

The Legal Assistant/Paralegal Course

www.saslawschool.org.uk

A SAS Law Programme

(Extracts Only)

tel: +44 (20) 7625 5211

e-mail: law@saslaw.org.uk

The SAS Law School, 401 Langham House,
29-30 St Margaret Street, London W1W 8SA

Welcome to

The Legal Assistant / Paralegal Course

combining

The Academic with The Practical & Covering Civil and Criminal Matters

The Academic Extract

The extract below is taken from
'An Introduction To General Principles And Procedure In English Law'

1. THE ENGLISH LEGAL SYSTEM

1.1 What is Law?

Rules of conduct imposed by the State upon its members and enforced by courts.

Such rules are the law of the land, the object of which is to enforce certain standards of behaviour among citizens in the interests of peace and good order.

1.2 Law can be divided into two main areas:

1.21 **Public Law** - is that part of the law which governs relationships of citizens with the State and of one state with another, eg: Criminal law.

1.22 **Private Law** - is that part of the law of a country which governs relationships of citizens among themselves, eg: Law of Contract.

1.3 **English and Roman Law**

In most parts of Europe and in many other parts of the world, the main systems of law are as follows:

1.31 **English Common Law**

To the foreign observer, probably the most distinct characteristic of English Law is its antiquity and continuity. Most countries on the continent of Europe have a modern legal system which has emerged over the past 200 years or so.

English Law, on the other hand, has an unbroken history which can be followed right back to Ethelbert who was King of Kent from 560-616.

English Law has absorbed only a few rules of Roman Law and today is applied in most parts of the Commonwealth and the USA.

1.32 **Modern Roman Law**

Derived from the ancient laws of the Roman Empire, modernised and applied in France, Spain, Italy, South America and Quebec.

Scottish Law is Roman law based.

1.4 **The Accusatorial Procedure**

(Another distinct characteristic in English Law)

4. **LAW OF CONTRACT**

A contract may be defined as an agreement between 2 or more parties that is binding in law, this means that the agreement generates rights and obligations that may be enforced in the courts. The normal method of enforcement is an action for damages for breach of contract, although in some cases the courts may compel performance by the party in default, eg pay compensation.

4.1 **ELEMENTS OF LAW OF CONTRACT**

There are three basic elements in the formation of a valid simple contract:

- 1 The parties must have reached agreement (offer and acceptance)
- 2 They must intend to be legally bound
- 3 Both parties must have provided valuable consideration.

In addition, the parties must have the legal capacity to Contract and, in some cases, there must be compliance with certain Formalities

A contract may be invalidated by a mistake, or by illegality and where the contract has been induced by misrepresentation, duress or undue influence, the innocent party may have the right to set it aside. To make the contract valid:

- 4.14 **Offer and acceptance** - if a contract is a legally binding agreement, the first question to consider is whether 1 party has made an offer which has been accepted by the other so as to conclude a contract.
- 4.15 **Offer** - an offer may be defined as a statement of willingness to contract on specified terms made with the intention that, if accepted, it shall become a binding contract. A genuine offer must be distinguished from an "Invitation to treat,, ie where a party is merely inviting offers which he/she is then free to ace" or reject.

Exceptions to offer

- 1 **Advertisements** of goods for sale are normally construed as invitations to treat (Fisher & Bell 1861).
 - 2 **Invitations to tender** will not normally amount to an offer to contract with the party who submits the most for a viable tender.
 - 3 **Auction sale** - auctioneers' request for bids is an invitation to treat and each bid is an offer
- 4.16 **Acceptance** - may be defined as an unconditional assent, communicated by the offeree to the offeror, to all terms of the offer, made with the intention of accepting. Whether an acceptance has in fact occurred is ascertained from the behaviour of the parties including any correspondence that has passed between them. The Offeree must accept the exact terms proposed by the offeror unconditionally, ie without introducing any new terms which the offeror has not had the opportunity to consider. The introduction of new terms if refereed to as a counter-offer and its effect in law is to bring to an end the original offer. (Hyde & Wrench 1W),

Acceptance must be communicated to the offeror by the offeree (or someone authorised by the offeree to do so). If the offeror prescribes a particular method of communicating acceptance and makes it clear that no other method will suffice, there may be no contract if a different method of communication is used by the offeree. Unless accepted, an offer has no legal effect and it may be revoked at any time until it is accepted.

- 4.17 **Intention to be legally bound** - the courts have recognised that some agreements, by their very nature, are not intended to be legally binding and in others, the parties may expressly indicate that they do not intend to be contractually bound, eg social agreements. It is recognised that there is a sphere of social arrangement where contractual relationships are not intended, eg to offer a friend a meal is not to court litigation!

In commercial agreements, there is a strong Presumption that the parties intend to be legally bound.

- 4.18 **Consideration** - in addition to offer and acceptance and contractual intent, consideration is an essential element on the formation of any contract (except by deed).

A valuable consideration may consist either in some right, interest, profit or benefit accruing to one party or some detriment, loss or responsibility given, suffered or undertaken by the other party.

It is essential to think of the consideration for the price paid for contract. It must be valuable, ie something that is capable of being valued in terms of money or money's worth, however slight, eg. a father had a son who said that if the father gave him £100 he would stop being a nuisance. The father gave the son £100 but the son did not stop being a nuisance. The father decided to sue the son, however, there was no consideration because what is the value of the son not being a nuisance anymore?

7. MORTGAGES

- 7.1 **Mortgagee** : the lender
Mortgagor : the borrower

A mortgage is a meaning of security: some right or interest in property given to creditor so that in the event of the debtor failing to pay the debt as and when agreed, the creditor may reimburse himself for the amount of debt out of property charged.

For our purposes, there are three types of security:

- 7.11 **pledge or pawn** : a deposit of chattels with a lender as security for repayment of a loan, ie pawn/pawnbroker.
- 7.12 **mortgages** : an assurance to the creditor of the legal or equitable interest in property as security for discharge of a debt, subject to the proviso that, on repayment, the mortgage shall become void. Possession of whatever is mortgaged, ie a home, remains vested in the

mortgagor until the debt is verdue, ie a pledge differs from a mortgage in that the pledge has possession of his security while ownership remains vested in the borrower.

In a mortgage, the mortgagee does not get possession but does obtain a legal or equitable interest in the property subject to the mortgage which he can enforce by selling the property if debt is not paid.

Liens - a right that a creditor may acquire the property of a debtor, either to retain the property until debt is paid or to seek a court order for the sale of property if debt is unpaid.

End of Extracts from The Academic Civil Law Module

The Practical Extract (only extracts from Parts 1, 3, and 6)

A SAS Law in Practice Course

...using extracts from past cases as examples
this part of the programme is entirely practical...

- Part 1** **Assisting Counsel In Civil Trials...** in addition you will learn court procedures and the duties, skills and principles needed in carrying out solicitor's instructions.
- Part 2** **Assisting Counsel In Criminal Trials...** in addition you will learn to take notes the same way barristers are taught and to take statements.
- Part 3** **District Judge's Applications...** in addition you will learn how to analyse a case file, extract relevant information and how to prepare and present a court application to a District Judge sitting in Chambers.
- Part 4** **District Judge's Applications cont...** further examples on how to analyse a case file, extract relevant information and consider options.
- Part 5** **Immigration Hearings/Interviews...** in addition you will learn to attend an immigration interview and ensure your client's reasons and claims are fully presented & recorded.
- Part 6** **Police Station Attendances...** in addition you will learn to attend a police arrest and protect your client's interests during a police interview. (Non indictable offences only).

The SAS Law In Practice Course

TUTOR'S NOTES

(Part 1)

WELCOME

- 1 Welcome onto the practical part of this course.
- 2 The purpose of this part of the programme is twofold. First; it is to provide persons interested in working in the legal field, such as for lawyers as a legal assistant or paralegal, with practical training and insight into the nature of work a person could be called on to carry out during their first weeks and months of work.
- 3 Second; through the training, to give persons confidence to be able to take the skills gained and apply them to other areas, in and out of the work place. For example if a person can confidently interact with lawyers, judges, immigration officers and police officers and not feel intimidated then he or she should be able to deal with almost any situation.

INITIAL EXPLANATIONS

- 4 Before you get into the course material we would like to explain how the course works and some of its features.
- 5 The Tutor's Notes (TN) are to be read in conjunction with the Course Materials (CM), which in the first instance is the Basic Level Part 1 course material, (CM-BL1)

6 This course was designed primarily for students attending a training centre. It has had built into it numerous opportunities for role playing and spontaneous interaction between students and tutor.

7 To compensate for the absence of this in the correspondence course, we have tried to make the tutor's notes as conversational as possible.

8 Within the tutor's notes you will notice a series of boxes. You should pay close attention to the information contained in them.

PAY CLOSE ATTENTION TO WHAT IS WRITTEN IN THE BOXES

9 Boxes headed ACTION, tell you what action should be taken with regard to information contained inside the box. Complete the action before moving on.

10 Boxes headed MEANINGS, tell you the meanings of legal jargon and phraseology.

Changes In Terminology Since April 1999

As a result of a major report by Lord Woolf a large section of County Court and High Court procedures have undergone substantial changes. Some of these changes include a change in terminology. Please see below for some changes in terminology referred to in our training programme:-

Old	New	Comments
Affidavit	Statement of Truth	In some cases affidavits will still be used. However, statements of truth do not need to be sworn, just signed. A solicitor can, with the clients permission, and on the clients understanding of the consequences for knowingly

Ex-parte	Without Notice	stating an untruth, sign the statement of truth on behalf of the client. Ex-parte still used in the High Court for certain cases such as family hearings.
----------	----------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------

Changes In Terminology – continued:

Old	New	Comments
In Chambers	In Private	Pre Lord Woolf most hearings held in Chambers were closed to the public. Only the participants could enter. Now it is not where the hearing is held but its designation that determines who can attend.
Plaintiff	Claimant	The same claim form is now used in both the County Court and the High Court. Also, until further notice the term plaintiff will still be used in certain cases.
Pleadings	Statements of Case	None

11 Boxes headed QUESTIONS, tell you to answer questions and write them on the assessment sheets provided.

12 Boxes headed SUMMARIZE, tell you to summarize the paragraphs highlighted onto pages in your Basic Level 1 course material (CM-BL1). Although the points to be summarized are already in the tutor's notes repeating the main points in your own words will help you remember them and confirm to yourself that you really understand the key thoughts. Remember to send us copies of the pages you summarize on to together with your answer sheets.

13 On completing each course level make sure that you have answered every question before moving on to the next part. When you have completed the whole programme send your answers to our London office, or e-mail your answers to us.

14 The Basic Level Part 1 course material, (CM-BL1), contains the framework, which together with some of the information from the Tutor's Notes (TN), will provide a good practical grounding in working as a paralegal/legal clerk for legal agencies that require paralegals with litigation (court) skills.....

ON THE WAY TO COURT

29 You are now ready to set off to complete your assignment. Between the lawyers office and the court house there are a couple of things you need to make sure that you accomplish. The first thing is, you must 'make sure that you know what is required of you'. The journey to the court is not the time to be doing the crossword, planning your holiday or day dreaming. Your assignment should be clear in your head, because sometimes the minute you step through the court house doors things will happen in a rush and it will be easy to make mistakes.

ACTION

Read page 2 of your CM-BL1 and highlight the words 'make sure you know what is required of you'.

30 This is one of the important principles of good clerking and you should have it firmly imbedded in your mind. The reason being that when a lawyer sends you off on an assignment he or she wants to feel confident that he/she can entrust their clients' welfare into your hands. A particular assignment may seem inconsequential yet in fact may carry a heavy penalty if not carried out properly and in accordance with the lawyer's instructions. We will look at a set of instructions in a little while.

31 After making sure of your instructions, summarize and detail them onto your Paralegal/Clerk Day Sheet. We will look at one later.

32 The second thing you should accomplish before arriving at the court, is make sure you know what the case is all about. To do this you will need to read the following documents from the client's case file:- a/ Brief To Counsel, b/ Client's Affidavit/Statement of Truth, c/ Witness Statements.

MEANINGS

Counsel: Another word for a Barrister.

Brief to Counsel: Lawyers instructions to Counsel, detailing the case explaining what needs to be accomplished at court on the day of the hearing.

Affidavit/Statement of Truth: A sworn statement.

SUMMARIZE

Paragraphs 29 - 32 onto page 2 of your CM-BL1.

33 You may be wondering why Counsel would want to ask you questions about the case. One reason is that sometimes the Counsel in attendance may have just been given the case the previous day and therefore may know very little about the background and lead-up to the hearing. In such a situation, Counsel would be looking to the clerk to provide additional information to what was provided in Counsel's brief.

QUESTIONS

- 14 How will you know which side to sit? Will you a/ try to work out which side is for the claimant and which side is for the defendant. Or b/ wait for Counsel to decide which side he or she is going to sit then sit behind them.

Write your answer on the Assessment Sheet.

70 Consider, if you were not sure where you should be sitting, what about your client? So let your client know that they will be sitting next to you in court. (Also when convenient explain other aspects that may worry them e.g. will they be called on to give evidence? If yes how should they conduct themselves. This is called client care and you should be conscious of displaying it whenever possible.) However, in District Judge's chambers all the parties sit around the table. Sometimes though, seating may be restricted in which case your client will sit next to Counsel and you may find yourself seated away from the table.

71 Another question often on the mind of the client is whether he or she will have to speak in court. Before the hearing check with Counsel on the likelihood of this and let your client know.

SUMMARIZE

Paragraphs 70 and 71 onto page 10 of your CM-BL1.

NOTE TAKING AT CIVIL TRIALS

72 Finally your case is called, you and your client follow Counsel into the courtroom and your client sits down beside you. Again you wonder to yourself 'as it's my first time in court, what things should I include in my notes?'

73 The first thing you must always remember to do is to note down the actual time the hearing starts.

74 With regard to note taking generally, we will be devoting more time to that in part 2 of your Basil Level Course Material, (CM-BM2).

75 However, the following points should be made. When note taking, pay particular attention to when the Judge speaks, whether it be in the form of a question

or statement. Particular attention should be paid when the Judge is summing up or giving directions at the end of the hearing/trial.

MEANINGS

Summing up: A review by the Judge, at the end of the hearing/trial, of the evidence and points of law.

Directions: The Judge explains how matters pertaining to a case should be looked at or proceeded with.

ACTION

At the very top of page 23 write the words 'The lawyer's sheet', and then read through.

86 The Court Attendance Sheet is a very useful document. At a glance, it tells the lawyer the things he most wants to know; such as, 'what did the Judge order and what needs to be done before the next hearing. All the information to fill in this sheet should be in your notes. Simply go over your trial notes and extract the needed information.

ACTION

Re-read the sections marked Judge's order and Any Comments/ Things to do

before next hearing on page 23 of your CM-BL1.

87 In addition, the Court Attendance Sheet provides the lawyer with information needed for costing purposes. Information such as: time when the hearing started; time spent in conference with the client (Counsel with client before/after hearing); time spent waiting; they all carry different rates chargeable to the client or the Legal Aid board.

ACTION

Look over the time notations, e.g. 'Start of Hearing' etc., on page 23 of your CM-BL1.

88 At a glance the Court Attendance Sheet gives the lawyer all the information he really wants to know. It saves him having to plough through pages and pages of notes.

SUMMARIZE

Paragraphs 85-89 onto page 22 of your CM-BL1.

CONCLUSION

ACTION

Review your Tutor's Notes & your CM-BL1. Make sure that you have summarized the allotted pages onto your CM-BL1, then note down 5 things worth remembering onto page 24 of your CM-BL1.

90 Before starting the next part, review all that you have done so far.

The SAS Law In Practice Course

Part 1

COURSE MATERIAL

Basic Level

**Assisting Counsel
in
Civil Cases**

AT THE LAWYERS

Situation

You have collected the file and received your instructions.

ON THE WAY TO COURT

Situation

The first thing you must always do is make sure you know what is required of you.

Then detail your instructions and requirements onto your Outdoor Clerk Day Sheet.

INSTRUCTIONS

TO: JOHN CARTER

FROM: LOUISE

**RE: LINA JANOS - 912242 - WILLESDEN COUNTY COURT
EX PARTE APPLICATION - 1ST DECEMBER 1992 –**

COUNSEL: LORNA TAGLIAVINI

DATE: 30TH NOVEMBER 1992

Your cheque for Stewart and Martin is stapled in an envelope inside Ms Janos' file. Many thanks for that and apologies for the delay on Stewart payment.

The Janos case is a very complex one. I am sending you down to clerk Lorna Tagliavini usually on a District Judge's appointment because of the complexity of the case and the number of things that need to be done.

Could you please attend to the following:-

1. In the blue ring binder file under the Legal Aid section you will find behind the yellow marker labelled 912242 defend 36303 a blue offer of Legal Aid Ms Janos must accept this offer of Legal Aid. If she does not her Legal Aid certificate numbered 1 91 36303B will be revoked and all her Legal Aid will be put in jeopardy. There is already a long history of Legal Aid Board problems on this file and I am absolutely certain that if she does not sign the offer of Legal Aid immediately we will not be able to do anything further for her because we will not be able to get Legal Aid to do so. Please ask Ms Janos' interpreter to explain that she needs to sign the offer of Legal Aid and give it to you. I will send it to the Legal Aid Board. She will then get from Legal Aid Board an instalment payment book and she will need to then start the monthly instalments of £49.50 in the first month followed by 11 instalments of £48.50.

2. Please issue the application. You will find two copies of the notice of application on the top of the file. Counsel already has a copy as do Latima Thobani who act for the Claimant. You may find they charge you a fee and there will be a cheque in the file.

3.....

A LAWYER'S COVERING LETTER

The Chief Clerk
Uxbridge County Court

19 December 1992
Our ref. 12/er/922222

Dear Sir

Trout -v- Trout Case No 922222

We enclose the following:-

1. Notice of Issue of Legal Aid together with Legal Aid certificate no. LA4596859.
2. Application for Injunction, Form N16A, plus copy for service.
3. Affidavit/Statement of Truth in support together with one Exhibit, plus a copy of both for service.

At present, the Respondent is protected by bail conditions which prohibit the Petitioner from living at the former matrimonial home or having contact with the Respondent.

The bail conditions will cease upon the criminal trial, which was due to take place on 4th December 1992. However, the matter will now be heard on 10th February 1993.

It is vital for the Respondent's protection that an Injunction is obtained and served upon the Petitioner before his bail conditions expire on 10th February 1993.

We would therefore ask that our client's application for an Injunction be listed for hearing on a date in the first week of February 1993, between 1st & 5th February inclusive.

The application will be on notice, and we will be arranging for the Petitioner to be personally served with the papers. We expect that the application may well be contested and would give a time estimate of half a day.

Yours faithfully

LEGAL CLERK DAY SHEET

Date: _____ Firm: _____

Time: _____ Lawyer: _____

Counsel: _____ Court: _____

General Instructions Re:

1. Assisting Counsel. []
2. Statement taking. []
3. Filing documents. []
4. Conference in chambers. []
5. Other. []

Main objectives:	Things to do or remember:

REMINDERS

Things worth remembering when clerking...

1/

2/

3/

4/

5/

AT THE COURT HOUSE

Situation

You have arrived at the Court House. The first thing you always do is.

Mr Aravella v Mrs Samal Fatigatora
Central London County Court
Counsel: Linda Peters
Judge: QC White

Court 1

Arrived Court 10.15 am

Hearing started 11.15 am

J Invited CD to open Application

CD App for Adj - Def not here - in Italy-

J Briefly explain situ to me

CD Case a landlord tenant dispute over rent arrears -

claimant seeking possession-

Def has H/benefit problems -

def in Italy due to mother's illness -

def misunderstood directions in previous hearing-

def thought case adj till 22/Feb.-

Housing benefit are holding monies as there appears

some confusion over claim's validity –

It is understood that this money is being held in a frozen account pending

outcome of trial or possible court order money held back covers majority of rent
owed.

J Why is def not able to attend?

- CD Attempts made to contact def. Instructing lawyers have sworn affidavit/statement of truth explaining what has been done to ensure that def present for today's hearing – Here is copy of Lucinda Rowe's sworn statement
- J Your observations
- CP Sir rent continues to accrue at £520 monthly -
next payment due tomorrow 12/1/93, then again on Feb 14 - housing ben ceased
Sept. 92 - last payment from claimant July - when def rec hse/ben there was
short fall £66.00, short fall not paid by def - no payments since July -
Balance never paid -
Bal outstanding £3000+? -
flat occupied by friend -
heating elec, water, all paid by landlord -
Def filed 2 weeks late - no disclosure as yet
- J In the defence, is defence claiming that entitled to relief? -
- CP The claim is that central heating turned off -
- J So counterclaim exists? -

END OF PART 1 EXTRACTS

A SAS Law in Practice Course

Part 3 of 6

(PART 3 EXTRACT)

The SAS Law In Practice Course

Part 3

TUTOR'S NOTES

Advanced Level 1/1

1. Once again, we would like to welcome you to Advanced Level One Part 1 (AL1/1) of our SAS programme. After completing the Basic Level, you should now feel confident and able to assist Counsel at Court in both civil and criminal hearings. You should, in addition, have an understanding and knowledge of what other duties you may be expected to carry out, such as the issuing of applications, conferences, attending prison visits and also be able to take simple statements from witnesses.
2. The purpose of Advanced Level One is to equip you with the necessary skills which will enable you to represent a lawyer in hearings at court, unassisted by counsel. Such cases will be of a fairly simple type; ones that are straight forward, requiring more a knowledge of the facts rather than a knowledge of law. These hearings will be before 'District Judges' in the lower courts, such as a County Court.
3. If sent to attend before a District Judge, the responsibility of putting the case across will be yours. 'You', in effect, will become counsel.
4. As a legal clerk going on a hearing before a District Judge, you will be expected to be familiar enough with the case, that you are able to prepare a short presentation of the facts of it and a simple line of reasoning as to why your application should be granted.
5. Whether the case is won or lost usually depends on :-
 - a) how well prepared the lawyers instructing you are in drafting their case, and

b) how well you, as the clerk, present their case in court.

6. As already mentioned, in most cases, whether an application before a District Judge is successful or not is dependent on how well prepared the lawyer's instructing you are in drafting their case. However, it is true to say that, in reality, when lawyers ask a clerk to cover a District Judge's application, they invariably know that the outcome will be one of the following; the Judge will either grant their request; refuse it; grant it but amend it in some way. The role of a clerk is to put across the lawyer's case to the Judge in the best way possible.

7. After collecting your file from the lawyer's office, make sure you know what is required of you. Read your instructions at the office and ask the lawyer instructing you to clarify anything you do not understand. When leaving the office, and before arriving at the courthouse, always make sure you know what the background to the case is. But more importantly, what is being sought after and what directions you should ask the Judge for if he is not minded to grant your initial request. If there is anything you are not sure of while at court, do not hesitate to give your lawyer (or the instructing lawyer) a phone call.

8. Throughout Advance Level One part 1 we will be looking at some typical applications that you, as a clerk, may be called upon to attend to. The course material will take a look at a charging order application, a pre-trial review and a property re-possession. So let us start with a Charging Order.

CHARGING ORDER ABSOLUTE

9. Let us now take a look at our first type of application: Charging Order Absolute.

10. Before we do this we will define what a Charging Order Absolute is and under what circumstances this type of application would arise.

11. Imagine that your client is a bank who has loaned money to Mr X. The money was loaned unsecured. Mr X has been repaying the loan over the past ten months. Mr X finds that he can no longer keep up with the repayments and has fallen three months in arrears.

MEANINGS

Unsecured loan: A loan given without asking for security or a guarantor.

17. You are now ready to look through your case paperwork, (the file) for the charging order application. The file in this case is made up of pages 2 to 16 of your CM-AL1/1 course material. To help you, page 1 of your CM-AL1/1 contains a brief description of each page in your case file.

ACTION

Read through page 1 of your CM-AL1/1.

18. The description of page 2 refers to an agent lawyer and a instructing lawyer. These terms are often used by lawyers and you will need to understand their usage.

MEANINGS

Instructing lawyer: The lawyer who has taken on a client's case.

Agent lawyer: A lawyer who has been asked to attend a hearing on behalf of the instructing lawyer and to carry out the instructing lawyer's instructions.

ACTION

Read through page 2 of CM-AL1/1

19. Page 2 of your AL1/1 is a simple instruction letter to the agent lawyer; it states the date of the hearing, the time of the hearing, the court, who the parties are and what is sought.

MEANINGS

Instruction letter: Instructions sent by an Instructing lawyer to an agent lawyer as to what has to be accomplished at the hearing.

ACTION

Read through page 11 of your AL1/1.

QUESTIONS

Regarding the Charging Order Nisi that you have just read:

- 13) If it was granted on 1 Sept 92 what took place on 12 April 91? Was it:
- a/ The day the Charging order Nisi was first applied for?
 - b/ The day the claimant got a county court judgement against the defendant?
- 14) Is this Charging Order Nisi also an application? Explain.

Write your answers on the Assessment sheet.

26. The Charging Order Nisi mentioned the affidavit/statement of truth of Mr S Kershaw. At first you may have wondered what role does it play. The next page should answer the question.

ACTION

Read through pages 12-16 of your AL1/1.

QUESTIONS

Having read through the Affidavit/Statement of Truth of Mr S Kershaw:

- 15) Is it an affidavit/statement of truth in support? Explain.
- 16) What makes up the exhibit SK1.
- 17) What does Mr Kershaw say the exhibit shows?

Write your answers on the Assessment sheet.

27. You have now gone through every page in your case file. You should now understand each page and its relationship to each other page. Your next question should be what happens next?

CHARGING ORDER SCRIPT

29. Pages 18 and 19 of your AL1/1 contain a fairly typical script representing the conversation that could take place between you and a District Judge in such a hearing.

ACTION

Read over the script on pages 18 and 19 of your AL1/1. Then, with the help of two friends, assume the role of 'you' and have your friends assume the roles of 'the Judge' and 'the defendant' Mr Rogan, respectively.

QUESTIONS

- 20) Do you think this type of hearing would be beyond your capabilities?
- 21) What were your general observations on the role playing.

Write your answers on the Assessment sheet.

PRE-TRIAL REVIEW/DIRECTION HEARING

30. We will now consider a second type of District Judge's application. That of a pre-trial review. But before you read through your paperwork we will define what is meant by a pre-trial review.

31. A pre-trial review - now more often known as a directions hearing - allows a Judge to give directions as to how the preparation for a hearing/trial should be conducted together with time limits for various stages in the preparation.

32. Since April 1999 new procedures have replaced the old system and consequently Judges now automatically direct and manage cases. Judges will allocate a case to a Fast Track if it is a straight forward matter, a Slow Track if it is a complex matter, or a Multi Track if aspects of the case fall into the above two categories.

ACTION

Read through AL1/1 pages 20 - 22.

35. Due to the fact that she stopped paying her monthly bill, the claimant/client decided to take her to court. Anticipating that the defendant might come up with

QUESTIONS

Having read over your instruction letter on pages 21 and 22:-

- 23) What will you be asking the Judge for if the defendant does not turn up?
- 24) If the defendant is present at court, what will you ask the Judge for?
- 25) Under what circumstances would you request that the Judge grant the directions as listed on page 21?

Write your answers on the Assessment sheet.

36. Having read over the script, you will notice that the defendant was not in court and consequently, the Judge gave Judgement in the client's favour. You will also notice that, just as in the Charging Order script, the case before the Judge lasted just a couple of minutes. This is pretty standard when the defendant fails to attend.

REPOSSESSIONS

37. The last type of District Judge's application that we are going to look at is the repossession of a property.

ACTION

Read through AL1/1 pages 26 - 28.

38. Having read through your instruction letter, you will notice that it is full of figures and directions. This is an example of a more complicated instruction letter and you will therefore need to spend more time understanding what is required of you.

CONCLUSION

43. Before sending off your Assessment Sheets, review all that you have done so far.

The SAS Law In Practice

Part 3

COURSE MATERIAL

Advanced Level 1/1

**District Judge's Applications
in
Chambers**

CHARGING ORDER ABSOLUTE

Situation

**You have received the paperwork for your case.
First thing you always do is read it through
and make sure you know what is required of you.**

Let us take a look at an example.

Page

2. Instruction letter to Agent (lawyer) appointed to represent instructing lawyer's client.
3. Instructing lawyer's letter showing what has been lodged at court.
- 4,5. Affidavit/Statement of Truth from authorised representative of the instructing lawyer. Detailing under oath the actions taken that are relevant to the application/case.
- 6-10 Copy letters sent by instructing lawyer to persons who have a legal entitlement to know about the application/case.
11. A copy of the Charging Order Nisi.
- 12-14. A copy of the affidavit/statement of truth sworn by a duly authorised member of the Bank detailing why an application for a Charging Order Nisi should be granted.
- 15,16. Office copy of Land Registry Property Register showing details of a property, such as who owns it and who has a monetary interest in it.

AGENCY INSTRUCTION SHEET/LETTER

From

Haley Handforth LLB (Hons) LAWYER
46 Peterloo Street, Manchester M1 4LX
Tel 061 211 7123 Fax 061 211 8945

Court: Kingston-Upon-Thames

Case No: 1010495

Date of Hearing: 26 October 92

Time of Hearing: 12.00

Parties: Barclays Bank PLC v Mr Thomas Rogan

Our Client: Barclays Bank

Client attending?: No

Type of Hearing: Charging Order Absolute

Enclosures?: See file

Specific Instructions: Obtain Charging Order; Obtain Costs £134

IN THE KINGSTON UPON THAMES COUNTY COURT

Case Number 1010495

BETWEEN

BARCLAYS BANK PLC

PLAINTIFF

AND

MR THOMAS ROGAN

DEFENDANT

This is the Exhibit marked 'VR 1' referred to in the Affidavit/Statement of Truth of Vivienne Richardson sworn before me this day of
1992.

BEFORE ME:

Officer of the court appointed by the Judge to take Affidavit/Statement of Truths.

Haley Handforth LLB (Hons) LAWYER
46 Peterloo Street, Manchester M1 4LX
Tel 061 2211 7123 Fax 061 2211 8945

Mr T Rogan
567 St Peter's Avenue
Worcester Park
Surrey
KT4

Our reference 207/CO/SW/7002535

Your reference

24 September 1992

Dear Sir

BARCLAYS BANK PLC V YOURSELF
COUNTY COURT KINGSTON UPON THAMES
CASE NUMBER 1010495

We enclose by way of service upon you documents relating to our clients' application for a Charging Order Absolute in respect of the property addressed as above, which has been listed for a Hearing in the Kingston Upon Thames County Court on 26 October 1992 at 12.00 noon.

Yours faithfully

H Handforth
(Lawyer)

Enclosure

CHARGING ORDER NISI

Claimant

County Court

Barclays Bank plc.

Kingston upon Thames

To the defendant

Case Number

Mr T Rogan
999a St Phillips Avenue,
Surrey, KT1

1010495

On the application of the Claimant
and on reading the affidavit/statement of truth of Mr S Kershaw
it appears that by a judgement (or order) made on the 12th day of April 1991
in this court the defendant Mr T Rogan was ordered to pay to the claimant the sum of £4049.20 of
which £4049.20 remains due and unpaid, and that the defendant has a beneficial interest in the asset
specified in the schedule below

It is ordered that unless sufficient reasons to the contrary are shown before the District Judge
at the Kingston upon Thames County Court on the 26th day of October 1992 at 12 o'clock,
when this matter will be further considered, the defendant's beneficial interest in the asset shall and it
is ordered that in the meantime it do, stand charged with the payment of £4049.20 including any
interest due on the judgement together with the costs of this application

Dated 1st September 1992

Take Notice: To the defendant

If you do not attend at the time and place shown above the court will make an order that it
thinks fit

Schedule:

999a St. Phillips Avenue, Surrey, KT1

IN THE KINGSTON UPON THAMES COUNTY COURT

Case Number 1010495

BETWEEN

BARCLAYS BANK PLC

PLAINTIFF

AND

MR THOMAS ROGAN

DEFENDANT

I Mr S Kershaw
Deputy Manager of Barclays Bank Recovery Unit
P O Box 543, Manchester, M15

make oath and say as follows;-

1. That I am duly authorised by the claimant company to make this affidavit/statement of truth on their behalf, and do so from facts within my own knowledge or from studying the claimant company's files.
2. That on the 12th day of April 1991 the claimant obtained Judgement in the above County Court against the Defendant Mr Thomas Rogan for £3933.45 and Costs of £115.75.
3. That the said Judgement was ordered to be paid by monthly instalments and that the instalments are in arrears.
4. That no payments have been made by or on behalf of the Defendant since the date of Judgement and that therefore the sum of £4049.20. remains due and outstanding under the Order herein. Unsatisfied Warrant Costs of £16.70. also remain outstanding.
5. That the claimant hereby applies to this Honourable Court for an Order Under Section 1, Charging Orders Act 1979 imposing a charge on the Defendant's beneficial interest in property situate and known as St Peter's Avenue, Worcester Park, Surrey, KT4 and I believe the defendant to be resident at this address.

cont.

CHARGING ORDER SCRIPT

Situation

You have been ushered into the court and are before the District Judge. Often in such cases there will be nobody from the other side. You may be the only person before the District Judge.

However in this example we are going to introduce the other side. The person is representing himself.

Judge "Yes what can I do for you?"

You "Sir this is an application for a charging order Nisi to be made absolute and I represent the claimant"

Judge (Looks through papers) "Yes I can see an affidavit/statement of truth dated 16 October"

You "Yes sir the affidavit/statement of truth of Vivienne Richardson sworn on the 16 Oct showing evidence of service... The debt of £4049.20 is shown on the charging order Nisi, pronounced 1 Sept 92 and based on the affidavit/statement of truth of Mr Kershaw"

Judge "What do you have to say about this Mr Rogan?"

Rogan "Well your Honour I am willing to pay it off bit by bit I was out of work for a time but now I'm working I can pay it off."

Judge "Well Mr Rogan I am not being asked to make an order regarding how the debt is paid off...Ms Smith or should say the bank are asking that if ever you sell your property that they get their money...I shouldn't worry that they will force you to sell, that is not their intention I'm sure. They merely want to protect their money."

Rogan "I understand your Honour and like I said I'm willing to pay off the money"

The claim has been listed for Pre-Trial-Review. If the Defendant fails to attend thereon, please endeavour to obtain Judgement in our favour.

If the District Judge is not minded to enter Judgement please request that the following order for directions be made where appropriate:-

1. The defendant do file and serve a full defence within fourteen days, failing which he be debarred from defending and the Claimant be at liberty to enter Judgement for the sum claimed plus costs.
2. Mutual disclosure by lists within fourteen days thereafter, inspection seven days thereafter.
3. The action be fixed for trial upon the Claimant's Certificate of Readiness with a time estimate.
4. Costs in the cause.

We confirm that we will be responsible for your reasonable fees, and if you have any queries in respect of this matter, please do not hesitate to contact this office. It would also be appreciated if you could return all our papers when you are informing ourselves of the outcome of the Hearing.

Yours faithfully

For The Manager
Group Litigation Department

Pre Trial Review cont...

- You "Except what is in my instructions; namely that under the Policy Cover Mrs Barren was the main Card Holder and her husband was purely an authorised user"
- Judge "Well since the defendant is not here I will give judgement ...do you have details of the claim?"
- You "Sir I was hoping you would have that, as I was not provided with a copy"
- Judge "I do not"
- You "I do have this though sir which may be useful"
- Judge "So you want judgement for £1160.50?"
- You "Yes sir plus it says £0.477 per day..unfortunately I do not know how many days"
- Judge "Well I give you judgement for £1160.50. I do not give you anything else, except costs...What amount?"
- You "I'm sorry sir no instructions"
- Judge "Okay costs according to scale and judgement payable within 14 days"
- You "Thank you sir. I'm sorry I could not have been more helpful"
- Judge "That's okay - Good day."

REPOSSESSION

Situation

You have received the paperwork for your case. First thing you always do is read it through and make sure you know what is required of you.

Let us take a look at an example.

Page

27, 28

Agency instruction letter.

LAWYERS

To the Chelsea Building Society

Our Ref: MISS L GUEST

Your Ref: LG/LMV.HERCULES

22 June 1993

Dear Sirs

RE: CHELSEA BUILDING SOCIETY -v- Mr HERCULES
AGENCY - SHOREDITCH COUNTY COURT
30TH JUNE 1993 AT 11.40AM

Further to our recent telephone conversation when you kindly agreed to act as my Agents in connection with the above, I now enclose the following Agency Papers:

Copy Particulars of Claim/Statement of Claim
Copy Affidavit/Statement of Truth
Charge Certificate
Copy Correspondence
Form 106 Search
Copy Plaintiff Note
Schedule of Payments Due and Received 1992-1993 (TO DATE)

Monthly instalments of £362.18 are due to the Society on the 25th day of each month. The Arrears at today's date amount to £3338.31 the last payment to the credit of the mortgage account was £239.88 on the 4th June 1993.

I confirm that a copy of the Affidavit/Statement of Truth has been served on the Defendant and the original filed at Court by letters dated 21st June 1993.

Please obtain an:- Order for possession in 28 days.

Alternatively if the Court is minded to make a Suspended Possession Order the terms of suspension must provide for payment of current monthly instalments together with an additional payment of £155.00, to enable discharge of the arrears within no more than 18 months, with liberty for the society to apply for the review in 3 months.

END OF PART 3 EXTRACTS

A SAS Law in Practice Course

Part 6 of 6

(PART 6 EXTRACT)

The SAS Law In Practice Course

Part 6

TUTOR'S NOTES

Advanced Level 3

1 Welcome to Police Station attendances, Advanced Level 3 of our SAS Programme,.

2 You may be aware that attendance at police stations and giving legal advice to detained clients is an increasingly specialised area of paralegal work.

3 Lawyers will predominantly only use legal clerks who have been trained and who are skilled at giving quality advice to suspects at a police station.

4 When a suspect is arrested and detained at a police station the suspect is entitled by law to free legal advice from either (a) a duty lawyer, or (b) a local firm of lawyers of their choice.

5 If a suspect obtains/receives advice from either of the above (duty lawyer or legal adviser) then his legal adviser will ensure that a suspect is made aware of their legal rights and that any interviews that take place are done in a fair and agreeable manner with the suspect's welfare and best interests in view.

6 On the Advanced Level 3 of the SAS Training Programme you will gain some understanding of what your role is when attending police stations as a legal adviser and also gain a knowledge of the powers entrusted to you by virtue of your role.

THE CUSTODY AREA/CHARGE AREA

ACTION

Read page 5 of your CM-AL3

12 In page 5 you were referred to Appendix 1a which is about the Custody Record. This is made and overseen by the Custody Officer. It is supposed to be an accurate and detailed record of all the things that happen to an arrested person held in custody. Ask to look at the custody record if you feel you have not been given a full enough picture by the Custody Officer and or the Investigating Officer.

13 We would like to stress how important it is that you spend sufficient time with your client in a private interview before any formal interviews by the police take place.

14 Within reason you may take as long as you like so please make sure that you ascertain as much information from your client as possible as regards his/her version of the events. Also please make sure that you explain to him/her why they are being detained in the police station and what exactly the police are likely to question him/her about.

QUESTIONS

Re page 5 of your CM-AL3

- 12 How easy do you think it will be to get information out of the police?
Explain your answer.
- 13 When introducing yourself to your client, why take your time and why make it clear that you are on his side?

Write your answers on the Answer sheet.

ADVISING THE CLIENT WHAT TO SAY

ACTION

Read page 6 of your CM-AL3

17 As mentioned in paragraph 4 your client has the right to stop the interview. This can be a great aid in reducing the pressures that could have built up within them to such an extent that they feel like blurting out something that could be detrimental to their situation. So make sure he or she is aware of this right.

ACTION

Re page 6 of your CM-AL3

Think of 6 questions. 3 should be innocent and 3 incriminating e.g. would you like a cup of water? (innocent). do you own a gun? (incriminating). Write them down.

Get a friend to ask you the 6 questions. Alternate an innocent question with an incriminating one. a/ Answer all the questions with the 'no comment' approach first and then b/ repeat the exercise this time answer innocent questions but offer a no comment to the incriminating ones.

QUESTION

Re the above action:

If you were a juror what impression would you infer from a/ and b/?

Write your answers on the Answer Sheets.

THE INTERVIEW

ACTION

Read page 7 of your CM-AL3

The SAS Law In Practice Course

Part 6

COURSE MATERIAL

Advanced Level 3

**Attending A Police Station Interview
(non indictable offences)**

BEFORE ATTENDING A POLICE STATION

Situation **Because of the enormous responsibility placed upon you when attending to a suspect at a police station, it is even more vital that you know what is required of you.**

1. The purpose of advise and assistance in the police station is to maintain the balance between the powers of the police when investigating whether a criminal offence has been committed and the protection of the rights of the suspect.

2. The presence of a lawyer or his assistant at the police station is to relieve the pressures which are on the suspect and which can induce false confessions and cause a miscarriage of justice.

3. The initial advice given to a suspect at the police station can have a material effect on whether proceedings are brought and, if they are, their outcome.

- 4.

- 5.

See Appendix 1a & 1b (pages 10 & 11)

BEFORE ATTENDING A POLICE STATION cont...

The lawyer's/representative's role

- 1.
2. Ensuring that the client understands the suspected allegations and the criminal offences which are under investigation.
- 3.
4. Being present at an interview to ensure that it is conducted fairly and to make notes as an independent record. **See Appendix 1c (page 12)**
5. Explaining the powers available to the police in retaining property which was on the suspect at the time of arrest or was found during the search of his house/car.
6. Making representations to the Custody Officer for bail.
- 7.
8. If client not given bail, discuss with client possible sureties.
- 9.

BEFORE ATTENDING A POLICE STATION cont...

You will need to make a record of:

1. Arrival and departure times
2. Information given by the police and the time given.
3. .
4. Time and details of any representations.
5. .

Taking instructions from lawyers

Upon receiving the initial call from your instructing lawyer, ascertain and record the following details:

1. Name of client
2. Name, address and telephone number of police station where suspect is being detained.
3. .
4. Name of Investigating Officer and Custody Officer
5. .
6. .

END OF PART 6 EXTRACT