



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 1 relates to **Documents 1 and 2** of the supporting materials.

Proceedings have not yet been issued. Krishnan intends to write to the claimant's solicitors, drawing attention to the terms and conditions in the booking confirmation (**Document 2**).

(a) Advise Ainslie why the terms and conditions (**Document 2**) might assist him in resolving the dispute before proceedings are issued.

(7 marks)

(b) Explain why Krishnan would not wish to write the letter 'without prejudice'.

(3 marks)

Krishnan has also advised Ainslie that he might protect his position by making a Part 36 offer.

(c) (i) Explain how a Part 36 offer would protect Ainslie's position on costs.

(9 marks)

(ii) Advise why it would not be appropriate to make any Part 36 offer in the same letter referred to above in 1(b).

(5 marks)

(Total: 24 marks)

Question 2

Reference: Question 2 relates to **Document 1** of the supporting materials.

All attempts to resolve the matter pre-commencement of proceedings fail. Ainslie decides against making a Part 36 offer. The claimant issues proceedings. Before the defence is served, Ainslie asks whether there is anything that can be done to strike out the claim.

(a) (i) Advise Ainslie whether it is likely that the claim could be struck out at this time.

(5 marks)

(ii) Explain whether Ainslie might make any other application to the court to dispose of the claim before trial.

(4 marks)

(b) Explain why Ainslie should think carefully about costs, before making any application to the court.

(5 marks)

(Total: 14 marks)

Question 3

Reference: Question 3 relates to **Document 3** of the supporting materials.

No applications are made. The matter proceeds and standard directions are given on the multi-track. Krishnan prepares and serves a list of documents on behalf of Ainslie. No list of documents is received from the claimant's solicitors but a letter is received from them (**Document 3**).

- (a) Explain whether the claimant's solicitors are correct in saying that they are under no duty to prepare a list of documents.

(6 marks)

Having read the letter, Krishnan decides to make an application to the court. One of the questions on the standard application notice, N244, is as follows: 'What order are you asking the court to make and why?'

- (b) (i) Identify what order the court should be asked to make, given the claimant's solicitors' conduct.

(1 mark)

- (ii) Explain why the court is being asked to make the order.

(2 marks)

In the application notice, Krishnan includes evidence in support. He says that he has not got time to discuss the application with Ainslie as he wants to get it issued. He says that, as Ainslie's legal representative, he will complete the statement of truth on behalf of Ainslie.

- (c) Explain whether Krishnan's proposed action complies with the relevant Civil Procedure Rules.

(5 marks)

Assume that the application is made in a way which complies with the Civil Procedure Rules.

- (d) (i) State what the parties must do before the hearing of the application to ensure that the court can make a summary assessment of costs.

(3 marks)

- (ii) Explain the likely costs order that will be made if Krishnan is successful in his application.

(4 marks)

(Total: 21 marks)

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Question 4

Reference: Question 4 relates to **Document 4** of the supporting materials.

Just before the hearing of the application, the claimant's solicitors serve their client's list of documents. The matter progresses. After exchange of witness statements, Krishnan receives a letter from the claimant's solicitors (**Document 4**).

- (a) Identify the costs implications if Ainslie rejects the offer set out in the letter and then recovers less than the offer at trial.

(5 marks)

Ainslie decides to reject the offer. At trial, the judge does not accept the claimant's claim that it was necessary to refund the ticket price of all of the guests who were not seated in the marquee. The judge permitted only two guests to be called as witnesses. The claimant is awarded the sum of £25,000.

- (b) Explain what impact the judge's finding may have on the claimant's costs recovery.

(6 marks)

(Total: 11 marks)

End of Examination Paper