

SUPPORTING MATERIALS

14 January 2019
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 a trainee lawyer working in the Commercial Litigation Department of Kempstons LLP, The Manor House, Bedford, MK42 7AB. The Head of Department, Ismail Okafor, has indicated that he 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. He has also provided you with a Memorandum that sets out further information on the files provided.

- Document 1** Memorandum from Ismail Okafor to Trainee Lawyer
- Document 2** Email from Jakub Smulski t/a The Hairy Potter to Lisa Rodeman of Lisa Rodeman Architects Ltd
- Document 3** Letter from Dernick Holdings Ltd to Tabitha Jenkins Interiors Ltd
- Document 4** Extract from contract between The Kempston Tribune Ltd and Brannings Newspaper Print Services Ltd
- Document 5** Letter from Atom Solicitors to Kempstons LLP

DOCUMENT 1

MEMORANDUM FROM ISMAIL OKAFOR TO TRAINEE LAWYER

To: Trainee Lawyer
From: Ismail Okafor
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. Jakub Smulski t/a The Hairy Potter v Lisa Rodeman Architects Ltd

We act for the defendant, Lisa Rodeman Architects Ltd (LRA), in relation to a potential professional negligence claim. Jakub Smulski contracted with LRA for LRA to design and project manage the building of a pottery studio. The contract was for the sum of £45,000. The project was completed on time, approximately eight months ago, and LRA has now received an email from Jakub Smulski (**Document 2**). Lisa Rodeman, the managing director of LRA, has indicated that any legal action taken by Jakub Smulski should be defended, as there is little, if any, merit in his assertions.

2. Tabitha Jenkins Interiors Ltd v Dernick Holdings Ltd

We act for the claimant, Tabitha Jenkins Interiors Ltd (TJI), in respect of a contract matter. The defendant, Dernick Holdings Ltd (DH), contracted with TJI to both design and furnish its offices. The contract was for the sum of £48,000 (£10,000 for the design of the office and £38,000 for the office furniture) and TJI, having fulfilled its side of the contract, invoiced the defendant. Having started proceedings for the £48,000, TJI has now received a letter from DH (**Document 3**) and seeks our advice on what action it should take.

3. The Kempston Tribune Ltd v Brannings Newspaper Print Services Ltd

We act for the claimant, The Kempston Tribune Ltd (TKL), in respect of a contract matter. Brannings Newspaper Print Services Ltd (BNPS) provides TKL with paper on which the newspaper is printed. The most recent delivery was substandard and so could not be used. Although TKL is unable to source paper elsewhere at short notice without incurring additional cost, it is not prepared to continue with BNPS supplying it with paper and wishes to cancel the contract immediately. TKL wants to claim the £18,000 difference in the cost of sourcing the paper from elsewhere at such short notice. A copy of the contract is on file (**Document 4**).

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4. Pushling Boats Ltd v Jostling, Redman and Brown Ltd

We act for the defendant, Jostling, Redman and Brown Ltd (JRB), in this professional negligence claim. Pushling Boats Ltd (PB) sought to purchase a competitor and sought advice from JRB, accountants specialising in takeovers and mergers. The value of the rival business was estimated by JRB to be £120,000. Acting on this, PB purchased the rival business and subsequently found out that the value was closer to £80,000. It has started proceedings for the recovery of the £40,000 difference and we have responded with our client's defence. Helen Jostling, the managing director of JRB, indicated that she was willing to settle the matter for £30,000, payable in two equal instalments. We have subsequently received a letter from the solicitor acting for the claimant (**Document 5**).

**EMAIL FROM JAKUB SMULSKI T/A THE HAIRY POTTER TO
LISA RODEMAN OF LISA RODEMAN ARCHITECTS LTD**

To: Lisa.Rodeman@LRAL.co.uk
From: J.Smulski@Hairypotter.co.uk
Sent: 28 December 2018
Subject: My Studio!

My studio is flooded! I have had to stop work as I cannot get into the studio. I hold you personally responsible for this problem, as you failed to take into account the potential for flooding to occur. Your design looked good, but you did not make sure the studio was built to prevent flooding.

I have lost business, as well as the building itself being damaged. I expect you to reimburse me for my losses, which are currently about £23,000. I wait to hear from you, otherwise I will bring proceedings against you to recover the money owed.

Jakub Smulski

DOCUMENT 3

**LETTER FROM DERNICK HOLDINGS LTD TO
TABITHA JENKINS INTERIORS LTD**

Dernick Holdings Ltd
Lark House
Kempston
MK47 7SD

4 January 2019

Tabitha Jenkins Interiors Ltd
32 Red Lane
Kempston
MK2 5GM

Re: Design and Furnishing of Offices at Lark House

Dear Madam

We are not satisfied that the quality of the office furniture you supplied is of a standard which is worth the £38,000 you seek. We are prepared to pay the £10,000 for the design of the office, but feel that the furniture is at best worth only £25,000.

As a consequence, we are prepared to make an offer of £35,000.

Yours faithfully,

J.K. Roberts

Managing Director

**EXTRACT FROM CONTRACT BETWEEN THE KEMPSTON TRIBUNE LTD AND
BRANNINGS NEWSPAPER PRINT SERVICES LTD**

... 14. ALTERNATIVE DISPUTE RESOLUTION (ADR)

14.1 Each party agrees to engage in Alternative Dispute Resolution (ADR) if a dispute has arisen amounting to a potential breach of contract and will refrain from court action until such ADR has taken place.

14.2 The parties agree that the matter will be referred to mediation through Toppers Mediation Resolution on their Standard Terms of Engagement which procedures and rules are deemed incorporated by reference herein.

14.3 If the dispute is not settled through mediation, the parties upon agreement may refer the matter to arbitration. ...

Turn over

LETTER FROM ATOM SOLICITORS TO KEMPSTONS LLP

Atom Solicitors
14 Kitt Mews
Kempston
MK32 2YP

7 January 2019

Kempstons LLP
The Manor House
Bedford
MK42 7AB

Dear Sirs,

Re: Pushling Boats Ltd v Jostling, Redman and Brown Ltd

Claim No. K45210 Kempston County Court

Further to your recent letter indicating your client's offer of £30,000, we confirm our client's agreement to settle the matter for that sum 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 £15,000, the first payment to be made on 1 February 2019 and the second on 1 March 2019. We will supply our client's bank details by separate correspondence.

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,

Jake Surtees

Atom Solicitors

End of Supporting Materials