



# **Master (Chancery) 2014**

## **Shortlisting Assessment Test**

### **Question Booklet with Answer Scores for Feedback and Publication**

**Shortlisting Test 15 May 2014**

This test was a multiple choice test.

The test contained **8** questions. Applicants were allowed 1 hour and 15 minutes to complete the test.

There were 40 marks available in total. Questions 1-7 were worth between 4 and 5 marks and question 8 was worth 10 marks.

Questions 1-7 were designed to assess Knowledge and Experience i). Question 8 was designed to assess Skills iii).

## Question 1

D is defendant to a mortgage possession action, by B Bank for possession of his house because he has fallen into mortgage arrears. D purchased the property in 2007 for £400,000 with the assistance of a 25 year term capital and interest repayment mortgage of £350,000. He changed jobs in 2009 but unfortunately his new employer went into liquidation in 2010 and he became unemployed with no redundancy entitlement. B Bank permitted him to make interest only payments which were largely covered by support for mortgage instalments for two years, but upon their insistence that D revert to full repayments of capital and interest significant arrears have accrued. The outstanding balance including arrears of £20,000 is £405,000. D has placed the house on the market with an asking price of £325,000 which reflects its current valuation according to the selling agent. He has provided a Mallett letter and asks the court to suspend possession for the purposes of facilitating the sale. B Bank resists this on the basis that D has not demonstrated that there are funds available to make up the shortfall on a sale. D has been offered new employment subject to satisfying certain checks and confirmation of salary and likely commission with a provisional start date about 6 weeks hence, which may enable him to resume payment of the normal monthly instalments of £2500 with a modest amount of about £100 towards the arrears.

### Do you:

- a). Make an order for possession suspended for 6 months to permit time for a sale, with review at 3 months to assess how the sale is proceeding and whether the asking price ought to be reduced. (0 marks awarded)
- b). Make an order for possession at this stage but suspend it on terms as to payment of the monthly instalment plus an amount towards clearing the arrears, and with leave for the plaintiff to return to court within 4 months without need for a summons in the event of default. (1 mark awarded)
- c). Adjourn the case for about 3 months to allow time for D to be confirmed in his new post and to submit an updated financial statement clarifying his precise salary vouched by a letter from his employer and his capacity to pay the monthly instalments and to make a proposal for clearing the arrears, with the option of keeping the house on the market in the meantime. (4 marks awarded)
- d). Adjourn the case for about 3 months: firstly to allow time for D to be confirmed in his new post and to submit an updated financial statement clarifying his precise salary vouched by a letter from his employer, and his capacity to pay the monthly instalments and to make a proposal for clearing the arrears with the house remaining on the market in the meantime; and secondly to facilitate a shortfall sale. (2 marks awarded)
- e). Make a 28 day order for possession. (0 marks awarded)

## Question 2

You are hearing a very late application for a stay of enforcement of an order for possession of a farm based on arrears of instalments on a commercial loan secured by a registered charge in favour of the plaintiff bank. There is no dwelling involved, but seven jobs of employees in a milk processing unit on the land will be lost if the eviction proceeds. The borrower has very recently entered into an agreement subject to contract to sell other land which is mortgage-free and appears from his affidavit and the estate agent's particulars to be likely to enable him to discharge the arrears of instalments in full and to afford the contractual monthly instalments well into the future. It is thought likely that the purchaser will obtain his mortgage offer and sign the contract next week and that, assuming his mortgage plans are successful and the transaction proceeds, it could be completed within 6 weeks. The bank's counsel contends that the court only has a common law discretion to stay possession of commercial premises such as farmland for a short time where no dwelling is involved where it is satisfied that there is a genuine prospect that the entire mortgage debt – not just the arrears of instalments – will be paid in full. He also emphasises that the farmland and milk processing unit the subject of the application are in £60,000 to £80,000 of negative equity and there is an express term in the mortgage contract that the lender will be entitled to possession if the borrower defaults for 14 days and there are 20 monthly instalments in arrears. Moreover, he argues that if the eviction is cancelled but the sale does not complete his client will be seriously prejudiced by the delay. Although invited to address these submissions the defendant's solicitor does not do so but simply emphasises the human cost, including that to the local economy, should the eviction proceed and that there is a "strong chance" of the default in paying mortgage instalments being addressed in full in a short time. The eviction is scheduled for tomorrow. You know from previous experience that cancellation at short notice of an eviction in respect of farmland is expensive (£5,000 and upwards) to the public purse.

### Would you:

- a). Adjourn for 6 weeks and impose a stay of enforcement pending further order, directing a supplemental affidavit from the defendant within 3 to 5 weeks as to progress in the sale. (3 marks awarded)
- b). Adjourn for about 3 or 4 weeks and impose a stay of enforcement pending further order, directing that the defendant's solicitors send a copy of the contract for sale to the plaintiff's solicitors if and as soon as it has been signed by the purchaser and accepted by the defendant. (4 marks awarded)
- c). Refuse the defendant's application for a stay. (0 marks awarded)
- d). Refuse the defendant's application to stay enforcement save inasmuch as you impose a stay for the period during which, according to Order 58 rule 1 of the Rules of the Court of Judicature (NI) 1980 any notice of appeal must be filed (i.e. 5 clear days from the date of the refusal). (0 marks awarded)
- e). Adjourn for 3 or 4 weeks for review as to progress of sale and impose a stay of enforcement until that date. (1 mark awarded)

### Question 3

You have a contested application to set aside a default judgment listed before you on 30.04.2014. The judgment had been entered by the plaintiff on 20.12.2012 after the defendant failed to enter an appearance to a writ of summons issued on 19.04.2010 and served by first class post delivered to the defendant's home address on 18.04.2011. The plaintiff's cause of action arose on 10.04.2007 when the plaintiff, a plumber, fell from a ladder and suffered personal injuries, at a worksite on which he was employed by the defendant, who was a building contractor. In his affidavit grounding the application the defendant said that he had taken no action in response to the writ of summons because he was experiencing considerable personal turmoil as a result of the impact on his business of the crash in the property market and because he was involved in an acrimonious marital breakdown. He also disregarded the default judgment when it was served on him on 08.01.2013 and only eventually took action when he received a Notice of Appointment for assessment of damages listed for 20.05.2013. Just two days before the hearing he instructed a solicitor to attend at the hearing to request adjournment to allow him to issue an application to set aside the default judgment on the grounds that he had a meritorious defence. The master allowed the adjournment but directed that the defendant was required to issue the summons in the application to set aside within 21 days. In fact the defendant did not attend with his solicitor in order to give full instructions and put them in funds to enable them to proceed with the application, for a further 3 months, so the summons was not issued until 31.10.2013. In his grounding affidavit the defendant explained the delay in issuing the application by reference to unspecified health problems, his continuing matrimonial dispute and difficulty raising the funds for his solicitor, although in a replying affidavit the plaintiff stated that the defendant's ancillary relief proceedings had ended in September 2012. Dealing with the facts relating to the way in which the plaintiff sustained injury, he alleged that he was not in fact the employer of the plaintiff, who was an independent contractor who fell from a defective ladder which he had himself brought onto the site without the defendant's knowledge and despite the fact that he had ensured that all necessary equipment was provided on site. The plaintiff challenged this in a replying affidavit. The defendant also claimed to have a limitation defence to the claim.

#### Do you:

- a). Allow the application and grant leave to defend on the basis that the defendant had demonstrated a meritorious defence, but order the defendant to pay the plaintiff's costs of the application, all costs incurred by the plaintiff in entering default judgment and the costs of the adjourned assessment of damages. (5 marks awarded)
- b). After balancing the affidavit evidence of the plaintiff and the defendant and finding that on balance of probabilities the plaintiff's evidence was more persuasive, dismiss the application with costs to the plaintiff. (0 marks awarded)
- c). On the basis that the defendant had demonstrated a meritorious defence, and irrespective of his delay in dealing with the writ of summons and failure to comply with the directions of the court, set aside the default judgment, grant

the defendant leave to defend, and allow him the costs of the application.(3 marks awarded)

- d). Dismiss the application because of the length of the delay from service of the writ of summons, his failure to comply with the directions of the court causing even further delay and further cost to the plaintiff, and failure to give proper explanation as to the reasons for the delay. (0 marks awarded)
- e). Allow the application and grant leave to defend on the basis that the defendant had demonstrated a meritorious defence, but as the defendant had succeeded in his application order the plaintiff to pay the defendant's costs of the application, and disallow the costs incurred by the plaintiff in entering default judgment and the costs of the adjourned assessment of damages. (1 mark awarded)

#### Question 4

During the long vacation you are sitting as vacation master when you are requested to hear an application for a payment out from minor's funds in court by the father and guardian of Jason Smith (DOB 15.03.2003). This is a new fund in which a sum of £350,000 was received into court on 13.02.2014 arising out of injuries sustained by Jason in a birth accident. He has been left with significant permanent impairment to his left arm and leg which will prevent engagement in work of a manual nature or requiring agility, but he is a bright child who has not suffered intellectually.

The application is a first application and is two-fold in nature. The first request is for £5950 for the cost of a family holiday to include flights to Miami, accommodation and facility passes at a well-known theme park and contribution to spending money, for Jason, both parents and his 8 year old brother. His father has recently been made redundant, his mother looks after the home and family, so family finances are stretched but the holiday is seen as a celebration and bringing closure to long running court proceedings. The second request is for £1876.00 for a state of the art Apple Mac computer to include a £377.00 warranty. The application is supported by a letter from Jason's head of year testifying as to its educational value. Jason's father is an I.T enthusiast and has a particular regard for Apple computers. Estimates have been provided in respect of both applications. No application for payment out was made to the judge when the settlement was approved. In the High Court generally payments out for laptop computers are in the region of £750.00 without warranty, although in exceptional circumstances where a particular need is shown, greater sums can be allowed.

#### Do you:

- a). Refuse the cost of the family holiday because this is a matter for the parents and should not be paid for by the minor from his funds in court. Allow the full cost of the computer and warranty. (0 marks awarded)
- b). As in a) except that you allow £750.00 for the computer. (2 marks awarded)
- c). Allow both applications in full. (0 marks awarded)
- d). Allow the full cost of the holiday for the whole family but stipulate that this is a one-off decision to reflect the end of the case. Allow £750.00 for the computer. (4 marks awarded)
- e). Allow a proportion of the cost of the holiday, for example the cost for the minor and one parent, and allow £750.00 for the computer. (3 marks awarded)

## Question 5

In 2003 husband A and wife B purchased a bungalow on a main road into and out of Belfast at a cost at the time of £190,000 with a capital and interest repayment mortgage of £150,000, repayable over a term of 25 years from Bank C. Their children who were young at the time the house was purchased are now adults although one daughter who suffers from a serious autistic spectrum disorder, and is unfit to live independently, lives with them. Since they purchased the property the volume of traffic on the road has gradually increased but the opening of a shopping centre with a major supermarket very close by in 2010 resulted in a dramatic increase in traffic including throughout the night. At the same time husband A was made redundant and aged 55 has found it impossible to obtain employment. Wife B works part time on a cash desk in the supermarket. Initially Bank C allowed a moratorium on capital repayments for a period of two years but then insisted that A and B resume full repayments, increased to reflect the two years when interest only was paid. They have fallen into arrears in the sum of approximately £9000. Bank C has issued mortgage possession proceedings pursuant to Order 88 of the Rules of Court. A and B attend the first hearing with their solicitor. They accept that they can no longer afford the mortgage repayments on their house but want an opportunity to sell it. A completed financial statement appears to confirm their inability to make payments. The balance outstanding on the mortgage is £105,000 with arrears of £9000 increasing at the rate of £850.00 per month. The bungalow next door to them, which was thought to be less attractive in terms of its kitchen and bathroom, recently sold for £145,000, but it remained on the market for over two years due in part to the economic climate and the proximity to the main road and the shopping centre which has reduced property values and desirability. The defendant's solicitor hands in a short drive-by report by an estate agent valuing the property at £150,000 but acknowledging that it might take some time to sell. Bank C objects to adjournment to permit a sale because it is likely that the property will be difficult to sell within a reasonable time during which mortgage arrears will continue to accrue. The plaintiff's solicitor submits that the appropriate order is an order for possession stayed for 3 months.

### Question 5 - Do you:

- a). Adjourn the application for three weeks in the first instance to enable A and B to furnish a letter from a reputable estate agent confirming the property is on the market and the asking price and stating the perceived ease or difficulty envisaged in selling the house, with a view to considering whether to adjourn the case, or to make an order for possession with such, if any, extended stay as may seem appropriate in the light of that letter. (3 marks awarded)
- b). Accede to Bank C's application and make an order for possession but stay the order for a period of six months. (0 marks awarded)
- c). Adjourn the application for a period of about six months, on condition that A and B produce a letter along the same lines as in a) within three weeks, and undertake to keep Bank C's solicitors informed of the progress of the sale, but allowing for earlier review if the plaintiff so requests by letter because of a problem about the estate agent's letter or the endeavour to sell, and directing

an updated letter from the estate agent if further time to sell is sought at the next hearing. (4 marks awarded)

- d). Accede to Bank C's application and make an order for possession stayed for 3 months, but including provision for a review hearing, on a date about 3 months away, to allow for the possibility of an agreement for sale in the meantime. (0 marks awarded)
- e). Adjourn the application for about 3 months on the same conditions as to leave to restore and directions as in c), but also indicating that the maximum overall period of adjournment to be allowed would be unlikely to exceed 12 months. (1 mark awarded)

## Question 6

You are hearing an application by the owner of a second charge for possession of a dwelling on registered land pursuant to a deed of charge executed in 2007. The defendant produces evidence that there would be no equity available for the plaintiff on a sale because the amount due on the first charge far exceeds (by approximately £100,000) the current market value of the property and would probably have done so at the time of issue of the originating summons. The defendant, who lives in the dwelling with his partner, also establishes that (even with his partner's help) he cannot afford to pay anything to the plaintiff although he has no arrears of instalments on the first charge. The plaintiff's solicitor concedes that the borrower's evidence is correct and is consistent with a drive-by valuation obtained by his client and his knowledge of the amount owed on the first charge prior to the proceedings. However the plaintiff asserts that the arrears due to it are very substantial and it has a legal contractual and common law right to possession which the court should not interfere with if there is no proposal to address the mortgage debt of approximately £120,000 or the arrears of instalments totalling £35,000 being some 25 monthly instalments in arrears. Moreover the plaintiff claims that as a mortgagee it is entitled to possession for the purpose of letting the property even if at present it cannot sell. The defendant's solicitor produces a letter from the first lender refusing the borrower permission to let because of the terms of that lender's mortgage conditions prohibiting letting. His client is therefore unable to understand how the plaintiff could have a power to let. He also claims that the court has a discretion and indeed a duty to refuse possession given that it should only make an order for possession of registered land if it is 'proper' to do so by reason of Schedule 7 Part 1 to the Land Registration Act (N.I.) 1970. In turn the plaintiff's solicitor argues that any such discretion should be exercised in line with equitable principles and Equity looks to the substance not the form and Equity follows the law: therefore given the very high arrears, the defendant's contractual legal obligation to give up possession and the absence of a financial proposal of any sort, it can only be proper to make an order for possession.

### Question 6 - Which of the following orders and explanations is correct?

- a). An order for possession to be delivered within 28 days of service because a registered owner of a charge has the powers of a mortgagee by deed which (by section 18 of the Conveyancing Act 1881) include when it is a mortgagee in possession a power to let and the defendant has no financial proposal. Just as equity looks to the substance not the form, a lender whose security happens to be a charge on land the title to which is registered in the Land Registry should not be disadvantaged by that 'paper accident' as compared with a mortgagee of unregistered land. It is therefore proper to make an order for possession. (0 marks awarded)
- b). Adjourn the proceedings generally making no order as to the costs of the proceedings because you accept the defendant's arguments and the plaintiff has failed to establish that it could sell or would be entitled to let the property as a mortgagee in possession. (1 mark awarded)

- c). The same order as in a), not because the plaintiff would have a power to let, but because a mortgagee (including an owner of a charge) is entitled to possession in order to protect its security until such time as it is in a position to sell. (0 marks awarded)
  
- d). Adjourn the proceedings generally for the same reasons as in b), but disallowing the plaintiff's costs of the proceedings as, though it was legally entitled to bring them because of the defendant's default, it had acted unreasonably by doing so. However you do not go so far as ordering the plaintiff to pay the defendant's costs in the action because of the scale of the defendant's default in his obligations under the mortgage contract and the court should in such circumstances take a measured approach to costs. (2 marks awarded)
  
- e). Adjourn the proceedings generally for the same reasons as in b) and d), disallowing the plaintiff's costs of the entire proceeding but going further and ordering the plaintiff to pay the defendant's costs of the action when taxed or agreed: the proceedings were doomed to fail at the outset and in such circumstances costs should follow the event, notwithstanding the fact that the party whose costs were to be paid was in obvious breach of his contractual obligations. (4 marks awarded)

## Question 7

The following statements as to principles of law are either correct or incorrect. In each case please indicate whether the statement is correct or incorrect.

Each question is worth one mark.

On the answer sheet indicate Y (Yes) for Correct and N (No) for Incorrect

- a). A bankrupt defendant in mortgage possession proceedings in respect of his home has no standing in the case because his estate has vested in the Official Receiver or Trustee in Bankruptcy.

Correct

Incorrect (1 mark awarded)

- b). In mortgage possession proceedings the court has no discretion whatsoever under section 36 of the Administration of Justice Act 1970 to stay possession for the purposes of sale by the borrower where the security is in negative equity.

Correct

Incorrect (1 mark awarded)

- c). Subject to statutory time limits an order for possession once made continues to subsist for as long as the mortgage subsists even after arrears of instalments have been discharged in full.

Correct (1 mark awarded)

Incorrect

- d). The court's statutory jurisdiction to impose a stay or suspension on an order for possession down to and including the date of the eviction is exercisable by both the Chancery Master or the Master (Enforcement of Judgments Office).

Correct

Incorrect (1 mark awarded)

- e). In mortgage possession (Order 88) proceedings, in the absence of a clearly formulated present proposal to clear arrears, the court may still defer possession to allow the borrower time "to get back on his feet".

Correct (1 mark awarded)

Incorrect

## Question 8

On Friday 25 July 2014 as Chancery Master you have a list of 30 cases, mostly mortgage possession applications, listed in blocks commencing at 10.00 with the last block listed for 12.30 pm. At 2.00 pm you have listed a complicated interlocutory application in which counsel have submitted detailed skeleton arguments and which is expected to take two hours to hear. It is likely that you will be required to reserve judgment. There is urgency because the main action is listed for trial by the Chancery Judge on 10 September 2014. In addition there is a late addition to your list in the form of an application to stay eviction. The eviction is listed for the following Monday morning 28 July 2014. You have been notified that the plaintiff will resist any application to stay eviction strenuously. The defendant is a litigant in person and he has filed a detailed affidavit which sets out proposals for paying arrears which may merit consideration or further investigation. The affidavit also contains detailed references to Human Rights case law which arguably ought to have been the subject of appeal of the original order. The application could take up to 2 hours to hear.

You are also the designated vacation master for the day. The Office of Care and Protection have received early notification of two separate ex parte applications for non-molestation orders pursuant to The Family Homes and Domestic Violence (NI) Order 1998. The papers cannot be lodged until lunchtime and then applications will require to be heard that day. Both applications involve violence or threat of harm to children. You also have a file of orders for signing from the Office of Care and Protection and 25 files from the Matrimonial Office for issuing of Decrees Absolute. Although routine these matters must be attended that day and should take 20 to 30 minutes. There are no other masters available. You are scheduled to go on holiday for two weeks with your flight leaving at 7.00 am the following morning.

[Note: For each day during vacations one master is designated as the vacation master for that day. The vacation master's function is to attend to any urgent matter which requires to be heard that day irrespective of which Division or Office of the High Court it comes from. Where a master lists a case before him during a vacation then it is his or her responsibility to attend to that case and he or she ought not to adjourn or transfer it to a vacation master, or any other master, either that or on any subsequent day, without the agreement of that master.]

### How do you manage this workload?

- a). Direct that those matters in your morning list which are scheduled for hearing from 11.00 am onwards are to be adjourned, which will give the Chancery Office some time to notify the parties, and subject to the availability of counsel, move the contested summons listed for 2.00 pm until 11.00 am. Hear the non-molestation applications at 2.00 pm and then deal with the application for stay of eviction. Sign the orders and Decrees Absolute at lunchtime. (0 marks awarded)
- b). Leave the morning list as it stands and deal with all the other matters beginning at 2.00 pm in the order in which the parties appear and indicate they are ready to proceed. Deal with the Care and Protection Orders and

Decrees Absolute as and when you have an opportunity. Sit for as long as it takes to complete the workload. (2 marks awarded)

- c). Leave the morning list as it stands. Adjourn the contested summons until a date in the first week after your return from holidays (week commencing 11 August 2014) subject to the availability of counsel (or alternative counsel if necessary). Hear the stay of eviction at 2.00 pm followed by the non-molestation applications. Deal with the Care and Protection Orders and Decrees Absolute as and when you have an opportunity. (4 marks awarded)
- d). Leave the morning list as it stands. The stay of eviction is a complex matter in which there is a litigant in person. It is not suitable for a rushed hearing. At a short hearing you stay the eviction in the first instance until 11 August 2014 and adjourn the full hearing until that date, giving directions as to the filing of further affidavits and skeleton arguments. Hear the non-molestation applications if possible at 2.00 pm before proceeding to hear the contested summons. Deal with the Care and Protection Orders and Decrees Absolute at lunchtime or early afternoon. (10 marks awarded)
- e). Leave the morning list as it stands and proceed to hear the stay of eviction application at 1.30 pm. Deal with the non-molestation applications at the conclusion of the stay of eviction application. Take the contested summons last as you will likely reserve judgment in any event, or hear as much of the case as time allows adjourning the remainder part heard until your return from holiday. Deal with the Care and Protection Orders and Decrees Absolute at the end of the day. (6 marks awarded)