



## 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 **Jakub Smulski t/a The Hairy Potter v Lisa Rodeman Architects Ltd.**

Proceedings are issued by Jakub Smulski. You advise your client that the claim is weak.

(a) Identify the grounds which must be established for your client to succeed in an application for summary judgment.

**(3 marks)**

(b) Explain the procedure for the summary judgment application.

**(5 marks)**

(c) Explain why the client should think carefully about making such an application in view of the costs implications.

**(5 marks)**

**(Total: 13 marks)**

## Question 2

Reference: Question relates to **Documents 1 and 3** of the supporting materials and is concerned with the matter of **Tabitha Jenkins Interiors Ltd v Dernick Holdings Ltd.**

(a) Explain whether the letter from the defendant (**Document 3**) is capable of being a Part 36 offer.

**(6 marks)**

(b) Explain to your client the possible cost consequences of not accepting a Part 36 offer.

**(7 marks)**

You have made an application to the court on your client's behalf in respect of a disclosure matter.

(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: 17 marks)**

### Question 3

Reference: Question relates to **Documents 1 and 4** of the supporting materials and is concerned with the matter of **The Kempston Tribune Ltd v Brannings Newspaper Print Services Ltd**.

Your client, The Kempston Tribune Ltd, has indicated that it wishes to cancel the contract straight away and seek the £18,000 through the courts.

- (a) Explain why your client does not have the option of refusing to participate in mediation.

**(4 marks)**

The matter proceeds to mediation.

- (b) Identify what documentation would be relevant and useful for the mediation meeting.

**(6 marks)**

Mediation is unsuccessful and your client is unsure whether to enter into arbitration.

- (c) Explain **five** advantages of using arbitration rather than litigation.

**(5 marks)**

- (d) Explain to your client how arbitration will differ from the mediation process.

**(5 marks)**

**(Total: 20 marks)**

**Turn over**

#### Question 4

Reference: Question relates to **Documents 1 and 5** of the supporting materials and is concerned with the matter of **Pushling Boats Ltd v Jostling, Redman and Brown Ltd**.

Ismail Okafor asks you to draft a valid consent order implementing the terms recorded in Documents 1 and 5.

- (a) (i) Draft a valid 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 **five** factors that the courts generally take into account when making a detailed assessment of costs on the standard basis.

**(5 marks)**

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

**(5 marks)**

**(Total: 20 marks)**

**End of Examination Paper**