demonstrates an ability to respond to the questions, albeit somewhat superficially.</p>		
<p>Merit 18+ Marks</p>	<p>RQ2: Good knowledge demonstrated of most of the main areas, including some recognition of different perspectives. Cited any conflicting sources. Identified more than just the basic information. Was able to show a good understanding of the purpose of both special and general damages (including PSLA).</p> <p>RQ3: Good knowledge demonstrated of most of the main areas. Good analysis of knowledge gained to date including reference to current case law. Was able to demonstrate good knowledge of the formalities of a part 36 offer and some depth of knowledge in</p>	<p>RQ2: Broad range of opinions /authority appropriately included and applied well. Ability to apply the law governing personal injury claims. Evidence of reflection upon the facts provided. Demonstrates an ability to explain how the law would impact upon this scenario providing a detailed consideration of the facts and the law on the calculating of both special and general damages. Will have considered interest and the procedure in relation to the Compensation Recovery Unit with specific reference to the facts in the scenario.</p> <p>RQ3: Broad range of opinions /authority appropriately included and applied well.</p>	<p>RQ2: + synthesis of ideas and either learning or critical evaluation. Able to analyse the impact of the information provided to the claim for both special and general damages. Was able to discuss why a claim for loss of enjoyment is unlikely to be successful with reference to conflicting common law decisions.</p> <p>RQ3: Demonstrates an ability to analyse facts and project costs consequences where at least one variable had been considered. Able to identify, for example, potential areas of costs risks in the claim. Demonstrates an ability to analyse facts and project costs consequences where a</p>	<p>Good grammar and problem question writing skills. Good use of paragraphs, good sentence structure, grammar and spelling, but some mistakes without detracting from overall understanding. Good writing skills and good use of language.</p>

	<p>relation to the CPR relating to QOCS.</p>	<p>Demonstrates and ability to apply both the CPR and CPR PDs governing personal injury claims. Evidence of reflection upon the facts provided. Evidence of the ability to apply case authority to the scenario when providing advice in relation to negotiations and QOCS.</p>	<p>number of likely variables had been considered.</p>	
<p>Distinction 21+ Marks</p>	<p>RQ2: Very good knowledge demonstrated of most of the main areas, critical awareness and areas of deep knowledge demonstrated. Cited the relevant authority in support. This type of deep knowledge may be demonstrated by the observation certain areas of the law are unsettled; may also take the form of commentary on the sources included in the submission. Was able to demonstrate a very good understanding of the purpose of both special and general damages (including PSLA), is likely to have considered the Compensation Recovery Unit.</p> <p>RQ3: Was able to demonstrate very good knowledge of each of the required points. Will have demonstrated very good</p>	<p>RQ2: ++ Very good range of authority considered with some evaluation/ justification for the responses to the question and, where appropriate, how to proceed. Ability to apply the law governing personal injury with some evidence of analysis in the responses proffered.</p> <p>RQ3: ++ Very good range of authority considered with some evaluation/ justification for the responses to the question and, where appropriate, how to proceed. Ability to apply the law governing personal injury with some evidence of analysis in the responses proffered.</p>	<p>RQ2: + relevant reflections showing synthesis, learning AND critical evaluation</p> <p>RQ3: + relevant reflections showing synthesis, learning AND critical evaluation</p>	<p>Coherent and fluent throughout, but may have a few very minor grammatical or spelling mistakes which do not detract from the flow of the submission at all. Excellent structure, weakness in one area only.</p>

	analysis of knowledge gained to date, will have cited current case law and considered how that authority has defined terms within the CPR. Will have considered both the relevant CPR and CPR PDs.			
Distinction (Higher) 24+ Marks	+ Knowledge gained is critically evaluated. Sources cited are considered.	Excellent range of sources and authority considered with full evaluation / justification for the response given.	+Inspired development of highly original idea(s) and / or plans for reform to the process of progressing personal injury claims.	Coherent throughout and excellent problem question/file note writing skills. No spelling or grammatical mistakes. Excellent use of paragraphs and sentence structure. Excellent structure for the answer. For a mark of 9 or 10 there must be no spelling or grammatical mistakes.

MEMORANDUM

To: Trainee

From: Bob Mistry

Date: 5 September 2019

Re: Harrison Clarke

Dear Trainee,

I should be grateful for your assistance in this matter. I attended a new client yesterday, Mr Harrison Clarke. Mr Clarke was injured in his home on the 15 May 2019.

He recently had his sash windows replaced by a specialist firm, Brite and Lite. The panels operate on a cable and pulley to open the window. It was incredibly warm on the 15 May 2019 and Mr Clarke opened the window and, whilst he was working, he rested his right elbow on the window sill when the cable suddenly snapped and the raised window panel fell onto his elbow. He was trapped for a while as he did not have the strength to raise the window panel using only his left hand. Fortunately, his brother arrived and was able to raise the window panel and free him.

Harrison was in such pain that his brother drove him to the accident and emergency department of Dale Hospital, where he was X-rayed. Mr Clarke was taken to the emergency department of the local hospital and X rays revealed a fracture to his elbow with severe bruising to the. His elbow was put in a cast and he was kept in overnight for observation. Following this, Harrison had NHS-funded physiotherapy treatment, which ended on 31 August 2019. He then continued with private physiotherapy to try to improve the wrist movement. He is frustrated that he has had to pay £40 twice a week for twelve weeks.

Harrison lives alone. He arranged with the cleaning agency, who have been cleaning his house for the last two years, to increase the number of hours spent each week by three hours, to include doing his laundry, ironing and gardening. He now pays £80 per week for these services. His brother took him shopping and helped him with bathing and cooking. His brother works as a piano tutor and would like to charge at his usual hourly rate of £25 for the time spent helping Harrison. Harrison tells me that he has not received any state benefits as a result of the accident.

Harrison is a well-known local artist. He has various sources of income, but he has been told by his treating consultant that, in the future, his ability to work as he does at present will be greatly reduced, as his wrist is likely to remain very weak. Harrison says that he had been perfectly fit and able prior to the accident. Harrison has also been unable to return to

playing tennis, which he really missed over the summer months. He does not know whether he will ever be able to return to playing.

I have said that we will happily take on his case for him and will send a letter of claim to Brite and Lite. He understands that we will need an independent medical report.

Can you please write to Harrison summarising the position in relation to:

- evaluating an appropriate general damages award for his injury;
- whether his incapacity to play tennis is relevant to his claim for damages;
- why it is necessary to issue proceedings if he wishes to recover interest on his general damages;
- the purpose of a claim for special damages.

Many thanks,

Bob

MEMORANDUM

To: Trainee

From: Bob Mistry

Date: 23 September 2019

Re: Harrison Clarke

Dear Trainee,

You will recall having done some work on Harrison Clarke's file. Proceedings have since been issued and negotiations entered into. We have just received the attached from the defendant's solicitors (Document 3).

I should be grateful if you would send a copy of the attached to the client and explain why the offer contained in the letter from the defendant's solicitors does not put Harrison at risk of paying the defendant's costs. I should also be grateful if you would advise Harrison how he may become at risk of paying the defendant's costs.

Many thanks,

Bob

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Moneytown
Moneyshire
MM1 2MM
Tel 020 234 4444
Fax 020 234 5555

Our Ref: AA/AB/0001

Your Ref: AB/12345/Clarke

20 September 2017

FAO: Mr B Mistry
Montagues LLP
100 High Street
Hammersmith
London
W6 1JU

'Without prejudice'

Dear Sir,

Re: Your client Harrison Clarke v our client Brite and Lite

Further in this matter, we would like to repeat our client's position with regard to liability. It remains our client's view that, for whatever reason, at some point between the windows being replaced and the accident, some person succeeded in removing the cable from the pulley and then replaced it incorrectly, causing it to snap as it did.

As matters stand, we are therefore instructed to maintain our client's denial of liability but, in an effort to be reasonable, we are also instructed to put forward an offer in the sum of £10,000 in full and final settlement of damages.

We look forward to hearing that our client's offer is accepted.

Yours faithfully,

Wellingtons and Hamleys LLP