

**LEVEL 4 - UNIT 10**  
**RESOLVING A COMMERCIAL DISPUTE IN ENGLAND AND WALES**  
**SUGGESTED ANSWERS - JANUARY 2017**

**Note to Candidates and Tutors:**

The purpose of the suggested answers is to provide students and tutors with guidance as to the key points students should have included in their answers to the January 2017 examinations. The suggested answers do not for all questions set out all the points which students may have included in their responses to the questions. Students will have received credit, where applicable, for other points not addressed by the suggested answers.

Students and tutors should review the suggested answers in conjunction with the question papers and the Chief Examiners' reports which provide feedback on student performance in the examination.

**Question 1**

- (a) The court has a duty to manage cases justly, which means that they should be dealt with proportionately to save the parties expense. The court also encourages parties to settle or use means of alternative dispute resolution to resolve litigation. Dealing with cases in a proportionate way includes reference to the amount of money involved, the complexity of the issues and the financial position of each party, including placing the parties on equal footing. This will also mean dealing with cases expeditiously and fairly and allocating appropriate resources. This claim is relatively low value, not complex, and both parties will be costs sensitive.
- (b) The pre-action letter does not comply with the pre-action conduct in several ways. The letter does not specify what the allegations are against the Defendant (Milo), i.e. breach of contract. The letter is not clear how the Claimant's loss has been calculated, and does not provide documentary support for the amount claimed. The letter does not mention ADR or propose possible methods of ADR, such as mediation or arbitration.

**Question 2**

- (a) The Claim should be issued in the County Court as the value is less than £100,000, which means that it cannot be issued in the High Court. The claim must be issued in the County Court Money Claims Centre.
- (b)
  - (i) Paragraph 1: Admit
  - (ii) Paragraph 2: Admit
  - (iii) Paragraph 3: Admit
  - (iv) Paragraph 6: Deny

- (c) Section 69 of the County Courts Act 1984.
- (d) The Defendant has two weeks from service of the particulars of claim in which to file and serve an acknowledgement of service or a defence/ admission/ counterclaim. If he files an acknowledgement of service within 14 days (two weeks), he has 28 days from service of the particulars of claim in which to file the defence. The date by which an acknowledgement or defence must be filed and served is 24 June 2016. If an acknowledgement of service is filed, the defence must be filed and served by 8 July 2016.

### **Question 3**

- (a) The normal track for this claim will be the fast track, because the amount claimed is less than £25,000 but more than £10,000. However, this will only be the case if the court thinks that the trial will last less than one day; expert evidence will be limited to one expert per party per field; and that there will be expert evidence in no more than two fields.

In this case, there are only likely to be experts required in two areas. As the issues involved are not numerous or complex, it is likely the trial would last no more than a day and the fast track would be the appropriate track for the action.

- (b) Milo must carry out the search in respect of the documents that he must disclose, and Raheema must carry out the search in respect of the documents that she must disclose. That is, it must be the parties, rather than their representatives, who carry out disclosure.
- (c) A disclosure statement is a statement made by the party disclosing the documents, it sets out the extent of the search that has been made, certifies that the party understands the duty to disclose documents and that he has carried out that duty to the best of his knowledge.

### **Question 4**

- (a) Milo will probably have two witnesses of fact, himself and Oscar. They can each comment upon the condition of the cello when it was in their custody (causation).
- (b) Milo is likely to call an expert in relation to the cost of repair of the instrument. He may need another in relation to the alleged diminution in value of the instrument.
- (c) In order to find an appropriate expert, I would need to consult directories or an approved list of experts. I may also have to rely upon personal recommendations, for example from Milo or Oscar who are familiar with the field. I would have to obtain the experts' CVs, and ensure that they were suitably qualified to make a report. I would also need to ensure that they were available to prepare the report and attend the trial at the required time.

- (d) To assist at trial, the court may also require a costs statement, chronology, skeleton argument, list of issues, and/or a case summary, dramatis personae, before the trial begins.

### **Question 5**

- (a) The court will draw up the order unless it orders a party to draw it up.
- (b) The order must contain the name and judicial title of the judge who made the order, in this case, DJ Pattrick. The order must also contain the date (17 January).
- (c) The judgment is silent as to when payment should be made. As this is a judgment for the payment of money, Milo has 14 days from the date the order is made (17 January) in which to comply with the order, so he must make the payment by 31 January 2017.
- (d)
  - (i) Interest runs on the judgment debt at 8%.
  - (ii) Interest will run from the date of the judgment until full payment is made.