

Set out time limits at the bottom of the CPR book.
Litigation Exam: Civil 65%, Criminal 35% - two exams on the same day

PROCEDURE TIMELINE

From commencement of claim: start ADR, Settlement, Part 36 offers

1. Comply with pre-action rules

CPR 23-25 From issuing Claim Form: start any interim applications – extension of time, summary judgment, injunction, security for costs

2. **CPR 7.5** Serve Claim Form within 4 months of issue
3. **CPR 16** Serve Particulars of Claim with the Claim Form. If Particulars is served separately, 14 days after Claim Form served
4. **CPR 10.3** File Acknowledgement of Service 14 days after Particulars
5. **CPR 14** Admissions
6. **CPR 15.4(1)(a)-(b)** File the Defence 28 days after Particulars of Claim (only if acknowledged service)
7. **CPR 12** Judgment in default – If Defendant fails to file a Defence/Acknowledgement of Service
8. **CPR 26.8** Notice of proposed allocation
CPR 15.8 Reply to Defence is served with Directions Questionnaire
9. **CPR 3.13** If multi track claim:
If < £50k: File first page of Precedent H with DQ
If > £50k: File Precedent H 21 days before CMC
File the Budget discussion report 7 days before CMC
10. **CPR 26.5** Claim is allocated to a track, hold allocation hearing
11. Case and costs management conference (CCMC) is held
12. **CPR 26-29** Directions
13. Instruct experts
14. **CPR 31** Disclosure and inspection
15. **CPR 32** Exchange witness statements
16. **CPR 35** Exchange experts' reports
17. Preparation for trial (Good time for a Part 36 offer, as all evidence is disclosed)
18. Pre-trial checklist
19. Trial
20. **CPR 52** Appeals
21. **CPR 70** Enforcement

CASE ANALYSIS

LIABILITY IN TORT AND CONTRACT:

Limitation periods (calculate exact date): Limitation Act 1980
If not commenced within this time, the claimant is barred damages.

Tort:

6 yrs from cause of action date even if unaware of breach and damages occurred later. – eg. date of poor advice, not date of retainer

Contract:

6 yrs from breach of contract – eg. did not satisfy obligations

Claim concurrent duties (sue for both tort and contract) and if limitation period is tight, one claim might still fall within the period.

Tort - Cause of action structure:

1. **Duty of care:** Reasonably competent advice from reasonably competent solicitor. – Sue lawyer in tort and the LLP for breach of contract (LLP has deeper pockets)
2. **Breach:** Did the defendant breach their duty? – eg. What was the solicitor's specialism? Would similarly qualified property lawyers advise differently? Cavated advice
3. **Causation:** Did the defendant's breach cause the claimant's loss? – eg. Did the solicitor's breach cause the loss suffered? Did X rely on this advice? What would X have done if cavated advice?
4. **Remoteness:** Was the damage suffered reasonably foreseeable?
5. **Loss suffered:** Must be foreseeable not too remote. – eg. £3m loss for property, but damages recoverable = £5m premium
6. **Damage:**
Measure of damages:
 1. Put claimant in position had the tort not occurred. Be wary of remote damages and contributory negligence.
 2. **Contributory negligence:** if the loss have been partly caused by claimant's own negligence – damages received by the claimant will be reduced.
7. **Remedies**

Conclude: Client's prospects of success? Any missing info? Strengths and weaknesses of the case?

Contract - Cause of action structure:

1. **Duty:** The duties of both parties is set out in the contract governing the parties' relationships. – Look at express and implied terms.

Implied terms:

s.13 SGA 1982 Reasonable care + skill

If contract is for Sale of goods also look at the below:

s.14(2) SGA 1979 Satisfactory quality

s.14(3) SGA 1979 Fitness for purpose

s.13 SGA 1979 Sale by description, products sold by description should match the description

2. **Breach:** Did the defendant breach a term of the contract? – eg. Express or implied term
3. **Loss:** Did the claimant suffer loss as a result of the breach?

4. Damage:

Measure of damages:

1. **Contract claims:** Put injured party in position had the contract been properly performed. C must mitigate.
2. **Debts:** it is a claim for a sum owed. No need to mitigate.

5. Remedies

Conclude: Client's prospects of success? Any missing info? Strengths and weaknesses of the case?

COST-BENEFIT ANALYSIS FOR LITIGATION:

Pros:

- If large amounts at stake: may win the case and get large amounts in compensation
- If the defendant has deep pockets such as indemnity insurance: likely that any compensation will be paid
- Publicity: the defendant will not want the publicity brought by court hearing and may prefer to settle before going to court.

Cons:

- Litigation is expensive
- Time-consuming and requires complex steps
- May need to pay legal fees upfront and may not recover the whole costs even if wins
- Litigation is risky and uncertain
- Difficult to prove negligence
- If the case is lost, C will likely have to pay substantial costs – **CPR 44.2(2)(a)**

COST CALCULATIONS:

Retainer = contract between solicitor and client. Client must instruct solicitor who must then agree to act. Initial interview = not retainer.

Solicitors' costs:

1. profit costs (hourly rate x numbers of hours spent) plus VAT disbursements

Bill your time every 6 minutes.

Who pays costs?

Solicitor/client costs: The client is responsible for their solicitor's costs.
CPR 44.2(1)(a) court will take into account the conduct of the parties.
CPR 44.2(2)(a) Party/party costs: unsuccessful party pays successful party's costs.

Court's wide discretion:

CPR 44.2(1) Who pays how much and when

CPR 44.2(4)-(5) Factors affecting how much: whether or not you have acted reasonably throughout the case. You will only recover 60%-70% of the costs even if you win – client pays the shortfall.

CPR 44.4 The amount paid

CPR 44.7 When they pay

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Wolfgang Guggemos



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