

SUPPORTING MATERIALS

15 January 2018

Level 4

DAMAGES, SETTLEMENT AND COSTS IN

PERSONAL INJURY CASES

Subject Code L4-6



**CHARTERED INSTITUTE
OF LEGAL EXECUTIVES**

THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

**UNIT 6 – DAMAGES, SETTLEMENT AND COSTS IN
PERSONAL INJURY CASES***

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 qualifications: **LEVEL 4 DIPLOMA IN PERSONAL INJURY LITIGATION** and **LEVEL 4 EXTENDED DIPLOMA IN PERSONAL INJURY LITIGATION**

SUPPORTING MATERIALS

INSTRUCTIONS TO CANDIDATES

You are a trainee lawyer in the dispute resolution department at Kempstons LLP. You are assisting Pilgrim Henry, who is a Chartered Legal Executive partner at the firm.

She has asked that you assist her with the matters of Miss Tilly Bourne and Mr Troy da Souza.

Tilly Bourne fractured her ankle joint when she was appearing in an end of term play at her school on 11 July 2017.

Troy da Souza has brought a claim against Gail Fisher to recover compensation for serious personal injuries sustained as a result of a road traffic accident in July 2016. The claim is valued at over £50,000.

Document 1 Medical Report of Mr Rodriguez McKenzie regarding Tilly Bourne – 1 November 2017

Document 2 Attendance Note of Perry Hopkins, secretary to Pilgrim Henry – 20 January 2018

Document 3 Extract from Troy da Souza's email to Kempstons LLP - 8 January 2018

Document 4 Gable LLP'S letter to Kempstons LLP - 20 May 2018

DOCUMENT 1

**MEDICAL REPORT OF MR RODRIGUEZ MCKENZIE REGARDING
TILLY BOURNE**

MR RODRIGUEZ MCKENZIE FRCS

Montague House,
25-27 Montague Street,
Bedford MK41 8RT

1 November 2017

My ref: Kempstons/Bourne

Client: Tilly Bourne

Date of incident: 11 July 2017

DOB: 13 January 2005

Dear Sirs,

Thank you for instructing me to prepare a report on Miss Tilly Bourne.

For the purposes of this report, I examined Tilly on 31 October 2017. She was accompanied by her mother, Mrs Samantha Bourne. Tilly was able to give me a full history of the accident which occurred on 11 July 2017.

I have reviewed Tilly's GP's notes and the hospital notes and X-rays from Kempston NHS Hospital.

History of accident

Tilly tells me that she was performing in an end of term play at her school, Kempston High School. The show was during the school day. Just before she went on stage, Tilly was given a pair of shoes to wear by her drama teacher. Tilly said that the shoes were the wrong size and were too big for her and she was not used to wearing platform shoes with such a high heel. She tells me that the heels were 15cm high. As there were no other shoes available, Tilly put on the pair offered to her. She was on the stage when she toppled from her shoes and fell to the stage.

Treatment

Tilly experienced immediate severe pain and tenderness in the ankle joint and was unable to bear her weight. She was taken to Kempston NHS Hospital and seen in the Accident and Emergency Department.

An X-ray of the ankle showed that there was a fracture to the joint. The ankle was numbed and the fracture was manipulated back into place.

She was given painkillers and she was kept under observation overnight. The following day, a splint was fitted as the ankle was too swollen for a plaster cast to be fitted. She was advised not to put any weight onto the foot and was given

Turn over

SUPPORTING MATERIALS

crutches. She was discharged after two days to the care of her GP. Her mother took three weeks off work to look after Tilly.

However, due to ongoing pain, Tilly was seen again at the hospital the following week and a plaster cast was fitted which caused considerable problems when Tilly was on holiday as she was not able to go swimming. The cast was removed after six weeks and Tilly then received weekly physiotherapy sessions for a period of two months and which have just finished. She also tells me that she was not able to take up an agreed holiday job helping out in her aunt's café over the summer as her ankle was in plaster.

On examination

On X-ray examination, the fracture has healed, although Tilly complains of ongoing discomfort and that her ankle still swells occasionally. She is a member of the school hockey team but because of her injury she has not been able to play this season and may lose her place in the team.

Prognosis

I anticipate that Tilly's condition will slowly continue to improve and I do not expect there to be any deterioration in her condition. She is well-advised not to play hockey for at least another six months.

In writing this report, I understand that my duty is to the Court and not to the client.

I am aware of the requirements of Part 35, Practice Direction 35 and of The Protocol for the Instruction of Experts to give evidence in civil claims.

I confirm I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinion on the matters to which they refer.

Yours faithfully,

Rodriguez McKennie (FRCS)

ATTENDANCE NOTE OF PERRY HOPKINS, SECRETARY TO PILGRIM HENRY

Client: Tilly Bourne
Attending: Geoff Lyons
Attended by: Perry Hopkins
Date: 20 January 2018
Time spent: 7 minutes

Attending Geoff Lyons at Bridge Law LLP.

I told him you were not available.

He said that he wanted to have a without prejudice discussion in order to resolve liability and asks that you call him back as soon as possible.

Very briefly, he mentioned that, whilst Kempston High School is willing to accept some liability for the accident, we are asked to take instructions on agreeing liability with a reduction of 75% for contributory negligence. He said that they will argue that Tilly had chosen the shoes she wanted to wear and wore them, even though she knew that they were too big for her and she was not used to wearing such a high heel.

He said that if liability can be sorted, he is then in a position to negotiate on quantum.

He asked that you return his call as soon as possible.

Perry Hopkins
Secretary to Pilgrim Henry

DOCUMENT 3

EXTRACT FROM TROY DA SOUZA'S EMAIL TO KEMPSTONS LLP

8 January 2018

Hi Pilgrim,

My claim

I am now out of hospital after what seems like a very long time although it was only two weeks. I have received very bad news from my consultant, which is that there is nothing more that can be done to improve the appearance of the scarring to my hands. The surgery has improved the appearance a little but, as a model, I have built my career on modeling jewellery and watches and this is now out of the question. Although I say it myself, good hand models are very difficult to find and so I was very much in demand.

I have a meeting with my modeling agency in three weeks' time. I am hoping that they will be able to offer me work in a different field, but I am concerned that my income will more than halve. I think I told you that my pre-accident salary is £48,000 per year gross. It looks very likely that I will earn about £1,500 per month gross whilst I build up my profile.

It will be a relief to have some income again. It has been very difficult living on benefits since the accident and I am grateful that you said that I can claim for my loss of earnings. Presumably the benefits are not deductible?

I also want to tell you that my watch, which was completely smashed in the accident, is not repairable and needs to be replaced. I bought the watch four years ago for £3,500. I think I still have the receipt which I will look for and send to you so that this cost can be added to my claim.

Best wishes,

Troy

GABLE LLP'S LETTER TO KEMPSTONS LLP

**GABLE LLP
The Parade
Bedford
MK39 2QU**

FAO: Ms Pilgrim Henry
Kempstons LLP
The Manor House
Bedford
MK42 7AB

20 May 2018

Dear Sirs,

Without prejudice save as to costs

Our client: Gail Fisher
Your client: Troy da Souza

Further to our discussion earlier today, we appreciate your explanation that your client has been very busy and has been away on holiday, but we do want to record formally our ongoing concern that your client's conduct throughout this matter, including providing documentation, has had an impact on the time taken to progress the matter to reach a stage where settlement might be achieved. We also note that your client's claim for special damages has changed several times with new heads of claim being made and others no longer being pursued. This has caused additional work. We will, of course, make appropriate representations on the issue of costs at the relevant time.

That said, we will take our client's instructions upon the settlement figures which you have proposed and return to you as soon as we have our client's instructions in the hope that this matter can finally be resolved.

Yours faithfully

John Griffiths
Chartered Legal Executive

Gable LLP

End of Supporting Materials

