



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 15 – CIVIL LITIGATION*

Time allowed: 3 hours plus 15 minutes' reading time

Instructions to Candidates

- You have been provided with a clean copy of the case study materials for you to use in this examination.
- You have **FIFTEEN** minutes to read through this question paper and the case study materials before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on 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 qualifications: **LEVEL 6 CERTIFICATE IN LAW, LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE** and the **LEVEL 6 DIPLOMA IN LEGAL PRACTICE**

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Question 1

Reference: Question relates to **Documents 1–4** of the case study materials.

(a) Lucy Paden asks you to read through the file and to draft the claim form (N1), so that proceedings may commence. The document you draft should be the 'original' and intended for solicitor service, and it should include only **the following parts of the claim form (N1):**

- the Court;
- the claimant's name and address;
- the defendant's name and address;
- brief details of the claim;
- the statement of value;
- the preferred County Court Hearing Centre.

NOTE TO CANDIDATES: A copy of claim form N1 is attached to this examination paper (see Document A) and is for reference only. You should draft your answer in your answer booklet.

(12 marks)

The claim form is issued on 6 April 2020 and returned to you by the Court for service. You have prepared the particulars of claim. The solicitors instructed on behalf of the defendant have stated that they are not instructed to accept service.

(b) Explain:

- how and where you should serve the proceedings that have been issued;
- the deemed day of service;
- by when the claim form must be served.

(10 marks)

(Total: 22 marks)

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Question 2

Reference: Question relates to **Documents 1–4** of the case study materials.

Proceedings are served. The defendant serves a defence in which it blames the cause of the accident on Fortune Servicing Limited. It alleges that Fortune Servicing Limited failed to ensure that a problem with the directional controls (forward and reverse), identified by the defendant and notified to Fortune Servicing Limited, was rectified. No additional claim has been made. No allegations of contributory negligence are made in the defence.

- (a) Advise Trevor about the defendant's and Fortune Servicing Limited's positions with regard to their liability to him and to each other, mentioning a course of action which Trevor may consider taking.

(15 marks)

- (b) Explain what should be done to secure the evidence of Kasja in support of Trevor's claim, and at any trial.

(6 marks)

In due course, Lucy is preparing the witness statement for Trevor Mitchell. Trevor tells Lucy that he has not given up smoking, but that he does not want that to be included in his witness statement because, he says, 'it is no one else's business'.

- (c) Explain how Lucy should discharge her professional conduct duties to Trevor and to the court.

(9 marks)

(Total: 30 marks)

Question 3

Reference: Question relates to **Document 5** of the case study materials.

Assume that SureFind Recruitment Consultancy Ltd's claim was issued in January 2020 and served correctly. Directions are given, which include a direction for standard disclosure. The parties are to serve their lists of documents on 14 May 2020. Lucy has asked you to prepare the client's list of documents. You arrange to meet with Ashraf Rao of SureFind.

(a) Advise Ashraf on standard disclosure, confining your advice to:

- what documents are to be disclosed;
- the duty of search;
- what the list of documents must indicate.

(7 marks)

You then review and discuss with Ashraf the available documents.

Note: the documents referred to in (b) below are NOT provided in the case study materials.

(b) Explain, for each of the following documents, and with reference to disclosure, whether or not inspection can be withheld and for what reason:

- emails from Tantalum Ltd pre-action, which blame SureFind for the problems arising with the website;
- counsel's advice to SureFind;
- a specialist external advisory report commissioned by SureFind in March 2020 as to the reasons for the website problems;
- a letter headed 'without prejudice' sent by Kempstons to the defendant's solicitors.

(13 marks)

(Total: 20 marks)

Turn over

Question 4

Reference: Question relates to **Documents 5 and 6** of the case study materials.

As indicated in his email, Ashraf Rao of SureFind calls to speak to Lucy during the afternoon of 14 July. However, Lucy is unavailable, and you take the call. Ashraf repeats that he is concerned about the expert's report, which is not as supportive of his claim as he would have liked. The expert is highly specialised in her field and has wide experience of providing expert evidence. The expert has complied with the requirements of Part 35.

- (a) Explain how you might reassure Ashraf regarding the expert evidence, including suggesting any step which might be taken to address his concerns.

(7 marks)

Having reassured Ashraf about the expert evidence, you consider the options with him.

- (b) Advise Ashraf, on behalf of SureFind, as to the range of options to bring the claim to conclusion without a trial. You should link each option to the most likely cost outcome, including any benefit.

[NOTE TO CANDIDATES: You are not required to explain the procedural requirements for any of the options that you mention.]

(15 marks)

After Ashraf's consideration of the options discussed above, you are instructed to negotiate a settlement of SureFind's claim. You successfully negotiate a settlement of £10,000, having made a concession with regard to costs. The defendant agrees to pay only a proportion of SureFind's costs, limited to £5,000. Your base costs are £9,000. You agree with Ashraf that you will not seek to recover the balance of the costs from SureFind. SureFind has funded the claim with the benefit of a Conditional Fee Agreement, which provides for a 50% success fee on base costs.

- (c) Calculate the costs (excluding VAT and disbursements) that Kempstons will receive, and the amount of damages that SureFind will retain.

NOTE TO CANDIDATES: You may either calculate in numbers or describe the process in words (or a combination of both).

(6 marks)

(Total: 28 marks)

End of Examination Paper

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