**Ethical Dilemmas in Civil Practice**

**Part 1: Pre-reading**

The following scenarios cover many of the issues we will cover in Part 2 of the course in the Specialist Civil Session. As part of your preparation for Part 2 of the course, you need to read through these scenarios and consider:

* What ethical issues do each of the scenarios raise?
* What are the possible options open to you?
* What are the Core Duties that arise in each scenario?

**(1) Instructions**

You are sent instructions to act for an employee that is on long term sick leave and has been refused payment under the employer’s permanent health insurance policy. The main defendant is the insurer, and the issue of whether the employee is incapacitated from working within the meaning of the policy. You have previously acted for the insurer, know all the individuals involved for the insurers, you have previously advised the insurers about the effect of a recent Court of Appeal decision on the meaning of incapacity and have published an article based on this advice. The employee knows all this and is keen for you to act for him.

* What do you do?

**(2) Witnesses**

You have a conference with the employee before proofs of evidence have been drawn up. His description of his infirmity is vague and you are not sure where it will fall between incapacity and capacity.

* What do you do?

Your client is very stressed and unable to give you very coherent answers to your questions. His wife tells you about his daily routine and his physical abilities.

* What do you do?

Your client tells you he is very worried about being cross-examined and asks you to give him advice so he knows what to expect.

* What do you do?

**(3) Documents**

In conference after exchange of witness statements, your client produces an occupational health report about him. He tells you he stole it from the company’s Human Resources office. The report is very helpful to his case but has not been disclosed by the Bank. You tell him he has committed a criminal offence. He admits it, says he’s sorry and says he will do whatever you think is best.

* What do you do?

Expert reports are exchanged. When you read a draft of your expert’s reply, you see that some points are deal with in a confusing way, some have not been deal with at all, and some have been conceded for no good reason.

* What do you do?

**(4) Disclosure**

The day before the trial, you exchange skeleton arguments with your opponent by email.

Your opponent’s email includes, without comment, a 1-page summary of the weaknesses in the defendant’s case at trial and an outline of a possible settlement strategy addressed to his instructing solicitor. Some points you had already spotted, some you had not, and the settlement indication is particularly useful.

* What do you do?

Judgment is reserved. The solicitor then tells you to say that your client has just admitted to him that he was, in fact, working from time to time when he felt up to it and did not disclose bank statements and other documents which would evidence this. You and the solicitor tell the client he must disclose the documents in accordance with his continuing duty of disclosure. He refuses and says you are fired and have no more business with the case.

* What do you do?