



CILEX Level 6 Single Subject Certificate/CILEX Level 6 Professional Higher Diploma in Law and Practice/CILEX Level 6 Graduate Fast-Track Diploma

Unit 15 – Civil Litigation

Question paper

January 2024

Time allowed: 3 hours and 15 minutes (includes 15 minutes reading time)

Instructions and information

- It is recommended that you take **fifteen** minutes to read through this question paper before you start answering the questions. However, if you wish to, you may start answering the questions immediately.
- You must answer **all** questions.
- This question paper is out of 100 marks.
- The marks for each question are shown — use this as a guide as to how much time to spend on each question.
- Write in full sentences — a yes or no answer will earn no marks.
- Full reasoning must be shown in your answers.
- Statutory authorities, decided cases and examples should be used where appropriate.
- You are allowed to use your own printed copy of the pre-release case study materials, as long as the materials are not annotated in any way. Alternatively, you can access the electronic version of the pre-release case study materials available in the examination.
- You are allowed to make notes on your scrap paper during the examination.
- You are **not** allowed access to any statute books.
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

Turn over

Answer ALL questions

Question 1

Reference: Question relates to **Case 1 Breakout Foods Ltd and Document 1** of the case study materials.

All efforts to engage with Magnetic Motors Ltd and Stratford Summers, whether by way of the Pre-action Protocol or otherwise, have proved unsuccessful. Kempstons are instructed to commence proceedings for damages not exceeding £17,000.

- a) Explain the nature and purpose of the documents that must be generated in order to commence proceedings (**DO NOT draft the documents**) and the procedure for commencing proceedings.

(7 marks)

Proceedings are commenced and the necessary documents served on the defendant, Magnetic Motors Ltd. No response has been served and Kempstons successfully apply for judgment in default for an amount to be determined by the court. A few days later, solicitors acting for Magnetic Motors Ltd make an application for the judgment in default to be set aside. In the application it is stated that the original documents, including the claim form, did not come to the attention of the defendant as they were served at its registered office address, which is that of its former accountants who did not forward the documents to it. They did forward the notice of default judgment. The defendant alleges it is not liable because the food van was to the specification agreed with Breakout Foods Ltd or, if it was not, that this was the responsibility of Clockwell Autoservices Ltd. The defendant also disputes the level of damages being claimed.

- b) Explain the jurisdiction of the court to entertain an application for default judgment to be set aside and the criteria that will be applied.

(7 marks)

The default judgment is set aside.

- c) Explain the steps you would expect Magnetic Motors Ltd to take in relation to Clockwell Autoservices Ltd and the documents it would need to produce. (**DO NOT draft the documents**)

(8 marks)

The case is allocated to the fast track but because of the backlog of cases awaiting a trial window, you are advised that it will be well over a year before the case is likely to be listed for trial. Raquel Cornwall and Jamaal Haynes are concerned at this delay, particularly as they have recently started negotiations to take on permanent restaurant premises. They ask whether there is any means by which they could seek to bring the case to an earlier conclusion.

- d) Explain the scope and purpose of a claimant's Part 36 offer and the consequences, including costs consequences, if such an offer is accepted or declined.

(8 marks)

(Total: 30 marks)

Question 2

Reference: Question relates to **Case 2 Jenny Hathaway and Document 2** of the case study materials.

- a) Indicate the changes that would be necessary to **Document 2** in order that it can stand as the witness statement of Emma Franklin.

(8 marks)

On the date fixed by the court for exchange of witness statements, Kempstons sends an email with an attachment that is intended to be the definitive witness statement of Emma Franklin. Two days later, it is realised that the attachment sent was one with a similar filename but containing a completely blank document.

- b) Explain the consequences of this error and the steps that should be taken in order to rectify matters.

(12 marks)

(Total: 20 marks)

Question 3

Reference: Question relates to **Case 3 Seema Malhotra and Documents 3, 4 and 5** of the case study materials.

The Malhotra family wish to understand how proceedings would be financed should they prove to be necessary. Javagal Malhotra indicates that he has personal resources that would enable him to fund the proceedings privately if necessary but he is concerned about any financial exposure in which this may result. He informs you that he has heard of Conditional Fees and Damages Based Agreements but does not understand the fine detail.

- a) Explain the funding options available for the claimant and the costs liabilities to which the claimant may be exposed.

(8 marks)

- b) Draft the Letter of Claim in this case using the information available to you.

(12 marks)

- c) Explain the procedure that will apply by virtue of Seema Malhotra's age if proceedings are to be commenced.

(6 marks)

(Total: 26 marks)

Question 4

Reference: Question relates to **Case 3 Seema Malhotra and Documents 3, 4 and 5** of the case study materials.

As time passes, it becomes clear that Seema Malhotra is suffering from significant mobility issues owing to the weakness of the left side of her body and the consequences of the shoulder and leg fractures. The rehabilitation team with which the family is working have recommended that an existing extension forming part of the family home could be modified for Seema's use. This would entail a remodelling of the bathroom and also the provision of ramped access and widened doors to accommodate a powered wheelchair that Seema has been recommended to use.

Proceedings have been commenced on the multitrack. Liability has not been admitted, but in discussions with the solicitors acting for Chatterley Bros Ltd, it seems clear that it will not ultimately be disputed, although there is an allegation in relation to contributory negligence for not following the height-restriction signs.

- a) By what process, and subject to what criteria, could a financial contribution to the cost of the wheelchair and the modifications to the house be obtained in the proceedings?

(10 marks)

As the case proceeds, it becomes clear that the expert witnesses for both sides in the fields of paediatric orthopaedic surgery and neurosurgery are in agreement and, as a result, have prepared joint statements for use at trial. There is, however, a significant difference of opinion between the rehabilitation experts and, despite meeting, they have been able to agree on only a limited number of the issues. Existing directions provide for oral evidence in this situation. The claimant will be calling Radha Malhotra as the sole witness of fact, as Seema Malhotra has no recollection of the incident and the surrounding circumstances. James Waters, of counsel, is instructed to appear at trial on behalf of the claimant. The time estimate for the trial is two days. The rehabilitation expert is Aleksandra Cortez. The paediatric orthopaedic surgeon is Miss Harmanpreet Johal and the neurosurgeon Mr Thomas Lowe.

- b) Explain the function of the listing questionnaire (Form N170) and how this should be completed on behalf of the claimant (**DO NOT draft the questionnaire**).

(6 marks)

Following the trial, in a reserved judgment the trial judge, Her Honour Judge Ching, sitting as a High Court Judge, gives judgment for the claimant subject to a reduction for contributory negligence of 50%. Trial counsel advises that this reduction is unreasonably high. He also advises that the judge appeared to misunderstand parts of the evidence given by Aleksandra Cortez, the rehabilitation expert for the claimant, as a result of which the quantum of damages awarded in respect of two important areas of the claim is significantly less than it should properly be.

- c) Explain the procedure for appeal and the criteria on which the admissibility of the appeal will be determined.

(8 marks)

(Total: 24 marks)

End of the examination

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