



**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**

**Case study materials**

**June 2024**

**Information for candidates**

- You should familiarise yourself with these case study materials before the examination, taking time to consider the themes raised in the materials.
- You should consider the way in which your knowledge and understanding relate to these materials.
- In the examination, you will be presented with a set of questions which will relate to these materials.
- You may discuss these materials with your tutor(s).

**Instructions and information to candidates during the examination**

- You are allowed to take your own clean/unannotated copy of this document into the examination. Alternatively, you can access the electronic version of this document in the examination.
- You are **not** allowed access to any statute books in the examination.
- You must comply with the CILEX Exam Regulations – Online Exams at Accredited Centres/CILEX Exam Regulations – Online Exams with Remote Invigilation.

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## **CASE STUDY MATERIALS**

### **GUIDANCE FOR CANDIDATES STUDYING FOR THE LEVEL 6 UNIT 15 CIVIL LITIGATION EXAMINATIONS**

Candidates studying for Level 6 Unit 15 Civil Litigation are advised that when revising for this unit, they should have knowledge and understanding of the Civil Procedure Rules and of the rules of professional conduct for lawyers issued by the regulatory body for CILEX and by the SRA. Candidates are advised that they should be fully familiar with the relevant current unit specification and may be tested on any aspect of it.

Where Civil Procedure Rules are given in the specification, candidates are expected to be broadly familiar with the content of those rules and associated Practice Directions, and their practical application, over and above familiarity with the relevant current specification, including the rules of professional conduct.

Listed below are the Statutes, Standards and Regulations, and Civil Procedure Rules that candidates may find particularly relevant to this examination.

Civil Evidence Act 1968  
Limitation Act 1980  
Senior Courts Act 1981  
County Courts Act 1984

Insolvency Act 1986  
Tribunals Courts and Enforcement Act 2007  
SRA Standards and Regulations  
Civil Procedure Rules and Practice Directions  
Part 1 Practice Direction and Pre-Action Conduct and Protocols  
Part 3  
Part 6  
Part 7  
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## **CASE STUDY MATERIALS**

### **ADVANCE INSTRUCTIONS TO CANDIDATES**

You are a trainee lawyer in the firm of Kempstons LLP ('Kempstons') of The Manor House, Bedford, MK42 7AB. You work in the civil litigation team and your supervising partner is Shirley Parreira. Your local County Court Hearing Centre is in Bedford. You are assisting Shirley Parreira in the following cases.

#### **1. Megan Halliday (trading as The Nice Place)**

This is a claim arising out of the installation at the client's café of an allegedly defective pizza oven. You are acting for the client as panel solicitors under BTE insurance provided by her membership of a trade association. Following unsuccessful negotiations with solicitors representing the defendant (JC Electrical Ltd), proceedings have now been commenced and you are awaiting confirmation as to how service has been affected. Full details of the circumstances leading to the claim are contained in **Documents 1, 2 and 3**.

#### **2. Thomas Freeman**

These are new instructions relating to a claim for personal injuries arising out of a workplace accident. The relevant information is contained in **Documents 4, 5 and 6**. Your provisional estimate is that damages will be in the region of £10,000–£15,000.

#### **3. Curzon Kitchens Ltd**

This is an established client; the present claim relates to the balance due in respect of a kitchen installation carried out for Turnpike Inns Ltd at the Gately Arms public house. The work was completed 18 months ago. The total cost of the work was £37,842. A total of £20,000 was paid by way of stage payments but despite several reminders, the balance remains outstanding. Turnpike Inns Ltd has not responded to two letters before action.

#### **4. Ravi Gavaskar**

These instructions relate to injuries sustained by the client in a road traffic accident when he was a passenger in a taxi. The accident occurred on 2 July 2021. The taxi collided at high speed with a roadside tree and the driver subsequently admitted having fallen asleep as he had been working for 15 hours. He has been convicted of dangerous driving. At the time of the accident the client was a postgraduate student at the University of Bedfordshire but his home is in India. As soon as he was fit to travel he returned home to complete his recuperation. He returned to England in January 2024 to continue with his degree and hopes to take advantage of the opportunity to work in the UK for two years after completing the degree. He now wishes to pursue a claim in relation to his injuries. He and his family are of modest means and have no substantial savings. A medical report detailing his injuries is at **Document 7**.

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Megan Halliday has given an initial statement in relation to the incident, as follows.

I have been in business running a café and food takeaway in Dunstable for the past 20 years. The business operates from rented premises at 37 Parliament St, and my trading name is 'The Nice Place'. My trading day was, until recently, 6.30 am to 4.30 pm Monday to Friday, 7.30 am to 4.30 pm on Saturday and 9.00 am to 2.00 pm on Sunday. I have a number of employees, most of whom have been with me for a number of years, and my daughter Hannah has started working for me full time since she left school two years ago. We make and sell cooked breakfasts, tea, coffee and hot chocolate, cakes and snacks for mid-morning and afternoon tea, and a range of soups and light dishes at lunchtime. I also produce an extensive range of sandwiches and paninis. Most of the hot food is cooked fresh to order but I do have a heated cabinet for items such as sausage rolls and hot pies. Over the past few years, I have tried to expand the range to cater for as many tastes as possible.

A few months ago, my daughter Hannah suggested that we could expand the business by selling pizzas. She said that a number of her friends would be willing to work in the business during the evenings as she thought that was when the biggest market for pizzas would be. I also recognised that there could also be a market at lunchtime. I realised that we were not going to be specialising and would not have space for a full, professional pizza oven but I could see that there was a space between the kitchen area and the passageway leading to the toilet and emergency exit where a small pizza oven could be installed. I started to look in the trade press at advertisements for different types of pizza oven and found two manufacturers whose products were potentially suitable. Both were Italian companies but they advertised in the British trade press and had representatives in England.

I then discussed my plans with the electrician I have used for many years who does all the electrical work for the business, James Crick. He operates through a company, JC Electrical Ltd. He said that he had had some experience with both of these products but one of them, the Alfredo model produced by Bertozzi Pizzatecnica SpA, was distinctly superior. He also told me that he could order this oven and get a trade discount, which he would pass on to me.

It was clear from the documentation and from what Mr Crick told me that the machine would operate on the standard electrical supply and there would need to be an extractor fan to the exterior of the premises to allow excess heat to be discharged. The machine was described as fully insulated and Mr Crick told me that the exterior of the machine was actually cool to the touch because of the way in which it was constructed to maximise heat retention, thus minimising energy use.

Eventually, in October 2023, I made the decision to purchase the new pizza oven. The cost of the oven itself was £2750 and installation, including the extractor fan, a further £750 exclusive of VAT; the oven was actually delivered on 9 November 2023. Mr Crick and one of his employees carried out the installation on 16 November 2023. We were open for business while he did the work and I saw him install the oven with packing underneath to ensure it was level and stable, and an extractor fan fitted above the oven with a pipe linked to a hole drilled in the exterior wall so that the heat from the oven could vent to the atmosphere. We put the oven into service from 18 November. In anticipation of the availability of the oven, I had planned an introductory event. Hannah, my daughter, had taken charge of establishing a rota of her friends who were prepared to operate the evening shifts. We wanted these to be distinct from the daytime operation and heavily focused on pizza. Everything went smoothly for the first two weeks. I found there was a demand for pizza at lunchtime to eat in and take away, and the evening pizza operation was also successful.

Unfortunately, something went wrong on the evening of 9 December 2023. Hannah and one of her friends were working that evening. At about 9.00 pm they took a telephone order for four large pizzas. This was the maximum that could be cooked at any one time in the oven. After they had placed these pizzas in the oven and closed the door, they noticed smoke coming from behind the oven. Before they could take any action there was a sudden flash and a fire broke out behind the

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oven, spreading to the extractor fan tubing and to the packing material on which the pizza oven stood. Hannah and her friend tried to put the fire out. Unfortunately, the extinguisher was not powerful enough to do this. The fire spread to the kitchen area. The fire brigade arrived very quickly and managed to extinguish the fire before it had spread beyond the kitchen area. The fire damage meant that I had to close the business until it was repaired. As this happened in the run-up to Christmas it took me until 16 January 2024 to get all the fire damage repaired. The whole café needed to be redecorated because of smoke damage and I had to replace all the furniture as it had become smoke logged and the smell of this could not be eradicated.

I arranged for a report on the causes of the fire (**Document 2**). I have also arranged for my accountants to produce a statement as to the financial implications of the fire (**Document 3**).

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### **DOCUMENT 2**

#### **EXTRACT FROM A REPORT BY GILES NORTON AND PARTNERS, CONSULTING ELECTRICAL ENGINEERS**

The primary cause of the fire was that there was inadequate ventilation for cooking gases. This led to a build-up of overheated gases, which raised the temperature within and around the oven to well in excess of the design temperature. A thermal cut-out fitted within the oven to prevent this was inoperative. Internal electrical circuits within the sensor were not complete and the cut-out could not therefore operate as designed by the manufacturer of the oven.

The build-up of heat was caused by installation in an area with inadequate natural ventilation. Heat built up in the alcove immediately over the oven. The extractor fan installed should have eliminated this build-up but this was not correctly installed and was operating in reverse to the intended direction of flow.

Had the thermal cut-out been operating correctly there is no reason to suppose that the temperature would have exceeded design specifications, although prudence would dictate a larger ventilation area. However, the defective cut-out ensured that the excess temperature was not reacted to.

**DOCUMENT 3**

**EXTRACT FROM A REPORT BY MALIN & CREAGH, CHARTERED CERTIFIED ACCOUNTANTS**

We have acted for Megan Halliday, trading as The Nice Place, since 2015 and have been responsible for the production of her business accounts and tax returns during this period.

The business is a café and food takeaway. The business was significantly affected during the COVID 19 pandemic, as a result of restrictions on trading. We have therefore largely discounted figures relating to turnover and profit from March 2020 to December 2021.

With figures adjusted to December 2023 prices, the net profit of the business is £36,550 per annum on a turnover of £425,000 per annum or 8.6%.

The net loss for the period when the business was unable to operate in December and January covers a total period of 37 days, although some allowance must be made for the days when the business would not be operating in any event over Christmas and the generally lower level of trading over the Christmas period. We estimate that the actual loss amounted to approximately £3500, based on historic trading records. We understand that the business had expanded by evening opening in late 2023. Examination of documents relating to receipts and costs for the period of this expansion indicates an increase in activity of approximately 20%, with no significant impact on net profit rates. A further figure of £700 should therefore be added to the loss of profit occasioned by the fire.

We can also confirm that expenditure related to the fire has been undertaken in a total amount of £11,780, representing the cost of repairs to the fire-damaged area, redecoration throughout and replacement of all fire- and smoke-damaged furniture and furnishings.

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**DOCUMENT 4**

**INITIAL STATEMENT OF THE CLIENT**

Thomas Freeman of 23 Stamford Rd, Casterton will say: I am 17 years of age (date of birth 30 March 2007). I am a pupil at Queen Eleanor High School. At weekends and in the school holidays I have a part-time job at the Burlington Hotel in Stamford. I am a general handyman, helping out my uncle who is in charge of maintaining the grounds and the facilities.

On Saturday 6th April 2024, I was up at the hotel. My uncle had gone to Peterborough to get some things he needed for the hotel, as the gardens were just about to reopen for the season. I was tidying up the flowerbeds in the hotel garden at about 12.30 pm when the general manager, Helen Granger, asked me if I knew how to use the large ride-on mower. I told her that I did. Helen said that she had noticed that the grass in the lower garden area needed cutting and told me to do this.

The hotel is on a slope overlooking the river. The upper garden is laid out quite formally with flowerbeds. The lower garden is about 30 feet lower and contains a croquet lawn and a picnic area, as well as two hard tennis courts. The area in between is wooded and on quite a steep gradient. There are three means of access to the lower garden, a flight of steps which the guests normally use, a track running diagonally from the side of the hotel where the garden stores and greenhouses are across the wooded area, and a gate giving access to a lane which runs from the road near the hotel past the garden and giving access to some fields closer to the river. My uncle and I normally used the diagonal track as it was convenient for taking materials down, but I knew that when a contractor did some work on the tennis courts they used the gate from the lane as it was possible to get their lorry down the lane but not down the track.

I had used the ride-on mower several times in the upper garden area but never in the lower garden. My uncle had explained all the controls to me. I knew that I had to raise the mowing arms when I was moving from place to place. I also knew that the mower had a cab.

I went to the garden stores and found the mower and the keys. The cab was not fitted to the mower and I looked for it but couldn't find it. I thought that it would be OK to use the mower without the cab. I checked that the mower arms were in the raised position and set off down the track to the lower garden.

At the bottom of the track there is quite a sharp left-hand turn where the track reaches the boundary of the hotel grounds and has to turn back on itself. As I negotiated this, the mower tipped over on to its left-hand side and fell on top of me. I was going very slowly – only at walking pace. The mower is one where you actually sit astride and the weight of the mower crushed my left knee and lower leg. I realised I was quite badly hurt. Fortunately, I had my mobile phone with me and I called my mother. She must have called the hotel and the ambulance because Helen Granger and the hall porter came very quickly to see how I was and an ambulance arrived within a few minutes.

I was taken to Stamford Hospital where my leg was examined and x-rayed. I was told that I had a fracture dislocation of the tibia and a fracture of the patella. My leg was put in an above-knee plaster and I was kept in overnight for observation.

I was in considerable pain at the time of the accident but I was given painkillers. I am still in the plaster but I have been told that there is no reason why I should not make a full recovery.



**EXTRACT FROM MEDICAL REPORT**

[which confirms that your client Thomas Freeman sustained] 'a closed dislocation fracture of the left tibia at the tibio-patella junction, with subluxation of the head of the fibula, together with a closed lateral fracture of the patella, and associated soft tissue injuries, contusions and abrasions, all consistent with the history of a ride-on mower falling on the left leg when it overturned.' These were treated by 'reduction of the fractures and application of an above-knee plaster, together with the administration of anti-tetanus serum and analgesics'. The patient was reviewed after four weeks, when the fractures appeared to be uniting well, with no apparent displacement, and again after 12 weeks when this was confirmed. Post-traumatic physiotherapy was provided and the patient made a complete recovery, with no loss of function or displacement. It is expected that the patient will return to all pre-accident activities with no loss of physical condition but there is a 5% risk of late-onset osteoarthritis attributable to the accident.

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**EXTRACT FROM ENGINEER'S REPORT**

There was a fault in the electrical interlock, which was intended to prevent the mower being operated without the cab but this was a hidden defect, and would have become apparent only if an attempt had been made to operate the mower with no cab. It is, however, a recognised defect with this model of mower and more recent production has included a warning light that operates if the interlock is not working.

**MEDICAL REPORT PREPARED BY ANDREA MCALLISTER MB BS FRCS (ENG) CONSULTANT  
ORTHOPAEDIC SURGEON**

Ravi Gavaskar, date of birth 3 February 1999, was aged 22 at the time of the accident to which this report relates. Until the time of the accident, he had enjoyed good health and was a fit, athletic young man. The history I have been given of the accident is that he was a passenger in a taxi that was involved in a road traffic accident. As a result of the driver losing control, the taxi collided at speed with a roadside tree.

Ravi Gavaskar was a rear-seat passenger and was not wearing a seatbelt. He sustained multiple injuries consistent with a high-speed collision with a tree. The most significant injuries were:

1. A comminuted fracture of the right femur with extensive crushing and trauma to the femoral and gluteal muscles. The extent of the damage was such that the leg was not viable and an amputation was undertaken during the initial treatment in the A&E department. The amputation has left a stump of approximately 10 cm length. This has healed unremarkably. The patient has until now been using a wheelchair and is able to hop on his left leg for short distances. He is considered suitable for a prosthetic leg and I understand has made arrangements to consult a specialist provider.
2. A depressed fracture of the right parietal region of the skull. This resulted in some bruising of the brain but appears to have resolved with no continuing symptoms or cognitive or motor deficit. However, injuries of this kind are associated with a significant (c 20%) risk of post-traumatic epilepsy. A further report from a competent neurosurgeon and/or neurologist would be required to establish the precise position in this case.

**End of the case study materials**

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