

SUPPORTING MATERIALS

11 June 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 working in the Commercial Litigation Department of Kempstons LLP, The Manor House, Bedford, MK42 7AB. The Head of Department, Jenny Harrison, 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 Jenny Harrison to Trainee Lawyer

Document 2 Extract from Contract between Professional Gardening Services Ltd and Midshire County Council

Document 3 Letter from Determine Solicitors to Kempstons LLP

Document 4 Letter from Brins Solicitors to Kempstons LLP

DOCUMENT 1

MEMORANDUM FROM JENNY HARRISON TO TRAINEE LAWYER

To: Trainee Lawyer
From: Jenny Harrison
Date: [Today's date]

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

1. Professional Gardening Services Ltd v Midshire County Council

We act for the claimant, Professional Gardening Services Ltd (PGS), in relation to a breach of contract claim. PGS entered into a contract with Midshire County Council to carry out gardening services at all 130 properties in the council's property portfolio. The contract was for the sum of £85,000 and was for a period of a year. When the contract came to an end in September 2017, the council refused to pay the outstanding £45,000, insisting that the work undertaken by PGS was of a poor standard and only worth the £40,000 the council had already paid. PGS refutes that the work was of a poor standard and seeks the outstanding sum. An extract from the contract is on file (**Document 2**).

2. Dash Personnel Management Ltd v Specialist Personnel Programs Ltd

We act for the defendant, Specialist Personnel Programs Ltd (SPP), who wrote a bespoke personnel software package for the claimant, Dash Personnel Management Ltd. Our client says that, at the time of the installation of the software, it informed the claimant by telephone that it needed to upgrade its computer hardware to enable the software to work properly. The claimant did not upgrade its computer hardware and, as a consequence, the software has not worked properly. Dash Personnel Management Ltd has denied that it was informed that the hardware needed upgrading, and claims that the subsequent problems with the software have cost the business £35,000. There is a letter from the solicitor acting for Dash Personnel Management Ltd on the file (**Document 3**).

3. Daniel Perkins t/a Kempston Music on the Lawns v Magic Music Productions Ltd

We act for the defendant, Magic Music Productions Ltd, in respect of a contract matter. Daniel Perkins is suing Magic Music Productions Ltd for the sum of £60,000 for our client's failure to provide musical acts for the 2017 Music on the Lawns festival. Through negotiation, we have come to a settlement of £36,000 (**Document 4**). Our client has indicated that the payment should be made in two equal payments.

Turn over

4. Callington Catering Ltd v Frendries Business Services Ltd

We act for the claimant, Callington Catering Ltd, in a professional negligence claim. The claimant engaged the defendant, Frendries Business Services Ltd, to advise it on the purchase of a business. All investigations of the accounts of the business were left to the defendant. The business turned out to be worth much less than the defendant advised. Had the defendant advised the claimant correctly, it would never have purchased the business. The claimant is claiming £25,000 for professional negligence. We have commenced proceedings and are awaiting the defence.

EXTRACT FROM CONTRACT BETWEEN PROFESSIONAL GARDENING SERVICES LTD AND MIDSHIRE COUNTY COUNCIL

... 3. Non-Performance of Contract

- 3.1 If a party's failure to perform its obligation amounts to a fundamental non-performance, the other party may terminate the contract.
- 3.2 Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.

... 6. Alternative Dispute Resolution

- 6.1 Any dispute or difference arising out of, or in connection with, this contract shall first be referred to mediation through Tinkers Dispute Resolution on their Standard Terms of Engagement which procedures and rules are deemed to be incorporated by reference herein.
- 6.2 If the said dispute is not settled by mediation within 10 working days of the date on which mediation began, the dispute shall be referred to and determined by the appointment of a single arbitrator to be agreed between the parties, or failing agreement within 14 days, after either party has given to the other a written request to concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Vice President of the Chartered Institute of Arbitrators. ...

LETTER FROM DETERMINE SOLICITORS TO KEMPSTONS LLP

Determine Solicitors
Floor 3
The Kings Building
Kempston
MK45 1ZT

29 May 2018

Kempstons LLP
The Manor House
Bedford
MK42 7AB

Without prejudice save as to costs

Dear Sirs,

Re: Dash Personnel Management Ltd v Specialist Personnel Programs Ltd (SPP)

Claim No. K64300 Kempston County Court

Our client maintains that it was not informed that the software provided by your client would not work without its computer system being upgraded. Nonetheless, our client is prepared to be reasonable, and would like to take this opportunity to settle the claim.

We are instructed to make an offer to accept £25,000 in full and final settlement and inclusive of interest. Please note that this offer is intended to have the costs consequences of CPR Part 36. It is open for acceptance for a period of 21 days from the date of this letter.

Yours faithfully,

Sebastian Granger

Determine Solicitors

LETTER FROM BRINS SOLICITORS TO KEMPSTONS LLP

Brins Solicitors
11 Grange Mews
Kempston
MK42 8AZ

1 June 2018

Kempstons LLP
The Manor House
Bedford
MK42 7AB

Dear Sirs,

Re: Daniel Perkins t/a Kempston Music on the Lawns v Magic Music Productions Ltd

Claim No. K12945 Kempston County Court

Further to our recent conversation with Jenny Harrison concerning the above matter, we confirm our client's agreement to settle the matter for the sum of £36,000 inclusive of interest. This will be in full and final settlement of the matter.

Our client has agreed to the sum being paid in two equal instalments of £18,000, the first payment to be made on 2 July 2018 and the second on 1 August 2018. We will supply our client's bank details separately.

Should the whole or part of any instalment remain unpaid on the due date, the whole of the remaining balance will become payable. Should this occur, the stay of proceedings will be removed and our client will enforce payment of the sum outstanding plus interest at the rate of 8% from the due date.

We also note that your client has agreed to pay our client's costs on the standard basis to be subject to detailed assessment if not agreed.

We await a draft consent order from you in the above terms.

Yours faithfully

Anita Fielding

Brins Solicitors

End of Supporting Materials

