

Title:	(Unit 15) Civil Litigation
Level:	6
Credit Value:	15

LEARNING OUTCOMES		ASSESSMENT CRITERIA		KNOWLEDGE, UNDERSTANDING AND SKILLS	
THE LEARNER WILL:		THE LEARNER CAN:			
1. Understand the main underlying features that enable an act of litigation	1.1	Explain the key rules of professional conduct	1.1	Outline knowledge of the SRA Code of Conduct for Solicitors (2023) the application of the Principles and Standards: <ul style="list-style-type: none"> • SRA principles • introduction; • maintaining trust and acting fairly; • dispute resolution and proceedings before courts; • service and competence; • conflict, confidentiality and disclosure; 	
	1.2	Explain different methods of financing litigation	1.2	Private funding: an explanation of privately paid costs; <ul style="list-style-type: none"> • an outline knowledge of special funding arrangements, such as legal expense insurance, Damage Based Agreements, Conditional Fee Arrangements and 3rd party funding. • the purpose and effect of BTE and ATE policies. 	

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	1.3 Explain the legal principles upon which most civil litigation is based	1.3 An underpinning knowledge of the principles of the laws of contract and tort, including the law of negligence and occupiers' liability.
	1.4 Analyse a given legal situation on these underlying features in order to offer practical advice and assistance	1.4 Analysis of a complex scenario to offer early advice including knowledge of the appropriate steps to take when accepting new instructions and making an early risk assessment and advice for progression.
2. Understand what pre-action steps should be considered before a claim is issued	2.1 Describe the key features of the Civil Procedure Rules (CPR)	2.1 The overriding objective of the CPR (Part 1) including the need to 'justify' steps in litigation to meet the overriding objective; <ul style="list-style-type: none"> • CPR 3 the Court's Case Management powers • the relevance and content of the pre-action protocols, the Practice Direction - Pre-Action Conduct and Protocols (PDPAC) and the relevance of methods of Alternative Dispute Resolution (ADR) • identifying and explaining to a client the consequences of an unreasonable failure to abide by protocol practice. • being aware when ADR might be considered. • Part 2 - the Application and Interpretation of the rules.

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	<p>2.2 Explain alternative methods of resolving debt actions under the Insolvency Act</p>	<p>2.2 The use of the statutory demand procedure as a debt-collection tactic, i.e., when it may be used and its key restrictions;</p> <ul style="list-style-type: none"> • application of the Pre-Action Protocol for Debt Claims
	<p>2.3 Describe limitations to actions</p>	<p>2.3 Understanding of the key sections of the Limitation Act 1980 relevant to actions in respect of wrongs causing personal injuries (s11) or death (s12), and definition of date of knowledge (s14); actions founded on simple contract (s5); discretionary exclusion of time limit for actions in respect to personal injuries or death (section 33); extension of limitation period in case of disability (s28); the impact for a claimant and a defendant of a case becoming statute barred.</p>
	<p>2.4 Analyse a defendant's financial circumstances</p>	<p>2.4 Understanding the need to establish the financial viability of a potential defendant, including knowledge of suitable enquiries, e.g. the use of enquiry agents, company searches, the register of judgments and credit reference agencies.</p>

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<p>2.5 Identify remedies available, including the assessment of damages and interest</p>	<p>2.5 Identifying the range of remedies available in an action founded on a breach of contract or in tort:</p> <ul style="list-style-type: none"> • understanding what heads of ‘damages’ may be sought (including categories and examples of pecuniary and non-pecuniary losses) and the applicable relevant rates of interest which may be claimed; • establishing quantum in personal injury cases including claims for provisional damages and an awareness of the level of damages awarded under the Whiplash Injury Regulations 2021. • the scope and application of the Law Reform (Miscellaneous Provisions) Act 1934 and Fatal accidents Act 1976; • the availability of periodic payments and structured settlements; • establishing quantum in commercial cases and the application of the Late Payment of Commercial Debts (Interest) Act 1998, including calculating interest and the provisions applied to commercial debts. • an outline understanding and ability to explain and obtain relevant equitable remedies such as injunctions with reference to application of the American Cyanamid principles
<p>2.6 Explain current pre-action protocols and practices in litigation</p>	<p>2.6 Pre-action protocols:</p> <ul style="list-style-type: none"> • an understanding of the Practice Direction - Pre-Action Conduct and Protocols • a working knowledge of the protocols applicable to personal injury claims including “The RTA Small Claims Protocol” • Employer’s Liability, and Public Liability Claims Procedure and the Pre-Action Protocol for Debt Claims. • an awareness of appropriate applications for pre-action disclosure and inspection; • selecting appropriate methods of ADR and settlement • letters of claim and pre-action “without prejudice” correspondence.

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	2.7	Analyse a given legal situation on pre-action steps in order to offer practical advice and assistance	2.7	Analysis of a complex scenario to offer advice and assistance, e.g., analysis of the facts, establishing potential grounds of liability, preparing written advice to a client, outlining any pre-action steps to be taken and an explanation of the merits and risks of an action at this stage (and including the costs involved).
3.		Understand the initial stages of proceedings	3.1	<p>Explain in which court proceedings should be issued</p> <p>Understanding the jurisdiction of the courts:</p> <ul style="list-style-type: none"> the issue of money claims and the High Court and County Court jurisdiction criteria (Part 7 and PD7A) understanding of the Low Value RTA. Employer's Liability, and Public Liability Claims procedure and awareness of the RTA Small Claims procedure; Awareness of current pilot schemes and other initiatives; an outline awareness of the Business and Property Courts and the specialist High Court lists, such as the Commercial Court, Technology and Construction Court and Administrative Court lists - knowledge of the practical and procedural differences in these Courts is not required.
	3.2	Analyse a claim form	3.2	<p>Be aware of the contents of the claim form (both Part 7 and Part 8 claims) and be able to draft the same. Identify the correct parties to litigation including claims by and against partnerships. Be aware of the requirements for managing claims involving children (Part 21). Be aware of the requirements of a properly drafted Particulars of Claim in an action for personal injury and loss, a breach of contract claim and a debt claim (Part 16). Be aware of the drafting requirements for specific situations such as reliance on convictions (PD 16.8.1 and s11 Civil Evidence Act (see also 8.2) and the Late Payment of Commercial Debts (Interest) Act 1998 (see also 2.5)</p>

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	3.3	Explain the procedure for issuing and serving a claim	3.3	Know how to issue a claim, and the documents required to issue. Understanding how service may be effected and the methods of service available and the requirements of service and what will constitute effective service. Knowledge of the steps that can be made to rectify or resolve problems relating to service (Parts 6 and 7).
	3.4	Analyse a defence to a claim, including evaluation of potential counterclaims	3.4	Be aware of the contents of a defence (Parts 9 & 15) and how to draft the same in an action for personal injury and loss, a breach of contract claim and a debt claim. Understand how to assess and explain a defence to a claimant or third party. Know the timescales for filing the defence or acknowledgment of service (Part 10); <ul style="list-style-type: none"> • sanctions for late filing and applications for extensions; • an explanation of the procedure for issuing a counterclaim; • assessment of circumstances when a counterclaim should be made; • distinction between a counterclaim and ‘set off’.
	3.5	Explain how additional claims can be brought by a defendant	3.5	Assessment of a counterclaim or claim against an additional party for contribution or indemnity; <ul style="list-style-type: none"> • procedural steps for bringing an additional claim and the court’s use of its case management powers when a counterclaim is made. (Part 20)
	3.6	Explain the procedure for obtaining more information about an opponent’s statement of case	3.6	Understanding when a request for further information (Part 18) is appropriate. Having knowledge of the procedure for making a request, the format of the request and how to respond to a request.
	3.7	Analyse how and when a statement of case can be amended	3.7	Powers and procedure for amending a statement of case and the costs implications (Part 17).
	3.8	Analyse a given legal situation on the initial stages of proceedings in order to offer practical advice and assistance	3.8	Analysis of a complex scenario to offer advice and assistance to a client at this stage of an action (including the cost implications).

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4. Understand when a matter can be terminated without a trial	4.1	Describe the process of ending proceedings where no defence is filed	4.1	Obtaining judgment in default (Part 12) and setting aside judgment in default (Part 13). Understanding the criteria contained in the CPR and the mandatory and discretionary bases for setting aside and factors to be considered by the court.
	4.2	Describe the procedure for obtaining judgment where a party admits some or all of the claim	4.2	Judgments on admission (Part 14), procedure for making an admission; types of admissions and their effect.
	4.3	Analyse when a case is weak and identify the rules and procedure for disposing of it early	4.3	Applications for summary judgment (Part 24): <ul style="list-style-type: none"> • who may apply; • grounds to be satisfied, including any relevant case law, and the cost consequences of such applications. • understanding when an application may be combined with an application for interim payment under Part 25. • be aware of the possible overlap for applications for striking out a statement of case under Part 3. (see also 7.2 below).
	4.4	Analyse the effect of reaching a negotiated settlement before judgment	4.4	Stay of proceedings: <ul style="list-style-type: none"> • the contents and effect of contracts of compromise, consent orders and the use of Tomlin orders and making an appropriate choice.
	4.5	Distinguish between discontinuing and abandoning proceedings	4.5	Effect of discontinuance and costs consequences (Part 38) and abandoning heads of claim (Part 17).
	4.6	Analyse a given legal situation on when a matter can be terminated without a trial in order to offer practical advice and assistance	4.6	Analysis of a complex scenario to offer advice and assistance; <ul style="list-style-type: none"> • making applications for judgment in default, summary judgment and/or strike out. • drafting Consent Orders and Tomlin orders (Part 23).

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<p>5. Understand the track allocation system</p>	<p>5.1 Explain the criteria used by the court to decide an appropriate track for an action</p>	<p>5.1 An explanation of: small claims, fast track, intermediate track and Multi-Track; (Parts 26-29)</p> <ul style="list-style-type: none"> • High Court; • criteria for determining the correct track and matters relevant to allocation; • contents of and appropriate information to include in the directions questionnaires (N180 and N181).
	<p>5.2 Analyse the significance of allocation to each of the tracks</p>	<p>5.2 Understanding the county court will allocate the court to a local hearing centre and the approach the court will take in managing a case in each of the tracks.</p> <ul style="list-style-type: none"> • small claims track, i.e., road traffic accidents, the extent of the court's powers and the rules on costs; • fast track and intermediate track, i.e., likely directions, general form of case management, timetabling (see PD 28.3.12), listing questionnaire, restrictions on costs, re-allocation of certain issues; • multi-track, i.e., duties of case management, case conferences, pre-trial reviews, variation of the case management timetable, use of listing questionnaires (parts 26-29).
	<p>5.3 Analyse a given legal situation on the track allocation system in order to offer practical advice and assistance</p>	<p>5.3 Analysis of a complex scenario to offer advice and assistance in this area.</p>

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<p>6. Understand the key steps made in the progress of a matter to trial</p>	<p>6.1 Explain what is meant by ‘directions’</p>	<p>6.1 Understanding the impact of a properly completed Directions Questionnaire and the Directions Order made by the court. i.e., preparation of draft directions orders that are appropriate to a case.</p> <ul style="list-style-type: none"> • be aware of situations when it is appropriate to seek and to justify specific directions. • be aware of the detail required in certain directions orders, for example where experts are to be appointed (eg, appointment of experts (where applicable) and subsequent report, disclosure of documents and subsequent exchange). • understand the importance and range of the court’s case management powers (Part 3); complying with court directions and the implications of non-compliance; • the potential sanctions of non-compliance and the requirements of making an application for relief from sanction under Part 3.9, including knowledge of the three-stage test in <u>Denton v T H White</u> [2014] EWCA CIV 906
	<p>6.2 Explain the rules of disclosure</p>	<p>6.2 Part 31 rules of disclosure and inspection:</p> <ul style="list-style-type: none"> • the meaning of standard and specific disclosure and inspection; • the general principles of disclosure including documents to be disclosed, the duty of search, the procedure for disclosure, right of inspection, documents referred to in statements of case. • understanding privilege and the categories of documents that may be withheld from inspection: • procedure for making or challenging claims to privilege. • the requirements for an application for specific disclosure. • an awareness of the client’s continuing duty of disclosure and advising appropriately.

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<p>6.3 Explain the purpose of witness statements and summonses, and the accompanying practical considerations of preparing evidence</p>	<p>6.3 The importance of preparing witness statements early, the requirements of a witness statement, what is and is not relevant content, understanding what a witness statement is seeking to achieve. understand the procedural requirements for witness statements and exchange (Part 32). Seeking a directions order for simultaneous disclosure of witness statements;</p> <ul style="list-style-type: none"> • understanding the requirement to serve a witness statement and the inbuilt sanction for failure to serve; the use of statements at trial (Part 32 and the Civil Evidence Act 1995); false statements. Understand how evidence is adduced including the rules relating to the preparation and exchange of witness statements, witness summons and the form and nature of affidavits (PD32). Understand the rules relating to hearsay and the weight likely to be given to evidence adduced at trial (see also 8.2).
<p>6.4 Analyse how expert witness reports are used by the parties and the court</p>	<p>6.4 The court's power to restrict expert evidence, the use of experts, when it is appropriate to obtain expert evidence. Understanding when a single joint expert is required (or should be sought) and when an order for single experts and/or multiple experts is required. Understanding the role, duty and obligations of an expert in proceedings (Part 35) e.g.:</p> <ul style="list-style-type: none"> • instructed by the parties; • medical reports in whiplash claims; • overriding duty; • rules relating to evidence of opinion; • methods of giving expert evidence; • general requirements to give written reports; • written questions to experts; • courts power to order discussion between experts and the experts right to ask for directions.

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	6.5	Analyse a given legal situation on the key steps made in the progress of a matter to trial in order to offer practical advice and assistance	6.5	Analysis of a complex scenario to offer advice and assistance at this stage of an action.
7. Understand offers of settlement and interim payments and remedies	7.1	Explain formal offers to settle	7.1	Part 36 offers; <ul style="list-style-type: none">• nature of the offer when made by claimants and defendants;• rules and procedure for making and withdrawing and changing the terms of an offer;• cost consequences on acceptance;• costs consequences following judgment of an offer made by a claimant and a defendant respectively;• an outline knowledge of the deduction of benefits including the role of the compensation recovery unit;• implications of QOCS and Part 36 e.g. in relation to split costs orders
	7.2	Explain the use of interim payments	7.2	Nature and availability: <ul style="list-style-type: none">• procedure and grounds for making an application for an interim payment (Part 25); when to seek a voluntary payment (see also 4.3).
	7.3	Explain other interim remedies available	7.3	Procedure and grounds for granting an interim order: <ul style="list-style-type: none">• interim remedies available under Part 25 including, e.g., declarations, injunctions, inspection of property, search orders and freezing orders.
	7.4	Analyse a given legal situation on offers of settlement and interim payments and remedies in order to offer practical advice and assistance	7.4	Analysis of a complex scenario to offer advice and assistance at this stage of an action or when these events occur in an action.

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8. Understand trial procedure	8.1 Explain the procedures involved within a trial	8.1 The steps required in preparing a case for trial, the contents and requirements of the listing questionnaire (N170) arranging witness attendance, production of trial bundles and skeleton arguments/reading lists/authorities; Procedures at the trial including sequence of events and consequences of failure to attend trial (Part 39)
	8.2 Explain the rules of civil evidence and their effect at trial	8.2 The rules and procedure relating to hearsay: evidence of admissions and the provisions of the Civil Evidence Act 1968 and 1995 (Part 33) (see also 6.3).
	8.3 Analyse the principle of costs and its application at trial	8.3 Understand how costs orders may be made in an action and the types of costs orders that may be made (Part 44). Understand the procedure for costs assessment. (Parts 45 – 47) (see also 10.1).
	8.4 Analyse a given legal situation on trial procedure in order to offer practical advice and assistance	8.4 Analysis of a complex scenario to offer advice and assistance at this stage of an action.

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<p>9. Understand orders and judgments, how they are enforced and the procedure of appealing a judgment</p>	<p>9.1 Outline the orders available and describe how decisions of the court become judgments</p>	<p>9.1 Types of orders and judgments available, payments by instalments, orders requiring an act to be done ('unless orders'), penal notices and consent orders;</p> <ul style="list-style-type: none"> • rule of drawing up judgments (Part 40); • the use of consent orders and correction of errors to judgments (see also 4.6).
	<p>9.2 Explain the enforcement remedies available to a winning party</p>	<p>9.2 General rules about enforcement (Part 70):</p> <ul style="list-style-type: none"> • obtaining information (Part 71); • third party debt orders (Part 72); • charging order (Part 73); • writs and warrants of control (Part 83); • taking control of goods (Part 84); • attachment of earnings (Part 89); • bankruptcy.
	<p>9.3 Explain the appeals procedure</p>	<p>9.3 Nature of appeal;</p> <ul style="list-style-type: none"> • the appeals framework including routes of appeal and permission to appeal; • procedural steps (Part 52), including applications for staying execution of the judgment.
	<p>9.4 Analyse a given legal situation on orders and judgments in order to offer practical advice and assistance</p>	<p>9.4 Analysis of a complex scenario to offer advice and assistance at this stage of an action.</p>

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<p>10. Understand the civil costs regime</p>	<p>10.1 Identify the rules relating to costs</p>	<p>10.1 An outline of Parts 44 to 47 of the CPR and related practice directions;</p> <ul style="list-style-type: none"> • In particular, the rules relating to costs orders, fixed costs, summary assessment of costs, provisional and detailed assessment of costs and the implications of QOCS on costs orders and enforcement
	<p>10.2 Analyse the impact of legislation and litigation on the costs regime</p>	<p>10.2 An understanding of the extent of the fixed fee regime;</p> <ul style="list-style-type: none"> • Precedent H (outline knowledge) and costs ‘budgeting’ (PD3E), the effect on costs of damage-based agreements and conditional fee agreements; • Understanding the principle of qualified one-way cost shifting in personal injury claims.
	<p>10.3 Analyse a given legal situation on the civil costs regime in order to offer practical advice and assistance</p>	<p>10.3 Analysis of a complex scenario to offer advice and assistance at this stage of an action, e.g., an analysis of when funding may become an issue in litigation and what steps should be taken;</p> <ul style="list-style-type: none"> • The application of the principles of costs to a scenario.

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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Civil Litigation
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 44 Personal Injury Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	N/a
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/a
Endorsement of the unit by a sector or other appropriate body (if required)	N/a
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	

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