



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

June 2023

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 **Documents 1 and 2** of the case study materials.

Further investigations by the school confirm the facts given in **Document 1**. A response is made by Kempstons to Millie's letter of claim. In that letter, Greenbank admits that the climbing frame was unsafe. However, breach of duty to Millie is denied on the basis that reasonable steps were taken to safeguard the students and to warn of risk. Furthermore, Greenbank alleges that Millie caused or contributed to the accident by her own negligence. Following this response, you receive a further letter from Millie's lawyers (**Document 2**).

- (a) Advise Greenbank whether the suggested expert evidence is needed in this dispute and indicate how Greenbank should respond to this invitation.

[NOTE: Do not draft the response itself.]

(8 marks)

You send a suitable reply to Millie's lawyers. It is not possible to reach settlement. On 28 April 2023, a claim form, endorsed with particulars of claim, is issued in the High Court and served on Greenbank and passed to your firm. The deemed date of service is 22 May 2023. Kallum passes the proceedings to you and queries whether a litigation friend should have been appointed on behalf of Millie.

- (b) Explain whether Millie needs a litigation friend to conduct proceedings on her behalf at this stage.

(7 marks)

Kallum accepts your explanation. You serve an acknowledgment of service. The following day, you receive a telephone call from Nigella Rouse who tells you that Jaquie, the member of staff responsible for running the volleyball training session, has admitted that, against school policy, she allowed Millie and her friends to enter and use the gym without supervision. In the circumstances, you advise Greenbank that it would be sensible to make a Part 36 offer at the same time as serving the defence. Greenbank asks you to explain your recommendation to make a Part 36 offer.

- (c) Explain to Greenbank the benefits of making such an offer, mentioning any relevant potential implications for costs and interest.

(12 marks)

(Total: 27 marks)

Question 2

Reference: Question relates to **Documents 3** of the case study materials.

Greenbank accepts your advice and, at the same time as serving the defence in which a denial of liability for negligence is maintained, and allegations of contributory negligence are raised, you make a Part 36 offer in the sum of £30,000 against a likely claim value of £55,000.

The relevant period for acceptance expires on 7 July 2023.

You have today received a letter from Millie's lawyers (**Document 3**).

- (a) In light of this letter, advise Greenbank what specific information you require from Millie's lawyers, including advice on tactics, and recommendations which might usefully be made. **(12 marks)**

The Part 36 offer is not accepted but the parties agree to negotiate. In August, a settlement is reached in the sum of £35,000. The defendant agrees to pay the settlement sum in 21 days and to pay the claimant's costs on the standard basis to be subject to detailed assessment if they are not agreed. The parties agree to keep the settlement terms confidential and as a gesture of goodwill, Greenbank has agreed that Millie's school fees for the past academic year will be refunded.

- (b) Explain why, on these facts, a Tomlin Order is the most appropriate method for the parties to record the settlement reached.

(8 marks)

Total: 20 marks)

Turn over

Question 3

Reference: Question relates to **Documents 4** of the case study materials.

The Practice Direction – Pre-action Conduct and Protocols applies to the claim. Kallum asks you to draft a letter of claim. Having read through the file, you realise that Charlie has not yet provided the information that Kallum mentioned in his attendance note (**Document 4**).

- (a) Explain, with reference to the Practice Direction – Pre-action Conduct and Protocols, why it is important to ensure that you have accurate information from Charlie, and the relevance of ADR.

(12 marks)

Having complied with the Practice Direction, the parties are not able to resolve the dispute. You issue and serve a claim form with the particulars of claim. The deemed date of service is 14 May 2023. On 24 May, Kempston’s case management system flags the case for you to enter default judgment and you do so that same day. You have now received notice of application to set aside the default judgment. You realise that there has been an inputting error in the system.

- (b) Advise Charlie on the reasons why the default judgment will be set aside and, in that event, the likely order for costs.

(8 marks)

Judgment is set aside. Jedi serves a defence. You require more information about the defence. You telephone Sayeed Khan at Jedi’s lawyers and discuss the information you need. Sayeed agrees to provide the information within seven days. It is now 14 days since you spoke to Sayeed, and you have not heard from him.

- (c) Explain your next step to obtain the information you seek in relation to Jedi’s defence.

(7 marks)

(Total: 27 marks)

Question 4

Reference: Question relates to **Documents 5 and 6** of the case study materials.

Prior to the meeting with Nita, Kallum has asked you to consider the relevant law so that you are both well prepared to discuss the circumstances with Nita (**Document 5**).

- (a) Explain what advice Nita should be given about her ability to bring a claim, mentioning the damages which may be sought, and the relevant limitation period.

(12 marks)

Following the meeting, you make further enquiries with the police. You receive confirmation from the police that the driver has, following a plea of not guilty, been convicted at trial of dangerous driving, for which the driver was sentenced to a period of imprisonment.

- (b) Explain the relevance of this conviction in terms of discharging Nita's evidential burden in her claim in negligence.

(6 marks)

It is now 21 December 2023. In the intervening six months, you have investigated and prepared Nita's claim for issue. Last week, you issued proceedings in the High Court. You have today received a letter from the defendant's lawyers (**Document 6**).

- (c) Explain, with reference to permitted methods of service and the information available, the most appropriate method of service for Nita's claim form and whether it is necessary to serve immediately.

(8 marks)

(Total: 26 marks)

End of the examination

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