

CASE STUDY MATERIALS

June 2021
Level 6
CIVIL LITIGATION
Subject Code L6-15



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.

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.

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 16

Part 20

Part 24

Part 25

Part 26

Part 29

Part 31

Part 36

Part 47

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 Cecilia Jordan. Your local County Court Hearing Centre is in Bedford.

You are assisting Cecilia Jordan in the following cases:

(1) The Murtaza Equipment Limited File (File Ref: CJ/GW/535/21)

Kempstons is acting for Murtaza Equipment Limited in connection with a claim for an outstanding invoice in the sum of £43,200 against one of its customers, Anderson Construction Limited. Further information concerning this case can be obtained from the following case study materials:

- DOCUMENT 1** Attendance note of telephone conversation between Ghulam Murtaza and Cecilia Jordan
- DOCUMENT 2** Email from Ghulam Murtaza to Frank Anderson
- DOCUMENT 3** Invoice from Murtaza Equipment Limited to Anderson Construction Limited

(2) The Wojciech Rostowski File (File Ref: CJ/GW/783/20)

Kempstons is acting for Wojciech Rostowski with respect to an accident during the course of his work at South Yorkshire Steel, in which he suffered an injury to his back. Further information concerning this case can be obtained from the following case study materials:

- DOCUMENT 4** Internal memorandum from Cecilia Jordan to trainee lawyer
- DOCUMENT 5** Letter from Wojciech Rostowski to Kempstons

(3) The Yarmouth Parker Limited File (File Ref: CJ/GW/615/21)

Kempstons is acting for Yarmouth Parker Limited with respect to a claim for breach of contract that has been taken against it by Talaria Air Limited relating to the supply of two cutting machines that are allegedly defective. Further information concerning this case can be obtained from the following case study materials:

- DOCUMENT 6** Internal memorandum from Cecilia Jordan to trainee lawyer

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DOCUMENT 1

**ATTENDANCE NOTE OF TELEPHONE CONVERSATION BETWEEN
GHULAM MURTAZA AND CECILIA JORDAN**

Attendance by: Cecilia Jordan (CJ)
Client: Ghulam Murtaza (GM) for Murtaza Equipment Limited (MEL)
Matter: Non-payment of invoice
Date: 11 May 2021
Time in attendance: 45 minutes
Reference: CJ/GW/535/21

Attending GM, the Managing Director of MEL, concerning the non-payment of an invoice [**DOCUMENT 3**]. The matter relates to a digger that MEL sold to Anderson Construction Limited (ACL) in March 2021.

GM explained that he set up the company a couple of years ago. It specialises in selling reconditioned second-hand equipment for the construction industry. The company has been doing well and, despite the pandemic, it has expanded.

GM explained that MEL had sold equipment to ACL on a couple of previous occasions and had not had problems with them. Indeed, ACL always seemed to have a full order book. GM was therefore happy to hear from ACL when it contacted him looking for a 13-tonne track digger, particularly as MEL had such a digger available.

GM spoke over the phone with ACL's Chief Executive, Frank Anderson, on 5 March 2021. They agreed a price of £40,000 plus VAT for the digger, with a 10% deposit before delivery. GM sent a short email to Frank Anderson shortly after the call [**DOCUMENT 2**].

ACL paid the deposit promptly, and so MEL delivered the digger on Friday, 12 March. MEL then sent its invoice [**DOCUMENT 3**] to ACL on Monday, 15 March.

ACL acknowledged receipt of the invoice, so GM assumed that there would be no difficulties with payment. MEL therefore waited until mid-April before chasing ACL about this.

MEL's accounts department has, however, had great difficulty in contacting people at ACL since then. GM tried to get in touch with Frank Anderson direct, but he has not returned any of GM's calls. To date, MEL has received neither payment nor any proposal for settlement of the outstanding sum. GM is worried, as he has heard that one of the main companies that ACL works for has gone into liquidation. He therefore wants us to seek to recover the outstanding debt as soon as possible, as he believes that ACL might not have replied because it is suffering cash flow problems.

GM will forward to us the email he sent after the meeting [**DOCUMENT 2**] and the invoice [**DOCUMENT 3**]. He confirmed that there were no further documents relating to the agreement with ACL.

DOCUMENT 2

EMAIL FROM GHULAM MURTAZA TO FRANK ANDERSON

From: Ghulam Murtaza (GM@MurtazaEquipment.co.uk)

Sent: 5 March 2021 10:32

To: Frank Anderson (FrankA@AndersonConstruction.co.uk)

Subject: 13-tonne digger

Hi Frank,

Really good to hear from you and do business with you again. I just wanted to confirm the outcome of our discussion.

It was agreed that we would deliver a 13-tonne track digger to you on the 12th. The price will be £40,000 plus VAT. We'll need a 10% deposit before we deliver the digger, but you said that wouldn't be a problem. We'll send you an invoice for the balance after delivery and will need payment 30 days after that.

Let me know if you've got any questions at any time.

Best wishes,

Ghulam

DOCUMENT 3

INVOICE FROM MURTAZA EQUIPMENT LIMITED TO
ANDERSON CONSTRUCTION LIMITED

Murtaza Equipment Ltd
Units 6–8
Langworthy Industrial Estate
Greenford
London UB1 7HN
VAT number: 556 8469 003
Email: accounts@MurtazaEquipment.co.uk

15 March 2021

Anderson Construction Limited
44 Lee Valley Road
Leyton Grange
London
E10 7YT

By email: info@AndersonConstruction.co.uk

Invoice 39/21

To: Sale of 13-tonne track digger, delivery on 12 March 2021

Price:	£40,000.00
VAT at 20%:	<u>£8,000.00</u>
Total	£48,000.00
Less	
Deposit (received with thanks)	<u>£4,800.00</u>
TOTAL DUE	£43,200.00

Payment: Payment must be made within 30 days of the date of this invoice.

Failure to pay within this time may result in action being taken against you to recover the debt

Signed: *Esther Hollow*
Accounts Clerk

DOCUMENT 4

**INTERNAL MEMORANDUM
FROM CECILIA JORDAN TO TRAINEE LAWYER**

Wojciech Rostowski (File Ref: CJ/GW/783/20)

I would like you to assist me with a personal injury case, where we are acting for Wojciech Rostowski with respect to an accident at work that he suffered in November last year. Mr Rostowski is a 45-year-old man, who was a general labourer at South Yorkshire Steel. He had worked at the company for ten years.

Mr Rostowski's accident happened when he was lifting some heavy steel castings and, as a result, suffered an injury to his back. The injury was quite serious and has prevented him from returning to work, as he is unable to cope with the heavy manual work that formed the major part of his duties.

Although Mr Rostowski was on sick pay for the first three months of his absence, he has not been paid anything by the company since then. Indeed, he has recently been examined by South Yorkshire Steel's doctor and the company has decided to let him go, as he is unable to return to his former duties.

The defendant has accepted that it was liable for the accident, but has disputed the extent of the injuries that were caused by it. It has indicated that our client had pre-existing degenerative problems with his back. Although Mr Rostowski had not experienced any symptoms prior to the accident, it is the defendant's view that he would have started to do so within the next year. This is based on its company doctor's examination and his review of the medical records.

In contrast, it is our doctor's view that all of the current symptoms are attributable to the accident and that Mr Rostowski will be left with some permanent ongoing symptoms. These won't prevent Mr Rostowski from working, but could mean that he will have to look for a different job that doesn't involve heavy lifting.

On the basis of our analysis, we value Mr Rostowski's general damages at around £25,000. He is suffering a continuing loss of earnings of approximately £250 a week and this has been the case since the beginning of February.

Given the difference between the two parties, I will be starting proceedings soon and have explained this to Mr Rostowski. He is a bit nervous of the financial consequences of this as his wife has been on furlough, so they don't have lot of money. He has, however, agreed to this, as we are acting for him on a conditional fee agreement and I have explained to him the position on costs in personal injury cases.

I'll need your help with litigating the matter and will give you various tasks as the case progresses.

Turn over

DOCUMENT 5

LETTER FROM WOJCIECH ROSTOWSKI TO KEMPSTONS

Kempstons LLP
The Manor House
Bedford
MK42 7AB

Ref: CJ/GW/783/20

Dear Ms Jordan,

Thanks for your recent update on the case. I'm very grateful for all you're doing for me.

I am, however, a bit worried about how things are financially, as my wife has lost her job, as the restaurant she was working in has now closed down. As a result, we are having to claim Universal Credit. I've been down to see the people at the Jobcentre and I've been told it'll be five weeks before we get any payment.

We've already used up all our savings and owe about £2,000 in council tax and utility bills. I'm really worried about how I'm going to look after the family. My two boys are both teenagers and so growing fast. It therefore costs a lot to clothe and feed them.

I've applied for lots of jobs but I'm not getting anywhere, so I wondered if there was anything you could suggest to help me out.

Thanks again.

Wojciech

DOCUMENT 6

**INTERNAL MEMORANDUM
FROM CECILIA JORDAN TO TRAINEE LAWYER**

Yarmouth Parker Limited (File Ref: CJ/GW/615/21)

I've recently been contacted by Nathaniel Yarmouth, Managing Director of Yarmouth Parker Limited (YPL), concerning a breach of contract claim that has been taken against YPL by Talaria Air Limited (TAL).

YPL is one of our more established clients and we've done a lot of work for it in the past. It manufactures precision tools and machines for a variety of industries. In April this year, it supplied two cutting machines at a cost of £10,000 each to TAL, which is a longstanding customer of YPL. TAL's main business is to manufacture wings for the aircraft industry. Just before the first lockdown, it entered into a contract to supply wings for new fighter planes that had been commissioned by the government. It therefore needed the machines to cope with the extra work that it had taken on as a result.

The cutting machines were delivered and fitted over the Easter weekend, when TAL's plant was shut down for the holiday period. TAL insisted that the work should be done at this time, so that it didn't suffer a loss of production.

YPL was happy to comply with this requirement but had to engage Rawsons Fitters Limited (RFL) to install the machines for it, as there had been an outbreak of coronavirus among YPL's staff who normally carry out such work.

Nonetheless, everything seemed to go smoothly and YPL was paid £20,000 on time for the machines.

Mr Yarmouth was therefore a bit surprised to receive a letter of claim from TAL's solicitors last week. The letter indicated that TAL's quality assurance department had picked up a number of problems with the wings that had been manufactured using the cutting machines. In particular, the machines weren't cutting the metal to the required specifications. TAL had therefore had to discard a number of panels that had been cut by the machines.

TAL estimates that it has suffered a loss of around £65,000 as a result of the defects with the machines. This is because it has been using a particularly high grade of aluminium for the wings, which has been expensive to replace. It is therefore claiming this amount from YPL.

Mr Yarmouth has indicated that, although he doesn't accept that there are any problems with the machines, he would like to resolve the matter quickly. He would also like to avoid the sort of adverse publicity that a lengthy court case might bring. In any event, TAL is an important customer for YPL and he wouldn't want to lose its business. He is therefore prepared to be pragmatic, particularly if that helps to keep costs down and to preserve the relationship with TAL.

End of Case Study Materials