

# New South Wales Civil Practice & Procedure Practice Test (Sample)

## Study Guide



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## **Questions**

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- 1. What is the role of the court when a defendant applies to dismiss a case for 'no case to answer'?**
  - A. The court must reject all evidence**
  - B. The court must assess whether the plaintiff could support their claim**
  - C. The court should schedule a new trial date**
  - D. The court will automatically rule in favor of the defendant**
- 2. Which rule outlines the general principles regarding Calderbank offers?**
  - A. UCPR 20.26**
  - B. UCPR 18.1**
  - C. UCPR 42.17**
  - D. UCPR 30.4**
- 3. A notice of motion is required to apply for what type of order during the appeal process?**
  - A. A stay application**
  - B. A writ of execution**
  - C. A court review**
  - D. A garnishee order**
- 4. According to Rule 42.8, what type of costs are incurred when unnecessarily putting a party to proof?**
  - A. Ordinary costs only**
  - B. Indemnity costs**
  - C. No costs are awarded**
  - D. Full costs based on mediation fees**
- 5. When should expert reports be disclosed to other active parties?**
  - A. At least 14 days before the hearing**
  - B. Before the hearing in which it will be used, or it will be inadmissible**
  - C. Within 7 days after being prepared**
  - D. Only upon the court's request**

- 6. How does the timing of an application for amendment influence the court's decision?**
- A. Late applications are never allowed**
  - B. Late applications may cause undue prejudice**
  - C. Timing makes no difference at all**
  - D. All applications will be accepted if well argued**
- 7. In the context of mediation, what is the parties' obligation under Section 27 of the CPA?**
- A. To ensure mediation is conducted in bad faith**
  - B. To participate in mediation procedures**
  - C. To avoid any form of settlement discussions**
  - D. To keep mediation outcomes confidential**
- 8. What does UCPR Rule 5.4 allow with respect to discovery from non-parties?**
- A. Discovery is limited to information already presented in court**
  - B. Discovery is permitted for documents relevant to proceedings**
  - C. Discovery from non-parties is strictly prohibited**
  - D. Discovery requires a jury's approval**
- 9. How many clear days must a notice of motion be served before the hearing?**
- A. Five clear days**
  - B. Two clear days**
  - C. Three clear days**
  - D. One clear day**
- 10. What must a defendant do to set aside a default judgment?**
- A. Provide a copy of the previous judgment**
  - B. Make a notice of motion with a draft defense attached**
  - C. Propose a new settlement to the court**
  - D. File a claim against the plaintiff**

## **Answers**

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- 1. B**
- 2. C**
- 3. A**
- 4. B**
- 5. B**
- 6. B**
- 7. B**
- 8. B**
- 9. C**
- 10. B**

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## **Explanations**

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**1. What is the role of the court when a defendant applies to dismiss a case for 'no case to answer'?**

**A. The court must reject all evidence**

**B. The court must assess whether the plaintiff could support their claim**

**C. The court should schedule a new trial date**

**D. The court will automatically rule in favor of the defendant**

The role of the court when a defendant applies to dismiss a case for 'no case to answer' is to assess whether the plaintiff could support their claim. In this context, the court evaluates the evidence that has been presented by the plaintiff to determine if there is sufficient basis for the case to proceed. This process typically occurs after the plaintiff has completed their presentation of evidence in the trial. This assessment is crucial because it helps to ensure that cases are only allowed to proceed to trial if there is a reasonable chance that the plaintiff's claims can be substantiated, thus preventing frivolous or unmeritorious lawsuits from advancing further. The court does not dismiss evidence outright nor does it decide the case in favor of the defendant without careful consideration of the presented claims. The decision focuses on whether the plaintiff has established a prima facie case that warrants further examination by either the judge or the jury.

**2. Which rule outlines the general principles regarding Calderbank offers?**

**A. UCPR 20.26**

**B. UCPR 18.1**

**C. UCPR 42.17**

**D. UCPR 30.4**

The general principles regarding Calderbank offers are outlined in UCPR 42.17. Calderbank offers refer to informal settlement offers made without prejudice, meaning they cannot be referenced in court during the trial. The rule emphasizes the importance of each party's conduct in relation to making and responding to such offers and discusses the implications of these offers on costs if the case proceeds to trial. This includes considerations of whether a party's refusal to accept a reasonable settlement offer made in a Calderbank letter could influence the court's decision on the awarding of costs. Understanding this specific rule is essential for practitioners in New South Wales, as it plays a pivotal role in encouraging parties to settle disputes amicably, rather than proceeding to trial, while also providing a mechanism to address costs in light of pre-trial negotiations. Other options, while they pertain to different aspects of civil procedure, do not specifically address the principles governing Calderbank offers.

**3. A notice of motion is required to apply for what type of order during the appeal process?**

**A. A stay application**

**B. A writ of execution**

**C. A court review**

**D. A garnishee order**

A notice of motion is necessary in the appeal process to formally request a stay application. A stay application is a legal request to halt the enforcement or operation of a lower court's order while an appeal is pending. This is critical because it allows the party seeking the stay to maintain the status quo, preventing potential irreparable harm during the appeal. In the context of civil proceedings, filing a notice of motion serves to inform the court and all parties involved about the specific relief sought and outlines the grounds for the application. The procedural nature of a stay application requires adherence to the correct legal framework, making the notice of motion a vital component in the appeal process. The other options, such as a writ of execution, a court review, and a garnishee order, do not typically require a notice of motion during the appeal process. Instead, these actions usually follow different procedures that do not directly involve the appeal mechanism, thus highlighting why the stay application is the correct focus in this context.

**4. According to Rule 42.8, what type of costs are incurred when unnecessarily putting a party to proof?**

**A. Ordinary costs only**

**B. Indemnity costs**

**C. No costs are awarded**

**D. Full costs based on mediation fees**

The assertion that indemnity costs are incurred when unnecessarily putting a party to proof aligns with the intention of Rule 42.8 in the context of civil procedure in New South Wales. This rule is designed to discourage parties from engaging in conduct that unnecessarily prolongs proceedings or forces the opposing party to provide evidence on issues that could have been resolved expediently. Indemnity costs are a type of legal cost order that goes beyond ordinary costs and typically reflects that one party has acted unreasonably or in bad faith. When a party unnecessarily compels another to prove a point in litigation—rather than agreeing to matters which should have been established without dispute—this is seen as an improper tactic. Such behavior not only extends legal proceedings but incurs additional costs for the opposing party, warranting a more substantial cost recovery under the principle of indemnity. This principle is intended to encourage cooperation and efficiency in the litigation process, ensuring that parties act responsibly and do not engage in unnecessary disputes over clear or agreed matters. Indemnity costs can effectively penalize the party that compounded the litigation burden, reflecting the seriousness of unnecessarily putting a party to proof.

**5. When should expert reports be disclosed to other active parties?**

- A. At least 14 days before the hearing**
- B. Before the hearing in which it will be used, or it will be inadmissible**
- C. Within 7 days after being prepared**
- D. Only upon the court's request**

The correct answer is that expert reports must be disclosed before the hearing in which they will be used; otherwise, they are likely to be deemed inadmissible. This requirement ensures that all parties have a fair opportunity to examine and respond to the evidence presented, maintaining the principles of procedural fairness and transparency within the legal process. In the context of civil procedure, timely disclosure of expert reports allows other parties to prepare adequately for trial, including the opportunity to challenge the credibility and reliability of the expert's conclusions. If a party fails to disclose an expert report prior to the hearing, the court may refuse to allow the report to be entered into evidence, thus preventing the party from relying on that expert's testimony during the proceedings. Other options suggest varying approaches to timeliness and the manner of disclosure. Some imply flexibility or conditions that do not align with the established requirements of procedural fairness in civil litigation. Properly adhered timelines are essential for effective case management and ensuring that the judicial process is efficient and fair for all parties involved.

**6. How does the timing of an application for amendment influence the court's decision?**

- A. Late applications are never allowed**
- B. Late applications may cause undue prejudice**
- C. Timing makes no difference at all**
- D. All applications will be accepted if well argued**

The timing of an application for amendment significantly influences the court's decision primarily because late applications can lead to undue prejudice for the other party involved in the case. Courts are particularly attentive to the fairness of proceedings, and allowing amendments at a late stage could disrupt the flow of the trial, impede the other party's ability to prepare their case, or delay the resolution of the dispute. When an application for amendment is made, the court will consider whether the timing of the application will adversely affect the fairness of the proceedings. If an amendment is made too close to a hearing or trial, it may not give the other party ample opportunity to respond adequately, which can lead to an uneven playing field. Therefore, the court places significant weight on the potential ramifications of allowing a late application. Timeliness assures that both parties can adequately prepare and present their cases, support their arguments with appropriate evidence, and avoid surprises that might undermine the judicial process. Hence, the focus on undue prejudice reflects a key principle in civil procedure concerning the balance of justice and fairness for all parties involved.

**7. In the context of mediation, what is the parties' obligation under Section 27 of the CPA?**

- A. To ensure mediation is conducted in bad faith**
- B. To participate in mediation procedures**
- C. To avoid any form of settlement discussions**
- D. To keep mediation outcomes confidential**

In the context of mediation, Section 27 of the Civil Procedure Act (CPA) establishes that parties have an obligation to participate in mediation procedures. This requirement underscores the importance of collaboration and good faith engagement during the mediation process, which is intended to facilitate a resolution of the dispute outside of court. The premise behind this obligation is that mediation serves as a means to encourage the parties to find mutually acceptable solutions. When parties are required to actively participate, it helps in the effective administration of justice by potentially reducing the number of cases that need to be resolved in court, thereby easing the burden on the judicial system. Participation implies engaging openly with the mediator and the other parties involved, which can lead to constructive dialogue and a higher likelihood of reaching a settlement. This responsibility is critical because mediation is designed to be a collaborative process, and the success of mediation heavily relies on the willingness and effort of both parties to negotiate sincerely. In contrast, the alternatives provided do not align with the spirit of mediation as intended by the CPA. Engaging in bad faith, avoiding settlement discussions, or disregarding confidentiality would undermine the process and its objectives, which are centered around achieving constructive resolutions through cooperative discussion.

**8. What does UCPR Rule 5.4 allow with respect to discovery from non-parties?**

- A. Discovery is limited to information already presented in court**
- B. Discovery is permitted for documents relevant to proceedings**
- C. Discovery from non-parties is strictly prohibited**
- D. Discovery requires a jury's approval**

UCPR Rule 5.4 provides a framework within which a party may seek discovery of documents from non-parties, allowing for documents that are relevant to the proceedings. This rule facilitates the acquisition of potential evidence that may not be directly held by the parties involved in the lawsuit but could still significantly impact the case. The aim is to ensure that all relevant information is accessible to the parties, enhancing the fairness and thoroughness of the legal proceedings. By permitting the discovery of such documents, the rule enables a more comprehensive understanding of the issues at hand, which can aid in the preparation of a case and support the pursuit of justice. This approach leverages the idea that information relevant to a case is not confined solely to the parties engaged in the litigation but can also be found in external sources. Consequently, the correct interpretation of this rule contributes to the principles of efficient case management and the pursuit of relevant evidence in civil matters.

**9. How many clear days must a notice of motion be served before the hearing?**

- A. Five clear days**
- B. Two clear days**
- C. Three clear days**
- D. One clear day**

The requirement for serving a notice of motion in New South Wales is outlined in the Uniform Civil Procedure Rules. Specifically, for most motions, the rule stipulates that the notice must be served at least three clear days before the scheduled hearing date. This ensures that all parties have sufficient time to prepare for the hearing and consider the contents of the notice. Choosing the option specifying three clear days aligns with both procedural fairness and the principle of giving parties adequate notice so they can prepare their responses or arguments effectively. Thus, three clear days is the standard timeframe that has been established in practice and procedure in New South Wales civil law, making it the correct response in this context.

**10. What must a defendant do to set aside a default judgment?**

- A. Provide a copy of the previous judgment**
- B. Make a notice of motion with a draft defense attached**
- C. Propose a new settlement to the court**
- D. File a claim against the plaintiff**

To set aside a default judgment, the defendant must make a notice of motion accompanied by a draft defense. This process is crucial because it allows the court to assess the validity of the original judgment and the defendant's reasons for failing to respond initially. By attaching a draft defense, the defendant demonstrates to the court what their response would have been had they not defaulted, which is essential for the court's consideration. This approach ensures that the legal process is upheld fairly and that the defendant has the opportunity to present their case. The requirement of a notice of motion is particularly vital, as it formally initiates the process of seeking relief from the judgment. This legal procedure also allows the plaintiff an opportunity to respond and maintain the integrity of judicial proceedings. Other actions, such as providing a copy of the previous judgment or proposing a settlement, do not fulfill the requirements set by the court for setting aside a default judgment. Additionally, filing a claim against the plaintiff isn't a necessary step in this context and does not address the primary goal of challenging the default judgment itself.