

SUPPORTING MATERIALS

19 January 2017

Level 4

**RESOLVING A COMMERCIAL DISPUTE IN
ENGLAND AND WALES**

Subject Code L4-10



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

**UNIT 10 – RESOLVING A COMMERCIAL DISPUTE IN ENGLAND AND
WALES***

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 working in the Commercial Litigation Department of Kempstons LLP, The Manor House, Bedford, MK42 7AB. Your supervising partner is Sanita Shalom.

You receive the following documents:

- | | |
|-------------------|--------------------------------|
| Document 1 | Attendance Note |
| Document 2 | Pre-Action Letter before Claim |
| Document 3 | Particulars of Claim |
| Document 4 | Note of Judgment after Trial |

DOCUMENT 1

ATTENDANCE NOTE

Persons attending: Sanita Shalom, Kempstons LLP
Milo Cathcart, First Fiddle
Date: 18 May 2016
Matter: Potential breach of contract claim against First Fiddle
Time engaged: 60 minutes

Milo Cathcart owns First Fiddle, a shop selling fine stringed instruments to skilled amateurs and professional musicians. On 7 January 2016, he purchased a number of cellos from Cello Bellies, a shop specialising in cellos, as it was closing down its business. Cello Bellies had been owned by Milo's friend, Oscar Brown.

Among the cellos purchased from Oscar was a cello made by Carleton Stanton, who made only a few during his lifetime. Oscar told Milo that the cello was worth about £80,000, and gave him an appraisal of the instrument dated November 2015.

On 3 February 2016, Raheema Begum, a young classical cellist, attended Milo's shop. She inspected the cello and played it in the shop. She returned the following week on 10 February 2016, and purchased the cello for £80,000.

On 6 March 2016, Miss Begum returned to the shop and told Milo that she had obtained a written valuation from Hazel Bear for insurance purposes. While valuing the instrument, Miss Bear discovered a hairline crack in the neck of the instrument as well as minor warping to the wood on the surface of the cello. Miss Bear estimated that this negatively affects the value of the instrument by approximately £20,000, meaning that the cello was only worth £60,000 when Raheema purchased it. Miss Bear further estimated that repairs would cost in the region of £17,000 due to the specialist wood and labour required for the works.

On 13 May 2016, Milo received the following letter from Miss Begum (**Document 2**).

Milo does not believe that the cello was damaged when he sold it. He says that he did inspect the cello before he purchased it and did not notice a hairline crack in the neck; however, he admits that he was more concerned with ensuring that the cello was a genuine 'Stanton' than whether there were any minor flaws. He has asked Oscar (from whom he purchased the cello) whether he recalls any problems with the cello, and Oscar has firmly denied that there were any problems.

Milo also cannot see how it will cost £17,000 to fix the cello. He knows he is not an expert but believes the cost of the repairs should easily be under £10,000. He also does not accept that the crack devalues the instrument by £20,000. Milo is very worried as, although he is adept at fixing violins and violas, he has little experience of cellos and typically only carries out work to cellos valued at under £1,000. He is therefore unable to carry out the work to the cello himself, and would have to pay for it to be done.

Sanita explained to Milo that he might have to pay an expert cello repairer to assess the damage and repair the cello, and that he might also have to find an expert to value the instrument with the hairline crack.

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DOCUMENT 2

PRE-ACTION LETTER BEFORE CLAIM

12 May 2016

Milo Cathcart
First Fiddle
35 High Street
High Wolston
WO1 5ST

Dear Mr Cathcart

I refer to the cello I purchased from you on 10 February 2016. The cello is damaged and does not sound right anymore.

I do not want a different cello; this one is perfect for me and therefore I do not want you to replace it. I want you to fix it so that it sounds beautiful again, and so that I am in the position I should have been in if you had held up your end of the bargain.

I demand that you fix my cello or pay £17,000 for it to be fixed by someone else.

If you do not pay me this money immediately, I will see you in court.

Yours sincerely,

Raheema Begum

Raheema Begum

Cellist, Kempston Philharmonic

DOCUMENT 3

PARTICULARS OF CLAIM

IN THE [] COURT

B E T W E E N

RAHEEMA BEGUM

Claimant

-and-

MILO CATHCART T/A FIRST FIDDLE

Defendant

PARTICULARS OF CLAIM

1. The Claimant is a professional cellist. The Defendant is the owner of a shop called 'First Fiddle'. The Defendant's shop sells stringed instruments.
2. On 3 February 2016 the Claimant visited the Defendant's shop. The Claimant played a cello made by Carleton Stanton (the 'Stanton Cello').
3. The Claimant returned to the shop on 10 February 2016 and purchased the cello for £80,000.
4. The Defendant was aware that the Claimant is a professional cellist and the cello would be used for performing.
5. It was an implied term of the contract that the cello would be:
 - a. Of satisfactory quality
 - b. Fit for the purpose for which it was intended
6. In breach of contract, the cello was not fit for purpose nor of satisfactory quality in that it was damaged as follows:

PARTICULARS OF DAMAGE

- a. Hairline crack in the neck of the cello running from the base of the neck to the scroll
 - b. Consequential warping to the top wood of the cello
7. As a result of the Defendant's breach of contract the Claimant has suffered loss and damage.

PARTICULARS OF LOSS

- a. Cost of repair of cello £17,000
alternatively
 - b. Diminution in value of the cello £20,000
8. In addition, the Claimant claims interest pursuant to section ____ of the _____.
9. Both parties have complied with the requirements of the Practice Direction – Pre-Action Conduct.

AND the Claimant Claims

- (1) Damages
- (2) Interest

7 June 2016

I believe that the contents of this Particulars of Claim are true.

Raheema Begum

Raheema Begum

DOCUMENT 4

NOTE OF JUDGMENT AFTER TRIAL

NOTE OF JUDGMENT AFTER TRIAL - 17 JANUARY 2017

DJ Pattrick finds that the cello was damaged on purchase, but that the Claimant has overstated the difference in value between its actual worth and what she paid.

DJ orders the Defendant to pay to the Claimant £5,000, being the diminution in value of the cello.

The Defendant must pay 70% of the Claimant's costs, such costs to be summarily assessed.

End of Supporting Materials

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