



## THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

### UNIT 11 – TACTICS AND COSTS IN COMMERCIAL LITIGATION\*

**Time allowed: 1 hour and 30 minutes plus 30 minutes' reading time**

#### **Instructions to Candidates**

- You have been provided with a copy of the supporting materials for you to use in this examination.
- You have **THIRTY** minutes to read through the supporting materials and this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read the supporting materials and this question paper fully.** However, you may make notes on the supporting materials, this question paper or in your answer booklet during this time, if you wish.
- **All questions are compulsory. You must answer ALL the questions.**
- Write in full sentences – a yes or no answer will earn no marks.
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities, decided cases and examples should be used where appropriate.

#### **Information for Candidates**

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

**Do not turn over this page until instructed by the Invigilator.**

\* This unit is a component of the following CILEx qualification: **LEVEL 4 DIPLOMA IN COMMERCIAL LITIGATION**

## Question 1

Reference: Question 1 relates to **Documents 1** and **2** of the supporting materials.

Proceedings are issued and Walking on the Moon Ltd fails to submit a defence.

- (a) Explain the procedural steps you should now take to conclude the matter in favour of Banks & Horrace Ltd.

**(7 marks)**

The matter is successfully concluded in favour of Banks & Horrace Ltd.

- (b) Describe the procedural steps Walking on the Moon Ltd should now take if it wishes to defend the claim.

**(4 marks)**

The Defendant subsequently submits a defence and the matter proceeds. Your client is successful at trial and costs are to be subject to detailed assessment.

- (c) Identify **five** factors that the courts generally take into account when making a detailed assessment of costs on the standard basis.

**(5 marks)**

The matter proceeds to detailed assessment of costs.

- (d) Summarise the procedural steps for assessment of costs up to, but not including, a detailed assessment hearing.

**(5 marks)**

**(Total: 21 marks)**

## Question 2

Reference: Question 2 relates to **Documents 1** and **3** of the supporting materials.

- (a) Identify the grounds which must be established for our client to succeed in an application for summary judgment.  
**(2 marks)**
- (b) Identify **three** factors upon which our client might rely in support of the application for summary judgment.  
**(3 marks)**
- (c) Explain why the client should think carefully about making such an application in view of the costs implications.  
**(5 marks)**
- (d) Indicate **five** key issues which should be clarified with regard to the offer letter from the defendant's solicitors (**Document 3**) before any Tomlin Order might be drafted.  
**(5 marks)**

**(Total: 15 marks)**

## Question 3

Reference: Question 3 relates to **Documents 1** and **4** of the supporting materials.

Our client, Roberts Bricklaying Ltd, has indicated that it does not wish to engage in either mediation or arbitration and would rather go to court.

- (a) Explain why our client does not have the option of refusing to participate in ADR.  
**(4 marks)**

The matter proceeds to mediation.

- (b) Identify the matters which should be taken into consideration on choosing a mediator.  
**(4 marks)**
- (c) Identify what documentation would be relevant and useful for the mediation meeting.  
**(6 marks)**

Unfortunately mediation was unsuccessful and the matter proceeds to arbitration.

- (d) Explain to your client how arbitration will differ from the mediation process.  
**(5 marks)**

**(Total: 19 marks)**

**Turn over**

## Question 4

Reference: Question 4 relates to **Documents 1** and **5** of the supporting materials.

- (a) Explain whether the defendant is required to provide a list of documents.  
**(7 marks)**

An application is made to court in respect of the letter from the defendant's solicitors.

- (b) State what the parties must do before the hearing of the application to ensure that the court can make a summary assessment of costs.  
**(4 marks)**

- (c) Explain the likely costs order that will be made if the application is successful.  
**(4 marks)**

**(Total: 15 marks)**

**End of Examination Paper**