

**SUPPORTING MATERIALS**

15 January 2018  
Level 4  
TACTICS AND COSTS IN COMMERCIAL  
LITIGATION  
Subject Code L4-11



**THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES**  
**UNIT 11 – TACTICS AND COSTS IN COMMERCIAL LITIGATION\***  
**SUPPORTING MATERIALS**

**Information for Candidates on Using the Supporting Materials**

- This document contains the supporting materials for your examination.
- You have **THIRTY** minutes' reading time to read these supporting materials and the question paper.
- It is strongly recommended that you use the reading time to read these supporting materials and the question paper fully. However, you may make notes on these supporting materials, the question paper or in your answer booklet during this time, if you wish.

**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**

## SUPPORTING MATERIALS

### INSTRUCTIONS TO CANDIDATES

You are a trainee lawyer working in the Commercial Litigation Department of Kempstons LLP, The Manor House, Bedford, MK42 7AB. The Head of Department, Zuzanna Bartek, has indicated that she would like you to take a more active role in the department and has provided you with some files relating to commercial litigation matters for you to work on. She has also provided you with a Memorandum that sets out further information on the files provided.

- Document 1**      Memorandum from Zuzanna Bartek to Trainee Lawyer
- Document 2**      Letter from Banks & Horrace (Trampoline Manufacturers and Installers) Ltd to Walking on the Moon Ltd
- Document 3**      Letter from Hogg & Watts Solicitors
- Document 4**      Mediation and Arbitration Clause in the contract between Jeffers Builders Ltd and Roberts Bricklaying Ltd
- Document 5**      Letter from Atom Solicitors

DOCUMENT 1

MEMORANDUM FROM ZUZANNA BARTEK TO TRAINEE LAWYER

**To:** Trainee Lawyer  
**From:** Zuzanna Bartek  
**Date:** [Today's Date]

I have left the relevant files on your desk. Please read through them carefully and carry out the required work. To assist, I have provided this brief summary.

**1. Banks & Horrace (Trampoline Manufacturers and Installers) Ltd v Walking on the Moon Ltd**

We act for Banks & Horrace Ltd, which has contracted with Walking on the Moon Ltd to provide some trampolines for their new trampoline park. The contract was for £72,000 for nine bespoke trampoline pits which were to be installed by the park itself. The trampolines were delivered by the agreed date and an invoice [**Not reproduced**] sent on the 2 November 2017 for the balance of the monies owing, being £42,000. After more than 28 days had expired, our client, having not received any communication from Walking on the Moon Ltd, sent a letter requesting payment (**Document 2**). We are instructed by the client to recover the outstanding £42,000.

**2. Cross & Core Partners LLP v Happy Times Tickets Ltd**

We act for the Claimant, Cross & Core Partners LLP, who purchased a hospitality package from the Defendant for the Formula 1 race at Middleton. The passes for the event never arrived and, therefore, the partners and their guests missed out on the race, and the gala dinner which followed in the evening. The monies from the Claimant (£24,675) were paid and received by the Defendant. During informal discussions between the parties, the Defendant acknowledged that it could neither confirm nor deny that the tickets were posted, as a temporary member of staff, who is no longer working for the business, dealt with the matter. The Claimant did not pay extra for the tickets to be sent by recorded delivery and, because of this, they would have been sent by normal post.

Proceedings have been issued and a defence has been filed which is merely a denial of responsibility. We have also received a letter from Hogg & Watts Solicitors, who are acting for the Defendant (**Document 3**).

**3. Jeffers Builders Ltd v Roberts Bricklaying Ltd**

We act for Roberts Bricklaying Ltd in this matter. Jeffers Builders Ltd are indicating that the work undertaken by Roberts Bricklaying Ltd is not of sufficient quality and that they will be looking to rely on the mediation and arbitration clause in the contract (**Document 4**).

**4. John and Heather Zander v Tony Surtees Architects**

We act for John and Heather Zander in their claim against Tony Surtees Architects for design work on an extension to their house. The architects were instructed at an early stage in relation to changes required to the building specifications, to ensure compliance with building regulations, however, the

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changes were not incorporated into the plans and, consequently, the costs of ensuring compliance are in the region of £28,000. Proceedings have been issued and a defence has been filed, Standard Directions apply. You will see on the file a letter received from the solicitors acting for Tony Surtees Architects (**Document 5**).

**LETTER FROM BANKS & HORRACE (TRAMPOLINE MANUFACTURERS AND INSTALLERS) LTD TO WALKING ON THE MOON LTD**

Walking on the Moon Ltd  
Kenil Business Park  
Bedford  
MK31 4AB

3 December 2017

Dear Sirs

**Re: Order 327 – Bespoke Trampoline Pits – Outstanding Balance**

The outstanding balance of £42,000 was due on 2 November 2017. We have had no communication from yourself and therefore must inform you that if the outstanding balance is not paid by 17 December 2017, we will have no alternative other than to start court proceedings for recovery.

Yours sincerely

*F.G. Banks*

Managing Director

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**LETTER FROM HOGG & WATTS SOLICITORS**

Kempstons  
The Manor House  
Bedford  
MK42 7AB

Our ref: HTT/24/21  
Your ref: CCP/ZB/34

20 December 2017

**'Without prejudice save as to costs'**

Dear Sirs,

**Re: Cross & Core Partners LLP v Happy Times Tickets Ltd**

Clearly our client cannot be held responsible for the failure of the post office to deliver the tickets. Had your client paid for the tickets to be delivered by recorded delivery this situation would never have arisen.

Notwithstanding our views on liability, our client is keen to settle the matter and we are instructed to make an offer in sum of £20,000.

We look forward to receiving notice of acceptance.

Yours faithfully,

Hogg & Watts Solicitors

**MEDIATION AND ARBITRATION CLAUSE IN THE CONTRACT BETWEEN  
JEFFERS BUILDERS LTD AND ROBERTS BRICKLAYING LTD**

... Any dispute arising out of or in connection with this contract shall, at first instance, be referred to a mediator for resolution. The parties shall attempt to agree upon the appointment of a mediator, upon receipt, by either of them, of a written notice to concur in such appointment. Should the parties fail to agree within fourteen days, either party, upon giving written notice, may apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a mediator.

Should the mediation fail, in whole or in part, either party may, upon giving written notice, and within twenty eight days thereof, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators, for the appointment of a single arbitrator, for final resolution. The arbitrator shall have no connection with the mediator or the mediation proceedings, unless both parties have consented in writing. ...

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**LETTER FROM ATOM SOLICITORS**

Kempstons  
The Manor House  
Bedford  
MK42 7AB

Our ref: TSA/VA/21  
Your ref: JHZ/ZB/93

24 November 2017

Dear Sirs

**Re: John and Heather Zander v Tony Surtees Architects**

We are in receipt of your list of documents.

Unfortunately, our client does not have any documents to disclose. All relevant documents have been included in your list.

For whatever reason our client has failed to keep documents, including notes relating to the meetings with your clients in respect of any changes required to the proposed building.

We therefore believe that a list of documents from our client is unnecessary.

Yours faithfully,

Atom Solicitors

**End of Supporting Materials**