

CASE STUDY MATERIALS

June 2018
Level 6
CIVIL LITIGATION
Subject Code L6-15



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 15 – CIVIL LITIGATION*

CASE STUDY MATERIALS

Information for Candidates on Using the Case Study Materials

- This document contains the case study materials for your examination.
- In the examination, you will be presented with a set of questions which will relate to these case study materials. You will be required to answer **all** the questions on the examination paper.
- You should familiarise yourself with these case study materials prior to the examination, taking time to consider the themes raised in the materials.
- You should take the opportunity to discuss these materials with your tutor/s either face-to-face or electronically.
- It is recommended that you consider the way in which your knowledge and understanding relate to these case study materials.

Instructions to Candidates Before the Examination

- You will be provided with a clean copy of the case study materials in the examination.
- You are **NOT** permitted to take your own copy of the case study materials or any other materials including notes or textbooks except a Statute Book, where permitted, into the examination.
- In the examination, candidates must comply with the CILEx Examination Regulations.

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* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

**GUIDANCE FOR LEARNERS STUDYING FOR THE LEVEL 6 UNIT 15
CIVIL LITIGATION EXAMINATION**

Learners studying for Level 6 Unit 15 Civil Litigation are advised that, when revising for these units, they should have knowledge and understanding of the Civil Procedure Rules and of the Solicitors Code of Conduct.

Learners are advised that they should be fully familiar with the relevant current unit specification and may be tested on any aspect of it. Where Civil Procedure Rules are given in the specification, learners are expected to be broadly familiar with the content of those rules and their practical application.

Listed below are the Civil Procedure Rules which learners may find particularly relevant to this examination:

SRACC

The Principles
Chapter 1

Civil Procedure Rules

Practice Direction Pre-Action Conduct and Protocols

CPR 1

CPR 7 and PD 7A

CPR 18 and PD18

CPR 23

CPR 26

CPR 33

CPR 36

CPR 38

ADVANCE INSTRUCTIONS TO CANDIDATES

You are a trainee lawyer in the firm of Kempstons LLP (Kempstons) of the Manor House, Bedford, MK42 7AB.

You are in the civil litigation team headed by Douglas Olubisi. Your supervising partner is Melanie Rogers. Your local County Court Hearing Centre is situated in Bedford.

You are assisting in the department generally and have been asked to be particularly involved with the following client matters:

1) Ania Toms (file ref: MR/AT/05/18)

Ania is a new client. Melanie has met with Ania in connection with her making a claim for compensation for personal injuries arising from a tripping accident. Further information concerning this case can be obtained from **Document 1** (Memorandum from Melanie Rogers).

2) Jacob Hodgetts Ltd (file ref: MR/JH/04/17)

Kempstons is acting on behalf of Jacob Hodgetts Ltd, for whom the firm acts regularly. Jacob Hodgetts is the Managing Director. Further details of this case can be obtained from **Document 2** (Telephone attendance note), **Document 3** (Letter from Kempstons to Briden Wall), **Document 4** (Letter from Briden Wall to Kempstons) and **Document 5** (Extract from email from Gillian Matharu to Douglas Olubisi at Kempstons).

3) Morgan Wong (file ref: DO/MW/21/16)

Kempstons is acting for Morgan in relation to a personal injury claim against his employer, Sidwell Holdings plc, at whose refuse collection facility he was injured in the course of his employment. Sidwell Holdings plc is represented by Gane Patel LLP. Further details of this case can be obtained from **Document 6** (Letter from Gane Patel LLP to Kempstons) and **Document 7** (Extract from email from Morgan Wong to Douglas Olubisi).

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DOCUMENT 1

MEMORANDUM

To: Trainee Legal Executive
From: Melanie Rogers
Date: 4 June 2018
Re: Ania Toms v Blink Deliveries
File ref: MR/AT/05/18

I saw Ania recently in connection with making a personal injury claim. On 14 March 2018, Ania had just entered a small boutique called Violet's Fashions, which is at 34, High Street, Great Dunford, when she tripped and was injured. She had walked round a shelf display in the centre of the shop floor and tripped over a crate containing shoeboxes, which had been delivered to the store by Blink Deliveries. Ania fell awkwardly and cut her forehead on the shelf display and split her upper lip, breaking a front tooth. To Ania's surprise, the owner of the business, Violet Grainger, was angry with Ania and shouted at her that she should have watched where she was going, but agreed to call an ambulance for Ania. She was taken to hospital. Ania received treatment for her injuries and has been referred to a dental hospital for ongoing treatment for the broken tooth. Her lip is still swollen, which has made eating and drinking very difficult. The cut to the forehead has healed, leaving only a very small scar. She has taken only two days off work and was paid during that time. We discussed funding the case and she is checking to see if she has any before the event insurance (BEI) cover.

Ania has since spoken to Violet Grainger by telephone and has gone into the boutique, but Violet refuses to accept blame for the incident and says that she had been in the back room of the shop when Blink Deliveries made their delivery and she had not had time to put away the boxes. Violet also says that she does not own the shop itself, but rents the premises from Shia Khalil. All Violet would tell Ania is that the boxes had only been on the floor for 'about 20 minutes' before Ania fell. She says that Ania should contact Blink Deliveries, as it is the fault of their delivery man that Ania tripped, as he had left the boxes where they were and, in any event, Ania is also to blame for tripping. Ania has not yet contacted Blink Deliveries, as she believes that only Violet Grainger is to blame for the accident.

As you know, I am a commercial lawyer and it's been many years since I have dealt with a claim in this area of law. I do have some capacity and so could take on the matter, but I need you to investigate and research anything that seems relevant. If you need help, have a word with Douglas Olubisi, who specialises in this area. I will catch up with you on this tomorrow afternoon.

Thanks,

Melanie

DOCUMENT 2

TELEPHONE ATTENDANCE NOTE

Fee earner: Melanie Rogers
Attending: Jacob Hodgetts of Jacob Hodgetts Ltd
Date: 28 May 2018
Time engaged: 3 units

Jacob has a new matter for us. Briefly, on 6 September 2017, Jacob's company agreed to supply goods to Kay's Distributors Ltd (KDL), with whom it has done business over several years. I understand that the goods were various glass and china ornaments. In accordance with Jacob Hodgetts Ltd's standard terms, the goods were delivered the next day (7 September 2017) together with an invoice, again in line with standard practice. The invoice was in the sum of £24,000, which was to be paid within 30 days. It was not paid and, when challenged, KDL complained that the goods were not reasonably fit for their stated purpose. Jacob takes the view that the complaints raised by KDL have no substance, and were only raised one month after the goods were supplied.

Apparently, there has been a change of management at KDL, and Jacob thinks that they are simply being awkward. Jacob has been trying to reach a resolution since last September and has now reluctantly concluded that they must take legal action to recover the amount outstanding. He did say that if we can think of a way to avoid proceedings that would be helpful. He is happy to accept a reasonable sum in settlement, but not less than £20,000, and we have authority to settle at that sum if necessary. I told him that I had enough information and that we would do our best to get on with it as soon as possible.

I mentioned briefly to Jacob that one thing we will need to look at is revising Jacob's standard terms of contract, as there are no terms providing for payment of interest on outstanding sums.

Melanie Rogers

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DOCUMENT 3

LETTER FROM KEMPSTONS TO BRIDEN WALL

Kempstons
Manor House
Bedford
MK42 7AB

Briden Wall Solicitors
Court Farm Gardens
Bedford
MK42 7WT

Our ref: MR/JH/04/17
Your ref: GS/KDL/3554/17

15 August 2018

Dear Sirs,

Our client: Jacob Hodgetts Ltd
Your client: Kay's Distributors Ltd

We thank you for your Defence. We note that liability is denied. However, it is not clear to us upon what basis that denial is made.

Accordingly we make the following request pursuant to Part 18 and in respect of which we would be grateful if, within the course of the next 21 days, you would please provide the requested clarification and information.

County Court Money Claims Centre

Case Number: BD18765

Jacob Hodgetts Ltd Claimant

v

Kay's Distributors Ltd Defendant

1. Of paragraph 2 of the Defence, please confirm the identity of the person whom it is alleged telephoned to complain about the goods received on 7 September 2017.
2. Of paragraph 3 of the Defence, please detail in every respect why it is alleged that the goods provided by our client were not reasonably fit for their stated purpose.

We look forward to hearing from you.

Yours faithfully,

Kempstons

DOCUMENT 4

LETTER FROM BRIDEN WALL TO KEMPSTONS

Briden Wall Solicitors
Court Farm Gardens
Bedford
MK42 7WT

Kempstons
Manor House
Bedford
MK42 7AB

Our ref: GS/KDL/3554/17

Your ref: MR/JH/04/17

22 August 2018

Dear Sirs,

Our client: Kay's Distributors Ltd

Your client: Jacob Hodgetts Ltd

We write further to receipt of Notice of Allocation received from the court. We cannot agree that this matter should be allocated to the fast track, as we are now instructed by our client to raise a counterclaim. You will appreciate that we must seek the court's permission to do so and we are in the process of preparing an application in this respect.

For the present, please be on notice that our client will claim that, due to your client's breach of contract, our client sustained a loss of business as orders could not be fulfilled. Our client considers its loss to be in the region of £12,000. Our client also made goodwill payments to disgruntled customers in the sum of £5,000.

We anticipate that expert evidence will be required with regard to the issue of fitness for purpose. As you should be aware, the items received from your client were broken and it is not accepted that the items were broken either in transit or at our client's premises. We intend to call one witness.

We trust that you will agree that this matter is suitable for allocation to the multi track and look forward to receiving your confirmation so that we may agree proposed directions.

Yours faithfully,

Briden Wall Solicitors

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DOCUMENT 5

**EXTRACT FROM EMAIL FROM GILLIAN MATHARU TO DOUGLAS OLUBISI
AT KEMPSTONS**

14 November 2018

Dear Douglas,

Re: Your client Jacob Hodgetts and my witness statement

Thank you for sending me my witness statement in Jacob's matter to sign. It seems so long ago now since we met at your offices. I have done as you said and read through it very carefully. I am happy with the statement and so I have signed and dated it at the bottom. I have amended my address and you will now see that I have left the UK and moved to live in Canada with my son. My email address remains the same...

DOCUMENT 6

LETTER FROM GANE PATEL LLP TO KEMPSTONS

Gane Patel LLP
Grove House
Bedford
MK42 7XY

Kempstons LLP
Manor House
Bedford
MK42 7AB

Our ref: Sidwell/04/2017
Your ref: DO/MW/21/16

18 June 2018

Dear Sirs,

Your client: Morgan Wong
Our client: Sidwell Holdings plc

Further to the exchange of documents and witness statements in this matter, we have carefully reviewed our client's position and given appropriate advice. As a result, and whilst fully aware of our continuing duty under the overriding objective, we find your client's case to lack any merit and we consider your client to be wholly at risk in pursuing this matter to trial. We are instructed to invite your client to seriously consider his position. Please be assured that we are advising our client on its own options to bring this matter to a swift conclusion.

We trust that you will discuss, with your client, the strength of our client's view and we look forward to hearing from you as quickly as possible as to the outcome, to avoid further increase in costs.

Yours faithfully,

Gane Patel LLP

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DOCUMENT 7

EXTRACT FROM EMAIL FROM MORGAN WONG TO DOUGLAS OLUBISI

10 August 2018

Dear Douglas,

Re: My claim

Thanks very much for your letter. I know I was supposed to get back to you by 3 August at the latest and sorry it's taken me longer, but I have been very busy sorting out moving house.

Well, it is a surprise to actually get an offer of £18,000 from my employer so, yes, I would like to accept it, please. Certainly it will be very useful with all the expense of my new house and so I look forward to receiving the money as soon as possible.

Thanks for all your help.

Morgan

End of Case Study Materials

