

 CILEX



# P2 – Dispute Resolution

*Professional Stage*

**2025- 2026**

# P2: Dispute Resolution

The aim of this module is to give you the essential knowledge and understanding to equip you to deal with dispute resolution in a civil litigation context. You will be able to challenge appropriately and give advice in the client's best interests. Through the development of drafting and tactical awareness skills, you will be able to prepare your client's case and take steps to resolve the case. You will develop your advocacy skills to present cogent and clear arguments. In addition, you will develop specialist skills in new areas of litigation and be able work with confidence with current and emerging technology in dispute resolution.

This module covers:

1. Procedural and tactical considerations at the initial stage
2. Tactical awareness and case analysis in dispute resolution
3. Preparing for and representing the client at hearings
4. Preparing for an ADR procedure
5. Media and Communications
6. Specific claims for personal injury and death
7. Trespass to goods and to the person
8. Commercial disputes
9. Communication skills and people management
10. Drafting
11. Current practice: portal claims and money claims online
12. Emerging practice: the impact of Artificial Intelligence in dispute resolution

## Learning Outcomes

By the end of this module you will be able to:

1. Plan and implement procedural steps to be taken in a civil litigation context to achieve particular outcomes and identify relevant procedural requirements
2. Draft a range of documents which are fit for purpose
3. Gather, analyse and synthesise a range of material with appropriate application to a case to develop solutions which are in your client's best interests
4. Formulate a case strategy and evolve as necessary to manage a complex case through the litigation process or ADR
5. Develop communication and written skills in the obtaining of client's instructions, delivering appropriate advice where necessary and building a trusting professional relationship with the client
6. Identify situations that potentially give rise to conflicts of interest, issues of professional ethics or other issues under the applicable Codes of Conduct

**Linked online assessment: P2**

**TQT: 300 hours**

**Prerequisite knowledge: Advanced Stage Dispute Resolution and Litigation**

## Module Resources

In addition to the VitalSource manual, there is a reading list to accompany the module which is located in the 'Study Guide and Content Updates – Professional Stage 1<sup>st</sup> Editions' document in the VitalSource bookshelf, Training Provider hub and in myCILEX.

## Details of updates included in 2025- 2026 Module Specification

There have been some changes to positioning of topics within the module spec which haven't been listed for brevity

- Re-inclusion of MS section 10 Current practice: portal claims and money claims online
- 1a: addition of 'Photographs and plans' within Investigations
- 1b: expansion of subsection heading: Analysing a case in light of emerging evidence and drafting applications and evidence in support, including objective evaluation of...
- Section 2. Title to include 'trial'
- 2b: addition of Limitation Act 1980 s32
- 2e: expansion of Managing client's expectations to include, 'explaining costs and obtaining instructions'
- 2f: expansion of subtitle heading: to include Awareness of advocacy skills – *preparing for the hearing*
- Section 3: slight change to title, now 'Preparing for ADR' inclusion of appropriate methods of ADR including negotiation and settlement offers
- Section 5: addition of sentence regarding assumed underpinning knowledge from Foundation Stage.
- 5d: renamed as 5c and insertion of "deceased's" estate
- Section 6: addition of sentence regarding assumed underpinning knowledge from Foundation Stage.
- Section 7: addition of sentence regarding assumed underpinning knowledge from Foundation Stage.
- 7a: inclusion of 'conspiracy to defraud'
- 9c: inclusion of: Use 'and completion' of online court forms (HMTCTS service)
- 9e: inclusion of: 'Drafting a claim form'
- Removal of Section 11: Emerging practice: the impact of Artificial Intelligence in dispute resolution

**1. Tactical awareness and case analysis in dispute resolution**

At the centre of dispute resolution is the ability to undertake close analysis of a range of materials and to decide upon a strategy to achieve an outcome which is in the client's interests. This includes:

- a) Identifying what evidence is needed and analysing case in light of emerging evidence
  - Costs and proportionality
  - Investigations: site visits and photographs and plans
  - Factual and expert witness evidence
    - Corroborative and probative value
    - Credibility and weight (NB: including Civil Evidence Act 1968 s.11)
    - Deciding what evidence to disclose or to dispense with
    - Strengths and weaknesses
    - Exploiting opponent's weaknesses
  - Usefulness of supplementary evidence
- b) Analysing a case in light of emerging evidence and drafting applications and evidence in support, including objective evaluation of:
  - Statements of case including requirements for amendment, and addition or substitution of parties:
  - Part 17 Amendments
  - Part 19 Adding and substitution of parties
  - Part 20 Counterclaims and other additional claims
  - Factors to consider including risk to client and costs liabilities
- c) Obtaining and evaluating documentary evidence including contemporaneous evidence e.g. photographs, records and plans
- d) Challenging suspected false evidence
  - Professional obligations
  - The client
  - The opponent
  - Sanctions
- e) Tactical use of
  - Notices to admit
  - Notices to produce
  - Deemed admission as to authenticity of disclosed documents

## **2. Preparing for and representing the client at hearings and trial**

Applications may be made throughout the litigation process. You must understand the underpinning rules of evidence and those relating to the use of hearsay evidence. You must know how to prepare for substantive applications. Therefore, you will need to know the following:

- a) Rules of evidence
- b) Burden and standard of proof in given situations:
  - General
  - Contributory negligence
  - Res ipsa
  - Duress/undue influence
  - Fraud (NB: Limitation Act 1980 s32)
- c) s11 Civil Evidence Act 1968
- d) Civil Evidence Act 1995
  - The nature of hearsay evidence
  - Admissibility of hearsay evidence
  - Previous statements
  - Proof of statements and records
  - Credibility
  - Notice of intention
- e) Specific applications
  - Managing client's expectations, explaining costs and obtaining instructions
  - Requirements, grounds and preparation and drafting of statements in support of the following applications:
    - Part 16: Pre-action Disclosure
    - Part 13: Setting aside judgment
    - Part 18: Requests for further information
    - Part 25: Interim payments
    - Part 25: Security for costs
    - Part 25: Injunctions
    - Part 24: Summary judgment
    - Part 3: Striking out
    - Part 3: Applications for relief from sanctions: The Denton test
- f) Awareness of advocacy skills – preparing for the hearing
  - Know how to establish suitable rapport with the court
  - Demonstrate understanding of relevant ethical rules, etiquette, and conventions
  - Understanding the scope of the judge's power
  - Effective advocacy

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|                             | <ul style="list-style-type: none"> <li>○ Preparation for the hearing</li> <li>○ Preparation of arguments</li> <li>○ Anticipating and responding to challenge</li> <li>• Recognise appropriate body language, pace and language</li> <li>• Prepare and present a coherent and persuasive case, consistent with client's instructions taking diversity into account</li> <li>• Demonstrate practical understanding of substantive and procedural law</li> <li>• Correctly apply relevant law to facts of case</li> <li>• Maintain these standards when working under pressure</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>3. Preparing for ADR</b> | <p>Throughout the dispute resolution process, the parties are encouraged to consider settlement and appropriate methods of ADR. You should understand the options for ADR including negotiation and settlement offers. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> <li>a) When to use ADR <ul style="list-style-type: none"> <li>• The difference between adjudicative and non-adjudicative options</li> <li>• Confidentiality and privileged materials</li> <li>• Funding</li> </ul> </li> <li>b) Conduct <ul style="list-style-type: none"> <li>• Failure to consider ADR</li> <li>• Unreasonable conduct in ADR</li> <li>• Sanctions</li> </ul> </li> <li>c) Arbitration <ul style="list-style-type: none"> <li>• Principles of s1 Arbitration Act 1996</li> <li>• Requirements</li> <li>• Likely uses</li> <li>• Commencement</li> <li>• Procedure</li> <li>• Enforcement of awards</li> </ul> </li> <li>d) Mediation <ul style="list-style-type: none"> <li>• Before, during and after the mediation process:</li> <li>• Selection of the mediator</li> <li>• Venue for mediation</li> <li>• Agreement to mediate</li> <li>• The position statement</li> <li>• Key supporting documents</li> <li>• Disclosure</li> <li>• Settlement clauses</li> <li>• Mediation stages</li> </ul> </li> </ul> |

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|                                    | <ul style="list-style-type: none"> <li>• Enforcement of settlements</li> </ul> <p>e) Early neutral evaluation</p> <ul style="list-style-type: none"> <li>• Expert evaluation</li> <li>• Suitable cases</li> <li>• Contractual provisions for referral to expert</li> <li>• Selection of the expert</li> <li>• Procedure</li> <li>• Challenging the expert's decision</li> <li>• Judicial neutral evaluation</li> <li>• Process</li> <li>• Limitations</li> <li>• Effect on conduct of proceedings</li> </ul> <p>f) Negotiation</p> <ul style="list-style-type: none"> <li>• Establishing strategy and parameters for settlement by negotiation</li> <li>• Preparing to negotiate</li> <li>• Case analysis of strengths and weaknesses</li> <li>• BATNA and negotiation plans</li> <li>• Identifying issues, objectives and concessions</li> <li>• Anticipating and responding to challenge</li> <li>• Advising the client and obtaining instructions</li> <li>• Conduct (including ethics) <ul style="list-style-type: none"> <li>• Face to face</li> <li>• Telephone</li> <li>• Written</li> </ul> </li> <li>• Tactical use of Part 36 and other offers</li> <li>• Joint settlement meetings</li> </ul> |
| <b>4. Media and Communications</b> | <p>There are various specialisms in the area of dispute resolution in a civil context. A burgeoning area is in the arena of media and communications including the widespread use of online media. Therefore, you will need to know the following:</p> <p>a) An outline of possible claims:<br/>defamation, misuse of private information, data protection law or harassment by publication, claims in breach of confidence and malicious falsehood which arise from publication or threatened publication by the print or broadcast media, online, on social media, or in speech</p> <p>b) What is defamation?</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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|                                                         | <ul style="list-style-type: none"> <li>c) Defamation Act 1996 and 2013 <ul style="list-style-type: none"> <li>• Limitation</li> <li>• The use of a cease and desist letter</li> <li>• Offers to make amends</li> </ul> </li> <li>d) Distinction between libel and slander <ul style="list-style-type: none"> <li>• Meaning of a statement</li> <li>• Burden of proof</li> <li>• Cases actionable per se</li> </ul> </li> <li>e) Requirements: <ul style="list-style-type: none"> <li>• Reference to claimant</li> <li>• Responsibility for publication</li> </ul> </li> <li>f) Defences <ul style="list-style-type: none"> <li>• Truth</li> <li>• Honest opinion</li> <li>• Public interest</li> <li>• Absolute privilege</li> <li>• Qualified privilege</li> <li>• Fair comment</li> </ul> </li> <li>g) Damages</li> <li>h) Rehabilitation of Offenders Act 1974</li> <li>i) Managing the claim: <ul style="list-style-type: none"> <li>• Pre-action Protocol for Media and Communications Claims</li> <li>• Summary disposal of claim and Part 53</li> </ul> </li> </ul> |
| <b>5. Specific claims for personal injury and death</b> | <p>A specialism in the area of dispute resolution concerns claims for personal injury and death. You will be assumed to have Foundation Stage knowledge of the following underpinning causes of action which may give rise to such claims: occupiers' liability, employers' liability, and claims under the Highways Act. In addition, , you will need to know the following:</p> <ul style="list-style-type: none"> <li>a) Psychiatric Illness <ul style="list-style-type: none"> <li>• The rules</li> <li>• Duty of care and psychiatric harm <ul style="list-style-type: none"> <li>○ Primary victims</li> <li>○ Secondary victims</li> </ul> </li> <li>• Medically recognised psychiatric injury</li> <li>• Nervous shock</li> <li>• Post-traumatic stress disorder</li> <li>• Pathological grief</li> </ul> </li> </ul>                                                                                                                                                                                                                                               |

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|                                               | <ul style="list-style-type: none"> <li>• Personality disorder</li> <li>• Trauma induced miscarriage</li> <li>• Unrecognised harms</li> <li>• Sudden event</li> </ul> <p>b) Fatal accident claims - claims by dependants</p> <ul style="list-style-type: none"> <li>• Limitation</li> <li>• Fatal Accidents Act 1976</li> <li>• Claims for dependency</li> <li>• Types of dependency</li> <li>• What is recoverable? <ul style="list-style-type: none"> <li>○ Loss of financial dependency</li> <li>○ Bereavement award</li> <li>○ Assessment of damages</li> <li>○ Impact of contributory negligence</li> </ul> </li> </ul> <p>c) Claims for the benefit of the deceased's estate</p> <ul style="list-style-type: none"> <li>• What is recoverable?</li> <li>• Law reform (Miscellaneous Provision) Act 1934</li> <li>• s.1 Administration of Justice Act 1982</li> <li>• Kadir v Mistry [2014]</li> <li>• Who is entitled to claim?</li> <li>• Procedure</li> </ul> |
| <b>6. Trespass to goods and to the person</b> | <p>Trespass to goods and to the person are further examples of specialist practice. You will be assumed to have underpinning Foundation Stage knowledge of the law of trespass. In addition, you will need to know the following:</p> <p>a) Trespass to goods</p> <ul style="list-style-type: none"> <li>• Torts (Interference with Goods) Act 1977</li> <li>• Wrongful interference with goods <ul style="list-style-type: none"> <li>○ What is conversion?</li> <li>○ Direct interference</li> <li>○ Possession (third party rights)</li> <li>○ Limitation</li> <li>○ Remedies</li> <li>○ Defences</li> </ul> </li> </ul>                                                                                                                                                                                                                                                                                                                                          |
| <b>7. Commercial disputes</b>                 | <p>Commercial disputes derive from contract law, and you will be assumed to have Foundation Stage knowledge of underpinning contract law giving rise to causes of action, including where deception or misrepresentation plays a role. You must have an awareness of some of the most common areas giving rise to a dispute including an outline understanding of trade disputes. In addition, you will need to know the following:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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|                                                      | <ul style="list-style-type: none"> <li>a) Conspiracy including conspiracy to defraud</li> <li>b) Inducing breach of contract</li> <li>c) Intention to cause loss by unlawful means</li> <li>d) Fraudulent misrepresentation, and fraudulent and deliberate concealment (NB: Limitation Act 1980 s32)</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>8. Communication skills and people management</b> | <p>Effective communication is a key skill for a successful litigator as the work requires skilled people management and compliance with regulatory requirements to achieve the best possible outcome. Building on the skills introduced at the Advanced Stage, you will need to develop the following:</p> <ul style="list-style-type: none"> <li>a) Application of communication skills for a civil litigation lawyer <ul style="list-style-type: none"> <li>• Use of appropriate language</li> <li>• Recognise when an interpreter is required</li> <li>• Be able to understand and explain role of the relationship between client and solicitor/counsel where appropriate during the conduct of the case</li> <li>• Elicit other relevant information from other side and relevant witnesses, experts where appropriate</li> <li>• Formulate appropriate advice through correct identification of legal/non legal issues</li> <li>• Actively consider whether settlement or non-litigation process is most appropriate to meet the client's objectives</li> <li>• Have the capacity (but where necessary to refer to trial Counsel) to give appropriate advice to assist client in making decisions including giving advice which is negative to the client's case and which is based on the evidence</li> <li>• Enable client to understand and to agree to the necessary steps to be taken in the preparation of the client's case</li> <li>• Persuasive communications towards resolution of issues</li> </ul> </li> <li>b) Giving advice and managing challenges <ul style="list-style-type: none"> <li>• Clients</li> <li>• Witnesses</li> <li>• Persons under a disability including elderly clients and minors</li> <li>• Litigation friends</li> <li>• Professional obligations towards litigants in person</li> <li>• Emerging guidance</li> </ul> </li> <li>c) Interviewing and advising skills for clients and witnesses</li> </ul> |
| <b>9. Drafting</b>                                   | <p>Drafting is an extension of communication skills. The objective is to condense material and present it clearly and concisely to achieve its purpose. Therefore, you will need to know the following:</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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|                                                                            | <ul style="list-style-type: none"> <li>a) The nature and purpose of legal documents</li> <li>b) Adapting precedents</li> <li>c) Use and completion of online court forms (HMCTS service)</li> <li>d) Rules of drafting</li> <li>e) The structure, content, and requirements for: <ul style="list-style-type: none"> <li>• Drafting a claim form</li> <li>• Drafting statements of case</li> <li>• Drafting witness statements</li> <li>• Drafting schedules of loss and counter-schedules</li> <li>• Drafting settlement offers</li> <li>• Drafting settlement agreements</li> <li>• Drafting instructions to counsel</li> </ul> </li> </ul>                                                            |
| <b>10. Current practice:<br/>portal claims and<br/>money claims online</b> | <p>Dispute resolution is an area of practice in which technology is heavily used throughout the process. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> <li>a) The digitisation of the justice system</li> <li>b) The Pre-Action Protocols including resolution of personal injury and money disputes through the online portals: <ul style="list-style-type: none"> <li>• The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol')</li> <li>• The Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims</li> <li>• Money Claim Online</li> </ul> </li> </ul> |