Suggested answers to self-test questions

Question 1: What are the elements of an action and in what way might a defendant seek to respond to them?

Liability

- The defendant may entirely refute the liability allegations made against him. In order to do this he will need to able to proffer an alternate version of the story the claimant has put forward. He will need to be able to give a version that satisfies the court that the claimant’s case is not made. He may seek to achieve this by challenging the evidence of the claimant or by adducing evidence of his own that supports his version of how the ‘event’ (the allegations of the claimant) happened.

Causation

- The defendant may accept some involvement in the events set out by the claimant but deny that his actions either caused the breach or accident or that the breach or event caused the damages and losses that the claimant alleges. To do this he will need either to refute and challenge the claimant’s case on causation or adduce evidence of his own that substantiates his denial.

Quantum

- The defendant may seek to deny the nature and extent of the injuries or damage and seek to suggest that the claimant contributed to his injuries.
Or he may both admit and deny parts of the claimant’s claim for quantum, admitting some elements but denying other parts thereby reducing the sum of the claim.

**Question 2:** If a defendant makes a pre-action admission how will the admission be treated in any subsequent litigation?

Where the defendant makes a pre-action admission of liability (which may be during protocol) he will be bound by any admission up to a value of £25,000 in subsequent litigation.

An admission may be made of the truth of an allegation or of the facts stated and they may be express or implied. They may be found in correspondence, in oral discussions between the parties, their legal representatives or between a party and a third party. An admission can also be inferred by conduct.

A party will not be bound by a previously made admission in the following circumstances:

- An admission made in previous proceedings that have not been placed before the current court as adopted and true.
- An informal admission that is not proved.
- An admission made by a person not authorized to make it unless there existed ostensible or apparent authority (of the agent) in which case the admission may bind (the principal) but he may have a right to claim an indemnity from the person who made the unauthorized admission.
- An admission that is not clear and unambiguous.
If the admission has been made formally neither party will need to adduce evidence of the issue or fact admitted in subsequent litigation. A formal admission may be withdrawn in certain circumstances:

- With the permission of the court. The court will consider the overriding objectives when considering such an application and will consider such issues as: prejudice to a party, the reasons why the admission was made, the stress a party was under when the admission was made, the interests of the public in permitting the withdrawal of the formal admission, and the time when the application to withdraw from the admission is made.

CPR 14A. This rule applies where a person wishes to withdraw a pre-action admission. This can be done:

- With the consent of the person to whom the admission was made.
- After commencement of proceedings with the permission of the court.

These conditions apply when:

- The admission was made in proceedings listed under the rule – personal injury, clinical disputes and disease and illness claims.
- The admission was made after a Letter of Claim has been sent or if before, the admission states that it has been made under the provisions of CPR 14.
The rule also makes provision for these pre-action admissions to be dealt with in subsequent litigation as follows:

- That any party may apply for judgment on a pre-action admission that is covered under the rule.
- The party who made the admission can apply to the court to withdraw it (and the court will apply the criteria noted above when considering the application).

Informal admissions however, are treated as pieces of evidence and further evidence may be adduced to disprove the informal admission or to explain away its apparent result.

An admission made without knowledge of a material fact will have little evidential value.

**Question 3:** Which applications may be made by a defendant who believes that the claimant’s case is very weak or does not (as it has been set down) reveal any substantive cause of action?

Summary Judgment (CPR 24) which may be combined with an application for a strike out under CPR 3.

**Question 4:** When will an application for Security for Costs NOT be successful?

When to do so would stifle a claimant’s action or when the grounds set down in CPR 25.12 are not met.
Question 5: When MUST a defendant respond to a claim made against him? What are the steps he can take and when must he take those steps?

Time begins to run from the deemed date of service of the Particulars of Claim on the defendant (CPR 9.2). The defendant has fourteen days from the date of service of the Particulars of Claim to take one of the following steps:

- File or serve an admission (CPR 14).
- File a defence (which may be combined with a counterclaim). Or a defendant may file an admission and a defence if part of the claim is admitted and part not admitted. (CPR 15)
- File an acknowledgement of service. (CPR 10)

These rules are different in specialist courts in the High Court. The specific Court Guide must be consulted.