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QUEENSLAND BAR EXAM

CIVIL PROCEDURE - KNOWLEDGE

PERUSAL TIME:

DURATION OF EXAM:

EXAM INFORMATION:

THERE ARE THIRTY (30) SAMPLE QUESTIONS IN TOTAL

MARKS FOR QUESTIONS ARE AS INDICATED

PERMITTED MATERIALS:

UNIFORM CIVIL PROCEDURE RULES 1999 (QLD); SUPREME COURT OF QUEENSLAND PRACTICE DIRECTIONS

INSTRUCTIONS:

- ANSWER ALL QUESTIONS
- WRITE CLEARLY
- SUPPORT ANSWERS WITH AUTHORITIES

This material is based on the *Uniform Civil Procedure Rules 1999 (Qld)* and related authorities current as at 1 April 2026. Students should verify any legislative amendments or case law developments after this date.

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Questions

Originating Process and Jurisdiction

1. What are the two main types of originating process under the UCPR?
 2. When must a proceeding be started by claim?
 3. When should a proceeding be started by application?
 4. What rule governs the form of a claim?
 5. What must accompany a claim when filed?
 6. What rule governs personal service of originating process?
 7. Can substituted service be ordered and under what rule?
 8. What rule governs service outside Queensland?
 9. What is the time limit for service of a claim?
 10. What must the plaintiff do if a claim is not served within 12 months?
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Pleadings

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 12. Which rules govern statements of claim and defence?
 13. What must a statement of claim contain?
 14. What is the rule on denial or non-admission?
 15. What is meant by "material facts"?
 16. Are pleadings permitted to contain evidence?
 17. What rule governs replies?
 18. When may pleadings be amended without leave?
 19. What rule governs amendment of pleadings generally?
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Interlocutory Applications

21. What is the procedure for interlocutory applications?
22. What rule governs interlocutory injunctions?
23. What is the legal test for granting an interlocutory injunction?
24. What is a freezing (Mareva) order?
25. What must be shown to obtain a freezing order?
26. What is an Anton Piller (search) order?
27. When may a search order be granted?
28. What is security for costs?

29. Against whom may security for costs be ordered?
30. What factors influence the court in ordering security for costs?

END OF EXAM

SAMPLE

ANSWER SHEET

1. What are the two main types of originating process under the UCPR?

Under the UCPR, the two principal types of originating process are a claim and an application (r 8).

A claim is the standard originating process used where the proceeding involves a substantial dispute of fact and requires the filing of a statement of claim (r 9). By contrast, an application is used where there is no substantial dispute of fact and the matter can be determined more summarily (r 10).

2. When must a proceeding be started by claim?

Under the UCPR a proceeding must be started by claim where the relief sought depends on the determination of disputed questions of fact.

This is reflected in r 9, which provides that a claim is the appropriate originating process where there is a substantial dispute of fact requiring resolution through pleadings, disclosure, and, if necessary, trial.

3. When should a proceeding be started by application?

Under the UCPR a proceeding should be started by application where there is no substantial dispute of fact and the matter can be determined on affidavit evidence or as a question of law.

This is reflected in r 10, which provides that an application is appropriate where the relief sought does not require a full trial and can be resolved more summarily by the court.

4. What rule governs the form of a claim?

Under the UCPR the form of a claim is governed by r 22, which requires that a claim be in the approved form (Form 2) and comply with the prescribed formal requirements set out in the rules.

5. What must accompany a claim when filed?

Under the UCPR a claim must be filed together with a statement of claim, unless the proceeding is one in which a statement of claim is not required.

This requirement arises under r 22(2), which provides that a claim must be accompanied by a statement of claim setting out the material facts relied upon and the relief sought.

6. What rule governs personal service of originating process?

Under the UCPR, personal service of originating process is governed by r 105. That rule prescribes the manner in which a claim or other originating process must be personally served on a party, including service by leaving the document with the person to be served or, in the case of a corporation, in accordance with the methods permitted under the rules.

7. Can substituted service be ordered and under what rule?

Yes. Under the UCPR, the court may order substituted service under r 116.

Rule 116 provides that, where it is impracticable to effect personal service, the court may make an order for service by an alternative method that is likely to bring the proceeding to the attention of the person to be served.

8. What rule governs service outside Queensland?

Service outside Queensland but within Australia is governed by r 123, which requires service in accordance with the *Service and Execution of Process Act 1992* (Cth). Service outside Australia is dealt with separately under Ch 4 Pt 7, including r 124 and following provisions for Supreme Court proceedings.

9. What is the time limit for service of a claim?

Under the UCPR a claim must be served within 12 months after it is filed, pursuant to r 24(1). If the claim is not served within that period, it becomes stale, and the plaintiff must apply to the court to renew the claim under r 24(2) before it can be served.

10. What must the plaintiff do if a claim is not served within 12 months?

Under the UCPR if a claim is not served within 12 months after filing, the plaintiff must apply to the court to renew the claim under r 24(2). The court may order renewal for a further period (typically up to 12 months) if satisfied it is appropriate to do so, thereby allowing the claim to be served despite the expiry of the original period.

11. What is the purpose of pleadings?

The purpose of pleadings is to define and confine the issues in dispute between the parties, so that each party knows the case it must meet and the court can determine the real issues in controversy. This is reflected in the requirement under the UCPR to plead material facts (r 149) and respond by admission, denial, or non-admission (r 166), thereby preventing surprise and ensuring procedural fairness (cf *Dare v Pulham*).

12. Which rules govern statements of claim and defence?

Under the UCPR statements of claim and defence are governed by the pleadings provisions in rr 149–169.

These rules set out the requirements for the content and form of pleadings (including statements of claim and defences), such as the obligation to plead material facts (r 149) and the manner of responding by admission, denial, or non-admission (r 166).

13. What must a statement of claim contain?

A statement of claim must plead the material facts relied on, but not the evidence, under r 149. It should also plead any matter required to be specifically pleaded under r 150, including matters such as fraud, misrepresentation, negligence, interest, knowledge or notice where relied on.

14. What is the rule on denial or non-admission?

Under the UCPR, the rule on denial or non-admission is governed by r 166.

A party must respond to each allegation of fact by either admitting, denying, or not admitting it. A denial must be direct and specific, and if a party does not admit an allegation, it must state a non-admission. Importantly, any allegation of fact not denied or not admitted is taken to be admitted.

15. What is meant by “material facts”?

“Material facts” are the essential facts which must be proved to establish a cause of action or defence—that is, the facts which, if established, entitle a party to relief or to resist relief. Under the UCPR, r 149(1) requires that pleadings contain a statement of these material facts, but not the evidence by which they are to be proved.

Accordingly, material facts are distinguished from:

- evidence (the means of proving the facts), and

- legal conclusions (which need not be pleaded).

At common law, they are often described as the “facts necessary to formulate a complete cause of action” (e.g. *Bruce v Odhams Press Ltd*).

16. Are pleadings permitted to contain evidence?

No. Under the UCPR, pleadings must contain material facts only and not the evidence by which those facts are to be proved, pursuant to r 149(1)(b).

Accordingly, a party must plead the essential facts constituting the cause of action or defence, but must not include evidentiary detail or the means of proof.

17. What rule governs replies?

Replies are dealt with within the progress of pleading provisions, particularly r 164 as to time for serving a reply, r 165 as to answering pleadings, and r 169 as to close of pleadings. A reply should plead any matter in answer to the defence that must be pleaded to avoid surprise.

18. When may pleadings be amended without leave?

Under the UCPR, pleadings may be amended without leave under r 378 at any time before a request for trial date is filed (see r 470).

After a request for trial date has been filed, an amendment may only be made with the leave of the court or by consent of the parties.

19. What rule governs amendment of pleadings generally?

Under the UCPR, the amendment of pleadings is governed generally by r 375, which confers a broad power on the court to allow amendments at any stage of a proceeding to ensure the real issues in controversy are determined.

That general power operates alongside specific provisions, including:

- r 378 (amendment without leave),
 - r 379 (objection to amendment), and
 - rr 384–385 (effect of amendment and service of amended pleading).
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20. When may pleadings be struck out?

Under the UCPR, pleadings may be struck out pursuant to r 171.

The court may order that all or part of a pleading be struck out if it:

- discloses no reasonable cause of action or defence;
- is vexatious or an abuse of the process of the court;
- is unnecessary, scandalous, frivolous or vexatious; or
- is otherwise likely to prejudice, embarrass or delay the fair trial of the proceeding.

The power is discretionary and exercised to ensure that only properly arguable issues proceed to trial.

21. What is the procedure for interlocutory applications?

Under the UCPR, an interlocutory application is made by application in a proceeding under r 31.

In limited circumstances, the court may permit an application to be made orally under r 32.

22. What rule governs interlocutory injunctions?

Interlocutory injunctions are granted under the court's equitable jurisdiction, and are sought procedurally by application in a proceeding under r 31, with procedure for such orders addressed in r 258.

23. What is the legal test for granting an interlocutory injunction?

The legal test for granting an interlocutory injunction requires the applicant to establish:

1. that there is a serious question to be tried (i.e. a prima facie case of sufficient merit, not necessarily a probability of success); and
2. that the balance of convenience favours the grant of the injunction, including consideration of whether damages would be an adequate remedy.

This test is authoritatively stated in *Australian Broadcasting Corporation v O'Neill*, where the High Court confirmed that the court must weigh the strength of the plaintiff's case together with the practical consequences of granting or refusing the injunction.

24. What is a freezing (Mareva) order?

A freezing (Mareva) order is an interlocutory injunction restraining a defendant from dealing with, disposing of, or diminishing the value of assets so as to prevent the frustration of a prospective judgment. Its purpose is protective, not punitive—to preserve the status quo and ensure that any judgment obtained is not rendered nugatory by the dissipation of assets. The principles governing such relief were articulated in *Cardile v LED Builders Pty Ltd*.

Under the UCPR, freezing orders are specifically provided for in r 260A. See Practice Direction No. 1 of 2007 for the Supreme Court - Freezing orders (also known as 'Mareva orders').

25. What must be shown to obtain a freezing order?

To obtain a freezing (Mareva) order, the applicant must satisfy the court that:

1. there is a good arguable case on an existing or prospective cause of action; and
2. there is a real risk that the respondent will dissipate or deal with assets so as to frustrate the enforcement of any judgment; and
3. the order is appropriate in all the circumstances, including considerations of justice and convenience.

These principles are established in *Cardile v LED Builders Pty Ltd* and reflected in the regime for freezing orders under the UCPR (see r 260A).

26. What is an Anton Piller (search) order?

An Anton Piller (search) order is an extraordinary interlocutory order permitting the applicant, under court supervision, to enter the respondent's premises to search for, inspect, and preserve evidence to prevent its destruction or concealment.

Its purpose is to protect the integrity of the court's process, and it is granted only in exceptional circumstances due to its intrusive nature. The principles governing such orders derive from *Anton Piller KG v Manufacturing Processes Ltd* and can be found under r 261A. See Practice Direction No. 2 of 2007 for the Supreme Court - Search orders (also known as Anton Piller orders).

27. When may a search order be granted?

A search order may be granted where the applicant establishes a strong prima facie case, serious potential or actual damage, sufficient evidence that the respondent possesses important evidentiary material, and a real possibility that the material may be destroyed, concealed or removed.

28. What is security for costs?

Security for costs is an order requiring a party (usually the plaintiff) to provide security (e.g. money or a bank guarantee) to ensure that the opposing party's costs will be paid if the claim is unsuccessful.

Under the UCPR, the power to order security for costs is found in r 670. The court has a broad discretion under r 670 to order security for costs where it is just, including (but not limited to) cases involving corporations, non-residents, or impecuniosity.

29. Against whom may security for costs be ordered?

Security for costs is typically ordered against a plaintiff or applicant, particularly where there is a concern that the party will be unable to pay the defendant's costs if unsuccessful. It may also be ordered against counterclaiming defendants or other parties in an analogous position, depending on the circumstances.

30. What factors influence the court in ordering security for costs?

The court exercises a broad discretion under r 672 and considers factors including:

- the financial position of the plaintiff and ability to satisfy a costs order;
- the prospects of success of the claim;
- whether the application is being used oppressively or to stifle a genuine claim;
- the justice of the case, including delay or conduct of the parties; and
- whether the plaintiff is ordinarily resident outside the jurisdiction or is a corporation with insufficient assets.

The overriding consideration is whether it is just in all the circumstances to order security.
