



## 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 relates to **Documents 1 and 2** of the supporting materials and is concerned with the matter of **Professional Gardening Services Ltd v Midshire County Council**.

Professional Gardening Services Ltd is anxious to begin legal proceedings.

- (a) Explain whether you should issue proceedings now on behalf of your client.  
**(4 marks)**
- (b) Explain, on the assumption that proceedings are not issued, the role of a mediator.  
**(4 marks)**
- (c) Identify what documentation would be relevant and useful for the mediation meeting.  
**(6 marks)**
- (d) Explain to your client how arbitration would differ from the mediation process.  
**(5 marks)**

**(Total: 19 marks)**

## Question 2

Reference: Question relates to **Documents 1 and 3** of the supporting materials and is concerned with the matter of **Dash Personnel Management Ltd v Specialist Personnel Programs Ltd**.

- (a) Explain why the letter states that it is 'without prejudice save as to costs'.  
**(2 marks)**
- (b) Explain the costs consequences of accepting a Part 36 offer within the prescribed period for acceptance.  
**(4 marks)**
- (c) Advise your client about the risks it faces if it rejects the offer and the claimant is awarded more than £25,000 at trial.  
**(7 marks)**
- (d) Advise your client how it might protect its position on costs.  
**(3 marks)**

**(Total: 16 marks)**

### Question 3

Reference: Question relates to **Documents 1 and 4** of the supporting materials and is concerned with the matter of **Daniel Perkins t/a Kempston Music on the Lawns v Magic Music Productions Ltd.**

Jenny Harrison asks you to draft a valid consent order implementing the terms recorded in Documents 1 and 4.

- (a) (i) Draft the consent order.

You do not need to include the heading of the document.

Begin with:

'UPON the parties having agreed terms of settlement and BY CONSENT IT IS ORDERED THAT:'

**(5 marks)**

- (ii) Draft the schedule to the order.

**(5 marks)**

Unfortunately, costs cannot be agreed and they will be considered through detailed assessment.

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

**(4 marks)**

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

**(6 marks)**

**(Total: 20 marks)**

**Turn over**

#### **Question 4**

Reference: Question relates to **Document 1** of the supporting materials and is concerned with the matter of **Callington Catering Ltd v Frendries Business Services Ltd**.

Frendries Business Services Ltd has submitted a defence, however it is a mere denial of liability.

(a) Explain the procedural steps you should now take to attempt to conclude the matter in favour of Callington Catering Ltd. In your answer, you should identify the requirements for the relevant documents.

**(6 marks)**

(b) Identify the potential costs orders that the court could make at such an application hearing.

**(5 marks)**

The application is not successful and the matter proceeds to trial.

(c) 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)**

**(Total: 15 marks)**

**End of Examination Paper**