

# Bar Training Civil Litigation Syllabus 2022-2023

## Summary of Changes

### Introduction

We have been asked by the Bar Standards Board to provide a short document summarising the main changes to the Bar Training Civil Litigation Syllabus in 2022-2023. This document is particularly intended to enable continuing part time students to understand which areas of the 2021-2022 syllabus will form part of the centrally set assessments in 2022-2023, and which parts of the 2021-2022 syllabus will not be assessed.

**This document provides a summary of the main changes to the syllabus. Students should also refer to the new syllabus, which includes full updated references to 'Civil Procedure' (the White Book) 2022 and The Jackson ADR Handbook (Third Edition, 2021), to understand the detailed requirements of the 2022-2023 syllabus.**

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2 August 2022

## **1 General Matters**

1. the allocation of business between the High Court and County Courts
2. the overriding objective
3. the duty of the court to manage cases
4. general principles of Alternative Dispute Resolution (ADR)
5. timing the use of ADR

### **Summary of Changes**

No syllabus changes.

## **2 Limitation**

1. accrual of causes of action
2. limitation periods in cases of tort, latent damage, personal injury, fatal accident, contract, and contribution claims

### **Summary of Changes**

No syllabus changes.

## **3 Pre-action Conduct**

1. the Practice Direction (Pre-Action Conduct and Protocols)
2. the Practice Direction for Personal Injury Claims
3. consequences of non-compliance
4. ADR prior to the issue of proceedings

### **Summary of Changes**

Under the 2022-2023 syllabus, examinable material on the Pre-Action Protocol for Personal Injury Claims will consist of the general aim of the protocol; letter of notification; rehabilitation; letter of claim; the response; disclosure; negotiations following an admission; quantification of loss; and stocktake. The relevant material is addressed in paragraphs 1-7.11, 8.1-8.2 and 10-11 of the Pre-Action Protocol for Personal Injury Claims at paragraphs C2-001 to C2-013 and C2-015 to C2-016 of Volume 1 of 'Civil Procedure' (the White Book)

2022; and in the commentary on the Pre-Action Protocol for Personal Injury Claims at paragraphs C2A-001 to C2A-003 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

## **4. Alternative Dispute Resolution: Adjudicative Options**

1. arbitration
2. expert (or neutral) determination

### **Summary of Changes**

No syllabus changes.

## **5. Alternative Dispute Resolution: Non-Adjudicative Options**

1. early neutral evaluation
2. conciliation and mediation

### **Summary of Changes**

No syllabus changes.

## **6 Commencing Proceedings**

1. the Part 7 procedure
2. validity, extension and service of claim forms
3. service of other court documents within the jurisdiction
4. the Part 8 procedure

### **Summary of Changes**

No syllabus changes.

## 7 Parties

1. partnerships, sole traders, LLPs and companies, trusts and deceased persons
2. children and persons suffering from mental incapacity

### Summary of Changes

No syllabus changes.

## 8 Statements of Case

1. claim forms and particulars of claim
2. acknowledgement of service, defences, replies, counterclaims
3. the effect of not responding to an allegation in a statement of case

### Summary of Changes

No syllabus changes.

## 9 Multiple Causes of Action, Counterclaims and Other Additional Claims

1. multiple causes of action and multiple parties
2. counterclaims against the claimant or an additional party
3. contribution notices and claims against third parties and fourth parties

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on multiple causes of action and multiple parties will consist of the number of claimants and defendants who may be joined as parties to a claim; the general provisions regarding changes of parties; provisions applicable where two or more persons are jointly entitled to a remedy; the procedure for adding and substituting parties; addition or substitution of claimant; addition or substitution of defendant; removal of party; transfer of interest or liability; and special provisions about adding or substituting parties after the end of a relevant limitation period. The relevant material is addressed in CPR 19.1-19.4; CPR 19.5; PD 19A paragraphs 1- 5; the commentary at paragraphs 19.5.1, 19.5.2, 19.5.4 (first two sub-paragraphs, up to “the application of the *Sardinia Sulcis* test does not infringe ECHR art.6”) and 19.5.5 of Volume 1 of ‘Civil Procedure’

(the White Book) 2022; and Limitation Act 1980 section 35, at paragraph 8-102 of Volume 2 of 'Civil Procedure' (the White Book) 2022.

## **10 Amendment**

1. permission or consent to amend
2. costs consequences of amendment

### **Summary of Changes**

No syllabus changes.

## **11 Further Information**

1. requests for further information
2. responding to a request for further information

### **Summary of Changes**

Under the 2022-2023 syllabus, examinable material on requests for further information will consist of obtaining further information; preliminary requests for further information or clarification; applications for orders under Part 18; the court's discretion; and restriction on the use of further information. The relevant material is addressed in CPR 18.1 and 18.2; PD18 paragraphs 1 and 5; and the commentary at paragraph 18.1.10 (first sub-paragraph) of Volume 1 of 'Civil Procedure' (the White Book) 2022.

## 12 Default Judgment and Summary Judgment

1. default judgment
2. applications to set aside
3. summary judgment

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on default judgment will consist of meaning of default judgment; claims in which default judgment may not be obtained; conditions to be satisfied; procedure for obtaining default judgment; nature of judgment where default judgment obtained by filing a request; interest; default judgment in claim against more than one defendant; and default judgment obtained by making an application. The relevant material is addressed in CPR 12.1-12.5, 12.7, 12.9 and 12.11(a)..

Under the 2022-2023 syllabus, examinable material on summary judgment will consist of grounds for summary judgment; types of proceedings in which summary judgment is available; procedure for obtaining summary judgment; evidence for the purposes of a summary judgment hearing; the court's powers when it determines a summary judgment application; procedure for making an application; the hearing of the application; the court's approach; orders the court may make; setting aside orders for summary judgment; costs; and case management. The relevant material is addressed in CPR 24.1, 24.2, 24.3-24.5 and 24.6; PD 24 paragraphs 1-5 and 8-10; and in the commentary at paragraphs 24.2.3-24.2.7, and at paragraphs 24.6.6-24.6.7 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

## 13 Case Management, Sanctions and Striking Out

1. the small claims track, fast track and multi-track
2. allocation
3. case management
4. costs management
5. directions
6. relief from sanctions
7. striking out a claim
8. discontinuance

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on costs management will consist of the purpose of costs management; filing and exchanging budgets and budget discussion reports; the effect of failure to file a budget; costs management orders; revision and variation of

costs budgets on account of significant developments ('variation costs'); costs management conferences; court to have regard to budgets and to take account of costs; assessing costs on the standard basis where a costs management order has been made; production of costs budgets; documents to be lodged for costs budgeting purposes; budget format; assumptions; budget discussion reports; and costs management orders. The relevant material is addressed in CPR 3.12-3.18; and in PD 3E paragraphs 3-5 and 12.

## **14 Disclosure and Inspection of Documents**

1. disclosure and inspection of documents
2. specific disclosure
3. collateral use of disclosed documents
4. pre-action disclosure
5. disclosure against non-parties
6. legal professional privilege and without prejudice communications in civil cases

### **Summary of Changes**

Under the 2022-2023 syllabus, examinable material on pre-action disclosure will consist of disclosure before proceedings start; the scope of documents covered by pre-action disclosure; the two-stage approach taken by the court in dealing with applications for pre-action disclosure; the relevance of merits of the future claim; and other powers of the court to order disclosure. The relevant material is addressed in CPR 31.16 and 31.18; and the commentary at paragraphs 31.16.3, 31.16.4 (first paragraph ending "... and Carillion at [68]" only) and 31.16.5 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

Under the 2022-2023 syllabus, examinable material on legal professional privilege and without prejudice communications in civil cases will consist of the right of inspection of a disclosed document; legal professional privilege; legal advice privilege; litigation privilege: communications between solicitor and non-professional agent or third party; litigation privilege: communications between client and non-professional agent or third party; legal professional privilege: pre-existing documents, copies or extracts; waiver or loss of privilege; 'without prejudice' communications; claims to withhold inspection or disclosure of a document; restriction on the use of a privileged document inspection of which has been inadvertently allowed; legal professional privilege and ADR; and the 'without prejudice' principle in ADR. The relevant material is addressed in CPR 31.3, 31.19, 31.20; PD 31A paragraph 6; the commentary at paragraphs 31.3.5-31.3.6, 31.3.8, 31.3.9 (first two sub-paragraphs), 31.3.11, 31.3.24 (first thirteen paragraphs, up to and including the paragraph beginning "Showing a draft witness statement to opposing counsel at court..." at page 1055) and 31.3.39 (first six paragraphs, up to and including the paragraph beginning "There is an exception to the without prejudice rule..." and also the subsequent paragraphs beginning "If one party to negotiations...", "Conversely the heading "without prejudice" does not..." and "Where a judge sees privileged or inadmissible material..." of Volume 1 of

'Civil Procedure' (the White Book) 2022; and paragraphs 5.15-5.26 of The Jackson ADR Handbook (Third Edition, 2021).

## 15 Interim Applications

1. with notice and without notice applications
2. documentation required in interim applications
3. periods of notice in interim applications
4. the duty of full and frank disclosure in without notice applications

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on with notice and without notice applications will consist of general rules about applications for court orders; the meaning of 'application notice' and 'respondent'; where to make an application; time when an application is made; applications dealt with without a hearing; service of application where application made without notice; application to set aside or vary order made without notice; power of the court to proceed in the absence of a party; dismissal of applications totally without merit; applications without service of an application notice; pre-action applications; claims in the County Court Money Claims Centre; telephone hearings; video conferencing; costs; orders for interim remedies; time when an order for an interim remedy may be made; how to apply for an interim remedy; notice of application; interim remedy order hearings in private; urgent applications and applications without notice; and orders for injunctions. The relevant material is addressed in CPR 23.1-2, 23.5 and 23.8-12; CPR 25.1, 25.2 and 25.3; PD 23A paragraphs 3, 5, 5A, 6.1-6.2, 7 and 13; PD 25A paragraphs 4 and 5; and the commentary at paragraphs 25.3.2 and 25.3.4 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

## 16 Interim Payments and Security for Costs

- interim payments
- security for costs

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on security for costs will consist of applying for security for costs, and the conditions to be satisfied on an application for security for costs. It will include the discretionary power to order security for costs; condition (c): insolvent or impecunious company; and condition (g): taking steps as to assets



which hinder enforcement. The relevant material is addressed in CPR 25.12 and 25.13; and in the commentary at paragraphs 25.13.1, 25.13.1.1, 25.13.1.2, 25.13.12-, and 25.13.16 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

## 17 Interim Injunctions

1. interim injunctions
2. *American Cyanamid* principles
3. exceptions and variations to *American Cyanamid*
4. usual undertakings and cross-undertakings

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on interim injunctions will consist of orders for interim remedies; interim injunctions; court's jurisdiction to grant interim injunctions; principles and guidelines to be applied; time when an order for an interim remedy may be made; and how to apply for an interim remedy. The relevant material is addressed in CPR 25.1, 25.2 and 25.3; and the commentary at paragraphs 25.1.9-25.1.11 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

## 18 Settlement (including offers to settle)

1. negotiation and joint settlement meetings
2. *Calderbank* offers and offers to settle under Part 36
3. withdrawing, reducing and increasing offers to settle
4. consequences of accepting Part 36 offers
5. consequences of failing to obtain judgment more advantageous than offer to settle

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on *Calderbank* offers and offers to settle under Part 36 will consist of Part 36 offers prior to issue of proceedings; Part 36 offers to settle; *Calderbank* offers; formal or technical defects in Part 36 offers; application of Part 36 to appeals; making offers; form and content of a Part 36 offer; formal requirements for a Part 36 offer; Part 36 offers: defendant's offer; and time when a Part 36 offer is made. The relevant material is addressed in CPR 36.1, 36.2, and 36.3-36.7; the commentary at paragraphs 36.2.1, 36.2.4, 36.2.4.1, 36.2.4.2, 36.5.1, 36.5.1.1, 36.5.1.2, 36.5.1.3, 36.5.1.4, 36.5.1.5, 36.5.1.6, 36.5.1.7 and 36.5.1.8 of Volume 1 of 'Civil Procedure' (the White Book) 2022; and paragraph 8.07 of The Jackson ADR Handbook (Third Edition, 2021). Students

should also be able to refer to the following specific leading case authority by name: *Calderbank*.

Under the 2022-2023 syllabus, examinable material on consequences of accepting Part 36 offers will consist of accepting offers; acceptance of a Part 36 offer; costs consequences of acceptance of a Part 36 offer; the effect of the rule; recoverable pre-action costs; claimant's entitlement to costs of claim to which offer relates; costs to be determined by the court; other effects of acceptance of a Part 36 offer; and acceptance of a Part 36 offer made by one or more, but not all, defendants. The relevant material is addressed in CPR 36.11, 36.13, 36.14-15; and the commentary at paragraphs 36.13.1-36.13.5 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

Under the 2022-2023 syllabus, examinable material on consequences of failing to obtain judgment more advantageous than offer to settle will consist of unaccepted offers; restriction on disclosure of a Part 36 offer; costs consequences following judgment; more advantageous judgment; recoverable pre-action costs; defendant's offer; claimant's offer; unless the court considers it unjust to do so; and genuine attempt to settle proceedings. The relevant material is addressed in CPR 36.16 and 36.17; and the commentary at paragraphs 36.17.1-36.17.4, 36.17.5 and 36.17.6 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

## **19 Evidence of Fact**

1. evidence of fact in civil proceedings
2. witness statements and witness summonses
3. notices to admit facts and notices to prove documents

### **Summary of Changes**

No syllabus changes

## 20 Expert Evidence

1. the general exclusionary rule in relation to evidence of opinion
2. the main exceptions to the rule
3. expert opinion evidence in civil proceedings

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on expert opinion evidence in civil proceedings will consist of general requirements for expert evidence; expert evidence at trial; expert availability and the trial timetable; judicial assessment of expert evidence; experts and the ultimate question; the court's duty to restrict expert evidence; the effect of the rule; types of cases raising particular considerations; overriding duty of experts to the court; duties and responsibilities of experts; the court's power to restrict expert evidence; court's permission to adduce expert evidence; pre-action protocols and disclosure of expert reports; general requirement for expert evidence to be given in a written report; written questions to experts; the court's power to direct that evidence is to be given by a single joint expert; obtaining further expert evidence; form and content of an expert's report; use by one party of an expert's report disclosed by another; discussions between experts; consequence of failing to disclose expert's report; expert's right to ask court for directions; service of information; cross-examination of experts on the contents of their instructions; questions to experts; circumstances relevant to allowing parties to rely on expert evidence and whether evidence should be from a single joint expert; and serving court orders on experts. The relevant material is addressed in CPR 35.1, 35.2, 35.3, 35.4-6, 35.7, 35.10, 35.11, 35.12-14; PD35 paragraphs 1-9; and the commentary at paragraphs 35.0.2, 35.0.3, 35.0.4, 35.1.1, 35.1.2, 35.1.3, 35.1.4, 35.1.7 (35.3.2, 35.4.2, 35.4.2.1, 35.4.2.2 ()), 35.4.4, 35.7.4 and 35.11.1 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

## 21 Civil Trial and Evidence

1. the trial of civil cases
2. hearsay evidence in civil proceedings
3. convictions as evidence in civil proceedings

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on the trial of civil cases will consist of the power of the court to control evidence; the general rule regarding evidence of witnesses; evidence by video link or other means; the use at trial of witness statements which have been served; witness statements as evidence in chief; amplification of evidence; witness not called; use of witness statements where party failing to attend trial; the use of

plans, models and photographs as evidence; failure to attend the trial; and the trial of civil cases, including trial timetables, order of speeches, calling and examining witnesses, judgment, submissions on orders for costs and permission to appeal. The relevant material is addressed in CPR 32.1-3, 32.5, 33.6 and 39.3; PD 28 paragraph 8; PD 29 paragraph 10; and the commentary at paragraphs 32.5.1-32.5.3.1, 39.3.4, 39.3.5 and 39.3.7 of Volume 1 of 'Civil Procedure' (the White Book) 2022.

Under the 2022-2023 syllabus, examinable material on hearsay evidence in civil proceedings will consist of the use of hearsay evidence at trial; notice of intention to rely on hearsay evidence; circumstances in which notice of intention to rely on hearsay evidence is not required; power to call witness for cross-examination on hearsay evidence; considerations relevant to weighing of hearsay evidence; and credibility. The relevant material is addressed in CPR 33.1-33.5; and sections 1-4 Civil Evidence Act 1995, at paragraphs 9B-1071 to 9B-1074 of Volume 2 of 'Civil Procedure' (the White Book) 2022.

## **22 Judgments, Orders and Enforcement**

1. judgment and orders, including Tomlin orders
2. enforcing money judgments
3. recording and enforcement of settlements following ADR

### **Summary of Changes**

Under the 2022-2023 syllabus, examinable material on enforcing money judgments will consist of enforcement of judgments generally; methods of enforcing judgments and orders; methods of enforcing money judgments; the rule that the court may order an act to be done at the expense of the disobedient party; transfer of proceedings for enforcement; transfer to county court for enforcement; transfer to High Court for enforcement; enforcement of judgment or order by or against non-party; effect of setting aside judgment or order; orders to obtain information from judgment debtors ('oral examination'); application notice; order to attend court; conduct of the hearing; attendance at court: normal procedure; attendance at court: procedure where the order is to attend before a judge; failure to comply with order; third party debt orders; debt due to judgment debtor and another; application for third party debt order; application notice; charging orders; charging order on matrimonial home; application for charging order; application notice; writs and warrants; enforcement of county court judgments; enforcement by taking control of goods; controlled goods agreements; where and how to make applications; attachment of earnings; where to make applications; mode of applying; and effect and contents of attachment of earnings order. The relevant material is addressed in CPR 70.1-2A, 70.3, 70.4 and 70.6; CPR 71.1-2, 71.6 and 71.8; CPR 72.1-3; CPR 73.3; CPR 83.2; CPR 84.3; CPR 89.3-4; PD 70 paragraphs 1A.1 and 1.1; PD 71 paragraphs 1, 2, 4 and 5; PD 72 paragraph 1; and PD 73 paragraph 1; the editorial introductions to CPR Parts 71-73, 83-84 and 89 at paragraphs

71.0.1, 72.0.1, 73.0.1, 73.0.4 (1) and (2), 83.0.2-83.0.3, the second paragraph of 83.0.17, 84.0.2-84.0.3 and 89.0.1 of Volume 1 of 'Civil Procedure' (the White Book) 2022; the commentary at paragraphs 70.3.1, 70.3.2 and 72.2.15 of Volume 1 of 'Civil Procedure' (the White Book) 2022; paragraph 8 of the High Court and County Courts Jurisdiction Order 1991 (SI 1991/724) at section 9B-939 of Volume 2 of 'Civil Procedure' (the White Book) 2022; and section 6(1)-(5) of the Attachment of Earnings Act 1971 at paragraph 9B-965 of Volume 2 of 'Civil Procedure' (the White Book) 2022.

## 23 Costs

1. summary and detailed assessment of costs
2. standard and indemnity costs
3. interim costs orders
4. costs orders in civil cases

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on standard and indemnity costs will consist of basis of assessment; costs on the indemnity basis; costs on the standard basis; and factors to be taken into account in deciding the amount of costs. The relevant material is addressed in CPR 44.3, 44.4; PD 44 paragraph 6; and the commentary at paragraph 44.3.8 (first four sub-paragraphs) of Volume 1 of 'Civil Procedure' (the White Book) 2022.

## 24 Appeals

1. Civil appeals in England and Wales (excluding appeals to the Supreme Court)

### Summary of Changes

Under the 2022-2023 syllabus, examinable material on civil appeals in England and Wales (excluding appeals to the Supreme Court) will consist of routes of appeal; time for appealing; grounds on which appeals may succeed; permission to appeal; determination of applications for permission to appeal to the County Court and High Court; determination of applications for permission to appeal to the Court of Appeal; permission to appeal test for first appeals; permission to appeal test for second appeals; appellant's notice; respondent's notice; transcripts at public expense; variation of time; stay; appeal court powers; hearing of appeals; review or re-hearing; evidence not before lower court (fresh evidence); destinations of appeal; obtaining permission to appeal and allocation of appeals; and skeleton arguments. The relevant material is addressed in CPR 52.1, 52.3-7, 52.12-16, 52.20 and 52.21; PD52A paragraphs 3.1-3.5, Table 1, and paragraph 3.9 in section 3 (destinations of appeal); paragraphs 4.1, 4.6 and 4.7 in section 4 (obtaining permission to appeal and

allocation of appeals); and section 5 (skeleton arguments); and the commentary at paragraphs 52.21.1 and 52.21.3 of Volume 1 of 'Civil Procedure' (the White Book) 2022.