



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 15 – CIVIL LITIGATION

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- A clean/unannotated copy of the case study materials is attached to this examination.
- You are permitted to take your own clean/unannotated copy of the case study materials and a statute book, where permitted, into the examination. You are **NOT** permitted to take any other materials including notes or textbooks.
- In the examination, candidates must comply with the CILEx Examination Regulations – Online Examinations or with the CILEx Examination Regulations – Online Examinations with Remote Invigilation.

Please turn over

This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

GUIDANCE FOR LEARNERS STUDYING FOR THE LEVEL 6 UNIT 15 CIVIL LITIGATION EXAMINATIONS

Learners studying for Level 6 Unit 15 Civil Litigation are advised that, when revising for these units, they should have knowledge and understanding of the Civil Procedure Rules and of the rules of professional conduct for lawyers issued by the regulatory bodies for CILEx and the SRA.

Learners 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, learners are expected to be broadly familiar with the content of those rules and their practical application. Over and above familiarity with the relevant current specification, including the rules of professional conduct.

Listed below are the Civil Procedure Rules which learners may find particularly relevant to this examination:

SRA Code of Conduct for Solicitors

CPR

Part 1

Part 6

Part 7

Part 25

Part 26

Part 29

Part 31

Part 35

Part 36

Part 44

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 are in the civil litigation team and your supervising partner is Annabel Bond. Your local County Court Hearing Centre is situated in Bedford.

You are assisting Annabel Bond in the following cases:

(1) The Constantine Investments Limited File (File ref: CI/AB/666/19)

Kempstons is acting for Constantine Investments Limited in connection with a claim for damages for breach of contract and/or professional negligence against their former solicitors Edge, Steel & Thornton LLP. Further information concerning this case can be obtained from the following case study materials:

DOCUMENT 1 Internal memorandum from Annabel Bond to trainee lawyer

DOCUMENT 2 Partly drafted Particulars of Claim

(2) The Grindlewood Domestic LLP File (File ref: GD/AB/277/19)

Kempstons is acting for Grindlewood Domestic LLP in connection with a claim for payment of an outstanding invoice in the sum of £35,000 against one of its clients Forest Services Limited. Further information concerning this case can be obtained from the following case study materials:

DOCUMENT 3 Internal memorandum from Annabel Bond to trainee lawyer

(3) The Our Love of Pets File (File ref: LOP/AB/456/19)

Kempstons is acting for Our Love of Pets in connection with a dispute with the local authority. Further information concerning this case can be obtained from the following case study materials:

DOCUMENT 4 Internal Memorandum from Annabel Bond to trainee lawyer

(4) The Sana Habir File (File ref: SH/AB/199/19)

Kempstons is acting for Sana Habir in connection with her claim for damages for personal injuries that she sustained as a result of a road traffic accident. Further information concerning this case can be obtained from the following case study materials:

DOCUMENT 5 Attendance note with client Sana Habir

DOCUMENT 6 Letter from client to Annabel Bond

DOCUMENT 1

INTERNAL MEMORANDUM

From: Annabel Bond
To: Trainee Lawyer
Client: Constantine Investments Limited
Matter: Breach of Contract/Professional Negligence Case against Edge, Steel & Thornton LLP
Date: Today

I have received instructions to act From Vernon Wood, the Operations Director of Constantine Investments Limited (CI). CI wish to instruct us in relation to issues surrounding the purchase of land for development of a gym, spa and wellbeing centre.

In early 2018 CI identified a plot of land in Milton Keynes that would be suitable for the wellbeing centre development. CI obtained a valuation of the site from a surveyor who confirmed that the land was worth £18 million. The valuation was based on the assumption that the land could be developed in accordance with the architect's plans. These plans were for a two-storey building with the second top storey being a car park. This was a vital part of the development as the wellbeing centre was dependent on customers being able to park close by and there was no other space on the land for parking, and no car parks nearby.

There was a restrictive covenant on the land to the effect that the owner could not construct any building which was greater than the height of the roof/ridge line of the nearby Shoe and Horn Hotel (the Hotel). The Hotel is the beneficiary of the restrictive covenant. The height of the proposed building was just below the top level of the chimney line of the Hotel.

CI instructed another firm of solicitors Edge, Steel & Thornton (EST), in relation to the property transaction, and the partner in charge Mr Jacobs was a specialist in commercial property. They signed the retainer letter in May 2018. He advised on the effect of the restrictive covenant and confirmed that CI could build to the height they required, just below the top level of the chimney line. As a result, CI purchased the land at a cost of £18 million in September 2018.

Shortly after development of the land commenced (December 2018), the Hotel threatened proceedings for breach of the restrictive covenant. To prevent such proceedings CI immediately negotiated with the Hotel, continued with the building of the wellbeing centre, but only to the roof line, and very quickly purchased a separate piece of land at a cost of £7 million for the purpose of building a car park for their customers attending the wellbeing centre.

The valuation of the mainland at £18 million by the surveyor was based on Mr Jacob's interpretation of the restrictive covenant that CI could build up to the top level of the chimney line of the Hotel. This not being the case, the land is only worth £16 million.

We are instructed to pursue Edge, Steel & Thornton LLP for professional negligence and breach of contract/retainer on behalf of CI in the sum of £9 million (the difference in value of the main property and the cost of the additional land).

DOCUMENT 2

PARTLY DRAFTED PARTICULARS OF CLAIM

Claim Number:

BETWEEN

CONSTANTINE INVESTMENTS LIMITED

Claimant

and

EDGE, STEEL & THORNTON LLP

Defendant

PARTICULARS OF CLAIM

1. At all material times the Claimant was a company engaged in the development of a well-being centre. The Defendant was a firm of solicitors practising as an LLP.
2. In early 2018 the Claimant identified a site in Milton Keynes (the 'land') where it wished to develop a well-being centre. The land was subject to a restrictive covenant to the effect that the owner could not construct any building on the Land that was greater in height than the roof/ridge line which existed on the neighbouring property (the 'Restrictive Covenant').
3. In order to be commercially viable, it was necessary for the well-being centre to have provision for car parking. The Claimant employed architects whose plans (the 'Plans') for the well-being centre were for a two-storey building, the second storey of which was to be a car park. The height of the well-being centre in accordance with the Plans was below the top level of the chimneys on the buildings which existed on neighbouring property but above the roof/ridge line of buildings which existed on the neighbouring property.

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DOCUMENT 3

INTERNAL MEMORANDUM

From: Annabel Bond
To: Trainee Lawyer
Client: Grindlewood Domestic LLP
Matter: Debt/unpaid invoice dispute with Forest Services Limited
Date: Today

We have been instructed to commence a claim by our client Grindlewood Domestic LLP, which is suing Forest Services Limited for an unpaid invoice in the sum of £35,000

Grindlewood Domestic LLP is a business that makes high quality industrial cleaning equipment and supplies it to cleaning businesses across the United Kingdom. Our instructions are provided by one of the directors, Kenneth Prince

Kenneth Prince entered into negotiations with Cecilia Jones, a senior operations manager at Forest Services, for the supply of 2 cleaning generators at a total cost of £35,000 (a reduction of £5000 on the full cost). The agreement was concluded on 5 October 2020.

The equipment was delivered to Forest Services Limited on 20 October 2020 together with the invoice. Despite repeated requests for payment, the invoice has not been paid. Forest Services Limited are alleging that the cleaning generators do not meet their specification and capacity as stated were required by Kenneth Prince on behalf of Grindlewood Domestic LLP, and on that basis, they refuse to pay for them.

Last week Kenneth Prince agreed to meet with Cecilia Jones in an attempt to resolve this matter. A secretary from Forest Services Limited was also in attendance to take the meeting minutes. After lengthy discussions, during which time, Cecilia was attempting to reduce the outstanding invoice to £28,000, the meeting ended abruptly. However, Kenneth has informed us that towards the conclusion of the meeting, Cecilia stated that there was not an issue with the generators, but that the company were having cashflow problems and attempting to reduce their invoices.

The pre-action protocol has been complied with, and we are now looking to commence proceedings on behalf of our clients. I would like you to start to prepare that documentation.

DOCUMENT 4

INTERNAL MEMORANDUM

From: Annabel Bond
To: Trainee Lawyer
Client: Our Love of Pets
Matter: Dispute with Local Authority
Date: Today

I was contacted by Michael Winters from Our Love of Pets regarding an ongoing matter with the local authority. I have acted for Michael in the past in a private capacity.

Michael, and his wife, Ursula, own Our Love of Pets, which is a pet supply shop. They also have small household pets to purchase such as rabbits, mice and guinea pigs. They also have a small range of fish and small fish tanks. Their business is located on the main high street in Bedford. The premises from which the business operates is subject to a five-year lease.

Earlier this month Bedford Council started works to the pavement area along the high street. The area is in a complete mess. The pavements are difficult to walk on, parking is restricted, and as a result the foot fall of people going into the shop has dropped dramatically from around 15 customers per day, to around 3. Since the work started sales are down by approximately £250.00 per day. Saturday used to be a really busy day, but only 3 or 4 customers go in, and sales are even less on a Saturday.

The work has been ongoing for 3 weeks from 8.00 am to 4.00 pm. The drilling is causing massive vibrations to the floor and the building, and the noise is horrendous. This has upset a lot of the small animals, and several have died. The fish stock has also been impacted. Not only is this upsetting, but it is the cost of the animals.

The client has complained to the workmen who have said the only way to do the work with less noise and vibrations is to use less powerful equipment, which is more expensive to buy and takes longer to do the job. The local authority will not use the alternative, despite other businesses also complaining.

Michael and Ursula need to take action now, as the local authority have said the work is continuing for another 6 weeks yet and they fear they will have no business left. If you could please consider what options they have available. They have £60,000 savings.

DOCUMENT 5

ATTENDANCE NOTE

Attendance by Annabel Bond
Client: Sana Habir
Matter: Claim for personal injuries
Date: 12 August 2020
Time in attendance 1 hour

Attending Sana Habir regarding a potential claim for damages following a personal injury she sustained in a road traffic accident on 10th May 2020.

Sana was driving her Suzuki Swift car along the main B road towards where she works in Bedford. Sana is a dental nurse practitioner at a local surgery. The speed limit on the road is 30 mph. She was approaching a sharp right-hand bend in the road at about 33 mph. As she entered the bend, she saw an HGV vehicle travelling on the opposite side of the road, moving very slowly. Suddenly another vehicle, (an Audi driven by Xavier Quinn) overtook the HGV and tried to pull in front of it, but instead collided with Sana's car, and the cars spun round and were splayed across the road. The other driver had misjudged the time that he had to go round the HGV vehicle and had not appreciated the speed of the oncoming traffic on the other side of the road. Both cars received significant frontal damage. Sana confirms she was wearing a seatbelt.

The Police were called. All necessary details were exchanged. Witness details were taken. Sana managed to get herself out of the car as the ambulance arrived, but then fell to the floor in extreme pain. She was taken to the Bedford General Hospital for treatment. She sustained severe whiplash to her back and neck, a fractured pelvis, and cuts to her forehead and face, some of which have required plastic surgery. She has had to have numerous GP and hospital appointments.

Sana has had to take three months off work following the accident, with her loss of earnings at £2,000 per month. She has also had to have physiotherapy sessions which she has undertaken privately at a cost of £600. In addition, she has further out-of-pocket expenses in the region of £1000 comprising of cost of medication, travel, and employing a cleaner.

Sana wishes to pursue a claim for damages and other losses resulting from this accident. We discussed a figure, in relation to quantum, for pain, suffering, loss of amenity in excess of £20,000.

DOCUMENT 6

LETTER FROM CLIENT

15 Singer Street
Luton
Bedfordshire
LU2 7HF

19 January 2021

Annabel Bond
Kempstons Solicitors
Manor House
BedfordshireMK42 7AB

Dear Annabel

Re: My road traffic accident

I hope you are well.

I just wanted to thank you for the work on my accident case.

I understand that you have to disclose documents and information to the solicitors acting for the driver of the other car and his insurers.

I just wanted to mention something, which I would rather remain confidential with you as my solicitor. I have actually had a conviction for driving without due care and attention in relation to a previous accident, where I also tried to claim damages for personal injuries. On that occasion the accident was not my fault (even though the other driver said it was because I failed to see his warning 'flash'). Even so, I was prosecuted and convicted because I was driving at excessive speed.

Also, at the time of the current accident, even though I told you I was, I wasn't actually wearing my seatbelt. I do, however, believe, that irrespective of this, I would still have suffered the same injuries.

As my solicitor, I understand from a work colleague, that as you are my solicitor this is privileged.

Thanks

Sana

End of Case Study Materials